

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>.

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters and ODPS, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

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

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

<sup>3</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

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

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

## Standards cases

### In Breach

#### Deadly Women

*Investigation Discovery, 16, 18 & 20 August 2013 at various times*

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##### Introduction

Investigation Discovery is a channel dedicated to documentary programming about crime and criminal investigations. The licence for Investigation Discovery is held by Discovery Communications Europe Limited ("Discovery" or "the Licensee").

*Deadly Women* is a true-life crime series about female killers. Each episode, which had a scheduled duration of 60 minutes, relayed the crimes of three different murderers through dramatic reconstructions of specific crimes and interviews with experts in criminal behaviour, including forensic pathologists.

A complainant alerted Ofcom to graphic depictions of violence contained within an episode broadcast at 09:00 on 20 August 2013. Ofcom assessed this episode, along with another seven episodes shown between 06:00 and 17:00 on 16 and 18 August 2013. We noted that each episode was preceded by variations of the following warnings:

*"The following programme contains scenes of a violent nature which some viewers may find disturbing"; or*

*"The following programme contains scenes of murder or violent crimes that have been re-enacted."*

We had concerns about a large number of the dramatic reconstructions included within the series. By way of example, we noted the following content:

##### 16 August 2013 at 06:00

A segment detailed the murder of Sarah Mitchell by her sister, Stevie. The accompanying dramatic reconstruction included a sequence of Stevie attacking Sarah with a crowbar. Images were shown of Stevie repeatedly bringing down the crowbar onto the unseen body of her sister. These images were accompanied by the sounds of impact and the sight of blood spattering up the wall and onto the surrounding furniture. Blood was then shown dripping from the crowbar before images of Sarah's head on a pillow covered in blood were repeated. Following this, Stevie was shown approaching the blood-covered corpse and starting up a hand-held circular saw. The sequence then showed Stevie holding the circular saw against the front of Sarah's corpse. Although the positioning of Sarah's corpse in relation to the camera meant no detail of the saw blade cutting flesh was shown, the sound of the blade grinding increased as the tool was moved up and down the victim's front. An interviewee described what happened:

*"[Stevie] dismembered [Sarah's] arms and legs and she dismembered her at the waist. There was blood spatter 360 degrees of the room. On all four walls of the room and the ceiling; blood everywhere".*

The reconstruction then continued, and showed Stevie, whose clothes and face were covered in blood, picking up the body's arm and placing it in a bin bag. Stevie was then shown struggling to force a number of bags, apparently containing her sister's body, into a chest freezer.

#### 16 August 2013 at 07:50

A segment featured the case of Elizabeth Brownrigg, an 18th century murderer who tortured a number of young orphans put into her care. The accompanying dramatic reconstructions included extended sequences of teenage girls being flogged; in total, a whip was shown being used more than 40 times within 10 minutes. During the early sequences, two girls whose hands were bound with rope and who had been forced to kneel over a chair, were shown screaming in agony as their backs and buttocks were lashed with a whip. Although there were no shots of the whip actually striking flesh, bloody welts were shown as having formed on the victims' backs and arms. Later, a 14-year old girl, Mary, was shown with her hands tied together above her head with rope, causing her to be suspended from a roof. Mary was shown from behind being whipped repeatedly and in turn by various members of the Brownrigg family, who were smiling and laughing as they tortured her. At points during the sequence the girl's face was shown in close-up crying and screaming in agony. This sequence concluded with the girl, apparently close to death, lying in a pig sty, with the camera panning slowly over her shivering and beaten body while the voiceover noted "*her body was covered in opening, festering wounds.*" The actions of Elizabeth Brownrigg were described in voiceover as follows:

*"Inflicting pain excited Elizabeth. She was turned on by power and suffering".*

*"Sexual sadism is a condition in which an individual becomes aroused at the infliction of pain, emotional, physical or sexual, on a helpless victim".*

Later in the same episode a dramatic reconstruction depicted the murder of Irene May by Kerry Lyn Dalton and two accomplices, Mark Tomkins and Sheryl Baker. An extended torture sequence was shown, during which:

- Kerry struck Irene with full force across the face with a hammer. Although the point of impact was not shown, the sound of the blow was pronounced and Irene was shown being knocked to the ground;
- Kerry was shown threatening Irene, whose head was bleeding and who was clearly crying and distressed, with exposed electrical wires. Kerry then repeatedly held the exposed wires to Irene's neck, causing her to convulse violently and scream out;
- As Kerry screamed "*Go on, baby! Do it! Harder! Harder!*" her accomplice Mark seemingly stabbed Irene in the stomach with a knife. Although there were no images of the blade penetrating Irene's flesh, again the sound of the blow was pronounced;
- Sheryl beat Irene across her back and then her bloodied knees with a frying pan as Irene cried out in pain;
- Kerry was shown pulling back Irene's hair and shouting "*Why won't this bitch die!?*" while Mark could be heard laughing. Mark was then shown holding a knife in Sheryl's hand and then directing her arm in order to repeatedly stab Irene in

the stomach. Again, although the point of impact was not shown, sound effects clearly representing a knife attack and Irene's screams were audible. Subsequently the bloodied knife and the blood-covered hands of the attackers were shown; and

- Kerry was shown handing Sheryl a syringe as a voice over explained it contained battery acid. Although the point at which Sheryl injected Irene was not shown, Irene's screams became more pronounced.

During Irene's eventual murder the following was shown: Mark approaching Irene, who was clearly dazed and screaming, with a screwdriver; Mark thrusting a screwdriver towards Irene's head; Irene falling to the ground with a screwdriver sticking out of the top of her head; and Mark seemingly stamping on Irene's body. Although Irene's upper torso and head were hidden by a chair, her body could be seen convulsing, as a voiceover explained that Mark finally killed Irene by stamping on her neck. Close-ups of a blood covered wall and Irene's bloodied corpse were then shown on multiple occasions.

#### 18 August 2013 at 07:00

A segment described the murder of Jeff Wright by his wife, Susan. In the accompanying dramatic reconstruction, the couple were depicted engaging in a sex game with Jeff tied to the bed. A shot of Susan holding a candle was shown, before a helpless Jeff was shown screaming and shouting: *"What are you doing that for!?"* As Susan put the candle on the bed side table a voiceover explained: *"Candle wax had been melted and dripped on Jeffrey's scrotum."* Susan then revealed a knife which she waved in front of her husband's face before she moved down his body. Images were shown of Susan raising the knife and striking out towards his groin and it was later confirmed by an interviewee that there were *"mutilation and cuts to the genitals"*. Susan then stabbed her husband multiple times. Although the blade penetrating Jeff's flesh was not shown, viewers did see the knife being brought down onto Jeff's bloodied chest. Susan's attack was interrupted by her young son knocking on the bedroom door and Jeff's blood-covered face was shown as he struggled to breathe. Having put her son back to bed, Susan returned to the bedroom and continued the assault. The programme then switched from the reconstruction to an interviewee, speaking to camera, who described the attack, as follows:

*"Susan stabbed her husband at least 196 times, almost 50 times in the face and neck."*

Repeated still shots, both in colour and black and white, of Jeff's bloodied and mutilated face were then shown.

#### 18 August 2013 at 09:00

A segment reconstructed the killing of David Harmon by Mark Mangelsdorf. Mark was seen repeatedly bringing a wrench down onto his unseen victim and blood spattered up into his face and onto the floor. The reconstruction briefly cut away to an interviewee who said:

*"There was an extreme amount of overkill...His head was crushed and the eyeball [...] popped out of his head and rolled along the floor"*.



The reconstruction continued and showed the eyeball rolling across the floor. Finally, an extended shot of David's body was shown. He was lying in a blood-soaked bed, with his head significantly beaten and totally covered in blood.

18 August 2013 at 11:00 and 16:00

A segment featured the murder by Valerie Pape of her husband. The accompanying dramatic reconstruction showed Valerie walking up behind her husband, raising a revolver, and shooting him four times. The husband was shown sinking to the floor with bloody bullet wounds in his back. Later in the sequence, the corpse of Valerie's husband was shown laid out on a plastic sheet. Valerie was shown, by an overhead shot, using an electric saw to cut into her dead husband's arm at the shoulder. She then separated her husband's arm from the rest of his body before putting the power tool against his throat. The sequence then switched to a view of her face being splattered with a large amount of blood, apparently as a result of her cutting into her husband's throat with the saw. The sequence concluded with images of Valerie holding up a bloodied, severed lump of flesh.

In the same episode, a separate segment featured the murderer Jean Lee. An accompanying dramatic reconstruction depicted the torture of a victim by Jean and two associates. The victim was tied to a chair and was shown being beaten and slashed at with a penknife. He was then shown screaming in agony with blood on his face. At this point an interviewee said:

*"Clayton lit a cigarette and butted it out on the man's face".*

The reconstruction then depicted Clayton (one of Jean's accomplices) pressing the cigarette into the victim's throat. A fizzing was heard and the victim writhed and cried out in agony. The victim was then knocked to the ground and shown bloodied and dazed. He was then shown being seemingly kicked multiple times by his male assailants (although the blows themselves were not shown) and then stabbed with a small knife by Jean. Clayton was then shown strangling the man, who was fighting for air, with his bare hands. After some seconds the victim was shown to lose consciousness and die.

20 August 2013 at 07:50

A segment featured Gunn-Britt Ashfield's murder of her six-year old son, John. An accompanying dramatic reconstruction showed Gunn-Britt, and her boyfriend Austin, approaching John holding a telephone directory and a hammer. Although blows were not shown landing on John, the reconstruction depicted Austin repeatedly swinging at John with the hammer, accompanied by the sounds of impact. Images were shown of two frightened young children watching the attack from a doorway. Gunn-Britt then removed a curtain rod from the window and was shown swinging at her son. The young boy's bruised hand was shown as it gripped onto his bed sheets in the midst of the attack.

The reconstruction was intercut with interviews with various individuals and the following comments were made:

*"They had taken down the curtain rod and they had beaten John with it so much so that the metal had bent".*

*"But it didn't stop, they just kept at it, and they kept at it for hours".*

After the boy had lost consciousness, Austin said:

*“Ah come on, don’t start crying like a little girl”.*

In the voiceover, Gunn-Britt and Austin were then described seeking to revive John by pouring scalding hot water over him. Although no further violent acts of abuse were shown, images of John’s beaten arm as he lay face down on a bed were repeated on a number of further occasions.

Another segment in the same episode depicted the murder of Terry Eleftheriou by Kelly O’Donnell. An accompanying dramatic reconstruction featured Kelly beating Terry repeatedly with a hammer. Although the landing of the blows on Terry were not shown, Terry’s bloodied body was shown to judder apparently in response to the impact of the hammer. Later in the reconstruction Kelly was shown dismembering her victim, running a handsaw repeatedly along Terry’s neck into what is described in the voiceover as *“his still breathing flesh”*. Although Kelly’s hand obscured the view of the saw blade actually making contact with Terry’s neck, the movement of the saw and the sound effects used would have made it clear to the viewer that Terry was being beheaded. At various points, small pieces of flesh were briefly visible on the blade of the saw. Various shots were then shown of Kelly and her accomplice kneeling beside Terry’s body and close-ups were shown of their bloodied hands as they used a saw and a chisel. As Kelly and her accomplice were shown continuing to dismember the body through a series of moving and still images, the voiceover and interviewees note that Kelly *“cut off his private part”* and *“then removed one of his eyes.”*

Ofcom considered the graphic depictions and descriptions of violence, torture and murder in this series of programmes, all shown pre-watershed, raised issues under the following rules of the Code:

Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them”.

Rule 1.11: “Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television)...and must also be justified by the context”.

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

We therefore asked Discovery how the material complied with these rules.

## **Response**

In response to Ofcom’s initial request for comments, Discovery apologised for the broadcast of this content. The Licensee stated that: “We accept that some of the content in these episodes was beyond the expectations of a daytime audience, even on a specialised crime channel such as [Investigation Discovery].” The Licensee also said that upon being alerted to the original complaint in this case, the content was reviewed and then immediately taken out of the daytime schedule.

In its initial comments, Discovery offered various contextual factors by way of mitigation in this case, such as the following:

- the series *Deadly Women* “addressed important issues around abusive relationships and violence against children, and the devastating effect of failing to report concerns in some cases, and even when they are reported, the failure of authorities to take swift action”;
- the dramatic reconstructions were: “clearly labelled as ‘reconstruction’ or ‘dramatization’”;
- Investigation Discovery was a “clearly labelled, specialist crime channel” targeted at an adult audience, located in the documentaries sections of both the Sky and Virgin EPGs. Discovery stated that only 1% of Investigation Discovery’s average of audience were children aged 4-15 and considered that, while some of the content was not suitable for daytime transmission, the programmes were scheduled in slots with low child viewing; and
- the Licensee noted it had received only one viewer complaint about one of the episodes shown.

Nevertheless, the Licensee said that it was reassessing its compliance procedures: “to ensure a more informed and carefully considered certification process takes place, particularly on series concerning domestic violence or violence against children”. In particular, Discovery laid out various steps it had taken to improve its compliance procedures including:

- the removal of a “large number” of series from the daytime schedule of Investigation Discovery to be “reviewed for compliance and recertified if required”;
- the establishment of a new team to ensure that “clear parameters of acceptable daytime content” on Investigation Discovery be agreed; and
- the provision of “tailored, crime compliance training” to teams working in “crime content” with clear guidelines on “handling content referencing key areas such as child abuse, domestic violence etc”.

Ofcom provided the Licensee with a copy of our Preliminary View (which was to record breaches of the Code and put the Licensee on notice that Ofcom will consider these contraventions of the Code for consideration of a statutory sanction).

In response Discovery apologised that its “initial response did not fully address the issues raised by Ofcom”. It said that all the programmes in this case had been from series six of *Deadly Women* and none of these programmes were “intended for transmission in daytime”. While all the other series of *Deadly Women* had been “correctly certified as post watershed”, Discovery said that this had not happened in the case of series six. The Licensee stated that “this deeply unfortunate incident” had occurred as a result of “an error of judgement by a less experienced member of the re-versioning team during the certification process for series 6 [which] meant that it was accidentally certified as suitable for audiences with a low child index”. This meant that the programmes in series six were broadcast in daytime. Discovery added that “ordinarily, this would have been picked up by a supervisor in the department or a scheduler”, but due to high volumes of new content being added to the Investigation Discovery schedule it believed that “the need to process [the content] quickly led to the mistake being missed”.

In its further representations, the Licensee provided further details about the improvements it had made to its compliance procedures, including the implementation of “additional certification and compliance checks to provide more security against human error”, and senior producers being: “required to sign off certification and inputting of all content for [Investigation Discovery]”.

In conclusion, Discovery stressed that it takes the issue of child protection “extremely seriously”, and expressed its “deep regret” with regard to the broadcasting of *Deadly Women* in an “entirely inappropriate time slot”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.

These duties are reflected in Sections One and Two of the Code respectively. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

In reaching a Decision in this case, Ofcom has taken into account the fact that broadcasters have a right to freedom of expression which gives them a right to transmit and the audience a right to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights. However, although broadcasters and viewers have this right, it is the responsibility of the broadcasters to ensure that the material they transmit is in accordance with the general law and the Code.

### **Rule 1.3**

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

Ofcom first considered whether the programmes were suitable for children. We noted that the programmes included numerous dramatic reconstructions, a selection of which have been summarised in the Introduction, which featured extended violent sequences. These included scenes of torture – which among other things included mutilation, knife attacks, electrocution, poisoning, beatings with blunt instruments, flogging, kicking and punching – as well as dismemberment. In nearly all cases, the ultimate outcome of the violence was death.

Although, in general the reconstructions did not feature images of, for example, weapons, such as knives, entering or making contact with human bodies, we considered that the combination of: images of weapons being wielded by the various murderers; the heightened sounds of these weapons hitting their victims; the cries of the victims themselves; and the after effects of the various attacks (for example, through blood being shown to spatter across crime scenes) would have clearly and unambiguously made clear that extreme acts of violence were being depicted on-

screen. In our view, the menacing music which played throughout the programmes, and which often rose to a crescendo when the most violent acts were being committed, served to heighten the impact of the material.

The graphic nature of the various reconstructions was further exacerbated by the content of the commentary and statements made by interviewees as the reconstructions were being shown. These comments were frequently detailed and protracted. For example, as Irene May was shown being tortured on-screen, in the space of 90 seconds each of the following comments was broadcast:

*“When somebody is touched by electrical wires, they’re going to suffer that shock and that burn. It’s going to be extraordinarily painful.”*

*“Irene May was truly tortured. She was beaten over the head with a frying pan so hard that the bottom fell out of the frying pan.”*

*“When an individual is struck multiple times the bones are pushed in, they’re crushed, they’re broken. Those types of injuries cause deep haemorrhage, deep bleeding. The membranes that lie in the bones contain all the nerves, so if you have an impact to your kneecaps and fracture that patella you’re going to have an extraordinary amount of pain to say nothing of the bleeding that would ensue.”*

*“Despite having been bashed with a hammer, electrocuted and beaten, Irene May was still alive.”*

*“I don’t even want to think about what was going through Irene May’s mind when this was going on. It had to be extremely painful and extremely prolonged.”*

Ofcom had particular concern about the strength and graphic detail of a number of the dramatic reconstructions, which we considered were especially unsuitable for children. These included the following:

- the reconstruction of the crimes of Elizabeth Brownrigg featuring two sequences of young women being whipped. These sequences included: the cries of the victims; references to the sexual gratification which Elizabeth received through her actions; and the prolonged depiction of the victim’s injuries;
- the reconstruction of the killing of Irene May showed a prolonged episode of torture lasting approximately four minutes featuring an attack with a hammer, a knife, a frying pan, electrocution and the injection of battery acid into the victim;
- the images, and accompanying description, of an eyeball rolling across the floor, after it had being caused to leave a victim’s head as a result of an attack; and
- the images of Valerie Page severing her husband’s arm from his corpse with an electric saw and then holding up a bloodied, severed limb.

We noted that two of the dramatic reconstructions featured young children, and that in one of these cases the child was the murder victim. These were:

- the reconstruction of the murder of Jeff Wright by his wife Susan, which as well as including a graphic depiction of murder, also featured the couple’s young son approaching the couple’s bedroom during the attack; and

- the killing of a six-year old boy (John) by his mother, Gunn-Britt Ashfield, and her boyfriend Austin. This sequence also showed two young children watching the attack from a doorway.

We considered that these two sequences in particular, because they featured young children, would have been highly likely to have caused distress to any children in the audience.

In summary, Ofcom considered that these programmes were unsuitable for children, and that a number of the episodes would have been likely to have greatly troubled younger viewers in particular.

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

It is important to make clear that the Code does not prohibit programmes about real life crimes being shown before the 21:00 watershed. Further, as noted by the broadcaster, it is likely that the expectations of the audience for a crime-based channel like Investigation Discovery will be different from those of a mainstream general interest channel. This is a point which Ofcom itself made in the guidance note to Section One of the Code<sup>1</sup>, where we recognised that there is a distinction between channels which appeal to a wide-ranging audience, including children, and those that attract a smaller, niche audience, unlikely to appeal to children.

However, it is important to emphasise that broadcasters of such channels still carry a responsibility towards a potential child audience. Ofcom's guidance<sup>2</sup> *Protecting the Under-Eighteens: Observing the watershed on television and music videos* makes clear that in relation to violence:

“broadcasters editing post-watershed drama material including violent scenes for pre-watershed transmission should ensure that such scenes are appropriately limited. Particular attention should be paid to scheduling of material in slots when children may reasonably be expected to have returned from school. It should be noted that, as indicated by Ofcom's research...violent scenes are of principal concern to parents.”

We considered that, in this case, the graphic levels of violence and the extended duration of many of the reconstructions meant that this series of programmes were entirely unsuitable for broadcast during the daytime in the form in which they were presented.

Although, in its first set of representations, the Licensee argued that the programmes were only scheduled in “low child index slots”, all of the material described above was broadcast at a range of times during the morning and afternoon of 16, 18 and 20 August 2013. Whilst acknowledging that a channel such as Investigation Discovery may attract a limited child audience, we noted that these broadcasts occurred on both the weekend and weekdays during the school holidays when there was a significant likelihood that children – some unaccompanied by an adult – would be available to view. In this context, Ofcom's own viewing figures indicated that although the number of children watching was limited (peaking at 6,000 children aged 4-9

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<sup>1</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>2</sup> See <http://stakeholders.acmpub.intra.ofcom.local/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

during the episode broadcast on 18 September 2013 at 15:00) at times around 25% of the total audience was made up of children aged nine years old or younger.

In reaching our Decision, we took into account Discovery's various representations in this case.

We noted that, in its first set of submissions, the Licensee set out various factors which it argued mitigated the broadcast of the programmes in this case. Although in its later set of representations the Licensee expressed its "deep regret" for broadcasting *Deadly Women* in an "entirely inappropriate time slot", we did take account of all the arguments that had been made earlier by Discovery.

Firstly, the Licensee had said that *Deadly Women*: "addressed important issues around abusive relationships and violence against children, and the devastating effect of failing to report concerns in some cases, and even when they are reported, the failure of authorities to take swift action". Although the Code does not prohibit treatment of these issues pre-watershed, broadcasters do not have unlimited licence in the approach they take in covering such matters. As already discussed, the various scenes depicted in these programmes were clearly unsuitable for children. Therefore, we do not consider that this rationale could justify the strength of this content being broadcast at times when children would be available to view.

Second, we noted the Licensee had also said it had "only" received one viewer complaint in relation to the episodes under investigation, and "no other viewer complaints related to this series". Discovery should be aware that Ofcom is required to enforce broadcast standards on licensed services irrespective of the number of complaints that may have been received in any particular case. We would be concerned if licensees considered that a low number of complaints received after broadcast was sufficient to justify retrospectively scheduling decisions about material that was plainly unsuitable for children to view.

Ofcom also took into account Discovery's original representations that the dramatic reconstructions were: "clearly labelled as 'reconstruction' or 'dramatization'" and "most of the more graphic sequences appeared well into the stories, by which point we believe that most viewers would have clearly understood the nature of the programme". We disagreed. The fact that the dramatic reconstructions were labelled and that "most" of the strongest content may have appeared later on into each reconstruction did not mitigate materially the potential harm and offence caused by the broadcast of this content at this time of the day. This is because the labelling of the content as "reconstruction" or "dramatization" would not have been sufficient to alert viewers to the strength of the material within those sequences. Ofcom also noted that each programme began with a preview of the cases featured in that episode and in many instances these were unsuitable for children in themselves. For example, the case of Stevie Mitchell killing her sister was previewed with a shot of Stevie holding an electric saw over the bloody corpse of her victim. This was followed by the following quote from an interviewee:

*"On all four walls of the room and the ceiling; blood everywhere".*

At the start of another episode, the case of Elizabeth Brownrigg was previewed with a shot of Mary sobbing as she was suspended from the ceiling shortly followed by a clip of Elizabeth smiling as she repeatedly whipped the two girls in her care. These previews were all accompanied by ominous, menacing music.

Further, as mentioned above, there was the potential, particularly during the summer school holidays, that children – some unaccompanied by an adult – might have been watching or that they may have come across the content unawares.

On a related point, we noted that each of the programmes in this case contained variations on the following pre-broadcast warnings:

*“The following programme contains scenes of a violent nature which some viewers may find disturbing”; or*

*“The following programme contains scenes of murder or violent crimes that have been re-enacted.”*

The provision of such information – while it may be useful as a guide to viewers in some circumstances – is not, in itself, sufficient to ensure that material is appropriately scheduled. As noted above, the protection offered by the watershed is in part an acknowledgment of the potential for child viewers, unaccompanied by adults, to come across material intended for adult audiences. In any case, we considered the references to violent scenes were insufficient to prepare viewers for the graphic nature of content which had the potential to cause considerable distress to younger viewers and offence more generally.

Ofcom noted that Discovery immediately withdrew the sixth series of *Deadly Women* from further pre-watershed broadcast on being notified by Ofcom of the original complaint. Further, the Licensee said it had made various improvements to compliance, such as: a reassessment of compliance procedures relating to content featuring “domestic violence or violence against children”; the creation of a group to ensure “clear parameters of acceptable daytime content” on the channel; and the implementation of “additional certification and compliance checks to provide more security against human error”. We also noted that Discovery acknowledged in its later representations that none of these programmes were “intended for transmission in daytime”, and that the content had been broadcast in an “entirely inappropriate time slot” due to human error.

However, given all of the above, Ofcom concluded that the programmes were clearly in breach of Rule 1.3 of the Code.

#### Rule 1.11

Rule 1.11 requires that violence must be appropriately limited in programmes broadcast before the watershed and must be justified by the context.

Ofcom has set out in detail above some examples of the more graphic depictions of violence featured in the programmes, which on more than one occasion featured extended depictions of torture and suffering. The reconstruction of Irene May’s murder, for example, continued for approximately four minutes including detailed and vivid depictions of torture, close-ups of the young victim in pain and commentary about her suffering from a number of expert interviewees. In our view, this material had significant potential to shock any children in the audience.

In assessing whether the violence had been appropriately limited, Ofcom noted that there were no images of weapons, such as knives, entering flesh, and limited images of weapons making contact with victims. However, we considered that the programmes included various scenes which depicted extreme acts of violence and their after effects in a graphic manner. We further considered that the cumulative



effect of, for example, the images of weapons being wielded by attackers, the sound effects of the weapons' impact on the victims, the graphic depictions of blood and wounds on the victims, and the ongoing cries of pain from the victims, would have been likely to have had a significant impact on any children in the audience. Therefore, we concluded that the level of violence on-screen had not been appropriately limited.

We therefore went on to consider if the violence was justified by the context. Context is assessed by reference to a range of factors including but not limited to: the editorial content of the programme; the service on which the material is broadcast; the time of broadcast; what other programmes are scheduled before and after the programme; the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description; audience expectations; and, the extent to which the nature of the content can be brought to the attention of the potential audience.

We noted that Discovery, in its initial representations, put forward a number of factors which, in its view, provided some context to the broadcast of the violence included in the programmes in this case. However, as already discussed above, Ofcom did not consider that these mitigated materially the broadcast of such strong scenes of violence pre-watershed. For example, we noted the Licensee's argument that *Deadly Women*: "addressed issues around abusive relationships and violence against children and the devastating effect of failing to report concerns in some cases, and even when they are reported, the failure of authorities to take swift action". However, we did not consider that the focus of the material was on these complex issues. Rather, the programmes featured highly stylised dramatic reconstructions of brutal crimes committed in past decades and centuries, focusing in extreme detail on the acts of violence themselves for the entertainment of an adult audience. Violent scenes were prolonged and stylised with menacing music and exaggerated sound effects, for example of a knife being thrust into a human body. Images of dead bodies were shown repeatedly, both in moving and still shots. The commentary, both in the voice over and from the interviewees, included descriptions of the pain experienced by the victims and the techniques used by their attackers to inflict it. Consequently, we considered the violence featured in the programmes which were shown before the watershed could not be justified by the context.

Ofcom also acknowledged that Discovery "deeply regrets" the broadcast of this content in an "entirely inappropriate time slot", which took place due to human error.

Taking all the factors into account, alongside those considered with respect to Rule 1.3, Ofcom concluded that the programmes breached Rule 1.11.

### Rule 2.3

Rule 2.3 requires that broadcasters must ensure that the broadcast of potentially offensive content is justified by the context.

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

Ofcom noted that the programmes included various sequences, as described in the Introduction, of extreme acts of violence and their after effects. We considered that these treatments of murder, torture, and associated acts of violence had the potential to cause offence. We therefore went on to consider whether the material was justified by the context.

We noted that, as argued by the Licensee in its original representations, these programmes were broadcast on a “clearly labelled, specialist crime channel” targeted at an adult audience, located in the documentaries sections of both the Sky and Virgin EPGs. However, these factors did not mean that there were no limitations on the strength of content that the Licensee could show during the period 06:00 to 18:00. We considered that the degree of offence likely to have been caused by the content would have been higher given the graphic nature of the content. This is because, in Ofcom’s view, the content would have been likely to have gone beyond audience expectations for broadcast on an Ofcom-licensed service during daytime, irrespective of the fact that this channel was aimed at an adult audience.

For example, although less graphic than many of the other dramatic reconstructions, the sequence featuring Gun-Britt Ashfield murdering her six year old son, John, included the extended beating of a child with a telephone directory and hammer by two adult attackers, including his mother, in view of two young, and clearly frightened children. The sequence also included John’s bruised body being dragged through the house. We considered that this graphic treatment of a real-life case featuring extreme violence directed towards a small child, had the potential to be highly offensive to those watching at the time it was shown, well before the watershed.

We also considered the other contextual factors, discussed above, initially put forward by Discovery by way of mitigation for the broadcast of the programmes. However, we considered that these factors did not provide sufficient contextual justification for the broadcast of this content. In particular, given the time of day the broadcasts took place, many viewers would have been unprepared for the graphic detail depicted within the programmes, increasing the likelihood of offence being caused. In any event, as previously mentioned, Discovery acknowledged that *Deadly Women* had been broadcast in an “entirely inappropriate time slot” due to human error.

Ofcom noted the review that Discovery has taken of its compliance procedures and the steps the Licensee was taking to improve compliance. However, given all the above, we considered the programmes exceeded generally accepted standards. Ofcom therefore also found the programmes in breach of Rule 2.3.

We were concerned that, as the Licensee admitted in its later representations, Discovery’s “initial response did not fully address the issues raised by Ofcom at the beginning of this process.” When asking for formal comments on a case which is under investigation, Ofcom relies on all licensees before responding to look into the matter thoroughly and to respond fully and accurately. As it was, in this case the Licensee in its initial representations put forward arguments – including the limited number of children who viewed these programmes and the low number of complaints that the broadcaster received about this content – that suggested a lack of understanding about its responsibilities under the Code. However, we noted from Discovery’s subsequent representations that “this deeply unfortunate incident” (i.e. the broadcast of these programmes before the watershed) had taken place due to “human error” and that it had never been the intention to show *Deadly Women* during the day. The Licensee said that high volumes of new content being added to the Investigation Discovery schedule meant there was “the need to process [the content] quickly [which] led to the mistake being missed” in this case.

Ofcom reminds all broadcasters to ensure they are adequately resourced to ensure all their programming complies with the Code. Further they must have sufficient resources and appropriate arrangements in place to monitor as necessary output as it is broadcast to ensure that if – as here – a compliance mistake is made the

licensee has a reasonable opportunity to spot the error and correct it before broadcast. In this case, the Licensee was seemingly unaware that it had broadcast wholly unsuitable material before the watershed until it was alerted by Ofcom.

We considered that the repeated broadcast during the daytime of very violent material in the form of prolonged and disturbing dramatic reconstructions of torture, mutilation and murder resulted in serious contraventions of the Code. **Ofcom therefore puts the Licensee on notice that we will consider these breaches of the Code for the imposition of a statutory sanction.**

**Breaches of Rules 1.3, 1.11 and 2.3**

## In Breach

### Rich Planet

Showcase, 15 June 2013, 07:00

Information TV, 15 June 2013, 16:00

Information TV, 16 June 2013, 10:30

Showcase, 19 June 2013, 18:00

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### Introduction

Showcase and Information TV are general entertainment services broadcast on the digital satellite platform. The licences for Showcase and Information TV are held by Information TV Limited ("the Licensee").

A complaint alerted Ofcom to a programme broadcast on Showcase on 19 June 2013 at approximately 18:00 which discussed events surrounding the death of Fusilier Lee Rigby, who was killed near the Woolwich Army Barracks on 22 May 2013<sup>1</sup>. The complainant was offended by the manner in which the events were discussed.

Ofcom noted that the programme had also been shown on Saturday 15 June 2013 on Showcase (at 07:00) and on Information TV (at 16:00), as well as on Sunday 16 June 2013 on Showcase (at 10:30).

*Rich Planet* was a one hour documentary programme, in which the presenter, Richard Hall, investigated and challenged mainstream opinion on a range of controversial issues such as UFO sightings, 'state sponsored' terrorism and historical conspiracies.

The first part of this programme lasted approximately 20 minutes, and was a discussion between the presenter and his guest, Nick Kollerstrom. The premise of this discussion was a 'conspiracy theory' critique of the evidence surrounding the death of Fusilier Rigby, casting doubt on the widely accepted explanation of this incident, as reported by the vast majority of media outlets. No warnings about the content of the broadcast were made before or during the programme. The thesis of the programme was that Fusilier Rigby was murdered by the British or American security services, and did not die as a result of an attack on a Woolwich street by two men who were arrested at the scene and subsequently charged with the killing. Nick Kollerstrom explained that in his opinion the circumstances surrounding the murder of Fusilier Rigby were:

*"...a contrived fabricated event which is not what it seems...you've got actors involved and you don't have real deaths...he [Fusilier Rigby] really died, but not in the road. It is fairly clear that they [the perpetrators of the attack] were using his corpse and thereby eliciting real grief and horror from his family...but the fellow did not die in that scene."*

The programme also included graphic descriptions and images relating to the death of Fusilier Rigby. This included footage, filmed on a mobile telephone at the scene of the crime, of a man brandishing a meat cleaver with blood on his hands, an image of

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<sup>1</sup> On 19 December 2013, Michael Adebajo and Michael Adebawale were found guilty of the murder of Fusilier Lee Rigby at the conclusion of their trial at the Old Bailey.

Fusilier Rigby's dead body lying in the road and other images of the aftermath of the attack.

During the course of the programme Nick Kollerstrom made various assertions about the events including that: the blood on the hands of the man brandishing a machete had been by Photoshopping<sup>2</sup> onto the footage; that blood on the road had been added to an aerial photograph taken at the scene; the amount of blood shown in footage of the scene was too small to be consistent with the description of the attack; and that the footage of the attackers at the scene had in fact been filmed a number of weeks before.

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

Rule 1.3: "Children must...be protected by appropriate scheduling from material that is unsuitable for them."

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

We therefore asked the Licensee how the broadcast complied with this rule.

## Response

The Licensee explained that although staff at the channel had reviewed the programme prior to transmission the "ultimate compliance authority" was travelling abroad and was unable to review the programme personally before it was broadcast. It added that at the time the decision was taken to broadcast this programme, Ofcom had not formally announced its investigation into the original broadcast of the footage of the aftermath of the attack in Woolwich on the mainstream media news bulletins on 22 May 2013. The Licensee said that the decision was made that the content "was OK" to broadcast based on this context. Further, the Licensee said that it objected to Ofcom citing the multiple broadcasts of the programme as multiple breaches, given that the mainstream channels broadcast the 22 May 2013 footage "on almost looping transmissions".

It said that the programme should be viewed in the context of *Rich Planet's* regular depiction of "conspiracy theories", that the images of the incident broadcast had been featured across all media, and that questions had been raised regarding the media coverage of the incident and the "official statements" at the time.

The Licensee accepted that Ofcom must apply the rules, Code and Guidance. However, it considered it was disproportionate to apply the same rules to a channel with a self selecting audience compared to mass media audience channels, on which the footage of the incident was originally broadcast.

It said it reacted strongly to the suggestion that it attend a meeting at Ofcom to discuss its compliance arrangements as "we give more consideration to our compliance obligations than mainstream channels likely did on May 22 itself" and the implication that it was a company without compliance arrangements was "entirely without foundation".

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<sup>2</sup> Photoshop is software which enables images to be digitally altered.

### Rule 1.3

The Licensee said that on 22 May 2013, when the footage of the aftermath of the attacks was first broadcast, many channels had carried very graphic material of the incident and that children were potentially exposed across every channel carrying news to material which might be regarded as “unsuitable”. It added that as the “story” developed the degree of “unsuitability” decreased and that all of the material shown in the programme had already been seen on mainstream TV. The Licensee said that the nature of the programme, broadcast on a minority interest channel, meant that few, if any, children would be watching it “by choice or accident” and that the programmes are not ones which could be reasonably envisaged that children would be interested in, far less liable to watch.

It also argued that graphic material shown in the documentary was widely available on the internet which “we are told is espoused by younger people more than broadcast TV itself” and that Ofcom’s rules regarding the protection of children had “clearly been overtaken by technology changes and urgently need revision”.

### Rule 2.3

The Licensee said that the events of 22 May 2013 were “profoundly disturbing for many” and the level or nature of any “offence” to viewers would depend on who they were – one important category being the friends and family of Fusilier Rigby. However, it argued that in the interests of freedom of speech if there were inconsistencies in the evidence surrounding the killing of Fusilier Rigby it would be wrong to suppress these: “to protect the sensitivities of a minority”.

The Licensee accepted that the programme did not offer an “official” response to the suggestions in the programme regarding the fabrication of the incident, as a possible way of mitigating the offence to viewers caused by this programme. However it said that the “official response” to any conspiracy theory would almost always be “no comment”. It argued that such a response should not prevent it highlighting what it believed to be “serious inconsistencies in the reporting and official response to the incident”.

The Licensee said that it was “public fact and knowledge” that the UK had “secret” institutions, funded by and responsible to government, who are “able to refuse or deflect public scrutiny of their actions”. The Licensee argued that scrutiny of their actions and motives was an essential element of democracy and that inevitably “offence” may be caused to some interested parties. However, it said this should not mean, under Ofcom’s rules, the prohibition of the views of significant minorities and putting it “on notice [of further regulatory action by Ofcom if there were further breaches of the Code]<sup>3</sup> for daring to take an alternative view suggests a serious infringement of freedom of speech”.

It argued that the emphasis on specific elements of the attack were essential components of the evidence of a “conspiracy” which formed the premise of the programme.

It added that the programme was broadcast at 18:00 because this was the regular slot for *Rich Planet* and that this was precisely the same time as the “source material”

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<sup>3</sup> This had been set out in Ofcom’s Preliminary View which was provided to the Licensee for its representations.

(i.e. mobile telephone footage of the attack) was broadcast on mainstream channels on 22 May 2013.

The Licensee said that it had taken the decision to “serve notice” on the makers of *Rich Planet* that it would no longer buy programming from them. This was a commercial decision because the implications of broadcasting the programme had become “too onerous” but it still considered that the issues raised in the programmes merited exposure.

## Decision

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

In applying Section Two, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority. In accordance with the fundamental right to freedom of expression, the Code does not prohibit the broadcast of potentially offensive material. However, broadcasters are required to ensure that potentially offensive material is justified by the context.

Ofcom fully recognises the right of broadcasters to feature controversial issues (such as conspiracy theories) and potentially offensive content in their programming, including footage of distressing events. Similarly, the Code does not prevent broadcasters analysing and critiquing the actions of, for example, the UK’s intelligence services. Broadcasters must however always ensure that in broadcasting such material they comply with the Code. In this case Ofcom has taken full account of the right to freedom of expression of the Licensee and audience, and carefully balanced that right against its duty to enforce the Code.

### Rule 1.3

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is assessed by reference to factors such as the time of broadcast, the nature of the channel, and the availability of children to view, taking into account school time, weekends and holidays.

Ofcom first considered whether the material was unsuitable for children.

The report included a still image of the aftermath of the attack on Fusilier Rigby which showed his corpse in the middle ground of the shot. Although the body was not identifiable the image was accompanied by the words of the presenter who stated that:

*“...one important factor is there is no photograph or video showing a decapitated corpse, you can see a body lying in the road but it’s not obvious whether there is a head there or not”.*

It would have been clear to viewers, including under-eighteens, that the image therefore depicted a dead body. This image was shown repeatedly throughout the programme – on five occasions; and for prolonged periods of time – from between 10 and 27 seconds on each occasion. At times, the image of Fusilier Rigby's dead body was also more prominent because it had been enlarged on screen.

The programme also slowed down footage of one of the alleged attackers brandishing a meat cleaver, addressing the camera with blood on his hands, although the recorded speech of the man was not played and therefore his words were not audible. While this footage was shown the presenter commented:

*"The guy stood there with a meat cleaver in his hand, supposedly with blood on his hand and the person is just calmly filming someone who's just hacked someone's head."*

In Ofcom's view this commentary compounded the already distressing images of the man brandishing a meat cleaver, by reinforcing the graphic and violent nature of the attack on Fusilier Rigby.

Shortly afterwards Nick Kollerstrom commented on this footage as follows:

*"So just ask yourself if you had seen somebody hack someone's head off and he's got blood all over his hands with a meat cleaver, er, would you stand there a few feet in front of him photographing him and talking to him?..That tells you that the red blood on the hands was photoshopped on - there was no red blood on the hands."*

The programme showed an aerial image of the scene of the incident which included what appeared to be a blood stained pavement. In relation to this image Nick Kollerstrom commented:

*"So we are supposed to believe...they tried to hack his head off. They suddenly got out a meat cleaver and tried to hack his head off...about eight pints of blood would have spurted out if they'd have done that. They would have blood all over themselves, which they didn't have and the important thing is there is no blood on the pavement."*

These remarks were made in the context of questioning the authenticity of the footage filmed immediately after the death of Fusilier Rigby. However their effect in Ofcom's opinion was to heighten the distressing nature of the content by underlining the extremely violent nature of Fusilier Rigby's death, and appearing to mitigate its seriousness by questioning evidence related to the crime.

Broadcasting images of a dead body, especially in such a repeated, prolonged and prominent manner, together with graphic descriptions of violent acts, has the potential to be very disturbing to viewers. Ofcom considers this especially true with regard to under-eighteens, whose exposure to death (and their ability to understand it and place it in context) is generally more limited than that of adults. Under-eighteens were also more likely to have been affected by the explicit references to the blood at the scene and to remarks about "*hacking*" Fusilier Rigby's head off. The material was therefore not suitable for children.

We next considered whether children were protected by appropriate scheduling.



The programme was broadcast on four occasions before the watershed, both outside of school hours and at a weekend. While Showcase and Information TV were unlikely to attract many child viewers, Ofcom noted that children were nevertheless available to view at these times. Despite these potentially distressing scenes no warning was given prior to the images being broadcast that could have alerted parents watching with children that such images were about to be shown.

We noted the Licensee's submissions that the footage of the incident included in the programme had already been widely shown on other television channels and was widely available on the internet, so children had already been exposed to it. The rules of the Code apply equally to all licensees, although as appropriate, in enforcing the Code, Ofcom takes account of the individual characteristics of a service. In this case, however, Ofcom considered that the broadcast of this material at these times in the context of a conspiracy theory programme, as opposed to a news or current affairs programme, was not in line with the likely expectations of the audience for these channels, and in particular those of parents. Ofcom's research shows that viewers have higher expectations of content regulation on broadcast television than of audio visual material online and that protection of minors and protection from harm are important areas of regulation to viewers.<sup>4</sup>

For these reasons, the Licensee failed to protect children from unsuitable material by appropriate scheduling.

The material was therefore in breach of Rule 1.3.

### Rule 2.3

Rule 2.3 states that in applying generally accepted standards broadcasters must ensure that potentially offensive material is justified by the context. Context is assessed by reference to factors such as the editorial content, the degree of offence, the time of the broadcast and likely audience expectations.

Ofcom first considered whether the material was potentially offensive.

The content of the programme was detailed in the Introduction. In summary it consisted of a discussion between Nick Kollerstrom and the presenter, in which Nick Kollerstrom set out his view that the events surrounding the murder of Fusilier Rigby were fabricated by: *"the axis of evil, dedicated to everlasting war, and that is the British and American Intelligence services, they organise these kind of events"*. Nick Kollerstrom and the presenter discussed, in particular, images and moving footage widely reported and accepted to have been filmed in the aftermath of the murder of Fusilier Rigby, and criticised their authenticity.

Nick Kollerstrom, for example, commented on an aerial photograph of the murder scene which had been taken by a helicopter. This showed a trail of blood on a pavement and a white tent, which had been erected presumably to cover the body of Fusilier Rigby. Nick Kollerstrom stated that in his view if an attempt had been made to decapitate Fusilier Rigby there would have been more blood visible at the scene of the crime and *"the important thing is there is no blood on the pavement."* (See above under Rule 1.3).

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/946687/Protecting-audiences.pdf>

A further still image was shown in which Fusilier Rigby's body could be seen in the middle ground lying in the road. Nick Kollerstrom commented that other photographs, such as the image depicting Fusilier Rigby's body, did not, in his opinion, show blood and concluded that it had been *"put in on that [aerial] photo"*.

Nick Kollerstrom questioned whether Fusilier Rigby's body had been moved from the pavement into the road. Speaking over the photograph of the body lying in the road Nick Kollerstrom said:

*"You happen to have a meat cleaver...you hack his head off – why would you want to do that – and you then drag him out into the middle of the road. It makes absolutely no sense. The only sense it makes is as a stage prop for public horror."*

The programme then showed footage of one of the men alleged to have attacked Fusilier Rigby. He was shown speaking to a mobile phone camera although no audio was broadcast. The alleged attacker was featured carrying a meat cleaver and his hands were covered in blood. Nick Kollerstrom commented that he believed that *"actors"* were involved in the production of the footage and that the footage had been filmed a week before the murder of Fusilier Rigby. He said:

*"...just ask yourself if you had seen somebody hack someone's head off and he's got blood all over his hands with a meat cleaver, er, would you stand there a few feet in front of him, with a camera, photographing him and talking to him...So that is an obviously staged event...that tells you that the red blood on the hands was photo-shopped on. There was no red blood on the hands and it is only on his hands not on anywhere else on his clothing as would have happened."*

As this footage was shown in the programme, a graphic was superimposed which stated *"again the redness goes for a slight second"*, and an arrow pointed to the bloodied hands of the alleged attacker, suggesting that the programme was endorsing Nick Kollerstrom's view.

During the course of the programme the presenter, Richard Hall, agreed with Nick Kollerstrom's view that aspects of the killing had been staged and did not challenge him at all on the veracity of his claims. For example, he stated:

*"So they've done a very badly orchestrated false flag event in Boston<sup>5</sup> now they have done one in Woolwich in the UK...You've got the people who do see through these lies, such as yourself – people who actually critically analyse, look at the evidence and see if there is any mileage in what the mainstream [media] are saying, and then unpick it and then we know it is all a fake event. Ok. It's easy to see."*

Mr Hall commented on the still image which showed Fusilier Rigby's body lying in the road as follows:

*"One important factor is there is no photograph or video showing a decapitated corpse, we can see a body lying in the road, but it's not obvious whether there is even a head there or not."*

Ofcom considered that the way that Nick Kollerstrom's opinions were presented in this programme was capable of causing considerable offence. He said in summary

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<sup>5</sup> Presumably referring to the terrorist bombing in Boston in April 2013.

that Fusilier Rigby was murdered before 22 May 2013 and his corpse moved to Woolwich for “...a *contrived fabricated event*” involving “actors”, and that the mobile phone footage of them had also been filmed before 22 May 2013 and manipulated afterwards to make the footage more graphic and distressing. Further, in Ofcom’s opinion the language used by both Nick Kollerstrom and the presenter was both callous and unsympathetic in tone. It had the potential not just to offend the friends and family of Fusilier Rigby but also a wider audience who had been distressed by the incident. The programme was broadcast within one month of the killing of Fusilier Rugby, when his funeral was yet to take place (on 12 July 2013).

To suggest without any credible evidence whatsoever so soon after the attack that aspects of the killing had been deliberately orchestrated by secret agencies of the state, and show the graphic images of one of the alleged attackers filmed after the incident in this context, in Ofcom’s view, clearly had the potential to be highly offensive.

As set out above, Ofcom also considered that the prolonged, prominent and repeated images of Fusilier Rigby’s dead body were capable of causing great offence and distress to viewers. The language used to describe the events contained explicit and vivid descriptions of an extremely violent act. The distressing images contained in the programme, whose effect was compounded by the graphic verbal descriptions, were capable of causing a high degree of offence.

We next considered whether the broadcast of this material was justified by the context.

Ofcom recognises that it is very important for broadcasters to have the editorial freedom to explore potentially controversial matters. In particular, the Code does not prevent broadcasters from analysing and criticising widely accepted views. However, in presenting such an analysis or critique, broadcasters must ensure that any potential offence this material may cause is justified by the context.

The events surrounding the death of Fusilier Rigby have been widely discussed in the media, and the disturbing images from the scene of the attack which were shown in *Rich Planet* had been shown in news bulletins across other broadcast media on the day of the attack and for some days after. They had been widely discussed and were important matters of public interest. To examine the events surrounding the death of Fusilier Rigby, including the authenticity of the evidence such as the mobile telephone footage, from the viewpoint of a conspiracy theorist like Nick Kollerstrom was a potentially valid avenue for investigation, in accordance with the broadcaster’s and audience’s right to freedom of expression. Any such programme however was required to comply with the Code, and in particular in this case the Licensee needed to ensure generally accepted standards were applied so that the public were adequately protected from offensive material.

For the reasons set out above, in Ofcom’s view this content was capable of causing considerable offence. The level of offence was compounded by the presenter’s agreement with Nick Kollerstrom’s conspiracy theories and the fact that he did not challenge them in any way (by pointing out for example that they were wholly based on assertion rather than any credible argument or evidence).

We also took account of the fact that no warning was given either before or during the programme about its potentially offensive content.

In addition to the offence caused by the manner in which the conspiracy theory was put forward in the programme, Ofcom considered that the distressing images shown in the programme (i.e. Fusilier Rigby's dead body, the alleged attacker brandishing a meat cleaver and the aftermath of this violent incident) were in themselves potentially very distressing to viewers and had the potential to cause offence. *Rich Planet* is not a news programme when the audience would be more likely to expect real life images of violence. Care therefore was required to mitigate any potential offence the broadcast of such distressing images would generate. In this case however in Ofcom's opinion such care was not taken to provide sufficient context. For example, the presenter and Nick Kollerstrom commented on the images of the incident using graphic language in a callous tone which emphasised the violence of the event.

In our opinion the majority of viewers of these channels would not have expected such potentially distressing images and graphic descriptions of violence to be shown in these circumstances.

In reaching our Decision in this case, we took account of the Licensee's various representations. For example, The Licensee said that although its staff had reviewed the programme prior to transmission the "ultimate compliance authority" was travelling abroad and was unable personally to review the programme before it was broadcast. However, this absence of compliance staff did not mitigate any failure on the part of the Licensee to apply generally accepted standards. Broadcasters must ensure that they have in place adequate processes at all times to ensure compliance with the Code. Ofcom requires all licensees to comply with the Code and does not accept that channels which serve minority interests have any less obligation to comply than other channels. Ofcom's view was that whether or not it had formally announced an investigation into the broadcast of the footage in news bulletins on 22 May 2013 should not have affected the Licensee's compliance decisions in this case in any way: all licensees must make their own decisions about generally accepted standards based on the material at issue and the circumstances at the time.

Ofcom considered that the offence caused by Nick Kollerstrom's comments may have been somewhat mitigated by the expectations of the likely audience for this programme, given that the premise of the series was to discuss conspiracy theories. However, Ofcom did not consider that the high level of offence caused was sufficiently mitigated by this.

We noted that The Licensee had taken the decision to "serve notice" on the makers of *Rich Planet* informing them that they would not be broadcasting any further episodes. . However, given the above, Ofcom considered that the broadcast of this material was not justified by the context and Rule 2.3 was breached.

Ofcom has previously noted its concerns with the Licensee's compliance in a Finding published in issue 228 of the Broadcast Bulletin<sup>6</sup>. This led to us requiring the Licensee to attend a meeting at Ofcom to give reassurances about its compliance arrangements. The current case gives Ofcom further concerns about the sufficiency of the Licensee's compliance arrangements. Ofcom is therefore putting the Licensee on notice that any similar compliance failures will result in Ofcom taking further regulatory action.

### **Breaches of Rules 1.3 and 2.3**

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<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb228/obb228.pdf>

## In Breach

### Production of recordings

#### Hot Fork

*Klear TV, 3 September 2013, 19:50*

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#### Introduction

Klear TV is a UK digital satellite television channel that broadcasts “ethnic and mainstream programming” to an “Afro-Caribbean and European” audience<sup>1</sup>. The licence for this channel is held by Millennium Media House Limited (“Millennium Media” or “the Licensee”).

Ofcom received a complaint about sexual content in the film *Hot Fork* broadcast on Klear TV at 19:50 on 3 September 2013.

#### Production of recording

In order to assess the material Ofcom requested a recording of the broadcast from the Licensee.

The recording provided by the Licensee was not of broadcast quality. The picture quality was satisfactory but the audio was intermittent. Therefore Ofcom was unable to carry out a complete assessment of the material. Ofcom requested a replacement recording from the Licensee. The Licensee explained that it was unable to provide another recording until it had resolved an issue with its playout provider. It requested that Ofcom allowed more time for the recording to be sent. Although Ofcom granted an extension to the deadline, the Licensee explained that its playout provider had refused to release the recording until it had received an outstanding payment and as such, Klear TV was not able to provide the recording requested by the extended deadline.

Because Millennium Media had been unable to provide a recording when requested to do so, Ofcom considered this matter warranted investigation under Television Licensable Content Service (“TLCS”) Licence Condition 11(2)(b):

(2) “In particular, the Licensee shall:

...

(b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction...”.

Paragraph 76 of Ofcom’s Guidance Notes for a Television Licensable Content Service licence (“TLCS”) application, advises all applicants that:

“The licensee must retain, or arrange for the retention of, recordings of everything included in the licensed service for a period of 60 days. If Ofcom requests a copy of any recording, the licensee must provide this forthwith. **Recordings must be of a standard and in a format which allows Ofcom to view the material as**

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<sup>1</sup> The service stopped broadcasting on the digital satellite platform on 18 September 2013. At the date of publication of this finding it was not known whether, and if so when, the service would start broadcasting again.

**broadcast.** [Emphasis added]. The licensee must also (where possible) provide Ofcom with scripts or transcripts of any material included in the service.”

Ofcom therefore sought comments from Millennium Media as to why it had been unable to comply with Licence Condition 11(2)(b).

### Sexual content

Although Ofcom was not able to complete a full assessment of the material, we did note that the programme was preceded by two warning notices which stated:

*“PARENTAL GUIDANCE IS ADVISED. This Programme may contain some mild violence, language or brief nudity. Some scenes may be unsuitable for young children”.*

and

*“This movie is rated 18 strictly for adult[s] only”.*

We noted one particular scene shown at approximately 20:10. This scene depicted a sexual encounter between a man and a woman lying in a foam bath. The couple was shown kissing passionately while the man caressed the woman’s buttocks. Although the couple were both naked, explicit nudity was obscured by foam. Shots of the couple were intercut with shots of a man watching the couple through a window. This man was shown repeatedly rubbing his genitals through his shorts.

Ofcom considered this scene raised issues warranting investigation under Rule 1.3 of the Code:

Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them.”

We therefore asked the Licensee as to how the material complied with this rule.

## **Response**

### Production of recording

The Licensee said that it had sent a DVD to Ofcom following our request for a replacement recording, although it did not specify when it had done so. However, as no replacement DVD was received by Ofcom, we twice enquired as to the whereabouts of the recording and on both occasions were informed that the Licensee was addressing the matter. Approximately two weeks after the Licensee had told us that it had sent a replacement recording, we received a DVD. However, the DVD did not contain any data.

### Sexual content

The Licensee said that it was disappointed with its “previous control mechanisms” and that it was currently off air whilst it improved its compliance procedures.

## Decision

### Production of recording

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request issued by Ofcom to produce such recordings.

Licence Condition 11(2)(b) reflects this obligation. Under this Licence Condition, licensees are required to produce recordings to Ofcom “forthwith” upon request. As the guidance makes clear, these recordings must be of broadcast quality. Breaches of Licence Condition 11(2)(b) are serious because they impede Ofcom’s ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom’s ability to carry out its statutory duties in regulating broadcast content.

Ofcom noted that initially the Licensee provided a recording that was not of broadcast quality because of the intermittent sound. When asked to supply a replacement, it was unable to do so because of an outstanding payment owed to its playout provider. It subsequently failed to meet extended deadlines to supply material. When it finally did submit a DVD to Ofcom, the disk was blank. As a result, we have recorded a breach of Licence Condition (11)(2)(b).

Ofcom expects its licensees to have measures in place to ensure that broadcast quality recordings are supplied to Ofcom upon request in a timely manner. We are very concerned about the Licensee’s approach to compliance in this area.

### Sexual content

The Act also places a duty on Ofcom to set standards for broadcast content in order to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

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

Ofcom first assessed whether the scene in question was unsuitable for children. Although the initial recording supplied had intermittent audio, Ofcom could make this assessment on the basis of the images. We noted that the scene was relatively brief and that the couple was positioned so that their bodies were largely masked by bath foam. However, the woman’s arched back and buttocks were visible and the scene very clearly portrayed two naked people engaging in a sexual act. Ofcom also noted that the man watching the couple was rubbing his genitals seemingly to disguise a state of arousal. The unambiguously sexual nature of the scene was, in Ofcom’s view, not suitable for children.

We then assessed whether the content was appropriately scheduled. Appropriate scheduling is judged against a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

We observed that the film was preceded by a warning stating that it contained material that was “*rated 18 strictly for adult[s] only*”. However, the provision of such

information – while it may be useful as a guide to viewers in some circumstances – is not, in itself, sufficient to ensure that that material is appropriately scheduled. In any event, Rule 1.23 of the Code makes clear that BBFC 18-rated films or their equivalent must not be broadcast before 21:00 on any service (except for pay-per-view services). In this case, we noted that the film<sup>2</sup> began at approximately 19:50 and the material described above was broadcast at 20:10 when children were likely to be available to view. It was therefore broadcast before the 21:00 watershed, when we would expect broadcasters to be mindful of the sexual content of programming in order to protect children who may be in the audience.

We noted the Licensee's decision to cease transmission until its compliance processes have been improved. However, we concluded that children were not in this case protected from unsuitable material by appropriate scheduling. As a result, Rule 1.3 was breached.

### **Breaches of Rule 1.3 and TLCS Licence Condition 11(2)(b)**

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<sup>2</sup> This film has not been certified by the BBFC.



## In Breach

### Promotion of charity appeals on behalf of Hazrat Sultan Bahu Trust

*Takbeer TV, from 1 December 2012 to 31 January 2013, various times*

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#### Introduction

Takbeer TV broadcasts a religious and general entertainment service, mainly in Urdu, directed towards the Sunni Muslim community. The licence for Takbeer TV is held by Takbeer TV Limited (“TTVL” or “the Licensee”).

During routine monitoring of broadcast charity appeals, Ofcom noted that donations were sought regularly on the channel for Care and Relief Foundation (“CRF”), both in advertisements and as programming. At the time, CRF was a project run by Hazrat Sultan Bahu Trust (UK) (“HSBT”), which is a registered charity whose activities include the provision of relief for victims of poverty and natural disasters<sup>1</sup>.

We asked TTVL to provide us with information about the terms under which its extended (i.e. telethon-style) broadcast charity appeals for CRF were broadcast. Although TTVL demonstrated to Ofcom that the extended charity appeals had been broadcast free of charge, TTVL also provided a copy of an ongoing agreement between TTVL and HSBT (“the agreement”), which specified a number of annual commitments made by TTVL in return for payment. Among other things, these commitments included advertising for HSBT to be shown on Takbeer TV and a “Documentary Component” – a specific commitment by TTVL to broadcast on Takbeer TV “a minimum of 12 documentaries” about aspects of HSBT’s work.

Ofcom requested recordings of material broadcast on Takbeer TV under the agreement during December 2012 and January 2013. The material supplied by TTVL included seven advertisements and 15 “documentaries”. The Licensee also supplied a full broadcast schedule for the “documentaries” but did not hold a detailed schedule for the seven advertisements.

The 15 “documentaries”, which were two to 15 minutes in duration, each focused on CRF’s provision of specific aid in Pakistan (e.g. food and sewing machines). 13 of them also sought donations for the project’s activities, providing at least a “*donation hotline*”, to enable immediate viewer response<sup>2</sup>. The other two “documentaries” celebrated CRF’s provision of clean water in Daphar, featured local people expressing gratitude to CRF’s donors and displayed either the CRF logo on-screen or the project’s name on a large sign, in situ.

We therefore considered the 15 items regarded by TTVL as documentaries raised issues warranting investigation under the following rule:

Rule 9.2: “Broadcasters must ensure that editorial content is distinct from advertising”.

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<sup>1</sup> HSBT is registered with the Charity Commission as charity number 292697. CRF has subsequently registered with the Charity Commission as charity number 1152230.

<sup>2</sup> Some of the broadcast items also featured relevant bank details and/or contact details.

Television advertising is defined in our Code on the Scheduling of Television Advertising (“COSTA”) as:

“any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment.”

We also considered the case warranted investigation under the following rule:

COSTA Rule 4: “...time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes...”.

We asked TTVL for its comments as to how the content complied with these rules.

## **Response**

TTVL said it understood Ofcom’s concerns but had “accepted that the nature and content of each one of the programmes represented a documentary in that it was informative and descriptive to viewers and therefore designated...as such”. The Licensee added that it had not therefore considered this broadcast material to be advertising and did not expect COSTA rules to have applied. In response to Ofcom’s Preliminary View on the matter, TTVL apologised for this misunderstanding.

## **Decision**

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

Article 19 of the AVMS Directive requires, among other things, that television advertising is kept distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. The requirement is reflected in, among other rules, Rule 9.2 of the Code.

Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour. This requirement is reflected in Rule 4 of COSTA.

### **Rule 9.2 of the Code**

This rule states that editorial content must be distinct from advertising. Its purpose is to prevent editorial material being distorted for commercial purposes and to ensure that both the Licensee maintains editorial control over its programming and it is clear to viewers that programming has not been subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising.

Ofcom noted that the Licensee had broadcast the 15 items as editorial content (i.e. documentaries). However, we also noted that each of these items had been provided

to TTVL by HSBT and broadcast in return for payment under terms specified in the agreement. Further, each item described specific CRF activities and, in most cases, sought donations from viewers.

For example, in one item, which featured, among other things, a “*donation hotline*” and an on-screen strap that stated: “*Distribution under the Hussaini feeding project – Care & Relief Foundation*”, the presenter said:

*“In the name of Allah the Merciful, the Beneficent: Respected viewers – In Pakistan, there have been the worst floods ever. Village upon village has been annihilated. People do not have basic food supplies. Praise Allah, we have delivered food to thousands of homes, through the Hussaini food project. In Muzaffar-Garh, Dera Ghazi Khan, and the flooded areas of Sind, Hussaini project is cooking food and feeding people. We need more of your cooperation. One daig<sup>3</sup> can be cooked for £50. Please...call us on the given phone number so that your donations can reach the Hussaini feeding project in the flood-ridden areas as soon as possible”.*

Other items contained positive comments from people in Pakistan about CRF’s aid programme; for example:

- *“...Many many thanks to Care and Relief Foundation for giving us clean water...may Allah reward them for providing clean water to us”;*
- *“We thank Care and Relief Foundation for doing us this great favour”;*
- *“We are thankful to the Foundation and the donors...We salute you”;*
- *“I am deeply grateful to Care and Relief Foundation...”;* and
- *“Allah willing, you will cooperate and these...water supplies will continue to be supplied one after another”.*

These items also featured visual references to CRF, through the use of either a superimposed logo or a large sign, shown in situ in Pakistan, displaying the project’s full name.

Ofcom considered that the 15 items did not have an *editorial* focus on the effects of the aid provided by CRF. Rather, they appeared to have the principal purpose of promoting CRF (at that time a project run by HSBT). In particular, they did so with a view to encouraging viewers to donate towards the supply of goods and services to people in Pakistan, with 13 of the items also featuring a “*donation hotline*”, to enable immediate viewer response.

We also noted that seven advertisements for CRF, which were between approximately 30 and 90 seconds in duration, had also been shown on Takbeer TV under the terms of the agreement. In our view, these advertisements, which were broadcast by the Licensee over a similar time period to the 15 items broadcast as documentaries, contained a number of similarities to them. In particular, both the seven advertisements and the 15 “documentaries” focused on CRF’s provision of specific aid in Pakistan (e.g. the provision of clean water and orphans’ marriage costs) and encouraged donations for the project’s activities, most providing at least a

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<sup>3</sup> A daig is a large cooking pot used to feed up to around seventy people.

*“donation hotline”*, to enable immediate viewer response. We also noted that the presenter in the advertisements featured in 14 of the 15 items broadcast as documentaries.

As a result, although the Licensee had broadcast the 15 items as editorial, we considered that these 15 items had the characteristics of advertising and that the content of the 15 items and the seven advertisements were interchangeable. We therefore concluded that the Licensee had failed to keep editorial content distinct from advertising, in breach of Rule 9.2 of the Code.

#### Rule 4 of COSTA

As the 15 items promoted CRF with a view to encouraging viewers to donate money to pay for the supply of goods and services to people in Pakistan, and were broadcast in return for payment from HSBT, we considered they met the definition of ‘television advertising’ contained in COSTA.

Rule 4 of COSTA states that the time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.

Ofcom reviewed the broadcast schedule of the 15 “documentaries” that TTVL had broadcast as editorial content, but which Ofcom considered met the definition of television advertising. We concluded that the following clock hours contained more than 12 minutes of advertising:

- 00:00-01:00, 14:00-15:00, 16:00-17:00 and 19:00-20:00 on 29 December 2012;
- 16:00-17:00 on 30 December 2012; and
- 00:00-01:00, 08:00-09:00, 13:00-14:00 and 16:00-17:00 on 31 December 2012.

TTLV therefore breached Rule 4 of COSTA on nine occasions. Ofcom noted the Licensee could not provide a full advertising schedule for Takbeer TV, as it did not hold details of when all its advertisements were broadcast. We were therefore unable to assess whether the broadcast of the 15 “documentaries” that TTVL had considered and broadcast as editorial, and which were actually additional advertisements, had led to further breaches of Rule 4.

Ofcom recently expressed concern about TTVL’s compliance record in a Sanction Decision<sup>4</sup>. At that time, we put the Licensee on notice that we intended to visit its premises, to review its compliance processes periodically and then monitor the broadcast content of Takbeer TV. As part of this process, Ofcom now intends to discuss the current compliance failure with TTVL.

#### **Breaches of Rule 9.2 of the Code Breaches of Rule 4 of COSTA**

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<sup>4</sup> See ‘Decision by Ofcom – Takbeer TV Limited’, published on 23 August 2013, at: <http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>.

## In Breach

### Sponsorship of Idiots

Channel Nine UK, 10 September 2013, 19:40

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#### Introduction

Channel Nine UK is a general entertainment channel that is broadcast in Bengali and serves the Bangladeshi community in the UK and Europe. The licence for Channel Nine UK is held by Runners TV Limited (“Runners TV” or “the Licensee”). The channel re-transmits content from Channel Nine in Bangladesh.

A complainant alerted Ofcom to a sponsorship credit for Lycamobile shown after a programme trail for the drama series *Idiots*.

Ofcom noted that the brief sponsorship credits for Lycamobile contained the following:

On-screen text: “Sponsored by Lycamobile Call the world for less”, “Visit: [website]”.

Voiceover: “Lycamobile, call the world for less”.

Ofcom considered that the sponsorship credit raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

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

We asked the Licensee for its comments as to how the content complied with Rule 9.22(a).

#### Response

The Licensee said that the placement of an advertising message in a sponsorship credit had been unintentional and that it had subsequently removed all taglines from credits. Runners TV, which said that it would “endeavour to avoid all future incidents”, told us that its staff were being retrained on the requirements of the Code.

#### Decision

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

obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

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

Rule 9.22(a) of the Code reflects this requirement. Among other things, Rule 9.22(a) requires that sponsorship credits broadcast around sponsored programmes<sup>1</sup> must not contain advertising messages or calls to action.

Ofcom’s guidance<sup>2</sup> about the use of sponsor’s slogans and straplines in sponsorship credits makes clear that:

- “[I]t is possible for some sponsors’ slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor’s products/services (e.g. by featuring claims)”; and, that
- “credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code.”

In this instance, Ofcom considered that the sponsor’s tagline – “*call the world for less*” – which featured both on-screen and in the voiceover, was a claim that the sponsor’s communication services were less expensive than those of other international call providers. Consequently, we considered it represented an advertising claim.

We also considered that the term “*Visit*” shown on-screen before the sponsor’s website address represented a direct call to action.

The sponsorship credit was therefore in breach of Rule 9.22(a) of the Code.

Ofcom has published a number of findings in relation to sponsorship credits in recent years, and has made clear the need for licensees to exercise care to ensure that credits do not contain advertising messages. More specifically, Ofcom published a finding about the use by another broadcaster of the “*call the world for less*” slogan in a sponsorship credit in issue 236 of the Broadcast Bulletin<sup>3</sup>.

It is the responsibility of licensees to ensure that the material they broadcast is compliant with the Code. Ofcom therefore expects licensees to take account of published rulings. We are concerned, therefore, by the Licensee’s compliance failure

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<sup>1</sup> Section Nine of the Code defines programming as “All broadcast content except spot advertising and telesshopping. Programmes, trailers, cross-promotions and sponsorship credits are all forms of programming.”

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

<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb236/>.

in this case, particularly as this credit was broadcast shortly after we had recorded a previous breach of Rule 9.22(a) by Runners TV<sup>4</sup>.

We are therefore requiring Runners TV to attend a meeting to explain its compliance procedures in this area.

**Breach of Rule 9.22(a)**

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<sup>4</sup> Ibid.

## Not in Breach

### Programmes featuring Anjem Choudary

*Channel 4 News, Channel 4, 23 May 2013, 19:00*

*Newsnight, BBC 2, 23 May 2013, 22:30*

*Daybreak, ITV, 24 May 2013, 06:20*

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#### Introduction

Anjem Choudary is a controversial Muslim cleric, who in the past headed the proscribed Islamic organisations Al-Muhajiroun and Islam4UK<sup>1</sup>. Following the killing of Fusilier Lee Rigby<sup>2</sup> in Woolwich on 22 May 2013<sup>3</sup>, Anjem Choudary admitted knowing one of the two individuals alleged to have killed Fusilier Rigby. It was in this context that Anjem Choudary was included in programmes broadcast by Channel 4, BBC 2 and ITV immediately following the attack on Fusilier Rigby.<sup>4</sup>

22 complainants alerted Ofcom to Anjem Choudary taking part in a discussion in an edition of *News* broadcast on Channel 4 on 23 May 2013; a discussion in an edition of *Newsnight* broadcast on BBC 2 on 23 May 2013; and, an interview in an edition of *Daybreak* broadcast on ITV on 24 May 2013. In summary, complainants:

- objected to Anjem Choudary being given the opportunity to air offensive views on television;
- considered that it was disrespectful to the family of Fusilier Rigby to interview Anjem Choudary so soon after the killing of Fusilier Rigby; and
- expressed concerns that the appearances of Anjem Choudary would incite hatred against the UK Muslim community, the majority of whom strongly opposed the killing of Fusilier Rigby.

Ofcom reviewed the three programmes.

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<sup>1</sup> Al-Muhajiroun and Islam4UK were proscribed on 14 January 2010 under the Terrorism Act 2000.

<sup>2</sup> Ofcom has published a decision in relation to various broadcasters' news coverage of the killing of Fusilier Rigby (see issue 245 of Ofcom's Broadcast Bulletin: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb245/>).

<sup>3</sup> On 19 December 2013, Michael Adebolajo and Michael Adebowale were found guilty of the murder of Fusilier Lee Rigby at the conclusion of their trial at the Old Bailey.

<sup>4</sup> Ofcom received 16 complaints about an interview with Anjem Choudary in an edition of the *Today* programme broadcast on BBC Radio 4 on 20 December 2013. Ofcom assessed this content under the Code and considered that this interview raised similar issues to those that are the subject of this Finding. Ofcom therefore decided that the interview did not raise potentially substantive issues under the Code that warranted further investigation. Ofcom also received 12 complaints about news programmes featuring coverage of the outcome of the trial of the killers of Fusilier Lee Rigby, which Ofcom assessed under the Code and also decided not to investigate further.



Channel 4 News, Channel 4, 23 May 2013, 19:00

During this programme, the studio presenter, Cathy Newman, conducted a discussion with Anjem Choudary, and two other participants: Julie Siddiqi from the Islamic Society of Britain<sup>5</sup>, who appeared in the studio; and Douglas Murray from the Henry Jackson Society<sup>6</sup>, who participated in the discussion by means of a live broadcast link. This discussion lasted nearly eight minutes, and we noted Cathy Newman commenced the discussion as follows:

Cathy Newman ("CN"):

*"I'm joined now by the radical cleric Anjem Choudary - one of the founders of the controversial Islamist organisation, Al-Muhajiroun...we've unearthed footage tonight which shows one of the alleged terrorists Michael Adebolajo at a protest by the now banned group Al Muhajiroun in 2007 - outside Paddington Green police station in London. Anjem Choudary was also on the march.*

*So, one of the suspects attended your marches, listened to your lectures; you therefore helped radicalise him. Will you apologise for what happened down in Woolwich?"*

Anjem Choudary ("AC"):

*"I'm not going to apologise for exposing the crimes of the British Government in Iraq or Afghanistan".*

CN: *"That's not the question I asked. You helped radicalise the suspect?"*

AC: *"Let me answer the question in my way. Radicalisation is a stake which is used to beat the Muslim community. The fact is that there is conflation between exposing the British foreign policy, between things like rendition, Guantanamo Bay, killing innocent men, women and children, which I have no apology for whatsoever and we will continue to expose".*

CN: *"But you helped radicalise the suspect and now a British soldier is dead".*

AC: *"Let me answer the question".*

CN: *"The question I am asking is that you helped radicalise him. Because you radicalised him on these marches. Will you apologise?"*

AC: *"Radicalisation is calling for the Shari'a nowadays. Radicalisation is exposing the British Government. Radicalisation is commanding good over evil. We say, and we've always said that we live here under a covenant of security. It's not allowed to target innocent people who are trying for our life to be secure and we've said that over the years. The fact is, the fact is that the biggest radicalising factor is the British Government and the foreign policy".*

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<sup>5</sup> The Islamic Society of Britain is a community based charity and not-for-profit company that seeks to "evolve a uniquely British flavour to Islam" (see: [www.isb.org.uk/](http://www.isb.org.uk/)).

<sup>6</sup> The Henry Jackson Society is a UK-based think-tank which supports the values of modern liberal democracies.

- CN: *"Radicalisation is also about justifying violence isn't it?"*
- AC: *"No it's not".*
- CN: *"Will you take some responsibility for what has happened on the streets of Woolwich?"*
- AC: *"The thing is the majority of radicalisation is fundamentally extremism that is used by the British Government to silence the section of the community which exposed their own policies. There's something called Islam: Islam called for the Shari'a; Islam says that people have a right to defend themselves and that's what we propagate. We don't propagate something outside of Islam".*

Later in the discussion, both the other participants made the following points:

Douglas Murray ("DM"):

*"[Al-Muhajiroun] and its activities predate 9/11 and I think it's very important to remember that Ami Mersa was convicted, first a member of Al-Muhajiroun, was convicted in 1998 for his attempt to firebomb a British army barracks. There have been a spate of attacks. We worked out that about 20% actually of convictions of Al-Qaeda related terror convictions in this country, have a linkage with Al-Muhajiroun and with Mr Choudary".*

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Julie Siddiqi ("JS"):

*"I just want to first of all to give my condolences and thoughts to the family, friends and people of Woolwich really. The family and friends of Lee Rigby. Of course today we've seen the face to a name really and it makes it even more horrific and very, very sad what we saw on our streets unfolding yesterday. You know, I think really, all us, any decent people in this country will realise that this kind of rhetoric has no place whatsoever in this country. You know, what we saw yesterday and what we're seeing with the likes of the English Defence League you know for me, in both ends they are trying to divide this country in a way that we won't stand for. You know the good hundreds and thousands of good people in this country, you know, Al-Muhajiroun and any of its off-shoots have always only ever had tens of people, not hundreds, not thousands, you know, so really representing a very, very small number of people in this country...I think the overwhelming majority of Muslim organisations and individuals have come out in full force today to absolutely condemn and say that this kind of action has no place whatsoever in this country".*

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DM: *"Almost none of the British nation I should think is terror struck. What we are is united in disgust, Muslims and non Muslims. You know it's extraordinary really for most of us because we've all witnessed Mr Choudary and his group for many years trying to provoke the British people. He's got on his record not only this huge swathe of people that he has helped to radicalise but of course he has also created the English Defence League. An incredible double whammy achievement for one*

*individual. But you know one of the things that's most interesting in this is the continuing provocations of Mr Choudary does not persuade and will not persuade most of us to believe that most Muslims are like Mr Choudary; they are not. Most Muslims in this country are utterly disgusted by him and his actions".*

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

Rule 1.3: "Children must also be protected by appropriate scheduling from material that is unsuitable for them".

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We therefore sought Channel 4's comments as to how this material complied with these rules.

Newsnight, BBC 2, 23 May 2013, 22:30

The presenter, Kirsty Wark, introduced the discussion item featuring Anjem Choudary, as follows:

Kirsty Wark ("KW"):

*"Well earlier this evening, I spoke to Anjem Choudary, whom you saw earlier in [a] package: a radical Muslim who once headed a now-banned extremist group, Al-Muhajiroun. Mr. Choudary says he knows the suspect, Michael Adebolajo, and he was seen standing alongside him at a protest in images which emerged today. During our discussion, he was challenged on his views by Julie Siddiqi, the Executive Director of the Islamic Society of Britain, and the Imam, Shams Adduha Muhammed, the Director of the Ebrahim College in East London".*

During the discussion we noted the following exchange between the presenter and Anjem Choudary:

KW: *"So, when you saw him standing there with his bloodied hands, and meat cleavers, were you horrified?"*

AC: *"I think, we were shocked, like everybody else".*

KW: *"Horrified?"*

AC: *"We were shocked. It was a shocking scene, there's no doubt about that".*

KW: *"But, do you abhor what he did?"*

AC: *"Well, you know I think that what he said explains what he did, and I –".*

KW: *"No, that's a different thing. No, that's a different thing. I'm really wanting your reaction –".*

- AC: *"Well, I'm not going to give a one word answer".*
- KW: *"When you saw the images of him, were you horrified?"*
- AC: *"When I saw what took place I was shocked. But, let me just say one thing. What he said in the clip which has now been played quite widely, I think, not many Muslims would disagree with because he was talking about the British Foreign policy, he was saying that many people are being killed –".*
- KW: *"Let's, just be quite clear, you have absolutely – no, no, you have – you're making a very big assertion there, and I have to say I would disagree that many Muslims –".*
- AC: *"Most Muslims around the world".*
- KW: *"I would just say to you that I find it quite extraordinary that you could not say you abhor the scene of him standing –".*
- AC: *"I abhor –".*
- KW: *"What he had done was actually killed a man in the street and you cannot bring yourself –".*
- AC: *"One man killed in the street does not equate to the hundreds of thousands and millions of Muslims in fact who have been slaughtered by Britain, America and their foreign policy. Those who have been tortured in Guantanamo Bay. Those who've been rendered off to be tortured by brutal regimes. If we're going to start abhorring, where's the condemnation of the British foreign policy?"*
- KW: *"This is a specific thing that happened in Woolwich beside a primary school where you actually attended".*
- AC: *"Do you abhor David Cameron's foreign policy? Do you abhor his foreign policy or not?"*
- KW: *"I'm asking you. I'm asking you a simple question –".*
- AC: *"I'm asking you a simple question as well".*
- KW: *"Are you refusing to condemn what happened because you had a hand in radicalising Michael Adebolajo?"*
- AC: *"If radicalisation is calling for the Shari'a; if radicalisation is exposing the British foreign policy; if radicalisation is saying that Muslims have the right to defend themselves, I don't have any qualms –".*
- KW: *"So, you did radicalise him?"*
- AC: *"– I don't have any qualms about that whatsoever".*
- KW: *"Did you radicalise him?"*

AC: *"We're on record as saying that Muslims in Britain have a covenant of security. In return for their property and wealth protected, they cannot target and the property and lives of those with whom they live".*

Later in the discussion, both the other participants, Shams Adduha Muhammed and Julie Siddiqi made the following points:

Shams Adduha Muhammed:

*"I have not come across a single Muslim – and I interact with a lot of them – who agrees with what happened and would justify and would agree with that [i.e. Anjem Choudary's] narrative".*

\*\*\*\*

JS: *"I just want to obviously give our condolences and thoughts to Lee Rigby's family, and seeing his photo today really has brought it home again. You know, a very smart, young man in his uniform and how horrific it was that he was murdered like that in cold blood. So really our, you know, thoughts go to his family and the people that had to witness something as horrific as that. I think that everyone's just been shocked and just outraged really at what's happened. Absolute condemnation from every Muslim organisation... This kind of rhetoric [i.e. Anjem Choudary's] really has no place whatsoever in this country. And the vast majority of people would say that. The majority of people have stood together today from all faiths and backgrounds, Muslims and not, and said 'you're not going to divide this country'".*

\*\*\*\*

JS: *"Well, I think there's absolutely no justification for what we saw yesterday [i.e. the killing of Fusilier Rigby]. It doesn't matter what is happening abroad, and as the Imam has said, it's a separate issue. And people up and down the country can talk about that, but you can never equate that with what we saw yesterday".*

The discussion concluded with the following exchange between Kirsty Wark and Anjem Choudary:

KW: *"Anjem Choudary, there's one simple, very short question that I want you to respond to, and respond to honestly: It is 'unIslamic' not to condemn the murder yesterday?"*

AC: *"I believe that that action, for me, would not be allowed. But I do believe there would be a difference of opinion".*

We considered the material raised issues warranting investigation under Rule 2.3 of the Code. We therefore sought the BBC's comments as to how this material complied with these rules.

Daybreak, ITV, 24 May 2013, 06:20

During this programme, the ITV journalist Jonathan Swain conducted an interview with Anjem Choudary live in a Woolwich street.

Jonathan Swain ("JSw"):

*"With me now is the radical preacher, Anjem Choudary, quite a controversial figure. Let's hear from you this morning if we can because we know that you knew one of the suspects, didn't you, Michael Adebolajo, he came to some of your demonstrations? Are you responsible then for radicalising him?"*

AC: *"Well, you know, if you mean by radicalisation that people are calling for the Shari'a; they stand out for men, women and children who have been killed around the world because of the British foreign policy; that they are commanding good and forbidding evil and of course raising their voice then, yeah, I have no problem with that whatsoever. Obviously in Britain –".*

JSw: *"Are you horrified at what he has gone on to do, though, it is one thing having different views, isn't it?"*

AC: *"Well, oddly enough, you know, we've had reaction from around the world from Muslim world for them because here is a Muslim confronting a soldier. For them he is courageous, for them he is a hero. It is not the same reaction".*

JSw: *"But many Muslims we have spoken to are absolutely horrified with what has happened here".*

AC: *"In Muslim countries he is considered to be courageous and a hero. Obviously in this country we do believe, actually, and I have expressed that before, that it's not allowed for Muslims as far as I believe to target the non-Muslims because we live under them, with them under a covenant of security but not everyone adopts that opinion. What he did does have justification according to some schools of thought. And as I said –".*

JSw: *"Mr Choudary that is quite offensive to many Muslims in this country because I have spoken to lots of them and they are absolutely horrified and appalled by what has happened just a mile or so down the road from here."*

AC: *"Well you know it could be that many people have been desensitised and you know they have grown up in the West and in fact they have really given up their religion but for the Muslims around the world the British Government and remember there are soldiers at war with them and therefore they consider this to be an act really an operation against the enemy".*

JSw: *"So therefore you are responsible for radicalising him, then, are you, for him to get these extreme views?"*

AC: *"There is in fact nothing called radicalisation in Islam there is either Islam or there is non-Islam, if you are talking about Islam".*

JSw: *"If there is someone you knew that has turned up to your sermons, demonstrations who has gone on to commit murder on the streets of*

*Britain in broad daylight in front of families and children. You've got to condemn those attacks surely?"*

AC: *"No, I don't think so. I think we should condemn the hundreds of thousands of murders of innocent men women and children first. The cause of this –".*

JSw: *"Mr Choudary, these are arguments you have made in the past before".*

AC: *"The point is there's effect and result".*

JSw: *"Would you consider yourself to be a dangerous man then with your views and the influence you have on people?"*

AC: *"I think Islam is very, very dangerous for non-Islam, for democracy and freedom. One day you will implement it in Britain. Obviously it is dangerous for those people who don't believe in God and want to live according to God's law".*

JSw: *"Mr Choudary for now we will have to leave it there. We are going to speak to you later on throughout the programme. And, Matt, it is now back to you and I am sure this will create a whole lot of debate with our viewers this morning".*

Immediately before this interview with Anjem Choudary, there was an interview in the *Daybreak* studio with Afzal Amin, a Muslim former officer in the British Army at 06:17. Afzal Amin was asked his opinion on the Government's overturning of a ban on British armed forces wearing uniforms in public. He went on to state his view as to how the attack on Lee Rigby would be perceived by most Muslims in the UK:

Afzal Amin ("AA"):

*"There are three million Muslims in Britain who today, tomorrow, yesterday, are living in this country. They are contributing to every part it, from doctors and politicians to street workers to, you know, people who are working in the underground or cab drivers, wherever else, fully part of this society; as indeed I, having spent 11 years in the Army: three tours of Afghanistan, one tour of Iraq. Now, a fully integrated body of people. So there is no way this attack is in any way representative of what it means to be British and Muslim".*

There was then the following exchange between the two studio presenters and Afzal Amin.

Presenter 1:

*"There's a lot of people who are Muslim in this country. But for many of them they're the silent majority. How do you feel, when, you know, the ones who shout loudest, the firebrands – I'm afraid we're going to hear from one a bit later –".*

AA: *"You are, and this is one of our biggest complaints that this tiny group of about 20 or so people, led by the particular preacher that you're going to have on today, you know, these people are utterly unrepresentative. And it's like asking Nick Griffin to go and represent Britain in the United*

*Nations. It's completely – we would say it's completely wrong that they're given so much airtime, whereas the silent, moderate majority, which is British first and foremost and integrated, is almost completely ignored".*

Presenter 1:

*"Then maybe, they should speak up a bit more, that's what I am saying".*  
AA: *"But the airtime isn't given. I mean you've got me on for a couple of minutes. You've got Anjem Choudary on for a lot longer".*

Presenter 1:

*"Not necessarily, actually, not necessarily".*  
AA: *"OK, whatever the time is, but he was on 'Newsnight' last night rather than much more moderate people. There is a degree of media culpability, if I may say so".*

Presenter 2:

*"It's interesting though, isn't it, the way as well, these extremist clerics use the religion to justify what's happened. I mean the front page of 'The Independent' today is all about a cleric who says that the decapitation of a non-civilian target is permitted under Islam. I mean it's very difficult with people coming out with those kinds of things on the internet to vulnerable young men, isn't it?"*  
AA: *"That may be one person, there's another 20 thousand, 30 thousand clerics that are saying exactly the opposite and that mass of people is almost completely ignored. You know, the first person in history to say that: don't kill women; don't kill children; don't kill non-combatants; don't kill, you know, people who are inside churches, was the Prophet Mohammed, six hundred, fourteen hundred years ago. So, I think there's a degree of misunderstanding here about what the religion really means. You know there are one and a half billion Muslims in the world, and they live largely peacefully with the rest of the population in the world, and we often forget these facts".*

In addition, we noted that immediately after the interview with Anjem Choudary at 06:24, there was an interview in the *Daybreak* studio with Alexander Meleagrou-Hitchens, an expert in radicalisation at King's College London. This interview proceeded as follows:

Alexander Meleagrou-Hitchens ("AMH"):

*"This is a guy [Anjem Choudary] who does teach the very binary and simplistic 'War on Islam' narrative. He says the West is engaged in ideological and physical war on Islam. And Muslims, according to him, are duty-bound to react violently. He would say, he would recommend perhaps people travel to fight Jihad, rather than do it here, because if he said that here, he would be breaking the law. He has history as a lawyer, so he does know how to avoid breaking any laws. As you can see, he is very careful on how he words his stuff. But, I mean, look, essentially this, what happened in Woolwich is a product of what this guy's been up to for over a decade".*



Presenter 1:

*“Alexander, you’re an expert in radicalisation. He says that he didn’t radicalise anybody, he doesn’t believe in radicalisation. But, really, when you look at these acts and you see that one of these suspects went to hear his sermons. That’s exactly what happened, isn’t it?”*

AMH: *“Well, it’s all about how you perceive it. I mean, Anjem Choudary’s understanding of Islam is not as a religion, or as a spiritual, you know, quest, or anything like that. For him, Islam is a political ideology: one which needs to be implemented globally; one which is to contend with secular, liberal government; and one which calls on violence in order to establish that system”.*

Presenter 1:

*“Which is not the experience of the millions of peace-loving Muslims in this country and around the world?”*

AMH: *“Absolutely not, and I would echo a little bit of the concerns that Afzal Amin you had on earlier had, giving this guy too much airtime. Because in all honesty, one of the big problems we have – and we’ve been talking about the EDL<sup>7</sup> and you know the reactions etcetera. I myself have done research in that group, and I’ve interviewed members of the English Defence League, including their leader, and a lot of them do genuinely believe that Anjem Choudary is representative of Muslims in this country when he is only representative of a tiny minority. When he comes on like this, there’s going to be a lot of people who saw that, Muslim and non-Muslim – ”.*

Presenter 1:

*“Of course, but our aim in speaking to you and Afzal prior to that is to remain balanced”.*

AMH: *“Of course”.*

Presenter 1:

*“But we can’t ignore what he’s saying, can we?”*

AMH: *“I mean, I don’t think you can ignore it, but you have to bear in mind he is an attention seeker, he’s an expert attention seeker, and his group really feeds off this oxygen. And at some point we’re going to have to make a call how worth it, it is. You know, if we want to know what he has to say, it’s all online, easily available. So it is worth perhaps reconsidering”.*

Ofcom considered the material raised issues warranting investigation under Rules 1.3 and 2.3 of the Code. We therefore sought ITV’s comments as to how this material complied with these rules.

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<sup>7</sup> The English Defence League.

## Response

### Channel 4 News, Channel 4, 23 May 2013, 19:00

Channel 4 said it had complied with Rules 1.3 and 2.3 of the Code. It explained that Anjem Choudary was included in this edition of *Channel 4 News* in the aftermath of the attack on Fusilier Rigby the preceding day. This was “the first killing of a soldier on mainland Britain by those linked to jihad” and therefore in the broadcaster’s view it was a “very significant matter of wide public importance”. The decision to include Anjem Choudary in a studio discussion about the killing of Fusilier Rigby was taken after “careful editorial consideration” and was justified for a number of reasons:

- *Channel 4 News* is a serious news programme “aimed primarily at an adult audience which covers the major issues of the day in a robust and challenging way”. Channel 4 said that it was necessary to consider why the attack on Fusilier Rigby occurred and what may have motivated the alleged attackers;
- although some in the audience would have found Anjem Choudary’s views “unacceptable” in the area of free speech “controversial views that are within the law should be allowed to be expressed” for reasons of high public interest. Channel 4 added that: “Banning views can come close to censorship”; and
- Anjem Choudary was invited onto the programme “to be challenged about his role in radicalising one of the alleged attackers” given that he had publicly stated that he knew one of Fusilier Rigby’s alleged attackers.

The broadcaster said that the presenter, Cathy Newman made clear at the beginning of the item that Anjem Choudary had radical views by stating that he had been one of the founders of the “*controversial Islamist organisation, Al-Muhajiroun*”. Channel 4 said that throughout the discussion Anjem Choudary was not given a “platform to espouse his controversial viewpoint” because he was robustly challenged by the presenter and the two other contributors: Julie Siddiqi, who expressed “a more moderate view of Islamism”, and Douglas Murray, who provided a “very firm right of centre voice on the matter”.

The broadcaster conceded that the discussion may have been “unsettling” for some. However it stressed the importance of news programmes not shying away from individuals with controversial views. Channel 4 said that its news programmes “should be a forum where such views can be challenged and the individuals held to account in a forthright way”. The broadcaster also stated its view that the discussion, although “controversial” did not contain material that was unsuitable for broadcast at this time. Channel 4 added that: “The content of the interview was not of a level where there needed to be specific warnings and would have been suitable for a younger audience”.

The broadcaster concluded that Anjem Choudary’s inclusion in the programme was “justified” and that “it would be a serious challenge to the basic principle of freedom of expression if such an interview could not be broadcast in this context and in this way”.

### Newsnight, BBC 2, 23 May 2013, 22:30

The BBC stated its view that the discussion featuring Anjem Choudary complied with the Code. The broadcaster said that production staff were “well aware” that the views

expressed by Anjem Choudary were likely to cause offence to some viewers. “Careful consideration” was therefore given as to whether to include Anjem Choudary in the programme. On balance, it was decided to do so because on the day of broadcast it was already clear that Anjem Choudary knew one of the alleged attackers of Fusilier Rigby. Therefore, in the BBC’s view, Anjem Choudary was: “a key figure in the story of the murder of Fusilier Rigby, and there was a clear public interest in challenging him about what role, if any, he had played in the radicalisation of those seemingly involved in the attack”.

The broadcaster said that the discussion was pre-recorded and carefully assessed in relation to the Code, and for example, the BBC’s legal obligations. The focus of the *Newsnight* interview was Mr Choudary’s personal involvement with the two attackers and what responsibility he may have held for the course of action they had chosen. The BBC said that during the interview, Anjem Choudary was obliged to “answer some central questions about his involvement with the attackers, rather than offering him a general platform to air his wider views”. In particular, the two other participants in the discussion, Julie Siddiqi and Shams Adduha Muhammed, were able to, “draw viewers’ attention to their belief that Mr Choudary speaks only for a small minority of the Muslim community in the UK”.

The broadcaster conceded that: “the very fact that Mr Choudary had been invited to appear in the programme would cause offence to some”. However, the BBC stated its belief that: “simply excluding potential interviewees on the ground that their inclusion in programmes might cause offence would be in fundamental conflict with broadcasters’ freedom of speech and the public interest that this freedom serves”.

In conclusion, the broadcaster said that: the interview had a clear editorial purpose in exploring “an important aspect of a complex on-going story”; the public interest outweighed the potential offence; and, the BBC took appropriate steps to keep offence to a minimum.

#### Daybreak, ITV, ITV, 24 May 2013, 06:20

The background to including Anjem Choudary in this edition of *Daybreak* was the killing of Fusilier Rigby, and specifically, it had been reported the previous day (23 May 2013) that Anjem Choudary knew one of the alleged killers of Fusilier Rigby, and that “there was speculation” that Anjem Choudary had been involved in his radicalisation. ... In ITV’s view, Anjem Choudary was in a position, “where he might contribute to the public’s understanding of why Adebolajo may have acted as he did”. The broadcaster added that although Anjem Choudary’s views are representative of a “small” part of the Muslim community, it was reasonable to include his contribution when: “discussing extreme or radical views and their possible contribution to particular terrorist acts such as the murder of Drummer Rigby”. By so doing, the audience would be better informed, and it was in the public interest to interview Anjem Choudary against the backdrop to the aftermath of Fusilier Rigby’s killing and: “the ensuing public debate over radicalisation and Britain’s foreign policy”.

The broadcaster said that production staff were “aware” that Anjem Choudary’s views might cause offence to some viewers. Therefore, in order to reduce that potential offence, ITV considered the following relevant to it taking the decision to interview Anjem Choudary:

- Anjem Choudary had appeared on *Daybreak* on three previous occasions (twice in March 2009 to discuss protests in Luton against returning British soldiers, and once in April 2013 regarding the conviction of Richard Dart, a Muslim convert

jailed for plotting terrorist attacks). ITV said that following these appearances, it had received a number of calls from viewers, and although some had been critical of the programme featuring Mr Choudary at all, others had praised the presenters' handling of the interviews.

- production staff viewed Anjem Choudary's appearance on the edition of *Newsnight* broadcast on BBC 2 the previous evening, and were of the view he expressed views that were "considered to be more measured and less inflammatory than those he had previously expressed elsewhere". Therefore, production staff considered that "with sufficient challenge during the interview, and presentation of alternative viewpoints in the programme, it could properly contextualise Mr Choudary's views so as to minimise offence to viewers";
- it was decided to interview Anjem Choudary live on location in Woolwich so that if he "deviated from his stated position and started making comments that the *Daybreak* team felt were gratuitously offensive, the interview could be terminated more easily and quickly by returning to the studio"; and
- interviews were arranged with two other contributors (Afzal Amin and Alexander Meleagrou-Hitchens) to present alternative viewpoints and challenge the comments being made by Anjem Choudary.

In relation to Rule 2.3, the broadcaster stated its view that Anjem Choudary's comments were sufficiently contextualised in a number of ways:

- *Daybreak* is a serious news programme aimed at, and primarily of interest to, an adult audience;
- in the introduction to the interview, Anjem Choudary was described as a "*radical preacher*" who was "*controversial*". Furthermore, he had earlier been described in a news report at 06.04 as "*the leader of a now-banned organisation [Al-Muhajiroun]*". He was therefore "not presented as someone who represented a mainstream Muslim view";
- while Anjem Choudary stated that Michael Adebolajo's alleged actions had been praised in "Muslim countries" Anjem Choudary did not himself "state the killing of Drummer Rigby was legitimate, or encourage others to carry out similar killings";
- Anjem Choudary's views were challenged by the interviewer. For example, the latter stressed the fact that "*many Muslims we have spoken to are absolutely horrified with what has happened here*" when Anjem Choudary claimed that Muslims around the world considered that Michael Adebolajo was "*courageous*" and a "*hero*"; and
- context was provided by the interviews conducted with Afzal Amin and Alexander Meleagrou-Hitchens respectively immediately before and immediately after the interview with Anjem Choudary. ITV said these two contributors "offered a firm critique of what Mr Choudary was saying, both directly before and after his contribution. As well as providing a balanced debate, this critique served to mitigate any offence Mr Choudary's comments would have caused. Its placement on either side of the interview with Mr Choudary also meant that viewers were unlikely to come across Mr Choudary's views unawares, without also having seen balancing and critical views". Specifically both these contributors questioned the decision taken by ITV to give Anjem Choudary: "so much airtime whereas the

silent, moderate majority which is British first and foremost and integrated into society are almost completely ignored by the media”.

ITV added that following the interview with Anjem Choudary: “it was decided that his views had been given sufficient airtime and a second previously planned contribution from him would not proceed”. In reaching this decision, the broadcaster said it had taken into account “a number of telephone calls of complaint from viewers that morning”.

In relation to Rule 1.3 of the Code, ITV said that it did not consider any of the material broadcast in this programme was unsuitable for children or that its scheduling was inappropriate. The broadcaster added that it was mindful of Anjem Choudary’s previously expressed views and “the influence he appears to have had on a small minority of Muslims (not all necessarily under-eighteens)”. ITV said that Anjem Choudary’s views were “fairly but robustly challenged during his interview, and that two other contributors offered a critique of his views on the Woolwich murder and his interpretation of Islam”. In addition, Anjem Choudary did not at any point say that the attack on Fusilier Rigby was legitimate “nor did he encourage others to carry out similar attacks”. Therefore, the broadcaster did not consider that the material in this context was unsuitable for under-eighteens, nor “exceeded the expectations of the audience regarding the protection of under-eighteens who were watching”. ITV added that the scheduling was appropriate “given the steps taken in the preparation of the content and adequate protection for under-eighteens was afforded by the careful handling of the interview in the context of the wider programme”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that persons under the age of eighteen are protected and generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material. These duties are reflected in Section One (Protecting the Under-Eighteens) and Section Two (Harm and Offence) of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; the nature of the particular programme; and, the likely audience expectations. Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Context is assessed by reference to a range of factors including but not limited to: the editorial content; the degree of offence; the effect of the material on viewers who might come across it unawares; whether the nature of the content has been brought to the attention of the audience by appropriate information; and likely audience expectations.

In reaching its decisions in this case, Ofcom has taken account of the audience’s and the broadcaster’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights (“ECHR”) which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Ofcom must therefore seek an appropriate balance between ensuring members of the public are protected from material which may be considered harmful or offensive on the one hand, and the broadcaster’s and audience’s right to freedom of expression on the other.

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

Ofcom recognises that, at times, offence can be caused not just by the actual content of a programme but by the very fact that people with controversial views are given airtime. Any potential offence in these circumstances can be exacerbated if viewers or listeners consider that such contributors’ views are not properly challenged or contextualised. However, broadcasters are allowed to include any contributor they wish in their programming, as long as they comply with the Code. There are various possible editorial approaches to how a broadcaster might provide context when featuring an individual with controversial and offensive views (e.g. a presenter asking challenging questions). However, the final decision as to what approach to take is one for the broadcaster.

In the case of these three broadcasts, each programme prominently featured Anjem Choudary, a controversial Islamic cleric, who is known for his provocative views concerning Islamic doctrine and practice. For example, he has been widely reported as arguing for the implementation of Shari’a<sup>8</sup> law in the UK. Ofcom took into account the fact that the appearances of Anjem Choudary had been arranged against the backdrop of a very important news story, namely the killing in a London street of Fusilier Rigby on 22 May 2013. Furthermore, in the wake of the murder, it had been widely reported that Anjem Choudary had known one of the alleged killers. Ofcom considered it understandable that broadcasters would wish to explore these issues and events in more detail given that it had been widely reported that the murder had allegedly been motivated by an extreme version of Islamic theology; Anjem Choudary’s well-documented links to proscribed extreme Muslim organisations( such as Al-Muhajiroun); and, the reports of Anjem Choudary’s links to one of the suspects. In particular, there was a strong public and news interest for broadcasters to examine the extent to which Anjem Choudary may have had a role in ‘radicalising’ one of the individuals alleged to have been involved in the killing of Fusilier Rigby.

Against the above background, we considered each programme in turn.

#### Channel 4 News, Channel 4, 23 May 2013, 19:00

##### *Rule 2.3*

Ofcom first considered whether the appearance of Anjem Choudary had the potential to cause offence. In this case, we noted that Anjem Choudary was included in a studio discussion lasting nearly eight minutes, in which he was able to put forward his views in relation to the killing of Fusilier Rigby. The attack on Fusilier Rigby had taken place on a London street during the day, whilst Fusilier Rigby was apparently unarmed. Ofcom considered that a UK audience would have viewed the attack as very serious. Despite being asked by the presenter Cathy Newman, to “*apologise*” and “*take some responsibility*” for the attack on Fusilier Rigby, given Anjem Choudary’s reported links to one of the alleged killers, he refused to do so. Furthermore, he appeared to state that the murder could be justified because of the effects of the UK Government’s foreign policy. An example of such an effect being, according to Anjem Choudary, the “*killing [of] innocent men, women and children [in*

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<sup>8</sup> “Shari’a” is the term for the collective laws of Islam.

for example Afghanistan]”. Given the widely-reported brutality of the killing of Fusilier Rigby, the graphic nature (as described above) of which had been shown across many broadcast outlets, we considered that Anjem Choudary’s failure to condemn or otherwise criticise this killing had the potential to be particularly offensive to many in the audience.

Ofcom then considered whether the material was justified by the context.

Ofcom noted that this discussion was included in *Channel 4 News*, a programme noted for providing in-depth coverage and analysis of a range of on-going news stories. As mentioned and for the reasons given above, it was not surprising that a specialist news programme should want to reflect Anjem Choudary’s viewpoint to some extent – for example criticism of the effects of UK foreign policy on countries such as Afghanistan and Iraq, and their populations. We considered that although this viewpoint might be objectionable to many, this was a legitimate topic for discussion. We considered that the various ways in which the broadcaster provided context for Anjem Choudary’s views. The presenter, Cathy Newman, repeatedly challenged Anjem Choudary as to his role in, and responsibility for, ‘radicalising’ one of Fusilier Rigby’s alleged killers. Second, both the other two participants in the panel discussion (Douglas Murray and Julie Siddiqi) strongly condemned the killing of Fusilier Rigby, in contrast to what Anjem Choudary was saying, and stressed that Anjem Choudary’s views were not representative of the large majority of UK Muslims. For example, at one point, Douglas Murray said: *“Most Muslims in this country are utterly disgusted by [Anjem Choudary] and his actions”*.

Further context was provided by Julie Siddiqi, as a British Muslim speaking on behalf of a prominent UK-based pan-Islamic organisation, distancing herself from what Anjem Choudary was saying. For example, at one point she said that:

*“...the overwhelming majority of Muslim organisations and individuals have come out in full force today to absolutely condemn that this kind of action [i.e. the killing of Fusilier Rigby] has no place whatsoever in this country”*.

We also noted that viewers were made aware of Anjem Choudary’s extreme views by Cathy Newman stating that he was *“one of the founders of the controversial Islamist organisation, Al-Muhajiroun”*, and Douglas Murray stating that: *“20% actually of convictions of Al-Qaeda related terror convictions in this country, have a linkage with Al-Muhajiroun and with Mr Choudary”*. In our view, such statements would have helped to alert viewers that Anjem Choudary was not providing a mainstream Muslim perspective.

Given all the above, we considered there was sufficient context to justify any potential offence in this case, and Rule 2.3 of the Code was therefore complied with.

### *Rule 1.3*

Given the time of broadcast of this programme, we also considered the content in relation to Rule 1.3. As a news programme aimed at an adult audience, we noted that the child audience in this case was low (23,000 children aged 15 and under, or 3.1% of the total audience). However, broadcasters must always ensure, as required by Rule 1.3, that children must be protected by appropriate scheduling from material that is unsuitable for them.

We therefore first considered whether the material in this case was unsuitable for children. Although Anjem Choudary’s views would have been likely to have been

offensive to some, we considered that he expressed his viewpoint in a measured way, and at no point did he expressly endorse or condone the killing of Fusilier Rigby. In addition, no graphic details were provided about Fusilier Rigby's death or any other acts of violence, and the presenter and other discussion participants acted to emphasise that Anjem Choudary's viewpoint was a minority view within the UK. We therefore considered that the material was not unsuitable for children. Given this, and the likelihood that this content would have been in line with the likely expectations of the audience for this programme on this channel, we considered that the content had been appropriately scheduled. The material was therefore not in breach of Rule 1.3.

*Newsnight*, BBC 2, 23 May 2013, 22:30

### *Rule 2.3*

Ofcom first considered whether the appearance of Anjem Choudary would have had the potential to cause offence. Anjem Choudary was included in a studio discussion lasting nearly eight minutes, in which he was able to put forward his views in relation to the killing of Fusilier Rigby. The attack on Fusilier Rigby had taken place on a London street during the day, whilst Fusilier Rigby was apparently unarmed. Ofcom considered that a UK audience would have viewed the attack as very serious. The format of the discussion included in this programme was very similar to the discussion included in the edition of *Channel 4 News*, discussed above. Anjem Choudary was asked by the presenter Kirsty Wark whether he was "*horrificed*" or "*shocked*" by the images of the alleged killers in the aftermath of the killing, and Anjem Choudary refused to say so. Rather, he appeared to compare the murder with the effects of UK Government's foreign policy, and "*many Muslims*" would agree with one of the alleged killer's statements<sup>9</sup> immediately after. Given the widely-reported brutality of the killing of Fusilier Rigby, the graphic nature of which had been shown across many broadcast outlets, we considered that Anjem Choudary's failure to condemn or otherwise criticise this killing had the potential to be particularly offensive to many in the audience.

We next considered whether the material was justified by the context.

This discussion was included in *Newsnight*, a programme noted for providing in depth coverage and analysis of a range of on-going news stories. As already discussed it was understandable that television journalists would wish to explore with Anjem Choudary issues and topics related to the killing of Fusilier Rigby – for example the extent (if any) of his responsibility for the 'radicalisation' of one of his alleged killers, and possible links with the effects of UK foreign policy on countries such as Afghanistan and Iraq, and their populations.

The broadcaster took various measures to provide context for Anjem Choudary's views. For example, the presenter, Kirsty Wark, repeatedly and strongly challenged Anjem Choudary as to his reactions to the killing of Fusilier Rigby. In particular, she robustly questioned his assertion that "*many Muslims*" would have agreed with Michael Adebolajo's stated views, and Anjem Choudary clarified that he meant: "*Most Muslims around the world*". In addition, Kirsty Wark expressed her incredulity

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<sup>9</sup> In the mobile telephone footage recorded immediately after the killing of Fusilier Rigby and widely broadcast on 22 May 2013 (the day before this edition of *Newsnight* was broadcast) one of the alleged killers was filmed standing near Fusilier Rigby's body, saying: "*I apologise that women had to witness this today, but in our lands our women have to see the same. People will never be safe. Remove your Governments! They don't care about you*".



at Anjem Choudary's refusal to state that he 'abhorred' the sight of one of the alleged killers standing with "*bloodied hands and meat cleavers*" by the body of Fusilier Rigby and seeking to justify the murder (see footnote 8). Second, both the other two participants in the panel discussion, Shams Adduha Muhammed and Julie Siddiqi, strongly condemned the killing of Fusilier Rigby and the presenter, in introducing the pre-recorded discussion item, stated that Anjem Choudary "*was challenged on his views*" by Julie Siddiqi and Shams Adduha Muhammed.

Further context was provided by both these contributors being British Muslims (Julie Siddiqi was speaking on behalf of a prominent UK-based pan-Islamic organisation) and distancing themselves from what Anjem Choudary was saying. For example, we noted that Shams Adduha Muhammed said that he had not come across a "*single Muslim*" who agreed with the killing of Fusilier Rigby and Anjem Choudary's "*narrative*" i.e. the linking of the death of Fusilier Rigby with UK foreign policy in Afghanistan and Iraq. Julie Siddiqi said that Anjem Choudary's views "*really has no place whatsoever in this country*". At one stage in the discussion, Julie Siddiqi said the following statement straight to camera:

*"So really our, you know, thoughts go to his family and the people that had to witness something as horrific as that".*

Ofcom considered that the likely effect of the above, a representative of a mainstream Islamic UK organisation giving a sincere expression of condolence to Fusilier Rigby's family, served to emphasise the difference to the audience (and hence soften the likely level of offence caused) between a mainstream UK Muslim viewpoint and the viewpoint being expressed by Anjem Choudary.

Given all the above, we considered there was sufficient context to justify any potential offence in this case, and Rule 2.3 of the Code was therefore complied with.

Daybreak, ITV, 24 May 2013, 06:20

### *Rule 2.3*

Again, Ofcom first considered whether the appearance of Anjem Choudary had the potential to cause offence. We noted that Anjem Choudary was interviewed in an outside broadcast from Woolwich. The interview lasted approximately two minutes. It was preceded by an interview in the studio, lasting approximately three minutes, with Afzal Amin, a Muslim former officer of the British Army; and was followed by an interview, lasting approximately three minutes, with Alexander Meleagrou-Hitchens, an expert in 'radicalisation' at King's College, London.

When interviewed, Anjem Choudary was variously challenged as to whether he had 'radicalised' one of the alleged killers; was "*horrified*" at the killing of Fusilier Rigby; and "*condemned*" the killing, but failed to do so. We noted that although Anjem Choudary stated his belief that "*it's not allowed for Muslims...to target non-Muslims*", he also stated that Muslims from "*around the world*" considered one of the alleged killers to be "*courageous*" and a "*hero*", and said that the killing of Fusilier Rigby did "*have justification according to some schools of thought*". In addition, rather than taking the opportunity to condemn the killing of Fusilier Rigby, Anjem Choudary said that: "*we should condemn the hundreds of thousands of murders of innocent men, women and children first*". Given the widely-reported revulsion at the circumstances in which Fusilier Rigby was murdered, the graphic nature of which had been shown across many broadcast outlets, Anjem Choudary's refusal to condemn or otherwise criticise the murder had the potential to be particularly offensive to many in the

audience. These factors, coupled with the brutality of the attack, would increase the potential level of offence in this case. In addition, we considered that further offence would have been caused by Anjem Choudary stating an example of his political views as follows:

*"I think Islam is very, very dangerous for non-Islam, for democracy and freedom. One day you will implement it in Britain. Obviously it is dangerous for those people who don't believe in God and want to live according to God's law".*

We next considered whether the material was justified by the context.

The interview with Anjem Choudary was included in a breakfast news programme. As already discussed it was understandable that television journalists would wish to explore with Anjem Choudary issues and topics related to the killing of Fusilier Rigby – for example the extent (if any) of his responsibility for the 'radicalisation' of one of his alleged killers, and possible links with the effects of UK foreign policy on countries such as Afghanistan and Iraq, and their populations.

The broadcaster took further steps to provide context for Anjem Choudary's views. The interviewer, Jonathan Swain, variously questioned Anjem Choudary as to his role in 'radicalising' one of Fusilier Rigby's alleged killers, and challenged him to condemn Fusilier Rigby's killing. In addition, he challenged Anjem Choudary's assertion that one of the alleged killers had been praised by many in the Muslim world, by saying:

*"...many Muslims we have spoken to are absolutely horrified with what has happened here".*

Second, although Anjem Choudary was featured in a standalone interview within this programme, studio interviews were included with two other contributors: Afzal Amin, immediately before the interview with Anjem Choudary; and Alexander Meleagrou-Hitchens, immediately after. In contrast to what Anjem Choudary was saying, these contributors strongly criticised the killing of Fusilier Rigby, and stressed that Anjem Choudary's views were unrepresentative of UK Muslims. For example, Afzal Amin said:

*"...there is no way this attack is any way representative of what it means to be British and Muslim".*

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*"You know there are one and a half billion Muslims in the world, and they live largely peacefully with the rest of the population in the world, and we often forget these facts".*

Alexander Meleagrou-Hitchens ("AMH") had the following exchange with one of the studio presenters:

AMH: *"...For him [Anjem Choudary], Islam is a political ideology: one which needs to be implemented globally; one which is to contend with secular, liberal government; and one which calls on violence in order to establish that system".*

Presenter 1:

*"Which is not the experience of the millions of peace-loving Muslims in this country and around the world?"*

AMH: *"Absolutely not..."*

We considered that further context was provided by Afzal Amin (as a British Muslim and a former member of the British armed forces, of which Fusilier Rigby was a member) dissociating himself from what Anjem Choudary was saying.

Both Afzal Amin ("AA") and Alexander Meleagrou-Hitchens ("AMH") challenged the decision by ITV to include an interview with Anjem Choudary within the programme:

AA: *"...we would say it's completely wrong that they're given so much airtime [to Anjem Choudary], whereas the silent, moderate majority, which is British first and foremost and integrated, is almost completely ignored".*

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AMH: *"...I would echo a little bit of the concerns that Afzal Amin you had on earlier had, giving this guy too much airtime. Because in all honesty, one of the big problems we have – and we've been talking about the EDL<sup>10</sup> and you know the reactions etc. I myself have done research in that group, and I've interviewed members of the English Defence League, including their leader – and a lot of them do genuinely believe that Anjem Choudary is representative of Muslims in this country when he is only representative of a tiny minority. When he comes on like this, there's going to be a lot of people who saw that, Muslim and non-Muslim –".*

We considered that such statements would have helped further to contextualise the views being articulated by Anjem Choudary, by alerting viewers that Anjem Choudary was not providing a mainstream Muslim perspective.

Given all the above, we considered there was sufficient context to justify any potential offence in this case, and Rule 2.3 of the Code was therefore complied with.

### *Rule 1.3*

Given the time of broadcast of this programme, we also considered the content in relation to Rule 1.3. As a news programme aimed at an adult audience, we noted that the child audience in this case was low (8,000 children aged 15 and under or 2.2% of the total audience). However, broadcasters must always ensure, as required by Rule 1.3, that children must be protected by appropriate scheduling from material that is unsuitable for them. We therefore first considered whether the material in this case was unsuitable for children. Although Anjem Choudary's views would have been offensive to some, we considered that he expressed his viewpoint in a measured way, and at no point did he expressly endorse or condone the killing of Fusilier Rigby. In addition, no graphic details were provided about Fusilier Rigby's death or any other acts of violence, and as explained above, the presenter and other discussion participants acted to emphasise that Anjem Choudary's viewpoint is a minority view within the UK. We therefore considered that the material was not unsuitable for children. Given this, and the likelihood that this content would have

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<sup>10</sup> The English Defence League.

been in line with the likely expectations of the audience for this programme on this channel, and in particular those of parents, we considered that the content had been appropriately scheduled. The material was therefore not in breach of Rule 1.3.

### Conclusion

The Code does not prohibit particular individuals from appearing on UK television and radio just because their views or actions have the potential to cause offence, as long as broadcasters comply with the Code. To do otherwise would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information and ideas. This is especially the case in news and current affairs programming, where the timely and comprehensive coverage of on-going news stories may require individuals or organisations with challenging views to be given airtime. However, where highly controversial individuals are given the chance to articulate their views on television or radio, broadcasters must ensure that they ensure that their views are challenged and contextualised as appropriate.

**News, Channel 4: Not in Breach**  
**Newsnight, BBC 2: Not in Breach**  
**Daybreak, ITV: Not in Breach**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*Colors, 8 September 2013, 23:00 and 20 September 2013, 23:00*

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#### Introduction

Colors is a general entertainment channel broadcast in Hindi. The licence for Colors is held by Viacom 18 Media UK Limited ("Viacom 18" or "the Licensee").

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

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

During its routine monitoring of COSTA compliance, Ofcom identified two instances where the Licensee had broadcast more than the permitted advertising allowance. The 23:00 clock hour on 8 September 2013 exceeded the allowance by four minutes and 36 seconds, and the 23:00 clock hour on 20 September 2013 exceeded the allowance by one minute and 46 seconds.

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

#### Response

The Licensee acknowledged that these clock hours had exceeded the permitted allowance of advertising and said that both instances were the result of human error.

Viacom 18 explained that the agency that handles its advertising sales requires programme and commercial break schedules to be submitted to them at least one month in advance of transmission. It added that due to several external factors, the duration of programmes in the schedule submitted in advance can differ considerably from the programmes in the final schedule. However, the Licensee stated that, as most of its programmes are provided by production companies at least one day before going to air, any scheduling issues caused by such duration changes are identified and resolved.

The Licensee said that in exceptional circumstances, it receives programmes on the day of broadcast in which case, the scheduling team is responsible for manually intervening to correct any scheduling problems created by changes to programme durations.

Viacom 18 said that the incidents were caused by the scheduling team's failure to adjust the final schedule to accommodate the changes in the duration of the programmes since the original schedule had been submitted to the advertising agency. In both cases, the actual duration of the programmes was significantly greater than their duration listed in the schedule submitted to the advertising agency. In both cases, the overrun pushed some advertising intended for the 22:00 clock hour into the subsequent hour.

Viacom 18 apologised for the errors and submitted there was no intention to gain commercially from the broadcast of additional minutage. It also said that to prevent a recurrence, it was “working towards tightening...[its] processes by ensuring that all UK output has a standard duration of 24 or 46 minutes” to avoid changes to programme durations.

## Decision

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

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

Ofcom noted the subsequent measures proposed by the Licensee to prevent such programmes from overrunning and that these incidents did not result in the broadcast of additional minutage overall. Nonetheless, the amount of advertising in these clock hours significantly exceeded the permitted allowance and therefore breached Rule 4 of COSTA.

In issues 235<sup>1</sup> and 242<sup>2</sup> of Ofcom’s Broadcast Bulletin, Ofcom recorded breaches of Rule 4 of COSTA for minutage issues on Rishtey – another of Viacom 18’s television services. We are therefore concerned at the frequency of such incidents. **Ofcom puts the Licensee on notice that it may consider further regulatory action, including the imposition of a statutory sanction, in the event of a recurrence on any of Viacom 18’s licensed services.**

## Breaches of Rule 4 of COSTA

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<sup>1</sup> Broadcast Bulletin 235: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>.

<sup>2</sup> Broadcast Bulletin 242: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb24021/obb242.pdf>.

## Broadcast Licensing cases

### In Breach

#### Breach of Licence Condition

*Heart Cornwall, 10 to 12 June 2013*

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##### Introduction

Atlantic Broadcasting Ltd (or “the Licensee”) holds a local commercial radio FM licence for Cornwall. In March 2012, the company was acquired by Global Radio (“Global”), and the station, which was formerly known as Atlantic FM, was subsequently re-branded to become part of Global’s quasi-national ‘Heart’ network of local radio stations.

Ofcom received a complaint which alleged that, since the re-launch of the service as Heart Cornwall, the output of the station was not compliant with the requirements of its published Format.

Under the Communications Act 2003, Ofcom has a statutory duty to ensure “a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.” In local commercial radio, Ofcom secures this by the use of Formats. At the centre of each station’s Format, which forms part of its broadcast licence, is the ‘Character of Service’, a description of the output which the licensee is required to provide, based on the promises originally made in its licence application. Formats, including the Character of Service description, may be varied over time, but only with Ofcom’s approval.

The Character of Service contained in the published Format for Heart Cornwall’s licence is as follows:

“A full service local station specifically for Cornwall, with speech an important part of the content. It will feature locally-focused news, information and speech content mixed with adult-orientated popular music for a broad audience with particular appeal for listeners aged 25-54”.

The complainant was concerned that Heart Cornwall was not delivering enough speech content to meet the requirement for it to be “a full service local station....with speech an important part of the content”. The complainant was also concerned that there was not enough “locally-focused news, information and speech content” being broadcast in the context of a service that is required to be “a full-service local station specifically for Cornwall.”

##### Background

In July 2012, four months after acquiring Atlantic Broadcasting Ltd, Global submitted a Format Change Request to alter the Format’s Character of Service. The new Character of Service proposed was: “A locally-oriented music and information station for Cornwall, featuring adult-oriented popular music for a broad audience with particular appeal for listeners aged 25-54.”

Ofcom decided that the request, if granted, would represent a significant change to the character of the station’s existing service (in particular, with regard to the speech

requirements). In accordance with statutory requirements in this area, the proposed changes were therefore subject to a public consultation, which ran for four weeks until 12 September 2012.<sup>1</sup>

On 9 October 2012, Ofcom's Broadcast Licensing Committee considered the results of that consultation and rejected Global's Format Change Request, on the grounds that its approval would narrow the range of programmes available to listeners in Cornwall by way of relevant independent local radio services. In the statement Ofcom published explaining this decision<sup>2</sup> ("the Statement"), we identified a number of aspects of the existing Heart Cornwall Format which we believed made it distinctive from the Format of the only other commercial radio service licensed to serve Cornwall, Pirate FM.

The aspects of the Format we identified (and our comments on their significance) were as follows:

- *The requirement to deliver a "full service" of output:* Ofcom's Format guidance published on our website defines a "full-service" station as one that "stands apart from more mainstream stations by virtue of its wide appeal and its generous, creative speech content."
- *The requirement that "speech [is] an important part of the content":* This obligation means that we would expect the levels of speech on Heart Cornwall, particularly during weekday daytime hours, to be reasonably substantial. We noted that, under the original Format for the station prior to June 2008, speech was required to account for between 30% and 50% of weekday daytime output. However we also noted that a specific percentage of speech is no longer included in the Format description. We would nevertheless expect the amount of speech to be broadly in keeping with that previously required, in order to keep within the spirit of the licence.
- *The requirement that the station is "specifically for Cornwall":* This commitment means that the station should feature significant amounts of Cornwall-specific (as opposed to more general) speech content, and is a reflection of the requirement contained in the station's original Format that: "The purpose of this station is to provide a Cornish rather than regional approach to the needs of local listeners."
- *The requirement that Heart Cornwall "will feature locally-focused news, information and speech content":* While the minimum number of hourly local news bulletins the station is required to broadcast is set out in the 'local news' section of its Format, this commitment contained in the Character of Service reflects the importance placed upon local news, information and speech in relation to the output of the station as a whole.

Ofcom took account of this relevant background as part of its assessment of the complaint.

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<sup>1</sup> The consultation can be found at:  
<http://stakeholders.ofcom.org.uk/consultations/heartcornwall/>

<sup>2</sup> The consultation statement is available in full at:  
[http://stakeholders.ofcom.org.uk/binaries/consultations/heartcornwall/statement/Heart\\_Cornwall\\_statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/heartcornwall/statement/Heart_Cornwall_statement.pdf)



In addition, Ofcom asked the Licensee to provide audio of the station's output during daytime hours (06:00 to 19:00) on Monday 10, Tuesday 11 and Wednesday 12 June 2013. In assessing this content against the complaint, we considered all aspects of Heart Cornwall's output, with particular emphasis on the amount<sup>3</sup> and type of speech broadcast by the station during the monitoring period, and the amount of Cornwall-specific material that we heard.

### Levels of speech

In the three days we monitored, we found that the average percentage of speech during weekday daytimes (i.e. 06:00 to 19:00) was around 22%, although this figure concealed a wide variation between different dayparts. The figure therefore fell below the expectations of speech levels for this Format that we had previously outlined in the Statement, as noted above.

Our Preliminary View was therefore that Heart Cornwall's output during the monitoring period was not consistent with the Format commitment to provide a "full service" of output in which "speech is an important part of the content."

### Amount of Cornwall-specific material

During the monitoring period, we noted that all local news, weather and traffic bulletins during weekday daytimes were 'exclusive' to the Cornwall licence (i.e. they were not broadcast on the transmitters of any other Heart stations in the wider South West region).

Based on the three days of monitoring, we were satisfied that Heart Cornwall was delivering the Format requirement to feature "locally-focused news". In all the bulletins we heard, there was always at least one story (and usually more) with direct local relevance to Cornwall. Several of these stories were enhanced with audio clips, and the news copy was regularly refreshed.

Similarly, we also took the view that Heart Cornwall was delivering the Format requirement to feature "locally-focused...information", in that a reasonably comprehensive weather and traffic news service, providing information specifically for Cornish listeners, was provided at peak-times (i.e. weekday breakfast and afternoon drive). We also noted that when there was a major traffic incident, as was the case on the A38 at Saltash on Monday 10 June, the station continued to keep listeners apprised of the situation by means of the local news bulletins and presenter links outside of the scheduled traffic reports.

However, in considering the Format requirement to also feature "locally-focused... speech content" we noted that, across the three days of monitoring, there was very little in the way of Cornwall-specific speech items broadcast, aside from some very general presenter chat about the weather and pollen forecasts; occasional 'what's on' information (three local events were mentioned during the three days of monitoring); and the occasional name-check and whereabouts of listeners who had phoned or texted the station.

Our Preliminary View was that, while Heart Cornwall was providing "locally-focused news" and "locally-focused...information", it was providing very little "locally-focused...speech content" in the context of a service that is required to be "a full service local station specifically for Cornwall, with speech an important part of the

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<sup>3</sup> Excluding advertising, programme/promotional trails and sponsorship credits.

content”. We also considered that the failure to satisfactorily deliver “locally focused...speech content” may also be linked to overall lack of speech on the station, as previously identified.

We gave the Licensee the opportunity to make representations on our Preliminary View that it was in breach of Licence Condition 2(4), contained in Part 2 of the Schedule to Heart Cornwall’s licence. This Licence Condition requires that:

“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).

## Response

Global responded on behalf of the Licensee. Global pointed to the growth in audience, as measured by RAJAR, that had occurred since Atlantic FM had been re-branded as Heart, noting that “Cornish listeners clearly enjoy Heart Cornwall’s output.”

With regard to the levels of speech provided by the station, Global objected to Ofcom’s use of the original long-form Atlantic FM Format, in force prior to June 2008, as a reference point for the amount of speech that should be broadcast under the current Format. (In common with all other commercial radio licensees, Atlantic FM’s Format was streamlined and simplified in 2008 following Ofcom’s 2007 consultation ‘The Future of Radio.’<sup>4</sup> In a letter to all licensees dated February 2008, Ofcom stated that while the new style Formats no longer included specific quotas, the “spirit” of the Format would be firmly regulated.)

Global argued that: “Ofcom has simply applied the 30-50% [speech] requirement without attempting to make any judgement about whether the station complies with the ‘spirit’ of the Format. Ofcom’s provisional decision entirely ignores the changes introduced in 2008 following the ‘Future of Radio’ consultation and is inconsistent with Ofcom’s policy.” It said that it did not accept that the test for whether the requirement had been met was a “simplistic arithmetic analysis for whether or not the old requirement to provide 30-50% of speech content in daytime has been met”. It also argued that Ofcom did not take account of the content or quality of the speech, merely the amount of it.

Global also noted that Ofcom could have, if it so wished, re-introduced a specific speech quota to the Format of the Cornwall licence in the course of undertaking its Change of Control Review of Atlantic FM in 2012, under section 355 of the 2003 Communications Act.<sup>5</sup>

Further, Global highlighted the differing levels of speech on Heart Cornwall during different dayparts (ranging, on weekdays, from 46% speech between 06:00 and 09:00 to 8% speech between 09:00 and 16:00). It argued that “listeners value speech more at certain times of the day, and it is entirely within the Character of Service and

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<sup>4</sup> Ofcom’s policy statement following its 2007 ‘Future of Radio’ consultation can be found at: <http://stakeholders.ofcom.org.uk/consultations/futureradio07/statement/>

<sup>5</sup> The s355 review of output of Atlantic FM is available in full at: <http://licensing.ofcom.org.uk/binaries/radio/change-control/atlanticFM.pdf>. This document also outlines the purpose and scope of the Change of Control Review.

‘spirit’ of the Format, that speech content be focused on those dayparts in which we believe it is most valued by listeners.”

Global also submitted that it was “arbitrary and unreasonable of Ofcom to exclude from their analysis of locally-focused speech discussion of weather, speech from Cornish callers and discussion of local events. This content is demonstrably Cornwall-specific and was provided over and above the local news and local information which Ofcom recognises the Station provides.”

It added that the three Cornish events featured during the monitoring period were in fact major events in the county (The Royal Cornwall Show, The Race for Life at Wadebridge and the Falmouth International Sea Shanty) and were “entirely appropriate” to be mentioned in the three days concerned.

Furthermore, Global said that Heart had attended over 30 local community events across Cornwall during the summer of 2013, and that alongside these Cornish events “we ran numerous interviews and supporting on-air and online content content to publicise them as part of our commitment to local content.”

## **Decision**

As noted above, under the Communications Act 2003, Ofcom has a statutory duty to ensure “a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.” In local commercial radio, Ofcom secures this by the use of Formats. At the centre of each station’s Format, which forms part of its broadcast licence, is the ‘Character of Service’, a description of the output which the licensee is required to provide, based on the promises originally made in its licence application. As also noted above, all commercial radio Formats were simplified in 2008 so that they no longer contained specific quotas. However Ofcom made clear to licensees at the time that the “spirit” of the Format would still be taken into account.

### Levels of speech

In reaching our decision on whether the Licensee is delivering the Format requirement that “speech is an important part of the content”, it was clearly necessary for Ofcom to make a judgement about the amount (rather than the quality or content) of the speech broadcast.

While we accept that the specific 30-50% quota set out in the previous long-form Format is no longer required, we considered it both reasonable and logical to inform our view with reference to it (given that it reflected the promises made by the applicant in its original licence application). This was particularly the case given the stated range in the original Format (of 30% to 50% speech during daytime output) gives a wide margin of flexibility for the precise balance between music and speech. In our view, this gives a clear indication of the levels of speech that reflect the spirit of the Format.

Having rejected Global’s Format Change Request last year, Ofcom’s expectations regarding the delivery of the Format for this licence were set out very clearly in the post-consultation Statement on the matter, including reference to the spirit of the long-form Format. However, we note that, following the publication of the Statement, the Licensee did not seek to challenge the basis on which we had set out those expectations.

We acknowledge Global's argument that differing levels of speech across different dayparts reflect when speech is valued most by listeners. We also noted the roughly even mix of music and speech provided during Heart Cornwall's weekday breakfast show.

Nevertheless, during the six consecutive daytime hours (10:00 to 16:00) over the three days of monitoring, speech levels averaged around 9%. In these circumstances, Ofcom did not accept that the spirit of the Character of Service was being delivered effectively across those hours.

#### Amount of Cornwall-specific material

We noted Global's concern that Ofcom did not consider that certain types of items (e.g. dedications, presenter chat about the weather) constituted locally-focused speech content. We accept and fully recognise that locally-focused speech content can be delivered in a variety of different ways, including through items of this type. Rather, our point was that, during the monitoring period, there was simply not enough of this type of content (or any other types of locally-focused speech content) being provided by the Licensee to meet the Format requirement satisfactorily. In total during our monitoring period, the Cornwall-specific material within presenter links outside of weather and traffic bulletins typically accounted for less than five minutes of output per day.

For example, on the three-hour drivetime show on Monday 10 June (a programme that is not shared with other any other Heart station in the region, and is therefore produced exclusively for the Cornwall audience), local speech content outside of news, weather and traffic bulletins consisted only of a brief presenter mention of the Royal Cornwall Show (approximately 30 seconds); a dedication to "*Gary in Newquay*" (approximately 30 seconds) and a mention of the forthcoming 'Race For Life' event at Wadebridge (approximately 56 seconds). The entirety of the presenter's reference to the Royal Cornwall Show the preceding weekend was as follows: "*How was your weekend? Did you have an absolutely amazing weekend? The sun was shining, it was absolutely beautiful...couldn't have been more perfect for the Royal Cornwall Show as well, which was just brilliant this year....*"

Similarly, during the four-hour breakfast show on Wednesday 12 June (which is shared with other Heart stations in the south west), Cornwall-specific content outside of news, weather and traffic bulletins comprised a further two mentions for the Wadebridge 'Race for Life' event, name-checks for St. Ives and Holdsworth as part of a regional pollen count feature, and a brief name-check for a listener in Penzance.

While it was clearly entirely appropriate for the three county specific events to be referred to on this service, and the other local references to be made, Ofcom was concerned that their brevity did not reflect the Format requirement for the service to "feature...locally-focused...speech content", or its overall spirit.

#### Conclusion

Having considered Global's representations, it remained our view that Heart Cornwall was not delivering some important aspects of the Character of Service of its current published Format, in particular the requirements that the station should be: "A full service local station for Cornwall, with speech an important part of the content," and that it should feature "locally-focused....speech content."

Ofcom is putting the Licensee on notice that, should similar issues arise, we may consider taking further regulatory action.

**Breach of Licence Condition 2(4) in Part 2 of the Schedule to the commercial radio licence held by Atlantic Broadcasting Ltd (licence number AL243).**

## Note to Broadcasters

Ofcom's guidance notes on Formats, available at <http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/about-formats>, set out our general approach to Format regulation, including our interpretation of common terms contained within Formats such as 'full service'. We also take this opportunity to remind holders of analogue commercial radio licences that, in addition to the specific programming requirements contained within their individual station Formats, licensees also need to be aware of, and compliant with, Ofcom's localness guidelines, which are published at: <http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/localness-guidelines>

## Fairness and Privacy cases

### Not Upheld

#### **Complaint by Mr Chris Holmes on his own behalf and on behalf of Bankruptcy Protection Fund Limited**

*The One Show, BBC 1, 2 July 2013*

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#### **Summary**

Ofcom has not upheld Mr Chris Holmes' complaint on his own behalf and on behalf of his company, Bankruptcy Protection Fund Limited ("BPF"), of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast

This edition of *The One Show* included a report on the business practices of BPF and related companies. The programme investigated the arrangements which BPF and related companies offered to help people who had been made bankrupt annul their bankruptcy. Mr Holmes was also shown in the programme being doorstepped by the reporter.

Ofcom found that:

- Mr Holmes was not unfairly portrayed in being doorstepped and the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, omitted or disregarded in a way that was unfair to Mr Holmes.
- Mr Holmes was given an appropriate and timely opportunity to respond to the allegations made in the programme, therefore there was no unfairness to Mr Holmes and BPF in this respect.
- Mr Holmes' position was sufficiently represented in the programme and it was not unfair to omit Mr Holmes' detailed explanation for why the couples featured in the programme had failed to have a satisfactory outcome with BPF.
- Mr Holmes had a legitimate expectation of privacy, albeit limited. However, the public interest in investigating consumer issues and subsequently broadcasting footage which showed Mr Holmes being doorstepped outweighed his expectation of privacy.

#### **Introduction and programme summary**

On 2 July 2013, BBC 1 broadcast an edition of its magazine programme, *The One Show*. The programme included an item about the experiences of a number of people who, after accepting assistance from BPF to annul their bankruptcy, were confronted with high interest charges in repaying BPF and the prospect of losing their home.

One contributor, Mrs Mandy Hindmarsh, told the programme that after her husband was declared bankrupt she accepted help from BPF to annul their bankruptcy. To achieve this, she said that BPF told her that they would get her a loan, reverse the bankruptcy order and, finally, get her a remortgage so she could repay the loan. Mrs Hindmarsh explained that BPF paid the tax and the unsecured creditors, however,

after the remortgage failed to materialise, she and her husband were left with an *“expensive loan and debts totalling more than twice the cost of their home”*.

The report also included an interview with Mr John Howden and Mrs Kathleen Howden who, it said, had received assistance from BPF in annulling their bankruptcy, however:

*“Because they couldn’t pay the fees and interest charges, their family home of 18 years was taken to pay the Bankruptcy Protection Fund Limited”*.

The reporter revealed that there was a clause in the *“small print”* of BPF’s contracts which gave them *“a legal charge”* over their customer’s property. An unnamed contributor then said that:

*“Rather than saving me from bankruptcy, they’ve aggressively pursued my house. They just want to get your house as soon as they can, release the equity and they’re creating a huge amount of profit”*.

The reporter subsequently explained that, on 16 April 2013, the Court of Appeal had *“ruled in four test cases that BPF’s ‘contracts were found to be legally unenforceable’”* and had *“raised concerns of the unfairness of the transactions with [BPF’s] customers...misleading advertising material...[and] huge and hidden rates of interest”*.

A photograph of Mr Holmes was included in the report and he was named as the director of BPF. The reporter said that Mr Holmes had repeatedly turned down requests for a camera interview, so the programme makers had decided to *“take the camera to him”*. The reporter was shown entering a building in which Mr Holmes’ office was located, knocking on his office door, and repeatedly asking Mr Holmes to answer some questions. Mr Holmes did not answer any questions. Footage filmed through the glass panel of his office door showing Mr Holmes, partially obscured by a computer monitor, sitting at his desk was broadcast. As the programme makers were shown leaving, the reporter stated:

*“Mr Holmes preferred to stay behind his locked door, he could obviously hear us, but he remains camera shy”*.

After the report, the studio presenters commented on the story. One of the presenters, Ms Alex Jones, called Mr Holmes a *“coward”* and her co-presenter, Mr Matt Baker, said *“the irony that his name is Mr Holmes”* to which Alex Jones replied *“I know you couldn’t make it up”*. The studio presenters summarised BPF’s response to the allegations in the report by stating:

*“The Bankruptcy Protection Fund Limited say that they have hundreds of satisfied customers in the vast majority of cases. They help people annul bankruptcies and secure remortgages and the people in our film could have achieved a positive result if they repaid their loans”*.

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

### **Unjust or unfair treatment**

In summary, Mr Holmes complained that he and BPF were treated unjustly or unfairly in the programme as broadcast in that:

- a) Material facts were presented in a way that was unfair to Mr Holmes because the programme makers doorstepped him despite him having provided them with a written statement in response to the allegations that he was informed would be made in the programme.

Mr Holmes said the footage portrayed him unfairly as someone who “hides away” and “was created only for dramatic effect and to give the incorrect impression that [he] was avoiding answering questions”. Further, following the end of the report, the studio presenter described Mr Holmes as a “coward”.

In response, the BBC said that the doorstepping of Mr Holmes occurred before he had provided a written response to the allegations which had been put to him. Further, the BBC explained that the filmed doorstepping took place shortly after midday on 2 July 2013 after prolonged attempts by the programme makers to secure a filmed interview with Mr Holmes which included two deadlines, both agreed with Mr Holmes, which had passed with no substantive response being received. The broadcaster added that Mr Holmes’ statement was subsequently sent to the BBC by email at 15:55 on 2 July 2013, a few hours after the filming had taken place and shortly before the broadcast of the programme. The BBC stated that it had previously investigated Mr Holmes in February 2013 for *Inside Out*, a current affairs programme broadcast on BBC South East in which he had indicated a willingness to engage with the right to reply process, but he would then prevaricate and delay. The BBC added that the view was therefore taken that Mr Holmes once again had no intention of being interviewed. It said that, in the circumstances, it considered that it was justified to attempt a doorstep interview in order to put the allegations to be made in the programme to Mr Holmes.

The BBC acknowledged a discrepancy in its correspondence in which it responded to an email from Mr Holmes, asking what the latest deadline for receipt of his statement would be, with “the afternoon” of 2 July 2013. However, the BBC said that the email from Mr Holmes was not seen or replied to until after the doorstepping was conducted. The BBC added that the doorstepping was not conducted because the last deadline for the statement had passed, but on the evidence of Mr Holmes’ behaviour, i.e. that he was prevaricating and had no intention of being interviewed.

The BBC said that it did not believe that the remark “coward” made by one of the studio presenters was unfair to Mr Holmes. It was a spontaneous reaction to the contents of the report and was justified in light of the report’s contents. The BBC stated that the word “coward”, although robust, accurately summed up Mr Holmes’ refusal to be interviewed about the business practices of his companies and was a fair comment.

- b) Mr Holmes was not given the opportunity to respond to the following allegations made in the programme. Mr Holmes said that not being given an opportunity to respond to these allegations in the programme resulted in him and his company, BPF, being unfairly portrayed. In particular, Mr Holmes complained that:
- The programme alleged that *“homeowners across the country have suffered a similar fate at the hands of BPF’s lawyers and county court judgments”* which implied that there were numerous people who faced losing their homes due to BPF placing legal charges on their property. However, Mr Holmes said that “apart from Mr and Mrs Hindmarsh and Mr and Mrs Howden, no other person allegedly affected by BPF’s activities was named in the programme”.



This prevented Mr Holmes from being able to respond to the allegation properly.

The BBC said that the allegation in the programme primarily concerned the business practices of BPF and how they had led to a number of homeowners losing their homes or having ownership of their homes placed in jeopardy. The BBC cited a Court of Appeal judgment in the case of Mr and Mrs Collins in which it said the business practices of BPF were questioned. The BBC explained that the allegations made did not derive from the particulars of individual cases and the cases referred to in the programme were corroborative of those general allegations which were put to Mr Holmes prior to the broadcast of the programme. The BBC added that it did not believe that any unfairness arose from the fact that BPF was not provided with the identities of other victims of BPF's methods and there was no reason why Mr Holmes might have been disadvantaged in responding to the general allegations being made.

- The broadcaster refused to identify to BPF a couple who made an anonymous allegation that BPF did not save them from bankruptcy but instead "*aggressively pursued their house*". This prevented Mr Holmes from being able to understand the allegation and to respond to it properly.

The BBC said that the request from BPF to identify a couple who made an allegation about the company in the programme came after the broadcast of the programme so declining to respond to this request could not have created any unfairness in the programme. The BBC added that it declined to identify the couple because assurances had been given to them before broadcast.

- c) Mr Holmes' written statement in response to the allegations made in the programme was not sufficiently represented in the programme. This resulted in Mr Holmes and his company being unfairly portrayed in respect of these allegations. In particular:

- The programme makers were provided with a detailed explanation indicating why the two named couples in the programme had failed to have a satisfactory outcome with BPF.

The BBC reiterated that Mr Holmes' statement was sent to the programme makers at 15:55 on the day of the broadcast of the programme. It added that it was a lengthy document and was accompanied by what was purported to be persuasive evidence supporting the claims it made. However, the BBC said that it included claims made by Mr Holmes and his solicitors about previous customers of his business who were appearing in the programme, and who had also appeared in the *Inside Out* programme. The BBC added that Mr Holmes' claims had been thoroughly researched after the *Inside Out* programme and were found to be misleading and damaging to the people who had appeared in the programme. To demonstrate this, the BBC provided Ofcom with examples which the BBC said refuted the claims made by Mr Holmes in his written statement.

The BBC said that it had to consider the consequences if it reiterated the claims made by Mr Holmes' in his statement, because the overall effect would have been to malign those people who had sought help from BPF and to mislead the programme's audience as to their culpability. The BBC said that the alternative would have been to examine each of the claims made by Mr Holmes and dispose of them in the programme with counter evidence.

However, the BBC stated this was not possible because of the late stage in which it received his response and it would not have been appropriate for a report of its duration.

The BBC stated that the programme makers decided to extract from Mr Holmes' statement what they believed to be a fair representation of his position without causing unwarranted damage to the reputation of those people who featured in the programme. The BBC added that it would have been preferable to give Mr Holmes the opportunity to respond at greater length but, by providing a highly misleading statement at a late stage and refusing to be interviewed, he left the programme makers with no other option.

#### Unwarranted infringement of privacy

- d) Mr Holmes complained that his privacy was unwarrantably infringed in the programme as broadcast because he was doorstepped by the programme makers at his office which was not necessary nor warranted. Mr Holmes said that he had declined to be interviewed and instead provided a written statement in response to the allegations. Mr Holmes said that the reporter's actions were embarrassing and intimidating. He said that there was no need for a face-to-face interview and the footage was gathered for dramatic effect.

In response, the BBC said that, despite its previous experience of Mr Holmes, the programme makers had tried to facilitate an interview with him, and that at various times he had indicated that he would be agreeable to an interview. The BBC added that every possible opportunity was extended to Mr Holmes which culminated in a BBC reporter travelling to Manchester on 1 July 2013 to arrange an interview with him. The BBC said that the timing of the doorstep interview was set to allow the maximum time for Mr Holmes to respond commensurate with leaving enough time for it to be edited into the programme. It stated that leaving the filming until midday on the day of broadcast was evidence of the programme makers' good faith in this matter and of the fact that the interview was not conducted merely for theatrical effect. The BBC added that it did not believe that the reporter's behaviour was "embarrassing and intimidating" and provided unedited footage of the doorstep interview to Ofcom to demonstrate this.

The BBC said that the doorstep was warranted by the public interest in investigating consumer issues and that it was conducted on the basis that Mr Holmes had not provided any meaningful response to the allegations made against him and his company.

#### **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 transcript of it, unedited footage of the attempted interview with Mr Holmes, both parties' written submissions and supporting material. Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

### Unjust or unfair treatment

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 the Code.

- a) Ofcom considered Mr Holmes' complaint that material facts were presented in a way that was unfair to him because the programme makers doorstepped him despite him having provided them with a written statement in response to the allegations that he was informed would be made in the programme. This gave the incorrect impression that he was avoiding answering questions.

In considering this head of complaint, Ofcom had regard to Practice 7.9 and considered whether the portrayal of Mr Holmes was consistent with the broadcaster's responsibility to ensure material facts had not been presented, disregarded or omitted in a way which was unfair to him. Ofcom also took into consideration Practice 8.11 of the Code which defines doorstepping as the "filming or recording of an interview or attempted interview with someone or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning". It should not take place unless "a request for an interview has been refused...and it is warranted to doorstep". While this Practice is found under Section Eight (Privacy) of the Code, it is appropriate for Ofcom to consider this Practice here in order to set out the requirements the Code places on broadcasters in justifying doorstepping.

Ofcom first assessed whether the doorstepping was warranted. Ofcom considers that doorstepping has the potential to create unfairness to individuals and/or organisations because of the lack of opportunity afforded to them to consider the allegations put to them and the potential adverse impression it can give to viewers about those who have been approached in this manner. Consequently, Ofcom expects broadcasters to be able to demonstrate the procedures that were followed by the programme makers in deciding to doorstep and that it was warranted to doorstep in the circumstances.

Ofcom carefully examined all the correspondence between Mr Holmes and the programme makers and noted that the broadcaster offered Mr Holmes, in a series of phone calls and emails, the opportunity to respond to the allegations to be made in the programme either by written statement or filmed interview. Ofcom noted that the programme makers, on numerous occasions, requested Mr Holmes to confirm whether or not he was willing to take part in a filmed interview. It was only after the programme makers arrived at his office and filmed shots of him the day before the broadcast of the programme on 1 July 2013 that Mr Holmes confirmed he would be unlikely to accept a request to be interviewed. Mr Holmes instead indicated that he would provide a written statement by 17:00 hours on 1 July 2013. After the deadline set by Mr Holmes passed, he emailed to

state that the written statement would be sent on the morning of 2 July 2013. The programme makers asked what time they could expect to receive the written statement and, the following day, Mr Holmes enquired about the latest time he could send the response. The programme makers replied and said he could send the statement in the afternoon.

Ofcom noted from the BBC's statement that the doorstep interview took place at midday on 2 July 2013 before the programme makers had seen the email from Mr Holmes regarding the latest time in which his written response could be sent, which subsequently arrived at 15:55 on 2 July 2013. Ofcom also considered the BBC's response, in which it stated that it had previously dealt with Mr Holmes, whom it believed was repeating the same behaviour which it had witnessed earlier when investigating similar claims in an episode of *Inside Out*. In particular, the concern was that he "had not entered the right to reply process in good faith and instead attempted to mislead, delay and prevaricate".

In Ofcom's view, the concerns raised by the programme makers in their correspondence were serious and, even though the programme makers had set out in detail the questions and main allegations which were to be made in the programme on which it sought Mr Holmes' response and had repeatedly requested Mr Holmes take part in a recorded interview or provide a written statement, Mr Holmes had not addressed the substance of the allegations until the day of broadcast after the doorstepping had taken place. Although the programme makers indicated that Mr Holmes could provide the statement by the afternoon of 2 July 2013, given the programme makers' previous experience of Mr Holmes and his repeated delay in providing a response to the allegations, Ofcom considered that the programme makers had a reasonable basis for believing that Mr Holmes was refusing to cooperate. It was therefore Ofcom's view that the programme makers were warranted in their decision to conduct a doorstep interview at Mr Holmes' office.

Having established that the doorstepping was warranted, Ofcom went on to consider whether the programme makers were justified to include the footage of the doorstepping in the programme as broadcast. The report in the programme concerned an important consumer issue which exposed concerns about the business practices of Mr Holmes and BPF and, prior to the doorstepping, Mr Holmes had not responded to the substance of the allegations which were to be made in the programme. Ofcom therefore considered that the programme was justified in including the footage of Mr Holmes being doorstepped as it illustrated the point to viewers that he had not, up to that point, responded to the allegations that the programme makers had put to him and which were to be made in the programme. In any event, the programme makers were unable to carry out the doorstep interview because Mr Holmes' office door was locked. In these circumstances, Ofcom considered that no unfairness resulted from the inclusion of the doorstepping.

Ofcom next went on to consider how the material was presented in the programme as broadcast as set out in detail above (see the "Introduction and programme summary" section) and whether this led to any unfairness to Mr Holmes. It was Ofcom's view that Mr Holmes had provided the programme makers with a written statement after the doorstep interview had taken place and therefore material facts were not presented in a way which was unfair to Mr Holmes in this regard. Ofcom considered that the footage did have the potential to portray Mr Holmes as someone who "hides away" or "was avoiding answering questions". However, given that a summary of Mr Holmes' written statement in

response to the allegations was included in the programme, it would have been apparent to viewers that Mr Holmes had been in contact with the programme makers. Further, prior to the doorstep interview, Mr Holmes had failed to address the substance of the allegations which the programme makers intended to make and the programme therefore accurately reflected that, in essence, Mr Holmes had “avoided answering questions”.

In Ofcom’s view the studio presenter’s comment, which referred to Mr Holmes as a “coward”, had the potential to imply that Mr Holmes was unwilling to answer questions and it could have altered viewers’ perceptions of Mr Holmes in a way which was unfair to him. However, Ofcom had regard to the footage as broadcast, the unedited footage and the protracted correspondence between the parties and noted that the programme makers had repeatedly requested Mr Holmes respond to the allegations they intended to make in the programme and it was at a late stage, after the doorstep interview had taken place, that Mr Holmes responded. Taking these factors into account, Ofcom took the view that Mr Holmes had been evasive in responding to the allegations and that the studio presenter had expressed her opinion accordingly, in a manner that was fairly presented. Ofcom noted that the inclusion of the comment by the studio presenter, prior to the summary of Mr Holmes’ response to the allegations, left it open to viewers to reach their own conclusions as to whether or not Mr Holmes had avoided responding to the allegations made by the programme makers.

For these reasons, Ofcom concluded that the programme as broadcast accurately reflected the chain of events. Ofcom considered that there was no unfairness in the presentation of material facts and the comment made by the studio presenter in the circumstances.

Ofcom considered therefore that there was no unfairness to Mr Holmes in this respect.

- b) Ofcom next considered the complaint that Mr Holmes was not given the opportunity to respond to the allegations that there were numerous people who faced losing their homes due to BPF placing legal charges on their property, and that BPF did not save them (the anonymous couple) from bankruptcy but instead *“aggressively pursued their house”*.

In assessing his head of complaint, Ofcom had particular regard to Practice 7.11 of the Code which states that, 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 first examined the steps taken by the programme makers to provide Mr Holmes with an opportunity to respond to the allegations specifically pointed out by Mr Holmes. Ofcom noted that, in email correspondence between Mr Holmes and the programme makers, Mr Holmes was informed that the programme would explore the issue that customers “have been dissatisfied with their experiences of BPF...Many have similar grievances to the Hindmarshes”. In a further email, the programme makers stated that one of the allegations which would be made in the programme was that “BPF offers bankruptcy annulment to prevent people losing their homes yet we have evidence that in fact your service does exactly the opposite and is grossly unfair to clients”. The programme makers also informed Mr Holmes that, in addition to Mr and Mrs Hindmarsh and Mr and Mrs Howden, it had “identified other former clients of BPF who believe they have unfairly lost their homes” and that there would be two new case studies to illustrate this fact.

Ofcom had regard to the BBC's response in which it said that Mr Holmes had not asked the broadcaster to identify the couple who featured in the programme prior to broadcast. After examining the correspondence, Ofcom took note of the fact that Mr Holmes had not explicitly asked, before broadcast, for details of the couple who appeared anonymously and relatively briefly. The programme makers had informed Mr Holmes that as well as Mr and Mrs Hindmarsh and Mr and Mrs Howden, they had also identified "two new case studies" which they intended to include in the forthcoming programme. Mr Holmes had asked for the programme makers to "identify the two case studies" and the programme makers responded and said that the two cases they wished to discuss were of Mr and Mrs Hindmarsh and Mr and Mrs Howden. This request by Mr Holmes was not followed up in any subsequent correspondence prior to the broadcast of the programme.

In Ofcom's view, although the programme makers did not name all the individuals who were to feature in the programme, Mr Holmes was given an appropriate and timely opportunity to respond to the general allegations which the programme intended to report i.e. that there were numerous people who were dissatisfied with BPF and who had suffered a similar experience to Mr and Mrs Hindmarsh and Mr and Mrs Howden. Ofcom did not consider it incumbent upon the programme makers to provide Mr Holmes with the names of all the individuals whose circumstances they had considered in order to give Mr Holmes an appropriate opportunity to respond and that, by not doing so, this had led to Mr Holmes being disadvantaged.

Ofcom therefore took the view that no unfairness had resulted to Mr Holmes in this respect.

- c) Ofcom considered the complaint that Mr Holmes' written statement in response to the allegations made in the programme was not sufficiently represented in the programme. In particular, the programme makers were provided with a detailed explanation indicating why the two named couples in the programme had failed to have a satisfactory outcome with BPF. This resulted in Mr Holmes and his company being unfairly portrayed in respect of these allegations.

When assessing this head of complaint, Ofcom had regard to Practice 7.13 which says that, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

It is important to note that broadcasters are not required to reproduce a response in its entirety. However broadcasters should fairly represent the substance of any response in the programme as broadcast.

Ofcom compared the summary of Mr Holmes' statement included in the programme as broadcast (as set out in the "Introduction and programme summary" section above) with the statement which Mr Holmes had requested be read out in full. Ofcom noted that the part of Mr Holmes' statement, which directly addressed the reasons why Mr and Mrs Hindmarsh and Mr and Mrs Howden were unable to achieve a "successful repayment route", was not included in the programme's summary of the statement.

Ofcom noted the attempts made by the programme makers to obtain a written statement or filmed interview from Mr Holmes (see head a) above). Ofcom

therefore considered that the programme makers had provided Mr Holmes with an appropriate and timely opportunity to respond to the allegations to be made in the programme and it was Mr Holmes' own actions which had resulted in a delay to the written statement being received by the programme makers. Although the programme makers had stated that Mr Holmes could send a written statement to them by the afternoon of the date of broadcast, Ofcom noted that this was only after Mr Holmes had repeatedly postponed sending the written statement.

As regards Mr Holmes' point that the programme makers omitted from the programme as broadcast a detailed explanation as to why the two couples featured in the programme had failed to achieve a successful outcome with the company, Ofcom recognises that, consistent with the principle of editorial freedom, the broadcaster has the right to decide whether or not to include particular pieces of information or material in a programme. This is an editorial decision for broadcasters to make prior to the broadcast of a programme, provided this does not result in unfairness.

In Ofcom's view, the studio presenter's presentation of Mr Holmes' response summarised sufficiently the main points Mr Holmes had made in his written statement to the programme makers. Viewers would have been clear that Mr Holmes' position was that the customers featured in the programme could have avoided losing their homes if they had repaid the loans.

Ofcom's opinion is that, given the significant delay in Mr Holmes providing his response to the programme makers and the sources which the BBC had relied on to research Mr Holmes and his company, the summary reflected Mr Holmes' viewpoint fairly and with due accuracy. Ofcom therefore concluded that the programme provided viewers with sufficient information regarding Mr Holmes' response and did so in a fair manner considering that there was a significant delay in the programme makers receiving Mr Holmes' statement.

Ofcom therefore considered that there was no unfairness to Mr Holmes or his company in this respect.

#### Unwarranted infringement of privacy

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

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

- d) Mr Holmes complained that his privacy was unwarrantably infringed in the programme as broadcast because he was doorstepped by the programme makers at his office which was not necessary nor warranted.

In considering this head of complaint, Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom also took into consideration Practice 8.11 of the Code (see head a) above).

Ofcom recognised that the footage of Mr Holmes that was included in the programme had been obtained by doorstepping Mr Holmes at his office. As set out in detail in head a) of this “Decision” section above, it was Ofcom’s view that the programme makers were warranted to doorstep Mr Holmes at his office and that it was not unfair to include the doorstep footage in the programme as broadcast, given that the programme makers had provided Mr Holmes with a number of reasonable opportunities prior to the broadcast of the programme to respond to the allegations which were to be made. Mr Holmes had not been forthcoming in providing this response and his reply was only sent after the doorstep interview had taken place.

Having reached the view that the doorstepping of Mr Holmes was warranted, Ofcom next assessed the extent to which he had a legitimate expectation of privacy in relation to footage of him included in the programme. Ofcom viewed the unedited footage and the footage in the programme as broadcast and considered the context in which Mr Holmes appeared in the programme.

Ofcom noted that the footage shown in the programme depicted the programme’s reporter entering the premises in which Mr Holmes’ office was located by “tailgating” another person who had not closed the door to the building. It was unclear to Ofcom whether or not this door required a security pass or code to open it. Ofcom also noted from the unedited footage that the reporter and the camera crew arrived at the premises and entered through what appeared to be the main front reception of the building to an area which contained a security desk with a member of staff present. The reporter told the security staff that he was going to interview Mr Holmes and proceeded to walk through the main reception, ascended the staircase and stood outside the main door to Mr Holmes’ office which had a security coded entrance.

Ofcom noted that the footage in the programme as broadcast showed the reporter entering through the main front door of the business premises and walking up the stairs stating that “*this is where Mr Holmes works*”. The reporter knocked on the security coded entrance door to BPF and requested Mr Holmes answer some questions. Mr Holmes was shown for approximately eight seconds, although his face was obscured by his computer monitor and therefore not fully visible to viewers. Ofcom took into account that the reporter was unable to talk with Mr Holmes. Mr Holmes was filmed through the glass panel of his office door and he did not appear to be engaging in anything particularly private or confidential.

It was Ofcom’s view that Mr Holmes had an expectation of privacy in relation to the broadcast of footage of him in his office, since he was filmed in his private office through a glass panel of a security coded door. However, in light of all the factors noted above (notably that the programme makers did not film Mr Holmes engaging in anything particularly private or sensitive, his face was obscured by his computer monitor and that Mr Holmes did not talk with the reporter), Ofcom considered that any expectation of privacy Mr Holmes had in these circumstances was limited.

Having found that Mr Holmes had a legitimate expectation of privacy, albeit limited, Ofcom went on to consider whether the intrusion into Mr Holmes’ privacy was warranted.



Ofcom noted the steps taken by the programme makers in requesting either a written response or filmed interview from Mr Holmes (see head a) above). Ofcom considered that it was reasonable for the programme makers to have reached the view that there were sufficient grounds to suspect that Mr Holmes had no intention to address the substance of the allegations either by written statement or filmed interview prior to the broadcast of the programme and that such a response could be obtained by conducting a doorstep interview.

Ofcom noted the public interest of broadcasters investigating consumer issues in order to help protect members of the public. Ofcom took the view in particular that the investigation of consumer issues in relation to Mr Holmes' company, which had previously been investigated by a different programme and had a Court of Appeal judgment against it (which echoed the concerns raised in the programme about business practices of the company), was a matter of public interest. Ofcom took into account all these factors, and in particular that the programme makers had on various occasions sought an interview or written statement by Mr Holmes; and the programme makers had ascertained from previous dealings with Mr Holmes that he had acted in a similar manner. Therefore there was a reasonable basis for concluding that he was avoiding responding to the allegations against him.

Given all the factors set out above, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in the subject matter of the programme, in the circumstances of this particular case, outweighed the limited legitimate expectation of privacy that Mr Holmes had in relation to the broadcast of the doorstepping without his consent.

Ofcom therefore took the view that there was no unwarranted infringement of Mr Holmes' privacy in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Holmes' complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### **Complaint by Mr Milan Vincze on his own behalf and on behalf of Animal Transport**

*Dispatches: Undercover Designer Dogs, Channel 4, 11 March 2013*

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#### **Summary**

Ofcom has not upheld this complaint made by Mr Milan Vincze on his own behalf and on behalf of his company, Animal Transport, of unjust or unfair treatment in the programme and unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme investigated the high demand for “designer dogs” as domestic pets in the UK and looked at the conditions in which significant numbers of puppies were imported and whether human health was being put at risk. Part of the report included secretly filmed footage of a Slovakian animal importer, Mr Vincze and his daughter, Ms Aya Vincze, negotiating with the programme’s undercover reporters about importing puppies. Part of this footage showed Ms Vincze appearing to claim that they mostly imported puppies that were younger in age than the ages printed in the travel documents of the animals. Both Mr and Ms Vincze were also secretly filmed delivering a number of puppies to a London pet shop.

Ofcom found that:

- The surreptitious filming of Mr Vincze was warranted in the circumstances and that the programme had presented the secretly filmed footage of Mr Vincze fairly and had taken reasonable care when presenting it. It considered that the inclusion of this footage, along with Mr Vincze’s denial of any wrongdoing, left it open to viewers to reach their own conclusions as to Mr Vincze’s animal importation and transportation business. There was no unfairness to Mr Vincze or his company, Animal Transport, in the manner they were depicted in the programme as broadcast.
- Mr Vincze had a legitimate expectation of privacy, albeit limited, in the obtaining of the material in that he would not expect to be filmed surreptitiously during the meetings he believed to be with potential business clients. In this case, Ofcom considered that the public interest in obtaining the material, outweighed Mr Vincze’s limited expectation of privacy. Therefore, Mr Vincze’s privacy was not unwarrantably infringed in connection with the obtaining of the material included in the programme.
- Mr Vincze had a legitimate expectation of privacy in relation to the broadcast of the surreptitious footage shown of him. In this case, the public interest in broadcasting the material in order to demonstrate that inadequately vaccinated puppies were being imported in the UK with false travel documents and the potential danger this posed to public health as a result, outweighed Mr Vincze’s limited expectation of privacy. Therefore, Mr Vincze’s privacy was not unwarrantably infringed in the programme as broadcast.

## Introduction and programme summary

On 11 March 2013, Channel 4 broadcast an edition of *Dispatches* entitled *Undercover Designer Dogs*, which investigated whether the high demand for “designer dogs” as domestic pets in the UK was “*fuelling another side to the pet trade*”. It looked at the conditions in which significant numbers of puppies were being imported and asked whether the relaxation of the UK quarantine regulations was putting human health at risk. The programme reported that a relaxation in quarantine rules in 2012 meant that young puppies could now legally be brought into the UK on pet passports. However, concerns had been raised about cheap puppies being imported from Eastern Europe where paperwork and rabies vaccinations were suspect.

To investigate these concerns, the programme makers set up a fictitious online pet shop called “*Hatched, Matched, Dispatched*” and approached European puppy importers who had come to their attention during their research. The programme makers planned to express an interest in buying imported puppies to sell in the UK in order to see how suspect importers operated and to film meetings with such importers surreptitiously.

Mr Vincze was first shown at the end of “*Part One*” of the programme in secretly filmed footage of him greeting the undercover reporter and showing him a number of puppies in cages stacked in the back of Mr Vincze’s van. The accompanying commentary stated:

*“In Part Two we are on the trail of a much larger importer who is bringing puppies in from Eastern Europe by the van load”.*

In “*Part Two*” of the programme, the programme’s reporter explained that he had arranged to meet an animal importer (who had offered a wide range of puppies for sale on the internet) in a roadside diner near Dover in order to negotiate an order for imported dogs. The undercover reporter posed as a UK-based dog trader who wanted to source very young dogs from Eastern Europe. In secretly filmed footage, Mr Vincze and his daughter, Ms Vincze, showed the reporter a number of puppies in cages in the back of Mr Vincze’s van. The reporter was heard to ask “*How many do you bring each time? Do you get a get quite a lot?*”, to which Ms Vincze’s daughter answered “*There are 45*”.

The reporter then went on to explain that although each of the puppies in Mr Vincze’s van had its own pet passport, which normally only allowed animals to be imported by individuals as domestic pets (i.e. not to then be sold), Mr Vincze’s was, in fact, entitled to import dogs in such numbers and then sell them in the UK, because he was actually importing them as commercial livestock. The programme stated that the regulations governing the transportation of livestock provided that young lambs are only allowed to travel for seven hours, however the same regulations did not stipulate how long young dogs could travel for. In the secretly filmed sequence that followed, it transpired that the puppies in Mr Vincze’s van had been travelling for a total of 72 hours from their kennels in Slovakia to Dover.

Mr Vincze and his daughter were then shown in a secretly filmed sequence seated at a table inside the roadside cafe discussing the various breeds of dogs they could supply to the undercover reporter. The following exchange took place:

Reporter:       *“In terms of the age of the dogs, what age are they, how does it work?”*

Ms Vincze: *“The age is officially 15 weeks, but they are younger mostly. Well those [i.e. the puppies in the back of the van in the car park] are older because they were [born] before Christmas and our customers had trouble to sell puppies so we kept them ourselves. But usually they are younger than the stated age”.*

The programme explained that:

*“the age of 15 weeks is critical. That’s because a puppy should be 12 weeks old before it’s vaccinated against rabies. And then, according to the Department for the Environment, DEFRA<sup>1</sup>, you must wait a further three weeks before importing it”.*

The programme returned to the secretly filmed footage in the cafe and showed the undercover reporter asking Ms Vincze: *“What do we tell our [customers]? We say that they are 15 weeks old?”*, to which she answered, *“Well, that’s up to you. It’s good to tell DEFRA and others that is 15 weeks, but what you tell the customer is up to you”.*

Later in the programme, the reporter was shown following Mr and Ms Vincze’s van and secretly filming them delivering some of the puppies to a pet shop at night. The programme’s reporter said:

*“30 minutes later we were lucky enough to run into them [Mr and Ms Vincze] again. They were making a delivery on a high street in London”.*

The programme then showed a number of puppies being handed over one at a time from the van to an unidentified person in the pet shop. The reporter then read a statement in which Mr Vincze denied any wrongdoing:

*“He said that all his puppies are 15 weeks old and they only told us some of the dogs were younger to win a potential new customer.*

*He said his company had been operating for 8 years and fulfils all the health regulations of Slovakia and the UK, and that all their puppies are properly vaccinated against rabies and echinococcus.*

*He told us his puppies are transported in approved conditions with sufficient space and that his van has a good litter system”.*

A statement from the pet shop then followed stating that it had been *“legally importing healthy puppies from Slovakia for years”* and that DEFRA had never queried the puppies’ ages.

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

### **Unjust or unfair treatment**

Mr Vincze complained that he was treated unjustly or unfairly in the programme as broadcast because:

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<sup>1</sup> The Department of the Environment, Food and Rural Affairs.

- a) Mr Vincze and his company, Animal Transport, were depicted unfairly as having imported dogs into the UK on more than one occasion illegally, without the proper permissions or vaccinations.

Mr Vincze said that neither he nor his company had ever unlawfully imported dogs into the UK and that by including them in a documentary about illegal dog importation and broadcasting a claim that he and his company had imported dogs illegally, Mr Vincze said that this portrayed him and Animal Transport unfairly.

In response, Channel 4 said that Mr and Ms Vincze had made repeated, consistent and clear admissions at three meetings over the course of as many months and these were secretly recorded (set out in detail in head b) below). It said that it beggared belief that Mr Vincze now argued that it was unfair to broadcast these admissions and to infer from them that there was anything other than reasonable grounds to suspect that he and his company had imported dogs illegally. Channel 4 said that the programme was scrupulously fair in presenting this evidence in the programme and in portraying him and his business, allowing the audience to make up its mind on the basis of the admissions made, the expert opinions offered on the evidence, and the response from Mr Vincze included in the programme.

#### Unwarranted infringement of privacy

- b) Mr Vincze complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that he was secretly filmed without his permission.

In response, Channel 4 said that preliminary research for the programme, carried out prior to any secret filming, had found that a pet shop in London had attracted negative reviews from a number of pet owners who complained about illness in puppies purchased there. The paperwork for one such puppy revealed that Mr Vincze had supplied it. It appeared to the programme makers that Mr Vincze might have been a regular supplier of imported puppies to the pet shop and so, posing as a London pet company, the programme makers emailed Mr Vincze on 7 November 2012 and asked about the availability of puppies to sell. Channel 4 said that Mr Vincze replied by return, giving details of the service he could provide:

- “1. The puppies are transported in specialized boxes in air-conditioned van.
2. The puppies are fed with food and water during the trip and the trip takes at most 20 hours.
3. Usually we arrive in London at 9 am.
4. The trip is fully legal, they are twice vaccinated and even against rabies.
5. The minimum of one order is 20 puppies for one customer. But it's possible to get even less when we combine it with another customer.
6. The puppies are growing up by proper breeders and we buy them up from them after proper vaccination and they are regularly checked by vet so there won't be any possible disease.”

Channel 4 said that prior to seeking formal permission to film secretly, two of the undercover reporters, posing as representatives of “Hatched Matched Dispatched”, a fictitious online pet shop, met with Mr Vincze and his daughter in Camden, London on 12 December 2012. Ms Vincze told the undercover reporters that they were able to bring puppies into the UK when they were 10 or 12 weeks old, but that Mr Vincze would write on the paperwork that they were

older. With Channel 4's prior permission, the programme makers surreptitiously audio recorded this meeting for note-taking and evidential purposes so that there was an independent record of the discussion and to consider if undercover filming would be merited. Channel 4 said that two of the key exchanges<sup>2</sup> in the meeting went as follows:

First exchange

Reporter 1: "OK. And what is – you can bring them in at what, three months?

Reporter 2: How old do they have to be?

Ms Vincze: What age are we transferring them normally?

Mr Vincze: 10...12...13. (translation into English)

Ms Vincze: They will be 15 weeks because of the vaccinations, but they will be not so old, they will be younger. They can sometimes be 10 weeks old only or 12.

Reporter 2: 'Cos some people want them really small.

Ms Vincze: Yeah that's why we don't, we just wait for the paperwork. But even if they will be smaller and younger they will definitely be vaccinated with the rabies and everything. They will be just written with what the vet wants".

Second exchange

Ms Vincze: "But they can't be too young, and not all of them can be really, really small because when the DEFRA stop us – we just – the bigger ones we just put in front – they will see the big ones and say yeah they're 15 weeks and the little ones are hidden.

Mr Vincze: We never had any problem.

Ms Vincze: Er...DEFRA checked us every time and everything was ok.

Reporter 1: What, when you come across they check – when you come through, come across into England?

Ms Vincze: They used to, but now we have to go with different company so sometimes they will just show up to you and check on the puppies but you will get the perfect paperwork so there will be no problems".

Channel 4 said that these were specific and damaging admissions of how Mr and Ms Vincze routinely evaded the 15 week requirement with falsified paperwork and duped DEFRA inspections by hiding smaller and younger puppies behind bigger ones.

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<sup>2</sup> Throughout the meetings, Ms Vincze conversed with Mr Vincze in Slovakian. Channel 4 provided Ofcom with an English translation.

On the basis of the research carried out by the programme makers, and particularly the above exchanges with Mr and Ms Vincze, Channel 4 said that it was satisfied that surreptitious recording and filming would be warranted in these circumstances and accordingly, covert filming was authorised. Specifically, Channel 4 said that from the preliminary research carried out by the programme makers there were reasonable grounds to suspect that further material evidence could be obtained and that it considered that secret filming was the only way to obtain an accurate picture of what was going on and to record the damaging practices being admitted to by Mr and Ms Vincze. Channel 4 said it was inconceivable that Mr and Ms Vincze would have admitted openly to breaching the DEFRA rules, falsifying paperwork to change the ages of puppies as young as 10 and 12 weeks to 15 weeks old, and to fooling officials by hiding smaller puppies behind larger ones when bringing them in to the country. Thus, Channel 4 said, it was necessary to the credibility and authenticity of the programme to film and record Mr and Ms Vincze surreptitiously.

Channel 4 said that at the two subsequent meetings, both at a diner in Kent, with the undercover reporters who Mr and Ms Vincze believed to be their prospective customers, they reiterated and fleshed out the key admissions they had made in the earlier meetings. For example, the admissions contained in the programme from Ms Vincze (made at the meeting on 9 January 2013) that *“usually they [the puppies] are younger than the stated age”*. Also, in that same meeting, Mr Vincze himself made further, similar admissions as to the puppies’ usual age [Channel 4’s emphasis]:

Reporter: *“...if we take puppies from you that are say 10 weeks old...had one rabies injection, we will have to give them a second one, won't we?”*

Slovakian translation into English:

Ms Vincze: *How did it happen? Don't they understand how it is, that they'd be sold in the 10th week and would have two vaccinations against rabies? Don't they understand that they have to get vaccinated or whatever?*

Mr Vincze: *No, those dogs have been vaccinated normally...[inaudible]*

Ms Vincze: *So that means they've got to be vaccinated again, 21 days after the vaccination? After the 12th week?*

*[inaudible]*

Ms Vincze: *But you're not going to vaccinate them again, right?*

Mr Vincze: *Vaccinate them twice, twice.*

Ms Vincze: *And you're going to vaccinate them early?*

Mr Vincze: *No, just whenever it's necessary.*

Ms Vincze: *Well, they simply don't understand how it's possible if they can be vaccinated only after the 12th week.*

Mr Vincze: *No, no, no. **I'm giving a vaccination that can be injected even in the 5th or 6th week, and they can be vaccinated again after two to six weeks***".

Channel 4 said that it was clear that this was simply wrong because of the importance of the 15 weeks age. It demonstrated either a fundamental lack of understanding about the way in which puppies needed to be properly protected against rabies, or an attempt to mislead a potential buyer. The conversation continued with further admissions of altering paperwork [Channel 4's emphasis in bold]:

Reporter 1: "So you don't need another vaccination after?

Ms Vincze: *No, no, just, we just did the even in...like this and the DEFRA didn't have trouble, want, didn't want to allow it, like the...didn't want to allow it **so we corrected only the paperwork***.

Reporter 2: **You corrected the paperwork?**

Ms Vincze: **Yeah**".

Channel 4 said that the above exchange showed that Mr and Ms Vincze were fully aware of the importance that the puppies' paperwork for the inspection reflected what DEFRA expected to see. In the third meeting (i.e. the second covertly filmed) on 12 February 2013, also at the diner, Mr and Ms Vincze made further admissions of falsifying the ages of puppies that were really 10 weeks old in their passports and of vaccinating at that age. While this was not broadcast in the programme, the exchange went as follows [Channel 4's emphasis in bold]:

Reporter: "But we would, I think, we would like puppies that are younger than 15 weeks, we'd like ones around...10, 12, if possible, because people really like younger puppies...

Slovakian translation into English:

Ms Vincze: **If they are 10 weeks or so? In reality.**

Mr Vincze: **OK. Tell him that it will be around that time when we vaccinate.**

Ms Vincze: The, **they actually will be like ten weeks old** normally even then the vaccination is correct so it's just **because of the...**

Reporter: **...passport.**

Ms Vincze: **Yeah.**

Reporter 1: No, I understand, I understand.

Slovakian translation into English:

Mr Vincze: But it's also possible 15 weeks.

Ms Vincze: But **they return in the passport 15 weeks** but how you will solve it with you it with your clients is up to you.



Reporter: No, that's fine.

Reporter: So some of these [puppies] like **are ten weeks and stuff?**

Ms Vincze: **Yeah. Sometimes they are even older**, but when they have everything so...

Reporter: But those ones sort of really tiny, **some of those look really tiny, some of those are ten weeks?**

Ms Vincze: Er, so, **yeah, some**".

Channel 4 said that it was decided at a senior editorial level that the broadcast of the programme containing the material obtained by secret filming was warranted. Specifically, it said that there was a clear and important public interest in the concerns revealed by the programme's secretly filmed evidence, namely in protecting public health and safety, and in exposing misleading claims.

Therefore, Channel 4 said that the secretly filmed behaviour and admissions from the complainants were necessary to the credibility and authenticity of the programme. As they were obtained without the subjects realising they were being filmed, these admissions had greater credibility because they were spontaneous and genuine rather than carefully tempered out of fear of potential repercussions.

- c) Mr Vincze complained that his privacy was unwarrantably infringed in the programme as broadcast in that secretly filmed footage of him, in which he was identified by his full name and the name of his business, was broadcast in the programme without his consent.

In response, Channel 4 said that it was not disputed that the complainants did not give consent for the footage of them to be broadcast. However, it said that the broadcast of this material served a clear public interest as set out in its response to head b) above and so the intrusion into Mr Vincze's privacy in the broadcast of the covertly recorded material was entirely warranted.

## Decision

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

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions. Ofcom prepared a Preliminary View in this case that Mr Vincze's complaint of unjust or unfair treatment and unwarranted infringement of privacy should not be upheld. Neither Mr Vincze nor Channel 4 made any representations on the Preliminary View.

### Unjust or unfair treatment

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 the Code.

- a) Ofcom first considered the complaint that Mr Vincze and his company, Animal Transport, were depicted unfairly as having imported dogs into the UK on more than one occasion illegally, without the proper permissions or vaccinations.

Ofcom also had regard to whether reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in the programme in a way which was unfair to Mr Vincze and his company (as outlined in Practice 7.9 of the Code). Ofcom also had regard to Practice 7.11 which states that 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 programme set out to investigate whether the demand for "designer dogs" as pets in the UK was having a significant effect on the conditions in which puppies were being imported and whether the relaxation of the quarantine regulations put human health at risk. Part of the investigation examined whether some dog importers were bringing puppies into the UK from abroad with falsified travel documents and immunisation histories. It was in this context that Mr Vincze was included in the programme.

Ofcom recognised that the footage of Mr Vincze that was included in the programme had been obtained surreptitiously by secretly filming him in a meeting with an undercover reporter who he believed were potential clients. Practice 7.14 of the Code states that broadcasters and programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentations or deception (which includes surreptitious filming or recording). However, Practice 7.14 makes it clear that it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means. In the circumstances of this case, we considered that Mr and Ms Vincze appeared to admit to flouting the DEFRA rules to the programme makers during the research stages and that this could only have been corroborated by the use of surreptitious filming. Ofcom therefore found that the use of surreptitious filming to obtain footage of Mr and Ms Vincze was in the public interest and warranted in the circumstances. Please see head b) below for our reasons for finding the surreptitious filming warranted.

Ofcom noted the allegations made in the programme relating to Mr and Ms Vincze (as set out in detail in head b) below), and in particular to Ms Vincze's admission that they supplied puppies younger than 15 weeks old on falsified paperwork. We also noted from the secretly filmed footage of Mr and Ms Vincze included in the programme that Ms Vincze told the undercover reporters that:

*"The age is officially 15 weeks but they are younger mostly. Well, those [i.e. the puppies Mr and Ms Vincze were transporting at the time of the filming] are older because they were before Christmas and our customers had troubles to sell puppies. So we kept them with ourselves, but usually they are younger than the stated age".*

In our view, Ms Vincze's comments in relation to their current consignment of puppies suggested that the puppies were older than the required 15 weeks. However, her comments also clearly implied that the puppies she and her father, Mr Vincze, imported were younger "*mostly*" than the official age for importation.

Ofcom noted that the programme makers had sought Mr Vincze's response to the allegations made in the programme and that a summary of his response was quoted in it (see the "Introduction and programme summary" section above). We took the view that the presentation of the summary of his response would have left viewers in no doubt that he refuted any wrongdoing and that his business fulfilled the health regulations of both Slovakia and the UK. Viewers would have also been aware from this summary of Mr Vincze's response that he claimed that he and his daughter had only said that some of the puppies were younger than 15 weeks old "*to win a potential customer*".

Taking these factors above into account, we took the view that the surreptitious filming of Mr Vincze was warranted in the circumstances and that the programme had presented the secretly filmed footage of Mr Vincze fairly and had taken reasonable care when presenting it. We considered that the inclusion of this footage along, with Mr Vincze's denial of any wrongdoing, left it open to viewers to reach their own conclusions as to Mr Vincze's animal importation and transportation business.

Ofcom therefore concluded that there was no unfairness to Mr Vincze or his company, Animal Transport, in the manner they were depicted in the programme as broadcast.

#### Unwarranted infringement of privacy

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

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

- b) Ofcom considered Mr Vincze's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that he was secretly filmed without his permission.

In considering this part of the complaint, we had regard to Practices 8.5 and 8.13 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.13 says that surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if: there is a *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme. We also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Before assessing whether Mr Vincze's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom considered whether it was warranted to film surreptitiously in accordance with Practice 8.13.

From Channel 4's submissions set out above, we noted the circumstances which preceded the programme makers' decision to surreptitiously film the meetings with Mr and Ms Vincze and the undercover reporters. We took into account too that evidence from preliminary research undertaken by the programme makers had revealed admissions by Mr and Ms Vincze of how they routinely evaded the 15 week of age requirement with falsified paperwork and mislead DEFRA inspectors by concealing smaller, younger puppies behind older, bigger ones. In addition, Ofcom also took account of the broadcaster's submissions which stated that surreptitious filming of Mr and Ms Vincze was necessary to the credibility and authenticity of the programme as it was inconceivable that Mr and Ms Vincze would have admitted openly to breaching the DEFRA rules and falsifying paperwork.

Ofcom considered that there was a genuine public interest justification in the programme makers' decision to gather information on Mr Vincze's animal import business (prior to Channel 4 granting permission to film surreptitiously) because there was a reasonable likelihood that surreptitious filming would uncover evidence relating to the falsifying of animal travel documentation and ineffective immunisation against rabies which posed a risk to public health and animal welfare. We considered that the apparent flouting of the DEFRA rules by Mr Vincze that the programme makers had been told by him and his daughter in the research stages could only have been corroborated by the use of surreptitious filming. For these reasons, Ofcom considered that the use of surreptitious filming was warranted in the circumstances. We also considered that the means of obtaining the material had been proportionate.

Having reached the view that the use of surreptitious filming was warranted, Ofcom next considered the extent to which Mr Vincze had a legitimate expectation of privacy in the circumstances in which he was filmed, i.e. surreptitiously by undercover reporters. As stated in the Code, "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question". When considering the extent to which a person has a legitimate expectation of privacy, Ofcom has regard to a number of factors which are set out below.

We noted that the filming took place over a number of meetings between Mr Vincze, his daughter, Ms Vincze, and undercover reporters posing as potential buyers for an online pet shop. Mr Vincze was not aware that he was being filmed surreptitiously while negotiating with the undercover reporters. Ofcom took the view that, ordinarily, business meetings and conversations in which the parties felt they could speak openly and freely could reasonably be regarded as being confidential and therefore attract an expectation of privacy. However, from the extracts of unedited material provided to us by Channel 4 in its submissions, the content of the conversation with Mr and Ms Vincze did not disclose any personal or private information about their personal lives. Nor did the conversations appear to contain particularly private business or financial information. It was also clear to Ofcom that the meetings had been conducted in a roadside diner which was openly accessible to the general public and that their conversation could have been overheard by other customers. Taking these factors into account, we considered that whilst Mr Vincze had a legitimate expectation of privacy in

connection with the obtaining of the surreptitiously filmed material, his expectation was limited by the fact that he was filmed in a diner where members of the public has access and that the content of the conversation was not particularly private or sensitive in nature.

Having reached the view that Mr Vincze had a legitimate expectation of privacy, albeit limited in these circumstances, Ofcom went on to consider whether it was warranted to infringe Mr Vincze's privacy.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

As already noted above, Ofcom considered that there was a genuine public interest justification in the programme makers' decision to gather information on Mr Vincze's animal import business and that the filming revealed that Mr and Ms Vincze admitted to routinely falsifying animal travel and immunisation documentation which posed a risk to public health and animal welfare. We considered too that while it was unaware of any legal proceedings that had been or were intended to be brought against Mr Vincze and his company, there was significant public interest in detecting and revealing the potentially unlawful activities in misleading DEFRA inspectors and falsifying official animal travel documents.

On balance and given all the facts set out above, Ofcom considered that the broadcaster's right to freedom of expression and the public interest of obtaining footage of Mr Vincze and his daughter admitting to routinely importing puppies into the UK with falsified travel documents, outweighed Mr Vincze's limited expectation of privacy.

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

- c) Ofcom next considered Mr Vincze's complaint that secretly filmed footage of him, in which he was identified by his full name and the name of his business, was broadcast in the programme without his consent.

In relation to this part of the complaint, Ofcom had regard to Practices 8.6 and 8.14 of the Code. Practice 8.6 of the Code states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Before assessing whether Mr Vincze's privacy was unwarrantably infringed in the programme as broadcast, we again considered whether it was warranted to film surreptitiously in accordance with Practice 8.13. For the reasons set out in detail in head b) above, Ofcom considered that the use of surreptitious filming was warranted in the circumstances.

Having reached the view that the use of surreptitious filming was warranted, we next considered the extent to which Mr Vincze had a legitimate expectation of privacy in the broadcast of the material in the programme.

Ofcom took into account the circumstances in which Mr Vincze was filmed and what material was actually included in the programme as broadcast (as set out in detail in head b) above and the “Introduction and programme summary” section above). Mr Vincze and his daughter, Ms Vincze, were shown discussing importing puppies with who they believed to be potential buyers for an online pet shop and apparently admitting to routinely falsifying the animal’s travel documents and mislead DEFRA inspectors in order to import younger puppies into the country.

Again, Ofcom took the view that, ordinarily, business meetings and conversations in which the parties felt they could speak openly and freely could reasonably be regarded as being confidential and therefore attract an expectation of privacy. However, from the material included in the programme, the content of the conversation with Mr and Ms Vincze did not disclose any personal or private information about their personal lives. Nor did the conversions appear to contain particularly private business or financial information. The meetings too had taken place at a roadside diner which was openly accessible to the general public and where their conversation could have been overheard by other customers. Taking these factors into account therefore, we considered that, whilst Mr Vincze had a legitimate expectation of privacy in relation to the broadcast of the footage, his expectation of privacy was limited by the fact that he was filmed in a publicly accessible place and that the content of the conversation was not particularly private or sensitive in nature.

Having reached the view that Mr Vincze had a legitimate expectation of privacy, albeit limited in these circumstances, Ofcom went on to consider whether it was warranted to infringe Mr Vincze’s privacy.

We observed from the programme that both Mr Vincze and his daughter were named in the programme, and that their faces were unobscured. Their voices were also heard. Mr Vincze was clearly identified in the programme. It was not disputed that Mr Vincze’s consent was not obtained before the programme was broadcast.

As set out in head b) above the Code states that “warranted” has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted.

As already set out above, the individual’s right to privacy has to be balanced against the competing rights of the broadcaster’s to freedom of expression. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right.

We carefully balanced Mr Vincze’s right to privacy in the broadcast of the surreptitiously filmed footage of him in the programme with the broadcaster’s right to freedom of expression and the audience’s right to receive the information broadcast without unnecessary interference. We came to the view that there was significant public interest in the programme broadcasting Mr and Ms Vincze’s admissions relating to the puppies they routinely imported into the UK, because it

illustrated the way in which puppies without the necessary rabies vaccinations were being imported under falsified travel documentation into the country. Ofcom considered that it was important for the public to be aware of how public health and animal welfare was being put at risk. We considered that, given the seriousness of Mr and Ms Vincze's admissions, the broadcaster's decision to broadcast the material and to identify them in the programme was justified in the circumstances.

On balance and given all the factors set out above, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in broadcasting the material in order to demonstrate that inadequately vaccinated puppies were being imported in the UK with false travel documents and the potential danger this posed to public health as a result, outweighed Mr Vincze's limited expectation of privacy.

Ofcom concluded therefore that there was no unwarranted infringement of Mr Vincze's privacy in the broadcast of the material in these circumstances.

**Accordingly, Ofcom has not upheld Mr Vincze's complaint that he and his company, Animal Transport, were unjustly or unfairly treated in the programme and that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Complaints Assessed, Not Investigated

### Between 17 December 2013 and 6 January 2014

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
4thought.tv	Channel 4	26/12/2013	Religious/Beliefs discrimination/offence	1
5 Live	BBC Radio 5	19/12/2013	Generally accepted standards	1
50 Shocking Facts About Diet and Exercise	Channel 5	02/01/2014	Materially misleading	5
8 Out of 10 Cats	Channel 4	29/12/2013	Generally accepted standards	1
8 Out of 10 Cats	E4	05/01/2014	Animal welfare	1
Alan Carr's New Year Specstacular	Channel 4	31/12/2013	Scheduling	1
All Star Family Fortunes	ITV	28/12/2013	Generally accepted standards	1
Arrow	Sky1	25/11/2013	Television Access Services	1
Auto Trader sponsorship credits	Dave	Various	Generally accepted standards	1
Autopsy: Michael Jackson's Last Hours	Channel 5	07/01/2014	Outside of remit / other	1
Background Music	Various	Various	Outside of remit / other	1
Bad Education	BBC 3	18/12/2013	Race discrimination/offence	1
Battlefield Britain	BBC 4	18/12/2013	Scheduling	1
BBC News at Six	BBC 1	05/12/2013	Outside of remit / other	1
BBC News at Six	BBC 1	19/12/2013	Scheduling	1
BBC News at Ten	BBC 1	19/12/2013	Generally accepted standards	1
BBC News at Ten	BBC 1	01/01/2014	Generally accepted standards	1
BBC Regional News	BBC 1 Northern Ireland	03/01/2014	Materially misleading	1
BBC World Dateline	BBC World Dateline	n/a	Outside of remit / other	1
Bear's Wild Weekend with Stephen Fry	Channel 4	25/12/2013	Violence and dangerous behaviour	1
Being Mike Tyson	Fox	08/01/2014	Outside of remit / other	1
Ben and James Versus the Arabian Desert	BBC 2	29/12/2013	Animal welfare	1
Benidorm (trailer)	ITV	22/12/2013	Scheduling	1
Big Fat Quiz of the Year 2013	Channel 4	26/12/2013	Materially misleading	1
Bigg Boss 7	Colors	18/12/2013	Voting	1
Birds of a Feather	ITV	02/01/2014	Generally accepted standards	1
Breakfast	BBC 1	30/12/2013	Outside of remit / other	1
Breakfast Show	Cambridge 105	13/12/2013	Generally accepted	1



	FM		standards	
Britain's Secret Terror Force	BBC 1	21/11/2013	Fairness & Privacy	2
Capital Breakfast - Gillies & Emily	Capital FM	Various	Fairness	1
Capital News	Capital FM (Manchester)	18/12/2013	Scheduling	1
Capital Radio	Capital Radio (South Wales)	22/12/2013	Race discrimination/offence	1
Capital Talk	Geo News	16/12/2013	Offensive language	1
Casualty	BBC 1	07/12/2013	Harm	1
Caught on Camera	Channel 5	11/12/2013	Privacy	1
Celebrity Juice	ITV2	02/01/2014	Generally accepted standards	1
Channel 4 News	Channel 4	06/11/2012	Outside of remit / other	1
Channel 4 News	Channel 4	13/12/2013	Scheduling	6
Channel 4 News Summary	Channel 4	22/12/2013	Due impartiality/bias	1
Charity advertisements	Various	Various	Advertising scheduling	1
Charlie Brooker's 2013 Wipe	BBC 2	28/12/2013	Religious/Beliefs discrimination/offence	1
Chatbox	Chatbox	04/12/2013	Generally accepted standards	1
Chatbox	Chatbox	13/12/2013	Generally accepted standards	1
Checkatrade.com's sponsorship of Cowboy Builders	Channel 5	Various	Sponsorship credits	1
Citizen Khan	BBC 1	20/12/2013	Religious/Beliefs discrimination/offence	1
Come Dine with Me	Channel 4	16/12/2013	Generally accepted standards	10
Coronation Street	ITV	22/11/2013	Generally accepted standards	2
Coronation Street	ITV	27/11/2013	Disability discrimination/offence	1
Coronation Street	ITV	16/12/2013	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	20/12/2013	Generally accepted standards	1
Coronation Street	ITV	20/12/2013	Religious/Beliefs discrimination/offence	2
Coronation Street	ITV	22/12/2013	Generally accepted standards	1
Coronation Street	ITV	23/12/2013	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	27/12/2013	Generally accepted standards	1
Coronation Street	ITV	01/01/2014	Generally accepted standards	1
Countryfile Christmas Special	BBC 1	22/12/2013	Outside of remit / other	1
Countryfile Christmas Special	BBC 1	22/12/2013	Scheduling	1
CSI: Crime Scene Investigation	Sky Living	12/12/2013	Scheduling	1
Dancing on Ice	ITV	05/01/2014	Flashing images/risk to	1

			viewers who have PSE	
Deadtime Stories	CITV	19/12/2013	Scheduling	1
Deal or No Deal	Channel 4	26/12/2013	Religious/Beliefs discrimination/offence	1
Derren Brown: The Great Art Robbery	Channel 4	13/12/2013	Crime	2
Diagnosis Murder	Alibi	26/12/2013	Advertising scheduling	1
Dickinson's Real Deal	ITV	17/12/2013	Materially misleading	1
Dickinson's Real Deal	ITV	20/12/2013	Crime	1
Doctor Who	BBC 1	25/12/2013	Religious/Beliefs discrimination/offence	1
Dog the Bounty Hunter	Pick TV	05/12/2013	Scheduling	1
Doggy Styling	Channel 4	30/12/2013	Outside of remit / other	1
E4 channel promotion	Channel 4	24/12/2013	Scheduling	1
EastEnders	BBC 1	23/12/2013	Scheduling	1
EastEnders	BBC 1	31/12/2013	Due accuracy	1
EastEnders	BBC 1	31/12/2013	Harm	1
EastEnders	BBC 1	01/01/2014	Animal welfare	1
EastEnders	BBC 1	01/01/2014	Race discrimination/offence	1
EastEnders	BBC 1	03/01/2014	Generally accepted standards	1
EastEnders / Coronation Street	BBC 1 / ITV	25/12/2013	Scheduling	1
Eleri Sion	BBC Radio Wales	16/12/2013	Harm	1
Emergency Abroad	Sky Living	15/12/2013	Scheduling	1
Emmerdale	ITV	15/10/2013	Violence and dangerous behaviour	1
Emmerdale	ITV	16/10/2013	Violence and dangerous behaviour	1
Emmerdale	ITV	17/10/2013	Violence and dangerous behaviour	1
Emmerdale	ITV	19/12/2013	Scheduling	1
Emmerdale	ITV	19/12/2013	Violence and dangerous behaviour	1
Emmerdale	ITV	23/12/2013	Scheduling	1
Emmerdale	ITV	30/12/2013	Generally accepted standards	1
Emmerdale	ITV	02/01/2014	Generally accepted standards	2
Emmerdale	ITV	Various	Scheduling	1
Emmerdale	ITV	Various	Scheduling	1
FA Cup Highlights	ITV	05/01/2014	Materially misleading	1
FA Cup promotion	ITV	Various	Materially misleading	1
Family Guy (trailer)	Fox	09/12/2013	Scheduling	1
Friday Download	CBBC	20/12/2013	Scheduling	1
Friends	Comedy Central	21/12/2013	Scheduling	1
Gino and Mel at Christmas	ITV	20/12/2013	Scheduling	1
Grouchy Young Men	Comedy Central Extra	12/12/2013	Offensive language	1

Halfords sponsorship credits	Dave	Various	Generally accepted standards	1
Hens Behaving Badly (trailer)	Channel 5	03/01/2013	Scheduling	1
Hitler's 9/11	Channel 5	24/11/2013	Materially misleading	1
Hollyoaks	Channel 4	05/12/2013	Generally accepted standards	1
Homeland	Channel 4	08/12/2013	Race discrimination/offence	1
Homeland	Channel 4	Various	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here!	ITV	07/12/2013	Animal welfare	1
Indiana Jones and the Kingdom of the Crystal Skull	BBC 1	27/12/2013	Scheduling	1
ITV London News	ITV London	19/12/2013	Generally accepted standards	1
ITV News and Weather	ITV	19/12/2013	Generally accepted standards	2
ITV News and Weather	ITV	24/12/2013	Due accuracy	1
ITV News and Weather	ITV	28/12/2013	Due impartiality/bias	1
ITV News and Weather	ITV	30/12/2013	Generally accepted standards	1
ITV News at Ten	ITV	19/12/2013	Generally accepted standards	3
Jay Z interview	BBC Radio 1	24/12/2013	Scheduling	1
Jeremy Vine	BBC Radio 2	17/12/2013	Generally accepted standards	1
Jeremy Vine	BBC Radio 2	02/01/2014	Sexual orientation discrimination/offence	1
Jimmy Carr: Being Funny	Channel 4	18/12/2013	Generally accepted standards	1
Jimmy Carr: Being Funny	Channel 4	18/12/2013	Religious/Beliefs discrimination/offence	2
John Bishop Live: Rollercoaster Tour	BBC 1	01/01/2014	Religious/Beliefs discrimination/offence	1
Ladies' European Tour Golf	Sky Sports 4	05/12/2013	Generally accepted standards	3
Let's Do Christmas with Gino and Mel	ITV	16/12/2013	Generally accepted standards	1
Live at the Apollo	BBC 1	20/12/2013	Generally accepted standards	1
Live FA Cup	BT Sport 1	05/01/2014	Generally accepted standards	1
Live from the National Theatre: 50 Years on Stage	BBC 2	02/11/2013	Television Access Services	1
Lorraine	ITV	23/12/2013	Scheduling	1
Lorraine	ITV	03/01/2014	Generally accepted standards	1
Made in Chelsea	E4	23/12/2013	Generally accepted standards	6
Make or Break Competition promotion	Absolute Radio	20/12/2013	Race discrimination/offence	1
MandM Direct's sponsorship of The Simpsons	Channel 4	24/12/2013	Sponsorship credits	1

MandM Direct's sponsorship of The Simpsons	Channel 4	Various	Sponsorship credits	1
MandM Direct's sponsorship of The Simpsons	Channel 4	20/12/2013	Generally accepted standards	1
Michael Buble's Christmas Special	Channel 5	26/12/2013	Advertisements	1
Michael Jackson: This Is It	Channel 5	25/12/2013	Outside of remit / other	1
Midsomer Murders	ITV	22/12/2013	Scheduling	1
Moonfleet	Sky1	28/12/2013	Access services	1
Mrs Brown's Boys	BBC 1	19/12/2013	Religious/Beliefs discrimination/offence	1
MTV Stars of 2013 (trailer)	MTV	Various	Voting	1
My Big Fat Gypsy programming	Channel 4	Various	Race discrimination/offence	1
Naked and Marooned: Ed Bares All (trailer)	Discovery	Various	Scheduling	1
Neev on Kiss	Kiss FM	23/12/2013	Competitions	1
Nelson Mandela: A Nation Remembers	BBC 2	10/12/2013	Outside of remit / other	1
News	BBC 1	19/12/2013	Generally accepted standards	2
News	BBC News	20/12/2013	Generally accepted standards	1
News	BBC Radio 4	01/01/2014	Crime	1
News	Capital FM	Various	Commercial communications on radio	1
News	Sunrise Radio	13/12/2013	Scheduling	1
News programming	Various	11/11/2013	Race discrimination/offence	1
News programming	Various	19/12/2013	Crime	1
News Quiz Extra	BBC Radio 4	16/12/2013	Religious/Beliefs discrimination/offence	1
News Update	BBC 1	20/12/2013	Outside of remit / other	1
Newsbeat	BBC Radio 1	17/12/2013	Generally accepted standards	3
Newsnight	BBC 2	19/12/2013	Generally accepted standards	1
Not Going Out	BBC 1	24/12/2013	Disability discrimination/offence	1
Now TV advertisements	ITV / Channel 4 / Channel 5	Various	Advertisements	1
Obsessive Compulsive Cleaners	Channel 4	18/12/2013	Disability discrimination/offence	1
Old Harry's Game	BBC Radio 4	24/12/2013	Outside of remit / other	1
PBA Bowling	British Eurosport	Various	Outside of remit / other	1
Pointless	BBC 1	03/01/2014	Generally accepted standards	1
Programming	BBC	Various	Outside of remit / other	1
Programming	Coastal Radio 107.3FM	16/12/2013	Scheduling	1
Programming	n/a	Various	Outside of remit / other	1
Programming	Sony	Various	Access services	1

	Entertainment Television			
Programming	TV5 Monde	Various	Outside of remit / other	1
Programming	Virgin Channel 499	20/12/2013	Generally accepted standards	1
Quest For The Holy Foreskin (trailer)	National Geographic	16/12/2013	Generally accepted standards	1
Rude Tube	E4	16/12/2013	Animal welfare	1
Rules of Engagement	E4	16/12/2013	Scheduling	1
Russell Howard's Good News	BBC 3	14/12/2013	Generally accepted standards	1
Sadie J	CBBC	19/01/2013	Scheduling	1
Save the Children advertisement	Gold	19/12/2013	Political advertising	1
Secret Santa competition	Gold Radio	08/12/2013	Competitions	1
Seven Seas Multivitamin's sponsorship of ITV National Weather	ITV	03/01/2014	Violence and dangerous behaviour	1
Sherlock	BBC 1	01/01/2014	Access services	1
Show Me the Telly	UTV	19/12/2013	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	18/12/2013	Due accuracy	1
Sky News	Sky News	18/12/2013	Generally accepted standards	1
Sky News	Sky News	19/12/2013	Generally accepted standards	1
Sky News	Sky News	23/12/2013	Due accuracy	1
Sky News with Kay Burley	Sky News	17/12/2013	Due impartiality/bias	1
South Park	Comedy Central	n/a	Generally accepted standards	1
Splash!	ITV	04/01/2014	Outside of remit / other	1
Sports Personality of the Year 2013	BBC 1	15/12/2013	Materially misleading	1
Sports Personality of the Year 2013	BBC 1	15/12/2013	Outside of remit / other	1
Sports Personality of the Year 2013	BBC 1	15/12/2013	Voting	2
Sportsound	BBC Radio Scotland	04/01/2014	Outside of remit / other	1
Strictly Come Dancing	BBC 1	14/12/2013	Scheduling	1
Strictly Come Dancing	BBC 1	15/12/2013	Outside of remit / other	1
Strictly Come Dancing	BBC 1	21/12/2013	Voting	1
Strictly Come Dancing	BBC 1	Various	Gender discrimination/offence	1
Strictly Come Dancing	BBC 1	Various	Outside of remit / other	1
Sunrise	Sky News	27/12/2013	Promotion of products/services	1
Super Scoreboard Live	Clyde 1	05/12/2013	Due impartiality/bias	1
Super Scoreboard Live	Clyde 1	10/12/2013	Due impartiality/bias	1
Super Scoreboard Live	Clyde 1	12/12/2013	Materially misleading	1
Super Scoreboard Live	Clyde 1	13/12/2013	Religious/Beliefs discrimination/offence	1
Super Scoreboard Live	Clyde 1	19/12/2013	Materially misleading	1

Super Scoreboard Live	Clyde 1	23/12/2013	Due impartiality/bias	1
Super Scoreboard Live	Clyde 1	01/01/2014	Religious/Beliefs discrimination/offence	1
Take Me Out	ITV	04/01/2014	Generally accepted standards	1
Text Santa	ITV	21/12/2013	Scheduling	1
The 50 Funniest Moments of 2013	Channel 4	28/12/2013	Generally accepted standards	3
The 50 Funniest Moments of 2013	Channel 4	31/12/2013	Materially misleading	1
The Alternative Christmas Message	Channel 4	25/12/2013	Generally accepted standards	1
The Amazing World of Gumball	Cartoon Network	01/12/2013	Scheduling	1
The Amazing World of Gumball	Cartoon Network	16/12/2013	Scheduling	1
The Andrew Marr Show	BBC 1	22/12/2013	Generally accepted standards	1
The Breakfast Show	Jack FM	16/12/2013	Generally accepted standards	1
The Daily Politics	BBC 2	11/12/2013	Outside of remit / other	1
The Dating Channel	The Dating Channel	14/12/2013	Generally accepted standards	1
The Graham Norton Show	BBC 1	20/12/2013	Generally accepted standards	1
The Great Train Robbery	BBC 1	19/12/2013	Scheduling	2
The Inbetweeners Movie	Channel 4	27/12/2013	Scheduling	1
The Jonathan Ross Show	ITV	14/12/2013	Gender discrimination/offence	1
The Jonathan Ross Show	ITV	28/12/2013	Generally accepted standards	1
The Keiser Report	RT	17/12/2013	Generally accepted standards	1
The Lost World	ITV2	24/12/2013	Scheduling	1
The Magdalene Sisters	BBC 1	23/12/2013	Outside of remit / other	1
The Muppets and Lady Gaga at Christmas	Channel 5	22/12/2013	Scheduling	3
The Official UK Top 40	Viva	17/12/2013	Scheduling	1
The One Show	BBC 1	05/12/2013	Outside of remit / other	1
The One Show	BBC 1	13/12/2013	Outside of remit / other	1
The One Show	BBC 1	18/12/2013	Crime	1
The One Show	BBC 1	18/12/2013	Generally accepted standards	4
The One Show	BBC 1	20/12/2013	Drugs, smoking, solvents or alcohol	1
The Revolution Will be Televised	BBC 3	15/12/2013	Race discrimination/offence	2
The Simpsons	Channel 4	16/12/2013	Scheduling	2
The Simpsons	Sky1	29/12/2013	Scheduling	1
The Voice (trailer)	BBC 1	21/12/2013	Generally accepted standards	1
The Wizard of Oz	Channel 5	26/12/2013	Outside of remit / other	1
The Wright Stuff	Channel 5	27/11/2013	Race discrimination/offence	1

The X Factor	ITV	30/11/2013	Product placement	1
The X Factor	ITV	14/12/2013	Voting	3
The X Factor	ITV	15/12/2013	Outside of remit / other	1
The X Factor	ITV	15/12/2013	Sexual orientation discrimination/offence	1
The X Factor	ITV	15/12/2013	Voting	1
The X Factor	ITV2	15/12/2013	Outside of remit / other	1
This Morning	ITV	16/12/2013	Competitions	1
This Morning	ITV	17/12/2013	Competitions	1
This Morning	ITV	03/01/2014	Gender discrimination/offence	1
This Morning	ITV	03/01/2014	Generally accepted standards	3
Thomas and Friends	Channel 5	19/12/2013	Generally accepted standards	1
Today	BBC Radio 4	20/12/2013	Religious/Beliefs discrimination/offence	16
Today	BBC Radio 4	02/01/2014	Outside of remit / other	2
Tricked	ITV2	02/01/2014	Generally accepted standards	1
Trolljägarna	TV3	n/a	Outside of remit / other	1
Twit of the Year	Channel 4	30/12/2013	Disability discrimination/offence	3
UK Hot 40 Xmas 2013	The Box	23/12/2013	Generally accepted standards	1
UTV Live	UTV	11/12/2013	Generally accepted standards	3
Weekend Sports Breakfast	Talksport	05/01/2014	Generally accepted standards	1
World at One	BBC Radio 4	27/12/2013	Outside of remit / other	1
World's Strongest Man 2013: Qualifiers	Channel 5	17/12/2013	Scheduling	1
World's Strongest Man 2013: Qualifiers	Channel 5	22/12/2013	Outside of remit / other	1
Wrestle Talk TV	Challenge	15/12/2013	Offensive language	1

## Investigations List

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

Here is an alphabetical list of new investigations launched between 19 December 2013 and 8 January 2014.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
5 News at 5	Channel 5	20 December 2013
Channel 4 News	Channel 4	16 December 2013
Channel 4 News	Channel 4	19 December 2013
Cruising with the Stars	Holiday & Cruise Channel	16 December 2013
Party	Party	Various
Shomoyer Sathe	NTV	28 October 2013
Sky News	Sky News	20 December 2013

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

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

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

For fairness and privacy complaints go to:

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