

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

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

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

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

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

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

## Standards cases

### In Breach

#### Arab Dream

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

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#### Introduction

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

Three viewers complained about programmes broadcast on 9 October 2011 and 25 October 2011 on Al Mustakillah Television. In summary the complainants considered the programmes were used to promote the political policies of The Popular Petition for Freedom, Justice and Development Party (“the Popular Petition Party”) also known as ‘Aridah Chaabia’ and ‘Al Aridah’.

The programme material broadcast on 9 October 2011 was two hours and 39 minutes long and was a ‘phone-in’ programme about the Tunisian General Election. This election was held a fortnight later on 23 October. The broadcast included a brief introduction by a presenter who introduced Dr Mohamed Hechmi Hamdi (“Dr Hamdi”) as the studio guest that day. Dr Hamdi talked about the manifesto of the Popular Petition Party for the forthcoming General Election, and the boycott he was facing from his alleged exclusion from official and state controlled Tunisian media.

This programme on 9 October 2011 was broadcast during the election campaign leading to the Tunisian General Election. On 23 October 2011 Tunisia held what was widely reported to be its first ever free and fair General Election. The election followed the ousting of President Zine al-Abidine Ben Ali and his Democratic Constitutional Rally in January 2011 after 23 years in power as part of the so called “Arab Spring”. The Popular Petition Party was established after the Tunisian revolution in March 2011 and was founded by Dr Hamdi.

The political parties that secured the majority of seats in the Tunisian Constituent Assembly immediately following the election in 2011 were: The Ennahda Party with 89 seats; The Congress for the Republic with 29 seats; The Popular Petition Party with 27 seats; and The Democratic Forum for Labour and Liberties with 20 seats.

Following claims that the Popular Petition Party had contravened election rules and allegations of foreign funding, eight seats of the party’s seats were declared void by the Instance Supérieure Indépendante pour les Eléctions (“ISIE,” Tunisia’s Electoral Committee). The Popular Petition Party lodged an appeal in the Tunisian Administrative Courts. As a result the ISIE’s decision was partially overturned and seven of the eight invalidated seats were reinstated. This brought the total number of seats secured by the Popular Petition Party to 26.

The first session of the Tunisian parliament took place in November 2011 and the National Constituent Assembly has begun drafting a new constitution.

The 25 October programme was about the Tunisian General Election, its emerging results and Dr Hamdi's future plans following the unexpected success of the Popular Petition Party. This programme had a total duration of one hour and 46 minutes.

Dr Hamdi is the founder and leader of the Popular Petition Party. Ofcom's records show that Dr Hamdi is the Ofcom compliance contact for Al Mustakillah TV. Dr Hamdi is also the chairman and director of Al Mustakillah (Holdings) Limited, the company that holds the licence for Al Mustakillah TV.

Ofcom noted that the 2011 Tunisian General Election had been announced prior to the broadcast on Sunday 9 October 2011 and that polling stations closed on the evening of Sunday 23 October 2011 i.e. before the second broadcast complained of which took place on 25 October 2011.

We commissioned a translation of both programmes from an independent translator, from the original Arabic. Having reviewed these translations, we considered the programmes raised issues under various rules of the Code, as set out below.

### 9 October programme

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

By virtue of this rule, the 2011 Tunisian General Election was considered by Ofcom to be a "matter of major political or industrial controversy and major matter relating to current public policy". As a consequence the rules in Section Five of the Code applied in relation to this programme, but in particular Rule 5.11 and 5.12. Ofcom therefore considered the material broadcast on 9 October 2011 raised issues warranting investigation under Rule 6.1 and under the following rules:

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

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."

### 25 October programme

The programme broadcast on 25 October 2011 was transmitted after the end of the Tunisian General Election campaign. As discussed below, it was Ofcom's view that

this second programme was dealing with a “matter of political or industrial controversy and matter relating to current public policy” (i.e. the policy platform espoused by the Popular Petition Party and Dr Hamdi with regard to Tunisia). We therefore considered the content broadcast on 25 October 2011 raised issues warranting investigation under the following rules:

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

Ofcom asked Al Mustakillah to provide comments on how the broadcasts complied with the above rules.

## **Response**

The Licensee’s comments were provided by Dr Hamdi, as the person responsible for compliance on Al Mustakillah. Overall, the Licensee did not provide comments on each broadcast separately, but on how both broadcasts complied with the following rules.

### General comments: Rules 5.5, 5.11, 5.12 and 6.1

Al Mustakillah denied that it breached these rules for various reasons.

The Licensee said that it issued “numerous” invitations to leaders of the other various Tunisian political parties to appear on the channel, and in these two programmes in particular, but they “did not even bother to answer”. With regard to the broadcast on 9 October 2011, the Licensee said “seats were empty around the guest [Dr Hamdi] to confirm that guests from other parties were invited and they declined to appear in the show. This...was also stated in the show introduction”. Al Mustakillah added that: “...the service was neutral. It almost begged leaders of other major parties to appear but they declined”. To underline that the Licensee was “very keen” to allow the leaders of the other main political parties in Tunisia to express their views freely on the channel, Al Mustakillah said that on the morning of 27 February 2012 it broadcast for 26 minutes an invitation to the leaders of the other main parties to take part in a discussion programme on the service and guaranteed “them the time they need to express their views.”

Second, the Licensee said that it respected the right of reply in the programmes. Before the programmes began Al Mustakillah explained that it played a recorded statement which said that the channel “welcomes plurality of views, the right to be different, and guarantees the right of reply” without delay. The Licensee believed the format of the broadcasts (discussion programmes in a ‘Question Time’ format rather than news) was relevant. It argued that because they were discussion programmes the opportunity for alternative viewpoints to be presented was available, through guests from the other political parties accepting the invitation from the channel to

appear, or from callers. It pointed out that Dr Hamdi answered calls from members of the public on 9 October “including a caller who accused him of defending the old regime”. The Licensee added that it allowed a “caller with opposite views to talk longer than any other caller during that 9 October show. This demonstrates an honest desire to have a free and honest debate during the show”.

Al Mustakillah relied on its right to freedom of expression as set out in Article 10 of the European Convention on Human Rights (“ECHR”). The Licensee said that the views expressed by Dr Hamdi in the programmes were “peaceful and political. They do not fall under the matters that warrant restrictions [under Article 10].” Al Mustakillah also asked Ofcom to take into account in deciding whether due impartiality had been preserved in this case that Dr Hamdi had been, it said, denied access to “public media” in Tunisia, even though the Popular Petition Party won “third place in the elections which confirms that he should have been given access to the media.” Al Mustakillah said that Dr Hamdi “was denied any chance to express his views in the local Tunisian TV and Radio. They all refused him even ten minutes to talk to the voters”. Al Mustakillah added that the policies of the other major parties had been widely reported in the Tunisian media; however the policies of the Popular Petition Party were not given the same prominence.

The Licensee considered that Ofcom should also have regard to the audience of the channel. Al Mustakillah said that the number of viewers of the channel is very small (according to the Licensee it is “not even mentioned in rating statistics in Tunisia”), and that the channel is broadcast “to the Arab world in general”, and not Tunisia alone. Ofcom inferred from these representations that the channel was arguing in effect that the influence that the two programmes might have had on influencing public opinion in Tunisia would have been immaterial.

Al Mustakillah pointed out that none of the other political parties contesting the 2011 Tunisian General Election had complained directly to the channel itself about the broadcasts.

The Licensee also asked Ofcom to have regard to the fact that, in its view, it had complied with Rules 5.8 and 5.10 of the Code<sup>1</sup>. These rules require respectively that any personal interest of a reporter or presenter which would call in question the due impartiality of the programme must be made clear to the audience, and that broadcasters must ensure that a personal view or authored programme or item must be clearly signalled to the audience.

#### Rule 5.4

With regard to this rule, Al Mustakillah did not deny that the 9 October 2011 programme dealt with matters of political controversy. However, the Licensee argued that Dr Hamdi appeared in the two programmes as a guest and politician expressing “his own views on Tunisian politics” and not the views of Al Mustakillah television, and that there were “objective reasons” to invite Dr Hamdi on to the programmes. Viewers were informed “at the outset” that Dr Hamdi was “not present as a manager or presenter” of Al Mustakillah television. The Licensee added that “the guest [Dr Hamdi] did not stand personally in the elections. He did not set foot in Tunisia ... [an] independent list of candidates stood in the elections”.

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<sup>1</sup> The Licensee’s representations on this point were unsolicited: Ofcom did not ask the Licensee to comment on whether it complied with these rules.



The Licensee considered that for Ofcom to record a breach of rule 5.4 in this case would contravene Dr Hamdi's rights under Article 10 of the ECHR. It stated that [Dr Hamdi] being "a complying officer in a TV channel should not constitute a reason to deny him the right to appear in the media and express his views...this is greatly unfair, and clearly a breach of article 10 of the European Convention on Human Rights".

#### 25 October programme: Rule 5.5

With regard to the broadcast on 25 October, the Licensee explained that once it was clear that the Popular Petition Party had gained a significant number of seats in the Tunisian assembly, various broadcasters such as the BBC, Al Jazeera, France 24, Al Hurrah TV, Radio France International and the Times newspaper, requested interviews with Dr Hamdi. Al Mustakillah added that it also wanted to broadcast an interview with the leader of the Popular Petition Party and that it had invited the "leaders of the other winning parties in the elections to appear in its talk shows, but all declined". The Licensee said that Al Mustakillah in our view cannot "be found in breach of Rule 5.5 because it did its best possible to have other guest [sic] in the show".

#### **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with.

This standard is contained in the Code. Broadcasters are required to comply with the rules in Section Five of the Code to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of major political or industrial controversy and major matters relating to current public policy (see above for the specific provisions). Section Six of the Code reflects the specific requirements relating to broadcasters covering elections.

In reaching this decision Ofcom has also taken account of the right to freedom of expression, as set out in Article 10 of the ECHR. Article 10 provides for the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers. The exercise of these freedoms may be subject to such restrictions and conditions as are prescribed by law and necessary in a democratic society, in the interests, for example, of national security, territorial integrity or public safety, for the prevention of disorder or crime, or the protection of the rights of others. Applied to broadcasting, Article 10 therefore protects the broadcaster's right to transmit material, as well as the audience's right to receive it, as long as the broadcaster ensures compliance with the Code and the requirements of statutory and common law.

It is not part of Ofcom's remit to question or investigate the validity of the political views expressed in cases 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 any controversial subject or including any particular point of view in a programme. To do so would be an unacceptable restriction on a broadcaster's freedom of expression.

However, the broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

### 9 October 2011 programme

#### Rules 6.1, 5.11 and 5.12

Rule 6.1 states:

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

Rule 5.11 states:

"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 states:

"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 first considered whether the requirements of Section Five and Section Six of the Code should be applied to the 9 October programme: that is, whether the subject matter of the programmes concerned major matters of political or industrial controversy or a matter relating to current public policy, and whether the rules relating to elections applied in this case.

As background, we noted the 2011 Tunisian General Election had been announced prior to the broadcast on 9 October 2011, and that polling stations closed on the evening of Sunday 23 October 2011 i.e. before the broadcast on 25 October 2011.

The effect of Rule 6.1 is to ensure broadcasters must preserve due impartiality in their coverage of elections and referendums. This is to help ensure that elections are conducted fairly, and that no unfair advantage is given to particular candidates through promotion in the broadcast media, irrespective of whether the candidate can be shown to have actually benefited in practice. Rule 6.1 applies to elections both inside and outside the UK, and requires broadcasters' coverage of elections to comply with the rules in Section Five. In particular, Rule 6.1 deems elections to be matters of major political or industrial controversy and major matters relating to

current public policy. As the programme broadcast on 9 October 2011 was broadcast during the 2011 Tunisian General Election campaign, Rule 6.1 of the Code was clearly applicable.

Due to the fact that the Tunisian General Election was a matter of major political or industrial controversy and major matter relating to current public policy, Rules 5.11 and 5.12 applied in this case.

Section Five of the Code provides that due impartiality must be preserved by broadcasters in their coverage of matters of political or industrial controversy and matters relating to current public policy. In addition, when dealing with matters of major political or 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”.

In assessing whether due impartiality has been preserved, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. 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 every argument has to be represented. When considering due impartiality Ofcom has regard to the context: factors such as the service on which material is broadcast, the likely size and composition of the potential audience and the likely expectation of the audience. If a service is broadcast outside the United Kingdom, this factor may also be taken into account. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster how it ensures due impartiality is maintained.

As already pointed out, Ofcom recognises that Section Five of the Code acts to limit, to some extent, freedom of expression. However, when considering matters under the Code, Ofcom takes into consideration the broadcaster’s and audience’s right to freedom of expression, which is considered to be at its highest in relation to political matters.

Ofcom’s guidance on Section Five states that the impartiality requirements apply not only to Ofcom licensees broadcasting to audiences within the United Kingdom and elsewhere, but also to those not broadcasting to the United Kingdom at all. However when not broadcasting to the United Kingdom the impartiality that is “due” *may* [emphasis in original Ofcom guidance] be less depending on the subject matter and original country of reception. As stated above, Al Mustakillah Television is broadcast in Arabic, predominantly to people in North Africa, the Middle East and Europe.

Ofcom therefore assessed whether in accordance with Rule 5.12 in the broadcast on 9 October 2011 (as translated for Ofcom), “due impartiality was preserved” and “an appropriately wide range of significant views were included” and “given due weight”.

Ofcom considered the content and views expressed during this broadcast as a whole were almost entirely about the Popular Petition Party and its election manifesto for the Tunisian General Election. For example Dr Hamdi made the following statements:

*“I pledge in the name of the Prophet that if you give the Popular Petition the majority of seats in parliament to the candidates on the lists of the Popular Petition, if you elect its candidates ... and this is later confirmed on the morning of 24<sup>th</sup> of this month, I will after being elected President of the Republic as per the items on the manifesto of the Popular Petition, I will in the*

*first session of the National Constituent Assembly, held a couple of days later, hold the first session of parliament on 1 November and will issue a decree...to provide free healthcare coverage to all those who don't have it in Tunisia...".*

*"I only ask that you vote for the Popular Petition in France 1 and France 2, in Germany and Italy and the Arab world where the Popular Petition has now a stronger platform".<sup>2</sup>*

There were a total of 14 telephone calls from members of the public during this programme. Only one of these (Caller 13) could be construed as at all critical of the Popular Petition Party, by suggesting that the Popular Petition Party was making election promises that were unrealistic and referring to Dr Hamdi's previous alliance with the ousted Tunisian regime.

Caller 13:

*"I am a Tunisian citizen and don't support any political movement ... [Dr Hamdi] adopts the basis of English politics in free healthcare coverage, workers unemployment benefit. This means that in five years things will change and Tunisia will be one of the best countries. But what Dr Hamdi does not know is that there is a certain level of 'laid-backness'...It does not mean people do not read or did not go to schools and universities. The 'laid-backness' is in the mentality inherited from previous generations...he knows deep down Tunisians will never change. The mentality will never change. We still adopt a French educational system, a French grants system where the strong is applauded and the weak, even with qualifications, does not get anywhere".*

Caller 13 continued:

*"[Dr Hamdi] is an intellectual and enjoys a high position in London as an immigrant. He emigrated to Britain to flee the previous regime. Following that he goes back to Tunis, the former president gives him the medal of the republic and they enjoy a very good relationship ... After that the Tunisians get rid of the former regime and then [Dr Hamdi] changes his theory and promises people that he will build something for Tunisia and provide free healthcare coverage, unemployment benefit education...".*

In addition, reference to other political parties during the programme included: Dr Hamdi stating that the Ennahda party did not have an electoral programme like that of the Popular Petition party; the Popular Petition Party has only recently been established, particularly when compared to parties such as Ennahda which was established in 1967 and has a well-developed campaign strategy; Dr Hamdi stating that he has spoken to the president and secretary of the Party of People's Unity who, like the Popular Petition Party, has not benefited from television coverage in Tunisia either; Caller 3 claiming that first, voters on the island of Girba are shifting allegiance from the Ennahda party to the Popular Petition Party and second, that other parties

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<sup>2</sup> On 20 October 2011 polling for expatriate Tunisians took place in over 80 countries around the world. Expatriate voters chose 18 of the 217 constituent assembly members. France had ten of these; Italy three; Germany one; North America and the rest of Europe two; and other Arab nations two.

were attempting to “*buy votes*” by offering members of the public rice and sugar<sup>3</sup>; Caller 13 stating that he is not aware of Ennahda criticising Dr Hamdi, however during the course of this programme Ennahda has been the subject of criticism; and Dr Hamdi explained that during his time as a member of Ennahda, he found his “direction” in religion and “most of [Ennahda’s] activity was political and unionist”.

These references to other parties were therefore not in the context of setting out their policies in any impartial way, but in the context of pejorative comments or comparisons to the Popular Petition Party or were simply passing remarks.

The Code does not prohibit broadcasters from showing programmes during an election campaign which include the views of particular political parties contesting that election campaign. However, in order to ensure compliance with Rule 5.12, it is not enough for a broadcaster either just to include some limited viewpoints that could be portrayed as representing an alternative (minority) “significant view” on an issue, or to allude to the existence of such views. An “appropriately wide range of significant views” must be included and be given “due weight”.

We noted that the programme included 14 telephone calls from viewers. Of the 14 calls only two in our opinion (Caller 13 and Caller 14), could be categorised as being in any way unsupportive of Dr Hamdi or the Popular Petition Party. Of those two calls, in Ofcom’s view Caller 13 was from a member of the public who was an impartial individual and the discussion with this caller made up approximately 15 minutes of the overall programme duration of two hours and 39 minutes. This caller was given a significant amount of time to express his opinion on why the policies of the Popular Petition Party were unrealistic. The second telephone call (Caller 14) was from a viewer that asked generic questions about polygamy and women’s rights and, the effect of the Popular Petition Party’s manifesto on the wealthy members of Tunisian society.

Although the programme did include one contribution by telephone from a viewer (Caller 13) who was able to express some criticisms of Dr Hamdi while not expressing any support for any other Tunisian political party, we considered that the programme did not include sufficient alternative viewpoints. While arguably perhaps “due weight” was given to callers 13 and 14, Ofcom considered that the Licensee had not made clear how the broadcaster had ensured there had been an “appropriately wide range of **significant** [Ofcom’s emphasis] views” included in the 9 October programme, or in clearly-linked or timely programmes. Rather, the programme included only one contribution that could be characterised as being critical of the policies of the Popular Petition Party in any way, and this contribution came from a member of the audience. The viewpoints of, for example, other Tunisian political parties contesting the Tunisian General Election were not adequately represented within the programme. In this way, viewers were not sufficiently furnished with the viewpoints of the various political parties competing against the Popular Petition Party.

Ofcom has taken careful account of the various points put forward by the Licensee arguing that it did not breach rules 6.1, 5.11 and 5.12.

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<sup>3</sup> Caller 3 from the Tunisian town of Girba: “*People in Girba are convinced with your programme and those who were with [the] Ennahda movement have now shifted to your side. People approve of what is in your manifesto ... Parties give bribes and money. Parties give money. A kilo of sugar ...a kilo of ... you sell your dignity*”.

We noted first Al Mustakillah's representations that it had issued "numerous" invitations to the leaders of the other major parties running in the election to participate in the programme but that they had declined them; and that in the programme broadcast on 9 October 2011, this was signalled to viewers by empty seats placed around Dr Hamdi. As pointed out above, in this case it was imperative that an appropriately wide range of significant views were included in this programme, broadcast as it was very close to a General Election. Merely inviting other political parties to participate and placing empty chairs in a studio did not discharge the Licensee from its obligations under Section Five of the Code to provide this range of views. Nor could this obligation be discharged about four months *after* the election on 27 February 2012 by the Licensee renewing its invitation to the other political parties to appear on the channel. By this date the Tunisian General Election had of course already taken place and the results announced in October 2011.

The Licensee also argued that due impartiality was preserved through it providing a sufficient right of reply: callers with alternative views were encouraged and allowed to present their views in the programme. As pointed out above, Ofcom carefully assessed the number and type of callers who were broadcast and what they said. Taking account of all the relevant circumstances, and for the reasons set out above, the two calls (Callers 13 and 14) from viewers who did not support the Popular Petition Party were clearly not sufficient to ensure due impartiality was preserved in the 9 October programme.

Ofcom took particular note of Al Mustakillah's representations about freedom of expression. In reaching the present decision, we have taken full account of the fact that this right is at its highest when discussing political matters. Ofcom acknowledges that Dr Hamdi's views as expressed in the programme were, as pointed out by the Licensee, both political and peaceful. As underlined above, however, the broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code (imposed explicitly by statute) to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy. This is clearly very important at times when citizens are taking crucial decisions about how they will decide to vote in a General Election.

Ofcom has taken note of Al Mustakillah's representations that Dr Hamdi and the Popular Petition Party were excluded from the main Tunisian media even though they attracted significant electoral support (as demonstrated by the election results). The application of Rules 5.11 and 5.12 to the 9 October programme, however, did not prevent the viewpoint of the Popular Petition Party about the forthcoming election being presented in this particular broadcast<sup>4</sup>. This could have been represented provided that the requirements of Rule 5.12 were fulfilled, that is that the viewpoints of the other main political parties needed to be reflected in an appropriate way with "due weight" – which Al Mustakillah did not do. Even taking account of the alleged exclusion of Dr Hamdi and the Popular Petition Party from the main Tunisian media, we considered that the Licensee gave so little time and prominence to presenting alternative viewpoints on this programme (see assessment above) that the Licensee did not include an appropriately wide range of significant views and did not give them due weight in this programme. In Ofcom's view therefore our decision in this case represents a justified and proportionate restriction of the Licensee's right to freedom of expression.

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<sup>4</sup> Including by means of an interview with a representative of the Popular Petition Party, provided this representative was not with "a person providing the service" (such as Dr Hamdi). See further the decisions relating to Rule 5.4 below.

We next considered the Licensee's points that: (a) the audience (and so the influence) of the channel was relatively small; (b) none of the other political parties contesting the 2011 Tunisian General Election complained directly to the channel; and, (c) that the channel (in the Licensee's view) complied with Rules 5.8 and 5.10 of the Code.

Concerning (a), Ofcom has no evidence as to the size of Al Mustakillah's audience and so to the potential influence the broadcast of this programme may or may not have had on Tunisian voters. Clearly however the programme was targeted at Tunisians and was received in Tunisia (telephone calls from that country were put through live to the programme). The programme therefore manifestly had the opportunity to influence voting intentions in the forthcoming General Election. Even if that influence might have been small, any change in voting intentions in a General Election as a result of the broadcast of a programme is potentially very significant. This is why statute imposed a specific obligation on broadcasters relating to matters of major political controversy (see section 320(6) of the Act) and Ofcom has reflected this obligation in Rules 5.11 and 5.12 of the Code.

It is irrelevant, in Ofcom's opinion, that none of the other political parties contesting the 2011 Tunisian General Election complained directly to the broadcaster. The 9 October programme raised potential issues under the Code warranting investigation. Ofcom also regards point (c) as irrelevant. Ofcom did not consider that the 9 October programme raised any potential issues under either Rule 5.8 or 5.10 of the Code and therefore did not ask Al Mustakillah to comment as to how it complied with these rules. It is not a relevant consideration for Ofcom to take into account in reaching a decision in the present case.

The Code does not prohibit broadcasters from discussing any controversial subject nor including a particular point of view within a programme. However, where a programme such as this one handles controversial policy matters and where alternative views are not readily available, broadcasters might consider employing editorial techniques such as: the presenter stating alternative viewpoints; or, if alternative viewpoints cannot be obtained directly from particular institutions, political parties or individuals, broadcasters can refer to public statements by such institutions, political parties or individuals; or, such viewpoints could be expressed, for example, through a presenter's questions to the interviewee.

In audience participation programmes where viewers or listeners are encouraged to telephone in to a programme (such as this), while broadcasters can encourage callers from different perspectives, it cannot 'manufacture' them. However, whether or not viewers or listeners make calls, it is the responsibility of the broadcaster to ensure that due impartiality is maintained. Therefore, in the situation such as this, where a major matter of political controversy is being covered in a programme and there are no views being expressed in opposition to the viewpoint being featured through callers to a 'phone-in' programme, broadcasters must take steps to ensure that due impartiality is maintained, such as those highlighted above.

In this case the steps taken by the broadcaster clearly did not satisfy the requirements of Rules 5.11 or 5.12. In particular when dealing with a matter of major political controversy and major matter relating to current policy the Licensee did not include an "appropriately wide range of significant views" and give them "due weight". Ofcom therefore considered the programme to be in breach of Rule 5.11 and Rule 5.12.

## Rule 5.4

Rule 5.4 of the Code states:

“Programmes [...] must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy...”.

Ofcom’s published Guidance<sup>5</sup> to Rule 5.4 states: ““The person providing the service” is a concept used in connection with the legal requirements for the licensing and compliance of broadcasting services. In this rule, it refers to the licensee, the company officers and those persons with an editorial responsibility for the service or part of the service rather than, for example, the programme presenter”.

Ofcom’s records show that Dr Hamdi is the named Ofcom compliance contact for Al Mustakillah Television and the chairman and director of the company Al Mustakillah (Holdings) Limited, which holds the licence for Al Mustakillah Television. In Ofcom’s view he is therefore a “company officer” and a person that holds “editorial responsibility for the service”, and so is a “person providing the service”.

We noted that Dr Hamdi is the leader of the Popular Petition Party in Tunisia. At the time of this broadcast, the Popular Petition Party was canvassing for votes in the 2011 Tunisian General Election. As explained above, by virtue of Rule 6.1 of the Code an election is deemed to be a matter of major political controversy and major matter relating to current public policy.

Ofcom noted that during this programme Dr Hamdi repeatedly made reference to and promoted various policies and promises of the Popular Petition Party. These included the provision of: free healthcare for all Tunisians; unemployment benefits; and free travel for those of the age of 65. For example he said during the programme:

*“...Let everyone call his/her family and make sure that they will vote for the Popular Petition. Some great things will happen in Tunisian history for the first time: free healthcare coverage, unemployment benefit, formation of a national committee to help young people get married, creation of an anti-corruption committee, creation of a committee that will handle any abuse against Tunisians whether at airports or frontiers checkpoints, new ministry for Tunisians working abroad, an ombudsman service, strict control on contracts between Tunisians and banks...”.*

Ofcom noted that during the programme an on-screen graphic appeared that contained the names and contact telephone numbers of people based in Tunisia who are supporters of the Popular Petition Party. The on-screen graphic was accompanied by Dr Hamdi encouraging viewers who were interested in supporting his party and its campaign to call the on-screen numbers for further information. For example:

*“On the coast we have sister Roda Ben Ammar, her number is [telephone number] and Sandas Al Bakouche, her number is [telephone number] for those wishing to alleviate the damage of the embargo imposed on the Popular Petition by television radios...anyone wishing to help in the middle of*

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<sup>5</sup> Ofcom Guidance on Section Five of the Broadcasting Code:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf> (published 16 December 2009)



*the country or the south – we know that conditions are more difficult in the south, even more difficult than Sousse – can call brother Khalifa Al Sharabi on [telephone number] and brother Mohazab Dyab [telephone number]. This is for those wanting to help in the middle, south or any place they can help”.*

Ofcom noted that for the last 50 minutes of the programme no calls from viewers were broadcast. Instead the presenter asked how the party’s proposed policies and projects would be financed. Dr Hamdi responded to the presenter and during the 50 minute period regularly spoke directly to the camera while setting out in detail the manifesto of the Popular Petition Party.

Ofcom therefore clearly considered that: Dr Hamdi (who is the named Ofcom compliance contact for the Al Mustakillah Television service and is chairman and director of the licence holding body) was the “person providing the service”; and, as the “person providing the service” in this programme he clearly expressed his views and opinions on the political policies of the Popular Petition Party two weeks before the Tunisian General Election, when that election was clearly a matter of major political controversy and a major matter relating to current public policy.

In reaching a decision about Rule 5.4, Ofcom took careful account of Al Mustakillah’s representations about its compliance with this rule.

The Licensee argued first that: Dr Hamdi expressed “his own views on Tunisian politics”, not the views of Al Mustakillah television, and that this was made clear to viewers; and that there were “objective reasons” to invite Dr Hamdi on to the programme. In response Ofcom points out that Rule 5.4 reflects an explicit statutory requirement in the Act (section 320(1)(a)). This prohibits broadcasters from including all expression of the views of the person providing the service on matters of political controversy (and, by extension, matters of major political controversy). The clear purpose of this provision is to ensure that the holders of a television licence do not compromise the editorial independence of their channel by being allowed to express their views on the service about controversial political and current public policy issues. This would be especially important at times of elections. If a programme contributor (e.g. an interviewee or presenter), whom Ofcom deems to be a “provider of the service”, expresses a view on a matter of political controversy in a programme on that service, there will therefore be a breach of Rule 5.4. This will be the case whether or not the programme contributor characterises their views on that matter as a personal opinion in the programme, and viewers are told this, or there are sensible editorial reasons to invite that person to express his or her opinion on the programme.

Ofcom went on to assess the Licensee’s second point that for Ofcom to record a breach of rule 5.4 in this case would contravene Dr Hamdi’s rights under Article 10 ECHR. Rule 5.4 did not prohibit Dr Hamdi’s opinions being included on Al Mustakillah TV on all matters. Rather it precluded him only from expressing his opinions on matters of political controversy and matters relating to current public policy. As pointed out above, Rule 5.4 is derived directly from statute and has a clear purpose in the public interest. In the 9 October programme it was open to Al Mustakillah to include any interviewee or presenter representing the Popular petition Party if it wished, provided he was not a “person providing the service” (such as Dr Hamdi). The restriction on the Licensee’s right to freedom of expression represented by Ofcom’s decision to record a breach of Rule 5.4 is, in our view, therefore justified and proportionate.

For these reasons Ofcom concluded that the Licensee breached Rule 5.4 of the Code.

### 25 October 2011 programme

The programme broadcast on 25 October dealt with the results of, and issues raised by the results of, the Tunisian General Election. We noted that the Tunisian General Election campaign ended before the broadcast on 25 October 2011. As a result Rule 6.1 did not apply.

Ofcom therefore had to ascertain whether this programme was dealing with a “matter of major political or industrial controversy and major matter relating to current public policy”<sup>6</sup> Ofcom’s published Guidance<sup>7</sup> to Rules 5.11 and 5.12 states “major matters” are of a significant level of importance and is likely to be the moment.

In Ofcom’s view, the outcome of the Tunisian General Election was, on balance, not of such a significant level of importance as to constitute a matter of major political or industrial controversy and major matter relating to current public policy. However, we considered that this programme dealt with issues that politicians and the media in Tunisia were in debate about: the aftermath of the Tunisian General Election, the future policy direction of Tunisia and the policy platform of the Popular Petition Party. Therefore, in our view, the programme was dealing with a matter of political or industrial controversy and matter relating to current public policy. Ofcom therefore considered that Section Five, and Rule 5.5 in particular, was applicable in this instance.

### Rule 5.5

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”.

In assessing whether due impartiality has been applied in this case, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. “Due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In summary, the programme included: an interview with Dr Hamdi, in which he made a number of statements that related to the policy platform of the Popular Petition Party, and Dr Hamdi personally, with regard to Tunisia; and a ‘phone-in’ with viewers.

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<sup>6</sup> The Code defines “matters of major political or industrial controversy and major matters relating to current public policy” as follows: “These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area”.

<sup>7</sup> See footnote 2.

The statements made by Dr Hamdi in relation to the policy platform of the Popular Petition Party included:

*“As for the Popular Petition it is the Tunisian population eager for freedom and social justice who imposed it on the political scene. They said we want to change our reality through this programme, through this petition. We want to see the results of this revolution in things like free healthcare, unemployment benefit, free travel for the retired, the ombudsman service, the department for almsgiving, and a ministry for foreign workers”.*

*“...If the door for communications is open in order to form a government, our approach and what we will defend will be the following: free healthcare coverage for Tunisians, unemployment benefit, a democratic constitution that will preserve freedoms and serve the Arab identity, justice within the state, ombudsman service, reviving almsgiving in society...”*

*“Democracy needs a government and opposition. A strong government has a strong opposition. Children of the petition wherever you are, the initial results show that we will either participate in a government that will serve the principles that we have fought for in the elections which are in the programme. Otherwise we will be in opposition; we will be the voice of the people”.*

During the interview with Dr Hamdi, we noted that he was asked a number of questions by the presenter. However, we considered that these questions, rather than critically challenging the points being made by Dr Hamdi, served principally to: punctuate Dr. Hamdi’s ongoing discussion of the election promises of the Popular Petition Party; and emphasise the fact that Dr Hamdi had been refused interviews on other television and radio services and had been banned from appearing on Tunisian broadcast services.

We also noted that the programme included 12 telephone calls from viewers. All were clearly supporters of the Popular Petition Party, including the following:

Caller 3:

*“the first thing we need to do is congratulate ourselves for this victory because we won despite the fact that the Popular Petition is small and new ... Some of us think that the Petition’s votes were affected negatively because you were not present and this had a huge impact ... so I think that you helped them to exclude you”.*

Caller 5:

*“I congratulate brother Al Hamdi ... there were people who wanted to buy votes on the day of the elections. There is among these parties a party I used to be proud of which is Ennahda ... when I saw this I voted for the Popular Petition. I suggest that Dr [Hamdi] runs for the next presidential elections and wish him the best of luck”.*

Caller 12:

*“...I salute you and I salute all those who worked for the Popular Petition ... good luck and hope to see you soon. I hope that you will be Tunisia’s president God willing”.*

We considered that taken overall the programme consisted overwhelmingly of views (including a substantial contribution by Dr Hamdi himself) that were supportive of Dr Hamdi, and of the policies Popular Petition Party, or were critical of other political parties. For example, Ofcom noted in response to Caller 5, Dr Hamdi reported the allegation that the Ennahda party had bought votes and suggested the relevant authorities (“the High Commission of Elections”) should be informed and that there should be a new law introduced that prevents such practices. We noted that the presenter did not comment on the allegation or offer an alternative viewpoint on this issue. He instead stated:

Presenter: *“Until now and organisation-wise there is a lot of praise for the electoral process in Tunisia ... there might be some trespasses as reported by some sources. There are also special committees that handle this...”*.

In addition, the political party in question (Ennahda) was not present to respond to this serious allegation and nor was its viewpoint represented.

Overall the programme dealt with the policies and actions of Dr Hamdi and the Popular Petition Party in the political landscape of the aftermath of the Tunisian General Election. We noted that following the early results of the election, eight seats initially secured by the Popular Petition Party were declared void by the ISIE, prompting the Popular Petition Party to appeal the decision through the Tunisian Administrative Courts. For these reasons (i.e. the political landscape and uncertainty of whether the party would retain its seats and therefore potentially form part of a future coalition government) we considered that the programme did not include sufficient alternative viewpoints on a matter of political controversy and matters relating to current public policy to maintain due impartiality in this case.

This programme when considered alone gave a one-sided view on these matters of political controversy. Further, the broadcaster did not provide any evidence of the viewpoints of, for example, other Tunisian political parties or their supporters, on the aftermath of the Tunisian General Election, the future policy direction of Tunisia and the policy platform of the Popular Petition Party, being included on the channel in a series of programmes taken as a whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience).

In reaching a decision about Rule 5.5 in relation to the 25 October programme, Ofcom took account of all the various general representations concerning due impartiality made by the Licensee as regards the 9 October programme (see above). Ofcom’s responses to those representations are also applicable concerning the 25 October programme.

As regards Rule 5.5 and the 25 October programme, Ofcom also noted some specific and additional submissions made by Al Mustakillah. The Licensee said that once it was clear that the Popular Petition Party had gained a significant number of seats in the Tunisian assembly, it - like other broadcasters such as the BBC and Al Jazeera - requested an interview with Dr Hamdi. Ofcom recognises that, in a programme dealing with the aftermath of the 2011 Tunisian General Election, the Licensee would want to invite the Popular Petition Party to take part<sup>8</sup>. However, the Licensee also had to reflect in the programme as appropriate viewpoints different to

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<sup>8</sup> Subject of course to the prohibition on people providing the Licensee’s service (such as Dr Hamdi) giving their views on air on matters of political or industrial controversy and matters relating to current public policy (see Rule 5.4 below).

that of Dr Hamdi and the Popular Petition Party. Al Mustakillah said it had invited guests from the other main Tunisian political parties to take part in the programme, but they all refused to do so. Merely inviting other political parties to participate in the 25 October programme did not however discharge the Licensee from its obligations under Rule 5.5 to preserve due impartiality. The Licensee was required to reflect appropriately the views of the other main political parties on the matters of political controversy and current public policy being discussed in the 25 October programme and failed to do so for the reasons explained above.

Ofcom therefore considered the 25 October programme to be in breach of Rule 5.5 of the Code.

#### Rule 5.4

Ofcom noted the programme on 25 October 2011 included: an interview with Dr Hamdi which explored the initial results from the election and the election promises of the Popular Petition Party; and Dr Hamdi's views on his future plans and his assertion that other broadcasters did not make reference to the Popular Petition Party even after it was clear the party had secured seats in the Tunisian assembly.

Ofcom noted again Dr Hamdi's role as a compliance officer at Al Mustakillah Television and his role as the chairman and director of the licence holding company, Al Mustakillah (Holdings) Limited. Ofcom therefore considered that for the purposes of considering whether the Licensee had breached Rule 5.4 Dr Hamdi (who is the named Ofcom compliance contact for the service and chairman and director of the licence holding body) expressed his views on the aftermath of the Tunisian General Election, the future policy direction of Tunisia and the policy platform of the Popular Petition party (i.e. a matter of political and industrial controversy and a matter relating to current public policy).

Again, as with the 9 October programme, in reaching this decision Ofcom had regard to the Licensee's representations about Rule 5.4. For the same reasons as already stated above however we did not find Al Mustakillah's arguments at all persuasive.

Ofcom therefore considered that the relevant material was in breach of Rule 5.4 of the Code.

The right to broadcast comes with responsibilities. It is important that broadcasters maintain due impartiality at all times on matters of major political controversy and major matters relating to current public policy. Licensed services must not be used as a mouthpiece for the policies and aims of any one political party, regardless of the circumstances. In particular, Ofcom is greatly concerned that: a person providing an Ofcom-licensed service used their service as a platform to espouse the policies of a political party to which they were closely linked, both during and after an election; the Licensee did not understand its obligations under Sections Five and Six of the Code; and, clearly did not have robust compliance arrangements in place to ensure Al Mustakillah fulfilled those significant obligations.

Ofcom therefore views the breaches in this case as particularly serious. **Al Mustakillah is therefore put on notice that these contraventions of the Code are being considered by Ofcom for the imposition of a statutory sanction.**

***Arab Dream, Al Mustakillah Television, 9 October 2011, 21:00***  
**Breaches of Rules 5.4, 6.1, 5.11 and 5.12**

***Arab Dream*, Al Mustakillah Television, 25 October 2011, 18:00**  
**Breaches of Rules 5.4 and 5.5**

## In Breach

### Girls of the Playboy Mansion

*E! Entertainment, 27 December 2011, 10:00 to 13:00 and 16:00 to 21:00*

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#### Introduction

*Girls of the Playboy Mansion* is a reality television series, filmed in the USA home of Hugh Hefner, the American magazine publisher and founder of the adult entertainment company Playboy Enterprises. It features the day to day activities of a group of women who live with Hugh Hefner in his house, known as the Playboy Mansion. The series was broadcast on the cable and satellite television channel E! Entertainment. The licence for this channel is held by E Entertainment UK Limited (“E Entertainment” or “the Licensee”). The content broadcast on E! Entertainment was complied by E Entertainment UK Limited at the time of the broadcast<sup>1</sup>.

During routine monitoring, Ofcom noted various episodes (each of about thirty minutes duration) of the *Girls of the Playboy Mansion* broadcast consecutively throughout the day and evening on E! Entertainment on 27 December 2011. The programmes featured:

- at 10:54 a male stripper wearing a pouch thong (his buttocks were blurred and genitals covered) thrusting his buttocks into the face of the mother of one of Hugh Hefner’s girlfriends during a lingerie party at the Playboy Mansion with the accompanying comment: “*she needed a good ass in her face*” (this scene and comment were also broadcast as part of a preview at the start of the episode);
- a number of sequences showing women and female glamour models, posing and being photographed during casting sessions for the 55th anniversary Playmate cover (with naked breasts, genitals and buttocks blurred) in consecutive episodes broadcast between 16:00 and 21:00; and
- numerous examples of bleeped and masked offensive and most offensive language.

Ofcom considered the material raised potential issues under the Code because it was broadcast before the watershed and during the school holidays, when children were available to view. It therefore warranted investigation under Rule 1.3 of the Code, which states:

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

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

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<sup>1</sup> In 2011 as a result of an acquisition, E Entertainment UK Group’s London based channels were gradually integrated with NBC Universal’s London based channels. From February 2012, E Entertainment UK’s channels have been complied by NBC Universal.

## Response

NBC Universal on behalf of the Licensee apologised for the inappropriate scheduling of this material. It explained that as soon as the Licensee was alerted to Ofcom's concerns about the content, E Entertainment placed a post-22:00 scheduling restriction on the entire series of *Girls of the Playboy Mansion* until it was fully re-complied and re-edited where necessary.

NBC Universal said it had investigated how the material came to be broadcast. This found that a former member of the E Entertainment UK Limited compliance team had not previously recorded adequate edit and scheduling instructions against the content. As a result information about the programmes was inaccurate.

NBC Universal noted that E Entertainment UK Limited had put in place a new compliance procedure in 2011<sup>2</sup> to ensure that any broadcast content which could raise concerns under the Code would be referred for viewing by a second compliance officer prior to scheduling on E! Entertainment. However this particular series had not been subject to this new procedure. This was because it had been scheduled several weeks ahead of transmission based on the original (and inaccurate) compliance review and prior to the introduction of this new referral process. NBC Universal acknowledged that, despite the advance scheduling of this series ahead of transmission, the subject matter of this series should have warranted its referral by E Entertainment UK for viewing by a second compliance officer.

NBC Universal said that following previous breaches of the Code recorded in issue 195 of the Broadcast Bulletin it had implemented a number of process audits, procedural changes and training initiatives to improve compliance processes, and that the NBC Universal compliance team had assumed control for the compliance function as regards output on E! Entertainment. It said the NBC Universal compliance team was re-complying all material which had previously been complied by E Entertainment UK Limited (totalling more than 1,400 hours) and that no programming will be transmitted on E! Entertainment until it has been re-complied by that team.

## Decision

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

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them.

We first considered whether the material was suitable for children. In Ofcom's opinion these episodes of *Girls in the Playboy Mansion* were clearly unsuitable for children.

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<sup>2</sup> In Broadcast Bulletin 195 (5 December 2011) Ofcom recorded against the Licensee various breaches of Sections One and Two of the Code concerning two programmes broadcast on separate dates in September 2011. In response to these breaches, the Licensee informed Ofcom that it had reviewed and improved its compliance processes. The Licensee said that any content which could raise concerns under the Code "will be subject to viewing by two separate compliance viewers prior to being scheduled". See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb1941/obb195.pdf>



They included prolonged sequences of nudity (albeit with breasts, buttocks and genitals blurred), particularly during the consecutive episodes showing the search for the 55<sup>th</sup> Playboy glamour model. These sequences featured numerous scenes of the models being filmed as they posed and were photographed during casting sessions for Playboy magazine. In addition, there was a sequence of the lingerie party at the Playboy Mansion which featured numerous scantily clad Playboy glamour models posing for the cameras; and shots of a male stripper wearing a thong thrusting his buttocks in the face of the mother of one of Mr Hefner's girlfriends, with a commentary: "*she needed a good ass in her face*". The episodes also featured repeated bleeped and masked offensive language throughout, which (taken together with the scenes of nudity) demonstrated in Ofcom's opinion that these programmes contained themes of an adult nature and were aimed at an adult audience.

We therefore went on to consider whether this material was appropriately scheduled. Ofcom noted that various episodes were broadcast consecutively at various times during the day on a Bank Holiday during the Christmas period when it was likely that children – some unaccompanied by an adult – might have been watching. Also no announcement whatsoever was made before the start of, or between, any of the programmes to warn viewers in advance about their content. In Ofcom's view this material was clearly not scheduled appropriately.

These broadcasts were therefore in breach of Rule 1.3.

Ofcom recently found that on two separate occasions in September 2011 the Licensee broadcast programmes that breached Section One of the Code<sup>3</sup>. In the second of the two recorded breaches in Bulletin 195, Ofcom stated that it had put "E Entertainment on notice that it is particularly concerned about the Licensee's compliance procedures and will proceed to consider further regulatory action should any similar incidents occur."

The contravention of Rule 1.3 is regarded by Ofcom as a serious breach of the Code. Ofcom only recently, on 5 December 2011, recorded Code breaches of a similar nature against E Entertainment and formally put the Licensee on notice that we would take further regulatory action if similar incidents occurred. The Licensee gave assurances to Ofcom that it would improve its compliance arrangements following the September 2011 Code contraventions. Ofcom is concerned that these improvements do not appear to have been quickly and thoroughly implemented. This failure led to the Licensee broadcasting several episodes of *Girls of the Playboy Mansion* on 27 December 2011 which resulted in the present and clear breach of the Code. **Ofcom therefore puts the Licensee on notice that we will consider this breach for the imposition of a statutory sanction.**

### **Breach of Rule 1.3**

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<sup>3</sup> See footnote 2 above.

## In Breach

### The Secrets in the Walls

Channel 5, 20 January 2012, 15:15

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#### Introduction

A complainant alerted Ofcom to the pre-watershed broadcast of the film *The Secrets in the Walls* because of concerns that it contained supernatural and horror themes and images unsuitable for a child audience.

Ofcom noted that this was a made-for-television film about a mother who moves into a new home with her two daughters where, it is later revealed, a young teenage bride had been murdered. Her malevolent spirit now seeks to free itself by possessing the older daughter. The film featured the following scenes:

- the unexpected appearance of the spirit in front of the daughters and at the window of the house, and their reactions of fear and distress;
- 'supernatural' activities such as unexplained music from a jewellery box, slamming doors and flickering lights;
- the older daughter was trapped in the wardrobe screaming and scratching as the light in the wardrobe flickered on and off (it was later revealed that she lost two fingernails from her frantic scratching to get out);
- an attempted "exorcism" to banish the spirit from the house; and
- the "possession" of the older daughter by the spirit.

Ofcom considered the material raised potential issues under the Code because it was broadcast before the watershed and featured content that could be described as typical of a horror genre film. This included scenes of supernatural activity, exorcism and themes of suspense and menace. It therefore warranted investigation under Rule 1.3 of the Code:

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

We therefore sought Channel 5's comments as to how the material complied with this rule.

#### Response

Channel 5 explained that it reviewed the film in its broadcast version again following receipt of Ofcom's request for comments and was of the view that the material should not have been scheduled for broadcast at 15:15.

Channel 5 explained the reasons why the broadcaster took the original decision to show the film in the afternoon. Following acquisition, Channel 5's Scheduling Department had decided the film should be broadcast at this time and marketed it to advertisers before the film was delivered to the Programme Compliance team for review. The compliance team therefore "used their best endeavours" to edit the programme to make it suitable for broadcasting in the afternoon without adversely affecting the editorial narrative in a manner which might confuse viewers.

Channel 5 said that in total 18 edits were made to the film with the aim of reducing the overall horror/thriller tone of the film and this was the version that was broadcast. However, having reviewed this broadcast version, Channel 5 stated: “we are of the view that further significant edits would have been required to make the programme suitable for a 3.15pm timeslot, or, the programme should have been scheduled at a time when children were not likely to be watching. Re-scheduling this version of the programme would have been the preferable solution as further edits...seem likely to compromise the editorial narrative of the programme, distort its meaning and/or confuse viewers”.

Channel 5 set out the steps it had taken to improve its compliance procedures in light of this case. Newly acquired films will be flagged to the compliance team for a preliminary review prior to scheduling to ensure that they are broadcast at appropriate times. In addition Channel 5's Head of Programme Compliance has provided further guidance to the Programme Compliance team to ensure that sufficient edits are requested for programming scheduled when children are likely to be viewing.

## **Decision**

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

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

In considering the material, Ofcom took the view that the subject matter of the film, namely a malevolent spirit residing in a house, did not necessarily exceed the boundaries of acceptability for a pre-watershed film. The issue with content of this nature is whether the treatment of the storyline, within a particular broadcast, complies with the Code and is suitable for a pre-watershed audience.

We first considered whether the material was suitable for children. This film contained themes, sequences and images of menace, threat and suspense as well as specific examples of supernatural activity, exorcism and possession which are typically found in horror films aimed at adult viewers. In one particular example, the mother was asleep in darkness when a shrill scream came from her older daughter's bedroom, piercing the silence. The mother and younger daughter ran to the bedroom and loud scratching and screams for help and “I can't breathe” could be heard. The light in the cupboard flickered on and off as the mother pulled open the doors to release her daughter, whose hands were injured from scratching at the closed doors to escape. These scenes were accompanied throughout by menacing sound effects and music. Further scenes featured the spirit appearing to the daughters unexpectedly in the mirror and at windows; and an attempt to exorcise the spirit that resulted in the woman conducting the exorcism being knocked down violently. In Ofcom's view these themes, sequences and images were unsuitable for child viewers.

We therefore went on to consider whether this material was appropriately scheduled. In Ofcom's view, a number of scenes were seriously disturbing and there was no

contrasting narrative contained within the film to lighten the mood. Further, the end of the film offered no redemptive resolution to the storyline with the spirit appearing in the window as a new family entered the house with a view to purchase. Ofcom noted that there was no warning given before the film began. As the film was broadcast on a weekday from 15:15, at a time when children are likely to be returning from school, Ofcom concluded that it was likely that a number of children would be in the audience, some unaccompanied. Indeed BARB figures indicate that some 35,000 children between the ages of 4 to 14 years old watched this film. The nature of the content and its scheduling in a pre-watershed afternoon slot meant that it was likely that the expectations of the audience were exceeded. The material was therefore not appropriately scheduled and breached of Rule 1.3.

Ofcom was concerned to note that in its response Channel 5 stated that the inappropriate scheduling of this programme occurred because the material was scheduled and marketed “prior to being delivered to Programme Compliance,” and therefore the compliance team had been in effect compelled to edit the material using “their best endeavours” to make the film suitable for broadcast at 15:15. Ofcom acknowledges that, subsequent to this investigation, Channel 5 has taken steps to ensure “that newly acquired films are flagged to Programme Compliance for preliminary review” prior to scheduling. Ofcom, however, expects all broadcasters to ensure that compliance with the Code is fundamental to the process of deciding where material should be scheduled.

### **Breach of Rule 1.3**

## In Breach

### Get Lucky

*Get Lucky TV (Channel 909), 15 February 2012, 21:01 to 21:30*

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#### Introduction

*Dirty Wives* is a segment of interactive ‘adult chat’ advertising content broadcast on the licensed service known as Get Lucky TV (Sky Channel 909). The service is freely available without mandatory restricted access and is situated in the ‘adult’ section of the Sky electronic programme guide (“Sky EPG”). Viewers are invited to contact onscreen presenters via premium rate telephony services (“PRS”). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

The licence for Get Lucky TV is owned and operated by Grandiose Limited (“Grandiose” or “the Licensee”).

Ofcom received a complaint that some content broadcast immediately after the watershed contained sexual images that were too strong to be shown at this time.

Ofcom noted there were three female presenters on screen during the broadcast. The female presenter on the left of the screen was wearing a pink leopard print top, a black high leg thong, black stockings and shoes. From 21:04 this presenter adopted various positions. She knelt facing the camera with her legs open and mimed sexual intercourse and knelt with her bare buttocks to camera at times lifting up a leg to reveal her crotch area in greater detail. On one occasion while in this position, she pulled tightly on her thong and lifted it to reveal anal detail.

Ofcom considered the material raised issues warranting investigation under BCAP Code Rule 32.3, which states:

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

Ofcom asked Grandiose for its comments as to how this content complied with this rule.

#### Response

The Licensee confirmed it had no comments to make on how this content complied with BCAP Code Rule 32.3.

#### Decision

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

Since 1 September 2010 all PRS-based 'daytime chat' and 'adult chat' television services have no longer been regulated as editorial content but as long-form advertising i.e. teleshopping. From that date the relevant standards code for such services became the BCAP Code rather than the Broadcasting Code.

The BCAP Code contains rules which permit 'adult chat' services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of 'adult chat' services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

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

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the "adult" section); any warnings; and mandatory restricted access. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

On 27 July 2011 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the "Chat Service Guidance")<sup>1</sup>. This clearly sets out what Ofcom considers to be acceptable to broadcast on these services post-watershed. In particular, the Chat Service Guidance states that with regard to material broadcast after 21:00 'adult chat' broadcasters should ensure that:

- "After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive. There should not for example be any miming of sexual acts between 9 and 10pm".

In addition, 'adult chat' broadcasters should:

- at no time broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object;
- ensure that presenters' clothing adequately covers their anal, labial or genital areas. They should also avoid adjusting their clothing (including clutching or bunching) which results in anal, labial or genital areas being exposed.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

Ofcom has also made clear in numerous previous published findings that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed<sup>2</sup>.

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

Ofcom noted that between 21:01 and 21:30, the female presenter on the left of the screen wore a high leg thong that revealed her outer genital area. In addition, at approximately 21:07 she was on all fours, with her bare buttocks to camera and briefly pulled tightly on her thong on three occasions to reveal her anal area. While wearing this very skimpy clothing, she adopted sexual positions such as lying on her back with her legs open to camera thrusting forward with her hips, and kneeling facing the camera miming sexual intercourse. The same presenter later but before 21:30: rubbed oil onto her outer genital area and breasts (through her top); slapped her buttocks; massaged her breasts and stroked her outer genital area; and while kneeling with her buttocks side on to camera, pulled her thong down to under her buttocks and gyrated her hips. In Ofcom's view, the revealing clothing and sexual positions and other inappropriate images, including that of anal detail, were intended to be sexually provocative in nature. In light of this behaviour and imagery, Ofcom concluded that this material was clearly unsuitable for children.

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to this broadcast. Ofcom took account of the fact that the channel is in the 'adult' section of the Sky EPG. However, this material was broadcast on a channel without mandatory restricted access in the period immediately after the 21:00 watershed, when some children may have been available to view, some unaccompanied by an adult.

Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the 'adult' section of the Sky EPG without mandatory restricted access directly after the 21:00 watershed. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast and available to view so soon after 21:00, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. The broadcast of such sexualised content was inappropriate to advertise 'adult sex' chat so soon after the 21:00 watershed. This broadcast was therefore in breach of BCAP Code Rule 32.3.

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

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<sup>2</sup> For example:

- *Elite Nights*, Elite TV and Elite TV 2: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>
- *Red Light*: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>
- *Red Light 2*, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb196/obb196.pdf>

## In Breach

### The Anything Goes Show

Bishop FM, 27 February 2012, 19:40

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#### Introduction

Bishop FM is a community radio station serving south-west County Durham. Ofcom received a complaint from a listener who objected to two instances of offensive language being broadcast.

On assessing this programme, Ofcom noted that during *The Anything Goes Show*, a pre-recorded interview with members of a band was played during which two instances of the word “fuck” were audible eleven seconds apart. We noted that after each of the two instances, the sound appeared to be dipped, and after the second instance of the word “fuck”, the two presenters made the following apology:

Presenter 1: “[Inaudible] *interview there. I do apologise for that language. I thought Mr. Jones [inaudible]*”.

Presenter 2: *“I do apologise”*.

Presenter 1: *“Still, he’s gone bright red”*.

Presenter 2: *“I really do apologise for that. Yeah, rock and roll, that’s what they’re like...”*.

Presenter 1: *“Well, we haven’t heard the track there. We’ll play that one again on Thursday night!”*

Presenter 1: *“We will”*.

Rule 1.14 of the Code states that “the most offensive language must not be broadcast... when children are particularly likely to be listening...”. Ofcom noted that this programme was broadcast at 19:40, at a time when few children were likely to have been listening to this station. Ofcom therefore considered that children were not particularly likely to have been listening to the broadcast, and therefore we did not consider this content raised issues warranting investigation under Rule 1.14 of the Code.

Ofcom however considered that the material raised issues warranting investigation under Rule 2.3 of the Code:

Rule 2.3: “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, offensive language, ... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

#### Response

Bishop FM said that it and the presenters in this case apologised for any offence caused. Further, Bishop FM explained the various steps it had taken following the



broadcast, including: removing the presenters from Bishop FM's programme schedule; introducing "controls on the content of pre-recorded interviews prior to broadcasting"; and introducing further training with regard to the Code and in particular the use of offensive language on radio. In addition, Bishop FM said it would "work diligently to prevent further instances of this nature".

## Decision

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

Rule 2.3 of the Code states that "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ...".

Ofcom first considered whether the material was capable of causing offence. Ofcom research on offensive language<sup>1</sup> clearly notes that the word "fuck" and its derivatives are considered by audiences to be amongst the most offensive. In this case, Ofcom noted two instances of the word "fuck" were broadcast at 19:40 within a very short period within a pre-recorded interview, and were therefore clearly capable of causing offence.

We considered whether the offensive language in this broadcast was justified by the context. We took into account factors such as the editorial content of the programme; the likely expectations of the audience; and the nature of the offensive content in this case.

This live programme included a pre-recorded interview with members of a band. In this case, two instances of the most offensive language were broadcast, and were clearly audible. We considered that the use of this language was likely to have gone beyond the expectations of the audience for a programme of this type broadcast in the early evening on a community radio station, especially for those in the audience who came across this material unawares. In our view, this was confirmed by: the apparent attempts taken during the broadcast to dip the sound after each of the instances of offensive language was broadcast; and the on-air apology given by the two presenters in this case. Ofcom also took account of the fact that there was no warning given to listeners before this item containing the strong language was broadcast.

Ofcom acknowledges that ensuring live broadcasts abide by the Code poses particular challenges for compliance. In this case however the most offensive language broadcast was included in a pre-recorded segment within this live programme. By allowing the broadcast of this material it appears that the Licensee had not checked and ensured in advance whether the pre-recorded material as broadcast contained the most offensive language and so was suitable for broadcast on this station in the early evening.

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

Ofcom noted that the two presenters did apologise immediately after broadcast of the bad language. This may to some extent have lessened any offence which might have been caused to listeners. On balance however Ofcom concluded that the potential offence was not justified by the context and the broadcaster did not apply generally accepted standards in this case.

There was therefore a breach of Rule 2.3 of the Code.

In reaching our decision, we took into account the steps taken by Bishop FM to improve compliance following the broadcast in this case. However, this case follows other breaches of the Code<sup>2</sup> recorded against Bishop FM involving offensive language. In that case, we welcomed the action to improve compliance taken by Bishop FM. We are concerned that a further similar breach has been recorded against the station, and therefore we would expect no further such instances in future.

Broadcasters should be aware that Ofcom has recently published Guidance on the use of offensive language on radio to guide broadcasters in this area:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

### **Breach of Rule 2.3**

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<sup>2</sup> See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

## In Breach

### Funky Sensation with Mike Vitti

Jazz FM, 18 February 2012, 19:15

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#### Introduction

Jazz FM is a commercial radio service available on the national digital multiplex, DAB radio and via satellite platforms. It broadcasts a combination of classic and contemporary jazz, blues and soul music. The licence holder for this service is Jazz FM Investments Limited (“Jazz FM” or “the Licensee”).

Three listeners alerted Ofcom to offensive language and inappropriate content broadcast on Jazz FM at 19:15 during the above programme. Ofcom noted that at around 19:15, and lasting for approximately five minutes, the broadcast included the clearly audible sounds of sexual activity. The material included breathing and groaning and nine uses of the word “fuck”. This content was broadcast over a music track and advertisement break.

Ofcom first assessed whether the material raised issues warranting investigation under Rule 1.14, which states:

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

Ofcom noted that this programming was broadcast on a Saturday at 19:15, during school term time, when normally a very small number of children listen to this station which is aimed at an adult audience aged between 35 and 55. Ofcom’s guidance states that when deciding whether a radio broadcast is made at a time when “children are particularly likely to be listening”, broadcasters should have particular regard to content broadcast at weekends between 06:00 and 19:00.<sup>1</sup> Ofcom therefore concluded that children were not particularly likely to have been listening to the broadcast on this station, and therefore we did not consider this content raised issues warranting investigation under Rule 1.14 of the Code.

However, Ofcom did consider the material raised issues warranting investigation under Rule 2.3 of the Code, which states:

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

Ofcom therefore requested comments from the Licensee on how the programme material complied with Rule 2.3.

#### Response

Jazz FM said that during the broadcast of the pre-recorded programme, *Funky Sensation with Mike Vitti*, a member of the Jazz FM Presentation team opened a personal email on the studio computer and accessed a weblink containing pornographic content; but by mistake left the sound fader linked to this computer

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<sup>1</sup> Ofcom guidance: Offensive language on radio, 20 December 2011:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

open on the broadcast console. This resulted in the broadcast of the audio of the pornographic content.

The Licensee said that it “launched a full investigation into the matter and the individual who inadvertently caused the material to be broadcast has now left Jazz FM”. The Licensee explained that as soon as the inappropriate content was heard, the Jazz FM engineer was immediately contacted and he remotely accessed the studio and disconnected the studio and the feed that was playing out the pornographic material. The pre-recorded edition of the programme and advertisements continued to play out.

Jazz FM said that it “is acutely aware of the potential offence broadcasting any such content may cause and issued an apology and explanation at 20:00 on 18 February 2012 on the station website ... and via social media networks”. The Licensee explained that it was unable to issue an apology during the show broadcast on 18 February 2012 because the programme was pre-recorded. Instead it issued a “full and frank apology” in the next live edition of programme on 25 February 2012.

Following this incident, the Licensee said it has implemented the following measures to improve compliance: changes have been made to the station play-out system to ensure that the live studio when not in use cannot play out any material; the personal computer used in the studio has been altered so it cannot be used to communicate with sources outside the building and content accessed on it through the internet can no longer be broadcast; presenters and producers have been reminded of their responsibilities and of the consequences of misuse of company property; and, a complete review of the company phone and internet usage policy has begun.

Jazz FM said that it alerted Ofcom to the error at the earliest opportunity and ensured that the regulator was kept informed of the internal investigation that was conducted at the station.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that: “generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and / or offensive material”. This objective is reflected in Section Two of the Code.

Rule 2.3 of the Code requires that “in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ...”.

Ofcom first considered whether the material was capable of causing offence. Ofcom’s research on offensive language<sup>2</sup> indicates that the word “fuck” and its derivatives are examples of the most offensive language. Ofcom was also of the view that most listeners would have understood quickly that the sounds were of sexual activity. In Ofcom’s view, the broadcast of this content in this programming clearly had the potential to offend.

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

Ofcom went on to consider whether the potential offence was justified by the context. In particular we took into account the editorial content of the programme and the composition and expectations of the audience.

Ofcom noted the offensive material was broadcast during a pre-recorded edition of the programme, *Funky Sensation with Mike Vitti*. This programme is described on the station website as: "Mike presents a winning mix of funk, sultry soul, classic jazz/funk and disco floor fillers". We also noted that Jazz FM is aimed at an adult audience aged between 35 and 55.

In our view, given that the broadcast included repeated instances of the most offensive language in the context of the clearly audible sounds of sexual activity, we considered that the material had the potential to cause considerable offence, especially for listeners who came across this content unawares. It was also likely to have gone beyond the expectations of the audience for a DJ-led weekend, early evening programme of this type.

We also took into account that 40 minutes after the broadcast Jazz FM published an apology on its website and via social media networks such as Twitter. However, we noted no apology was broadcast on the service during the programme, or immediately afterwards or later that same evening to help mitigate any offence caused. Instead an apology was broadcast during the following live edition of the programme seven days later. The Licensee's explanation for this was that the programme broadcast on 18 February 2012 was pre-recorded and therefore the broadcast of an apology was not possible during the broadcast.

Ofcom was concerned that a radio service broadcasting on the national digital multiplex and satellite platform did not have appropriate compliance systems in place to respond to the incident in a more timely and appropriate fashion: both to stop the broadcast of inappropriate material for such an extended period (about five minutes) and to apologise more quickly. Broadcasters are reminded that, regardless of whether a programme is broadcast live or pre-recorded, licensees are required to have adequate compliance procedures in place at all times.

Ofcom noted that the broadcast of the offensive material in this case was the result of an error by an individual working for Jazz FM who no longer works for the Licensee; and that the Licensee said that extra compliance measures had been implemented in response to this incident.

However generally accepted standards were not applied in this instance and Rule 2.3 was breached.

Ofcom does not expect any similar compliance failures by Jazz FM.

### **Breach of Rule 2.3**

## In Breach

### Find My Past's sponsorship of various programmes

*Blighty, Watch and Yesterday, 15 July 2010 to present, various dates and times*

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#### Introduction

Blighty, Watch and Yesterday are channels licensed to UK Channel Management Limited, UK Gold Services Limited, and UKTV New Ventures Limited respectively. Although each channel is licensed to a different licensee company, the channels are under common ownership and share a programme compliance team. Therefore, in this finding, the three licensees will be referred to collectively as "UKTV" or the "Licensee".

Blighty broadcasts programmes about modern Britain, Watch is an entertainment channel and Yesterday broadcasts history programmes and historical dramas. All three channels are broadcast on cable and satellite platforms, while Yesterday is also broadcast on the Freeview platform.

Each channel broadcast sponsorship credits around various programmes for the genealogical search engine [findmypast.co.uk](http://findmypast.co.uk).

There were nine different credits. Each credit consisted of a woman using a laptop while also speaking to a character from a point in history. This is followed by the following voiceover: "*Find My Past sponsors [programme name].*" Simultaneously, "*findmypast.co.uk. search with the experts*" appears as on-screen text in either the top or bottom-right hand corner of the screen.

The following is an example of one of the credits:

A woman is using a laptop. A suffragette appears and says to the woman, "*And what did you do for women's rights?*" The woman responds, "*I burnt my bra in the 1960s!*" The suffragette gasps.

Voiceover: "*Find My Past sponsors [programme name].*"  
On-screen text: "*findmypast.co.uk. search with the experts.*"

On Blighty, the credits appeared around *Who Do You Think You Are?* and *Victorian Garden Kitchen*. On Watch, the credits appeared around *Heir Hunters* and *Who Do You Think You Are?*

On Yesterday, the credits appeared around *Victorian Pharmacy*, *Ration Book Britain*, *Land Girls*, *Fred Dibnah's Made in Britain*, *The Channel Islands at War*, *Andrew Marr's Making of Modern Britain*, *Wainwright's Walks*, *Who Do You Think You Are?*, *After the War was Won* and Catherine Cookson dramas.

Ofcom considered that the on-screen text in these credits raised issues warranting investigation under Rule 9.22(a) of the Code, which states:

"Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third

party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement."

We therefore sought UKTV's comments on how the sponsorship credits complied with this rule.

## Response

UKTV said that it considered that the sponsorship credits complied with Rule 9.22(a) as it did not consider the strapline "*search with the experts*" to be either a call to action or an advertising message.

UKTV considered the word "*search*" was "... an explicit reference to the sponsor's service in order to help clarify what they do" and that the word was "not intended to be interpreted as an imperative verb, as [UKTV is] aware that sponsorship credits cannot contain a call to action."

The Licensee submitted that the strapline used neutral language and appeared in text only. UKTV continued that the strapline "does not suggest that one should 'go and search' or 'search now'" and therefore it is not a call to action. Rather, UKTV considered that the strapline helped to clarify the purpose of the sponsor's service.

UKTV explained that it considered the word "experts" to be a subjective term. UKTV submitted that if someone wanted to undertake a genealogical search they would not use a regular search engine, but would use a specific "expert", niche search engine such as Find My Past. Therefore, the strapline "*search with the experts*" was included in the sponsorship credit to "help better define the sponsor's service".

UKTV also considered to the use of the word "*expert*" to be "recognised 'puffery' associated with sponsorship arrangements".

However, UKTV explained that it was working with its creative agency to produce a new set of sponsorship credits to address these issues.

## Decision

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

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

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, and that credits must not encourage the purchase or rental of the products or

services of the sponsor or a third party. It also makes clear that explicit references in sponsorship credits to the sponsor's products, services or trade marks must be for the "sole purpose" of helping to identify the sponsor and/or the sponsorship arrangement.

As Ofcom's guidance to Rule 9.22(a) makes clear, the rule "permits references to the products and services of a sponsor in sponsorship credits. However, care is needed to ensure that such references do not constitute advertising messages". Further, the guidance states that "any direct appeals to the viewer to buy or try the sponsor's goods or services...are likely to breach Rule 9.22".

In this case Ofcom noted UKTV's argument that the term "search" was an explicit reference to the sponsor's service "in order to help clarify what they do". However, we considered that the strapline "*search with the experts*", with its clear use of the imperative form of the verb, was an invitation to viewers to use the Find My Past website to search for genealogical records. Ofcom therefore concluded that, irrespective of this being a description of the sponsor's business, the strapline "*search with the experts*" was a call to action to viewers to use the sponsor's service, in breach of Rule 9.22(a).

Ofcom also considered that combining this call to action with a description of the sponsor as "*experts*" was an advertising message, because it amounted to a claim that users of the website would benefit from the skill and knowledge of experts in the field of genealogy. Ofcom did not accept that the strapline was "puffery" or that the word "experts" was a subjective term: it was a claim about the quality of the sponsor's service. Ofcom therefore found the sponsorship credits in breach of Rule 9.22(a).

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



## In Breach

### Bits n Bytes

Channel S, 10 December 2011, 20:00

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#### Introduction

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

*Bits n Bytes* is a weekly IT and technology advice and review programme. This edition of the programme included a viewer competition to win an iPod and an Islamic CD.

Ofcom received a complaint from a viewer who was concerned that the cost to enter the competition by telephone or text message was not stated during the programme.

On viewing the programme, Ofcom noted that, to enter the competition viewers were required to either call a premium-rate telephone (“PRS”) number and provide the answer ‘A’, ‘B’ or ‘C’. Alternatively, viewers could send a text message stating ‘BB’ and their answer ‘A’, ‘B’ or ‘C’ to a premium-rate shortcode number. An on-screen banner message stated: “*charges may vary at different networks*” but no other information about the cost of a PRS call or text message was provided to viewers.

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

Rule 9.30: “The cost to viewers for using premium rate telephony services must be made clear to them and broadcast as appropriate.”

In the course of Ofcom’s initial correspondence with the Licensee, Channel S explained that the PRS telephone and text message numbers had been broadcast in error and were in fact invalid. This meant that viewers could not enter the competition by the entry routes detailed in the banner. Channel S explained that, as a result, it had selected the competition winner by email, as it had also provided an email address at another point during the programme.

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

Rule 2.13: “Broadcast competitions... must be conducted fairly”; and

Rule 2.14: “Broadcasters must ensure that viewers... are not materially misled about any broadcast competition...”.

Further, third party verification is required for all competitions (and voting schemes) that offer to viewers a means of registering a vote or entering a competition using PRS and that are publicised in programming.

Television Licensable Content Service (TLCS) Licence Condition 6(A)(3)(b) sets out requirements for the handling of communications from viewers. It states:

“Where the Licensee uses a Controlled Premium Rate Service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures include a system of verification by an appropriate independent third party...”.

We therefore sought Channel S’s comments on how the viewer competition complied with Rules 2.13, 2.14 and 9.30. We also asked Channel S to confirm whether or not it had third party verification procedures in place for this competition.

## Response

Channel S stated that the banner which displayed the competition information was incorrect and had been included by the editor by mistake. It submitted that the banner which should have been used in the programme explained that competition entry was by text message only and to a different PRS shortcode number than the one broadcast in error. Channel S said that the correct banner should have stated: “£1.02 per text. 16+ and prior permission from the bill payer. Different networks may vary.” Channel S explained that it had taken disciplinary action against the member of staff responsible for the mistake.

The Licensee explained that the PRS telephone number was “a dead line”, so viewers who called the number would not have been charged. In the case of the PRS text message shortcode, Channel S explained that if viewers had texted the ‘trigger’ “BB”, it would have been invalid as this ‘trigger’ had not been registered with its PRS service provider. The Licensee said therefore that viewers who had attempted to enter the competition by texting “BB” and their answer ‘A’, ‘B’ or ‘C’ to the PRS shortcode would not have been charged at premium rate, although they would have been charged their standard network rate.

Channel S said that the competition was conducted fairly because, given that the PRS telephone and text message shortcode methods of entry were invalid, viewers who attempted to enter using these methods were not charged.

Furthermore, the Licensee submitted that the competition was conducted fairly because, as no PRS entries were received (because viewers could not enter the competition by the entry routes detailed in the on-screen banner), a winner was selected via email. Channel S said that its terms and conditions are published on its website and state that viewers can enter its on-air competitions via email. The Licensee said that it had also broadcast an email address during the programme.

With regards to its compliance with TLCS Licence Condition 6(A)(3)(b), Channel S provided an email from its PRS supplier which stated that the supplier had a Prior Permission certificate from PhonepayPlus<sup>1</sup>.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “generally accepted standards are applied to the contents of

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<sup>1</sup> Prior permission is required for identified categories of premium rate services which pose a greater risk of harm to users because of their content/cost. These types of services can only be operated if PhonepayPlus has provided written prior permission.

television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material". This objective is reflected in various Code rules including Rules 2.13, 2.14 and 9.30.

In recent years, Ofcom has recorded numerous breaches of its rules relating to audience competitions. Ofcom has made it clear that it expects all broadcasters to exercise particular caution when inviting audiences to enter broadcast competitions, especially where they are required to pay a premium rate to participate.

#### Rule 2.13

When a broadcaster invites its audience to enter a competition, Ofcom expects it to make clear all the possible routes of entry to that competition. It is not sufficient to rely solely on statements about permissible methods of competition entry in terms and conditions published on a website for example. To ensure that the competition is conducted fairly and all potential competition entrants are aware of all methods of entry, they should be clearly publicised during the programme, so that all viewers are made aware of how to enter.

Ofcom noted that an email address was broadcast during the programme. However we also noted that the presenter said that its purpose was to provide feedback on the programme or apply to be a programme guest. The email address was not described during the programme as a means of entry to the competition. Ofcom therefore considered that the competition was not conducted fairly because the winner was selected from email entries when it was not made clear to viewers that they could enter by email. The competition was therefore in breach of Rule 2.13.

#### Rule 2.14

Ofcom noted that an incorrect banner had been used to promote this competition. Ofcom also noted the Licensee's confirmation that anyone who had attempted to enter by phone or text message would not have been charged at premium rate, as the relevant lines were closed.

Nevertheless, we also noted that standard network charges could have applied to viewers who had attempted to enter by text message.

Ofcom took into account that any such costs for attempted entry were likely to have been low (in the region of 10 or 12 pence), and to have applied to only a few viewers, if any, although Channel S were unable to confirm how many. Nevertheless the broadcaster had failed to ensure that its viewers were not materially misled. Channel S told its viewers that they could pay to enter the competition when in fact they could not by the entry routes described on air, in breach of Rule 2.14.

#### Rule 9.30

Rule 9.30 seeks to protect viewers from financial harm by requiring that the cost to viewers for using PRS must be made clear to them and broadcast as appropriate.

In this case, viewers would not have been charged at premium rate for attempting to enter the competition because the PRS telephone or text message shortcode numbers were invalid. However, viewers who attempted to enter the competition by text message could have been charged a standard network rate of approximately 10 or 12 pence.

Notwithstanding that the PRS telephone and text message shortcode numbers were invalid, Channel S had failed to inform its viewers of how much it would cost to enter the competition (i.e. the PRS charges and that standard network charges could apply

to text messages). Ofcom therefore found Channel S in breach of Rule 9.30 of the Code.

TLCS Licence Condition 6(A)(3)(b)

Third party verification is required for all competitions (and voting schemes) that offer to viewers a means of registering a vote or entering a competition using PRS and that are publicised in television programming.

In summary, third party verification requires that:

- a suitable, independent third party must be engaged by the licensee to assess and advise on the systems used for the receipt and handling of PRS communications from viewers. This assessment and advice must be fully documented;
- the third party must also conduct appropriately regular reviews of competitions (and PRS voting) in individual programmes. These reviews must track all entries through all stages from receipt onwards. These reviews must be fully documented;
- a licensee must appoint a designated Director with specific responsibility for verification;
- reports from the third party verifier regarding the assessment of systems and the reviews of individual programmes must be provided to the designated Director;
- a licensee must publish annually a statement signed by the designated Director confirming that he is satisfied that the licensee has in place suitable procedures to fulfil the requirements of the licence variation and confirming the name of the third party engaged by the Licensee to fulfil the verification requirements; and
- all relevant data regarding votes and competition entries, and all documentation in respect of third party systems verification and individual programme reviews must be retained for at least two years.

Throughout 2007 and 2008, whether in sanctions adjudications, published findings, additional guidance and via the introduction of the PRS verification licence condition, Ofcom had made it clear to all its licensees that it expects extreme caution to be exercised in the use of PRS in programme.

Broadcasters should be aware that any service provider they contract with for broadcast PRS services must hold the necessary prior permission certificate from PhonepayPlus to demonstrate that it has sufficient technical capacity, expertise and contractual clarity to be able to provide PRS services to broadcasters. However, Ofcom was extremely concerned that Channel S considered its PRS supplier's PhonepayPlus prior permission certificate to be sufficient evidence that Channel S had in place an appropriate system of third party verification.

Had Channel S read Ofcom's Guidance to television broadcasters on verification obligations for the use of PRS in programmes<sup>2</sup>, it would have been aware of what is meant by a system of third party verification and that this is required *in addition to* its PRS supplier holding a PhonepayPlus prior permission certificate.

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<sup>2</sup> See: [http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/guidance\\_verification\\_obj.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/guidance_verification_obj.pdf)

Ofcom now expects the Licensee to take appropriate steps to ensure its compliance in this area before using PRS for any other broadcast competition. Any recurrence of similar breaches is likely to result in Ofcom taking further regulatory action.

**Breaches of Rules 2.13, 2.14 and 9.30 and TLCS Licence Condition 6(A)(3)(b)**

## Resolved / Not In Breach

### 606

*BBC Radio 5 Live, 25 February 2012, 19:22*

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#### Introduction

606 is a weekly live football-related 'phone-in' programme. Ofcom received a complaint from a listener who objected to instances of offensive language being broadcast during a live telephone interview.

The presenter of 606, Mark Chapman, conducted an interview with the Chairman of AFC Bournemouth, Eddie Mitchell, following the team's one-nil defeat earlier that Saturday by Milton Keynes Dons. In the interview, Mark Chapman asked Eddie Mitchell about a rumour that the wife of the Russian co-owner of AFC Bournemouth, Maxim Denim, had given a team talk at the half-time of that day's match involving the club.

We noted the following exchanges that occurred during the interview between Eddie Mitchell ("EM") and Mark Chapman ("MC"):

EM: *"[Maxim Denim]'s wife came to the ground today to watch the game. She's a very passionate person. She's not very football intelligent, but she watched the first half and asked me if she could come and watch the players come into the tunnel and wish them all the best. And they came into the tunnel, and obviously we were one-nil down at half-time and they were a bit pissed off...I invited her into the changing room at half-time and she wished the boys the best in the world...By and large Bournemouth Football Club is a football club for everybody: the supporters from the top to the bottom, and Mr. and Mrs. Denim have put a lot of energy, a lot of time, a lot of hard work into this football club, that has got us from the brink to where we are now. I am not going to deny them the opportunity to meet the players whom they indirectly employ..."*

MC: *"So, Eddie, if it's a club for everybody from top to bottom, and you have a season ticket holder who pays out all his money every single week to watch you at home and probably travels away as well, and he collared you at half-time and he said: 'Could I pop in at half-time and wish the players luck for the second half'. Would you allow it?"*

EM: *"Well, that's a load of bollocks because..."*

MC: *"Eddie! Eddie! Eddie, don't talk to me like that. Why is it? You just said – you know – if you want to argue with me, argue with me. Don't swear at me when kids are listening"*

EM: *"We are a family club. We believe in expressing our gratitude to anybody who's got a penny or a pound to spend on this club, to wish it well. And because we've been, well I won't say, but fucked in the past..."*

MC: *"Eddie! Eddie! Eddie!"*

EM: *"We ain't..."*

MC: *“Eddie! Eddie! Eddie! Eddie! Eddie! Eddie! Get rid of him! Get rid of him!”*

EM: *“No”.*

MC: *“Get rid of him! Get rid of him! I don’t care who you are; you do not come on this show which is listened to by fans of all ages and swear: not once, not twice, but three times. And I am not having somebody coming on and swearing three times when there are kids listening. If you’re listening to the show then I apologise for the language that Eddie Mitchell has just used. And if you’re a Bournemouth fan, I would have a word with yourself this evening about the kind of man who comes on air and without being provoked in any shape or form chooses to swear at us three times...Apologies once again, particularly if you’re driving home at the moment, and you’ve got your kids in the car and had to listen to that nonsense”.*

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

Rule 1.14: “The most offensive language must not be broadcast...when children are particularly likely to be listening...”.

Rule 1.16: “Offensive language must not be broadcast...when children are particularly likely to be listening...unless it is justified by the context...”.

Rule 2.3: “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, offensive language, ... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

Ofcom asked the BBC to provide comments on how the programme complied with the above rules.

## **Response**

The BBC confirmed to Ofcom it had no representations to make on the matter.

## **Decision**

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

In this case, Ofcom noted one instance of each of the words “fuck”, “bollocks” and “pissed [off]” was broadcast within this programme.

### **Rule 1.14**

Rule 1.14 of the Code states that “the most offensive language must not be broadcast... when children are particularly likely to be listening...”.

Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive. Such language is unacceptable when children are particularly likely to be listening, whatever the audience profile of the station. Ofcom’s research on offensive language also found that the words “bollocks” and “pissed [off]” are considered generally acceptable, because they are frequently used in everyday life and are not usually used in a context which is likely to offend people.

In Ofcom’s Guidance on use of offensive language on radio<sup>2</sup>, we state that for the purpose of determining when children are particularly likely to be listening, broadcasters should have particular regard to content broadcast between 6am and 7pm at weekends. However, the Guidance also states that outside these times care should be taken concerning the use of offensive language on radio.

In this case, we considered that although an instance of the most offensive language (“*fuck*”) was used at just after 7.20pm on a Saturday night, we considered that it was possible that a relatively high number of children may have been listening on this particular occasion, because 606 is a football ‘phone-in’ programme aimed at a mixed audience. We note that Mark Chapman specifically referred to him broadcasting at a time “*when kids are listening*”. Therefore, Ofcom concluded that this broadcast did take place at a time when children were particularly likely to be listening to this station.

We acknowledge the particular challenges of live broadcasting and in particular where contributors use offensive language. However, as Ofcom’s Guidance on offensive language in radio makes clear, broadcasters should be vigilant during live broadcasts for any potential breaches of the Code and where necessary take timely appropriate action during the broadcast, ideally to prevent or, if necessary, to mitigate them. If offensive language is broadcast at a time when children are particularly likely to be listening, the broadcaster should apologise, as appropriate, at the earliest opportunity, to mitigate any offence.

In this case, we noted that the presenter, following the use of the most offensive language: strongly rebuked the contributor in question; instructed the contributor to be cut off; and handled the incident appropriately, in particular, by giving an immediate and unequivocal apology to the audience. Given these series of steps taken by the BBC, we considered that this case was resolved in respect of Rule 1.14 of the Code.

#### Rule 1.16

Rule 1.16 of the Code states that “Offensive language must not be broadcast...when children are particularly likely to be listening...unless it is justified by the context...”.

In this case, we noted that the words “*bollocks*” and “*pissed [off]*” were broadcast as part of a live interview. Although, we considered that this was a time when children were particularly likely to be listening, on balance, most listeners would have considered these terms to be generally acceptable, because they are frequently used

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

<sup>2</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>



in everyday life. Therefore, we considered that there was no breach of Rule 1.16 in this case.

### Rule 2.3

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

As already noted, Ofcom research on offensive language<sup>3</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive.

We therefore considered whether the use of this word in this broadcast was justified by the context. We took into account factors such as the likely composition of the audience; and the nature of the offensive content in this case. In this case, the word “fucked” was broadcast once, and was clearly audible. We considered that the use of this language was likely to have gone beyond the expectations of the audience for a football phone-in programme, aimed at a mixed audience, broadcast early on a Saturday evening on a BBC national radio station.

Ofcom acknowledges that during live broadcasts, when offensive language is used, the issuing of an apology, at the earliest opportunity, can mitigate any offence. In this case, we noted that the presenter, following the use of the most offensive language: strongly rebuked the contributor in question; instructed the contributor to be cut off; and handled the incident appropriately, in particular, by giving an immediate and unequivocal apology to the audience. Given these steps taken by the BBC to mitigate any offence caused, we consider that this case was also resolved in respect of Rule 2.3 of the Code.

Broadcasters should be aware that Ofcom has recently published Guidance on the use of offensive language on radio to guide broadcasters in this area:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

**Resolved in respect of Rules 1.14 and 2.3  
Not in Breach of Rule 1.16**

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<sup>3</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

## Broadcast Licensing Cases

### In Breach

#### Breach of Licence Condition

*Rossendale Radio, community radio service for Rossendale Uplands*

*5 March to 16 April 2012*

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#### Introduction

Rossendale Radio was a community radio station licensed to provide a service for the population of the Rossendale Uplands in Lancashire. It started broadcasting on 26 April 2010. The licence was held by Agapao International ("the Licensee").

Community radio licences are granted for a five-year period and broadcasting a service, as well as providing other outputs (such as opportunities for volunteers) described in the licence, is required throughout the licence period.

On 5 March 2012 the station manager of Rossendale Radio contacted Ofcom to enquire about the procedure for surrendering a community radio licence. He explained that the financial situation at the station meant that it may have to close, and the Licensee was unlikely to request a transfer of the licence to a new owner, but gave no indication of a timeframe for when a decision might be made about the station's future. Later that same day, however, the owner of the technical equipment that the station uses to broadcast its service contacted Ofcom to say that he was going to be removing transmission and studio equipment that evening. He also indicated that the station had stopped broadcasting at 3pm.

On 6 March, we contacted the Licensee whose representative confirmed that the station had indeed ceased broadcasting at 3pm the previous day.

At the same time, we became aware that a statement had been posted on Radio Rossendale's website, which said: "Rossendale Radio has experienced financial difficulties for the past 18 months. Despite the best efforts of a number of individuals and organisations to resolve the issues, it has been made clear that the problems are insurmountable and it is with deep regret that Rossendale Radio is being forced to close down. Following meetings and discussions with an independent financial advisor, involving the staff members of Rossendale Radio Station Limited, Agapao International and REAL, it was made apparent that Rossendale Radio is not viable and it is with great sadness that Rossendale Radio must cease live broadcast from 3pm on Monday 5<sup>th</sup> March 2012. The team involved would like to take this opportunity to thank everyone for your support."

Accordingly, on 9 March Ofcom wrote to the Licensee to ask how it was complying with the following two conditions in its licence relating to the delivery of its service:

Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:

"The Licensee shall provide the Licensed Service specified in the Annex<sup>1</sup> for the licence period."

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<sup>1</sup> The annex sets out the radio station's 'key commitments'. The key commitments 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,

Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex<sup>2</sup> so as to maintain the character of the Licensed Service throughout the licence period.”

## Response

The Licensee replied on 21 March. The letter said “Agapao International was granted the broadcasting licence transfer from Rossendale Radio CIC in November 2011. This decision was made purely as a ‘stop gap’, as the focus of our work is the relief of poverty in developing countries; the station operates from our building, relationships had been forged and it had become a valuable asset in the Valley. The intention was to find another organisation to support it long term to allow Agapao to revert back to its core objects.”

The letter went on to explain that it had explored the possibility of finding another organisation to take over the licence and the running of the radio service. An organisation looking into the matter for the Licensee “had appointed an independent financial advisor who had concluded that the company is not viable and that it needed to liquidate. A meeting was arranged with the staff for 12 noon on the 5th March ... where the situation was explained and the conclusion drawn that the station had to close immediately to avoid further debts. A statement was read out on-air at 3pm and the station ceased live broadcasting.”

“The owner of the transmission equipment was notified and, as he was not going to be receiving future payment, he arrived at 6pm to collect his items which resulted in 104.7fm going off air. Later that same evening, an email arrived from an interested party who offered to get the station back open. They have experience of running community stations, the transmission equipment needed and the ability to take on the license, if agreed by Ofcom<sup>3</sup>. We are pursuing this course of action and hope to be broadcasting within a couple of weeks. We would ask that grace be given to allow the partnership to develop, which would restore a much valued asset to this community.”

No request to transfer the licence was made, and on 16 April the Licensee surrendered the licence

## Decision

By ceasing to provide its licensed service from 5 March 2012, the Licensee was in breach of licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence. Ofcom has therefore formally recorded this breach by Agapao International.

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opportunities to participate in the operation and management of the service, and accountability to the community. Rossendale Radio’s key commitments can be found here <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr159.pdf>

<sup>2</sup> See footnote 1.

<sup>3</sup> A licence can only be transferred from one body to another with the written consent of Ofcom. The legislation stipulates that such consent shall not be given unless Ofcom is satisfied that the person (body or company) to whom it is proposed to transfer the Licence would be in a position to comply with all of the licence conditions throughout the remainder of the licence period.

The Licensee set out the circumstances that had led to its decision to cease broadcasting. We note that this was as a result of financial difficulties. However, the Licensee did not notify Ofcom directly that it had ceased broadcasting. In addition, the Licensee allowed transmission equipment to be removed, so that it could not resume broadcasting. Following these decisions, the Licensee was approached by a number of interested parties about the possibility of requesting Ofcom to transfer the licence. However, the service was not being provided during this period.

In its response of 21 March the Licensee indicated that it may request that the licence be transferred, and that it expected to resume broadcasting “within a couple of weeks” (i.e. before 4 April). However the station did not resume broadcasting and nor did Ofcom receive a request to transfer the licence.

Provision by a Licensee of its licensed service is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided. In addition, choice for listeners is reduced.

The Licensee did not specifically state whether ‘off-air’ activities included in the licence (as set out in the Licensee’s key commitments) were being delivered. These include ‘social gain’ (such as training programmes) and access to and participation in the service (volunteering opportunities, for example). Taking into account the Licensee’s confirmation that it announced that the station had closed down, it seems unlikely that off-air key commitment activities were being delivered. This was to the potential disadvantage of the target community.

It is a duty placed upon Ofcom to ensure optimal use is made of the electromagnetic spectrum. The non-provision of its licensed radio service by Agapao International was not optimal use of that radio spectrum.

**Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence formerly held by Agapao International (licence number CR159), and now surrendered.**

## Advertising Scheduling Cases

### 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 finding
UMP Movies	5 to 14 January 2012 various dates and times	COSTA Rule 4	Ofcom noted, during monitoring, that UMP Movies exceeded the permitted hourly allowance from between 15 seconds, and three minutes and 26 seconds within the transmission dates specified.  <b>Finding: Breach</b>

## Fairness and Privacy Cases

### Not Upheld

#### **Complaint by Mr Zafer Mahmood and Meridian Foundation Limited made on their behalf by Mr Craig Needham**

*Dispatches: Landlords from Hell, Channel 4, 4 July 2011*

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**Summary:** Ofcom has not upheld this complaint of unjust or unfair treatment made by Meridian Foundation and the complaint of unwarranted infringement of Mr Zafer Mahmood's privacy in connection with the obtaining of material included in the programme and in the programme as broadcast, made on their behalf by Mr Craig Needham.

The programme investigated "*rogue landlords*" and looked at the activities of Meridian Investments Limited and its charitable arm Meridian Foundation Limited ("Meridian"). An undercover reporter worked at Meridian and the programme revealed that Mr Mahmood, the chief executive of Meridian, was willing to use violence to deal with tenants and exposed a record of poor treatment to vulnerable tenants, most of whom were on housing benefit, including renting out properties in unsatisfactory conditions, failing to carry out repairs and evicting tenants without good cause.

Ofcom found as follows:

- Given the examples of poor service provided to Meridian tenants and the secretly filmed footage of Mr Mahmood included in the programme, material facts were not presented, disregarded or omitted in a way that was unfair to Meridian.
- The programme included several statements setting out Meridian's position in relation to the stories included in the programme and all the allegations made in the programme were supported by the surreptitiously filmed footage and other information gathered by the programme makers.
- In view of the extensive material obtained showing wrongdoing by Meridian and Mr Mahmood and the public interest in the investigation, the doorstepping of Mr Mahmood was justified and was not an unwarranted infringement of his privacy.
- Given the material gathered showing wrongdoing by Meridian and Mr Mahmood and the public interest in the investigation of Meridian's business practices, the use of surreptitiously filmed footage was not an unwarranted infringement of Mr Mahmood's privacy in the broadcast programme.

#### **Introduction**

On 4 July 2011, Channel 4 broadcast an edition of its current affairs series *Dispatches* entitled *Landlords from Hell* which investigated the issue of "*rogue landlords breaking the law and getting away with it*". The programme, which was presented by Jon Snow, looked into the activities of Meridian Investments Limited, and its charitable arm Meridian Foundation Limited ("Meridian"). According to its website the foundation is a registered charity:

*“...created in aspiration and determination to help the homeless and disadvantaged through the means of providing accommodation, training, placement opportunities and support for all”.*

An undercover reporter went to work as a trainee letting agent for Meridian and some surreptitiously filmed footage was included in the programme. Footage of Mr Mahmood, the chief executive of Meridian, was also included. Meridian was described in the programme as *“not just a property business, but also a registered charity allegedly set up to house the homeless”*. Mr Mahmood was then introduced as someone whose attitude towards Meridian’s tenants was *“less than charitable”*. He told the reporter that: *“I could soon turn up outside somebody’s house with a baseball bat and knock their teeth straight out of their mouth”*.

The programme looked at the case of a tenant who was being forced to move out of her property because of Meridian’s *“re-marketing scheme”*<sup>1</sup>. Mr Snow said that the tenant, Marie, *“has never fallen behind with the rent”* but *“despite this... they just want her out”*. Mr Snow explained that, although Marie’s rent was paid directly to Meridian from her housing benefit, Mr Mahmood had insisted on having a guarantor for her new home. However, the guarantor had failed the *“credit check”* and so Mr Mahmood was refusing to let Marie move into her proposed new home and a decision was taken *“to trick Marie by getting all her belongings out of the house”*.

The programme also looked at the cases of a number of tenants who were experiencing maintenance and safety issues in Meridian properties, some of which were said to be so dangerous that they breached housing regulations. The programme stated that Meridian had been fined *“£4,000 in court for leaving properties in disrepair but they still seemed happy putting a family into an unsafe property”*. *“Hazel”* and her family were living in a house which was so damp it was making her teenage daughter ill. The front door had been boarded up for *“a couple of months”*, repairs had not been carried out and Meridian had decided to increase the rent.

The programme also described a *“scam”* in which couples, usually elderly, would sell their properties to Meridian and then rent the property from the company, on the basis that Meridian would maintain the property for them at a low rent and that they could stay in the property for life. The programme featured a couple Meridian now wanted to evict from their property for failing to maintain it.

The programme included extracts from a statement by Meridian in response to a number of the allegations made in the programme. Mr Snow was shown approaching Mr Mahmood’s driveway as he was leaving his home and asking him to answer allegations about Meridian. Mr Mahmood said he would give a full statement and agreed to meet with Mr Snow later at Meridian’s offices. When Mr Snow attended the offices, he was initially denied access to Mr Mahmood and was told that filming could not take place at the offices. Mr Snow said Mr Mahmood had refused to be interviewed and read out a statement from Mr Mahmood.

Following the broadcast of the programme, Mr Craig Needham, a Meridian employee, complained to Ofcom on behalf of Meridian that it was treated unjustly or unfairly in the programme as broadcast. He also complained on behalf of Mr Mahmood that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

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<sup>1</sup> “Re-marketing” was described as a scheme where existing tenants are forced to move out so that the rent can be increased for new tenants.

## Summary of the complaint and broadcaster's response

### Unjust or unfair treatment

In summary, Mr Needham complained that Meridian was treated unjustly or unfairly in the programme as broadcast in that:

- a) Material facts were presented, disregarded or omitted in a way that was unfair to Meridian (see sub-heads i) to iii) below for details).

By way of background Channel 4 said that Meridian was identified to the programme makers as a "rogue landlord" by a range of sources, including the homeless and housing charity Shelter, the local MP and local councillors. Meridian was therefore chosen for examination in the programme's investigation into the private rental sector in Britain.

Channel 4 said that before filming began the programme makers had evidence that Meridian was a "rogue landlord", because Meridian Foundation Limited had pleaded guilty to failing to comply with an improvement notice issued under the Housing Act 2004 and was fined £2,500 and ordered to pay costs of £918. At the same hearing, Meridian Investments (Manchester) Ltd pleaded guilty to an offence under the Building Act 1984 relating to a failure to remove a disused external toilet at the same property that was allowing rats to escape from the sewer and was fined £1,500 and ordered to pay costs of £354.

Channel 4 said that the programme makers also gathered evidence from individual Meridian tenants. One family explained that they had been shown a property that was in a terrible state, filthy and with mould in the kitchen and rubbish in the garden but that Meridian had assured them that the house would be cleaned by the time they moved in. The cleaning was not done before they moved in and Meridian did not arrange for the necessary work to be done. There were also problems with the roof leaking, which no one came to resolve. Meridian again failed to help when there was a gas leak. The family was left with no heating or hot water and had to move to a homeless shelter and then a hostel, with two young children and a new-born baby. The family moved back into the property, but the boiler broke down again over the Christmas period. Meridian was shut and there were no emergency numbers. On the advice of Shelter, the family withheld one month's rent, but Meridian told the family they owed them the withheld rent and instructed builders to stop working on the property. At this point the family moved out of the property.

Channel 4 said that Shelter had also been investigating Meridian and received a number of complaints from tenants. Mr Bill Rashleigh, Head of Investigations at Shelter, described them as "a very dodgy outfit" and Shelter advised the programme makers that Meridian should be at the top of the list of companies to investigate because of the poor conditions of the properties and the treatment of tenants.

Channel 4 also said that a number of tenants and employees of Meridian had posted critical online reviews. One former employee referred to the company as "con artists" and said that all of the properties were "in a very bad way...not even fit for a rat to move into". A former tenant said "I was a tenant with these people till 2 yrs ago. NEVER AGAIN. No repairs done, damp in every room, broken stairs, unfit for dogs". Another tenant complained of the landlords asking for extra



money before handing over the keys, failure to carry out promised works, extensive problems with the property and difficulties in contacting the landlord.

Channel 4 said that, on the basis of the evidence gathered, there was clear evidence of a story in the public interest and that surreptitious filming was warranted as there were reasonable grounds to suspect that further material evidence could be obtained that was necessary to the credibility and authority of the programme. The programme makers therefore decided to place an undercover reporter in Meridian as a lettings officer. The reporter conducted daily filming of business activity at Meridian and the interaction between Meridian and its tenants and kept a daily written log of what he witnessed during four weeks working for Mr Mahmood.

Mr Needham made the following specific complaints under this head of complaint:

- i) The reporter witnessed some of the problems landlords suffered, such as properties being illegally occupied and destroyed by tenants, but the programme sought to represent a biased perspective on quotations that had been taken out of context.
- ii) The reporting team witnessed many positive aspects of Meridian but these were omitted from the programme.

Channel 4 responded to these two sub-heads of complaint together and said that the complaint did not specify any problems suffered by landlords, identify quotations taken out of context or specify “positive aspects of Meridian” that were omitted from the programme.

However Channel 4 said that at no point in the reporter’s daily log was there any suggestion that he had witnessed Meridian suffering problems of the kind suggested and that, in fact, filmed comments by Mr Mahmood and his staff clearly and consistently illustrated the way the company was run and its attitude towards tenants. Channel 4 said that the reporter witnessed no positive aspects of Meridian and that his daily log recorded many more incidents of poor treatment of tenants than there was room for in the final programme. It added that on an almost daily basis the reporter recorded Meridian’s practice of sending people to view properties without warning or seeking the permission of the current tenant.

In reply to Channel 4’s response, Mr Mahmood said, in summary, that the reporter had been sent to serve notice on squatters and therefore witnessed at least one instance of an illegally occupied property owned by Meridian, and that the programme was biased in that it omitted to refer to this.

In summary, Channel 4 said in response that the reporter’s daily log did not support Mr Mahmood’s point that the people in the property the reporter was sent to were squatters.

- iii) The programme wrongly suggested that a statement promised by Meridian was not provided.

Channel 4 said that the broadcast footage showed that when the programme makers arrived to seek Mr Mahmood’s response to the evidence gathered by the programme makers it was apparent that they were making a television

programme and that any interview or statement would be on camera. Mr Snow and his crew agreed with Mr Mahmood to defer the interview until midday, as was made clear in the transmitted film. When the programme makers arrived at the agreed time and location, they were told that no filming was to be allowed. The production team was taken to an office where Mr Mahmood and his legal adviser engaged them in conversation for an hour. Mr Mahmood explained that he was reluctant to give the promised interview because he was too nervous to appear on camera. The production team explained their obligations to edit the interview fairly, but despite Mr Mahmood's previous assurance, neither a formal statement nor an interview on camera was given. Channel 4 said that this sequence of events was fairly represented in the script and that the production team had kept contemporaneous notes of the conversation to support this account.

In reply to Channel 4 on this point, Mr Mahmood said, in summary, that he did give the promised interview, but had never agreed that it would be on camera. The programme's statement that he had "*refused to be interviewed*" was therefore incorrect and gave the false impression that he had not delivered upon his promise.

Channel 4 made no further representations in this respect.

- b) The programme was edited in a way that was unfair to Meridian in that:
- i) Meridian's statement was not fairly represented.

Channel 4 said that, in view of Mr Mahmood's unwillingness to give an interview on camera, the programme makers wrote to him two weeks before transmission, setting out the programme's findings in detail and requesting a written response. Mr Mahmood's response was incorporated into the programme as broadcast.

- ii) Footage had been significantly edited and the material was used out of context to support the allegations in the programme.

Channel 4 said that the complaint did not specify how any footage was unfairly edited or used out of context. However, given the evidence gathered by the production team before filming began and the reporter's detailed daily log, it was clear that the edited footage in the transmitted programme provided an accurate picture of both Mr Mahmood's attitude to his tenants and business and the manner in which Meridian dealt with its tenants.

#### Unwarranted infringement of privacy

In summary, Mr Needham complained that Mr Mahmood's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- c) Mr Mahmood was filmed on private property at his home without his consent.

Channel 4 said that Mr Mahmood was a menacing figure who, by his own admission, was prepared to use force to get his way and that there was compelling evidence that he was guilty of a number of offences such as the forcible eviction of tenants and disposal of their property without their consent or knowledge, housing families in unsafe properties and the fraudulent taking of

holding deposits from multiple prospective tenants for the same property. Channel 4 said that the production team came to the view, based on the reporter's experiences, that Mr Mahmood would ignore any formal approach and use advance warning to frustrate the investigation. Given Mr Mahmood's boast that he "...could soon turn up outside somebody's house with a baseball bat and knock their teeth straight out of their mouth", Channel 4 felt that advance notice could result in pressure on tenants to withdraw their contributions from the film or expose them to the real risk of reprisals. Mr Mahmood was therefore approached in a responsible and courteous manner outside his home.

In these circumstances, Channel 4 felt that a doorstep interview was necessary to avoid the risk that the investigation would be frustrated and/or that there would be reprisals against the vulnerable tenants featured in the investigation.

Mr Needham also complained that Mr Mahmood's privacy was unwarrantably infringed in the programme as broadcast in that:

- d) Surreptitiously obtained footage was used in the programme without Mr Mahmood's consent and edited to make it appear that the broadcast of the material was in the public interest.

Channel 4 said that, given the weight of the material gathered, there was clear evidence of a story in the public interest. It was also clear that surreptitious filming was warranted as there were reasonable grounds to suspect that further material evidence could be obtained that it was necessary to the credibility and authority of the programme. The programme makers, in accordance with Channel 4's procedures, applied for and were granted permission for secret filming. Channel 4 said that the inclusion of the surreptitiously filmed footage in the programme was warranted, as it demonstrated the complainants' reprehensible attitude towards their tenants and the shocking condition of the properties they rent to vulnerable people.

## Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions. Ofcom also took careful account of all the representations made by both parties in response to being given the opportunity to comment on Ofcom's preliminary view on this complaint. Ofcom recognises that in response to the preliminary view Mr Mahmood said he did not fully accept Ofcom's findings and the decision not to uphold the complaint. Ofcom had regard to all Mr Mahmood's further representations in finalising the current decision,

although Ofcom concluded that none of the further points he raised materially affected the outcome of the complaints made by Meridian and Mr Mahmood.

### Unjust or unfair treatment

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code (the "Code"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that material facts were presented, disregarded or omitted in a way that was unfair to Meridian.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- i) & ii) Ofcom considered together the complaints that the reporter witnessed some of the problems landlords suffered, such as properties being illegally occupied and destroyed by tenants, but the programme sought to represent a biased perspective on quotations that had been taken out of context and that the reporting team witnessed many positive aspects of Meridian but these were omitted from the programme.

Ofcom noted that the complaint did not specify any incidents the reporter witnessed that would have demonstrated that Meridian, as a landlord, suffered from problems. Nor did it refer to any specific positive examples of Meridian's activities. Ofcom also noted that the programme included footage demonstrating that:

- Mr Mahmood told the undercover reporter he would use violence against tenants.
- He suggested that it was possible to circumvent the legal and regulatory protections in place for tenants.
- Marie was the victim of the re-marketing of her property and that Meridian staff were willing to lie in order to secure her departure from the property and to threaten her with eviction without valid grounds for doing so.
- Mr Mahmood told the reporter that when a tenant had not paid his rent, the company had moved someone else into his property without warning.
- The reporter was asked to move a young family into a property that was not fit for them to live in, due to breaches of a number of housing regulations, including an exposed boiler, a large hole in a wall, nails sticking out of bare boards and open-backed stairs.
- A handy man who did work for Meridian was unimpressed with the condition of Meridian properties.
- Meridian had been fined as a result of the condition of some properties let out by the company.
- Hazel and her family had been living in a house with a boarded up door, extreme damp problems and had been asked to pay more rent, despite repairs not being carried out. One of Hazel's daughters was suffering ill health as a result of the damp in the property.

- Meridian persuaded an elderly couple sell their house to the company and then rent it from Meridian and then evicted the couple.

Ofcom considers that, taking into account the examples of poor service provided to the tenants shown in the programme, the fines imposed on Meridian by Wigan & Leigh Magistrates' Court and the secretly filmed footage of Mr Mahmood included in the programme, the programme included a sufficiently accurate representation of the manner in which Meridian's business was conducted. Ofcom therefore considers that, in the context of a programme looking at allegations that Mr Mahmood was a "rogue landlord", Channel 4 took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Meridian.

- iii) As regards the complaint that the programme wrongly suggested that a statement promised by Meridian was not given, Ofcom noted that the programme showed Mr Snow approaching Mr Mahmood outside his home and attempting to conduct an interview. Mr Mahmood refused to engage in a conversation but said:

*"We can give you a full statement for everything...I'm quite happy to go through everything with you".*

He then invited Mr Snow to attend his offices and said he would give a statement. Mr Snow suggested attending the offices at midday that day and Mr Mahmood agreed. When Mr Snow arrived at the Meridian offices, however, although Mr Mahmood spoke to the programme makers, he was not willing to give an interview on camera. Mr Snow said in the programme:

*"Another broken promise. Mr Mahmood in the end refused to give us the promised interview and instead gave us a written statement".*

The following extract from that written statement was then read out:

*"We have many happy tenants. We suffer both vacant and occupied property being vandalised, stolen from, illegally occupied and abused on a daily basis. However, we continue with our faith in human nature and strive to provide accommodation for those in need. The current financial climate is horrendous and every day remains a struggle".*

Ofcom also noted that several other extracts from the written statement provided by Mr Mahmood were included in the programme (see the decision at head b) i) below). In Ofcom's view, if a potential contributor agrees to provide an interview in connection with a television programme, it is reasonable for programme makers to understand that to mean an interview conducted on camera.

In these circumstances, Ofcom considered that the commentary was accurate in stating that Mr Mahmood refused to give an interview. It would also have been clear to viewers that Mr Mahmood had provided a written statement and that extracts from that were included in the programme.

Ofcom therefore found no unfairness to Mr Mahmood in this respect.

- b) Ofcom next considered the complaint that the programme was edited in a way that was unfair to Meridian.

In considering this head of complaint Ofcom had regard to Practice 7.6 of the Code, which states that when a programme is edited, contributions should be represented fairly.

- i) Ofcom first considered the complaint that Meridian's statement was not fairly represented. Ofcom noted that following Mr Mahmood's decision not to give an interview on camera (as referred to at head a) iii) above) the programme makers wrote to him on 20 June 2011. Meridian provided a detailed written response on 24 June 2011 and Ofcom noted that the programme included several statements taken from that letter.

In relation to Marie, the programme included the following statement:

*"Marie informed us she wanted to leave her current property and we duly sought to find another tenant for the property and a new home for Marie. The van driver finished loading late in the day and we therefore placed Marie's belongings in safe storage overnight".*

As regards a young family moved into the property that was in breach of housing regulations, with an exposed boiler, a large hole in a wall, nails sticking out of bare boards and open-backed stairs, the programme included the following statement:

*"The property was not ready on the day she wanted to take occupation. As she was unable to alter this date, we appointed a full-time contractor to attend to the issues and worked with the tenant until all faults were rectified. She remains at the property".*

With reference to Hazel and her family, the following statement was included:

*"We were completely unaware of any reported problems with this property until we carried out an inspection following receipt of notice from the tenant".*

Meridian's statement in relation to the elderly couple who had sold their property to Meridian and then rented it from the company before being evicted was also included:

*"The property was purchased some years ago prior to the formation of the charity at what we considered to be a fair price with a short tenancy agreement in place and no contractual guarantee relating to the current or future rental".*

Meridian's position was then summarised by the inclusion of the extract set out under head a) iii) above.

In Ofcom's view, the inclusion of the extract from Meridian's written statement ensured that viewers were made aware of Meridian's position on the key allegations in the programme.

- ii) Footage had been significantly edited and the material was used out of context to support the allegations in the programme.

Ofcom noted that the complaint did not specify how any footage was unfairly edited or used out of context. However, Ofcom considered that the

programme made it clear that the undercover reporter worked at Meridian for four weeks and that viewers would have understood that not all the footage he filmed was included in the programme. Ofcom considered that all the allegations made in the programme were supported by the surreptitiously filmed footage, the information gathered by the programme makers during the making of the programme and the views expressed by Shelter.

In these circumstances, Ofcom found no unfairness to Meridian in this respect.

#### Unwarranted infringement of privacy

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

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

- c) Ofcom considered the complaint that Mr Mahmood was filmed on private property at his home without his consent.

In considering this head of complaint, Ofcom took into account Practices 8.5, 8.9 and 8.11 of the Code. Practice 8.5 says that any infringement of privacy in connection with obtaining material included in programmes should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Practice 8.11 says that doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep.

Doorstepping is the filming or recording of an interview or an attempted interview with someone without prior warning and is a legitimate means for programme makers to obtain interviews in certain circumstances. However, it should not take place unless a request for an interview has been refused, or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep.

In order to establish whether or not Mr Mahmood's privacy was unwarrantably infringed in connection with obtaining material included in the programme, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the doorstepping of him outside his house.

Ofcom noted that the filming was conducted on private land outside Mr Mahmood's house. Ofcom took the view that Mr Mahmood had a legitimate expectation that he would not be doorstepped outside his home and filmed without prior warning about the conduct of his business.

Having formed the view that Mr Mahmood had a legitimate expectation of privacy in relation to the filming, Ofcom went on to consider whether any intrusion into Mr Mahmood's privacy was warranted.

Ofcom noted that the programme makers did not attempt to request an interview openly with Mr Mahmood or his company and that Channel 4 felt that advance notice of filming could result in pressure on tenants to withdraw their contributions or expose them to the real risk of reprisals. Ofcom noted Channel 4's position that a doorstep interview was necessary to avoid the risk that the investigation would be frustrated and/or that there may be reprisals the tenants who featured in the investigation.

Ofcom noted the material the programme makers had gathered both about the poor conditions of some Meridian properties, the treatment of tenants and Mr Mahmood's stated attitude to dealing with "difficult" tenants. In particular Ofcom took into account Mr Mahmood's reference to being willing to "...turn up outside somebody's house with a baseball bat and knock their teeth straight out of their mouth" and his statement to the reporter that if the builder who had said one of Meridian's property was dangerous was present he would "*smash his face in right in front of you*". Ofcom also considered Mr Mahmood's stated willingness to evict tenants without good cause and the fines imposed on Meridian for breaches of housing regulations. Taking all these factors into account, Ofcom took the view that the programme makers had reasonable grounds to believe that if they approached Mr Mahmood in advance and requested an interview, it was likely that he would refuse the request and take steps to frustrate the investigation. Ofcom also took the view that the investigation into the behaviour of Meridian and Mr Mahmood, the treatment of tenants and the condition of properties was in the public interest. Ofcom considered, in these circumstances, that the approach to Mr Mahmood outside his home was proportionate and noted that no members of his family were filmed.

Taking these factors into account, Ofcom found that there was no unwarranted infringement of Mr Mahmood's privacy in connection with obtaining material included in the programme.

- d) Ofcom then considered the complaint that surreptitiously obtained footage was used in the programme without Mr Mahmood's consent and edited to make it appear that the broadcast of the material was in the public interest.

Ofcom took into consideration Practice 8.6 of the Code, which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether Mr Mahmood's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that the secretly filmed footage of him would not be broadcast, and whether his consent was required.

In Ofcom's view, Mr Mahmood had a legitimate expectation that footage of him that had been secretly filmed as he went about his business would not be broadcast.

Having formed the view that Mr Mahmood had a legitimate expectation of privacy in relation to the broadcast of the secretly filmed footage, Ofcom went on to



consider whether any intrusion into Mr Mahmood's privacy was warranted. As set out under Ofcom's decision under head c) above, Ofcom took the view that the investigation of Meridian's business practices was in the public interest. It also considered that the inclusion of the surreptitiously filmed footage provided evidence that Mr Mahmood was willing to consider using violence, provide a poor level of service to his tenants and commit breaches of housing regulations and criminal offences.

In these circumstances, Ofcom found that there was no unwarranted infringement of Mr Mahmood's privacy in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Needham's complaint of unfair treatment on behalf of Meridian and his complaint of unwarranted infringement of Mr Mahmood's privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Paul Greaves

*My Transsexual Summer, Channel 4, 22 November 2011*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mr Paul Greaves.

This programme featured footage of a group of transgendered people visiting a bowling complex for an evening out. Mr Greaves was shown briefly during this footage.

Mr Greaves complained that he was treated unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme

In summary, Ofcom found that:

- Although Mr Greaves did not expressly consent to his image being included in the programme, he was not treated unfairly in this respect, and he was not portrayed as someone who was “totally disgusted” with the transgender individuals who were visiting the bowling alley.
- Mr Greaves did not have a legitimate expectation of privacy with regard to the recording of footage of him during his visit to the bowling alley and therefore his privacy was not unwarrantably infringed in this respect.

### Introduction

On 22 November 2011, Channel 4 broadcast an edition of *My Transsexual Summer*. This is described on Channel 4’s website as a series of programmes that “follows seven people who are undertaking a range of gender affirmation procedures as they make the journey to realise their true identities”.

During this edition of the programme, the group talked about the difficulties they face when going out in public and, in particular, their fears of being attacked. One member of the group, “Drew”, talked about her extreme lack of confidence amongst strangers. Following a session with a Jujitsu teacher to show the group how to deal with any difficult situations and to address Drew’s confidence issues, the group was shown visiting a bowling alley. The narrator said:

*“Tonight Drew will have the support of her new friends to draw on but the bright lights of the bowling alley are no help when trying to pass in public”.*

This comment was followed by another member of the group, “Donna”, talking about the size of her feet. During Donna’s comments, the programme cut to a brief image of Mr Paul Greaves sitting on a bench, who was visiting the bowling alley with members of his family. Mr Greaves was shown clearly but was neither named nor referred to in the programme.

Following the broadcast of the programme, Mr Greaves complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy

was unwarrantably infringed in connection with the obtaining of material included in the programme.

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

The details of Mr Greaves' complaint are set out below, followed by Channel 4's responses on particular points.

Before responding to Mr Greaves' specific heads of complaint, Channel 4 indicated that the series had a clear focus on serving the public interest and provided an important platform for the seven transgender contributors to share their experiences with the viewing public in order to provide a better understanding of and an insight into their lives and the struggles they faced fitting into society.

#### Unjust or unfair treatment

In summary, Mr Greaves complained that he was treated unjustly or unfairly in the programme as broadcast in that:

- a) While Mr Greaves was informed by a member of staff at the bowling alley that filming was going on, he was included in the programme without his consent.

Channel 4 responded that both it and Twenty Twenty (the production company which made the series) paid careful attention to the issue of contributor consent. It observed that practice 7.3 of Ofcom's Broadcasting Code ("the Code"), which dealt with the issue of "informed consent", did not apply where a person's participation in a programme was minor.

The broadcaster said that the filming at the bowling complex took place with the full informed consent and cooperation of the headquarters, management and staff of the complex. Channel 4 said that the principal aim of one of the two cameras used was to film observationally and capture genuine reactions from the public to the transgender contributors. Accordingly, and given the public nature of the location, Twenty Twenty placed eight A4 filming notices (a copy of which was provided to Ofcom) in the bowling complex - four around the front reception desk and four around the main foyer. In addition, Channel 4 stated that the Duty Manager of the complex made several announcements over the tannoy during the course of the evening to inform the public that filming for a television programme was taking place and that if anyone had any queries they should speak to him/her. The broadcaster added that the production team were highly visible and accessible to members of the public and that the filming was conducted openly.

Channel 4 said that, unlike individuals with whom the production team conducted interviews, who were vox-popped or who were constantly in shot when the transgender contributors were being filmed, Mr Greaves did not give his explicit consent to being filmed or to his image being broadcast. However, it also said that in his complaint Mr Greaves had acknowledged that:

- he was informed by a member of staff "behind the counter" at the bowling complex that filming was taking place and what was being filmed;
- he witnessed the production team filming and in particular stated that "a camera crew were filming at the end of [his bowling] alley"; and

- his sister-in-law asked the film crew what they were doing and was told that they were filming a documentary.

Channel 4 said that, despite his evident knowledge that filming was taking place, including the subject of the filming, at no stage did Mr Greaves notify any member of the production team that he did not wish to be filmed or included in any broadcast. It added that Mr Greaves appeared in the programme for less than two seconds and that he was sitting silently looking in the direction of the transgender contributors and his face was partially obscured.

The broadcaster said that given these circumstances, Mr Greaves' participation was minor and it was therefore not necessary to seek his express consent to include him in the programme.

- b) As a result of the correlation of the voice-over commentary and his image Mr Greaves was portrayed as someone who was "totally disgusted" with the transgender individuals who were visiting the bowling alley when this was not the case.

By way of background Mr Greaves said: that he is a police officer; that he is very open-minded; and, that he was deeply upset by the way the programme made him look.

Channel 4 responded that the section of the programme in which Mr Greaves was included focussed on: Drew; the steps she was taking to tackle her confidence issues (notably going with the group to the bowling complex); and, her fears about being out in a confined public space and about being able to 'pass' as a woman. It would have been clear to viewers that prior to going on the bowling trip Drew was nervous, but that the trip had been a very positive experience for her and as a result her confidence improved and she realised that her fear of going out in public was not warranted. Channel 4 added that the relevant section of the programme included the public's reactions to the transgender contributors, which ranged from, at worst, apathetic to wholeheartedly supportive.

Channel 4 said that the brief image of Mr Greaves in the programme did not portray any prejudice or disgust. It said that image of him was included to: make it clear to the viewing public that the transgender contributors were in a public environment; to show that there were onlookers; and, to show viewers the genuine reactions of those onlookers. Mr Greaves was shown sitting looking in the direction of the camera and appeared to be watching the transgender contributors as they collected their bowling shoes. Channel 4 added that: Mr Greaves' face was partially obscured by his hand; he looked impassive; and there was nothing about the language or images in this section which suggested that either the female member of the public or Mr Greaves held any particular view or prejudices in respect of the transgender contributors.

Channel 4 said that the language used in the voiceover and the inclusion of the images of the public, including Mr Greaves, indicated to viewers that the group of transgender individuals did draw the attention of the public. As the programme went on to explore, this was not a negative reflection on the public at the bowling complex, but focused on how this experience was used to boost Drew's confidence.

### Unwarranted infringement of privacy

In summary, Mr Greaves complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- c) No member of the film crew asked if they could record pictures of him and his family.

In summary, Channel 4 responded that given that Mr Greaves was filmed in a bowling complex which was open to the public and did not constitute a 'sensitive place' for the purposes of the Code<sup>1</sup> and given that he was not doing anything of a 'private nature', he did not have a legitimate expectation of privacy with regard to recording of the footage of him.

The broadcaster also reiterated that: the filming was carried out openly; there were clear filming notices prominently displayed in the bowling complex; the filming took place with the full consent and cooperation of the management and staff at the bowling complex; and, Mr Greaves himself acknowledged that he was aware of the filming and its subject but did not at any stage raise any objection with the production team.

Channel 4 also said that if Mr Greaves had a legitimate expectation of privacy in these circumstances there was a clear public interest in enabling viewers to gain a better understanding of the lives of transgender individuals and the challenges they face, and in trying to correct any misunderstandings that may be harboured by the viewing public in order to facilitate the promotion of a greater acceptance of transgender individuals within society. The broadcaster argued that an essential part of this was to explore how the transgender contributors were received by the general public as they went about their daily lives and the importance to the transgender contributors of 'passing' as the gender to which they are transitioning or have transitioned.

The broadcaster said that the filming was designed to gather a fair and accurate representation of the transgender contributors' trip to the bowling complex and the public's genuine responses to them and that the public interest in filming Mr Greaves in these circumstances outweighed any expectation of privacy that he may have had.

### **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.

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<sup>1</sup> Practice 8.8 of the Code (which concerns filming in institutions, organisations or other agencies) states that individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required but adds that in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations separate consent should normally be obtained before filming or broadcast (unless not obtaining consent is warranted).

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

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

### Unjust or unfair treatment

In considering Mr Greaves' complaint of unfair treatment Ofcom had regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. In doing so it paid particular regard to Practice 7.9 of the Code, which states that before broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- a) Ofcom first considered Mr Greaves' complaint that he was treated unjustly or unfairly in the programme as broadcast in that while he was informed by a member of staff at the bowling alley that filming was going on he was included in the programme without his consent.

Ofcom observed that Mr Greaves was not invited to contribute to the programme (for example, by being asked to give his view of the transgender contributors and their visit to the bowling complex) and that the programme makers therefore did not specifically seek consent from Mr Greaves for his inclusion in the programme<sup>2</sup>.

The filming of the footage in which Mr Greaves was shown in the programme took place openly and filming notices were placed around the bowling complex which explained that:

- filming was taking place for a programme with the working title "Trans Project";
- by entering and remaining on the premises while filming and recording took place individuals consented to being filmed and recorded and to appearing in the programme(s); and,
- if someone did not wish to appear in the programme he or she should "notify a member of the crew immediately on entry".

In this context, Ofcom noted that although Mr Greaves acknowledged that he knew that the filming was taking place and that his sister-in-law was told by a member of the film crew that that they were filming a documentary, on the information available to Ofcom it did not appear that Mr Greaves had made a request not to appear in the programme.

In addition, while it is clear that Mr Greaves would have preferred not to have been included in the programme, Ofcom recognised that his image was shown on

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<sup>2</sup> Given that Mr Greaves was not invited to make a contribution to the programme Ofcom does not consider that practice 7.3 of the Code is relevant to the consideration of this head of complaint.

screen for a very brief period; he was not named or referred to; and, nothing of a personal nature to him was revealed in this footage.

In reaching its decision on this head of complaint, Ofcom also took into account that: Mr Greaves was not portrayed as someone who was “totally disgusted” with the transgender individuals who were visiting the bowling alley (see the decision at head b) below); and Mr Greaves did not have a legitimate expectation of privacy in relation to the recording of footage of him at the bowling alley, and that his prior consent to filming was not required (see the decision at head c) below).

In light of the factors noted above, Ofcom found that Mr Greaves was not treated unfairly in this respect.

- b) Ofcom then considered Mr Greaves’ complaint that as a result of the correlation of the voice-over commentary and his image he was portrayed as someone who was “totally disgusted” with the transgender individuals who were visiting the bowling alley when this was not the case.

Ofcom noted the relevant section of the programme. As the transgender contributors entered the bowling alley the voiceover stated: “...*but the bright lights of the bowling alley are no help when trying to pass in public*”. The programme then cut away briefly to an image of a female member of the public and cut back to the transgender contributors collecting their bowling shoes. One of the contributors, Donna, said “*Look how big my feet are. My feet are not this big*”. The programme then cut away briefly to the shot of Mr Greaves and then cut back to Donna.

Ofcom noted that Mr Greaves was seen in the programme as he sat near a bowling lane looking towards something in the distance. While his hand partially covered the lower part of his face, Mr Greaves was clearly visible in the foreground of the picture for between one and two seconds and would have been identifiable to people to whom he was already known. The image of Mr Greaves was included during a section of the programme in which the transgender contributors were shown collecting their bowling shoes near the bowling lanes. Mr Greaves was neither named nor referred to in the programme and none of the comments made by the narrator or the transgender contributors during the programme related to him.

In Ofcom’s opinion, viewers of this footage would have regarded Mr Greaves as simply one of many people who had come to the bowling alley for an evening out and who were naturally curious about the filming that was taking place in front of them and possibly about the transgender contributors who were being filmed.

Ofcom also observed that the rest of the programme made it clear that although Drew had been concerned about going to the bowling alley because she feared the potential reaction to her by members of the public she had found the experience to be very positive.

Taking account of the factors noted above Ofcom concluded that the programme did not imply that Mr Greaves was “totally disgusted” with the transgender individuals who were visiting the bowling alley or that he had any adverse reaction to them.

Ofcom therefore found that Mr Greaves was not portrayed unfairly in the programme as broadcast in this respect.

### Unwarranted infringement of privacy

- c) Ofcom then turned to Mr Greaves' complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that no member of the film crew asked if they could record pictures of him and his family.

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

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

In considering this complaint Ofcom paid particular regard to practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person's/or organisation's consent or otherwise be warranted. It also took account of practices 8.4 and 8.8 of the Code. The first of these practices states that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted. The second states that when filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Practice 8.8 goes on to say that individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required. It also states that in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.

In order to establish whether or not Mr Greaves' privacy was unwarrantably infringed in connection with the obtaining of material included in the programme Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the recording of the relevant material.

As noted above Mr Greaves was filmed sitting in bowling complex to which members of the public had open access. Having examined the footage and the submissions of both parties, it was clear to Ofcom that the programme makers had filmed openly, in full view of those visiting the bowling complex, and with the consent of the staff and management of the complex. Also, it was made clear to visitors that if they did not wish to appear in the programme they should contact one of the programme makers to make them aware of this wish.

Ofcom also observed that, on the information available to it, it appeared that the footage of Mr Greaves recorded by the film crew was: brief; placed no particular focus upon him (as noted above, Ofcom considered that the footage of Mr Greaves included in the programme showed him as simply one of many people



visiting the bowling alley on the evening in question); and, included no information that could be regarded as either private or sensitive in nature.

Ofcom noted that Mr Greaves said that he had not given his consent for images of him or his family to be recorded. However, given the lack of any special circumstances in relation to the filming of Mr Greaves, Ofcom concluded that he did not have a legitimate expectation of privacy in relation to recording of the footage of him at the bowling alley and that in these circumstances his prior consent to filming was not required.

Given this conclusion, it was not necessary for Ofcom to consider whether any intrusion into Mr Greaves' privacy was warranted.

Ofcom therefore found that there was no unwarranted infringement of Mr Greaves' privacy in connection with the obtaining of material included in the programme.

**Accordingly, Ofcom has not upheld Mr Greaves' complaint of unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material in the programme should.**

## Other Programmes Not in Breach

Up to 2 April 2012

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Advertisements	Channel AKA	n/a	Advertising scheduling
Advertisements	Movies4Men	n/a	Advertising scheduling
Inside Men	BBC 1	02/02/2012	Violence and dangerous behaviour
New Girl	Channel 4	24/02/2012	Scheduling
The Real Radio Football Phone-In	Real Radio Scotland	23/02/2012	Race discrimination/offence
The Wright Stuff	Channel 5	01/02/2012	Due impartiality/bias

## Complaints Assessed, Not Investigated

### Between 13 March and 2 April 2012

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
10 O'Clock Live	Channel 4	07/03/2012	Religious/Beliefs discrimination/offence	1
10 O'Clock Live	Channel 4	14/03/2012	Generally accepted standards	1
10 O'Clock Live	Channel 4	28/03/2012	Generally accepted standards	1
118 118's sponsorship credit	ITV Movies	n/a	Violence and dangerous behaviour	1
4OD promo	Channel 4	n/a	Materially misleading	1
50 Biggest Selling R'n'B Hits Of The Noughties	4Music	25/03/2012	Offensive language	1
Adult programming	Bluebird TV	n/a	Outside of remit / other	1
Adult Chat Channels	Various	n/a	Participation TV - Protection of under 18s	1
Adult programming	Freeview	n/a	Generally accepted standards	1
Advertisements	Investigation Channel	16/03/2012	Advertising minutage	1
Advertising Contract	UCTV	n/a	Outside of remit / other	1
Afternoon	Mountain FM	26/03/2012	Religious programmes	1
Aik Hazaru Me Meri Behna	Star Plus	06/03/2012	Generally accepted standards	1
Al Intifada Al Arabyia	Al Hiwar	03/03/2012	Race discrimination/offence	1
America's Next Top Model	TV3	14/02/2012	Advertising/editorial distinction	1
Amsterdam Nights	n/a	n/a	Sexual material	1
Antichrist	Film 4	29/03/2012	Sexual material	1
Any Questions	BBC Radio 4	24/03/2012	Outside of remit / other	1
Argumental	Dave	n/a	Gender discrimination/offence	1
Avatar	Channel 4	25/03/2012	Offensive language	6
Avatar	Channel 4	31/03/2012	Offensive language	3
Aviva's sponsorship of ITV Drama Premieres	ITV1	25/03/2012	Harm	1
Babes From TV	Get Lucky TV	26/03/2012	Participation TV - Protection of under 18s	1
Bangladesh vs Pakistan ODI	Zee Cafe	11/03/2012	Advertising minutage	1
BBC News	BBC News Channel	21/03/2012	Offensive language	1
BBC News	BBC News Channel	28/03/2012	Generally accepted standards	1
BBC News 24	BBC News 24	11/03/2012	Outside of remit / other	1
BBC News at Six	BBC 1	15/03/2012	Generally accepted standards	1

BBC News at Six	BBC 1	26/03/2012	Outside of remit / other	1
BBC News at Ten	BBC 1	29/03/2012	Outside of remit / other	1
BBC Panorama Britain's Crimes of Honour	BBC 1	19/03/2012	Outside of remit / other	1
Benidorm	ITV1	09/03/2012	Sexual orientation discrimination/offence	1
Benidorm	ITV1	16/03/2012	Generally accepted standards	1
Benidorm	ITV2	25/03/2012	Disability discrimination/offence	1
Big Fat Gypsy Weddings	Channel 4	21/02/2012	Animal welfare / Crime	49
Big Fat Gypsy Weddings	Channel 4	28/02/2012	Animal welfare	1
Big Fat Gypsy Weddings	Channel 4	13/03/2012	Generally accepted standards	12
Big Fat Gypsy Weddings	Channel 4	20/03/2012	Due impartiality/bias	1
Big Fat Gypsy Weddings	Channel 4	20/03/2012	Sexual orientation discrimination/offence	1
Big Fat Gypsy Weddings	Channel 4	20/03/2012	Generally accepted standards	1
Big Fat Gypsy Weddings	Channel 4	24/03/2012	Due impartiality/bias	1
Big Fat Gypsy Weddings	Channel 4	27/03/2012	Animal welfare	8
Big Fat Gypsy Weddings	Channel 4	27/03/2012	Under 18s in programmes	1
Big Fat Gypsy Weddings	Channel 4	n/a	Generally accepted standards	1
Bondi Rescue	CBS Reality	24/03/2012	Offensive language	1
Boulton and Co	Sky News	29/03/2012	Due impartiality/bias	1
Breakfast	BBC 1	24/03/2012	Generally accepted standards	1
Breakfast Show	Clyde 1	16/03/2012	Sexual material	1
Britain's Got Talent	ITV1	24/03/2012	Race discrimination/offence	35
Britain's Got Talent	ITV1	24/03/2012	Generally accepted standards	13
Britain's Got Talent (trailer)	ITV1	15/03/2012	Materially misleading	1
Britain's Got Talent (trailer)	ITV1	19/03/2012	Materially misleading	1
Britain's Got Talent (trailer)	ITV1	n/a	Materially misleading	1
Britain's Got Talent (trailer)	ITV1	n/a	Materially misleading	1
Britain's Got Talent 2012 (trailer)	ITV1	17/03/2012	Materially misleading	1
Castle	Channel 5	23/03/2012	Outside of remit / other	2
Celebrity Juice	ITV2	01/03/2012	Generally accepted standards	1
Celebrity Who Wants to be a Millionaire?	ITV1	18/03/2012	Due accuracy	1
Channel 4 News	Channel 4	26/03/2012	Generally accepted standards	1
Channel Promotion	Comedy Central	28/03/2012	Hypnotic and other techniques	1
Cheaters	Really	12/02/2012	Drugs, smoking, solvents or alcohol	1
Cheekybingo.com's sponsorship of The Jeremy Kyle Show	ITV1	n/a	Crime	1

Christian O'Connell Breakfast Show	Absolute Radio	05/03/2012	Sexual material	1
Competition	Key 103	02/03/2012	Competitions	1
Competitions	Heart FM	n/a	Competitions	1
Coronation Street	ITV1	05/03/2012	Crime	1
Coronation Street	ITV1	08/03/2012	Generally accepted standards	1
Coronation Street	ITV1	12/03/2012	Materially misleading	1
Coronation Street	ITV1	15/03/2012	Disability discrimination/offence	1
Coronation Street	ITV1	15/03/2012	Scheduling	1
Coronation Street	ITV1	19/03/2012	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	19/03/2012	Violence and dangerous behaviour	1
Coronation Street	ITV1	28/03/2012	Violence and dangerous behaviour	1
Coronation Street	ITV1	n/a	Generally accepted standards	1
Criminal Minds	Sky Living	16/09/2011	Scheduling	1
Crufts 2012	More 4	08/03/2012	Due impartiality/bias	1
Crufts 2012	More 4 +1	08/03/2012	Animal welfare	1
Dancing on Ice	ITV1	04/03/2012	Advertising scheduling	1
Dancing on Ice	ITV1	04/03/2012	Generally accepted standards	1
Dancing on Ice	ITV1	04/03/2012	Violence and dangerous behaviour	1
Dancing on Ice	ITV1	25/03/2012	Voting	2
Deal or No Deal	Channel 4	14/03/2012	Generally accepted standards	1
Deal or No Deal	Channel 4	18/03/2012	Generally accepted standards	1
Deal or No Deal	Channel 4	20/03/2012	Generally accepted standards	1
Desperate Midwives	Really	22/03/2012	Nudity	1
Dickinson's Real Deal	ITV1	06/02/2012	Competitions	1
Dickinson's Real Deal	ITV1	21/03/2012	Competitions	1
Dirty Wives	Party	11/03/2012	Participation TV - Protection of under 18s	1
Doctors	BBC 1	14/03/2012	Sexual material	1
Doctors	BBC 1	15/03/2012	Sexual material	1
Doctors	BBC 1	20/03/2012	Sexual material	1
Doctors	BBC 1	22/03/2012	Drugs, smoking, solvents or alcohol	1
Doctors	BBC 1	26/03/2012	Scheduling	2
Doctors	BBC 1	27/03/2012	Offensive language	1
Don't Tell the Bride	BBC 3	13/03/2012	Outside of remit / other	1
Don't Tell The Bride	Really	16/03/2012	Offensive language	1
Dr Who (The Impossible Astronaut	BBC 1	23/04/2011	Outside of remit / other	1
EastEnders	BBC 1	08/03/2012	Generally accepted standards	1

EastEnders	BBC 1	20/03/2012	Generally accepted standards	3
EastEnders	BBC 1	22/03/2012	Generally accepted standards	1
Elite Days	Elite TV	05/03/2012	Participation TV - Harm	1
Emmerdale	ITV1	05/03/2012	Sexual orientation discrimination/offence	1
Emmerdale	ITV1	08/03/2012	Sexual orientation discrimination/offence	2
Emmerdale	ITV1	21/03/2012	Generally accepted standards	1
Emmerdale	ITV1	22/03/2012	Scheduling	2
Emmerdale	ITV1	27/03/2012	Generally accepted standards	1
Emmerdale	ITV1	n/a	Generally accepted standards	1
Eyewitness	Ahlulbayt TV	07/02/2012	Due impartiality/bias	1
FA Cup Football	ESPN	17/03/2012	Generally accepted standards	1
FA Cup Sixth Round	ITV1	18/03/2012	Outside of remit / other	1
Family Guy	BBC 3	27/03/2012	Violence and dangerous behaviour	1
Fat Families	Sky Living	n/a	Outside of remit / other	1
Food Inspectors	BBC 1	14/03/2012	Outside of remit / other	1
Football Focus	BBC 1	10/03/2012	Flashing images/risk to viewers who have PSE	1
Format	Talksport	n/a	Format	1
Format	Talksport	n/a	Format	1
Format issues	KMFM Ashford	n/a	Format	1
Four Rooms	Channel 4	21/03/2012	Scheduling	11
Four Rooms	Channel 4	28/03/2012	Offensive language	1
Game of Thrones (trailer)	Sky News Channel	25/03/2012	Scheduling	1
Geordie Shore	MTV	n/a	Generally accepted standards	1
Goals on Sunday	Sky Sports 1	04/03/2012	Offensive language	1
Gok Wan: Made in China	Channel 4	07/03/2012	Generally accepted standards	1
Got to Dance	Sky1	04/03/2012	Under 18s in programmes	1
Grand Designs	More 4	24/03/2012	Offensive language	1
Hairy Bikers' Bakeation	BBC 2	13/03/2012	Offensive language	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	n/a	Generally accepted standards	1
Harry Hill's TV Burp	Cartoon Network	09/03/2012	Nudity	1
Harry Hill's TV Burp	ITV1	10/03/2012	Violence and dangerous behaviour	1
Harry Hill's TV Burp	ITV1	17/03/2012	Disability discrimination/offence	1
Harry Hill's TV Burp	ITV1	17/03/2012	Generally accepted standards	2
Harry Hill's TV Burp	ITV1	17/03/2012	Scheduling	1

Harry Hill's TV Burp	ITV1	24/03/2012	Religious/Beliefs discrimination/offence	1
Harveys' sponsorship of Coronation Street	ITV1	13/03/2012	Generally accepted standards	1
Harveys' sponsorship of Coronation Street	ITV1	15/03/2012	Generally accepted standards	1
Harveys' sponsorship of Coronation Street	ITV1	19/03/2012	Gender discrimination/offence	2
Harveys' sponsorship of Coronation Street	ITV1	30/03/2012	Gender discrimination/offence	1
Harveys' sponsorship of Coronation Street	ITV1	n/a	Gender discrimination/offence	1
Harveys' sponsorship of Coronation Street	ITV1	n/a	Generally accepted standards	4
Harveys' sponsorship of Coronation Street	ITV2	10/03/2012	Generally accepted standards	1
Heartbeat	ITV3	09/03/2012	Advertising minutage	1
Hit The Road Jack (trailer)	Channel 4	19/03/2012	Generally accepted standards	1
Holby City	BBC 1	20/03/2012	Generally accepted standards	1
Hollyoaks	Channel 4	12/03/2012	Animal welfare	1
Homeland	Channel 4	19/03/2012	Religious/Beliefs discrimination/offence	1
Horizon	BBC 2	28/02/2012	Harm	1
I Just Want My Pants Back	MTV	n/a	Generally accepted standards	1
ITV Documentaries (trailer)	ITV1	24/03/2012	Generally accepted standards	2
ITV Documentaries (trailer)	ITV1	25/03/2012	Generally accepted standards	1
ITV News and Weather	ITV1	25/03/2012	Due impartiality/bias	1
ITV News at Ten and Weather	ITV1	15/03/2012	Gambling	1
ITV News at Ten and Weather	ITV1	26/03/2012	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	27/03/2012	Generally accepted standards	1
Joop's sponsorship of NCIS	FX	n/a	Generally accepted standards	1
Joop's sponsorship of NCIS	FX	n/a	Generally accepted standards	1
Just a Minute	BBC 2	26/03/2012	Religious/Beliefs discrimination/offence	1
Kid Jensen in the Afternoon	Smooth Radio North West	20/03/2012	Race discrimination/offence	1
Last House on the Left	ITV4	16/03/2012	Generally accepted standards	1
Law and Order: UK	ITV1	03/02/2012	Generally accepted standards	1
Listen Live (promotion)	Classic FM	21/03/2012	Crime	1
Live PGA Tour Golf	Sky Sports 3 HD	15/03/2012	Outside of remit / other	1
LIVE with Gabby	Channel 5	28/03/2012	Generally accepted standards	1
Live World Golf Championship	Sky Sports 1	22/02/2012	Race discrimination/offence	1

London Greek Radio	London Greek Radio	10/03/2012	Competitions	1
Loose Women	ITV1	08/03/2012	Gender discrimination/offence	1
Loose Women	ITV1	09/03/2012	Gender discrimination/offence	1
Loose Women	ITV1	28/03/2012	Race discrimination/offence	2
Loose Women	STV	19/03/2012	Generally accepted standards	1
Lorraine	ITV1	13/03/2012	Materially misleading	1
Lorraine	ITV1	22/03/2012	Transgender discrimination/offence	1
Lorraine	ITV1	27/03/2012	Competitions	1
Love Life	ITV1	22/03/2012	Harm	1
Love Life (trailer)	ITV1	15/03/2012	Sexual material	1
Make Bradford British	Channel 4	01/03/2012	Materially misleading	14
Mammor och Minimodeller	TV3	13/02/2012	Under 18s in programmes	1
Man v Food	Dave	25/03/2012	Generally accepted standards	1
Mastermind	BBC 2	16/03/2012	Materially misleading	1
Midsomer Murders	ITV1	26/02/2012	Nudity	1
Midsomer Murders	ITV1	16/03/2012	Nudity	9
Midsomer Murders	ITV1	19/03/2012	Sexual orientation discrimination/offence	1
Midsomer Murders	ITV1	21/03/2012	Animal welfare	1
Midsomer Murders	ITV1	21/03/2012	Violence and dangerous behaviour	1
Midsomer Murders	ITV1	01/04/2012	Offensive language	1
Milad FM	Milad FM (Bradford)	13/02/2012	Religious/Beliefs discrimination/offence	1
Mini Countryman's sponsorship of The Jonathan Ross Show	ITV1	17/03/2012	Disability discrimination/offence	1
MTV Rocks	MTV Rocks	22/03/2012	Harm	1
My Phone Sex Secrets	Channel 4	12/03/2012	Generally accepted standards	1
My Phone Sex Secrets (trailer)	Channel 4	06/03/2012	Scheduling	1
My Phone Sex Secrets (trailer)	Channel 4	09/03/2012	Scheduling	1
My Phone Sex Secrets (trailer)	Channel 4	10/03/2012	Scheduling	1
My Phone Sex Secrets (trailer)	More 4	08/03/2012	Scheduling	1
Naked States	Sky Arts 1	04/03/2012	Nudity	1
NCIS	Channel 5	16/03/2012	Outside of remit / other	1
NCIS	FX	08/03/2012	Advertising minutage	1
Neighbours	Five	n/a	Product placement	1
New Crimes That Shook Britain	Crime & Investigation	11/03/2012	Materially misleading	1
News	BBC Radio Ulster	07/03/2012	Outside of remit / other	1



News	Capital FM	08/03/2012	Race discrimination/offence	1
News	Talksport	21/03/2012	Due accuracy	1
News programming	BBC channels / ITV channels	n/a	Outside of remit / other	1
News programming	BBC channels / ITV channels	31/03/2012	Materially misleading	1
Nick Conrad	BBC Radio Norfolk	15/03/2012	Sexual orientation discrimination/offence	1
Nick Ferrari	LBC 97.3FM	09/03/2012	Race discrimination/offence	1
Outnumbered	Gold	24/03/2012	Offensive language	1
Pete Price	Radio City 96.7FM	20/03/2012	Race discrimination/offence	2
Pete Price Phone In Unzipped	Radio City 96.7FM	18/03/2012	Materially misleading	1
Pink Mist	BBC Radio 4	20/03/2012	Offensive language	1
Playboy TV Chat	Playboy TV Chat	09/03/2012	Generally accepted standards	1
Playboy TV Chat	Playboy TV Chat	11/03/2012	Participation TV - Protection of under 18s	1
Playboy TV Chat	Playboy TV Chat	29/03/2012	Participation TV - Harm	1
Pointless	BBC 1	28/03/2012	Race discrimination/offence	1
Premier League Football: Liverpool v Arsenal	Sky Sports 2	03/03/2012	Offensive language	1
Programming	Sikh Channel / Sangat	23/03/2012	Religious/Beliefs discrimination/offence	1
Programming	Atlantic FM	n/a	Format	1
Programming	Felixstowe Radio 107.5	n/a	Format	1
Programming	Playboy TV	n/a	Scheduling	1
Programming	Sabras Radio	n/a	Outside of remit / other	1
Proud and Prejudiced	Channel 4	27/02/2012	Due impartiality/bias	1
Psychic Line	Psychic World TV	18/03/2012	Participation TV - Harm	1
Psychic programming	Various	n/a	Participation TV - Misleadingness	1
Question Time	BBC 1	22/03/2012	Outside of remit / other	1
Regional News and Weather	BBC 1	15/03/2012	Outside of remit / other	1
Regional News and Weather	BBC 1	19/03/2012	Offensive language	1
Regional News and Weather	BBC 1	24/03/2012	Outside of remit / other	1
Road Wars	ITV4	28/03/2012	Generally accepted standards	1
Roary the Racing Car	Channel 5	25/03/2012	Race discrimination/offence	1
Room 101 - Extra Storage	BBC 1	11/03/2012	Sexual orientation discrimination/offence	1
Rude Tube	Channel 4	30/03/2012	Race discrimination/offence	1
Russell Howard's Good News Best Bits	BBC 3	09/03/2012	Religious/Beliefs discrimination/offence	1

Sandhurst	BBC 2	25/03/2012	Outside of remit / other	1
Sarah Millican Television Show	BBC 2	22/03/2012	Generally accepted standards	1
Saubhagyavati Bhava	Star One	20/03/2012	Violence and dangerous behaviour	1
Save Ahlulbayt TV	Ahlulbayt TV	25/02/2012	Appeals for funds	1
Scott and Bailey	ITV1	12/03/2012	Disability discrimination/offence	1
Scott and Bailey	ITV1	12/03/2012	Generally accepted standards	1
Scott and Bailey	ITV1	19/03/2012	Offensive language	1
Scott and Bailey	ITV1	26/03/2012	Sexual material	8
Shirk and Bidat	Milad FM (Bradford)	10/02/2012	Religious/Beliefs discrimination/offence	3
Signed By Katie Price	Sky Living	n/a	Competitions	1
Six Nations Rugby Union	BBC 1	25/02/2012	Outside of remit / other	1
Skins	E4	26/03/2012	Drugs, smoking, solvents or alcohol	1
Skins	E4	26/03/2012	Outside of remit / other	1
Sky News	Sky News	n/a	Outside of remit / other	1
Sky News	Sky News	n/a	Outside of remit / other	1
Sky News at 5 with Jeremy Thompson	Sky News	22/03/2012	Generally accepted standards	2
Sky's sponsorship of Heart Breakfast	Heart Essex	02/02/2012	Commercial communications on radio	1
Snog, Marry, Avoid?	BBC 3	18/01/2012	Scheduling	1
So You Think You Can Dance	BBC 1	11/06/2011	Competitions	1
Sport Relief 2012	BBC 1	23/03/2012	Generally accepted standards	3
Sport Relief 2012	BBC 1	23/03/2012	Sexual material	1
Sri Lanka's Killing Fields: War Crimes Unpunished (trailer)	More 4	09/03/2012	Violence and dangerous behaviour	1
Steve Allen	LBC 97.3FM	16/03/2012	Sexual orientation discrimination/offence	1
Sunrise	Sky News	14/03/2012	Generally accepted standards	2
Sure's sponsorship credits	Sky Sports News	14/03/2012	Materially misleading	1
Swamp Brothers	Quest	09/03/2012	Scheduling	1
Take Me Out	ITV1	n/a	Advertising scheduling	1
Tetley's sponsorship of Real Men's TV	ITV4	n/a	Generally accepted standards	1
The Agenda	ITV1	05/03/2012	Due impartiality/bias	1
The Apprentice	BBC 1	21/03/2012	Product placement	1
The Apprentice	BBC 1	28/03/2012	Disability discrimination/offence	1
The Bank Job	Channel 4	02/03/2012	Offensive language	1
The Big Questions	BBC 1	11/03/2012	Sexual orientation discrimination/offence	1
The Chase	ITV1	28/03/2012	Generally accepted standards	1

The Chris Moyles Show	BBC Radio 1	19/03/2012	Offensive language	1
The Daily Politics	BBC 2	19/03/2012	Offensive language	1
The Green Berets	Channel 5	10/03/2012	Scheduling	1
The Haunted Mansion	BBC 1	03/03/2012	Scheduling	1
The Jeremy Kyle Show	ITV1	27/03/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	27/03/2012	Offensive language	1
The Jeremy Kyle Show US	ITV1	03/03/2012	Materially misleading	1
The Jonathan Ross Show	ITV1	10/03/2012	Generally accepted standards	1
The Jonathan Ross Show	UTV	29/03/2012	Race discrimination/offence	1
The Love Machine	Sky Living	11/03/2012	Generally accepted standards	1
The Love Machine (trailer)	Sky1	08/03/2012	Generally accepted standards	1
The Million Pound Drop Live	Channel 4	30/03/2012	Offensive language	1
The Morning Line	Channel 4	24/03/2012	Due impartiality/bias	1
The Now Show	BBC Radio 4	17/03/2012	Generally accepted standards	1
The Now Show	BBC Radio 4	17/03/2012	Offensive language	1
The One Show	BBC 1	28/03/2012	Animal welfare	1
The Pingu Show	BBC 2	30/03/2012	Drugs, smoking, solvents or alcohol	1
The Sarah Millican Television Programme	BBC 2	10/03/2012	Generally accepted standards	3
The Secret Policeman's Ball	Channel 4	09/03/2012	Sexual orientation discrimination/offence	1
The Secrets of Everything	BBC 3	18/03/2012	Nudity	1
The Sikh Channel	The Sikh Channel	29/03/2012	Generally accepted standards	1
The Simpsons	Channel 4	26/03/2012	Offensive language	1
The Simpsons	Channel 4	28/03/2012	Offensive language	2
The Simpsons	Sky1	12/03/2012	Animal welfare	1
The Simpsons	Sky1	27/03/2012	Sexual material	1
The Story of Musicals	BBC 2	10/03/2012	Offensive language	1
The Undateables	Channel 4	21/03/2012	Disability discrimination/offence	1
The Undateables (trailer)	Channel 4	25/03/2012	Disability discrimination/offence	1
The Undateables (trailer)	Channel 4	n/a	Disability discrimination/offence	1
The Voice UK	BBC 1	24/03/2012	Outside of remit / other	2
The Wright Stuff	Channel 5	22/02/2012	Race discrimination/offence	1
This Morning	ITV1	02/03/2012	Advertising/editorial distinction	1
This Morning	ITV1	06/03/2012	Generally accepted standards	1
This Morning	ITV1	06/03/2012	Sexual material	1
This Morning	ITV1	07/03/2012	Race discrimination/offence	1

This Morning	ITV1	07/03/2012	Generally accepted standards	1
This Morning	ITV1	07/03/2012	Sexual material	1
This Morning	ITV1	15/03/2012	Scheduling	2
This Morning	ITV1	19/03/2012	Generally accepted standards	1
This Morning	ITV1	21/03/2012	Scheduling	19
This Morning	ITV1	22/03/2012	Scheduling	3
This Morning	ITV1	23/03/2012	Scheduling	1
This Morning	ITV1	29/03/2012	Offensive language	1
This Week's Most Played Top 40 Friday Update!	MTV Base	09/03/2012	Offensive language	1
Those Who Kill (trailer)	ITV3	02/03/2012	Violence and dangerous behaviour	1
Those Who Kill (trailer)	ITV3	14/03/2012	Hypnotic and other techniques	1
Thundersport GB (trailer)	Motors TV	15/03/2012	Materially misleading	1
Today in Parliament	BBC Radio 4	27/03/2012	Outside of remit / other	1
Top Gear	BBC 2	04/03/2012	Religious/Beliefs discrimination/offence	1
Top Gear	BBC 2	11/03/2012	Outside of remit / other	1
Top Gear	Dave	18/03/2012	Animal welfare	1
UEFA Champions League	ITV1	14/03/2012	Outside of remit / other	1
UEFA Champions League	ITV1	14/03/2012	Outside of remit / other	1
Unsigned, Sealed, Delivered	Salford City Radio	04/03/2011	Outside of remit / other	1
Various	Various	n/a	Religious/Beliefs discrimination/offence	2
Various	Various	n/a	Generally accepted standards	1
Various	Various	n/a	Offensive language	2
Waterloo Road	BBC 1	07/03/2012	Drugs, smoking, solvents or alcohol	2
Waterloo Road	BBC 1	14/03/2012	Outside of remit / other	1
Well Woman's sponsorship of Countdown	Channel 4	26/03/2012	Sponsorship	1
Withnail and I	Channel 4	10/03/2012	Offensive language	1
World's Craziest Fools	BBC 3	12/03/2012	Generally accepted standards	1
You've Been Framed!	ITV1	31/03/2012	Under 18s in programmes	1
You've Been Framed!	ITV2	16/03/2012	Generally accepted standards	1
Zeke and Luther	Disney XD	19/03/2012	Scheduling	1

## Investigations List

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

Here is an alphabetical list of new investigations launched between 29 March and 18 April 2012.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>
Advertisement for voteforcitygardenproject.co.uk	Original 106	28 February 2012
Advertising minutage	4Music	27 February 2012
Advertising minutage	Liverpool FC TV	3 March 2012
Advertising minutage	MTVN HD	23 and 24 February 2012
Advertising minutage	Nicktoons	20 February 2012
Advertising minutage	The Vault	Various
Advertising scheduling	Discovery Science	18 February 2012
Advertising scheduling	Kiss TV	17 February 2012
Advertising scheduling	Movies4Men	Various
Advertising scheduling	NTV	9 February 2012
Advertising scheduling	Sony TV	16 and 17 February 2012
Advertising scheduling	Syfy	5 and 11 February 2012
Britain's Got Talent	ITV1 and ITV2	31 March, 1 and 6 April 2012
Central News	ITV1 (Central)	12 February 2012
Channel 4 News	Channel 4	13 March 2012
Masti Chat	Party	18 March 2012
News	CFM Radio	14 March 2012
News programmes	Sky News	Various
Nitro Circus	Extreme Sports	13 March 2012
Peace FM	Peace FM community radio	15 March 2012
Red Light Central	Red Light 4	23 March 2012

Scanning & Konsekvens (Truth and Consequences)	TV3	16 November 2011
STV News	STV	2 March 2012
The Chairman's Interview	Yorkshire Radio	15 and 29 February 2012
Various	Fashion One	1 February 2011

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

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

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

For fairness and privacy complaints go to:

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