

Ofcom Broadcast and On Demand Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act². Ofcom must include these standards in a code, codes or rules. These are listed below.

The Broadcast and On Demand Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and rules below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by the ASA on the basis of their rules and guidance for advertising content on ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”) for content broadcast on television and radio services.
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in television programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility for on television and radio services. 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 advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) Ofcom’s [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral by the Advertising Standards Authority (“ASA”), the co-regulator of ODPS for advertising or may do so as a concurrent regulator.

[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

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

² The relevant legislation can be found at Part 4A of the Act.

³ 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.

provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

It is Ofcom's policy to describe fully the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.

Notice of Revocation

ARY Digital, QTV – Islamic Education Channel, ARY News, ARY World News, ARY QTV, ARY Entertainment *ARY Network Limited (in liquidation)*

Introduction

ARY Network Limited (in liquidation) held six Television Licensable Content Service ('TLCS') licences granted under Part 1 of the Broadcasting Act 1990. These licences were used to broadcast the following channels: ARY Digital (TLCS-290BA/1), ARY QTV (TLCS-1550BA/1), ARY News (TLCS-925BA/1), ARY World News (TLCS1549BA/1), QTV–Islamic Education Channel (TLCS924BA/1), and ARY Entertainment (TLCS1551BA/1).

On 27 January 2017, Ofcom notified ARY Network that it was minded to revoke the licences, subject to their representations, on the basis that the company had ceased to provide all six of the services. ARY Network had ceased trading on 31 December 2016 and had been placed into voluntary liquidation on 12 January 2017. Ofcom was concerned that, despite the liquidation of the company, programmes were still being broadcast on three of the licensed services (ARY Digital, ARY QTV and ARY News). Ofcom noted that the three remaining services (ARY World News, QTV – Islamic Education Channel and ARY Entertainment) were no longer broadcasting at all.

Following Ofcom's letter of 27 January, the liquidator for ARY Network provided both written and oral representations to Ofcom. These confirmed that ARY Network was no longer providing the services and that the liquidator had been investigating the matter. In its oral representations, the liquidator explained that he believed that the services that were still on air were being provided by a third party. The liquidator also explained his role in maximising the value of the assets in the company and that he was seeking Ofcom's permission to vary the licences to rename the channels and to begin broadcasting new content, with the intention of then selling the EPG slots on which the channels were available.

Decision

Having given careful consideration to the comments made in both the written and oral representations of the liquidator, Ofcom was satisfied that ARY Network had ceased to provide all six of its licensed services and, in particular, that it did not have general control of those services within the meaning of section 362(2) of the Communications Act 2003.

The broadcasting regulatory framework relies on Ofcom being able to identify who is providing the licensed service at all times and to be able to hold its broadcast licensees accountable to the terms and conditions of their licences. Having regard to these functions, particularly in relation to authorising the provision of broadcasting services and regulating the content of those services, Ofcom was satisfied that it was appropriate to serve a notice on ARY Network revoking the licences.

On this basis, Ofcom issued and served a notice on ARY Network on 1 February 2017 under section 238(4) of the Communications Act 2003 revoking all six of its licences with immediate effect.

Revocation of the Licences under section 238(4) of the Communications Act 2003.

Broadcast Standards cases

In Breach

Can't Pay? We'll Take It Away!

Channel 5, 28 September 2016, 21:00

Introduction

Can't Pay? We'll Take It Away! is an observational documentary series that follows the work of High Court Enforcement Agents ("HCEAs") as they attempt to resolve debt disputes through negotiated settlements and asset seizures.

Ofcom received three complaints about the frequent use of offensive language broadcast "just after the watershed" which, the complainants considered was not appropriate.

The pre-programme information provided by the continuity announcer referred to: "...*highly offensive language in Can't Pay? We'll Take It Away!*" Then, following the sponsorship credit, a warning was shown with a voiceover stating:

"Be prepared for scenes of intense aggression and HIGHLY [emphasis in the original] offensive language from the very start and throughout, which may distress some viewers".

The first story in this episode, broadcast from 21:02, featured two HCEAs attempting to recover £5,000 from a man who requested that they should leave his property. From approximately 21:04, and for about three minutes, 15 instances of the most offensive language were used, which consisted of 14 instances of the word "*fuck*" (and variations of it) and one instance of the word "*cunt*".

Ofcom considered this material raised issues warranting investigation under Rule 1.6 of the Code, which states that:

"The transmission to more adult material must not be unduly abrupt at the watershed...For television, the strongest material should appear later in the schedule".

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

Response

Channel 5 stated that it did not believe that the content was in breach of Rule 1.6. In its view, the broadcast occurred after the 21:00 watershed and at a time when audiences expected to encounter strong adult material. Channel 5 said that it was well known for showing content with adult themes at this time and that this episode was no exception.

The Licensee added that in a previous decision relating to this programme, Ofcom had acknowledged that there was a public interest in seeing the activities of the HCEAs and in understanding the difficulties, threats and trying circumstances they face in exercising their duties. This public interest extended to seeing and hearing verbal abuse occasionally directed at the HCEAs.

The Licensee stated that this series had an established reputation and was known to include adult themes and heated and difficult situations. Having run for four series over two years, Channel 5 said that the audience clearly understood the nature of the programme and followed the series because of this. Accordingly, Channel 5 considered that no viewers, even a casual viewer, would have been in any doubt that when tuning into an episode of the programme that she or he may encounter “dramatic, confrontational and sensational behaviour, often accompanied by highly offensive, and sometimes, violent language”.

Channel 5 explained that its usual approach to ensure compliance with Rule 1.6 was that there should be no offensive language broadcast in the first seven minutes of a programme broadcast at 21:00 to ensure that the transition to more adult material after the watershed was not too abrupt. However, occasionally, and with regard to this particular episode, the Licensee explained that the editorial requirements of the programme meant that this position was varied. It said that it had permitted the offensive language on this occasion because without it, the severity and volatility of the situation and the difficulties experienced by the HCEAs in carrying out their duties would have been unclear and incomprehensible to viewers. Channel 5 said that its decision to include the most offensive language soon after the watershed was not taken lightly and that it had been “referred up to the highest levels of Channel 5”.

The Licensee added that in this case, great care was taken to ensure that a bespoke warning was given to viewers so that they would be properly prepared for the use of highly offensive language. The on-screen warning (as detailed in the Introduction above) was voiced by the programme’s regular voiceover artist so that it was integrated into the programme. Further, Channel 5 said that, by placing the word “HIGHLY” in capitals, it conveyed that the offensive language included in the broadcast would be at the very high end of the scale. This was in addition to the usual warning of highly offensive language given by the continuity announcer.

Channel 5 said that given the unusual editorial context and the presence of the serious and bespoke warning, it considered that the broadcast did not breach Rule 1.6.

Licensee’s representations on Ofcom’s Preliminary View

The Licensee provided Ofcom with its representations on the Preliminary View which was to find the programme in breach of Rule 1.6.

In summary, Channel 5 stated it did not consider that the programme had breached Rule 1.6 of the Code or that the Preliminary View had given sufficient consideration to its earlier submission (as detailed above) and the context in which the programme was broadcast. The Licensee reiterated that factors such as: the audience being familiar with the editorial nature of the content; viewers watched the programme because of the nature of the content; and, the “carefully considered warnings” at the start of each programme, all provided editorial context and ensured that the content did not exceed the expectations of even a “casual viewer” to the programme.

The Licensee said that Rule 1.6 refers to the transition “at the watershed”, not at some “unspecified time after the watershed”. Accordingly, as the first instance of offensive language in this programme was broadcast at 21:04 it was Channel 5’s view that this was “clearly not ‘at’ the watershed, but shortly after it”. It added that there was no prohibition on the use of the word “fuck” (and variations of the word) and “cunt” after the watershed. It therefore considered that in this case, four minutes

after the watershed was a “sufficient” amount of time for the transition to adult programming.

Channel 5 stated that Ofcom had previously reached decisions where no breach of Rule 1.6 had been found despite offensive language being broadcast “either right on or immediately after the watershed”. Ofcom had taken into consideration not just whether offensive language was broadcast at, or immediately after, the watershed, but also whether there was sufficient editorial justification and context for broadcasting the most offensive language very soon after 21:00.

The Licensee reiterated the editorial justification and contextual factors for broadcasting the most offensive language soon after the watershed in this case. These were, in summary, that:

- the programme included “clear and express warnings” prior to the commencement of the programme made both in text on-screen and in voiceover. Channel 5 said that this warning was “unprecedented in the history of the programme” which warned regular viewers to be “on notice” that this programme “would be different to ordinary programmes” and that casual or accidental viewers would be “fully informed” about the type of content that they were about to view and make a decision not to watch;
- the most offensive language was broadcast after the watershed and at a time when audiences expect to encounter strong adult material. Channel 5 stated that there was “a standing rule” that no offensive language should be included in “the first seven minutes of a programme” (where it is broadcast from 21:00) in order to permit for a smooth transition. However, the exception was where the particular editorial context of an individual programme in any series of *Can't Pay? We'll Take It Away* warranted it;
- there was an editorial justification for including the offensive language in this case, because if it was removed the audience would not have a proper understanding of the volatility of the situation or the stress and the pressure the HCEA faced. An accurate telling of this confrontation was therefore entirely in the public interest and justified an unduly abrupt transition to more adult material; and
- there was no evidence that the inclusion of offensive language in this programme, or any other episode of this programme which contained multiple instances of offensive language, caused widespread offence.

In conclusion, Channel 5 stated that it had taken great care to ensure any possible offence was minimised and completely contextualised, not least by the use of the bespoke warning prior to the commencement of the programme. Therefore, in its view, there was sufficient editorial justification and context to ensure the transition was not “too abrupt”.

Decision

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

Rule 1.6 states that the transition to more adult material must not be unduly abrupt at the watershed, i.e. 21:00.

As noted in Ofcom's guidance on observing the watershed on television⁴, "[c]ontent that commences after the watershed should observe a smooth transition to more adult content. It should not commence with the strongest material". Recognising that children may not have ceased viewing at exactly 21:00, Rule 1.6 is designed to avoid a sudden change to more adult material that would only be suitable for a post-watershed broadcast.

Rule 1.6 is not prescriptive. It does not stipulate a certain set time after the watershed when broadcasters may start to transmit more adult material. What constitutes an "unduly abrupt" transition to more adult material depends on the context: for example, factors such as the nature of the offensive and/or harmful material, the editorial content of the programme, the time of broadcast, and the expectations of the audience. We therefore took all these factors into account when determining whether there was sufficient justification for broadcasting this content approximately four and a half minutes after the watershed.

Ofcom's 2010 research on offensive language⁵ highlighted that the words "fuck" (and variations of it) and "cunt" were considered by audiences to be amongst the most offensive language and that the word "cunt" was particularly offensive.

In this case, from 21:04 there were 15 instances of the most offensive language, including 14 instances of the word "fuck" (and variations of it) and one instance of the word "cunt" broadcast within a period of three minutes during a sequence involving a confrontation between the two HCEAs and the man from whom they were trying to recover money. In Ofcom's view the amount and the frequency of the most offensive language, which was used in an aggressive and confrontational manner over a concentrated period of time meant that the material was clearly aimed at an adult audience and could be considered "more adult material". In addition, given that the strongest material was broadcast relatively soon after the 21:00 watershed, this was clearly, in our view, an abrupt transition.

Ofcom recognises that there is no prohibition on the use most offensive language after the watershed. However, given that there is a prohibition on the most offensive language immediately before 21:00 (Rule 1.14), a broadcaster would need to demonstrate that there was very strong contextual justification for the inclusion of the most offensive language in a period very soon after the 21:00 watershed, especially when the language is used repeatedly and in an aggressive and confrontational manner⁶.

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0030/86781/watershed-on-tv.pdf

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0017/27260/offensive-lang.pdf. On 30 September 2016 Ofcom published new research on public attitudes to potentially offensive language:
https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

⁶ Ofcom's research on offensive language (see above) has consistently found that participants considered that the tone or delivery of offensive language can increase or decrease its acceptability. An aggressive, malicious, angry or mocking tone, particularly when directed at another individual, heightened the impact of the language for participants, increasing its emotional intensity.

In assessing whether the transition to this more adult material was unduly abrupt in this case, we considered whether there was sufficient editorial justification and context for broadcasting 15 instances of the most offensive language from four minutes after the 21:00 watershed.

We noted the Licensee's view that the programme was a serious observational documentary and that it was "entirely in the public interest" to broadcast accurately the interaction between the HCEA and the man from whom money was to be recovered.

The purpose of Rule 1.6 is not to limit what content that is in the public interest may include, but to ensure a smooth transition to stronger material in the schedule. When the strongest material is broadcast so soon after the watershed only limited editorial context can be provided to viewers, particularly children or those less familiar with the programme, who may have come across the material unawares. Therefore, while the most offensive language can be broadcast after 21:00, Rule 1.6 requires broadcasters to ensure the strongest material should appear later in the schedule.

We noted Channel 5's view that Rule 1.6 states that transition must not be unduly abrupt "at the watershed" and that "at" does not mean "at some unspecified time after the watershed". Channel 5 also submitted that four minutes was a "sufficient time for a transition to adult programming post-watershed". However, it also acknowledged that usually it applied a "standing rule" that there should be no offensive language contained in any programme in the first seven minutes of the programme (where it is broadcast at 21:00) in order to permit the transition around the watershed not to be too abrupt. Its decision to schedule the most offensive language at 21:04 in this case was, it said, because there was sufficient editorial and contextual justification.

Channel 5 also pointed to its "bespoke" and "unprecedented" on-screen warning before the programme, which followed the previous warning by the continuity announcer. The bespoke warning, in Channel 5's view, provided context and would have put regular viewers on notice that this episode would differ from others, and that casual or accidental viewers would have the opportunity to change channels.

In Ofcom's view, warnings at the start of a programme provide helpful signposting to viewers but there is no guarantee that they are watched by all viewers and therefore do not serve alone to ensure that a transition to more adult material is not unduly abrupt. We recognise that the warning in this case was bespoke, strongly worded and clear. However, in our view, it did not, in itself, mitigate the need to ensure the smooth transition to adult material, particularly given the strength of the material in this case and its proximity to the watershed.

We acknowledged that there was a clear editorial context for the inclusion of the offensive language in the programme – to illustrate the type of challenging behaviour encountered by HCEAs in the course of their work. However, in Ofcom's view, this in itself did not provide sufficient editorial justification for this material to be broadcast at the very beginning of the programme soon after the watershed. We took the view that, even taking account of the editorial context and the strongly worded and voiced warning, it was still unlikely that viewers would have expected the frequent use of the most offensive language in an aggressive and confrontational manner at such a short time after the watershed on a public service channel like Channel 5.

We concluded that the programme was in breach of Rule 1.6.

Breach of Rule 1.6

In Breach

Now We're Talking¹

That's Manchester, 8 October 2016, 18:17

Introduction

That's Manchester is the local television service for Manchester and surrounding areas. The Licence for That's Manchester is held by YourTV Manchester ("YourTV" or "the Licensee").

Now We're Talking is an hour long studio based discussion programme which provides opportunities for members of the community in Greater Manchester to articulate their views and opinions on a range of current affairs issues. The show is primarily presented and produced by volunteers.

A viewer complained that the presenter ("P") and two guests on this programme ("Guest 1") and ("Guest 2"), were not duly impartial when referring to a speech given by the Prime Minister, Theresa May, at the Conservative Party Conference on 4 October 2016.

The presenter opened the discussion by referring to Theresa May's "*long, and to some, deeply troubling speech*" and then went on to select some of the main quotes from the speech, on issues such as: tax; the NHS; the Labour Party; education; fairness in society; and, the power of Government. For each of these topics, the presenter firstly summarised extracts of Theresa May's speech and then invited his guests to express their views on that topic. We noted the following exchanges:

Tax

- P: *"[Theresa May] said, whoever you are, however rich or powerful you have a duty to pay your tax. So make them then. Not just words Theresa. Let's discuss that one briefly".*
- Guest 1: *"This annoys me as a business owner because I pay 20 per cent tax which is more than Google pays. Yet I make a tiny tiny fraction of what they earn. They make billions. This is absolutely outrageous".*
- P: *"These are just words again aren't they? Just words".*
- Guest 1: *"False promises. I've noticed that just recently she is saying a lot of things the left are saying".*
- P: *"Yeah well she's made this whole thing – we want to be the party for the working people and all you've got to do is work really hard".*

¹ This case has been retrospectively amended on 21 September 2017. The presenter referred to in the Decision contacted Ofcom following publication to advise that certain statements, regarding his alleged training in station policy, made to us by the Licensee (YourTV Manchester) and detailed in the Response section, were, in his view, incorrect. Therefore, the Decision now includes a statement representing the third party views of the presenter but remains a breach of Rule 5.5, as previously published in Issue 322.

Guest 1: *"Have the Conservatives ever been that party?"*

All: *"No",*

NHS

P: *"[Theresa May] hailed the vital national institution and hit out at Labour – which there was no need for – for claiming the Tories want to privatise healthcare. She tried to band the Conservatives as the Party of the NHS and highlighted a £10 billion cash injection into England's NHS...she also said Jeremy Hunt was amazing".*

Guest 2: *"...Know what I think. The NHS is a great thing and our taxes go to help that organisation to give us, as Britain, a free health service. So for the Conservatives to say they are not going to attack and privatise this health service what was Cameron and his cronies trying to do before?"*

P: *"Oh, she dug into Cameron. She said Cameron had changed things but now it was time to change again".*

The Labour Party

P: *"[Theresa May] switched her infamous description of the Conservative party as the nasty party to Labour as she launched a blistering attack on their sanctimonious pretence of moral superiority. She didn't mention Jeremy Corbyn by name but she branded Labour not only divided but divisive. Are you feeling that Labour is divisive at the moment?"*

Guest 1: *"No not at all. But...what I feel about the Conservative Party - for God knows how long - have done more to divide this nation than any other party ever could possibly I believe. Really, attacking Labour and Jeremy Corbyn like this, I mean, if he really is as bad as they are making him out to be just leave him to it..."*

P: *"...yeah, yeah because he'll put his own foot in it won't he if he's that bad?"*

Guest 1: *"Yeah, Jeremy the Unelectable...got elected again so..."*

P: *"How bizarre".*

Education

P: *"[Theresa May] set up a grammar school showdown with Tory rebels by insisting she will lift the ban on establishing new grammar schools, but she tried to ease fears of social mobility by stressing they will only be allowed where they will definitely take pupils from all backgrounds. Now isn't that one of the fundamental things about grammar schools that they can be one faith based? That's what they are at the core".*

Guest 2: *"Well that's what grammar schools used to be that... from that one domination of the faith. Like, for instance using Catholic as an*

example, that one denomination was the whole spectrum of schools just from the Catholic faith. It's no good for that. I don't think... there shouldn't be that one denomination there should be fairness and the whole spectrum...so not just teaching that religion which is what Catholic schools do".

P: *"Personally I don't think that religion should be taught in schools at all. I think schools should be about education...you want your kids to learn about religion take them to church on a Sunday but let them learn math in school".*

Fairness

P: *"[Theresa May] claimed that too many people think life simply doesn't seem fair as she outlined a vision for a country of decency, fairness and quiet resolve...she probably did her arms like this at that bit [outstretched his arms] she did that quite a bit – it looked stupid – but she failed to take any responsibility despite being in David Cameron's Cabinet for six years...She was thinking I've been a part of that for the last six years but it's nothing to do with me – look at my shoes aren't they fancy. She likes to do that as a deflection doesn't she?"*

Government

P: *"She [Theresa May] highlighted the good that Government can do. Sorry. As she outlined plans for a far more interventionist approach. She vowed to put the power of Government squarely at the service of ordinary working class people and call for a new approach which says while Government doesn't have all the answers, Government can, and should, be a force for good".*

The presenter then said he was not going *"to read any more...parts [of Theresa May's speech] because they have all annoyed me"* but went on to quote a further part of Theresa May's speech and discuss this with the two guests:

P: *"If you believe you are a citizen of the world, you are a citizen of nowhere".*

Guest 2: *"Degrading".*

P: *"If you believe you are a citizen of the world, you are a citizen of nowhere".*

Guest 2: *"Degrading people. Simply degrading somebody".*

Guest 1: *"Yeah. Absolutely appalling".*

Guest 2: *"You're saying 'you're from nowhere'".*

P: *"So in general how do you feel about Ms Theresa May? [A caricature of Mrs May appeared on a screen next to the presenter with the text: 'Were you inspired by her words?' #scripted diatribe] Oh look, it's her face. Were you inspired by her words or was it a #scripted diatribe? That's what I'm wondering".*

- Guest 2: *"No. It just seems the Conservatives are going to be the exact same way they always have been. No change. No fairness".*
- P: *"Come on guys when she spoke those passionately with her arms like this [outstretches his arms] you didn't feel better about your lives...?"*
- Guest 2: *"No".*
- P: *"...or the world? Or your country?"*
- Guest 2: *"No".*
- P: *"But look at my arms. Surely that makes you feel safe?"*
- Guest 2: *"No".*
- P: *"No? Theresa, you got it wrong love!"*
- All: [Laughing]
- P: *"Did you watch any of it by the way?"*
- Guest 2: *"I watched bits of it on the news."*
- P: *"Did you see that bit at the end when quite clearly to anyone with any acting skills her face said thank goodness that's over? I think I did alright. Everyone interpreted that look as oh she's quite emotional 'cos she was that passionate with her arms like this [arms outstretched] She was that passionate – come with me, come with me – that's how it ended. And they all said oh look now's she's emotional. No, she bit her bottom lip. Oh thank goodness that's all over, I think I've got them"*
- Guest 2: *"Cos she knows she could lose her leadership...if her party doesn't follow her".*
- P: *"Do you think if there was a General Election now that they would be out?"*
- Guest 1: *"I do, yeah".*
- Guest 2: *"Unfortunately I don't. I don't unfortunately".*
- P: *"I've got this really bad urge to [he was shown miming inserting his finger into the nose of the caricature of Theresa May on the screen next to him] to do that. That's a really good picture of her – apparently it was taken first thing in the morning...she's just about to practise her arms which is her saving grace. That's a very similar bottom lip bite to the micro expression she had the other day when everybody got fluked into thinking that she actually had emotion. So no I wasn't inspired at all by her words".*
- Guest 2: *"I certainly wasn't inspired".*
- Guest 1: [Shakes head].

For the reasons set out in the Decision, it was Ofcom's view that the programme was dealing with matters of political controversy and matters relating to current public policy i.e. the policies and actions of Theresa May, and more widely the Conservative Government. We therefore considered this content raised issues warranting investigation under the following rule of the Code:

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

We therefore asked the Licensee for its comments on how the material complied with this rule.

Response

YourTV said that the programme *Now We're Talking* formed part of That's Manchester's commitment to encouraging greater participation in media. It added that this was consistent with the commitments in That's Manchester's licence which requires the station to: "involve people in making television"; "be created with people from different walks of life"; and be "diverse and challenging".

The Licensee explained that *Now We're Talking* would, over a typical month, provide opportunities for a wide range of opinions to be aired. It added that the Chairman of the Manchester Conservative Party, David Semple, was a regular contributor to the programme.

Notwithstanding that it was That's Manchester's policy to invite a range of guests and seek a diversity of views for *Now We're Talking*, the Licensee acknowledged that its own policy was not implemented and that this programme was in breach of the station's policy of due impartiality which required the presenter to ensure that due impartiality was upheld within discussions.

YourTV said that the presenter, in this case, had been instructed in station policy, and provided Ofcom with a statement from another volunteer which stated that he had seen the presenter being instructed in the requirements of presenting a show in a duly impartial manner. Following the complaint being brought to the attention of senior management, the station considered it was "most appropriate" that the presenter discontinue broadcasting on That's Manchester, pending a review of the station's compliance procedures.

YourTV said it had reminded the producers of the programme about the station's policies and was intending to take the opportunity to further review its training and compliance procedures for all community-based productions.

Ofcom also received third-party representations from the presenter of the programme. He stated that he "had in fact never been trained, or offered any training regarding station policy, or broadcast policy, or any other policy for that matter." Further, the presenter stated that "[t]he first and only mention of any kind of training of guidelines was said to me on the day I was told I was being taken off air immediately."

Decision

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

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

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

Section Five of the Code acts to limit, to some extent, freedom of expression because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee has the freedom to discuss any controversial subject or include particular points of view in its programming, broadcasters must always comply with the Code. Ofcom underlines that the broadcasting of comments either criticising or supporting the policies and actions of any political organisation or elected politician is not, in itself, a breach of due impartiality.

Rule 5.5 of the Code requires that: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved. Depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way to ensure that Rule 5.5 is complied with. 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.

Ofcom first considered whether the requirements of Section Five of the Code applied in this case, that is, whether this programme concerned matters of political or industrial controversy or matters relating to current public policy. This episode of *Now We’re Talking* focused on a range of key policies, as set out in the speech by the Prime Minister, Theresa May, to the October 2016 Conservative Party Conference. During the discussion, the presenter and two guests discussed their views of these various policies. Given these were current or proposed Government policies or political positions, Ofcom considered that any debate surrounding them was clearly a matter of political controversy and a matter relating to current public policy. We therefore concluded that the rules in Section Five were engaged.

Ofcom went on to assess whether this programme preserved due impartiality by, for example, reflecting alternative viewpoints as appropriate.

We noted that the presenter summarised the key points of the policies presented in Theresa May's speech in a broadly factual manner (as set out in the Introduction). However, the discussion and comments from the presenter and two guests, with regard to these policies, could be characterised as an overwhelmingly one-sided and critical assessment of Theresa May's policies and the manner she delivered her speech. For example, we noted that the discussion included the following comments:

The Labour Party

P: *"[Theresa May] switched her infamous description of the Conservative party as the nasty party to Labour as she launched a blistering attack on their sanctimonious pretence of moral superiority. She didn't mention Jeremy Corbyn by name but she branded Labour not only divided but divisive. Are you feeling that Labour is divisive at the moment?"*

Guest 1: *"No not at all. But...what I feel about the Conservative Party - for God knows how long - have done more to divide this nation than any other party ever could possibly I believe. Really, attacking Labour and Jeremy Corbyn like this, I mean, if he really is as bad as they are making him out to be just leave him to it..."*

Fairness

P: *"[Theresa May] claimed that too many people think life simply doesn't seem fair as she outlined a vision for a country of decency, fairness and quiet resolve...she probably did her arms like this at that bit [outstretched his arms] she did that quite a bit – it looked stupid – but she failed to take any responsibility despite being in David Cameron's Cabinet for six years...She was thinking I've been a part of that for the last six years but it's nothing to do with me – look at my shoes aren't they fancy. She likes to do that as a deflection doesn't she?"*

Concluding comments

P: *"So in general how do you feel about Ms Theresa May? [A caricature of Mrs May appeared on a screen next to the presenter with the text: 'Were you inspired by her words?' #scripted diatribe] Oh look, it's her face. Were you inspired by her words or was it a #scripted diatribe? That's what I'm wondering".*

Guest 2: *"No. It just seems the Conservatives are going to be the exact same way they always have been. No change. No fairness".*

In addition, we considered that the presenter and two guests were highly critical of the policies of the Conservative Party more widely. For example, we noted the following statements on the Conservative policies on tax and the NHS:

Tax

Guest 1: *"This annoys me as a business owner because I pay 20 per cent tax which is more than Google pays. Yet I make a tiny tiny fraction of what they earn. They make billions. This is absolutely outrageous".*

P: *"These are just words again aren't they? Just words".*

Guest 1: *"False promises. I've noticed that just recently she is saying a lot of things the left are saying".*

NHS

P: *"[Theresa May] hailed the vital national institution and hit out at labour – which there was no need for – for claiming the Tories want to privatise healthcare. She tried to band the Conservatives as the Party of the NHS and highlighted a £10 billion cash injection into England's NHS...she also said Jeremy Hunt was amazing".*

Guest 2: *"...Know what I think. The NHS is a great thing and our taxes go to help that organisation to give us, as Britain, a free health service. So for the Conservatives to say they are not going to attack and privatise this health service what was Cameron and his cronies trying to do before?"*

We did not identify any statements or other content which could reasonably be considered as either reflecting the viewpoint of Theresa May and/or the Conservative Party, or otherwise served to counter the various criticisms being made of Theresa May and the Conservative Party within the programme. Therefore, in our view, this programme gave a one-sided view on the matters of political controversy and the matters relating to current public policy.

In addition, we noted from the Licensee's representations that the programme *Now We're Talking* had featured senior local representatives of the Conservative Party in "recent weeks" and had previously provided "a good platform for an appropriate range of views" from a range of guests.

Rule 5.5 states that due impartiality may be achieved within a programme or over a series of programmes taken as a whole. However, where there is more than one programme on the same service it must not only be editorially linked but also be dealing with the same or related issues within an appropriate time period. In this respect, the Licensee did not provide any evidence as to how it had presented alternative viewpoints on the matters of political controversy and the matters relating to current public policy in a series of programmes taken as a whole i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience.

Ofcom noted the disagreement between the Licensee and the third-party presenter of the programme as to whether or not the presenter had received appropriate training. Ofcom cannot determine this issue in this case.

Regardless of whether the presenter received training or not, the programme breached the Code. It was the Licensee's responsibility to ensure compliance with the Code. In that regard, Ofcom noted that the Licensee: had acknowledged that this material was in breach of the station's own policy of due impartiality; had taken steps

to remind producers of the station's policies; and was intending to review its training and compliance procedures for its community based productions.

However, for all the reasons given above, our Decision was that the programme was in breach of Rule 5.5 of the Code.

Breach of Rule 5.5

In Breach

This Is Your Day! – Benny Hinn

Flow TV, 28 June 2016, 22:30

Introduction

Flow TV is a television channel broadcasting Christian programming on the digital satellite platform. The licence for this channel is held by Flow TV Limited (the “Licensee”).

During routine monitoring, we viewed content broadcast on Flow TV on 28 June 2016, including *This Is Your Day! – Benny Hinn*, in which Pastor Benny Hinn, a televangelist known for his revival meetings and faith healing events known as “Miracle Crusades”, preached about the Christian faith from an evangelical perspective.

Ofcom was concerned that this programme contained content that encouraged viewers to make financial donations to Benny Hinn Ministries, in return for prayer or divine intervention.

The programme was 28 minutes in duration and comprised of three parts: an introduction to the programme from 22:30 to 22:34; footage of Pastor Benny Hinn’s religious service from 22:34 to 22:50; and an appeal for donations to the ministry featuring Pastor Coy Barker from 22:50 to 22:58.

At approximately 22:30, Benny Hinn introduced the programme and appealed to viewers to make a donation to Benny Hinn Ministries:

“I am coming to you today as my wonderful partner because I know you love this Ministry and you love the Lord especially. I have always been honest with you about our financial needs. We are facing a challenge; a serious challenge. And I need to talk to you, my wonderful and sweet partners. Because I know when the Lord speaks to you, you’ll do something about it. And I have already prayed that God would speak to you today to help me with this financial challenge. Every Ministry faces financial challenges every so often. I have been in the Ministry 42 years. And believe me, I have had them come and go... Right now here we are, summertime, and I need to hear from you my wonderful partners and people who view our programmes and social media and are being ministered to by the Ministry. The need is now and the need is urgent and the need is critical. If I do not hear from you, it will affect the Ministry. It will affect the outreach of our ministry. We cannot allow money to affect the work of the Lord. I will not allow money to stop the gospel. I am a man of faith; I believe God almighty will take care of this as he always has in my life. When I began preaching I was 21 years of age. I am now almost 64. I have never seen the Lord one time fail me with this. Because when I come to you my partners, God touches you. God speaks to you. That’s the only way I know to do it. I cannot go borrow money when I face a challenge, it’s not the way out of it. The only way to pay our bills and to stay current with our TV station and with vendors is to come straight to you, my wonderful partners. Will you stand with me today? Will you do something about helping our Ministry pay the bills that must be paid? Or like I said, it will affect the outreach of the Ministry. I have many upcoming crusades overseas; I don’t want to see that affected. Or our TV Ministry affected. Or we are not able to pay our

employees. No, we have to do it for his glory [pointed skywards]. This is for his glorious namesake. I cannot be selling you things like TV networks do, I simply say, 'Look I have a need, will you please help me?' So any amount, no amount is too small, trust me. There is a number on the screen, or you can do it online. Let the Lord speak to you on the amount. But if this Ministry has been a blessing for you, I need to hear from you right away. It's urgent, trust me. We need to hear from you immediately, so we can pay our vendors, pay our bills, and keep going, trusting God, listen like I have for now for 42 years. And the Lord will bless you for it, many, many times over. So let me pray with you [begins praying]. Father, everyone who respond right now, everyone who will do something about it, to help your Ministry, bless them greatly, bless them mightily, and reward them many times over. In Jesus's wonderful and sweet name, Amen and Amen. There is a number on the screen, please call that number, or, online, make sure to do it today. Thank you, I pray the Lord will reward you, and send you a mighty harvest to bless your life many times over. Thank you again".

During this appeal, a caption was shown (the full telephone number and address have not been published by Ofcom in this finding):

"031-566-[XXXX] BennyHinn.ORG, Private Bag [X]54335, Durban [XXXX], South Africa".

The programme then featured excerpts of a religious service conducted by Pastor Benny Hinn in South Africa in what appeared to be a conference centre with a large audience. During these excerpts, it was claimed that audience members had been healed of cancer and other medical problems, such as hearing deficiencies. Several members of the audience were also brought up on stage to Benny Hinn. For example, at about 22:37 the following exchange took place between Benny Hinn (BH) and a female member of the audience (AM1):

- BH: *"What's happened to you?"*
- AM1: *"I've been in pain – in my stomach is a lot of fluids they drained fluids last week, four litres of it"* [the audience member is touched on the forehead by Pastor Benny and falls over. She is helped to her feet by two assistants of Benny Hinn].
- AM1: *"Pastor Benny thank you".*
- BH: *"What was wrong with you?"*
- AM1: *"Stopping cancer".*
- BH: *"The lady had cancer – the pain is gone"* [the audience member is touched on the forehead again by Benny Hinn and falls over. She is helped to her feet again].
- BH: [Singing] *"Jesus, oh Jesus, Jesus, oh Jesus, Jesus your prayers make me whole".*
- BH: *"Squeeze, squeeze that area hard, squeeze it hard [referring to the stomach area]. You had pain there [turns to music group in the venue] just a second – play gently. How long have you had cancer for?"*
- AM1: *"Last year, May".*

BH: *"Last year?"*

AM1: *"For chemo tomorrow".*

BH: *"You are supposed to go for chemo tomorrow – but I have news for you – the cancer is no longer in your body! Now wait, you had a lot of pain [instructs assistants to squeeze the area affected by cancer]. OK, squeeze that area real hard, just put one hand on her back and squeeze real hard. Any pain?"*

AM1: *"No, it's better".*

BH: *"No pain?"*

AM1: *"The pain is gone".*

At 22:50, the programme concluded with Benny Hinn and his guest Pastor Coy Barker (CB) making appeals to viewers for donations of 50 US dollars to Benny Hinn Ministries:

BH: *"I'm gonna believe God with you today for your miracle, your healing and your deliverance – with me, is a mighty man of God...Pastor Coy Barker and I go way back. Some of the greatest miracles I have seen were in his church in Oklahoma City – but let's believe together right now for people to be healed and then you are gonna give them another word and pray for their finances. Sweet Jesus we give you pray to the Lord – heal your people, Lord, if that's in your power today. We rebuke that sickness, we rebuke that disease in the name of Jesus, somebody – a growth on your neck, is going down, thank you Lord. Yes, Jesus, a blind right eye is being healed, skin cancer, we rebuke it in the name of Jesus, throat cancer, somebody with cancer on your vocal cords, we rebuke it in Jesus's mighty name. A lady of mighty severe arthritis in the lower back – be healed in the name of Jesus, I see a lady, ah – very, very strong and need healing for your lungs, your heart, oh dear Lord. I'm getting a name, I never got that name before 'Alberetta', you must be Spanish, you are being healed of your lungs. In the name of Jesus, the greatest miracle is salvation, if you don't know the Lord just pray right now. Jesus, I'm a sinner, Lord come into my heart and save my soul, and wash both your precious blood and make me whole, I'll serve you for the rest of my days forever amen, amen, dear God, the anointing is still here. I'm telling you, talk to the people and pray for them, that their finances would be healed and would be delivered".*

CB: *"The Lord is – I understand, the Bible said that first Chronicles 12 if you know the season, you understand the times, then you know how to move, and I have heard from God. I understand the season, I understand your season, I'm here for you, I love this man, he opened this door for me to come here, but I'm gonna speak to you. I'm here because God sent me on an assignment, to your house, and here is the word of the Lord to you. In this Bible, that I have spoken and preached around the world, many times out of over four decades, I've seen every kind of miracle you can imagine, financially, spiritually, physically, from just simple steps of obedience. Now listen to this, what God said to do right now is so simple, and so profound, till it's amazing to me. Fifty in the Bible, is a mountain number. It's a number that changes things, it talks about grace, it talks about favour,*

when you talk about fifty you talk about jubilee. Jubilee in the scriptures means brokenness is healed, family members saved, financial woes broken off in your life, abundance comes to you. Here's what the Holy Spirit said and we talked about it, Pastor Benny and I, and in agreement, it's very biblical and it's a God thing that is ready to happen for you. God said to give you an invitation, go to your phone right now, take your credit card or your bank card, dial that number, or go on the internet, go to that protected safe site, give to this ministry, fifty dollars. I literally believe there are thousands of you that are going to get miracles so suddenly, just by that simple step of faith. Fifty, liberty, fifty, freedom, fifty, household salvation, fifty favour, somebody's been trying to get a contract signed, you need the favour of God, I am asking you to go right now. Dial that number right now. When you dial that number you make that connection. God honours actions of faith, I know in my own life when I have operated by faith I moved on an instruction from a man or woman of God, my life was changed, instantly things begin to happen. I am a living miracle right now, of restoration physically, spiritually, financially, every part of my household. I am a living picture, a photograph, if you go to the dictionary and you look up restoration my picture's gonna be there cos I am living that, and whatever I have is coming into your life. God's gonna release it into your life. I have seen the impossible, I have seen the supernatural, I have seen cancers disappear, I have seen the crippled limbs made whole. I have seen all kinds of phenomenal miracles happen. Cancers ripped out of the body when doctors have said there is no hope, simply by an act of faith. You know what I am asking you to do? Jam the phone lines out right now as an act of faith, step out of that comfort zone, step into that arena, put that seed in this moist anointed holy soil in the kingdom. I'm telling you, this is your God moment and you cannot – must not – hesitate to go to that phone”.

BH: *“Can you pray for them right now?”*

CB: *“I must break the spirit of poverty; I come against that spirit of lack. I break that demonic stronghold, and I release abundance, I release health, I release family, miracles of salvation. I cause it to come in the name that's above every name, it is done, run to the phones, go go go, run to the phone, say here is my fifty dollars, I need a miracle. Tell us what that miracle is, we will believe God with you. We will believe God to work quickly and suddenly in your life, but we love you, thank you so much for obeying God and thank you for letting me be here”.*

BH: *“And remember your miracle is running to your house”.*

While Benny Hinn and Coy Barker addressed the audience, a caption appeared (the telephone number and address have altered so the full details were not set out in this finding): *“\$50 Sudden Restoration Seed, 031-566-[XXXX], BennyHinn.ORG, Private Bag, [X]54335, Durban [XXXX], South Africa”.*

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

Rule 2.1: *“Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.”*

Rule 4.6: “Religious programmes must not improperly exploit any susceptibilities of the audience”.

Ofcom was satisfied that this programme was a “religious programme” within the meaning set out in Section Four of the Code. This was because Pastor Benny Hinn and Pastor Coy Barker used the programme to preach and discuss the Christian faith, the Bible and their Christian ministry and included appeals for donations based on frequent references to God, Christian teaching, religious texts, and promises and suggestions of practical benefits (in terms of resolving health or other problems) that God might give viewers in return for those donations. This broadcast therefore clearly dealt with matters of religion as the central subject, or as a significant part, of the programme.

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

Response

The Licensee agreed that the programmes featured on Flow TV are religious programmes dealing with religion and religious faith from a Christian perspective. It said it was important to note that Flow TV is exclusively a broadcaster of Christian religious content and it is obvious to the uninformed viewer that this is a religious channel.

The Licensee stated that because Flow TV broadcasts Christian content there is a reasonable expectation that a viewer can be expected to anticipate that the content on the channel will include statements expressing an interpretation of scripture in the Bible. Furthermore, it advised that as many of its viewers are Christian the channel “is aimed at satisfying their spiritual needs”.

The Licensee also pointed out that the Christian nature of the channel is made clear in various ways – for example, the channel is located in the section of the Electronic Programme Guide for religious channels. The Licensee argued that, as a result, viewers could be expected to anticipate that they were watching a religious channel.

The Licensee said that it was generally understood by its viewers (which it said included “so-called ‘believers’ as well as possibly ‘non-believers’”) that spiritual matters, including miracles (which, it said, are “a matter of public record”) are difficult to prove empirically. In relation to the healing of medical conditions featured in *This Is Your Day! – Benny Hinn*, it said that the Bible is filled with miracles performed by Jesus Christ and that it teaches that believers can lay hands on the sick and expect God to perform “miraculous healings”. The Licensee explained that the Bible is clear that the healing is performed by God himself and not any person. The Licensee stated that Christian believers attribute the healings to the result of the application of faith in God and that it is reasonable to expect that viewers of a Christian channel would anticipate viewing programming that teaches this principle.

The Licensee explained that “any perceived susceptibilities of the viewing audience must be logically considered in a balanced fashion against the background of these fundamental spiritual principles”, and suggested that to depart from this would potentially lead to “the absurd result that no television programme of a Christian nature would be considered acceptable” taking account of viewer susceptibilities.

The Licensee said that with general reference to Rule 2.1, Flow TV sought to make an “earnest attempt” to apply standards that could be regarded as generally accepted in order to protect members of the public from the inclusion of harmful or offensive material by only broadcasting material “that aligns sufficiently with the Christian statement of faith adopted by the broadcaster”. It said that viewers chose or selected programmes that fitted into their “respective theological comfort zones”.

In relation to the appeal for donations on *This Is Your Day! – Benny Hinn*, the Licensee said that the principle of offerings is a “fundamental teaching of the Christian faith” and giving to Christian ministries is therefore “not a foreign concept in any fashion”. It explained that donations from the public are a well-established way in which “so-called not-for-profit organisations or charities are funded”.

The Licensee stated that at no point in the programme did anything happen which was not in line with scripture, and it considered the content to be congruent with the teachings of the Bible. In its view, Flow TV did not expose viewers to any harm or offence, and “any perception of harm or offence would be in the opinion of the viewer” and “would be identical to their perception of harm and offence if they had read the Holy Bible for themselves”. The Licensee stated that “viewing a religious channel must reasonably be considered to be a free will choice by a viewer who could be reasonably expected to exercise their own discernment as to the merits of the views [broadcast]”. It also argued that this programme had not breached Rule 4.6 because the Bible contains “numerous scriptures referring to God responding to acts of giving in a number of ways” but that this is “impossible to empirically prove” given the nature of faith. Accordingly, it was “not a question of susceptibility of the viewing audience but of faith”.

Finally, the Licensee said that religious programming necessarily incorporates views which, because they are aligned with the dictates of a particular religion or faith, may be construed as contentious, harmful, wrong or offensive by viewers who do not personally adhere to the same teachings. On this basis, it said it was difficult for it to understand how a broadcaster such as itself could “avoid the spectre of the provisions of Rule 2.1 and Rule 4.6 being brought into play from the viewpoint of individuals who disagree with the teachings of the Christian faith”.

The Licensee advised that it wished to be as cooperative as possible with Ofcom and was happy to consider broadcasting appropriately worded captions that drew attention to the fact that “Flow TV is a Christian religious channel and that views expressed by the programmers should be interpreted accordingly”¹. It said it had commenced broadcasting a caption along these lines from 11 October 2016.

Flow TV also provided further representations in response to Ofcom’s Preliminary View in this case, which was to record breaches of Rules 2.1 and 4.6 in relation to this content. In summary, The Licensee said that:

- appeals for funding for Christian ministries are completely normal, and an accepted form of funding;

¹ In its representations on Ofcom’s Preliminary View, Flow TV also proposed broadcasting “appropriately worded banners on screen” that stated that “the views expressed in programmes are not necessarily that of Flow TV...[and] that viewers should apply their own minds to the messages which are preached”.

- the breaches identified by Ofcom could not “be factually in existence” because they arose from monitoring rather than an “empirically evidenced viewer complaint”, rather the breaches identified are a matter of Ofcom’s opinion;
- Benny Hinn’s statement² of prayer in response to donations was “in line with scripture” and that the “Word of God does contain the kingdom principle that God responds to giving”. Flow TV added that “This does not suggest that a blessing (or even healing) is purchased” by the audience;
- Benny Hinn did not perform any spiritual healings as “this can only be done by God”;
- in a religious programme the only acceptable inducements are those “in keeping with the Word of God” and these cannot be “accurately accessed...[by] secular or regulatory methods”. However, the Licensee added that it considered Ofcom to have acknowledged this in its Preliminary View;
- Ofcom was being “potentially categorical” in stating that it is unacceptable for programming to seek to persuade viewers to donate money on the basis of inducements, such as a promise of divine intervention. Flow TV therefore queried the basis for Ofcom’s view on this point, and added that most Christian ministries teach that there is a “spiritual causal connection” between donations and divine intervention;
- it disagreed with Ofcom’s statement that inducements to donate “of this nature” were more likely to cause harm to vulnerable people. The Licensee compared appeals of the kind in the programme to “the event of a church preaching on the principle of faith every Sunday”. It also referred to the “individual...responsibility of the audience” by arguing that members of the Christian community must not conclude that the “giving of finances alone will solve all their problems”, and stating that there is no teaching which would imply that faith does not require some form of human works in sympathy with the application of the principle of faith. Flow TV therefore said that it was unfair for Ofcom to “hold Flow TV responsible for such potential misconceptions arising” from the programme; and
- whilst acknowledging that Ofcom had taken account that viewers had been requested to donate funds to assist with the particular financial challenges the ministry faced, the Licensee objected to Ofcom stating “that spiritual support by the ministry was conditional on the financial donations”.

Flow TV suggested that in an ideal world, “ministry that may be perceived as unduly aggressive or manipulative should be strongly discouraged”, and that Coy Barker’s ministry was “rather aggressive”. However, the Licensee made a number of points by way of mitigation, saying that:

- Flow TV is “not a manufacturer of programming material, but is simply a broadcaster”;

² Flow TV cited the following statement made by Benny Hinn: “*Father, everyone who respond right now, everyone who will do something about it, to help your Ministry, bless them greatly, bless them mightily, and reward them many times over. In Jesus’s wonderful and sweet name, Amen and Amen*”.

- the content in this case had been broadcast on a number of other television platforms around the world; and
- not every programme is “previewed in its entirety” before broadcast due to “practicality and economics”. It added that as a 24 hour service, incorporating 48 half hour minute programmes its “quality control procedures do find themselves under pressure”.

The Licensee noted that they would actively seek to mitigate against any future contraventions of the Code, and would be happy to display appropriately worded banners on screen during programmes. The Licensee also said that they would be pleased to receive any guidance that Ofcom wished to provide, and would be happy to attend a meeting with Ofcom to discuss the breaches and practical ways to ensure that breaches do not re-occur.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appears to it best calculated to secure the standards objectives. These include that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material in the manner which best guarantees “an appropriate level of freedom of expression”, and that religious programmes do not involve “any improper exploitation of any susceptibilities of the audience for such a programme”. These objectives are reflected in Sections Two and Four of the Code.

In reaching a Decision in this case, Ofcom acknowledged the importance attached to freedom of expression in broadcasting, as contained in Article 10 of the European Convention on Human Rights (“ECHR”). This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority.

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

It is not Ofcom’s role to question or investigate the validity and significance of religious belief. Ofcom’s statutory duty, as mentioned above, is to set content standards and secure that broadcasters comply with those standards. Therefore, when investigating programmes which include content that seeks to persuade viewers to donate money on the basis of material or spiritual inducements, Ofcom must balance the right to freedom of expression and freedom of religion against its statutory duties to provide adequate protection for the public from potentially harmful material (see Rule 2.1), and to protect susceptible members of the audience from improper exploitation when watching religious programmes (see Rule 4.6).

Rule 2.1

Rule 2.1 states that: “Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.”

Context is important in this regard and the extent of any protection required will depend on all the circumstances, including (amongst other things) the service on which the material is broadcast, the degree of harm and/or offence likely to be caused, the likely expectation of the audience and the effect of the material on viewers who may come across it unawares.

Ofcom considers it unacceptable for a programme to seek to persuade viewers to donate money on the basis of inducements such as the promise of divine intervention, leading to better health, wealth or the resolution of serious personal problems, without adequate protection being put in place³.

Further, Ofcom considers appeals of this nature are more likely to cause harm to vulnerable people who may be unduly encouraged to give donations as a result of experiencing health, financial or emotional difficulties. We therefore did not agree with Flow TV's comparison of such appeals to "church preaching on the principle of faith every Sunday", because Ofcom's concern in this case was with potentially harmful inducements for financial support, and not with the Licensee's right to preach or broadcast on matters of faith.

In reaching a Decision under Rule 2.1, Ofcom must assess the nature of the potentially harmful material and either its potential effect or any actual harm that has occurred. Ofcom must also assess the context within which the material was included in the programme before going on to assess whether, if the material was harmful or had the potential to be so, adequate steps were taken by the broadcaster to protect viewers.

Ofcom first assessed whether the programme contained potentially harmful material.

The programme began with a pledge from Benny Hinn directly to viewers to donate funds to his ministry in return for a blessing because it was "*facing a challenge*", and required funds so that it could "*pay our vendors, pay our bills, and keep going*". Benny Hinn stated that "*The Lord will bless you for it, many, many times over*" and then prayed for "*everyone who respond right now*", urging viewers to call a telephone number displayed on screen to make a donation. We took into account that this appeal to viewers requested donations to assist with the financial challenges the ministry faced in return for spiritual support.

However, towards the end of the programme, the nature of the appeals changed. Benny Hinn was joined by Pastor Coy Barker. This section of the programme began with Benny Hinn praying for people to be healed of various serious medical conditions and a series of statements implying that viewers were being healed⁴. For example, we noted the following: "*a blind right eye is being healed, skin cancer, we rebuke it in the name of Jesus, throat cancer, somebody with cancer on your vocal cords, we rebuke it in Jesus's mighty name. A lady of mighty severe arthritis in the lower back – be healed in the name of Jesus, I see a lady, ah – very, very strong and need healing for your lungs, your heart, oh dear Lord. I'm getting a name, I never got*

³ See for example the breach findings on *Heart for the World* on Daystar: http://www.ofcom.org.uk/_data/assets/pdf_file/0017/50615/issue_305.pdf; *Rohani Alam* on Venus TV: http://www.ofcom.org.uk/_data/assets/pdf_file/0024/47652/obb269.pdf; and *Saturday Night Special* on Noor TV: http://www.ofcom.org.uk/_data/assets/pdf_file/0017/45161/obb184.pdf.

⁴ In its representations, Flow TV disagreed that Benny Hinn had performed any spiritual healings and said that "this can only be done by God".

that name before 'Alberetta', you must be Spanish, you are being healed of your lungs".

Coy Barker then made repeated invitations to viewers to go immediately to their phone or to the internet to make a donation of 50 dollars, encouraging them to do so by suggesting that various medical conditions would be healed or financial problems solved in return. In particular, we noted that Coy Barker implied very strongly that donations would result in God bringing about miraculous faith healings, for example: *"crippled limbs [being] made whole"* or other *"phenomenal miracles"* such as *"cancers ripped out of the body when doctors have said there is no hope, simply by an act of faith"*.

We considered that these appeals for donations at the end of the programme contained strongly implied promises and inducements to viewers that their financial donations would lead to significant improvement or healing of various serious health conditions.

Ofcom noted that Coy Barker used an exhortatory and imperative tone, speaking authoritatively and focusing strongly on religious beliefs. In this context, we noted Flow's TV statement that Coy Barker's ministry was "rather aggressive". For example, statements such as: *"God said to give you an invitation, go to your phone right now, take your credit card or bank card"*, *"I'm here because God sent me on an assignment, to your house"* and *"God honours actions of faith"*. Further, Coy Barker described the number 50 as having a religious symbolism. He urged viewers to donate 50 dollars, implying that because it related to the number 50 in the Bible and held religious significance, a donation of this amount from the viewer had the power to strengthen their family relationships, improve their finances and bring about miracles.

For example:

"Fifty in the Bible, is a mountain number. It's a number that changes things, it talks about grace, it talks about favour, when you talk about fifty you talk about jubilee. Jubilee in the scriptures means brokenness is healed, family members are saved, financial woes broken off in your life, abundance comes to you. Here's what the Holy Spirit said and we talked about it, Pastor Benny and I, and in agreement it's very biblical and it's a God thing that is ready to happen for you".

Further, both preachers personally addressed viewers by speaking directly to camera. Ofcom considered that this added authority to their comments about donations leading to miraculous divine intervention to solve viewers' problems. There were also various comments in the programme that emphasised the authority of the two preachers. For example, Benny Hinn endorsed Coy Barker as a *"mighty man of God"* and testified that *"some of the greatest miracles I have seen were in his church in Oklahoma City"*. Coy Barker underlined his own authority by stating *"In this Bible, that I have spoken and preached around the world, many times out of over four decades, I've seen every kind of miracle you can imagine, financially, spiritually, physically, from just simple steps of obedience"*. Pastor Coy Barker in turn made statements to enhance Benny Hinn's status and authority, such as *"Pastor Benny and I, and in agreement, it's very biblical and it's a God thing that is ready to happen for you"*.

In addition, Coy Barker encouraged viewers to donate on the spur of the moment by giving personal testimony of the miraculous blessings he claimed God had given him and by telling viewers to dial *"that number right now"* and *"step out of their comfort*

zones” before making a donation: “You know what I am asking you to do? Jam the phone lines out right now as an act of faith, step out of that comfort zone, step into that arena, put that seed in this moist anointed holy soil in the kingdom”.

We were concerned that the language used by these potentially authoritative figures on biblical scripture and interpretation directly appealed to viewers who were in desperate situations, experiencing health, financial or personal difficulties.

For example:

“God said to give you an invitation, go to your phone right now, take your credit card or bank card, dial that number, or go on the internet, go that to that protected safe site, give to this ministry, fifty dollars. I literally believe there are thousands of you that are going to get miracles so suddenly, just by that simple step of faith”.

“Dial that number right now. When you dial that number you make that connection. God honours actions of faith, I know in my own life when I have operated by faith I moved on an instruction from a man or woman of God, my life was changed, instantly things begin to happen. I am a living miracle right now, of restoration physically, spiritually, financially, every part of my household. I am a living picture, a photograph, if you go to the dictionary and you look up restoration my picture’s gonna be there cos I am living that, and whatever I have is coming into your life”.

Ofcom also had regard to the footage of the faith healing from cancer of the female member of the audience referred to above in the Introduction to this Decision. In Ofcom’s view, the earlier inclusion of this material featuring Benny Hinn appearing to cure an audience member of cancer underlined the authority of the preacher and contributed towards the potential for harm as a result of viewers in desperate situations being persuaded to donate money to the ministry.

Having assessed the nature of the content and the manner in which it was presented, we went on to consider the wider context within which it was broadcast.

Ofcom acknowledged the Licensee’s submission that casual viewers who had come across this content unaware were likely to have understood that it was a religious programme. We also accepted that the vast majority of viewers of this programme would have an expectation that they were watching religious content and that the channel was aimed at satisfying their spiritual needs. However, in Ofcom’s opinion, viewers of all UK-regulated channels, whether or not they are religious channels, would expect broadcasters of religious programming to ensure adequate protection for the audience from potentially harmful content.

Ofcom noted the Licensee’s argument that the programme was consistent with Christian teachings, and its representation that it would be an absurd result if no programming on a Christian channel was considered acceptable taking account of viewer susceptibilities. Ofcom acknowledged the point made by the Licensee that “spiritual matters are difficult to empirically prove” and it is “not possible for Christian programming to generally detract from [the] fundamental principle of faith that undergirds the Christian faith or the workings of faith itself”. Ofcom emphasises, however, that it does not question viewers’ religious beliefs, nor caution against any particular religious teaching. In this context, we noted the Licensee’s argument that in a religious programme the only acceptable inducements are those “in keeping with

the Word of God” and these cannot be “accurately accessed...[by] secular or regulatory methods”. However, all broadcasters are subject to the Code, regardless of their religious stance, and, we have a duty to ensure all members of the public watching television (whether people of faith or not) are provided with adequate protection from potentially harmful material. This duty relates to any content broadcast by Ofcom licencees, irrespective of whether Ofcom has been alerted to content through an audience complaint or, as in this case, monitoring.

The nature of faith and the right to freedom of religion does not mean that religious broadcasters (whether Christian or otherwise) are at liberty to broadcast content that poses a potential risk to viewers, especially viewers who are potentially vulnerable, without adequate protection. Ofcom acknowledges that the Bible contains references to miracles and that charity is a fundamental principle of Christian teaching. However, Ofcom is not aware of any specific, widely accepted Christian teaching which encourages donations on the basis of specific reward in the form of better health, wealth or the resolution of serious personal problems.

Ofcom underlines that it does not consider people of faith in any way particularly susceptible or vulnerable because of their faith. In Ofcom’s opinion, viewers of religious channels are likely to watch programmes on those channels for a variety of reasons. These could include, for example, learning more about religion, seeking support for their faith, or seeking comfort and solace in times of trouble. In the absence of evidence to the contrary, the ability of viewers to assess the reliability of claims made on such channels to cure illness or solve personal problems, and their ability to resist inducements to make donations based on their religious belief, is likely to vary widely.

Taking all this into account, Ofcom considered carefully the balance that it had to strike between, on the one hand, the broadcaster’s and audience’s right to freedom of expression and freedom of religion, against the reasonable limitations placed on these rights such as, for instance, the need to protect the public from harm. We recognised that broadcasters are free to offer prayers for health or other personal problems of individual viewers or viewers in general. Such material can of course legitimately include the discussion of miracles and suggest that people of faith may derive comfort and solace in prayer or a belief in faith healing when ill or encountering personal difficulties. However, we did not accept that it would be unfair to hold Flow TV responsible for any viewer misconception regarding the making of donations and how this might impact on their personal problems. This is because where prayers are linked in some way with making a financial donation, as they were in this programme, Ofcom’s concern, for all the reasons discussed above, is that this could result in financial harm or loss to vulnerable viewers, whether or not it is reasonable for such viewers to believe that making a donation will solve their problems.

We went on, therefore, to consider the extent to which, if any, the Licensee had provided adequate protection to members of the public.

In Ofcom’s view, the more serious the risk of harm to vulnerable viewers, the greater protection that should be provided. The programme made claims that by making a donation, particularly a donation of 50 dollars, to the ministry, financial difficulties would be solved (*“financial woes broken off in your life, abundance comes to you”*) and it was strongly implied that serious medical conditions such as cancer would be cured (*“Cancers ripped out of the body when doctors have said there is no hope, simply by an act of faith”*). For the reasons set out above, these claims created a

material risk of financial harm or loss to some viewers. Therefore, the need for adequate protection for viewers was accordingly high.

At no point did the programme include any warnings or guidance to the audience (whether by the presenters, or in commentary, or on screen) about the claims regarding faith healing and curing serious health conditions. Similarly, nothing was said or displayed on screen to qualify the certainty with which it was suggested that making a financial contribution could bring about a miracle. On the contrary, the context within which the appeals for donations were made, together with the style and tone of presentation and the authority of the preachers all served to reinforce the claims that were being made.

Although some viewers were likely to have been able to put the claims made in the programmes into context, this would not necessarily have been the case for all viewers (especially those who were most desperately in need, perhaps due to the persistence of serious medical or financial problems, and were therefore particularly vulnerable). In our view, the strength of the statements or suggestions, and the lack of any warnings or guidance in the programmes to qualify what they said served to increase the potential harm, making it more likely that some viewers would have been induced to make donations, which they otherwise would not have made.

In reaching our Decision, we noted the Licensee's arguments by way of mitigation that, Flow TV is "not a manufacturer of programming material, but is only a broadcaster", and the content in this case had been broadcast on a number of other television platforms around the world. However, the Licensee retains editorial responsibility for everything it broadcasts irrespective of whether it produces the content. Further, just because this programme had been broadcast in a number of jurisdictions around the world did not necessarily mean it was compliant with Ofcom's Code. It is the Licensee's responsibility under their licence to ensure that this is the case.

Ofcom therefore concluded that the Licensee had not applied generally accepted standards so as to provide adequate protection to viewers of this programme, in breach of Rule 2.1.

Rule 4.6

Rule 4.6 of the Code states that religious programmes must not improperly exploit any susceptibilities of the audience. Ofcom was satisfied that this programme was a "religious programme" for the reasons set out in the Introduction to this Decision.

For the same reasons as set out above regarding Rule 2.1, Ofcom's Decision was that this programme had the potential to improperly exploit the vulnerability of some viewers with serious personal, health or financial difficulties. The cumulative effect of the statements of encouragement, the inducements to make donations, and the assurances made in the programme (as detailed in the Introduction), heightened the risk of the susceptibilities of vulnerable viewers being improperly exploited. In Ofcom's view such viewers may have been less likely to question the claims that were broadcast and, therefore, could have been more susceptible as a result to the claims presented.

We again took careful account of the Licensee's and audience's right to freedom of religion and freedom of expression. As noted previously, it is important that religious channels are able to offer prayers for health or other personal problems and to

suggest that people of faith may derive comfort and solace in prayer or a belief in faith healing.

However, this programme actively solicited financial donations from viewers on the basis of their religious beliefs, and gave promises and strong inducements of divine intervention to cure serious illnesses and solve personal or financial problems. As set out in our reasoning for Rule 2.1, these promises were couched in exhortatory and imperative terms, without any appropriate caveats, warnings or context to ensure susceptible viewers were not improperly exploited.

As previously, we considered the content featuring Benny Hinn appearing to cure an audience member of cancer increased the likelihood of harm as a result of viewers in desperate situations being persuaded to donate 50 dollars. This was because the programme had already demonstrated what appeared to be an instance of a serious illness being cured by divine intervention. As set out in our reasoning for Rule 2.1, this footage was shown and these claims were made without any appropriate caveats, warnings or guidance to ensure that vulnerable members of the audience were not persuaded to make a donation because they believed it would lead to them being cured of a serious medical condition.

For all these reasons, Ofcom's Decision was that there was also a breach of Rule 4.6.

Conclusion

Ofcom underlines that the Code places no prohibition on the broadcast of material in which miracles are presented and discussed, and in which religion is presented as a means of supporting people through illness and personal difficulties. Nonetheless Ofcom has made clear in various published findings that when broadcasting such material, a licensee must ensure that viewers who are vulnerable and/or suffering serious illnesses are adequately protected from potential harm and the risk of improper exploitation.

Ofcom is very concerned about the nature of the breaches in this case and the adequacy of Flow TV's compliance processes, noting the Licensee's statements that not every programme is "previewed in its entirety" before broadcast due to "practicality and economics". We are therefore requesting that the Licensee attends a meeting to discuss the issues raised in this case. Ofcom will also be undertaking further monitoring of Flow TV.

Breaches of Rules 2.1 and 4.6

In Breach

UK Immigration with Tariq

Venus TV, 31 August 2016, 18:00

Introduction

Venus TV is a satellite general entertainment television channel broadcasting in English, Urdu, Hindi, Punjabi, Gujarati and Bengali. The licence for the service is held by Venus Global TV Limited (“the Licensee”).

UK Immigration with Tariq was a consumer advice programme during which the host, Mr Shazad Tariq, answered questions from viewers on legal issues related to immigration.

A complainant alerted Ofcom to an email address for West London Solicitors Limited which was on-screen for the majority of the programme.

Ofcom translated the programme into English.

We noted an on-screen graphic which showed the host’s full name, an email address which used the domain name associated with West London Solicitors and a phone number to contact Venus TV directly.

Ofcom requested information from the Licensee to determine whether the email references constituted product placement as defined in the Code¹. Based on the information provided, we considered the material raised issues warranting investigation under the following Code rules:

- | | |
|----------|---|
| Rule 9.4 | “Products, services and trade marks must not be promoted in programming.” |
| Rule 9.5 | “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from: <ul style="list-style-type: none">• 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 sought the Licensee’s comments on how the material complied with these rules.

¹ The Code defines product placement as: “The inclusion in a programme of, or reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not product placement.”

Response

The Licensee emphasised that it had made no commercial “or other gain” from the programme. It added: “Mr S Tariq does an informative programme for the viewers and gives advice on immigration problems to the viewers”.

The Licensee said that the email address is usually shown for ten seconds at the start and end of the programme, however due to “a technical error” the email address remained on-screen for the majority of the programme. It added: “This error was resolved the next day” and that all future live programming will be monitored as is it broadcast.

In response to Ofcom’s Preliminary View that the programme was in breach of Rules 9.4 and 9.5 of the Code, Venus TV stressed that the presenter “has never mentioned his company name or promoted his business” in the programme and that the information appeared as a result of a computer error.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The 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. The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including, among other rules, Rules 9.4 and 9.5.

Rule 9.4

Rule 9.4 states that products, services and trade marks must not be promoted in programming. Ofcom’s Guidance² on this rule explains: “where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears”.

In this programme, Ofcom noted that on a number of occasions Mr Tariq explicitly urged viewers to send their contact details to him via the on-screen email address. For example,

“My contact email is on the screen. If you want to contact me, you may send your name and telephone number by email and I will try my best to get back to you as soon as possible”.

“You may contact me and I will get back to you as soon as possible. I think my email address is at the bottom of the screen”.

² https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf

“As regards contact details, if you want to contact me after the show, you may send your name and telephone number by email”.

Ofcom recognises that viewer interaction is a key component of some programmes. In such content, there are clear editorial grounds for broadcasters to provide viewers with details of how to contact the programme. The Code allows broadcasters to use a variety of communications routes to facilitate viewer interaction, including telephony, email and social media. However, when promoting such routes on-air, care is needed to ensure that editorial content is not used, or perceived as being used, for advertising purposes (e.g. to promote a particular business).

In this case, Ofcom noted that the email address that viewers were repeatedly told to use to contact the programme host related to a law firm. In one instance, viewers were invited to email the host *“after the show”*. Although the studio telephone number was displayed on screen, viewers were not explicitly invited to contact the programme via this route. Ofcom considered that the invitations to viewers to contact the host using his business email address were promotional for the company in question. The programme was therefore in breach of Rule 9.4.

Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. According to Ofcom’s Guidance: “Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears”.

Although we noted the Licensee’s argument that it had received no financial benefit from the inclusion of these references, the rules relating to undue prominence are primarily intended to protect audiences by limiting the number of commercial messages contained in programming. Accordingly, the Licensee’s commercial arrangements were not relevant to our consideration of whether the references within the programme were unduly prominent.

In this case, we noted that the email address for a legal firm featured prominently throughout the programme. Although the inclusion of programme contact details within programmes for the purpose of enabling viewer interaction is likely to be justified on editorial grounds, it is difficult to justify invitations to viewers to contact commercial organisations on the same grounds. In this case, the email contact details promoted in the programme were not specific to the programme but were for a commercial organisation that provides legal advice on immigration issues. Further, the invitations to viewers to use this email address to contact the host were not limited to the provision of on-air advice in the programme – in one case viewers were told that they could contact the host *“after the show”*. Ofcom noted the Licensee’s representations regarding the duration of time the email address was intended to be on-screen (10 seconds at the start and end of the programme) and that due to human error, the graphic had stayed on-screen for approximately 36 minutes. We did not consider that the duration of the references was relevant in this case as we considered that there was no editorial justification for the references to West London

Solicitors email address in the programme. The programme was therefore in breach of Rule 9.5 of the Code.

Ofcom is concerned that the Licensee comments in this case imply a fundamental misunderstanding of the requirements of the Code relating to the promotion of products, services and trade marks. In light of this, Ofcom is inviting the Licensee to attend a meeting to discuss its compliance arrangements and in particular its understanding of Section Nine of the Code.

Breaches of Rules 9.4 and 9.5

In Breach

Sitare Kya Kahte Hai

Venus TV, 4 October 2016, 16:00

Introduction

Venus TV is a satellite general entertainment television channel broadcasting in English, Urdu, Hindi, Punjabi, Gujarati and Bengali. The licence for the service is held by Venus Global TV Limited ("the Licensee").

Sitare Kya Kahte Hai is an astrology programme during which the host, Mir Zaid, answered questions from viewers on various issues including relationship guidance and how planetary positions impact on people's lives. A complainant alerted Ofcom to contact details for an astrology service which were on-screen throughout the broadcast. During our assessment of this material we noted the content included two telephone numbers (+91 988 801 [XXXX] and +91 959 204 [XXXX] which were preceded by Indian international dialling codes; three on-screen graphics ("INTERNATIONAL RATES APPLY", "IF YOU ARE HAVING ANY HEALTH PROBLEMS PLEASE CONSULT YOUR GP..." and "HELPLINE TEleshopping"); and an email address (XXXXXX@gmail.com).

Ofcom translated the content into English.

We noted at the end of the programme the presenter said:

"If you want to ask any question of Professor Mir Zaid or want to discuss and have a consultation about any matter, then you can write to [XXXXXX@gmail.com], or, if you want to get in touch by phone, then contact us on +91 988 801 [XXXX]. The other number +91 959 204 [XXXX]."

Although Ofcom noted the on-screen graphic referred to 'teleshopping', we considered that the material did not fulfil the criteria¹ to enable it to be classified as such. Ofcom considered the content was presented as a programme and therefore requested information from the Licensee to determine whether the email and telephone references constituted product placement as defined in the Code². The Licensee confirmed that the references to the telephone numbers and email address were not made in return for the making of any payment, or the giving of valuable consideration, to any relevant provider or any person connected with any relevant provider.

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

¹ As set out in the Note to Broadcasters in issue 193 of Ofcom's Broadcast Bulletin, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0028/47386/obb193.pdf

² The Code defines product placement as: "The inclusion in a programme of, or reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not product placement."

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

We sought the Licensee’s comments on how the material complied with these rules.

Response

The Licensee said the phone numbers and email address enabled viewers to contact the programme directly for free advice. Both options of contacting the programme were offered to viewers as “not all viewers can get through on the phone”.

The Licensee added that the content was labelled as ‘teleshopping’ “to make sure we are using ou[r] teleshopping air time, not advertisements minutes”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The 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. The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including, among other rules, Rules 9.4 and 9.5.

Rule 9.4

Rule 9.4 states that products, services and trade marks must not be promoted in programming. Ofcom’s Guidance³ on this rule explains: “where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears”.

In this programme Ofcom noted that the host encouraged viewers to contact the show, for example:

“So if you have any questions in your mind, if you have problems in your life, then you can call us on our phone numbers during this show or after the show and

³ Ofcom Section Nine Guidance:
https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf

share your problems. Or if you want, please note our email address and you can get answers to your questions via email”.

Ofcom recognises that viewer interaction is a key component of some programmes. In such content, there are clear editorial grounds for broadcasters to provide viewers with details of how to contact the programme. The Code allows broadcasters to use a variety of communications routes to facilitate viewer interaction, including telephony, email and social media. However, when promoting such routes on-air, care is needed to ensure that editorial content is not used, or perceived as being used, for advertising purposes (e.g. to promote a particular business).

In this case, Ofcom noted that the telephone numbers, which were onscreen permanently, and an email address, which appeared occasionally, were not specific to the programme but in fact were methods of contacting Mir Zaid directly and could be found on his own website⁴. Ofcom considered that the invitations to viewers to contact Mir Zaid using his business email address, indirectly promoted his astrology company. The content was therefore in breach of Rule 9.4.

Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. According to Ofcom’s Guidance: “Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears”.

Although we noted the Licensee’s argument that it had received no financial benefit from the inclusion of these references, the rules relating to undue prominence are primarily intended to protect audiences by limiting the number of commercial messages contained in programming. Accordingly, the Licensee’s commercial arrangements were not relevant to our consideration of whether the references within the programme were unduly prominent.

In this case, we noted that the email address and telephone numbers for a commercial entity featured prominently throughout the programme. Although the inclusion of programme contact details within programmes for the purpose of enabling viewer interaction is likely to be justified on editorial grounds, it is difficult to justify invitations to viewers to contact commercial parties on the same grounds. In this case, the email contact details and telephone numbers promoted in the programme were not specific to the programme or channel but were for a commercial entity that provides astrology readings. Further, the invitations to viewers to use this email address to contact Mir Zaid were not limited to the provision of on-air astrological advice in the programme – in one case viewers were told that they could contact the Mir Zaid “*after the show*”. We considered there was no editorial justification for the references to Mir Zaid’s business contact details in the programme. The programme was therefore in breach of Rule 9.5 of the Code.

Breaches of Rules 9.4 and 9.5

⁴ <http://www.astrologer-mir-zaid.com/>

In Breach

Ryanair sponsorship of Daytime

Channel 5, 4 October 2016, 16:57 and various other dates and times

Introduction

Channel 5's daytime programming was sponsored by Ryanair.

During routine monitoring Ofcom noted that, following a broadcast of the film *Fatal Friends* on 4 October 2016, a sponsorship credit was broadcast, which started by displaying a list of Channel 5 daytime programmes as destinations on an airport departure board. An airport announcement then stated in voiceover, *"A great line-up to choose from"*, as the departure board information turned into a list of *"Holiday departures"*. A further announcement then stated, *"Ryanair sponsors Daytime on Channel 5"*, as a woman settled into an airline seat, with two children occupying themselves in the adjacent seats. The message, *"Ryanair sponsors Daytime on Channel 5"* was also displayed, incorporating both a Channel 5 logo and a Ryanair logo that included the phrase, *"LOW FARES MADE SIMPLE"*.

The sponsorship credit was followed immediately by a photograph of a Ryanair plane, which was overlaid with the words, *"LOW FARES MADE SIMPLE"*, displayed in large letters, together with a Ryanair logo. The woman who featured in the sponsorship credit then settled into an airline seat once again, with the same two children occupying themselves in adjacent seats, as the message, *"Fly from £19.99"* was displayed in a prominent graphic and a voiceover stated: *"Book now, from just £19.99"*. The voiceover then stated, *"Ryanair – low fares, made simple"*, as an air stewardess was shown walking down the aisle of the plane and the Ryanair logo that included the phrase, *"LOW FARES MADE SIMPLE"*, was then displayed. Advertisements for various other businesses were then broadcast.

We considered the sponsorship credit raised issues warranting investigation under the following Code rule:

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

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

We therefore sought Channel 5's comments on how the sponsorship credit complied with this rule.

Response

Scheduling of the sponsorship credit

Channel 5 said it had investigated the matter, adding that it had not authorised the broadcast of Ryanair advertisements directly after Ryanair sponsorship credits, as had occurred in this instance. It added that their broadcast in succession had been inadvertent. Channel 5 accepted that the material would have been confusing to viewers and that the sponsorship credit was in breach of Rule 9.22.

Channel 5 said there had been a breakdown in communication between Sky Media, which “sells the airtime, packages it up and sends it back in file form to Channel 5” (which, in turn, imports the file into its scheduling system), and Channel 5 Scheduling, which “schedules all other elements such as programming, promotions, continuity menus, sponsorship etc.”. It added that Sky Media thought channel idents were broadcast by Channel 5 either side of its commercial breaks, to separate advertising from other items in the schedule, and it did not therefore believe there was “any likelihood that the Ryanair sponsorship [credits] could be broadcast contiguously with Ryanair advertising spots”. Channel 5 confirmed that it did not always broadcast channel idents either side of its commercial breaks.

Channel 5 said that it regretted the breach of Rule 9.22, and that it had established a new procedure with Sky Media, which ensured “appropriate communication” to avoid recurrence. The Licensee added that the incident occurred because of lack of proper communication, and not because anyone at either Sky Media or Channel 5 was applying incorrect criteria or misunderstanding the nature and ambit of Rule 9.22. It continued that now that “appropriate communication is assured”, it was confident that no breaches of this nature will occur in the future.

Content of the sponsorship credit

Channel 5 noted that Ofcom’s published guidance which accompanies Rule 9.22¹ states that:

“claims about the sponsor’s products/services ... are likely to be considered as advertising messages and therefore should not be included in sponsorship credits”; and

“it is possible for some sponsor’s slogans and straplines to be used within a credit, for the purpose of helping identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor’s products/services...”.

Channel 5 submitted that Ryanair is known as a “cut-price” airline and one of the features that distinguishes the airline from its competitors is this inherent characteristic. It therefore considered that, in accordance with Ofcom’s guidance, the phrase “*low fares made simple*” was part of the way in which Ryanair is identified by the public. It added that phrase was so identifiable with Ryanair that it had been successfully registered as a European Trade Mark in several classes.

The Licensee was of the view that, in the absence of other information, the phrase did not encourage the purchase of the services offered by Ryanair: it simply ensured

¹ Available at
https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf

the viewer knew what Ryanair is. It acknowledged that in separate contexts the phrase could become an advertising message but, on its own and considered separately from any advertising message, the trademarked phrase was, in the Licensee's view, merely one of the ways in which Ryanair identifies itself to the public.

Channel 5 believed that the presentation of the phrase in the sponsorship credit underlined this position: the phrase was not mentioned in the voiceover; it was "merely a part of the identifying logo of the sponsor, with the words "low fares made simple" appearing in smaller print directly under the name Ryanair". It highlighted that no attempt was made to separate the phrase from the corporate name of the sponsor – it was simply part of the way the sponsor was identified to the audience: by its name and usual trademark.

The relevant question, Channel 5 believed, was whether viewers of the sponsorship credit, when looking at the credit in isolation, would be confused about the message it contained or would think that the credit was an advertising message rather than a means by which the relevant sponsor of the programme could be identified or the sponsorship association be identified. In Channel 5's view, seen in isolation, the Ryanair sponsorship credit would not confuse the viewer. The Licensee believed this position was supported by the fact that it had received no complaints that the sponsorship credit itself was confusing or "advertorial" and, as far as Channel 5 was aware, Ofcom had received no such complaints either.

In response to Ofcom's Preliminary View that the credit was in breach of Rule 9.22(a), Channel 5 expressed concern that this represented, in its view, "a significant re-interpretation of Rule 9.22, one that is likely to severely and adversely impact on the ability of broadcasters to attract sponsorship for programmes". It continued that if "no advertising message can be included in sponsorship [credits], then many advertisers will not be interested in sponsoring programmes". Channel 5 believed that Ofcom's guidance suggests that advertising messages can be included in sponsorship credits provided they do not encourage the purchase or rental of the sponsor's products/services. It believed that the Preliminary View proceeded on a different, much stricter, basis.

The Licensee identified a number of statements that it considered contained advertising messages and that it believed would be proscribed in sponsorship credits if the approach set out in the Preliminary View was adopted. In its view, while the identified statements might be "advertorial", they did not cross a line because they did not particularly encourage the purchase or rental of products or services but were descriptive, assisting the viewer in understanding the product sponsoring the programme. Channel 5 considered that, absent any additional information, the phrase "low fares, made simple" did not encourage the purchase of the services offered by Ryanair: it simply ensured that viewers knew what Ryanair is.

Channel 5 noted that Ofcom's Preliminary View stated that "the phrase went beyond a means of identifying the sponsor and was a claim about the sponsor's service". The Licensee considered that Ofcom had not indicated what claims about Ryanair's service were made by the phrase, nor had Ofcom indicated why the phrase went beyond a means of identifying Ryanair, particularly as the phrase was a trade mark incapable of being used by anyone else. Channel 5 accepted that the question will always "be one of degree and context but that does not prevent fine distinctions".

Channel 5 considered its view that the phrase was not an advertising message was supported and reinforced by the fact that the sponsor had used it without criticism in sponsorship credits broadcast in another EU Member State. The Licensee also cited a sponsorship credit, which it considered contained a phrase that was ‘more advertorial’, that Ofcom had assessed during a recent monitoring exercise but had not investigated. In this case, the phrase appeared on a product as part of a pack shot in the credit. The Licensee believed that companies which provide services “ought to be able to identify themselves to the viewer in ways which are no less impactful than showing an actual product”. It noted that sponsors who sell products can show those products in credits. Further, sponsors who do not have a product by which they can be easily identified should be able, by use of material which is associated clearly with them, to identify themselves to viewers. The Licensee believed that it would be inequitable for providers of services to be penalised in a way in which providers of goods are not. In response to Ofcom’s Preliminary View, Channel 5 stressed that, in its view, there is little difference, if any, between using an image of a product, which features possibly advertising claims, and the use of a trade mark, some aspect of which might be considered to be “advertorial”. The Licensee considered that in both cases, all the audience “takes away” is the identity of the sponsor and not an advertising message or call to action.

The Licensee stressed that it was important to consider the sponsorship credit in isolation. It considered that the juxtaposition of the credit and the advertisement in this case should not “colour a dispassionate view” of the sponsorship credit. Channel 5 reiterated its view, that considered in isolation, the credit did no more than identify the type and quality of services of the programme sponsor and did not encourage the purchase of sponsor’s services. For the reasons set out above, Channel 5 did not believe that the inclusion of the phrase in the credit involved any breach of the Ofcom Broadcasting Code.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising (“advertising minutage”). To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, Rule 9.22 requires broadcasters to ensure that sponsorship credits are distinct from advertising.

Scheduling of the sponsorship credit

Distinction between sponsorship credits and advertising may be achieved in a number of ways, including by separation (e.g. by the use of a channel ident) and/or a clear difference in the style/content of each. In this instance, there was no separation between the Ryanair sponsorship credit and advertisement, and the content of the two items was very similar, featuring characters common to each and presenting prominently the phrase, “*low fares made simple*”.

For these reasons, Ofcom considered the sponsorship credit – as broadcast at 16:57 on 4 October 2016 – was not distinct from advertising and was therefore in breach of Rule 9.22 of the Code.

Ofcom noted Channel 5's acknowledgement that the juxtaposition of the credit and the sponsor's advertisement led to a lack of distinction between the content. In view of the steps introduced by Channel 5 to prevent recurrence, we considered this issue resolved.

Content of the sponsorship credit

As noted above, the credit featured a Ryanair logo that included the phrase, "*low fares made simple*". Ofcom went on to consider this phrase under paragraph (a) of Rule 9.22, which states:

"Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action..."

As noted by the Licensee, Ofcom's associated guidance states that:

"claims about the sponsor's products/services ... are likely to be considered as advertising messages and therefore should not be included in sponsorship credits"; and

"it is possible for some sponsor's slogans and straplines to be used within a credit, for the purpose of helping identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor's products/services..."

Channel 5 submitted that the phrase was part of the sponsor's strapline, used as a means of identifying the sponsor's business, and was not an advertising message. Although the Code provides scope for sponsorship credits to identify the nature of a sponsor's business and to include company straplines, to ensure compliance with Rule 9.22(a), such material must contain no advertising messages or calls to action. In this case, Ofcom recognised that the sponsor operates within the low-cost carrier market² and accepted that, to an extent, this fact could be reflected when identifying the sponsor. However, in Ofcom's view, the phrase went beyond a means of identifying the sponsor's business and was a claim about the sponsor's pricing strategy – an advertising message which also featured prominently in the airline's contemporary advertising campaign (e.g. "*Book now, from just £19.99 ... Ryanair – low fares, made simple*").

Ofcom noted Channel 5's submission that the phrase formed part of the sponsor's registered trade mark. We also noted Channel 5's interpretation that Ofcom applied a different test when assessing sponsorship credits that contain product shots featuring advertising claims than when considering similar claims that form part of a sponsor's trade mark. As set out above, the purpose of Rule 9.22 is to prevent sponsorship being used as a means by which broadcasters increase the amount of advertising they can transmit. The rule achieves this by limiting the extent to which information featured in credits can be promotional for the sponsor. Any advertising message, regardless of whether it forms part of a registered trade mark or is featured on a product, should not be included in sponsorship credits.

² Low-cost carriers are airlines generally recognised for offering 'no frills' flights for low fares.

We also noted Channel 5's position that the inclusion of the phrase in the credit was unlikely to confuse viewers about the nature of the material. Our concern in this instance was not that viewers would be misled as to the nature of the content but that the content of the credit amounted to advertising. Further, whether or not the phrase had been accepted in a sponsorship credit broadcaster in another EU Member State was not relevant to Ofcom's consideration. Although Rule 9.22 is derived from the requirements of the AVMS Directive, it is a matter for individual member states to interpret and apply the regulations as they see fit. An interpretation by one Member State does not bind another.

In its response to Ofcom's Preliminary View, Channel 5 set out its belief that Ofcom's guidance "suggests that advertising messages can be included in sponsorship credits provided they do not encourage the purchase or rental of the sponsor's products/services". This is not the case. Rule 9.22(a) states explicitly that "Sponsorship credits broadcast around sponsored programmes must not contain advertising messages". In addition, the associated guidance makes clear that the purpose of sponsorship credits "is to identify sponsorship arrangements: they are not a platform for a sponsor to sell its products and services".

The Licensee also cited examples of statements it believed Ofcom would consider unacceptable under Rule 9.22(a). The purpose of Ofcom's investigation in this case was to consider whether the credit in question complied with the Code and we did not therefore assess the statements provided. However, as made clear in the guidance and in a number of previous Bulletins³, Ofcom recognises that when judging whether the various components of a sponsorship credit amount to the credit being sufficiently distinct from advertising, fine editorial judgements are often required. We accept that broadcast sponsorship is used by sponsors with a view to promote themselves or their products through their association with the sponsored programme. However, we remind licensees of the importance of maintaining a distinction between sponsorship credits and advertising in order to justify the exclusion of credits when calculating the amount of airtime a broadcaster has used for advertising. We consider Rule 9.22(a) affords broadcasters the freedom permissible under the European legislation to identify sponsorship in a way that both informs the audience of the sponsorship arrangements and benefits the sponsor without encroaching on advertising minutage.

For the reasons set out above, Ofcom concluded that the sponsorship credit breached Rule 9.22(a) of the Code.

Breach of Rule 9.22(a)

³ For example, https://www.ofcom.org.uk/_data/assets/pdf_file/0028/46954/issue146.pdf; https://www.ofcom.org.uk/_data/assets/pdf_file/0024/46293/obb223.pdf; and https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50615/issue_305.pdf

Not in Breach

Sky News

Sky, 7 August 2016, 22:00

Introduction

On 7 August 2016, *Sky News* included a news item which featured the journalist Stuart Ramsay reporting from Western Romania about people allegedly engaged in the illegal sale of firearms.

Over 190 viewers complained that the item was not duly accurate. Some of these claimed that elements of the item had been “staged” or “faked”. Ofcom was also made aware that, following the broadcast of the report, the Directorate for Investigating Organised Crime and Terrorism (“DIICOT”) in Romania was reported to have ordered a criminal investigation into events related to the news item and had arrested three Romanian citizens who were believed to have appeared in the Sky News report¹. DIICOT was reported to be investigating claims that, for example:

- one of the alleged gun dealers was a Romanian citizen approached by the journalists to appear in the report;
- Sky paid three Romanian people 2,000 Euros to appear in the report, and provided them with the answers they should give to the Sky journalists; and
- the weapons shown in the news item were legally owned hunting weapons and not military-grade weapons as was implied by the report.

More detail of the matters reported to be under investigation by DIICOT is set out below in the Response section.

Complaints received by Ofcom largely echoed the above claims. Some also complained that:

- the report did not provide evidence to substantiate that the weapons shown were smuggled and that the gun dealers had business connections with terrorists; and,
- the report was inaccurate in portraying Romania as a transit area for supplying weapons to terrorists (noting Romania is not part of the Schengen Area without routine border controls) and for implying that the Romanian authorities were turning a blind eye to illegal arms dealing.

The news item was introduced by the presenter in the studio who said:

“A Romanian gang has told Sky News it’s prepared to sell automatic weapons to anyone, including terrorists. Security analysts fear the guns may get into the hands of Islamist terror cells or lone wolf killers who want to carry out a ‘Paris-style’ attack. Our chief correspondent Stuart Ramsay has travelled to Romania to meet the gun dealers who claim to have thousands of weapons. He sent this report from the west of the country near the border with Ukraine”.

¹ <http://www.diicot.ro/index.php/arhiva/1853-press-release-11-08-2016-eng>

The pre-recorded report began with shots of the Sky News team following a four-by-four vehicle in a location in rural Romania while the reporter Stuart Ramsay ("SR") commented:

"After months of negotiations, Sky News was told to meet this car in Western Romania and to follow. The passengers wouldn't communicate or reveal themselves, and the car – a beaten up old jeep – had no plate or any identifying features".

Footage of the Sky News team followed, showing Stuart Ramsay and his interpreter walking up to the vehicle and shaking hands first with one man, and then a second, who emerged from behind the vehicle. Both men were wearing masks covering their faces, sunglasses and balaclavas. The Sky News interpreter was also shown briefly, wearing a baseball cap, sunglasses and a black scarf tied across the bottom half of his face. Stuart Ramsay said in commentary:

"In a forest clearing, we met the weapons dealers, armed, 'balaclaved' and in military clothing. They were deeply suspicious and wary throughout. On orders from the head of the gang, they showed us the types of weapons they supply [the first man pulled back a blanket covering the vehicle's cargo to show half a dozen or so assorted guns]. 'The vast majority [of weapons] go to Western Europe and they boast the supply is virtually endless [one of the men cocked one of the semi-automatic weapons]. These are high quality weapons smuggled from Ukraine into Romania and then abroad. Demand, they say, is absolutely huge. The biggest seller, the AK-47. The weapon of choice of terrorists, not ordinary criminals".

One of the men ("Man 1") showed a weapon and a charger to the camera and remarked (his words translated into English by the interpreter who was with the Sky News crew):

"OK, this is a small charger, with ten bullets, and there with 30 bullets. This is just example" [he cocks the weapon].

The following conversation was then shown between Stuart Ramsay and Man 1:

SR: *"Yeah, because the 'AK' has the traditional sort of, the, the, whatever you know".*

Man 1: *"Never broke down this weapon [he deliberately drops the weapon on the ground and steps on it]. You can drop them, you can, you know".*

SR: *"And that's why it's one of the most popular weapons worldwide, because it is so strong, yeah".*

Man 1: *"Yeah, small, you can hide it [he holds the weapon next to his leg]. You can use it with one hand" [he demonstrates how, lifting the weapon on his shoulder with one hand and pretending to aim].*

SR: *"Now explain to us this [indicating another weapon in the back of the vehicle], because it's quite a specialist weapon?"*

One of the other men then took a rifle from the back of the vehicle and Man 1 said via the interpreter:

- Man 1: *"300 metres, you can't miss. A target like this 300 metres and the advantage is that you can shoot the target from er, like far away, from far away, yeah".*
- SR: *"And what is the maximum range on that? 300 metres is good for what sort of [inaudible]?"*
- Man 1: *"Maximum is like 500, yeah? But 300 you must be good".*
- SR: *"Is it possible that these weapons end up in the hands of what we call terrorists as opposed to criminals?"*
- Man 1: *"If you have the money he doesn't care who you are, he's gonna sell to anyone".*

At this point, footage from January 2015 was shown of the terrorist attack in Paris on the French satirical weekly newspaper, Charlie Hebdo, when two terrorists forced their way into the offices of the newspaper armed with assault rifles and murdered 12 people. The footage showed them fleeing after the attack. This was accompanied by Stuart Ramsay's commentary:

"The increase of terrorist attacks in Europe has highlighted the damage that can be done by military grade weapons in the hands of individuals as well as gangs. Europe is awash with illegal weapons. Traditionally terrorist attacks were characterised by the use of bombs. Not anymore. Automatic weapons kill more people and they're easier to use. From fighting in the Middle East jihadists are returning fully trained. Across Europe and the United Kingdom, security services are on a constant alert every single day".

Footage followed from an interview with Ian Cruixton, the Director of the National Crime Agency in the UK:

"The potential for what we've seen in Europe in terms of a greater availability and use of those kind of weapons. We're very conscious of the fact that's only 21 miles away across the Channel. And so we are constantly working and vigilant in terms of managing that threat as it poses itself to the UK".

The report then returned to the men in Romania and featured more footage of the weapons at the back of the vehicle. There was an exchange between Man 1 and Stuart Ramsay:

- Man 1: *"1,700 Euros".*
- SR: *"1,700 Euros for the AK47?"*

Stuart Ramsay then said in a piece to camera:

"Networks for these mafia-inspired gangs stretch from the Balkans to Eastern Europe. Virtually anything is available to anyone if they're prepared to pay. There's a further concern amongst the police authorities across Europe that crime gangs are now the main suppliers of weapons not just to criminal groups in the West but also to terrorist groups both in Western Europe and the Middle East. That means Islamic State could get their hands on weapons like these as well, and this [pointing behind him at the weapons at the back of the vehicle] is just a

shop front, if you like, just a small truck with an array of guns for sale. They insist though that they can supply as much as anyone could ever want”.

At this point, the men were shown covering the weapons with the blanket and driving away. Commentary by Stuart Ramsay concluded the report:

“The gun runners said they were not bothered by the local law enforcement as the weapons weren’t used in Romania, they’re just exporters. They insisted we stayed 20 minutes while they left. They told us that the next time we arrived they expected us to be buyers. Stuart Ramsay, Sky News, Romania”.

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

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

We therefore sought comments from Sky UK Limited (“Sky” or “the Licensee”) as to how the material complied with this rule.

Response

Sky stated that the sequence of filming which appeared in the report was “categorically not staged or faked by Sky News” and that “to do such a thing would be in contradiction of our own editorial guidelines”. It explained that it pursued this news story “using highly experienced journalists, applying due diligence in the preparation, and then reporting in good faith about a matter of extreme public interest related to the fight against terrorism in Europe”. The Licensee stated that: “We have reviewed the position internally and are confident that there is no merit to the allegations. We have documentary and witness evidence that supports our position”.

Sky explained that the report had involved “several months of journalistic inquiries into illegal gun sales in the region”. The Licensee said it was initially contacted through one of its fixers “who was a trusted source”. The fixer informed Sky that he had been approached by a Romanian citizen “about a gang in Moldova operating in Romania who specialised in the sale of guns to European crime gangs”. Sky explained that the “initial pitch” by the fixer indicated that the gang were dealing in “heavy weaponry” and that it was on that basis that Sky decided to go ahead with the news story. Sky said that it engaged in discussions with the gang through its fixer and his contacts “to make arrangements” in preparation for the filming of the report.

In its request for comments from Sky, Ofcom also summarised the most significant and specific allegations made by complainants about the news item (and echoed in a number of the complaints received by Ofcom). We have summarised below these allegations (and related questions) which Ofcom specifically put to Sky under five sub-headings:

Due accuracy

- 1) *It had been suggested by complainants that the Romanian citizen featured in the report (as the Sky News interpreter) had been approached by a British journalist who wanted to make a documentary on gun smuggling and wanted people to show him firearms. It was alleged that the Romanian citizen had told the journalist he could only produce sporting (not military) rifles and the journalist agreed.*

The Licensee said this “is simply not true”. It said Sky News “first became involved in this story” when it was approached by a UK-based contact (“with whom we had worked...on numerous occasions and who was a trusted source”), who had told Sky that he had been approached by a Romanian citizen/contact about a gang from Moldova operating in Romania “who specialised in the sale of guns to European crime gangs”. Sky also said that it did not know the identities of the gun dealers, nor whether they hunted for a hobby. It said that, “through our extensive negotiations... we believed in good faith that they were members of a criminal gang linked to organised crime who were prepared to sell weapons to anyone with the money to pay for them”. It added that “[n]othing in our initial negotiations or during our meeting led us to suspect that they were anything other than they claimed”. The Licensee said that “[a]t no time” did the contact “suggest the gang could only supply sporting goods” but that “[h]is initial pitch indicated that we would see heavy weaponry and at all times Sky News believed that the collection included ‘military grade weapons’”.

- 2) *It had been suggested by complainants that Sky paid a sum (2,000 Euros had been indicated) to three Romanian citizens to appear in the Sky News report and asked them to wear hoods (in the case of the Romanian fixer/interpreter provided by the journalists) and appear in an isolated area in Romania in a car without number plates. They were, it was alleged, provided with the answers they should give to the questions.*

Sky explained that it first became aware of the story about illegal arms sales when it was approached by a fixer based in the UK who it had worked with on numerous occasions and was described as “a trusted source”. Sky said that its UK-based fixer had initially been approached by a Romanian-based fixer “about a gang in Moldova operating in Romania who specialised in the sale of guns to European crime gangs”.

Sky said that it had paid the Romanian-based fixer, who was the original source for the story a total of 1,400 Euros for sourcing the story, the introduction to the gang and four days of work at 350 Euros per day. Material viewed by Ofcom also indicated that Sky had paid the UK-based fixer a total of 4,100 Euros. The Licensee provided Ofcom with receipts to support its position that the amounts paid to both fixers had been “accounted for as is usual practice”. It underlined that “no one from Sky News or acting on our authority paid any money to the [two Romanian] men we understood to be smugglers” and that “[w]e do not pay criminals in any circumstances”. Sky added that it did not provide the Romanian men with answers to the questions they were asked and that there was no evidence to the contrary.

Sky explained that the men who were alleged to be illegally selling weapons had chosen the location of the meeting and that the final details were only communicated to Sky News via its Romanian-based fixer on the way to the location. Sky said that it had “no influence over the location of the meeting nor did they [Sky News] make specifications as to the kind of vehicle the men should use with number plates or otherwise”. The Licensee stated that it did not ask the men to wear hoods. However, Sky said that it had provided its Romanian-based fixer “with clothing to conceal his identity” because the fixer acted as a translator for the meeting and as a result appeared on camera. The Licensee also explained that “the producer was only able to track the team by monitoring the [map] pin drops that the team sent as they progressed” and that this was in line with its risk assessment and health and safety policies.

- 3) *It had been suggested by complainants that, while the weapons shown in the news item were implied to be military weapons, they were in fact part of a legally held sporting collection of weapons.*

Sky explained that its fixer facilitated the meeting “on the basis that military grade weapons would be amongst those we were to be shown”. The Licensee acknowledged that, among the weapons displayed at the back of the vehicle, “there were some high-end hunting weapons”. However, Sky stated that it, “believed the haul also included military style weapons as samples of the kind of guns they [the gang] said they were able to supply in large numbers”. The Licensee said that its “highly experienced reporter Stuart Ramsay (who has covered and reported from numerous conflict zones and terrorists’ atrocities over the number of years) believed that the weapons, in particular the AK-47, were military grade, similar to those used in the Paris attacks”. The Licensee added that: Sky News’ Head of Security (who was part of the Sky News team in Romania) visually inspected the weapons and believed them to be authentic; “[w]hether or not the weapons were primarily used for hunting they were still lethal, capable of causing mass casualties and being offered for sale illegally”; “the men indicated that the selection of weapons was merely a ‘shopfront’ and that they could provide a significantly greater quantity if required”; and, “when asked they explained it would be possible to buy heavier weaponry but they conceded that such weaponry would be provided by others”.

- 4) *It had been suggested by complainants that Sky took inadequate steps to verify, prior to broadcast, the various claims made within the news item e.g. to substantiate the claims that the weapons featured had been smuggled, the portrayal of Romania as a transit area for weapons for terrorists who would carry out ‘Paris-style’ attacks, and that the gun dealers featured had some sort of permanent business connection with terrorists.*

Sky said it “strongly refute[s] any suggestions that the report was inaccurate or in any way set up. The story came from a trusted source and nothing during the course of our investigations or preparation of the report led us to believe that anything he told us was untrue”. Sky explained that it had worked with its UK-based fixer “on many occasions” and that he had “also done extensive work with other mainstream media domestically and internationally”. It added that the UK-based fixer had been working as a freelancer for more than 20 years. Sky also said the Romanian fixer who sourced the story to the Sky News UK-based fixer had “developed a reputation as the go to source for stories in Romania, particularly those related to the underworld”. The Licensee explained that “[o]n the basis of previous experience and our own investigations we believed the information we were provided by our fixers to be true and discovered nothing during the preparation of the report to challenge that belief”. It said that “all our evidence was that these weapons had come from Ukraine and that they were available for sale” and that the Romanian gang agreed to be filmed “in the belief that we would actually buy some weapons from them”.

The Licensee said that “Eastern Europe generally is a well-known and documented location for the illegal purchase of weapons by criminal and terrorist interests”. It explained that – in the own words of the men included in the report – “[i]f you have the money they don’t care who you are”. The Licensee added that “[i]n such circumstances the weapons could clearly find their way into the hands, directly or indirectly, of organised criminal gangs, Islamic State or lone terrorists”.

Due impartiality

- 5) *It had been suggested by complainants that the viewpoint of the Romanian authorities ought to have been reflected, in light of the potential implication from the report that they had adopted a lax approach to regulating arms smuggling on their territory.*

The Licensee stated that: “It is always our aim to deal with every story in line with the impartiality obligations of the Ofcom code which we reinforce with our own stringent Editorial Guidelines. We did approach this story impartially”.

The Licensee said that “Romania was the setting for the criminal gang and the shop front rather than the focus of the report” and that “it is generally accepted that illegal arms sales take place across Eastern Europe and it isn’t a point of particular controversy”. Sky added that it was clear from the report that the weapons were not being used in Romania and therefore it believed “it reasonable that cracking down on such practices wouldn’t be a priority for the Romanian police”. It explained that the report did not mean to say that weapons dealers were given “a free pass” by the police in Romania but rather that they were “flying under the radar”. It said that it was “implicit in the security arrangements that the men insisted on that they were taking steps to avoid the notice of the police”. Sky said that it did not accept that there was a “direct criticism of the [Romanian] police or authorities generally and as such we did not believe that there was an allegation that required a response from them”.

The Licensee acknowledged that Romania did have border controls with the Schengen Area. It however explained that the report aimed to point out that, “[gun] smugglers find ways to get across borders” and that, “the potential for such dangerous weapons to fall into the wrong hands is a legitimate issue for news organisations to examine at a time of heightened concern about terrorism in Europe”.

Sky also offered Ofcom an opportunity to examine the documents it held and footage it recorded relating to the news item. Ofcom accepted this offer and viewed the documents and unedited footage, including Sky’s records regarding how the news story was set up, its trip to and filming in Romania, and receipts of the payments to both the Romanian-based fixer who sourced the story and the UK-based fixer.

Ofcom also sent Sky a document setting out Ofcom’s preliminary view that the news item had been reported with due accuracy, that due impartiality was preserved, and that Sky did not breach Rule 5.1. Sky did not make substantive comments on the content of the preliminary view, which Ofcom reflected in this Decision.

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 news included in television and radio services is reported with due accuracy and presented with due impartiality. This objective is reflected in Section Five of the Code.

When applying the requirements to report news with due accuracy and present news with due impartiality, Ofcom must take into account the broadcaster’s and the audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and

audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. However, the broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirements in the Code to report news with due accuracy and present news with due impartiality.

Rule 5.1 of the Code states that: "News, in whatever form, must be reported with due accuracy and presented with due impartiality". The meaning of "due impartiality" set out at the start of Section Five of the Code makes clear that "due" means adequate or appropriate to the subject and nature of the programme. Any judgement as to the due accuracy and/or due impartiality of a particular news report is complex and must take account of all the relevant circumstances.

It is important to note that Ofcom's investigation is limited to Sky's compliance with broadcasting licence obligations based on the evidence that complainants and Sky have provided to Ofcom.

Due accuracy

The rule requiring due accuracy is primarily intended to ensure that viewers and listeners can trust news broadcasters to report the facts of the news, and the factual background to it, with appropriate accuracy. It goes to the heart of the relationship of trust between a news broadcaster and its audience. Audiences of news programmes are likely to place a particularly high degree of trust in the broadcaster's editorial integrity.

In this case, the news item covered a matter which was clearly of significant public interest: alleged weapons dealers in Romania prepared to sell automatic weapons smuggled from Ukraine to anyone, including to Islamist terror cells, at a time of continued and heightened concern about terrorism threats in Western Europe. It was therefore clearly legitimate for Sky to make and broadcast a report on this subject in its news output. However, in doing so, Sky was required to ensure the news item was duly accurate. Ofcom therefore began by assessing the specific allegations set out above that aspects of the report were "staged" or "faked", and that there were other material inaccuracies in the report.

- 1) *It had been suggested by complainants that the Romanian citizen featured in the report (as the Sky News interpreter) had been approached by a British journalist who wanted to make a documentary on gun smuggling and wanted people to show him firearms. It was alleged that the Romanian citizen had told the journalist he could only produce sporting (not military) rifles and the journalist agreed.*

In the news report, two masked men who were allegedly dealing weapons spoke in Romanian and answered Stuart Ramsay's questions. There was also a third man (wearing a baseball hat and masked) who, Ofcom understands, was the Romanian Sky interpreter/fixer, who was interpreting the conversation.

In assessing the background to the filming of the news story and Sky News' knowledge of the type of weapons the gang would produce, Ofcom took account of all the information and material provided by the Licensee on this issue. Ofcom examined copies of material provided by Sky which documented some of the background to the filming, including notes of interactions between the parties prior to the filming of the report. In Ofcom's opinion, this evidence supported key aspects of Sky's representations, including that Sky News was first approached

by its UK-based fixer about the story, and that the Licensee believed in good faith that the men would show them “military grade” weapons.

- 2) *It had been suggested by complainants that Sky paid a sum (2,000 Euros had been indicated) to three Romanian citizens to appear in the Sky News report and asked them to wear hoods (in the case of the Romanian fixer/interpreter provided by the journalists) and appear in an isolated area in Romania in a car without number plates. They were, it was alleged, provided with the answers they should give to the questions.*

Ofcom carefully analysed all the available evidence, including footage which had not been included in the edited piece as broadcast, contemporaneous notes and messages arranging the meeting, and Sky’s submissions. Ofcom also examined copies of receipts provided by Sky documenting a payment of 1,400 Euros to Sky News’ fixer/interpreter in Romania (which Sky said was for “sourcing the story, the introduction to the gang and four days’ work”), and a total of 4,100 Euros to its UK-based fixer. Sky denied paying money to the alleged gun dealers who featured in the report. Ofcom saw no evidence (either provided by Sky or complainants) to contradict that position.

In Ofcom’s opinion, the evidence also supported other key aspects of Sky’s representations, including that: Sky News was first approached by its UK-based fixer about the story; the Licensee believed in good faith that the men would show them “military grade” weapons; and, that the location where the Sky News team in Romania met the men was determined by them and not Sky News. From viewing the ‘rushes’ filmed on location it did not appear to Ofcom that any of the interviewees had been instructed what answers to give to questions.

Sky acknowledged having provided its Romanian fixer with some clothing to hide his face on camera because it said he was acting as the interpreter and “did not want to be identified on camera”. There was no evidence, however, that the two members of the gang were asked by the Sky journalists to hide their identity.

- 3) *It had been suggested by complainants that, while the weapons shown in the news item were implied to be military weapons, they were in fact part of a legally held sporting collection of weapons.*

Ofcom first considered what had been said or implied in the news report regarding the nature of the weapons. At the beginning of the item, the presenter referred to the “automatic weapons” and “guns” that the alleged dealers were “prepared to sell to anyone, including terrorists”. Later in the report, Stuart Ramsay referred to the “types of weapons” the men were showing him, describing them as “high quality weapons” and including the “AK-47”. No reference was made in the report to “military weapons” in relation to the guns that the men were showing to the journalists. However, later in the report, archive footage was shown of terrorists involved in the Charlie Hebdo attack, and the accompanying voice over said: “[t]he increase in murderous terrorist attacks in Europe has highlighted the damage that can be done by military-style weapons”. Ofcom therefore considered that the report implied that the weapons shown included “military-style” guns. We do not consider that the report went further than this, for example by saying that all weapons shown were solely for military use.

The evidence provided by Sky indicated that Sky News did not believe that these were legally owned weapons used for hunting. Even if some of the weapons were in fact legally owned in the hands of the alleged dealers, it did appear that one of

the weapons shown was an AK-47. In Ofcom's view, the implication that this was a military style weapon was duly accurate.

- 4) *It had been suggested by complainants that Sky took inadequate steps to verify, prior to broadcast, the various claims made within the news item e.g. to substantiate the claims that the weapons featured had been smuggled, the portrayal of Romania as a transit area for weapons for terrorists who would carry out 'Paris-style' attacks, and that the gun dealers featured had some sort of permanent business connection with terrorists.*

For news to be reported with due accuracy it is important that broadcast journalists take appropriate steps to check their sources and facts. What such steps are in a particular case will depend on all the relevant circumstances: for example, the nature and importance of the story, and the nature and reliability of the source.

In his commentary over images of the guns being displayed by the men, Stuart Ramsay stated: "*These are high quality weapons smuggled from Ukraine into Romania and then abroad*". The report was therefore clear that Sky News believed the weapons were smuggled.

As to whether Sky adequately verified that assertion, Ofcom took account of the evidence in the report and documents seen by Ofcom that the men were engaged in illegal gun dealing. This evidence included a clandestine location for the meeting, and the fact that the men wished to hide their identities. As noted above, the evidence Ofcom saw supported Sky's assertion that these conditions were imposed by the alleged dealers rather than Sky. The 'rushes' Ofcom viewed further supported the claim made in the report that the men got the weapons from Ukraine and claimed to be selling them abroad, for example in France, England and Spain.

We also had regard to the documentary and other evidence related to the news item shown to Ofcom by the Licensee and summarised above, which led Sky News to believe that the men its journalists met in Romania were weapons dealers both in the sense of acquiring the guns and bringing them into Romania unlawfully, and being willing to supply them to people who planned to hold and use them unlawfully.

In our opinion, in light of the report and evidence overall, Sky had taken reasonable care to satisfy itself before broadcasting the report that the weapons featured were smuggled from Ukraine to abroad.

As regards any alleged link between the men and terrorists, we carefully assessed the news item itself. Nowhere in the item was it suggested that the gun dealers featured had "some sort of permanent business connection with terrorists".

Instead, in Ofcom's view, statements in the report indicated that the men possessed a number of guns which they said they were *willing* to sell to any buyer, including terrorists, provided they were able to pay. The report did not say the men had either supplied terrorists in the past or had any established link with, or conduit to supply, terrorists.

In our opinion, in light of the report and evidence overall, Sky had taken reasonable care to satisfy itself that the statements made in the report about the

men being willing to supply weapons of the sort featured to terrorists, and that the statements in the report about terrorists using such weapons, were duly accurate before broadcasting them.

Due impartiality

- 5) *It had been suggested by complainants that the viewpoint of the Romanian authorities ought to have been reflected, in light of the potential implication from the report that they had adopted a lax approach to regulating arms smuggling on their territory.*

We went on to consider whether the news report was presented with due impartiality as required by Rule 5.1. The Code makes clear that the term “due” means adequate or appropriate to the subject matter. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures a news story is presented with due impartiality. A key part of Ofcom’s analysis is an assessment of whether a particular view or response needed to be reflected, or context provided, to ensure due impartiality, and if so – whether it was appropriately reflected or provided. This is a matter of judgement to be decided taking into account all relevant circumstances.

The report included the following statements: “[t]he vast majority [of weapons] goes to Western Europe and they [the gun runners] boast the supply is virtually endless...these are high quality weapons smuggled from Ukraine into Romania and then abroad”. It later said that “[t]he gunrunners said they were not bothered by the local law enforcement as the weapons weren’t used in Romania, they’re just exporters”.

In Ofcom’s view, the comments implied that some smuggling of guns takes place in Romania. They also implied that the alleged dealers themselves felt local law enforcement was lax, albeit they saw the choice of a remote location and to conceal their identities was necessary to take some precautions against detection.

However, the comments on the sufficiency of local law enforcement were attributed to the alleged dealers rather than necessarily being a conclusion of the report. We noted that the report was unclear as to which law enforcement agency or agencies were being referred to. Further, we noted that the report was framed as highlighting a broader issue of unlawful imports of guns via Eastern European countries, including but not limited to Romania. It is fairly widely accepted that guns have illegally crossed borders via Eastern Europe². The focus of the report was on the existence of the issue rather than the sufficiency of the response to the issue.

In light of the above, we did not consider that it was necessary in the full context of the report for the purposes of due impartiality to reflect the viewpoint of specific Romanian authorities on the implication by the alleged dealers that enforcement in Romania was lax.

² For example, see:

- <http://time.com/how-europes-terrorists-get-their-guns/>;
- <http://www.telegraph.co.uk/news/worldnews/europe/france/11351855/How-did-the-Paris-terrorists-get-hold-of-their-weapons.html>;
- <http://www.ibtimes.co.uk/paris-attacks-how-were-isis-terrorists-able-obtain-kalashnikov-ak-47-assault-rifles-1528834>

Conclusion

On the basis of the evidence available to Ofcom, and the Licensee's representations, Ofcom's Decision was that this news item was reported with due accuracy, due impartiality was preserved, and Sky did not breach Rule 5.1.

Not in Breach of Rule 5.1

Advertising Scheduling cases

In Breach

Advertising minutage

LFC TV, 14 to 27 October 2016, various times

Introduction

LFC TV is a sports channel broadcast on digital satellite platforms. The licence for LFC TV is held by Liverpool Football Club & Athletic Grounds Limited (“the Licensee”).

Rule 2 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

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

During its routine monitoring of COSTA compliance, Ofcom identified five instances where the amount of advertising in a single clock hour exceeded the permitted allowance by between 120 and 353 seconds.

Ofcom considered these instances raised issues warranting investigation under Rule 2 of COSTA and therefore sought comments from the Licensee with regard to this rule.

Response

The Licensee said it had implemented a new playout system in the summer, and the overruns were caused by technical problems in October when its playout server failed to play scheduled programme material.

It said this was immediately escalated for investigation, with tests to identify the issue and to develop software to correct it. The Licensee said that a revised version of the software was deployed at the start of November, since which there have been no further technical errors and the schedules have been played out correctly.

The Licensee acknowledged the seriousness of exceeding the COSTA advertising limits, but said: the overruns were not intentional; it had reacted to the problem immediately; and, it had carried less advertising in November to try and correct the discrepancies of October.

Decision

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

Articles 20 and 23 of the Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these

requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees' compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast by the Licensee was in breach of Rule 2 of COSTA on five occasions.

This compliance failure follows a previous breach recorded by Ofcom covering a series of minutage overruns on LFC TV¹. In that case the overruns were caused by a malfunction in its scheduling software which resulted in some adverts being allocated a shorter scheduled slot than their actual duration. The Licensee had also explained the broadcasts were temporarily being operated by a third party playout provider and overruns were not identified before broadcast. LFC TV had provided assurances that it since had full control of its playout facilities to avoid further breaches of COSTA.

We acknowledged the time elapsed between the previous breaches in 2014 and this case, and that this was the result of a technical issue with a new and recently introduced system. We also noted the Licensee's statement that it had reacted quickly to the overruns to identify the cause and implement a solution, and had carried less advertising to correct the overruns.

However, the different set of circumstances in this case notwithstanding, Ofcom expects the Licensee to ensure its systems are sufficiently robust to prevent breaches of Rule 2 of COSTA, and we will continue to monitor the Licensee's compliance with COSTA and consider appropriate action should another breach occur.

Breaches of Rule 2 of COSTA

¹ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0018/45351/obb271.pdf

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with ‘Key Commitments’

Cando FM (Barrow-in-Furness), 22 to 24 September 2016

Introduction

Cando FM is a community radio station licensed to provide a service for “16 to 40 year olds in Barrow-in-Furness”. The licence is held by Furness College (“Cando FM”, or “the Licensee”).

Like other community radio stations, Cando FM is required to deliver ‘Key Commitments’, which form part of its licence¹. These set out how the station will serve its target community and include: a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint that Cando FM’s output was not delivering some of the programming requirements set out in the station’s Key Commitments.

We requested recordings of three days of Cando FM’s output, covering Thursday 22, Friday 23 and Saturday 24 September 2016. The audio consisted of a large amount of music and very little locally-relevant editorial content. We therefore had concerns about Cando FM’s compliance with the following Key Commitments:

- “Cando FM...provides a... local service with a social voice and tailored for people in the area...”
- “The main types of speech output broadcast over the course of each week are: ...community information...and discussions.”
- “The service provides original output for a minimum of 60 hours per week.”
- “The service provides...the facilitation of discussion and the expression of opinion”.

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

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

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

¹ Cando FM’s Key Commitments are contained in an annex to its licence and can found at: <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr101253.pdf>

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

Response

The Licensee recognised that “at the time of assessment we were not fulfilling the key commitments to which you have referred”.

It said that that one of the main reasons for its failure to deliver the required programming was that, because Cando FM is part of an educational establishment (Furness College), it tends to lose volunteer presenters over the summer holiday period, and it then takes time during September and October to recruit new volunteers and train them up to the required standard.

The Licensee added that it was introducing a number of measures to ensure that the station was compliant with its Key Commitments going forward. These include: a greater emphasis on the training and development of its presenters; the employment of a co-ordinator to build connections in the local community; and more engagement with local schools, sports clubs, community groups and the local council. Recognising that the station needs to provide an increased level of speech content in order to meet its Key Commitments, Cando FM said that: “It is our intention that our work with community groups and the council will facilitate discussion on and off air about local issues and projects, and will allow for the expression of more opinion around these matters in our broadcast output”.

Decision

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

Based on the evidence of our monitoring period, it was clear that Cando FM had not been delivering a number of core programming elements required by the Key Commitments set out in its licence. This was acknowledged by the Licensee.

Our Decision therefore was that the Licensee was in breach of its licence. However, we welcomed the positive steps that Cando FM is taking going forward, and in particular its plans to create more speech content through better community engagement.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Furness College (licence number CR101253).

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 16 and 29 January 2017 because they did not raise issues warranting investigation.

Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Place To Eat	&TV	21/10/2016	Promotion of products/services	1
The Place To Eat	&TV	28/10/2016	Promotion of products/services	1
The Place To Eat	&TV	05/12/2016	Promotion of products/services	1
The Place To Eat	&TV	12/12/2016	Promotion of products/services	1
Trending Live	4Music	13/12/2016	Sexual material	1
News	Al Jazeera	25/01/2016	Violence	1
Apple Tree Yard	BBC 1	22/01/2017	Sexual material	5
Breakfast	BBC 1	24/01/2017	Generally accepted standards	1
Call The Midwife	BBC 1	22/01/2017	Offensive language	11
Casualty	BBC 1	14/01/2017	Generally accepted standards	1
Class	BBC 1	09/01/2017	Race discrimination/offence	1
Common Sense (trailer)	BBC 1	18/01/2017	Generally accepted standards	1
EastEnders	BBC 1	12/01/2017	Offensive language	119
EastEnders	BBC 1	13/01/2017	Offensive language	3
EastEnders	BBC 1	13/01/2017	Race discrimination/offence	1
EastEnders	BBC 1	13/01/2017	Sexual material	1
EastEnders	BBC 1	16/01/2017	Violence	1
EastEnders	BBC 1	20/01/2017	Religious/Beliefs discrimination/offence	1
EastEnders	BBC 1	20/01/2017	Violence	1
EastEnders	BBC 1	23/01/2017	Generally accepted standards	33
EastEnders	BBC 1	24/01/2017	Generally accepted standards	20
Father Brown	BBC 1	05/01/2017	Scheduling	1
Holby City	BBC 1	24/01/2017	Generally accepted standards	1
Not Going Out	BBC 1	20/01/2017	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sherlock	BBC 1	15/01/2017	Generally accepted standards	1
Sherlock	BBC 1	15/01/2017	Other	7
Taboo	BBC 1	07/01/2017	Generally accepted standards	2
Taboo	BBC 1	21/01/2017	Offensive language	8
Taboo	BBC 1	21/01/2017	Sexual material	1
The One Show	BBC 1	24/01/2017	Generally accepted standards	1
This Week	BBC 1	26/01/2017	Generally accepted standards	1
Who Dares Wins	BBC 1	21/01/2017	Transgender discrimination/offence	1
BBC Regional News, Look North	BBC 1	18/01/2017	Violence	1
A Place to Call Home	BBC 2	13/01/2017	Sexual material	1
Dances With Wolves	BBC 2	26/12/2016	Violence	1
Inside No. 9: The Devil of Christmas	BBC 2	27/12/2016	Generally accepted standards	3
Revolting	BBC 2	10/01/2017	Generally accepted standards	1
School Swap: Korea Style	BBC 2	08/01/2017	Race discrimination/offence	2
The Artist	BBC 2	25/12/2016	Suicide and self harm	1
Transgender Kids: Who Knows Best?	BBC 2	12/01/2017	Transgender discrimination/offence	24
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	09/01/2017	Competitions	1
America Rewritten	BBC Radio 4	17/01/2017	Race discrimination/offence	1
PM	BBC Radio 4	18/11/2016	Generally accepted standards	1
Reading Europe – Italy: The Story of a New Name	BBC Radio 4	22/01/2017	Sexual material	1
Robert Newman's Entirely Accurate Encyclopaedia of Evolution.	BBC Radio 4	15/01/2017	Scheduling	1
The World at One	BBC Radio 4	24/01/2017	Crime and disorder	1
Weather forecast	BBC Radio Kent	07/01/2017	Materially misleading	1
Scottish Football	BT Sport 1	09/12/2016	Religious/Beliefs discrimination/offence	1
Drive Time	Capital FM (Liverpool)	20/01/2017	Offensive language	1
Adventure Time	Cartoon Network	15/01/2017	Scheduling	1
Bullseye	Challenge	21/01/2017	Animal welfare	1
Channel 4 News	Channel 4	11/01/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	11/01/2017	Generally accepted standards	1
Channel 4 News	Channel 4	16/01/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Channel 4 News	Channel 4	20/01/2017	Due impartiality/bias	1
Cucumber (trailer)	Channel 4	24/12/2016	Scheduling	1
First Dates Hotel	Channel 4	16/01/2017	Race discrimination/offence	1
Health Detective	Channel 4	09/01/2017	Generally accepted standards	1
Homeland	Channel 4	22/01/2017	Sexual material	1
How to Lose Weight Well	Channel 4	10/01/2017	Harm	1
How to Lose Weight Well	Channel 4	17/01/2017	Materially misleading	1
Location, Location, Location	Channel 4	04/01/2017	Offensive language	1
No Offense	Channel 4	18/01/2017	Materially misleading	1
The Jump	Channel 4	various	Outside of remit	1
The Restoration Man	Channel 4	19/01/2017	Offensive language	1
The Undateables	Channel 4	16/01/2017	Disability discrimination/offence	1
Walking the Americas	Channel 4	22/01/2017	Race discrimination/offence	1
Bloody Tales of the Tower	Channel 5	11/01/2017	Violence	1
Brides Make You Laugh Out Loud	Channel 5	15/01/2017	Animal welfare	1
Celebrity Big Brother	Channel 5	10/01/2016	Generally accepted standards	2
Celebrity Big Brother	Channel 5	05/01/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	10/01/2017	Generally accepted standards	3
Celebrity Big Brother	Channel 5	11/01/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	12/01/2017	Generally accepted standards	2
Celebrity Big Brother	Channel 5	13/01/2017	Competitions	4
Celebrity Big Brother	Channel 5	13/01/2017	Generally accepted standards	3
Celebrity Big Brother	Channel 5	13/01/2017	Voting	1
Celebrity Big Brother	Channel 5	14/01/2017	Drugs, smoking, solvents or alcohol	1
Celebrity Big Brother	Channel 5	14/01/2017	Generally accepted standards	4
Celebrity Big Brother	Channel 5	14/01/2017	Sexual material	3
Celebrity Big Brother	Channel 5	15/01/2017	Offensive language	1
Celebrity Big Brother	Channel 5	15/01/2017	Violence	1
Celebrity Big Brother	Channel 5	16/01/2017	Generally accepted standards	8
Celebrity Big Brother	Channel 5	16/01/2017	Offensive language	1
Celebrity Big Brother	Channel 5	18/01/2017	Generally accepted standards	24
Celebrity Big Brother	Channel 5	19/01/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Celebrity Big Brother	Channel 5	19/01/2017	Religious/Beliefs discrimination/offence	1
Celebrity Big Brother	Channel 5	22/01/2017	Offensive language	1
Celebrity Big Brother	Channel 5	24/01/2017	Offensive language	1
Celebrity Big Brother	Channel 5	25/01/2017	Disability discrimination/offence	1
Celebrity Big Brother	Channel 5	16/02/2017	Drugs, smoking, solvents or alcohol	1
Celebrity Big Brother	Channel 5	various	Voting	1
Celebrity Big Brother's Bit on the Side	Channel 5	13/01/2017	Offensive language	1
Lip Sync Battle UK	Channel 5	13/01/2017	Outside of remit	1
Neighbours	Channel 5	16/01/2017	Race discrimination/offence	1
Sex Pod	Channel 5	26/01/2017	Sexual material	1
The Week We Went Wild	Channel 5	09/01/2017	Animal welfare	4
The Wright Stuff	Channel 5	03/01/2017	Offensive language	1
The Killing Season (trailer)	Crime and Investigation	03/01/2017	Generally accepted standards	1
QI	Dave	13/01/2017	Offensive language	1
Red Dwarf X	Dave	14/01/2017	Offensive language	1
Bear Grylls: Born Survivor	Discovery DMAX	07/01/2017	Animal welfare	1
Hasb E Haal	Dunya TV	23/12/2016	Generally accepted standards	1
Hasb E Haal	Dunya TV	01/01/2017	Due impartiality/bias	1
Coach Trip: Road to Marbs	E4	24/01/2017	Offensive language	1
Hollyoaks	E4	17/01/2017	Generally accepted standards	1
Hungryhouse's sponsorship of The Big Bang Theory	E4 +1	04/01/2017	Sponsorship credits	1
Aspas ok baat	Geo News	04/01/2017	Due impartiality/bias	1
Gold's 10 in a Row	Gold	17/01/2017	Race discrimination/offence	1
Which Switch's sponsorship of entertainment on Gold	Gold	30/12/2016	Sponsorship	1
2Awesome: Freakish (trailer)	ITV	08/01/2017	Scheduling	1
Carry On Up The Jungle	ITV	08/01/2017	Race discrimination/offence	1
Coronation Street	ITV	04/01/2017	Offensive language	2
Coronation Street	ITV	09/01/2017	Generally accepted standards	5
Coronation Street	ITV	11/01/2017	Generally accepted standards	26
Coronation Street	ITV	13/01/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	16/01/2017	Generally accepted standards	1
Coronation Street	ITV	16/01/2017	Violence	1
Coronation Street	ITV	20/01/2017	Violence	9
Emmerdale	ITV	13/01/2016	Sexual material	6
Emmerdale	ITV	11/01/2017	Suicide and self harm	1
Emmerdale	ITV	13/01/2017	Nudity	1
Emmerdale	ITV	17/01/2017	Scheduling	1
Emmerdale	ITV	19/01/2017	Outside of remit	1
Emmerdale	ITV	various	Scheduling	1
Endeavour	ITV	15/01/2017	Generally accepted standards	1
Endeavour	ITV	15/01/2017	Religious/Beliefs discrimination/offence	1
Good Morning Britain	ITV	09/01/2017	Race discrimination/offence	1
Good Morning Britain	ITV	18/01/2017	Offensive language	1
Good Morning Britain	ITV	23/01/2017	Generally accepted standards	1
Good Morning Britain	ITV	25/01/2017	Due impartiality/bias	1
Good Morning Britain	ITV	25/01/2017	Gender discrimination/offence	1
Good Morning Britain	ITV	25/01/2017	Generally accepted standards	1
ITV Evening News	ITV	09/01/2017	Disability discrimination/offence	1
ITV News	ITV	10/01/2017	Due impartiality/bias	2
Jeremy Kyle's Emergency Room	ITV	25/01/2017	Materially misleading	1
Loose Women	ITV	16/01/2017	Generally accepted standards	1
Loose Women	ITV	23/01/2017	Generally accepted standards	47
Loose Women	ITV	25/01/2017	Generally accepted standards	1
Party Political Broadcast by the Labour Party	ITV	18/01/2017	Due accuracy	5
Sugar Free Farm	ITV	10/01/2017	Generally accepted standards	1
The Chase	ITV	13/01/2017	Materially misleading	1
The Jeremy Kyle Show	ITV	20/01/2017	Generally accepted standards	1
The National Television Awards 2017	ITV	25/01/2017	Under 18s in programmes	1
The Voice UK	ITV	07/01/2017	Generally accepted standards	2
The Voice UK	ITV	14/01/2017	Offensive language	1
This Morning	ITV	04/01/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
This Morning	ITV	12/01/2017	Materially misleading	2
This Morning	ITV	20/01/2017	Generally accepted standards	2
This Morning	ITV	26/01/2017	Drugs, smoking, solvents or alcohol	1
Through the Keyhole	ITV	14/01/2017	Generally accepted standards	1
Through The Keyhole	ITV	14/01/2017	Nudity	1
Through The Keyhole	ITV	21/01/2017	Drugs, smoking, solvents or alcohol	1
Tipping Point	ITV	06/01/2017	Undue prominence	1
ITV News Anglia	ITV Anglia	10/01/2017	Scheduling	1
Granada Reports	ITV Granada	28/12/2016	Undue prominence	3
ITV News West Country	ITV West Country	05/01/2017	Advertising/editorial distinction	1
ITV News Calendar	ITV Yorkshire	06/01/2017	Due impartiality/bias	1
2Awesome: Freakish (trailer)	ITV2	11/01/2017	Scheduling	1
2Awesome: Freakish (trailer)	ITV2	15/01/2017	Scheduling	3
2Awesome: Freakish (trailer)	ITV2	21/01/2017	Scheduling	1
FYI Daily	ITV2	15/01/2017	Scheduling	1
Get Him to the Greek	ITV2	13/01/2017	Outside of remit	1
ID Mobile's sponsorship of Family Guy	ITV2	20/01/2017	Sponsorship credits	1
You've Been Framed	ITV2+1	09/01/2017	Race discrimination/offence	1
Murder She Wrote	ITV3	19/01/2017	Race discrimination/offence	1
Iain Dale	LBC 97.3 FM	12/01/2017	Generally accepted standards	1
Iain Dale	LBC 97.3 FM	18/01/2017	Materially misleading	1
James O'Brien	LBC 97.3 FM	13/01/2017	Drugs, smoking, solvents or alcohol	1
James O'Brien	LBC 97.3 FM	23/01/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	24/01/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	various	Due impartiality/bias	1
Katie Hopkins	LBC 97.3 FM	15/01/2017	Due impartiality/bias	1
Nick Abbot	LBC 97.3 FM	23/12/2016	Materially misleading	1
Nick Ferrari	LBC 97.3 FM	20/01/2017	Transgender discrimination/offence	1
Nigel Farage	LBC 97.3 FM	10/01/2017	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	11/01/2017	Due accuracy	1
Steve Allen	LBC 97.3 FM	28/12/2016	Generally accepted standards	1
Dance Moms	Lifetime	03/01/2017	Race	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
			discrimination/offence	
Top Ten Sexiest Dance Videos	MTV Dance UK	07/01/2017	Sexual material	1
The Nightmare Neighbour Next Door	My5	22/01/2017	Animal welfare	1
Q Breakfast	Q Radio (Belfast)	01/12/2016	Offensive language	1
Scott Makin	Radio Aire	09/01/2017	Crime and disorder	1
Chris Moyles	Radio X	17/01/2017	Sexual orientation discrimination/offence	1
Ghost Adventures (trailer)	Really	various	Scheduling	1
Crosstalk	RT	02/01/2017	Due impartiality/bias	1
Indian Politics Elections 2017	Sikh Channel	16/01/2017	Other	1
Press Review	Sky News	21/01/2017	Due impartiality/bias	1
Sky News	Sky News	21/01/2017	Due impartiality/bias	3
Sophy Ridge on Sunday	Sky News	08/01/2017	Offensive language	7
Sunrise	Sky News	20/01/2017	Gender discrimination/offence	7
World Darts	Sky Sports 1	27/12/2016	Flashing images/risk to viewers who have PSE	1
Can't Pay? We'll Take It Away!	Spike	12/01/2017	Offensive language	1
Studio 66 Nights	Studio 66	19/12/2016	Participation TV - Offence	1
Andy V	Swindon 105.5	07/01/2017	Drugs, smoking, solvents or alcohol	1
Random Reggae Show	Swindon 105.5	31/12/2016	Generally accepted standards	1
Late Nights with Iain Lee	Talk Radio	13/12/2016	Generally accepted standards	1
Late Nights with Iain Lee	Talk Radio	22/12/2016	Offensive language	1
Late Nights with Iain Lee	Talk Radio	04/01/2017	Generally accepted standards	1
The Alan Brazil Sports Breakfast	Talksport	02/01/2017	Commercial communications on radio	1
Celebrity Fat Fighters	TLC	02/01/2017	Materially misleading	10
Undressed	TLC Poland	various	Sexual material	1
Programming	TV99	03/01/2017	Materially misleading	1
Programming	Various	17/01/2017	Due accuracy	1
Programming	Various	various	Due impartiality/bias	1
Royal London sponsorship credits	various	various	Sponsorship credits	1
Online Istikhra	Venus TV	02/01/2017	Materially misleading	1
Porridge	Yesterday	22/01/2017	Animal welfare	1

Complaints assessed under the General Procedures for investigating breaches of broadcast licences

For more information about how Ofcom assesses complaints about broadcast licences, go to: https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf

Licensee	Licensed service	Categories
That's Oxford Limited	That's Oxfordshire	Format
Radio Ceredigion Limited	Radio Ceredigion	Format
Swansea Bay Radio Limited	Swansea Bay Radio	Format

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts, accuracy in BBC programmes or an on demand service does not fall within the scope of regulation.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about television and radio programmes, go to:

https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Programming	Babestation	26/01/2017	Outside of remit	1
Breakfast	BBC 1	24/01/2017	Due impartiality/bias	1
Party Political Broadcast by the Labour Party	BBC 1	18/01/2017	Due accuracy	5
The One Show	BBC 1	23/01/2017	Due impartiality/bias	1
Newsnight	BBC 2	11/01/2017	Due impartiality/bias	1
Programming	BBC 2	25/01/2017	Outside of remit	1
Programming	BBC Asian Network	various	Outside of remit	1
BBC News	BBC Channels	16/01/2017	Due impartiality/bias	1
BBC News	BBC Channels	19/01/2017	Outside of remit	1
In Short	BBC iPlayer Radio	14/01/2017	Generally accepted standards	1
BBC News America	BBC News Channel	23/01/2017	Due impartiality/bias	1
Programming	BBC Persian	01/02/2016	Materially misleading	1
Mastertapes	BBC Radio 4	23/01/2017	Other	1
The Food Programme	BBC Radio 4	08/01/2017	Materially misleading	1
Victoria Derbyshire	BBC Radio 5 Live	17/01/2017	Due accuracy	1
Radio Wales Sport	BBC Radio Wales	24/01/2017	Other	1
Advertisement	BT Sport 2	21/01/2017	Advertising content	1
Advertisement	CBS Reality	17/01/2017	Advertising content	1
Advertisement	Channel 5	23/01/2017	Advertising content	1
Advertisement	Gold	24/01/2017	Advertising content	1
Advertisement	Good Food	25/01/2017	Advertising content	1
Advertisement	Heart FM	24/01/2016	Advertising content	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	Heart FM	23/01/2017	Advertising content	1
All Aboard	Holiday and Cruise Channel	20/01/2017	Advertising content	1
The Holiday and Cruise Clinic	Holiday and Cruise Channel	21/01/2017	Advertising content	1
Vision Cruise	Holiday and Cruise Channel	14/01/2017	Advertising content	1
Advertisement	ITV	17/01/2017	Advertising content	1
Advertisement	ITV	21/01/2017	Advertising content	1
Advertisement	ITV	21/01/2017	Advertising content	1
Advertisements	ITV	13/01/2017	Advertising content	1
Advertisement	n/a	17/01/2017	Advertising content	1
Programming	The Craft Channel	24/01/2017	Advertising content	1
Shopping TV	TJC	17/01/2017	Advertising content	1
The Graham Norton Show	TV3 Auckland New Zealand	13/01/2017	Violence	1
Advertisement	Yesterday	15/01/2017	Advertising content	1

Complaints about broadcast licences

For more information about how Ofcom assesses complaints about broadcast licences, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0019/31942/general-procedures.pdf

Licensed service	Licensee	Categories
That's Manchester	Your TV Manchester Limited	Other

Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition or other regulatory requirements, it will start an investigation.

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 16 and 29 January 2017.

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

Programme	Broadcaster	Transmission date
Victoria Derbyshire	BBC 2/ BBC News Channel	23 January 2017
Phonetech's sponsorship of News	Buchan Community Radio	16 December 2016
Dr. Negea on the formation of Ethiopia National Movement	Ethiopian Satellite Television UK (ESAT UK)	17 November 2016
News in Brief	Ethiopian Satellite Television UK (ESAT UK)	17 November 2016
Picture Dating	Kiss Me TV	27 September 2016
Ian Payne	LBC	25 December 2016
Second Story Man	Sony Movie Channel	17 January 2017
Studio 66 Nights	Studio 66	6 January 2017

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
Party Political Broadcast by the Scottish National Party	BBC Scotland	12 October 2016

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to:

https://www.ofcom.org.uk/data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

Investigations launched under the Procedures for investigating breaches of rules for On Demand programme services

Service provider
Bay TV Liverpool Limited
Classical TV Ltd
Distrify Media Limited
Esplanade Vale Media Limited
Lebara Media Services Limited
Plato Media Ltd
Premier Christian Media Trust
SBTV Global Ltd

For more information about how Ofcom assesses complaints and conducts investigations about on demand services, go to:

https://www.ofcom.org.uk/data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf