

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 objectives¹. 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 Act².

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 advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) 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

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

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

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

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.

Notice of Sanction

Deadly Women

Investigation Discovery, 16, 18 and 20 August 2013 at various times.

Introduction

Investigation Discovery is a channel dedicated to documentary programming about crime and criminal investigations. This sanction relates to eight episodes of the series *Deadly Women* which the channel broadcast at various times during the day on 16, 18 and 20 August 2013.

The licence for Investigation Discovery is held by Discovery Communications Europe Limited (“Discovery” or “the Licensee”).

Summary of Decision

In its decision published on 20 January 2014 in issue 246 of the Broadcast Bulletin¹, Ofcom found for the reasons summarised below that the programmes contained violent material that was unsuitable for children to view, and that caused offence not justified by the context. In particular, the programmes contained prolonged and disturbing reconstructions of torture, mutilation and murder. These included: attacks on individuals with hammers and knives; electrocutions and whippings; the murder of a six-year old boy through beating by this mother and her boyfriend; a dramatized image and accompanying verbal description of an eyeball rolling across the floor after a victim was attacked; and, the dismemberment of a corpse with a circular saw. As these programmes were broadcast in the daytime during the school holidays, Ofcom concluded that the Licensee had not taken adequate steps to protect children from this unsuitable content by appropriate scheduling.

Ofcom found that each of the eight programmes breached Rules 1.3, 1.11 and 2.3 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...”.

In accordance with Ofcom’s penalty guidelines, Ofcom decided that it was appropriate and proportionate in the circumstances to impose a financial penalty of **£100,000** on Discovery in respect of these serious Code breaches (payable to HM Paymaster General). In addition, the Licensee should broadcast a statement of Ofcom’s findings in this case, on a date and time to be determined by Ofcom.

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/246/obb246.pdf>

The full decision is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Discovery.pdf>

Standards cases

In Breach

Top Gear Burma Special

BBC 2, 16 March 2014, 20:00

Introduction

Top Gear is a long-running magazine series on motoring. Presenters Jeremy Clarkson, James May and Richard Hammond provide information and commentary about cars and interact with the audience and special guests. Programmes are light-hearted in tone, and typically include quirky and humorous banter between the presenters.

This particular episode was the second part of a two-part special, filmed in Burma, where the *Top Gear* presenters crossed the country in trucks and built a makeshift bridge over the River Kwai in Thailand. On observing the completed bridge, on which an Asian man is seen walking towards them, Jeremy Clarkson and Richard Hammond engaged in the following conversation:

Jeremy Clarkson: *"That is a proud moment...but...there is a slope on it."*

Richard Hammond: *"You are right...[pointing]...it is definitely higher on that side".*

Jeremy Clarkson then narrates, over images of the bridge: *"...we decide to ignore the slope and move onto the opening ceremony".*

Ofcom received two complaints from viewers who expressed concern that the word 'slope' referred to the Asian man crossing the bridge and was an offensive racist term.

Ofcom noted that the word 'slope' is an offensive and pejorative term for a person of East Asian descent¹. Jeremy Clarkson used the word at exactly the same time as the Asian man crossed the bridge.

Ofcom considered that the use of this reference warranted further investigation under the following rule of the Code:

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

Ofcom therefore asked the BBC how this material complied with Rule 2.3.

¹ *US informal, offensive* A person from East Asia, especially Vietnam.

Source: Oxford Dictionaries (Oxford University Press)
(<http://www.oxforddictionaries.com/definition/english/slope>).

U.S. slang. (depreciative and offensive). An oriental person; more recently) *spec.* a Vietnamese person. Source: Oxford English Dictionary (www.oed.com).

[NOTE: This sentence and footnote were amended by Ofcom on 15 October 2014 to correct minor factual errors about the origin of the offensive meaning of 'slope' and a dictionary reference. The published decision was otherwise unchanged.]

Response

In response the BBC stated that the programme: “used the word in what the programme-makers believed was an inoffensive, humorous play on words, addressed at the build quality of a bridge which the team had constructed and a local Asian man who was crossing it.”

The BBC added that although the programme-makers: “knew that the word could be used to refer to people of Asian origin they believed that such use was mere slang.” The programme-makers were “not aware at the time that it had the potential to cause offence particularly in some countries outside the UK” and had they been aware of this, the word would not have been used in this context.

The BBC stated that it had “already issued a public statement apologising for the use of the word and for any offence which its use caused” and the BBC added that it “unreservedly” repeated that apology. A copy of the public statement, authored by the Executive Producer of *Top Gear*, Andy Wilman, was provided to Ofcom and read:

“When we used the word ‘slope’ in the recent Top Gear Burma Special it was a light-hearted word play joke referencing both the build quality of the bridge and the local Asian man who was crossing it.

We were not aware at the time, and it has subsequently been brought to our attention, that the word ‘slope’ is considered by some to be offensive and although it might not be widely recognised in the UK, we appreciate that it can be considered offensive to some here and overseas, for example in Australia and the USA.

If we had known that at the time we would not have broadcast the word in this context and regret any offence caused.”

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives. One of these is 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 standards are contained in the Code. Broadcasters are required under Rule 2.3 of the Code to ensure that, in applying generally accepted standards, they must ensure that the inclusion of material which may cause offence is justified by the context.

In reaching a decision in this case, Ofcom acknowledged the importance attached to the right to freedom of expression in broadcasting. Broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference.

However, the Code requires that potentially offensive material is justified by its context. As such, there is significant room for innovation, creativity and challenging material within light-hearted comedy programming, but it does not have *unlimited* licence in terms of offensive material.

In this case, Ofcom considered firstly whether the use of the word ‘slope’ was offensive (and the degree of any offensiveness) and, if so, secondly, whether the

BBC had ensured that it had applied generally accepted standards by justifying the inclusion of that material by the context of the programme.

Ofcom's view is that the word 'slope' is a pejorative racial term which has the potential to be offensive to Asian people specifically, as well as to viewers more generally. In its representations the BBC explained that the programme-makers were aware that the word was "used to refer to people of Asian origin" but they considered "such use was mere slang". Further they argued that the programme-makers were not aware it had the potential to cause offence "outside the UK" and had they been aware of this offence it would not have been used.

Ofcom acknowledges that 'slope' is a term of offence more widely used in America and Australia. However it is also capable of causing offence in the UK particularly to people of Asian origin. Further, Ofcom research² has indicated that viewers are likely to consider a word to be more offensive if they understand it to be making a derogatory reference to specific characteristics of a defined ethnic group.

Ofcom therefore considered whether the broadcast of this offensive word was justified by the context. *Top Gear* is widely known for its irreverent style and sometimes outspoken humour, as well as the banter between the three presenters. We also noted that regular viewers of *Top Gear* were likely to be aware that the programme had previously used national stereotypes as a comedic trope, particularly to describe the characteristics of cars. Various nationalities have, at some point, been the subject of the presenters' mockery during the history of this long running programme. The regular audience for this programme adjusts its expectations accordingly.

In our view, however, in this case Jeremy Clarkson deliberately employed the offensive word to refer to the Asian person crossing the bridge as well as the camber of the bridge. Ofcom noted that this sequence was scripted in advance, and that clear consideration was given at the time of production to using the term 'slope' to formulate what the production team intended to be humorous word play around it. There was clearly an opportunity both during filming and post-production to research the word and reach a more considered view on whether it was "mere slang" and had the potential to cause offence to viewers.

We took into account that the BBC said the programme makers intended the use of 'slope' to be "an inoffensive, humorous play on words", but that the broadcaster accepted now that the word was capable of causing offence in the UK and apologised. We noted that the BBC provided no other arguments to justify the potential offence in the context.

Ofcom concluded, however, that in the circumstances of this particular case there was insufficient context to justify the broadcast of this material. The BBC did not apply generally accepted standards so as to provide adequate protection for members of the public from offensive material. As a result there was a breach of Rule 2.3.

Breach Rule 2.3

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

In Breach

Counter Strike GO: Pro League

Ginx TV, 16 May 2014, 18:00

Introduction

Ginx TV is a channel dedicated to programming about video games that broadcasts on cable and satellite platforms in a number of European countries, including the UK. The licence for this service is held by Ginx TV Limited (“Ginx” or “the Licensee”).

Counter Strike GO: Pro League was a 60-minute programme which broadcast ‘as live’ an online multiplayer match of the video game Counter Strike: Global Offensive¹ (“CS: GO”). Due to violent content the game is rated by Pan European Game Information (“PEGI”²) as only suitable for those aged 18 years or older.

A complainant alerted Ofcom to the inclusion of violent scenes in the programme which the complainant considered to be inappropriate for the time of transmission.

Ofcom assessed the programme and noted that it primarily featured footage taken from a CS: GO multiplayer match during which two commentators described the action. Players formed two teams of either terrorists or counter-terrorist officers and used realistic knives and guns to kill members of the other team. The programme featured 27 rounds of competition and each round featured numerous depictions of characters being shot or slashed with a knife.

Ofcom considered that the programme 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) or when children are particularly likely to be listening (in the case of radio) and must also be justified by the context”.

Ofcom therefore requested comments from the Licensee on how the material complied with these rules.

Response

The Licensee said that it had reviewed the programme internally and concluded that the “even though entirely fictional and computer generated, [it] should not have aired in the form it was at 18:00 hours”. Ginx told Ofcom that, as a result, it had removed any further pre-watershed broadcasts of this series from the schedule. The Licensee apologised and said it regretted any offence this broadcast may have caused.

¹ Counter Strike: Global Offensive is an online multiplayer game in which players compete in a variety of warfare scenarios from a first person perspective.

² The self-regulatory European video game content rating system.

While accepting that this programme should not have broadcast before the watershed, Ginx said that the average age of a video game player is 31 (Source: ESA Essential Facts 2014³) and that audience data showed that the vast majority of Ginx's viewers are aged between 25 and 34.

Further, it said that *Counter Strike GO: Pro League* is "exceptional" as it is the channel's only acquired programme and: "the material depicts a competition that is edited 'live'". To prevent a recurrence of this compliance issue, the Licensee said that it had made an arrangement with its programme supplier to deliver content earlier allowing for more time to edit the programme.

The Licensee said that in the future all further competitive gaming programmes acquired from the same provider would be scheduled after 22:00 and that it would host a regulatory seminar with the programme provider to remind editors of regulatory requirements.

Decision

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

Rule 1.3

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

In applying Rule 1.3, 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 to freedom of expression enjoyed by both broadcasters and their audience. In accordance with this right, the Code does not prohibit the broadcast of material unsuitable for children. However, broadcasters are required to ensure that children are protected from unsuitable material by appropriate scheduling.

Ofcom first considered whether this programme was suitable for children. As noted above, the vast majority of the duration of this 60 minute programme consisted of in-game footage taken from CS: GO, a video game rated 18 by PEGI due to its violent content. The footage was consistently violent and included frequent depictions of characters being killed with guns or knives. In addition, these on-screen deaths were often bloody, with blood spraying onto walls or the ground when a player was shot or slashed with a knife. We considered that this extended, repeated and bloody simulation of armed combat was not suitable for children.

We went on to assess whether the programme 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.

³ http://www.theesa.com/facts/pdfs/esa_ef_2014.pdf

This programme was broadcast at 18:00 on a weekday and was therefore shown at a time when children would be available to view. Ginx highlighted data which showed that the average age of a video game player is 31 years old. Ofcom noted that the same report stated that approximately 29% of gamers are under the age of 18. We therefore considered that a service dedicated to programming about video games is likely to appeal to a child audience as well as older viewers. We also noted that no warning was given to viewers before or during the programme to alert them to its violent content. Taking these factors into account, this programme was not appropriately scheduled – as was acknowledged by the Licensee.

For these reasons we concluded that the programme was in breach of Rule 1.3.

Rule 1.11

Rule 1.11 states that violence must be appropriately limited in programmes broadcast before the watershed and must be justified by the context. We first considered whether the violence had been appropriately limited.

As described above, the video game footage that formed the majority of this programme contained numerous realistic and bloody depictions of armed, military combat. Violent images included frequent instances of characters being shot and killed with various types of weaponry and blood could be seen spraying from these characters when they were hit.

Ofcom noted, as pointed out by the Licensee, that the violent material in this case was fictional and computer generated. We considered that this may have limited the potential impact of the images on any children watching. However, we concluded that the consistently violent nature of the programme material outweighed any potentially mitigating factor created by the computer-generated nature of the images and therefore the violence was not appropriately limited.

We then considered whether the violence was justified by the context.

This programme broadcast at 18:00 and was therefore shown at a time when a significant number of children may have been available to view. As noted above, Ofcom also considered that a specialist channel dedicated to programming about video games may well appeal to younger audiences. Given these circumstances, there was clearly the requirement on the broadcaster to ensure the violent nature of the programme was strongly justified by other contextual factors.

Ofcom recognised that the audience for a channel dedicated to programming about video gaming may (given the violent nature of many video games) have a greater expectation for some violent content. However, we considered that such expectation would not extend to the daytime broadcast of extensive violent footage from a video game rated as only suitable for an adult audience.

Given the above, we considered that the material was not justified by the context and Rule 1.11 was breached.

Ofcom was concerned that this programme (which the Licensee admitted was not suitable to be shown at 18:00) was scheduled and broadcast at this time. Although Ginx apologised and said it was taking steps to improve compliance, it did not explain how its compliance arrangements had allowed this programme to be shown before the watershed. Broadcasters must have robust arrangements in place at all times to ensure compliance with the Code.

We note this is the second recent incident (see *Joystick Warriors* Decision in issue 253 of Ofcom's Broadcast Bulletin⁴) of violent video game footage being shown before the watershed on an Ofcom licenced service. Although the computer generated nature of violent video game images has the potential to reduce their impact, broadcasters must consider whether their broadcast before the watershed is appropriate.

Breaches of Rules 1.3 and 1.1

⁴ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb253/>

In Breach

The Politics Show

Apni Awaaz, 6 May 2014, 20:00

Introduction

Apni Awaaz was a Restricted Service Licence radio service that broadcast in the Birmingham area between 13 April 2014 and 10 May 2014. The licence was held by Mr Qamar Zaman ("the Licensee").

A complainant alerted Ofcom to a programme that featured two local election candidates representing the Labour Party and the Liberal Democrats. The complainant considered that other candidates should also have been included in the programme.

We noted that this programme was of 60 minutes duration and consisted of two presenters leading a discussion between two candidates standing in the Washwood Heath ward in Birmingham in the English local elections held on 22 May 2014. The programme also featured listeners calling the programme by telephone and putting their questions to the candidates. The two candidates were Idrees Mohammed (Labour Party) and Rafiq Waheed (Liberal Democrats). We noted that during the programme both candidates made various statements advancing their candidacy in the election.

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.2 to 6.13 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the "election period"¹. Section Six of the Code under the heading 'Meaning of "election"' makes clear that for the purpose of this section "elections include...a local government election...".

For the reasons explained in this Decision, Ofcom considered that the programme was an electoral area report and discussion and Rules 6.8 to 6.13 of the Code were engaged. In particular, we considered the material raised issues warranting an investigation under the following rules of the Code:

Rule 6.8: "Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion".

Rule 6.9: "If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)".

We therefore asked the Licensee how the programme complied with these rules.

¹ In the case of the 2014 English local elections, the "election period" ran from the last date for the publication of the notice of elections on 14 April 2014 to the close of polling on 22 May 2014.

Response

The Licensee said *The Politics Show* was broadcast over a two week period and the Licensee said that it “had call[ed] different candidates in daily” between Monday and Friday. In particular, this programme featured the Labour Party and Liberal Democrat candidates standing in Washwood Heath ward in Birmingham. The Licensee said that prior to the broadcast, it had contacted: “the Conservative office at Birmingham City Council to gain a contact so that we could invite the candidate from this party”. It added: “We left our details with one of the secretaries to ask whether they could ask one of the councillors to ring us back but no one returned our call”.

The Licensee stated that although it featured only two of the “3 local mainstream political parties in Birmingham” in the 6 May programme, it had adhered to the Code and “call[ed] other parties in as well...but they turned up on other days”. The Licensee also said that “in the interest of fairness”, one of the programme presenters mentioned all the candidates standing in this particular ward in the 22 May 2014 elections in the 6 May programme. In addition, the Licensee said that the audience “was informed via announcements live on air of our schedule” of programmes featuring candidates.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code. Broadcasters are required to comply with the rules in Section Five of the Code so as to ensure that the due impartiality requirements of the Act are complied with. In addition, Section Six of the Code reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended).

Ofcom’s Guidance to Section Six (Elections and Referendums) of the Code (“the Guidance”)² states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover election campaigns, they must comply with the rules set out in Section Six of the Code, and in particular the constituency and electoral area reporting rules laid out in Rules 6.8 to 6.13 of the Code. These specific rules apply when a broadcaster is broadcasting a particular constituency and electoral area report or discussion during an election period.

Rule 6.9 requires that if a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead. The major parties for any given election are listed in the Ofcom list of major parties³. For the 2014 English local elections, the major parties were: the Conservative Party; the Labour Party; and the Liberal Democrats.

In addition, Rule 6.8 requires that due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion. Paragraph 1.37 of the accompanying Ofcom Guidance states that: “There is a range

² See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

³ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/major-parties.pdf>

of editorial techniques by which broadcasters can comply with Rule 6.8, but broadcasters should ensure that they reflect the viewpoints of candidates...”.

To determine whether the electoral area reporting rules (Rules 6.8 to 6.13) applied in this case, we first had to determine whether the programmes contained an electoral area report or discussion. Paragraph 1.39 of the Guidance states: “...the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rules 6.9 and 6.10) have an opportunity to take part as appropriate”.

We noted that Idrees Mohammed and Rafiq Waheed were included in a discussion programme of 60 minutes duration during which they were asked questions about, and were able to give their views upon, a range of subjects including: crime and policing; education; and housing. We therefore considered that these two candidates (representing the Labour Party and the Liberal Democrats respectively) standing in the Washwood Heath ward in Birmingham were given the opportunity to give their views, within the programmes, about policies affecting the electoral area in which they were seeking election. Rules 6.8 to 6.13 therefore applied.

To comply with Rule 6.9 of the Code, the Code makes clear that if a candidate is given an opportunity to discuss matters relating to their electoral area then broadcasters must ensure that other candidates from the major parties should also be offered an opportunity to take part. In this case this meant that, as well as featuring the Labour Party and Liberal Democrat candidates standing in in Washwood Heath as they did, the Licensee was required to offer Alexander Hall, the Conservative Party candidate standing in Washwood Heath, the opportunity to take part in the programme.

We noted that prior to the broadcast, the Licensee said it had contacted “the Conservative office at Birmingham City Council to gain a contact” so as to invite the Conservative Party candidate to take part in this programme. The Licensee added that it had: “left [its] details with one of the secretaries to ask whether they could ask one of the councillors to ring [the Licensee] back but no one returned [its] call”. However, we considered that these steps taken by the Licensee could not reasonably be described as offering the Conservative Party candidate an opportunity to take part in the electoral area report or discussion in this case, as required by Rule 6.9 of the Code. In our view, the Licensee needed to make direct contact with the Conservative Party candidate or his representative and make them aware of the opportunity for them to take part in the programme in this case. This did not happen and therefore there was a breach of Rule 6.9.

In relation to Rule 6.8, we took into account the Licensee’s representation that towards the beginning of this programme, one of the two presenters had read out a list of the full names and parties of the four candidates⁴ standing in the Washwood Heath ward, as required by Rule 6.11⁵ of the Code. We considered that, although

⁴ These were: Alexander Hall (Conservative Party); Idrees Mohammed (Labour Party); Rafiq Waheed (Liberal Democrat); and John Bentley (Green Party).

⁵ Rule 6.11 states: “Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they

announcing the list of candidates standing in Washwood Heath ward was helpful, this was not sufficient to ensure that the viewpoint of the Conservative Party candidate or his party was reflected in the programme. At no point during the programme were the viewpoints of the Conservative Party candidate, Alexander Hall, or the policies of the Conservative Party more generally, reflected in this programme, either by the two presenters or by other programme contributors, including audience members contacting the programme by telephone.

We also took account of the Licensee's representation that it had call[ed] other parties in as well... but they turned up on other days" following the broadcast of the programme in this case. In this regard, paragraph 1.47 of Ofcom's Guidance states:

"Broadcasters may structure a constituency/electoral area report or discussion over a series of broadcasts, for example in the form of a series of candidate interviews in different programmes. However, in line with Rule 5.6⁶, the broadcaster should ensure that the fact that a constituency/electoral area report or discussion is being split over several programmes is clearly signalled to the audience...".

In this case, we noted the Licensee's representation that the audience "was informed via announcements live on air of our schedule" of programmes featuring candidates. However, the Licensee did not provide specific evidence to Ofcom as to the content of these announcements and when they were scheduled. Furthermore, and importantly, the Licensee did not clearly signal to the audience in the 6 May programme that it would be inviting other candidates contesting the Washwood Heath ward to take part in other, later programmes on the service. We therefore considered that the audience would not have been aware that that an electoral area report or discussion was being split over more than one programme. Given all the above, we therefore concluded that due impartiality in this electoral area report or discussion was not strictly maintained and also recorded a breach of Rule 6.8 of the Code.

Breaches of Rules 6.8 and 6.9

are an independent candidate. This must be conveyed in sound and/or vision...". The close of nominations in this case was 24 April 2014.

⁶ Rule 5.6 states: "The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air".

In Breach

Legal Advice

CHSTV, 2 May 2014, 17:00 to 18:00

Introduction

CHSTV is a free-to-air satellite general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for CHSTV is held by CHS.TV Limited ("CHSTV" or "the Licensee").

In the course of routine monitoring Ofcom noted *Legal Advice*, an hour-long legal advice feature.

The feature was transmitted in the style of a studio-based discussion programme. A presenter sat in the studio speaking to camera. Throughout the item a prominent banner was displayed at the bottom of the screen. The banner promoted a premium rate telephone ("PRS") number with routine warnings about variations in call costs. In addition, the following text was displayed: "*Information provided on this line may also be free within the public domain.*"

We also noted that the item contained 'sponsorship' slates which stated: "*You are watching live programme Legal Advice*". This followed a slate saying: "*Sponsored by Kalam Solicitors*".

In November 2009 Ofcom published a statement about the use of PRS in programmes, in which we made clear that programming featuring the use of PRS numbers would be likely to breach the Code's rules on undue prominence and promotion of commercial products and services, unless such numbers could be shown to be editorially justified¹.

The statement includes the following²:

"...Where the amount of promotion of the PRS element is significant, this may be considered as unduly prominent which would mean that such content in future falls to be regulated as advertising under the Advertising Code. Broadcasters whose programming currently contains a high level of PRS promotion which is not linked to editorial content could therefore be in breach of the new Broadcasting Code rule unless, as advertising, they were compliant with the Advertising Code."

Where a PRS number is heavily promoted in material and use of the number is not editorially justifiable, the material will usually be more appropriately regarded as teleshopping.

In view of this, and of the considerable prominence and promotion given to PRS in the feature, *Legal Advice* was in our view properly regarded as teleshopping, i.e. as a form of advertising, rather than programming. As advertising, *Legal Advice* was

¹ The statement can be found at:
<http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/summary/ptv3.pdf> .

² At paragraph 1.19.

subject to the requirements of the BCAP Code: the UK Code of Broadcast Advertising (“the BCAP Code”).

The BCAP Code requires that advertising is kept distinct from programming:

BCAP Rule 2.1: “Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement.”

BCAP Rule 2.4.1: “Television only – Television advertisements, except for programme promotions, must not...refer to themselves in a way that might lead viewers to believe they are watching a programme.”

Noting that *Legal Advice* referred to itself as a programme, did not identify itself as advertising or teleshopping, for example by the use of appropriately regular and prominent labels, and that it referred to its being “*sponsored by...*”, we sought the Licensee’s comments on how the feature complied with the above rules.

Response

CHSTV said that it had never broadcast teleshopping and was not aware of the particular requirements of the BCAP Code.

The Licensee told us that it had taken “all necessary steps”, including removing the premium rate number from the programme and cancelling the ‘sponsorship’ deal.

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 a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

Article 19 of the AVMS Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. This requirement is reflected, in, among other rules, BCAP Rule 2.1 and BCAP Rule 2.4.1.

In Ofcom’s view *Legal Advice* was not distinct as advertising. We considered that, as set out in the Introduction to this Decision, the material was presented in the style of a studio discussion programme. It contained, for example, no on-screen messages to make clear that it was advertising content. We noted also that slates shown at the start of the item stated “*You are watching live programme Legal Advice*” and claimed that the material was “*Sponsored*” content. Although as advertising material *Legal Advice* could have promoted any number of commercial interests, and to any extent, describing such additional promotion as sponsorship compounded the misimpression that *Legal Advice* was programming. As a result we concluded the material was in breach of BCAP Rule 2.1 and BCAP Rule 2.4.1.

Although we noted the steps taken by the Licensee in response to Ofcom's enquiries, we were concerned that CHSTV had not been aware of the specific requirements which apply to teleshopping material. Ofcom reminds CHSTV that it is a condition of its licence to ensure its compliance with all relevant codes and guidance.

Breaches of BCAP Rules 2.1 and 2.4.1

In Breach

News

Channel Nine UK, 19 February 2014, 19:00 and 21:00

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.

During routine monitoring of compliance with advertising scheduling rules, Ofcom noted that a news update broadcast at 19:00 included a scrolling text bar at the bottom of the screen, which referred to election results in Bangladesh, and which also contained branding for the sportswear retailer Lotto Sport Italia (“Lotto”).

In addition, we noted that a news programme broadcast at 21:00 included the following report on the opening of a new outlet of Lotto in Basundhara City, a shopping centre in Dhaka:

Reporter: *“A new outlet of the world renowned Italian brand Lotto has been opened at Basundhara. Lotto will work across the country to serve consumers with world class shoes, slippers and T-shirts. After opening the Basundhara outlet, Lotto Bangladesh Managing Director Kazi Jamil Islam described various aspects of Lotto products. Lotto’s new products spring collections were also displayed. In the event employees of the company including Lotto sports Italian area manager Filippo Palizer and city bank DMD Badrudozza Chowdhury were present.”*

Runners TV confirmed that the inclusion of the branding in the scrolling text bar was subject to a commercial arrangement between Lotto and Channel Nine in Bangladesh. The Licensee also stated that the inclusion of the report was not subject to any commercial arrangement between Lotto and Channel Nine in Bangladesh or Runners TV.

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

Rule 9.4: “Products, services and trade marks must not be promoted in programming.”

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

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming.”

Rule 9.7(a): “Programmes [...] must not contain product placement if they are:

(a) news programmes[.]”

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

Response

Runners TV apologised for the inclusion of branding for Lotto in the news update broadcast at 19:00. It said that the branding had featured on screen “24 hours a day over 7 days” in Bangladesh, but that it had been “fade[d] out” for broadcast in the UK. However, the Licensee admitted: “On this date fading out did not happen...We failed to remove the infringing content before it was aired.”

The Licensee also stated: “We receive the vast majority of our content shown on Channel Nine UK from Bangladesh...We actively screen and edit everything that is sent to us so that we may remove any inappropriate content where necessary. Where content cannot be removed we either place a bar over [the] subject area or fade it out so that it cannot be seen. On this occasion it seems appropriate action was not taken, [and the] content was not blurred, covered or removed. We have taken this up with the transmission crew who are responsible for ensuring this type [of] error does not occur. They have the necessary knowledge on [Ofcom’s] guidelines and [have] been given [the] necessary equipment to identify and remove such content before it is aired.”

Runners TV further commented that it was “not aware of the purpose of the original broadcast in Bangladesh”, but said it would: “speculate that the purpose is solely advertisement as this was [a] news bulletin and the brand wanted maximum exposure in Bangladesh”. The Licensee emphasised that the regulatory regime in Bangladesh allowed broadcasters and advertisers to enter into commercial arrangements of this sort, but that when re-transmitting content on Channel Nine UK it took action to “edit and remove content appropriately”. Runners TV added that it often transmits material six hours later than Channel Nine in Bangladesh in order to allow time to ensure that all content is compliant with the Code.

Regarding the report on the opening of a new outlet of Lotto in the news programme broadcast at 21:00, the Licensee stated that there was no commercial arrangement between Lotto and Channel Nine in Bangladesh: “No arrangement[s] were made for it [the report] to be featured in the news bulletin. It was provided free of cost.” Runners TV added that Channel Nine in Bangladesh “regularly cover[s] such opening events to attract clients”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. The rules in Section Nine of the Code, among others, reflect this objective.

The Audiovisual Media Services (“AVMS”) Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming.

The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

Rule 9.7(a)

Under the Act (as amended), Ofcom has a statutory duty to secure the standards objective that: “the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)”. Both the Act (as amended) and the AVMS Directive prohibit product placement except in the permitted genres of films, series, sports and light entertainment programmes. Rule 9.7(a) of the Code therefore prohibits product placement in news programmes.

We first considered whether the Lotto branding included in the programme broadcast at 19:00 constituted product placement. The statutory definition of product placement, reproduced in the Code, is as follows: “The inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement.” Runners TV confirmed that the inclusion of this branding was subject to a commercial arrangement between Lotto and Channel Nine in Bangladesh. Ofcom therefore considered that the branding satisfied the statutory definition of product placement.

Ofcom’s published guidance¹ on Rule 9.7(a) states: “The prohibition on product placement in news covers all news programmes made for audiovisual media services...regardless of their country of origin. Therefore the prohibition extends to news programmes acquired from outside the EU. Where acquired news contains product placement...careful thought should be given to whether it is suitable for broadcast[.]” The guidance also states, concerning news produced primarily for broadcast outside of the EU: “[W]here it is practically possible, broadcasters should take reasonable steps to determine whether the broadcast contains product placement and obscure or mark such placements.”

Runners TV, in re-transmitting this news update from Channel Nine in Bangladesh, failed to remove the branding for Lotto, and the material was therefore in breach of Rule 9.7(a).

Rule 9.4

Rule 9.4 states that products, services and trade marks must not be promoted in programming.

Ofcom’s published guidance on Rule 9.4 states: “In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed.”

Ofcom noted that in the news programme broadcast at 21:00, the report referred to “*the world renowned Italian brand Lotto*”, and further described its products as “*world class*”. The report therefore contained “favourable or superlative language”. In addition, the report specifically referred to the opening of a “*new outlet*” in Dhaka, and to Lotto “*work[ing] across the country to serve the customers*”, alongside references to its “*new products*” and “*spring collections*”. In Ofcom’s view these references

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

served to promote the availability of Lotto products in Bangladesh. As a result, we concluded that the content was in breach of Rule 9.4.

Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to.

Ofcom recognises that there are circumstances in which it can be editorially justified for a news programme to report on the commercial activities of a company. We noted that a number of news sources had reported on the expansion of Lotto into Bangladesh². However, Ofcom considered that the focus of the report contained in the news programme broadcast at 21:00 was the potential benefits to consumers resulting from the availability of Lotto products. Within the context of a news bulletin, this focus, coupled with the promotional language discussed above, could not be justified. We concluded therefore that this content was in breach of Rule 9.5.

Conclusion

In recent issues of the Broadcast Bulletin, Ofcom has recorded a number of breaches of the rules in Section Nine against Runners TV³. In light of our concerns about the Licensee's compliance record on 5 February 2014, Runners TV was required to attend a meeting to discuss its processes. Following that meeting it submitted revised compliance procedures to Ofcom on 5 March 2014.

Ofcom is concerned that despite our intervention, the Licensee's procedures were insufficient on 19 February 2014, when the material considered in this Decision was shown, to ensure that promotional content was not broadcast during a news bulletin. **Ofcom will monitor content broadcast on Channel Nine UK, and is considering taking further regulatory action.**

Breaches of Rules 9.4, 9.5 and 9.7(a)

² See, for example: <http://oftrend.com/lotto-now-in-bangladesh/>, <http://archive.thedailystar.net/beta2/news/lotto-shoes-in-bangladesh/> and http://www.daily-sun.com/details_yes_25-01-2013_Lotto-Italia-opens-outlet-at-Gulshan_390_1_3_1_16.html.

³ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb236/obb236.pdf>, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2361/obb237.pdf>, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/246/obb246.pdf>, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf> and <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb255/>.

In Breach

Business Talk with Sufi

ATN Bangla, 8 April 2014, 20:00

Introduction

ATN Bangla is a news and general entertainment channel broadcast in Bengali and serving a British Bangladeshi audience. The licence for ATN Bangla is held by ATN Bangla UK Limited (“ATN Bangla” or “the Licensee”).

Business Talk with Sufi is a programme about successful businesses within the British Bangladeshi community in the UK. This episode featured the presenter in conversation with the directors of a restaurant in North London, Riverside Lounge.

Ofcom received a complaint that the references to Riverside Lounge in the programme were promotional and unduly prominent. The complainant also believed that the programme had failed to signal that it contained product placement.

Ofcom obtained a recording of the programme and a full translation of its contents.

The first section of the programme contained: some initial discussion of the backgrounds of the guests, Azad Ali and Arman Ahmed; a brief description of the business model for Riverside Lounge; and references to the challenges facing a business of this sort in the current economic climate.

Azad Ali and Arman Ahmed also made a number of positive statements about Riverside Lounge, for example:

“[W]e wanted to make it [the restaurant] buffet to give choices. Whatever you want you can eat.”

“Bengali people eat, they go out and enjoy. The atmosphere in our restaurant is very nice.”

“There is [a] nice buffet. 70-80 items, Bengali, Chinese, Italian items are there.”

“The charge is £13.99. You can eat as much as you want without drink. You need to purchase drink as a separate item. But we give 25% discount, so it is £10.50 and we also give discount in drink. So you can eat as much as you want. Many families come and they really enjoy it. We have Mr Naga [a branded chilli oil] within the sauces. Four, five tins of Mr Nagas finish in a day. It’s like a family atmosphere. If you come and see our building, it is very nicely decorated. It was valued [at] over a million pound[s]. You see domes, big chandeliers, etc.”

“We have open[ed] the restaurant so that you can come and eat peacefully as you eat at home.”

The guests then answered questions from callers to the programme, whose comments about the restaurant were also generally positive, for example:

“I went to their restaurant, Riverside Lounge, very good restaurant. Their buffet system is very nice. They have [a] Shisha lounge, which I used. I congratulate

them for making such a restaurant. I would like to request them to change the buffet.”

“I am very pleased to see your programme and your restaurant is nice. I will organise a wedding party and a music party in your restaurant. Please continue, my prayers are with you so that you can become billionaire[s] not millionaire[s].”

“I liked the food in this restaurant. I will make two comments to my brothers. They have decorated the restaurant very nicely. It will be nice, if there are more grill items...They offer drink. If they reduce the price of the drink then we will have more drink.”

“We have been in the restaurant, we booked three benches there and it was very nice and the food was excellent. I have never seen anything like this.”

“I have been there [a] couple of times. I would like to say it’s one of the [most] beautiful and fantastic restaurants. Very lovely and the foods are very good and they have so many different dishes...”

“Beautiful restaurant, very beautiful...They [have] got a really nice restaurant. The food is really nice. It is very organised. I did enjoy [it]. I went there time and time [again] and was never disappointed.”

At one point, the presenter, Sufi, specifically asked a caller if he had anything negative to say about the restaurant:

Sufi: *“Brother Bablu, I would like to ask you a question, it is a bit [of a] tricky question. Have you got anything negative to say about this restaurant?”*

Bablu: *I want them to up the buffet price.*

Sufi: *You want the buffet price to be up?*

Bablu: *Yes.*

Sufi: *That’s not negative.*

Azad Ali: *That’s negative. We don’t want to make the price too high. We want to give good quality food. We would like to make money but we would like to give you that back.*

Sufi: *You don’t want to kill people, you want them to come back.”*

The callers also included a further director of Riverside Lounge and an employee of ATN Bangla.

Azad Ali said to one caller:

“Please come between Monday–Thursday and we will give you 25% discount. It will be on all items.”

There was some discussion of the prices of specific products available at Riverside Lounge:

"[T]here are many restaurants including buffet style restaurants who don't offer water. They don't give water but in our restaurant water is free. A jug of water, which is your right, is free. If you want you can get water and coke starts from £2.25...And it goes up to £4.75 maximum [for] drinks like Ferrero Rocher and you know Ferrero Rocher, it's a milkshake and you know the price of Ferrero Rocher."

Azad Ali acknowledged that the restaurant had received complaints about its car parking facilities:

"We have a comment card to receive complaints. There are no complaints regarding food, there are complaints about car parking. The car park is small. Twenty, twenty-five cars can park there. However after 1 o'clock it's free to park on outside roads. It's very difficult to get [a] car park in London, everyone knows that. We have a car park, that is a good thing."

Towards the end of the programme, Azad Ali gave some general advice to any viewers thinking of entering the catering business:

"[A] few friends need to get together who have got [a] strong friendship and you need money. For [the] restaurant business, you need money from the start. You are not going to make money from the start. In [the] property business, you need the money to get the property and then you can get the money when you rent it out. But when you start a restaurant, it's not going to be busy. So you need a strong friendship. You also need to find the right place. From the start you [have] got to think, the catering business is hard. God willing, you need a bit of luck as well."

He then said:

"Please come to Riverside Lounge. Please come, eat and see what is on the menu. We do functions and it's a very unique restaurant. You can enjoy the food."

Arman Ahmed added:

"Please come to Riverside Lounge. You come, eat and comment. So that we can understand whether the food is good."

The Licensee confirmed that there was no commercial arrangement between ATN Bangla and Riverside Lounge. The product placement rules were therefore not engaged.

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

Rule 9.4: "Products, services and trade marks must not be promoted in programming."

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

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming."

We therefore asked ATN Bangla for its comments on how the material complied with Rules 9.4 and 9.5.

Response

The Licensee stated that in its view the programme was not promotional.

Decision

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

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

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

Rule 9.4

Rule 9.4 states that products, services and trade marks must not be promoted in programming.

Ofcom’s published guidance¹ on Rule 9.4 states: “In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed.”

We first noted that this programme contained numerous instances of favourable and superlative language being used to describe the Riverside Lounge restaurant. These included claims made by Azad Ali and Arman Ahmed, directors of the Riverside Lounge, for example:

“Whatever you want you can eat.”

“The atmosphere in our restaurant is very nice.”

“Many families come and they really enjoy it...It’s like a family atmosphere. If you come and see our building, it is very nicely decorated. It was valued [at] over a million pound[s]. You see domes, big chandeliers, etc.”

“We have open[ed] the restaurant so that you can come and eat peacefully as you eat at home.”

The callers to the programme also used favourable and superlative language in their comments on Riverside Lounge, for example:

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

"I went to their restaurant, Riverside Lounge, very good restaurant. Their buffet system is very nice. They have [a] Shisha lounge, which I used. I congratulate them for making such a restaurant."

"I am very pleased to see your programme and your restaurant is nice. I will organise a wedding party and a music party in your restaurant. Please continue, my prayers are with you so that you can become billionaire[s] not millionaire[s]."

"I liked the food in this restaurant...They have decorated the restaurant very nicely."

"We have been in the restaurant, we booked three benches there and it was very nice and the food was excellent. I have never seen anything like this."

"I have been there [a] couple of times. I would like to say it's one of the [most] beautiful and fantastic restaurants. Very lovely and the foods are very good and they have so many different dishes..."

"Beautiful restaurant, very beautiful...They [have] got a really nice restaurant. The food is really nice. It is very organised. I did enjoy [it]. I went there time and time [again] and was never disappointed."

We noted that the programme did include some caveats to these generally positive statements, such as *"I would like to request them to change the buffet"*, *"It will be nice, if there are more grill items"* and *"If they reduce the price of the drink then we have more drink"*. Further we noted that Azad Ali acknowledged that the restaurant had received complaints about its car parking facilities and that, at one point, the presenter specifically asked a caller if he anything negative to say about the restaurant.

However, Ofcom considered that any criticism of the restaurant was extremely limited, and much less frequent and extensive than the instances of favourable and superlative language. In addition, we noted that at a number of points in the programme prices and availability were referred to by Azad Ali, for example:

"The charge is £13.99. You can eat as much as you want without drink. You need to purchase drink as a separate item. But we give 25% discount, so it is £10.50 and we also give discount in drink."

"There is [a] nice buffet. 70-80 items, Bengali, Chinese, Italian items are there."

"Please come between Monday–Thursday and we will give you 25% discount. It will be on all items."

"[T]here are many restaurants including buffet style restaurants who don't offer water. They don't give water but in our restaurant water is free. A jug of water, which is your right, is free. If you want you can get water and coke starts from £2.25...And it goes up to £4.75 maximum [for] drinks like Ferrero Rocher and you know Ferrero Rocher, it's a milkshake and you know the price of Ferrero Rocher."

In Ofcom's view, the cumulative effect of both favourable and superlative language made by callers and by the guests themselves to refer to Riverside Lounge, and these references to prices and availability, was promotional. The content was therefore in breach of Rule 9.4.

Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to.

Ofcom's published guidance on Rule 9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears."

Ofcom considered that the editorial context was a programme about successful businesses within the British Bangladeshi community in the UK. In that context, there was sufficient editorial justification for focusing on the Riverside Lounge restaurant. However, Ofcom considered that very little time in the programme was dedicated to discussion about the directors' experience of starting or running a successful business as opposed to the merits of the Riverside Lounge. Ofcom noted that the first section of the programme included: some initial discussion of the backgrounds of the guests, Azad Ali and Arman Ahmed; a brief description of the business model for Riverside Lounge; and references to the challenges facing a business of this sort in the current economic climate. We also noted that at the end of the programme, as set out in the Introduction to this Decision, Azad Ali set out some of the difficulties involved in starting a restaurant business, for example: "*You are not going to make money from the start.*"

However, in our view, the majority of the rest of the programme consisted of discussion of the products available, and the quality of the service, at Riverside Lounge, for example:

"[Y]ou can eat as much as you want. Many families come and they really enjoy it. We have Mr Naga within the sauces. Four, five tins of Mr Nagas finish in a day."

"We have been in the restaurant, we booked three benches there and it was very nice and the food was excellent. I have never seen anything like this."

"I would like to say it's one of the [most] beautiful and fantastic restaurants. Very lovely and the foods are very good and they have so many different dishes..."

"Beautiful restaurant, very beautiful...They [have] got a really nice restaurant. The food is really nice. It is very organised. I did enjoy [it]. I went there time and time [again] and was never disappointed."

In Ofcom's view, this emphasis was not editorially justified, even in the context of a programme about successful businesses within the British Bangladeshi community in the UK. As a result, we concluded that the content was in breach of Rule 9.5.

Ofcom has recently recorded a number of breaches of the rules in Section Nine of the Code against this Licensee². We are concerned that the Licensee's compliance

² See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb24021/obb242.pdf>,
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast->

processes have not proved sufficiently robust to prevent breaches of the Code in this area.

In light of our concerns, Ofcom is requiring the Licensee to attend a meeting to discuss its compliance procedures.

Breaches of Rules 9.4 and 9.5

Resolved

The Simpsons

Channel 4, 9 April 2014, 18:00

Introduction

The Simpsons is an irreverent animated comedy produced in the USA, with an appeal to a mixed audience of children and adults, and broadcast by Channel 4 at 18:00 on weekdays.

Seven complainants alerted Ofcom to the broadcast of the word “bastard”, which they considered inappropriate at this time of day and in a programme which appeals to children.

Ofcom viewed a recording and noted the following comment by the character Krusty the Clown around 18:23:

“...who needs friends? The incessant beep of the global positioning system is all the companionship I need...” [Krusty receives an electric shock as he pats the box, and, in anger, throws it out of his boat] *“Tell me where you are now, you bastard!”*

Ofcom considered the material raised issues warranting investigation under Rule 1.16 of the Code, which states:

“Offensive language must not be broadcast before the watershed...unless it is justified by the context”.

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

Response

Channel 4 said that “Ofcom will appreciate that the word ‘bastard’ is not the strongest language” but nonetheless it considered: “it was inappropriate for inclusion in an episode of *The Simpsons* at 18:00 in this context”. It apologised for any offence that may have been caused and said it gave careful consideration to scheduling programmes at times when children were expected to be viewing to protect children from unsuitable content.

Channel 4 explained that despite *The Simpsons* being a series aimed at older viewers, it is perceived by many viewers to be family or children’s entertainment, and it therefore pays particular attention when compiling this series to creating versions suitable with a child audience in mind.

All episodes of *The Simpsons* intended for broadcast before the watershed are reviewed and edited appropriately. However on this occasion, due to “human error” caused by different edits of the episode being created around the same time, an ‘all times’ rating had been applied in error to a post-watershed version of this episode.

Channel 4 said it became aware of the problem the morning after its transmission, and carried out an immediate investigation to identify the nature of the error, update

the existing system information, and leave only the correct 'all times' version available for transmission. As a precaution, remaining episodes in the particular series of *The Simpsons* due to run over the school break and across Easter 2014 were checked to ensure an 'all times' rating had been applied to the correct episode version, and similar checks would take place for all forthcoming series to ensure the same issue would not occur again.

Decision

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

Rule 1.16 of the Code states that: "Offensive language must not be broadcast before the watershed...unless it is justified by the context".

Ofcom research on offensive language¹ indicates that the word "bastard" is thought to be a 'stronger' swear word and that, while some people consider there are some contexts in which this word is acceptable on television pre-watershed, care needs to be taken over its use.

Ofcom did not consider the use of "bastard" at 18:00 in this context in a programme like *The Simpsons*, with a clear appeal to children², and broadcast on a public service channel with a broad audience, was justified by the context or in line with audience expectations.

However Ofcom has taken into account that: this failure was the result of an apparently isolated and unusual set of circumstances; Channel 4 proactively and quickly took steps to identify the cause of the issue and avoid the risk of a recurrence; and, Channel 4 apologised for any offence caused.

In light of these factors, Ofcom considers the matter resolved.

Resolved

¹ Page 91 of Ofcom's Audience attitudes towards offensive language on television and radio, August 2010
(<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

² BARB audience figures recorded an average of 886,000 viewers for this episode. 212,000 were children aged between 4 and 15, representing 24% of the total audience.

Advertising Scheduling cases

In Breach

Gloria TV

DM News Plus, 7 March 2014, 15:00 to 16:00

Introduction

DM News Plus is a free-to-air news and general entertainment channel, available on the Sky platform, which broadcasts in Urdu, Punjabi, Pothohari and English to the UK Asian community. The licence for the channel is held by DM Global Media Limited (“DM Global” or “the Licensee”).

Gloria TV was a studio discussion programme conducted in various languages, including French. The host and his guest discussed the history of various African countries, predominantly The Democratic Republic of the Congo.

Throughout the programme scrolling text ran along the bottom of the screen superimposed on the programme. The text was in French. As translated the text said:

“To sponsor this programme call [telephone number]...email [email address]”.

The definition of television advertising given in our Code on the Scheduling of Television Advertising (“COSTA”) is as follows:

“‘television advertising’ means 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.”

Because the on-screen message contained information about programme sponsorship opportunities offered by the broadcaster, we considered this content met the definition of advertising set out above. It was therefore subject to the COSTA rules.

Ofcom therefore considered the programme to warrant investigation under the following COSTA rules:

Rule 11: “Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used as well.”

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

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

Response

DM Global did not respond to Ofcom's enquires.

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.

Among other things, 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. These requirements are reflected in COSTA.

In the absence of any submissions from the Licensee, Ofcom moved to reach a view on the facts available to it from the evidence of the programme alone.

We noted that the advertising text inviting potential programme sponsors to contact the Licensee scrolled continually over the editorial material. We also noted that the text was not separated from the programme's picture – for example by displaying it against a solid and discrete background – or otherwise made distinct from it. Because the advertising text was presented as part of the programme, we concluded it was in breach of COSTA Rule 11.

Further, because the advertising text was visible on-screen throughout the hour-long programme, far exceeding the advertising allowance specified in COSTA, the Licensee was in breach of COSTA Rule 4.

Breaches of Rules 4 and 11 of COSTA

Broadcast Licence Conditions cases

In Breach

Retention and production of recordings

Castle FM (Leith), 29, 30, 31 May 2014

Introduction

Castle FM is a community radio station licensed to provide a service for the residents of Leith in Scotland. The licence is held by Leith Community Media Works Ltd (“LCMWL” or “the Licensee”).

In issue 254 of Ofcom’s Broadcast Bulletin¹, three breaches were recorded against the Licensee. Two breaches related to the non-retention and production of recordings. One of those cases significantly affected Ofcom’s ability to assess the station’s compliance with the Code, and the other meant that we could not assess the Licensee’s compliance with its Key Commitments².

We stated in the Findings that these were significant breaches of LCMWL’s licence, and the Licensee was put on notice that we would monitor its provision of the licensed service, along with its arrangements to retain and provide recordings to Ofcom, in due course.

Ofcom therefore requested recordings of three days of output covering Thursday 29, Friday 30 and Saturday 31 May 2014. No audio was received by the deadline given.

Ofcom was contacted by the Licensee on the day of the deadline. The Licensee explained that it was unable to provide the recordings at the present time due to personal circumstances, but would be able to do so the following week. In light of the particular circumstances, Ofcom agreed to extend the deadline.

After the revised deadline had passed, the recordings had still not been received by Ofcom. We contacted the Licensee and asked it to send them as soon as possible.

A few days later we wrote to the Licensee stating that the recordings had still not been received. The Licensee responded that: “I will attend to this upon my return. It will be sent special delivery. I was at Glastonbury this weekend.”

The audio was received some time later. We therefore considered that the matter raised issues warranting investigation under Condition 8(2)(b) of LCMWL’s licence, which requires the Licensee to:

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

Ofcom therefore asked the Licensee for its formal comments on its compliance with this licence condition.

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>

² Key Commitments for Castle FM:
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000080.pdf>

Response

The Licensee stated that it had implemented new procedures and policies to avoid this issue happening again. It said: “We will ensure that all requests from Ofcom going forward are submitted and received by yourselves before any deadline expires.” The Licensee explained that only one person had had the ability to log on to its recording system previously and this had caused the delay in Ofcom receiving the requested recordings. It said that arrangements had now been put in place to ensure that an additional person can access the recording equipment to ensure a timely response to any recording request from Ofcom.

Decision

Under the Communications Act 2003, 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 to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Condition 8.

Licence Condition 8(2)(b) requires licensees to produce such recordings to Ofcom forthwith upon request.

In this case, the Licensee failed to provide Ofcom with the recordings when requested, and only provided them some time later. We had given the Licensee an extension to provide the requested recordings. That revised deadline was also missed by the station. We also noted that the Licensee sought to explain its delay in providing the recordings as being due to its attendance at Glastonbury music festival. Ofcom has made it clear in its previous Findings on the Licensee’s failure to provide recordings that this is an important obligation with which licensees must comply. We did not consider the Licensee’s attendance at a music festival to be in any way a satisfactory or acceptable explanation for its failure to comply with this requirement of its licence. This is a significant breach of LCMWL’s licence, which, in this particular case, significantly affected Ofcom’s ability to assess Castle FM’s ongoing compliance with its Key Commitments.

We noted that the Licensee had taken steps to prevent the issue from recurring. Nevertheless, as this is the third consecutive occasion on which the Licensee has either failed altogether to provide audio to Ofcom or failed to provide it within the specified timeframe, **Ofcom is putting the Licensee on notice that it will consider these breaches for the imposition of a statutory sanction.**

Breach of Licence Condition 8(2)(b) in Part 2 of the Schedule to the community radio licence held by Leith Community Media Works Ltd (licence number CR000080BA)

Resolved

Provision of service

Radio 1458 and Radio 1035, 6 to 9 June 2014

Introduction

Radio 1458 and Radio 1035 are local AM commercial radio stations licensed to provide local sound broadcast services for the Asian population in London under Part III of the Broadcasting Act 1990 (as amended) (“the Licence”). In both cases, the Licence is held by Lyca Media II Ltd (“the Licensee”).

During the week commencing 9 June 2014, it came to Ofcom’s attention that both Radio 1458 and Radio 1035 had ceased broadcasting their licensed services the previous weekend.

Ofcom considered that this raised issues warranting investigation under Condition 2(1) contained in Part 2 of the Schedule to Lyca Media II Ltd’s licences, which states that:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable.” (Section 106(2) of the Broadcasting Act 1990).

We therefore sought formal comments from the Licensee on its compliance with this licence condition.

Response

A representative of the Licensee subsequently confirmed to Ofcom that Radio 1458 and Radio 1035 had ceased broadcasting on the evening of Friday 6 June 2014. He stated that the transmitters had been switched off by the Licensee’s transmission provider, due to an unpaid bill. The Licensee confirmed that both services resumed broadcasting normally on the morning of Monday 9 June 2014, following settlement by the Licensee of the outstanding transmission fees. The Licensee explained that the situation had arisen because, following the recent transfer of the two licences to Lyca II Media Ltd, the newly-formed company had experienced teething problems with its internal systems for the payment of invoices. It added that these difficulties had now been resolved, and it did not anticipate similar problems arising in future.

In addition, the Licensee’s representative stated: “This came from an administrative lapse caused by the complex launch of our two new radio stations. We have reviewed our operational processes to eradicate any future situations like this.”

Decision

Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum.

Provision by a Licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a commercial radio licence is granted. This is

reflected in the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required commercial radio programme output is provided. In addition, choice for listeners is reduced.

In this case, the Licensee confirmed to us that the transmitters had been switched off between the evening of Friday 6 June and the morning of Monday 9 June due to an unpaid bill. Therefore, Lyca Media II Ltd failed to provide the specified licensed services during this period. However, we recognise that the Licensee took swift action to get the two services back on the air, and has since made changes to its payments process systems to ensure that similar problems do not arise in future.

In view of this, Ofcom considered the matter to be resolved.

Resolved

Fairness and Privacy cases

Not Upheld

Complaint by Miss Jodie Musgrave

Police Interceptors, Channel 5, 23 September 2013 (repeated on 27 and 29 September 2013)

Stop! Police Interceptors, Channel 5, 11 December 2013 (repeated on 17 December 2013)

Summary

Ofcom has not upheld Miss Musgrave's complaint of unwarranted infringement of privacy in the two programmes as broadcast.

The programmes were part of a series that followed the work of police officers carrying out their public duties. These editions included footage of Miss Musgrave being questioned and breathalysed by the police at a police station following her involvement in two traffic incidents in which she was suspected of colliding with two other vehicles while under the influence of alcohol.

Ofcom found that, in the particular circumstances of this case, Miss Musgrave had a legitimate expectation of privacy, albeit limited. However, the public interest in filming and subsequently broadcasting footage showing the work of the police outweighed Miss Musgrave's expectation of privacy. Ofcom therefore considered that Miss Musgrave's privacy was not unwarrantably infringed in the programmes as broadcast.

Introduction and programme summaries

On 23 September 2013, Channel 5 broadcast an episode of *Police Interceptors*, a series which follows the country's high speed police interception units in carrying out their duties. This episode featured footage of Miss Musgrave. On 11 December 2013, an episode of *Stop! Police Interceptors* was broadcast. This is a series of programmes which consists of compilations of material shown previously in editions of *Police Interceptors*. The 11 December episode of *Stop! Police Interceptors* included virtually identical footage of Miss Musgrave which had been shown earlier in the 23 September programme.

In both programmes, Miss Musgrave was shown briefly in the opening title sequence and in the 'coming up next teaser' before the commercial break being abusive to police officers.

Longer footage of her was included in the final section of the programmes. This showed Miss Musgrave at a police station after she had been involved in two separate road traffic incidents and been arrested on suspicion of driving while under the influence of alcohol. While being processed by the custody sergeant at the police station, Miss Musgrave - referred to in both programmes by her first name, "*Jodie*" - was asked by a police officer if she had anything of value in her purse and whether she had consumed any alcohol. She admitted to having consumed a bottle of wine. Footage of Miss Musgrave verbally abusing a police officer at the police station was shown and she was again referred to by her first name. Miss Musgrave was then shown being taken to be breathalysed and blowing into an "*Intox*" machine (which

analyses the level of alcohol in a person's breath). At the end of this part of the programme featuring Miss Musgrave, the narrator stated that:

"The boozy blonde [referring to Miss Musgrave] was later convicted of driving with no insurance whilst over the limit and failing to stop at a collision. She was disqualified for over two years, ordered to pay costs, and given a community service order".

Miss Musgrave was referred to by her first name twice in the two programmes, her face was shown unobscured, and her voice was heard.

Summary of the complaint and the broadcaster's response

In summary, Miss Musgrave complained that her privacy was unwarrantably infringed in the programmes as broadcast because footage of her was included without her consent.

Miss Musgrave explained that despite the incident having happened almost a year ago, the two programmes in which she featured had been repeated on a number of occasions. As a result, Miss Musgrave said that she had been identified and mocked by various people about the incident.

In response, Channel 5 said that *Police Interceptors* was first broadcast on 23 September 2013 and repeated on 27 and 29 September 2013. At the time of Miss Musgrave's complaint to Ofcom, the programme had also been repeated on Channel 5's "5*" channel. It added that the compilation programme *Stop! Police Interceptors* was first broadcast on 11 December 2013 and was repeated on 17 December 2013.

Channel 5 stated that whether Miss Musgrave's privacy was unwarrantably infringed in the programmes as broadcast should depend on the consideration of the material and not upon the number of occasions the programmes had been broadcast. Channel 5 noted that Miss Musgrave said in her complaint to Ofcom that she only expected the incident to be shown once and that the basis of her complaint was that the incident had been shown "far too many times". Channel 5 added that it therefore appeared that Miss Musgrave "accept[ed] that [the programme] broadcast on one occasion did not amount to an unwarranted infringement of privacy" and so, Channel 5 argued, that "if that was not an unwarranted infringement of privacy, then neither could the subsequent broadcasts have been". Therefore, Channel 5 did not consider that Miss Musgrave's privacy was unwarrantably infringed in the programmes as broadcast.

Channel 5 stated that the programme makers, with the knowledge and agreement of the police, were shadowing the police interceptors undertaking their public duties and that the programme makers were present at the second incident Miss Musgrave had apparently been involved in and also at the police station.

Channel 5 cited the decision in the European Court of Human Rights ("ECHR") Axel Springer case²⁸ and stated that: "Where a person has been negligent or intentionally

²⁸ Channel 5 referred to this paragraph in the ECHR judgment: Axel Springer AG v Germany (application no 39954/08; 7/02/2012) "In order for Article 8 [of the European Convention on Human Rights] to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see A v Norway). The Court has held, moreover, that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable

broken the law, Article 8 cannot be used in aid to create a right to privacy in relation to their actions. The commission of a crime and the aftermath of the commission, including search, detainment and arrest, cannot be considered private matters.”

Channel 5 said that it was not clear what information disclosed in the programme Miss Musgrave considered private. It said that the outcome of Miss Musgrave’s prosecution could not legitimately be considered private, because this information was in the public domain. Further, the footage of Miss Musgrave at the police station disclosed no information which could be considered to be inherently private, such as disclosing a medical condition. Channel 5 said that it is not relevant to the test of privacy whether Miss Musgrave wished the information about her behaviour to remain private to her or whether Miss Musgrave might be embarrassed by the disclosure of that information.

Channel 5 stated that Miss Musgrave would have been informed at the police station that “anything she said could be used in evidence in open court” and therefore she could not have expected what happened at the police station to remain private. Channel 5 added that the filming of Miss Musgrave took place openly at the police station after she had been arrested for committing a crime and where she was breathalysed. She was aware that she was being filmed because she both looked directly at the camera and “appeared to intentionally knock into the camera...and later motioned towards the camera as if she was going to barge it again”. Therefore, the broadcaster said that Miss Musgrave could have had no legitimate expectation of privacy in relation to the disclosure of her convictions and sentence, or her behaviour at the police station.

Channel 5 argued that, even if Ofcom concluded that Miss Musgrave had a limited legitimate expectation of privacy in the information disclosed in the programme, and that this information could be considered private, it considered that the broadcast of the footage was warranted. This was because of the public interest in exposing crime and serious wrongdoing, particularly in programmes like *Police Interceptors*, which showed the varied work of the police and demonstrated the obstacles, difficulties and dangers that the police interceptor units face in carrying out their duties. Channel 5 stated that the case involving Miss Musgrave underlined the difficulties police units encounter and the serious consequences that can occur as a result of drink driving. It also demonstrated the impact this can have on other members of the public, the police, and the lives of the individuals concerned.

Channel 5 said that the footage of Miss Musgrave and the information about her included in the programme was a necessary and effective part of the story of the work of the police officers in this case. It added that the broadcaster’s right to freedom of expression, including the right to freely inform the public about matters of public interest, outweighed any interference with Miss Musgrave’s private life.

Ofcom’s Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld. We provisionally concluded that Miss Musgrave did have a legitimate expectation of privacy, although limited, but that this expectation of privacy was outweighed by the significant public interest of showing the work of the police and the challenges they face when dealing with individuals who have been involved in incidents while under

consequence of one’s own actions such as, for example, the commission of a criminal offence (see *Sidabras and Dziautas v Lithuania*).”

the influence of alcohol, and of the serious consequences of drink driving for the individuals involved and for others who might be affected by their conduct.

Both parties were given the opportunity to comment on the Preliminary View. Miss Musgrave made no representations on Ofcom's Preliminary View. However, Channel 5 submitted the following relevant representations on the Preliminary View, which are summarised below.

Channel 5's representations

Channel 5 submitted that Ofcom's Preliminary View was contrary to the prevailing law in England and Wales. Channel 5 said that Article 8 of the ECHR "does not provide protection for public life or activities" and that this was recognised by the Courts. In support of its position, Channel 5 referred to the Supreme Court judgment in *Kinloch v HM Advocate* [2012] UKSC 62²⁹ and the Northern Ireland Queen's Bench judgment in *JR 38 for Judicial Review* [2013] NIQB 44³⁰ and submitted that where a person engages in criminal or anti-social activity in a public place, there is no need to establish whether or not a person might have a reasonable expectation of privacy as "nothing about the conduct concerns 'private and family life'". Further, Channel 5 argued that, as in the circumstances of this case, when "a crime is committed, the circumstances of the arrest and other consequences which occur in public do not engage Article 8 because they do not engage aspects of 'private or family life'".

Channel 5 said that it was not aware of any authority to support the proposition that Miss Musgrave, having admitted to drinking a bottle of wine, was "vulnerable to some extent". They also considered that the footage did not appear to show her "in any form of distress". The broadcaster said that it was not possible to determine from the footage how intoxicated Miss Musgrave was, but that her level of intoxication was a consequence of her own actions and that as a general rule: "the law does not permit a person to escape from the consequences of actions undertaken when intoxicated". Therefore it was difficult to understand why: "self-inflicted intoxication and subsequent actions in public places can amount to aspects of 'private and family life'".

Channel 5 also said that there was no basis for Ofcom's finding that Miss Musgrave was either vulnerable or in a state of distress and that the fact of arrest and subsequent processing in a police station does not automatically create any vulnerability. In any event, the broadcaster said that these matters were not relevant to the question of whether what occurred at the police station was a part of Miss Musgrave's "private or family life".

Channel 5 stated that Practice 8.8 suggested that consent would "normally" be required if a person was in a "sensitive situation". However, the broadcaster argued

²⁹ Channel 5 in particular emphasised the following statement of Lord Hope in respect of whether a person subject to police surveillance in a public street had a legitimate expectation of privacy: "The criminal nature of what he was doing, if that was what it was found to be, was not an aspect of his private life that he was entitled to keep private."

³⁰ Channel 5 in particular referred to the following statements by Lord Justice Higgins: "In this case the applicant placed himself in public view among a crowd of other persons engaged, allegedly, in public disorder. He was open to public view by anyone who happened to be watching be they police or civilians... In my view a criminal act is far removed from the values which Article 8 was designed to protect, rather the contrary."

that the fact something occurs at a police station does not make it sensitive, and the precise circumstances will determine whether or not it is a sensitive situation. The broadcaster said that the filming of Miss Musgrave occurred in public places of the police station in which any member of the public could have seen Miss Musgrave and her interaction with the police officers. Therefore, the broadcaster said that it was difficult to see why “anything which occurs in the public areas of a police station, at least when it comes to the behaviour of those arrested for criminal activity, can be rationally considered to be part of the ‘private or family life’ of that person”. Channel 5 added that there was also nothing private about anything which happened at the police station in relation to Miss Musgrave. Channel 5 argued that the relevant question was whether a reasonable person in Miss Musgrave’s position would think that they had a legitimate expectation of privacy in the relevant circumstances, and that no reasonable person would think that details of her/his arrest and subsequent processing at a police station were matters she/he was entitled to regard as legitimately private. Channel 5 did not consider it was enough for Ofcom to conclude that the processing of Miss Musgrave at the police station attracted an expectation of privacy.

Channel 5 stated that Miss Musgrave’s activities before, during and after arrest and processing in the police station either did or did not attract a reasonable expectation of privacy. The broadcaster added that it was not aware of any authority recognised in law of a “limited” expectation of privacy. Channel 5 said that Miss Musgrave had “no reasonable expectation of privacy at the time of filming because nothing that was filmed was part of her ‘private or family life’”.

Decision

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

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

In reaching this Decision, we carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast and both parties’ written submissions. We also took account of the representations made by Channel 5 in response to Ofcom’s Preliminary View on this complaint (which was not to uphold).

The individual’s right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to 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 Ofcom’s Broadcasting Code (“the Code”) which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In assessing Miss Musgrave's complaint that her privacy was unwarrantably infringed in the broadcast of the programmes because footage of her was shown without her consent, Ofcom had regard to Practice 8.6 of the Code. This 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. Ofcom also had regard to Practice 8.8 which states that, in potentially sensitive places, such as police stations, separate consent for broadcast should normally be obtained from those in sensitive situations (unless not obtaining consent is warranted).

In considering whether or not Miss Musgrave's privacy was unwarrantably infringed in the programmes as broadcast, Ofcom first assessed the extent to which she might have a legitimate expectation of privacy in relation to the footage of her as broadcast.

As already set out in the "Introduction and programme summary" section above, we noted where in the programmes Miss Musgrave appeared and the context in which she was shown, i.e. following arrest, being questioned at the police station and later being breathalysed.

Ofcom also considered Channel 5's submissions in relation to Miss Musgrave's complaint and in particular that no reasonable person would think that details of her/his arrest and subsequent processing at a police station were matters she/he was entitled to regard as legitimately private. As Ofcom noted in an earlier fairness and privacy decision³¹, Ofcom does not agree with Channel 5's interpretation of the *Axel Springer* case or the other UK case law cited which Channel 5 contends supports that interpretation. It is not correct that Article 8 rights can never be engaged in relation to the circumstances of a person's unlawful activity, for example, in relation to an arrest or its circumstances. The paragraph in the *Axel Springer* case which Channel 5 rely upon (set out in footnote 1) is set in the specific context of a discussion about the extent to which Article 8 can be invoked to remedy loss of reputation. Ofcom's view is consistent with the interpretation of the *Axel Springer* case in a recent judgment of the High Court, *Hannon v News Group Newspapers Ltd* [2014] EWHC 1580 (Ch).³²

We may consider that the broadcast of the *fact* of an individual's arrest and subsequent conviction, which is a matter of public record, is not information in relation to which that individual has a legitimate expectation of privacy in the circumstances. We do not agree however that it then follows that there can be no legitimate expectation of privacy in respect of the broadcast of the footage of that individual being arrested or processed at the police station and his/her interactions with police officers during those events.

The test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the

³¹ See Complaint by Miss C, Criminals: Caught on Camera, Channel 5, 18 October 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb252/obb252.pdf>

³² Mr Justice Mann noted that *Axel Springer*: "does not support an absolute right of the press to have, and to publish, the fact of an arrest, and its circumstances. At most it supports a submission that, if the facts justify it, that right exists and the countervailing privacy rights do not. As with a large number of disputes under Convention rights, that is a question of fact and degree, and is highly fact sensitive" (paragraph 96).

individual concerned finds him or herself.³³ Ofcom will therefore continue to approach each case on its facts.

In our view, whether or not someone who has been filmed while being questioned by the police after arrest in relation to an incident has a legitimate expectation of privacy in the broadcast of that footage depends on all the relevant circumstances. These may include:

- whether the filming took place in a public place;
- whether the individual was vulnerable in any way (e.g. through the consumption of alcohol or drugs or because of an illness or disability);
- whether the person concerned was a minor;
- whether the footage depicted the individual doing something, or disclosed information about that individual, which was confidential, sensitive or personal;
- the time that had elapsed between the events depicted in the footage and its broadcast (or re-broadcast); and
- any change in factual circumstances between the events depicted and its broadcast which may affect the extent to which the material could be considered to be private or confidential (for example, whether since the incident filmed the individual concerned was charged and/or found guilty of any offences).

Ofcom noted from the programmes as broadcast that at the police station Miss Musgrave appeared to have been filmed openly and that she was aware of the presence of the cameras. We took into account too that she was not shown engaged in any conduct or action that could reasonably be regarded as particularly private, sensitive or confidential in nature, other than being processed in a police station on suspicion of committing a criminal offence. We had regard to the fact that the programme makers had obtained permission from the police to follow the work of the interceptor unit in carrying out all their public duties. Ofcom also noted that Miss Musgrave was, as a result of her conduct, subsequently convicted and disqualified from driving for two years for driving with no insurance whilst over the limit and failing to stop at the scene of a collision, and we took account of the fact that by the date of the broadcast, Miss Musgrave's conviction would have been information already in the public domain.

On the other hand, having admitted to the police officers that she had drunk a bottle of wine, it was clear that Miss Musgrave was under the influence of alcohol. We considered that she was shown in the footage to be vulnerable to some extent and in a state of distress. We also noted that Miss Musgrave explained in her complaint to us that the broadcast of footage of her at the police station had caused her embarrassment and concern. Further, we had regard to the fact that the filming took place while Miss Musgrave was being processed in the custody suite of a police station, and we considered that this was a sensitive situation, as recognised by Practice 8.8 of the Code with consequent restrictions on filming without specific consent.

³³ See for example, Anthony Clarke MR in *Murray v Big Pictures* (2009) "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came in the hands of the publisher". See also Hannon (quoted above) at paragraph 96.

Ofcom also considered whether Miss Musgrave was identifiable in the programmes as broadcast. Miss Musgrave's face was shown unobscured, her voice was heard and she was referred twice by her first name "Jodie" in the programmes as broadcast. We therefore considered that Miss Musgrave was clearly identifiable from the footage included in the programmes.

We noted that Channel 5 had argued that there was no authority to support the proposition that an expectation of privacy may be "limited". We do not agree with Channel 5 that an expectation of privacy may not be "limited" in the circumstances of a particular case. As noted above, we consider that the question of whether an individual's Article 8 rights are engaged is fact sensitive, depending on the circumstances. In some cases, although we may consider that the circumstances are such that an individual may have a legitimate expectation of privacy in the relevant footage as broadcast, it may be to a lesser degree, which we would take into account when deciding where the balance lies when considering whether an intrusion into the individual's right to privacy was warranted.

Taking all the above factors into consideration, we considered that, Miss Musgrave did have a legitimate expectation of privacy in relation to the broadcast of unobscured footage of her at the police station without her consent, however this expectation was limited because by the date of broadcast Miss Musgrave had been convicted, as a result of her own conduct, of a criminal offence in relation to the events depicted in the programmes, which was a matter of public record.

We then assessed whether her consent had been secured before the footage was broadcast in accordance with Practices 8.6 and 8.8. Channel 5 did not indicate in their submissions whether or not Miss Musgrave's specific consent had been sought by the programme makers. However Miss Musgrave said that she had not given permission for the footage of her to be broadcast. We therefore took the view on the evidence available to us that the programme makers did not obtain individual consent from Miss Musgrave for the footage of her to be included in the programmes.

Given that Miss Musgrave had, in our view, a limited legitimate expectation of privacy in relation to the footage of her broadcast in the programmes, we next assessed the competing right to freedom of expression of the broadcaster and audience, against Miss Musgrave's right to privacy. In particular, we considered whether there was a sufficient public interest or other sufficient reasons to justify the infringement of Miss Musgrave's privacy in the broadcast of the unobscured footage of her in the 'teasers' and in the longer footage of her at the police station. As outlined above, while Ofcom took into account that being processed in a police station is a sensitive situation for the individual concerned, we considered that there is a genuine public interest in broadcasting programmes of this nature, specifically those which examine the work of the police in responding to the varied and often difficult incidents they experience in their work. In our view, showing such material in programmes plays an important role in informing the public about the challenging work the police face when dealing with individuals who have been involved in incidents while under the influence of alcohol, and of the serious consequences of drink driving for the individuals involved and for others who might be affected by their dangerous conduct. We also considered the footage of Miss Musgrave shown in the 'teasers', and took into account the fact that this footage of Miss Musgrave was not placed in context in the same way as the later footage of her. Nevertheless, we considered that the footage included was very brief (lasting only a few seconds) and was justified in accordance with Channel 5's editorial freedom and their right to promote the upcoming content of the programme to the audience and inform viewers about that content.

As already stated, Ofcom recognises that there is a genuine public interest in broadcasting programmes of this nature. However, it should not be assumed by broadcasters that a public interest justification will exist in all circumstances for all broadcasts of a particular programme of this type. Broadcasters must have regard to when a programme is broadcast and should periodically review repeat broadcasts of programmes such as *Police Interceptors* and *Stop! Police Interceptors* in this light. For instance, where at the time of the original broadcast or broadcasts, the public interest in revealing the identity, conviction and sentence of an individual may have outweighed the individual's expectation of privacy, the balancing exercise may produce a different result when undertaken some time later taking into account all the relevant circumstances when the programme is repeated.

Ofcom considered that the first broadcasts of *Police Interceptors* and *Stop! Police Interceptors* were justified for the reasons set out above. As regards to the repeats of the two programmes, Ofcom was of the view that the circumstances had not changed materially between the first broadcasts of the unobscured footage of Miss Musgrave and of the repeats (which all occurred within three months of the original broadcasts). Therefore Ofcom considered that for the same reasons already stated, Miss Musgrave's privacy was not infringed in these subsequent broadcasts. However, as already noted, if a broadcaster wishes to repeat at later dates a programme that at the original time of broadcast did not unwarrantably infringe someone's privacy, they should periodically review their justification for breaching the privacy of that individual or organisation as regards those later broadcasts.

Therefore, Ofcom considered that in the circumstances of this case, the broadcaster's right to freedom of expression and, the public interest outweighed Miss Musgrave's limited expectation of privacy in relation to the broadcast of footage of her in the two programmes.

Ofcom has not upheld Miss Musgrave's complaint of unwarranted infringement of privacy in the programmes as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 1 and 14 July 2014 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Law with N Rahman	CHSTV	25/01/2014	Advertising/editorial distinction (tv)

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 14 July 2014 because they did not raise issues warranting investigation.

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

For more information about how Ofcom assesses conducts investigations about content standards, go to:

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Programming	Al Jazeera	n/a	Due impartiality/bias	1
Programming	Apni Awaaz 87.7FM	13/06/2014	Commercial communications on radio	1
Programming	Babestation	10/07/2014	Outside of remit / other	1
BBC News	BBC 1	01/07/2014	Outside of remit / other	1
BBC News	BBC 1	09/07/2014	Outside of remit / other	1
BBC News	BBC 1	n/a	Outside of remit / other	1
BBC News at One	BBC 1	30/06/2014	Outside of remit / other	1
BBC News at Ten	BBC 1	08/07/2014	Outside of remit / other	1
BBC News at Ten	BBC 1	09/07/2014	Outside of remit / other	2
BBC News at Ten	BBC 1	11/07/2014	Outside of remit / other	1
Breakfast	BBC 1	01/07/2014	Outside of remit / other	1
Common	BBC 1	06/07/2014	Violence and dangerous behaviour	1
Countryfile	BBC 1	06/06/2014	Outside of remit / other	1
David Beckham Into the Unknown	BBC 1	09/06/2014	Surreptitious advertising	1
EastEnders	BBC 1	03/07/2014	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	08/07/2014	Generally accepted standards	2
EastEnders	BBC 1	10/07/2014	Generally accepted standards	2
EastEnders	BBC 1	11/07/2014	Generally accepted standards	1
Match of the Day Live	BBC 1	01/07/2014	Gender discrimination/offence	9
Match of the Day Live	BBC 1	01/07/2014	Outside of remit / other	1

Match of the Day Live	BBC 1	05/07/2014	Generally accepted standards	1
Match of the Day Live	BBC 1	05/07/2014	Outside of remit / other	1
Match of the Day Live	BBC 1	08/07/2014	Generally accepted standards	2
Match of the Day Live	BBC 1	08/07/2014	Race discrimination/offence	1
Match of the Day Live	BBC 1	08/07/2014	Religious/Beliefs discrimination/offence	1
Match of the Day Live	BBC 1	n/a	Outside of remit / other	1
Operation Hospital Food with James Martin	BBC 1	08/07/2014	Product placement	1
Room 101	BBC 1	03/07/2014	Generally accepted standards	1
The One Show	BBC 1	23/06/2014	Offensive language	1
The One Show	BBC 1	09/07/2014	Gender discrimination/offence	1
Watchdog	BBC 1	02/07/2014	Crime	1
Wimbledon 2014	BBC 1	01/07/2014	Outside of remit / other	1
Wimbledon 2014	BBC 1	06/07/2014	Outside of remit / other	1
FIFA World Cup Final 2014	BBC 1 & ITV	13/07/2014	Outside of remit / other	1
Match of the Day	BBC 2	09/07/2014	Outside of remit / other	1
Mock the Week	BBC 2	13/06/2013	Outside of remit / other	1
Newsnight	BBC 2	08/07/2014	Generally accepted standards	1
Newsnight	BBC 2	10/07/2014	Outside of remit / other	1
The Honourable Woman	BBC 2	03/07/2014	Generally accepted standards	1
The Silent War	BBC 2	12/12/2013	Television Access Services	1
Today at Wimbledon	BBC 2	02/07/2014	Outside of remit / other	1
Top Gear Polar Special	BBC 2	25/07/2007	Outside of remit / other	1
Scotland 2014	BBC 2 Scotland	01/07/2014	Outside of remit / other	1
Family Guy	BBC 3	12/07/2014	Generally accepted standards	1
Slum Survivors	BBC 3	08/07/2014	Generally accepted standards	1
Snog, Marry, Avoid?	BBC 3	03/07/2014	Race discrimination/offence	1
Programming	BBC 4	n/a	Television Access Services	1
BBC News	BBC News Channel	01/07/2014	Outside of remit / other	1
BBC News	BBC News Channel	02/07/2014	Outside of remit / other	1

BBC News	BBC News Channel	03/07/2014	Generally accepted standards	1
BBC News	BBC News Channel	03/07/2014	Religious/Beliefs discrimination/offence	1
BBC News	BBC News Channel	13/07/2014	Animal welfare	1
The Old Plane and The Sea	BBC News Channel	29/06/2014	Generally accepted standards	1
Steve Wright's Sunday Love Songs	BBC Radio 2	13/07/2014	Generally accepted standards	1
BBC News	BBC Radio 4	04/07/2014	Outside of remit / other	1
BBC News	BBC Radio 4	14/07/2014	Outside of remit / other	1
Programming	BBC Scotland	n/a	Materially misleading	1
Sister's Hour	British Muslim TV	03/07/2014	Generally accepted standards	1
Breakfast with Gillies and Emily	Capital FM South Coast	04/07/2014	Scheduling	1
Programming	Castle FM	05/06/2014	Scheduling	1
Programming	Castle FM	21/06/2014	Scheduling	1
Advertising	Channel 4	13/07/2014	Outside of remit / other	1
Channel 4 News	Channel 4	25/06/2014	Outside of remit / other	1
Come Dine with Me	Channel 4	02/07/2014	Generally accepted standards	1
Couples Come Dine with Me	Channel 4	09/07/2014	Race discrimination/offence	1
Couples Come Dine with Me (trailer)	Channel 4	04/07/2014	Generally accepted standards	1
Dispatches	Channel 4	23/06/2014	Due accuracy	1
Hollyoaks	Channel 4	02/07/2014	Suicide and self harm	1
Hollyoaks	Channel 4	03/07/2014	Scheduling	2
Kirstie's Fill Your House for Free	Channel 4	08/07/2014	Gender discrimination/offence	1
Meet the Mormons	Channel 4	26/06/2014	Materially misleading	3
Scottish Tourist Board Advertisement	Channel 4	30/06/2014	Political advertising	1
The Complainers	Channel 4	10/06/2014	Religious/Beliefs discrimination/offence	1
The Million Pound Drop (trailer)	Channel 4	06/07/2014	Materially misleading	1
The World's Best Diet	Channel 4	30/06/2014	Generally accepted standards	1
Transformers: Revenge of the Fallen	Channel 4	05/07/2014	Offensive language	2
5 News Tonight	Channel 5	04/07/2014	Generally accepted standards	1
Benefits Britain: Life on the Dole	Channel 5	16/06/2014	Under 18s in programmes	1
Benefits Britain: Life on the Dole	Channel 5	07/07/2014	Generally accepted standards	2
Benefits Britain: Life on the Dole	Channel 5	07/07/2014	Race discrimination/offence	1

Can't Pay? We'll Take it Away	Channel 5	08/04/2014	Scheduling	1
Neighbours	Channel 5	03/07/2014	Outside of remit / other	1
Rush Hour	Channel 5	06/07/2014	Offensive language	1
Almost Naked Animals	CITV	13/07/2014	Nudity	1
News	Classic FM	01/07/2014	Due accuracy	1
Channel promotion	Comedy Central	n/a	Surreptitious advertising	1
Scottish Tourist Board Advertisement	Comedy Central	09/07/2014	Political advertising	1
Channel promotion	Comedy Central +1	28/06/2014	Generally accepted standards	1
Maoam's sponsorship of Big Bang Theory	E4	02/07/2014	Sponsorship	1
Make Room For Daddy	FilmOn.tv	06/05/2014	Sponsorship	1
Advertising	Free Radio Birmingham	n/a	Outside of remit / other	1
Channel promotion referring to ARY News Network	Geo News	20/05/2014	Generally accepted standards	1
The Ideal Youth	Inspire FM	23/06/2012	Due accuracy	1
118118.com's sponsorship of movies on ITV	ITV	n/a	Sponsorship credits	1
Advertising	ITV	09/07/2014	Outside of remit / other	7
All Star Mr & Mrs	ITV	02/07/2014	Generally accepted standards	1
Benidorm	ITV	01/07/2014	Generally accepted standards	12
Coronation Street	ITV	30/06/2014	Generally accepted standards	1
Coronation Street	ITV	30/06/2014	Scheduling	1
Coronation Street	ITV	02/07/2014	Materially misleading	1
Coronation Street	ITV	07/07/2014	Generally accepted standards	3
Coronation Street	ITV	n/a	Generally accepted standards	1
Dickinson's Real Deal	ITV	04/07/2014	Generally accepted standards	2
FIFA World Cup Live 2014	ITV	26/06/2014	Outside of remit / other	1
FIFA World Cup Live 2014	ITV	30/06/2014	Generally accepted standards	1
FIFA World Cup Live 2014	ITV	30/06/2014	Outside of remit / other	1
FIFA World Cup Live 2014	ITV	12/07/2014	Outside of remit / other	1
FIFA World Cup Live 2014	ITV	13/07/2014	Gender discrimination/offence	3

Good Morning Britain	ITV	30/06/2014	Due accuracy	1
ITV News	ITV	04/07/2014	Crime	3
ITV News	ITV	04/07/2014	Due impartiality/bias	1
ITV News	ITV	05/07/2014	Violence and dangerous behaviour	1
ITV News	ITV	07/07/2014	Generally accepted standards	1
ITV News at Ten and Weather	ITV	02/07/2014	Due impartiality/bias	1
Loose Women	ITV	01/07/2014	Generally accepted standards	2
Peter Andre's 60 Minute Makeover	ITV	16/06/2014	Animal welfare	1
The Jeremy Kyle Show	ITV	07/07/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	11/07/2014	Offensive language	1
This Morning	ITV	01/07/2014	Generally accepted standards	1
This Morning	ITV	01/07/2014	Scheduling	3
Tonight: Beating Breast Cancer	ITV	03/07/2014	Nudity	2
Tonight: The Rise of Discount Supermarkets	ITV	23/05/2014	Product placement	1
Tour De France 2014 Live	ITV	05/07/2014	Generally accepted standards	1
Tour De France 2014 Live	ITV	06/07/2014	Due impartiality/bias	1
Tour De France 2014 Live	ITV	06/07/2014	Outside of remit / other	3
Tour De France 2014 Live	ITV	06/07/2014	Violence and dangerous behaviour	1
Tour De France 2014 Live	ITV	07/07/2014	Advertising scheduling	5
You've Been Framed!	ITV	07/07/2014	Generally accepted standards	3
You've Been Framed!	ITV	09/07/2014	Religious/Beliefs discrimination/offence	1
Channel ident	ITV2	01/07/2014	Violence and dangerous behaviour	1
Foxy Bingo's Sponsorship of The Jeremy Kyle Show	ITV2	08/07/2014	Sponsorship	1
The Magaluf Weekender	ITV2	06/07/2014	Gender discrimination/offence	1
Tour De France 2014 Live	ITV4	05/07/2014	Outside of remit / other	1
James O'Brien	LBC 97.3 FM	01/07/2014	Religious/Beliefs discrimination/offence	5
Nick Ferrari	LBC 97.3 FM	01/07/2014	Scheduling	1
Heure de Verite	MATV	17/04/2014	Crime	1
Heure de Verite	MATV	23/04/2014	Crime	1

Welcome TV	MATV	18/04/2014	Religious/Beliefs discrimination/offence	1
Welcome TV	MATV	19/04/2014	Religious/Beliefs discrimination/offence	1
Welcome TV	MATV	10/06/2014	Race discrimination/offence	1
Car SOS	More4	15/06/2014	Generally accepted standards	1
Advertising	n/a	n/a	Outside of remit / other	1
The Backyardigans	Nick Jr	06/06/2014	Disability discrimination/offence	1
Ladyboys	Pick	03/07/2014	Transgender discrimination/offence	1
Laid Bare	Pick	27/06/2014	Generally accepted standards	1
Programming	Radio Asian Fever	29/06/2014	Generally accepted standards	1
Mitchell Glass' sponsorship of Cashphrase on Radio Borders	Radio Borders	n/a	Commercial communications on radio	1
Bizarre ER	Really	13/07/2014	Generally accepted standards	1
Penny Dreadful	Sky Atlantic	17/06/2014	Generally accepted standards	1
Sky News	Sky News	29/06/2014	Due impartiality/bias	4
Sky News	Sky News	05/07/2014	Due impartiality/bias	1
Sky News with Kay Burley	Sky News	10/07/2014	Due impartiality/bias	1
Sky World News	Sky News	11/07/2014	Due impartiality/bias	1
Programming	Sky on demand	n/a	Television Access Services	2
Riding The Dales: The Yorkshire Tour Challenge	Sky2	07/07/2014	Materially misleading	1
FIFA World Cup Live 2014	STV	04/07/2014	Outside of remit / other	1
Programming	STV	n/a	Outside of remit / other	1
Alan Brazil Sports Breakfast (trailer)	Talksport	10/07/2014	Offensive language	1
World Cup Drive	Talksport	03/07/2014	Race discrimination/offence	1
Advertising	Various	05/07/2014	Outside of remit / other	1
Omega Loans advertisement	Various	n/a	Outside of remit / other	1
Programming	Various	n/a	Television Access Services	1
Scottish Tourist Board Advertisement	Various	n/a	Political advertising	1
Scottish Tourist Board Advertisement	Various	n/a	Political advertising	1

Motorway Cops: Rush Hour	Watch	27/06/2014	Race discrimination/offence	1
Auschwitz: The Nazis and the Final Solution	Yesterday	03/07/2014	Generally accepted standards	1

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

For more information about how Ofcom conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.

Licensee	Categories
Radio Scilly Limited	Key Commitments

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 3 and 16 July 2014.

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

Programme	Broadcaster	Transmission date
Ame R Ma	Bangla TV	10 June 2014
ATN Rannagor	ATN Bangla	10 June 2014
Drivetime	Talksport	2 June 2014
Newsbeat	BBC Radio 1	13 June 2014
Welcome TV	MATV	5 April 2014
World's Craziest Fools	BBC 3	30 June 2014

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

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

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

Programme	Broadcaster	Transmission date
Khara Sach	Ary News	18 and 19 February 2014

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

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