Ofcom Broadcast Bulletin

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Contents

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[1], 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[2].

The BCAP Code is at: http://www.bcap.org.uk/Advertising-Codes/Broadcast-HTML.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.

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

[2] 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

Love Shaft

Channel 4, 2 and 9 June, 10:35 and 23 June, 09:50

Introduction

Love Shaft is a 'speed dating' series which was broadcast as part of T4, the weekend youth-oriented morning segment on Channel 4 aimed at 16-34 year olds. The programme is largely set in a lift where a young male or female contestant seeking a date is presented with a series of potential dating partners as the lift stops at different floors. The contestant can only choose one potential partner to be with them in the lift at any time. The aim of the programme is for the contestant to find a partner to take on a date by the time the lift reaches the penthouse floor. During the course of the programme, the voice of the lift (called "Lift" in the programme and in this Decision) discusses events in the lift with the contestants and their potential dating partners, and makes comments about the participants. Meanwhile from the penthouse the family and friends of the contestants monitor the progress of the contestants in the lift, consult with the contestant in the lift about their potential partners, and discuss the events taking place with the programme presenter in the penthouse bar.

Ofcom was alerted by a complainant to these three episodes of the programme because they included adult themes throughout, sexual references and innuendo. They were broadcast at a time when young children were available to view on a Saturday morning. Ofcom reviewed the material and noted, for example:

2 June 2012

In this episode, contestant Joel was asked about his ideal girl. Joel replied:

> *"I really love massive tits, a lovely arse..."*

The voiceover explained the premise of the programme:

> *"*[W]*hen the lift stops he* [the contestant] *will meet some hot to trot totty all desperate for a date in the lift with him but there is no room for a threesome...he will have a chance of a dream date with whoever is in the lift with him whether they are a stunner or a bummer."*

Joel was featured lying back naked on a couch in the lift holding only a pineapple to cover his genitals. His "date" in the lift, Alana, was dressed as an artist and was painting a picture of him on an easel.

Lift asked: *"Is that a big enough pineapple for you?"*

Alana: *"If you keep talking about the pineapple Lift I'll look even more – oops! I've just painted it and it looks really wrong."*

Lift comments: *"It's harder than it looks!"*

Next, contestant Joel was shown holding Alana close and dancing with her in the lift and Lift made a sexual innuendo about the potential for Joel to get an erection:

"Before you [Joel] *start, try not to get mahogany...it's wood darling."*

Joel was then joined in the lift by his next date, Lolly, in the lift. They were presented with various options of possible items to take with them on holiday and had to choose between them.

Lift asked: *"Condoms or shoes?"*

Lolly: *"Instead of a condom you could use a plastic bag or something?"*

Joel replied: *"That's a bit dangerous, babe, we don't want to have a baby...not yet anyway."*

9 June 2012

In the next episode, the contestant, Chris, was asked by Lift what he *"goes for"* in a girl.

Chris: *"Varies really. If it's just a Saturday night thing or I'm bringing her home to my mum."*

Lift: *"What you mean – if it's a one night stand?"*

Chris was then joined by his next date, Jess, in the lift. Jess asked Chris what he does for a living. He explained he has a spray tan business and if Jess wanted to give it a go she would have to *"wap her baps out".* In another 'test' for compatibility, Chris had to guess the dress size of Jess, how many men Jess has kissed in one night and how many serious relationships she has had. After hearing Chris's responses, the presenter summarised:

"[H]*e is saying she* [Jess] *is a larger lady and a part-time slut.*"

Together with another potential new date, Gemma, Chris was asked to make a small clay sculpture of a male life model in the lift. The genitals of the naked life model were covered with a graphic overlay and Chris commented that he was *"a bit taken aback"* and the Lift asked why:

"[H]*e's* [the male life model] *just whacked his sausage out in front of me...I just want to have a play with it."*

The presenter in the penthouse suite asked Chris's friend if he considered this: *"I wish there was a penis I could play with",* was a strange thing to ask on a date: The life model reviewed the clay sculpture and it was shown on-screen with the caption: "Morph - the porn years".

Chris commented on Destiny, a glamour model, who joined Chris in the lift. He looked down at and stared at Destiny's breasts for an extended time while commenting:

"Look at the size of them – absolute rack."

At the end of the programme Destiny and Chris were shown on a date and filmed separately. Destiny commented:

> *"If he thinks he is getting lucky tonight in the next hour he better make me feel like the woman of his dreams."*

Chris commented:

> *"Yeah, I'm going to go back in there and see what happens and – fingers crossed – get a feel of that rack."*

23 June 2012

In this episode, Lift asked contestant Seb to guess how many body piercings his lift 'date' Leila has. Seb guessed it is higher than three. Leila revealed to Seb she has eight piercings and Lift asked her to identify where they are on her body. Leila pointed to the places on her body which included her nipple and genital area. Seb commented:

> *"You have one there, one on your* [whistles]*?"*

A graphic accompanied this discussion which pointed out to the audience the location of the piercings with the genital piercing location referred to on the graphic as the "*lady garden*".

Later in this episode, a 12 year old boy, dressed as a headmaster, asked Seb and another female contestant (who are dressed as school children and sitting at desks in the lift) the following question:

> *"Be honest how old were you when you popped your cherry?"*

The contestants both replied the question was *"bad"* and *"quite personal"* but went on to write their ages on chalkboards and show one another.

Ofcom sought information from Channel 4 about the participation of the 12 year old boy in this programme. Having carefully considered this information, Ofcom was satisfied that Channel 4 had taken due care over the physical and emotional welfare and the dignity of the child actor in the programme. Ofcom therefore concluded that the programme did not breach the relevant Code rule[1].

However, Ofcom considered the three episodes summarised above raised potential issues under the Code because it was broadcast before the watershed and on a Saturday morning, 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.

[1] Rule 1.28 of the Ofcom Broadcasting Code: "Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis."

Response

Channel 4 stated that the tone of this programme was "cheeky, witty and full of entendre and risqué banter, especially from the voice in the lift" who makes "sassy and humorous remarks and asks probing questions to the contestant and potential date". The broadcaster considered the programme was appropriate for a pre-watershed transmission and "the content would not have gone beyond the generally accepted standards" of the T4 audience and a T4 show.

The T4 slot runs for the most part of a Saturday morning and is targeted at the 16-34 age group. Channel 4 stated that the series of *Love Shaft* was originally broadcast on E4 in May 2012 at 19:30.

2 June 2012

Channel 4 argued that the language used in this episode was not inherently sexual in nature. Joel's description of what he looked for in a woman ("massive tits" and "lovely arse") were descriptions of "physical attributes" and any sexual meaning taken from these words "would be entirely the interpretation of the viewer". The words were not "overtly offensive" and Ofcom's research stated that "tits" and "arse" were considered acceptable for broadcast pre-watershed because they are used frequently in everyday language.

Further, Channel 4 said the term "hot to trot totty" was "entirely suitable" and would not have exceeded the generally accepted standards for a T4 audience. The reference to "try not to get mahogany – wood" was not sexually explicit language but an euphemism which would not generally be understood by children and there was no subsequent comment to explain what this reference actually meant.

9 June 2012

Channel 4 stated that the comment "wap your baps out", while it was "possibly unsophisticated in delivery", was "not expressly sexual in nature or tone" and "would have similar levels of acceptability of the word 'tits' if not higher".

Channel 4 considered Chris's comment "whacked his sausage out in front of me" to be "a little crude, but not sexual in nature or tone", and the word "sausage" to be "a very mild euphemism for penis, neither of which are prohibited from broadcast pre-watershed". With regard to the comment that Chris makes, "I want to have a play with it", Channel 4 interpreted this comment to be made in the spirit of the task "rather than anything more salacious".

Channel 4 considered that the presenter referring to Jess as "a larger lady and part-time slut" was not directed towards someone but was an interpretation of Chris's comments. Further, Channel 4 stated: "[T]he inclusion of the word 'slut', while not seriously offensive language, was perhaps not the most ideal for the broadcast at 10.35, generally it would not go beyond generally accepted standards for a T4 audience when used in this context."

Finally, with regard to the comment "look at the size of them - absolute rack", Channel 4 did not consider this line to be sexual in tone or nature rather "a comment of Destiny's physical attributes". The broadcaster stated that any sexual interpretation of this line was in the mind of the viewer. The comments, while crude, were not the sort of language that are precluded from pre-watershed transmission and nor "do they go beyond the generally accepted standards for a T4 audience".

23 June 2012

Channel 4 did not consider that the discussion on body piercings or the term "lady garden" was sexual in tone or nature and nor was it a subject precluded from pre-watershed. The term "lady garden" is "highly euphemistic and not overtly descriptive and Channel 4 believes that children would not generally understand what the phrase meant".

In conclusion, Channel 4 stated that it did not consider any of the content "in isolation is sexual in tone, or that the language goes beyond what is generally accepted by the T4 audience and on a T4 show" and therefore the episodes were "appropriate for a pre-watershed transmission during the T4 scheduling slot on Channel 4". The language was "relatively low level" and spread over three separate programmes. In terms of scheduling, Channel 4 stated that "the episodes were preceded by programmes which are not specifically aimed at children and were within the expectations of viewers during this scheduling slot."

However, on balance, Channel 4 was mindful "of the cumulative, bawdy and irreverent nature of the series and that this leaned toward a more provocative tone". The broadcaster accepted that: " [W]ith the benefit of hindsight, and taking into account the complaint made to Ofcom, Channel 4 will be considering whether it would be appropriate to edit some of the material for any future early morning or afternoon broadcast to avoid any cumulatively offensive effect."

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 September 2011, Ofcom gave guidance[2] to all broadcasters that they should "take care to ensure that adult themes of a more sexualised nature are suitable for broadcast pre-watershed".

Ofcom noted this series was originally broadcast at 19:30 on E4, which is aimed at 16-34 year olds. It was also considered by Channel 4 to be suitable to be shown during the T4 slot, which is targeted at the same demographic, but broadcast on a Saturday morning on Channel 4, the main public service channel.

Ofcom examined whether the episodes shown at 10:35 (2 and 9 June) and 09:50 (23 June) on Saturday mornings contained material that was unsuitable for children; and – if so – whether children were protected from it by appropriate scheduling. We therefore considered first whether the material broadcast was suitable for children.

In Ofcom's view, overall these episodes clearly included a tone and content aimed at an adult audience, as might be expected for a dating series aimed at 16 to 34 year

[2] http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf

olds. The editorial premise of the programme was speed dating, in this case meeting potential dating partners after a brief experience of one another in a lift. Given this, the programme included a number of flirtatious sexual references and innuendoes which were not necessarily sexually explicit when considered individually and in isolation. For example, Ofcom did not consider the words "sausage" and "baps" per se to be problematic.

However, in Ofcom's view, there were references and language used in the programmes, including words such as "massive tits" and "slut" which were plainly sexual even when considered in isolation. Ofcom did not accept that children would not have understood the use of this type of language.

Further, all of the language, including the inexplicit terminology, was presented in a way that conveyed a continuing sexual theme. For example:

> *"...he's* [the male life model] *just whacked his sausage out in front of me...I just want to have a play with it"*;

and

> *"Look at the size of them – absolute rack."*
>
> *"Yeah, I'm going to go back in there and see what happens and – fingers crossed – get a feel of that rack."*

In Ofcom's view, the cumulative effect of all such references (see Introduction above for further examples) throughout the episodes was to heighten the adult nature and sexual theme. As such, Ofcom considered the material was unsuitable for children.

We therefore went on to consider whether this material was appropriately scheduled.

Ofcom considered Channel 4's view that as this programme was broadcast in the well established T4 slot, which is aimed at 16-34 year olds, the more irreverent nature of the content would not have exceeded the expectations of the target T4 audience. However, we noted the BARB viewing data for these programmes which showed that a significant number of children were viewing. There were 11,000 children aged 4-15 (9.2% of the total audience) watching the episode on 2 June; 14,000 children (11.8% of the total audience) watching the episode on 9 June; and, 6,000 children (8.2% of the total audience) watching the episode on 23 June. Ofcom therefore noted that, while the material was aimed at a more adult audience, it was broadcast on a Saturday morning when children were watching, some possibly unaccompanied.

Each decision under Rule 1.3 depends on the individual circumstances and whether the context in each case is sufficient to justify the inclusion of more adult content at a time when children are available to view unaccompanied. In this case, Ofcom considered the content, featuring a continuing sexualised theme, was not suitable for broadcast at 10:35 and 09:50 respectively, on a Saturday morning. Therefore it was not appropriately scheduled so as to protect children and breached Rule 1.3.

Breach of Rule 1.3

In Breach

The Only Way is Essex

ITV2, 12 August 2012, 13:30

Introduction

The Only Way Is Essex is a popular 'constructed reality' programme broadcast on ITV2. It features scenes from the daily lives of a group of young people in Essex. The structure of each scene is predetermined but the dialogue between participants, who appear as themselves, is unscripted.

Each episode is originally broadcast at 22:00 on ITV2 and repeated several times during the following week on the same channel at various times of the day in an edited pre-watershed version.

Ofcom was alerted by a complainant to this particular episode broadcast at lunchtime on a Sunday. It included content with adult themes and sexual references. Ofcom viewed the material and noted, for example:

Example 1

Characters Diags and Tom talked about their sex life:

Diags:	*"I've got my exercise bike, but you get all exercise from LG* [Tom's girlfriend, Lauren] *though."*
Tom:	*"What do you mean?"*
Diags:	*"From* [bleep to obscure offensive language]*…"*
Tom:	*"She's ain't like the sort of girl that would just sleep with you on the first date. Enough about me, mate, what sort of girls have you been* [bleep to obscure offensive language]*? You need to go and get tested."*

Tom explained the procedure of a sexual health test by saying:

"[T]*hey stick a cotton bud up your* (whistles*)"*.

Example 2

A scene featured a group of young male characters organising a night out where a male character said he wanted to get drunk.

Charlie:	*"I just wanna good lad's night out. I wanna get smashed. Plenty of birds."*
Charlie also says:	*"*[He's] *never really got 'totally smashed'."*
Mario replies:	*"Have you ever even had a hangover before?"*

Charlie: *"No* [the group laugh]*. Maybe a bit of a headache but I've never had that proper thing when you know like when you have an urge for greasy food or whatever it is people say? I've never had that."*

Another friend responds with: *"You need it mate."*

Example 3

A discussion took place between couple Tom and Lauren and their friends about their sex life:

Diags: *"Is Tom good in bed?"*

Lauren: "*Shut up, Diags."*

Another character, Joey, asks: *"Have you two gone with each other in bed?"*

Lauren: *"No."*

Joey: *"What, you telling me he has gave you a little…"*

Diags whistled and made a gesture with his hands representing sex.

Example 4

A conversation occurred between two male friends (Charlie and Chris) in a nightclub about their preference in a sexual partner:

Charlie: *"I like the curvaceous type, a little bit of junk in that trunk."*

Chris: *"Sounds like every man likes a bit of boobage, bit of bum."*

Charlie: *"It's all about the eyes."*

Chris: *"You see, I never talk to a girl with the eyes. I'm looking down, seeing what they've got to offer…You need to show the king, you need to be the king of the jungle. You need to just pounce on your prey and just penetrate."*

Charlie: *"Okay."*

Chris: *"Penetrate."*

In addition, Ofcom noted several other examples of bleeped or partially bleeped language throughout the programme.

Ofcom considered this material raised potential issues under the Code because it was broadcast on a Sunday lunchtime during the summer 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."

Ofcom sought comments from ITV2 Limited ("ITV" or "the Licensee") as to how the content complied with this rule.

Response

ITV said that this episode was part of the sixth series of *The Only Way is Essex* and viewers would therefore be familiar with the nature of the characters and their preoccupations. It added that much of the content centres on conversations about their relationships and sex lives and that since they are real people, their dialogue containing a "good deal of strong language" reflects how they speak in everyday life.

The Licensee explained that care is taken to obscure all of the strongest and most offensive language for the pre-watershed version of the series and that content deemed unsuitable for pre-watershed scheduling, due to its theme or explicitness, is also edited.

The Licensee pointed out that the Code does not prohibit discussions on sexual matters before the watershed and argued that the sexual discussions in Examples 1 and 3 were suitably inexplicit. It submitted that younger viewers would not understand the references to the sexual health test in Example 1 and that the phrase "good in bed" used in Example 3 was "commonplace and one that few viewers would find offensive".

ITV said the scene featuring Charlie planning a night out (Example 2) identified the negative consequences of excessive alcohol consumption (e.g. headache, lethargy, the need for greasy food) and therefore would not have encouraged viewers to drink heavily. It added that the potential negative effects of drinking are regularly played out in the wider series through emotional fallouts and arguments.

ITV said that to avoid any suggestion that the programme encouraged the misuse of alcohol it omitted a longer sequence, showing characters drinking, for the pre-watershed version. The Licensee pointed out that Charlie himself was only seen to "sip two beers and does not appear to be drunk". It therefore did not consider the programme encouraged excessive consumption of alcohol.

The Licensee said that although the conversation between Charlie and Chris in Example 4 had a sexual undercurrent, the expressions were not in its view explicit or particularly lewd, and therefore would have exceeded audience expectations of a typical discussion involving such characters. ITV stated that words and phrases such as "boobage" and "junk in that trunk" would not have been generally considered inappropriate for a pre-watershed audience.

ITV added that (although offensive language is a normal element of everyday conversation of characters in the series) all of the strongest language is carefully edited for the pre-watershed version, often with visual obscuring of mouths as well as sound editing. It argued that the 20 instances of language edits in this programme were not excessive in the context of a programme reflecting the actual lifestyle of this community and did not consider it would have caused widespread offence to viewers.

However, ITV said it carefully considers the overall tone of the content and the potential for offence caused by excessive bleeped language in pre-watershed programming. Although it did not believe the programme was unsuitable for children,

the Licensee said it had it had asked the producers to edit offensive language entirely rather than use bleeping for future pre-watershed broadcasts, where appropriate and practical to do so. Furthermore, it had decided to no longer schedule *The Only Way Is Essex* in weekend daytime or school holiday daytime slots, in view of Ofcom's concerns about children being more likely to view unaccompanied at such times.

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 September 2011 Ofcom gave guidance[1] to all television broadcasters that they should "take care to ensure that adult themes of a more sexualised nature are suitable for broadcast pre-watershed".

Ofcom noted that *The Only Way Is Essex* is first broadcast at 22:00 on ITV2 and that a pre-watershed edited version is later aired several times on the same channel including, as was the case here, on a Sunday afternoon when children are available to view. We therefore considered first whether the material broadcast was suitable for children.

Language editing

Ofcom recognised the various language edits (by means of bleeps) that ITV had made for the pre-watershed version. As set out in Ofcom's guidance on the watershed, masking offensive language is one way in which broadcasters may edit post-watershed material to make it suitable for broadcast pre-watershed.

In Ofcom's view, in this case, the bleeping of the words was not always sufficient to mask the language or its impact. In many cases, the meaning of the bleeped words was likely to have been clear to the audience from the context and tone of the discussion: for example, the bleeping out of words during a discussion of a clearly sexual nature in Example 1.

Ofcom was also concerned about the frequency of bleeping in this programme. We noted there were 20 instances in this half hour programme. As also set out in Ofcom's guidance, if the use of masked offensive language in a programme is frequent, such that the programme requires multiple instances of bleeping, there can be a cumulative effect on viewers. In programmes where there is frequent use of offensive language, broadcasters may need either to edit the programmes more rigorously for pre-watershed transmission to take account of this cumulative effect, or consider whether the programme is in fact appropriate for pre-watershed broadcast at all.

[1] http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf

Adult themes

Ofcom noted that this programme contained a number of adult themes, including references to the consumption of alcohol and, in particular, references to characters' sex lives and their interest in each other's sexual activity (as set out in the examples above).

Ofcom noted ITV's argument that the Code does not prohibit sexual discussion in pre-watershed programmes. However, we took account of the prominence of these adult themes throughout the programme, and the impact and frequency of the masked language. We concluded that the programme was therefore unsuitable for children.

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

Ofcom noted that ITV2's target audience is 16 to 34 year olds. Ofcom therefore understands that the channel's programming is not aimed at children. BARB viewing data indicated that only 4,000 out of 118,000 viewers were below the age of 15 (3.39% of the total audience).

We note that this programme was broadcast on a Sunday lunchtime during the extended summer school holidays. Further it was broadcast on a mainstream general entertainment channel which is likely to attract a broad audience. Both these factors, in Ofcom's opinion, made it more likely that children – some of them unaccompanied – would view this material.

Each decision under Rule 1.3 depends on the individual circumstances and whether the context in each case is sufficient to justify the inclusion of more adult content at a time when children are available to view unaccompanied. In this case, Ofcom considered the content, featuring continuing adult themes and frequent masked language, was not suitable for broadcast at 13:30, on a Sunday during the school holidays.

We noted ITV's decision to edit offensive language entirely rather than use bleeping for future pre-watershed broadcasts, where appropriate and practical to do so. We also welcomed its decision to avoid scheduling future episodes of *The Only Way Is Essex* in weekend daytime or school holiday daytime slots, when children are more likely to be available to view unaccompanied.

However Ofcom concluded that on this occasion the programme was not appropriately scheduled so as to protect children and therefore breached Rule 1.3.

Breach of Rule 1.3

In Breach

News

Russia Today, 12 July 2012, 10:00

Introduction

Russia Today is a global news and current affairs channel produced in Russia, and funded by the Russian Government[1]. In the UK, the channel broadcasts on the Sky digital satellite platform. The licence for Russia Today is held by Autonomous Non-profit Organisation TV Novosti ("TV Novosti" or "the Licensee").

A complainant alerted Ofcom to a news report about the armed conflict in Syria between the government of President Bashar al-Assad and opposition rebel forces. The complainant considered the news broadcast was biased, because, in the complainant's view, an interviewee was crediting a "massacre [in the Syrian conflict] to the rebels and not the government and was not challenged in any way".

Ofcom reviewed the news item in question, which focused on developments in the Syrian uprising. We noted that at approximately 10:10, the news presenter introduced a clip from a pre-recorded 'down the line' interview with the Editor of Pan-African News Wire*,* Abayomi Azikiwe. This clip lasted for about one and a half minutes and for the duration of this content he spoke direct to camera and was uninterrupted. Amongst other remarks Abayomi Azikiwe stated that the Syrian opposition had rejected Kofi Annan's *"initial peace plan...that was endorsed by the Syrian Government"*. (The former UN Secretary-General, Kofi Annan had been appointed the UN-Arab League special envoy to Syria in early 2012 but he resigned from this post at the end of his mandate in August 2010. Kofi Annan resigned on 2 August 2012, citing the intransigence of both the Assad government and the rebels, as well as the stalemate on the UN Security Council, as preventing any peaceful resolution of the situation[2].)

Abayomi Azikiwe added that the *"backers"* of the Syrian opposition:

> "*...have opposed any effort aimed at dialogue to bring about a political solution to this crisis. They have refused to acknowledge any type of ceasefire. They have continued their aggressive activities against the Syrian Government, and as a result of that the Syrian Government has had no choice except to engage in these military manoeuvres that we've seen over the last couple of days. The onus for the resolution of this crisis strictly lies with the armed opposition and also the opposition which is around the Syrian*

[1] The Licensee informed Ofcom that Russia Today "while receiving a fixed annual subsidy from the Russian state budget, is neither state-owned, nor state oriented in its editorial policy. As an autonomous non-profit organisation, quite unique for a medium in Russia, it doesn't have any state representatives among its Board members or editorial staff, similar to the BBC's model in the UK".

[2] Press conference by Kofi Annan, Joint Special Envoy for Syria, United Nations Office at Geneva. 2 August 2012 (see: http://www.un.org/apps/news/story.asp?NewsID=42609&Cr=Syria&Cr1=.

> *National Council[3] as well as the other Islamist groups, which have refused all peace plans that have been put forward by the United Nations Envoy, Kofi Annan."*

The news presenter then said that later in the programme, the Syrian conflict would be looked at from a *"different angle".*

We noted that at approximately 10:20 (i.e. approximately 10 minutes after the above), the news presenter introduced a report about a boycott of Syrian television and film production by certain Arab countries. The news presenter introduced the item as follows:

> *"Dramatic pictures from Syria have been streaming to our TVs for 16 months now, but there's a different kind of drama unfolding behind the camera. Some opposition-supporting Arab nations have banned Syrian programmes and movies, but their producers say it has only hardened their resolve.*"

The report had a duration of around three minutes and 50 seconds. In this news item, the reporter stated that during the current Syrian conflict:

> *"Gulf countries, which had traditionally helped fund* [Syrian productions], *withdrew from production leaving a huge financial gap, and matters were made worse when the Arab League called for a boycott of Syrian satellite channels..."*

An actor, Mohamed Rafea then said:

> *"*[The Arab nations opposing the Syrian Government] *want to fight everything good in Syria. They don't want us to show our drama to the world..."*

Another actor, Milad Yousef stated:

> *"They wanted to destroy not just our country, but all that's good in our country, and even every positive images of Syria in the minds of other Arab people."*

The reporter remarked*:*

> *"Gulf countries headed by Qatar and Saudi Arabia were among the first to condemn the Syrian regime for its crackdown on protesters. They were also among the most active supporters of the Syrian armed opposition, sponsoring and arming the rebels."*

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

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

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

[3] The Syrian National Council is a coalition of Syrian groups that oppose the government of the Syrian President, Bashar al-Assad.

Response

The Licensee said that the news programme had complied with Rule 5.1 by reflecting the viewpoint of the Syrian opposition.

TV Novosti said that prior to the brief comments made by Abayomi Azikiwe, the news presenter stated the following (with the Licensee's emphasis added):

> *"Syria's main opposition alliance has failed to persuade Russia to help them oust President Assad. During talks in Moscow the Syrian National Council insisted Assad must go before there can be any transition* [to a new government in Syria]*…"*

According to TV Novosti this (underlined) statement chimed with what was being "widely reported across other media (including the BBC), [namely] the Syrian opposition had indeed rejected Kofi Annan's peace plan and insisted that Assad must resign".

The Licensee said that Abayomi Azikiwe also commented on the position of the Syrian National Council in his interview as follows:

> *"...the Syrian opposition had rejected Kofi Annan's initial peace plan that was put forward by Kofi Annan and the United Nations, that was endorsed by the Syrian Government, by other forces throughout the region."*

TV Novosti said there was "no need to challenge" Abayomi Azikiwe's viewpoint within the bulletin in question on 12 July 2012 because the full live interview with Abayomi Azikiwe had been broadcast in an edition of Russia Today's *News,* broadcast at 17:07 the previous day (11 July 2012). By way of introduction to that full interview, the news presenter in the news bulletin broadcast on 11 July 2012 had said the following:

> *"The Syrian main opposition group is saying that the Syrian people are suffering because Russia has used its veto on the Security Council to prevent international action being taken against the Assad regime*"; and "*The opposition has another demand as well...they are calling for a UN intervention to resolve the conflict there."*

The Licensee said that Rule 5.1 had therefore been complied with because "Ofcom's Rules and Guidance maintain that Due Impartiality may be achieved within a programme or over a series of programmes taken as a whole".

TV Novosti also made several other points in relation to covering, of what was in its view, an on-going news story:

- it was incorrect for the complainant to – and Ofcom should also should not – focus on "one particular programme" i.e. the news bulletin in question, broadcast on 12 July 2012;

- according to the Licensee "a rolling news channel will naturally be editorially linking any continuing news 'story'...[but] it would be impossible to predict (and signpost) just how and in what form this would take". Furthermore "a rolling news channel does not have the ability to plan a 'series', as would be the case for a more conventional channel where editorial and production decisions are planned in advance";

- TV Novosti said that: "We feel it would not be appropriate to fully reprise the history leading up to breaking events in live news coverage of current events – and that the summary references were consistent with our earlier coverage, and factually correct". In addition, "it would also made for very boring and confusing television if news items had to be continually refer back to earlier programmes, purely as a means of ensuring regulatory compliance". In this regard, the Licensee said that Russia Today complements its live news bulletins with documentaries and special reports analysing news issues "in more depth and from different 'angles', which might explore the history in more depth, as well as other aspects of a particular situation".

In relation to the later report in the same news bulletin about a boycott of Syrian television and film production by certain Arab countries, TV Novosti said this item was an example of Russia Today's practice of "sometimes juxtapos[ing] 'raw' news with documentary material which goes beyond the headlines to explore other 'angles' of a major issue". Furthermore, this item was "not intended as a direct counterpoise to the earlier news coverage. Rather, it looked into the implications and impact of the conflict on one aspect of Syrian life (rather than bringing in the opposite standpoint)". In this item "a handful of actors vented their frustration over losing their jobs when the suspended transmissions reduced the funding for the series in which they acted".

The Licensee said that this item "contained negligible commentary from [TV Novosti] itself, but was a factual portrayal of one aspect of the tragedy in Syria, and its effect on ordinary citizens...[and] the statements from the actors were personal feelings relating to their plight. We do not feel that this piece was one where issues of impartiality arise. By analogy, the personal feelings of a Western employee who has lost his job due to redundancies brought on by economic recession do not, we contend, require 'balancing' by a further explanation of the causes of, or views on, the recession itself". In addition, TV Novosti said to "suggest there was no 'counterbalance' to the emotional outbursts of affected civilians is equivalent to suggesting that if [TV Novosti] had broadcast a news report containing the anguished outpourings of a mother who had lost a child in the conflict [that] would require us to have balanced the report with a counterview from parties who felt that the death of a child was justified"

The Licensee added: "It is true that Qatar and Saudi Arabia, both energetic stakeholders of the Arab League, declared their support for the suspension [of the purchase of Syrian TV programmes and films] that caused the Syrian actors to voice their invectives". However, the item was "an example of the complementary material which [Russia Today] regularly brings to its coverage of world events...highlighting the human plight of some affected by the crisis".

In summary, in relation to the item about a boycott of Syrian television and film production by certain Arab countries, TV Novosti said that "We accept that perhaps there might be a need to better separate the 'news' from the 'documentary'" with the latter "analysing a particular aspect of what has become a major news item but which would not necessarily carry the same degree of impartiality that the News itself would present". Although such a move would require a change in Russia Today's "scheduling format" the Licensee said that it was "discussing the technical aspect of schedule presentation with the relevant editorial staff".

The Licensee also made a number of points about the nature of Russia Today as an international news channel:

- in TV Novosti's view: "Plurality in international news coverage, particularly of conflict situations, is surely provided by virtue of the availability to viewers of a range of different viewpoints from different broadcasters". In this regard, the Licensee cited an Ofcom document[4] on media plurality "which we feel in several respects reinforces our arguments". In addition, TV Novosti said that Russia Today's "viewers will of course also be watching other international news channels, from which they gain additional perspectives, often completely opposite to what they see on [Russia Today]. That, we contend, is the healthy plurality to which British citizens are privileged to have access";

- on a related point, Russia Today "reaches half a million regular UK viewers weekly" and the fact that "only one complained about 'bias' does, we suggest, illustrate that the vast majority appreciate the portrayal of Russia's view";

- according to the Licensee "if every international news channel had to be obliged to give 'due' coverage to all viewpoints (even if 'due' could be defined), all international news channels would in such case inevitably be reflecting the views of the country in which the channel is regulated". This, in TV Novosti's view, would impinge on freedom of expression and "deprive viewers of insights into why different countries take a different view of conflict situations";

- the Licensee stated that: "The world today provides unlimited access through the internet to sites with all sorts of content, totally unregulated and having no ethical constraints. Responsible and regulated media organisations like ourselves command respect, and our integrity will be judged by viewers. Imposing constraints on the reporting of anything that might to some be controversial will only lead to citizens turning more and more to news sources that carry similar information, but presented in a totally irresponsible, unbalanced and unregulated way";

- TV Novosti considered that "war situations, and matters of international controversy" are not specifically dealt with by the Code "nor can they be treated in the same way as domestic national issues." Furthermore: "What is controversial in one country may not be so in another...[and] [w]hat might be regarded as 'bias' or 'lack of impartiality' is itself often a subject of international debate"; and

- the Licensee suggested that the Code rules on impartiality in relation to international news "perhaps need to be re-examined in the light of the current media structure and citizens access to information". In the meantime, TV Novosti said that it "definitely tries to abide by the spirit" of the Code.

In conclusion, the Licensee said that it had "reemphasised the UK regulatory requirements" to all staff.

Decision

Under the standards objectives of 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 news included in

[4] *Measuring media plurality: Supplementary advice to the Secretary of State for Culture, Media and Sport and the Leveson Inquiry*, 5 October 2012 (See http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/letters/advice.pdf).

television and radio services is presented with due impartiality. Broadcasters are required to comply with the rules in Section Five to ensure that due impartiality is preserved in news programmes.

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

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit to some extent freedom of expression. This is because its application necessarily requires broadcasters to ensure, for example, that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

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

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

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

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

In this case, by way of background, Ofcom noted since the onset of the Syrian conflict in March 2011, the Russian Government has taken a position which has been characterised by many commentators as being supportive of the current Syrian Government. For example, the Russian Government has voiced its concerns in the

United Nations Security Council, that some members of the international community might be trying to force a change of government in Syria[5].

Ofcom also noted that in the news bulletin in question broadcast at 10:00 on 12 July, there were only two news items about Syria: firstly, an excerpt from a pre-recorded interview with Abayomi Azikiwe; and, second, ten minutes later, a pre-recorded item about a boycott of Syrian television and film production by certain Arab countries. We assessed these two news items together to reach a decision overall as to whether the news in this programme was presented with due impartiality.

Abayomi Azikiwe's comments

We considered that taken together these two items included a number of statements which could be reasonably characterised as being strongly critical of the Syrian opposition movement (including the Syrian National Council) and Arab Nations supportive of the Syrian opposition movement, and/or supportive of the Syrian Government. For example, we noted that Abayomi Azikiwe: labelled the Syrian opposition as having undertaken *"aggressive activities against the Syrian Government"*; stated that the Syrian Government had had *"no choice"* but to undertake military operations against the Syrian opposition; and that the *"onus for the resolution of this crisis strictly lies with"* the Syrian opposition. We also noted that in the second news item, there were comments critical of Arab nations who had boycotted Syrian film and television productions, so that these Arab nations were characterised as wanting to *"fight everything good in Syria"* and to *"destroy not just our country, but all that's good in our country".*

The issue of the conflict in Syria between the Assad regime and opposition forces was, and is, one clearly where there are differing viewpoints of importance – principally those of the government of President Assad and of the opposition, and of the states which express or give support in various forms to one or the other. We therefore considered what evidence there was of alternative (i.e. Syrian opposition) viewpoints presented in this news programme on the morning of 12 July 2012.

We took into account the following points put forward by the Licensee:

- the news presenter stating that: *"During talks in Moscow the Syrian National Council insisted Assad must go before there can be any transition"* ("Comment 1"); and

- the following comment made by Abayomi Azikiwe:

  "...the Syrian opposition had rejected Kofi Annan's initial peace plan that was put forward by Kofi Annan and the United Nations, that was endorsed by the Syrian Government, by other forces throughout the region" ("Comment 2").

We acknowledge that these statements to some degree gave a factual description of the position of the Syrian opposition.

We noted however that these statements were made in the context of comments by Abayomi Azikiwe as a commentator that overall were critical of the Syrian opposition. He stated for example that the opposition had undertaken "*aggressive activities against the Syrian Government*", and that the "*onus for the resolution of this crisis strictly lies with*" the Syrian opposition). Before, during and after this clip of interview

[5] By way of example, see: http://www.un.org/News/Press/docs/2012/sc10536.doc.htm

Abayomi Azikiwe's critical remarks were not challenged by other content in the programme. Further, we noted that there were no other statements included in the news programme broadcast at 10:00 on 12 July 2012 that could be reasonably described as reflecting or supporting the viewpoint of the Syrian opposition, the Syrian National Council, or Arab states critical of the Syrian administration of Bashar al-Assad, in relation to the ongoing conflict of Syria. As a result we concluded that Comment 1 and Comment 2 did not: sufficiently articulate the viewpoint taken by the Syrian opposition during the Syrian conflict at that time; or sufficiently counter the criticisms being made of the Syrian opposition.

We took account of TV Novosti's representation that an alternative (i.e. the opposition's) viewpoint had been reflected in its news output the previous day (11 July 2012) at 17:07, when the full live interview with Abayomi Azikiwe had been broadcast on Russia Today. According to the Licensee during that interview news presenter said:

> *"The Syrian main opposition group is saying that the Syrian people are suffering because Russia has used its veto on the Security Council to prevent international action being taken against the Assad regime"*; and *"The opposition has another demand as well...they are calling for a UN intervention to resolve the conflict there"* ("Comment 3").

We noted the Licensee's view that: Ofcom should not focus on "one particular programme"; and that TV Novosti had complied with Rule 5.1 because "Ofcom's Rules and Guidance maintain that Due Impartiality may be achieved within a programme or over a series of programmes taken as a whole".

We did not agree with this argument put forward by TV Novosti. The reference to due impartiality being achieved "over a series of programmes taken as a whole" is in Rule 5.5[6] of the Code and not Rule 5.1. We recognise there may be occasions when a broadcaster may be able to comply with Rule 5.1 in one news programme by broadcasting material in a different news programme or programmes. For example, due impartiality in news might be achieved through broadcasting different viewpoints on a particular issue on successive days in a series of explicitly linked 'special' news reports which each separately focused on one particular viewpoint on a particular subject. Depending on the circumstances in each case, such an editorial approach might ensure compliance with Rule 5.1, as long as it was clearly signposted to the audience, in line with Rule 5.6[7] of the Code. In the present case, this approach was not taken.

Second, we noted the Licensee's representation that "a rolling news channel will naturally be editorially linking any continuing news 'story'...[but] it would be impossible to predict (and signpost) just how and in what form this would take". TV Novosti also stated that "a rolling news channel does not have the ability to plan a 'series', as would be the case for a more conventional channel where editorial and production decisions are planned in advance". We acknowledge the challenges faced

[6] 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".

[7] Rule 5.6 states: "The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air".

by rolling news channels in ensuring compliance with the Code, especially in fast-moving news stories. In response, we note that it is possible for a rolling news channel to plan ahead to commission and broadcast items in a series of linked reports (as just suggested above) to help preserve due impartiality on a particular issue. In any event, it is still incumbent on all broadcasters to ensure sufficient alternative viewpoints are broadcast within its news programming, as appropriate. In this case, on succeeding days, the Licensee broadcast first the full interview with Abayomi Azikiwe on 11 July 2012, and then an excerpt from that interview on 12 July 2012. However, by way of balancing alternative viewpoints, TV Novosti only broadcast the three short Comments 1, 2 and 3 over the two days in question. In our view, having regard to all the circumstances, Comments 1 to 3 by themselves did not provide sufficient balance within the context of news programming to the other statements being made by Abayomi Azikiwe, for example, criticising the Syrian opposition, and supporting the Syrian Government.

We also took account of the Licensee's representations that: "We feel it would not be appropriate to fully reprise the history leading up to breaking events in live news coverage of current events – and that the summary references were consistent with our earlier coverage, and factually correct"; and "it would also made for very boring and confusing television if news items had to be continually refer back to earlier programmes, purely as a means of ensuring regulatory compliance". In response, depending on the circumstances in each case, Ofcom underlines that the Code does not in any way require that: each news report includes the "history leading up to breaking events"; or that news items "continually refer back to earlier programmes". However, broadcasters must ensure that alternative viewpoints are reflected in a proportionate and appropriate way in news reports (in many cases this may need only be very briefly) to ensure news is presented with due impartiality.

Report on boycott of Syrian television and film production

We went on to assess the second news item in the programme broadcast on 12 July 2012, namely a report about a boycott of Syrian television and film production by certain Arab countries.

We noted first TV Novosti's representations that this item: was not "intended as a direct counterpoise" to the earlier content featuring Abayomi Azikiwe. Irrespective of the editorial intention, we noted that following the news item featuring Abayomi Azikiwe, the news presenter did signal to viewers that later in the same news programme the Syrian conflict would be looked at from a *"different angle".* In our view because of this comment, and the fact that the second item (concerning a boycott of Syrian television and film production by certain Arab countries) contained statements that could be characterised as critical of Arab states opposed to the Syrian Government, viewers would have been likely to have perceived the two items, to some degree, as dealing with the same politically controversial subject matter, namely the Syrian conflict. This news item, together with any other items dealing with the Syrian conflict, therefore needed to be presented with due impartiality in accordance with Rule 5.1.

We noted the Licensee's argument that this was not a news item which needed to be presented with due impartiality because it was a report that: "contained negligible commentary from [TV Novosti] itself"; was a "factual portrayal of one aspect of the tragedy in Syria"; was looking at the "impact of the [Syrian] conflict on one aspect of Syrian life", and included statements from the actors in the news item that were "personal feelings relating to their plight". However, as mentioned above, Rule 5.1 applies potentially to any issue covered in a news programme, and not just matters of

political or industrial controversy and matters relating to current public policy. In any case, we considered that this news item touched to some degree the controversial subject of the Syrian conflict, through certain contributors' criticisms of opponents of the Syrian Government.

Given the above, we considered that the overall effect of the Syrian actors' statements critical of certain Arab states opposing the Syrian Government, was to build on Abayomi Azikiwe's statements made ten minutes earlier, criticising the Syrian opposition and supporting the Syrian Government. Further, we considered that there were not sufficient alternative viewpoints provided either in the news programme itself broadcast on 12 July 2012, nor any editorially linked material in the news bulletin identified by the Licensee broadcast on 11 July 2012, to ensure that this news item was presented with due impartiality in this case.

In assessing this second news item, we had regard to TV Novosti's representation that although "[i]t is true that Qatar and Saudi Arabia, both energetic stakeholders of the Arab League, declared their support for the suspension [of the purchase of Syrian made programmes] that caused the Syrian actors to voice their invectives", the item was "an example of the complementary material which [Russia Today] regularly brings to its coverage of world events...highlighting the human plight of some affected by the crisis". In response we point out that the Code does not in any way prohibit a news broadcaster producing programming content that complements different aspects of its news output (indeed Ofcom wholeheartedly supports broadcasters reporting and presenting the news from different and creative angles). However, all news items must comply with Rule 5.1, as necessary and appropriate.

In considering the report about a boycott of Syrian television and film production by certain Arab countries, we noted TV Novosti's argument that to "suggest there was no 'counterbalance' [a counterbalance was needed] to the emotional outbursts of affected civilians is equivalent to suggesting that if [the Licensee] had broadcast a news report containing the anguished outpourings of a mother who had lost a child in the conflict [that] would require us to have balanced the report with a counterview from parties who felt that the death of a child was justified". In our view, TV Novosti's argument is based on an incorrect analogy. It does not adequately consider how or why the due impartiality requirements in the Code applied in this case. We noted that the item concerning a boycott of Syrian television and film production by certain Arab countries: contained statements that could be characterised as critical of Arab states opposed to the Syrian Government; and, followed shortly after the earlier content featuring Abayomi Azikiwe which included views that were, for example, supportive of the Syrian Government. The report therefore did in our view require alternative viewpoints to be reflected as appropriate, on the Syrian conflict. The fact that this item, in the Licensee's words was examining the effect of the Syrian conflict on "ordinary citizens" did not obviate the need for due impartiality to be maintained in this case.

In reaching our overall decision, we took into account the Licensee's various representations relating to the nature of Russia Today as an international news channel.

Firstly, we noted TV Novosti's argument in relation to plurality. For example, the Licensee cited the recent Ofcom document[8] on media plurality and said that that: "Plurality in international news coverage, particularly of conflict situations, is surely

[8] See footnote 4.

provided by virtue of the availability to viewers of a range of different viewpoints from different broadcasters." Furthermore, TV Novosti stated its view that Russia Today's "viewers will of course also be watching other international news channels, from which they gain additional perspectives, often completely opposite to what they see on" Russia Today. Ofcom recognises the importance of media plurality, which we have defined[9] as, for example, ensuring there is a diversity of viewpoints available, and consumed, across and within media enterprises. However, this does not mean that individual Ofcom licensees do not have to reflect alternative viewpoints in their own news programming, as appropriate, in accordance with Rule 5.1 of the Code. They must not and cannot rely on the output of other services and channels to help them present their news output with due impartiality.

Second, the Licensee said that: Russia Today "reaches half a million regular UK viewers weekly"; and the fact that "only one complained about 'bias' does, we suggest, illustrate that the vast majority appreciate the portrayal of Russia's view". In reply, Ofcom underlines that our investigations are not influenced by the number of complaints received in a particular case, but the potential issues raised. The fact that only one complaint was received by Ofcom in this case does not affect the facts and reasoning leading Ofcom to conclude that TV Novosti did not present the news with due impartiality.

Third, we noted the Licensee's representation that "if every international news channel had to be obliged to give 'due' coverage to all viewpoints (even if 'due' could be defined), all international news channels would in such case inevitably be reflecting the views of the country in which the channel is regulated [Licensee's emphasis]". This, in TV Novosti's view, would impinge on freedom of expression and "deprive viewers of insights into why different countries take a different view of conflict situations [Licensee's emphasis]". We disagree. As mentioned above, we recognise that Section Five of the Code acts to limit to some extent freedom of expression. However, the requirement to ensure that news programming is presented with due impartiality is a requirement on all Ofcom licensees and, as mentioned above, reflects an explicit statutory requirement in the Act[10]. The way due impartiality is preserved in news is an editorial matter for each individual broadcaster. It does not mean that news programmes on for example international news channels cannot be supportive of certain nation-states, nor be critical of the policies of particular governments, including the UK. However, all news stories must be presented with due impartiality. This does not mean that international TV news channels licensed and regulated by Ofcom must reflect the views of the UK. They must however comply with the regulatory framework of the UK – and expressly agree to do so by choosing to base themselves in this jurisdiction. An important part of that framework is the rules about due impartiality put in place by UK statute and set out in the Act.

Fourth, the Licensee also stated that the "world today provides unlimited access through the internet to totally unregulated" websites compared with regulated entities such as Russia Today. In TV Novosti's view imposing "constraints on the reporting of anything that might to some be controversial will only lead to citizens turning more and more to news sources [on for example "unregulated" websites] that carry similar

[9] See paragraph 1.6, *Measuring media plurality: Supplementary advice to the Secretary of State for Culture, Media and Sport and the Leveson Inquiry* (See http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/letters/advice.pdf).

[10] Section 320(2)(c) states that one of the standards objectives is "that news included in television and radio services is presented with due impartiality...".

information, but presented in a totally irresponsible, unbalanced and unregulated way". Ofcom acknowledges that audiences are able to obtain news from a vast range of media ranging from the printed press, through linear broadcasting, to various forms of online services. However, broadcasters licensed by Ofcom must comply with the statutory regime set down by the Act, which reflects Parliament's desire to require all linear TV broadcast channels to comply with certain standards, including the preservation of due impartiality.

Fifth, the Licensee considered that "war situations, and matters of international controversy [Licensee's emphasis]" are not specifically dealt with by the Code "nor can they be treated in the same way as domestic national issues". Furthermore: "What is controversial in one country may not be so in another...[and] [w]hat might be regarded as 'bias' or 'lack of impartiality' is itself often a subject of international debate". In response, we would point to the fact that the meaning of due impartiality[11] laid out in Section Five of the Code is flexible, and makes clear that contextual factors are important in considering the application of due impartiality. Therefore, in reaching our decision in this case, we have given due regard to the fact that the content was broadcast on an international news channel, broadcasting from a Russian perspective. Furthermore, we have taken account of the fact that Ofcom's published Guidance[12] to Section Five of the Code states that Ofcom published research "demonstrated that there are greater expectations [in relation Rule 5.1] for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience or for retransmitted news services made originally for non-UK audiences".

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

Given the above, we concluded that, overall and on the specific facts of this case, the news bulletin broadcast at 10:00 on 12 July 2012 was not presented with due impartiality in respect of its treatment of the Syrian conflict. We have therefore recorded a breach of Rule 5.1 of the Code.

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

[12] See http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf

We noted that this breach follows other breaches of Section Five recorded against the Licensee in Bulletin 213[13]. Ofcom is therefore requiring the Licensee to attend a meeting to explain its compliance procedures in this area.

Breach of Rule 5.1

[13] See Broadcast Bulletin 213, 10 September 2012 (http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb213/obb213.pdf).

In Breach

Channel 4 Racing: The Morning Line

Channel 4, 15 September 2012, 08:00

Introduction

Ofcom received nine complaints about the promotion of a Ladbrokes betting offer during the Channel 4 racing coverage of the St Leger festival 2012 which included live broadcasts from Doncaster race course.

Ofcom noted that the 2012 St Leger event was sponsored by gambling company Ladbrokes PLC ("Ladbrokes"). The event included a rare contender for the prestigious triple crown – the 2,000 Guineas and Derby winning horse, Camelot. Approximately 36 minutes into the live broadcast of *The Morning Line* one of the presenters Tanya Stevenson interviewed David Williams, a representative of Ladbrokes. In the interview David Williams:

- invited viewers to take part in a special betting offer by Ladbrokes;
- described details of the betting offer, and;
- discussed the means by which the offer could be accessed.

In addition, the betting offer was highlighted to viewers in an on-screen caption. A transcript of the interview follows:

TS: *"...I'm joined by David Williams of Ladbrokes. You must be so pleased that Camelot is here for the triple crown bid. How are you celebrating it?*"

DW: *"We're absolutely delighted Tanya it's a historic day. We've talked about that and we want everybody, all Morning Line viewers*..."

TS: *"Go on."*

DW: *"...to be part of history; we are doing an offer, available in about 30 seconds time, from half past eight; It is the most historic, the greatest*..."

TS: *"Go on.*"

DW: *"...no lose bet. Back Camelot at two to five and if he wins you collect your money*..."

At this point in the interview an on-screen caption appeared which stated:

"LADBROKES ST LEGER Money back from the sponsors if Camelot loses"

DW *"...If he loses we're giving your money back; for twenty quid; it's the equivalent of having £8 free for every*..."

TS: *"Twenty pounds.*"

DW: *"...single punter, yeah and you don't have to wait 'til 10 o'clock; it's available now in the shops, online, on your tablet, on your mobile, however you want to do it, the best, you don't even have to think about it, there's no reason not to back Camelot. That is what we're doing*."

TS: *"Phenomenal*."

Channel 4 confirmed to Ofcom that neither it, the programme producer, nor any person connected with either received payment or other valuable consideration for the inclusion of references to Ladbrokes or its bet offer.

Ofcom considered that the material raised issues warranting investigation under Rules 9.4 and 9.5 of the Code which state:

9.4 "Products, services and trademarks must not be promoted in programming."

9.5 "No undue prominence may be given in programming to a product, services or trade mark. Undue prominence may result from:

- The presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or

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

We therefore sought formal comments from Channel 4 (or "the Licensee") on how this material complied with these rules.

Response

Channel 4 explained that the decision to interview the Ladbrokes representative was taken by the production company, Highflyer Productions. The production team considered the Ladbrokes offer to be "a significant development within the betting market" and that there was a justified editorial reason to communicate this to *The Morning Line*'s viewers.

Channel 4 said in hindsight that the "delivery of the item was not appropriate" and that the decision to broadcast it should have been taken with "more thought being given to the intended focus of the interview and consideration given to...issues such as undue prominence".

The Licensee explained that this item had not been referred to the relevant commissioning editor at Channel 4, and as broadcast the item "went beyond what Channel 4 would consider to be editorially justified".

Channel 4 submitted that following this "misjudgement in editorial presentation" it has issued guidance to the production company on the referral of significant items to the commissioning editor and on the inclusion of references to betting offers in programming, to ensure that no further issues of undue prominence arise. Also, Channel 4 said that additional training has been given to the production company on these matters, and it has ensured that presenters are specifically briefed on undue prominence and other compliance issues in the context of live programming.

Decision

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

Article 19 of the EU Audiovisual Media Services (AVMS) Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming.

The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are reflected in, among other rules, Rules 9.4 of the Code which states that products, services and trade marks must not be promoted in programming. Rule 9.5 of the code prohibits giving undue prominence to a product, service or trade mark in programming.

It is common during racing coverage for presenters and guests to discuss gambling, and potentially, betting prices or offers by various bookmakers on specific races or horses. However, broadcasters are expected to ensure that any such references are both editorially justified and presented in a way that does not raise concerns under Section Nine of the Code.

In this case, we noted that the Ladbrokes representative was given an opportunity to describe the Ladbrokes betting promotion in detail. He provided the Ladbroke odds offered on Camelot to win, and explained the money back promotional offer on a £20 stake if Camelot did not win. In doing so, the Ladbrokes representative directly invited and encouraged viewers to take part in the special offer and place a bet, emphasising the uniqueness and immediacy of the offer with a clear call to action: *"...we are doing an offer, available in about 30 seconds time, from half past eight; ... Back Camelot at two to five and if he wins you collect your money...*"

Furthermore, the Ladbrokes representative described how the Ladbrokes betting offer could be accessed via shop, online, on tablets and mobile phones: *"...and you don't have to wait 'til 10 o'clock; it's available now in the shops, online, on your tablet, on your mobile, however you want to do it, the best, you don't even have to think about it, there's no reason not to back Camelot. That is what we're doing*."

We took into account that the programming was broadcast live. However, given the inclusion of the on-screen caption (*"LADBROKES ST LEGER Money back from the sponsors if Camelot loses*") during the material, it was clear that the inclusion of the interview with the Ladbrokes representative had been planned and the production team were therefore aware prior to the interview that the Ladbrokes representative would be making detailed references to the exclusive betting offer on air. Further we noted *The Morning Line* presenter did not attempt to limit the references to the betting offer, and indeed went on to endorse it with the word *"Phenomenal"*.

Ofcom considered that the overall effect of the interview and the inclusion of the on screen caption was to promote and endorse the Ladbrokes betting offer. Ofcom

therefore considered the material to be promotional and in breach of Rule 9.4 of the Code.

In addition, Ofcom considered that there was insufficient editorial justification for the inclusion of these commercial references within the programming. Ofcom therefore found these references to be unduly prominent, in breach of Rule 9.5 of the Code.

Ofcom noted that there was no contractual relationship between Channel 4 or the production company and Ladbrokes for the inclusion of these references. We also noted that Channel 4 has taken steps to ensure that any future references to betting products are compliant with the Code.

Breaches of Rules 9.4 and 9.5

Not in Breach

Sri Lanka's Killing Fields: War Crimes Unpunished

Channel 4, 14 March 2012, 23:05

Introduction

The documentary *Sri Lanka's Killing Fields: War Crimes Unpunished* was a follow up to the previous Channel 4 documentary *Sri Lanka's Killing Fields* broadcast in 2011[1]. It highlighted further information, with regard to four specific case studies, which it was argued, presented "new evidence" of alleged war crimes perpetrated by the Sri Lankan government in the final stage of the Sri Lankan civil war in 2009. The documentary generated 20 complaints which alerted Ofcom to two potential issues: impartiality and the broadcast of misleading material.

One of the complaints, from Complainant A, was extremely detailed, amounting to a total of 141 pages plus extensive appendices, which included evidence that allegedly counteracted the arguments presented by Channel 4 in the documentary. A second complaint, Complainant B, also raised a large number of issues and disputed the key points about alleged war crimes set out in the programme, Both complainants also raised wider issues regarding the role of the Tamil Tigers (known as the LTTE[2]) more generally in the Sri Lankan civil war which they considered was underplayed by Channel 4. As these issues had been previously considered by Ofcom at length in its published decision on the earlier documentary broadcast by Channel 4 in June 2011, and Ofcom found there was no breach of the Code, Ofcom considered after careful consideration that it not necessary or proportionate to review these same or very similar issues again concerning this later case.

Ofcom therefore focussed on the new evidence presented in *Sri Lanka's Killing Fields: War Crimes Unpunished* – the four specific case studies concerning alleged activities undertaken by the Sri Lankan Government during the civil war:

- Case Study 1: that the Sri Lankan Government forces fired into an area within the designated No Fire Zone 1;
- Case Study 2: that the Sri Lankan Government withheld food and medicines from the civilian population;
- Case Study 3: that the Sri Lankan Government forces fired into the designated No Fire Zones 2 and 3 and the Sri Lankan Government did not adhere to their policy of "no civilian casualties"; and
- Case Study 4: the torture and execution of captured LTTE prisoners by Sri Lankan Government forces, as evidenced by mobile telephone and video material.

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[1] The documentary *Sri Lanka's Killing Fields* broadcast on Channel 4 on 14 June 2011 was investigated by Ofcom and found not to be in breach of the Broadcasting Code. See Broadcast Bulletin 192 published on 24 October 2011: http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb192/.

[2] The "LTTE" stands for the Liberation Tigers of Tamil Eelam, the separatist militant organisation formerly based in northern Sri Lanka. The LTTE was defeated by Sri Lankan Government armed forces in 2009 after a bloody conflict.

As was the case with the previous documentary, Channel 4's investigation drew on evidence set out in the UN Panel of Experts on Accountability in Sri Lanka ("UN Report"), analysis by expert contributors and a dossier of evidence including film (such as mobile phone and video film footage), photographs and eye witness accounts collected by Channel 4 in the previous two years.

Due impartiality

Regarding the issue of whether Channel 4 presented the policies, arguments and actions of the sides involved in each of the four case studies presented in a balanced way, Ofcom considered the rules on due impartiality in Section Five of the Code were applicable.

We considered that this issue raised matters warranting investigation under Rule 5.5 of the Code, which 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."

Ofcom therefore asked the broadcaster to provide formal comments as to how the programme complied with this rule.

Misleading material

Two issues were raised with regard to misleading material:

The first was whether the programme, in broadcasting the new evidence (primarily photographs and video) and eyewitness accounts obtained by Channel 4 (which was presented in the programme primarily in Case Study 4 as evidence that the war crime of torturing and murdering captured and surrendering LTTE prisoners was committed) may have misled viewers through the broadcast of faked or manipulated material, or that the new evidence was presented in such a way that materially misled the audience.

The second issue was whether the way in which Channel 4 presented the evidence in Case Studies 1, 2 and 3 misled the audience as it focused on the alleged role of the Sri Lankan Government in committing war crimes and underplayed the role of the LTTE.

Ofcom therefore requested formal comments as to how the programme complied with the following Rule:

Rule 2.2: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience."

Response

Channel 4 provided general comments regarding the investigation of this programme by Ofcom and more specific comments with regard to the Code rules set out above as applied to each of the four case studies presented.

General Comments

Channel 4 stated that it "firmly believed" that the broadcast of the programme was in compliance with the Code. Furthermore, it stated that the matters broadcast were of "immense public interest" and therefore merited protection under Article 10 of the European Convention on Human Rights (Freedom of Expression).

With regard to the two specific complainants referred to in the Introduction above, Channel 4 stated that both had a vested interest in this programme and could not be considered as "neutral observers" with "genuine complaints" under the Code. Furthermore, with regard to the complaint from Complainant A, which was particularly lengthy and detailed, the broadcaster raised concerns regarding the cost and burden placed upon it to respond to the complaint which posed "a serious threat to the future of...current affairs television" and the potential to be "highly chilling of free expression".

Due impartiality

As with the previous documentary broadcast in 2011, and investigated by Ofcom in Broadcast Bulletin 192 ("the Finding"), Channel 4 argued that this documentary did not raise issues under Section Five of the Code. This was because the question of whether the Sri Lankan Government "may" have committed war crimes, as presented in the programme, is no longer a matter of political controversy. The UN Report and two further reports by the UN Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions, which covered much of the same terrain as this programme, found cogent evidence of serious violations of international humanitarian and human rights law by the Sri Lankan Government.

Further, the Sri Lankan Government's own inquiry[3] had itself made a number of significant admissions regarding firing into the No Fire Zones, the use of heavy weapons, that humanitarian aid was in seriously short supply from February – May 2009 and that many civilians had been killed or injured as a result of "crossfire" between the Government forces and civilians. Evidence of abuse, abductions and unlawful arrests by Government soldiers was also presented as warranting further investigation. Therefore, Channel 4 argued, by the time of the broadcast of this second film, the question of whether the Sri Lankan Government "may" have committed war crimes was even less capable of being "a matter of political controversy".

With regard to the question of whether the UK Government or international community should pursue further action in respect of these allegations, Channel 4 argued that this was not a genuine matter of current public policy because the issue of the Government or the international community investigating serious war crimes was not one that could be "realistically" opposed. The broadcaster stated this was not

[3] The *Lessons Learnt and Reconciliation Commission* ("LLRC") was appointed by Sri Lankan President Mahinda Rajapaksa in May 2010 to investigate the facts and circumstances of the civil war during 2002 and 2009, namely: (1) the facts and circumstances which led to the failure of the ceasefire agreement in 2002; (2) whether any person, group or institution directly or indirectly bear responsibility in this regard; (3) the lessons learnt from to ensure that there will be no recurrence; (4) The methodology of restitution to those affected; and (5) the institutional administrative and legislative measures which need to be taken in order or prevent any recurrence of such concerns in the future and to promote further national unity and the reconciliation among all communities.

therefore a matter of "current public policy" in the UK where the programme was broadcast.

Nonetheless, if Ofcom decided that Rule 5.5 was applicable, the broadcaster did address the issue of due impartiality in its response. In this case, Channel 4 stated that the programme made clear to viewers from the outset the subject matter of the documentary and the specific timeframe, for example:

- The presenter Jon Snow introduced the programme as a follow-up to the first documentary: *"...in this follow up film, we present new evidence of war crimes – and investigate who was responsible. An investigation which points to the highest levels of the Sri Lankan Government."*

  Viewers were therefore immediately aware that the purpose of the programme was to consider war crimes committed on the Sri Lankan Government side and that the programme was not concerned with the culpability of the LTTE;

- The specific time frame covered in the programme was also made clear: presenter Jon Snow stated at the beginning that the footage in the first Channel 4 documentary was *"filmed in 2009 in the final stages of the civil war..."* and the four case studies placed events as taking place between January and May 2009.

Therefore, in response to concerns that this documentary may have underplayed the role of the LTTE and focused inappropriately on the actions of the Sri Lankan Government, Channel 4 argued that given the clearly defined editorial context and time frame it was entitled to focus on the Sri Lankan Government's (and not the LTTE's) violations of international criminal and humanitarian law. This was because violations by a Government were: "plainly a far more serious matter than if similar contraventions are perpetrated by terrorist organisations such as the LTTE." Channel 4 stated that viewers would appreciate that a government army was expected to adhere to higher standards of conduct in this regard. This core rationale was underlined at the start of the programme by former Foreign Secretary, David Miliband:

> *"The fact the LTTE were using civilians as human shields – which in some cases they were, which is in itself a war crime – doesn't justify the shelling of those sites and those individuals. Democratic governments are held to higher standards than terrorist organisations and they needed to be adhered to."*

Channel 4 concluded that there was therefore no need for the programme to provide a full history or account of the actions of the LTTE and it was entitled to report the war crimes committed on the part of the Government in the time frame indicated to viewers.

Nonetheless, with regard to the programme including the views of the Sri Lankan Government, Channel 4 provided the Government with "a full and fair opportunity" to respond to all of the detailed allegations prior to broadcast and their response was included in the broadcast. In addition, Channel 4 detailed a number of examples included within the programme that reflected the Sri Lankan Government's viewpoint and the role of the LTTE in the conflict:

- A summary of the findings of the Sri Lankan Government's own inquiry (the LLRC published in December 2011) was referred to in the introduction of the programme;
- News footage and other film footage which featured the Sri Lankan Government's official position views with regard to the four case studies was broadcast, during the course of the programme (see below);
- The brutality of the LTTE was also reported on from the outset and "in no way did it paint the LTTE as free of guilt, or as a civil, peaceful or benevolent force". For example the narration stated: "our film presented evidence of atrocities by both sides..."; "The Tamil Tigers were a brutal but effective army" who were fighting a war in which "they were prepared to use conscription, child soldiers, and even – as in this attempt to kill a government minister – suicide bombers".

Four Case Studies

Channel 4 also addressed the issue of Section Five with regard to the four case studies presented and highlighted that in each instance due impartiality was maintained by referring to the Government's position within the programme:

Case Study 1: included the viewpoint of the Sri Lankan Government at that time:

> *"Government spokesman Brigadier Udaya Nanayakkara denied government responsibility – blaming Tigers who sometimes did have units adjacent to the civilians."*

In addition the programme referred to the Government's position during the conflict of maintaining "zero civilian casualties".

Case Study 2: included the Sri Lankan Government's position at the time of the conflict that in fact, they had underestimated the number of civilians in the area. Firstly, reference was made to a Sri Lankan Embassy cable which stated that the government estimates of civilians remaining in the conflict zone "were about 60,000" and then footage was shown of President Rajapaksa's estimate of civilians in the area to CNN in April 2009:

> "*....there are only about 5,000...5,000 to say, even 10,000 as they say..."*

Channel 4 also stated that the programme was "legitimately entitled" to report that these figures were a "gross underestimate" and the numbers of civilians Channel 4 cited in the programme were supported by evidence from the UN Report, which also found that the Sri Lankan Government's estimates were untenable and that the number of civilians in the area was far higher than the Government had claimed.

Case Study 3: the programme repeatedly included the Sri Lankan Government's stance at the time of the events, namely, that they considered this to be a "humanitarian" or "hostage rescue" operation, that they did not deploy any heavy artillery or weapons and that no civilians had died in the offensive. For example, the following comments were included:

- *"The Sri Lankan Government officially claimed this was a hostage rescue operation."*

- *"An official military spokesman insisted on 22nd April [2009] – as the Government did throughout the war – that no heavy weapons had been used."*
- Quote from Government spokesman: *"During this rescue operation, as I said earlier, we never used any of the heavy weapons and tanks."*
- Clip of Sri Lanka TV newsreader: *"Troops engaged in the Vanni Humanitarian operations are believed to have rescued all civilians held hostage by the LTTE from Puttumattalan to Umbala and Pokanai in the no-war zone. Troops have refrained from attacking the areas where civilians are held hostage by the brutal LTTE."*
- Reference to the findings of the LLRC Report that the resulting civilian deaths were a result of "crossfire" and were "proportional and justified".
- Statements from General Shivendra Silva, who was the Sri Lankan Government forces commander in the area at the time, and the televised denial at the time of events by President Rajapaksa that they did not use heavy weapons.

Channel 4 also stated that the programme made it clear that the LTTE had been equally guilty of war crimes using the civilians in the No Fire Zone as "human shields" and this was commented on by David Miliband in the programme:

> *"The fact that the LTTE were using civilians as human shields – which in some cases they were, which is a war crime – doesn't justify the shelling of those sites and those individuals."*

Case Study 4: the programme made it clear to viewers that the Sri Lankan Government had challenged the authenticity of the footage:

> *"The Sri Lankan Government has continued to dismiss [the videos] as fake. And when the LLRC came to examine the videos and the allegations of extra-judicial executions, it avoided reaching a conclusion."*

In addition, the programme included the Sri Lankan Government's view on the use of the footage at other points in the programme, for example:

- Clips were shown from the Sri Lankan Government's documentary *Lies Agreed Upon* alleging that Channel 4's previous documentary Sri Lanka's Killing Fields had been "doctored" and "deliberate lies are presented as authentic, numbers are pulled from thin air and presented as fact, sources are not mentioned, faces hidden, voices distorted"; and
- The media advisor to Sri Lankan President Rajapaksa was shown in a clip confronting the programme maker from Channel 4 and challenging the authenticity of the first film.

In conclusion, Channel 4 stated that alternative viewpoints, namely those of the Sri Lankan Government, were presented throughout the programme to ensure due impartiality was preserved. The broadcaster stated that the audience would have been left "under no illusion that the Government of Sri Lanka disputed much of what was being reported" in the programme. In addition, the programme provided the audience with clear signposts to where the Sri Lankan Government position had been articulated, including its own LLRC Report and the highly critical film promoted by the Sri Lankan Government called *Lies Agreed Upon.*

Misleading material

With regard to the authenticity of the footage shown, Channel 4 "categorically" rejected the suggestion that any of the material shown in the programme was "faked" or "manipulated" or "misleading in any way".

As was case with the previous documentary, the programme makers had carried out an extensive two-year investigation in which they collated an extensive dossier of evidence including: film footage, photographs, diplomatic cables, confidential correspondence, forensic reports and witness statements. In addition, extensive steps had been taken to verify the authenticity of this material and all evidence was subject to rigorous journalistic analysis and cross checking to corroborate them. With regard to the new photographic evidence presented, of dead and injured civilians in No Fire Zone 1, this had been taken by UN workers and independently analysed by forensic pathologist Professor Derrick Pounder. In addition, other evidence had been presented to support the findings presented including expert opinions, confidential cables, witness testimony and confidential internal reports.

In response to concerns from the complainants that Channel 4 had not revealed its sources, the broadcaster stated it could not reveal these due to concern for the safety of the individuals. The broadcaster offered its reassurance however that there was "a painstaking and unparalleled journalistic investigation underlying the programme, which has been supported by the UN Report, the UN Special Rapporteurs as well as numerous NGOs".

With reference to the editorial context, Channel 4 argued that the audience was provided, throughout the course of the programme, with appropriate and corroborated information about the nature of the evidence that was broadcast and the Government's view on the authenticity of the footage was explicitly presented, for example:

Presenter
Jon Snow: *"The Sri Lankan Government has continued to dismiss [the videos] as fake. And when the LLRC came to examine the videos and the allegations of extra-judicial executions it avoided reaching a conclusion."*

In conclusion it was Channel 4's opinion that "viewers could not have watched this programme without being fully aware of the fact that the Sri Lankan Government found both the previous programme and the allegations in this programme tendentious. Likewise viewers would have been aware that the Sri Lankan Government challenged the allegations as being "false and malicious" as was made clear from the official statement which was included in the programme. In this respect Channel 4 stated the audience was not misled.

Decision

This Decision takes into consideration Channel 4's general comments about the legitimacy of the complaints relating to this investigation and the more specific comments regarding Section Five and Section Two of the Code.

Ofcom noted Channel 4's concerns that two of the complainants (previously detailed) had a political interest in Sri Lanka and therefore they were not "neutral observers" nor should the complaints be considered as "genuine" viewer complaints under the Code.

However, in considering whether a complaint relating to Rules Two and Five of the Code requires investigation, Ofcom must follow its Procedures for investigating breaches of content standards for television and radio.[4] These make it clear that it is the *issues* raised by the complaint and the programme, rather than the identity of the complainant, which are looked at when Ofcom considers whether a complaint warrants further investigation:

> "Ofcom will first consider whether, on its face, a complaint(s) raises potentially substantive issues under the Broadcasting Code (or other Code to which these Procedures apply) which warrant investigation by Ofcom. It will do so by reference to the gravity and/or extent of the matter complained of, including, for example, whether it involves ongoing harm, harm to minors and/or financial harm." (Paragraph 1.18)

In this case Ofcom considered that the significance of the potential issues raised in relation to the programme, and the apparently conflicting and detailed nature of the evidence presented to Ofcom concerning those potential issues, warranted an investigation by Ofcom. In order for Ofcom to have the information to enable it to reach a fair and reasonable decision in this case, it was necessary to ask Channel 4 to comment in an appropriate way on the potential issues raised and the related evidence.

Ofcom appreciated that two of the complainants, Complainants A and B, raised especially detailed and lengthy concerns in their complaints. It is not Ofcom's intention to place a disproportionate burden on broadcasters by asking them to comment in unnecessary detail on very lengthy complaints, especially when there is a risk that by doing so the broadcaster might be discouraged from producing controversial programmes. It is essential that broadcasters have the editorial freedom to make challenging programmes without undue interference with their, and the audience's, right to freedom of expression. Equally however Ofcom is under a statutory duty to ensure that due impartiality is preserved within television and national radio services on matters of political or industrial controversy and matters relating to current public policy. Ofcom also has a duty to ensure generally accepted standards are applied to the content of television services which provide adequate protection for members of the public from harmful and/or offensive material. Where Ofcom considers that a complainant raises an issue which warrants further investigation with respect to these duties, it should investigate the matter further.

We do not consider that a disproportionate burden was placed on Channel 4 in responding to Ofcom's queries about this case. As well as providing copies of the complaints, Ofcom provided a summary of the main issues raised. We did not ask Channel 4 to comment on potential issues raised by complainants in relation to Channel 4's overall portrayal of alleged war crimes by Sri Lankan military forces – as we considered that these were issues which had already been determined by Ofcom and on which Ofcom's decisions had been published already in Broadcast Bulletin 192[5]. Ofcom narrowed the focus of this investigation only to that part of the complaints which related to due impartiality and the new evidence presented in the programme, specifically in relation to the four case studies alleging war crimes.

In this case, the content of the Channel 4 documentary was disputed. In this case, it is not Ofcom's role to establish whether or not the material was faked or manipulated.

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[4] http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/

[5] http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb192/

Rather, Ofcom's role is to determine whether or not the programme was compliant with the Code. Ofcom therefore needed to have sufficient knowledge and submissions on the material facts in order to decide in this case whether or not Channel 4 took reasonable care to ensure that it properly considered the material facts and presented the programme in a manner which was consistent with the requirements of the Code, including the requirements to preserve due impartiality and to ensure the audience was not materially misled.

Due impartiality

As noted above, under the special impartiality requirements of the Communications Act 2003, Ofcom has a duty to ensure that due impartiality is preserved within television and national radio services on matters of political or industrial controversy and matters relating to current public policy. Under the Act Ofcom also has a duty to ensure generally accepted standards are applied to provide adequate protection for members of the public from harmful and/or offensive material.

Rule 5.5 of the Code states: "Due impartiality on matters of political or industrial controversy and matter 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".

When interpreting due impartiality, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority.

The broadcaster's right to freedom of expression is therefore 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 this requirement 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. Ofcom therefore applies the Code in a manner that fulfils its function of securing the necessary standards objectives in a manner that best guarantees an appropriate level of freedom of expression.

Ofcom first considered whether the requirements of Section Five of the Code should be applied: that is, whether the subject matter of the documentary concerned matters of political or industrial controversy or a matter relating to current public policy.

Ofcom noted Channel 4's two key arguments as to why Section Five did not apply in this case and that to apply it was an unnecessary infringement of freedom of expression:

- firstly, because the alleged evidence that the Sri Lankan Government committed war crimes was no longer a matter of political controversy; and
- secondly, because the issue of international community or UK Government intervention to hold the Government of Sri Lanka to account for these war crimes was not a matter of current public policy.

Ofcom noted that in our decision of 24 October 2011 (on the programme broadcast by Channel 4 on 14 June 2011) we found that "the actions and policies of the Sri Lankan Government during its offensive against the LTTE and the appropriate response of the international community was, and still remained a matter of political controversy at the time of this broadcast. Further, given that the international community, including the UN, has publicly called on the Sri Lankan Government to investigate the atrocities committed this was also a matter relating to current public policy". Section Five of the Code therefore applied with respect to this programme, broadcast on 14 March 2012.

Ofcom noted that the subject matter of this second documentary - evidence that the Sri Lankan Government, during its offensive against the LTTE, had committed war crimes against the civilian population in the latter stages of the civil war as contained in the four case studies - has been continuously rejected by the Sri Lankan Government. Indeed, whilst the Sri Lankan Government's own inquiry findings, as reported in the LLRC report, set out some admissions regarding its actions during the civil war, it has not made any admission of responsibility for war crimes and has resolutely countered allegations made by Channel 4 regarding events in the latter stages of the civil war.

Therefore, Ofcom has concluded that the actions and policies of the Sri Lankan Government during its offensive against the LTTE and the appropriate response of the international community was, and still remained, a matter of political controversy at the time of this second broadcast.

Also the international community, including the UN, continues to call on the Sri Lankan Government to investigate the atrocities committed in Sri Lanka[6]. It appears to Ofcom that there is to a great extent a consensus among a number of governments that the Sri Lankan Government should investigate the alleged war crimes committed in Sri Lanka. The Sri Lankan Government has not yet however agreed to hold such an investigation. The fact that there may be a UK Government or international community consensus on this issue however (i.e. in this case that the Sri Lankan Government should investigate) does not prevent it being a matter of current public policy as to whether further action might be required or appropriate by the UK Government or international community to bring about such an investigation (i.e. "the issue of international community or UK Government intervention to hold Sri Lanka to account for these war crimes"). Ofcom therefore concluded that this programme also dealt with a matter relating to current public policy.

Due impartiality therefore needed to be maintained in accordance with Section Five of the Code.

For these reasons, Ofcom did not accept the argument advanced by Channel 4 that this documentary was not subject to Rule 5.5. Further, as previously set out in the Finding relating to the first documentary, "there is no requirement that there should be any political controversy in the UK's Parliament about an issue for its treatment in a broadcast to be subject to Section Five; nor necessarily in all cases that if the UK Parliament has a "settled policy" on the international community's role in relation to a particular matter that the matter is no longer a "matter of current public policy"". The meaning of "matters of political or industrial controversy and matters relating to

[6] The UN's human rights body, the Human Rights Council, called on the Government of Sri Lanka in March 2012 to take "credible" steps to ensure accountability for alleged serious violations committed during the final stages of the country's civil war. See: http://www.un.org/apps/news/story.asp?NewsID=41608&Cr=sri+lanka&Cr1=.

current public policy" set out in the Code potentially is broad. In deciding whether Section Five applies in any case, Ofcom will reach its decision taking account of the individual circumstances.

Having established that Section Five of the Code applied, Ofcom then went on to consider in this case whether due impartiality had been preserved. Section Five of the Code distinguishes between news programmes and non-news programmes (such as this documentary). While all subjects in news programmes must be presented with due impartiality and reported with due accuracy, in other non-news programmes there is no requirement in the Code for issues to be treated with due accuracy[7]. However, depending on the subject matter, there may be a requirement for issues to be presented with due impartiality.

Therefore, in applying Section Five of the Code, Ofcom underlines that the broadcasting of highly critical comments concerning the policies and actions of any state or government (such as in this case regarding the Sri Lankan Government) is not in itself a breach of the Code. It is Ofcom's view that current affairs programmes must be able to explore and examine such issues and put forward highly critical views.

However, where the subject matter of the programme raises a matter of political controversy, it is the responsibility of the broadcaster to ensure that "due" impartiality is maintained. Under the Code the term "due" means adequate or appropriate to the subject matter. It does not mean that an equal division of time has to be given to every view nor that every argument or every facet of the argument must be presented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures that due impartiality is maintained.

In this case, Ofcom noted that:

- when presenting the four case studies, Channel 4 did seek to include the viewpoints of the Sri Lankan Government and produced evidence in its response that it had put all of the significant allegations included in the programme to the Sri Lankan Government for comment in advance of the programme. Whilst the Sri Lankan Government chose not to respond in full to each of the individual allegations put to it, Channel 4 broadcast a near verbatim version of its limited statement;

- the programme included: official statements and views contemporaneously made by the Sri Lankan Government; statements from the official Government report (LLRC); and, a clip from the documentary (*Lies Agreed Upon*). More specifically, the Sri Lankan Government position was presented in: the narration, such as the reference to Brigadier Udaya Nanayakkara blaming the Tigers for having units adjacent to civilians; in Sri Lankan television news clips featuring Government officials such as General Silva and President Rajapaksa; and in other footage featuring for example the President's Media Advisor;

- the subject matter of this documentary was clearly presented as being about the final stages of the Sri Lankan civil war, and in particular, the war crimes

[7] Although as set out in more detail below, Rule 2.2 of the Code states that: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience."

allegedly perpetrated by the Sri Lankan Government against the civilian population in the LTTE-held areas of Sri Lanka. This was set out by presenter Jon Snow and the former Foreign Secretary, David Miliband, in the introduction. As this documentary was not intended to be an analysis of the entire conflict or the actions of both the LTTE and Sri Lankan Government during the duration of the civil war as a whole, the programme was only required to maintain due impartiality of the specific subject matter presented; and

- while the documentary did focus on evidence which predominantly covered the actions of the Sri Lankan Government in its offensive against the LTTE and the war crimes allegedly perpetrated by the Sri Lankan Government, the documentary did include explicit references to the LTTE activities at this time where this was relevant. For example: Jon Snow referred to the LTTE as "a brutal but effective army" fighting a war "which they were prepared to use conscription, child soldiers, and even...suicide bombers"; David Miliband highlighted that the LTTE were using civilians as "human shields...which is itself a war crime"; and, the quote from Brigadier Nanayakkara highlighted that the LTTE had units adjacent to the civilians which resulted in the Government shelling.

Ofcom therefore concluded that overall Channel 4 preserved due impartiality in its examination of the Sri Lankan Government's actions and policies during its offensive and there was no breach of Rule 5.5.

Misleading material

Rule 2.2 states that: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience". Guidance to this rule underlines that it is "designed to deal with content that **materially misleads the audience so as to cause harm or offence** [emphasis in original]" and not "with issues of inaccuracy in non-news programmes". It is therefore designed to provide *adequate* protection to the public from harmful or offensive material. Whether a programme "materially" misleads an audience so as to cause harm or offence is a high test and depends on a number of factors such as the editorial context, the nature of the misleading material and, above all, either what the potential effect could be, or what actual harm or offence has occurred.

In this case, some of the evidence set out in the complaints received and in the programme (and in Channel 4's representations about the programme) were to some extent in conflict. In investigating this case it was not Ofcom's role to establish whether or not the material was faked or manipulated. Rather, Ofcom's role is to determine whether or not the programme was compliant with the Code, and to examine the steps taken by Channel 4 to ensure that it took reasonable care to properly consider the material facts and present them in a manner that ensured the audience was not materially misled. Ofcom assessed the measures taken by Channel 4 to ensure the audience was not materially misled in two ways: firstly with regard to the alleged faking or manipulation of video and photographic evidence; and, secondly with regard to the way in which facts were presented overall.

Video and photographic Evidence (Case Study 4)

In considering the new evidence presented in this documentary, Ofcom noted that the broadcaster took steps *before* broadcast to check whether the video material featuring the execution of the supreme leader of the LTTE and his 12-year old son

had been faked or manipulated before it was broadcast. The narration stated that the footage had been "carefully examined for authenticity by leading independent experts" and the execution was corroborated by a "sworn affidavit from a senior Sri Lankan Officer".

We went on to consider the steps taken by Channel 4 *during* the broadcast to ensure the audience was not materially misled by material alleged to be faked or manipulated. The programme featured Professor Derrick Pounder, a forensic pathologist, reviewing the footage (and the high resolution photographic images taken from the video) of two dead bodies, said to be the boy and his father. He offered his professional opinion that the fatal injuries were sustained from close up gunshot wounds which would suggest a "targeted shot", torture and an execution rather than combat injuries. In addition, Professor Schabas offers his expert view that this evidence amounted to a war crime. This information provided viewers with expert opinion and editorial context relating to the nature of the video evidence and photographic images.

In addition, Ofcom noted that the broadcaster took steps during the programme to ensure that viewers were made aware of the view of the Sri Lankan Government with regard to the footage and photographs shown, which suggested the execution of captured and bound LTTE prisoners, by including several references to their position. For example, presenter Jon Snow commented at the start of the programme: "The Sri Lankan Government has continued to dismiss them [the videos] as fake".

Therefore Ofcom is of the view that taking these points into consideration the viewer would have been aware of the Sri Lankan Government's view of the material presented and the debate surrounding its authenticity. Therefore the broadcaster took reasonable care, both before and during the programme, to ensure the audience was not materially misled with regard to the video and photographic evidence in Case Study 4.

Misleading editorial content (Case Studies 1, 2 and 3)

As already pointed out, there is no obligation in the Code requiring broadcasters to present non-news factual programmes with due accuracy. With regard to the complainants' concerns that the programme misled the audience with regard to the way in which it presented the role of the Sri Lankan Government and underplayed the role of the LTTE, it is Ofcom's role, in applying Rule 2.2, to determine if the broadcaster included sufficient context to ensure viewers were not materially misled.

We noted that the programme (as set out above in relation to Ofcom's consideration of due impartiality) set out: the views of the Sri Lankan Government on a number of occasions; made reference to the actions of the LTTE; and included, a near verbatim onscreen presentation of the official statement from the Sri Lankan Government on the issues raised by Channel 4 in this programme (Channel 4 having offered the Sri Lankan Government the opportunity to be interviewed about the allegedly faked footage, which the Government declined). Taking all these factors into account, and the factors which lead us to consider that due impartiality was preserved, it is Ofcom's view that the audience would not have been materially misled in this case so as to cause harm or offence through the broadcast of allegedly faked or manipulated footage of war crimes or misleading material, or through the way in which the material was presented.

Therefore, it is Ofcom's view that there was no breach of Rule 2.2 in relation to the programme.

Conclusion

Ofcom recognises that some viewers may have been offended or concerned by the tone and content of this current affairs programme. All broadcasters must however have the editorial freedom to investigate and report on controversial issues. In doing so they must also have the freedom to select and present the information and facts as they wish; and, in accordance with their right to freedom of expression, they have the right to broadcast this material provided they comply with the Code. After careful investigation, Ofcom was satisfied that Channel 4 in broadcasting this programme did comply with the Code.

Not in Breach of Rules 2.2 and 5.5

Broadcast Licence Condition cases

Broadcasting licensees' Relevant Turnover returns

Ofcom is partly funded by the licence fees it charges television and radio licensees. In setting these fees, Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles[1]. Chief among these principles is that for all television and for national and local analogue radio licensees, the fees they are required to pay are based on a percentage of their turnover from related activities. This is known as Relevant Turnover.

In order to enable Ofcom to charge licensees the appropriate fee, each licensee is required each year to submit to Ofcom a statement of its Relevant Turnover for the last but one calendar year. This provision of information is a licence requirement[2]. As well as enabling the charging of fees, this information is also used by Ofcom to fulfil its obligations regarding market reporting. It can therefore be seen that submission of Relevant Turnover is an extremely important requirement upon all relevant broadcasting licensees. Failure by a licensee to submit an annual Relevant Turnover return when required represents a serious and fundamental breach of a broadcast licence, as the absence of the information contained in the return means that Ofcom is unable properly to carry out its regulatory duties.

Ofcom recorded a breach against a number of licensees in Broadcast Bulletin 209[3] which had failed to submit their Relevant Turnover returns, despite repeated requests for this information. As a consequence of this serious and continuing licence breach, Ofcom put these licensees on notice that their present contravention of their licences was being considered for the imposition of a statutory sanction, including licence revocation.

Revoked

The following licensees failed to submit their Relevant Turnover return in accordance with the original deadline. Ofcom wrote to these licensees, stating that it was minded to revoke the licence if the outstanding breach was not resolved. Further notice of revocation was issued, and the following licensees have been revoked with effect from 13 September 2012 as the Relevant Turnover information remained outstanding.

Licensee	Service Name
Daystar Television Network Limited	Daystar
Electra Entertainment Limited	Channel Zero
Dhammakaya International Society of	Dhamma Media Channel

[1] http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

[2] Contained in Licence Condition 12 for television licensees, and Licence Condition 9 for radio licensees.

[3] http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb209/

the UK	
INX Media UK Limited	9XM

Resolved

The following licensees failed to submit their Relevant Turnover return in accordance with the original deadline, but have subsequently submitted a late return. For these licensees, we therefore consider the matter **resolved and therefore no longer in breach.**

Licensee	Service name
Pakistan Television Corporation Limited	PTV-Global
DM Digital TV Limited	DM Digital
Miniweb Technologies Limited	TV Keys
Celestial Television Networks Limited	Celestial Action Movies
Greener Technology Limited	BEN TV
New OBE Channel Limited	OBE
Passion Broadcasting Television Services Limited	Passion TV
TV Enterprises Limited	NTAI

Other Programmes Not in Breach

Up to 15 October 2012

Programme	Broadcaster	Transmission Date	Categories
Advertisements	E!	22/07/2012	Advertising scheduling
Cornwall with Caroline Quentin	ITV1	02/01/2012	Advertising/editorial distinction
Hollyoaks	Channel 4	31/07/2012	Harm

Complaints Assessed, Not Investigated

Between 2 and 15 October 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
5 News	Channel 5	05/10/2012	Generally accepted standards	1
60 Second News	BBC 3	08/10/2012	Outside of remit / other	1
Advertisements	Sky Sports	n/a	Advertising scheduling	1
Ageeda-e-Khatm-e-Nabuwat	Takbeer TV	11/08/2012	Religious/Beliefs discrimination/offence	1
All Creatures Great and Small	Yesterday	02/10/2012	Television Access Services	1
All Star Mr and Mrs	ITV1	03/10/2012	Scheduling	1
An Officer and a Gentleman	Film4	17/09/2012	Offensive language	1
Antiques Road Trip	BBC 2	05/10/2012	Generally accepted standards	1
Arrow (trailer)	Sky One	03/10/2012	Scheduling	1
Babe: Pig in the City	CITV	28/09/2012	Scheduling	1
BAMMA 10: Live Mixed Martial Arts	5*	15/09/2012	Violence and dangerous behaviour	1
BBC News at Ten	BBC 1	27/09/2012	Race discrimination/offence	1
Be Your Own Boss	BBC 3	03/10/2012	Generally accepted standards	1
Big Brother	Channel 5	15/07/2012	Generally accepted standards	1
Big Fat Quiz of the 00s	Channel 4	30/09/2012	Race discrimination/offence	1
Brainiac: Science Abuse	Challenge	03/10/2012	Scheduling	1
Brainiac: Science Abuse	Challenge	08/10/2012	Scheduling	1
Brainiac: Science Abuse	Challenge	09/10/2012	Gender discrimination/offence	1
Bury FM (Ramadan)	Bury FM (Ramadan)	11/08/2012	Commercial communications on radio	1
Captivity	STV	21/09/2012	Generally accepted standards	1
Cat House	Pick TV	07/10/2012	Gender discrimination/offence	1
Celebrity Juice	ITV2	13/09/2012	Generally accepted standards	1
Celebrity Juice	ITV2	11/10/2012	Transgender discrimination/offence	5
Celebrity Juice (trailer)	ITV2	04/10/2012	Scheduling	1
Channel 4 News	Channel 4	04/10/2012	Generally accepted standards	1
Channel 4 News	Channel 4	06/10/2012	Materially misleading	1
Classic Car Rescue	Channel 5	08/10/2012	Materially misleading	1
Classic Car Rescue	Channel 5	08/10/2012	Materially misleading	1

Come Dine with Me	Channel 4	08/10/2012	Sexual orientation discrimination/offence	1
Come Dine with Me	Channel 4	10/10/2012	Generally accepted standards	1
Coronation Street	ITV1	28/09/2012	Outside of remit / other	1
Coronation Street	ITV1	01/10/2012	Gender discrimination/offence	1
Coronation Street	ITV1	01/10/2012	Product placement	1
Coronation Street	ITV1	03/10/2012	Harm	1
Coronation Street	ITV1	05/10/2012	Product placement	1
Coronation Street	ITV1	10/10/2012	Materially misleading	1
Countryfile	BBC 1	07/10/2012	Outside of remit / other	1
Daybreak	ITV1	02/10/2012	Outside of remit / other	1
Deal or No Deal	Channel 4	07/10/2012	Scheduling	1
Deal or No Deal	Channel 4	08/10/2012	Generally accepted standards	1
Derren Brown	Channel 4	18/09/2012	Religious/Beliefs discrimination/offence	1
Dickinson's Real Deal	ITV1	04/10/2012	Outside of remit / other	1
Dispatches	Channel 4	08/10/2012	Offensive language	1
Doctor Who	BBC 1	29/09/2012	Suicide and self harm	2
Doctors	BBC 1	08/10/2012	Scheduling	1
Downton Abbey	ITV1	30/09/2012	Advertising minutage	1
Downton Abbey	ITV1	07/10/2012	Religious/Beliefs discrimination/offence	1
Downton Abbey (promotions)	ITV1	23/09/2012	Surreptitious advertising	1
EastEnders	BBC 1	05/10/2012	Materially misleading	41
EastEnders	BBC 1	05/10/2012	Violence and dangerous behaviour	9
EastEnders	BBC 1 Scotland	04/10/2012	Scheduling	1
Eastenders / Coronation Street	BBC 1 / ITV1	08/10/2012	Generally accepted standards	1
EastEnders Omnibus	BBC 1	06/10/2012	Materially misleading	1
EastEnders Omnibus	BBC 1	13/10/2012	Generally accepted standards	1
EastEnders Omnibus	BBC 1	13/10/2012	Generally accepted standards	1
Emmerdale	ITV1	20/09/2012	Generally accepted standards	1
Emmerdale	ITV1	20/09/2012	Generally accepted standards	1
Emmerdale	ITV1	20/09/2012	Generally accepted standards	1
Everybody Loves Raymond / According to Jim	Channel 4	n/a	Outside of remit / other	1
Exposure	ITV1	26/09/2012	Generally accepted standards	1
Exposure	ITV1	03/10/2012	Fairness	1
Family Guy	BBC 3	30/09/2012	Generally accepted standards	1

FIFA World Cup Qualifier	ITV1	12/10/2012	Race discrimination/offence	1
Fifth Gear	Discovery Channel	05/10/2012	Religious/Beliefs discrimination/offence	1
Finding Financial Freedom	KICC TV	02/10/2012	Outside of remit / other	1
Fleabag Monkeyface	CITV	n/a	Scheduling	1
Format	Nation 80s	n/a	Format	1
Four Weddings	Sky Livingit	03/09/2012	Scheduling	1
Fred Dinenage: Murder Casebook (trailer)	Sky News	03/10/2012	Outside of remit / other	1
Fresh Meat (trailer)	Channel 4	14/10/2012	Scheduling	1
Friends	Comedy Central	14/10/2012	Offensive language	1
Get Well Soon	CBeebies	04/10/2012	Offensive language	1
Global Khatm-e-Nabuwat Movement	Takbeer TV	09/06/2012	Religious/Beliefs discrimination/offence	1
Harveys' sponsorship of Coronation Street	ITV1	08/10/2012	Materially misleading	1
Have I Got News for You	BBC 1	12/10/2012	Generally accepted standards	16
Have I Got News for You	Dave	03/10/2012	Offensive language	1
Hollyoaks	E4	01/10/2012	Violence and dangerous behaviour	1
Homefront	ITV1	27/09/2012	Generally accepted standards	3
Hotel GB	Channel 4	01/10/2012	Generally accepted standards	2
Hotel GB	Channel 4	01/10/2012	Religious/Beliefs discrimination/offence	1
Hotel GB	Channel 4	01/10/2012	Sexual orientation discrimination/offence	1
Hotel GB	Channel 4	04/10/2012	Privacy	1
Hotel GB	Channel 4	05/10/2012	Disability discrimination/offence	1
Hotel GB	Channel 4	05/10/2012	Generally accepted standards	1
Hunted	BBC 1	04/10/2012	Generally accepted standards	1
ITV News and Weather	ITV1	30/09/2012	Generally accepted standards	1
ITV News and Weather	ITV1	30/09/2012	Outside of remit / other	1
ITV News and Weather	ITV1	30/09/2012	Surreptitious advertising	1
Jeff Randall Live	Sky News	03/10/2012	Outside of remit / other	1
Jeremy Vine	BBC Radio 2	02/10/2012	Outside of remit / other	1
Jewish Mum of the Year	Channel 4	09/10/2012	Outside of remit / other	2
Jewish Mum of the Year	Channel 4	09/10/2012	Religious/Beliefs discrimination/offence	4
Jonathon Ross Show	ITV1	04/10/2012	Animal welfare	1
Julia Hartley-Brewer	LBC 97.3FM	06/09/2012	Violence and dangerous behaviour	1
Jurassic Park	ITV1	06/10/2012	Offensive language	2
Kenny Everett - Top of the Pops: 1973	BBC 4	03/10/2012	Race discrimination/offence	1

Kevin Mccloud's Man Made Home	Channel 4	07/10/2012	Animal welfare	1
Kevin Mccloud's Man Made Home	Channel 4	07/10/2012	Animal welfare	1
Khatm-e-Nabuwat	Takbeer TV	03/07/2012	Religious/Beliefs discrimination/offence	1
Kuami Masle	Sangat TV	29/07/2012	Generally accepted standards	1
Live International Boxing	Channel 5	13/10/2012	Generally accepted standards	1
Look East	BBC 1 (East)	09/10/2012	Due impartiality/bias	1
Loose Women	ITV1	27/09/2012	Race discrimination/offence	1
Loose Women	ITV1	01/10/2012	Nudity	1
Loose Women	ITV1	03/10/2012	Generally accepted standards	1
Lorraine	ITV1	11/10/2012	Generally accepted standards	1
Meal or No Meal competition	Lincs FM 102.2	n/a	Outside of remit / other	1
Michael McIntyre's Comedy Roadshow	BBC 1	28/09/2012	Race discrimination/offence	1
Million Pound Drop	Channel 4	04/10/2012	Generally accepted standards	1
Miranda	BBC 1	05/10/2012	Offensive language	2
Mirpuri Show	Cresent Radio	19/09/2012	Generally accepted standards	1
Mistakes Girls Make New York Competition (promotion)	Sky News	07/10/2012	Religious/Beliefs discrimination/offence	1
Mock the Week	BBC 2	11/10/2012	Disability discrimination/offence	1
Monroe	ITV1	01/10/2012	Materially misleading	1
Most Haunted	Living TV	n/a	Materially misleading	1
Mount Pleasant	Sky Living	26/09/2012	Crime	1
Mrs Biggs	ITV1	03/10/2012	Advertising scheduling	1
NCIS	Channel 5	n/a	Advertising scheduling	1
Never Mind the Buzzcocks	BBC 2	30/09/2012	Race discrimination/offence	1
Never Mind the Buzzcocks	BBC 2	01/10/2012	Generally accepted standards	1
Never Mind the Buzzcocks	BBC 2	08/10/2012	Generally accepted standards	1
News on the Hour	Sky News	29/09/2012	Generally accepted standards	1
Newsnight	BBC 2	30/08/2012	Due accuracy	1
Newsnight	BBC 2	27/09/2012	Race discrimination/offence	1
Newsnight	BBC 2	08/10/2012	Due accuracy	1
Nick Wallis	BBC Radio Surrey	25/09/2012	Generally accepted standards	1
No Repeat Guarantee with Nick	Absolute Radio	08/10/2012	Competitions	1
Nothing to Declare	Pick TV	07/10/2012	Offensive language	1

Olympics 2012	BBC 1	09/08/2012	Race discrimination/offence	1
Panorama: Euro 2012: Stadiums of Hate	BBC 1	28/05/2012	Outside of remit / other	1
Pay Day competition	Radio Clyde	n/a	Competitions	2
Peter Lee Show	TMCR 95.3FM	13/09/2012	Crime	1
Phones 4U's sponsorship of Films on 4	Channel 4	07/10/2012	Generally accepted standards	1
Price v Harrison Fight	Box Nation	13/10/2012	Outside of remit / other	1
Programming	Dave	n/a	Outside of remit / other	1
Programming	Various	n/a	Outside of remit / other	1
Programming	Various radio stations	n/a	Scheduling	1
Radio 1D	BBC Radio 1	06/10/2012	Outside of remit / other	1
Real Life Stories (trailer)	BBC 1	08/10/2012	Generally accepted standards	1
Real Life Stories (trailer)	BBC 2	07/10/2012	Generally accepted standards	1
Real Radio Breakfast	Real Radio Scotland	26/09/2012	Religious/Beliefs discrimination/offence	1
Regional News and Weather	BBC 1	01/10/2012	Due accuracy	1
Robin Galloway	Radio Clyde 1	27/09/2012	Transgender discrimination/offence	1
Room at the Top	BBC 4	27/09/2012	Offensive language	1
Safari	BBC 2	07/10/2012	Generally accepted standards	1
Scott Mills	BBC Radio 1	24/09/2012	Generally accepted standards	1
Shooting Stars	Dave	25/09/2012	Offensive language	1
Signing	BBC	n/a	Television Access Services	1
Sky News	Sky News	25/09/2012	Generally accepted standards	1
Sky News	Sky News	02/10/2012	Generally accepted standards	1
Sky News	Sky News	03/10/2012	Generally accepted standards	15
Sky News	Sky News	04/10/2012	Outside of remit / other	1
Sky News	Sky News	08/10/2012	Outside of remit / other	1
Sky News at Seven with Steve Dixon	Sky News	02/10/2012	Generally accepted standards	1
Sky News at Ten	Sky News	01/10/2012	Generally accepted standards	1
Sky News with Colin Brazier	Sky News	13/10/2012	Generally accepted standards	1
Sky News with Kay Burley	Sky News	03/10/2012	Outside of remit / other	1
Sky News with Kay Burley	Sky News	04/10/2012	Outside of remit / other	1
Soccer Saturday	Sky Sports News	29/09/2012	Due impartiality/bias	1
Sportscene	BBC 1 Scotland	26/09/2012	Generally accepted standards	56

Strictly Come Dancing	BBC 1	06/10/2012	Generally accepted standards	1
Subtitles	Various	n/a	Television Access Services	1
Sunday Morning Live	BBC 1	30/09/2012	Religious/Beliefs discrimination/offence	1
Sunday Morning Live	BBC 1	07/10/2012	Generally accepted standards	1
Switch (trailer)	ITV1	29/09/2012	Scheduling	1
T20 Cricket	ARY News	20/09/2012	Crime	1
The Alan Titchmarsh Show	ITV1	28/09/2012	Animal welfare	1
The Food Hospital	Channel 4	10/10/2012	Offensive language	1
The Inbetweeners	E4	30/09/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	03/10/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	11/10/2012	Outside of remit / other	1
The Jonathan Ross Show	ITV1	08/09/2012	Animal welfare	1
The Jonathan Ross Show	ITV1	13/10/2012	Generally accepted standards	1
The Million Pound Drop Live	Channel 4	12/10/2012	Generally accepted standards	1
The Morning Line	Channel 4	15/09/2012	Materially misleading	9
The One Show	BBC 1	16/07/2012	Due impartiality/bias	1
The One Show	BBC 1	02/10/2012	Due accuracy	1
The Thick of It	BBC 2	13/10/2012	Offensive language	1
The Valleys	MTV	25/09/2012	Race discrimination/offence	11
The Valleys	MTV	25/09/2012	Sexual orientation discrimination/offence	1
The Valleys	MTV	28/09/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	21/09/2012	Age discrimination/offence	1
The Wright Stuff	Channel 5	26/09/2012	Violence and dangerous behaviour	1
The Wright Stuff	Channel 5	27/09/2012	Generally accepted standards	2
The Wright Stuff	Channel 5	01/10/2012	Crime	1
The Wright Stuff	Channel 5	03/10/2012	Race discrimination/offence	1
The Wright Stuff	Channel 5	05/10/2012	Gender discrimination/offence	1
The X Factor	ITV1	18/08/2012	Materially misleading	7
The X Factor	ITV1	18/08/2012	Offensive language	1
The X Factor	ITV1	18/08/2012	Scheduling	2
The X Factor	ITV1	08/09/2012	Race discrimination/offence	1
The X Factor	ITV1	08/09/2012	Race discrimination/offence	1
The X Factor	ITV1	22/09/2012	Crime	1
The X Factor	ITV1	23/09/2012	Outside of remit / other	1

The X Factor	ITV1	30/09/2012	Generally accepted standards	1
The X Factor	ITV1	30/09/2012	Offensive language	3
The X Factor	ITV1	30/09/2012	Outside of remit / other	2
The X Factor	ITV1	06/10/2012	Generally accepted standards	5
The X Factor	ITV1	06/10/2012	Product placement	1
The X Factor	ITV1	06/10/2012	Promotion of products/services	1
The X Factor	ITV1	06/10/2012	Violence and dangerous behaviour	1
The X Factor	ITV1	06/10/2012	Voting	1
The X Factor Results Show	ITV1	07/10/2012	Offensive language	12
The X Factor Results Show	ITV1	14/10/2012	Generally accepted standards	1
The Xtra Factor	ITV2	29/09/2012	Scheduling	1
This Morning	ITV1	26/09/2012	Race discrimination/offence	1
This Morning	ITV1	03/10/2012	Fairness	1
This Morning	ITV1	08/10/2012	Generally accepted standards	1
This Morning	ITV1	08/10/2012	Harm	1
Top Gear	BBC 2	30/09/2012	Scheduling	1
Top Gear	Dave	06/10/2012	Offensive language	1
Total Wipeout	BBC 1	29/09/2012	Nudity	1
Trollied	Sky1	21/09/2012	Generally accepted standards	1
True Stories: Gypsy Blood / BIg Fat Gypsy Wedding	Channel 4	n/a	Race discrimination/offence	1
Unzipped (Trailer)	BBC 1	06/10/2012	Generally accepted standards	1
Vera	ITV3	06/10/2012	Generally accepted standards	1
Victoria Derbyshire	BBC Radio 5	03/10/2012	Outside of remit / other	1
Walk on the Wild Side	BBC 1	13/10/2012	Generally accepted standards	1
Watchdog	BBC 1	10/10/2012	Generally accepted standards	1
Watchdog	BBC 1	10/10/2012	Materially misleading	2
Welcome to India	BBC 2	03/10/2012	Generally accepted standards	8
Welcome to India	BBC 2	03/10/2012	Materially misleading	1
World of Bollywood	Prime TV	03/09/2012	Undue prominence	1
World's Greatest Body Shockers	E4	01/10/2012	Gender discrimination/offence	1
Yorkie's sponsorship of Eddie Stobart, Trucks and Trailers	Channel 5	05/10/2012	Gender discrimination/offence	1
You've Been Framed!	ITV1	13/10/2012	Animal welfare	1
Zeebox's sponsorship of The Simpsons	Sky1	04/10/2012	Generally accepted standards	1

Investigations List

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

Here is an alphabetical list of new investigations launched between 18 and 24 October 2012.

Programme	Broadcaster	Transmission Date
Anglia Mowers' sponsorship of weather	North Norfolk Radio	Various
Animal Sanctuary	Horse & Country TV	28 August 2012
Emmerdale	ITV1	17 October 2012
Fresh Meat	Channel 4	16 October 2012
Studio 66 Nights	Studio 66 TV4	10 October 2012
STV News at Six	STV	13 August 2012
The X Factor	ITV1	18 August 2012

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/.