

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 to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for 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 (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it 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 requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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.

It is Ofcom's policy to describe fully 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.

Broadcast Standards cases

In Breach

George Galloway

Talk Radio, 16 March 2018, 19:00

Introduction

Talk Radio is a national digital speech radio station, the licence for which is held by Talksport Limited ("Talksport" or "the Licensee"). The *George Galloway* programme is typically broadcast on Fridays between 19:00 and 22:00 with Mr Galloway broadcasting on occasion at additional times when covering for other presenters.

We received a complaint that the programme broadcast on 16 March 2018 contained "biased and unbalanced views" about the response of the UK and Russian Governments to the poisoning of Yulia and Sergei Skripal in Salisbury on 4 March 2018. The complainant also considered that any listeners who attempted to challenge Mr Galloway's views were "mocked and ridiculed".

In his introduction to the programme Mr Galloway said:

"Russia should go away and shut up" said the Frank Spencer, man at C&A defence secretary of Great Britain¹. Apparently though, off the record, he also said, 'My dad's bigger than your dad' and 'I'm going to tell teacher' and 'pee poo belly bum'. Though as that was off the record, I'm not able to confirm it. The truth is, he in that cameo, absolutely revealed the pitiful inadequacy of the people in charge of our national, and now, international affairs, not just our Brexit affairs, which are complex and difficult enough, but our intercontinental affairs are in the hands of blithering idiots. Morons".

Shortly afterwards he said:

"A better educated fool is Boris Johnson, our Foreign Secretary. He weighed in too. He said the very 'Russian-ness' of the crime [the poisoning of Sergei and Yulia Skripal] betokened, I think was the word he used, their guilt. That and the sarcasm and smugness of their response. Well the words sarcasm and smugness trip easily from the lips of the 'Bullingdon boys', of course, but it may well be that the Russian response has been effectively tailored by the utter madness of the accusation made. The accusation made is that a completely obscure former British spy, whom the Russians had in their hands in a Russian prison where, when he bent over to pick up the soap in the prison showers, literally anything could have happened to him, who was then exchanged in a 'spy-swap', the future of which spy-swaps is now utterly defunct to everybody's disadvantage. Russia could have killed him anytime. They could have killed him anytime in the eight years he has been in Salisbury, seven miles from Britain's own nerve centre war research laboratory at Porton Down..."

¹ On 15 March 2018, Gavin Williamson, the UK Defence Secretary said in a press conference that "Russia should go away, it should shut up". (<https://uk.reuters.com/article/uk-britain-russia-goaway/go-away-and-shut-up-british-minister-tells-russia-idUKKCN1GR23F>)

Mr Galloway then acknowledged that Russia was capable of committing a crime such as poisoning of Yulia and Sergei Skripal but queried Russia's culpability in this case. He said:

"And it's not that I'm saying that Russia would not, could not carry out such a crime. Russia has carried out many such crimes. I'm not saying the Russian intelligence services are above such a crime. They have committed many such crimes, just like every other intelligence agency in the world, including – and perhaps particularly – our own. Don't get me started on intelligence services. The question is 'Why?' 'Why would Putin – who is personally, overwhelmingly likely responsible, said the clown Boris Johnson, who is in charge of our foreign affairs – Putin, Why?'"

He then went on to describe his reasons for believing why the Russian authorities were not responsible for the poisoning of Sergei and Yulia Skripal. He said:

"But the Russian state is just about the least likely suspect of them all and yet and yet, like Pavlov's dogs, they [i.e. UK MPs] barked, they ran, in the House of Commons, the Lilliputian parliament of pigmies, shouting 'war war war' on all sides...because a politician told them there was no doubt that Russia committed a crime. Have these fools learned nothing!?"

At approximately 19:25, Mr Galloway spoke to the first caller called "Bill". Bill said, "confidence on the street in what our politicians tell us – let alone the current crop that we have been inflicted with – is at an all-time low". Mr Galloway agreed and described his experiences that day on the streets of London where "virtually every person stopped me and congratulated me on standing up against this madness". He also said that:

"People are fearful about where this can lead. They see these pipsqueaks in the British Cabinet hurling insults and accusations and ultimatums at a country vastly, vastly more powerful than us and they automatically know that it won't be the pipsqueaks that will pay the price. It will be ordinary people".

Bill responded:

"Well after that ridiculous comment from Williamson yesterday, I think that has let the air right out of the balloon. No one has got any confidence at all that the people in the positions to have a direct effect on this shouldn't be sent to the shop for a Kit Kat to put it plainly".

Mr Galloway then said to Bill:

"That's exactly right. What do we think the international impact of a defence secretary, that looks about 14 by the way, coming on stage in such a crisis and saying 'nah nah nah nah nah, my dad is bigger than your dad. Go away and shut up'. I mean what kind of image does that send?...If the wheels keep coming off this Salisbury story at the rate they are coming off then by this time next week we could be faced with everybody knowing that the government has made a gigantic mistake in this crime, in the action that they took in the face of this crime".

At 19:30, Mr Galloway spoke to another listener "Tone". Tone began his comments by describing Jeremy Corbyn as "one of the most principled politicians" he had "ever seen"

because of his response to the poisoning of the Skripals². Replying, Mr Galloway said that Mr Corbyn "*speaks the truth*" and "*does his duty*" and the Conservative Party were "*lying*" about the events that had taken place in Salisbury.

Mr Galloway then read a series of text messages he had received from listeners. Each of the 11 messages he read was broadly supportive of his own views on the events in Salisbury in that they either criticised the UK Government, questioned the validity of the Government's allegations about the involvement of the Russian authorities or, expressed support for Jeremy Corbyn's response. The twelfth message Mr Galloway read out was as follows:

"I'm afraid, George Galloway, each of your excuses for Russia not to be involved have been countered by other eminent commentators. I believe our Government have more intel than is being divulged at present implicating Russia".

Mr Galloway responded to this message by saying:

"Well, I really hope they do, because what they have divulged at present...is simply ludicrous as I shall adumbrate throughout the show but here's a suggestion 'big boy' why don't you call me [telephone number given]. That's the number to call. Come and have a go if you think you're hard enough".

Mr Galloway took another call from a listener who, in summary, said he was "*embarrassed*" by Theresa May. The caller also made a prediction that "*Putin will keep his job and Theresa May will lose hers*". Mr Galloway described this as an "*odds on bet*".

At 19:57, Mr Galloway read out the following listener message:

"...You may be disgusted by the actions of Chuka Umunna³. As part of Labour's bloodless new breed, he inspires little enthusiasm in me either. However, I suspect a large portion of the British public are equally disgusted by Corbyn's shameful apologist position on Russia. It is obvious that he prefers to revel in a twisted communist fantasy than follow moral principles".

Mr Galloway commented that the listener had sent in their message from "*ward five of Broadmoor*⁴".

The next 20 minutes of the programme was primarily focused on US politics and, in particular, the sacking of former United States Secretary of State Rex Tillerson. The programme then returned to issue of UK politics. At approximately 20:20, the theme music for the television programme *Dad's Army* was played. Mr Galloway said:

² On 12 March 2018, Theresa May delivered a statement in the House of Commons in which she stated it was "highly likely" that Russia was responsible for the poisoning. However, Mr Corbyn urged the Government to maintain a "robust dialogue" with Russia and ensure its response was "decisive, proportionate and based on clear evidence". (<https://news.sky.com/story/salisbury-attack-jeremy-corbyn-accused-of-appeasement-towards-russia-11289753>)

³ On 14 March 2018, Chuka Umunna was one of a number of MPs who signed a House of Commons motion "unequivocally accepting" the Russian state's culpability for the poisoning of the Skripals. (<https://edm.parliament.uk/early-day-motion/51540>)

⁴ A high-security psychiatric hospital.

"Someone has just pointed out to me on Twitter and I almost don't want to say it, but it's not just the Dad's Army in charge of us, that have placed our whole country on a collision course which cannot end well and frankly we will be on our own. Macron [Emmanuel Macron, the President of France] will next month be in Moscow, shaking hands with President Putin. Put your money on that right now. The Germans will continue, dependent as they are on Russian gas to have a very healthy relationship with Russia. Trump, as we all know, is a Russian agent, put in power by the Russians so don't expect very energetic support from him. It will be us all alone".

He went on to say:

"Now just ask yourself something more immediately and personally serious. These people, [Gavin] Williamson and [Boris] Johnson, whose doubled down on it tonight, saying it is overwhelming likely, and I quote, 'that President Putin personally authorised the crime that took place in Salisbury 13 days ago'. There is no going back from that, as Moscow itself described it, this is, unforgivable, which means it will not be forgiven. But we have a football team going to the World Cup in just 85 or so days from now. We have football supporters going to support that team, in Russia, just 85 or so days from now. These people, with their reckless viciousness, idiocy, have placed not just our interests in danger but our people in danger. Get that, our people in danger".

Mr Galloway then read out a further series of text messages, including one from a listener named "Big Al":

"Just because Tony Blair lied about the war in Iraq does not mean Theresa May is lying about Russia. I have an open mind but surely there must be some evidence about their [Russia's] involvement in this sad affair that they can't share. I think sometimes we need to toughen up".

Mr Galloway responded:

"That's from Big Al in Belfast who's lucky that he's in Belfast because if he was in England he would be in Ward Five too. They've got evidence, but they can't share? Al? Anyone heard that one. Anytime anywhere before?"

At 20:50, Mr Galloway interviewed Steve Topple, a journalist for the website The Canary⁵. The discussion focussed on a recent opinion poll that indicated approximately 75% of the public "are with Theresa May and are blaming Russia for this crime in Salisbury". Mr Galloway said that he felt "sure that this is a misrepresentation". He went on to read a Tweet from a London taxi driver which said: "I haven't found a passenger who believes this story all week". Mr Galloway said that was also "his experience" and Mr Topple said "it was the same" where he lived in the north of England.

In the third hour of the programme, Mr Galloway continued to focus on issues related to the poisoning of the Skripals. The second caller that Mr Galloway spoke to said it was "quite clear that Mrs May is cynically using the poisonings in Salisbury to give her weak and unstable government a veneer of strength...".

⁵ The Canary is a news website that has been described by its news editor-in-chief as "a counterpoint to conservative media" and "broadly liberal" (see https://www.buzzfeed.com/marieleconte/the-rise-of-the-canary?utm_term=.huaR4L1zD#.nrJz2NIG3).

Shortly afterwards, Mr Galloway read a series of listener messages that were broadly supportive of his own views. He then read the following message (which appeared to be a listener's response to Mr Galloway's description of the opinion poll finding that 75% of the public were supportive of the position of Theresa May on the issue of the Skripals as "a misrepresentation"):

"You're totally wrong, public opinion is not changing. Wishful thinking on your part I guess. Comrade Corbyn has been exposed..."

Mr Galloway said about this message:

"That's in Broadmoor, Ward five. They've got the radio on and all the patients are gathered round and Nurse Ratched⁶ is keeping hold of them. None of them seems to have been able to get their hands on a phone yet"

Approximately ten minutes later, Mr Galloway read the following message:

"Vladimir Putin, supporter of gay rights and fair elections has George Galloway and Nigel Farage in his pocket and payroll. His "demoralise, disruption and confuse and mistrust plan" is working great. Galloway and Farage don't even know they are puppets"

Mr Galloway responded:

"If Vlad [i.e. Vladimir Putin] has a plan to demoralise, disrupt, confuse and mistrust. If he has such a plan it's not working nearly as well as the same plan being implemented by our own Government and Governments in fact. It is not Vlad, but our own Governments that have demoralised our people. It is not Vlad but our own Governments that have disrupted, confused, and sown mistrust in our political system...It is not Putin that is responsible for the mass poverty that exists in our country, for the fact that pensioners are getting ready to shiver through the Beast from the East⁷. It is not Putin that left our school children without free school meals, it is not Putin that has left our industries in ruin. It is not Putin that has left so many of our people bitter and angry with their lot and hating whoever they can find to hate. It is our own leaders who have done that"

Shortly afterwards, Mr Galloway took a call from a listener who asked him who he thought was responsible for the poisoning of the Skripals. Mr Galloway said it was:

"Perfectly preposterous to say that Russia did this because you have to ask Cui Bono? Who benefited? Has Putin benefited from this? Has Russia benefited from this? No, the people that are against Russia have benefited from this. So that's where we should look to solve the crime if crime there was. I'm entering that caveat. I can't go too deeply into it for legal reasons. But it is of course perfectly possible that this material was once in the future going to be used for a crime but was somehow released accidentally before the target was reached. Maybe many months or even years before the target was reached"

⁶ Nurse Ratched is a tyrannical psychiatric nurse featured in the novel and film *One Flew Over the Cuckoo's Nest*.

⁷ On 17 and 18 March 2018, cold air from the East of the United Kingdom resulted in heavy snow across much of the country.

The next caller said that he thought the way that the UK Government had responded to the attack was not *"the way a normal government would react if this really was Russia that was behind this"*. Mr Galloway responded:

"Well, I feel the same. I really do feel the same and I'm just hoping that the public do. But whether they do or if they don't it's not going to change my point of view and I expect it's not going to change Jeremy Corbyn either".

Towards the end of the programme, Mr Galloway read out the following text message from a listener, which appeared to be voicing support to the presenter's criticisms of the UK Government and its response to the poisoning of the Skripals:

"Embarrassed, angry and frustrated George. This excuse of a Government are playing us for fools. I also cannot get my head around why the opposition party are agreeing with them. I voted SNP last time. No more. But who to vote for in the future? Who to trust? Another shambles".

Mr Galloway said in response:

"Very well said. The SNP just took the skill of the military pipes and they fell into line too".

We considered that this programme was dealing with a matter of major political controversy and major matter relating to current public policy, namely, the policies and actions of the UK and Russian authorities, concerning the poisoning of Sergei and Yulia Skripal. We therefore considered this programme raised potential issues under the following rules of the Code:

- Rule 5.11 *"[...] due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes".*
- Rule 5.12 *"In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented".*

We requested comments from the Licensee on how this programme complied with these rules.

Response

Talksport described Mr Galloway as a "national figure known for his controversial views which would not come as a surprise to listeners". It added that the "majority of listeners are familiar with his reputation as well as the format of his 'personal view' phone-in programmes...and would be comfortable with adjusting their expectations of due impartiality". The Licensee also described Mr Galloway as "famous for holding highly partial opinions that are anything but mainstream and are more often than not at odds with the majority of his fellow presenters on" Talk Radio.

Talksport said it was “reasonable to suggest the Government’s view on who was responsible for the Skripal poisoning was universally known to Talk Radio listeners at the time of the broadcast” and “it was merely the Government’s strong opinion of what happened, not a matter of policy”.

The Licensee acknowledged that Mr Galloway’s “introduction against the Government’s position on the Skripal-Novichok⁸ affair went unchallenged” but considered it “reasonable to assume that Galloway’s colourful critique would be regarded by listeners as a highly opinionated personal-view attack by Galloway that did not require a formal rebuttal”. Talksport was also of the view that Mr Galloway’s comments were largely “questioning the calibre of those in power and their comments...rather than major matters of government policy”. It also considered that, rather than “attacking government policy or action”, Mr Galloway was “putting forward a number of hypotheses as to who was responsible for the Skripal poisoning”.

The Licensee described Talk Radio’s output as following “relatively seamlessly from one presenter to another, with a consistent style of output, range of subject matter and interactive format”. It therefore considered the station’s audience “do not make an ‘appointment to view’ to the extent that they do with television programmes” and therefore “the treatment of a topic across the schedule is relevant to how due impartiality is maintained, as well as the treatment within each individual programme”. By way of example, Talksport told Ofcom that the breakfast programme, presented by Julia Hartley-Brewer, broadcast on 16 March 2018, included four guests who discussed the Skripal poisoning and expressed support for the Government’s handling of the crisis.

The Licensee also considered it “relevant to point out that on the day in question, the producer of George Galloway’s show endeavoured to persuade a number of guests to feature on the programme to challenge Galloway’s views” but “all of them declined”.

Talksport defended Mr Galloway’s “right to broadcast his opinions without interference, as well as [its] overall approach to complying with due impartiality requirements across” Talk Radio. However, it accepted that “on this occasion, there was not enough lively debate provided by either listeners or guests to challenge [Mr Galloway’s] views within the programme itself”. The Licensee said that this did not produce “the kind of entertaining, robust and controversial debate that makes for good radio, whereas airing diverse opinions is sound editorial policy that also ensures regulatory compliance with regard to due impartiality”. As a result of this “shortcoming”, Talksport said it had taken the following steps to ensure that “differing views are expressed on air”:

⁸ Novichok is a type of nerve agent originally developed by the former Soviet Union. In a statement on 12 March 2018 the UK’s Prime Minister said that a group of nerve agents known as Novichok was used in the poisoning of Sergei and Yulia Skripal: <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018> On 12 April 2018, the Organisation for the Prohibition of Chemical Weapons confirmed the findings of the UK relating to the identity of the toxic chemical. https://www.opcw.org/fileadmin/OPCW/S_series/2018/en/s-1612-2018_e_.pdf. We also note the letter published by the UK’s National Security Adviser to the Secretary-General of NATO, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699819/Letter_from_the_UK_National_Security_Adviser_to_the_NATO_Secretary_General_regarding_the_Salisbury_incident.pdf.

- “a pre-recorded [jingle]...has been produced...to ‘let the debate begin’ by inviting listeners to phone, text and email and challenge Galloway on air”. The Licensee said that “this is being played at least once an hour and every time that Galloway introduces a new topic”;
- “the producer has spoken to Galloway of the need for dissenting voices to be heard, something which Galloway has always welcomed and encouraged.” The Licensee said that “when expressing strong opinions in subsequent editions of his programme, Galloway has agreed to invite contrary opinions from listeners...”;
- the producer of the programme “has been instructed to provide a well-informed guest whose views conflict with Galloway’s to provide due weight to the opposing view”. Talksport said that if “a guest cannot be booked, a Talk Radio presenter will be added to the line-up to challenge Galloway on his views as well as provide an alternative viewpoint”; and
- “specific guidance on the importance of balance was incorporated in pre-planned internal training seminars for Talk Radio and Talksport production staff...”.

The Licensee also provided examples of subsequent episodes of *George Galloway* in which the “production team has been successful in providing different viewpoints on the programme”. On 30 March 2018 a programme had been broadcast “[o]n Russia” and on 9 April 2018, a programme had been broadcast “[o]n Skripal-Novichok”.

In conclusion, Talksport said that: “All the pro-active measures [it has] taken will stimulate debate, making for more entertaining, thought-provoking radio that [it is] committed to produce”. It also said that it had “taken swift and appropriate action to resolve this issue by ensuring that Galloway’s views are countered by listeners, guests and fellow Talk Radio presenters to provide informative, riveting and balanced debate”⁹.

Preliminary View

Ofcom issued a Preliminary View that the programme broadcast on 16 March 2018 was in breach of Rules 5.11 and 5.12 of the Code and invited the Licensee’s representations on the Preliminary View. The Licensee did not provide representations on the Preliminary View. However, in the course of subsequent investigations into two episodes of *George Galloway* broadcast on 27 July and 6 August 2018¹⁰, the Licensee provided us with a report produced by a barrister reviewing the compliance of the programme with Section Five of the Code. This report agreed with Ofcom’s Preliminary View that the episode of *George Galloway* broadcast on 16 March 2018 was in breach of Rules 5.11 and 5.12.

⁹ During the course of Ofcom’s investigation into this programme, we launched a further investigation into two episodes of *George Galloway* broadcast on 27 July and 6 August 2018 that we also considered raised potential issues under Rules 5.11 and 5.12. During this investigation, the Licensee told Ofcom that it had instigated a “root-and-branch reorganisation of the *George Galloway* programme”. We will set out more detail about the additional steps the Licensee said it had taken to improve the compliance of the *George Galloway* programme when the investigation is completed.

¹⁰ These investigations are ongoing. We have issued preliminary views in relation to both programmes and our decisions will be published as soon as possible.

Ofcom recognises that there may be persons/bodies who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint. Our procedures encourage broadcasters to seek to take account of and include such representations. Our procedures also note that where such persons/bodies provide representations to Ofcom directly, Ofcom will as appropriate take those representations into account. In this case, Ofcom considered it was appropriate to invite the presenter to make representations on the Preliminary View. Mr Galloway provided his representations direct to Ofcom.

Response from George Galloway

Mr Galloway said that "Talk Radio shows run all day seamlessly discussing the same issues – the issues of the day – as they did on the fateful day in question". He described the programme presented by Julia Hartley-Brewer¹¹ as "vituperatively right wing" and said Mike Graham's programme¹² is advertised as for those who think "Capital Punishment doesn't go far enough". Although Mr Galloway said he had not listened again to the programme (nor Ms Hartley-Brewer's or Mr Graham's programmes from the same day), he considered it a "fair assumption" that as his "show was a lively and entertaining example of a counter narrative so theirs were equally lively and entertainingly in support of the state narrative". He described Talk Radio as a "balanced radio station".

Mr Galloway told Ofcom that he did not merely welcome alternative views to his programme but relished them and when listeners with alternative views are included in his programme he treats them respectfully and listens to them at length without interruption. Mr Galloway also told Ofcom that he prioritises reading out hostile tweets or text messages but when messages are anonymous he "draw[s] attention to the gutlessness of that" and invites them to call in "if they're hard enough". He acknowledged that he sometimes (although less so now due to complaints from mental health campaigners) describes listeners with alternative views as being "from Ward 5" and said "that's entertainment".

Regarding the content of this particular programme, Mr Galloway said he was robustly supporting the then scepticism of one half of the British polity on the chaos of the state narrative of the Skripal case. He also told Ofcom that he and the production team had sought "remorselessly, to find alternative viewpoints from guest callers, texters, emailers, and tweets that night and every night". Further, he said that "we cannot invent opposition" and "that is not what parliament intended Ofcom to try to achieve".

Mr Galloway also said that support for Jeremy Corbyn within the media is rare, and therefore it was "perverse" for Ofcom to "punish" him for describing Mr Corbyn as "telling the truth".

In conclusion, Mr Galloway described Ofcom's investigation as a "transparently politically motivated attempt at censorship" which had "already received its intended result – namely the partial stifling of [Mr Galloway's] lone voice...on the airwaves".

¹¹ Julia Hartley-Brewer hosts the breakfast show on Talk Radio on weekdays between 06:30 and 10:00.

¹² Mike Graham's programme is broadcast on Talk Radio between 10:00 and 13:00.

Decision

Reflecting our duties under the Communications Act 2003¹³ ("the Act"), Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.11 states that: "due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes".

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

Ofcom is the UK's independent broadcast regulator. In performing our broadcast standards duties, we act independently from Government and politicians. We have conducted this case following our published procedures, which provide for a fair and transparent process. After listening to the entire programme, we assessed and investigated the programme against the rules in Section Five of the Code. We have taken careful account of the fact-specific context of the programme and of the representations made by both the Licensee and Mr Galloway.

Ofcom must perform its duties in accordance with the right to freedom of expression set out in Article 10 of the European Convention of Human Right. Freedom of expression is one of the essential foundations of a democratic society. As is well established, it encompasses the broadcaster's right to freedom of expression as well as the audience's right to receive information and ideas without interference¹⁴. It applies not only to the content of information but also to the means of transmission or reception¹⁵. Any interference must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society (i.e. proportionate to the legitimate aim pursued and corresponding to a pressing social need). Decisions of the European Court of Human Rights make clear that there is little scope for restrictions on freedom of expression in two fields, namely political speech and on matters of public interest. Accordingly, a high level of protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.

The Government's White Paper¹⁶ published in advance of the Communications Bill in December 2000, set out the Government's rationale for the continuation of the due impartiality requirements for television and radio broadcasting in the UK. It stated that:

"...one of the cornerstones of broadcasting in the UK has been the obligation on all broadcasters to present news with due accuracy and impartiality. There are also important impartiality obligations applying to other programming. The Government

¹³ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>
<http://www.legislation.gov.uk/ukpga/2003/21/section/320>

¹⁴ *Lingens v Austria* (1986) 8 EHRR 407.

¹⁵ *Autronic v Switzerland* (1990) 12 EHRR 485.

¹⁶ Communications White Paper (Safeguarding the interests of citizens, 6.6.1)
https://webarchive.nationalarchives.gov.uk/20100407191943/http://www.culture.gov.uk/images/publications/communicationswhitepaper_fullreport.pdf

believes that these obligations have played a major part in ensuring wide public access to impartial and accurate information about our society and the opportunity to encounter a diverse array of voices and perspectives. They ensure that the broadcast media provide a counter-weight to other, often partial, sources of news. They therefore contribute significantly to properly informed democratic debate. Responses to the consultation indicated general support for retaining them”.

In passing the Act, Parliament set out in legislation the restrictions prescribed by law and which it has judged to be necessary in our democratic society. The legitimate aim is for the protection of rights of others. The statutory framework set by Parliament specifically assigns an area of judgment, to be exercised by Ofcom, as to how the requirements of the legislation are to be applied to the facts of each case.

Each and every time Ofcom applies the Code to broadcast content, Ofcom gives careful consideration to the broadcaster's and the audience's Article 10 rights. In order to reach a decision on whether due impartiality was maintained in this programme, Ofcom has had careful regard to the Article 10 rights and relevant contextual factors.

In light of the above, we considered it was legitimate for the Licensee to broadcast a programme from a perspective that was largely critical of the UK Government's position on the poisoning of the Skripals. However, to the extent that the programme examined politically controversial matters, we considered that Talksport needed to comply with Section Five by ensuring that due impartiality was preserved.

Application of Rules 5.11 and 5.12

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case: that is, whether the programme concerned matters of major political or industrial controversy or matters relating to current public policy.

The Code states that matters of major political or industrial controversy and major matters relating to current public policy will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are “of the moment” and of national, and often international, importance, or are of similar significance within a smaller broadcast area.

This three-hour discussion programme was almost entirely focused on the subject of the poisoning of Sergei and Yulia Skripal on 4 March 2018 in Salisbury. They were found unconscious after coming into contact with what police later identified as a nerve agent. The UK Government had on 12 and 14 March 2018 said that this constituted an unlawful use of force by the Russian State in the UK¹⁷. The Russian Federation denied that it developed the nerve agent concerned and that it committed the attempted murder¹⁸.

¹⁷ See the statement of Theresa May to the House of Commons on 12 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018> and on 14 March 2018, <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-response-14-march-2018>

¹⁸ See, for example, the statement of Vasyli Nebenzya to the United Nations on 14 March 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.8203

This programme was broadcast on 16 March 2018, less than two weeks after the poisoning. Throughout this period, there was intense international media and political interest in:

- the ongoing investigations by the UK police and the OPCW¹⁹,
- allegations about the alleged culpability of the Russian Government in the poisoning of Sergei and Yulia Skripal and the Russian Government's response to these allegations; and
- the impact of the poisoning on diplomatic relations between Russia, the UK and the wider international community.

The Licensee said that Mr Galloway "was questioning the calibre of those in power and their comments...rather than major matters of government policy". The Licensee also considered that Mr Galloway "was not so much attacking government policy or action but putting forward a number of hypotheses as to who was responsible for the Skripal poisoning". In our view, the discussion in the programme, concerned, among other things, the likely involvement of the Russian Federation in the poisoning of the Skripals, and included various statements that were either critical or dismissive of the UK Government's position on the poisoning of the Skripals, and the policies and actions of the UK Government in connection with the incident.

We considered that the position of the UK Government on the purported responsibility of the Russian State for the incident and the response of the UK Government and the wider international community were subjects of debate and political controversy both in the UK and internationally and were of both national and international importance.

For these reasons, we considered that the programme was concerned with matters of major political controversy and major matters relating to current public policy and the Licensee was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code.

Preservation of due impartiality

Ofcom went on to assess whether the programme preserved due impartiality on these matters. In judging whether due impartiality has been preserved in any particular case, the Code makes clear that "due" means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

Ofcom's Guidance²⁰ to Section Five of the Code makes clear 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 rules. Any broadcaster may do this provided it complies with the Code. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative

¹⁹ The Organisation for the Prohibition of Chemical Weapons.

²⁰ https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf, paragraph 1.34

viewpoints or provide context in an appropriate way to ensure that Section Five of the Code is complied with.

The Code also makes clear that the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content and the extent to which the content and approach is signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

We took into account the representations made by the Licensee regarding the contextual factors about Talk Radio and the *George Galloway* programme. These included that Mr Galloway is the “maverick lone voice of the left compared to the majority of his fellow presenters” on Talk Radio. The Licensee also said that Mr Galloway’s “controversial views would not come as a surprise to listeners” and that, given that the UK Government’s position on the Salisbury poisoning was “universally known”, listeners would have regarded Mr Galloway’s comments on the subject as a “personal-view attack...that did not require a formal rebuttal”.

In addition, we have taken a number of contextual factors into account in considering the broadcaster’s and audience’s Article 10 rights. In particular, we acknowledged listeners were likely to expect Mr Galloway to address controversial issues, and to do so from his own personal ‘anti-authority’ and left-wing perspective that may generally be critical of the UK Government. Furthermore, in relation to the Licensee’s argument that the UK Government’s position was “universally known”, the Code requires that broadcasters take additional steps in order to preserve due impartiality when dealing with matters of major political and industrial controversy and major matters relating to current public policy, namely to reflect an appropriately wide range of significant views and to give those due weight.

Mr Galloway made frequent statements over the course of the three-hour programme that were critical of the Government’s response to the events that had occurred in Salisbury and/or supportive of Jeremy Corbyn’s response. For example, he heavily criticised Government ministers labelling them as, amongst other things, “*blithering idiots. Morons*”; “*pipsqueaks ... hurling insults and accusations*” and “*fools*”; showing “*reckless viciousness, idiocy*”; displaying “*pitiful inadequacy*”; and “*lying*” about alleged Russian involvement in the poisoning of Sergei and Yulia Skripal. He described the Government’s response as “*madness*”; suggested that the Government’s response was irrational because Russia would not benefit from carrying out such an attack; and further suggested the Government was irresponsibly endangering British football supporters attending to the World Cup in Russia.²¹ In contrast, he said that Jeremy Corbyn “*speaks the truth*” and “*does his duty*” in relation to his approach to this incident.

The programme also included similar statements made by listeners who spoke to Mr Galloway via phone or had Tweets or text messages read out on air. For example, listeners variously said:

²¹ This commenced on 14 June 2018.

- *"No one has got any confidence at all that the people in the positions to have a direct effect on this shouldn't be sent to the shop for a Kit Kat to put it plainly";*
- *"[it is] quite clear that Mrs May is cynically using the poisonings in Salisbury to give her weak and unstable government a veneer of strength...";*
- Mr Corbyn was *"one of the most principled politicians"* one listener had *"ever seen"* in relation to his response to the Skripal incident; and
- *"Embarrassed, angry and frustrated, George. This excuse of a Government are playing us for fools".*

These views were aligned with the views being espoused by Mr Galloway, i.e. they were highly critical of the Government's response to the events in Salisbury (including the Government's statement that Russia was "highly likely" responsible for the poisoning) and/or supportive of the response of Jeremy Corbyn.

We took account of Mr Galloway's argument that it was perverse for him to be punished for expressing support for Mr Corbyn. We disagree. Rules 5.11 and 5.12 do not prohibit broadcasters from expressing support for an individual's position on a major matter, provided that an appropriately wide range of significant views in relation to that matter are included and given due weight. We went on to consider whether this had been achieved.

As highlighted in Ofcom's Guidance on Section Five of the Code, the broadcasting of highly critical comments concerning the policies and actions of, for example, any one state or institution, is not in itself a breach of due impartiality rules. It is essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical. However, as envisaged by section 320 of the Act – which is given effect by Rules 5.11 and 5.12 – , a broadcaster must maintain an adequate and appropriate level of impartiality in its presentation of matters of major political controversy, including times when it is being critical of a nation state's policies and actions on a major matter. How this is done is an editorial matter for the broadcaster. We took into account that the Licensee accepted that "on this occasion, there was not enough lively debate provided by either listeners or guests to challenge [Mr Galloway's] views within the programme itself" on the issue of the poisoning of the Skripals. Given the nature and amount of criticism of it in the programme, and taking into account that the programme was dealing with a matter of major political controversy, we would have expected the viewpoint of the UK Government on the incident to be appropriately reflected.²²

We acknowledged that the viewpoint of the UK Government on the incident was arguably reflected, to a limited extent, in the discussion in the programme. For example, the UK Government perspective could be said to be implicit background in the introductory comments of Mr Galloway which discussed Gavin Williamson's and Boris Johnson's statements on the incident. We also took into account that Mr Galloway acknowledged that Russia was capable of committing a crime such as the poisoning of Yulia and Sergei Skripal, although queried Russia's culpability in this case. However, we considered that, overall in the discussion on this topic that took place in the programme, Mr Galloway's statements and the audience contributions reflected in the programme (such as those set out above) focused

²² Ofcom's Guidance explains that 'significant views' could include the viewpoint of nation states whose policies are considered to be 'major matters' (paragraph 1.58).

overwhelmingly on expressing doubt over the UK Government's position that the Russian Government bore any responsibility for the incident.

We recognised the efforts Mr Galloway said he and the production team had made to include alternative views in the programme, and that a small number of text messages and Tweets that challenged the views of Mr Galloway were read out on air. These below were interspersed throughout the three hour programme:

"I'm afraid, George Galloway, each of your excuses for Russia not to be involved have been countered by other eminent commentators. I believe our Government have more intel than is being divulged at present implicating Russia";

"...You may be disgusted by the actions of Chukka Umuna. As part of Labour's bloodless new breed, he inspires little enthusiasm in me either. However, I suspect a large portion of the British public are equally disgusted by Corbyn's shameful apologist position on Russia. It is obvious that he prefers to revel in a twisted communist fantasy than follow moral principles";

"Just because Tony Blair lied about the war in Iraq does not mean Theresa May is lying about Russia. I have an open mind but surely there must be some evidence there [Russia's] involvement in this sad affair that they can't share. I think sometimes we need to toughen up";

"You're totally wrong, public opinion is not changing. Wishful thinking on your part I guess. Comrade Corbyn has been exposed..."; and,

"Vladimir Putin, supporter of gay rights and fair elections has George Galloway and Nigel Farage in his pocket and payroll. His 'demoralise, disruption and confuse and mistrust plan' is working great. Galloway and Farage don't even know they are puppets".

However, in the overall context of the programme, we did not consider that these contributions were sufficient to present an alternative view on the matter of the Skripal poisoning with due weight. Firstly, we took into account the strong degree of alignment between Mr Galloway's viewpoints and most of the other listeners whose views were broadcast (as discussed above) throughout the three-hour programme. Secondly, we considered that the five brief contributions set out above were treated differently by Mr Galloway to other contributions that could be considered to align more with his own views. In this context, we had regard to Ofcom's guidance to Section Five of the Code which states:

"As part of treating viewpoints with 'due weight' a broadcaster may debate and discuss such views. However, broadcasters must not dismiss or denigrate such viewpoints and include them in a programme simply as a means to put forward their own views".

We took into account that, on three occasions when the audience contributions differed to Mr Galloway's position, he joked that the listeners who had sent in their messages were housed in Broadmoor psychiatric hospital. We understood this to mean that Mr Galloway was suggesting that these listeners were in need of psychiatric care for holding the positions they held. While we took account of Mr Galloway's argument that such comments are entertaining and consistent with his style as a presenter, we considered they nevertheless had the effect of dismissing and denigrating listeners who held views which differed from his

own, and constituted a clear difference in the treatment of views which do and do not align with Mr Galloway's own.

We also took account of the Licensee's comment that it had attempted to persuade a number of guests to feature on the programme to challenge Mr Galloway's views; but that all had declined. Ofcom acknowledges the challenges that broadcasters can face obtaining contributions in certain circumstances. However, as Ofcom has made clear on numerous occasions, where an alternative viewpoint is needed to maintain impartiality, inviting contributors to participate who then refuse to do so is not sufficient to preserve due impartiality²³. A broadcaster is responsible for the views that are presented during a given programme. If a broadcaster cannot obtain an interview or a statement on a particular viewpoint on a matter of political controversy, then it "**must** find other methods of ensuring that due impartiality is maintained" (emphasis added)²⁴. The Guidance gives examples of a number of editorial techniques which a broadcaster might consider employing, where alternative views are not readily available, to preserve due impartiality.

In this case, for the reasons given above, and taking account of the relevant contextual factors discussed above, we considered the programme had not included and given due weight to an appropriately wide range of significant views on the matter of the poisoning of the Skripals.

Due impartiality in clearly linked and timely programmes

Broadcasters may comply with Rules 5.11 and 5.12 by ensuring due impartiality is maintained either in each programme "or in clearly linked and timely programmes". We next considered whether such views were included in clearly linked and timely programmes and given due weight.

In its representations, the Licensee said that Talk Radio's "output flows relatively seamlessly from one presenter to another" and that "audiences...do not make an 'appointment to view' to the extent that they do with television programmes". It therefore considered that "the treatment of a topic across the schedule is relevant to how due impartiality is maintained, as well as the treatment within each individual programme". We recognised that the Licensee, and Mr Galloway, told Ofcom that other programmes broadcast on Talk Radio on the same day as *George Galloway* included a range of viewpoints on subjects related to the poisoning of Yulia and Sergei Skripal.

However, even if other programmes that have been broadcast on the same day contained relevant alternative viewpoints on this subject, such content could only contribute to preserving due impartiality on matters of major political and industrial controversy and major matters relating to current public policy in accordance with the Code if those programmes were clearly linked and timely. Broadcasters cannot preserve due impartiality by relying on what is broadcast across their services as a whole²⁵. Because it cannot be

²³ See paragraph 1.36, at: https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-codeguidance-section-5-march-2017.pdf

²⁴ See footnote 20.

²⁵ As we made clear in our December 2013 *Syrian Diary* Decision (see https://www.ofcom.org.uk/data/assets/pdf_file/0025/45745/obb244.pdf), due impartiality can only be preserved across a whole service in the case of non-national radio services. Specifically,

guaranteed that a person watching one programme will have been watching the programme that precedes it or follows it, or that is broadcast on the same day, the broadcaster must take steps to ensure that the two programmes are "clearly linked". Therefore, even if other programmes that have been broadcast do deal with the same subject matter and contain relevant alternative viewpoints, these contextual factors alone are not sufficient to ensure that due impartiality is preserved, particularly where the matter concerned is a major matter within the scope of Rule 5.11 and 5.12. This is because without an explicit link, viewers may not be aware of the other programmes

In this case, Talksport did not provide evidence as to how this edition of the *George Galloway* programme had been "clearly linked" with other Talk Radio programmes broadcast on the same day, such as the breakfast programme, presented by Julia Hartley-Brewer. We took into account that there was no suggestion in the *George Galloway* programme that it was part of a range of programmes broadcast on the same day that would debate this issue.

The Licensee also provided examples of other editions of *George Galloway* broadcast on 30 March 2018 ("On Russia") and 9 April 2018 ("On Skripal-Novichok") that were "successful in providing different viewpoints". However, in our view, these examples were: neither timely, being broadcast two weeks or more after the programme in this case; nor clearly linked because there was no content within the programme in this case which alerted viewers to the programmes broadcast on 30 March 2018 and 9 April 2018. These two programmes were therefore not relevant to our consideration of Rules 5.11 and 5.12.

Given the above, we did not consider that Talksport had reflected an appropriately wide range of significant views in clearly linked and timely programmes.

In this case, we have taken careful account of the broadcaster's and audience's rights of freedom of expression and all the relevant contextual factors. For all the reasons set out above, Ofcom's Decision is that the Licensee failed to include and give due weight to an appropriately wide range of significant viewpoints in relation to the relevant matters of major political controversy and major matters relating to current public policy dealt with in the programme.

In reaching our Decision, we took account of the various measures introduced by Talksport to ensure that due impartiality is maintained in future editions of this programme (including those set out in the Licensee's response to our investigation into the episodes of the programme broadcast on 27 July and 6 August 2018). However, for all the reasons given above, our Decision is that the Licensee failed to include and give due weight to an appropriately wide range of significant viewpoints in relation to the relevant matter of major political controversy and major matters relating to current public policy dealt with in this programme.

Breaches of Rules 5.11 and 5.12

section 320(1)(c) of the Act requires: "the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on...matters [of matters of political or industrial controversy; and matters relating to current public policy]". Section 320(4)(b) states that the requirement contained in section 320(1)(c) "is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole".

Next steps: Ofcom is minded to consider these breaches for statutory sanction.

Ofcom considers these breaches of Rules 5.11 and 5.12 to be serious. **Therefore, subject to receiving the Licensee's representations on this issue, Ofcom is minded to consider the imposition of a statutory sanction.**

In Breach

Sheffield In Focus

Sheffield Live!, 31 July 2018, 15:00

Introduction

Sheffield Live! is a local television service, broadcasting local news and information to the Sheffield region. The licence for the service is held by Sheffield Local Television Limited ("the Licensee").

Sheffield in Focus is a weekly magazine show produced by and for disabled people. It is produced live as an audio-only programme and is accompanied with images on screen of the local area.

Ofcom received a complaint that a discussion in the programme was offensive to trans and non-binary¹ people.

During the programme, four presenters and a guest discussed a variety of topical issues, including a newspaper article² in which an equality campaigner, who identifies as non-binary, defended their membership of the Freemasons. The presenter said:

"Now, according to this article, we are not blokes sitting in a studio we are binaries...so there are five binary people, I don't know if we can use the word 'people', binary things...and there are certain referral words that we can't use...we can't use 'he' or 'she' we have to use the word 'they'... this is a ruling from the transgender community basically – there is no such thing as male or female, there is everything in between".

The following exchange then took place:

Presenter 2: *"What about 'it'?"*

Presenter 1: *"No, you can't use the word 'it'...it's 'they' – it sounds like a horror film doesn't it?"*

Presenter 2: *"Some group of aliens".*

Presenter 1: *"We are robot aliens basically, that's what we are".*

The presenter later returned to the discussion about the newspaper article. He said:

¹ Stonewall defines the use of the term 'trans' as "An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, two-spirit, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois".

² <https://www.telegraph.co.uk/news/2018/07/30/gender-equality-campaigner-defends-freemason-membership/>

"The headline in this article is "trans activist" – now this is what everybody wants to be isn't it, everybody wants to be a trans activist because it is such an important part of life – you know, are you male or female if you want to be one or the other you should be a trans activist this is really, really important... this trans person is actually a Freemason. Well, if you are into the rules of Freemasonry no ladies are allowed to be a Freemason, only a red neck bloke can be a Freemason, no other kind of bloke... And he is going to be a trans activist so I am still not quite sure what he is, because he describes himself...his name is Edward Lord. Well that name is obviously male isn't it, he's called Edward. Edward is a male name...Edward Lord sounds like one of the most male names I've ever heard of. But he is obviously not sure about whether he is a bloke or not – even with a name like Edward Lord... So there you are, going on about transgender issues and he hasn't even got a transgender name! Well if he wasn't transgender it would be half male half female".

The following exchange then took place:

Presenter 1: *"Mr Lord identifies as non-binary – well this is unbelievable, non-binary – we were talking about earlier sounds like a robot don't it..."*

Presenter 2: *"Sounds like 'Terminator 5' to me..."*

Presenter 1: *"[laughing] He asked to be described by the pronoun 'they' – so he isn't a 'he' or a 'she', he's a 'they'. Which I thought was plural... So he's a total hypocrite because he even calls himself Edward – so what the hell is he playing about at? [laughing]"*

Presenter 2: *"Or change his name to Edwina".*

Presenter 1: *"Well that's a woman's name – so it has got to be inbetween. It's got to be Edward-ween [laughter]... Could somebody tell me where this 'trans' stuff is coming from? Because most people really haven't got an issue with this have they? I mean they know they're a bloke or they know they're a woman, so what the hell is going on here?...".*

The discussion then moved on to discuss transgender toilets and the following exchange took place:

Presenter 2: *"You do have the right to walk around in whatever clothes you choose of course, if you want to dress as a lady and walk around town you can do I suppose..."*

Presenter 1: *"I just don't understand where it's come from. It's weird, don't you think it's weird? I think it's weird".*

Presenter 2: *"I think they want something like, you know to be recognised, like [to have] transgender toilets, to be recognised as a thing, don't they? Isn't that what they wanted? To rename the toilets and changing rooms so they..."*

Presenter 1: *"If I was female and somebody looked like a bloke came in [to the toilets], and said "I'm transgender" [laughter could be heard] I'd probably run out*

screaming or something, and say 'What are you doing in here?!' I think it's a bit weird".

Presenter 3: *"Well, the thing is, would they allow a male who identifies as female – to use the jargon – how would they feel if a man went into a woman's toilet? Because they identify as female? Now admittedly in female toilets of course they're all cubicles, so would it really make that much difference?"*

Presenter 1: *"What if I identify as Kermit the Frog, or all these other sort of cartoon characters, and I went around saying 'Well I'm Kermit the Frog, so treat me as a frog please'".*

After playing 'Jealous Guy' by Roxy Music, the presenter said: *"Yes, that's for all the jealous guys who can't use the appropriate facilities".*

Later in the programme, the discussion about the newspaper article continued:

Presenter 1: *"He's actually got a male name – Edward– and we thought actually he should not be called Edward Lord he should be called Bunny Lord, because Bunny could be male or female couldn't it...so I think he's going to be called Bunny Lord from now on. And I'm going to write a letter to him to suggest that he needs to be called Bunny. Because if he's transgender or whatever he's doing, that's a transgender name isn't it, Bunny?" [laughter]*

Presenter 2: *"Right, anyway let's not poke any more fun".*

Presenter 1: *"But he's a good victim isn't he? I mean if he was at school he'd be bullied to high heaven".*

The presenter and guests were not shown on screen during the course of the discussion. Instead, a series of photographs of Sheffield and some news headlines were shown. None of these images related specifically to the discussion about trans issues. The Licensee confirmed that the visual element "consists of a semi-automated feed on a 10 minute cycle".

We considered that the programme raised potential issues under Rule 2.3 of the Code, which states:

Rule 2.3: *"In applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to... discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership)".*

Ofcom requested comments from the Licensee on how the programme complied with this rule.

Response

The Licensee expressed regret for the comments made in the broadcast, saying that "[T]he discussion which took place had the intent of lampooning Edward Lord, however the

statements made went further than this in a manner that was not only derogatory towards the subject of the article, but to non-binary and transgender people in general and would likely be found offensive by people from the transgender community and their allies". The Licensee said that the production team "...accepted that several of the comments were not appropriate for broadcast and said the remarks were made out of ignorance and not intended to be malicious or harmful".

It added that the "station management took the view that several of the remarks made were unacceptable to be broadcast and were against the values of Sheffield Live!" and they had taken the following steps as a result:

- "ask[ed] the production team to review the relevant sections of the Broadcasting Code to increase their awareness of the potential issues raised in order to prevent a repetition".
- undertaken a "content review" and had "sought out the engagement of an LGBT advisor to meet with the team...to improve awareness of transgender issues".
- issued an on-air apology on 21 August 2018, this followed an informal complaint about the content and was broadcast the day after the informal complaint was received. The apology was made by Presenter 1 and repeated three times on that day. It added it considered this to be a "timely response" and in any event, due to a summer break, this was the "the first opportunity to carry a message of apology in the same show".
- removed the audio podcast of the programme as a result of the informal complaint.

The Licensee emphasised that it had recognised the problematic nature of the content on receiving the informal complaint and taken steps prior to receiving information from Ofcom.

The Licensee added that as a "community broadcasting service" it aims "to provide a platform for a plurality of perspectives. This includes people from the LGBT+ community who are active among our volunteer producers as well as in our positive coverage of community campaigns on LGBT+ rights such as Sheffield Pride, International Day Against Homophobia and Transphobia, and the Transgender Day of Remembrance". It said it had a "strong track record of working with and positively portraying the LGBT+ community".

In relation to their internal compliance procedures, the Licensee confirmed that they had "reviewed specialist guidance from Stonewall, All About Trans, International Lesbian and Gay Association and Article 19, as well as the Broadcasting Code". The Licensee also took into account their "responsibilities under the Equality Act 2010, including with respect to the production team, the majority of whom share a protected characteristic, being people with disability".

Decision

Reflecting our duties under the Communications Act 2003³, Section Two of the Code provides protection for members of the public from harmful and/or offensive material.

³ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance its duties to ensure that listeners are given adequate protection from offensive material with the broadcaster's and audience's right to freedom of expression.

Ofcom has also had due regard⁴ in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic – such as gender reassignment – and those who do not.

Rule 2.3 requires that in applying generally accepted standards, broadcasters must ensure that potentially offensive material is justified by the context. Context includes, but is not limited to, the editorial content of the programme, the service that the material was broadcast on, the time that the material was broadcast and the extent to which the nature of the content can be brought to the attention of the potential audience (for example by giving information).

Ofcom first considered whether the broadcast contained material which could be considered offensive.

In the discussion about the newspaper article, the presenters:

- frequently referred to Edward Lord using the masculine pronouns *"he"* and *"him"* despite the fact that Edward Lord identifies as non-binary (as made clear in the article).
- called the trans activist a *"hypocrite"* for having an *"obviously male"* name: *"Edward Lord sounds like one of the most male names I've ever heard of...he doesn't know whether he's a bloke or not"*;
- said that Edward Lord was: *"going on about transgender issues and he hasn't even got a transgender name!"* and suggested that they should be called *"Edward-ween"* or *"Bunny"*; and
- said that the activist was *"a good victim"* who would have been *"bullied to high heaven"* at school.

We considered that these comments had the potential to cause significant offence as they were insulting, derogatory and sought to ridicule the activist's non-binary status. In addition, by repeatedly referring to Edward Lord using the incorrect pronoun, the presenters appeared to ignore and undermine the publicly stated gender identity of a trans person.

We also considered that the likely level of offence would have been increased in this case by the following comments about the wider LGBT+ community:

- saying that the term *"non-binary"* *"sounds like a robot"*, and that the use of the pronoun *"they"* was comparable to a *"horror film"*, *"robots"* and *"aliens"*. The presenter later referred to identifying as *"Kermit the Frog"* and questioned whether others would then *"treat me as a frog"*;

⁴ Under section 149 of the Equality Act 2010.

- saying that trans people were “weird” and adding that if they encountered a trans person in a public toilet they would “*probably run out screaming*” indicating that this would be a cause for concern; and
- playing the song ‘Jealous Guy’ by Roxy Music, and commenting that it was “*...for all the jealous guys who can’t use the appropriate facilities*”.

We considered these comments sought to ridicule and dehumanise non-binary and trans people and were likely to be offensive to the wider LGBT+ community and its allies.

Ofcom went on to consider whether this content was justified by the context.

Sheffield in Focus is a weekly discussion programme broadcast in the afternoon. Although it is a television broadcast, the audience does not see footage of the presenters or guests on screen, instead the channel broadcasts images of Sheffield (submitted by viewers), interspersed with text including local news headlines and weather forecasts. The programme is listed on the Sheffield Live website⁵ as a ‘magazine show’ featuring “opinion and debate” and Ofcom acknowledged that the audience would therefore be likely to expect a range of personal views across a variety of subjects, some of which may be contentious or attract strong opinions from presenters and guests. However, given the strength and extended nature of the presenter’s potentially highly offensive views on the trans community, we considered this content was likely to have exceeded the audience’s expectation of content on this local television service, particularly in the afternoon when audiences generally do not expect to encounter more challenging content.

We took into account that during the course of the discussion one of the presenters said: “*You do have the right to walk around in whatever clothes you choose of course, if you want to dress as a lady and walk around town you can do I suppose...*” and towards the end of the discussion: “*Right, anyway let’s not poke any more fun*”. We considered these comments may have indicated a more tolerant approach to the trans community but in our view they did not provide sufficient challenge to the potentially offensive comments. Further, the programme also did not include any warnings or disclaimers that might have mitigated any potential for offence.

Therefore, Ofcom considered that there was insufficient context to justify the potentially highly offensive references to trans people.

⁵ <https://web.sheffieldlive.org/shows/sheffield-in-focus/>

We acknowledged the Licensee's position that the comments were made by the production team "out of ignorance and [were] not intended to be malicious or harmful" however regardless of the intent, in our view the comments had the potential to cause significant offence for the reasons set out above. We also took into account that an on-air apology was made on 21 August 2018 following a complaint and before contact with Ofcom. In Ofcom's view, this may have provided some limited mitigation to the potential offence, and while it was made shortly after the Licensee was made aware of the comments, it was still broadcast three weeks after the original programme. We also acknowledged the steps taken by the Licensee following the broadcast, such as the engagement of an LGBT advisor "to improve awareness of transgender issues; and, its involvement with the LGBT+ community prior to this broadcast. However, given all of the above, our decision is that the content exceeded generally accepted standards, in breach of Rule 2.3 of the Code.

Breach of Rule 2.3

In Breach

Shomoyer Sathe

NTV, 23 April 2018, 23:00

Introduction

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

Shomoyer Sathe is a live talk show, in which a presenter moderates political debate among guest contributors. At the time this programme was broadcast, elections were due to be held in Bangladesh in December 2018¹ and days before, leaders and activists of the Bangladesh National Party² had protested against the visit of Sheikh Hasina³ to the UK and allegedly attacked one of her Deputy Ministers⁴.

Ofcom received four complaints that this programme allowed its contributors to use offensive language and behave aggressively.

As the programme was broadcast in Bengali, Ofcom commissioned an independent translation of the content into English. The Licensee was given an opportunity to comment on the accuracy of the translation and did not dispute it. We relied on this translation for the purposes of this investigation.

Four guests sat behind a desk with the presenter in the middle for a discussion on the political situation in Bangladesh. Two of the guests, Mr Mujibul Haque Moni,⁵ and Mr Alhaj M A Malek,⁶ were sitting to the far right and the immediate left of the presenter respectively. During the discussion, Mr Moni said:

¹ See <https://thediplomat.com/2018/03/turbulent-politics-set-to-return-to-bangladesh/>

² The Foreign and Commonwealth Office information on GOV.UK says the Bangladesh National Party is the main, unofficial opposition party in Bangladesh.

³ Sheikh Hasina is the leader of the Awami League political party and Prime Minister of Bangladesh.

⁴ See <https://www.dhakatribune.com/bangladesh/2018/04/19/bnp-men-attack-deputy-minister-arif-khan-london>

⁵ Mr Moni is vice president of the UK branch of Jatiya Samajtantrik Dal, the National Socialist Party of Bangladesh. According to , a report by the European Asylum Support Office Jatiya Samajtantrik Dal is in an alliance of 14 political parties which includes the Awami League political party. See <https://www.easo.europa.eu/sites/default/files/publications/coi-bangladesh-dec-2017.pdf>.

⁶ Mr Malek is the president of the UK branch of the "Bangladesh National Party".

"At the beginning, a caller said, 'This government is Murtad'⁷, this government is a disbeliever'. It is not right to condemn a government with these types of bad words. It is not a nice thing because the current government of Bangladesh can't be a Murtad. All of them are Muslims. Now people who are using Islam as a road to capture power, they are not Murtad, they are the Kafirs⁸. I refer to them as Kafirs".

A debate followed, much of which was too heated to be distinguishable. It began when, off-camera, there was a noise which sounded as if one of the other guests had thumped the desk and said, *"You are a Kafir"*. As the camera panned out to show all four guests, the presenter could be seen motioning with both arms to Mr Moni, and to Mr Malek who was shouting, to stop arguing. The two guests pointed at each other. Ten seconds into the argument, Mr Malek said *"You are a Kafir"* to Mr Moni, who replied *"I caution you"*. Mr Malek shouted back *"You are a Kafir"* and *"Shut up, shut up, you are a Kafir, shut up"*. The presenter held Mr Malek's hand down. Mr Malek thumped the table with his free hand and the two guests continued to point at each other. Mr Malek continued to shout at Mr Moni. Around 35 seconds into the altercation, and for 12 seconds, it appeared as if the presenter was regaining control of the guests, as he continued to motion and tell them to calm down. Mr Moni said, *"You can't do this on a TV talk show"* and Mr Malek replied, *"You referred me as a Kafir, I am a Muslim"*. However, Mr Moni then shouted back, repeatedly beating his chest with his finger, *"I am a Muslim. You called me Murtad"*⁹ and Mr Malek and then Mr Moni thumped the desk.

Over the next 50 seconds they shouted unintelligibly and pointed at each other. At times, the presenter held Mr Malek's hand down and one of the other guests held Mr Moni's hand down. At times, Mr Malek looked as if he was about to stand, but he remained seated. Mr Malek thumped the desk again and shouted *"Shut up, shut up, shut up. Shut up Beadob"*¹⁰. *Beadob. Hasina*¹¹ *entices. Beadob, your leader is a beadob. Your leader is a beadob. You are a beadob"*. Mr Moni replied, *"Why are you scolding Hasina?"* and appeared to motion for him to leave the studio. As Mr Moni and Mr Malek pointed at each other, the presenter clasped his hands together in front of him and addressed the viewers. He said *"Dear viewers, you can see our situation. We will come back again after the break. Please stay with us"*.

The programme then cut to an advertisement break. By then the altercation had lasted for one minute and 40 seconds, throughout which the presenter had repeatedly and almost incessantly appealed to the guests with the words *"brother Moni"*, *"brother Malek"*, *"no more"*, *"please"*, *"stop"*, *"please do not say a single word"* and *"I'm saying no"*.

⁷ "Murtad" refers to a person who leaves his religion (Islam in this case) and is a highly offensive insult in Bengali conversation, particularly because under extreme applications of sharia law the penalty for apostasy is death. We found no use of this word by a caller in the programme.

⁸ "Kafir" refers to people who have no faith in religion (Islam in this case) and is generally a derogatory insult in Bengali conversation, but when said to a Muslim person it is similar in effect to the word "murtad" and, therefore, highly offensive.

⁹ We could not identify any use of this word by Mr Malek in the programme.

¹⁰ "Beadob" means "uncultured", "disobedient" or "unruly" and is a mildly offensive term, the usage of which in political debate would be likely to be within viewers' expectations.

¹¹ A reference to Sheikh Hasina. See footnote 3.

After the advertisement break, the presenter said:

"Thank you, dear viewers. You have seen the situation of politics of Bangladesh. We want a nice politics, a politics of discussion and debate. That debate will be based on arguments and exchange of information. No one should attack another personally. However, it is the history of politics and heritage of Bangladesh. Since it is a political talk show, there will be attacks, there will be politics and debate and you will take part by asking questions".

He then took a call from a viewer who said *"One person said, it's a talk show, it is not right, and another person wanted to attack him, standing up from his chair. It is not right"*. The presenter said *"Let me tell you. I know you have been hurt by this. However, this is a daily routine in the politics of Bangladesh"* and *"Of course, I have understood you. I have understood you. We do not expect one politician to term another politician a Kafir, one politician to term another politician a Kafir. Please keep watching"*. The presenter then took a call from another viewer who said viewers had been *"hurt by the language"* Mr Malek had used about the Prime Minister on Facebook such as *"Modi cradles Hasina in his lap", 'Indian Hasina, Russian Hasina, go back, go back'"*. The presenter discussed the issue with his guests. During the discussion the following exchange took place:

Mr Malek: *"...I understand that he [Mr Moni] referred to us, the Muslim BNP [Bangladesh National Party] politicians, as Kafirs. He later gave an explanation. So, when we are angry" [interrupted].*

Presenter: *"However, the viewers were hurt by this".*

Mr Malek: *"I will say to the viewers that I am sorry about this. I am sorry from the core of my heart about this".*

Presenter: *"Thank you".*

After further discussion, and when it was his turn to speak, Mr Moni also apologised:

"Before that I would like to refer to the situation of the last segment. Brother Malek has apologised to the viewers. I would like to say something to the viewers. Dear respected viewers, we come here to talk to you. We don't come here to fight. You feel bad about it, definitely you feel bad about it. I feel sorry for this. We expect this type of incident not to happen again. The reputation of the TV and your respect are associated with it".

The presenter responded: *"Especially yours. You are the politicians. We don't feel very bad about it".*

At the programme's close, the presenter said *"I would like to say sorry to our viewers through you. If you decrease your tendency to fight and discuss with arguments, then the viewers will benefit"*.

We considered this raised potential issues under the following Code rule:

Rule 2.3: *"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...discriminatory treatment or language (for*

example on the grounds of...religion...). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

Ofcom requested comments from the Licensee on how the programme complied with this rule.

Response

ITCE said that it sought compliance with Ofcom's rules through a rigorous recruitment process for the presenter, designed to select someone who would have total control of the programme. In addition, it selected topics and guests carefully and the presenter had signed a code of conduct that was in line with Ofcom rules and NTV's regulations. The Licensee said it values constructive debate but not “personal attack and religiously degrading comment”, which it edited out of recorded programmes. It added that if this happened in a live programme it cut straightway to an advertisement break and warned the participants not to repeat it.

ITCE said that before this live broadcast it had briefed the guests properly not to breach Ofcom's rules or NTV's regulations, so that they would not make any controversial or religiously degrading comment, nor attack each other personally. The Licensee said “the guest used ‘Kafir’ on a separate event outside of NTV and he used that word as reference”. (The Licensee did not specify to which guest(s) it was referring.) It added that the production team instructed the host to go to an advertisement break immediately when the situation became beyond his control.

ITCE said it was “currently observing this program keenly” and “trying to bring certain changes” to avoid the same thing happening again.

The Licensee also provided representations on Ofcom's Preliminary View, which was to record a breach of Rule 2.3 in this case. It said that it chose its guests carefully “based on their relevant background” to achieve “healthy debate and discussion”. It said the guests in this programme were “well known politicians from leading political parties of Bangladesh” and it would “never [have known] such respectful politicians would behave irresponsibly on a live [programme]”. It said the production team had briefed them before the programme and their altercation was “irration[al]” and “beyond [its] control”, particularly considering it was a live programme”.

ITCE said that the production team had switched off the microphone of every guest “immediately once the situation was beyond their control”, but “[the] squabble was heard through [the] presenter's microphone [for whom it used a] powerful microphone...”. It said it then cut to a commercial break “almost immediately”.

The Licensee said the “the presenter [did] his best to neutralise such an unforeseeable situation”. It said he “stopped both guests once they started [to] squabble” and “warned [them] during commercial breaks”. It said the presenter was “apologetic through his voice and body gestures” and that “both guests apologised on air and also after the program”. It added that its “senior management team...had several conversations with [both guests] and barred them from NTV until further notice”. ITCE said that it had also “changed the theme of [the] program for further broadcast[s]”. It expected these remedial steps to “prevent a repetition of such [an] incident” and stressed that it is a responsible broadcaster that “[took] Ofcom's advice seriously” and trained its staff on our rules.

Decision

Reflecting our duties under the Communications Act 2003¹², Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material in programmes.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

Ofcom recognises that the live discussion of current affairs in a political talk show may involve heated debate on matters of controversy, which some viewers might find challenging. Consistent with the right to freedom of expression, Ofcom recognises the importance of broadcast content of this type, provided that any potential offence is justified by the context.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely expectation of the audience.

We first considered whether the use of "kafir" had the potential to cause offence¹³.

The word "kafir" can be used in various acceptable ways, particularly within religious discourse. However, it can be an insult and was clearly used as such in the programme. Ofcom's latest research on offensive language¹⁴ indicated that the use of "kafir" is considered by audiences to be generally unacceptable before the watershed. Ofcom's research classified it as a "strong word (generally unacceptable)", a "religious insult" and a form of discriminatory language. Further, the research indicated that "if the language was used in an unexpected context...aggressive delivery made it less acceptable as it was much more jarring or shocking..." and "strong discriminatory or degrading language was almost universally deemed unacceptable if those referred to were likely to feel insulted or hurt, taking contextual factors into account".

We took into account that a viewer called the programme specifically to express concern about the aggression of one of the guests ("*he wanted to attack him, standing up from his chair. It's not right*"). Also, Mr Moni described this behaviour, which the presenter recognised had "*hurt*" the caller, as inappropriate to the programme ("*You can't do this on a TV talk show*").

¹² <https://www.legislation.gov.uk/ukpga/2003/21/section/319>.

¹³ Both "murtad" and "kafir" have the potential to cause offence (see footnotes 7 and 8). We focused on the guests' use of "kafir" to attack each other rather than Mr Moni's references to previous uses of the word "murtad", which we were not able to identify in the programme (see footnotes 7 and 9).

¹⁴ <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/offensive-language-2016>

The guests repeatedly used the word “kafir” to insult one another. In this context we considered that this was one of the most offensive possible uses of “kafir”¹⁵. We also considered that the heated altercation surrounding its use showed that the guests felt highly degraded by this. The guests used the word aggressively, thumping the desk and pointing at each other. In our view, this was likely to have exacerbated the level of offence caused and exceeded the expectations of viewers of a political discussion programme.

We went on to consider whether the potentially offensive content was justified by the context.

We took into account the service on which the programme was broadcast, its format and the time of broadcast. It was a political talk show broadcast on a general entertainment service aimed at the Bangladeshi community in the UK and Europe. It was broadcast live, late at night after the watershed and with guests who supported opposing political parties in Bangladesh. It was also an election year in which political tensions were reportedly rising.¹⁶ In our view, therefore, the audience may have reasonably expected robust debate and controlled discussion of controversial topics. Further, we considered that the production team could have reasonably anticipated that the debate could have become heated and/or contentious given the political climate at the time of broadcast, and reports of disorderly protests by BNP activists and leaders¹⁷. Therefore, we considered that it was the Licensee's responsibility to be well prepared to control the discussion should the guests' comments or behaviour exceed robust and controlled discussion.

We considered that in the context of a current affairs talk show viewers were unlikely to have expected the guests to have repeatedly and aggressively directed religious insults at one another in an uncontrolled way and to the extent they did. We considered that viewers were likely to have been offended by this, even taking account of the current political tensions and the late time of the broadcast.

We acknowledged the measures the Licensee took before the broadcast. We understand that it is not possible for broadcasters to prevent every instance of offensive language in live broadcasts¹⁸. However, according to our research¹⁹, audiences expect broadcasters to avoid repeated offensive language wherever possible, and they consider stronger forms of discriminatory language to be potentially unacceptable both before and after the watershed.

We also acknowledged that the Licensee said the producers decided to cut the microphones of all the guests once the debate became heated. However, the guests were shouting and some of their words, including the most offensive terms, could still be heard over the presenter's microphone. Therefore, we considered that this initial attempt to limit the

¹⁵ See footnotes 7 and 8.

¹⁶ See footnote 1.

¹⁷ See footnote 4 and <https://www.dhakatribune.com/bangladesh/politics/2018/02/13/uk-bnp-apologizes-attack-bangladesh-high-commission/>.

¹⁸ Our research (see footnote 14) indicated that audiences were tolerant of occasional, accidental strong language on live TV and acknowledged the limits of broadcaster control in live programming, particularly when contributors have been invited on to a programme.

¹⁹ See footnote 14.

offence was ineffective and that this would have become quickly apparent to the production team. However, the production team did not take any further action and continued to broadcast the altercation for one minute and 40 seconds after it broke out. We considered that viewers were unlikely to have realised what action the programme producers had attempted to limit the potential for offence before cutting to a commercial break. We considered that this was likely to have been interpreted by viewers as delayed action on the part of the production team and the presenter. In our view, this increased the potential for offence.

Our research²⁰ indicates that sincere and swift apologies sometimes mitigate the use of offensive language, particularly accidental or unexpected use during a live broadcast. In this programme, as the argument escalated, the presenter's body language was apologetic (for example, clasping his hands together) and following the altercation, he criticised the behaviour of the guests, placing responsibility on them ("*...You are the politicians. We don't feel very bad about it*"). However, given the repeated and aggressive use of highly pejorative terms during a lengthy and heated argument, we considered that the programme did not do enough to mitigate the offensive language and behaviour of the guests. We acknowledged that later in the programme the guests apologised for arguing and at the end of the programme the presenter apologised on their behalf. However, in our view, given that highly offensive language was used repeatedly, deliberately and aggressively by the guests, these apologies did not fully mitigate the potential for offence because they were not given at the time of or immediately after the altercation.

Ofcom had regard to the right to freedom of expression of the Licensee, its audience and the guest contributors, and balanced this carefully against our duty to provide adequate protection for members of the public from harmful and/or offensive material. Ofcom acknowledged that it was essential that broadcasters have the editorial freedom to debate topics of public interest and for audiences to hear and see the words and actions of the representatives of political parties, particularly in the run up to elections.

We took into account that the potential for offence was addressed in part by the programme broadcasting callers who condemned the language and behaviour of the guests. We also considered that the presenter attempted to contextualise the offensive language and aggressive behaviour with broad references to freedom of expression and the culture of politics in Bangladesh ("*You have seen the situation of politics of Bangladesh...Since it is a political talk show, there will be attacks, there will be politics and debate...*"). We also took account of the action taken by the Licensee to ensure no recurrence, which comprised:

- the warning the presenter gave both guests during the commercial break;
- the conversations the senior management team had with them following the programme; and,
- the barring of the guests from the programme until further notice²¹.

²⁰ Ibid.

²¹ The Licensee also said that it would alter the theme of the programme. However, it did not state how it would alter the theme or how this would prevent a recurrence.

However, for the reasons set out above it was our Decision that the repeated, aggressive use of highly offensive and derogatory language exceeded generally accepted standards and was not justified by the context, and the programme was therefore in breach of Rule 2.3 of the Code.

Breach of Rule 2.3

In Breach

Teen Life

Voxafrica TV, 17 April 2018, 21:00

Introduction

Voxafrica TV is a general entertainment channel broadcasting to what it describes as the “pan-African” community. The service is available in the UK on the Sky digital platform. The licence for Voxafrica TV is held by Vox Africa Plc (“Vox Africa” or “the Licensee”).

Teen Life is a feature film in English, produced and set in Ghana. It follows the love lives of a group of teenagers and some of their parents.

Ofcom received a complaint that this film contained homophobic material.

We viewed the film in full. One of the storylines concerned a man, Mason, who discovered that his teenage son, Carlos, was having a sexual relationship with another boy, Julius. He then arranged for the boys to receive counselling from a psychologist in order to make them heterosexual. The film included a number of references to homosexuality.

A psychologist character said of her work counselling teenagers:

“It’s terrible when they are attracted to the same sex”.

After reading his son Carlos’s diary and discovering his relationship with Julius, Mason was visibly upset and cried as he said:

“No, no, not my son... Not Carlos, Carlos can’t be gay, no, not my son, what have I done, God, what have I done?”.

Mason confronted his son, Carlos, about the diary and the following exchange took place:

Mason: *“I’m not judging you about anything. I understand how confusing it gets sometimes, teenagers growing up, especially when it comes to the issue of sexuality... I don’t mean to get you to feel uncomfortable, I’m just trying to get us talking... I just wish you would be able to talk to me about anything, anything you feel uncomfortable about... I’m just trying to be the best dad for you here. You should think about taking good care of yourself... the issue of homosexuality, it’s wrong in the eyes of God”.*

Carlos: *“Yes Daddy, but you’re always busy, you are not there for me. You are the only one who understood me”.*

Mason: *“Come on, Carlos. It still doesn’t make what you guys did right... Son, I want to help you, but I first need you to trust me and be truthful to me”.*

Carlos: *“Yes, Dad. Daddy, I’m willing to change, if only you could help me”.*

Mason: *“I love you, son”.*

Carlos: *"Daddy, I never meant to disappoint you, I'm sorry".*

Mason: *"It's okay, it's okay. Bit by bit we're going to get through this together. Just remember, you are not in this alone. We are both in this together".*

Mason then offered to pay for Carlos and him to take a holiday to Australia, on the condition that Carlos would "co-operate".

In another scene, Mason said to his son's boyfriend, Julius:

"I think you need serious help...you are not well...you're sick, psychologically you are very sick and you need help... Even though I'm so angry about what you have done to my son, I still don't want to see you go down that road to hell... I'm talking about homosexuality, homosexuality! Don't play dumb with me. I'm going to tell the authority what you've done and then you can kiss your damn prefect position bye-bye... First, I want you to take me to your parents. We need to get your parents involved in this. You need help, just like my son... I've already arranged with a teenage psychologist who's going to help counsel you guys, so you have to comply with me..."

Mason gave a talk to school students, describing himself as:

"...an advocate of teenage sexual health, especially when it comes to an issue as sensitive and as serious as homosexuality. I have a son who has been a victim of homosexuality, and I'm so glad to say to you that I was able, as a father, to help counsel him out of homosexuality, and now he's okay, he's straight".

Mason then introduced Julius:

"...who has been into homosexuality for many, many years. Julius is now very straight, and I mean he's very straight, he's a regular guy and I'm sure that you girls can, you know, have a talk with him. He's very straight right now... He's going to share with you his experience and his walk out of homosexuality".

Julius then addressed the school students:

"If everyone in the world were to be gay, how would the human race survive? It would mean no babies, and when God created us and told us to multiply and fill the Earth, students, I have been there, and apart from it being wrong in God's eyes, it's also not healthy. There are many health issues associated with homosexuality. Just to name a few: anal cancer; human immunodeficiency virus; and human papilloma virus and so on. So if you have it started out of curiosity, then stop before it turns into a habit, or it will turn into a character which society will frown upon. If you are already into homosexuality, please talk to somebody and get help".

We therefore considered that this programme raised issues warranting investigation under the following rule:

Rule 2.3: *"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory*

treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

Ofcom requested comments from the Licensee on how the programme had complied with this rule.

Response

Vox Africa said that *Teen Life* is a fictional comedy and was “not serious or factual”. It said that the main actors were “recognised by an African audience for their expertise in performing comedic roles in movies and TV series in Ghana” and that where “serious or contentious issues” were included, the treatment of them was “purely comedic”.

The Licensee considered that the likely audience was small and “predominantly African” and that it was “unlikely” or that only a “very small minority” of viewers might come across the material unawares. It said that data from the Broadcasters Audience Research Board (BARB) suggested that Voxafrica TV’s audience “is predominantly African with Nigerians and Ghanaians holding the highest reach among the overall African community” and that “about 10%” of its audience is “British”.

It emphasised that the film was made for a Ghanaian audience and the film “considered and portrayed all views on homosexuality within the Ghanaian cultural context”. It said that it would expect its audience to understand this cultural context and that in Ghana homosexuality is considered a criminal offence. In Vox Africa’s view, the likely audience would find the views in the film “very ordinary”, “progressive” or, to more conservative or religious viewers, “very progressive and perhaps offensive” in its liberal approach. It added that any potential offence was justified as “within the context of a Ghanaian production... homosexuality is still considered illegal within the cultural context of the movie setting” and that Ofcom should balance the rights of freedom of expression of a “UK West African” audience against “its duty to provide adequate protection to members of the public... otherwise, it will also be discriminating against Ghana and its current legislation”.

It said that only “a very small minority” of viewers would come across this material unawares, and that the UK Ghanaian or West African audience’s right to freedom of expression must be considered too.

The Licensee added that the overall timing of this storyline within the movie was “very low” and not the “main storyline” of the film. It said for the film to be “reasonably offensive” the “majority of the script” would have to be “offensive to the audience whether or not the cited context was fully considered”.

The Licensee said that the film had been appropriately scheduled post-watershed.

Vox Africa said that it does not support homophobic views. It said it has often produced “pro-tolerance” programming, actively promotes equal opportunities “in race, gender and sexual orientation”, exercises “the highest standards of equality” and does not support any of the views in the film which were highlighted by the complaint to Ofcom. The Licensee said that it was not its intention to cause offence and apologised for “any potential offence met by the complainant”.

Decision

Reflecting our duties under the Communications Act 2003¹, Section Two of the Code requires that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

Ofcom has also had due regard² in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as sexual orientation, and those who do not.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material is broadcast, the time of broadcast, the likely expectation of the audience, and the effect of the material on viewers who may come across it unawares.

We first considered whether the material had the potential to cause offence.

Several characters in the film expressed negative views about homosexuality, including:

- *“It's terrible when they [teenagers] are attracted to the same sex”;*
- *“It's wrong in the eyes of God”;*
- *“It doesn't make what you guys did [have a homosexual relationship] right”;*
- *“Psychologically you are very sick and you need help”;*
- *“I have a son who has been a victim of homosexuality and... I was able, as a father, to help counsel him out of homosexuality, and now he's okay, he's straight”;*
- *“Julius is now very straight, and I mean he's very straight, he's a regular guy”;* and
- *“[homosexuality is] not healthy. There are many health issues associated with homosexuality. Just to name a few: anal cancer; human immunodeficiency virus; and human papilloma virus and so on”.*

These statements were potentially highly offensive, particularly as the characters in the films: equated homosexuality with a number of diseases; and implied it was a form of mental illness.

We also considered the film's portrayal of homosexuality as a psychological illness which can be cured through counselling. This type of counselling, known as conversion therapy, is considered in the UK by all major counselling and psychotherapy bodies and the NHS to be

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

² Under section 149 of the Equality Act 2010.

"unethical and potentially harmful"³. The film promoted the efficacy of conversion therapy, and we considered this had the potential to cause serious offence to viewers as the film's narrative asserted that homosexuality could, and should, be corrected.

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

We took into account that *Teen Life* is a fictional drama. The Licensee said that "All of the main actors are recognised by an African audience for their expertise in performing comedic roles in movies and TV series in Ghana" and that the "serious or contentious issues" in the film were "intended to be treated in a purely comedic manner". Ofcom did not consider the nature of the drama was sufficient to mitigate the highly offensive material and it was not apparent that a wider audience coming across the content unawares would have understood the background of the actors.

Ofcom had regard to the broadcaster's and audience's right to freedom of expression. Broadcasters should be able to deal with any subject (including for example homophobia and/or conversion therapy) in comedy and drama, provided they comply with the Code. It is acceptable under certain circumstances for programmes to cause offence through the portrayal of discriminatory attitudes, particularly when shown by fictional characters in a dramatic situation. However, in doing so, broadcasters must ensure that any potential offence is justified by the context.

The character Mason was portrayed as a concerned father who acted in good faith to provide what he perceived as help to both his son and his son's boyfriend. The Licensee said that this portrayal would reduce the potential for offence, particularly Mason's dialogue, "*I am not judging you about anything but understand how confusing it can get sometimes for teenagers growing up especially when it gets to the subject of sexuality*". Ofcom considered that although Mason's motivation was to help his son, his opinion was that homosexuality was wrong, and that homosexual people needed "*help*" through conversion therapy in order to become straight. His opinion seemed to be supported by the psychologist character who counselled the boys. As no other characters challenged this view, and the outcome of the storyline was that the teenagers undertook conversion therapy and became "*okay*" and "*regular guy[s]*", it was Ofcom's view that the editorial voice of the film promoted the highly offensive idea that homosexuality was wrong and could and should be treated with conversion therapy. This effectively endorsed homophobic views, and put forward a negative representation of homosexuality, without sufficient context being provided.

Ofcom acknowledges that *Teen Life* was set and made in Ghana, primarily for a Ghanaian audience and that, as the Licensee said, it "portrayed all views on homosexuality within the Ghanaian cultural context". We understand that attitudes towards homosexuality are different in Ghana than in the United Kingdom. For example, while in the UK, the sexual orientation of bisexual, gay, lesbian and heterosexual people is a protected characteristic under the Equality Act 2010, in Ghana homosexuality is considered a criminal offence which can lead to a custodial sentence between 3 and 25 years⁴. Vox Africa said that if Ofcom did not balance the rights of freedom of expression of a "UK West African" audience against "its duty to provide adequate protection to members of the public... it will also be discriminating

³ <https://www.psychotherapy.org.uk/wp-content/uploads/2017/10/UKCP-Memorandum-of-Understanding-on-Conversion-Therapy-in-the-UK.pdf>

⁴ <https://www.gov.uk/foreign-travel-advice/ghana/local-laws-and-customs>

against Ghana and its current legislation". In determining whether the broadcast was in breach of Rule 2.3 of the Code, Ofcom must assess whether potentially offensive material was justified by the context. Ghanaian legislation which makes homosexuality a criminal offence is part of the context, but would not be apparent to all viewers. As in the UK homosexual people are protected by legislation, Ofcom considered that a UK audience would be more likely to find some of the material in the film offensive and less likely to feel that the offence was justified by the context.

Ofcom acknowledged that Voxafrica TV is a specialist service aimed at a predominantly African audience living in the UK. The Licensee said "we would expect our audience to understand the cultural context of the comedic characters portrayed in the episode and the relating story line" and that "only a very small minority" of viewers were likely to come across this material unaware of the cultural context. However, according to data supplied by the Licensee, 10% of Voxafrica TV's audience, a significant minority, is categorised as "British" and therefore may be less likely to understand the Ghanaian cultural context of the film. The Licensee said that in its view, the likely audience would find the views in the film "very ordinary", "progressive" or, to more conservative or religious viewers, "very progressive and perhaps offensive". Vox Africa is entitled in this service to reflect different perspectives appropriate to its global outlook but it must also remain sensitive to cultural norms in the UK. All content broadcast on licenced services in the UK must adhere to generally accepted standards. On balance, this content (a seriously negative representation of gay and bisexual people) was likely to have exceeded the expectations of and caused offence to many viewers, not only those unfamiliar with the cultural context of the film, but also members of Vox Africa's target audience viewing Voxafrica TV in the UK. We also considered that members of the Ghanaian and/or wider African community in the UK who are homosexual were likely to have been highly offended at the broadcast of this film given the protections to homosexual people given under UK legislation.

Further, we also considered this storyline in the wider context of the film. While noting that the film also covered a number of other storylines, such as the ups and downs of the heterosexual relationship between teenagers Opeibia and Jay, and the lead up to Mason's marriage to Jay's mother, these did not sufficiently mitigate the potential offence outlined above as they were separate and unrelated. Ofcom considered that the storyline about Julius and Carlos, while not the main focus of the film, was still a prominent storyline. It is not the case that "the majority of the script" would have to be offensive in order for the broadcast to be found in breach of the Code. Ofcom's assessment is of whether the potentially offensive material was justified by the context. In this film, as the other storylines appeared unrelated to one about a homosexual relationship, they did not provide any contextual justification for the offensive elements.

Vox Africa said that it had scheduled the film appropriately, at the post-watershed time of 21:00. Observing the watershed reduces the likelihood of children viewing inappropriate material. In this case however, where there was a high risk of serious offence to adult viewers, we considered this was insufficient to mitigate the level of offence.

Given all the above, therefore, it is Ofcom's view that the broadcast of this offensive material exceeded generally accepted standards, in breach of Rule 2.3 of the Code.

Breach of Rule 2.3

In Breach

Lokkho Praner Sur **TV ONE, 11 July 2018, 13:00**

Introduction

TV ONE is a general entertainment channel aimed at the Muslim community in the UK. The licence for the service is held by Light Upon Light Media Limited ("the Licensee").

Lokkho Praner Sur is a talent show in which young contestants perform religious themed songs for a panel of judges.

Ofcom received a complaint that the programme contained several visual references to the fruit juice manufacturer Shezan. Logos for Shezan and the product Shezan Mango were situated on the judges' desks and in various locations around the stage area. Although sometimes obscured by on-screen graphics, these logos were clearly visible to viewers on many occasions throughout the programme.

We requested information from the Licensee about any commercial arrangements relating to the inclusion of the manufacturer logos in the programming. Based on the information provided, Ofcom considered that the material raised potential issues under the following rule of the Code:

- 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 requested comments from the Licensee on how the content complied with this rule.

Response

The Licensee apologised for what it said was a human error and accepted that broadcast was not compliant with Rule 9.5 of the Code. It also assured Ofcom that the error would not be repeated and confirmed that a check of all broadcast material had been undertaken. The Licensee added that arrangements have been made for further internal training amongst its editorial team.

Decision

Reflecting our duties under the Communications Act 2003¹, Section Nine of the Code limits the extent to which commercial references can feature within editorial content. The rules in this section help ensure there is a distinction between advertising and programming.

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Rule 9.5 requires that references to products, services or trade marks in programming must not be unduly prominent. Undue prominence may result from such references where there is no editorial justification or from the manner in which they are referred to. Ofcom's published guidance² on undue prominence makes clear that where a product, service or trade mark appears in a programme "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".

Ofcom recognises that there may be legitimate editorial grounds for programmes to include references to products and services. However, when doing so, care is needed to ensure that editorial content is not used, or is likely to be viewed as being used, as a platform to promote those products and services.

In this case, there were several visual references to Shezan and Shezan Mango during a singing contest. Given the circumstances, there did not appear to be any editorial justification for their inclusion in the programme. Ofcom accepted that the appearance of the logos occurred as a result of human error and acknowledged the Licensee's assurance that the error would not be repeated. However, Ofcom's decision is that the programme gave undue prominence to Shezan and Shezan Mango, in breach of Rule 9.5 of the Code.

Breach of Rule 9.5

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

In Breach

A Mouthworth of Southworth with Denise Southworth Wythenshawe FM, 8 August 2018, 14:00

Introduction

Wythenshawe FM is a community radio station licensed to provide a service for people in Wythenshawe, Manchester. The licence for this service is held by Wythenshawe Community Media ("Wythenshawe" or "the Licensee").

A complaint alerted Ofcom to a charity appeal that was broadcast during *A Mouthworth of Southworth with Denise Southworth*, a weekly music and talk radio show.

During the programme, the presenter spoke to a guest about their job as a DJ and charity work that they were involved in. The guest spoke about "*one of [their] charities*" which they said aimed to "*buy buildings for the homeless, send children away on holiday, and also to fight mental health issues*". The guest gave details of a "*major event coming up*" to raise money for this charity. The presenter told listeners to "*get a pen and paper*" to take down the details of the event. Listeners were given information by the guest and the presenter about how to buy tickets for this event and how they could donate to the charity.

From the complaint, Ofcom understood that in the following week's programme, broadcast on 15 August 2018¹, questions were raised by the presenter about the legitimacy of the charity.

Ofcom considered that the material raised potential issues under the following Code rule:

- Rule 10.11: "Fund-raising activity broadcast on behalf of a charity (or emergency appeal) is only permitted if:
- [...]
 - the broadcaster has taken reasonable steps to satisfy itself that:
 - the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and,
 - the organisation concerned is not prohibited from advertising on radio".

Ofcom requested comments from the Licensee on how the material complied with this rule.

Response

In Wythenshawe's initial response to Ofcom, it said that it had a "failure in due diligence" and that the presenter had "failed to carry out a robust check on the organisation concerned". Wythenshawe said that it was therefore unable to provide evidence to Ofcom that "[the] presenter was aware of the organisation's charitable status".

¹ The Licensee was unable to provide a copy of this programme to Ofcom when requested. This matter is being considered separately by Ofcom.

However, in further correspondence, Wythenshawe said that the presenter had confirmed that she “did check with the charity authorities and could find no issues” regarding the organisation’s charitable status. Ofcom asked for further details about the steps taken by the Licensee. In response, Wythenshawe provided Ofcom with two screenshots: one of the guest’s Facebook page, which gave the name of their charity and stated “Not for profit charity [sic]”; and, one of guidance on the Charity Commission’s charity register from the UK government’s website, which gave various reasons why a charity might not be included in the register, including that charities would not be listed if they had an income of less than £5,000. Wythenshawe also provided Ofcom with a copy of an email from the presenter in which she said that the guest “quite clearly stated in the interview [that they were] initially looking to get a few blankets/warm clothing, which would mean [they] would not need to register such a low-budget charity”. The presenter added that “the charity had only been going a couple of weeks”.

Wythenshawe said that as a result of Ofcom’s investigation, it would be “offering further training to all volunteers” and would provide an updated handbook “clearly advising all volunteers of the various guidelines, rules and regulations from Ofcom and Wythenshawe Community Media Radio”. Wythenshawe said that it would also undertake a “full review of [its] administration procedures”.

Decision

Reflecting our duties under the Communications Act 2003², Section Ten of the Code contains rules designed to protect consumers from harm.

Rule 10.11 of the Code requires licensees to take reasonable steps to satisfy themselves that an organisation can provide evidence of charitable status before broadcasting an appeal or fund-raising activity on its behalf.

We acknowledged the Licensee’s representations that the presenter had considered that the organisation’s income was sufficiently low that it would not be included in the charity register. We also acknowledged that the Licensee told us that the presenter had checked the guest’s Facebook page. The Licensee provided us with a copy of the Facebook page, which described the organisation as a not-for-profit charity which had only been operating for “a couple of weeks”.

We also took into account that the presenter thought that the appeal would be for “a few blankets/warm clothing”. However, during the programme, the guest did not ask listeners to donate blankets or clothing, and instead promoted a charity event, which both the guest and the presenter encouraged listeners to buy tickets for.

We acknowledged that Wythenshawe said that the presenter had “failed to carry out a robust check on the organisation concerned”. However, it is the Licensee’s responsibility to ensure that material it broadcasts complies with the Code.

² <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

We therefore considered that the actions taken by Wythenshawe were insufficient to satisfy itself that the organisation involved was of charitable status. We took into account the steps being taken by the Licensee to improve its compliance. However, Ofcom's Decision is that the broadcast was in breach of Rule 10.11.

Breach of Rule 10.11

Resolved

Jeremy Vine

Channel 5, 24 October 2018, 09:15

Introduction

Jeremy Vine is a topical magazine programme broadcast live on weekday mornings on Channel 5. The licence for Channel 5 is held by Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee").

The programme features a panel of guests who discuss various news items. Viewers are also invited to participate in discussions, via telephone and social media platforms. The programme's presenter is usually Jeremy Vine, but for this episode it was Anne Diamond.

A viewer alerted Ofcom to offensive language in the above programme during a discussion around oversharing on social media. At 10:33, a telephone caller identified as "Chris" was put to air and discussed how he likes to share pictures of his daughter on social media, which he finds *"brings people together"*. The following exchange then took place between Chris and Anne Diamond ("AD"):

Chris: *"My daughter's four, she started school last month".*

AD: *"Oh bless, I bet there's a nice picture of that".*

Chris: *"Which is one of the things that I shared".*

AD: *"Absolutely, I'm sure it is. Do you, do you –"*

Chris: *"Big fat cunt".*

The call was terminated, and Anne Diamond immediately apologised, saying: *"Thank you very much, right well I do apologise for that creeping in on air. Isn't it amazing how people sometimes can let you down".*

She apologised again around a minute later, adding: *"Let me just go back to that. I'm very sorry. I apologise unreservedly for any offence caused by the language that you just heard a couple of moments ago. It was unacceptable, it was revolting, it was horrible. We do our best to avoid such language causing offence but, hey, we're all human. Again, my apologies".*

Anne Diamond apologised again at the end of the programme, saying: *"Let me just again apologise for something that happened a bit earlier on in the programme. So let me say once again I would like to apologise for what happened earlier, unreservedly, for any offence that might have been caused to you if you were watching. It was unacceptable. We do our best to avoid such language on this programme".*

We considered the material raised potential issues under the following Code rule:

Rule 1.14: *"The most offensive language must not be broadcast before the watershed".*

Ofcom requested comments from the Licensee on how the programme complied with the above rule.

Response

Channel 5 said, "*Jeremy Vine* is one of very few Current Affairs programmes on UK television with live phone-ins" and there is "clear public interest value" in providing viewers with the "broadest possible opportunity to contribute to [the programme's] debates with the least amount of filtering".

The Licensee explained that the programme is made by ITN productions ("ITN"). It said that the ITN production team can receive as many as 350-600 calls each week from members of the public and that the team "attempts to offer as many of these callers as possible the opportunity to air their views live on the programme", which is around 35-40 callers each week. It also said that ITN has "robust systems in place to prevent as many problem callers as possible from being put to air", and it gave Ofcom details of these systems.

Channel 5 said that "twice in the past couple of months ["Chris"] had managed to get through and swear on air". It said that "although he was using a new name and saying he was from a different location, his number should have been flagged by the system as a problem caller". Channel 5 said that it had not been possible to determine whether this was due to a software glitch or human error.

The Licensee said that if a caller "uses unacceptable language or behaves in an unacceptable manner whilst on air", it has a protocol in place, which includes:

- the presenter issuing a "formal on-air apology", and depending on what was said, the presenter repeating that apology later in the programme; and
- a discussion with the programme lawyer "will immediately determine whether the call needs to be edited out of the +1 broadcast of the programme and also out of the My5 online iteration".

Channel 5 said that "Chris" did not use any offensive language before being put on air or "give any indication that he was likely to do so". It said that as soon as he used the offensive language, the "strict protocol we have in place was followed". The Licensee said, "An external lawyer employed by Channel 5 to ensure regulatory compliance views the show on a daily basis and was in the ITN studio viewing the show when the incidents in question happened. He ensured that the protocol was followed and also that an apology was repeated at the end of the show and alerted Channel 5 to the issue. Steps were also immediately taken to ensure that the language was not re-transmitted an hour later on Channel 5 +1".

Channel 5 also said that ITN had taken various actions since the incident, including:

- reiterating the importance of the process to all producers involved, and all producers are receiving further legal training;
- all staff who operate the software system have undertaken additional "one-on-one" training; and
- the phone number used by "Chris" has been blocked, and a producer spoke to a person on the number (who denied he was responsible) and explained to him how seriously the issue was being taken.

Channel 5 said that it “apologises unreservedly to any viewer who was offended by the language” and believes that the “further training and extra measures” put in place will prevent the caller in question being put to air again.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed on television.

Ofcom's 2016 research² on offensive language clearly indicates that the word “cunt” is considered by audiences to be amongst the most offensive language. The inclusion of the word in this programme at 10:33 was therefore a clear example of the most offensive language being broadcast before the watershed.

Programmes which feature live interaction with viewers clearly carry an increased risk of offensive language being used on air. Broadcasters should have procedures in place to minimise the risk, as far as practicable.

We took into account that the Licensee had taken a number of measures in advance to minimise the risk of offensive language being broadcast. While it was unfortunate that the software system did not identify the caller's number, we acknowledged the steps taken by ITN to minimise further the risk of offensive language being broadcast in future. We also took into account that the Licensee's protocol for handling such incidents was followed in full, including the presenter apologising on air immediately afterwards, and three times in total.

In light of these factors, Ofcom's Decision is that this matter is resolved.

Resolved

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

² On 30 September 2016, Ofcom published updated research in this area – *Attitudes to potentially offensive language and gestures on television and on radio* – which is available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

Resolved

The X Factor

ITV, 17 November 2018, 20:54

Introduction

Ofcom received a complaint about the broadcast of offensive language during this episode of the reality music competition. After a contestant's performance and comments from the judges, judge Louis Tomlinson ran on stage to hug the contestant and said "*I fucking love you lad*".

We considered the material raised potential issues under the following Code rule:

Rule 1.14: "The most offensive language must not be broadcast before the watershed..."

Ofcom requested comments from the Licensee on how the programme complied with this rule.

Response

ITV said that it takes "careful steps to avoid offensive language being used during the live shows". It said that contestants and judges are briefed by producers before transmission about the need for their language and behaviour to be appropriate. The producers discuss with the judges their observations during dress rehearsals so that they have a broad idea of what the judges are likely to say in the live shows. ITV also said that a member of the compliance team is in attendance in the studio during all live shows to advise producers should an unforeseen issue occur.

ITV said that in this instance the language used by Mr Tomlinson was not heard by the compliance team during the live broadcast as the microphone was muffled. ITV said that had the offensive language been noticed, the producers would have instructed the presenter to make an immediate on-air apology for the use of the language.

After the broadcast, when the use of offensive language became clear, the Licensee said it took the following steps to minimise offence and ensure the offensive language was not re-broadcast:

- The programme was edited for the daytime repeat broadcast on ITV the next day.
- The edited version of the programme replaced the original version of the programme on ITV's catch-up service.
- The presenter gave an on-air apology during the following episode of *The X Factor* broadcast the next evening (18 November).

ITV apologised to the complainant for any offence caused.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed on television.

Ofcom's 2016 research² on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language.

The inclusion of the word "fucking" in this programme at 20:54 was therefore a clear example of the most offensive language being broadcast before the watershed.

However, we took into account that this was a live broadcast, the Licensee had taken a number of measures in advance to minimise the risk of offensive language being broadcast, and that an on-air apology had been issued by the presenter the next day.

We also took into account that the Licensee had taken immediate steps to avoid the offensive language being broadcast again during the daytime repeat of the programme the next day and on its catch-up service.

In light of these factors, Ofcom's Decision is that this matter is resolved.

Resolved

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

² On 30 September 2016, Ofcom published updated research in this area – *Attitudes to potentially offensive language and gestures on television and on radio* – which is available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with 'Key Commitments' *Big City Radio CIC, 9 to 10 July and 6 to 7 August 2018*

Introduction

Big City Radio is a community radio station licensed to provide a service for "all the communities of Aston with a particular focus on the area's ethnic communities". The licence is held by Big City Radio CIC ("Big City" or "the Licensee").

As with all community radio stations, Big City is required to deliver 'Key Commitments'¹, which form part of its licence. The station's Key Commitments set out how the station will serve its target community and includes a description of the programme service.

Ofcom received two complaints that Big City Radio was not broadcasting the service described in its Key Commitments, in particular, that it was not delivering its programming requirements relating to the provision of speech content and original output. We therefore requested programme schedules² from the 9 to 13 July and 6 to 10 August 2018 and recordings of four days of Big City Radio's output from 9, 10 July and, 6 and 7 August 2018.

Having listened to the recordings provided by the Licensee, it appeared that Big City was not delivering the following of its Key Commitments:

- Description of character of service: "The service compromises...information aimed at, and likely to appeal to, the target community groups in the licensed area".
- Speech: "The main types of speech output broadcast over the course of each week are: news (international and local), travel, community information and what's on, weather, national and local sport".
- Original output: "The service provides original output³ 24 hours per day".

Ofcom considered this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Big City'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

¹ Big City's Key Commitments are contained in an annex to its licence and can be found at: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000038.pdf>.

² Ofcom separately investigated Big City's non-provision of this information. See page 67 for further details.

³ Original output is output that is first produced for and transmitted by the service and excludes output that was transmitted elsewhere before. Original output can be live or voice-tracked. Repeat broadcasts of original output do not count towards the minimum requirement.

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

We requested comments from Big City Radio on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

Response

Big City accepted that it was not delivering its Key Commitments. It explained that it has "staffing problems" during "every holiday period" because all of its volunteers have children and so are less available during school holidays. It explained that the station also had a high turnover of volunteers due to the success of its coaching leading to volunteers finding full time employment and no longer volunteering at the station. The Licensee submitted that during holiday periods the station has "good output, albeit very heavy on the music side".

To prevent a recurrence, Big City said that it would "employ, with the help of grants a full time programme maker who will record all the necessary speech content for all the programmes".

The Licensee also indicated that it wanted to discuss with Ofcom applying to reduce its Key Commitments relating to the provision of speech content and original output.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licences require the provision of the specified licensed service. This is the fundamental purpose for which a community radio licence is granted.

Over the period monitored, it was clear that Big City failed to deliver its Key Commitments relating to the number of hours of original output. We found that the Licensee was broadcasting significantly less original output per day than the required 24 hours per day. Original output amounted to three hours on 9 July 2018 and two hours on 10 July 2018. There was no original output broadcast on 6 and 7 August 2018.

Additionally, we found that there was no local news, travel, community or 'what's on' information or national and local sport being broadcast over the period monitored. There was also no content which Ofcom considered met the definition of information aimed at, and likely to appeal to, the target community groups in the licensed area.

We noted the Licensees' explanation that the school holidays affected volunteer numbers. While the period during August was in the school holidays, the period in early July was not. Whatever the reason for a lack of volunteers, Licensees must have in place contingency plans to meet their Key Commitments at all times.

Ofcom's Decision therefore was that Big City was in breach of Conditions 2(1) and 2(4).

We noted that the Licensee was found in breach of Conditions 2(1) and 2(4) of its licence on 21 May 2018⁴ for failing to comply with its Key Commitments in relation to the provision of original and locally-produced content. In our breach decision, we reminded all community radio licensees of the importance of ensuring that they are practically able to deliver their Key Commitments, and that if they are unable to they should ask to change them accordingly. In that breach decision we also notified the Licensee that, should further breaches of this type occur, we may consider further regulatory action including the imposition of a statutory sanction. The Licensee has not formally requested a reduction to its Key Commitments and Ofcom is concerned that the Licensee appears to still be unable to meet them. Given that this is the second breach of Licence Conditions 2(1) and 2(4) that has been recorded by Ofcom within eight months, we are putting the Licensee on notice that we are minded to consider this breach for the imposition of a statutory sanction.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Big City Radio CIC (licence number CR000038)

⁴ Issue 354 of Ofcom's Broadcast and On Demand Bulletin can be viewed at:
<https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>
https://www.ofcom.org.uk/data/assets/pdf_file/0011/114104/issue-354-broadcast-on-demand-bulletin.pdf

In Breach

Providing a service in accordance with 'Key Commitments' *B.R.F.M Bridge Radio Limited, 19, 20 and 21 August 2018*

Introduction

BRFM is a community radio station licensed to provide a service to Minster, Isle of Sheppey. The licence is held by B.R.F.M Bridge Radio Limited ("B.R.F.M" or "the Licensee").

Like other community radio stations, B.R.F.M is required to deliver the 'Key Commitments', which form part of its licence.¹ These set out how the station will serve its target community and deliver social gain (community benefits), and also include a description of the programme service.

Ofcom received a complaint that B.R.F.M was not broadcasting the service described in its Key Commitments, in particular, that the station's programming was largely automated, with no local news, interviews or features with local guests. We therefore requested a programme schedule and recordings of three days of B.R.F.M's output from 19, 20 and 21 August 2018.

We noted that no local or community news or discussion programmes were broadcast on 19, 20 and 21 August. Furthermore, other than the "What's on Guide", there was no information programming.

It therefore appeared that B.R.F.M was not delivering the following of its Key Commitments:

- Description of character of service: "...Local news and information is a mainstay of daily programming...the station provides...a stage from which the community can air views".
- "Speech. The main types of speech output broadcast over the course of each week are: local and community news, information and discussion programmes and output produced by local community organisations and/or schools".

Ofcom considered this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to B.R.F.M'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 B.R.F.M's Key Commitments are contained in an annex to its licence and can found at:
<http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000107.pdf>

We requested comments from B.R.F.M on how it was complying with these conditions.

Response

B.R.F.M accepted that the speech and local news content was insufficient during the period in question, and cited the following reasons for the difficulty in maintaining the usual speech and local news programming.

The Licensee explained that there was a general lack of volunteers and staff available during the summer period due to holidays meaning that the station was left with minimal staff. It continued that two volunteers, who support each other to produce the local news, were also unavailable at the same time during this period in question. B.R.F.M submitted that it can usually meet its Key Commitments over the summer period with that level of volunteers and staff, but in addition this year three volunteers were on long-term leave for personal reasons.

The Licensee also explained that the problem was further compounded by the extreme hot weather during the time in question which meant that it "found it difficult to cover live shows". This was because of the studio being housed in a shipping container which combined with the heat and failure of the air conditioning unit to bring temperatures down acceptable health and safety levels meant that presenters and guests could not be in the studio for prolonged periods of time.

B.R.F.M explained that it had since implemented new schedules featuring "specific shows dedicated to speech broadcast and local issues", with additional hours dedicated to speech and more interview with community groups, and recruited additional volunteers "to act as backup to the Local News team". It also explained that a new studio "with facilities to control the temperature" is nearly complete which is hoped will prevent the weather from being an issue in the future.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licences require the provision of the specified licensed service. This is the fundamental purpose for which a community radio licence is granted.

Over the period monitored, B.R.F.M failed to deliver the speech and local news content requirements of its Key Commitments or meet the description of its character of service which states that "Local news and information is a mainstay of daily programming".

Ofcom acknowledged the Licensee's explanation that the reason for its failure to meet these requirements over this period was essentially a logistical one, in that volunteers were unavailable and the hot weather conditions made the studio environment unsuitable for presenters and live guests. However, we are concerned that B.R.F.M had not made Ofcom aware of this situation at the time, or sought to implement measures to ensure the continued delivery of its Key Commitments in light of these logistical difficulties.

We noted the Licensee's future plans to implement a new schedule and recruit additional volunteers. However, the Licensee did not meet the requirements of its Key Commitments to provide local and community news and information over the period we monitored.

Therefore, Ofcom's Decision was that B.R.F.M is in breach of Licence Conditions 2(1) and 2(4).

We are putting the Licensee on notice that Ofcom will monitor this service again to check its Key Commitments compliance.

We remind all community radio licensees of the importance of ensuring that they are practically able to deliver their Key Commitments, and that if they are unable to they should have in place contingency measures and plan in advance.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by B.R.F.M Bridge Radio Limited (licence number CR000107BA)

In Breach

Providing a service in accordance with 'Key Commitments' *Llandudno Community Radio Limited, 10 to 16 September 2018*

Introduction

Tudno FM is a bi-lingual station in English and Welsh for the people of Llandudno, especially the Tudno and Mostyn wards. The licence is held by Llandudno Community Radio Limited ("Llandudno Community Radio" or "the Licensee").

As with all community radio stations, Llandudno Community Radio is required to deliver the 'Key Commitments' which form part of its licence¹. The station's Key Commitments set out how the station will serve its target community and includes a description of the service.

Ofcom received a complaint that Llandudno Community Radio was not broadcasting the service described in its Key Commitments, in particular, that it was not delivering its programming requirements relating to the provision of Welsh content and original output. We therefore requested a programme schedule and recordings of three days of Tudno FM's output from 10, 11 and 12 September 2018.

We noted that no Welsh content was broadcast on 10, 11 and 12 September 2018. We also noted that the broadcast output across the days monitored consisted of a significant amount of automated music which could not be counted as original output. It therefore appeared that Tudno FM was not delivering the following of its Key Commitments:

- Description of character of service: "a bi-lingual station in English and Welsh...";
- "Over the course of the week output is broadcast in English and Welsh"; and
- "The service provides original output² for a minimum of 10 hours per day".

Ofcom considered that this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Llandudno Community Radio's licence. These state, respectively:

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

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

¹ The Key Commitments are contained in an annex to Llandudno Community Radio's licence. They can be viewed in full at

<http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000156.pdf>

² Original output is output that is first produced for and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live or voice-tracked. Repeat broadcasts of original output do not count towards the minimum requirement.

We requested comments from Llandudno Community Radio on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

Response

In its response, Llandudno Community Radio confirmed to Ofcom that there was no Welsh content broadcast over the course of the week 10 to 16 September 2018. The Licensee said that Llandudno Community Radio was currently operating a “skeleton service” while in the process of relocating. It also said that several of its presenters had recently left the station, some of whom presented their programmes in Welsh or bilingually.

The Licensee also said that, in order to keep the station on air and therefore fulfil its licence obligation to broadcast a service, it had been transmitting automated music from its playlist, interspersed with “station identifiers”. The Licensee said it realised this was “not an ideal situation” but that it was “the best we can do in the circumstances”.

Llandudno Community Radio said that it was currently in the process of finalising details of its relocation and said that it then intended to “recruit new presenters with a view to relaunching the station”.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the licensed service specified in their Key Commitments. This is a fundamental purpose for which a community radio licence is granted.

During the week 10 to 16 September 2018, it was clear that Llandudno Community Radio failed to meet the description of its character of service as a “bi-lingual station in English and Welsh...” and to meet the requirement set out in its Key Commitments to broadcast content in both English and Welsh over the course of the week.

It was also clear that, over the three days we monitored, Llandudno Community Radio failed to meet the minimum requirement for the broadcast of original output set out in its Key Commitments. Over the days 10, 11 and 12 September there was a significant amount of automated content which did not appear to include any of the “station identifiers” referred to by the Licensee. Ofcom does not consider an automated playout of continuous music, with no speech content, to constitute original output. We therefore concluded that, while the service was required to broadcast a minimum of 10 hours of original output on each of the days monitored, its original output amounted to eight hours on Monday 10 September, nine hours on Tuesday 11 September and eight hours on 12 September.

Ofcom noted Llandudno Community Radio's explanation that it has been operating a “skeleton service” whilst in the process of relocating, and that several of its presenters had recently left the station. However, the Licensee did not meet its requirement to broadcast content in both English and Welsh over the course of the specified week or meet its requirement to provide a minimum of 10 hours of original output per day. Ofcom's Decision is therefore that Llandudno Community Radio was in breach of Licence Conditions 2(1) and 2(4).

We noted that the Licensee was previously found in breach of Licence Condition 8(2) on 22 October 2018 for failing to make and retain recordings and provide them to Ofcom on

request³. Ofcom is concerned about this second breach of licence conditions within a short space of time. We are therefore putting the Licensee on notice that Ofcom will monitor this service again to check both recording retention and Key Commitments compliance.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Llandudno Community Radio Limited; licence number CR000156

³ See issue 364 of Ofcom's Broadcast and On Demand Bulletin:
https://www.ofcom.org.uk/data/assets/pdf_file/0015/124116/issue-364-broadcast-on-demand-bulletin.pdf

In Breach

Providing a service in accordance with 'Key Commitments' *Tees Valley Christian Media, 1 to 7 October 2018*

Introduction

Cross Rhythms Teesside is a community radio station licensed to provide a service for "the Christian community in the Tees Valley area, and particularly the 16-35 age group". The licence is held by Tees Valley Christian Media ("TVCM" or "the Licensee").

Like other community radio stations, TVCM is required to deliver 'Key Commitments', which form part of its licence.¹ These set out how the station will serve its target community and deliver social gain (community benefits), and also include a description of the programme of service.

Ofcom received a complaint that the station was not broadcasting the service described in its Key Commitments, in particular, that it was not delivering its programming requirements relating to the provision of speech content and original output². We therefore requested recordings of three days of TVCM's output from 1, 2 and 3 October 2018 and a programme schedule for the week 1 to 7 October 2018.

Having listened to the recordings and having assessed the programme schedule provided by the Licensee, it appeared that TVCM was not delivering the following Key Commitments in full:

- Description of character of service: "programming...includes...local news and information".
- Speech: "The main types of speech output broadcast over the course of each week are: ... local travel and weather".
- Original output: "The service provides original output for a minimum of five hours per day on weekdays and at least two hours per day at weekends".
- Locally-produced output³: "The service provides locally-produced output for a minimum of five hours per day on weekday and at least two hours per day at weekends".

¹ TVCM's Key Commitments are contained in an annex to its licence and can found at: <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000098.pdf>.

² Original output is output that is first produced for and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or 'voice-tracked'. Repeat broadcasts of original output do not count towards the minimum requirement.

³ Locally-produced output is any output made and broadcast from within the service's licensed coverage area. It may include all types of local production.

Ofcom considered this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to TVCM's licence. These state, respectively:

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

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

We requested comments from TVCM on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

Response

In its response, the Licensee explained that on 1 and 2 October 2018 the service's breakfast time presenter had been away but that he had "previously primed his audience that he would be away for two days". TVCM said that all other scheduled content went ahead as usual during this period.

TVCM said that it was currently broadcasting 25 hours of original and local output per week and that it had dropped to this figure from the level required in its Key Commitments due to two volunteer presenters stepping down because of other commitments.

Additionally, the Licensee submitted that "the operating equipment and systems inherited by the current leadership team were...coming to the end of their useful life". The Licensee explained that "after considerable investment in new hardware and software" the station would be fully operational "transmitting full local content" by Friday 16 November 2018. It also said that it had recruited a further three presenters who would contribute to TVCM's required number of hours of original output going forward.

In relation to the provision of local news, travel and weather information, TVCM said that local news and weather is "now a full feature of all live shows", and invited Ofcom to review its output again in the future.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the specified licensed service. This is the fundamental purpose for which a community radio licence is granted.

During the period monitored, TVCM failed to deliver its Key Commitments relating to the number of hours of original and locally-produced output. On 1, 2 and 3 October 2018, the service was required to broadcast a minimum of five hours of original and locally-produced output each day. However, Ofcom found that the station had broadcast two hours of original and locally-produced output on 1 October, two hours on 2 October and three hours on 3 October.

Additionally, we found that there was no local news, information, travel or weather being broadcast between 1 and 7 October as required by the Key Commitments.

Ofcom therefore found the Licensee in breach of Licence Conditions 2(1) and 2(4).

We noted that the Licensee had been found in breach of its licence for failing to meet its Key Commitments in relation to the provision of original and locally-produced programming in 2015⁴, 2016⁵, 2017⁶. On each occasion the Licensee assured Ofcom that it had plans in place to increase the amount of original and locally-produced programming hours to meet its Key Commitments.

The last time the Licensee was found in breach of Conditions 2(1) and 2(4), Ofcom considered the breach for the imposition of a statutory sanction. However, following publication of the Decision, Ofcom was satisfied that the service had subsequently made progress towards meeting its Key Commitments and had plans in place to maintain them going forwards. We therefore decided not to impose a statutory sanction on the Licensee.

Ofcom is extremely concerned that, despite previous assurances, the Licensee appears to be unable to meet its Key Commitments to broadcast original, locally-produced programming. Given that this is the fourth breach of Licence Condition 2(4), we are putting the Licensee on notice that we are minded to consider this breach for the imposition of a statutory sanction.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Tees Valley Christian Media (licence number CR000098)

⁴ Issue 282 of Ofcom's Broadcast and On Demand Bulletin can be viewed at:
https://www.ofcom.org.uk/data/assets/pdf_file/0021/50349/issue_282.pdf

⁵ Issue 304 of Ofcom's Broadcast and On Demand Bulletin can be viewed at:
https://www.ofcom.org.uk/data/assets/pdf_file/0035/49796/issue_304.pdf

⁶ Issue 332 of Ofcom's Broadcast and On Demand Bulletin can be viewed at:
https://www.ofcom.org.uk/data/assets/pdf_file/0020/103709/issue-332-ofcom-broadcast-on-demand-bulletin.pdf

In Breach

Provision of information

Big City Radio CIC

Introduction

Big City Radio is a community radio station licensed to provide a service for “all the communities of Aston with a particular focus on the area’s ethnic communities”. The licence is held by Big City Radio CIC (“Big City” or “the Licensee”).

Like other community radio stations, Big City is required to deliver ‘Key Commitments’, which form part of its licence.¹ These set out how the station will serve its target community and deliver social gain (community benefits), and also include a description of the programme service.

Ofcom received two complaints about the Licensee’s compliance with its Key Commitments. We therefore asked the Licensee to provide recordings of the content broadcast on 9 and 10 July and, 6 and 7 August 2018, as well as the full programme schedules for those weeks, to determine whether the service was broadcasting the licensed service described in its Key Commitments.

After twice extending the deadline for provision of the requested material, Ofcom received the recordings of the service’s broadcast content from Licensee on 10 September 2018. However, Big City did not provide the full programme schedules for the specified dates as requested.

Ofcom sent a further request to the Licensee for this material on 27 September 2018, however, the Licensee again failed to provide the full programme schedules for the specified dates.

On 16 October 2018, we formally requested the information in accordance with Licence Condition 9(1) (“General provision of information to Ofcom”) of Big City’s licence, which states that the Licensee:

“...shall furnish to Ofcom in such a manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act, or the Communications Act”.

The Licensee failed to submit the required information by the final deadline. We therefore requested comments from the Licensee about how it had complied with this licence condition.

¹ Big City’s Key Commitments are contained in an annex to its licence and can be found at: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000038.pdf>.

Response

The Licensee did not provide a response to the specific matter of failure to provide information.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licences require the provision of the specified licensed service. This is the fundamental purpose for which a community radio licence is granted.

Ofcom therefore has a duty to ensure that community radio services provide the service for which they have been licensed.

In this case, Ofcom requested information from the Licensee to assist us in carrying out a timely assessment of the recordings it had provided to check whether it had met its Key Commitments.² The Licensee did not provide the information requested, in breach of Licence condition 9(1).

Breach of Licence Condition 9(1) of the Schedule to the community radio licence held by Big City Radio CIC (licence number CR00038BA)

² Ofcom separately investigated Big City's compliance with its Key Commitments on 9 and 10 July and, 6 and 7 August 2018. See page 55 for further details.

Fairness and Privacy cases

Upheld

Complaint by Ms Mahnaz Ghezellou

Cheshmandaz, Iran International, 6 June 2018

Summary

Ofcom has upheld this complaint made by Ms Mahnaz Ghezellou of unjust or unfair treatment in the programme as broadcast.

The programme included a discussion about the 29th Annual Conference of Iranian Women's Movement Inside Iran which was being held in Stockholm from 8 to 10 June 2018. During the discussion, one of the contributors referred to a petition in protest at the invitation of a particular speaker to the conference [i.e. Ms Ghezellou, the complainant] and said that she had made "*false accusations against one of the LGBT activists*". Ms Ghezellou complained that she was unfairly treated in the programme and was not given an opportunity to respond to the allegations made against her.

Ofcom considered that:

- the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to the Ms Ghezellou.
- the broadcaster should have provided Ms Ghezellou with an appropriate and timely opportunity to respond to the allegations being made in order to avoid unfairness to her.

Programme summary

On 6 June 2018, Iran International broadcast an edition of *Cheshmandaz*, a current affairs programme presented by Ms Tannaz Khameh. Iran International is a Farsi language channel broadcast under an Ofcom licence held by Global Media Circulating Limited. As the programme was broadcast in Farsi, an English translation was prepared by Ofcom and provided to the complainant and the broadcaster for comment. Both parties made comments on the translation which were assessed by Ofcom and amended where appropriate. A final version of the translation was then provided to the parties who were informed that Ofcom would use the translation for the purpose of the investigation.

The first topic to be discussed in the programme was Saudi Arabia's decision to lift the ban on female drivers and the reaction to this change and the influence it may have on other women's rights issues in the country and elsewhere. The programme then included a discussion about the 29th Annual Conference of Iranian Women's Movement Inside Iran which was being held in Stockholm from 8 to 10 June 2018 and how such conferences can "*help women in Iran and what challenges do they face?*". During this discussion, the presenter was joined in the studio by Ms Shadi Sadr, a lawyer and human rights activist, and Ms Shabham Azar, a reporter for Iran International. Also taking part in the discussion via videolink was Ms Naeemeh Doustar, a member of the local committee in charge of organising the conference, and Ms Monir Baradaran, one of the spokespersons at the conference. The presenter introduced the topic:

"...it has been nearly three decades since the Iranian Women Studies Foundation has been active as an independent foundation based outside Iran. This year, the foundation is hosting guests from across the world from 8 to 10 June. To what extent has this conference that is held in one of the cities of the world been able to build a connection with women in Iran, and beyond that, has also been effective? What common points are there between the women's movement and other social movements, and what organisations or individuals in the world support them?"

A pre-recorded report from Ms Azar was then shown. It included footage of various speakers from previous conferences in the programme and, in a voiceover, Ms Azar said:

"Presentation of a female narrative with female minds and words from Iranian contemporary history and the representation of the suffering, failures and successes of Iranian women in Iran and the world is one of the efforts that can be seen in the record of the Iranian Women Studies foundation..."

Ms Azar went on to state that the topic being discussed during the conference in 2018 was *"Allies of the Women's Movement in the Region and the World"*. She also explained that *"as with every year, roundtable discussions are to be held with the participation of feminists from Iran and other parts of the world to discuss controversial and sensitive topics related to Iranian women"*. She added that:

"In the past three decades, the foundation has built a network between Iranian women across the world and also those interested in Iranian women's activities. Like every year, the organisers of the conference will introduce another successful Iranian woman for her contribution to women's society".

The report ended and the presenter in the studio asked Ms Doustar, who was one of the organisers of the conference, about the reasons for the chosen topic of the conference and who would be speaking. The presenter then asked Ms Baradaran about the topic that she would be discussing at the conference. The following conversation then took place between the presenter and Ms Sadr:

Presenter: *"...Ms Sadr, you have also participated in these conferences in previous years, I think?"*

Ms Sadr: *Yes, I participated twice: once in 2000 in Stockholm, and once in 2009 in Hanover, Germany, where I was the spokesperson at the Women's Studies Foundation Conference.*

Presenter: *On what topics did you speak?*

Ms Sadr: *In Stockholm, in fact, I talked about the relation of the youth, young women, with the women's movement, their role in women's movement. And, in Hanover, I talked about the women's movement's tendency not to deal with imposed hijab and why we are not ready to do our homework on imposed hijab.*

Presenter: *Yes. Let us go back to this year. Any incident, any conference or event that is held sometimes pursues marginal issues. This conference has had its marginal issues this year too. Can you elaborate on these a bit?*

Ms Sadr: *Yes. So far as it relates to me, I am one of more than 130 signatories of a letter of objection that was signed by activists of various groups in protest at the invitation and granting of a platform to a speaker [the complainant, Ms Ghezellou] of the Studies Foundation, whose role in making false accusations against one of the LGBT activists of the women's movement has been confirmed and proved. Unfortunately, this was without knowing what the source of this smear campaign was. And, in this protest statement, we tried to provide an explanation about the accusation, and we requested and invited the participants to object to this speech in any peaceful manner they could. I think it is essential to clarify one point here, from a legal point of view, about the meaning of defamation, because in Iranian society we usually mix these definitions together. For example, let us say we easily insult each other and say mercenary, spy, traitor, and all these things, but what makes defamation more notable among other aggressive verbal abuses – and this is seen at the highest level and it is considered a crime everywhere in the world due to the same reason – is that defamation is, in fact, making a criminal accusation against someone. This means that you attribute something to someone which is a crime according to the law and you cannot prove it and do not have any proof or documentation for it. For example, to say that a person has raped someone, for instance, or say they have committed economic corruption, engaged in money laundering, these are crimes in the laws of all countries, and if someone cannot prove them, then they have defamed that person. It is exactly due to the same reason that defamation actually targets someone's honour and respect, and due to the same reason, it is significant.*

Another issue is defamation online, which is, again, even more important, because what is published in a newspaper or what someone says in a speech passes by, but what is on the Internet remains there forever. And another point, the final point, is that Iranian society usually thinks that private conversations, or chat, or what we tell each other in a chat, or let's say, the emails that we forward each other, are private. This is while, in the laws of the countries where we live, as I said, because of the significance of the crime [of] defamation, and even sending any defaming statements privately, through e-mails or anything else, is still considered defamation. This is, in fact, the main point of our objection to this part of the conference of the Women's Studies Foundation.

Presenter: *Thank you Mrs Sadr. It is the 29th year that these conferences are being held, and they have had their positive impacts too. They have always dedicated a part of it to the arts too..."*

The presenter then asked Ms Azar about the role of the arts in the women's movement and, later, asked Ms Doustar about the criteria they look for in choosing who delivers a speech or participates as an artist. The presenter also asked Ms Doustar whether men were also asked to participate.

The presenter then asked Ms Baradaran further questions about the topic she would discuss at the conference. The presenter and Ms Sadr then had the following conversation:

Presenter: *"...Mrs Sadr, we come back to you and the objection you mentioned. Well, in your opinion, don't such objections harm the women's movement?"*

Ms Sadr: *I think, if I were to reply in one word, I would say no. Because, I think all these objections and disputes resulting from it can, in fact, lead to progress. It can raise issues that Iranian society has not faced so far, because many of the concepts that we talk about today or have been discussed in relation to this conference are not basically concepts built into Iranian society, but grow from the heart of struggles in Iranian society and, therefore, come with its culture. For example, this is good, such issues should be raised and discussed. Whether such issues can harm the women's movement I think depends to a great extent on how we deal with these issues. Should we move forward with constructive discussions and hold talks with each other? Or should we employ destructive methods that are definitely not favoured by anyone? Another issue is that, I think, the point that this matter is being raised in a conference that, as my friends have said, is one of the achievements of the women's movement, and for the same reason I have participated in it twice. However, after 29 years, despite being scientific and based on research, this conference still lacks a particular creed that we can refer to under such circumstances, that is, how it views the issue of having a speaker whose performance is – or, according to some people's beliefs – against the charter, objectives, and spirit of this conference. Or, if there is someone among the speakers with a history that does not give them the credibility and status to be a speaker at this conference, how should the organisers of the conference confront them? This happens in all scientific communities. All scientific communities that are strict supporters of freedom of speech and in fact, places where the most challenging issues are discussed without concern, have creeds. We can see that, even after the name of a speaker is announced – for example, I was looking at a conference on biology a few days ago that has nothing to do with this. Just because one of its speakers, who is a very prominent professor of Oxford University, had published a tweet making fun of feminists, they announced that, with all due respect for freedom of speech, since what this speaker did does not accord with the principles they believe in, they are cancelling the speech. Therefore, I think these issues help us understand what is freedom of speech, the rights of defenders...*

Presenter: *This is exactly the questions that came to my mind now too, that if we oppose someone making a speech somewhere, many might say there is freedom of speech.*

Ms Sadr: *Exactly.*

Presenter: *But, you say that if there is a creed based on which decisions can be made there wouldn't be a problem.*

Ms Sadr: *No, because all these groups or conferences and universities have certain principles, so that when they receive a report – as in this particular case the report was received by the documents department, the Studies Foundation, before they announced the speakers' names – if there is an issue, a problem with one of the speakers, they have the responsibility of carrying out research. And, they should carry out such research independently. This*

research should not be based on friendships or personal relationships. They have the duty to hear out the other party too, to review documents, and based on the written charter that they have [to] make a final decision and transparently announce what process they went through, how they gave both parties the right to talk. Both the parties, the victim and the defaming party, were given their rights, and then ultimately, they announce their decision. Everyone will surely accept a decision that they can stand by and is a logical one, and there will be no objections”.

The presenter thanked Ms Sadr for her contribution and asked Ms Azar whether she knew of any artists in Iran who had applied to participate in these types of conferences. The presenter concluded the programme and said:

“Thank you very much. I would have really liked to continue this discussion with Mrs Doustar, Mrs Baradaran, and Mrs Sadr on the issues you raised. Unfortunately, our time is very short. We will try to continue these discussions in future programmes. And also, those who did not participate in this programme but may have objections can contact us, come here, and express their views...”.

Ms Ghezellou was not named in the programme and there was no further reference to the matter she complained about.

Summary of the complaint and the broadcaster's response

Complaint

Ms Ghezellou complained that she was treated unjustly or unfairly in the programme because untrue allegations were made about her in the programme and that she was not given an opportunity to respond to them. Ms Ghezellou said that the programme was broadcast to intentionally harm her reputation in the Iranian community worldwide.

In particular, Ms Ghezellou said that:

- the programme falsely alleged that she had a “confirmed and proven” role in defaming another activist. Ms Ghezellou said that a court had found that another activist was liable for publishing defamatory articles against a colleague of Ms Sadr, one of the contributors to the programme. Ms Ghezellou said that she had forwarded an email in confidence to the activist, but said that this did not mean that she was responsible for its content, or that she had played a role in defaming this person.
- Ms Sadr’s “flawed” definition of defamation only served to exaggerate Ms Ghezellou’s alleged “crime”.
- Ms Sadr unfairly stated that the Iranian Women’s Studies Foundation (“IWSF”) had not dealt with her request to disinvite Ms Ghezellou diligently and fairly. She said that the IWSF had released a statement saying that “they could not act as a court of law to examine and pass judgement on allegations”, and that they had rejected the request “after consulting with a professional lawyer”. However, Ms Ghezellou said that the programme chose not to include this information.

Ms Ghezellou said that although she was not named in the programme, she was easily identifiable as there was a public campaign organised by Ms Sadr which called for Ms Ghezellou’s speech at the conference to be cancelled or disrupted. Ms Ghezellou added that

as the programme makers were aware of this campaign, and that Ms Sadr would “*call into question my moral character, personal reputation and professional standing*”, Ms Ghezellou should have been given an opportunity to respond to the claims being made. She further added that the presenter did not provide the other contributors on the programme with an opportunity to challenge Ms Sadr's claims.

Broadcaster's response

Iran International said that the presentation of a letter of protest at the conference discussed in the programme, which had more than 130 signatories, was a main talking point at the conference and “in the circles who follow it”. It was therefore a matter of legitimate and considerable public interest that a significant protest had taken place, over the inclusion, as a speaker, of the complainant.

The broadcaster said that the studio guest, Ms Sadr, stated that Ms Ghezellou had made false accusations about another LGBT activist, and that was why the petition had been raised. It added that Ms Sadr, a lawyer, then went into some detail about defamation, particularly with regard to online defamation.

Iran International said that it would have been impossible to cover the story of the protest without outlining that Ms Ghezellou had been accused of making defamatory comments about another activist, and it believed that covering the story of the protest was important to this community and its wider audience.

The broadcaster said that at no stage did the programme name Ms Ghezellou, nor did it state the specific accusations against her that brought about the petition. It further added that Ms Ghezellou had not denied the existence of the petition.

Iran International said that Ms Ghezellou had complained to the broadcaster the day after the broadcast of the programme in which she denied being banned from the conference or being guilty of making defamatory comments. It said that the complaint was reviewed and the broadcaster contacted Ms Ghezellou and explained that almost all the discussion was about the conference and not about her, that she had not been named and, that the guest had been talking about something that was a talking point at the fringe of the conference. It said that Ms Ghezellou requested a special appearance on the programme, which was declined as it was deemed “inappropriate to build a special segment around Ms Ghezellou” and because there were no plans for further coverage of the conference. However, the broadcaster did offer Ms Ghezellou the opportunity to write an article for its website and to appear as a guest on the programme the next time relevant topics were discussed. The broadcaster said that Ms Ghezellou did not accept the offer of writing the article and said that: “maybe you can invite me in the future”.

Iran International said that the programme only discussed the protest petition and referred to the defamation claims in that context. It said that the reason for raising the matter with the studio guest was its importance to the community and its audience. It added that at no stage did the programme give details of the accusation, it only mentioned it in order to explain the protest. In response to the claim that the conference had not chosen to “disinvite” Ms Ghezellou, it said that the programme judged that the important story had been the actual protest against her. It also said that Ms Sadr's comments should be seen on the basis of the live programme's decision to raise a matter of legitimate public interest, and immediately after Ms Ghezellou contacted the programme, a right of reply was offered (in

the form of an article for the website written by Ms Ghezellou), which she chose not to accept. It added that Ms Ghezellou had been offered a separate appearance on the programme in which she was to be interviewed about current developments in the feminist movement.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Ms Ghezellou's complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant submitted representations about an offer of resolution from the broadcaster in relation to her complaint. The broadcaster also made representations which are summarised, insofar as they are relevant to the complaint entertained and considered by Ofcom, below.

Broadcaster's representations

Iran International said that it considered Ms Ghezellou's claims that any allegations made against her are unfair or unfounded have not been tested in a court of law. It understood that she did not deny forwarding an email she wrote about an activist, and this is what is at the heart of the issue. It said that it would be up to a court to decide whether that email was defamatory and whether putting it into the public domain was legal and justified.

The broadcaster said that the programme was aware of the intense rivalry between the various activist groups in this area. It added that it made a point of not naming Ms Ghezellou, but still discussed the matters that the dispute raised as it believed they were a matter of legitimate public and news interest.

Iran International said that not only was the programme live, but most of its guests were in different countries, making an on-air right of reply impractical. The challenge of providing a live link to another activist who might be anywhere in the world makes this kind of response too challenging. It said that Ms Ghezellou did not complain until after the broadcast of the programme.

Iran International said that Ms Ghezellou was given a right to reply immediately after the live broadcast. It said that the programme makers explained to Ms Ghezellou that she could not appear on the programme immediately because it had no plans to cover the subject again, but she was given an opportunity to write an article on the website. It considered that this was a proportionate and sensible approach in the context of a multi-platform news channel which cross-promotes content across its broadcast and digital output. It added that Ms Ghezellou had not denied that she was given this opportunity.

Iran International said that it did not accept that the claims made by Ms Ghezellou had been legally tested and it believed she had been given an appropriate opportunity to respond.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of it, and both parties' written submissions. We also took careful account of the representations made by the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View on the complaint. After careful consideration of the representations, we considered that the points raised did not materially affect the outcome of Ofcom's decision to uphold the complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

Ofcom considered Ms Ghezellou's complaint that she was treated unjustly or unfairly in the programme because untrue allegations were made about her in the programme and that she was not given an opportunity to respond to them. Ms Ghezellou said that the programme was broadcast to intentionally harm her reputation in the Iranian community worldwide.

In considering this complaint, we had particular regard to the following Practices of the Code:

Practice 7.9:

"Before broadcasting a factual programme...broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation..."

Practice 7.11:

"if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

The Code recognises the importance of freedom of expression and the public interest in allowing broadcasters the freedom to broadcast matters in programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to people or organisations. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the cases including, for example, the seriousness of any allegations and the context within which they

were presented in the programme. Therefore, Ofcom began by considering whether the matters complained of had the potential to materially and adversely affect viewers' opinions of Ms Ghezellou in a way that was unfair.

We first considered whether Ms Ghezellou was identifiable in the programme. We took into account that Ms Ghezellou was not named in the programme. However, we recognised that the programme did refer to a petition against a person who had been invited to speak at the conference, one of the contributors had explained the reason the petition had been launched and, it appeared that it was only one person who people had objected to appearing at the conference. In addition, the conference itself had been named and viewers were informed that more than 130 activists had signed a petition against this speaker. We also took into account that the broadcaster confirmed in its statement, that while not named, the programme was referring to a petition launched against Ms Ghezellou and that she was the person being discussed. Taking these factors into account, we considered that it was likely that Ms Ghezellou was, at least, potentially identifiable to the viewers to the programme as the speaker at the conference being referred to in the programme. Being satisfied that Ms Ghezellou was identifiable as the subject of the allegation, we therefore went on to consider whether the comments made in the programme resulted in any unfairness to Ms Ghezellou.

As set out in the "Programme summary" above, the programme discussed the 29th Annual Conference of Iranian Women's Movement Inside Iran which was to be held in Stockholm. The presenter said to Ms Sadr *"this conference has had its marginal issues this year too"* and asked her to elaborate on this. Ms Sadr spoke about a letter, which had been signed by more than 130 activists *"in protest at the invitation and granting of a platform to a speaker of the Studies Foundation, whose role in making false accusations against one of the LGBT activists of the women's movement has been confirmed and proved. Unfortunately, this was without knowing what the source of this smear campaign was"*. Ms Sadr also provided a definition of defamation in which she referred to it as *"making a criminal accusation against someone"* that you *"cannot prove"*. In particular, she referred to forwarding private emails which contain defamatory statements and said: *"This is in fact, the main point to our objection to this part of the conference of the Women's Studies Foundation"*. Ms Sadr also stated that some people's belief was that Ms Ghezellou's behaviour was *"against the charter, objectives and spirit of the conference"* and discussed how this should have been dealt with by the conference organisers.

In our view, the comments made about Ms Ghezellou were critical of her. In particular, viewers would have understood from the programme that Ms Ghezellou had made "false accusations" against an LGBT activist; that these accusations amounted to "defamatory statements"; and, that the organisers of the conference had not dealt with the objection to Ms Ghezellou appearing at the conference appropriately. We therefore considered that the comments about Ms Ghezellou had the clear potential to materially and adversely affect viewers' opinion of her because it would have, in our view, suggested to viewers that Ms Ghezellou had acted inappropriately and against the values of the conference and, that there was a proven and legitimate reason for the petition and protest against Ms Ghezellou.

We then considered whether the presentation of these statements in the programme as broadcast resulted in unfairness to Ms Ghezellou. Ofcom acknowledges broadcasters' right to freedom of expression and that they must be able to broadcast programmes on matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an

obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

We took into account the broadcaster's submissions that the letter of protest was a matter of legitimate public interest to the community and wider audience and that it said that it could not have covered the story about the protest without outlining that Ms Ghezellou had been accused of making defamatory comments about another activist. We also took into account the broadcaster's statement that Ms Ghezellou had not denied the existence of the petition.

Given this context, we considered it was legitimate for the broadcaster to include in the programme a discussion about the protest and the view of Ms Sadr, who was one of the signatories of the petition. We also took into account that this was just one of many topics related to the conference which was discussed during the programme.

However, Ofcom considered that the comments made by Ms Sadr went beyond simply a discussion about the petition and the background to it and instead presented a view that Ms Ghezellou had, as fact, made false accusations about another activist which were defamatory, that she should not have been invited to be a speaker at the conference and that it was unlikely the matter had been investigated properly.

We took into account the broadcaster's representations that the programme was broadcast live. We recognise that such programmes can present particular challenges to broadcasters. It is Ofcom's view, therefore that for live programmes it may not always be possible for the broadcaster to obtain responses from other prior to, or during, the programme. However, in such circumstances, broadcasters need to be particularly aware that they have a duty to ensure that reasonable care is taken that the broadcast material is consistent with the requirements of the Code. It must not mislead viewers or portray people or organisations in a way that is unfair.

Given this, Ofcom assessed the steps, if any, that the broadcaster took to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair the Ms Ghezellou.

Iran International provided no evidence it had taken any reasonable steps before the live broadcast, for example, by anticipating that allegations may be made and by putting appropriate measures in place to reduce the risk for potential unfairness. During the programme itself, the presenter had asked Ms Sadr specifically about the petition and made no attempt to challenge the comments of Ms Sadr. This was despite it appearing that the broadcaster had planned to discuss this matter with Ms Sadr. In addition, nowhere else in the programme was anything said to balance or place into appropriate context the comments made about Ms Ghezellou by explaining, for instance, that it only reflected Ms Sadr's personal view of the matter. Further, at no point was the viewpoint of Ms Ghezellou reflected in the programme. Therefore, in our view, the comments made about Ms Ghezellou in the programme amounted to significant allegations about her which had the potential to materially and adversely affected viewers' opinions of Ms Ghezellou and which were presented in the programme in a way that was unfair to her.

In addition, in accordance with Practice 7.11, we considered that in these circumstances, the broadcaster should have offered Ms Ghezellou an appropriate and timely opportunity to respond to the allegations in order to avoid unfairness to her. We understood that Iran

International had not sought Ms Ghezellou's response to the allegations prior to the broadcast of the programme. The broadcaster said that it had offered Ms Ghezellou an opportunity to respond following the broadcast. While we recognise that such an attempt was made by the broadcaster to resolve the matter with the complainant, it was our view that this was not sufficient to avoid unfairness to Ms Ghezellou in the programme as broadcast.

Ofcom considered Ms Ghezellou was treated unjustly or unfairly treatment in the programme as broadcast.

Ofcom has upheld Ms Ghezellou's complaint of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr Altaf Hussain, made on his behalf by Mr Adil Ghaffar News Bulletin, Geo News, 2 February 2018

Summary

Ofcom has not upheld this complaint by Mr Altaf Hussain¹, made on his behalf by Mr Adil Ghaffar, of unjust or unfair treatment in the programme as broadcast.

The programme included a report about the arrest of a “30 year-old Pakistani” in connection to the kidnapping and subsequent murder of Mr Saeed Khan, the General Secretary to the Awami National Party, a political party in Pakistan. Footage of Mr Hussain’s car and private security personnel was included in the report.

Ofcom considered that, in this case, material facts were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Hussain in the programme as broadcast.

Programme summary

Geo News is an Urdu language channel broadcast under an Ofcom licence held by Geo TV Limited (“Geo TV”). As the programme was broadcast in Urdu, an English translation was obtained by Ofcom and provided to the complainant and the broadcaster for comment. Neither party responded. Ofcom therefore used this translation for the purposes of investigating the complaint.

On 20 February 2018, the presenter of Geo News introduced the news story:

“News that Awami National Party’s London General Secretary, Saeed Khan, who had previously been kidnapped, has now been found killed. Police arrested on the spot the person responsible. A 30 year-old Pakistani has been arrested by the police”.

At this point, footage was shown for approximately three seconds of a large dark grey car parked in a narrow side street. The make of the car and its number plate were visible. Behind the car was parked a van. Three men were shown standing around the vehicles. Two police officers were also shown.

The presenter continued:

“We are told that following the post mortem the body will be taken to Pakistan. Geo News’ correspondent Wadud Mushtaq will report on this”.

A caption was also shown:

“Breaking News. Awami National Party’s London General Secretary Saeed Khan has been killed following his kidnapping”.

The reporter then said:

¹ Mr Hussain is the founder and leader of the Pakistani political party, Muttahida Quami Movement (“MQM”).

"Saeed Khan had been living in the UK for the past two decades. He was active in social and political matters. According to the police he was kidnapped on the evening of 24 January from London's east end, in an area called Ilford. His body was found from a local graveyard. In connection with this, a Pakistani man has been arrested and is currently being investigated. Party representatives and his friends Javed Akhunzada, Iftikhar Khan and Maqsood Anwar have expressed shock at his brutal death. Talking to Geo News they said that the party has lost an honest and sincere party worker".

The report then included brief contributions from three men who spoke about how difficult it would be for the ANP UK to replace Mr Khan, the anguish his family must be feeling, and the confidence the community had in the police in finding those responsible. The following captions were also shown at this point of the report:

"Awami National Party's General Secretary Saeed Khan, murdered following kidnapping".

"Following the post mortem his body will be taken to Pakistan".

The reporter then concluded the report:

"ANP's national leader Asfandiyar Khan Wali has expressed deep concern at the news of Saeed Khan's murder. He expressed condolences with his family and dependants and said that Saeed Khan's political service will not be forgotten. According to police sources, following the post mortem the body will be released to his dependants. According to the family the body will be taken to Bajaur Agency for burial. Wadud Mushtaq, Geo News, London".

The report ended without further reference to Mr Hussain.

Summary of the complaint and broadcaster's response

Mr Ghaffar complained that Mr Hussain was treated unjustly or unfairly in the programme as broadcast because the bulletin deliberately showed Mr Hussain's personal car, along with his private security staff, outside Southwark Police station. Mr Ghaffar said that this footage was filmed about four years ago, however, it was shown in this report as the presenter said that a person had been arrested by the police in relation to the murder of Mr Khan. Mr Ghaffar said that the programme was part of "another malicious campaign to malign the MQM and Mr Hussain" by linking MQM and Mr Hussain to "this horrific incident".

In response, Geo TV said that Mr Hussain's team had raised a concern with the programme makers on the day the programme was broadcast that Mr Hussain's car was being shown in the news report. It said that the programme makers promptly reviewed the item, determined that it contained a brief clip of Mr Hussain's car, but no other reference or connection to him in the story. Geo TV said that "...an inadvertent error had occurred, and a corrected news item was broadcast in the next news bulletin", which it said did not contain the brief clip of the car. Geo TV also said that "in the next News Bulletin, it was clarified that the car footage [of the car] was broadcasted as an error and that [Geo TV] apologises for the footage being aired". The broadcaster also said that the later corrected report also made clear that the car had no connection to the news story about the death of Mr Khan².

² In fact, the later corrected edition of the report stated: "Prior to this [ie the earlier report], a picture of the police was incorrectly broadcast, for which we apologise".

Geo TV explained that the clip of the car was stock footage from Geo TV's archive, which had been tagged "London Police Station". It said that the footage had been picked up by its news editor because the metadata had included this tag. It said that the metadata on the clip had now been updated to read "Altaf Hussain Car at London Police Station".

The broadcaster said that there had been no mention of Mr Hussain in the news story and that Geo TV did not consider that audiences would have "in any manner" recognised a connection to Mr Hussain from the grey car parked at the police station and shown for four to six seconds. It said that it was unfortunate that the clip had also included Mr Hussain's car, but that it "highly doubted" the UK audience would know about the car or recognise it, given that the broadcaster "had no evidence" that the car was registered to Mr Hussain, or that it was in his personal use. Geo TV said that its intention was to resolve the issues with the complainant as soon as it was identified.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr Hussain's complaint, made on his behalf by Mr Ghaffar, should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of it and both parties' written submissions.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

In assessing whether Mr Hussain had been treated unjustly or unfairly as a result of the inclusion of the footage of his personal car and private security personnel in the programme, we had particular regard to Practice 7.9 of the Code, which states:

“Before broadcasting a factual programme..., broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation...”.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters in the public interest in programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to people or organisations in programmes. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case.

Ofcom began by considering the content of the footage included in the news report. As set out in detail above in the “Programme summary”, the footage, which was very brief and lasted approximately three seconds, showed a picture of a large grey car, placed prominently in the foreground of the footage, parked down an unnamed side street. The image also showed three men and two police officers who were standing next to or nearby the vehicle. Mr Hussain told us that this was his car and one of these men was a member of his security personnel who was shown unobscured. The car was facing the camera and its make, colour and licence plate number were clearly visible. We also took into account that the footage had been filmed some years prior to the event which was the subject of the report. Ofcom considered that the inclusion of footage of Mr Hussain’s car and security personnel in this context had the potential, if viewers recognised it as his car, to wrongly imply to viewers that Mr Hussain was in some way associated with the murder of Mr Khan.

In Geo TV’s submissions, it said that the footage of Mr Hussain’s car and security personnel was included in the programme as broadcast as a result of an “inadvertent error” due to the way the footage had been tagged in its archive of stock footage. However, broadcasters are responsible for taking reasonable care under Rule 7.9 of the Code to ensure that broadcast material is consistent with the requirements of the Code and does not mislead viewers or portray people or organisations in a way that is unfair.

Ofcom next went on to consider whether the broadcaster’s inclusion of the footage of Mr Hussain’s personal car and private security personnel, and the context within which it was shown, resulted in unfairness to Mr Hussain in the programme as broadcast.

We took into account that the footage was included in the context of a news bulletin which reported on the murder of Mr Khan and that as the footage was shown the presenter stated that a “30 year-old Pakistani” was “*the person responsible*” for Mr Khan’s murder and that this person had subsequently been “*arrested by the police*”.

The footage was shown very briefly, for about three seconds. We took into account that, while the car number plate was clearly, albeit briefly, visible in the footage, it was not personalised to Mr Hussain in any way and the car itself had no distinguishing features. We therefore considered that viewers were unlikely to have been able to recognise from the footage shown that the car belonged to Mr Hussain, unless they already had very specific knowledge of the car he used. Similarly, the footage of Mr Hussain’s security personnel was also very brief and shot from such a distance that the man’s facial features were not particularly clear or distinguishable. He was also not named or referred to specifically at any point during the programme. Ofcom therefore considered it unlikely that viewers would have been able to recognise from the footage shown that the man belonged to Mr Hussain’s

private security team, unless they already had knowledge of Mr Hussain's security arrangements. Taking this into account, Ofcom did not consider it likely that the general viewing audience would have made a connection to Mr Hussain from the footage of his car and security personnel included in the programme.

In light of this, and recognising that the broadcaster took steps to correct later editions of the report and to apologise for the error, we considered that the inclusion of the brief footage of Mr Hussain's car and security personnel in the programme as broadcast was unlikely, in itself, to materially or adversely affect viewers opinions of Mr Hussain in a way that was unfair to him.

Ofcom therefore considered that there was no unjust or unfair treatment to Mr Hussain in the programme as broadcast.

Ofcom has not upheld Mr Hussain's complaint, made on his behalf by Mr Ghaffar, of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr Tasveer Palray *The Debate, Panjab Radio, 7 July 2018*

Summary

Ofcom has not upheld this complaint by Mr Tasveer Palray of unjust or unfair treatment in the programme as broadcast.

The programme included a discussion with representatives of the parties standing for election to the management committee of the Singh Sabha London East Gurdwara ("the Gurdwara"). During the programme, a member of the incumbent management committee named Mr Palray and read out part of an email sent by him to the management committee about one of its building contracts. Mr Palray said that he was treated unjustly or unfairly in the programme because criticisms were made about him and he was not offered an opportunity to defend himself.

Ofcom considered that the reference to Mr Palray did not amount to serious allegations against him. Ofcom took the view that, in the particular circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Palray. It was therefore not necessary for the broadcaster to have provided Mr Palray with an appropriate and timely opportunity to respond in order to avoid unfairness to him.

Programme summary

On 7 July 2018, Panjab Radio broadcast *The Debate*, a programme dedicated to the Singh Sabha London East Gurdwara management committee elections that were to be held the following day. The programme featured representatives of the parties standing for election discussing the management of the Gurdwara by the incumbent committee, and management of numerous building projects that were planned or underway.

As the programme was broadcast in Punjabi, an English translation was obtained by Ofcom and provided to the complainant and the broadcaster for comment. Both parties made comments on the translation which were assessed by Ofcom and amended where appropriate. A final version of the translation was then provided to the parties who were informed that Ofcom would use this translation for the purpose of its investigation.

During the programme, the following exchange took place between the guests. Mr Satnam Singh was a member of the incumbent management committee:

Presenter: *"Next point? We only have 27 minutes left. Yes, Mr Satnam Singh."*

Mr Singh: *The next thing is the Barking building project. Many upsetting comments were made on Facebook as well as on WhatsApp. Some said the Gurdwara has been closed, the work has been closed, the builders are bankrupt, this happened, that happened; they made us suffer so much that there is no limit to it. The work on the Gurdwara is being completed on time, and it is within the budget."*

- Presenter: *Mr Satnam Singh let us discuss about the school in the end, first, let us discuss the main points.*
- Mr Singh: *The community members were really great, they helped us a lot. Now, I will not name names, but a lot of people gave big donations. One such donation was for concrete; a man called Mandeep Singh came and said that all the concrete used in building the Gurdwara will be given by him, it will cost us £125,000 to build God's places [referring to the Gurdwara]. When they go to meet Mankamal's brother Tasveer Singh [the complainant, Mr Palray], who was a committee member, he sent us an email in which they wrote that 'the concrete will be under the sub-contractor of the main contractor'. They [the management committee at the time] didn't ask how much he [Mr Mandeep Singh] donated, and they started spreading rumours about him that he is a sub-contractor. And that man, when he came to know, because he made an independent building committee there were eight to ten members of the community Bhuttar Singh Nijjar, Mandeep Singh, Raja Rajvinder, Amrik Singh Gill, the best member of the committee was Ravinder Singh Jamu; they appointed me and asked me to organise the meetings. They then asked me to talk to the architect and tell them who the sub-contractor is and what his share is. He [Mr Mandeep Singh] was a member; he came to know about it and he said 'I don't want this shame. On one side I am giving £125,000 worth of concrete and this work has just started, God knows where it will go'. We had a loss of £125,000 and they are responsible for it. He then sent an email saying that they will have the meetings and mention five to six names, that I will not mention, who were committee members and some leaders. They signed the email and provided a contact number in a hard copy and said we will meet with you immediately.*
- The meeting has not yet taken place. They did not even reply to the email, let alone have the meeting. Now, tell me who is accountable for the loss of £125,000 worth of concrete for the Gurdwara? The community has to understand this; after all they were responsible for this as they sent the email and the work stopped. He then donated £51,000 in cash and said, 'I would like to give more but they lost so much money and put off an enthusiastic person which was totally unacceptable'.*
- Mr Kulbir Singh: *Similarly, Paramjeet Singh Hayer who supplied concrete said he would supply the labour free of charge, saying we would be better off. If we add both amounts, then we potentially lost almost £150,000.*
- Presenter: *Ultimately, it is the loss of Gurdwara Sahib. Nobody loses anything individually.*
- Mr Kulbir Singh: *Yes.*
- Mr Singh: *Yes.*
- Mr Kulbir Singh: *You asked Tarsem Singh whether they did grievance in their AGM?*

Presenter: Yes.

Mr Kulbir Singh: *Let me tell you, at the 2018 AGM only four members from their group came. In that meeting Tarsem Singh gave a statement saying that when he was not near the building he felt incomplete; he said that and left the place without listening to anybody else. Upkar Singh was sitting there, he also left. Tirlok Singh Johal was there, he said that we have heard that you have increased the loan amount from £990,000 to £1,085,000, and at that time I gave the statement.*

If you can prove it, I will give immediately resign. I will not even come to the committee. I have contributed to the committee for 18 months and I cannot tolerate people lying to me.

Mr Singh: *Tarsem Singh said that he felt incomplete because the Gurdwara Sahib building is being built very slowly. I would like to say that when girls get married in the Gurdwara Sahib 100-150 people can be accommodated and 400 people can visit. Initially, the people who used to come would drink tea and coffee and leave, but now people are served food and we have the utensils. Didn't they feel bad or incomplete at that time? I would like to ask how we can facilitate the Gurdwara without being so slow. They ignored the senior citizens. It was written that the gym facility is available for senior citizens and kids as well. We are also going to that age group. They want a state of the art facility, but how can it be built without a tie?*

Presenter: *Yes, I also said to Upkar Singh that time is always an issue, even when you refurnish or redecorate a house a little bit.*

Mr Singh: Yes.

Mr Kulbir Singh: *Yes. Tarsem Singh said that we have different rules for the AGM. In 2015, I was not a member of the committee. I asked to speak for two to three minutes and he refused, saying 'You are not a member', which I accepted".*

The programme continued and other topics and issues concerning the Gurdwara were discussed. No further mention of the complainant was made in the programme.

Summary of the complaint and the broadcaster's response

Complaint

Mr Palray complained that he was treated unjustly or unfairly in the programme as broadcast because criticisms were made about him and he was not offered an opportunity to defend himself.

Mr Palray said that, as a member of Singh Sabha London East Gurdwara (and a member of the previous management committee), he had written to the management committee requesting clarity about some of the building contracts they had awarded over the last two years. He said that one of the guests, a member of the incumbent management committee,

decided to name him publicly and read out part of the email that he had sent to the committee over a year ago. Mr Palray said that he felt that this was done to target and belittle him. He said that he was not informed that the email would be read out and that he would be publicly named and criticised. He said that the debate was "a farce" and that the programme "gave airtime for the guest to throw insults and baseless accusations". Mr Palray said that he was named and criticised because the "guest wished to throw mud publicly at those who supported another party".

Broadcaster's response

Panjab Radio said that Mr Palray was referred to only once in the programme in respect of an email about a donation of concrete. It said that the words attributed to Mr Palray in the email were: "*the concrete will be under the sub-contractor of the main contractor*". The broadcaster said that, whether or not the statement was factually accurate, it appeared to be a statement of fact as then understood by Mr Palray. Panjab Radio said that the statement did not imply any wrongdoing by Mr Palray. It also said that there was no accusation or allegation of incompetence made against Mr Palray. The broadcaster said that naming someone once and in connection with a statement about concrete for a building being "*under the subcontractor of the main contractor*" could not reasonably be viewed as targeting or belittling them.

Panjab Radio accepted that Mr Palray would not have been aware that part of his email would be read out during the programme. However, it said that, as above, Mr Palray was not criticised. It said that, given no accusation, allegation, or criticism was made against Mr Palray in the programme, it was not necessary to give Mr Palray an opportunity to respond. It said that, in its view, the words attributed to Mr Palray were "so insignificant that they did not, in fact, amount to anything".

Panjab Radio said that if there was any criticism being made at all, which it did not consider there was, it was against the Committee as a whole as opposed to Mr Palray. It said that the guest frequently referred to "*they*" and that it was unclear who "*they*" were, but that it was evident that this did not refer to Mr Palray personally. The guest asked: "*who is accountable for the loss of £125,000 worth of concrete for the Gurdwara?*", but Panjab Radio said that it was unclear what had actually been lost and how the events unfolded, and that the guest did not answer his own question or implicate Mr Palray. It said that during the programme, Mr Palray was not mentioned in connection with £125,000 or any funds. It said that Mr Palray was not accused of any wrongdoing, misappropriation or personal or professional misconduct.

Panjab Radio disputed that the programme was a "farce" as suggested by Mr Palray, and also said that Mr Palray's claim was irrelevant to whether there was any unfairness towards him. It also said that no accusations were made about Mr Palray and that no insults were "thrown at him". Panjab Radio said that Mr Palray had not explained how any unfairness has been caused apart from the guest reading out an email that Mr Palray had written, and that this "in itself cannot amount to unfairness".

Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

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

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

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

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

Ofcom considered Mr Palray's complaint that he was treated unjustly or unfairly in the programme because criticisms were made about him and he was not offered an opportunity to defend himself.

In considering this complaint, we had particular regard to the following Practices of the Code:

Practice 7.9 states:

"Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation..."

Practice 7.11 states:

"If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

Ofcom's role is to consider whether the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to Mr Palray. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the

case including, for example, the seriousness of any allegations and the context within which they were presented in the programme. Therefore, Ofcom began by considering whether the matters complained of had the potential to materially and adversely affect listeners' opinions of Mr Palray in a way that was unfair.

As set out in the "Programme summary" above, Mr Satnam Singh read out an email sent by Mr Palray to the management committee, which said *"the concrete will be under the sub-contractor of the main contractor"*. We took into account that Mr Palray was not informed that he would be named in the programme or that his email would be read out. However, we also considered that the content of the email as read out appeared, in our view, to be only a statement about the detail of the concrete contract and the status of who would be providing the concrete. Ofcom considered that this comment, in itself, did not raise any issues that had the potential to materially and adversely affect listeners' opinions of Mr Palray in a way that was unfair to him.

The guests then went on to discuss the loss of a concrete contract. During this conversation, Mr Satnam Singh said: *"we had a loss of £125,000 and they are responsible for it"*, and asked: *"who is accountable for the loss of £125,000 worth of concrete for the Gurdwara?"* We took into account that Mr Singh's question remained unanswered by the presenter and the guests. We also took into account the fact that the guests frequently used *"they"* during this conversation and that several other names were also mentioned by the guests in addition to Mr Palray's name. Having carefully read the translated transcript of the programme, it was our view that it was unlikely to have been clear to listeners precisely who (either a specific individual/s and/or potentially the Committee as a whole) was being referred to during this exchange. We therefore considered it unlikely that listeners would have attributed Mr Satnam Singh's comments about the responsibility for the loss of the concrete contract to be specifically referring to Mr Palray. In this context, we did not consider that the presenter, nor any of the guests on the programme, had made any comments that amounted to serious allegations about Mr Palray.

Taking all these factors into account, Ofcom found that the single reference to Mr Palray and his email in the programme was unlikely to have materially or adversely affected listeners' opinions of him in a way that was unfair. On that basis, Ofcom considered that material facts were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Palray.

Given that we considered that the programme did not contain allegations of wrongdoing or incompetence or make any other significant allegations about Mr Palray, we therefore also considered that there was no requirement on the broadcaster to have provided Mr Palray with an appropriate and timely opportunity to respond to the comments made in the programme in order to avoid unfairness to him, in accordance with Practice 7.11.

Ofcom has not upheld this complaint by Mr Palray of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr Chris Hobby, made on his behalf by Ms Karen Williams

The Late Night Alternative with Iain Lee, Talk Radio, 23 July 2018

Summary

Ofcom has not upheld this complaint by Mr Chris Hobby, made on his behalf by Ms Karen Williams, of unjust or unfair treatment in the programme as broadcast.

During this phone-in programme, Mr Hobby and the presenter, Mr Iain Lee, had an exchange in which Mr Hobby said to Mr Lee: *"I've invited you round for tea, you're not far from me"*. Mr Lee responded by saying that he did not want to go to Mr Hobby's house because he sounded *"like a sex criminal"*.

Ofcom considered that Mr Lee's comment about Mr Hobby was, in the context in which it was said, likely to have been understood by listeners to be an unfiltered and impulsive response to Mr Hobby's invitation, rather than a serious accusation of criminal wrongdoing. In the particular circumstances of this case, we took the view that Mr Lee's comment was unlikely to have materially or adversely affected listeners' opinions of Mr Hobby in a way that was unfair. Therefore, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Hobby.

Programme summary

On 23 July 2018, Talk Radio broadcast an edition of its daily phone-in programme, *The Late Night Alternative with Iain Lee*. The presenter, Iain Lee, introduced a call from "Chris" and the following conversation took place between them:

Mr Lee: *"Hello Chris, you're live on Talk Radio, how can we help you?"*

Mr Hobby: *I'd like to speak to Iain Lee.*

Mr Lee: *What would you like to say to Iain Lee, Chris?*

Mr Hobby: *I'd like to know if he likes my photograph of me standing by him on his farm in Dorset dressed as his new scarecrow "Bollock-chops", as he calls me?*

Mr Lee: *Oh! Yeah, I think he knows who you are".*

Mr Lee and Mr Hobby then argued about whether Mr Lee knew who Mr Hobby was, and whether Mr Hobby knew who Mr Lee was. This exchange continued (with Mr Lee and Mr Hobby frequently speaking over each other):

Mr Hobby: *"OK, ask him why. [Mr Hobby was interrupted by Mr Lee and the two men frequently interrupted each other throughout the call]*

Mr Lee: *Yes?*

Mr Hobby: *When he was interviewing Eve Thomas last year?*

Mr Lee: *Yeah? Oh! We know, he knows who you are.*

Mr Hobby: *And he blocked me for no reason. I didn't know who he was until then.*

Mr Lee: *He blocked you, he will have blocked you [Mr Hobby continues to talk in the background] Shut up, shut up, you rude man! Shut your face. Shut your face!*

Mr Hobby: *You silly boring man.*

Mr Lee: *You don't even know who he is, that's how thick you are.*

Mr Hobby: *And he doesn't know who I am.*

Mr Lee: *But at least he knows he's talking to you now. You don't know you're talking to him, dimwit.*

Mr Hobby: *I don't give a damn who I'm talking to, as long as it gets to the ears of Iain Lee.*

Mr Lee: *You're talking to him now, you absolute prune.*

Mr Hobby: *OK, why are you treating me like you are? You know nothing about what's...*

Mr Lee: *I know that you're an arse.*

Mr Hobby: *All the lies of my stalkers and abusers.*

Mr Lee: *I don't even want to talk about that. Shall I tell you?*

Mr Hobby: *No, you don't.*

Mr Lee: *No, I'll tell you why.*

Mr Hobby: *Because you do not know what the truth is.*

Mr Lee: *Shut your mouth. You are rude, you are rude. Who's Karen Williams? Who's Karen Williams?*

Mr Hobby: *What do you make of all of that that I tweeted to you from your friend's helpful troll?*

Mr Lee: *I don't read, I don't read stuff, I've muted it.*

Mr Hobby: *Well you should do, I posted a video.*

Mr Lee: *I don't click on links, you absolute prune. Who's Karen Williams?*

Mr Hobby: *A YouTube video.*

Mr Lee: *Who's Karen Williams?*

Mr Hobby: *Having a go at you and dissing you to all your colleagues at Talk Radio.*

Mr Lee: *Who's Karen Williams? Why are you tweeting under the name Karen Williams?*

Mr Hobby: *It's a shared account.*

Mr Lee: *Oh, a shared account. Here's the thing.*

Mr Hobby: *That's right, it's not a crime.*

Mr Lee: *Here's the thing, Karen, here's why I don't like you. Because you're nasty. And I'll tell you why you're nasty. Because I tweeted, this is the tweet I did, right: 'After all the stress of hosting a psychedelic, esoteric, late-night phone-in show...I have retired from show biz'.*

Mr Hobby: *No, you haven't, I'm talking to you now.*

Mr Lee: *Shut up, I'm reading the tweet out. I am reading the tweet out.*

Mr Hobby: *I've invited you round for tea, you're not far from me.*

Mr Lee: *I don't want to come to your house for tea, you sound like a sex criminal.*

Mr Hobby: *You've retired to the exact right place, because they call Bournemouth God's waiting room. Those trolls killed my partner.*

Mr Lee: *What a rude man.*

Mr Hobby: *And, they're trying to do it to me.*

Mr Lee: *Shut up, shut up, shut up.*

Mr Hobby: *And, you're supporting them. Shut up and go and get lost, Iain. Goodbye.*

Mr Lee: *No, no, don't put the phone down. Because I want to tell you why I don't like you and you're going to hear it, OK? Because there's a good reason. He put the phone down".*

The following conversation then took place between Mr Lee and his co-presenter, Ms Katherine Boyle:

Ms Boyle: *"Of course he did.*

Mr Lee: *Of course, he put the phone down.*

Ms Boyle: *Don't you phone him back.*

- Mr Lee: *Thank you. So, I tweeted: 'Effective immediately, I'm loving my new career working the land', right. So, he tweeted, from a fake name: 'good riddance'.*
- Ms Boyle: *Out of nowhere?*
- Mr Lee: *Out of nowhere. And then, tweeting from like three or four or five different accounts, all of this conspiracy theory stuff. Can I say, I, go on.*
- Ms Boyle: *The other thing I noticed was, he then proceeded to post, not 'at'-ing you, but as if you were having a conversation. Now, that, to me, sets off an alarm bell".*

Mr Lee then took a call from another listener and neither Mr Hobby, nor Ms Williams, were heard or referred to again in the programme.

Summary of the complaint and the broadcaster's response

Complaint

Ms Williams complained that Mr Hobby was treated unjustly or unfairly in the programme as broadcast because the presenter alleged that Mr Hobby "sounded like a sex criminal".

Ms Williams said that various internet 'trolls' had been persecuting Mr Hobby for more than a year with "horrendous lies on Twitter, which amount to homophobic hate crimes". She said that the presenter had acted as "an uncensored mouthpiece for the trolls" and had used a "public broadcasting medium to spread malicious lies" about Mr Hobby.

Broadcaster's response

Talk Radio acknowledged that in response to Mr Hobby's invitation for Mr Lee to come "round for tea", Mr Lee said: *"I don't want to come to your house for tea, you sound like a sex criminal"*. Talk Radio said that, in context, Mr Lee's response was neither unjust nor unfair. The broadcaster said that this response was merely an observation on what these strange and unwarranted requests from a caller sounded like. It said that these comments could "certainly not be construed as an accusation". It also said that Mr Hobby did not protest at Mr Lee's remark, and instead offered a "chilling riposte" by saying: *"you've retired to the exact right place, because they call Bournemouth God's waiting room. Those trolls killed my partner"*.

Talk Radio said that Mr Lee has been consistent and outspoken in his unqualified criticism and dislike of internet trolls, both as a victim and as a broadcaster. It also said that whenever the subject of trolls came up during his conversation with Mr Hobby, Mr Lee always closed down the subject. Talk Radio also said that the complainant had not offered any evidence that Mr Lee had acted as an "uncensored mouthpiece for the trolls", or that Mr Lee had used a "public broadcasting medium to spread malicious lies". It said that these accusations were "extremely offensive" to Mr Lee and were contrary to Mr Lee's "long-held opposition to trolls".

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr Hobby's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

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

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

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

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

Ofcom considered Ms Williams' complaint that Mr Hobby was treated unjustly or unfairly in the programme as broadcast because the presenter alleged that Mr Hobby sounded "*like a sex criminal*".

In considering this complaint, we had particular regard to Practice 7.9 of the Code:

"Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation..."

Ofcom's role is to consider whether the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to the Mr Hobby. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they were presented in the programme. Therefore, Ofcom began by

considering whether the matter complained of had the potential to materially and adversely affect listeners' opinions of the Mr Hobby in a way that was unfair.

As set out in the "Programme summary" above, Mr Hobby called Mr Lee's phone-in programme and they had a heated discussion. At one point, Mr Hobby said: *"I've invited you round for tea, you're not far from me"*, to which Mr Lee responded: *"I don't want to come to your house for tea, you sound like a sex criminal"*. Ofcom considered that being referred to as sounding *"like a sex criminal"* had the potential to be taken by listeners to be a serious allegation about Mr Hobby. However, we went on to consider the context in which the comment was made to assess whether it resulted in unfairness to Mr Hobby.

Ofcom listened carefully to the programme and took particular account of Mr Hobby's contribution and the presenter's treatment of him. We took into account that Mr Hobby had chosen to call the programme specifically to speak to Mr Lee and, from the nature of the conversation, it was clear to us that that Mr Hobby and Mr Lee had some previous knowledge of each other before the call, and that their conversation related to their exchanges on social media.

We appreciated that Mr Hobby took issue with the presenter's comment that he sounded *"like a sex criminal"*. However, in our view, given the context in which the comment was said, listeners were likely to have understood that the comment was an unfiltered and impulsive response to Mr Hobby's invitation for Mr Lee to come *"round for tea"*, rather than a serious accusation of criminal wrongdoing. We also took the view that Mr Lee's comment was in keeping with his established and well-known robust presenting style. Given this, we considered that Mr Lee's comment was unlikely to have materially or adversely affected listeners' opinions of Mr Hobby in a way that was unfair to him.

In the circumstances of this case, Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Hobby.

Ofcom has not upheld Mr Hobby's complaint, made on his behalf by Ms Williams, of unjust or unfair treatment in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 7 and 20 January 2019 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Service	Transmission date	Categories
Trainspotting	TNT Romania	07/09/2018	Scheduling
High et Fines Herbes	Viceland (France)	01/06/2018	Other

For more information about how Ofcom 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

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 7 and 20 January 2019 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
Cheryl: Hangout	4Music	02/01/2019	Generally accepted standards	1
Can't Pay? We'll Take It Away!	5Star	15/01/2019	Advertising minutage	1
Breakfast	Big City Radio CIC	06/08/2018	Generally accepted standards	1
Premier League Tonight	BT Sport 1	29/12/2018	Generally accepted standards	1
BT Sportscore	BT Sport 2	05/01/2019	Race discrimination/offence	13
Voice of a Killer (trailer)	CBS Reality	27/12/2018	Violence	1
Voice of a Serial Killer	CBS Reality	29/12/2018	Sexual orientation discrimination/offence	1
8 Out of 10 Cats	Channel 4	11/01/2019	Gender discrimination/offence	1
Alan Carr's Christmas Cracker	Channel 4	25/12/2018	Offensive language	2
Big Fat Quiz of Everything	Channel 4	04/01/2019	Generally accepted standards	2
Brexit: The Uncivil War	Channel 4	07/01/2019	Due impartiality/bias	7
Brexit: The Uncivil War	Channel 4	07/01/2019	Offensive language	1
Channel 4 News	Channel 4	12/11/2018	Due accuracy	1
Channel 4 News	Channel 4	04/01/2019	Generally accepted standards	1
Channel 4 News	Channel 4	10/01/2019	Due accuracy	1
Channel 4 News	Channel 4	10/01/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	14/01/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	14/01/2019	Generally accepted standards	1
Channel 4 News	Channel 4	14/01/2019	Race discrimination/offence	1
Channel ident	Channel 4	01/01/2019	Generally accepted standards	1
Channel ident	Channel 4	05/01/2019	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Channel ident	Channel 4	08/01/2019	Due impartiality/bias	1
Countdown	Channel 4	15/01/2019	Materially misleading	1
Food Unwrapped: Diet Special	Channel 4	03/01/2019	Drugs, smoking, solvents or alcohol	2
How to Lose Weight Well	Channel 4	07/01/2019	Materially misleading	1
Hunted	Channel 4	10/01/2019	Dangerous behaviour	1
Hunted	Channel 4	10/01/2019	Generally accepted standards	3
Live Formula 1	Channel 4	25/11/2018	Promotion of products/services	1
Naked Attraction	Channel 4	09/01/2019	Generally accepted standards	1
SAS: Who Dares Wins	Channel 4	06/01/2019	Gender discrimination/offence	4
SAS: Who Dares Wins	Channel 4	06/01/2019	Generally accepted standards	1
SAS: Who Dares Wins	Channel 4	13/01/2019	Generally accepted standards	6
The Last Leg of the Year	Channel 4	31/12/2018	Generally accepted standards	1
The Secret Life of 4 Year Olds	Channel 4	10/01/2019	Race discrimination/offence	1
The Truth about Vegans	Channel 4	02/01/2019	Materially misleading	51
Trans Kids: It's Time to Talk	Channel 4	21/11/2018	Transgender discrimination/offence	1
Celebrity Big Brother	Channel 5	03/09/2018	Generally accepted standards	1
Celebrity Games Night	Channel 5	29/12/2018	Race discrimination/offence	2
Channel 5 News	Channel 5	02/01/2019	Due impartiality/bias	1
Channel 5 News	Channel 5	08/01/2019	Due impartiality/bias	1
Dogs Behaving (Very) Badly	Channel 5	15/01/2019	Materially misleading	2
Friends	Channel 5	03/01/2019	Sexual material	1
Jeremy Vine	Channel 5	15/01/2019	Age discrimination/offence	11
Levi Bellfield: The Real Manhunt	Channel 5	08/01/2019	Materially misleading	1
Police Interceptors	Channel 5	14/01/2019	Advertising minutage	1
The Big Fat Lies About Diet & Exercise	Channel 5	02/01/2019	Materially misleading	3
The World's Strongest Man (trailer)	Channel 5	24/12/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Jimmy Carr: Laughing and Joking	Comedy Extra	04/01/2019	Generally accepted standards	1
Cool Saturday Show	Cool FM	05/01/2019	Drugs, smoking, solvents or alcohol	1
Gavin and Stacey	Dave	31/12/2018	Offensive language	1
Gavin and Stacey	Dave	02/01/2019	Sexual material	1
Silent Witness	Drama	14/01/2019	Advertising minutage	1
Hollyoaks	E4	08/01/2019	Generally accepted standards	1
One Day	Film4	13/12/2018	Offensive language	1
Capital Talk	Geo News	17/12/2018	Violence	1
Heart Breakfast with Martin and Sue	Heart Essex	07/01/2019	Generally accepted standards	1
Ipswich 102 Breakfast	Ipswich 102	09/01/2019	Materially misleading	1
Coronation Street	ITV	21/12/2018	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	04/01/2019	Product placement	1
Coronation Street	ITV	04/01/2019	Violence	1
Coronation Street	ITV	07/01/2019	Dangerous behaviour	2
Coronation Street	ITV	07/01/2019	Generally accepted standards	2
Coronation Street	ITV	07/01/2019	Sexual material	4
Coronation Street	ITV	07/01/2019	Violence	1
Coronation Street	ITV	09/01/2019	Generally accepted standards	1
Coronation Street	ITV	09/01/2019	Generally accepted standards	3
Coronation Street	ITV	09/01/2019	Sexual material	1
Coronation Street	ITV	09/01/2019	Violence	2
Coronation Street	ITV	14/01/2019	Materially misleading	1
Dancing on Ice	ITV	06/01/2019	Generally accepted standards	9
Dancing on Ice	ITV	13/01/2019	Advertising minutage	1
Dancing on Ice	ITV	13/01/2019	Disability discrimination/offence	1
Dancing on Ice	ITV	13/01/2019	Offensive language	1
Emmerdale	ITV	11/12/2018	Materially misleading	1
Emmerdale	ITV	14/12/2018	Materially misleading	5
Emmerdale	ITV	19/12/2018	Generally accepted standards	1
Emmerdale	ITV	19/12/2018	Materially misleading	1
Emmerdale	ITV	21/12/2018	Sexual material	2
Emmerdale	ITV	25/12/2018	Generally accepted standards	1
Emmerdale	ITV	25/12/2018	Scheduling	2

Programme	Service	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	01/01/2019	Materially misleading	3
Emmerdale	ITV	01/01/2019	Violence	21
Emmerdale	ITV	02/01/2019	Dangerous behaviour	1
Emmerdale	ITV	02/01/2019	Materially misleading	1
Emmerdale	ITV	10/01/2019	Violence	10
Emmerdale	ITV	14/01/2019	Generally accepted standards	5
Good Morning Britain	ITV	10/12/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	11/12/2018	Generally accepted standards	1
Good Morning Britain	ITV	13/12/2018	Generally accepted standards	1
Good Morning Britain	ITV	14/01/2019	Generally accepted standards	1
Good Morning Britain	ITV	15/01/2019	Generally accepted standards	2
Grantchester	ITV	11/01/2019	Religious/Beliefs discrimination/offence	2
How to Spend It Well at Christmas with Phillip Schofield	ITV	18/12/2018	Promotion of products/services	1
HSBC advertisement	ITV	05/01/2019	Political advertising	1
HSBC advertisement	ITV	06/01/2019	Political advertising	1
Ibiza Weekender (trailer)	ITV	06/01/2019	Offensive language	1
ITV News	ITV	09/10/2018	Due impartiality/bias	1
ITV News	ITV	04/01/2019	Due impartiality/bias	1
ITV News	ITV	05/01/2019	Animal welfare	1
ITV News	ITV	06/01/2019	Due impartiality/bias	1
ITV News	ITV	07/01/2019	Due accuracy	1
ITV News	ITV	07/01/2019	Generally accepted standards	1
ITV News	ITV	12/01/2019	Generally accepted standards	2
Judge Rinder	ITV	14/12/2018	Generally accepted standards	1
Loose Women	ITV	14/12/2018	Generally accepted standards	1
Loose Women	ITV	03/01/2019	Dangerous behaviour	1
Loose Women	ITV	10/01/2019	Disability discrimination/offence	94
Loose Women	ITV	11/01/2019	Transgender discrimination/offence	35

Programme	Service	Transmission Date	Categories	Number of complaints
Loose Women	ITV	15/01/2019	Disability discrimination/offence	1
Lorraine	ITV	04/01/2019	Gender discrimination/offence	1
Manhunt	ITV	07/01/2019	Offensive language	2
The Chase	ITV	04/01/2019	Fairness	1
The Chase	ITV	05/01/2019	Fairness	1
The Chase	ITV	07/01/2019	Fairness	1
The Chase/Coronation Street	ITV	26/02/2018	Other	1
The Mummy	ITV	29/12/2018	Scheduling	1
The Voice	ITV	12/01/2019	Generally accepted standards	1
The Voice UK	ITV	05/01/2019	Other	1
This Morning	ITV	07/01/2019	Generally accepted standards	1
This Morning	ITV	08/01/2019	Gender discrimination/offence	1
This Morning	ITV	08/01/2019	Generally accepted standards	1
This Morning	ITV	09/01/2019	Nudity	1
This Morning	ITV	10/01/2019	Generally accepted standards	1
This Morning	ITV	11/01/2019	Generally accepted standards	1
Through the Keyhole	ITV	12/01/2019	Generally accepted standards	1
Vera	ITV	13/01/2019	Violence	1
Who Wants to be a Millionaire?	ITV	03/01/2019	Race discrimination/offence	1
Who Wants to be a Millionaire?	ITV	04/01/2019	Fairness	2
Who Wants to be a Millionaire?	ITV	04/01/2019	Race discrimination/offence	1
Who Wants to be a Millionaire?	ITV	06/01/2019	Animal welfare	2
Who Wants to be a Millionaire?	ITV	06/01/2019	Race discrimination/offence	1
Who Wants to be a Millionaire?	ITV	06/01/2019	Sexual material	1
Granada Reports	ITV Granada	31/12/2018	Promotion of products/services	1
London Tonight	ITV London	02/01/2019	Due impartiality/bias	1
Coast and Country	ITV Wales	21/12/2018	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
Ibiza Weekender (trailer)	ITV2	04/01/2019	Offensive language	1
HSBC advertisement	ITV3	04/01/2019	Political advertising	1
HSBC advertisement	ITV3	08/01/2019	Political advertising	1
Law and Order UK	ITV3	10/01/2019	Generally accepted standards	1
The Mummy Diaries	ITVBe	19/12/2018	Dangerous behaviour	1
The Real Housewives of Cheshire	ITVBe	24/09/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	20/12/2018	Materially misleading	1
James O'Brien	LBC 97.3 FM	03/01/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	04/01/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	07/01/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	10/01/2019	Offensive language	1
James O'Brien	LBC 97.3 FM	15/01/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	15/01/2019	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	28/12/2018	Materially misleading	1
Steve Allen	LBC 97.3 FM	08/01/2019	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	13/01/2019	Generally accepted standards	1
Tom Watson	LBC 97.3 FM	06/01/2019	Due impartiality/bias	1
Non Political Politics Show	Liskeard Radio	30/11/2018	Due impartiality/bias	1
Tarz-e-Hayat	MATV	16/12/2018	Violence	1
Cars SOS (trailer)	More4	02/01/2019	Offensive language	1
The Royal World	MTV	11/12/2018	Generally accepted standards	1
The Royal World	MTV	12/12/2018	Generally accepted standards	1
HSBC advertisement	n/a	07/01/2019	Political advertising	1
Chris Tate Random Show	PCRFM	08/01/2019	Generally accepted standards	1
The Brunch Show (Tuesdays only)	Radio Bronglais	18/12/2018	Religious/Beliefs discrimination/offence	1
The Breakfast Show with Nigel Bassett	Radio St Austell Bay	20/12/2018	Drugs, smoking, solvents or alcohol	1
The Music Vault	Radio St Austell Bay	06/12/2018	Generally accepted standards	1
Danny Wallace	Radio X	01/01/2019	Generally accepted standards	1
Boom Bust	RT	16/11/2018	Due accuracy	1

Programme	Service	Transmission Date	Categories	Number of complaints
News	RT	11/03/2018	Generally accepted standards	1
News	RT	28/11/2018	Due impartiality/bias	1
The Weekly	RT	02/12/2018	Due accuracy	1
Jane Fonda in Five Acts	Sky Atlantic	01/01/2019	Nudity	1
Scottish Football	Sky Football	29/12/2018	Race discrimination/offence	1
Soccer Saturday	Sky Football	29/12/2018	Gender discrimination/offence	1
Premier League Football	Sky Main Event	09/12/2018	Flashing images/risk to viewers who have PSE	1
Scottish Football	Sky Main Event	29/12/2018	Generally accepted standards	1
Premier League Football	Sky Main Event / Sky Premier League	15/12/2018	Generally accepted standards	2
Adam Boulton	Sky News	14/01/2019	Generally accepted standards	1
All Out Politics	Sky News	12/12/2018	Due impartiality/bias	1
All Out Politics	Sky News	09/01/2019	Due accuracy	1
Kay Burley	Sky News	10/01/2019	Due accuracy	1
Kay Burley	Sky News	15/01/2019	Due impartiality/bias	1
Lunchtime Live	Sky News	10/12/2018	Due impartiality/bias	1
Press Preview	Sky News	13/01/2019	Due impartiality/bias	1
Sky News	Sky News	13/12/2018	Due impartiality/bias	1
Sky News	Sky News	19/12/2018	Due impartiality/bias	1
Sky News	Sky News	21/12/2018	Due impartiality/bias	1
Sky News	Sky News	28/12/2018	Due impartiality/bias	1
Sky News	Sky News	30/12/2018	Due impartiality/bias	1
Sky News	Sky News	05/01/2019	Due accuracy	1
Sky News	Sky News	07/01/2019	Due impartiality/bias	1
Sky News	Sky News	08/01/2019	Generally accepted standards	1
Sky News	Sky News	09/01/2019	Generally accepted standards	1
Sky News	Sky News	15/01/2019	Due impartiality/bias	1
Sky News	Sky News	17/01/2019	Due impartiality/bias	1
Sky News Live	Sky News	16/01/2019	Due impartiality/bias	1
Sky News Tonight with Dermot Murnaghan	Sky News	03/01/2019	Generally accepted standards	1
Sky News with Kay Burley	Sky News	17/12/2018	Due impartiality/bias	5
The Papers	Sky News	21/12/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
The View	Sky News	09/01/2019	Due accuracy	1
Premier League Football	Sky Premier League	16/12/2018	Offensive language	1
Star Sixes	Sky Sports Football	06/01/2019	Race discrimination/offence	1
Sky Sports News	Sky Sports News	17/12/2018	Violence	1
Sky Sports News at 5	Sky Sports News	29/05/2018	Due accuracy	1
A League of Their Own	Sky1	06/01/2019	Disability discrimination/offence	1
A League of Their Own	Sky1	09/01/2019	Race discrimination/offence	1
Criminal Instinct: The Wandering Soul Murders	Sony Crime Channel	07/01/2019	Dangerous behaviour	1
Badass Women's Hour	Talk Radio	05/01/2019	Generally accepted standards	1
Programming	Talk Radio	20/12/2018	Generally accepted standards	1
Alan Brazil Sports Breakfast	Talksport	20/12/2018	Due impartiality/bias	1
At Home with the Noonans	Together	13/12/2018	Generally accepted standards	1
Shoot 'em Up	TV6 (Sweden)	07/01/2019	Generally accepted standards	1

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

Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Service	Transmission Date	Categories	Number of complaints
Andrew Marr Show	BBC 1	17/06/2018	Religious/Beliefs discrimination/offence	1
Lenny Henry: The Commonwealth Kid	BBC 1	02/04/2018	Materially misleading	1
Panorama: Legal Weapon	BBC 1	20/08/2018	Race discrimination/offence	1
Question Time	BBC 1	04/10/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Victoria Derbyshire	BBC 2	15/08/2018	Generally accepted standards	1
Victoria Derbyshire	BBC 2	09/08/2018	Other	1
Dateline London	BBC News Channel	27/01/2018	Due impartiality/bias	1
A Point of View	BBC Radio 4	20/05/2018	Due impartiality/bias	1
The Death of the Post-war Settlement: From Crisis to Crisis	BBC Radio 4	06/11/2018	Materially misleading	1

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 7 and 20 January 2019 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories	Number of complaints
Haven FM (Pembrokeshire) Ltd	Radio Pembrokeshire	Format	1
Sci-Fi Channel Europe LLC	Syfy	Television Access Services	1

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

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 or an on demand service that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
Programming	BBC	Various	Due impartiality/bias	1
Programming	BBC channels	Various	Outside of remit	1
Advertisements	British Comedy Radio Gold (online)	12/01/2019	Advertising content	1
The Official Vodafone Big Top 40	Capital FM	16/12/2018	Outside of remit	1
Advertisement	Channel 4	06/01/2019	Advertising content	1
Advertisement	Channel 4	07/01/2019	Advertising content	1
Advertisement	Channel 4	14/01/2019	Advertising content	1
Britain's Wildest Weather	Channel 4	05/01/2019	Outside of remit	1
Frasier	Channel 4	09/01/2019	Outside of remit	1
Ways to Change the World	Channel 4 Podcast	n/a	Hatred and abuse	1
Advertisement	Channel 5	04/01/2019	Advertising content	1
Advertisement	E4	03/01/2019	Advertising content	1
Advertisement	GOLD	06/01/2019	Advertising content	1
Advertisement	ITV	04/01/2019	Advertising content	1
Advertisement	ITV	05/01/2019	Advertising content	1
Advertisement	ITV	06/01/2019	Advertising content	2
Advertisement	ITV	08/01/2019	Advertising content	1
Loose Women	ITV	07/01/2019	Outside of remit	1
Advertisement	ITV channels	01/01/2019	Advertising content	1
Programming	ITV Hub	21/12/2018	Access services	1
Advertisement	ITV2	04/01/2019	Advertising content	1
Love Island	ITV2	10/01/2019	Outside of remit	1
Advertisement	ITV3	12/01/2019	Advertising content	1
Advertisement	More4	04/01/2019	Advertising content	1
Dear White People	Netflix	02/01/2019	Hatred and abuse	1
Line of Duty	Netflix	n/a	Hatred and abuse	1
Sex Education (trailer)	Netflix	n/a	Sexual material	1
Sky News	Sky News	07/01/2019	Outside of remit	1
Programming	Virgin on-demand	12/10/2018	Access services	1

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

BBC First

The BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1	04/01/2019	Generally accepted standards	1
BBC News	BBC 1	15/01/2019	Offensive language	1
BBC News	BBC 1	16/01/2019	Generally accepted standards	1
BBC North West Tonight	BBC 1	08/01/2019	Generally accepted standards	1
Countryfile	BBC 1	09/12/2018	Materially misleading	1
Doctors	BBC 1	Various	Race discrimination/offence	1
EastEnders	BBC 1	11/01/2019	Generally accepted standards	1
EastEnders	BBC 1	15/01/2019	Crime and disorder	2
Match of the Day Live	BBC 1	16/01/2019	Generally accepted standards	1
MOTD Live: Southampton v Derby County	BBC 1	16/01/2019	Generally accepted standards	1
Question Time	BBC 1	10/01/2019	Race discrimination/offence	1
Question Time	BBC 1	17/01/2019	Generally accepted standards	8
Semi-detached	BBC 1	06/01/2019	Generally accepted standards	1
The Greatest Dancer	BBC 1	05/01/2019	Race discrimination/offence	4
Sportscene	BBC 1 Scotland	30/12/2018	Due impartiality/bias	1
Catch Me if You Can	BBC 2	05/01/2019	Scheduling	1
Catch Me if You Can	BBC 2	05/01/2019	Sexual material	1
Frankie Boyle's New World Order 2018	BBC 2	27/12/2018	Generally accepted standards	1
Icons	BBC 2	09/01/2019	Voting	2
My Million Pound Menu	BBC 2	15/01/2019	Generally accepted standards	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Newsnight	BBC 2	17/01/2019	Age discrimination/offence	1
Politics Live	BBC 2	10/01/2019	Generally accepted standards	1
Politics Live	BBC 2	15/01/2019	Due impartiality/bias	1
The Big Short	BBC 2	15/12/2018	Generally accepted standards	1
The Christmas Misadventures of Romesh Ranganathan	BBC 2	20/12/2018	Offensive language	1
Programming	BBC channels	10/01/2019	Drugs, smoking, solvents or alcohol	1
BBC News	BBC News Channel	14/01/2019	Product placement	1
BBC News	BBC News Channel	15/01/2019	Offensive language	1
BBC News	BBC News Channel	16/01/2019	Due impartiality/bias	1
BBC News	BBC News Channel	17/01/2019	Due impartiality/bias	1
BBC News Special	BBC News Channel	15/01/2019	Due impartiality/bias	1
Programming	BBC Radio 1Xtra	12/01/2019	Generally accepted standards	1
BBC News	BBC Radio 2	29/12/2018	Due impartiality/bias	1
Drivetime	BBC Radio 2	10/01/2019	Offensive language	1
Jeremy Vine show	BBC Radio 2	09/01/2018	Generally accepted standards	1
Feedback	BBC Radio 4	16/12/2018	Due impartiality/bias	1
The News Quiz	BBC Radio 4	22/09/2018	Religious/Beliefs discrimination/offence	1
World at One	BBC Radio 4	08/01/2019	Due impartiality/bias	1
Good Morning Scotland	BBC Radio Scotland	16/01/2019	Due impartiality/bias	1

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 7 and 20 January 2019.

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

Programme	Service	Transmission date
Politics Show	BCFM	23/11/2018
Sangeen Mamlay	KTV	20/09/2018
'Make Debates Happen' campaign	Sky News	Various
Studio 66 TV	Studio 66	27/11/2018
Alan Brazil Sports Breakfast	Talksport	18/12/2018

Due to an administrative error the listing to indicate we had opened an investigation into the programme The Valley of the Homosexuals, which appeared on the Peace TV service on 11 March 2018, did not appear in issue 354 of the Broadcast and On-Demand Bulletin published on 21 May 2018. This notice corrects that.

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	Service	Transmission date
Can't Pay? We'll Take It Away!	Channel 5	26/10/2018
ITV News	ITV	07/01/2019

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