

# **Ofcom Broadcast and On Demand Bulletin**

**Issue number 305  
23 May 2016**

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## Introduction

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

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

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

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

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

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

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

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

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

## Note to Broadcasters and On Demand Service Providers

### E-cigarettes: changes to Sections Nine and Ten of the Code and the Rules and Guidance for On Demand Programme Services

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On 13 April 2016 Ofcom set out changes to the rules in Sections Nine and Ten of the Broadcasting Code (and accompanying guidance). We also announced changes we were instructing our co-regulator the Broadcast Committee of Advertising Practice (“BCAP”) to make to the BCAP Code: the UK Code of Broadcast Advertising (“the BCAP Code”)<sup>4</sup>.

On 20 May 2016 Ofcom published further changes to the rules in Section Nine of the Broadcasting Code (and accompanying guidance), as well as changes to the Rules and Guidance: Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (“the Rules and Guidance”)<sup>5</sup>.

These changes relate to the regulation of electronic cigarette sponsorship, product placement and advertising. In summary, Ofcom has:

- introduced a prohibition on product placement by nicotine-containing electronic cigarettes (and refill containers) in programmes in broadcast television services and on-demand programme services (“ODPS”);
- introduced a prohibition on programme and service sponsorship by nicotine-containing electronic cigarettes (and refill containers) in broadcast television and radio services and ODPS; and
- made other necessary minor amendments to the Sections Nine and Ten of the Broadcasting Code (and accompanying guidance) and the Rules and Guidance.

In addition, BCAP has prohibited advertising by nicotine-containing electronic cigarettes (and refill containers) in broadcast television and radio services, as well as making other necessary minor amendments to the BCAP Code.

These changes arise from the Government’s transposition of the Tobacco Products Directive (“TPD”) 2014 into UK law. The Government has given effect to certain provisions of the TPD via directions issued to Ofcom by the Secretary of State, and via amendments to Regulations. As these decisions were a matter for Government, Ofcom has not publicly consulted on the changes.

The updated Broadcasting Code (and accompanying guidance) can be found at the following link: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

The updated Rules and Guidance can found at the following link: <http://stakeholders.ofcom.org.uk/broadcasting/on-demand/rules-guidance/>

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<sup>4</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/e-cigarettes/e-cigarette.pdf>

<sup>5</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/e-cigarettes/e-cigarettes-May16.pdf>

If you have any questions about these changes please contact  
[paul.ingram@ofcom.org.uk](mailto:paul.ingram@ofcom.org.uk).

**The new rules came into effect on Friday 20 May 2016 at 10:00.**

## Broadcast Standards cases

### In Breach

#### Heart for the World

Daystar, 7 June 2015, 21:30

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#### Introduction

Daystar is a television channel broadcasting evangelical Christian programming which was broadcast on the UK digital terrestrial platform until the end of 2015. The Ofcom digital terrestrial licence for this service is held by Daystar Television Network Limited (“DTNL” or “the Licensee”)<sup>1</sup>. *Heart for the World* is a programme in which guest preachers appear and viewers are encouraged to phone in to make donations.

A complainant was concerned that the programme encouraged viewers to donate 1,000 US dollars in return for a blessing from God to heal potentially serious medical conditions, resolve debt, and solve personal problems.

This three and a half hour live programme was a special edition entitled “*Israel Day*” presented by the American televangelist Marcus Lamb<sup>2</sup>, his wife Joni, and their daughters Rachel and Rebecca. They were joined by a studio guest, Rabbi Curt Landry. During the first part of the broadcast, the presenters made various appeals to viewers to “*fulfil God’s promise*” and “*bless the people of Israel*” by making a donation of 1,000 US dollars to the channel<sup>3</sup> and in return would be sent a gift linked to Israel or Christian theology.

At approximately 22:45 Marcus Lamb introduced the next segment of the programme:

*“There [are] some people watching today. You need a blessing. You feel like you’ve been under a curse not under a blessing. There [are] difficulties right now in your family, in your finances, or in your health, or in your marriage, or with your kids and you need something to change. You need the curse to be reversed. You need your circumstance to be different than it is now...I’m telling you as a man of God if you will bless the land of Israel, and the Jewish people today, with your gift you are going to see the hand of God move in your direction like you never have before... So go to the phone right now whether it’s a 1,000 dollar one time gift, or*

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<sup>1</sup> DTNL notified Ofcom in 2015 that it wished to cease broadcasting on Freeview and planned to seek a licence to broadcast on this UK digital terrestrial television (“DTT”) platform from another EU jurisdiction. This channel then ceased broadcasting on this platform in the early winter of 2015. As at the date of publication of this finding the Licensee had not surrendered its Ofcom DTT licence. Separately Daystar broadcasts the Daystar service to the UK on the digital satellite platform under a licence issued by another EU state.

<sup>2</sup> Marcus Lamb is also the co-founder and CEO of Daystar.

<sup>3</sup> Viewers were encouraged to make their donation by contacting Daystar by either calling a toll free number (1-800-329-XXXX) as noted a scroll displayed throughout the broadcast, or by writing to a “Daystar Partner”. On some occasions the presenters specifically said donations would be used to support a number of Daystar projects in Israel that seek to improve the lives of Israeli citizens. But in a number of instances the presenters asked for donations to Daystar without specifying who exactly would receive the money and for what purpose. See: <http://annualreport.daystar.com/support/>



*whether its 84 dollars a month for 12 months, or its some other amount that God is speaking to you. I'm saying, do what God wants you to do, don't miss this moment".*

Marcus Lamb appealed to viewers who were experiencing marital problems to make a donation:

*"This opportunity today is what you need to turn your situation around. God can cause a marriage that's on the rocks, that's heading towards a divorce court, God can cause that marriage to be supernaturally healed and restored".*

He added:

*"We heard a testimony about that yesterday. It was a pastor and his wife [who] were heading towards divorce, had given up on one another, but God supernaturally got involved. Do you know when it happened? When the pastor's wife gave 1,000 dollars, the last money she had, to a ministry that was helping her during this time and within five minutes God moved on the heart of her husband and he called and said, "I'm going to stick with you. I'm not going to abandon you. We're going to work this thing out". So you need a change? Then you need to change what you're doing and you need to get involved in this thing today...only God can turn a situation around like that".*

At about 22:48 Marcus Lamb, who was shown standing in the studio call centre, then appealed to viewers who were suffering "hardships", "problems" and "difficulties" to donate:

*"It seems like things are never going to change, never going to be any different. They're always going to be the same and God's saying, "Now's the time. I'm here to turn your situation around. I'm here to make a difference in what you're going through. I'm here to silence the Devil who's been lying to you and who's been lying about you". Satan is the one that's tried to destroy your marriage. Satan is the one who's trying to destroy your kids. Satan is the one that has fall[en] against your finances and against your health. But God is saying "I'm ready to stop the Devil in his tracks"".*

The presenter continued to appeal to viewers who "need a major breakthrough" with serious health problems to donate:

*"There's somebody watching right now with sugar diabetes. You need to be healed. There's somebody with a heart condition. You need to be healed. There's somebody with cancer today. You need to be healed. I'm telling you tap into this special anointing of blessing Israel and see if the healing Christ doesn't make healing manifest in your body that will amaze the doctors, that will astound the specialists, that will reverse what all of the tests, the x-rays, and the lab reports have said thus far. Go to the phone right now".*

Immediately after an address by studio guest Rabbi Curt Landry, Marcus Lamb resumed his appeal to viewers suffering from health problems to donate 1,000 US dollars to be healed by God:

*"There are people with heart conditions and blood pressure, high blood pressure problems that you've been spending hundreds and even thousands of dollars on doctors' visits, and prescription medicine, and tests, and even hospital stays and you haven't got any better. But the healing Jesus is ready to stretch forth a nail*

*scarred hand in your direction if you will only stretch forth your hand towards Israel and bless the land of Israel, bless the Jewish people today...and as you make that declaration you automatically [holds up the Bible] set yourself up for a divine visitation. Ladies and gentlemen, you can't have a divine visitation and not be healed...You can't have a divine encounter and not be changed in your heart, in your mind, in your emotions. God can do it and God will do it. If you're gonna do what God is saying today you're gonna see the biggest turnaround you've ever seen in your life. You're gonna remember this day when you heard that word and when you made that commitment to God for a 1,000 dollars for Israel, or 84 dollars a month for 12 months, and your gonna say that that's when the turnaround got started. That's when I got my order in. That's when God and I signed a contract. When God and I came into a divine covenant with one another that's when it began. Folks seal the deal today. Seal the covenant today by making your commitment".*

Marcus Lamb made a further appeal to viewers at about 23:12:

*"God's ready to commit to you but God can't do that and God won't do that until you commit to him. But before He said He would grant the desires of your heart He said commit your way unto me. That's what a pledge is. It's a commitment. God, I commit that I'm gonna send a 1,000 dollars in or I'm gonna send in 84 dollars a month till I've given 1,000 dollars. God, I'm making that commitment to you. But Lord at the same time this is the commitment that I need...God to turn my marriage around... Oh God, distil healing of that cancer in my body, that heart condition. God, I need you Lord to be the great physician for me".*

Following another address by Rabbi Curt Landry and a short video about Daystar's "Never Again" project, Marcus Lamb said:

*"I'm promising you as a man of God... as you bless God's land of Israel, God must bless you. God must bless you. God must bless you. He has no choice. God has no choice. He must do it [be]cause he's bound by his word [Marcus holds up his Bible]. Go to the phone right now. Go to the phone right now. There [are] people with major illnesses. God will send healing in your body. I'm believing that. I'm believing that. You are going to feel faith come alive in your spirit as you hear that. God is going to do that. God is gonna cause a family member that's an alcoholic to be delivered from alcoholism. God is gonna cause a loved one who's bound by drugs, they're gonna be set free from the drugs and it's gonna be a mighty miracle... You've prayed for months, you've prayed for years but God is saying this is the key, this is the key. You wanna move God? You wanna move God's hand in your direction? You wanna move God's heart towards your situation? Then you bless what's on Gods heart which is the Israeli people, the Jewish people. Go to the phone quickly, go to the phone...If I had a major need in my life and I thought there was any way in the world that I can come up with 84 dollars a month I'd be on the phone right now. I wouldn't hesitate. I wouldn't stop and try to rationalise it and figure it out. I would just say "Yes Lord, your servant heareth. Lord you're speaking and your servant heareth".*

Marcus urged viewers to call and say "This is the major miracle that my family has got to have". He added:

*"Tell the prayer partners, say "I need God to bless me in my finances". He can cause debt to be cancelled. He can cause your interest rate on your mortgage to go down. He can cause your boss to give you a promotion. He can cause your manager to recommend you for a raise...When you get in covenant with God*

*then his blessings are so amazing that they will come down on you. Quickly go to the phone... You need a supernatural increase? You bless Israel and see what God does for you..."*

At approximately 23:41 Marcus Lamb explained how Daystar had "invested [just over 2 million US dollars] in a piece of property" that had become "dilapidated" and "abandoned" and it appeared that Daystar "would lose all the money that we had in good faith tried to help some people [a church]". He recounted how Daystar, after being "supernaturally blessed" for blessing Israel, received "a cheque for 6.7million dollars", describing it as a "supernatural miracle".

Making an appeal to viewers who were experiencing legal problems, Marcus Lamb said:

*"Folks I can just tell you story, after story, after story [about] how God has supernaturally blessed Daystar as we have blessed Israel. I want you to have the same experience. There's somebody, the Lord is showing me, that's involved in a legal situation and it's not going well, and it's dragging out and you're really worried about it. God is saying that if you would bless Israel with this 1,000 dollar pledge today I will totally take care of the legal situation that you're involved in. It may be a court case. It may be a lawsuit. It may be where you're looking for a settlement with an insurance company. It may be a loved one that is in trouble with the law. I don't know what this particular situation that you're in [is] but all I know is that Jesus is the righteous judge and he can cause that legal situation to be taken care of in a way that nobody else can".*

During the last hour of the programme Marcus Lamb made further appeals to viewers who were experiencing financial difficulties and problems with their businesses. For example at about 23:46 he said:

*"Maybe things have been difficult in your business. Why don't you call today and say "I'm going to bless Israel but I need God to do something in my business". Listen, God can bring the buyers. He can bring the customers. He can bring the favour with the bank... There [are] people right now, you've been trying to work with the bank on a loan situation and it hasn't been working. God can cause the bankers to change their mind and give you the favour that you need. Go to the phone... Make that pledge and say "I'm gonna bless Israel but I need God to bless me with the bank. I need favour with the bank. So there [are] people that need favour with the bank. There [are] people that need favour with the courts system, with the law suit situation, with selling of a house. Put God to the test today and be specific. Be specific when you make that pledge and say this is how I need God to bless me. This is what I need God to do. This is how I need God to move on my behalf".*

The presenter also made additional appeals to viewers with a "major sickness or illness":

*"If you're facing a major sickness or illness, call when you make that pledge and say "I need to be healed of sugar diabetes, I need to be healed of a heart condition. I need to be healed or maybe somebody in your immediate family needs to be healed of cancer". Plant that seed towards that need, and say "God, I'm gonna bless Israel but I need you to bless me in this specific area of healing in my body".*

At about 00:14 Rabbi Curt Landry addressed comments to viewers, urging them to donate on the basis that they would receive a “*double portion*” of blessing from God.

After the Rabbi had finished speaking, Marcus Lamb was joined on screen by his family who then appealed together to viewers to make a donation. Mr Lamb stated:

*“He [Rabbi Curt Landry] has talked about the double portion today and if you’d like to see a double portion of what we’ve been talking about, and teaching about, then go to the phone. Call the number right now. We are going to declare and decree over the next few minutes that [for] everyone that calls there is going to be a double, double for your trouble. Who would like to see a double of the glory of God in your life? If you’re a candidate, if you want to see that happen, slip to the phone. Call and say, “I’ll pledge a 1,000 dollars or I’ll give 84 dollars a month and I’m going to stand with Israel and I want to see the double in my life”. Double in your finances, double in your health, double in your family. Whatever you’re needing God to do”.*

The programme concluded with Joni and Marcus Lamb listing and reading out to viewers some of the donations that had been made during the programme.

Ofcom considered the material raised issues warranting investigation under Rule 2.1 of the Code, which states that:

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

Ofcom was satisfied that the programme was a “religious programme” within the meaning set out in Section Four of the Code<sup>4</sup>. This was because this programme was broadcast on a channel devoted exclusively to evangelical Christian programming, and consisted of a Christian preacher and Rabbi presenting a programme which was principally an appeal for donations based on frequent references to God, the significance of the land of Israel in Christian teaching, religious texts, and promises and suggestions of practical benefits (in terms of resolving health or other problems) God might give viewers in return for those donations.

In addition, we considered the material complained of raised issues under Rule 4.6. This states that:

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

We sought comments from the Licensee as to how the material complied with these rules<sup>5</sup>.

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<sup>4</sup> Meaning of a “religious programme”: A religious programme which deals with matters of religion as the central subject, or as a significant part, of the programme.

<sup>5</sup> Ofcom also assessed whether this material should be investigated under Section Nine of the Code (Commercial References in Television Programming). The Licensee informed us that the material was broadcast as a charity appeal, and provided satisfactory evidence of the charitable status of Daystar Television Europe.

## Response

In its initial comments, the Licensee “strongly refute[d] any suggestion that harm [had] been caused or offence taken by any appeals for money by religious channels” and said that “such appeals had been broadcast in this vein for many years in the UK...”. The Licensee said that the content was “part of a week-long (not four hour) teleshopping<sup>6</sup> section, clearly labelled as a fundraiser” and explained that “such fund-raisers have a long and accepted tradition of being ‘over the top’”. It said that “any accusation by Ofcom that we are in some way deliberately exploiting the susceptible and/or vulnerable would be taken very seriously” and had “no base in fact”. In the Licensee’s view such an accusation would “appear to indicate that Ofcom believes “that to reach out in a Christian way to those in need of help is exploitation”. This would be a “crass and dangerous conclusion”. The Licensee stated that it “protected the vulnerable... and far more so than is shown in the employment of emotional blackmail in UK fund-raisers such as Children in Need and Comic Relief”.

The Licensee said that the “self-selecting audience” was already drawn to the channel and that the “larger-than-life approach” was both “anticipated and awaited, rather than dissected or queried by the viewer”, who was “perfectly able to put the content into context”. The Licensee said it was clear that viewer expectation was a major factor. It stressed that it would be “foolhardy and dangerous” to suggest that all religious texts, parables, preaching and ecclesiastical teachings should be taken literally and that there was “no way that Daystar’s audience – or an audience to any specialist religious channel - would take everything literally” and it was “bordering on insulting to believe it ever would”.

DTNL acknowledged that often this content is “overtly hyped” but argued that the rhetoric of Daystar’s preachers is “no more questionable than that of [a] Muslim targeted” channel broadcasting an appeal promising in the afterlife ‘a land of milk and honey’ to donors of £1,000 and stating that “spending with Allah now will count towards your afterlife”. The Licensee claimed that such content had “never been found to be unacceptable [by Ofcom] and could be seen as favouring Non-Christian broadcasters”.

The Licensee said it “would not contend for one minute that this content was not ‘*way over the top*’ but viewer expectation, context, and free speech and belief should override any futile, meaningless and purposeless out-of-context literal dissection of a fun-based fund-raising week which has a fine history, in both viewing and regulatory spheres”.

In response to Ofcom’s Preliminary View (that there were serious breaches of Rules 2.1 and 4.6 which Ofcom would consider for statutory sanction), the Licensee withdrew its initial comments. It apologised and said that “we realise – and have never sought to defend – that some of the content may have gone too far in its enthusiasm, and breached” Rules 2.1 and 4.6 of the Code.

DTNL explained that the programme was part of a “charity fund-raiser aired only three weeks a year and hits high levels of excitement in order to sustain”. It acknowledged, however, that some of it “may have gone too far” although it said that “this fund-raiser has aired – in identical format – in the UK for many years without any complaints to Daystar” and it “was not aware of any [complaints] received by Ofcom over the years”. It said this “must be relevant in terms of harm assessment.”

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<sup>6</sup> As part of its investigation, Ofcom established that this programme was editorial content, rather than teleshopping as claimed by the Licensee, and therefore subject to the Code.

DTNL stated that the examples “cited by Ofcom” of breaches by other licensees (see footnote 8 of this Decision) “involved general entertainment channels, and not religious services”. In relation to viewer expectation, the Licensee wished to explain that “casual viewers to entertainment stations, who simply ‘come across’ such content are not as likely to put it into context as regular viewers to religious channels”.

The Licensee concluded that it “would not knowingly broadcast anything we thought harmful to our loyal audience” and said it was “already discussing changes that would need to be made” to this broadcast to comply with Code “should Daystar return to Freeview”.

## Decision

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

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

Article 10 of the ECHR also provides that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Accordingly, Ofcom is required to set standards to secure the standards objectives in section 319(2) of the Act, including that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material. Ofcom secures the application of such standards through making and enforcing the Code, which includes the rules in Section Two relating to harm and offence.

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

Ofcom’s statutory duties are not to question or investigate the validity of religious belief or its consequences but to require broadcasters to comply with the standards in the Code. Therefore, when investigating broadcast content which persuades

viewers to donate money on the basis of material or spiritual inducements in return for donations, Ofcom must balance the right to freedom of expression and freedom of religion against Ofcom's statutory duties to provide adequate protection for the public from potentially harmful material (see Rule 2.1), and protect susceptible members of the audience from improper exploitation when watching religious programmes (see Rule 4.6).

### Rule 2.1

Rule 2.1 states that generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material. This rule is specifically concerned with the protection of viewers from harm.

The Code does not prevent programmes from reaching out to those in need from a Christian or any other religious perspective. But as Ofcom's guidance on Section Two of the Code makes clear, we recognise that some programming may include material that has the potential to be harmful or offensive. This puts a responsibility on the broadcaster to take steps to provide adequate protection for the audience. Context is important in this regard and the extent of any protection required will depend on all the circumstances, including (amongst other things) the service on which the material is broadcast, the degree of harm or offence likely to be caused, the likely expectation of the audience and the effect of the material on viewers who may come across it unawares<sup>7</sup>.

In Ofcom's view, broadcasters need to take particular care if promises or suggestions are made that serious illnesses can be cured or personal problems resolved solely by faith healing or divine intervention, especially if such promises or suggestions are linked to appeals for funds. Appeals for funds should not potentially cause harm to vulnerable people, such as those experiencing health, financial or emotional difficulties, who may be unduly encouraged to give donations. In particular, Ofcom normally considers it unacceptable for a Licensee to persuade viewers to donate money on the basis of inducements such as, for example, offering a prayer for or on behalf of the donor or the promise of divine intervention leading to better health, wealth or the resolution of serious personal problems<sup>8</sup>.

In reaching a decision under Rule 2.1, Ofcom must assess the nature of the potentially harmful material and either its potential effect or what actual harm has occurred. Ofcom must also assess the context within which the material was included in the programme. Therefore, Ofcom first assessed whether the programme contained potentially harmful material.

### Potentially harmful content

During this programme viewers were repeatedly urged to make a donation of either 1,000 US dollars, 84 US dollars a month for a period of twelve months or 5,000 US

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<sup>7</sup> For further examples see meaning of "context" in Section 2 of the Code.

<sup>8</sup> See Ofcom's decision finding breaches of Rules 2.1, 2.2, 4.6, 10.23 and 10.15 against Al Ehya Digital Television Limited in respect of religious programming broadcast on its service Noor TV, pages 10-11 (see <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf>); and resulting sanctions decision, page 6 (see <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Ehya.pdf>).

dollars. In exchange they would receive a “*blessing*”, “*divine visitation*” or a “*commitment*” from God which would result in the healing of potentially serious medical conditions (such as cancer) or solutions to various serious personal problems (such as financial, legal and marital difficulties). The programme suggested that this healing, or these solutions, would result from divine intervention linked in various ways to the donation. In particular, we noted that Marcus Lamb and Rabbi Landry during the programme variously promised that donations would result in God bringing about the following:

- the healing of cancer;
- the healing of heart diseases;
- the healing of diabetes;
- the healing of high blood pressure problems;
- an “*alcoholic to be delivered from alcoholism*”;
- a “*loved one bound by drugs*” to be “*set free*” from their addiction;
- a marriage “*heading towards a divorce court*” to be “*supernaturally healed and restored*”;
- the cancellation of debt; and
- the resolution of outstanding legal or financial issues (such as a “*law suit*”, a “*settlement with an insurance company*” or “*trouble with the law*”).

Viewers were also promised that, if they made a donation, Daystar could offer a prayer for the viewer (for example taking the viewer’s name to the Wailing Wall in Jerusalem “*where prayer can go up twenty four hours a day*”).

We considered that, to a certain extent, the programme was intended to encourage viewers to be charitable and offer spiritual support to Israel in exchange for a blessing from God. However, in Ofcom’s view the various statements and promises made, and the inducements offered, to viewers went much further than offering spiritual support. In particular, Ofcom was concerned that by focussing heavily on religious beliefs, there was a risk that some viewers would have been more likely to make donations than they otherwise would have done.

Ofcom considered carefully the balance that must be struck between, on the one hand, the broadcaster’s and audience’s right to freedom of expression and freedom of religion, against the reasonable limitations placed on these rights such as, for instance, the need to protect the public from harm. We recognised that broadcasters are free to offer prayers for health or other personal problems of individual viewers or viewers in general. However, where those prayers are linked in some way with making a donation Ofcom’s concern, as mentioned above, is that this could result in harm to vulnerable viewers. In such circumstances, Rule 2.1 requires that generally accepted standards are applied so as to provide adequate protection.

We therefore went on to assess the nature of the potentially harmful content and in particular to consider whether the tone of the various statements and promises in the programme and the manner in which they were made added to the likelihood of any



potential harm. Ofcom also assessed the extent to which, if any, the Licensee applied generally accepted standards so as to provide adequate protection to members of the public.

### *Health issues*

Viewers were encouraged to call and donate considerable sums of money in return for various promises, or in response to inducements offered, that potentially serious medical conditions – such as diabetes, heart conditions, cancer, and high blood pressure problems (see examples above), or addiction to alcohol or drugs – would be healed through God’s intervention.

Marcus Lamb made the following claims at various points in the programme:

*“There’s somebody watching right now with sugar diabetes. You need to be healed. There’s somebody with a heart condition. You need to be healed. There’s somebody with cancer today. You need to be healed. I’m telling you tap into this special anointing [for] blessing Israel and see if the healing Christ doesn’t make healing manifest in your body that will amaze the doctors...”*

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*“...as you make that declaration you automatically [holding up a copy of the Bible] set yourself up for a divine visitation. Ladies and gentlemen you can’t have a divine visitation and not be healed”.*

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*“There [are] people with major illnesses. God will send healing in your body...it’s gonna be a mighty miracle”.*

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*“If you’re facing a major sickness or illness call when you make that pledge and say “I need to be healed of sugar diabetes, I need to be healed of a heart condition. I need to be healed”, or maybe somebody in your immediate family needs to be healed of cancer. Plant that seed towards that need and say “God I’m gonna bless Israel but I need you to bless me in this specific area of healing in my body”.*

Ofcom noted that the presenter variously described the divine intervention which would bring certain benefits to viewers who donated as: *“a mighty miracle”*; a *“divine visitation”*; a *“supernatural blessing”*; and a *“supernatural miracle”*. We considered that statements of this nature in a programme that offered promises and inducements to viewers were capable of being reasonably interpreted by some viewers as promises that, by making a donation, the viewer or a relative could be certain of a divine intervention that would result in them being healed of these conditions (for example cancer, diabetes or a heart condition) or serious addictions.

### *Financial, legal or personal problems or issues*

The presenter also encouraged viewers to make a donation of 1,000 US dollars on the basis that their financial or legal difficulties or issues (such as the cancellation of debt, a high mortgage interest rate, the inability to obtain a loan from the bank, low income or a court case) would be resolved. For example: *“You need a supernatural increase? You bless Israel and see what God does for you”*. Further, the presenter

on two occasions provided personal testimony about how he and his church had been “*supernaturally blessed*” and benefited from a “*supernatural miracle*” when facing financial difficulties. (See Introduction for further examples). We considered that Marcus Lamb’s various statements of this nature in the programme about potentially serious financial or legal problems or issues were capable of being reasonably interpreted by some viewers as promises that, by providing a substantial donation to Daystar, these problems or issues would be solved successfully.

We were concerned that there were examples of the presenter using language directly to appeal to viewers who were already experiencing financial difficulties or legal problems (e.g. “*There’s somebody, the Lord is showing me, that’s involved in a legal situation and it’s not going well, and it’s dragging out and you’re really worried about it*”). The presenter claimed that they would be helped by God soon afterwards if they gave the channel 1,000 US dollars: “*God is saying that if you would bless Israel with this 1,000 dollar pledge today I will totally take care of the legal situation that you’re involved in*”. Another example, this time in relation to marital problems, was a statement made concerning a woman who feared her husband wished to divorce her: “*When the pastor’s wife gave 1,000 dollars, the last money that she had, to a ministry that was helping her during this time, and within five minutes God moved on the heart of her husband*”.

#### *Conclusion on potentially harmful content*

Ofcom acknowledged that the Licensee accepted that it had breached Rules 2.1 and 4.6 of the Code. In Ofcom’s view, for the reasons set out above, the statements about serious health conditions and addictions, and various legal and financial problems had a strong potential to harm vulnerable members of the audience, particularly those experiencing such difficulties in their lives. This was because the appeal heavily focussed on inducements to make donations based on religious belief: such as divine intervention, offering a prayer for or on behalf of the donor, or the promise of better health. The programme additionally suggested that making a donation would produce results even where prayer had not done so: “*You’ve prayed for months, you’ve prayed for years but God is saying this is the key... You want [to] move God’s heart towards your situation?... Go to the phone quickly...*”. In our view this made it more likely that vulnerable viewers (such as those suffering health or financial problems) would make donations as advocated by Marcus Lamb and supported by Rabbi Landry, which they otherwise would not have done and which, in some cases, could have been quite substantial (as much as 5,000 US dollars or more).

Ofcom considered, therefore, that the statements created a strong risk of financial harm to some viewers, particularly vulnerable ones, who may have been unduly encouraged to give donations as a result of the statements that were made in the programme. Ofcom was also concerned that there was a risk that the promise of divine intervention through a “*blessing*”, “*divine visitation*” or a “*commitment*” from God in return for making a “*commitment to God*” involving a substantial financial donation might have caused some viewers to believe that their financial or health problems would be solved without the need to seek, or continue to receive, appropriate professional advice or qualified medical treatment or assistance.

#### Adequate protection

Taking into account the context within which the potentially harmful statements in the programme were broadcast, we next considered whether the Licensee provided adequate protection to viewers.

As we have set out previously, religious channels are free to broadcast material in which religion and prayer are presented as a means of supporting individuals through illnesses and personal difficulties. Such material can of course legitimately include the discussion of miracles and suggest that people of faith may derive comfort and solace in prayer or a belief in faith healing when ill or encountering personal difficulties. However, where a programme makes potentially harmful claims relating to health or other (for example financial) problems, the Code requires that the broadcaster applies “generally accepted standards” to provide adequate protection to viewers in order to mitigate any potential risk that viewers (particularly vulnerable viewers) might be harmed. As set out above, we considered in this case that there was such a risk of harm. In particular, the tone of the various statements and promises in the programme and the manner in which they were made created a strong potential risk of financial harm, particularly to viewers suffering from financial or legal difficulties or serious medical problems, and may also have caused some viewers not to seek professional help or advice or to abandon existing medical treatment, including treatment for some very serious medical conditions such as diabetes and cancer.

We took into account the status of the presenter (a Christian preacher) and the studio guest Rabbi Curt Landry, and the way the programme was presented (e.g. statements such as *“I’m promising you as a man of God”*). Marcus Lamb was the main presenter of this lengthy programme, normally speaking direct to camera and so directly to viewers. This clearly underlined his authority, and the unequivocal nature of his promises of divine intervention and its effectiveness in solving serious human problems in exchange for substantial payments to Daystar. He in turn enhanced the status and authority of Rabbi Landry. For example, the presenter said at one point: *“You have heard a word today from a Jewish leader, a Rabbi, so you know there is a marked blessing on his life”*. We considered the standing and authority of the presenter and the Rabbi were material factors in increasing the programme’s potential harm, in that it made it more likely that some viewers would respect and follow their advice, and respond to their inducements to donate money.

In our view, the more serious the risk of harm to vulnerable viewers, the greater the protection that should be provided. The programme made repeated claims that by making a payment of 1,000 or 5,000 US dollars, or payments of 84 US dollars a month, and *“blessing Israel”* potentially serious medical conditions such as cancer and diabetes would be cured, or other serious problems resolved. For all the reasons set out above, these claims created a material, potential risk to some viewers.

Ofcom examined the whole programme carefully. We noted that at no point did the programme include any warnings or guidance to the audience about the claims made to cure various serious health conditions, suggesting for example that viewers with such conditions should consult their doctor, or otherwise qualifying the promises that they would be cured. Similarly the broadcast did not contain any warnings, guidance, or caveats about the promises made to solve viewers’ financial or legal difficulties. Instead we noted that the tone and content of the language used by Marcus Lamb in encouraging donations was exhortatory and imperative, for example:

*“I’m telling you as a man of God... So go to the phone right now, whether it’s a 1,000 dollar one time gift, or whether its 84 dollars a month for 12 months, or its some other amount that God is speaking to you. I’m telling you, do what God wants you to do, don’t miss this moment”.*

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*“There’s somebody with cancer today. You need to be healed. I’m telling you tap into this special anointing [for] blessing Israel and see if the healing Christ doesn’t make healing manifest in your body that will amaze the doctors, that will astound the specialists, that will reverse what all of the tests, the x-rays, and the lab reports have said thus far. Go to the phone right now”.*

Also we were concerned that where the presenter did refer to conventional (and expensive) medical treatments he appeared to undermine their comparative value or referred to them in a somewhat disparaging way. For example:

*“...and see if the healing Christ doesn’t make healing manifest in your body that will amaze the doctors, that will astound the specialists, that will reverse what all of the tests, the x-rays, and the lab reports have said thus far”.*

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*“There are people with heart conditions and blood pressure, high blood pressure problems that you’ve been spending hundreds and even thousands of dollars on doctors’ visits, and prescription medicine, and tests, and even hospital stays and you haven’t got any better”.*

Ofcom was concerned that a potential effect of these statements was that some viewers might be induced to question the efficacy of seeking or continuing to seek advice from a qualified medical practitioner.

We noted DTNL’s comment in its response to Ofcom’s Preliminary View that “We realise – and have never sought to defend - that some of the content may have gone too far in its enthusiasm, and breached Ofcom Code Rules 2.1 and 4.6”.

With respect to viewer expectation, Ofcom acknowledged that casual viewers to entertainment stations who simply come across such content could have different expectations of religious programming from viewers of services whose content is exclusively religious. In Ofcom’s opinion, however, viewers of all channels, whether or not they are religious channels, would expect religious programming to include adequate protection from potentially harmful content. Ofcom is not aware of any evidence which shows that all viewers of channels exclusively or mainly consisting of religious programming, such as Daystar, are better able to put potentially harmful material into context.

In Ofcom’s opinion, viewers of religious channels are likely to watch programmes on those channels for a variety of reasons. These could include, for example, learning more about religion, seeking support for their faith, or seeking comfort and solace in times of trouble. In the absence of evidence to the contrary, the ability of viewers to assess the reliability of claims made on such channels to cure illness or solve personal problems, and their ability to resist inducements to make donations based on their religious belief, is likely to vary widely. Accordingly, whilst it may have been the case that some viewers would have been able to put the claims made in the programme into context, this would not necessarily have been the case for all viewers (especially those who were most desperately in need, perhaps due to the persistence of serious medical or financial problems, and were therefore particularly vulnerable). In our view, the strength of the comments, together with the authority of those who made them and the lack of any warnings or guidance in the programme to qualify what they said served only to increase the potential harm. This made it more likely that some viewers would have been induced unduly to make donations, including donations of quite significant amounts, which they otherwise would not

have made. In the absence of any evidence from the Licensee, or anything specific within the programme itself, Ofcom concluded that the Licensee had not applied generally accepted standards so as to provide adequate protection to viewers of this programme.

Taking all this into account and for all the reasons set out above we considered that the broadcast material breached Rule 2.1.

#### Rule 4.6

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

As detailed above, this programme encouraged viewers to make substantial financial donations on the basis of promises of divine intervention to cure serious medical conditions (including cancer) or solve financial, legal and marital difficulties.

We noted DTNL’s comment in its response to Ofcom’s Preliminary View that: “We realise – and have never sought to defend - that some of the content may have gone too far in its enthusiasm, and breached Ofcom Code Rules 2.1 and 4.6.”.

We considered for the reasons set out above that the programme was presented to viewers in a manner that could lead vulnerable (and so susceptible) members of the audience to believe that potentially serious medical conditions (such as cancer) and personal issues could be “*healed*” or solved as a direct consequence of donating money to Daystar. It therefore created a material risk that susceptible members of the audience may have been persuaded to donate money when they would not otherwise have done so.

We noted the presenter encouraged viewers to donate on the spur of the moment by giving personal testimony of the miraculous blessings God had allegedly given him (as detailed in the Introduction) and by telling them not to “*rationalise*” or “*figure it out*” before making a donation. For example:

*“If I had a major need in my life, and I thought if there is anyway in the world that I can come up with 84 dollars a month, I’d be on the phone right now. I wouldn’t hesitate. I wouldn’t stop and try to rationalise it and figure it out”.*

For the same reasons as set out above regarding Rule 2.1, Ofcom considered that this programme clearly had the potential to improperly exploit the vulnerability of some viewers with serious personal, health or financial difficulties. The cumulative effect of the statements of encouragement, the inducements to make donations, and the assurances made in the programme (as detailed in the Introduction), heightened the risk of the susceptibilities of vulnerable viewers being improperly exploited. Also, we considered that some viewers of religious services may be more trusting of the content in view of the nature of the service and their own beliefs. Such viewers may have been less likely to question the claims that were broadcast and, therefore, could have been more susceptible as a result to the claims presented.

In reaching a Decision on compliance with Rule 4.6, we again took careful account of the Licensee’s and audience’s right to freedom of religion and freedom of expression. As already pointed out, religious channels have considerable latitude to feature and discuss miracles and faith healing, and offer prayers to support individuals in difficulty. However, where a programme makes promises that serious illnesses can

be cured or problems solved as a direct consequence of making a donation, particular care is needed. This three and half hour long programme actively solicited substantial financial donations throughout from viewers, on the basis of their religious beliefs and promises of divine intervention to cure serious illnesses and solve potentially serious personal problems. As set out in our reasoning for Rule 2.1, these promises were couched in exhortatory and imperative terms, without any appropriate caveats, warnings or context to ensure susceptible viewers were not improperly exploited.

There was therefore also a breach of Rule 4.6.

### Conclusion

Ofcom underlines that the Code places no prohibition on the broadcast of material in which miracles are presented and discussed, and religion acts as a means of supporting individuals through illness and personal difficulties. We noted that the Licensee accepted that some of the content may have gone too far in its enthusiasm and breached Rules 2.1 and 4.6 of the Code. We also noted DTNL's comment that it is "already discussing changes that would need to be made to this world-wide broadcast in order to comply with Ofcom UK regulation". Nonetheless Ofcom has made clear in various published findings<sup>9</sup> that when broadcasting such material a licensee must ensure that viewers who are vulnerable and/or suffering serious illnesses are adequately protected from potential harm and the risk of improper exploitation.

**Ofcom regards these breaches of Rule 2.1 and Rule 4.6 the Code as serious, and we are putting the Licensee on notice that these breaches will be considered for the imposition of a statutory sanction.**

### **Breaches of Rules 2.1 and 4.6**

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<sup>9</sup> See for example the breach findings on Rohani Alam on Venus TV: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb270/obb269.pdf> and Saturday Night Special on Noor TV: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf>

## In Breach

### Africa Vision

*BEN TV, 13 February 2016, 12:00*

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#### Introduction

BEN TV is an entertainment and news channel that broadcasts to Western Europe and parts of Asia and Northern Africa. The licence for this service is held by Greener Technology Limited (“GTL” or “the Licensee”).

A complainant drew Ofcom’s attention to this programme. Ofcom had the material translated from Lingala into English. GTL was given an opportunity to comment on the accuracy of the translation and the Licensee did not raise any concerns. We therefore relied on this translation for the purposes of this investigation.

This 53 minute community affairs programme consisted of three segments. The programme commenced with a seven minute segment in which the programme presenter interviewed Mama Gudile Mwinka about her retail business, referred to as Mama Mwinka Fashion. During the interview Mama Gudile Mwinka (“M”) made a number of references to her business in response to questions from the presenter (“P”). For example:

P: *“Last time you came [on the programme] you told them where the shop was. Are you still continuing that activity or have you stopped?”*

M: *“No, I still continue. But at the moment I only open for a short period of time, because I have young children. You see, I open from 10am to 4pm”.*

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P: *“Viewers, you have seen and heard Mama Mwinka. She says she has a sale, 50% sale. Brothers and sisters, if you’re looking for a place to buy things, Mama Mwinka has a 50% sale on, everything 50% less”.*

M: *“But Papa Yembisi, I’d like to say something, sorry, sorry. I need to speak because many clients come and they say ‘Mama, please order branded items for us’. I don’t ever sell branded items, only normal items. Examples if you want my bag, you will buy a normal bag. If you buy clothing, the clothing will be normal. I don’t sell branded items, I only sell normal items. In the new location where I’ll be, near the market, I will not be selling clothing only handbags, accessories, and small items...”.*

P: *“I think you heard what she said. So if you need something, especially young ladies... Mama Mwinka said you will find it at a good price at hers. So do contact her using the number that you see on the screen. You heard everything that has been said about Mama Mwinka’s foundation, she said she is having a sale. So everything in the shop is on sale 50% off. Brothers and sisters run there, and buy”.*

The Licensee confirmed that there was no commercial arrangement between the programme producer, the service provider, or any person connected with either, and Mama Mwinka Fashion.

Ofcom considered that the programme 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”.

We therefore sought GTL’s comments on how the programme complied with these rules.

After the opening segment featuring Mama Gudile Mwinka, the second segment of the programme was a three minute music video.

The third and final segment of the programme consisted of a discussion led by the presenter and featuring two guest contributors, Mama Olive and Pastor Dave. The contributors made a series of critical comments about two politicians from the Democratic Republic of Congo (“DRC”), Vital Kamerhe of the Union pour la Nation Congolaise (“UNC”) and Felix Moise Katumbi of the Union pour la Démocratie et le Progrès Social (“UDPS”). These two politicians are widely reported as being in opposition to the Government and policies of the current DRC President, Joseph Kabila, and as being potential candidates in the planned Presidential elections in the DRC, scheduled to take place in November 2016.

For example, the presenter (“P”), Pastor Dave (“D”) and Mama Olive (“O”) made the following statements:

D: *“The easy answer is that if Kamerhe wins we will cook him. If Kamerhe wins we will cook him – why? Because he is not worthy. You know they shouldn't stop us Congolese. Kamerhe is a man who moulded the Congo's suffering. He is a man who made the Congo's suffering... On the first day Kabila... had a meeting with Kamerhe at the fair, you could see that Kamerhe was a man who would change things. Whether he started the change, I don't know, he changed the words of the president, this person who changed his words, to convince the people of Kinshasa with money. How today will someone who used such methods take position, he is not even sorry, he faced no consequences, and he says he will be a candidate to become the president of the Congo”.*

P: *“He has all the means”.*

D: *“Having the means, having money doesn't mean that because you have money you must become president”.*

P: *“He has brains”.*

D: *“No, in the Congo that's not enough. There are many intelligent people in the country who can do the job. We certainly do not need someone with blood on*



*his hands. If he already had blood on his hands, how can we entrust him this responsibility? If someone has a history of damaging things, he will always do damage. There's no point".*

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O: *"The blood of the Congolese people, is on Kamerhe's head".*

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O: *"Kamerhe sacrificed the Congolese people but he is taking care of his family elsewhere. Congolese people think about this".*

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O: *"So if Kamerhe takes power, we will suffer greatly. We need to open our eyes to be set free. He speaks well with the blood of Congolese people. Kamerhe raped many people; he made the blood of many of our men run".*

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O: *"Kamerhe is from Rwanda. He is bad because we don't like him because he killed in this country. This country welcomed him, gave him water to drink, food to eat. The very people who gave you water to drink, food to eat, you destroyed and killed these very people. My brothers and sisters, let's open our eyes. It is not a time to relax at all".*

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O: *"I don't have any one good point in mind about Katumbi that I can mention".*

P: *"You know that he built a stadium?"*

O: *"I believe that he built a stadium with the money he got from the blood of Congolese people. Katumbi, we liked him a lot. The whole of Lubumbashi<sup>1</sup> loved Katumbi, but he destroyed them, all to increase the money in his bank account. My brothers and sisters, it is sad and bad. When you start talking about Kamerhe or Katumbi, it is sad. They destroyed us in a way that is really bad".*

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O: *"The person who wants to be president, Katumbi, just resigned from the PPRD<sup>2</sup>, not even two months ago. They seized his cars, because he didn't pay tax, they seized his plane because he didn't pay tax. Is this the model President that we need in the Congo? In the Congo we need a president who is honest, who is concerned with the Congolese people, who is concerned with his country, and also let me remind you... Katumbi is not Congolese. My brothers and sisters from Lubumbashi, don't let Katumbi fool you. Don't let Katumbi fool you".*

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<sup>1</sup> Lubumbashi is the second biggest city in the DRC.

<sup>2</sup> Parti du Peuple pour la Reconstruction et la Démocratie, the party of the current DRC President Joseph Kabila.

- P: *“Do you have proof?”*
- O: *“You want proof? In Lubumbashi they say they saw him kill children. They say they saw him kill men and women in Lubumbashi. Congolese people, let us get up and open eyes, the Congo is ours. The land is ours, we need to be proud to call ourselves, to be Congolese. We need to be proud of our country. Let us open eyes, Congolese people. They can never become presidents of our country the Congo”.*
- P: *“They get things done in the Congo and people see their work”.*
- O: *“Papa, what work do they do? The only work they do in the Congo is killing people. Every day they kill people”.*
- P: *“Have you personally seen them do it?”*
- O: *“I have seen them, who hasn’t? Who hasn’t seen them? How many deaths have happened in the Congo?”*
- P: *“Even the tiniest good thing, they haven’t done?”*
- O: *“There is no good thing that they have done. The good thing is the blood of Congolese children which has flown”.*

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- D: *“At a time when the Congo didn’t even have one plane, didn’t even have an airline, Air Zaire was shut down...there wasn’t even one plane, Katumbi allows himself the luxury of buying a whole plane for his team....The stadium that he built represents crumbs compared to the money that he stole. Crumbs compared to the money that he stole”.*

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- D: *“This Katumbi, Moise, he used to sell things, then he created a co-op with other hustlers to sell ores such as the cobalt of Gécamines<sup>3</sup>. Katumbi was already preparing the death of Gécamines since his childhood, thinking that Gécamines had to be destroyed. He would steal this cobalt and go and sell it in Zambia. All the time, his brother whose name is Katebe Katoto, he is his cousin, he has the same skin colour as him, he owns a trailer and who is also a hustler. He said, let me take it somewhere”.*

As discussed below, it was Ofcom’s view that this programme was dealing with matters of political or industrial controversy and matters relating to current public policy, namely, the policies and actions of Vital Kamerhe and Felix Moise Katumbi and their parties in relation to their opposition to the administration of Joseph Kabila, and/or the scheduled November 2016 Presidential elections in the DRC. We therefore considered this content raised issues warranting investigation under Rule 5.5 of the Code, which states:

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<sup>3</sup> Gécamines is a commodity trading and mining company based in the DRC.

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

Ofcom therefore also asked the Licensee to provide comments on how the programme complied with the above rule.

## **Response**

The Licensee said that in its broadcast schedule it provides “slots for community engagement and programmes”. This programme focused on “the French speaking communities” in Africa and two independent guests had been invited to take part in a “political debate” which related to the “coming presidential elections” in the DRC. GTL added that the guests discussed and made “critical comments” about two potential candidates in those elections, Vital Kamerhe and Felix Moise Katumbi, and expressed the view that these two candidates “were not credible at all for different reasons”. It also said that the two guests within the programme had apologised during the programme “if they offended any viewer by the language used”.

According to the Licensee, the interviewer “did not take side[s] but only facilitated the conversation” and “maintained his impartiality and was only asking questions”. GTL said that representatives of the parties of Vital Kamerhe and Felix Moise Katumbi were invited to participate in the programme but they “declined” and this fact was referred to in the programme. It added that during the programme, the presenter had invited representatives of the parties of Vital Kamerhe and Felix Moise Katumbi to contact BEN TV “in order to organise another political debate where they will have the opportunity to put forwards their opinion”. GTL also said that following the programme, a representative of the UNC, the party of Vital Kamerhe had “promised...to record a programme in response to the comments made by” the two guests in the programme in this case. However, the Licensee said that no response had been received from the UDPS, the party of Felix Moise Katumbi.

GTL also argued that “it is difficult to have a group debate with different Congolese political parties”. For example, it said that “each time when Kamerhe and Katumbi come to London, they only meet with members of their party in a private place”. The Licensee added that “It is not possible to have both parties on the same stage for [a] political exchange, instead each party would prefer not being challenge[d] by another on the stage”. In relation to the item at the beginning of the programme featuring Mama Gudile Mwinka, the Licensee said that Mama Gudile Mwinka’s participation in the programme was “free of charge” and the intention was to try to “help her”.

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that: news included in television and radio services is presented with due impartiality; and that the special impartiality requirements set out in section 320 of the Act are complied with. These standards are contained in Section Five of the Code.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without

interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand against the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy.

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. While any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code. Depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints and/or provide context in an appropriate way to ensure that Section Five is complied with.

In judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term "due" means adequate or appropriate to the subject matter. "Due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Ofcom also has a statutory duty under the Act to ensure 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 Directive ("the 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 5.5

Rule 5.5 of the Code states that:

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

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

This programme included a number of highly critical statements (see Introduction), relating to two politicians from the DRC, Vital Kamerhe of the UNC and Felix Moise Katumbi of the UDPS. These two politicians are widely reported as being in

opposition to the Government and policies of the current DRC President, Joseph Kabila, and as being potential candidates in the planned Presidential elections in the DRC, scheduled to take place in November 2016. For example, both Vital Kamerhe and Felix Moise Katumbi were described as having “*destroyed us in a way that is really bad*”.

Vital Kamerhe was variously described as: being “*not worthy*”, having “*moulded the Congo’s suffering*”, having “*blood on his hands*”, having “*a history of damaging things*”, having “*killed in this country*”. It was also stated in the programme that: “*The blood of the Congolese people, is on Kamerhe’s head*”, “*...if Kamerhe takes power, we will suffer greatly*”, “*Kamerhe raped many people; he made the blood of many of our men run*”.

In addition, the following statements were made about Felix Moise Katumbi:

*“The whole of Lubumbashi loved Katumbi, but he destroyed them, all to increase the money in his bank account”.*

*“They seized his [Katumbi’s] cars, because he didn’t pay tax, they seized his plane because he didn’t pay tax. Is this the model President that we need in the Congo? In the Congo we need a president who is honest, who is concerned with the Congolese people, who is concerned with his country”.*

*“In Lubumbashi they say they saw him kill children. They say they saw him kill men and women in Lubumbashi”.*

*“The stadium that he built represents crumbs compared to the money that he stole. Crumbs compared to the money that he stole”.*

*“This Katumbi, Moise, he used to sell things, then he created a co-op with other hustlers to sell ores such as the cobalt of Gécamines Katumbi was already preparing the death of Gécamines since his childhood, thinking that Gécamines had to be destroyed. He would steal this cobalt and go and sell it in Zambia”.*

In view of these statements we considered that the programme dealt with matters of political controversy and matters relating to relating to current public policy i.e. the policies and actions of Vital Kamerhe and Felix Moise Katumbi and their parties in relation to their opposition to the administration of Joseph Kabila, and the scheduled November 2016 Presidential elections in the DRC. Rule 5.5 was therefore applicable.

Ofcom went on to assess whether the programme preserved due impartiality. We set out in the Introduction a series of statements made in this programme which illustrated the strongly critical stance of this programme towards the policies and actions of Vital Kamerhe and Felix Moise Katumbi and their parties. As a result it was Ofcom’s view that this programme gave a predominantly one-sided view on the matters of political controversy and matters relating to current public policy referred to in the broadcast.

We therefore assessed whether the Licensee provided sufficient alternative viewpoints on the policies and actions Vital Kamerhe and Felix Moise Katumbi and their parties to preserve due impartiality.

At one point in the programme a short video clip was broadcast which featured Felix Moise Katumbi. However, this clip was introduced as illustrating Mr Katumbi having “*insulted*” Vital Kamerhe and during the clip Mr Katumbi referred to alleged criticisms

of himself by Mr Kamerhe. For example, Mr Katumbi made the following statement during the clip:

*“...our comrade Vital Kamerhe when he came to Katanga, he even went and told the head of state that I was the worst governor, that I was there to plot a coup and that I would betray the republic”.*

In our view, this video clip featuring Felix Moise Katumbi could not be reasonably described as reflecting the alternative viewpoint of either Mr Katumbi, Vital Kamerhe (or their respective parties, the UDPS and UNC) to the highly critical statements being made in this programme.

We also considered the role of the presenter in this programme. In particular, GTL argued that the interviewer “did not take side[s] but only facilitated the conversation and maintained his impartiality and was only asking questions”. In our view, at some points during the discussion about Vital Kamerhe and Felix Moise Katumbi the presenter did ask questions or make statements which could be interpreted as countering to some extent some of the highly critical statements being made by the two guest programme contributors, Pastor Dave and Mama Olive. For example:

P: *“He [Kamerhe] has all the means”.*

D: *“Having the means, having money doesn’t mean that because you have money you must become president”.*

P: *“He has brains”.*

D: *“No, in the Congo that’s not enough. There are many intelligent people in the country who can do the job. We certainly do not need someone with blood on his hands. If he already had blood on his hands, how can we entrust him this responsibility? If someone has a history of damaging things, he will always do damage”.*

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P: *“They [Kamerhe and Katumbi] get things done in the Congo and people see their work”.*

O: *“Papa, what work do they do? The only work they do in the Congo is killing people. Every day they kill people”.*

P: *“Have you personally seen them do it?”*

O: *“I have seen them, who hasn’t? Who hasn’t seen them? How many deaths have happened in the Congo?”*

P: *“Even the tiniest good thing, they haven’t done?”*

O: *“There is no good thing that they have done. The good thing is the blood of Congolese children which has flown”.*

Although the presenter could be seeking to challenge, to some extent, the comments being made by Pastor Dave and Mama Olive, we did not consider the presenter’s statements in the above exchange or elsewhere in the programme were sufficient on

their own to challenge the overwhelmingly and highly critical statements being made about Vital Kamerhe and Felix Moise Katumbi in the programme.

Ofcom's view, therefore, was that this programme presented an overwhelmingly one-sided view on the matters of political controversy and matters relating to current public policy. We noted the Licensee said that representatives of the parties of Vital Kamerhe and Felix Moise Katumbi were invited to participate in the programme but they "declined" and this fact was referred to in the programme. GTL added that during the programme, the presenter had invited representatives of the parties of Vital Kamerhe and Felix Moise Katumbi to contact BEN TV "in order to organise another political debate where they will have the opportunity to put forwards their opinion". It also said that following the programme, a representative of the UNC, the party of Vital Kamerhe had "promised...to record a programme in response to the comments made by" the two guests in the programme. However, the Licensee did not provide any evidence of alternative views on this issue in a series of programmes taken as a whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience).

In reaching our Decision in this case, we noted GTL's argument that the two guests within the programme had apologised<sup>4</sup> during the programme "if they offended any viewer by the language used". However, potential offence is a different issue to due impartiality. We therefore did not consider this apology in any way served to mitigate the Licensee's failure to provide alternative viewpoints in order to preserve due impartiality.

We also noted the Licensee's various arguments that: "it is difficult to have a group debate with different Congolese political parties"; "each time when Kamerhe and Katumbi come to London, they only meet with members of their party in a private place"; and "It is not possible to have both parties on the same stage for [a] political exchange, instead each party would prefer not being challenge[d] by another on the stage". We acknowledge the practical challenges that broadcasters can face when seeking alternative viewpoints. However, as Ofcom's published Guidance<sup>5</sup> to Section Five makes clear, if alternative views are not readily available, broadcasters can consider employing various editorial techniques, such as having available interviewees to express alternative views and/or alternative viewpoints being summarised, with due objectivity and in context, within a programme.

Taking all the above into account, we concluded therefore that Rule 5.5 was breached in this case.

#### Rule 9.4

Rule 9.4 of the Code states that:

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

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<sup>4</sup> For example, one of the two guest programme contributors, Pastor Dave said towards the end of the programme: "The viewers who have watched us err I personally apologise profusely because what I said had a few obstacles, forgive me, but this is due to the sadness and the anger that I feel when I see our great country the Congo suffer for so long, and that the very people who destroy it decide to run for office".

<sup>5</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>, paragraph 1.37.

Ofcom noted the Licensee's view that, because there was no commercial arrangement in place, references to Mama Mwinka Fashion within the programme were not made in order to promote that company's products. However, as Ofcom's Guidance<sup>6</sup> makes clear: "[Rule 9.4] applies to all references to products and services featured in programming, regardless of whether their appearance is a result of a commercial arrangement between the broadcaster or producer and a third party funder or not". The fact that there was no commercial arrangement in place does not mean that the material was necessarily compliant with the Code.

Ofcom's 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".

There were various references in this programme to the prices and availability of products sold at Mama Mwinka Fashion. For example:

*"Viewers, you have seen and heard Mama Mwinka. She says she has a sale, 50% sale. Brothers and sisters, if you're looking for a place to buy things, Mama Mwinka has a 50% sale on, everything 50% less".*

*"I don't ever sell branded items, only normal items. Examples if you want my bag, you will buy a normal bag. If you buy clothing, the clothing will be normal. I don't sell branded items, I only sell normal items. In the new location where I'll be, near the market, I will not be selling clothing only handbags, accessories, and small items".*

*"I think you heard what she said. So if you need something, especially young ladies... Mama Mwinka said your find it at a good price at hers... You heard everything that has been said about Mama Mwinka's foundation, she said she is having a sale. So everything in the shop is on sale 50% off".*

In addition to these references to prices and availability, the presenter encouraged viewers to "contact her [Mama Gudile Mwinka] using the number that you see on the screen" and to "run there [Mama Mwinka Fashion], and buy".

We concluded that the references to the prices and availability, and the calls to action from the presenter, were promotional, in breach of Rule 9.4.

### Rule 9.5

Rule 9.5 of the Code states that:

"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".

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<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/code-july-15/section9-jul15.pdf>



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 took into account the editorial context of the sequence featuring Mama Gudile Mwinka in this community affairs programme. We recognise that in this context there may be editorial justification for an interview with the proprietor of a local business such as Mama Mwinka Fashion. However, most of this segment of the programme focused specifically on the products available at Mama Mwinka Fashion. We considered that this emphasis on one company's products was not editorially justified and therefore unduly prominent. The promotional manner in which the products were referred to – as set out above under Rule 9.4 – further contributed to the undue prominence. Our Decision is that the content was therefore also in breach of Rule 9.5.

#### **Breaches of Rules 5.5, 9.4 and 9.5**

## In Breach

### Agneepath

&TV, 4 March 2016, 15:00

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#### Introduction

&TV is a general entertainment television channel for the South Asian community in the UK, broadcasting in Hindi. The licence is held by Asia T.V. Limited (“Asia T.V.” or “the Licensee”).

During routine monitoring, Ofcom viewed the 2012 Bollywood film *Agneepath* shown on &TV between 15:00 and 18:15 on 4 March 2016. The film, which was broadcast in Hindi with English subtitles, was a drama about a man (Vijay) seeking revenge against his father’s murderer (Kancha).

The film began with a caption that read:

*“The film has been certified U/A<sup>1</sup>. We advise parental guidance due to violence in the film”.*

We noted the following scenes in particular:

#### Scene One

This was broadcast about 15 minutes after the start of the film and took place while Vijay was a young boy. It featured Deenanath (Vijay’s father) being falsely accused of molesting and killing a young girl by his enemy who lived in the same village, Kancha. The sequence, which took place at night during a severe electrical storm, lasted approximately three and a half minutes. Viewers saw:

- Deenanath being attacked by an angry mob, and then dragged by the neck along the ground by Kancha towards a banyan tree on a cliff;
- Vijay fighting his way through the mob to reach his father, whose clothes were now covered in blood;
- Kancha pulling Vijay away from his father by his hair;
- Vijay being held back by the mob who called for Deenanath to be hanged;
- Kancha tying rope around Deenanath’s hands and feet, and a noose round his neck;
- Vijay struggling free from the crowd and trying to support his father as Deenanath was hoisted by his neck by Kancha into the air;
- a close-up of Deenanath’s contorted face as he lost consciousness; and,

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<sup>1</sup> U/A is a film certificate given by the Indian Central Board of Film Classification. Films certified as U/A are described as suitable for “unrestricted public exhibition – but with a word of caution that Parental discretion required for children below 12 years”.

- two full-length shots of Deenanath's body hanging from a tree and Vijay weeping beneath his father's corpse.

### Scene Two

In a scene shown just after 16:45 Vijay, now an adult, witnessed another hanging at the same tree. Slow-motion flashbacks of Deenanath's murder were shown including: the ropes being tied around Deenanath's neck, wrists and feet; a full-length shot of Deenanath thrashing around as he was hanged from the tree; and, a close-up of Deenanath's bloody face. This was followed by another near full length-shot of the swinging corpse of the man whose hanging from the tree Vijay was now witnessing.

### Scene Three

Vijay and his allies attacked a group of men taking part in an auction of young girls. The fight was approximately five minutes in duration and broadcast at about 17:15. It featured:

- numerous incidents of people being attacked with knives and guns, including spurts of blood as bullets entered or exited the victims' bodies;
- Vijay engaging in hand-to-hand combat with the auctioneer;
- Vijay squeezing his hands around the auctioneer's throat, trying to strangle him; and,
- Vijay holding the auctioneer's head under the water in a fountain. The auctioneer was seen to thrash around in the water and there were three close-up shots of the auctioneer's face under the water as he lost consciousness.

### Scene Four

Following their wedding, Vijay and his new wife, along with their wedding guests, were attacked by men with assault rifles. The two groups exchanged gunfire and there were frequent shots of blood spraying from bullet entry and exit wounds. After Vijay had killed the gunmen he looked round to see the majority of his wedding party, including his wife, had been massacred.

### Scene Five

This climactic scene, broadcast at approximately 18:00, was a bloody 12 minute fight between Vijay, Kancha and Kancha's henchmen. It featured numerous violent acts including:

- Kancha strangling Vijay both with a metal chain and by pressing his foot into his throat;
- punches that left each man's face increasingly bloody; and,
- Vijay using a large piece of metal to strike Kancha and his men.

After Vijay had fought off Kancha's henchmen, Kancha approached him from behind and stabbed him in the back. Although the actual impact of the stab was not shown, the sound of the knife entering Vijay's body could be heard. This was followed by

shots of Vijay's agonised reaction, and of the knife in Vijay's back. Shortly afterwards, there was a brief close-up of the knife being pulled out of Vijay's back before he collapsed.

Outside the building where the fight had started, Kancha slashed Vijay across his chest and back with the knife, causing bloody wounds. Kancha pulled Vijay back to his feet and stabbed him in the stomach. Again, although the stab itself was not seen, there was an almost immediate shot of the knife in Vijay's body and Kancha pulling the knife out.

With Vijay grievously wounded, Kancha dragged him by a rope around his neck towards the same banyan tree where he had hanged Deenanath. Vijay managed to snap the rope and the two men exchanged ferocious punches. Eventually Vijay lifted Kancha high above his head, threw him to the ground, and slammed a large rock into Kancha's back. Vijay then tied a rope around Kancha's neck and looped the other end around a branch of the tree. He pulled on the rope, hoisting Kancha into the air. There was then a series of shots of Kancha's body, suspended from the rope by his neck, twitching as he lost consciousness and also after his death.

The film is classified by the British Board of Film Classification ("BBFC") as '15' for "strong violence"<sup>2</sup>.

We considered the material raised issues warranting investigation under Rules 1.3 and 1.11 of the Code. These state:

Rule 1.3: "Children must also 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...and must also be justified by the context".

We therefore requested comments from the Licensee as to how the content complied with these rules.

## **Response**

Asia T.V. apologised and said that the post-watershed version of the film had been "shown in error at the wrong time". The Licensee explained that when it first received the film it checked its BBFC classification and "decided to edit the film considerably to remove all post-watershed material to allow it to run pre-watershed". However, Asia T.V. said that although both the edited and unedited versions for the film "were correctly marked up in the system" a member of staff "in error scheduled the post-watershed version in the pre-watershed slot". Asia T.V. said that this error had "led to the individual concerned being disciplined".

The Licensee told Ofcom that it continues to "conduct a full compliance inspection of all content before it is aired in the UK" and has "started giving voice over as well as text based information about the content of each film". Asia T.V. also said that it was "confident this type of scheduling error should not be repeated in the future".

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<sup>2</sup> <http://www.bbfc.co.uk/releases/agneepath-2012>

## Decision

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

Ofcom first considered whether *Agnepath* contained material unsuitable for children. As noted above, the film contained a number of very violent scenes that included brutal hand-to-hand combat, frequent gun and knife attacks, and hangings. These acts were often depicted in a particularly bloody fashion, with blood spraying from bullet entry and exit wounds and bloody slashes visible when characters were attacked with knives.

In addition, we considered the film dealt with a number of themes that were further indicative of this material being unsuitable for children.

For example, Scene One depicted the character of Deenanath being hanged from a tree. The hanging was shown over a reasonably extended duration (about 90 seconds) and included shots of:

- ropes being tied around Deenanath’s arms, legs and neck;
- Deenanath’s young son trying to support his father after he had been hoisted into the air;
- a close-up of Deenanath’s face as he lost consciousness;
- two full-length shots of Deenanath’s body hanging from the tree; and,
- Deenanath’s son weeping beneath his father’s corpse.

Elements of this scene were repeated later in the film as Vijay had flashbacks of his father’s murder. Ofcom considered such a graphic scene of a young boy witnessing his father’s hanging had significant potential to deeply frighten and unsettle any children in the audience.

We also noted that later in the film Vijay, now an adult, began working with a child trafficker. In two scenes, young girls were seen being auctioned off to the highest bidder. The girls were described by the auctioneer variously as: “*a budding rose*”, having the potential “*to turn more beautiful*”; and, “*beautiful and young*”. In our view the theme of child sex slavery in these scenes was further indicative of the film’s unsuitability for children.

For all these reasons, we considered the material was clearly unsuitable 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.

The material was broadcast between 15:00 and 18:15 on a weekday and was therefore shown at a time when it was likely that children would have been in the audience. &TV is an entertainment channel that broadcasts a variety of general interest programming including dramas, soap operas and films. We therefore considered that the violent and occasionally disturbing nature of the film would have exceeded the expectations of the audience for this this channel broadcasting at this time. For these reasons, as was acknowledged by the Licensee, the film was not appropriately scheduled and Rule 1.3 was breached.

#### 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.

As described above, the film contained frequent and bloody depictions of violence. These included three detailed scenes of hanging (as described above) and numerous incidents of people being beaten, shot or violently attacked with knives. Ofcom considered the frequency of these violent acts, and the bloody and graphic manner in which they were depicted, resulted in the violence not being appropriately limited.

We went on to consider whether the violence was justified by context.

We noted that a warning caption was shown before the film, alerting viewers to the fact it contained scenes of violence. The provision of such information – while in principle useful to viewers – was not, in itself, sufficient to justify the broadcast of very violent material well before the watershed. In our opinion the violence in this film far exceeded the expectations of the audience for this general entertainment channel broadcasting at this time.

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

We took into account that the Licensee had intended to broadcast pre-watershed an edited version of this 15-rated film. However, we were concerned that even with significant cuts the film's overarching violent, menacing and adult tone may have still resulted in this film being unsuitable for broadcast at this time. Ofcom urges all licensees to approach the scheduling pre-watershed of films classified '15' by the BBFC with caution and to consider in each case whether, even if cuts are made, they are suitable for pre-watershed broadcast.

We were also concerned that the Licensee did not appear to have procedures in place to prevent the erroneous broadcast of the unedited version of this violent and potentially distressing film in the afternoon. We noted the assurances provided by the Licensee that a similar error should not occur again. However, should any similar breaches occur in the future, we will consider taking further regulatory action.

#### **Breaches of Rules 1.3 and 1.11**

## Introduction to Sponsorship Credit findings

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Television sponsorship provides companies with an opportunity to be affiliated with the content they are sponsoring (e.g. a television programme or channel). For reasons of transparency, the Code requires broadcasters to inform viewers when a sponsorship arrangement is in place<sup>1</sup>: this is achieved through the broadcast of sponsorship credits.

Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising<sup>2</sup>. To ensure that sponsorship credits fulfil their purpose of identifying sponsorship arrangements, and are not used as a means to extend advertising airtime, the Code requires credits to be distinct from advertising and prohibits credits from containing advertising messages or calls to action<sup>3</sup>.

The sponsorship rules reflect the requirements of the AVMS Directive<sup>4</sup>. Ofcom has a statutory duty under the Communications Act to ensure the requirements of the AVMS Directive are met. Ofcom recently undertook a monitoring exercise to assess the compliance of sponsorship credits with the relevant Code rules.

During the monitoring exercise, Ofcom assessed around 100 sponsorship campaigns across a wide range of broadcasters licensed by Ofcom, including non-English speaking channels and channels which broadcast outside the UK. We were reassured that the vast majority of credits we viewed did not raise Code issues. Those credits found in breach of the rules are included in this issue of the Broadcast and On Demand Bulletin.

Ofcom would like to take this opportunity to remind licensees that, to ensure compliance with the rules, credits should make clear *both* the sponsorship arrangement and the identity of the sponsor. In addition, credits must be distinct from advertising. Ofcom recognises that when judging whether a sponsorship credit is sufficiently distinct from advertising, fine editorial judgements are often required. Broadcasters are reminded that the primary focus of credits should remain on the sponsorship arrangement itself, rather than on the sponsor and its products and/or services. In this respect, particular care is needed when using footage and slogans from a sponsor's advertising campaign in credits, to avoid advertising-type claims featuring in sponsorship credits and/or a blurring of the distinction between advertising and sponsorship.

Ofcom has provided detailed guidance for broadcasters on this issue and on how to ensure compliance with all of the sponsorship rules in Section Nine of the Code. The guidance is available at:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

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<sup>1</sup> Rule 9.19 requires sponsorship to be clearly identified by means of sponsorship credits. These must make clear: a) the identity of the sponsor by reference to its name or trade mark; and b) the association between the sponsor and the sponsored content.

<sup>2</sup> Ofcom's Code on the Scheduling of Television Advertising limits the amount of advertising a television broadcaster can transmit, in line with Article 23 of the AVMS Directive.

<sup>3</sup> Rule 9.22 of the Broadcasting Code.

<sup>4</sup> See Article 10 of the AVMS Directive.

## In Breach

### Sponsorship of Various Programmes by Enchanteur

*ABS-CBN News Channel, 18 October to 17 November 2015, various dates and times*

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#### Introduction

ABS-CBN News Channel broadcasts news and lifestyle programming from the Philippines. The licence for ABS-CBN News Channel is held by ABS-CBN Europe Ltd (“ABS-CBN” or “the Licensee”).

Various programmes broadcast on the channel between 18 October and 17 November 2015 were sponsored by Enchanteur, a toiletry brand. Ofcom noted that the sponsorship credit for Enchanteur stated “*Enchanteur, the fragrance of French romance*” but it did not contain any reference to the sponsorship arrangement.

Ofcom therefore considered that the sponsorship credit raised issues warranting investigation under Rule 9.19 of the Code, which states:

“Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- a) the identity of the sponsor by reference to its name or trade mark; and
- b) the association between the sponsor and the sponsored content”.

We therefore asked the Licensee how the sponsorship credit complied with this rule.

#### Response

The Licensee acknowledged that the sponsorship credit did not identify the sponsorship arrangement. ABS-CBN told us it would provide further training for their production staff on the requirements of the Code, and Rule 9.19 in particular.

#### 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”.

The Audiovisual Media Services (“AVMS”) Directive requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”.

The requirements of the AVMS Directive to identify sponsorship arrangements are reflected in Rule 9.19 of the Code.



In this case, although the sponsorship credit for Enchanteur shown around programming on the ABS-CBN News Channel made clear the identity of the sponsor, it did not make any reference to the sponsorship arrangement. Because the credit did not make clear the association between the sponsor and the sponsored programmes, we concluded that the sponsorship credit was in breach of Rule 9.19(b) of the Code.

**Breach of Rule 9.19(b)**

## In Breach

### Sponsorship of Saas Bahu Aur Beti by Pooja Sweets

*Aaj Tak, 18 October to 17 November 2015, various dates and times*

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#### Introduction

Aaj Tak is a 24 hour news channel broadcast in Hindi on the digital satellite platform. The licence for Aaj Tak is held by TV Today Network Ltd (“TVTN” or “the Licensee”). Saas Bahu Aur Beti is a daily entertainment programme. The programme is sponsored by Pooja Sweets, a retailer of vegetarian confectionary and savouries.

Ofcom noted that the sponsorship credit for Pooja Sweets shown between 18 October and 17 November featured onscreen text which stated “*Order Online at [website address given]*”. Ofcom considered this sponsorship credit raised issues warranting investigation under the following Code rule:

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

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

We therefore asked the Licensee how the sponsorship credit complied with this rule.

#### Response

The Licensee acknowledged that the sponsorship credit contained the call to action “*Order Online at [website address given]*” as a result of human error. TVTN advised that the situation had now been rectified and further systems put in place to ensure compliance with the Code.

#### Decision

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

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising.

To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, Rule 9.22(a) of the Code requires broadcasters to ensure that sponsorship credits do not contain advertising messages or calls to

action, or encourage the purchase or rental of the products or services of the sponsor or a third party.

Ofcom considered that the text “*Order Online at* [website address given]” included in the credit was a direct invitation to viewers to purchase the sponsor’s products. We therefore concluded that the sponsorship credit was in breach of 9.22(a) of the Code.

**Breach of Rule 9.22(a)**

## In Breach

### Sponsorship of CITV by DC Thomson

*CITV, 18 October to 17 November 2015, various dates and times*

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#### Introduction

CITV broadcasts entertainment programmes aimed at children. The licence for CITV is held by ITV Digital Channels Ltd (“ITV” or “the Licensee”).

Between 18 October and 17 November 2015 the channel was sponsored by DC Thomson, a publisher of children’s magazines. Each of the sponsorship credits for DC Thomson featured a different children’s magazine. The sponsorship credits for the magazines ‘Thunderbirds Are Go’, ‘WWE Kids’, ‘110% Gaming’, and ‘Epic!’ each featured graphics showing pages of the relevant magazine being flicked through. Each page shown was accompanied by text which was repeated in a voiceover as follows:

#### ‘Thunderbirds Are Go’ magazine

*“F.A.B MISSIONS, F.A.B ADVENTURES, F.A.B ACTION, F.A.B HEROES...THUNDERBIRDS ARE GO MAG SPONSORS CITV”.*

#### ‘WWE Kids’ magazine

*“AWWESOME FUN, AWWESOME ACTION, AWWESOME SUPERSTARS...WWE KIDS MAG SPONSORS CITV”.*

#### ‘110% Gaming’ magazine

*“LEGENDARY LOLS, FUNNIES, AND ENTERTAINMENT...110% GAMING MAG SPONSORS CITV”.*

#### ‘Epic!’ magazine

*“EPIC! FUN!, EPIC! JOKES!, EPIC! ACTION!, EPIC! HEROES!...EPIC! MAG SPONSORS CITV”.*

As individual pages were shown, text referring to elements of the magazine was highlighted. For example, during the credit featuring ‘110% Gaming’ magazine:

*“LOLS”* was shown over a spread from the magazine with features including *“DAD JOKES”* and *“TOP 10 OF EVERYTHING!”*;

*“FUNNIES”* was shown over a comic strip called *“Hugh Choob”* and a magazine feature entitled *“THE GREATEST RACING GAMES EVER!”*;

*“ENTERTAINMENT”* was shown over two magazine spreads entitled *“THE MOST EPIC MINECRAFT CREATIONS”* and *“FIFA 15 ULTIMATE TEAM ZONE!”*

Ofcom considered these sponsorship credits raised issues warranting investigation under the following Code rule:

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

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

We therefore asked the Licensee how the sponsorship credits complied with this rule.

### **Response**

The Licensee said they had approved the wording of the voiceovers and graphics on the basis that they associated the sponsor with CITV and its characteristic programming.

ITV explained that the credits used creative language, both to evoke CITV programming, and to act as a description of the content of the magazine featured. For example, it argued that the statement “*legendary LOLs, funnies and entertainment*” in the credit for ‘110% Gaming’ magazine reflected both the nature of CITV programming and the content of that publication, creating a thematic link between the channel and the sponsor. It said that the wording used had been selected to resonate with general themes running throughout the programming on CITV as a channel. The Licensee further stated that the wording used did not contain claims capable of objective substantiation in relation to the sponsor’s products and largely used subjective wording to link the sponsor magazines and the programming in an enthusiastic manner.

With regard to the visual images, the Licensee said that these used a cartoonish style and format to create further visual thematic links between the sponsor and the sponsored content. They advised that all visible magazine content was edited to remove, blur, or make illegible, any advertising messages, calls to action, prices or claims; and that the inclusion of visual and verbal sponsorship messages further distinguished the credits from advertising.

### **Decision**

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

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising.

To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, Rule 9.22(a) of the Code requires broadcasters to ensure that sponsorship credits do not contain advertising messages or calls to

action, or encourage the purchase or rental of the products or services of the sponsor or a third party.

Ofcom acknowledged that the descriptive terms used in the sponsorship credits could be applicable to both programming on CITV and the attributes of the magazines sponsoring that content. However we considered that viewers were likely to infer that the terms related to the content of the magazine rather than to CITV programmes. This was because in each case:

- a magazine feature was the visual focus of the sponsorship credit. each sponsorship credit showed the relevant magazine being flicked through and highlighted different pages of that publication; and,
- images from the magazine reflected the terms being made in the voiceover and the onscreen text. For example, the credit for 'Thunderbirds are Go' magazine showed the terms "*F.A.B. HEROES*". over a spread with a "*SCOTT TRACY FACT FILE*" and a feature entitled "*THUNDERBIRDS ARE WHO?*" with short descriptions of each of the main Thunderbirds characters.

Rule 9.22(a) requires that "Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action ..." and that "the focus of the credit must be the sponsorship arrangement itself". We noted that the Licensee had edited the magazine content to ensure that any explicit advertising messages were removed. However, in our view, the shots of the magazine, the descriptions in the voiceover and the onscreen text placed the focus of the credits on the magazine and its attributes. We therefore concluded that the sponsorship credits were in breach of 9.22(a) of the Code.

### **Breach of Rule 9.22(a)**

## In Breach

### Sponsorship of FIA WTCC by Total Quartz

*Eurosport Danmark, 18 October to 17 November 2015, various dates and times*

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#### Introduction

Eurosport Danmark is a Danish sports channel. The licence for Eurosport Danmark is held by Discovery Corporate Services Ltd (“Discovery” or “the Licensee”). FIA WTCC is a programme which covers the FIA World Touring Car Championship. The programme is sponsored by Total Quartz, an engine oil.

Ofcom noted that the sponsorship credit for Total Quartz shown between 18 October and 17 November did not appear to contain any reference to the sponsorship arrangement. The credit also included the text: *“Keep your engine younger for longer”*.

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

Rule 9.19: “Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- (a) the identity of the sponsor by reference to its name or trade mark;  
and
- (b) the association between the sponsor and the sponsored content”.

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

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

We therefore asked the Licensee how the sponsorship credit complied with these rules.

#### Response

Discovery said it takes compliance extremely seriously and that it aims at all times to comply with its regulatory requirements.

#### Rule 9.19

Discovery stated that, although it considered that viewers would be in no doubt that Total Quartz were the sponsor of the programme, it accepted that a sponsorship message should have been included in the credit. It advised that, on this occasion, the information was omitted as a result of human error.

### Rule 9.22

Discovery said that it understood the main purpose of Rule 9.22 was to ensure that sponsorship credits are not confused with advertising. In this case, the Licensee considered that viewers would not confuse the content with an advertisement. Nor did it believe that the credit would “in any way encourage the purchase or rental of the products or services of the sponsor”.

Discovery did not consider that the text “*Keep your engine younger for longer*” should be interpreted as an advertising message. The Licensee considered that the phrase was simply “a strapline”, similar to many straplines used in sponsorship credits on-air. The Licensee cited other sponsorship credits that used either companies’ well-known straplines, or descriptions of their products. It said that the Total strapline was used in a similar vein. The Licensee’s view was that the statement was not an advertising message: it was relatively inconsequential; it did not “directly encourage” viewers to purchase the product; and it contained no special promotional references. Further, Discovery did not believe the phrase to be a direct claim about the sponsor’s product that was capable of objective substantiation. In addition, there was, in the Licensee’s view, no use of promotional language or superlatives.

### **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.

### Rule 9.19

The AVMS Directive requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. The requirements of the AVMS Directive to identify sponsorship arrangements are reflected in Rule 9.19 of the Code.

Although the Total Quartz sponsorship credit identified the sponsor, it did not make any reference to the sponsorship arrangement in breach of Rule 9.19(b) of the Code.

### Rule 9.22

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service.

Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. The purpose of such credits is to identify sponsorship arrangements, they are not a platform for a sponsor to sell its products or services. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, Rule 9.22(a) of the Code requires broadcasters to ensure that sponsorship credits broadcast around programmes do not contain advertising messages or calls to action, or encourage the purchase or rental of the products or



services of the sponsor or a third party. Ofcom's Guidance on this rule states that "claims about the sponsor's products/services (in particular those that are capable of objective substantiation), are likely to be considered as advertising messages and therefore should not be included in sponsorship credits".

Ofcom noted that Discovery viewed the phrase as "a strapline", similar to those featured in other sponsorship credits. The Code does not prohibit the inclusion of company straplines in sponsorship credits. However such content must be compliant with Rule 9.22 – the inclusion in a sponsorship credit of a strapline that features a claim about the efficacy of the sponsor's products is not compatible with the Code.

In Ofcom's view, the statement "*Keep your engine younger for longer*" was a claim about the beneficial effects on car engines of using the sponsor's product in breach of Rule 9.22(a) of the Code.

### **Breaches of Rules 9.19(b) and 9.22(a)**

## In Breach

### **Sponsorship of various programmes by Natur Produkt Zdrowit** *CI Polsat, 18 October to 17 November 2015, various dates and times*

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#### **Introduction**

CI Polsat broadcasts general entertainment programming in Poland. The licence for CI Polsat is held by AETN UK (“AETN” or “the Licensee”).

Various programmes broadcast on the channel between 18 October and 17 November 2015 were sponsored by Natur Produkt Zdrowit, a manufacturer of dietary supplements. Ofcom noted that the sponsorship credit showed the company’s products, including packaging which stated “90+30 FREE CAPSULES”. The credit also featured a voiceover which stated “... *Bilomag PLUS, for memory and concentration*”. Ofcom considered this sponsorship credit raised issues warranting investigation under the following Code rule:

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

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

We therefore asked the Licensee how the sponsorship credit complied with this rule.

#### **Response**

The Licensee said it understood that there were elements of the sponsorship credit that risked blurring the line between sponsorship and advertising. It considered that the statement “... *for memory and concentration*” could be justified on the basis that it helped to identify the product and what it was for, which wouldn’t otherwise have been clear to viewers. However, AETN accepted that the text on the product packaging which stated “90+30 FREE CAPSULES” amounted to an advertising message and explained that it had been included in error because the sponsorship credit had not been seen by its London-based compliance team.

The Licensee advised that it understood the same sponsorship credit had been shown simultaneously on a number of commercial Polish channels and that it considered the credit to be broadly in line with local Polish expectations for sponsorship credits. Nonetheless, it had removed the credit from the CI Polsat schedule when the error was discovered.

In response to Ofcom’s Preliminary View, AETN said it was concerned that Ofcom considered the claim “... *for memory and concentration*” to be an implied health claim. The Licensee reiterated both that it considered this phrase was necessary to make clear the intended use of the product to the audience and that the term did not, in its view, equate to a claim about the product’s efficacy. The Licensee believed that the

effect of Ofcom's decision was to lessen significantly the value of sponsorship for any product whose purpose was not immediately clear from its name or physical appearance.

## **Decision**

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

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising.

To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, Rule 9.22(a) of the Code requires broadcasters to ensure that sponsorship credits do not contain advertising messages. Sponsorship credits may include explicit reference to the sponsor's products or services for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement provided this information does not include an advertising message or call to action.

Ofcom noted the Licensee's view that the phrase "*...for memory and concentration*" could be justified on the basis that it helped to identify the nature of the product in question. However, we considered that the phrase went beyond identifying the product as a dietary supplement. We concluded that the phrase amounted to an implied health claim which was capable of substantiation, and which would be understood by the audience to mean that taking Bilomag PLUS would have a beneficial effect on memory and concentration. As such, we considered this statement went beyond what was necessary to help the audience identify the sponsor and constituted an advertising claim. Ofcom also considered that the text "*90+30 FREE CAPSULES*" amounted to an inducement to buy the product and an advertising message. We therefore concluded that the sponsorship credit was in breach of 9.22(a) of the Code.

## **Breach of Rule 9.22(a)**

## In Breach

### Sponsorship of various programmes by Schweppes

TV3 Plus, 18 October to 17 November 2015, various dates and times

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#### Introduction

TV3 Plus broadcasts general entertainment programming in Denmark. The licence for TV3 Plus is held by MTG Limited (“MTG” or “the Licensee”).

Various programmes broadcast on the channel between 18 October and 17 November 2015 were sponsored by Schweppes, a manufacturer of soft drinks. Ofcom noted that the sponsorship credit for Schweppes featured a voiceover which stated “... *the sparkling original since 1783*”.

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

- Rule 9.22: “Sponsorship credits must be distinct from advertising. In particular:
- a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

We therefore asked the Licensee how the sponsorship credit complied with this rule.

#### Response

MTG said it considered that the sponsorship credit was distinct from advertising. It did not accept that the phrase “*since 1783*” was an advertising claim and explained that it considered this to be nothing more than a factual statement about how long the company had been established .

#### Decision

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

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising.

To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, Rule 9.22(a) of the Code requires broadcasters to ensure that sponsorship credits do not contain advertising messages.

In this case, Ofcom accepted that “... *the sparkling original since 1783*” was a statement about how long the company had been established. However, it remained our view that this statement constituted an advertising claim, designed to emphasise the heritage of the brand and reassure consumers that the company was well-established, rather than to identify the relationship between the sponsor and the programme. We therefore concluded that the sponsorship credit was in breach of Rule 9.22(a) of the Code.

### **Breach of Rule 9.22(a)**

## Resolved

### Chris Evans Breakfast Show

*BBC Radio 2, 18 March 2016, 09:10*

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#### Introduction

The *Chris Evans Breakfast Show* is BBC Radio 2's morning show. Celebrities are frequently interviewed as part of the programme.

During a live interview with the actor Jeremy Irons, listeners were given the opportunity to call in. In response to a caller's question, Jeremy Irons told an anecdote about young actors in which he remarked, *"And I say to him, 'You have a wonderful voice, have you ever listened to it?' And the actor is fucked"*.

The presenter Chris Evans immediately said *"You can't say that"*, and *"I've got to apologise on your behalf – in fact could you apologise?"* Jeremy Irons also apologised. Chris Evans went on to remind other guests in the studio that the actor's use of offensive language was serious and that *"really we can't make light of it"*.

Ofcom received one complaint that this language was inappropriate for this time of day.

Ofcom considered this material raised issues warranting investigation under Rule 2.3 of the Code, which states that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.... Such material may include, but is not limited to, offensive language..."

We therefore asked the BBC how the content complied with this rule.

#### Response

The BBC accepted this language was inappropriate and apologised for any offence caused.

The broadcaster said that in assessing the suitability of Jeremy Irons as a guest, before broadcast, Radio 2 made a risk assessment to decide whether to pre-warn him about unsuitable language. Despite programme-makers' research suggesting that Jeremy Irons was unlikely to use inappropriate language, he was "given a full face-to-face briefing on arrival". The broadcaster had reminded the actor that this programme had a large family audience, with the potential for children to be listening, and he needed to moderate his language and stories accordingly.

The BBC also pointed to the apologies immediately broadcast by both Chris Evans and Jeremy Irons for the use of inappropriate language. The broadcaster stated that "Jeremy Irons, clearly mortified by his mistake, did so without hesitation".

The broadcaster clarified that Radio 2 has now reinforced its policy to limit offensive language in live interviews by sending a warning email to the party through whom it is booking a guest, to emphasise the importance of not using offensive language. It added that in "a live studio environment such slip-ups can unfortunately happen, but

we believe appropriate measures were in place to try and guard against that eventuality, and steps taken in the immediate aftermath to mitigate the offence”.

## Decision

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

This objective is reflected in Rule 2.3 of the Code, which requires that broadcasters must ensure that material which may cause offence is justified by the context.

Ofcom research on offensive language<sup>1</sup> indicates that the word “fuck” and variations of this word are considered by audiences to be among the most offensive language. Jeremy Irons’ use of the most offensive language in this programme was therefore clearly capable of causing offence.

We went on to assess whether the potential offence was justified by the context. Radio 2 is a popular music and comedy service with a wide range of listeners, including some children. As acknowledged by the broadcaster, the *Chris Evans Breakfast Show* in particular has a large family audience, with children potentially listening at breakfast or during the school run. In Ofcom’s opinion the audience would therefore not have expected to hear the most offensive language used in this programme broadcast on this service at this time. This use of the most offensive language was therefore not justified by the context.

However, Ofcom took into consideration that: Radio 2 had a compliance policy in place to carry out a risk assessment before a broadcast of the likelihood of live guests using offensive language, and carried out such an assessment in this case; before going on air the broadcaster gave the actor a briefing reminding him of the need not to use offensive language; both Chris Evans and Jeremy Irons immediately broadcast apologies; and, following this incident, the broadcaster had further tightened up its compliance procedures to minimise the likelihood of a recurrence.

In light of all these factors, Ofcom considered this matter resolved.

## Resolved

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

## Resolved

### Danny Matthews

*The Bay (Morecambe), 27 April 2016, 08:45*

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#### Introduction

The Bay is a local commercial radio service providing adult contemporary music and information for the Morecambe Bay area. The licence holder for this service is the Bay Radio Ltd (“the Licensee”).

A listener alerted Ofcom to offensive language around 08:45 during a live call from a listener to the programme.

The presenter took a call from a competition winner he had unsuccessfully tried to call earlier in the programme. The caller initially appeared to be surprised by being connected to the presenter, and her first comment seemed to be directed to another person at her end of the line:

Presenter: *“The phone’s going, I wonder if it’s [name of competition winner] ringing back? Shall we have a look? Could be, I recognise that number. Good morning, The Bay”.*

Caller: *“Oh...it was already ringing, you fucking idiot...”.*

Presenter: *“Excuse me, you’re on the air – excuse me...You’re live on the radio, please do not swear...”.*

Shortly afterwards there was reference to the language, and an apology:

Presenter: *“Are you in shock? [referring to the caller winning a diamond ring worth £1,800] Clearly, with that language”.*

Caller: *“I apologise”.*

Presenter: *“We apologise everybody, but this lady is in shock, she’s just won a two grand ring, nearly...”.*

The next day around the same time the presenter broadcast a lengthy apology for the caller’s use of offensive language.

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast...when children are particularly likely to be listening”.

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



## Response

The Licensee explained this was a live call and both the presenter and caller apologised for the language at the time. The presenter was also directed to broadcast an apology at the same time the next day, mindful that many of the previous day's listeners would be listening again at the same time.

## Decision

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

Rule 1.14 of the Code states that "the most offensive language must not be broadcast...when children are likely to be listening". Ofcom's research on offensive language<sup>1</sup> notes that the word "fuck" and other variations of this word are considered by audiences to be amongst the most offensive language.

In discussing the meaning of "when children are particularly likely to be listening", Rule 1.5 of the Code states that the phrase particularly refers to the school run and breakfast time "but might include other times". Ofcom's guidance on offensive language on radio<sup>2</sup> says that: "broadcasters should have particular regard to broadcasting content...between 06:00 and 09:00 Monday to Friday during term-time". This material was broadcast around 08:45 on a Wednesday, which was clearly within these times. This material was therefore an example of the most offensive language being broadcast at a time when children were particularly likely to have been listening.

However, Ofcom took into account that: the offensive language was used by a caller who did not realise she had been connected to the presenter and was live on air; this was a single use of the most offensive language; the presenter intervened and both he and the caller apologised immediately; and, the presenter broadcast an additional and lengthy apology at the same time the next day.

Given all these circumstances, Ofcom considered this matter resolved.

## Resolved

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010, available at: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>.

<sup>2</sup> Ofcom Guidance, Offensive language on radio, 20 December 2011, available at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>.

## Broadcast Licence Conditions cases

### In Breach

#### Provision of information

*BEN TV, 18 October to 17 November 2015, various times*

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##### Introduction

BEN TV is an entertainment and news channel that broadcasts to Western Europe and parts of Asia and Northern Africa. The licence for this service is held by Greener Technology Limited (“GTL” or “the Licensee”).

Ofcom wrote to the Licensee on two occasions seeking information about sponsorship campaigns broadcast on Ben TV between 18 October and 17 November 2015 as part of our sponsorship monitoring. On both occasions the Licensee failed to respond to Ofcom’s request.

Ofcom considered the Licensee’s failure to respond to Ofcom’s request for information warranted investigation under Condition 12(1) of GTL’s licence, which states that the Licensee:

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

We therefore asked the Licensee how it complied with this licence condition.

##### Response

Initially GTL stated that it had responded to Ofcom’s request for information. When requested by Ofcom to provide a copy of this response, however, the Licensee said that there had been a mix-up over correspondence. It did not provide evidence of any response to Ofcom’s original requests for information but advised that the channel did not carry any sponsorship between the specified dates.

##### 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 provide information to Ofcom when such information is necessary to enable Ofcom to exercise its functions. For Television Licensable Content Service (TLCS) licences, this is reflected in Licence Condition 12(1).

Ofcom requires licensees to have measures in place to ensure information it requests is provided in a timely manner. In this case, the Licensee failed to provide information to Ofcom at the time it was requested despite requests to do so. Ofcom has therefore recorded a breach of Licence Condition 12(1).

The failure by GTL to meet the requirements of Condition 12(1) is a significant breach of its licence, because it resulted in Ofcom being unable to fulfil its statutory duty properly to assess and regulate broadcast content in this case.

Ofcom has previously recorded breaches against GTL for breaches of its licence conditions<sup>1</sup>. As stated in the Finding published in issue 300 of Ofcom's Broadcast and On Demand Bulletin, we will check the Licensee's arrangements to retain and provide recordings and information to Ofcom in the near future. We remind GTL that, should similar compliance issues arise, Ofcom will consider taking further regulatory action.

### **Breach of TLCS Licence Condition 12(1)**

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<sup>1</sup> See issues 280 and 300 of Ofcom's Broadcast and On Demand Bulletin at: [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb280/Issue\\_280\\_of\\_Ofcom's\\_Broadcast\\_Bulletin.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb280/Issue_280_of_Ofcom's_Broadcast_Bulletin.pdf) and [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb300/Issue\\_300.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb300/Issue_300.pdf)

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 3 and 15 May 2016 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Hasbro Nerf Modulus sponsorship credit	Cartoon Network	various	Sponsorship credits
Aloha Vet	Pick	03/04/2016	Scheduling

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

### Investigations conducted under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed service	Categories
Radio Ceredigion Limited	Radio Ceredigion	Format

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

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 3 and 15 May 2016 because they did not raise issues warranting investigation.

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

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Magicians	5Star	05/05/2016	Disability discrimination/offence	1
Alaska: The Last Frontier	Animal Planet	26/04/2016	Animal welfare	1
Antiques Roadshow	BBC 1	29/04/2016	Generally accepted standards	1
BBC News at One	BBC 1	09/05/2016	Generally accepted standards	1
Doctors	BBC 1	09/05/2016	Generally accepted standards	1
EastEnders	BBC 1	19/04/2016	Offensive language	1
EastEnders	BBC 1	22/04/2016	Disability discrimination/offence	1
EastEnders	BBC 1	27/04/2016	Generally accepted standards	2
EastEnders	BBC 1	27/04/2016	Materially misleading	3
EastEnders	BBC 1	27/04/2016	Scheduling	1
EastEnders	BBC 1	28/04/2016	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	28/04/2016	Generally accepted standards	1
EastEnders	BBC 1	29/04/2016	Gender discrimination/offence	2
EastEnders	BBC 1	04/05/2016	Generally accepted standards	1
EastEnders	BBC 1	05/05/2016	Generally accepted standards	1
EastEnders	BBC 1	12/05/2016	Generally accepted standards	1
Holby City	BBC 1	19/04/2016	Violence and dangerous behaviour	1
In the Club	BBC 1	10/05/2016	Generally accepted standards	1
Invictus Games 2016	BBC 1	10/05/2016	Outside of remit / other	1
MasterChef	BBC 1	21/04/2016	Animal welfare	3
Michael McIntyre's Big Show	BBC 1	30/04/2016	Religious/Beliefs discrimination/offence	1
Panorama	BBC 1	11/04/2016	Suicide and self harm	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Party Election Broadcast by the Green Party	BBC 1	27/04/2016	Under 18s in programmes	2
Party Election Broadcast by the UK Independence Party	BBC 1	27/04/2016	Outside of remit / other	1
Peter Kay's Comedy Shuffle	BBC 1	25/04/2016	Animal welfare	1
Peter Kay's Comedy Shuffle	BBC 1	02/05/2016	Animal welfare	1
The A Word	BBC 1	16/04/2016	Generally accepted standards	1
The British Academy Television Awards	BBC 1	08/05/2016	Generally accepted standards	1
The Graham Norton Show	BBC 1	29/04/2016	Under 18s in programmes	1
This Week	BBC 1	12/05/2016	Animal welfare	1
Mock the Week	BBC 2	05/05/2016	Generally accepted standards	1
Newsnight	BBC 2	28/04/2016	Race discrimination/offence	1
Normal for Norfolk	BBC 2	24/04/2016	Crime	1
Victoria Derbyshire	BBC 2	19/02/2016	Sexual material	1
World Championship Snooker	BBC 2	01/05/2016	Religious/Beliefs discrimination/offence	1
The Matt Edmondson Show	BBC Radio 1	02/05/2016	Offensive language	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	06/05/2016	Disability discrimination/offence	1
Jeremy Vine	BBC Radio 2	28/04/2016	Generally accepted standards	1
Clare in the Community	BBC Radio 4	26/04/2016	Race discrimination/offence	1
The Blame Game	BBC Radio 4	01/05/2016	Animal welfare	1
Today	BBC Radio 4	23/04/2016	Religious/Beliefs discrimination/offence	2
Woman's Hour: The 15-Minute Drama	BBC Radio 4	10/05/2016	Offensive language	1
Jim Hawkins	BBC Radio Shropshire	27/04/2015	Harm	1
The Dance	BRFM	15/04/2016	Offensive language	1
News	Capital FM (Liverpool)	04/05/2016	Outside of remit / other	1
News	Capital FM (Scotland)	29/04/2016	Commercial communications on radio	1
Channel 4 News	Channel 4	02/05/2016	Due impartiality/bias	2
Eukanuba's sponsorship of The Supervet	Channel 4	11/05/2016	Sponsorship credits	1
Food Unwrapped	Channel 4	15/04/2016	Gender discrimination/offence	1
Sex Box	Channel 4	02/05/2016	Sexual material	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
The Island with Bear Grylls	Channel 4	02/05/2016	Animal welfare	3
The Island with Bear Grylls	Channel 4	02/05/2016	Generally accepted standards	1
The Island with Bear Grylls	Channel 4	02/05/2016	Offensive language	2
The Island with Bear Grylls	Channel 4	04/05/2016	Animal welfare	2
Very British Problems	Channel 4	09/05/2016	Generally accepted standards	1
Very British Problems (trailer)	Channel 4	05/05/2016	Scheduling	1
What British Muslims Really Think	Channel 4	13/04/2016	Religious/Beliefs discrimination/offence	91
5 News at 5	Channel 5	03/05/2016	Elections/Referendums	1
Aidan: The Rarest Boy in the World	Channel 5	05/05/2016	Generally accepted standards	1
Betway's sponsorship of Live Football	Channel 5	02/05/2016	Sponsorship credits	1
On Benefits: Life on the Dole	Channel 5	28/04/2016	Offensive language	2
On Benefits: Life on the Dole	Channel 5	05/05/2016	Offensive language	1
The Secret Life of Puppies	Channel 5	28/04/2016	Materially misleading	1
The Wright Stuff	Channel 5	03/05/2016	Elections/Referendums	1
The Wright Stuff	Channel 5	03/05/2016	Generally accepted standards	1
The Gadget Show	Channel 5HD	04/05/2016	Television Access Services	1
Fort Boyard Ultimate Challenge	CITV	30/04/2016	Animal welfare	1
Betsafe's sponsorship of primetime on Dave	Dave	26/04/2016	Sponsorship credits	1
Hoff the Record (trailer)	Dave	05/05/2016	Generally accepted standards	1
Breakfast Show	Dearne FM	04/05/2016	Disability discrimination/offence	1
Alaska: The Last Frontier	DMAX	25/04/2016	Animal welfare	1
Made in Chelsea	E4	09/05/2016	Generally accepted standards	1
Nymphomaniac Vol 2	Film4	26/04/2016	Sexual material	1
Jamie and Jimmy's Food Fight Club	Food Network	18/04/2016	Generally accepted standards	1
The Irvine Beat FM Talk In with Chic Brodie	Irvine Beat FM	Various	Due impartiality/bias	1
Billy Connolly's Tracks Across America	ITV	15/04/2016	Race discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Britain's Got Talent	ITV	30/04/2016	Gender discrimination/offence	2
Britain's Got Talent	ITV	30/04/2016	Generally accepted standards	2
Britain's Got Talent	ITV	30/04/2016	Violence and dangerous behaviour	1
Coronation Street	ITV	15/04/2016	Crime	1
Emmerdale	ITV	30/03/2016	Nudity	1
Emmerdale	ITV	22/04/2016	Nudity	1
Emmerdale	ITV	28/04/2016	Generally accepted standards	1
Emmerdale	ITV	28/04/2016	Nudity	1
Emmerdale	ITV	29/04/2016	Nudity	12
Emmerdale	ITV	02/05/2016	Nudity	3
Emmerdale	ITV	03/05/2016	Product placement	1
Emmerdale	ITV	04/05/2016	Scheduling	1
Emmerdale	ITV	06/05/2016	Generally accepted standards	2
Emmerdale	ITV	09/05/2016	Generally accepted standards	1
Emmerdale	ITV	11/05/2016	Generally accepted standards	1
EU Referendum Debate	ITV	07/06/2016	Outside of remit / other	1
Her Majesty's Prison: Norwich	ITV	04/05/2016	Crime	1
ITV News and Weather	ITV	01/05/2016	Offensive language	1
ITV News at Ten and Weather	ITV	10/05/2016	Outside of remit / other	1
ITV News at Ten and Weather	ITV	11/05/2016	Elections/Referendums	2
Judge Rinder	ITV	09/05/2016		1
Loose Women	ITV	10/05/2016	Generally accepted standards	1
Loose Women	ITV	10/05/2016	Sexual material	16
McCain's sponsorship of Emmerdale	ITV	Various	Sponsorship credits	2
Sainsbury's sponsorship of ITV showcase drama	ITV	06/05/2016	Sponsorship credits	1
The Chase	ITV	04/01/2016	Transgender discrimination/offence	1
The Chase	ITV	11/05/2016	Fairness	1
The Chase	ITV	12/05/2016	Materially misleading	1
The Durrells	ITV	17/04/2016	Offensive language	2
The Durrells	ITV	01/05/2016	Offensive language	2
The Durrells	ITV	08/05/2016	Sexual material	1
The Jeremy Kyle Show	ITV	Various	Gender discrimination/offence	1
The Secret	ITV	29/04/2016	Outside of remit / other	1



Programme	Broadcaster	Transmission Date	Categories	Number of complaints
This Morning	ITV	27/04/2016	Due impartiality/bias	1
This Morning	ITV	04/05/2016	Generally accepted standards	2
Tonight at the London Palladium	ITV	13/04/2016	Generally accepted standards	2
Tonight at the London Palladium	ITV	27/04/2016	Materially misleading	1
You've Been Framed!	ITV	30/04/2016	Generally accepted standards	2
ITV News Granada Reports	ITV Granada	29/04/2016	Generally accepted standards	1
ITV News Calendar	ITV Yorkshire	29/04/2016	Generally accepted standards	2
Britain's Got More Talent	ITV2	30/04/2016	Generally accepted standards	1
Britain's Got More Talent	ITV2	01/05/2016	Gender discrimination/offence	2
The Dam Busters	ITV4	02/05/2016	Race discrimination/offence	1
Real Housewives of Cheshire	ITVBe	18/04/2016	Generally accepted standards	1
Våra omgjorda kroppar	Kanal 11	02/05/2016	Nudity	1
Berg och Meltzer	Kanal 5	21/04/2016	Crime	1
Programming	Kiss FM	29/03/2016	Competitions	1
James O'Brien	LBC 97.3FM	04/05/2016	Religious/Beliefs discrimination/offence	1
Katie Hopkins	LBC 97.3FM	01/05/2016	Elections/Referendums	1
Nick Ferrari	LBC 97.3FM	27/04/2016	Generally accepted standards	1
Nick Ferrari	LBC 97.3FM	28/04/2016	Gender discrimination/offence	1
Nick Ferrari	LBC 97.3FM	04/05/2016	Race discrimination/offence	1
Shelagh Fogarty	LBC 97.3FM	28/04/2016	Gender discrimination/offence	1
The Late Show	LBC 97.3FM	22/04/2016	Generally accepted standards	1
River Cottage Bites	More4	09/05/2016	Animal welfare	1
Sunni Talk	Muslim Ummah TV	15/04/2016	Religious/Beliefs discrimination/offence	1
Beyond Death	National Geographic	03/04/2016	Religious/Beliefs discrimination/offence	1
The Story of God	National Geographic	10/04/2016	Religious/Beliefs discrimination/offence	1
US Bounty Hunters	Pick	01/05/2016	Generally accepted standards	1
Alvin and the Chipmunks	Pop	05/05/2016	Offensive language	1
Advertisements	Radio Tay FM	11/05/2016	Advertising content	1
Game of Thrones	Sky Atlantic	02/05/2016	Generally accepted standards	1
Sky News	Sky News	06/05/2016	Materially misleading	1
Sky News	Sky News	12/05/2016	Elections/Referendums	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sky News Tonight with Adam Boulton	Sky News	22/04/2016	Elections/Referendums	1
Sky News with Anna Jones	Sky News	28/04/2016	Due impartiality/bias	1
Premier League Football	Sky Sports 1	11/05/2016	Religious/Beliefs discrimination/offence	1
Celtic v Rangers	Sky Sports 2	17/04/2016	Religious/Beliefs discrimination/offence	1
Can't Pay? We'll Take it Away!	Spike	19/04/2016	Materially misleading	1
Hawksbee and Jacobs	Talksport	08/03/2016	Generally accepted standards	1
Hawksbee and Jacobs	Talksport	02/05/2016	Race discrimination/offence	1
Kick Off	Talksport	10/05/2016	Generally accepted standards	2
Sports Bar	Talksport	09/05/2016	Fairness	1
The Alan Brazil Sports Breakfast	Talksport	12/04/2016	Religious/Beliefs discrimination/offence	1
Weekend Sports Breakfast	Talksport	30/04/2016	Race discrimination/offence	1
The Wave Breakfast with Badger and Claire	The Wave	05/05/2016	Generally accepted standards	1
Nazisternas Hemliga Dokument	TV10	30/04/2016	Religious/Beliefs discrimination/offence	1
Frank Mitchell	U105	26/04/2016	Commercial communications on radio	1
Programming	Various	Various	Due impartiality/bias	1
Programming	Various	Various	Elections/Referendums	1
Programming	Various	Various	Television Access Services	1
Grime Show	Westside 89.6FM	13/04/2016	Generally accepted standards	1
Programming	Various	Various	Outside of remit / other	1

### Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Programme	Service provider	Accessed date	Categories
Helluva Tour: The End of the Road	All4	various	Crime and disorder
Witless	BBC 3	22/04/2016	Generally accepted standards
Victoria Derbyshire	BBC iPlayer	19/02/2016	Sexual material
Advertisements	ITV Hub	11/05/2016	Advertising content
Game of Thrones	Now TV	02/05/2016	Generally accepted standards
Subtitling	Now TV / Sky Go		Television Access Services
King Ralph	Sky Movies on Demand		Nudity

For more information about how Ofcom assesses complaints about on demand services, go to: <http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/procedures-investigating-breaches.pdf>

## Complaints outside of remit

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

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

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

### Complaints about television or radio programmes

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	05/05/2016	Due impartiality/bias	1
BBC News	BBC 1	11/05/2016	Elections/Referendums	1
BBC News at One	BBC 1	12/05/2016	Due impartiality/bias	1
BBC News at Six	BBC 1	09/05/2016	Elections/Referendums	1
BBC News at Six	BBC 1	11/05/2016	Elections/Referendums	3
Election 2016	BBC 1	05/05/2016	Due impartiality/bias	5
Election 2016	BBC 1	11/05/2016	Elections/Referendums	1
Question Time	BBC 1	10/03/2016	Due impartiality/bias	1
Referendum Debate (pre-transmission)	BBC 1	21/06/2016	Outside of remit / other	1
The Daily Politics	BBC 2	03/05/2016	Due impartiality/bias	1
The Daily Politics	BBC 2	09/05/2016	Elections/Referendums	1
BBC News	BBC News Channel	12/05/2016	Elections/Referendums	1
Victoria Derbyshire	BBC News Channel	27/04/2016	Due impartiality/bias	1
Robert Elms	BBC Radio London	05/05/2016	Elections/Referendums	1
Advertisements	Channel 4+1	02/05/2016	Advertising content	1
Advertisements	ITV	01/05/2016	Advertising content	1
Advertisements	ITV	09/05/2016	Advertising content	1
Advertisements	ITV2	30/04/2016	Advertising content	1
Advertisements	More4	05/05/2016	Advertising content	1
Advertisements	More4	11/05/2016	Advertising content	1
Advertisements	Sky Arts	02/05/2016	Advertising content	1
Advertisements	STV	10/05/2016	Advertising content	1
Advertisements	Talksport	11/05/2016	Advertising content	1
Advertisements	Tiny Pop	28/04/2016	Advertising content	1
Advertisements	Various	Various	Advertising content	1
BBC News	Various	Various	Due accuracy	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
BBC News	Various	Various	Due impartiality/bias	2
Advertisements	Yesterday	30/04/2016	Advertising content	1

### **Complaints about on demand services**

<b>Programme</b>	<b>Service name</b>	<b>Accessed date</b>	<b>Categories</b>
Advertisements	ITV Hub	11/05/2016	Advertising content
Mr. Young	Netflix	26/04/2016	Protection of under 18s

For more information about how Ofcom assesses complaints about on demand services, go to: [http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules\\_and\\_guidance.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules_and_guidance.pdf)

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 3 and 15 May 2016.

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

Programme	Broadcaster	Transmission date
ITV London News	ITV	20 April 2016
Takbeer Special	Takbeer TV	1 March 2016
The Day The Hand Will Speak	Unity FM (Birmingham)	26 March 2016
Danny Matthews	The Bay (Morecambe)	27 April 2016

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

### Investigations launched under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed Service
Awaaz Radio Limited	Awaaz Radio
Celtic Music Radio Limited	Celtic Music Radio
Gravity FM CIC	Gravity FM
Community Broadcast Initiative Tyneside Limited	NE1FM
Pulse Media Broadcasting Limited	Pulse radio
Radio Cardiff Limited	Radio Cardiff
Radio Fiza Limited	Radio Faza

<b>Licensee</b>	<b>Licensed Service</b>
St Peters Studio and Community Radio Limited	Saint FM
Bridgwater Young Men's Christian Association	Sedgemoor FM
Ujima Radio CIC	Ujima Radio
Wythenshawe Community Media	Wythenshawe FM

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/general-procedures/>