

# **Ofcom Broadcast Bulletin**

**Issue number 273  
16 February 2015**

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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.**

## Standards cases

### In Breach

#### News report on Metropolitan Police Service and the Ellison Review

*Channel 4 News, Channel 4, 6 March 2014, 19:00*

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##### Introduction

Ofcom was alerted to this programme by a complaint from the Metropolitan Police Service (“MPS”). This edition of *Channel 4 News* reported on the publication of the Ellison Review<sup>1</sup> into possible corruption in the MPS and the role of undercover policing in the Stephen Lawrence case.

The MPS complained<sup>2</sup> that a news item of the programme which featured a reporter conducting vox pop<sup>3</sup> interviews with five individuals in Brixton, South London (“the Brixton Report”), was not duly accurate or duly impartial. The individuals were asked their opinions of the MPS, and according to the complainant: “The impression given by the report was that all the individuals were chosen randomly”. However, according to the MPS, the programme did not refer “to the fact that the individuals were employees of an organisation [Livity<sup>4</sup>] for which the reporter had worked or which...had also worked for Channel 4”.

On assessing the content, we noted that at the beginning of the programme, the studio presenter said:

*“Betrayed again, this time by police corruption. The [Stephen] Lawrence family have waited more than 20 years for the truth about their son’s murder. They’re still waiting. The Home Secretary has announced an extraordinary public inquiry into undercover policing after it was revealed that a police spy was placed amongst the grieving Lawrence family and that police links with criminals may have frustrated the original investigation into the murder of Stephen Lawrence. Theresa May [the Home Secretary], who also said that an unknown number of miscarriages of justice may have occurred, says the police stand damaged*

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<sup>1</sup> The Stephen Lawrence Independent Review, conducted by Mark Ellison QC (“the Ellison Review”), was an independent inquiry into possible corruption and the role of undercover policing in the MPS’ investigation into the murder of a black teenager Stephen Lawrence. Mr Lawrence had been stabbed to death in a racially motivated attack in Eltham, south east London in 1993. The findings of the Ellison Review were published on 6 March 2014. (see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/287030/stephen\\_lawrence\\_review\\_summary.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287030/stephen_lawrence_review_summary.pdf)).

<sup>2</sup> Ofcom also received a complaint from the MPS of unjust or unfair treatment in the programme as broadcast (see page 89 of this Bulletin for Ofcom’s adjudication on that matter).

<sup>3</sup> Vox pop interviews are commonly known to be recorded interviews with members of the public talking informally in public places about particular topics.

<sup>4</sup> According to its website, Livity is a Brixton-based “youth marketing agency” aimed at improving the lives of young people in the UK. Livity involves young people in projects to “co-create campaigns, content and communities”.

*tonight. Stephen Lawrence, Hillsborough, 'Plebgate', now this. Will the police ever win the trust of the community?"*

A brief introduction by a reporter was then shown in which he said: *"I've come down to south London to see if the people here trust the police"*. Immediately following this statement was an excerpt from a vox pop interview with a contributor who said *"even when you see another black police officer there's still a disconnect between that police officer and a normal black guy on the street"*.

Later in the programme the studio presenter explained that the Macpherson Inquiry<sup>5</sup> *"did not get to the root of what went wrong in the police investigation of the murder of Stephen Lawrence"*. She said that the Ellison Review had *"found evidence to suggest police corruption, subterfuge, and inappropriate conduct"* and a public inquiry into undercover policing had been ordered by the Home Secretary. There then followed a pre-recorded report by a reporter, Simon Israel, during which he interviewed Deputy Commissioner Craig Mackey of the MPS. Following this report, the studio presenter discussed the Ellison Review with Neville Lawrence, the father of Stephen Lawrence.

There was then a second pre-recorded report, The Brixton Report, which began with the reporter explaining that he had visited Brixton because he *"wanted to know if people here were surprised by the alleged corruption [in the MPS] and whether there was any optimism for the future"*. He added that: *"I've come home to Brixton to find out if tensions between the black community and the police have abated in the 20 years since Stephen Lawrence's murder"*.

The reporter asked five people the question: *"Do you trust the police?"*

The first individual, identified as Matthew Peltier, appeared to have been filmed on a street in Brixton. He responded to the question *"Do you trust the police?"* by stating:

*"That's a really difficult question and I'm not sure, not yet. I've been being [sic] stopped and searched for at least fifteen years now. It happened for the first time when I was about 13 and it happened a couple of months ago. It doesn't feel like it's changed for me. It doesn't feel like we've grown or evolved in the way in which we deal with members of the public and specifically black and Asian members of the public"*.

Immediately following this, a clip from an interview with Naomi Brown was shown. She was identified as a *"Youth Development Manager, Livity"*. She said:

*"Engaging with the young people like I do at Livity every day, I think their experience with the police is very negative. They [i.e. young people] kind of don't respect them, they [young people] don't put them in authority, they [i.e. the police] have no interest in what they're doing and [the police] kind of are against them. They think that the police are not there to help, the police are against them"*.

The third individual, identified as Beulah Lambert, appeared to have been filmed on a different street in Brixton to that of the previous two people. She was asked the same question by the reporter and answered:

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<sup>5</sup> In 1999, the Stephen Lawrence Inquiry, conducted by Sir William MacPherson, found the MPS to be "institutionally racist" and recommended a number of measures in an attempt to tackle the problem.

*"I would say no actually. Any time I see police I always think 'Oh God, what have I done?' instead of thinking that they are there to protect me".*

The fourth individual, identified as Henry Houdini, appeared to have been filmed on a different street in Brixton to that of the three previous people.  
He said:

*"Even when you see another black police officer, there's still a disconnect between that police officer and a normal black guy on the street and I don't know why that is, but I think there just is".*

Finally, the reporter said: *"I also caught up with Lee Jasper, who worked under the former Mayor of London, Ken Livingstone"*. Mr Jasper was identified as a *"race relations activist"* and appeared to have been filmed in a market area in Brixton. The following discussion between the reporter and Mr Jasper took place:

Reporter: *"Do you trust the police?"*

Lee Jasper: *"No. I don't think no communities trust the police because I think that we find time and time again that we're lied to, we're deceived, [and] we're not given the full truth. And even when the police themselves are caught out in the inappropriate use of an exercise of their powers, they're loathe to apologise".*

Reporter: *"Can you ever foresee in your lifetime a time when the black community and the police, they'll be that trust, that bridge will be built back again?"*

Lee Jasper: *"Yeah, I can. When we get proper political representation who are not intimidated by the police and force them to address the institutional and systemic racism in their police practices".*

The Brixton Report ended with the reporter stating:

*"I found little hope of change here, but a community still fighting for parity".*

Following the Brixton Report, there was studio discussion about the Ellison Review that included: Neville Lawrence; Damien Green, a Home Office Minister at the time; and, via video link, John O'Connor, a former MPS detective.

We noted that the Brixton Report was approximately two minutes and 30 seconds in length and the whole news segment about the MPS and the Ellison Review was approximately 18 minutes and 35 seconds in duration.

On 13 March 2014, the following statement was broadcast in *Channel 4 News*:

*"And now for an apology. Last Thursday Channel 4 News broadcast a report into public attitudes to the police in Brixton. In the introduction we said we were speaking to residents and the impression given was the four interviewees who expressed a lack of trust in the police were chosen at random. We would like to make clear the individuals were all linked to a youth focused organisation based in Brixton and were not a random sample. This should have been made clear and it was not our intention to mislead in any way. We apologise for the impression given which fell below our normal high standards".*



We noted that the MPS complained that the edition of *Channel 4 News* broadcast on 6 March 2014 was not duly impartial in its treatment of the MPS. However, after carefully assessing the whole segment of the programme covering issues raised by the Ellison Review, we did not consider that the programme warranted investigation under the part of Rule 5.1 of the Code which requires that news “must be...presented with due impartiality”. This was because in our view, taking the programme as a whole, there were various statements that reflected the viewpoint of the MPS to some extent, or defended the MPS against the criticisms being made against it to some degree, in relation to the debate surrounding the Ellison Review. For example, we noted:

- a pre-recorded interview with Deputy Commissioner Craig Mackey of the MPS. Mr Mackey was able to present the MPS’s viewpoint concerning allegations that the MPS had undermined the Macpherson Inquiry<sup>6</sup>;
- the participation in a studio discussion of a former MPS detective, John O’Connor. He, while critical of some past police undercover activities, directed his criticisms against senior police officers authorising such activities, rather than individual police officers<sup>7</sup>; and
- the participation in a studio discussion of a then Home Office Minister, Damien Green. He conceded that the findings of the Ellison review were “*shocking*”, but he also defended the MPS in several statements:
  - *“I completely agree...[that] the [police] attitude on the street needs to be improved and to be fair to the Metropolitan Police, in some boroughs, particularly in London and Hackney they are trying very hard to do that”;*
  - *“We’re conducting root and branch reform of the police. I do think it would be very unfair to the vast majority of police officers to suggest they do corrupt things or racist things. The vast majority of police officers do a difficult job, it’s sometimes dangerous, they do it very well and with integrity”;*
  - *“The stop and search is a useful tool for the police, but it’s got to be done properly, it’s got to be done with respect. People have to understand, I think the root of it is why they’re being stopped and search. And as I say, in some London boroughs particularly, the Metropolitan Police is experimenting with new ways of doing it and the initial results are quite good. Far fewer people are being stopped and searched and a far higher proportion of those stopped and searches end up in an arrest. Which is clearly a step forward...”; and*
  - *“I trust the police, I trust most individual police officers”.*

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<sup>6</sup> For example, Deputy Commissioner Mackey said in response to a question as to whether the MPS had undermined the MacPherson Inquiry: *“I’m not confirming or denying anything. What I am saying is: we have a series of allegations; we’ve presented a detailed report that shows the findings of the work that we’ve done in terms of that; and clearly in part of the work that goes on in the future will be to look at the detail behind that”.*

<sup>7</sup> For example, Mr O’Connor said: *“And I think you really have to look not at the individual officers that are involved in undercover work, but I think you’ve got to look at a very senior level of the people that authorised this to happen particularly those that tried to compromise the Lawrence family”.*

However, Ofcom considered that the Brixton Report warranted investigation under Rule 5.1 of the Code in relation to its requirement that news must be reported with due accuracy. In full Rule 5.1 states:

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

We therefore sought Channel 4’s comments as to how this material complied with this rule in as regards due accuracy.

## **Response**

Channel 4 stated its belief that the various news items relating to the Ellison Review in this edition of *Channel 4 News* “taken as a whole [were] duly accurate and was not therefore in breach of the Code”.

By way of background, Channel 4 said that the Ellison Review was “a major news story of significant public interest...[which] found evidence to suggest police corruption, subterfuge and inappropriate conduct”. The Ellison Review also “led to the Home Secretary announcing an extraordinary public inquiry into undercover policing following allegations of police behaviour towards the grieving Lawrence family, police links with criminals that may have frustrated the original investigation into the murder of Stephen Lawrence and the allegation the original Stephen Lawrence Inquiry in 1999 into the police may not have known the full story”.

According to Channel 4, as part of its coverage into the outcome of the Ellison Review “it was decided editorially to gauge public views on relations between the public and the police by sending a reporter to speak to individuals in Brixton. A reporter was tasked to carry out interviews to this end. It was a quick turnaround project on the day”. Channel 4 stated that: “The reporter assigned to do this was a junior reporter at Channel 4 News – who to date has worked primarily on Channel 4 News as a reporter on sports”. It added that this reporter had formerly been the editor of a free youth magazine called ‘Live’, which was based Brixton, and produced by a company called Livity, a Brixton-based “youth marketing agency”.

Channel 4 said that in the Brixton Report, the reporter “visited Brixton to test what locals felt about the police”. It added that the interviews were carried out in the street in Brixton, and the individuals were asked about relations between the MPS and people living in Brixton. However, Channel 4 added that the Brixton Report “wrongly suggested that this was a vox pop randomly chosen. The first four individuals interviewed in the report did have links with the organisation Livity, although only one of these individuals was identified in the programme as being from that organisation”. By way of explanation, Channel 4 said that: “Instead of carrying out vox pops with members of the public chosen randomly, the reporter had arranged with a contact at Livity to speak to her and for her to bring along three or four others who would also speak on camera. Channel 4 conceded that: “The methodology adopted by the reporter was flawed – a random sample of people should have been interviewed”. By way of mitigation, Channel 4 said that this was “an error of judgement, borne out of inexperience” on the part of the reporter.

However, Channel 4 argued that: “The individuals [featured in the vox pops] did have direct knowledge of Brixton and the policing in the community...[and] were not coached or coerced into making their statements. The interviewees gave their own honest opinions and were speaking from personal experience. There was no agenda to somehow publicise Livity or to take a particular line”.

Despite this “error of judgement”, Channel 4 argued that the Brixton Report was duly accurate for several reasons. Firstly, the views expressed by the five individuals were “genuinely held views – which were indeed milder than many of the other criticisms made by the Ellison Report and other interviewees that day”. In addition, Channel 4 said that all the interviewees “had personal experience and direct knowledge of Brixton and...[t]hey all said more-or-less the same thing raising concerns” about the police. In Channel 4’s opinion, given that these interviews were not “manufactured” or “inconsistent to mainstream opinion on the day” then “whether or not it was made clear that the people speaking were from one group as opposed to random individuals does not alter the accuracy of the report in a material respect”.

Second, Channel 4 said that although the “methodology used by the reporter was flawed...the [interviewees’] opinions were honest and reflect similar findings and concerns raised by many other individuals about the same subject, relations between the black community and the police”. It added: “That the background of the interviewees was not made clearer was below normal high standards, but viewers were not misled in any material way”. In this regard Channel 4 cited various examples of the concerns raised by the interviewees, such as:

- April 2013: Channel 4 said that the MPS was: “still institutionally racist, according to the Metropolitan Black Police Association [“MetBPA”] which said the force has failed to change the racist mindset behind Stephen Lawrence failures”;
- November 2013: according to Channel 4, the Equality and Human Rights Commission said that “overall, black people were six times more likely than white people to be stopped, with Asian or other ethnic minority groups two times more likely to be stopped”;
- March 2014: Channel said that the leader of the MetBPA, Janet Hills, called on the MPS Commissioner, Sir Bernard Hogan-Howe “to admit that the force was still institutionally racist and said the force has not improved since the 1999 Macpherson inquiry”; and
- March 2014, in the programme in question in this case, Neville Lawrence set out similar concerns when he said:

*“I told Theresa May that in order to go forward the police have to change their attitude and behaviour, when they stop young people especially. When people are being harassed they tell their friends and the police’s reputation goes even further down”.*

Third, Channel 4 argued that “‘Due’ is an Important qualification to the concept of accuracy and impartiality” in news”. It added that the Code “makes clear that ‘due’ means adequate or appropriate to the subject and nature of the programme and the likely expectation of the audience”. Therefore, in Channel 4’s view “[t]hat the individuals were wrongly billed as a vox pop rather than from a youth-focused organisation did not alter the fact that the views were genuine and were consistent with the views expressed and concerns raised about the police, including in official reports and what was said by Stephen Lawrence’s father” in the same programme. In addition, Channel 4 referred to the context of the vox pop interviews, stating that they “played an incidental role to the main reporting” on the Ellison Review, and “formed only a small part of the whole news segment about the MPS and the Ellison Review which lasted nearly twenty minutes”. Furthermore, Channel 4 said that the comments made

by the interviewees from Livity were “less critical than the findings in the Ellison report and what was said by other interviewees” in the programme.

Channel 4 “accepted that this particular report fell below the normal standards of Channel 4 News”. It also said: “The report should have made clear the interviewees were all linked to Livity and were not a random sample”. However, it added that: “taken as a whole due accuracy was applied”.

In conclusion, Channel 4 said that this matter “was caused by poor judgement by a junior reporter”.

It added that: “When the matter was fully investigated the mistake was corrected to viewers in an on air apology within a week of the original broadcast”. (Please see the Introduction for text of this apology). In addition, Channel 4 said that a “formal apology” was also sent to the MPS, part of which said: “We apologise for the impression given which fell below or normal high standards”.

Channel 4 added that: “The reporter has been made aware that this must not happen again, that he should have made known his connection with Livity”. In addition, Channel 4 said that the reporter and five other members of the Channel 4 News team had received further training on media law and compliance. Furthermore, Channel 4 said that it had reviewed its “internal editorial procedures and protocols to ensure that should such any similar issue occur again it will be highlighted and brought to the attention of the senior editorial staff prior to broadcast.” Amendments to its procedures include “improving its internal reference up procedure to bring about closer supervision of the work of all the editorial team (both junior and experienced staff) by senior members of the editorial team of Channel 4 News”.

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that news included in television and radio services is reported with due accuracy and presented with due impartiality. This objective is reflected in Section Five of the Code.

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

When applying the requirement to report news with due accuracy and present news with due impartiality, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to report news with due accuracy and present news with due impartiality.

As mentioned in the Introduction above, we did not investigate this programme in relation to the part of Rule 5.1 requiring news to be presented with due impartiality. This was because, in our view, taking the news segment as a whole which dealt with the debate surrounding the Ellison Review, there were various statements that could be described as reflecting the viewpoint of the MPS to some extent, or defending the MPS against the criticisms being made against it to some degree.

The remainder of this Decision therefore deals with the issue of whether the Brixton Report reported the news with due accuracy.

This part of Rule 5.1 sets out a fundamental requirement on broadcasters to ensure that audiences are not misled by the manner in which news is presented. Accordingly, breaches of this requirement are amongst the most serious that can be committed by a broadcaster, because they go to the heart of the relationship of trust between a broadcaster and its audience. In particular, we consider that the audience is likely to place a higher degree of trust in the broadcaster's editorial integrity when producing news programming.

Accuracy entails getting the facts right and where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher. Therefore, where substantial criticisms are being made in programming about particular organisations or individuals, viewers must be able to trust the information they are being given.

When considering whether or not a broadcaster has reported with "due accuracy", it is important to recognise the importance attached to the right to freedom of expression and the broadcaster's right to be able to interpret news events as it sees fit. This is particularly the case in the reporting of controversial matters in the news, which is to some extent dependent on subjective interpretations. Regulatory intervention should be the minimum necessary to ensure compliance with the Code. Further, in assessing "due" accuracy, "due" means adequate or appropriate to the subject matter.

We noted that this edition of *Channel 4 News* included a lengthy sequence of approximately 18 minutes and 35 seconds in duration in total analysing the issues surrounding the publication of the Ellison Review. Part of this sequence, the Brixton Report, was a shorter pre-recorded report of approximately two and a half minutes in duration. The reporter explained that he had visited Brixton because he "*wanted to know if people here were surprised by the alleged corruption [in the MPS] and whether there was any optimism for the future*". He added that: "*I've come home to Brixton to find out if tensions between the black community and the police have abated in the 20 years since Stephen Lawrence's murder*". The Brixton report featured five vox pop interviews with individuals in Brixton who were all asked the question: "*Do you trust the police?*"

Given the criticisms made of the MPS in the Ellison Review, we appreciate why *Channel 4 News* would want to include interviews with members of the public to gauge their opinions of the MPS. In particular, given the Ellison Review's focus on the Stephen Lawrence case, and the interaction of the MPS with the black community more generally, it was not surprising that the broadcaster should wish to include a report on attitudes to the MPS in a part of London with a substantial black population. In addition, we recognise that vox pop interviews are a common editorial technique whereby broadcasters can reflect the views of members of the public in their programming. However, all news items must be "reported with due accuracy", including reports which include and rely on vox pop interviews as part of their content.

In this case, we considered whether the vox pop interviews were duly accurate in two respects: firstly, in the manner which these interviews were presented in the programme as to how they were selected; and second, in relation to whether they were representative of likely attitudes to the MPS amongst black people in Brixton.

In relation to the manner in which the vox pop interviews were presented in relation to their selection, the five vox pop interviews were included in the programme as described in the Introduction. We noted the second of these interviewees, Naomi Brown was identified on screen as a “*Youth Development Manager, Livity*”. In addition, we noted that the fifth interviewee, Lee Jasper, was described by the reporter as having “*worked under the former Mayor of London, Ken Livingstone*”. In addition, Mr Jasper was identified on-screen as a “*race relations activist*”. The audience would therefore have been aware of relevant biographical details of these two interviewees. As a result, we considered that it would not have been likely that the audience would have viewed Naomi Brown and Lee Jasper as members of the public stopped at random to take part in brief vox pop interviews.

The other three vox pop interviewees were only identified by their name on-screen however. As such we considered it likely that the audience would have viewed these three contributors as what the reporter described as “*people here*” i.e. ordinary members of the public in Brixton that Channel 4 had stopped at random in the street for the purposes of obtaining brief interviews designed to be broadly representative of the views of local black people towards the MPS.

We noted, however, that these three interviewees who were not identified in any way actually worked for Livity, the same organisation as represented by the second interviewee. In consequence, and as confirmed by Channel 4, these three interviewees were not members of the public randomly chosen but were individuals from the same organisation, Livity, with which the reporter had links. In our view, the programme did not provide sufficient biographical details of these three interviewees, to make clear that they were not members of the public stopped at random for the purpose of taking part in an interview. We therefore considered there to have been potential for the audience to have been misled by the way in which these interviews were presented in the programme. This was particularly the case, given that, although the interviewees were all employees of the same organisation, they were interviewed in different street settings.

We noted that Livity is a youth marketing agency that lists Channel 4 as one of its clients. Channel 4 said that although it is listed as a client of Livity on the Livity website, there is no link between Livity and ITN, who makes *Channel 4 News* for Channel 4. It added that: “The choice of interviewees was solely that of the individual reporter from ITN, it was not in any way linked to or influenced by the broadcaster Channel 4”. The link between Channel 4 and Livity, albeit indirect, was information which the programme did not provide to the audience. We considered that had the audience been aware of this fact, it may have affected their perception of, and reaction to, the three vox pop interviewees in this programme, who were not fully identified. Ofcom therefore concluded that omission of this information may also have had the potential to mislead the audience to some extent.

In its representations, Channel 4 accepted that: “The methodology adopted by the reporter was flawed – a random sample of people should have been interviewed”. It added that this was “an error of judgement, borne out of inexperience” on the part of the reporter. However, the reporter’s lack of experience did not mitigate the broadcaster’s failure to accurately represent several important programme contributors in this programme, whose statements it was relying on to some degree in the context of an important news story.

For all these reasons, we considered that the method by which three of the five vox pop interviewees was chosen, and the presentation of these three interviews, was not reported with due accuracy in the Brixton Report.

We next considered whether the Brixton Report reported with due accuracy the attitudes to the MPS amongst black people in Brixton. The introduction to the vox pop interviews would have given viewers the impression that, with the exception of Naomi Brown<sup>8</sup>, and Lee Jasper<sup>9</sup> the three other vox pop interviewees were randomly selected people shown to be voicing their own opinions about their experience of the MPS as members of the Brixton community.

Ofcom noted that all five of the Brixton Report interviewees voiced, to a lesser or greater degree, a negative view of the MPS and its relationship with the local community in Brixton.

We first considered Naomi Brown's comments about the young people she was in contact with at Livity:

*"I think their experience with the police is very negative. They [i.e. young people] kind of don't respect them, they [young people] don't put them in authority, they [i.e. the police] have no interest in what they're doing and [the police] kind of are against them. They think that the police are not there to help, the police are against them".*

We noted that Ms Brown had expressed an opinion based on her experience as a Youth Development Manager at Livity. In the clip of her interview used in the Brixton Report she stated clearly that the young people who she came into contact with at Livity all had a negative view of the police. Given this, it was not surprising that the three young people who worked for Livity, whose vox pops were also included in the report, endorsed the view expressed by Ms Brown:

- Matthew Peltier said when discussing stop and search in particular that: *"It doesn't feel like it's changed for me. It doesn't feel like we've grown or evolved in the way in which we deal with members of the public and specifically black and Asian members of the public";*
- Beulah Lambert said that: *"Any time I see police I always think 'oh God, what have I done?' instead of thinking that they are there to protect me";* and
- Henry Houdini stated that: *"Even when you see another black police officer, there's still a disconnect between that police officer and a normal black guy on the street".*

In addition, we noted the contribution of the fifth and last vox pop interviewee, Lee Jasper, who said the following:

*"I don't think no communities trust the police because I think that we find time and time again that we're lied to, we're deceived, [and] we're not given the full truth. And even when the police themselves are caught out in the inappropriate use of an exercise of their powers, they're loathe to apologise".*

Ofcom accepted Channel 4's submissions that each of the interviewees were giving their "own honest opinions and were speaking from personal experience". We noted too Channel 4's argument that the interviewees reflected "similar findings and

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<sup>8</sup> who was identified as a "Youth Development Manager, Livity".

<sup>9</sup> who was described by the reporter as having: "worked under the former Mayor of London, Ken Livingstone".

concerns raised by many other individuals about the same subject, relations between the black community and the police". In this regard, we agreed with Channel 4's argument that the opinions expressed by the people connected to Livity were "less critical than the findings in the Ellison report and what was said by other interviewees" in the programme, including Lee Jasper.

Nonetheless, by limiting the vox pops to people who had a negative view of the police, the Brixton Report limited the scope for a wider range of views to be reported. By failing to reveal the connection that interviewees had to Livity, Ofcom considered that the report wrongly implied to viewers that the views expressed represented a random sample of opinions from people in Brixton as to whether relations between the black community in Brixton and the MPS had improved in the previous 20 years. In this regard, we noted that Mr Jarrett-Bryan did not include any positive comments about the MPS' relationship with the Black community in Brixton in any commentary.

It is clearly not possible to reach a definitive conclusion on the extent to which the views of local residents of Brixton towards the MPS vary, nor the extent to which the opinions of local residents as expressed in the Brixton Report, and the reporter's conclusion, would have been different if the interviewees had been selected at random. However, we considered if the reporter had used a genuinely random selection of people in the report, he may have received more varied responses. Therefore, while the vox pops did represent the views of certain members of the Brixton community expressing their opinions, it did not necessarily reflect the views of members of the black community in Brixton as a whole.

Further, the way in which the people interviewed were selected may have resulted in a more limited selection of views being presented than would have been the case if a more random approach had been used. We therefore considered that the audience was misled by the Brixton Report in relation to how representative the vox pop interviews were of likely attitudes to the MPS amongst black people in Brixton. Accordingly, we considered that, in this respect, the news was not reported with due accuracy.

In reaching our Decision, we took into account Channel 4's point that the Brixton Report "played an incidental role to the main reporting" on the Ellison Review and "formed only a small part of the whole news segment about the MPS and the Ellison Review which lasted nearly twenty minutes". We also noted that Channel 4 had: undertaken a "full investigation" into the circumstances in which the Brixton Report had been prepared; subsequently broadcast a detailed apology in Channel 4 News on 13 March 2014 (cited in the Introduction above); sent a "formal apology" to the MPS; taken steps to provide training to the reporter in this case (who was "made aware that this must not happen again"), and five other Channel 4 News staff; and reviewed and amended its "internal editorial procedures and protocols to ensure that should such any similar issue occur again it will be highlighted and brought to the attention of the senior editorial staff prior to broadcast".

However, we also noted that, although Channel 4 accepted that "this particular report fell below the normal standards of Channel 4 News" and "should have made clear the interviewees were all linked to Livity and were not a random sample", its view remained that "taken as a whole due accuracy was applied" in the programme.

We disagreed. In addition, in our view, the steps taken by Channel 4 in this case were not sufficient to remedy the likely impact on viewers of the way in which the Brixton Report had been presented. As stated above, Ofcom considers that it is a fundamental obligation on broadcasters to ensure that audiences are not misled by



the manner in which news is presented. Breaches of this nature are amongst the most serious that can be committed by a broadcaster, because they go to the heart of the relationship of trust between a broadcaster and its audience. This is particularly pertinent when it involves a public service broadcaster, as in the case here.

We considered that in this case there was a significant failure on the part of Channel 4, when examining relations between the MPS and the black community in Brixton. This was because – when reporting on this matter of extreme public sensitivity in light of the Stephen Lawrence case and subsequent related developments – it presented the comments of three interviewees from the same organisation as being the views of randomly selected members of the public. This meant that viewers would have believed not only that they were seeing interviews with randomly selected members of the Brixton community, but that the attitudes presented in those interviews were representative of likely attitudes to the MPS amongst black people in Brixton.

In conclusion, for all the reasons above, we concluded that the news which was the subject of the Brixton Report was not reported with due accuracy and there was a breach of Rule 5.1 of the Code.

**Breach of Rule 5.1**

## In Breach

### News

CCTV News, 30 September 2014, 12:00

CCTV News, 1 October 2014, 12:00

CCTV News, 2 October 2014, 12:00

CCTV News, 3 October 2014, 12:00

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### Introduction

CCTV News is a global news and current affairs channel produced in China, with links to CCTV, the Chinese state broadcaster<sup>1</sup>. In the UK, the channel broadcasts on digital satellite. The licence for CCTV News is held by Star China Media Limited ("SCML" or "the Licensee").

Ofcom was alerted to the four news bulletins in this case through routine monitoring. We noted that all these bulletins reported on pro-democracy protests then taking place in Hong Kong, that involved the 'Occupy Central'<sup>2</sup> movement as well as various student protesters.

### Chronology of events

All the news bulletins in this case dealt with the pro-democracy demonstrations taking place in Hong Kong at the end of September 2014 and early October 2014. By way of background, we noted the following chronology of events in Hong Kong up to 3 October 2014:

- 10 June 2014: The Chinese Government published a White Paper on Hong Kong and the "one country, two systems"<sup>3</sup> policy. The White Paper was criticised by pro-democracy campaigners.
- 30 June 2014: 800,000 people in Hong Kong voted in an unofficial referendum in favour of greater political freedoms than had been proposed by the Chinese Government.

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<sup>1</sup> The stated aims of CCTV are as follows: "China Central Television (CCTV) is the national TV station of the People's Republic of China and it is one of China's most important news broadcast companies. Today, CCTV has become one of China's most influential media outlets. In addition to its TV programs, CCTV has also built up a multi-media broadcasting platform and business operation, which includes movies, newspapers and the Internet. CCTV is the main news source for the Chinese people. It is also an important window for Chinese to learn about the outside world, and for the world to find out more about China. CCTV is making efforts to become a global media network with increased international influence". (see [www.cntv.cn](http://www.cntv.cn), quoted in *Good news from a Far Country? Changes in international broadcast news supply in Africa and South Asia*, by Brian Rotheray, Reuters Institute for the Study of Journalism, 2010, <http://reutersinstitute.politics.ox.ac.uk/sites/default/files/Changes%20in%20International%20Broadcast%20News%20Supply.pdf> ).

<sup>2</sup> 'Occupy Central' (or 'Occupy Central with Love and Peace') is a civil disobedience movement that started around March 2013 to campaign for electoral reform in Hong Kong.

<sup>3</sup> "One country, two systems" is a Chinese constitutional principle whereby certain regions of China, such as Hong Kong, are able to have their own distinct political systems.

- 31 August 2014: The Chinese Government stated that elections would take place in Hong Kong in 2017, with candidates being selected from a pre-approved list. This prompted Occupy Central and various student groups to announce they would launch demonstrations.
- 22 September 2014: A number of Hong Kong students announced a week-long boycott of university classes.
- 26 September 2014: Students entered the Hong Kong Government headquarters.
- 28 September 2014: The Occupy Central movement joined the student protests, and protesters took over a main street outside the Hong Kong Government headquarters.
- 1 October 2014: China's National Day was celebrated across China as the Hong Kong protests continued.
- 2 October 2014: The Chief Executive of Hong Kong, C Y Leung, rejected demonstrators' calls for his resignation but he offered the opportunity for protesters to have talks with his deputy.
- 3 October 2014: Student leaders accepted C Y Leung's offer of talks, as fights broke out between protesters and groups opposing the demonstrations.

#### Broadcast content

We noted the content of the four news bulletins in this case.

#### 30 September 2014 at 12:00:

At the beginning of this bulletin the studio presenter, Edwin Maher, read the following headline:

*"China commends the Hong Kong SAR<sup>4</sup> Government for its handling of the illegal Occupy Central protests in the region".*

Later in the bulletin Edwin Maher said:

*"Now to Hong Kong, where the Occupy Central movement has seriously affected people's lives. Traffic in several areas of Hong Kong, including the CBD<sup>5</sup> has been seriously affected. A total of 36 branches, offices or ATMs of 20 banks located in the sit-in areas have had to be temporarily closed. At a regular press briefing in Beijing, spokeswoman for the Foreign Ministry, Hua Chunying, stressed that the central government opposes illegal activities in all forms in the Hong Kong Special Administrative Region, and fully supports Hong Kong authorities' handling of the protests".*

There was then footage of Hua Chunying, a Chinese Foreign Ministry spokeswoman, (through the voice of an interpreter) saying:

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<sup>4</sup> Special Administrative Region.

<sup>5</sup> Central Business District.

*“We noticed that since midnight on September the 28<sup>th</sup>, some people in Hong Kong have rallied illegally and carried out Occupy Central activities. The Chinese central Government formally opposes the various illegal activities in Hong Kong, that have jeopardised the rule of law and social stability and peace. We fully believe in and formally support the Hong Kong Government handling it according to law”.*

Edwin Maher then said:

*“She also reaffirmed that Hong Kong is one of China’s special administrative regions, and therefore its affairs are purely China’s internal affairs. She stressed that the Chinese Government has demanded that foreign countries should not get involved or interfere in China’s internal affairs in any way, and not send any wrong signals to the outside world”.*

1 October 2014 at 12:00

In this bulletin, the studio presenter, Li Dongning said:

*“Meanwhile, Hong Kong Special Administrative Region’s Chief Executive, Chun Leung, has said to sustain its development, Hong Kong must capitalise on the combined advantages of the One Country, Two Systems. He added that this policy fully applies to Hong Kong’s constitutional development. Speaking at a National Day reception, Leung said that the Standing Committee of China’s top legislature has confirmed that the Chief Executive can be elected through one person, one vote from 2017”.*

This was followed by footage of Chun Leung (through the voice of an interpreter):

*“It’s understandable that different people may have different ideas about a desirable reform package. But it’s definitely better to have universal suffrage than not. It’s definitely better to have the Chief Executive elected by four million eligible voters than 1,200 people”.*

The studio presenter, Li Dongning, then said:

*“Leung hoped that all sectors of the community will work with regional government in a peaceful, lawful and pragmatic manner to complete the subsequent consultation and legislative work, and make a big step forward in constitutional development. The Chief Executive also noted that under ‘One Country’, Hong Kong has the staunch support of the country for its development and huge mainland market presents the region with numerous career opportunities. While under ‘Two Systems’, Hong Kong’s legal and financial systems are different from that of the mainland. He added that the combined advantages of One Country, Two Systems also comes into play in areas such as culture, arts, education and scientific research”.*

2 October 2014 at 12:00

At the beginning of this bulletin the studio presenter, Pan Deng, read this headline:

*“Despite the on-going unrest in Hong Kong, many residents come out to celebrate the National Day holiday and declare their pride in being part of One China”.*

Later in the bulletin Pan Deng said:

*“Chinese Foreign Minister Wang Yi has had talks with senior US officials in Washington. They exchanged ideas on various international and regional issues. The Foreign Minister asked the United States not to meddle in China’s internal affairs”.*

The reporter, Nathan King, said the following:

*“Raising the issue of Hong Kong first, Secretary of State John Kerry called for restraint”.*

This was followed by footage of the US Secretary of the State, John Kerry:

*“As China knows, we support universal suffrage in Hong Kong according with the Basic Law. And we believe in open society with the highest possible degree of autonomy and governed by rule of law, is essential for Hong Kong’s stability and prosperity. And we have high hopes that the Hong Kong authorities will exercise restraint, and respect the protesters’ rights to express their views peacefully”.*

Nathan King said:

*“Foreign Minister Wang Yi responded saying Hong Kong was a local issue”.*

There was then footage of Wang Yi (through the voice of an interpreter) saying:

*“I believe for any country, for any society, no one will allow these illegal acts that violate public order. That’s the situation in the United States, and that’s the same situation in Hong Kong. We believe that the Hong Kong SAR Government has the capability to properly handle the situation in accordance with the law”.*

Nathan King stated soon afterwards:

*“The White House said, Wednesday, President Obama affirmed that he is looking forward to his visit to China. The President and Ambassador Rice are following developments in Hong Kong closely and expressed their hope that differences between Hong Kong authorities and protesters will be addressed peacefully”.*

Soon afterwards, the studio presenter, Pan Deng, said the following:

*“China’s leading newspaper, The People’s Daily, has published a commentary on the continuing protest in Hong Kong, saying the actions by protesters are having a negative effect on life in the Special Administrative Region. The article says the central government’s basic principle and policy towards Hong Kong has not changed and will not change. The paper quoted Chinese President Xi Jinping, who met a business delegation from Hong Kong just about a week ago. President Xi Jinping said the Chinese central government will unswervingly implement the policy of One Country, Two Systems and the Basic Law. He said the central government will support the steady development of democracy in Hong Kong in accordance with the law. And the central government will firmly maintain Hong Kong’s long-term prosperity and stability. The editorial also said that a decision, made by the Standing Committee of the National People’s Congress in Beijing about universal suffrage in Hong Kong, was taken on a basis of the Basic Law and were in the best interests of all the people in Hong Kong. Earlier we talked to Martin Jacques, whose opinion piece on the current protest in Hong Kong*

*appeared in the UK's Guardian newspaper on Tuesday. Entitled 'China is Hong Kong's Future not its Enemy', Jacques wrote that many Hong Kong locals are experiencing a crisis of identity and a sense of displacement. We spoke to him earlier and he talked of the measures that the central government as well as the Hong Kong regional government could take to help the people in Hong Kong".*

Audio of Martin Jacques saying the following was then broadcast:

*"It's important: to be patient and to do nothing precipitous; to allow the movement, I think, probably to decline over the next few days and weeks. I think that there's a very important task of trying to persuade, to explain, better how it sees things and the future of Hong Kong and so on. This is a difficult task because for 155 years, Hong Kong was a British colony, and so the attitudes amongst the Hong Kong people are very different from attitudes on the mainland. This is a task, I think, for now but also for the future, and think that the Chinese authorities and local authorities in Hong Kong will need to find better ways of making this explanation. In other words, there's a very, very important task of persuasion that lies ahead".*

The studio presenter, Pan Deng, stated:

*"A special carnival has been held in Hong Kong's Victoria Park to mark China's National Day holiday. Despite current protests over democratic reform, many Hong Kong residents say they're proud of being part of One China and just hoped for a peaceful resolution to the current stand-off".*

Footage of two Hong Kong residents followed, who (through the voice of an interpreter) said:

*"I want to pass on knowledge of my country to my children. We are all One China. We need to let our children know that China is now very great".*

*"We want to show our positive power. We all agree that we're Hong Kong residents, but we belong to China and we're not alone. We're looking for a better Hong Kong".*

### 3 October 2014 at 12:00

At the beginning of this bulletin the studio presenter, Clint Deloatch, read the following headlines:

*"Hong Kong police say that protesters surrounding the main government complex are breaking the law and should leave peacefully".*

*"Hong Kong's stock market recovers slightly after losses caused by the on-going protest".*

Soon afterwards, Clint Deloatch said:

*"The Hong Kong SAR Government has announced that its offices will not reopen for work on Friday as had been previously planned. It comes as huge protests continue to block key economic and administrative zones in central Hong Kong. The announcement was made by Hong Kong SAR officials, reversing a previous pledge for offices to reopen. Protesters are continuing to block access to government headquarters preventing civil service workers from returning to their*

*jobs. Government staff have now been told not to go to work, but instead to follow contingency plans set up by their departments. All public and official visits to government offices have been postponed for now or cancelled. Hong Kong Chief Executive, Leung Chun-Ying, said he won't resign, one of the key demands of the protesters, who've been occupying several key areas in Hong Kong in the past few days. Leung also says he'll appoint Chief Secretary, Carrie Lam, as his representative to talk to students taking part in the protest. On Thursday evening, Leung gave a short news conference at Government House in Hong Kong's central district, flanked by Lam. It came just minutes ahead of a deadline set by student groups calling for his resignation. Thousands of protesters have blocked major roads in several districts in Hong Kong since September the 28<sup>th</sup>. Leung insists that he'll continue to work to promote constitutional reform in Hong Kong".*

There was then footage of Chun Leung (through the voice of an interpreter) saying:

*"I will not resign. I will continue to work to promote universal suffrage in Hong Kong. I would like to work together with everyone to change Hong Kong's long-existing election committee mechanism and make sure four million eligible voters in Hong Kong can cast their own vote on election day, with them all taking on the responsibility of choosing Hong Kong's next Chief Executive. This is my pledge and goal, and also my aim in serving the public".*

The studio presenter, Clint Deloatch, said:

*"Hong Kong police held a news conference saying that the obstruction caused by the protesters is irresponsible, and police urged them to leave peacefully".*

Footage of Hui Chun-Tak, Chief Superintendent HK SAR Police Public Relations Branch, followed. He stated:

*"As you should be aware, there is a large crowd gathering at Longmuir Road, near the Chief Executive's Office...outside the Central Government Complex, causing serious obstruction to the traffic, in particular the west and east traffic on Hong Kong island. The obstruction is unreasonable and unnecessary, severely affecting the emergency services and the life of the general public. I emphasise that this behaviour is not only irresponsible but also law-breaking. I urge the protesters to leave the area peacefully and orderly, so that everyone can resume their normal routine".*

A reporter, Li Jiejun, speaking from Hong Kong, then said:

*"Chief Executive Leung Chin held a press conference this afternoon. He said the government has no plans to clear protesters outside the government's headquarters and his office. But for the time being he said nowhere else in the world would protesters be allowed to surround the government headquarters indefinitely. Speaking after a visit to the Intel Corporation's headquarters in Kowloon Bay, Leung said the authorities would differentiate between protesters who were staging a peaceful rally and those who were blocking access and stopping police officers and the government staff from carrying out their duties. Demonstrators on Friday were occupying major roads on Hong Kong island and Kowloon and the government here has temporarily closed its headquarters...The protesters were also maintaining the blockade of the Chief Executive's Office...The on-going protest has greatly hit Hong Kong's tourism. The number of visitors arriving in Hong Kong on October the 1<sup>st</sup> fell almost 40,000, more than 7% from last year. The national Golden Week holiday, usually a peak time for tourism*

*and shopping in Honk Kong, experts predict the number of mainland visitors to Hong Kong will drop 20 to 30%. Many shops said that the protests have cut business by as much as 70%. Meanwhile the protests have brought inconvenience to people's regular life. Dozens of public transport routes have been suspended or changed due to the occupation of the streets in Hong Kong's major business and shopping districts. And many citizens complain about the road blockade. And because of the demonstration, many schools and kindergartens are closed, so many parents are worrying about their children's education. And we can see now that more and more people have come out to express their dissent about the protest. They call for this illegal movement to end as soon as possible".*

A reporter, Matt Stoddart, stated:

*"Schools suspended, roads paralysed, commuters and emergency responders stuck in traffic. Speaking at an inter-departmental press conference on Thursday, SAR Government officials said the on-going protests are seriously affecting the lives of residents".*

There was then footage of Albert Su, Hong Kong Assistant Transport Commissioner:

*"270 bus routes have been disrupted, that's 47% of the entire bus system. Since September the 30<sup>th</sup>, for example, 150 million commuters were affected and continue to be so directly impacted every day. This number constitutes 40% of passengers using the bus service system".*

Matt Stoddart then said the following:

*"The dysfunctional traffic is causing a string of other problems. Hong Kong police say a dozen emergency vehicles were delayed in Central and Causeway Bay on September the 31<sup>st</sup>, while they were answering emergency calls. Police are calling on protesters to at least clear the main roads and emergency lanes, so ambulances and fire trucks can operate without disruption. Meanwhile Hong Kong's Education Bureau says elementary and middle schools in...central and western districts have been temporarily closed over fears that the traffic chaos could jeopardise pupils' safety. Officials say that they are assessing the situation to determine when classes can resume. Some Hong Kong residents have taken to the streets to oppose the unrest".*

Footage of a Hong Kong resident followed, who said (through the voice of an interpreter):

*"They are the minority. They should not be harming the interests of the rest of us. Why are we rallying here today? Well, I'm a construction worker. I want to have my meals in peace. They're causing serious disturbances".*

Matt Stoddart stated:

*"Hong Kong's Food and Environmental Hygiene Department says that protesters are producing a huge amount of garbage as well. The Department says it's boosted the number of garbage collections in areas around the main protest sites".*

After this, studio presenter, Clint Deloatch, said:



*“Investors are now saying the on-going protests, which have blocked the city’s vital economic districts and have had a smaller impact on the economy than previously”.*

Shortly afterwards, in a studio interview, professor Wang Lei of Peking University, commented:

*“And I think the protests are illegal, definitely, accurately, to say, this kind of action is illegal action...No-one has the right to break down: the order; the stability; the public order; the social order of Hong Kong. The relationship between democracy and the rule of law should be balanced. If the action of democracy is out of law, democracy, the so-called democracy, is not the true democracy...The Occupy the Central lasts six days. This action will damage the rule of law. Most of the people think is a good tradition in Hong Kong. People benefit a lot from the good tradition. So there’s a bad example: to destroy the rule of law. And, you know, Hong Kong is the financial centre of the whole world and Central is centre of the financial centre of Hong Kong. So it’s very important, if somebody does something harmful to Central, that will destroy the financial reputation. And this action, the Occupy Central, is bad for: the social order; public order; public interest; and also the reputation of Hong Kong. Maybe in the future, a few people like to invest in Hong Kong. So, I think, these people, pan-democrats, will give up the illegal action and go on the right track. The right track is the rule of law”.*

#### Ofcom’s investigation

Ofcom considered that this material raised potential issues as to the impartiality with which the pro-democracy protests in Hong Kong was reported. As news programming, it raised issues warranting investigation under the following rule of the Code:

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

In addition, it was Ofcom’s view that these news bulletins were dealing with a matter of major political controversy and major matter relating to current public policy. This matter was the ongoing pro-democracy demonstrations and movement in Hong Kong, focused around the Occupy Central movement and student protesters, and the policies and actions of the Hong Kong and Chinese Governments in response to these issues in Hong Kong. We therefore considered that this news content also raised issues warranting investigation under the following rules of the Code:

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

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

Ofcom asked the Licensee to provide comments on how the programmes complied with these three rules.

## Response

In its response, SCML said that the programmes in this case were “a very selective example of CCTV’s coverage on this issue over the four days selected”. It added that: “As a 24x7 broadcaster we believe our coverage must be assessed hour-upon-hour and indeed day-upon-day, especially in a dispute that is now more than six weeks old”. Therefore, the Licensee argued that: “It appears unfair to judge a 24-hour broadcaster...based on single bulletins on the one day when issues relating to fairness and balance can only be truly assessed over a period of time”. SCML suggested that the relevant period of time for judging due impartiality on “this particular issue” would be “a matter of weeks”. It also argued that “coverage on a particular issue by a 24-hour broadcaster must be assessed “over a series of programmes taken as whole” referred to in Rule 5.5 of the Code<sup>6</sup>, and that “this has not been done in this particular case”.

The Licensee provided examples of CCTV news bulletins “interviewing individuals engaged in the ‘Occupy Central’ campaign in the past months, and giving due weight in presenting the views of ‘Occupy Central’ protesters and supporters”:

- on 17 October 2014, a CCTV reporter interviewed “both protesters and firefighters to show different opinions towards the ‘Occupy Central’ movement”. SCML said that “the interviewees expressed their views on why they supported ‘Occupy Central’ campaign and stayed on the streets”;
- on 21 October 2014, CCTV News “twice transmitted live coverage of the first dialogue between student representatives and Hong Kong SAR officials, giving equal time to both sides”. The Licensee added that: “On the day, our reporter also interviewed student protesters on the streets for their reaction to the dialogue”; and
- on 22 October 2014, CCTV News “rebroadcast the clips of the first dialogue [broadcast on 21 October 2014], followed by reporters’ lives, packages and studio discussions on the history of Hong Kong SAR and the political claims and stands of ‘Occupy Central’ protesters.

SCML added that “[m]ore voices could be heard in CCTV News commentary programs” as follows:

- on 12 October 2014, the programme World Insight “invited Wang Xuewen, a current affairs commentator to join the panel discussion, during which Wang stated that the students staying on the streets have their certain reasons, and the Hong Kong SAR government shall improve their service in creating jobs and education opportunities for students”; and
- on 16 October 2014, the programme Dialogue “summarized the attitudes of [the] international community on the ‘Occupy Central’ campaign, including” the viewpoints of the UK Prime Minister, David Cameron, the US President, Barack Obama and the Taiwanese leader, Ma Ying-jeou. The Licensee said that in this programme: “Tsinghua University Professor Wang Chenguang stated that there

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<sup>6</sup> Rule 5.5 states: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”.

are different views in Hong Kong, and those of the occupiers are part of it and should be taken into consideration”.

In conclusion, SCML said that CCTV News “operates as the Public Broadcaster of China under specific guidelines to present news on domestic issues from a unique perspective with Chinese characteristics. It is our view that the majority of viewers world-wide appreciate this responsibility, as they do with other State Broadcasters which operate a global news service”.

In response to Ofcom’s Preliminary View in this case (proposing breaches of Rules 5.1, 5.11 and 5.12), SCML provided three examples of its coverage of the protests during late November and early December 2014<sup>7</sup> as the barricades were cleared and the protests drew to a close. SCML said that in these examples CCTV News “interviewed and broadcast the views of police officers, protesters, residents opposed to the protests, analysts and commentators, and representatives of the various groups, including Alex Chao, General Secretary of the Hong Kong Federation of Students”.

SCML also emphasised that CCTV was “obliged to respect and reflect the overarching and fundamental principle that all activity conducted within China’s territory must not violate Chinese laws and regulations”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that news in television and radio services is presented with due impartiality, and the special impartiality requirements set out in section 320 of the Act are complied with. These objectives are reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

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

Section Five of the Code acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure, for example, that news is reported with due accuracy and presented with due impartiality, and that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any

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<sup>7</sup> This content consisted of: a clip of five minutes duration from 18 November 2014; a clip of two minutes and 30 seconds duration from 25 November 2014; and, a clip of three minutes and 30 seconds duration from 11 December 2014.

Ofcom licensee has the freedom to report on and discuss any controversial subject or include particular points of view in its programming, broadcasters must always comply with the Code.

In addition, in judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained. The definition of “due impartiality” laid out in the Code also states: “The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important”.

Importantly, it is not part of Ofcom’s remit to question or investigate the validity of the views expressed in a case like the current one, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing or reporting on any controversial subject, or including any particular point of view in a news programme. To do so would be an unacceptable restriction on a broadcaster’s freedom of expression. The Code does not prohibit broadcasters from, for example, criticising one side in a particular conflict or dispute, such as the dispute about the right to vote and elections in Hong Kong. It is essential that news and current affairs programmes are able to explore and examine controversial issues, and contributors are able to take a robust and highly critical position. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way and/or take other appropriate editorial measures to ensure due impartiality is preserved.

#### Application of Section Five

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

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

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

The obligation in Rule 5.1 to present news with due impartiality applies potentially to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures a news story is presented with due impartiality. In assessing whether any particular news item or issue in the news has been presented with due impartiality, we take into account all relevant facts in the case, including: the

substance of the story in question; the nature of the coverage; whether there are varying viewpoints on a news story, and if so, how a particular viewpoint or viewpoints on a news item could be or are reflected within news programming; and, the context of the particular broadcast material in issue, including factors such as the type of programme and channel, and the likely expectations of the audience as to the content. With any case of whether news has been presented with due impartiality, a key part of Ofcom's analysis is an assessment of whether a particular view or response needed to be reflected to ensure due impartiality, and - if so - whether it was appropriately reflected. This is a matter of judgment, to be decided taking account of all the relevant circumstances.

In addition to Rule 5.1, broadcasters must ensure that if their news content is dealing with matters of major political and industrial controversy and major matters relating to current public policy, they must comply with Rules 5.11 and 5.12 of the Code. These additional rules are necessary because of the nature of the subject matter concerned: a matter of major political and industrial controversy or major matter relating to current public policy is of a significant level of importance and is likely to be of the moment. Rule 5.11 requires that due impartiality must be preserved on major matters in each relevant programme or clearly linked and timely programme. Rule 5.12 requires that (where appropriate) news broadcasters must ensure that, in addition to preserving due impartiality at a basic level, when reporting on a matter of this significance they must include "an appropriately wide range of significant views" and give those views "due weight".

All four of the news bulletins dealt with the unfolding political events in Hong Kong at the end of September 2014 and the beginning of October 2014. These events revolved around the controversy in Hong Kong about political reform, the pro-democracy movement there and whether candidates in the May 2017 election to select Hong Kong's leader can only be chosen from a limited list chosen by a nominating committee. At the time of these broadcasts there were a number of large protests by pro-democracy demonstrators on the streets of Hong Kong. These events attracted much media and political discussion across the world. They were also in Ofcom's view of great symbolic significance, since they raised important issues about the future of democracy in Hong Kong. For these reasons, we considered that these events were of significant global importance. We therefore concluded that, as well as engaging Rule 5.1, these news bulletins were overall dealing with matters of major political and industrial controversy and major matters relating to current public policy. These matters were the pro-democracy movement and related ongoing demonstrations in Hong Kong, focused around the Occupy Central movement and student protesters, and in particular the policies and actions of the Hong Kong and Chinese Governments in response to these issues in Hong Kong. We therefore considered that these matters were of a significant level of importance at the time of broadcast, and that these news bulletins also engaged Rules 5.11 and 5.12 of the Code. The Licensee did not dispute that Rules 5.11 and 5.12 were engaged in this case.

When Rules 5.11 and 5.12 apply to news, the bulletins may present the news with due impartiality by, for example, sufficiently reflecting alternative viewpoints, and in particular including "an appropriately wide range of significant views" and giving those views "due weight". "Significant views" normally include the viewpoint of key protagonists whose policies and/or actions are material to the relevant major political and industrial controversy or major matter relating to current public policy. There is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news. All news stories must however be presented with due impartiality: that is, with impartiality adequate or appropriate to the subject and nature

of the programme. Presenting news stories with due impartiality in news programmes very much depends on editorial discretion being exercised appropriately in all the circumstances.

Ofcom underlines that it is not part of our remit to question or investigate the validity of any views expressed in programming. The Code does not prevent broadcasters from criticising one side in a conflict. In addition, there is nothing in the Code to prohibit or materially limit an editorial approach based on a view of world events from a particular country's perspective. However, at all times due impartiality must be preserved.

#### Preservation of due impartiality: Rules 5.1, 5.11 and 5.12

Ofcom assessed whether the news bulletins preserved due impartiality by, for example, sufficiently reflecting alternative viewpoints, and in particular including "an appropriately wide range of significant views" and giving those views "due weight".

Ofcom underlines that the Code did not prohibit SCML from broadcasting various comments that were critical of, or in opposition to, the pro-democracy Occupy Central and student protest movements in Hong Kong. Ofcom has no view on the validity of the criticisms of the Occupy Central and student protesters included in the news bulletins. However, we considered that the pro-democracy Occupy Central and student protest movements had a "significant view" on the issues being discussed in these news bulletins. The Licensee was therefore obliged to reflect adequately the viewpoint of the Occupy Central and student protest movements within the news bulletins.

Whether due impartiality is preserved depends on all the relevant circumstances. The absence of an alternative viewpoint does not inevitably mean that due impartiality has not been maintained. However, a fundamental aspect of the preservation of due impartiality is that normally a range of viewpoints (and especially of "significant views") needs to be reflected to an appropriate extent in programming. Ofcom's published Guidance on Rule 5.1 of the Code states that: "...if a news item includes criticism of individuals or organisations, then broadcasters should consider whether they need to reflect the viewpoints of the individuals or organisations being criticised, within their news output as appropriate and in a proportionate way and/or reflect any refusal to comment of that individual or organisation"<sup>8</sup>.

The four news bulletins in this case featured various news stories that dealt with different aspects of the on-going political crisis in Hong Kong in late September and early October 2014. In all four bulletins, we considered that: the Occupy Central and student protest movements were directly or implicitly criticised; statements were broadcast in opposition to the protests; and/or the viewpoint of the pro-democracy Occupy Central and student protest movements were to a very large extent not reflected in circumstances when it would be reasonable to expect them to be so. We noted the following illustrative examples in each of the four bulletins.

#### 30 September 2014 at 12:00:

At the beginning of this bulletin, the studio presenter read the following headline:

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<sup>8</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>, paragraph 1.12.

*“China commends the Hong Kong SAR Government for its handling of the illegal Occupy Central protests in the region”.*

The viewpoint of the pro-democracy movement was not reflected at all in the headlines.

In the bulletin itself, there were various statements that could be described as being critical of the pro-democracy Occupy Central and student protest movements or could be said to reflect the viewpoints of the Chinese and Hong Kong Governments. For example, there were comments referring to the negative practical effects of the protests on life in Hong Kong. The studio presenter said: *“Now to Hong Kong, where the Occupy Central movement has seriously affected people’s lives. Traffic in several areas of Hong Kong, including the CBD has been seriously affected. A total of 36 branches, offices or ATMs of 20 banks located in the sit-in areas have had to be temporarily closed”.* Although these comments were not directly dealing with the issues that the demonstrators were protesting about, namely democratic reform in Hong Kong, we considered these comments to be implicitly critical of the Occupy Central and student protest movements. As such, we considered the issue of the extent to which the pro-democracy demonstrations were impacting on life in Hong Kong would have been a matter on which the Occupy Central and student protest movements had a view, but it was not reflected in this case.

We also noted statements which could be said to reflect the viewpoint of the Chinese Government in relation to the legitimacy of the protests. For example, the studio presenter referred to the Chinese Foreign Ministry spokeswoman stressing that the Chinese Government *“opposes illegal activities in all forms in the Hong Kong Special Administrative Region, and fully supports Hong Kong authorities’ handling of the protests”.* In addition, the Chinese Foreign Ministry spokeswoman said that protesters had *“rallied illegally and carried out Occupy Central activities”.* She added that the Chinese Government *“formally opposes the various illegal activities in Hong Kong, that have jeopardised the rule of law and social stability and peace”.* She also added that the Chinese Government *“fully believe in and formally support the Hong Kong Government handling it according to law”.*

At no point in this news bulletin were any statements broadcast that could be reasonably described as reflecting the viewpoint of the pro-democracy Occupy Central and student protest movements in relation to the criticisms being made of these movements, including to counter the criticisms that the protests had caused various negative practical effects of the protests on life in Hong Kong. In addition, there was no viewpoint to counter the accusations that the protesters had *“rallied illegally”* or otherwise to challenge the viewpoint of the Chinese Government over its criticisms of the protests and its support for the Hong Kong Government’s handling of the protests.

1 October 2014 at 12:00

This bulletin focused on a public statement by the Hong Kong Chief Executive, C Y Leung in which he implicitly referred to the grievances of the Occupy Central and student protest movements, when he referred to the Chinese Government’s position on electoral reform in Hong Kong. For example, the studio presenter said that:

*“...the Standing Committee of China’s top legislature has confirmed that the Chief Executive can be elected through one person, one vote from 2017”.*

C Y Leung then said:

*"It's understandable that different people may have different ideas about a desirable reform package. But it's definitely better to have universal suffrage than not. It's definitely better to have the Chief Executive elected by four million eligible voters than 1,200 people".*

We considered that C Y Leung's reference to *"different people [maybe having] different ideas about a desirable reform package"* could be reasonably interpreted as indirectly referring to the viewpoint of the pro-democracy Occupy Central and student protest movements. However, we noted that the studio presenter summarised C Y Leung as hoping that *"all sectors of the community will work with regional government in a peaceful, lawful and pragmatic manner"* in relation to electoral reform. In addition, C Y Leung was reported as saying that the concept of One Country, Two Systems has *"the staunch support of the country for its development and huge mainland market presents the region with numerous career opportunities"* and has *"advantages...in areas such as culture, arts, education and scientific research"*.

We considered that the content in this news bulletin was not as overtly critical of the Occupy Central and student movements as the other bulletins in this case. However, our view was, on balance, that the news bulletin did not adequately preserve due impartiality. This was because the audience for this bulletin was deprived of any specific reference to a significant viewpoint, namely that of the pro-democracy Occupy Central and student protest movements in relation to their rationale for staging their protests. In addition, at no point in this news bulletin was the viewpoint of C Y Leung and the Hong Kong Government challenged or otherwise placed in context to ensure the news was presented with due impartiality in this case.

2 October 2014 at 12:00

This news bulletin reported on how *"many [Hong Kong] residents"* had celebrated China's National Day despite *"the on-going unrest in Hong Kong"*. The bulletin also reported on the different viewpoints of the US and Chinese Governments on the pro-democracy protests.

We noted the following statements that could be reasonably described as being either critical of the pro-democracy Occupy Central and student protest movements, or reflecting the viewpoint of the Chinese Government. For example, the Chinese Foreign Minister, Wang Yi, described the protests as *"illegal acts that violate public order"*. In addition, the studio presenter referred to *"China's leading newspaper, The People's Daily"* as: saying *"the actions by protesters are having a negative effect on life in"* Hong Kong; summarising the viewpoint of the Chinese President on the Hong Kong protests; and, stating that the Chinese Government's decision on electoral reforms in Hong Kong *"were in the best interests of all the people in Hong Kong"*.

In addition, the news bulletin reported that a *"special carnival has been held in Hong Kong's Victoria Park to mark China's National Day holiday"* where it was reported *"many Hong Kong residents say they're proud of being part of One China and just hoped for a peaceful resolution to the current stand-off"*. In this part of the news bulletin two Hong Kong residents were shown making statements that could reasonably be interpreted as supporting the viewpoint of the Chinese Government and implicitly criticising the pro-democracy protests:



*“I want to pass on knowledge of my country to my children. We are all One China. We need to let our children know that China is now very great”.*

*“We want to show our positive power. We all agree that we’re Hong Kong residents, but we belong to China and we’re not alone. We’re looking for a better Hong Kong”.*

We also noted that in this bulletin there were three other pieces of content relating to the pro-democracy protests:

- US Secretary of the State, John Kerry, said the following:

*“As China knows, we support universal suffrage in Hong Kong according with the Basic Law. And we believe in open society with the highest possible degree of autonomy and governed by rule of law, is essential for Hong Kong’s stability and prosperity. And we have high hopes that the Hong Kong authorities will exercise restraint, and respect the protesters’ rights to express their views peacefully”;*

- the studio presenter said:

*“The President and Ambassador Rice [the US National Security Adviser] are following developments in Hong Kong closely and expressed their hope that differences between Hong Kong authorities and protesters will be addressed peacefully”;* and

- the UK journalist Martin Jacques was featured giving his opinion on the pro-democracy protests:

*“It’s important: to be patient and to do nothing precipitous; to allow the movement, I think, probably to decline over the next few days and weeks. I think that there’s a very important task of trying to persuade, to explain, better how it sees things and the future of Hong Kong and so on. This is a difficult task because for 155 years, Hong Kong was a British colony, and so the attitudes amongst the Hong Kong people are very different from attitudes on the mainland. This is a task, I think, for now but also for the future, and think that the Chinese authorities and local authorities in Hong Kong will need to find better ways of making this explanation. In other words, there’s a very, very important task of persuasion that lies ahead”.*

We considered that these statements provided important alternative viewpoints on the issue of the pro-democracy protests. For example, John Kerry’s statement reflected a view consistent with the stated aims of the pro-democracy Occupy Central and student protest movements, namely the introduction of universal suffrage to Hong Kong. However, overall, we considered these statements to be providing only background to the protests. Importantly, we considered they could not be characterised as directly reflecting the pro-democracy viewpoint of the Occupy Central and student protest movements as to why they were undertaking their demonstrations and their reaction to the criticism of their movement and ideas by the Chinese Government reported elsewhere in this bulletin. We therefore considered that SCML had not reflected a significant viewpoint, namely that of the pro-democracy Occupy Central and student protest movements, and given that viewpoint due weight.

3 October 2014 at 12:00

This news bulletin dealt with on-going developments in relation to the Hong Kong protests including the following:

- the announcement by the Hong Kong Government that its offices would remain closed due to the on-going protests; and
- a statement by the Hong Kong Chief Executive, C Y Leung, that he would not accede to protesters' demands to resign, and that he would appoint a representative to talk to the protesters.

We noted that there were a number of statements that could be reasonably classed as directly critical of the pro-democracy protesters:

- *"Hong Kong police say that protesters surrounding the main government complex are breaking the law and should leave peacefully";*
- *"Hong Kong police held a news conference saying that the obstruction caused by the protesters is irresponsible";*
- *"I emphasise that [the protesters'] behaviour is not only irresponsible but also law-breaking. I urge the protesters to leave the area peacefully and orderly, so that everyone can resume their normal routine";*
- *"And we can see now that more and more people have come out to express their dissent about the protest. They call for this illegal movement to end as soon as possible";* and
- *"I think the protests are illegal, definitely, accurately, to say, this kind of action is illegal action...No-one has the right to break down: the order; the stability; the public order; the social order of Hong Kong. The relationship between democracy and the rule of law should be balanced. If the action of democracy is out of law, democracy, the so-called democracy, is not the true democracy...The Occupy the Central lasts six days. This action will damage the rule of law. Most of the people think is a good tradition in Hong Kong. People benefit a lot from the good tradition. So there's a bad example: to destroy the rule of law. And, you know, Hong Kong is the financial centre of the whole world and Central is centre of the financial centre of Hong Kong. So it's very important, if somebody does something harmful to Central, that will destroy the financial reputation. And this action, the Occupy Central, is bad for: the social order; public order; public interest; and also the reputation of Hong Kong. Maybe in the future, a few people like to invest in Hong Kong. So, I think, these people, pan-democrats, will give up the illegal action and go on the right track. The right track is the rule of law".*

We also noted other statements that pointed to negative practical and economic effects of the protests on life in Hong Kong:

- *"Hong Kong's stock market recovers slightly after losses caused by the on-going protest";*
- *"The on-going protest has greatly hit Hong Kong's tourism. The number of visitors arriving in Hong Kong on October the 1<sup>st</sup> fell almost 40,000, more than 7% from last year. The national Golden Week holiday, usually a peak time for tourism and*

*shopping in Hong Kong, experts predict the number of mainland visitors to Hong Kong will drop 20 to 30%. Many shops said that the protests have cut business by as much as 70%. Meanwhile the protests have brought inconvenience to people's regular life. Dozens of public transport routes have been suspended or changed due to the occupation of the streets in Hong Kong's major business and shopping districts. And many citizens complain about the road blockade. And because of the demonstration, many schools and kindergartens are closed, so many parents are worrying about their children's education";*

- *"Schools suspended, roads paralysed, commuters and emergency responders stuck in traffic. Speaking at an inter-departmental press conference on Thursday, SAR Government officials said the on-going protests are seriously affecting the lives of residents";*
- *"270 bus routes have been disrupted, that's 47% of the entire bus system. Since September the 30<sup>th</sup>, for example, 150 million commuters were affected and continue to be so directly impacted every day. This number constitutes 40% of passengers using the bus service system";*
- *"The dysfunctional traffic is causing a string of other problems. Hong Kong police say a dozen emergency vehicles were delayed in Central and Causeway Bay on September the 31<sup>st</sup>, while they were answering emergency calls. Police are calling on protesters to at least clear the main roads and emergency lanes, so ambulances and fire trucks can operate without disruption. Meanwhile Hong Kong's Education Bureau says elementary and middle schools in...central and western districts have been temporarily closed over fears that the traffic chaos could jeopardise pupils' safety. Officials say that they are assessing the situation to determine when classes can resume. Some Hong Kong residents have taken to the streets to oppose the unrest";*
- *"They [the protesters] are the minority. They should not be harming the interests of the rest of us. Why are we rallying here today? Well, I'm a construction worker. I want to have my meals in peace. They're causing serious disturbances"; and*
- *"Hong Kong's Food and Environmental Hygiene Department says that protesters are producing a huge amount of garbage as well. The Department says it's boosted the number of garbage collections in areas around the main protest sites".*

Although these comments were not directly dealing with the issues that the demonstrators were protesting about, namely democratic reform in Hong Kong, we considered all these comments to be implicitly critical of the Occupy Central and student protest movements. As such, we considered the issue of the extent to which the demonstrations were impacting on life in Hong Kong would have been a matter on which the pro-democracy Occupy Central and student protest movements would have been likely to have had a view, but their view was not reflected.

We did note that in this bulletin, C Y Leung said:

*"I would like to work together with everyone to change Hong Kong's long-existing election committee mechanism and make sure four million eligible voters in Hong Kong can cast their own vote on election day, with them all taking on the responsibility of choosing Hong Kong's next Chief Executive. This is my pledge and goal, and also my aim in serving the public".*

We considered that this statement could be described as reflecting a view partially consistent with the stated aims of the Occupy Central and student protest movements, namely the introduction of universal suffrage to Hong Kong, in that C Y Leung was voicing support for widening the electorate in Hong Kong's elections (although Ofcom understood that C Y Leung supported the Chinese Government's proposal that candidates in Hong Kong elections would only be selected from a pre-approved list). However, in our view this statement was not sufficient to preserve due impartiality when set against the large number of statements listed above which were either directly or indirectly critical of the protest movements. In particular, we considered that at no point, for example, was the viewpoint of the pro-democracy Occupy Central or student protest movements directly referred to or included in this news bulletin. We therefore considered that the Licensee had failed to give due weight to a significant viewpoint on the issue of the Hong Kong pro-democracy protests.

#### Conclusion: appropriately wide range of significant views in the bulletins

Having taken account of all the factors set above, however, we considered that the Licensee did not adequately reflect the viewpoint of the pro-democracy Occupy Central and student protest movements in response to the various criticisms and allegations made about them in the four news bulletins in this case. Across the four news bulletins broadcast between 30 September 2014 and 3 October 2014, Ofcom noted there were some statements that could be said to be partially<sup>9</sup> consistent with the stated aims of the pro-democracy Occupy Central and student protest movements, namely the introduction of universal suffrage to Hong Kong. However, in our opinion these were not sufficient to balance the many other viewpoints within these news bulletins criticising (some seriously so), the actions, aims and motives of the pro-democracy Occupy Central and student protest movements. Therefore, the Licensee had not ensured that it had included an appropriately wide range of significant views and given those views due weight, as required by Rule 5.12 of the Code.

#### Other matters

Ofcom went on to consider other points or issues raised by the Licensee.

In reaching a Decision, we took into account SCML's representations that CCTV News "operates as the Public Broadcaster of China under specific guidelines to present news on domestic issues from a unique perspective with Chinese characteristics", and that "the majority of viewers world-wide appreciate this responsibility, as they do with other State Broadcasters which operate a global news service". In response to these points, just as other national broadcasters may report news from their own national perspective, the Licensee is of course free to report news from the perspective of the Republic of China. However, in doing so, it must comply with the requirements of Section Five of the Code. In reaching this Decision, Ofcom had careful regard to the nature of this service, the likely audience expectations of CCTV News, and the broadcaster's right to freedom of expression and the audience's right to receive information and ideas.

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<sup>9</sup> As mentioned above, in the news bulletin on 3 October 2014, C Y Leung voiced his support for widening the electorate in Hong Kong's elections. However, Ofcom understood that C Y Leung supported the Chinese Government's proposal that candidates in Hong Kong elections would only be selected from a pre-approved list.

Ofcom also took account of SCML's comments that it is "obliged to respect and reflect the over-arching and fundamental principle that all activity conducted within China's territory must not violate Chinese laws and regulations". Ofcom takes no view on the legality of the pro-democracy protests that were the subject of these news bulletins. However, the pro-democracy movement and related ongoing demonstrations in Hong Kong, and the policies and actions of the Hong Kong and Chinese Governments in response, were matters of major political controversy and major matters relating to current public policy. In its reporting of them, CCTV was therefore obliged as appropriate to present the news with, and preserve, due impartiality and include an appropriately wide range of significant views, irrespective of the legality under Chinese law of the protests taking place at that time.

We also noted SCML's argument that the programmes in this case were "a very selective example of CCTV's coverage on this issue over the four days selected...As a 24x7 broadcaster we believe our coverage must be assessed hour-upon-hour and indeed day-upon-day, especially in a dispute that is now more than six weeks old". Therefore, the Licensee argued that: "It appears unfair to judge a 24-hour broadcaster...based on single bulletins on the one day when issues relating to fairness and balance can only be truly assessed over a period of time". SCML suggested that the relevant period of time for assessing its due impartiality on "this particular issue" would be "a matter of weeks". It also argued that "coverage on a particular issue by a 24-hour broadcaster" must be assessed "over a series of programmes taken as whole" referred to in Rule 5.5<sup>10</sup> of the Code, and that "this has not been done in this particular case".

We disagreed with these arguments. Ofcom has had regard to the particular features of CCTV News, as a rolling news channel, in determining the approach to due impartiality in this case. We recognise the challenges of ensuring that rolling news programming complies with the Code. However, such programming must comply with due impartiality obligations, and rolling news services regulated by Ofcom can and do successfully take a number of measures to ensure they do so. In addition, as mentioned above, there is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news. However, all news stories must be reported with due accuracy and presented with due impartiality i.e. impartiality adequate or appropriate to the subject.

In addition, we did not agree with the Licensee's reference to due impartiality being achieved "over a series of programmes taken as a whole", as set out in Rule 5.5 of the Code. In this case, as well as complying with Rule 5.1, the requirement on the Licensee was not to comply with Rule 5.5 (which applies to matters of political controversy and matters relating to current public policy), but with Rules 5.11 and 5.12 (which apply to matters of major political controversy and major matters relating to current public policy). In particular, Rule 5.12 makes clear that where Rules 5.11 and 5.12 apply due impartiality can be achieved in "clearly linked and timely programmes" (not "over a series of programmes taken as a whole").

We recognise there may be occasions when a broadcaster may be able to comply with Rule 5.1 in one news programme by broadcasting material in a different news programme or programmes. Ofcom's Guidance<sup>11</sup> to Section Five states that due impartiality in news might be achieved through broadcasting different viewpoints on a

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<sup>10</sup> See footnote 6.

<sup>11</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>, paragraph 1.11.

particular issue on successive days in a series of explicitly linked ‘special’ news reports which each separately focus on one particular viewpoint on a particular subject. Depending on the circumstances in each case, such an editorial approach might ensure compliance with Rule 5.1, as long as it was clearly signposted to the audience, in line with Rule 5.6<sup>12</sup> of the Code. However, we noted that the Licensee did not take this approach in this case. Nor did SCML provide any evidence as to how the news bulletins in this case had been “clearly linked” (as required by Rules 5.11 and 5.12 of the Code) to other content on CCTV News that might have reflected the viewpoint of the pro-democracy Occupy Central and student protest movements.

We noted that SCML pointed to some of its news bulletins “interviewing individuals engaged in the ‘Occupy Central’ campaign in the past months, and giving due weight in presenting the views of ‘Occupy Central’ protesters and supporters”, and current affairs programmes that reflected “more voices” on the issue of the pro-democracy protests. However, we considered that as well as these programmes not being referred to in the four news bulletins (i.e. they were not “clearly linked” as required by Rule 5.12), this other content was broadcast in the period after 12 October 2014 i.e. starting nine days after the last news bulletin that we were investigating in this case. We therefore considered that the additional programmes cited by the Licensee could not reasonably be described as being “timely” for the purposes of preserving due impartiality, as required by Rule 5.12.

We also noted the three further examples of CCTV’s news coverage of the protests from late November and early December 2014 supplied by the Licensee in response to Ofcom’s Preliminary View in this case. While these news clips did include very brief interviews with pro-democracy protesters, we considered this content was not “clearly linked” to the original four news bulletins. Further, this additional material could not reasonably be described as “timely”, as required by Rules 5.11 and 5.12, being broadcast over six weeks after the last news bulletin (3 October 2014) investigated in this case.

In summary, the Licensee could not rely on programmes that were not clearly linked and were broadcast at least one week later (i.e. were not timely) as a means of ensuring due impartiality in this case. Given the large number of viewpoints critical of the pro-democracy Occupy Central and student protest movements included in these four news bulletins, and in particular in the news bulletins broadcast on 2 and 3 October 2014, we would have expected SCML to have reflected the views of the protesters to some extent within the four news bulletins themselves and given those views due weight.

### Conclusion

For all the reasons set out above, Ofcom concluded that the Licensee failed to preserve due impartiality as required by Section Five of the Code and the four news bulletins detailed in this finding therefore breached Rules 5.1, 5.11 and 5.12 of the Code.

### **Breaches of Rules 5.1, 5.11 and 5.12**

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<sup>12</sup> Rule 5.6 states: “The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air”.

## In Breach

### The Political Slot

Channel 4, 20 November 2014, 19:55

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#### Introduction

*The Political Slot* is a long-running series of short programmes (each about three minutes in duration) broadcast on Channel 4 (or “the Licensee”), in which representatives of the most significant UK political parties<sup>1</sup> are given a platform to present their views on topical issues. The episode of the programme broadcast on 20 November 2014 featured Conservative Party MP and Exchequer Secretary to the Treasury Priti Patel. Ofcom received complaints about the programme being broadcast on the same day as a parliamentary by-election for the constituency of Rochester and Strood in Kent.

The programme was broadcast at 19:55, following an episode of Channel 4 News. Priti Patel spoke to camera and in voice-over, over footage of her constituency of Witham in Essex. This was interspersed with clips of the Prime Minister David Cameron addressing the Conservative Party Conference, and vox-pops of constituents reacting positively to the policies discussed. The main theme was tax policy, specifically Conservative Party proposals to increase the tax-free personal allowance to £12,500, and to increase the threshold at which people begin paying the higher rate of income tax to £50,000 a year.

Priti Patel placed these proposals in the context of the record of the Conservative Party-led coalition government on tax policy:

*“The Conservative Party has always believed in rewarding those who work hard and do the right thing. Since 2010 we have taken the difficult decisions needed to turn our economy around from Labour’s great recession. And because of that, we have been able to give a tax cut to 26 million people, saving the typical tax-payer £705 a year...But we want to go further”.*

She also looked forward to the General Election in May 2015:

*“[T]he only way we can cut taxes is having a long-term economic plan that grows our economy, creates jobs and cuts the deficit. The choice at the next General Election could not be any clearer. A Labour Party that wants to spend, borrow and tax more, or a Conservative Party that’s working through our long-term economic plan, cutting taxes, and securing a better future for Britain”.*

Section Six of the Code is concerned with elections and referendums. Under the heading ‘Meaning of “election”’, the Code makes clear that for the purposes of this section “elections include...[a] parliamentary by-election”. Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.2 to 6.13 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the ‘election period’.

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<sup>1</sup> For the purposes of *The Political Slot*, Channel 4 considers that the UK’s most significant political parties include: the Conservative Party; the Labour Party; the Liberal Democrat Party; the Scottish National Party (“SNP”); Plaid Cymru; the Green Party; and the UK Independence Party (“UKIP”).

In the case of the Rochester and Strood by-election, the 'election period' ran from the issuing of the writ for that election on 24 October 2014 to the close of polling on 20 November 2014. The polls were open from 07:00 to 22:00 on 20 November 2014. Having viewed this episode of *The Political Slot*, broadcast at 19:55 on the same day, Ofcom considered that the material raised issues warranting investigation under Rule 6.4 of the Code:

"Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post)".

We therefore sought the Channel 4's comments as to how the material complied with this rule<sup>2</sup>.

## Response

Explaining the background to *The Political Slot*, Channel 4 stated: "Editorial control of the Slots rests with the political parties themselves; the parties choose the topics for their respective Slots and put the programmes together themselves with the assistance of an independent production company. Channel 4 gives the parties the maximum possible latitude in terms of freedom of expression in political speech by confining our obligations to ensuring compliance with the Code and the law."

The Licensee also explained that the relevant block of programmes had been scheduled in the spring of 2014: "[T]hey were carefully placed after discussion between the scheduling teams, the Commissioning Editor and the Programme Lawyer, in order to avoid the national and referendum periods and they were fixed prior to any announcement of a by-election". Channel 4 noted that this was a particularly challenging year for scheduling such programmes, with European, mayoral and local elections, as well as the referendum on Scottish independence, held in 2014. The parliamentary by-election in Rochester and Strood was announced many months after this block of programmes had been scheduled.

Channel 4 acknowledged: "The announcement [of the by-election] should have triggered an automatic review of the schedule under our procedures but due to human error this did not take place. We have undertaken a review of our procedures and reminded all key staff of the importance of ensuring that the series schedule is kept under regular review particularly in light of the evolving electoral landscape and the imminent General Election next year. We are confident this was an isolated incident and our previously unblemished record in relation to the series demonstrates that we take compliance in this area seriously".

The Licensee maintained that the material was still compliant with Rule 6.4: "In this case, Rule 6.4 dictates that discussion and analysis of the *By-Election* issues must

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<sup>2</sup> We also asked the Channel 4 to provide information demonstrating how due impartiality was preserved in *The Political Slot*. The Licensee supplied Ofcom with a schedule for the broadcast of episodes of *The Political Slot* in 2014. The programme was scheduled in blocks of four episodes, broadcast on successive days in a given week, from Monday to Thursday. There were four such blocks scheduled over the course of the year, with each comprising three episodes dedicated to the Conservative Party, the Labour Party and the Liberal Democrat Party respectively, and a fourth episode dedicated to one of the UK Independence Party ("UKIP"), the Green Party, the Scottish National Party and Plaid Cymru. Having considered the schedule for broadcasts of *The Political Slot* in 2014 supplied by Channel 4, Ofcom was satisfied that due impartiality was preserved across *The Political Slot* series.



have finished when the polls open. It does not mean that there cannot be any political discussion at all". The Licensee stated that the programme did not refer to the constituency where the by-election was taking place, and nor did it feature or concern any of the individual candidates who were standing in that by-election.

Further, Channel 4 argued that the programme did not include any discussion of "the main issues being debated by the parties involved in the By-Election" and "reported on in the media" in the course of the by-election campaign. It summarised these main issues as: immigration; the National Health Service, in particular getting the local hospital, Medway Hospital, out of special measures; and issues surrounding local housing and a housing development at Lodge Hill, Medway. Instead, Priti Patel focused on "macro General Election issues, concerning the Conservative Party's national economic policy, including their promises in respect of tax cuts for the next parliament", according to Channel 4. It added that the programme addressed Conservative Party proposals for the next parliament which were more relevant to the forthcoming General Election, as demonstrated by the clips of David Cameron discussing tax policy at the Conservative Party Conference, and by the explicit reference to the General Election made by Priti Patel.

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code. Broadcasters are required to comply with the rules in Section Five of the Code to ensure that the due impartiality requirements of the Act are complied with. In addition, Section Six of the Code reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended).

Rule 6.4 requires that discussion and analysis of election issues must finish when the polls open (at 07:00 in the UK). The purpose of Rule 6.4 is to ensure that broadcast coverage on the day of an election does not affect voters' decisions. In this case the programme was broadcast at 19:55, after the polls had opened and prior to the polls closing at 22:00.

Ofcom noted Channel 4's statement that the programme did not specifically refer to the constituency being contested in the by-election, Rochester and Strood in Kent. Instead, Priti Patel spoke from her own constituency of Witham in Essex. However, *The Political Slot* is broadcast nationally, and issues explored in relation to one area may also be relevant to another. The by-election contest in Rochester and Strood followed another by-election, also triggered by the defection of a Conservative Party MP to the UK Independence Party ("UKIP"), in the constituency of Clacton in Essex.

We also took into account that the programme did not feature or concern any of the individual candidates who were standing in the by-election in Rochester and Strood. Nonetheless, the Conservative Party, which had held the seat until the MP Mark Reckless defected to UKIP, was the focus of the programme. There was therefore the potential for a positive depiction of the Conservative Party and its policies and actions to influence voting intentions in the constituency.

As noted by the Licensee, Rule 6.4 is not intended to stop all political discussion and analysis once the polls open, with the prohibition instead being limited to "[d]iscussion and analysis of election and referendum issues". Channel 4 argued that

the “main issues” debated by the parties involved in the by-election and reported by the media in the run-up to it were immigration, health and housing (with each being discussed as appropriate from a local perspective). The Licensee said these issues were not discussed or analysed in the programme. Ofcom accepts that these issues may have been prominent during the campaign. But in our view that did not mean that discussion of other issues on the day of the by-election poll might not have been of interest to potential voters in that by-election and might not have had some potential to sway how they voted.

For example, it is reasonable to assume that the perceived economic competence of the political parties nationally might have been a salient consideration for some voters, and this was touched upon in Priti Patel’s comments on *The Political Slot*: “Since 2010 we [the Conservative Party] have taken the difficult decisions needed to turn our economy around from Labour’s great recession”. The exposure given to specific policies of the Conservative Party, which were presented in an extremely positive light in the programme, could have had an impact on voting intentions as well: “[W]e have been able to give a tax cut to 26 million people, saving the typical tax-payer £705 a year...But we want to go further”. Priti Patel was able to denigrate the policies of the Labour Party and praise the policies of the Conservative Party unchallenged, when both of these parties were contesting the Rochester and Strood by-election: “The choice at the next general election could not be any clearer. A Labour Party that wants to spend, borrow and tax more, or a Conservative Party that’s working through our long-term economic plan, cutting taxes, and securing a better future for Britain”. We also took into account that the format of this series provided an opportunity for a representative of a political party to address viewers, speaking directly to camera.

In addition, the Licensee argued that the focus of the programme was the May 2015 General Election and the Parliament that would follow it, rather than the Rochester and Strood by-election and the current Parliament. Ofcom agreed that this was the main focus of the 20 November 2014 programme. However, in our opinion, the characterisation of the choice facing voters between the Conservative Party and the Labour Party as presented in the programme was relevant to, and could have influenced, voters in the Rochester and Strood by-election.

Ofcom underlines that Rule 6.4 is not intended to stop all political discussion and analysis once the polls open in an election. However, the format of *The Political Slot* meant that this episode of the programme was unsuitable for broadcast in the particular circumstances of this case. As explained by Channel 4, the political parties contributing to the series were given effective editorial control of the programme (with the exception of ensuring compliance with the Code and the law). In the 20 November 2014 programme, a Conservative Party MP was able to present her party’s policies in a positive light, and to denigrate those of the Labour Party, speaking directly to camera, without her comments being mediated by a presenter, or balanced by the presence of representatives of other political parties. In this respect *The Political Slot* was akin to a party political broadcast.

The Licensee acknowledged that it would not ordinarily have scheduled *The Political Slot* for broadcast on the day of a by-election and did so in error on this occasion. Ofcom was concerned that Channel 4 did not review the scheduling of the programme after the Rochester and Strood by-election was called, given the importance of ensuring compliance with Section Six of the Code. We noted that the Licensee has since reviewed its procedures and reminded relevant staff of the importance of regularly reviewing the scheduling of these programmes. However, for

the reasons set out above, Ofcom has concluded that on balance the content was in breach of Rule 6.4.

**Breach of Rule 6.4**

## In Breach

### Major League Baseball

ESPN, 3 October 2014, 20:00

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#### Introduction

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

During live coverage of a baseball match in America, the commentators talked very briefly about the pitcher who kept looking at a batter at first base because the batter was attempting to ‘steal base’<sup>1</sup>. This involved the batter moving back-and-forth on first base in an ungainly manner to distract the pitcher. These movements prompted one of the commentators to say:

*“He [the pitcher] might be just looking at him because he looks like such a spaz”.*

A viewer alerted Ofcom to the reference to “spaz” in the commentary, saying that it was an offensive term to describe someone with physical disabilities.

Ofcom considered that the use of this word warranted further investigation under Rule 2.3 of the Code:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include but is not limited to...discriminatory treatment or language (for example on the grounds of...disability...)”.

Ofcom therefore asked ESPN Limited how the material complied with this rule.

#### Response

ESPN Limited apologised for any offence caused. The Licensee however said that “the use of this word in America is not seen as offensive as it is here. As a consequence, this presents UK broadcasters, especially in relation to the coverage of live sport, difficult challenges”.

ESPN Limited explained its live coverage of Major League Baseball is via an international feed from the US host broadcaster. The Licensee said that during a live programme, if offensive language is broadcast, the US commentator “would immediately apologise”. However, in this case, ESPN Limited said the “US commentator didn’t (and wouldn’t) apologise because the word “spaz” in America is largely seen as inoffensive.” The Licensee said this word “is used [in the USA] to describe someone who is clumsy or un-coordinated and is generally linked with that person being excessively excited or hyperactive”.

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<sup>1</sup> The term ‘steal base’ refers to the common practice in baseball where a batter on a base tries to advance to the next base while the pitcher is in the process of delivering the ball.

ESPN Limited pointed to a previous decision of Ofcom published in October 2006 in which Ofcom acknowledged that "...the word "spaz" does not necessarily cause the same level of offence in America and therefore its use in acquired programmes...presents UK broadcasters with editing and scheduling judgements<sup>2</sup>". Taking this into account, the Licensee said in the coverage of live events from America, it "cannot make editing judgements (other than for repeats) and scheduling judgements are also a moot point given the event is live".

The Licensee explained that because there was "a difference between the definition and use of this word in the USA than that of the UK, it follows that the *context* of the use of this word also differs. This is important in relation to rule 2.3 as material which may cause offence must be justified by the context." The Licensee said "ESPN is a well-established brand specialising in the broadcasting of US sports" and that its viewers "understand that differences exist between the presentation style and content of US coverage than that of the UK." ESPN Limited suggested that the difference in the meaning of the term "spaz" between the USA and the UK is "widely understood" by ESPN viewers, because it is a "niche channel where the vast majority of content is devoted to US sports". However, the Licensee said it was "not defending the use of this word or trivialising any offence caused, we are merely pointing out that the ESPN audience would have had different expectations," and as a result "the degree of harm or offence is lessened".

The Licensee said it uses a third party company for its playout and transmission services. This company monitors live output on behalf of the Licensee "24 hours a day, 7 days a week" and, according to ESPN Limited, provides "immediate remedial actions" when covering live sporting events. ESPN said there are established processes "when identifying potential compliance issues" at the playout facility, including muting the audio levels or showing an apology caption.

ESPN Limited said it fully understood its responsibility to meet the requirements set out in the Code. It said it had introduced "a new apology procedure" to deal with similar compliance issues, so that a pre-prepared apology caption can where appropriate be broadcast straightaway. The Licensee said it is also "conducting further training sessions with the relevant teams to reiterate the importance of swift action when issues arise."

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives. One of these is 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 standards are contained in the Code. Broadcasters are required under Rule 2.3 of the Code to ensure that, in applying generally accepted standards, they must ensure that the inclusion of material which may cause offence is justified by the context.

Ofcom's research ('Language and Sexual Imagery in Broadcasting: A Contextual Investigation', 2005) indicated that respondents in the UK considered the word 'spastic' to be very offensive to most people, although a few thought that it was

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<sup>2</sup> See the Ofcom's Decision on *Bratz* on ITV and CITV in issue 71 of the Broadcast Bulletin, available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb71/>.

permissible to use the word “spas” or “spaz”<sup>3</sup>. According to Ofcom’s later 2010 research<sup>4</sup> the word ‘spastic’ (and similar words like “spaz”) are seen as derogatory terms related to disabled people, and when considered in isolation many participants did not think it was acceptable to use these terms on television because they single out people in society and are “extremely harmful and upsetting”. This research indicated that viewers are likely to consider a word to be more offensive if they understand it to be making a derogatory reference to specific characteristics of a defined group. The remark made by the commentator in this case was therefore clearly capable of causing offence.

We went on to consider whether the offence was justified by the context.

Ofcom acknowledged that ESPN is an established channel broadcasting American sporting events live. Ofcom understands that, in American slang, the term “spaz” is largely inoffensive. We noted the Licensee’s argument that the US commentator was referring solely to the player’s physical awkwardness rather than making a derogatory comment about disability. However, in our view, a UK audience – even one familiar with ESPN content – would not automatically have understood the different meaning of the word in the USA and it would therefore have been capable of causing considerable offence. Further, we considered that the fact that the word had been intended to refer to physical awkwardness increased the likelihood that viewers would have assumed that the reference was linked to disability.

ESPN operates under an Ofcom UK broadcasting licence. It must therefore adhere to generally accepted standards. The Licensee must take UK audience expectations into account when transmitting material broadcast live from America. As pointed out above, the word “spaz” can cause considerable offence to UK viewers and listeners, and we noted that no apology to viewers was broadcast in this case.

The live broadcasting of material provided by a supplier from a different country with different cultural expectations poses compliance challenges to licensees. We noted however that ESPN Limited said it had now introduced new compliance measures which would enable it to deal more quickly and effectively with similar issues in future.

However, on balance, Ofcom’s view was that the use of “spaz” in these particular circumstances was not justified by the context and Rule 2.3 was breached.

### **Breach of Rule 2.3**

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/research/radio-research/language.pdf>, page 82.

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>, page 110.

## In Breach

### Shera Kontho

Channel i, 19 September 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”).

*Shera Kontho* was a singing contest initially broadcast on Channel i Bangladesh and sponsored by a soft drink brand, Fizz Up Clear Lemonade. A complainant contacted Ofcom about the prominence of references to the sponsor throughout the episode broadcast on 19 September 2014.

We reviewed the programme, which was approximately 45 minutes in duration. In addition to sponsorship credits, we noted regular references throughout the programme to its sponsor, Fizz Up Clear Lemonade. These included:

- the sponsor’s products on display on the desk, in front of each of four judges;
- the sponsor’s product images screened on the set behind each contestant and their accompanying musicians;
- the sponsor’s logo and product images screened on the set behind the panel of judges; and
- oral references to the episode’s upcoming winner, “*Fizz Up voice of the day*”.

Further, Ofcom noted that Fizz Up Clear Lemonade was produced by a subsidiary of Globe Pharmaceutical Group of Companies Limited (“Globe Pharmaceutical Group”). During the programme, images of both Fizz Up Clear Lemonade and other products produced by Globe Pharmaceutical Group companies were occasionally superimposed on-screen – namely, Uro Orange, Okkra instant noodles, Mangolee fruit juice and Tiffin biscuits.

The Licensee confirmed that the inclusion of references to the brands cited above had been subject to commercial arrangements between each brand and Channel i Bangladesh, which had produced *Shera Kontho*. As a result, the references met the definition of product placement<sup>1</sup> set out in the Code.

Ofcom considered the broadcast of *Shera Kontho* on Channel i raised issues warranting investigation under the following Code rules:

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

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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.

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

We therefore asked the Licensee for its comments as to how the material broadcast complied with these rules.

### **Response**

The Licensee said Channel i Bangladesh had produced *Shera Kontho* and the brands mentioned in the programme were Bangladeshi products that had “no commercial or business interest or presence in [the] UK or Europe” and had featured on Channel i Bangladesh under agreement with that channel. It added that Prime Bangla was a separate company from Channel i Bangladesh, with which the Licensee had an agreement to broadcast its content in the UK and Europe under the brand, Channel i.

Prime Bangla said it therefore considered the content it rebroadcast on Channel i “was not purposely produced ... to promote those brands in [the] UK for commercial benefit”. However, the Licensee said it understood Ofcom’s concern and would ensure in future that computer generated product branding was masked when rebroadcast outside Bangladesh.

### **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 specific standards objectives, including “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.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

More specifically, both the AVMS Directive and the Act require that:

- programmes containing product placement shall not directly encourage the purchase or rental of goods or services; and
- programmes containing product placement shall not give undue prominence to the products, services or trade marks concerned.

Rules 9.9 and 9.10 reflect these requirements.

Ofcom noted Prime Bangla’s claim that the brands mentioned in *Shera Kontho* were Bangladeshi products that had “no commercial or business interest or presence in [the] UK or Europe” and the programme, as rebroadcast on Channel i, “was not purposely produced ... to promote those brands in [the] UK for commercial benefit”.



However, as summarised in the Introduction above, Section Nine of the Code makes clear that product placement is, “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 the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement”. Further, Section Nine notes 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...”.

In this case, references to a range of products were included in *Shera Kontho* as a result of a commercial arrangement between the brand owners and the programme producer, Channel i Bangladesh. We therefore concluded that the product placement rules in the Code were engaged. Accordingly, irrespective of whether brand references to Globe Pharmaceutical Group companies’ products made in the broadcast of *Shera Kontho* on Channel i were intended to promote those brands to the UK audience for commercial benefit, we considered that Rules 9.9 and 9.10 applied.

We therefore went on to consider whether Rules 9.9 and 9.10 were breached in this case. Ofcom recognised that, as the sponsor of *Shera Kontho*, some references to Fizz Up Clear Lemonade were likely to appear in the programme. Nevertheless, Ofcom’s Guidance accompanying Section Nine of the Code<sup>2</sup> makes clear that the level of prominence given to a product, service or trade mark will be judged against the editorial context in which it appears. In this instance, Ofcom noted that, in addition to frequent product placement of its sponsor, Fizz Up Clear Lemonade, the programme also contained product placed references to Uro Orange, Okkra instant noodles, Mangolee fruit juice and Tiffin biscuits. Ofcom was particularly concerned by the superimposed images of all the Globe Pharmaceutical Group companies’ products that appeared during the programme. In each case, we considered the nature of the reference to the featured brand served a promotional rather than editorial purpose and could not therefore be justified. As a result, we concluded that the references to the placed products were promotional and unduly prominent in breach of Rules 9.9 and 9.10 of the Code.

Ofcom noted that Prime Bangla intended in future to mask computer generated product branding, when rebroadcasting material previously shown on Channel i Bangladesh. However, the extent to which product placed brand references in *Shera Kontho* were computer generated was not clear. It was therefore unclear to Ofcom whether such masking would avoid the recurrence of similar Code breaches.

Ofcom is concerned that the Licensee’s comments in this case imply a lack of understanding of the requirements of Section Nine of the Code. We are therefore requesting that Prime Bangla attend a meeting to set out its procedures for ensuring compliance with Section Nine.

### **Breaches of Rules 9.9 and 9.10**

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

## In Breach

### Community Announcement

*Channel i, 6 to 14 September 2014, various times*

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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 drew Ofcom’s attention to broadcast material that announced an upcoming event in East London, called ‘UK Star Night’. The item lasted 30 seconds, during which the image of a poster (or flyer) that promoted the event was slowly scrolled up the screen. Written in English, it featured photographs of performers at the event and read:

*“UK STAR NIGHT Present by [logo of the event producer]  
14 September 2014  
Sunday @ 6-11pm  
Venue [address]  
Contact: [two mobile phone numbers]  
Ticket £10  
Ticket: [the name of three businesses local to the event venue]”.*

The voiceover was in Bangla and Ofcom therefore commissioned an independent translation. The audio provided the above information and noted that there would be “live music, dance and [a] DJ” and that tickets could be collected from any of the three named businesses.

The Licensee informed Ofcom that the above material was transmitted on 46 occasions over the nine days, 6 to 14 September 2014, as part of its regular bulletin, *Community Announcement*.

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

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

We therefore asked the Licensee for its comments as to how the material broadcast complied with the above rules.

## Response

Prime Bangla said it “received this clip from a community member” who requested it was broadcast on Channel i. The Licensee added that its editorial team considered “the material did not directly promote any sponsors of their event or their products”. It added that its “aim is to let [its] community know about the events happening in the society” and that “some of the business brand placement on the material sole purpose is to let public know where the tickets can be obtained”. In addition, Prime Bangla said it “never intentionally broadcast their brands for any benefit or give [un]due prominence to any particular brand”, adding that it considered “no products, services and trade marks [were] directly or indirectly promoted in programming”.

However, Prime Bangla said that, if Ofcom considered the programme “a potential problem”, it would “avoid using such material in [Channel i’s] community announcement section”.

## Decision

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

Article 19 of the Audiovisual Media Services (“AVMS”) Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour. Rules 9.2, 9.4 and 9.5 of the Code, among others, reflect these requirements.

Ofcom noted Prime Bangla’s view that the material provided to it by a community member “did not directly promote any sponsors of their event or their products”. However, as Ofcom’s Guidance to Section Nine of the Code<sup>1</sup> makes clear, these rules apply “to all references to products and services featured in programming, regardless of whether their appearance is a result of a commercial arrangement between the broadcaster...and a third party...or not”. Rules 9.4 and 9.5 prohibit promotion and undue prominence of *any* product, service or trade mark in programming.

In this case, Ofcom considered the message concerning the upcoming event, ‘UK Star Night’, broadcast during *Community Announcement*, served solely and explicitly to promote a commercial event. Although Ofcom noted that the Licensee’s intention to provide information about an event that may have been of interest to its viewers, there appeared to be no editorial purpose to the announcement, which comprised advertising messages, including the price of entry to the event, how to obtain tickets for it and where to collect them. We therefore concluded that the broadcast was in breach of Rules 9.4 and 9.5 of the Code.

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<sup>1</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

Further, as Ofcom's Guidance to Section Nine of the Code states, the purpose of Rule 9.2 is to "prevent editorial content being distorted for advertising purposes, so ensuring that editorial control is reserved to the licensee and that programming is understood by viewers as not being subject to the control of advertisers".

In this instance, the item concerning 'UK Star Night' included in *Community Announcement* was nothing more than the scrolled image of a marketing poster (or publicity flyer) for a commercial event, to which a voiceover had been added. We therefore considered that this short item, which, as noted above, contained ticket and pricing information, was akin to a broadcast advertisement. As such, the item was not distinct from advertising and therefore in breach of Rule 9.2.

Ofcom is concerned that the Licensee's comments in this case imply a lack of understanding of the requirements of Section Nine of the Code. We are therefore requesting that Prime Bangla attend a meeting to set out its procedures for ensuring compliance with Section Nine.

### **Breaches of Rules 9.2, 9.4 and 9.5**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*HUM Europe, various dates and times*

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#### Introduction

HUM Europe is a general entertainment channel that broadcasts in Urdu, serving the Pakistani community in the UK and Europe. The licence for HUM Europe is held by HUM Network UK Limited (“HUM” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified instances where the Licensee had broadcast more than the permitted advertising allowance:

Date	Clock hour	Amount of Advertising (minutes and seconds)
09/10/2014	09:00	13:01
10/10/2014	10:00	13:10
16/10/2014	09:00	17:10
17/10/2014	09:00	16:48
19/10/2014	09:00	17:25
19/10/2014	23:00	12:28
20/10/2014	12:00	12:26
22/10/2014	10:00	13:34
23/10/2014	09:00	18:00
24/10/2014	17:00	12:45
24/10/2014	25:00	12:35
26/10/2014	10:00	12:37

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

#### Response

The Licensee said that upon being alerted to the matter, it conducted a full internal investigation. It explained that the incidents detailed above occurred “when a programme was either more than 1 hour in length or when a 1 hour programme started mid clock hour”.

The Licensee added that its process and systems have now been thoroughly reviewed and updated to ensure that schedules cannot be used for transmission if a clock hour contains more than 12 minutes of advertising.

HUM assured Ofcom that these incidents were unintentional and that it was committed to preventing further occurrences.

## Decision

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

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

On 12 occasions, the Licensee broadcast significantly more advertising than permitted by Rule 4 of COSTA and therefore breached Rule 4 of COSTA in each case.

In issue 269 of Ofcom’s Broadcast Bulletin<sup>1</sup>, Ofcom recorded 21 breaches of Rule 4 of COSTA for exceeding the permitted advertising minutage allowance on HUM Europe in August 2014. In its response to the matter, the Licensee said it has “carried out a complete review of the process”. Ofcom is therefore concerned that a further 12 incidents have occurred within a short space of time.

Ofcom noted that in the present case the Licensee attributed the incidents to the length and starting time of particular programmes. However, to date, the Licensee has not provided a satisfactory explanation as to why clock hours containing these particular programmes were problematic. Given the Licensee’s recent review of its compliance processes, Ofcom was concerned that such a fundamental flaw in its procedures for checking advertising minutage had not been identified.

While Ofcom noted the HUM’s commitment to future compliance with COSTA, it also noted that 33 breaches of Rule 4 of COSTA have been recorded for incidents broadcast on HUM Europe within a two-month period. Therefore, Ofcom puts the Licensee on notice that further breaches may result in the consideration of a statutory sanction.

## Breaches of Rule 4 of COSTA

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<sup>1</sup> See issue 269 of Ofcom’s Broadcast Bulletin available at:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb269/>

## Note to Broadcasters

### Responsibility for compliance with advertising scheduling rules

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This Broadcast Bulletin contains a number of Findings setting out the result of Ofcom's investigations into compliance by licensees with the Code on the Scheduling of Television Advertising ("COSTA").

Among other things, COSTA sets limits on the amount of advertising that may be shown by Ofcom licensees. Specifically, under Rule 4 of COSTA, licensees may not show more than 12 minutes of television advertising in any single clock hour.<sup>1</sup>

In four of the cases published in this Bulletin, the licensee in question explained to us that Rule 4 of COSTA was breached as a result of errors made by the third-party supplier operating its playout facility.

**Ofcom would like to remind all broadcasters that it is the sole responsibility of the licensee to ensure that the material it broadcasts complies with all of Ofcom's codes and rules. Broadcasters are therefore responsible – and will be held to account by Ofcom – for ensuring that any third party suppliers they use have appropriate procedures in place so that licensed services do not show more advertising in any single clock hour than permitted under COSTA.**

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<sup>1</sup> The full set of rules can be found at:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>.

## In Breach

### Advertising minutage

*Smash Hits, 28 September 2014, various times*

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#### Introduction

Smash Hits is a music entertainment channel broadcast on digital satellite platforms. The licence for Smash Hits is held by Box Television Limited (“Box TV” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified three instances on 28 September 2014 where the amount of advertising in a single clock hour exceeded the permitted allowance by between 21 and 61 seconds.

Ofcom considered these instances raised issues warranting investigation under Rule 4 of COSTA and therefore sought comments from the Licensee with regard to this rule.

#### Response from Box TV

The Licensee said that its playout facility is operated by a third party playout provider, Red Bee Media (“Red Bee”). On this occasion a transmission schedule which Box TV had sent to Red Bee, contained an error which was not identified by the playout provider in its pre-transmission checks.

#### Response from Red Bee

Ofcom’s Procedures for investigating breaches of content standards for television and radio<sup>1</sup> permit Ofcom to seek representations from third parties “who may be directly affected by the outcome of Ofcom’s investigation and determination of a complaint(s) and who may have interests independent of the relevant broadcaster of that programme (e.g. presenters, producers and/or independent programme-makers)”. In the circumstances of this case, Ofcom considered that Red Bee, as the playout provider for Box TV, met these criteria and therefore gave it the opportunity to respond to Box TV’s comments.

Red Bee said that its understanding was that Box TV would not release a schedule to it for broadcast if the schedule contained a COSTA violation. It explained that under its arrangements with Box TV, it was the Licensee’s responsibility to export compliant schedules to the playout provider. Nevertheless, Red Bee stated that it checks all schedules carrying advertisements, despite “not having any express contractual obligation to do so”. At the time of broadcast, however, this was a “highly manual” process. As a result and due to human error, the COSTA violations in the schedule were not identified before transmission. Red Bee said that its scheduling software has since been updated to flag minutage overruns more clearly.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>



## **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, Ofcom found that the amount of advertising broadcast by Smash Hits was in breach of Rule 4 of COSTA on three occasions.

Ofcom noted that the overruns were the result of an error in the schedule submitted by Box TV to its playout provider Red Bee Media which was not then identified before broadcast. Although Ofcom noted the steps subsequently taken by the playout provider to update its scheduling software, Ofcom reminds all broadcasters that it is the responsibility of the Licensee to ensure that both it and any third party suppliers have appropriate procedures in place to ensure the material it broadcasts is compliant with COSTA.

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

## In Breach

### Advertising minutage

*SAB, 24 September 2014, 22:00 and 2 October 2014, 02:00*

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#### Introduction

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

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

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

During monitoring of licensees’ compliance with COSTA, Ofcom noted that there were two instances when this channel exceeded the maximum allowance for advertising in any clock hour. On 24 September 2014 the 22:00 clock hour exceeded the allowance by 48 seconds, and on 2 October 2014 the 02:00 clock hour contained three minutes and 24 seconds more advertising than permitted by Rule 4 of the COSTA.

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

#### Response from MSM

The Licensee stated that on 24 September the amount of advertising had not exceeded 12 minutes and did not comment further.

For the incident on 2 October, MSM said there was a “systems error” which resulted in a longer break being scheduled. A second check at its third party transmission and playout provider operated by Advanced Broadcast Services Limited (“ABS”) “also failed to pick up this error”. The Licensee provided documentation from ABS which said the transmission facility had the “tools in place to alert [MSM] to an overrun, unfortunately on this occasion it seems [ABS] automation failed to pick up this error”.

#### Response from ABS

Ofcom’s Procedures for investigating breaches of content standards on television and radio<sup>1</sup> permit Ofcom to seek representations from third parties “who may be directly affected by the outcome of Ofcom’s investigation and determination of a complaint(s) and who may have interests independent of the relevant broadcaster of that programme (e.g. presenters, producers and/or independent programme-makers)”. In the circumstances of this case, Ofcom considered that ABS, as the provider of playout and transmission services for MSM, met these criteria and therefore gave it the opportunity to respond to MSM’s comments.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

ABS said it checked the transmission information it had retained from 24 September and could not find any minutage overrun. The playout provider said 11 minutes and 55 seconds of advertising had been scheduled for broadcast, and this was verified by its internal logs.

Regarding the 2 October occurrence, ABS said “a series of errors and unusual situations led to this incident”. The playout provider said that MSM’s compliance team “were away on an international conference” and therefore the “usual team responsible” for ensuring COSTA compliance “was not doing it”. ABS said MSM’s “backup team” in Singapore finalised the playlist and sent it to the playout provider, but because of the time difference, arrived “much later than” normal. ABS said MSM’s Singapore team “inadvertently made the mistake of scheduling 18:00 minutes of advertising” in the clock hour.

The playout provider said its normal procedure involves a playlist being put through its automatic software. As a result “any discrepancies are flagged up for manual action by a transmission controller”. On this occasion, however, ABS said it was “facing major automation issues”. As a result, “the channel was being run from a secondary backup server capable of basic playout, with none of the additional features available on the main servers”. This resulted in the breach which ABS said it “work[ed] so hard to avoid”. The playout provider said it is attempting to make “this application more robust”.

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

In this case, the amount of advertising broadcast on SAB exceeded the permitted allowance on two occasions.

Ofcom was concerned that MSM and ABS defended the material broadcast on 24 September as being compliant with Rule 4 when this was not the case. Ofcom reviewed a timecoded copy of the incident which MSM had provided. This clearly showed that the channel had exceeded its allowance by 48 seconds.

Ofcom was also concerned that, for the incident on 2 October, according to the playout provider, compliance staff with insufficient knowledge of COSTA were placed in charge of the scheduling of advertising on SAB. A software problem at the playout provider prevented any remedial action to limit the amount of advertising broadcast. However, it is the sole responsibility of the Licensee to put robust procedures in place to ensure compliance with COSTA rules.

The amount of advertising broadcast on SAB on 24 September and 2 October exceeded the permitted allowance. Ofcom is therefore recording a breach of Rule 4 of COSTA in each case.

Ofcom expects MSM to ensure its compliance recording systems are suitably robust in future and we will continue to monitor the Licensee's compliance with COSTA.

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

## In Breach

### Advertising minutage

*BT Sport 1, 17 August 2014, 04:00 and 20 August 2014, 23:00*

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#### Introduction

BT Sport 1 is owned and operated by British Telecommunications Plc (“BT” or “the Licensee”).

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

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

BT contacted Ofcom on 18 August 2014 to notify us that on 17 August 2014, BT Sport 1 had exceeded the maximum permitted allowance for advertising in the 04:00 clock hour by 60 seconds because of human error at the channel’s external transmission and playout facility, provided by Red Bee Media.

Separately, during monitoring of licensees’ compliance with COSTA, Ofcom noted that there was an additional instance on 20 August 2014 when there was an overrun of 40 seconds during the 23:00 clock hour.

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

#### Response from BT

The Licensee said that on both 17 August and 20 August a breach “occurred due to human error” at its external transmission and playout facility provided by Red Bee Media (“Red Bee” or “the playout provider”).

BT said that on 17 August, during breaks in programming, only promotional material (which would not count towards the channel’s advertising minutage) had been planned. However, advertising had instead been placed, leading to a breach of COSTA.

BT said that on 20 August, the same member of staff, at Red Bee, “did not follow the agreed process”, leading to a breach of COSTA.

BT said that its processes required “continual checks...throughout the day to react to live changes in the schedule due to the nature of live sports coverage with events over or under-running.” It explained that “these checks should be done at least once an hour during non-live content and on a constant basis during live” transmissions. It was therefore the responsibility of a member of the playout team to check the transmission playlist for potential advertising breaches and amend the schedule accordingly. BT explained that, because the “necessary checks” were not carried out, the service had exceeded the advertising minutage allowed.

The Licensee said the member of staff responsible for both breaches was “being shadowed...to ensure the agreed processes are followed” and that the playout facility had reminded its team of the agreed procedures. In addition, BT said that its playout

facility was “undergoing a full process review to identify any further potential gaps in the process” and developing a range of software improvements to aid compliance with COSTA.

### **Response from Red Bee**

Ofcom’s Procedures for investigating breaches of content standards for television and radio<sup>1</sup> permit Ofcom to seek representations from third parties “who may be directly affected by the outcome of Ofcom’s investigation and determination of a complaint(s) and who may have interests independent of the relevant broadcaster of that programme (e.g. presenters, producers and/or independent programme-makers)”. In the circumstances of this case, Ofcom considered that Red Bee, as the provider of playout and transmission services for BT Sport, met these criteria and therefore gave it the opportunity to respond to BT’s comments.

Red Bee said that “regrettably, on both occasions” a member of staff “failed to properly operate procedures that were in place at the time to monitor and assure adherence to the COSTA regulations.” Red Bee noted that the member of staff “who oversaw these failures” was no longer an employee of the company.

The playout provider said the technical updates to its systems had been completed and “the bespoke application to track commercial minutage was deployed into live operations on 7 November 2014”. Red Bee said the application “is on permanent display in a prominent position in the playout transmission suite and is automatically updated to show actual commercial minutes which have been broadcast in the current clock hour.” The playout provider said it also uses a software application to verify the amount of commercial minutage broadcast during every clock hour at the end of each day.

Red Bee said it is also considering other technical solutions which could “automatically halt any commercial content at 12 minutes within the clock hour and drop the transmission output” with an appropriate message.

The playout provider said it hoped these steps demonstrated how seriously it took this matter and showed its “commitment to take all reasonable steps to mitigate the risk of any repeat”.

### **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 its licensees’ compliance with COSTA.

In this case, the amount of advertising broadcast by BT Sport 1 exceeded the permitted allowance on two occasions.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

Ofcom noted the Licensee's explanation that these incidents were the result of human error at its third-party provider Red Bee and that it notified Ofcom of the first but not the second instance. We also welcome the measures outlined by the playout provider to improve COSTA compliance procedures at BT.

However, it is the sole responsibility of the Licensee to put robust procedures in place to ensure compliance with COSTA rules. We were concerned that, despite the fact that BT had been aware of the causes of the breach on 17 August, a second similar error at BT's playout facility should have occurred so shortly afterwards. Ofcom will continue to monitor the Licensee's compliance with COSTA.

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

## In Breach

### Advertising minutage

*ESPN, 28 October 2014, 23:00*

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#### Introduction

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

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”.

The Licensee contacted Ofcom on 31 October 2014 to notify us that on 28 October, ESPN had exceeded the maximum permitted allowance for advertising in the 23:00 clock hour by 50 seconds.

Ofcom considered the instance above raised issues warranting investigation in respect of Rule 4 of COSTA.

We therefore asked the Licensee for its comments with regard to this rule.

#### Response from ESPN

ESPN said the error “occurred due to the incorrect placement of programme parts for the [programme] ‘World Series of Poker’ and was exacerbated by a failure on the part of the Transmission Controller... to realise this and the consequences this would cause”.

*World Series of Poker* was broadcast between 22:30 and 23:30. The Licensee said parts two and three of this programme “mistakenly” ran back-to-back without an advertising break. ESPN said this shifted a commercial break from one clock hour to the following clock hour, beginning at 23:00. The Licensee said this issue was noted by the transmission controller but “the full implication of this ‘rollover’ would not become apparent” until the following live programme, an American football match. The Licensee said this live programme, which originated from America via another broadcaster and began at 23:30, had three scheduled advertising breaks before midnight, and that it was the transmission of the last break led to the breach of Rule 4 of COSTA.

ESPN said the transmission controller “failed to communicate appropriately or take contingency measures to mitigate against the possibility of a breach”. The Licensee said as a result of “human error” the individual “did not follow the prescribed procedures and processes that ensure we do not breach the ad minutage amount”.



## Response from Arqiva

Ofcom's Procedures for investigating breaches of content standards for television and radio<sup>1</sup> permit Ofcom to seek representations from third parties "who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint(s) and who may have interests independent of the relevant broadcaster of that programme (e.g. presenters, producers and/or independent programme-makers)". In the circumstances of this case, Ofcom considered that Arqiva, as the provider of playout and transmission services for ESPN, met these criteria and therefore gave it the opportunity to respond to ESPN's comments.

Arqiva said it "unreservedly" apologised for the situation and said "at the core of the breach was a human error by an Arqiva transmission controller who did not follow the agreed procedures and processes". The playout provider confirmed the information provided by ESPN in its response was "an accurate record of the events".

Following this breach, the playout provider said all relevant staff have been on "refresher" training courses, to be repeated every three months, on the agreed processes between the Licensee and Arqiva. It said it would ensure that "all relevant transmission controllers (not just those working on ESPN)" were put through 'refresher' training courses by the end of 2014 "to mitigate this occurring on other channels".

Arqiva said it is "on schedule to provide an automated commercial minutage tracker which will assist the transmission controllers monitor commercial minutes transmitted during each clock hour". Arqiva said this facility "will be available to all transmission controllers not just those working on ESPN".

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

In this case, the amount of advertising broadcast by ESPN exceeded the permitted allowance.

Ofcom noted the Licensee's explanation that this incident was the result of human error at Arqiva and that it notified Ofcom of this issue. We also welcome the measures outlined by the playout provider to improve COSTA compliance procedures at ESPN.

However, it is the sole responsibility of the Licensee to put robust procedures in place to ensure compliance with COSTA rules. Ofcom will continue to monitor the Licensee's compliance with COSTA.

## Breach of Rule 4 of COSTA

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

## 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.”

Channel	Transmission date and time	Code and rule / licence condition	Summary
S4C	15 November 2014, 22:00	Rule 4 of COSTA	The Licensee notified Ofcom that the channel exceeded the permitted advertising allowance by 57 seconds.  <b>Decision: Breach</b>

## Broadcast Licence Conditions cases

### Note to Broadcasters

#### Compliance with licence requirements to retain and produce recordings

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In this issue of the Broadcast Bulletin, Ofcom has recorded breaches of licence conditions in six separate cases for the failure to retain and/or supply recordings to Ofcom.

We are taking this opportunity to remind all licensees of the obligation in their licences to make and retain recordings of all broadcast output for the time period specified in the licence, and to supply recordings forthwith to Ofcom on request.

Ofcom considers breaches for failures to retain and/or supply recordings in accordance with deadlines set by Ofcom to be significant. This is because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under Ofcom's codes.

**Licensees should note that failure to adhere to these requirements can result in Ofcom considering further regulatory action, including the imposition of statutory sanctions.**

**Accordingly, we are considering the imposition of statutory sanctions in two cases included in this issue of the Broadcast Bulletin involving serious and/or repeated failures to provide recordings to Ofcom.**

## In Breach

### Provision of recordings

*MATV, 24 November 2013, 15:00*

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#### Introduction

Midlands Asian Television (“MATV”) is a satellite television service that broadcasts Indian programming in Hindi, English, Gujarati and Punjabi. The licence for MATV is held by Middlesex Broadcasting Corporation Limited (“MBCL” or “the Licensee”).

*Miripiri Gurdwara Live Kar Sewa* (“the programme”) is a live discussion programme which invites viewers to contact the studio via telephone to participate. Ofcom received a fairness complaint from one of the telephone participants in the programme broadcast on 24 November 2013. The complainant said that during the programme one of the presenters made an allegation against him and mentioned him by name.

Ofcom requested that MBCL provide a recording of the programme in order to assess the complaint and the Licensee supplied a recording. As the programme was broadcast in Punjabi, Ofcom commissioned an independent English translation of the content. We noted that the translation did not contain any reference to the incident identified by the complainant.

Ofcom provided MBCL and the complainant with a copy of the translation of the programme and sought confirmation from both parties that they were content for this to be the basis of its investigation. In our correspondence with the complainant, we noted that, on the basis of this translation, the programme did not appear to contain the incident to which he had referred. The complainant advised Ofcom that the incident about which he had complained was missing from the translation.

We had commissioned a full translation of the recording supplied to us by MBCL, which we had understood to be the entirety of the programme broadcast on 24 November 2013. We therefore asked MBCL to confirm that the recording it had provided to us was a copy of the programme as broadcast. MBCL stated that the recording it had sent was “the original broadcast which has gone on air”.

Ofcom provided the complainant with a recording of the programme supplied by the Licensee. The complainant responded by stating that the recording had been “manipulated”. The complainant identified a point in the recording where his telephone call had been disconnected and said that the allegation against him had been made by one of the presenters immediately afterwards. However, the complainant claimed that this incident had been edited out of the recording supplied to Ofcom by MBCL. To support his case, the complainant provided Ofcom with a copy of the programme that he had recorded himself when the material had been broadcast.

Ofcom reviewed the material supplied by the complainant. We noted that it contained approximately 16 seconds of material that did not feature in the recording provided to us by MBCL. Ofcom also noted that the additional material occurred precisely at the point that the complainant had identified.

Ofcom then obtained an independent translation of the 16 second segment that was only present in the recording supplied by the complainant. The translation matched the incident described by the complainant.

To inform Ofcom's view on the complainant's assertion that the recording supplied by the Licensee did not reflect the material as broadcast, Ofcom requested a further high quality recording of the programme from MBCL for technical assessment. The results of this frame-by-frame analysis of this recording demonstrated that the content appeared to skip in both sound and vision at the precise time indicated by the complainant. This suggested to us that two programme segments had been edited together, omitting the relevant 16 second excerpt pertinent to the complaint.

Condition 20(1)(a) of MBCL's Television Licensable Content Service Licence ("the Licence") requires the Licensee to comply with requests for information by Ofcom about fairness complaints. Specifically, the Condition states that:

"(1) The Licensee shall comply with such directions and requests for information as may be given to him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:

- (a) provide Ofcom with a recording in sound and vision of the programme, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession".

Ofcom considered this matter raised substantive issues warranting investigation under Condition 20(1)(a) of the Licence. We therefore asked the Licensee for its comments in relation to the issues raised and how it complied with this licence condition.

When requesting comments from the Licensee, Ofcom provided MBCL with a copy of the complainant's recording of the programme, a translation of the additional 16 second segment that it contained, and a screenshot of the point in the Licensee's recording at which it appeared that two programme segments had been edited together.

### **Response from MBCL**

The Licensee said that its compliance recording was carried out by a third party contractor, IQ Broadcast, on its behalf. It explained that IQ Broadcast supplied recordings of broadcast segments to MBCL in files which were converted into a tape and sent to Ofcom on DVD.

By way of explanation for the missing 16 second segment, the Licensee said: "the conversation ends at one file and then restarts at [the] next file". To demonstrate this, MBCL sent Ofcom 14 media files each containing a segment of the programme. It added that "no editing was done" to the material by MBCL.

MBCL said it had no reason to believe that IQ Broadcast could falter in their work and while it regretted the mistake, it stressed that it was "neither done deliberately nor intentionally".

Ofcom's Procedures for investigating breaches of broadcast licences<sup>1</sup> provide for it to seek representations from third parties "who may be directly affected by the outcome of Ofcom's investigation". In this case, Ofcom considered it appropriate to give IQ Broadcast an opportunity to make representations.

### **Response from IQ Broadcast**

IQ Broadcast stated that it provided a compliance recording service to the Licensee. It explained that whenever a client requests data, it sends recordings as files on external hard drives or DVDs. It added that it does not "normally" go through nor do any editing of material, and only retrieves files according to the timing and duration of the request.

IQ Broadcast said that by the time it had been informed of the missing material by MBCL, it no longer had the original recordings and was therefore unable to perform any checks.

### **Decision**

Condition 20(1)(a) of a TLCS licence places an obligation on licensees to comply with a request by Ofcom for a recording in sound and vision of a programme, or any specified part of it, to which a fairness complaint relates. Relevant to this licence condition is the statutory requirement under section 117 of the Broadcasting Act 1996, which requires broadcasters to retain a recording of every television programme that they broadcast for a specified period after broadcast. It is implicit that, to comply with Condition 20(1)(a), the recording provided to Ofcom must be a true and accurate copy of all the relevant material that was broadcast.

Breaches of Condition 20(1)(a) are significant because they can impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the Code.

In this case, Ofcom made two separate requests to the Licensee to provide us with a recording of the programme as broadcast. We specifically asked the Licensee to confirm that the first recording it provided to Ofcom was a copy of the programme as broadcast and it stated that it was.

Ofcom noted that the complainant's recording appeared to be of a continuous transmission which, in Ofcom's view, would be expected from a programme broadcast live.

Ofcom examined the 14 media files sent by MBCL in support of its representations. We noted that when joined together, they replicated the two recordings it had provided to Ofcom previously. When comparing these recordings with the complainant's recording, Ofcom identified that there was a "jump" in sound and vision at each point where the files were joined together. In all but one case, the loss in sound and vision was approximately one second. However, at one point there was a "jump" that resulted in 16 seconds of content being omitted from the Licensee's recordings. Ofcom noted from the translation of the complainant's recording of the programme that the incident identified by the complainant had occurred during this 16 second interval.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>

Having considered and compared the recording provided by the complainant against the two recordings provided by the Licensee, it appears to Ofcom that the Licensee supplied Ofcom with two separate recordings of the programme which both omitted the 16 second interval. Further, the missing period coincided precisely with the section of the programme which gave rise to the complaint, and aside from the very brief “jumps” resulting from the joining together of media files, this was the only substantive content which appeared to be missing from the entire 75 minutes of the programme. Accordingly, to the extent that the Licensee has provided Ofcom with incomplete recordings, it appeared that these recordings may have been altered deliberately.

In its response, MBCL explained that compliance recordings are produced on its behalf by a third party contractor. The Licensee said that when recordings are requested by Ofcom they are sent from the contractor to MBCL in segments. These segments are then converted into a tape which is sent to Ofcom. We noted MBCL’s statement that: “the conversation [i.e. in the programme which forms the basis of the fairness complaint] ends at one file and then restarts at [the] next file”. The Licensee appeared to seek to explain the missing 16 seconds of material by the editing together of the two files, implying that one of the files supplied by the third party contractor contained a recording which ended prematurely or began late.

On the basis of the representations that Ofcom has received from both MBCL and from its third-party contractor, it is not clear how the relevant 16 seconds of content came to be missing from the recordings. However, whether it was MBCL or the contractor who caused the omission, it is, in Ofcom’s view, MBCL who is ultimately responsible. This is because, as the Licensee, it is the sole responsibility of MBCL to ensure that it complies with the requirements of Condition 20 of the Licence, regardless of whether recordings are made in-house or on its behalf by a third party contractor. It is not acceptable for the Licensee simply to pass responsibility for this task to its third party contractor.

In Ofcom’s view, MBCL has not provided a satisfactory explanation as to why there appeared to be a period of 16 seconds missing from the two recordings it had submitted, nor why these recordings were not properly checked for accuracy and completeness before being sent to us. As a result, it is Ofcom’s decision in this case that MBCL failed to provide Ofcom with a complete and accurate recording of the programme as requested, and that it has therefore breached Condition 20(1)(a) of the Licence.

Ofcom is particularly concerned by MBCL’s formal confirmation in writing to the regulator that the recordings provided were of “the original broadcast which has gone to air”, when it appears that this was not in fact the case. This confirmation clearly had the potential to mislead Ofcom and make it difficult, if not impossible, for us to consider the fairness complaint properly in accordance with our statutory duties.

While we noted MBCL’s assertion that the material had not been edited, Ofcom reminds MBCL that, irrespective of how it came about, the Licensee had provided Ofcom with recordings that omitted material which Ofcom required to carry out its statutory duties. Given the particular circumstances of this case, Ofcom’s Preliminary View is that this breach of Licence Condition 20 is serious.

**Accordingly, Ofcom therefore puts the Licensee on notice that it is considering this breach for the imposition of a statutory sanction.**

**Breach of TLCS Licence Condition 20(1)(a)**

## In Breach

### Provision of recordings and information

*Welcome TV, MATV, 12 April 2014, 13:00*

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#### Introduction

Midlands Asian Television (“MATV”) is a satellite television service that broadcasts principally Indian programming in Hindi, English, Gujarati and Punjabi<sup>1</sup>. The licence for MATV is held by Middlesex Broadcasting Corporation Limited (“MBCL” or “the Licensee”).

Ofcom requested from MBCL an off-air, time-coded recording of a programme broadcast on MATV on 12 April 2014, *Welcome TV*. This was for the purpose of investigating a fairness complaint that Ofcom had received about the programme. Ofcom did not receive a response to its request by the specified deadline. We therefore wrote to the Licensee again, reminding it of its responsibility under its licence to supply Ofcom with the material requested. A new deadline was set. A day after that revised deadline, Ofcom received a disk from MBCL containing three media files of 30 minutes duration each. These files were not time-coded as requested and no information was provided to explain what material had been sent.

Ofcom therefore wrote to MATV to request a further copy of the recording of the programme, with time codes and other requested information. A further deadline was given for the receipt of this information. Ofcom did not receive a response from the Licensee.

Subsequently, Ofcom received from MBCL a copy of a recording that was labelled ‘12 April 2014 (Welcome TV)’ and which gave the relevant time and complainant reference. On opening the disk, however, it appeared to be dated 5 April 2014 and, contrary to Ofcom’s request, it was not time-coded.

Ofcom obtained an independent translation of both disks that were provided by the Licensee in response to our request for the recording. The original disk that was supplied to Ofcom, consisting of three unnamed media files, appeared only to contain content from 5 April 2014 and content from an unidentified date prior to 12 April 2014. The second disk supplied to Ofcom labelled ‘12 April 2014 (Welcome TV)’ similarly appeared only to contain content from 5 April 2014.

Condition 20(1) of MBCL’s Television Licensable Content Service (“TLCS”) licence requires the Licensee to comply with requests for information by Ofcom about fairness complaints. It states that:

“(1) The Licensee shall comply with such directions and requests for information as may be given to him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:

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<sup>1</sup> MATV also appears to broadcast programming in a Congolese language, which we believe may have been the case here.



- (a) provide Ofcom with a recording in sound and vision of the programme, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession...
- (b) provide Ofcom with such other things that Ofcom may specify or describe and that appear to Ofcom to be relevant to its consideration of the complaint and to be in the possession of the Licensee.”

Ofcom considered that this matter raised issues warranting investigation under Condition 20(1). We therefore wrote to the Licensee, asking for its comments on how it had complied with this licence condition.

## Response

The Licensee apologised for the delay in sending the requested material to Ofcom. It explained that the delay was due to someone “hacking” into its data system so that emails could not be opened and data was lost. Further, MBCL said that it had suffered a power outage which caused problems with its broadcast system and that “restoring the entire system took [sic] lot of time”. The Licensee explained that: “Luckily we have this Ofcom Data Recording facility at a different location, hence the compliance recording data was not lost”, but that there had also been “an issue with the data recording system at that Location”. It said that that issue had since been fixed, enabling the Licensee to provide Ofcom with a copy of the material requested. Finally, MBCL stated that it “sincerely regret[ted] the events that has taken place in April and May and will try [its] best to maintain compliance as per OFCOM request”.

In a further response, the Licensee said that it could not provide the material as “the DV recorder to record data was under repair”.

Following Ofcom’s Preliminary View on the matter (that there were breaches of Conditions 20(1)(a) and 20(1)(e)), the Licensee wrote to Ofcom and explained that it had: “...never ignored any Ofcom directive or never failed to provide the requested data”. It said that the reason it had not supplied the requested information on this occasion was due to “genuine problems” which it had explained already to Ofcom.

The Licensee went on to add that:

“Regarding welcome TV programming this is a religious programme offered to Congolese community who does not have their own TV station so the Christian community (Congolese decent) [sic] which is living in this country can air their views. As far as MATV was concerned we were only providing AIR TIME for religious Christian teachings on air...We are only doing a community service by providing space for Christian teachings. Major cause of the misunderstanding was the [sic] that we had no knowledge of the spoken language and we thought it was religious broadcast so we never thought we need to hire some one to look at the content closely. Which we accept was a mistake. Since the Ofcom issues have surfaced now we have one person closely monitoring the Live or recorded content”.

MBCL asked Ofcom to be lenient because it considered that a genuine mistake had been made “...due to the belief that if some one is going to speak about Christianity what wrong could be there in religious teachings”.

## Decision

Condition 20(1) of a TLCS licence places an obligation on licensees to comply with requests from Ofcom for information in relation to any fairness complaint. In particular, Condition 20(1)(a) requires the Licensee to comply with a request by Ofcom for a recording in sound and vision of a programme, or any specified part of it, to which a fairness complaint relates. Condition 20(1)(e) requires the Licensee to provide Ofcom with such other things that Ofcom may specify or describe and that appear to Ofcom to be relevant to its consideration a fairness complaint.

Breaches of Condition 20(1) are significant because they can impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the Code, in accordance with our statutory duties under section 110 of the Broadcasting Act 1996.

For Ofcom to fulfil its duty to assess and investigate fairness complaints effectively, broadcasters must provide recordings of programmes in a timely way in accordance with Ofcom's specified deadlines. It is unacceptable for a broadcaster to delay unreasonably the supply of recordings and information to Ofcom, or to fail to supply the recording and/or other requested information at all.

In this case, MBCL failed to provide Ofcom with a recording of a programme, and information about it. This failure by the Licensee has prevented us from assessing the relevant broadcast material to fulfil our statutory duties. Ofcom has therefore found that MBCL breached Licence Conditions 20(1)(a) and 20(1)(e).

Ofcom was concerned that, contrary to the directions given to the Licensee to respond to Ofcom by the deadlines given, MBCL appeared to have ignored them repeatedly and attributed its failure to respond in a timely manner to technical difficulties. While Ofcom noted MBCL's explanation that its failure to provide the requested material was due to "genuine problems" and accepted that broadcasters may, from time to time, experience difficulties with their data systems, we expect them to have contingency plans in place to ensure that, at the very least, they can continue to receive (and respond to) communications from the regulator.

### **Ofcom has put the Licensee on notice that it will consider these breaches for the imposition of a statutory sanction.**

Ofcom also noted that MBCL submitted that it had no knowledge of the language in which the programme was being broadcast and that it "never thought [it needed] to hire some one to look at the content closely." These statements raised further concerns for Ofcom with regard to Condition 17(2)<sup>2</sup> of MBCL's TLCS licence. Ofcom intends to investigate this matter separately.

### **Breaches of TLCS Licence Conditions 20(1)(a) and 20(1)(e)**

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<sup>2</sup> Condition 17(2) of MBCL's TLCS licence relates to the compliance procedures and arrangements it is required to have in place.

## In Breach

### Provision of recordings

*Sentinelle TV, DM News Plus, 3 and 11 August 2014, 00:00*

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#### Introduction

DM News Plus is a news and general entertainment channel, available on digital satellite, which broadcasts in Urdu, Punjabi, Pothohari and English to the UK Asian community. The licence for the channel is held by DM Global Media Limited (“DM Global” or “the Licensee”).

Following receipt of two fairness complaints, Ofcom requested recordings of the above two programmes separately. No response was received from the Licensee in either case. Ofcom therefore made further requests for the recordings, but again no response was received. Ofcom subsequently received an email from the Licensee that related to a separate complaint explaining that the contact email address provided to Ofcom for compliance purposes had been “hacked” and that, as a result, it had not been able to access its emails. Given this, Ofcom requested the recordings again and set new deadlines.

Ofcom received a response from the Licensee stating that the recording of the 3 August programme had been sent to Ofcom in the post. Ofcom received some recordings from the Licensee, but they did not relate to the material complained about. Ofcom therefore made a subsequent request for the correct recording. No response was received.

No further response was received from the Licensee about Ofcom’s request for the programme broadcast on 11 August 2014.

Condition 20(1) of DM Global’s Television Licensable Content Service (“TLCS”) licence requires the Licensee to comply with requests for information by Ofcom about fairness complaints. It states that:

“(1) The Licensee shall comply with such directions and requests for information as may be given to him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:

- (c) provide Ofcom with a recording in sound and vision of the programme, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession.”

Ofcom considered that these matters raised issues warranting investigation under Condition 20(1)(a) and therefore wrote to the Licensee asking for its comments on how DM Global complied with the licence condition in this case.

#### Response

The Licensee stated: “...we have delivered the DVDs on 3 occasions to you and there was a problem of hacking of my emails”. The Licensee also said that the individual responsible for compliance was undergoing hospital treatment and “a close member of [their] family” had also been receiving hospital treatment for a serious

medical condition. Subsequently, the Licensee said that: "...our records show that we have sent you the recordings to comply with the request". The Licensee then asked which recordings Ofcom had not received. The Licensee also explained again that the lateness of its response was: "...due to illness and hacking of our system which has caused difficulty in retrieving the information".

In further correspondence, the Licensee explained that: "There is no deliberate attempt to hold any recording from you, as I have explained previously there may have been an oversight due to my illness and no access to my emails".

## Decision

Condition 20(1) of the Licence places an obligation on licensees to comply with requests from Ofcom for information in relation to any fairness complaint. In particular, Condition 20(1)(a) requires the Licensee to comply with a request by Ofcom for a recording in sound and vision of a programme, or any specified part of it, to which a fairness complaint relates.

Breaches of Condition 20(1) are significant because they can impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the Code, in accordance with our statutory duties under section 110 of the Broadcasting Act 1996.

For Ofcom to fulfil its duty to assess and investigate fairness complaints effectively, broadcasters must provide recordings of programmes in a timely way in accordance with Ofcom's specified deadlines. It is unacceptable for a broadcaster to delay unreasonably the supply of recordings and information to Ofcom, or to fail to supply the recording and/or other requested information at all.

In this case, on receipt of two fairness complaints, Ofcom requested recordings of two programmes to enable Ofcom to assess the complaints. Despite repeated requests by Ofcom for these recordings, the Licensee failed to provide them.

Ofcom is also concerned that, contrary to the directions given to the Licensee to respond to Ofcom by the deadlines given, DM Global appears repeatedly to have ignored them and has attributed its failure to respond in a timely manner to technical difficulties and staff illness. While Ofcom accepts that broadcasters may, from time to time, experience difficulties with their data systems and staff illness, we expect them to have contingency plans in place to ensure that, at the very least, they can continue to receive (and respond to) communications from the regulator.

On this occasion, the failure by the Licensee to provide the material requested by Ofcom prevented us from assessing the relevant broadcast material in fulfilment of our statutory duties.

DM Global therefore breached Condition 20(1)(a) of its licence.

In issue 270 of the Broadcast Bulletin<sup>1</sup>, Ofcom recorded five breaches for failures by DM Global to provide recordings in other cases. In that Finding, Ofcom put the Licensee on notice that it would be considering those five breaches for the imposition of a statutory sanction.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2691/obb270.pdf>

In light of this latest case, Ofcom is very concerned about DM Global's ability to comply with the conditions in its licence requiring it to provide recordings to Ofcom on request. Ofcom therefore intends to monitor DM Global's compliance with these conditions to determine whether any additional regulatory action is necessary.

**Breach of TLCS Licence Condition 20(1)(a)**

## In Breach

### Retention and production of recording

*PTC Punjabi, 24 to 30 September 2014, various times*

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#### Introduction

PTC Punjabi is a news and general entertainment service broadcasting in Punjabi, and originating from India. The channel is available in the UK on a digital satellite platform. The licence for PTC Punjabi is owned and operated by G Next Media UK Limited (“GNM UK” or “the Licensee”).

During monitoring of licensees’ compliance with the Code on the Scheduling of Television Advertising (“COSTA”), Ofcom noted that there were three instances when this channel appeared to exceed the maximum allowance for advertising in a clock hour. However, when Ofcom requested recordings of the output to confirm this, GNM UK said it was not able to provide the material as, following a move to a new playout facility, no recordings were available.

Ofcom considered the failure to provide the original recording requested raised issues warranting investigation under Conditions 11(2)(a) and (b) of PTC Punjabi’s Television Licensable Content Service (“TLCS”) licence, which states that:

“(2) In particular, the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...” .

Ofcom therefore asked GNM UK for its formal comments on how it had complied with these Licence Conditions and to provide a suitable recording.

#### Response

GNM UK said that after it took control of the licence for PTC Punjabi at the end of August 2014, the playout operations were transferred to a new site. The Licensee said “testing was carried out for broadcast and retention of recordings” and that “the system was operating properly”.

However, when GNM UK tried to obtain the material following Ofcom’s request, it “discovered that the recording function had not been working due to a technical fault which had been overlooked by the Operations team”. The Licensee said “the fault should have been identified, given the initial tests undertaken to retain recordings”.

GNM UK said it had since “held briefings with the Operations team and started a series of random checks of recordings and retentions” which “continue on a fortnightly basis” to ensure compliance. The Licensee added that that following identification of the fault, recordings had been made and retained.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the licensee to retain recordings of every programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request issued by Ofcom to produce such recordings issued by Ofcom. TLCS licences contain these obligations in Licence Conditions 11(2)(a) and (b).

Under Licence Condition 11(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 60 days after broadcast. Under Licence Condition 11(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

It is a condition of all television licences that the licensee adopts procedures for the retention of recordings and produces recordings to Ofcom forthwith on request. In this case, GNM UK was unable to provide a copy of the broadcast material requested.

Breaches of Licence Conditions 11(2)(a) and (b) are significant because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant code or codes. In such circumstances, Ofcom's ability to carry out its statutory duties in regulating broadcast content may be affected.

Further, Ofcom is very concerned that there was a period of more than two months when recordings were not available and that this went unnoticed by compliance staff. This was not acceptable. In fact, GNM UK only became aware of this issue when Ofcom contacted it to obtain a recording of its output.

The introduction of random spot checks is helpful to determine the reliability of GNM UK's compliance recording system. Given the duration of the period for which recordings were not available, Ofcom expects GNM UK to remain vigilant to ensure its compliance recording systems are suitably robust in future.

The failure to retain recordings and provide them to Ofcom on request is a clear breach of Licence Conditions (11)(2)(a) and (b). In the event of further breaches of these Licence Conditions, we may consider further regulatory action.

### **Breaches of TLCS Licence Conditions 11(2)(a) and (b)**

## In Breach

### Retention and production of recording

*Studio 66 TV1, 27 October 2014, 11:30*

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#### Introduction

*Studio 66 TV Days* is a segment of interactive ‘adult chat’ and ‘daytime chat’ advertising content broadcast on the service Studio 66 TV1. The service, broadcasting on a digital satellite platform, is freely available without mandatory restricted access and is situated in the ‘adult’ section of the electronic programme guide (“EPG”). Viewers are invited to contact on-screen presenters via premium rate telephony services (“PRS”). During ‘daytime chat’, all dress and behaviour should be non-sexual in tone and apparent intent.

The licence for Studio 66 TV1 is owned and operated by 914 TV Limited (“914 TV” or “the Licensee”).

Ofcom received a complaint about inappropriate sexual content broadcast during the day on 27 October 2014.

Ofcom requested the relevant recording, but the Licensee did not provide it and explained the reason why (set out below).

Ofcom considered the failure to provide the original recording requested raised issues warranting investigation under Conditions 11(2)(a) and (b) of Studio 66 TV1’s Television Licensable Content Service (“TLCS”) licence. This states that:

“(2) In particular, the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...”.

Ofcom therefore sought formal comments from 914 TV about why it was unable to comply with these Licence Conditions.

#### Response

914 TV said it was “sincerely sorry that this failure occurred”. The Licensee said while trying to retrieve a copy of the recording “it became apparent that, as a result of our having had a complete studio move, there was a period of around 72 hours (from 09.30 on 24 October 2014 to 13.10 on 28 October 2014) in which we had retained either no, or incomplete, recordings”.

The Licensee explained that normally “digital recordings are made on site and stored on a hard disk recorder, and these are then backed up on a nightly basis to an additional hard drive”. It added that it had “never previously failed to retain suitable copies of” its output.



914 TV said that it has investigated how the problem occurred and it “appear[ed] that, during the studio move our engineers failed to re-attach a cable which links all of the recording apparatus together”. The Licensee said this “was simply a case of human error”.

As a result of this, 914 TV said it is now using an off-site compliance recording company “to ensure that, as well as the on-site recording, we have an additional resource from which to retrieve recordings, as and when required”. The Licensee said it is “confident that this will remove the opportunity for any recurrence of this issue in the future”.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of every programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request issued by Ofcom to produce such recordings. TLCS licences contain these obligations in Licence Conditions 11(2)(a) and (b).

Breaches of Licence Conditions 11(2)(a) and (b) are significant because they impede Ofcom’s ability to assess whether a particular broadcast raises potential issues under the relevant code or codes. In such circumstances, Ofcom’s ability to carry out its statutory duties in regulating broadcast content may be affected.

In this case, 914 TV was not able to provide a copy of the broadcast material requested. Ofcom noted that, according to the Licensee, this resulted from “human error”. We noted the additional measures put in place by the Licensee to avoid any recurrence of this issue in the future. However, we were concerned that there was a three day period when recordings were not fully available but this went unnoticed by compliance staff at the time. It appears that 914 TV only became aware of this issue when Ofcom contacted it to obtain a recording of its output.

The failure to provide a recording to Ofcom was a clear breach of Licence Conditions (11)(2)(a) and (b). 914 TV must ensure its compliance recording systems are suitably robust in future.

## **Breach of TLCS Licence Conditions 11(2)(a) and (b)**

## In Breach

### Retention and production of recordings

*Drystone Radio (Sutton in Craven), 7 June 2014*

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#### Introduction

Drystone Radio is a community radio station licensed to provide a service for the people of South Craven in the Yorkshire Dales. The licence is held by Drystone Radio Limited (“DRL” or “the Licensee”).

Ofcom received a complaint alleging that Drystone Radio was not keeping recordings of its output for the period of time required under its Ofcom licence, and had not had a reliable system in place to log output for the past 18 months. To assess the complaint, we requested recordings of three different days of output from the station. The Licensee provided the requested recordings for 16 June and 3 July 2014, but was unable to provide the requested recording for 7 June 2014.

Ofcom considered that DRL’s failure to provide a recording of its output on 7 June raised issues warranting investigation under Licence Condition 8(2)(a) and (b) which require the Licensee to:

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

We therefore asked the Licensee for formal comments on its compliance with these licence conditions.

#### Licensee’s Response

The Licensee apologised for failing to provide a recording of its output on 7 June 2014. It said that the station’s computer which stored the 42-day recording log had recently been removed without its knowledge. Ofcom’s request for recordings had alerted the station’s management to the computer’s removal, and a 42-day log was restored. DRL also said it had decided to establish a further audio storage facility away from the studio to prevent such a problem occurring in the future.

Given the comments received from DRL, we considered it appropriate to seek further representations from the complainant as to the duration of any potential non-compliance by the Licensee. In particular, Ofcom sought to verify whether any non-compliance had been occurring for a period of “18 months or more” (as contained in the original complaint) or whether (as contended by DRL) this was a very recent event which had resulted from its logger being removed from the premises without its knowledge.

The complainant did not respond to Ofcom’s invitation to provide representations.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

In this case, we acknowledged that the Licensee had provided Ofcom with two of the three recordings requested, and its explanation that the failure to provide all of the recordings was due to the removal of its computer without its knowledge. We also noted that the problem had since been rectified and that new procedures have been put in place at the station for the retention of recordings.

Nevertheless, the Licensee is obliged under the terms of its licence to ensure that recordings of its output are retained for 42 days and provided to Ofcom on request. The failure to retain and produce to Ofcom the recordings requested for 7 June 2014 therefore constituted a breach of DRL's licence. However, in the absence of any additional representations from the complainant to the contrary, it appears to Ofcom that this incidence of non-compliance may have been an isolated episode of relatively short duration, and the Licensee has now rectified the situation. We do not therefore consider it appropriate to take any further regulatory action.

**Breaches of Licence Conditions 8(2)(a) and (b) of the community radio licence held by Drystone Radio Limited (licence number CR000148BA)**

## In Breach

### Providing a service in accordance with ‘Key Commitments’

*Corby Radio, 13 to 15 August 2014*

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#### Introduction

Corby Radio is a community radio station licensed to provide a service for “the population of Corby and surrounding area”. The licence is held by Corby FM Limited (“Corby Radio” or “the Licensee”).

Like other community radio stations, Corby Radio is required to deliver the ‘Key Commitments’ which form part of its licence.<sup>1</sup> These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint alleging that Corby Radio’s output “is almost wall to wall music and commercials”, and that “community content is minimal.”

We asked Corby Radio for a sample of its audio across three days so we could assess the complaint. The audio provided raised issues with regard to Corby Radio’s compliance with the following Key Commitments:

- “Output typically comprises 75% music and 25% speech during the day, with a much higher percentage of music during the evenings and overnight (‘speech’ excludes advertising, programme/promotional trails and sponsor credits).”
- “The station provides a platform for balanced local discussion and debate. It makes every effort to attract the views of its listeners via various means of communication.”

Ofcom considered that these issues warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Corby Radio’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

We therefore wrote to Corby Radio to request its comments on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

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<sup>1</sup> The Key Commitments are contained in an annex to Corby Radio’s licence. They can be viewed in full at:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000185.pdf>.

## Response

The Licensee explained that since Ofcom had published its Content Sampling Report on Corby Radio in 2013<sup>2</sup>, the station has increased its speech levels, and is doing its best to comply with the 25% speech requirement.

The Licensee added that it recently had to restructure its staffing due to the death during 2014 of its breakfast show presenter. It stated that the level of speech broadcast varied hour by hour, and that although there were some hours which had less speech than is required by the Key Commitment, other hours had featured more than the 25% required. Corby Radio also said that it had identified areas of output which it recognised required improvement, and it was working to introduce more daytime speech content.

The Licensee acknowledged that, although it offers debate at election periods and around other significant national and local events, this may not be a frequent occurrence. It added that it has since introduced a new 'Daily Debate' feature on the station which it hoped would encourage more discussion and debate on the station as well as listener interaction.

The Licensee also stated that it had recently introduced a new system of monitoring its daytime speech levels to ensure future compliance with the 25% requirement.

## Decision

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

Ofcom has traditionally regulated speech output on all stations on the basis of an average percentage taken across the daypart in question (in this case, daytime output), rather than requiring licensees to meet the percentage speech requirement in every single clock hour. This is because we recognise that licensees may legitimately wish to over-deliver on speech content during some hours, but place a greater emphasis upon music in other hours.

However, in this case, our view was that, even when calculated on this averaged-out basis, Corby Radio was not delivering the 25% required level of speech content during daytime output. We concluded that the overall lack of speech content on the station was in part linked to the Licensee's acknowledgement that, outside of covering particular events such as local elections, it had not generally been providing on-air forums for balanced local discussion and debate, as the Key Commitments require.

We welcome the steps now being taken by the Licensee to ensure that more speech content is provided each day on Corby Radio, and that the station is also introducing more local discussion and debate into its programming. We also acknowledge that the Licensee has taken steps to monitor its content and speech output more closely.

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/sampling/corby.pdf>

Nevertheless, it was clear that, during our monitoring period, Corby Radio had not been delivering on two of its Key Commitments relating to speech output, therefore breaching the Licence Conditions 2(1) and 2(4), as set out above. Corby Radio is licensed to provide a local community radio service for Corby and the surrounding area, and as such, locally-relevant speech content should reasonably be expected to form a central plank of its output. We are putting the Licensee on notice that, should similar issues arise in future, we may consider taking further regulatory action.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Corby FM Limited (licence number CR000185BA)**

## In Breach

### Providing a service in accordance with ‘Key Commitments’

*North Manchester FM, 3 to 5 July 2014*

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#### Introduction

North Manchester FM is a community radio station which has been broadcasting since July 2009. The station is owned and operated by North Manchester FM Community Interest Company (“North Manchester FM” or “the Licensee”).

Like other community radio stations, North Manchester FM is required to deliver the ‘Key Commitments’ which form part of its licence.<sup>1</sup> These set out how the station will serve its target community and include: a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

The ‘Character of Service’ contained within the Key Commitments requires that: “North Manchester FM provides a service aimed at improving the quality of life of people in the area. The station will increase community pride, giving residents a voice in the decisions that affect them and enabling agencies tasked with serving the area a means by which to better engage local people.”

Ofcom received a complaint that there were “gaps” in North Manchester FM’s schedule and the station played automated music “for several hours during the daytime and early evening.”

We requested recordings of three days of North Manchester FM’s output, covering Thursday 3 July, Friday 4 July and Saturday 5 July 2014. After monitoring this output we identified a number of concerns about North Manchester FM’s delivery of the following Key Commitment:

“The service broadcasts original output for at least 10 hours per day on weekdays, with less at weekends. The majority of the output is locally produced and the station also uses some networked news services and shared programming where appropriate.”

In particular, we noted that during the monitoring period 11 hours of original output were broadcast on Thursday 3 July, three hours on Friday 4 July, and six hours on Saturday 5 July. The amount of original output broadcast on Friday 4 July therefore did not meet the ten hour requirement (the station instead broadcast several hours of automated music, for example from 16:00 through to midnight).

Ofcom considered that this issue warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to North Manchester FM’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

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<sup>1</sup> <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000165.pdf>

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

We therefore wrote to the Licensee to request its comments on how it was complying with these Conditions, with reference to the specific Key Commitment.

## **Response**

The Licensee acknowledged that it did not broadcast the required ten hours of original output on Friday 4 July 2014. It said that this was due to volunteer presenters forgetting to inform the station’s management when they would be on holiday, making it difficult for the management to arrange short notice cover for them. North Manchester FM explained that it has a general rule that volunteers must tell the station in advance if they plan to miss a show and should aim to either find a replacement or produce a pre-recorded show instead.

North Manchester FM informed Ofcom that it had added two new Friday shows and was planning to add a third in the coming weeks. The Licensee also stated that it was working with its partners to produce more original pre-recorded content for later broadcast.

The station manager stated that she would: “continue to monitor the situation closely and ensure that any potential gaps in our required daily 10 hours are filled immediately.”

## **Decision**

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

The Licensee had confirmed that, on one of the three days we monitored, it did not deliver the ten hours of original output required by its Key Commitments.

We acknowledged the lack of original output on Friday 4 July was due to the non-attendance of volunteers, and that this can be a problem for community radio stations, particularly during the holiday season. We also acknowledged North Manchester FM’s plans to produce more original pre-recorded content for later broadcast, and to create some new programmes for the Friday schedule.

Nevertheless, North Manchester FM is licensed to provide a local community radio service for North Manchester, and as such, original content (rather than automated music) should reasonably be expected to constitute the mainstay of its output. We are putting the Licensee on notice that, should similar issues arise in future, we may consider taking further regulatory action.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by North Manchester FM Radio (licence number CR000165BA)**



## Fairness and Privacy cases

### Not Upheld

#### Complaint by the Metropolitan Police Service

*Channel 4 News, Channel 4, 6 March 2014*

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#### Summary

Ofcom has not upheld this complaint by the Metropolitan Police Service (“MPS”) of unjust or unfair treatment in the programme as broadcast<sup>1</sup>.

The programme included a sequence reporting on the findings of the Ellison Review<sup>2</sup> and the Home Secretary’s announcement of a public inquiry into undercover policing. Part of the sequence was a report on whether attitudes towards the MPS had changed since the murder of Mr Stephen Lawrence. A reporter visited Brixton in south London to test what locals felt about the police (referred to as the “Brixton report”). Vox pop interviews were recorded in which the participants were asked whether or not they trusted the police.

Ofcom found that the vox pops included in the Brixton report were inaccurately presented in the report. This was because viewers would have reasonably understood from the introduction and the footage that four of the five vox pops represented a random selection of people from the Brixton community. In fact, these people were not chosen at random but because of their connection to a Brixton-based youth marketing agency, Livity<sup>3</sup>. These people interviewed all expressed views critical of the MPS to some extent. In Ofcom’s view, a random selection of people from the Brixton community may have expressed a greater variety of opinions on the MPS.

However, when considered in the context of the whole sequence in the programme reporting on the Ellison Review, it was our view that any unfairness resulting from the selection and presentation of the vox pops in the Brixton report was not capable of materially or adversely affecting viewers’ opinions of the MPS in a way that was unfair. Therefore, overall, we did not consider that the MPS was treated unfairly in the programme as broadcast.

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<sup>1</sup> Ofcom also received a complaint from the MPS that the programme was not duly accurate or duly impartial (see page 6 of this Bulletin for Ofcom’s in breach decision on this matter).

<sup>2</sup> The Stephen Lawrence Independent Review, conducted by Mr Mark Ellison QC (“the Ellison Review”), was an independent inquiry into possible corruption and the role of undercover policing in the MPS’ investigation into the murder of Mr Stephen Lawrence. Mr Lawrence had been stabbed to death in a racially motivated attack in Eltham, south east London in 1993. The findings of the Ellison Review were published on 6 March 2014.

<sup>3</sup> According to its website, Livity is a Brixton based “youth marketing agency” aimed at improving the lives of young people in the UK. Livity involves young people in projects to “co-create campaigns, content and communities”.

## Introduction and programme summary

On 6 March 2014, *Channel 4 News* included a news story on the reaction to the findings of the Ellison Review. The programme included a report by Mr Jordan Jarrett-Bryan about whether people in Brixton trusted the police.

The opening introductory sequence to the programme included an excerpt from a statement made in Parliament by the Home Secretary, Mrs Theresa May MP. Mrs May said:

*“The findings I have set out today are profoundly disturbing. For the sake of Doreen Lawrence, Neville Lawrence<sup>4</sup> and the British public, we must act now to address these wrongs”.*

Immediately following this, the studio presenter said:

*“Betrayed again, this time by police corruption. The Lawrence family have waited more than 20 years for the truth about their son’s murder. They’re still waiting. The Home Secretary has announced an extraordinary public inquiry into undercover policing after it was revealed that a police spy was placed amongst the grieving Lawrence family and that police links with criminals may have frustrated the original investigation into the murder of Stephen Lawrence. Theresa May, who also said that an unknown number of miscarriages of justice may have occurred, says the police stand damaged tonight. Stephen Lawrence, Hillsborough, ‘Plebgate’, now this. Will the police ever win the trust of the community?”*

A brief introduction by the journalist, Mr Jordan Jarrett-Bryan, regarding his Brixton report was then shown in which he said: *“I’ve come down to south London to see if the people here trust the police”*. Immediately following this statement was an excerpt from a vox pop with a contributor who said: *“even when you see another black police officer there’s still a disconnect between that police officer and a normal black guy on the street”*.

Later in the programme the studio presenter, Ms Jackie Long, explained that the Macpherson Inquiry<sup>5</sup> *“did not get to the root of what went wrong in the police investigation of the murder of Stephen Lawrence”*. She said that the Ellison Review had *“found evidence to suggest police corruption, subterfuge, and inappropriate conduct”* and a public inquiry into undercover policing had been ordered by the Home Secretary.

A pre-recorded report by Mr Simon Israel, a *Channel 4 News* reporter, was then shown. He examined the reaction to and the findings of the Ellison Review.

Mr Israel explained that the Home Secretary had appointed Mr Mark Ellison QC to examine the extent of corruption in the original Stephen Lawrence murder investigation. An excerpt was shown from a Channel 4 investigative programme, *Dispatches: The Police’s Dirty Secret* broadcast in June 2013. This included footage from an interview with a former undercover police officer, Mr Peter Francis. The

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<sup>4</sup> The parents of Stephen Lawrence: see footnote 1.

<sup>5</sup> In 1999, the Stephen Lawrence Inquiry, conducted by Sir William MacPherson, found the MPS to be “institutionally racist” and recommended a number of measures in an attempt to tackle the problem.

reporter explained that Mr Francis: *“went public with the claim that there was a smear campaign to undermine the [Lawrence] family”*. The reporter explained that Mr Ellison’s review found: *“nothing to substantiate his claim, but uncovered potentially even worse conduct through another deployed undercover officer known as N81”*.

A brief pre-recorded interview between Mr Israel and Deputy Commissioner Craig Mackey of the MPS about whether the MPS had undermined the Macpherson Inquiry was also included in the report. This was as follows:

Mr Mackey: *“Well that will be one of the allegations that will be looked at and will be pored over in the days and weeks to come. What is clear, what is absolutely clear, is that the existence of that undercover officer was not disclosed to the inquiry.”*

Reporter: *You aren’t even denying today that you may have undermined the Macpherson Inquiry.*

Mr Mackey: *I’m not confirming or denying anything. What I am saying is: we have a series of allegations; we’ve presented a detailed report that shows the findings of the work that we’ve done in terms of that; and clearly in part of the work that goes on in the future will be to look at the detail behind that”.*

This edited interview with Mr Mackey lasted approximately 42 seconds.

Mr Israel concluded his report by stating:

*“This has now gone way beyond the flawed 1993 investigation. The Lawrences have really lit the touch paper yet again. There may or may not have been a smear campaign against the family but the fact a public inquiry was so compromised by the background antics of the Metropolitan Police is as serious a charge as you will ever see. Theresa May, the Home Secretary’s, announcement of a public inquiry and a raft of anti-police corruption measures is a sign not that shaking a tree so the bad apples fall off it, but the need to completely uproot it”.*

Following this report, the studio presenter was joined in the studio by Mr Lawrence, father of Mr Stephen Lawrence. The presenter and Mr Lawrence discussed the announcement made by the Home Secretary that there would be a public inquiry into undercover policing. Mr Lawrence said he felt *“joy and anger”* at the announcement of a public inquiry.

The studio presenter stated that a member of the original Macpherson inquiry panel had in response to the Ellison Review said that: *“the treatment of ethnic minorities by the police was certainly no better and possibly even worse than it was twenty years ago”*. The studio presenter said: *“Is he right? Well our reporter Jordan Jarrett-Bryan spent the day in Brixton in south London to test out what residents there felt about the police”*.

A second pre-recorded report was then shown. The reporter, Mr Jarrett-Bryan, explained that he had visited Brixton because he: *“wanted to know if people here were surprised by the alleged corruption [in the MPS] and whether there was any optimism for the future”*.

The reporter said: *“I’ve come home to Brixton to find out if tensions between the black community and the police have abated in the 20 years since Stephen*

*Lawrence's murder*". The reporter asked five people the question: "Do you trust the police?"

The first individual, Mr Matthew Peltier, appeared to have been filmed on a street in Brixton. He responded to the question "Do you trust the police?" by stating:

*"That's a really difficult question and I'm not sure, not yet. I've been being [sic] stopped and searched for at least fifteen years now. It happened for the first time when I was about 13 and it happened a couple of months ago. It doesn't feel like it's changed for me. It doesn't feel like we've grown or evolved in the way in which we deal with members of the public and specifically black and Asian members of the public".*

Following this, a clip from an interview with Ms Naomi Brown was shown. She was identified as a "Youth Development Manager at Livity". She said:

*"Engaging with the young people like I do at Livity every day, I think their experience with the police is very negative. They [i.e. young people] kind of don't respect them, they [young people] don't put them in authority, they [i.e. the police] have no interest in what they're doing and [the police] kind of are against them. They think that the police are not there to help, the police are against them".*

The third individual, Ms Beulah Lambert, appeared to have been filmed on a different street in Brixton to that of the previous two people. She was asked the same question by the reporter and answered:

*"I would say no actually. Any time I see police I always think 'oh God, what have I done?' instead of thinking that they are there to protect me".*

The fourth individual, Mr Henry Houdini, appeared to have been filmed on a different street in Brixton to that of the three previous people. In his vox pop, Mr Houdini said:

*"Even when you see another black police officer, there's still a disconnect between that police officer and a normal black guy on the street and I don't know why that is, but I think there just is".*

Finally, the reporter said: "I also caught up with Lee Jasper, who worked under the former Mayor of London, Ken Livingstone". Mr Jasper was identified as a "race relations activist" in the report and appeared to have been filmed in a market area in Brixton. The following discussion between the reporter and Mr Jasper took place:

Reporter: "Do you trust the police?"

Mr Jasper: *No. I don't think no communities trust the police because I think that we find time and time again that we're lied to, we're deceived, [and] we're not given the full truth. And even when the police themselves are caught out in the inappropriate use of an exercise of their powers, they're loathe to apologise.*

Reporter: *Can you ever foresee in your lifetime a time when the Black community and the police, they'll be that trust, that bridge will be built back again?*

Mr Jasper      *Yeah, I can. When we get proper political representation who are not intimidated by the police and force them to address the institutional and systemic racism in their police practices”.*

The Brixton report ended with the reporter stating:

*“I found little hope of change here, but a community still fighting for parity”.*

In total the Brixton report was approximately two minutes and 30 seconds in duration.

Immediately after the Brixton report, there was a studio discussion about the reputation of the police and the MPS in particular. The studio presenter was joined in the studio by Mr Lawrence and Mr Damian Green, the Home Office Minister at the time responsible for policing, and from Staffordshire via video link, Mr John O’Connor, a former MPS detective and *“Commander of the Flying Squad”*.

The reporter first had a discussion with Mr O’Connor and asked him: *“what do you make of what you’ve heard today? The police, their reputation stands pretty low tonight, doesn’t it?”*

In response, Mr O’Connor said:

*“Yeah, it does. And you know I’m not going to try and defend the indefensible, but I think you really have to go all the way back to those years, twenty years ago when Stephen Lawrence was murdered. And I said at the time and I don’t change my view on that, I think that there were a number of issues that were raised. One of course out of the Macpherson hearing was alleged police corruption. That has never actually been proved and it has been investigated. I think it was wrong”.*

The studio presenter interrupted Mr O’Connor and asked him: *“-Are you saying that you still don’t believe there was corruption?”*

Mr O’Connor responded:

*“No, I didn’t say that. I said that it was investigated. I think it’s wrong now for Theresa May to actually have named the officer using parliamentary privilege because one thing that we need out of all this is fairness. And that’s fairness for any investigation into the police and fairness for the Lawrence family and fairness for anybody that believes they may have been in some way suffering as a result of undercover police operations. And I think you really have to look not at the individual officers that are involved in undercover work, but I think you’ve got to look at a very senior level of the people that authorised this to happen [the presenter spoke over Mr O’Connor briefly at this point] particularly those that tried to compromise the Lawrence family”.*

The presenter next asked Mr O’Connor: *“Does this ring true with the culture of the time with your experience as a police officer?”*

Mr O’Connor said:

*“Well it doesn’t ring true in the sense that this was normal everyday practice. Don’t forget that if senior officers at Scotland Yard had authorised these activities by undercover officers, then they’re not going to publicise it. It was going to be kept secret. This isn’t something that everybody on the street would know about, I certainly didn’t know about it. And I think that some people need to be held*

*accountable now. You have to remember as well that twenty years ago, the extensive use of undercover officers was in its infancy. I think a lot of people got carried away with this new tool, if you like, to use against crime. And it seems that it was used in many other ways as well... There has been in my view a degree of unaccountability and misuse of that resource and that needs to be answered-*"

The presenter interrupted Mr O'Connor: *"-and that is what Theresa May is talking about"*.

The presenter then turned to Mr Lawrence and asked:

*"Can I just come to you Mr Lawrence about what the young people said in our film? The fact that they don't feel very much has changed. I mean what do you think about that?"*

Mr Lawrence said:

*"Well, I agree with what the young people are saying. My focus has been on the young people. Even in the last couple of weeks ago, a young boy was arrested by seven police officers sitting in his car. And the beauty of what he did was to record everything that was happening on his cell phone. And this guy was sitting in his car. They wanted him to show his driving licence and all his detail and he said I'll do that but I'm not coming out of my car and they arrest him for an hour and a half"*.

The presenter asked Mr Lawrence: *"What do you want to say to the Government, to the Minister today about where we are now?"*

Mr Lawrence said that he himself had made: *"the point of telling Theresa May that in order for us to go forward the police has to change attitude and behaviour when they stop young people – especially because when young people are being arrested, they go and tell their friends and the reputation of the police goes even further down"*.

The presenter then asked Mr Green: *"What are we to think today? Are we to have any trust in the police because you listen to Theresa May talking about these profoundly, deeply concerning findings in this review, it's very hard not to come away thinking we're talking about wide scale corruption here"*.

Mr Green said:

*"What's been exposed in the Ellison report is absolutely shocking and bringing it up to date I completely agree with what Neville Lawrence has just said about the attitude on the street needs to be improved and to be fair to the Metropolitan Police, in some boroughs, particularly in London and Hackney they are trying very hard to do that. But it does require a big culture change and all the various announcements the Home Secretary has made today in response to this shocking report should be seen as part of a wider reform of the police that's designed to make them more open, more transparent so that this kind of undercover operation which appears to have been out of control, couldn't happen today"*.

The presenter then referred to Mr Israel's report and said: *"it's not about a few bad apples falling from the tree, this is a suggestion of really needing root and branch reform of the police"*.

Mr Green responded:

*“We’re conducting root and branch reform of the police. I do think it would be very unfair to the vast majority of police officers to suggest they do corrupt things or racist things. The vast majority of police officers do a difficult job, it’s sometimes dangerous, they do it very well and with integrity”.*

The presenter interrupted Mr Green and said: *“How do you respond to what Neville Lawrence and the young people say about stop and search for example? Fundamental reforms still needed there”.*

Mr Green said: *“And we’ve had a consultation on that and we’re still coming to a conclusion about that”.*

The presenter interrupted Mr Green and said: *“Would you like, on the evidence today, would you like to see that change, now fundamentally stopped?”.*

Mr Green said:

*“The stop and search is a useful tool for the police, but it’s got to be done properly, it’s got to be done with respect. People have to understand, I think the root of it is why they’re being stopped and search. And as I say, in some London boroughs particularly, the Metropolitan Police is experimenting with new ways of doing it and the initial results are quite good. Far fewer people are being stopped and searched and a far higher proportion of those stopped and searches end up in an arrest. Which is clearly a step forward-”.*

The presenter interrupted Mr Green again and the following exchange took place:

Presenter: *“-Can we trust the police tonight?”*

Mr Green: *Well, I trust the police, I trust most individual police officers, but there are clearly-*

Presenter: *But we still need a public inquiry?*

Mr Green: *Oh, we still need a public inquiry. We still need a new offence of police corruption. There are still big problems and they need addressing really urgently”.*

The discussion ended, and a new, unrelated news story began. In total, the whole sequence about the Ellison Review was 18 minutes and 35 seconds in duration.

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

The MPS complained that it had been treated unjustly or unfairly in this edition of *Channel 4 News* because the Brixton report about Brixton residents’ attitudes towards the MPS was not a “fair reflection of the whole community’s view of the police” and the presenter unfairly concluded in the report that he had *“found little hope of change here [in Brixton], but a community still fighting for parity”*. The MPS said that the programme misled viewers by giving the incorrect impression that the vox pops with Brixton residents were with randomly selected people when, in fact, the vox pops included in the report were with people linked to Livity, a youth marketing agency based in Brixton, south west London.

In response, Channel 4 stated that the main news stories on the day of the Brixton report were: the findings of the Ellison Review into possible police corruption; the role

of undercover police in the Stephen Lawrence investigation; and, the announcement by the Home Secretary that there would be a public inquiry into undercover policing. The broadcaster said that the findings of the Ellison Review were of significant public interest. Channel 4 said that *Dispatches* had: “first revealed the evidence of this undercover police operation in an interview with former undercover policeman Peter Francis”.

Channel 4 said that a reporter (Mr Jarrett-Bryan) visited Brixton to speak to people to gather public views on relations between the public and the police. The reporter was formerly a contributor to and then editor of a free youth magazine produced by Livity. Channel 4 said that instead of carrying out vox pops with randomly selected people, the reporter “arranged with a contact at Livity to speak to her and for her to bring along three or four others who would also speak on camera”. Channel 4 acknowledged that the methodology adopted by the reporter was flawed: a random sample of people should have been interviewed and that it was an error of judgement that the reporter did not make known how he carried out the interviews. The broadcaster explained that this was because it was a quick turnaround project on the day and the reporter assigned to carry out the report was junior and inexperienced and had primarily worked as a sports reporter.

Channel 4 said that the interviews were conducted on the street in Brixton and the people were asked questions about police relations in Brixton. Further, the people interviewed: were not coerced into making their statements; had direct knowledge of Brixton and the policing in the community; were giving their honest opinions and speaking from personal experience; and, all said more or less the same thing. The broadcaster added that the presenter’s comment that he had “*found little hope of change*” was his own opinion based on what he had heard in the interviews. There was: “no agenda to somehow publicise Livity”.

Further, Channel 4 said that the views expressed by the people in the report were not “extraordinary or unorthodox” and were not materially different to many concerns raised about the police, for example, by the media, particularly on issues such as stop and search. Channel 4 added that the opinions reflected similar findings and concerns raised in official reports and by leaders in the black community, including senior police officers. For example:

- April 2013 – According to the Metropolitan Black Police Association, the Metropolitan Police is still institutionally racist and has failed to change the racist mind-set behind the Stephen Lawrence failures;
- July 2013 – The Independent Police Complaints Commission inquiry into 60 referrals of incidents between April and May 2012 and complaints from 2011 found Metropolitan Police failings over race complaints, and a failure to tackle complaints of racism by its officers fairly or robustly;
- November 2013 – The Equality and Human Rights Commission said that overall black people were six times more likely than white people to be stopped, with Asian or other ethnic minority groups two times more likely to be stopped;
- March 2014 – Janet Hills, the leader of the Metropolitan Black Police Association called on the Commissioner, Sir Bernard Hogan-Howe, to admit that the force was still institutionally racist and said the force has not improved since the 1999 Macpherson inquiry.
- March 2014 – Mr Lawrence, the father of Mr Stephen Lawrence, set out similar concerns on Channel 4 News by stating that the police have to change their attitude when they stop and search young people.



Channel 4 said that when it became aware of an issue with the broadcast on Sunday 9 March 2014, it immediately removed the report from the Channel 4 News website. The broadcaster said an apology was broadcast on Thursday 13 March 2014, within one week of the original broadcast. The apology, delivered by the studio presenter Jon Snow, said:

*“And now, an apology. Last Thursday, Channel 4 News broadcast a report on the public attitudes to police in Brixton. In the introduction we said we were speaking to residents and the impression was given that four interviewees who expressed a lack of trust in the police were chosen at random. We would like to make clear the people were all linked to a youth focus organisation based in Brixton and were not a random sample. This should have been made clear and it was not our intention to mislead in any way. We apologise for the impression which fell well below our normal standards”.*

A formal apology was also sent to Mr Stearns, Head of Media at the MPS on Friday 14 March 2014. Channel 4 said that the apology clarified to both viewers and the police that the report did not include a random sample of opinions and that this should have been made clear. The broadcaster said the reporter has since carried out and will continue further training on media law and compliance.

Channel 4 examined the context in which the report was included in the programme and said that prior to the report, there was an interview with Mr Mackey, the Deputy Commissioner of the MPS, who said they would be looking into the allegations of police corruption. Channel 4 added that after the report, there was a studio discussion with Mr Lawrence, Mr Green and Mr O'Connor. It said that it had sought an interview and comment from the MPS, but that no interviewee from the MPS was available. To redress the balance, Mr O'Connor, as a former MPS Commander, and Mr Green, the Home Office Minister responsible for policing, were invited to contribute. Channel 4 stated that this was reflected in what they said in the programme. The broadcaster said that Mr O'Connor set out a number of points, including that it was wrong to blame individual officers for issues with undercover policing; that there needed to be a review of those at a senior level; and that undercover policing was at the time a new development. Channel 4 added that Mr Green had said in the programme that the report was “*shocking*” and that he agreed: “*with Neville Lawrence that the [police] attitude on the streets needs to be improved and to be fair to the Met Police in some boroughs particularly London and Hackney they are trying to do that. But this does require a culture change and all the reforms should be seen as a wider reform to make them more transparent and open*”.

Channel 4 concluded that the Brixton report fell below the normal standards of *Channel 4 News*. It said that the report and introduction should have been more transparent and it should have been made clear that the interviewees were all linked to Livity and were not a random sample. Channel 4 said it was not anyone's intention to mislead in any way and it did not accept that in the circumstances the MPS was treated unfairly or unjustly.

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

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme as broadcast, should not be upheld.

Both parties were given the opportunity to comment on the Preliminary View. Both made representations and the relevant points relating to the Preliminary View are summarised below.

### *The MPS's representations*

The MPS said it had serious concerns about Ofcom's Preliminary View, contending that it failed to give sufficient weight to the evidence presented by the MPS on the significance of the Brixton report for viewers and reached conclusions which the MPS considered to be perverse.

The MPS noted that although Ofcom had acknowledged in its Preliminary View that the vox pops included in the Brixton report were inaccurately presented and that a random selection of people may have expressed a greater variety of opinions, it nevertheless appeared to say that the overall nature of the coverage was fair because it would not have made a difference to viewers' opinions of the MPS. . The MPS said that the import of Ofcom's Preliminary View is that "news broadcasters can make serious errors – without sanction – where they are reporting on organisations or individuals who already appear to be held in low esteem by the viewing public". The MPS described this conclusion as "extraordinary" and not one that a properly informed and rational regulator could have reached.

The MPS put forward a number of reasons why it considered that Ofcom had underplayed the significance of the Brixton report for viewers in its Preliminary View.

First, it contended that while the preceding report from Mr Israel about the Ellison Review focused on events which had occurred 20 or more years ago -in respect of which the MPS said it had already acknowledged mistakes and made apologies - the Brixton Report was about the present day relationship of the MPS with black communities, which it considered to be a substantially different issue. It said that the Brixton Report was the only element in the longer news report that reported on the present day MPS.

Second, the MPS stated that the Brixton report set the tone for the later studio discussion about the issues covered in the Ellison review and the current relationship of the MPS with the public and therefore its influence on the overall coverage and the viewers' perception of the MPS was greater than the duration of the report itself. Third, the MPS said that it is widely recognised that the "testimonies of ordinary people are often more powerful than those expressed by politicians and indeed many other public figures" and for this reason the impact of the Brixton report on viewers should be reconsidered.

The MPS noted that the Preliminary View included a reference to a number of reports and comments about racism, the handling of complaints and stop and search and said that the MPS recognised the views that were "expressed as a result by some people within the black community". However, the MPS added that these views are not a fair representation of views within the black community. The MPS gave the following examples:

- The MPS said a BBC/Mori poll published in 2013 found that "76% of BME questioned trusted the police". The MPS said that this survey was conducted immediately following the allegations about undercover police targeting the Stephen Lawrence campaign.
- In July 2014, The MPS Public Attitudes Survey found that in the borough of Lambeth, in which Brixton is situated, "69% of Lambeth residents believed police in the area did a good or excellent job" and "68% of people in Lambeth agree that police treat everyone fairly no matter who they are".

- A Satisfaction survey of people who had contact with the police found that “74% of BME people were satisfied by the service they received from Lambeth police” which was “up from 64% in 2010/11”.

The MPS said that in addition to these surveys there were “clear examples of how the modern day MPS had addressed confidence issues in the BME community. It added that the number of stop and searches had dropped and that the Met was also actively targeting BME communities in its recruitment. The MPS said that a properly conducted vox pop “would most likely have found a greater range of views than those shown to viewers and something closer to the wider research that has been carried out”.

Further the MPS challenged the reporter’s comment that he had “*found little hope of change here, but a community still fighting for parity*”. The MPS said that the broadcaster had provided no evidence that the reporter had tried to speak to anyone beyond those whose contributions were used in the final report. It asked Ofcom to reconsider whether the comment was fair and submitted that Ofcom had underplayed the significance of this comments for viewers watching the coverage.

Finally, the MPS also referred to its complaints about the report’s accuracy and impartiality. These issues are addressed in Ofcom’s Finding on pages 6 to 17 of this issue of the Broadcast Bulletin.

#### *Channel 4’s representations*

In response to the Preliminary View, Channel 4 said that it agreed with Ofcom’s view that the report did not result in unfairness to the MPS. The broadcaster added that Ofcom was correct to look at the coverage in the programme and report as a whole to determine whether or not there was any unfairness.

Channel 4 said that the Brixton report was one of a number of reports that day that reflected many issues arising from the Ellison Review. The broadcaster added that after the Brixton report, there were studio interviews with Mr Lawrence, Mr Green and Mr O’Connor. Channel 4 said that they had sought an interview and comment from the MPS but that no interviewee was made available. Therefore, to redress the balance, Mr O’Connor and Mr Green were invited to appear. Channel 4 said this was reflected in the comments made by Mr O’Connor and Mr Green in the programme.

Further, the broadcaster said that the comments made in the Brixton report were “genuine honest opinions” and that they were “consistent with criticism recognised and accepted by the MPS”. Channel 4 added that it “does not seem to be in dispute that there are real concerns about the relations between the police and the black community”. The broadcaster said that the reporter’s conclusion that he had “*found little hope of change here, but a community still fighting for parity*” fairly reflected what he had found and that this was not dissimilar from what the Met Police Chief, Sir Bernard Hogan Howe, had said on 24 November 2014 which was that the police need to do more to gain the trust of black Londoners.

#### **Decision**

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

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, both parties' written submissions and supporting material. We also took into account both parties' relevant representations in response to Ofcom's Preliminary View on this complaint (which was to not uphold).

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of people and organisations, as set out in Rule 7.1 of the Code. In assessing this complaint, Ofcom also had regard to Practice 7.9 of the Code which provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

We also took into account the importance of the right to freedom of expression and the need to allow broadcasters the freedom to investigate, report and comment on matters of genuine public interest, particularly where this concerns an important public body such as the MPS, and for audiences to receive this information without undue interference. However, this comes with the responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust and unfair treatment of people or organisations in a programme.

In this case, the MPS complained that it was treated unjustly or unfairly in the programme as broadcast because the Brixton report about Brixton residents' attitudes towards the MPS was not a "fair reflection of the whole community's view of the police" and the presenter unfairly concluded in the report that he had "*found little hope of change here [in Brixton], but a community still fighting for parity*". The MPS said that the programme misled viewers by giving the incorrect impression that the vox pops were with randomly selected people in Brixton when, in fact, the vox pops included in the report were with people linked to Livity.

Ofcom began by considering the context of the vox pops in the Brixton report and the reporter's conclusion that he had "*found little hope for change*" in Brixton. Overall, the whole sequence which included the Brixton report focused on the publication of the Ellison Review, a high profile report into the MPS which criticised certain aspects of its undercover policing activities, and examined whether in light of the findings of the Ellison Review the earlier Macpherson inquiry was compromised in any way. As part of this sequence, the Brixton report was introduced by the studio presenter as an assessment of the current attitude of the black community towards the MPS in Brixton, an area which the reporter explained had had a history of tensions with the police. The report clearly related to a subject which was of significant public interest. Following the Brixton report, there was a discussion between Mr Lawrence, Mr O'Connor and Mr Green about undercover policing and stop and search techniques. In this context, it was our view that the Brixton report formed part of a wider news story about the Ellison Review and its findings about the conduct of the MPS.

We noted the manner in which the Brixton report was first introduced in the programme. The studio presenter in the opening introductory sequence to the

programme said: *“Theresa May...says the police stand damaged tonight. Stephen Lawrence, Hillsborough, ‘Plebgate’, now this. Will the police ever win the trust of the community?”* Following this, a clip from the Brixton report was shown (see “Introduction and Programme Summary” section above for the detail of this). Later in the programme, the studio presenter said that a member of the original Macpherson Inquiry panel had said in response to the Ellison Review that: *“the treatment of ethnic minorities by the police was certainly no better and possibly even worse than it was twenty years ago”*. The presenter explained that to find out if he was right, Mr Jarrett-Bryan had: *“spent the day in Brixton in south London to test what residents there felt about the police”*. The reporter introduced the Brixton report by stating that: *“he wanted to know whether people here were surprised by the alleged corruption [in the MPS]”*. In light of the inclusion of these initial comments made by the studio presenter and the reporter, we therefore considered that viewers would have understood from the beginning that the purpose of the Brixton report was to offer an insight into whether the attitude of the local community in Brixton had changed in the 20 years since the murder of Mr Stephen Lawrence. Further, viewers would have expected from the introduction that the vox pops would be with randomly selected residents of Brixton.

As detailed above, however, and as confirmed by Channel 4, none of the people interviewed were randomly selected people in the Brixton community. Four of the people were selected because of their connection to Livity, but only one individual was actually identified to viewers as being connected to Livity (as a Youth Development Manager). The last contributor, Mr Jasper, was not connected to Livity, and was introduced by the reporter as a *“race relations activist”* who had worked for the former (Labour) Mayor of London, Mr Ken Livingstone. Ofcom went on to consider whether the presentation of the vox pops, accompanied by the reporter’s comment that he had *“found little hope of change”*, resulted in unfairness to the MPS.

Ofcom considered that the introduction to the vox pops would have given viewers the impression that, with the exception of Mr Jasper, who was the subject of a separate introduction by the reporter, the interviewees were randomly selected people shown to be voicing their own opinions about their experience of the police as members of the Brixton community. In particular, with regards to the presentation of the vox pops, each of the Livity interviewees were shown on different street locations in Brixton and only one – Ms Naomi Brown – was introduced to viewers in her professional capacity as a Livity employee. Viewers were not informed by the broadcaster about the connection that the other three interviewees had to Livity, and this resulted in viewers being misled as to how they had been selected.

Further, Ofcom considered that all of the Brixton interviewees voiced, to a lesser or greater degree, a negative view of the MPS and its relationship with the local community in Brixton.

We first considered Ms Brown’s comments about the young people she was in contact with at Livity, in which she said:

*“I think their experience with the police is very negative. They [i.e. young people] kind of don’t respect them, they [young people] don’t put them in authority, they [i.e. the police] have no interest in what they’re doing and [the police] kind of are against them. They think that the police are not there to help, the police are against them”*.

We noted that Ms Brown had expressed an opinion based on her experience as a Youth Development Manager at Livity. In the clip of her interview used in the Brixton

report she stated clearly that the young people who she came into contact with at Livity all had a negative view of the police. Given this, it was not surprising that the three young people who worked for Livity, whose vox pops were included in the report, endorsed the view expressed by Ms Brown:

- Mr Peltier said when discussing stop and search in particular that: *“It doesn’t feel like it’s changed for me. It doesn’t feel like we’ve grown or evolved in the way in which we deal with members of the public and specifically black and Asian members of the public”*;
- Ms Lambert said that: *“Any time I see police I always think ‘oh God, what have I done?’ instead of thinking that they are there to protect me”*; and
- Mr Houdini stated that: *“Even when you see another black police officer, there’s still a disconnect between that police officer and a normal black guy on the street”*.

Ofcom accepted Channel 4’s submissions that each of the interviewees were giving their honest opinions and speaking from personal experience. In this regard, we observed that the opinions expressed by the people connected to Livity were fairly mild and were less vehement in their criticisms of the MPS in comparison to Mr Jasper’s contribution.

We noted too the various points made by Channel 4 that the views expressed by the people in the Brixton report were not “extraordinary or unorthodox” and that the opinions reflected similar findings and concerns raised in official reports and by leaders in the black community, including senior police officers (see the “Summary of complaint and broadcaster’s response” section above for more detail). We noted that the MPS recognised in its representations the concerns referred to in the material cited by Channel 4 and the views that are expressed as a result by people in the black community.

Nonetheless, by limiting the vox pops to people who had a negative view of the police, the sequence limited the scope for a wider range of views to be reported. In this regard, we noted the survey evidence referred to by the MPS in its representations in response to the Preliminary View, including specifically in relation to the Lambeth police, showing high levels of trust and satisfaction from black and minority ethnic respondents. . Further, by failing to reveal the connection that interviewees had to Livity, Ofcom considered that the report wrongly represented to viewers that the views expressed were a random sample of opinions across the Brixton community as a whole as to whether relations between the Black community in Brixton and the MPS had improved in the previous 20 years. We noted that Mr Jarrett-Bryan did not include any positive comments about the MPS’ relationship with the Black community in Brixton in any commentary.

It is clearly not possible to reach a definitive view on the extent to which the views of local residents of Brixton towards the MPS vary, nor the extent to which the views of local residents as expressed in the Brixton report, and the reporter’s conclusion, would have been different if the interviewees had been selected at random. However, in the light of the survey evidence referred to by the MPS, we considered if the reporter had used a genuinely random selection of people in the report, it was likely that he would have received more varied responses. Therefore, while the vox pops did represent the views of certain members of the Brixton community expressing their opinions, it did not necessarily reflect the views of members of the Brixton community as a whole.

Given the above, we considered that viewers were misled about how three of the five people featured in the Brixton report were selected. Further, the way in which the people interviewed were selected was likely to have resulted in a more limited selection of views being presented than would have been the case if a more random approach to selection had been used.

The Brixton report was approximately two minutes and 30 seconds in length and the whole news segment about the MPS and the Ellison Review was approximately 18 minutes and 35 seconds in duration. In the light of the MPS's representations that the Brixton report was the only element within that sequence which reported on the present day MPS, we considered whether it was so distinct from the rest of the news item that it should be considered in isolation in assessing whether it resulted in unfairness to the MPS. We concluded that would not be appropriate. We considered that in addition to reporting on the findings of the Ellison Review about the police investigation into the Stephen Lawrence murder 20 years earlier, the longer news item as a whole also considered the repercussions of those findings, in the context of current police practices and attitudes towards the police. The broader, present day context was addressed in the studio presenter's introduction, which reported the Home Secretary's comment that "the police stand damaged tonight", as well as in the studio discussion that followed the Brixton report. Therefore, we did not consider that the Brixton report was about substantially different issues to the wider news item but instead was directly connected with matters broadcast before and after it in the longer news segment. We therefore assessed whether, in the context of the whole news sequence, the shortcomings of the Brixton report resulted in the MPS being treated unfairly in the programme.

Before the Brixton report, there was a detailed assessment of the findings of the Ellison review which had found evidence of "*police corruption, subterfuge and inappropriate conduct*". The introductory sequence included the excerpt from the Parliamentary statement of the Home Secretary, Mrs May, in which she had called the findings: "*profoundly disturbing*". Immediately following this, the studio presenter referred to the finding that a police spy was placed among the grieving family of Stephen Lawrence and that police links with criminals may have frustrated the original investigation into his murder. She quoted Mrs May as saying "*the police stand damaged tonight*". Therefore we considered that the content of the news item broadcast prior to the Brixton report being shown was likely to have already had a significant and adverse impact on viewers' opinions of the MPS.

Following the Brixton report there was a studio discussion. We noted from the broadcaster's response that Channel 4 had requested for a representative from the MPS to join this studio discussion, but that no one from the MPS was available. Instead, Mr O'Connor's and Mr Green's views were sought in an attempt to ensure the MPS was treated fairly. We observed that Mr O'Connor was asked questions about the MPS' reputation and his experience as a police officer. In his comments, Mr O'Connor said "*I'm not going to try and defend the indefensible*", an acknowledgement of the seriousness of the findings that had been made by the Ellison Review about the Stephen Lawrence murder investigation.

Further, we noted that later the studio presenter asked Mr Green specifically about whether, following Mrs May's announcement, people were "*to have any trust in the police*". Mr Green acknowledged the efforts the MPS had put into improving the attitudes of people towards the MPS, particularly in London and Hackney. Mr Green qualified that statement by saying that the outcome of the Ellison review was "*shocking*" and that the announcements made by the Mrs May should: "*be seen as part of a wider reform of the police that's designed to make them more open, more*

*transparent, so that this kind of undercover operation which appears to have been out of control, couldn't happen today".* At the end of the interview, the presenter again asked Mr Green if people could trust the police and his response was: *"well I trust the police, I trust most individual police officers"*. However, he went on to say that a public inquiry into undercover policing was needed and that: *"There are still big problems and they need addressing really urgently"*.

Following the Brixton report, the news item included interviews with two people – a former member of the MPS and the Government Minister responsible for policing, who might be expected to provide an alternative, more positive viewpoint in respect of the MPS. Indeed, Mr Green, in particular, did, in our view, make some positive comments about the present day police and the MPS and the efforts they are currently taking to improve the reputation of the police within the black community. Even so, as the quotes cited above reveal, both Mr Green and Mr O'Connor expressly recognised that the Ellison Review exposed serious failings within the MPS.

Having carefully assessed the 18 minutes and 35 seconds news segment as a whole, we concluded that it comprised a report and assessment of the findings of the Ellison Review into possible corruption and undercover policing in the MPS' investigation into Stephen Lawrence's murder and the repercussions of those findings in the context of present day policing. We concluded that it was highly likely that the nature of these findings and the responses to them from the Home Secretary, Mr Neville Lawrence, Mr Green and Mr O'Connor that were featured in the news report would have had a significant and adverse impact on viewers' opinions of the MPS. The MPS made no complaint about these parts of the broadcast and we had no reason to consider that these were unfair or unbalanced.

The Brixton report has to be considered against this background. It lasted for about two minutes and 30 seconds and contained relatively mild adverse comments about the MPS by the interviewees from Livity. In the context of the news item as a whole, we considered that it would not have had any material effect on viewers' responses to the broadcast and its presentation of the MPS in particular.

In reaching this view, we had regard to the reasons put forward by the MPS as to why the Brixton report would have significance for viewers watching the coverage, the impact of which should not be underplayed. For the reasons already set out, we did not accept that the Brixton report was the only part of the longer news item to report on the present day MPS. Furthermore, in the reporting before and after the Brixton report commentators (including the Home Secretary and a former MPS detective) acknowledged that the police's present day reputation had been adversely affected, while in the studio discussion Mr Lawrence and Mr Green acknowledged that police attitudes on the street had to be improved. While the views expressed in the vox pops were the subject of part of the studio discussion, we do not consider that they unduly and unfairly influenced the nature of that discussion. Mr Lawrence provided independent evidence to support his stance while Mr Green expressly referred to the action that the present day MPS was taking to make improvements and offered positive support for the work of the "vast majority of police officers".

As the MPS argued, we recognise as a general principle that the testimonies of ordinary people can be compelling. In this case, however, we noted that the views of the ordinary people that were broadcast were relatively mild. Further, we considered that the range of commentators assembled by Channel 4 would have been recognised by viewers as having expertise on the issues under discussion in the studio in relation to the MPS and accordingly their views were likely to have carried



particular authority. We therefore did not consider that in the context of the wider news item, the vox pops were likely to have been given such weight by viewers so as to alter materially their perception of the MPS in a way that was different from the impact of the news item overall.

Finally, we noted that the reporter's conclusion that he had "*found little hope for change here, but a community still fighting for parity*" reasonably reflected what he had heard based on the interviews broadcast. While that reflection may have been more negative than would otherwise have been the case if the reporter had used a genuinely random selection of people, we do not consider that the comment materially changed the impact of the Brixton report in the context of the wider news item. Therefore, notwithstanding the shortcomings in the way the interviewees were selected and presented in the news item, we did not consider that these would have made a material and adverse difference to viewers' overall perception of the MPS in a way that was unfair.

Taking into account all the factors set out above, Ofcom's view was that the content of the Brixton report and the manner in which it was presented – when assessed in the context of the programme as a whole – was not unfair to the MPS.

**Therefore, Ofcom has not upheld the MPS' complaint of unjust or unfair treatment in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 20 January and 2 February 2015 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

Programme	Broadcaster	Transmission date	Categories
Live:UFC Nelson v Story	BT Sport 2	04/10/2014	Offensive language

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	Licensed service	Categories
Sunrise Radio (London) Ltd	Sunrise Radio	Format

For more information about how Ofcom conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.

## Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 20 January and 2 February 2015 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
The Box+ Streaming Chart: Top 20	4Music	26/01/2015	Nudity	1
New Year's Day Comedy Films (trailer)	5USA	30/12/2014	Scheduling	1
Absolute Radio Pays Your Bills competition	Absolute Radio	Various	Competitions	1
Lockerbie	Al Jazeera	21/12/2014	Materially misleading	1
News	ATN Bangla	04/11/2014	Due impartiality/bias	1
Programming	Babestation	Various	Sexual material	1
News	Bangla TV	05/11/2014	Due impartiality/bias	1
BBC Look North	BBC 1	07/01/2015	Crime	1
BBC News	BBC 1	26/01/2015	Due accuracy	1
BBC News	BBC 1	Various	Due accuracy	1
BBC News at Six	BBC 1	19/01/2015	Fairness & Privacy	1
BBC News at Six	BBC 1	20/01/2015	Scheduling	1
BBC News at Ten	BBC 1	08/01/2015	Religious/Beliefs discrimination/offence	1
Bitter Lake (trailer)	BBC 1	22/01/2015	Hypnotic and other techniques	1
Breakfast	BBC 1	28/01/2015	Due impartiality/bias	1
Countryfile	BBC 1	18/01/2015	Generally accepted standards	1
EastEnders	BBC 1	26/01/2015	Religious/Beliefs discrimination/offence	1
EastEnders (trailer)	BBC 1	26/01/2015	Scheduling	8
Father Brown	BBC 1	14/01/2015	Nudity	1
HARDtalk	BBC 1	26/01/2015	Due impartiality/bias	1
Last Tango in Halifax	BBC 1	25/01/2015	Outside of remit / other	1
Mrs. Brown's Boys	BBC 1	25/12/2014	Transgender discrimination/offence	1
NorthWest Tonight	BBC 1	09/01/2015	Generally accepted standards	1
Panorama	BBC 1	12/01/2015	Generally accepted standards	3

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Regional News and Weather	BBC 1	22/01/2015	Animal welfare	1
Roald Dahl's Esio Trot	BBC 1	01/01/2015	Offensive language	1
Rugby: Six Nations	BBC 1	06/02/2015	Outside of remit / other	1
Silent Witness	BBC 1	19/01/2015	Materially misleading	1
Silent Witness	BBC 1	20/01/2015	Generally accepted standards	2
Still Open All Hours	BBC 1	11/01/2015	Generally accepted standards	1
The Holocaust: A Story of Remembrance	BBC 1	28/01/2015	Outside of remit / other	1
The National Lottery	BBC 1	10/01/2015	Generally accepted standards	1
The One Show	BBC 1	09/01/2015	Drugs, smoking, solvents or alcohol	2
BBC Newsline	BBC 1 Northern Ireland	14/01/2015	Offensive language	1
Dave Allen Show	BBC 2	30/12/2014	Race discrimination/offence	1
Newsnight	BBC 2	12/01/2015	Religious/Beliefs discrimination/offence	1
Six Puppies and Us	BBC 2	06/01/2015	Animal welfare	1
Six Puppies and Us	BBC 2	07/01/2015	Animal welfare	1
The Tea Trail with Simon Reeve	BBC 2	18/01/2015	Scheduling	2
The Wrong Mans	BBC 2	23/12/2014	Religious/Beliefs discrimination/offence	1
Top Gear	BBC 2	27/12/2014	Generally accepted standards	1
Top Gear	BBC 2	28/12/2014	Offensive language	1
Top Gear	BBC 2	28/12/2014	Religious/Beliefs discrimination/offence	1
Top Gear	BBC 2	25/01/2015	Generally accepted standards	1
Top Gear	BBC 2	25/01/2015	Offensive language	1
Top Gear	BBC 2	25/01/2015	Religious/Beliefs discrimination/offence	3
Top Gear	BBC 2	Various	Outside of remit / other	1
Wolf Hall	BBC 2	21/01/2015	Generally accepted standards	1
Bluestone 42	BBC 3	10/10/2014	Due impartiality/bias	1
Top Gear	BBC 3	19/01/2015	Offensive language	1
BBC News	BBC News Channel	11/01/2015	Generally accepted standards	1
The Paper Show (trailer)	BBC News Channel	12/01/2015	Harm	1
Debate of Durham Free School	BBC Parliament	27/01/2015	Offensive language	3
BBC News	BBC Radio 2	12/01/2015	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Steve Wright in the Afternoon	BBC Radio 2	23/01/2015	Materially misleading	1
Words and Music	BBC Radio 3	23/12/2014	Offensive language	1
Afternoon Play: GF Newman's The Corrupted	BBC Radio 4	20/01/2015	Generally accepted standards	1
Afternoon Play: GF Newman's The Corrupted	BBC Radio 4	27/01/2015	Scheduling	1
Drama: Cocktail Sticks	BBC Radio 4	03/01/2015	Offensive language	1
Mark Steel's in Town	BBC Radio 4	08/01/2014	Religious/Beliefs discrimination/offence	1
The Archers	BBC Radio 4	18/01/2015	Generally accepted standards	1
5 Live Breakfast	BBC Radio 5 Live	08/01/2015	Religious/Beliefs discrimination/offence	1
Programming	BBC Radio Five Live	22/01/2015	Generally accepted standards	1
Alex Dyke	BBC Radio Solent	20/01/2015	Disability discrimination/offence	2
Programming	BBC Radio Solent	22/12/2014	Religious/Beliefs discrimination/offence	1
Advertisement	Boomerang	19/01/2015	Advertising content	1
Mr Bean	Boomerang	24/01/2015	Nudity	1
FA Cup Football	BT Sport 1	25/01/2015	Generally accepted standards	1
Paul G Afternoon Show	Carrickfergus FM	13/12/2014	Race discrimination/offence	1
My Life: I Am Leo	CBBC	28/01/2015	Scheduling	1
Newsround	CBBC	30/01/2015	Generally accepted standards	1
Me Too!	CBeebies	12/01/2015	Scheduling	1
Who wants to be a Millionaire	Challenge	29/12/2014	Generally accepted standards	1
Hawaii 5. 0	Channel 2 (ABC)	Various	Outside of remit / other	1
Advertisement	Channel 4	18/01/2015	Advertising content	1
Advertisement	Channel 4	30/01/2015	Advertising content	1
Banana (trailer)	Channel 4	15/01/2015	Scheduling	1
Banana (trailer)	Channel 4	17/01/2015	Scheduling	2
Banana (trailer)	Channel 4	20/01/2015	Scheduling	1
Catastrophe (trailer)	Channel 4	29/01/2015	Scheduling	1
Celebrity Fifteen to One	Channel 4	28/12/2014	Sexual orientation discrimination/offence	1
Channel 4 News	Channel 4	08/01/2015	Generally accepted standards	1
Channel 4 News	Channel 4	12/01/2015	Religious/Beliefs discrimination/offence	1
Come Dine with Me	Channel 4	24/01/2015	Disability discrimination/offence	1
Countdown	Channel 4	21/01/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Cucumber	Channel 4	22/01/2015	Generally accepted standards	1
Cucumber	Channel 4	22/01/2015	Sexual material	3
Cucumber	Channel 4	22/01/2015	Sexual orientation discrimination/offence	1
Cucumber	Channel 4	29/01/2015	Sexual material	1
Cucumber (trailer)	Channel 4	21/01/2015	Scheduling	1
Cucumber (trailer)	Channel 4	21/01/2015	Sexual orientation discrimination/offence	1
Cucumber (trailer)	Channel 4	22/01/2015	Scheduling	2
Cucumber (trailer)	Channel 4	28/01/2015	Scheduling	1
Cucumber (trailer)	Channel 4	Various	Outside of remit / other	1
Cucumber, Banana (trailer)	Channel 4	21/01/2015	Scheduling	1
Cucumber, Banana (trailer)	Channel 4	Various	Scheduling	1
Cucumber, Banana, Tofu (trailer)	Channel 4	21/01/2015	Scheduling	1
Cucumber, Banana, Tofu (trailer)	Channel 4	Various	Scheduling	2
Hollyoaks	Channel 4	19/01/2015	Generally accepted standards	1
Hollyoaks	Channel 4	20/01/2015	Outside of remit / other	1
Homeland	Channel 4	21/12/2014	Television Access Services	1
Josie: The Most Hated Woman in Britain?	Channel 4	22/01/2015	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	25/11/2014	Under 18s in programmes	1
Programming	Channel 4	Various	Scheduling	1
Rude Tube	Channel 4	24/01/2015	Race discrimination/offence	1
The Simpsons	Channel 4	17/01/2015	Scheduling	1
The Undateables	Channel 4	19/01/2015	Outside of remit / other	1
The World's Best Diet	Channel 4	17/01/2015	Scheduling	1
16 and Pregnant (trailer)	Channel 5	11/01/2015	Scheduling	1
Advertisement	Channel 5	18/01/2015	Advertising content	1
Advertisement	Channel 5	22/01/2015	Advertising content	1
Advertisement	Channel 5	27/01/2015	Advertising content	1
Benefit House: Me and My 26 Kids	Channel 5	13/01/2015	Materially misleading	1
Benefit House: Me and My 26 Kids	Channel 5	13/01/2015	Offensive language	4
Can't Pay? We'll Take it Away!	Channel 5	30/12/2014	Offensive language	1
Car Crash TV	Channel 5	12/01/2015	Generally accepted standards	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Her Husband's Betrayal	Channel 5	18/01/2015	Offensive language	1
Ice Road Truckers	Channel 5	23/01/2015	Offensive language	1
Law and Order: Special Victims Unit (trailer)	Channel 5	29/01/2015	Scheduling	1
Programming	Channel 5	29/01/2015	Scheduling	1
Storm Night: Worst Weather Ever?	Channel 5	06/01/2015	Materially misleading	1
Suspects	Channel 5	20/01/2015	Offensive language	1
The Hotel Inspector	Channel 5	13/01/2015	Offensive language	1
The Hotel Inspector	Channel 5	14/01/2015	Offensive language	2
The Wright Stuff	Channel 5	12/01/2015	Due impartiality/bias	1
The Wright Stuff	Channel 5	12/01/2015	Generally accepted standards	1
The Wright Stuff	Channel 5	20/01/2015	Due impartiality/bias	2
In the Mix with DJ Pick	Chorley FM	13/12/2014	Materially misleading	1
News	CHS TV	05/11/2014	Due impartiality/bias	1
Drunk History	Comedy Central	12/01/2015	Offensive language	1
Drunk History (trailer)	Comedy Central	13/12/2014	Offensive language	1
Drunk History (trailer)	Comedy Central	Various	Offensive language	1
Storage Hunters UK	Dave	30/12/2014	Offensive language	1
Advertisements	Discovery Channels	19/05/2012	Advertising minutage	1
American Guns	Discovery UK	17/11/2015	Advertising minutage	1
Programming	DM News Plus	Various	Outside of remit / other	1
Sentinelle TV	DM News Plus	01/06/2014	Generally accepted standards	1
Advertisement	E4	25/01/2015	Advertising content	1
Advertisement	E4	30/01/2015	Advertising content	1
Banana (trailer)	E4	22/01/2015	Scheduling	2
Cucumber (trailer)	E4	22/01/2015	Scheduling	1
Hollyoaks	E4	20/01/2015	Sexual orientation discrimination/offence	1
Programming	E4	07/01/2015	Offensive language	1
Rude(Ish) Tube	E4	19/01/2015	Animal welfare	1
Equatorial Guinea vs Tunisia	Eurosport	31/01/2015	Outside of remit / other	1
Advertisement	Film4	27/01/2015	Advertising content	1
Advertisement	Film4	01/02/2015	Advertising content	1
Leverage	Fox	01/01/2015	Offensive language	1
Good Afternoon	Gateway 97.8 FM	22/12/2014	Due impartiality/bias	1
Hajj Radio Bradford 87.7FM	Hajj Radio Bradford 87.7FM	28/09/2014	Commercial communications on radio	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Heart Breakfast	Heart FM (Essex)	12/01/2015	Generally accepted standards	1
Heart Breakfast with Tom, Nicola & Jack	Heart FM (Sussex)	26/01/2015	Scheduling	1
Advertisement	Home	26/01/2015	Advertising content	1
118118.com's sponsorship of ITV movies	ITV	Various	Generally accepted standards	1
Advertisement	ITV	12/01/2015	Advertising content	1
Advertisement	ITV	19/01/2015	Advertising content	1
Advertisement	ITV	22/01/2015	Advertising content	1
Advertisement	ITV	24/01/2015	Advertising content	3
Advertisement	ITV	27/01/2015	Advertising content	1
Advertisement	ITV	29/01/2015	Advertising content	1
Advertisement	ITV	01/02/2015	Advertising content	1
Advertisement	ITV	Various	Advertising content	1
Advertisements	ITV	26/01/2015	Advertising content	1
Aunt Bessie's sponsorship of The Chase	ITV	Various	Crime	1
Benidorm	ITV	23/01/2015	Drugs, smoking, solvents or alcohol	1
Big Star's Little Star	ITV	24/01/2015	Outside of remit / other	1
Broadchurch	ITV	19/01/2015	Sexual material	1
Broadchurch (trailer)	ITV	26/01/2015	Hypnotic and other techniques	1
Coronation Street	ITV	29/12/2014	Promotion of products/services	1
Coronation Street	ITV	09/01/2015	Sexual orientation discrimination/offence	1
Coronation Street	ITV	14/01/2015	Product placement	1
Coronation Street	ITV	19/01/2015	Generally accepted standards	1
Coronation Street	ITV	21/01/2015	Advertising minutage	1
Coronation Street	ITV	21/01/2015	Disability discrimination/offence	1
Coronation Street	ITV	21/01/2015	Materially misleading	1
Coronation Street	ITV	26/01/2015	Generally accepted standards	1
Coronation Street	ITV	26/01/2015	Race discrimination/offence	1
Deadtime Stories	ITV	03/01/2015	Scheduling	1
Deadtime Stories	ITV	11/01/2015	Scheduling	1
Emmerdale	ITV	09/01/2015	Generally accepted standards	1
Emmerdale	ITV	12/01/2015	Scheduling	8
Emmerdale	ITV	13/01/2015	Violence and dangerous behaviour	1
Emmerdale	ITV	19/01/2015	Scheduling	1
Emmerdale	ITV	20/01/2015	Scheduling	10



<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Emmerdale	ITV	22/01/2015	Scheduling	1
Emmerdale	ITV	27/01/2015	Generally accepted standards	1
Emmerdale	ITV	27/01/2015	Religious/Beliefs discrimination/offence	3
Emmerdale	ITV	29/01/2015	Gender discrimination/offence	6
Get Your Act Together	ITV	25/01/2015	Outside of remit / other	1
Good Morning Britain	ITV	24/12/2014	Generally accepted standards	1
Harry Hill's Stars in Their Eyes	ITV	17/01/2015	Generally accepted standards	1
Harry Hill's Stars in Their Eyes	ITV	17/01/2015	Outside of remit / other	1
Harry Hill's Stars in Their Eyes	ITV	17/01/2015	Religious/Beliefs discrimination/offence	1
Harry Hill's Stars in Their Eyes	ITV	24/01/2015	Generally accepted standards	1
Harry Hill's Stars in Their Eyes	ITV	31/01/2015	Outside of remit / other	1
ITV News and Weather	ITV	11/01/2015	Generally accepted standards	1
ITV News at Ten and Weather	ITV	06/01/2015	Due accuracy	1
ITV News at Ten and Weather	ITV	08/01/2015	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	15/01/2015	Generally accepted standards	1
ITV News at Ten and Weather	ITV	19/01/2015	Religious/Beliefs discrimination/offence	1
ITV News at Ten and Weather	ITV	23/01/2015	Materially misleading	1
Judge Rinder	ITV	14/01/2015	Generally accepted standards	1
Live and Let Die	ITV	18/01/2015	Race discrimination/offence	1
Loose Women	ITV	14/01/2015	Generally accepted standards	1
Mel and Sue	ITV	21/01/2015	Gender discrimination/offence	1
Mel and Sue	ITV	21/01/2015	Scheduling	1
Skoda's sponsorship of mystery drama on ITV	ITV	Various	Crime	1
Sport on ITV4 (trailer)	ITV	24/01/2015	Drugs, smoking, solvents or alcohol	1
Sport on ITV4 (trailer)	ITV	Various	Drugs, smoking, solvents or alcohol	1
The Chase	ITV	26/01/2015	Materially misleading	1
The Jeremy Kyle Show	ITV	12/01/2015	Generally accepted standards	3
The Jeremy Kyle Show	ITV	13/01/2015	Gender discrimination/offence	1
The Man with the Golden Gun	ITV	25/01/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Martin Lewis Money Show	ITV	09/01/2015	Promotion of products/services	1
The National Television Awards	ITV	21/01/2015	Generally accepted standards	1
The National Television Awards	ITV	21/01/2015	Offensive language	1
The National Television Awards	ITV	21/01/2015	Race discrimination/offence	4
This Morning	ITV	08/01/2015	Scheduling	1
This Morning	ITV	09/01/2015	Materially misleading	1
This Morning	ITV	21/01/2015	Scheduling	3
This Morning	ITV	27/01/2015	Generally accepted standards	1
This Morning	ITV	27/01/2015	Outside of remit / other	1
ITV News Anglia	ITV Anglia	13/01/2015	Due impartiality/bias	1
Channel Report	ITV Channel Television	11/12/2015	Generally accepted standards	1
ITV News London	ITV London	15/01/2015	Generally accepted standards	1
Advertisement	ITV+1	23/01/2015	Advertising content	2
Advertisement	ITV2	30/01/2015	Advertising content	1
Cockroaches	ITV2	27/01/2015	Race discrimination/offence	1
King Kong	ITV2	17/01/2015	Scheduling	1
The Jeremy Kyle Show	ITV2	08/01/2015	Offensive language	1
Sport on ITV4 (trailer)	ITV4	23/01/2015	Drugs, smoking, solvents or alcohol	1
Advertisement	ITVBe	18/01/2015	Advertising content	1
Advertisement	ITVBe	21/01/2015	Advertising content	1
Cristo	LBC 97.3 FM	20/12/2014	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	14/01/2015	Due accuracy	3
Steve Allen	LBC 97.3 FM	14/01/2015	Generally accepted standards	2
Advertisement	More4	27/01/2015	Advertising content	1
Advertisement	National Geographic	23/01/2015	Advertising content	1
Programming	NE1FM 102.5	10/01/2015	Outside of remit / other	1
News	NTV	04/11/2014	Due impartiality/bias	1
News	Nu Sound Radio	26/01/2015	Generally accepted standards	1
Advertisement	Pick	29/01/2015	Advertising content	1
Road Wars	Pick	23/01/2015	Offensive language	1
American Chopper - Senior Vs Junior	Quest	08/01/2015	Offensive language	1
Unbelievable Truth	Radio 4	12/01/2015	Generally accepted standards	1
Advertisement	Really	03/01/2015	Political advertising	1
Press Preview	Sky News	05/01/2015	Due accuracy	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sky News	Sky News	15/12/2014	Crime	1
Sky News	Sky News	13/01/2015	Generally accepted standards	2
Sky News	Sky News	15/01/2015	Generally accepted standards	1
Sky News with Dermot Murnaghan	Sky News	14/01/2015	Generally accepted standards	1
Sky News with Dermot Murnaghan	Sky News	19/01/2015	Due impartiality/bias	8
Sunrise	Sky News	14/01/2015	Outside of remit / other	1
Sunrise	Sky News	14/01/2015	Race discrimination/offence	1
Derby County v Nottingham Forest	Sky Sports 1	17/01/2015	Generally accepted standards	1
Liverpool v Chelsea	Sky Sports 1	20/01/2015	Outside of remit / other	1
Programming	Sky Sports News	22/01/2015	Materially misleading	1
Advertisement	Sky1	27/01/2015	Advertising content	1
Ross Kemp: Extreme World (trailer)	Sky1	29/01/2015	Scheduling	1
Advertisement	Sky2	27/01/2015	Advertising content	1
Mahabharatham	Star Vijay	29/09/2014	Outside of remit / other	1
Advertisement	STV	11/01/2015	Political advertising	1
Advertisement	STV	16/01/2015	Advertising content	1
Programming	Sunny Govan Community Radio	13/12/2014	Materially misleading	1
Drivetime	Talksport	27/01/2015	Generally accepted standards	1
That's Solent News	That's Solent	08/01/2015	Materially misleading	1
Advertisement	Tiny Pop	Various	Advertising minutage	1
Katie Hopkins: My Fat Story	TLC	02/01/2014	Animal welfare	2
Katie Hopkins: My Fat Story	TLC	02/01/2014	Generally accepted standards	5
Toddlers and Tiaras	TLC	01/01/2015	Under 18s in programmes	1
Too Ugly for Love?	TLC	14/01/2015	Disability discrimination/offence	3
Wheeler Dealers	Turbo	15/12/2015	Advertising minutage	1
Advertisement	Various	06/01/2015	Advertising content	1
Advertisement	Various	22/01/2015	Advertising content	1
Advertisement	Various	28/01/2015	Advertising content	1
Advertisement	Various	Various	Advertising content	1
Banana (trailer)	Various	Various	Scheduling	1
BBC News	Various	Various	Due impartiality/bias	1
BBC News	Various	Various	Religious/Beliefs discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Cucumber, Banana, Tofu (trailer)	Various	Various	Scheduling	1
Help to Buy Advertisement	Various	Various	Political advertising	1
News	Various	16/01/2015	Violence and dangerous behaviour	1
News	Various	Various	Generally accepted standards	1
Programming	Various	Various	Advertising minutage	1
Programming	Various	Various	Offensive language	1
Programming	Various	Various	Outside of remit / other	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/>.

<b>Licensee</b>	<b>Licensed service</b>	<b>Categories</b>
Southend and Chelmsford Radio Limited	Southend Radio	Format
TMCRFM Limited	TMCR	Outside of remit

## 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 22 January and 4 February 2015.

### Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
South East Today	BBC1 South East	22 November 2014
Advertising minutage	Bonanza Bonanza	28 December 2014
Advertising minutage	BT Sport 2	11 January 2015
Bangla Carpets' sponsorship of Tritio Mattra	Channel i	29 December 2014
Boogie In the Morning	Forth One	22 December 2014
Advertising minutage	Heat	26 November 2014
The Jeremy Kyle Show	ITV	3 February 2015
Rishtey TV's sponsorship of Lyca Radio 1458 Breakfast	Lyca Radio 1458	Various
Advertising minutage	Samaa	22 December 2014
Sky News	Sky News	7 January 2015
Advertising minutage	TLC (Balkans)	18 October 2015
XFM Breakfast Show with Tim Cocker	XFM Manchester	27 January 2015

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**

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Can't Pay? We'll Take it Away	Channel 5	19 November 2014
Countdown to Murder	Channel 5	8 September 2014
Muggings & Mayhem: Caught on Camera	Channel 5	20 November 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/>.