

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

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

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

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

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

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

Note to Broadcasters

Election programming

On 8 June 2017, a General Election will be taking place across the UK.

Ofcom reminds all broadcasters of the rules for election-related programming. In particular, broadcasters should ensure that they comply with Sections Five (Due Impartiality)¹ and Six (Elections and Referendums)² of the Code, as well as the prohibition on political advertising contained in section 321 of the Communications Act 2003 and reflected in Section 7 of the BCAP Code. These various rules already apply to any coverage of the various local elections taking place across England, Wales and Scotland on 4 May 2017³.

On 9 March 2017, Ofcom published a Statement⁴ setting out:

- our decision to remove the concept of the list of larger parties from Section Six of the Code and the rules on party political and referendum broadcasts (“PPRB Rules”); and
- changes to apply Section Five (due impartiality and due accuracy) and Section Six of the Code, to the BBC.

Our changes to Sections Five and Six of the Code and the PPRB Rules came into effect on 22 March 2017, the date when Ofcom became responsible for enforcing these sections for BBC content.

Following the removal of the concept of larger parties from our rules and to help broadcasters to take editorial decisions during election campaigns, we published⁵ an annual digest of past electoral and current support ahead of the elections taking place on 4 May 2017. This also set out the factors we consider when making decisions on election-related programming, including putting more weight on evidence of past electoral support, than evidence of current support (e.g. opinion polls).

As soon as possible after the elections on 4 May 2017, we intend to publish an updated version of the digest, ahead of the General Election. This will incorporate the results of the 4 May 2017 local elections and relevant opinion poll data up until the end of April 2017.

¹ See https://www.ofcom.org.uk/data/assets/pdf_file/0008/100115/broadcast-code-april-2017-section-5.pdf Ofcom's published Guidance to Section Five can be found at https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf

² See https://www.ofcom.org.uk/data/assets/pdf_file/0009/100116/broadcast-code-april-2017-section-6.pdf Ofcom's published Guidance to Section Six can be found at https://www.ofcom.org.uk/data/assets/pdf_file/0034/99178/broadcast-code-guidance-section-6-march-2017.pdf

³ See Ofcom's Note to Broadcasters in Broadcast and On Demand Bulletin 325, 20 March 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0030/98913/issue-325.pdf

⁴ See https://www.ofcom.org.uk/data/assets/pdf_file/0030/98148/Due-impartiality-and-elections-statement.pdf

⁵ See https://www.ofcom.org.uk/data/assets/pdf_file/0031/98149/Election-Digest.pdf

The rules in Section Six of the Code will apply when the "election period" commences. In the case of the General Election being contested on 8 June 2017, this period begins with the dissolution of Parliament on 3 May 2017.

Ofcom will consider any breach arising from election-related programming to be potentially serious and will consider taking appropriate regulatory action, which could include the imposition of a statutory sanction.

If a complaint is made which raises a substantive due impartiality issue during the election period and in Ofcom's opinion the complaint, if upheld, might require redress before the election, it will be considered by Ofcom's Election Committee⁶. In these cases, it will be necessary for Ofcom to act quickly to determine the outcome in a proportionate and transparent manner before the election, and broadcasters should be prepared to engage with Ofcom on short timescales.

For further information about the General Election being contested on 8 June 2017, broadcasters should visit the Electoral Commission website at www.electoralcommission.org.uk

If broadcasters would find it helpful to discuss the rules in Sections Five and Six of the Code, they can contact Ofcom (adam.baxter@ofcom.org.uk or stephen.taylor@ofcom.org.uk).

⁶ See Ofcom Election Committee's Terms of Reference <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/election-committee/terms-of-reference/>

Broadcast Standards cases

In Breach

Fun Kids Breakfast Show

Fun Kids, 20 January 2017, 07:30

Introduction

Fun Kids Breakfast Show is broadcast on Fun Kids, a radio station dedicated to children's programming. The licence for Fun Kids is held by Children's Radio UK Ltd ("CRUK" or "the Licensee").

A complainant alerted Ofcom to offensive language included in a song. The song was a remix of "Greased Lightning" from the original soundtrack of the film "Grease", and contained the following offensive language:

"she's a real pussy wagon".

We considered this raised potential issues under Rule 1.15 of the Code which states:

"Offensive language must not be used in programmes made for younger children except in the most exceptional circumstances".

We sought the Licensee's comments on how the material complied with this rule.

Response

CRUK said it had a "12 year unblemished regulatory record" demonstrating, in its view, the attention it gives to ensuring its material is compliant with the Code.

The Licensee explained that the inclusion of the offensive language was the result of a mistake. It said that when adding this song to the station playlist, station staff did not "spot" the words "*pussy wagon*" in the "well known song derived from the PG-rated film Grease". CRUK added that if staff had picked up the offensive language, "it would not have been included on the playlist". It said that since being alerted by Ofcom to the complaint, the material had been removed from the station playlist.

The Licensee stated that the content team "are disappointed with themselves that it was broadcast, and it has served as a reminder the importance of closely reviewing all material – whether heritage or new". It said that it had instigated "a revised policy where two people now look and listen over new music added to the station's play out system".

Decision

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

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

Rule 1.15 of the Code states that offensive language must not be used in programmes made for younger children except in the most exceptional circumstances. Ofcom research on offensive language² clearly indicates that audiences consider the word "pussy" and similar words offensive and usually unacceptable pre-watershed.

In this case, a remix of the song "Greased Lighting" from the soundtrack of the movie "Grease" was played in a programme dedicated to children and included the words "*she's a real pussy wagon*". The Licensee acknowledged that the inclusion of the offensive language was the result of an oversight by the compliance team.

Ofcom took into account that the Licensee had: apologised in its representations to Ofcom; removed the material from the station playlist; and taken steps to ensure a similar incident would not recur. Nonetheless we considered that there were no exceptional circumstances in this case to justify the inclusion of the word "*pussy*" in children's programming.

Our Decision is that the broadcast breached Rule 1.15.

Breach of Rule 1.15

² On 30 September 2016, Ofcom published updated research in this area: Attitudes to potentially offensive language and gestures on television and radio:

(http://www.ofcom.org.uk/data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf);
(http://www.ofcom.org.uk/data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf).

In Breach

Banks Chronicles

ROK, 20 February 2017, 16:30

Introduction

ROK is a movie channel aimed at the West African community which broadcasts predominantly Nigerian movies and drama series. The Licence is held by Iroko Partners Limited ("IPL" or "the Licensee").

Banks Chronicles is a drama series set in Lagos about an affluent family, the Banks.

A complainant alerted Ofcom to a sex scene involving two characters, which was broadcast at 17:02. The scene lasted for approximately 30 seconds. The complainant considered the scene was unsuitable for broadcast at a time when children might be viewing.

A PG-type logo¹ was broadcast at the start of this episode. The scene showed the characters in bed in a dark bedroom. They were clothed from the waist up, with their lower bodies covered by a sheet. The male character was shown on top of the female character and the couple were depicted having sex. This was accompanied by dramatic music, sounds of the bed creaking and shots of the female character's hands clasping the bed post.

Ofcom considered this raised issues under Rule 1.20 of the Code which states:

"Representations of sexual intercourse must not occur before the watershed (in the case of television)...unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed...and must be appropriately limited".

We sought comments from the Licensee as to how the material complied with this rule.

Response

The Licensee explained that the content was broadcast because of a scheduling error. Its scheduling system set an age rating by series, rather than by the content of an individual episode. In this case, it said that the series was rated as suitable for broadcast pre-watershed and there was no specific warning that this episode differed from the series as a whole.

The Licensee pointed out that ROK is a niche African movie channel and that its audience expectations differed from those of a more mainstream UK audience. However, it accepted that the sexual nature of this material was unsuitable for broadcast pre-watershed.

IPL stated that it was mindful of its responsibilities to protect children and appropriately limit any potential offence to viewers. It said it had well-trained compliance staff and robust compliance procedures in place. It explained that most of the channel's content was suitable for broadcast pre-watershed. However, where required, material was edited to ensure it was

¹ 'PG' is widely recognised as the film classification 'Parental Guidance' applied by the British Board of Film Classification 'BBFC'.

appropriate. Where this was not possible for editorial reasons, such as where the content had adult themes, this material would be scheduled post-watershed.

Following the scheduling error in this case, the Licensee explained that it had implemented a procedure where all content within a series must be edited and rated consistently as either pre-watershed or post-watershed. In addition, it said that it had checked its back catalogue to prevent a reoccurrence.

The Licensee explained that it had used a PG-type logo, which differed from the BBFC certification in its "background, colours and animation", before the episode started as "a guideline" to advise viewers that the content, although suitable for "general viewing", may be "unsettling" for younger or sensitive children. IPL said that in future it would consider changing the PG-type logo that it had included in its programming and adding the following voiceover statement: "ROK have classified this movie (or programme) (or feature) as PG – Parental Guidance – which means it is suitable for general viewing, although some scenes may be unsuitable for young children".

Decision

Reflecting our duties under the Communications Act 2003², Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.20 requires broadcasters to ensure that representations of sexual intercourse must not occur before the watershed unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed and must be appropriately limited.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

This scene was featured in a pre-watershed drama series. Ofcom could not identify any serious educational purpose for the inclusion of this scene, as required by Rule 1.20. Although there was some editorial justification for the scene in the context of this drama, and it was broadcast on a channel with a greater appeal to adults, we did not consider that this was sufficient to justify its broadcast in this programme at 17:02.

We took into account that this scene was limited to some extent as both characters were clothed and the room was dark. However, we did not consider these factors were sufficient to limit the content appropriately for broadcast at this time. Ofcom's Decision is that the material was a clear breach of Rule 1.20.

A 'PG' certification is a classification used by the BBFC to denote a film suitable for general viewing which contains some scenes which may be unsuitable for younger children. It is widely understood by consumers to indicate that the material has been reviewed and certified by the BBFC. Broadcasters are not entitled to use such a symbol unless the content has been classified by the BBFC.

Warnings may be a useful guide to viewers in some circumstances. However, warnings must: not indicate to viewers that the content has been certified by the BBFC when this is not the

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

case; be accurate in terms of advice on the suitability of the content; and, may not alone be sufficient to ensure that material is appropriate for broadcast before the watershed. Ofcom has previously advised³ broadcasters that all the BBFC certification symbols are both registered and unregistered intellectual property rights of the BBFC and cannot be used unless under licence. These rights extend to similar looking symbols. Ofcom advises broadcasters not to use the BBFC symbols or similar looking symbols without prior consultation with the BBFC.

Breach of Rule 1.20

³ Issue 317 of Ofcom's Broadcast and On Demand Bulletin, published on 21 November 2016
https://www.ofcom.org.uk/_data/assets/pdf_file/0023/94271/Issue-317.pdf

In Breach

Drivetime

North Manchester FM 106.6, 21 February 2017, 18:05

Introduction

North Manchester FM 106.6 is a community radio station providing a service for people in the North Manchester area. The licence for the service is held by North Manchester FM Community Interest Company ("North Manchester FM" or "the Licensee").

Drivetime is an evening radio show which broadcasts on Mondays, Tuesdays, Wednesdays and Fridays between 17:00 and 19:00. On Tuesdays it focuses on playing urban music.

A complainant alerted Ofcom to offensive language in two songs:

- "Samantha" by Dave and J Hus was broadcast at approximately 18:05 and included the lyrics: *"I don't give a fuck what you done"*; and
- "Black" by Donae'O featuring JME and Dizzee Rascal, which featured the lyrics: *"Always the fucking case"*.

We considered the language raised potential issues 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 did not consider it was necessary to seek formal representations from the Licensee before reaching a Preliminary View in this case but, in line with our published procedures¹, North Manchester FM was provided with the opportunity to make representations on Ofcom's Preliminary View

Response

North Manchester FM explained that the presenter believed he was playing the clean radio edits of the tracks and did not apologise on air because he was not aware of the error until Ofcom notified the Licensee of the complaint.

The Licensee stated that the presenter fully understood the mistake and in future will check all tracks before playing them to prevent a repeat of this error.

In addition, North Manchester FM said that it will conduct a refresher session on the Broadcasting Code for its presenter and had shared Ofcom's research on "Attitudes to potentially offensive language and gestures on TV and radio" with the presenter and all volunteers at the station.

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Decision

Reflecting our duties under the Communications Act 2003², Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states the most offensive language must not be broadcast when children are particularly likely to be listening. Ofcom research³ on offensive language clearly states that the word “fuck” and similar words are considered by audiences to be among the most offensive language.

Ofcom's published Guidance on offensive language on radio⁴ states that the period “when children are particularly likely to be listening” includes the times “between 06:00 and 19:00... from Monday to Fridays during school holidays”.

Ofcom noted North Manchester FM's submission that this offensive language was broadcast in error, and that the Licensee had taken steps to prevent recurrence. However, in this case the broadcast of the words “fuck” and “fucking” were clear examples of the most offensive language broadcast when children were particularly likely to be listening, i.e. at approximately 18:05 on a Tuesday evening during the half-term school holiday in Manchester. We therefore concluded that the broadcast was in breach of Rule 1.14.

Breach of Rule 1.14

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

³ Attitudes to potentially offensive language and gestures on TV and radio, September 2016. See page 6 of the Quick Reference Guide:

https://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf

See also the main report:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf

In Breach

To Be The Best

True Entertainment, 20 January 2017, 16:00

Introduction

True Entertainment is a general entertainment channel available on digital satellite and terrestrial platforms, owned and operated by CSC Media Group Limited ("CSC Media" or "the Licensee").

To Be The Best is a 1992 TV movie. A complainant alerted Ofcom to a scene that the complainant considered contained "sexualised nudity", which they said was unsuitable for broadcast at a time when young children might be viewing

The scene in question showed a couple in a bedroom reacting to material on a television screen, which clearly featured, for a period of 20 seconds, images of a topless woman dancing in a sexually provocative manner.

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

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

We therefore sought the Licensee's comments on how the material complied with this rule.

Response

The Licensee said it had investigated the matter and found that the offending content was broadcast as a result of human error in its Quality Control and Compliance team.

While acknowledging that there was no editorial justification for the broadcast of this material during the day, CSC Media said the topless dancer "was incidental and not full-frame as it was a scene included on a TV set in shot".

The Licensee also said that the True Entertainment has a target audience of women over 45 and has very low child audience figures, and data for the relevant timeslot indicated there were no children watching.

It added that the compliance editor concerned had been made aware of the seriousness of their error and "guidelines about the significance of incidental shots within primary action had been reissued."

Decision

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

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

Rule 1.3 states that children must be protected from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of broadcast; and likely audience expectations.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Ofcom first had to consider whether this broadcast material was unsuitable for children.

The scene in this case featured a couple watching material on a television screen which featured for a period of 20 seconds clear images of a woman removing her bra and then dancing in her knickers in a sexually provocative way. CSC Media said the topless dancer "was incidental and not full-frame as it was a scene included on a TV set in shot". However, in our view, the images of the topless women were clearly visible and we therefore considered this content was unsuitable for children.

Ofcom therefore went on to consider whether this material was appropriately scheduled.

True Entertainment is a television channel not aimed at children, but rather, as the Licensee said that the channel is targeted at women over the age of 45. In addition, *To Be The Best* was a film unlikely to have appealed to children. However, we considered the 16:00 transmission time was when children were likely to have returned from school, which increased the likelihood of them being available to view this scene.

CSC Media's acknowledged that there was no editorial justification for the broadcast of this material during the day but said it had taken steps to improve compliance.

Ofcom's decision is that the material was inappropriately scheduled and in breach of Rule 1.3 of the Code.

Breach of Rule 1.3

In Breach

Item for the State Government of Punjab *PTC Punjabi, 14 to 30 November 2016, various times*

Introduction

PTC Punjabi is a news and general entertainment service broadcasting in Punjabi, and originating from India. The channel is available in the UK on a digital satellite platform. The licence for PTC Punjabi is held by G Next Media UK Limited ("GNM UK" or "the Licensee").

A complainant drew Ofcom's attention to what they considered to be an advertisement placed by Shiromani Akali Dal – a political party in India – in breach of the ban on political advertising contained within the Communications Act 2003 ("the Act").

Ofcom obtained a recording of the item, which was 90 seconds long and appeared in the middle of an advertising break, between spot advertising. It contained both audio and text in Punjabi. We therefore commissioned an independent translation of the item.

The item opened with an elderly Sikh man looking at a photograph of a deceased relative. He reflected (as a voiceover):

"Had there been no financial support of five lakhs from the insurance scheme started by Mr Badal¹, your unfortunate death might have ruined [the] family. His insurance scheme started has also taken care of the health of your sick father".

This sequence was accompanied by a caption, which read:

"Bhagat Pooran Singh Health Insurance Scheme. Compensation of 5 Lakh² Rs [Rupees] in case of death of the head of the family member. Families of Blue Card holders will be entitled for free treatment of Rs 50,000/annum".

The elderly man walked outside after being presented with a meal by his daughter, and reflected:

"Now, unlike in the past, while having breakfast I do not worry about how to arrange food for the dinner. Because of the Wheat Flour-Pulses Scheme³ of Mr Badal, every poor person has food in his stomach".

This sequence was accompanied by a caption, which read:

"Wheat Flour-Pulses Scheme, wheat @ Rs. 2/ Kg., Pulses @ Rs. 30/Kg. Beneficial for 14.1 million poor".

¹ Prakash Singh Badal is the Chief Minister of Punjab and a member of the political party, Shiromani Akali Dal.

² One Lakh equals 100,000

³ A scheme where highly subsidised food is provided to poor families

The elderly man watched his daughter prepare to go to school on a bicycle, and reflected:

"It was not in my capacity to send our studious Jeeti to a distant school. But now she goes to school. She rides to her school on the free bicycle given by the government".

This sequence was accompanied by a caption, which read:

"Mai Bhago Education Scheme. Free Bicycles to 11th and 12th class girl students of government schools. 4, 82,703 girl students of government schools were given free bicycles".

The elderly man looked at his wife and daughter happily together, and reflected:

"By doubling the pension of needy people who lack support, like me and Manjeet, our honour and respect has increased. Now I can fulfil the demands of these children".

This sequence was accompanied by a caption, which read:

"The Pension Scheme. Pensions of old age people, widow/destitute women, dependent children, and handicapped persons have been doubled. Beneficiaries 17,37,791 and total amount 52.6726 billion rupees".

At night, while standing outside his house, as he watched members of his family talking to each other or reading, the elderly man reflected:

"Since the time you have left us, the sorrows of our heart have never lessened, but by providing free electricity to this dark house, Mr Badal has brought light to this house. The light of this electricity will brighten the future of your children".

This sequence was accompanied by a caption, which read:

"200 free electricity units to SC/BC/BPL⁴ families".

The item ended with the elderly man talking directly to camera:

"Because of the scheme for providing money for marriages of girls, with all happiness, our Rano has also gone to her marital home. I am thankful to Mr Badal from my heart. He has improved every aspect of life of needy people like us; he has transformed every house of Punjab into a prosperous house".

We sought the Licensee's comments on the terms under which the item had been included in its schedule. The Licensee informed us that the item had not been transmitted in return for payment or other valuable consideration.

Ofcom concluded that the item must therefore be regarded as programme material and was subject to the Code.

⁴ A reference to the Indian caste system: SC (Scheduled Caste), BC (Backward Classes), BPL (Below Poverty Line)

As the item consisted solely of a message that provided details of the Chief Minister of Punjab and thanks for various welfare and education schemes introduced by the State Government of Punjab⁵ we considered that it raised issues under the following rules of the Code:

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

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

Ofcom requested the Licensee's comments on how the item complied with these rules.

Response

GNM UK confirmed the item had been broadcast 95 times over the period, 14 to 30 November 2016.

GNM UK said the item "explains the schemes run by the Government of Punjab" rather than a political party and "is the equivalent of a public service announcement informing viewers of a government-scheme".

The Licensee noted the item "promotes welfare and education schemes by the government of Punjab and refers to the Chief Minister of the Punjab government, Mr Badal". GNM UK said it considered this item to be "the equivalent of naming the Mayor of the London Assembly in a public service announcement of a London community scheme".

The Licensee explained it scheduled the announcements in advertising breaks and treated the content "like a Central Office of Information (COI) film and did not charge for it as it forms part of [the channel's] corporate social responsibility policy".

GNM UK said the item was scheduled as "a service to our viewers who have relations in the Punjab and may not be aware of these health and education schemes".

After receiving Ofcom's Preliminary View on this issue, the Licensee said it disagreed with Ofcom's opinion of the item. GNM UK said the material was shown "completely independent of any election process". The Licensee also said that in the UK, the Government Communications Service⁶ runs campaigns "on topics ranging from public health to teacher recruitment and promoting apprenticeships not simply campaigns to raise awareness of a social issue to change public attitudes". GNM UK highlighted the Public Health England advertisements for One You, which promotes a healthy lifestyle, as an example of political advertising which has been permitted which it felt was the equivalent of the *Item for the State Government of Punjab*.

⁵ At the time of broadcast, the State Government of Punjab was a coalition of two political parties – Shiromani Akali Dal, which was the largest party in the state assembly, and Bharatiya Janata Party.

⁶ <https://gcs.civilservice.gov.uk/>

Decision

Reflecting our duties under the Communications Act 2003⁷ ("the Act"), Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.5 requires that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

The Code makes clear that the term "due" means adequate or appropriate to the subject matter. "Due impartiality" does not therefore mean an equal division of time has to be given to every view, or that every argument has to be represented. Due impartiality can be preserved in a number of ways, and it is an editorial decision for the broadcaster as to how it ensures this. Depending on the specific circumstances, it may be necessary to reflect alternative viewpoints in an appropriate way. The context in which programme material appears, including the particular characteristics of the programme, is important to judgments of what is duly impartial.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcasters' freedom to discuss any controversial subject or point of view and compliance with Section Five.

Ofcom's duties under the Act, as set out in Rule 9.2 also require that a distinction is maintained between advertising and editorial content.

The purpose of this distinction is to prevent viewers being confused or misled about the status and purpose of the material they are watching and to protect viewers from surreptitious advertising. It also prevents editorial content from being used to circumvent the restrictions on advertising minutage.

Rule 5.5

This rule states:

"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".

It is not Ofcom's role to question or investigate the validity of the political views expressed in a case like the current one, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing any particular controversial subject or including any particular point of view in a programme. To do so would be an unacceptable restriction on a broadcaster's freedom of expression.

Ofcom first considered whether Rule 5.5 applied in this case – that is, whether this programme concerned matters of political or industrial controversy or matters relating to current public policy.

⁷ <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

We considered the item clearly promoted a portrayed success of various public policies of the State Government of Punjab. The broadcast material showed how a grateful (fictional) family had benefitted from resultant welfare and education schemes, many of which were initiated by Prakash Singh Badal, the Chief Minister of Punjab. The item also provided details of the benefits associated with these schemes in on-screen graphics and ended with a claim that Mr Badal had *"improved every aspect of life of needy people"* and *"transformed every house of Punjab into a prosperous house"*. Ofcom was therefore of the view that the broadcast material concerned matters of political controversy and matters relating to current public policy, and that Section Five of the Code was engaged.

Ofcom was of the view that the item was a self-standing expression of support for the State Government of Punjab on current public policy. The item did not contain any alternative views, which could be reasonably classed as criticising or opposing those of that Government.

Ofcom was also mindful that the Punjab state elections were to be held on 4 February 2017, and the item was broadcast during the height of the election campaign in the Punjab. At the time the item was broadcast, the State Government of Punjab was a coalition of two political parties – Shiromani Akali Dal, which was the largest party in the state assembly, and Bharatiya Janata Party.

Ofcom took into account the Licensee's view that the item was the equivalent of a public service announcement. We disagreed. Public service announcements generally aim to raise awareness of a particular social issue to change public attitudes. This sequence portrayed the success of various welfare and education schemes, many of which were initiated by the Chief Minister of Punjab, Prakash Singh Badal, as leader of the State Government of Punjab. The item would have been seen as favourable both to that Government and, at the time of an election, to Shiromani Akali Dal, the political party Mr Badal represents.

For the reasons stated above, Ofcom did not consider GNM UK had preserved due impartiality on matters of political controversy or public policy. Ofcom's decision is that the item therefore breached Rule 5.5 of the Code.

Rule 9.2

This rule states:

"Broadcasters must ensure that editorial content is distinct from advertising".

The item was a self-standing message of short duration which appeared to have been produced by, or on behalf of, the State Government of Punjab. It appeared in the middle of an advertising break, between spot advertisements, and formed part of a sequence without any announcement or introduction. There were no conventional programme elements present (i.e. a presenter, a studio or programme titles etc.). It strongly resembled an advertisement and was, in Ofcom's view, very much more likely to be perceived by viewers as an advertisement rather than as a programme.

Ofcom concluded that it was not distinct as programme material. It is therefore Ofcom's decision that Rule 9.2 was breached.

While we noted GNM UK's assertion that UK-based licensees broadcast similar content within advertising space, the Act enables Government departments to be exempt from the rules of

political advertising⁸ (such as the current campaign for One You from Public Health England). But in this case, the item shown on PTC Punjabi was editorial content rather than advertising, and therefore the example is not comparable.

Breaches of Rules 5.5 and 9.2

⁸ Section 321 (7) <http://www.legislation.gov.uk/ukpga/2003/21/section/321>

In Breach

The Newshour

Times Now, various dates, August and September 2016, 16:30

Introduction

Times Now is a television channel broadcasting news and current affairs content in English. The channel originates from India and is rebroadcast on the satellite and terrestrial platforms in the UK. The licence for Times Now is held by Times Global Broadcasting Company Limited ("Times Global" or "the Licensee").

The Newshour is a daily current affairs discussion programme broadcast at 21:00 in India. During August and September 2016, it was simulcast at 16:30 in the UK. At the time of Ofcom's investigation, this programme was presented by the journalist Arnab Goswami. Each edition typically featured two debates, each of approximately an hour's duration. In each debate there would be around six to eight participants. The faces of each participant, whether in the studio with the presenter, or participating from other locations by satellite link, would appear in a box on screen. During the majority of each programme, the boxes showing the presenter and debate participants were then presented on screen in two rows.

Background

From July to September 2016, there was a period of increased tension between India and Pakistan, focusing in particular on the disputed region of Kashmir which is claimed by both countries. These tensions provided the backdrop to the various editions of *The Newshour*, which Ofcom considered in this case. Key events during this period included:

- 8 July 2016: Indian security forces reportedly killed Burhan Wani, a Kashmiri separatist militant and a leading member of Hizbul Mujahideen, which had been designated as a terrorist organisation by several countries including India. His death prompted widespread disturbances in Indian-occupied Jammu and Kashmir, which led to the imposition of curfews by the Indian authorities during July and August 2016;
- 12 July 2016: Pakistan's Prime Minister, Nawaz Sharif, was reported to have expressed his shock at the killing of Burhan Wani;
- 1 August 2016: An Islamic political party in Pakistan, Jamaat-e-Islami, organised a march of several thousand people towards the border crossing with India at Wagah. It is reported that the march was in solidarity with the population of Indian-occupied Jammu and Kashmir. A leader of Hizbul Mujahideen, Syed Sallahudin and also Hafiz Saeed, who was alleged to have been involved in the 2008 terrorist attacks on Mumbai, were reported to have participated in the march;
- 18 September 2016: Four terrorists, widely reported as being part of a Pakistani-based terrorist group, attacked an Indian military outpost near the town of Uri in the Indian-occupied area of Jammu and Kashmir. It was reported that 17 Indian soldiers were killed in the attack;

- 21 September 2016: Nawaz Sharif, speaking¹ at the United Nations General Assembly (“UNGA”) said: “A new generation of Kashmiris has risen spontaneously against India’s illegal occupation – demanding freedom from occupation. Burhan Wani, the young leader murdered by Indian forces, has emerged as the symbol of the latest Kashmiri Intifada”; and
- 26 September 2016: Also speaking² at the UNGA, Sushma Swarajh, the Indian External Affairs Minister, said: “Pakistan's continued support for terror groups operating in Jammu and Kashmir is the main challenge to protecting the human rights of our citizens in the State...The latest terrorist attack in Uri, where 18 Indian soldiers lost their life and over 20 injured, only underlines that the infrastructure of terrorism in Pakistan remains active”.

Ofcom’s investigation

A complainant³ alerted Ofcom to the edition of *The Newshour* broadcast on 1 August 2016, which the complainant considered to be biased.

The first debate in this programme was referred to in a caption as: “*DEBATE 1: OpenPakTerrorPush*”. This debate focused on the march that had happened that day (see above), organised by the Pakistani political party, Jamaat-e-Islami, where demonstrators had marched towards the border crossing with India at Wagah. The discussion focused on the degree to which terrorist attacks in India were a “*home-grown*” problem or had originated from Pakistan.

The debate featured contributors who were generally in favour of India taking a more robust diplomatic line against Pakistan. These speakers alleged that Pakistan gave refuge to several people described in the programme as “*terrorists*”. In particular, these contributors objected to the presence at the march of two controversial militants, Syed Sallahudin and Hafiz Saeed, who were alleged to have been involved in the 2008 terrorist attacks on Mumbai. The other participants in the debate, who were all from India, were described in the programme by Arnab Goswami, the presenter, as being “*doves*” i.e. taking a conciliatory attitude towards Pakistan.

At the beginning of the programme, Arnab Goswami said:

“Good evening, Newshour viewers. Great to see you on top of the week. Viewers, last week a section of doves came out to downplay the role of Pakistan in Kashmir and I don’t know why they keep doing that. Citing one excuse or the other, they said that India is responsible for the situation in Kashmir, and not Pakistan”.

There were also a number of other statements that were critical of the policies and actions of the Pakistani Government, such as the following:

¹ See http://www.pmo.gov.pk/pm_speech_details.php?speech_id=78

² See https://www.mea.gov.in/Speeches-Statements.htm?dtl/27437/Right_of_Reply_by_India_in_response_to_a_statement_by_Pakistan_under_Agenda_item_8_at_33rd_Session_of_the_Human_Rights_Council_September_26_2016

³ Ofcom subsequently also received single complaints about the editions of *The Newshour* broadcast on 19, 22 and 26 September 2016.

[Caption] *"PAK DROPS K [i.e. Kashmir] TERRO PRETENCE".*

"Pakistan drops the pretence and officially lets terrorists march next to the Wagah border. Pakistan's Kashmir cloak is lifted: Terrorist rally stops eight kilometres from the Wagah border... Can the doves underplay Islamabad's direct role in the unrest anymore?".

"Hafiz Saeed and Syed Salahuddin have unmasked the real face of Islamabad this evening".

"A terrorist and his allies have unmasked Pakistan's real Kashmiri intent".

"For the first time ever, Pakistan has dropped the pretence, and has now made it difficult for doves to hide behind the home grown terror excuse".

"Has Pakistan made its terror intent clear with the Wagah march?"

"What Pakistan has done...is openly admit that 'we are organising it, we are managing it, we are funding the protests, we are financing it, we are logistically organising it, we have our terrorist groups leading it".

"The fact that Hafiz Syed is allowed to come so close to the Wagah border, it points to yet another reinforcement of the fact that...all that is happening is with the tacit consent of the Pakistani Government and the military there...26/11 clearly had a Pakistan hand...".

"No-one wants to become part of a terrorist state which Pakistan has increasingly become".

"Forget any mention of Pakistan's direct support to terror outfits".

"Today Pakistan's state stands as one in front of Wagah border, waving in our face that they will hoist their flag in Kashmir: Let there be no mistaking this fact".

"Today we see a dangerous escalation in which the Pakistani State is being led by the nose, not even by the military-ISI complex [Inaudible] it is the terrorists, internationally recognised terrorists, like Hafiz Saeed who are leading the charge. They have hijacked Pakistan's foreign policy and they are now embarked on a serious escalation which could lead to the firth India-Pakistan war".

"The Pakistani policy of 'good terrorist, bad terrorist' is exposed".

"Show me a single reference in your petition to Pakistan's proxy war that is fuelling the protests in the first place, and financing the likes of Burhan Wani".

"Pakistan is not that solution, it is a failed state. The point is that Pakistan is today a problem even in the international arena with regard to terrorism".

"Don't brush aside the role of Pakistan in fermenting the trouble in Kashmir. Let us accept it. Let us acknowledge it. Let us not brush it aside".

We could not identify in this programme any content that could reasonably be described as reflecting the viewpoint of the Pakistani Government, or otherwise rebutting the criticisms being made of it. Times Global provided evidence that it had reflected viewpoints representing the Pakistani Government in 16⁴ further editions of *The Newshour* presented by Arnab Goswami. We also received complaints about the editions of *The Newshour* broadcast on 19 and 26 September 2016, which featured only contributors from India, but also dealt with India's on-going relationship with Pakistan.

Ofcom viewed the 18 additional episodes of *The Newshour* broadcast between 3 August 2016 and 30 September 2016. All these programmes dealt with: the on-going tensions between India and Pakistan during August and September 2016; the Pakistani Government's policy towards Kashmir; and alleged terrorist activities towards India. However, the programmes also featured highly critical discussion about the Pakistani Government's policies and actions in other areas such as its treatment of the separatist movement in the Pakistani province of Balochistan⁵. Further, the 16 programmes cited by the Licensee (see footnote 4) each included three or four contributors that could reasonably be described as supporting the Pakistani Government or Pakistan more generally. These contributors included: Pakistani political analysts and commentators; retired Pakistani diplomats; retired senior members of the

⁴ These programmes were broadcast on: 3, 4, 8, 10, 12, 15, 23 August 2016 and 2, 7, 8, 15, 20, 22, 28, 29 and 30 September 2016.

⁵ Balochistan is one of Pakistan's four provinces and makes up the southwest part of Pakistan.

Pakistani armed forces; Pakistani journalists; and both current and retired Pakistani politicians⁶.

Ofcom's concern in this case was not whether the Licensee had reflected a range of viewpoints, but the manner in which those viewpoints were dealt with by the presenter, Arnab Goswami. We lay out below examples of how Arnab Goswami dealt with different contributors:

1 August 2016

In this programme there was a debate about the march to the Wagah border crossing featuring the Pakistani militants, Syed Sallahudin and Hafiz Saeed. There was the following exchange between Arnab Goswami ("AG") and Mufti Nasir-ul-Islam ("MNI"). Arnab Goswami referred to two contributors in the programme who were described as being critical of Pakistan, G.D. Bakshi and Nalin Kohl ("NK"), the latter who was invited to speak during this exchange. Arnab Goswami also referred to Navid Hamid, a contributor who was described as being an apologist for Pakistan:

AG: *"Essentially you are down playing what happened in Wagah, the role of Hafiz Saeed, Sayeed Salahudeen, and the Jamaat-e-Islami because these people are saying 'we will hoist the Pakistani flag in Kashmir'. And I want to know from Mufti Nasir-ul-Islam, whether he agrees with such a statement. When these people say they, 'we will hoist the Pakistani flag in Kashmir'. I want him to tell me whether he feels that's a home grown problem. G.D. Bakshi, I will come back [to you] but let Mufti Nasir-ul-Islam reply to me please".*

MNI: *"Mr Arnab Goswami, do you, do you hear me?"*

AG: *"I'm hearing you loud and clear".*

MNI: *"Ok. Let me begin by paying my tribute to Burhan Wami?—"*

AG: *"Eh listen—".*

MNI: *"—and 70 others who were martyred".*

AG: *"No, no, no. Here you see. I will not, no, no, no one second, Mufti Nasir-ul-Islam, Mufti Nasir-ul-Islam. You, no, no, no, Mufti Nasir-ul-Islam you don't have to say things to provoke. I can tell you. I can, no, no, no, one second I will not allow you. Nalin Kohl's on the debate!"*

NK: *"Any innocent person is not somebody who can be idolised. Next you'll be saying we should pay tribute to Osama Bin Laden. Another time he's going to say we should pay tribute to somebody else. A terrorist is a terrorist! It doesn't matter those, those who want [continues to talk over MNI's attempts to talk] to participate in democracy and get the aspirations each one is welcome. Those who give up their weapons are welcome but all these tributes of terrorist please not on any show—".*

⁶ For example, in the programme broadcast on 4 August 2016, Dr Farid Ahmed Malik of the Tahreek-e-Insaaf party took part; and in the programme broadcast on 8 August 2016, Rana Afzai Khan, a member of Pakistan's National Assembly for the Pakistan Muslim League (Nawaz), and Federal Parliamentary Secretary for Finance, Revenue, Economic Affairs, Statistics and Privatization.

AG: “[Interrupts and talks loudly over MNI and NK] *The Indian state, the Indian state, also Nalin Kohli, as far as Mufti Nasir-ul-Islam is concerned, as far as Mufti Nasir-ul-Islam concerned, he is also a Pakistan apologist, Mufti Nasir-ul-Islam, Mufti Nasir-ul-Islam takes security, the Mufti, Mufti, takes security. The question is and the question goes to Navid Hamid. The question is Navid Hamid of the All Indian Muslim Majlis-e-Mushawarat, I’m coming to you, and Mufti Nasir-ul-Islam, just a quick reminder to you that as of this minute, as of this second, you are taking security funded by the Indian taxpayer. Never forget that OK. [MNI tries to talk but AG talks over him] Never forget that, so at least have a sense of loyalty. Don’t, I had to expose you today because of your duplicity, because of your hypocrisy, your opportunism. Does that not reveal something? Now you know something [talking over Mufti Nasir-ul-Islam] you have no, you are beholden to the Pakistanis and I will not allow this channel to become an instrument for your venom so I’ll cut you off for a while and when you behave yourself I’ll bring you back. Neither for your venom or your political aspirations. You say you are a mufti, your political aspirations [MNI tries to talk] and I don’t know why you are loyal to Pakistan”.*

MNI: “*Ok, I don’t want to be a part of this—*”.

AG: “*You don’t have the guts to answer my question so you are walking out like a typical opportunist [MNI tries to talk and AG talks over him] Mufti Nasir-ul-Islam calm down. Mufti Nasir-ul-Islam calm down. If it was a choice between having you on the show and letting you. Letting you use The Newshour for your duplicitous venom. I would be much happier asking you. I would be much happier, Mufti Nasir-ul-Islam, if you are on Newshour you must behave yourself and show the least amount of loyalty that someone who takes security from the Indian taxpayer should show. or if you don’t want to show that I have no problems if you walk out the programme. I have no problems if you walk out the programme. It doesn’t matter to me. I’m happy to ask you to leave the programme Mufti Nasir-ul-Islam. Mufti Nasir-ul-Islam you are obviously beholden to the Pakistanis. You can continue your act. I think you’ve revealed yourself. [raises voice and starts shouting] And the fact is Mufti Nasir-ul-Islam, don’t you wag your finger at me Mufti Nasir-ul-Islam. I have decently debated with you for the last ten minutes but the fact of the matter is there has been a terror group called the Lashkar-e-Taiba⁷ and Hizbul Mujahideen which carried out a march with Jamaat-e-Islami. But you for the opportunist that you are cannot speak against the LET [i.e. Lashkar-e-Taiba] you are scared of them or in league with them. So drink that water and behave yourself. calm down. Calm down, I’m not going to waste my time. Look at Mufti Nasir-ul-Islam unable to control his loyalties. Has to show his real loyalty to Pakistan. Absolutely unable to control. Has to show his loyalty to Pakistan at every single opportunity. I’m so glad television being a transparent medium. Let this medium expose the real loyalties of these people one by one”.*

4 August 2016

In this programme, there was a debate discussing whether the Pakistani Government had “*hit an all-time diplomatic low*”. There was the following exchange between Arnab Goswami (“AG”) and the Pakistani barrister Zahid Saheed (“ZS”) about perceptions of the level of media coverage about the visit by the Indian Home Minister of Rajnath Singh to Pakistan:

⁷ A militant group based in Pakistan.

AG: *"...the only word I have for this is childish with a capital 'C'. So childishly you try to ensure that the Indian media can't cover Rajnath Singh. What did you think? We are not going to get access to what he says, for your kind information I have with me the full details of what Rajnath Singh has said. I can understand that the Pakistanis don't want to allow Rajnath Singh's words to be heard on Pakistan television because you're damned sacred, that is if Rajnath Singh's truth is heard by the people of Pakistan, then they start asking you questions. I hope they will. But you don't allow us to report on our minister. This is childish, this amateurish, this unacceptable, this is just absolutely ridiculous and I want an explanation, on behalf of every Indian citizen, an answer from Pakistani panellists on why on earth this happened, what were you trying to do? What were you scared of? Were you scared that Rajnath walked into your territory and your soil and confronted you with the bare truth about your support for terrorism. Have the courage to listen to him. Barrister Zahid Saeed open the debate. It's a free debate after that. Yes, Barrister Zahid Saeed".*

ZS: *"Your home minister was welcome in Pakistan—".*

AG: *"[AG interrupts shouting] Why was he censored?"*

ZS: *"I'm trying to, I'm trying to explain. Can you please keep quiet please for a few minutes. He left before they could even answer what he was saying—"*

AG: *"[Interrupts shouting] Absolute lies! Absolute lies! Absolute lies! How can you lie on Indian television like that Sir? Sorry, but how can you lie? [inaudible]"*

ZS: *"You have so much venom in you that its bursting out of you. You must listen!"*

AG: *"I am asking you why you sent home our home minister. And you know why Zahir Saeed because you're scared because Rajnath Singh walks out of your hollow promises".*

8 August 2016

In this programme, there was a debate discussing international attitudes to Pakistan's policy on terrorism, during a heated discussion about India's involvement in Balochistan, Arnab Goswami ("AG") allowed Amir Mustaqim ("AM"), a Balochi panellist who was critical of Pakistan's policy on Balochistan, an opportunity to challenge a Pakistani panellist, retired Group Captain Sultan Ali Hali ("SAH"):

AM: *"Baloch and India are one. We are one. Why shouldn't India be involved in Balochistan? I say it is the right of India, not only the right of India, it is the moral responsibility of India to openly support Balochistan. The main foreign interference in Balochistan is the presence of your military boots".*

AG: *"[Shouting] Well said!"*

AM: *"How many have you killed of my blood and bone?"*

AG: *"[Shouting] Well said!"*

AM: *"How many have you killed and how many do you want to kill?"*

AG: "[Shouting] Answer him, Ambassador, answer him!"

SAH: "Do you know the Geneva Convention? Do you know the lines of diplomacy? If India supports Balochistan openly, this will amount to intervention—".

AG: "[Shouting] What about Kashmir?! What about Kashmir?! What about Kashmir ?!"

SAH: "Kashmir is a disputed area".

AG: "Oh for God's sake! For God's sake".

22 September 2016

In this programme, there was a debate discussing about whether "Pakistani apologists" should be allowed on Indian soil. There was the following exchange between Arnab Goswami and an Indian Supreme Court Advocate, Shabnam Lone ("SL"):

AG: "If there was an attempt at trying to keep a divide, a line of plausible deniability, between the Pakistan Government, the Pakistan army and ISI⁸ and the group of Pakistan apologists in India, it collapsed in a heap yesterday. Shabnam Lone, when Nawaz Sharif⁹ mirrored the words you used about Burhan Wani and therefore my question is simple".

SL: "Yes, well everything is hunky-dory between India and Pakistan—".

AG: "—I haven't asked my question—".

SL: "—Arnab, nothing has changed—".

AG: "—I haven't asked my question—".

SL: "—I know what question you are asking—".

AG: "I haven't asked my question. No, you don't know, let the question come. The question is this: Do you condemn, and use your words carefully, do you condemn the Pakistan Prime Minister Nawaz Sharif using his UN speech, using it to describe Burhan Wani as a peace icon and a young leader who was only armed with his beliefs? Do you condemn Nawaz Sharif?"

Shabnam Lone tried to respond. While she spoke, Arnab Goswami continuously repeated the question "Do you still condemn Nawaz Sharif?" getting louder and more persistent each time she tried to talk. Arnab Goswami then said:

AG: "[Pakistan] is a hostile terrorist nation and I'm asking you tonight. Old tactics will not work. Shabnam Lone's inability to answer that straight forward question and respond in terms of 'you' and 'them' 'us' and 'them' reflects the hypocrisy of the pro-Pakistan brigade in India. Now we will get someone else in. [raises his voice] Shabnam Lone

⁸ The Pakistani Directorate General for Inter-Services Intelligence or Inter-Services Intelligence ("ISI").

⁹ The Pakistani Prime Minister.

practices in the Supreme Court and refuses to condemn Nawaz Sharif. She is so paranoid that she will go and say anything, she is flustered and still speaking. Look viewers!"

28 September 2016

In this programme, there was a debate about a forthcoming meeting of the South Asian Association for Regional Cooperation ("SAARC") that was due to take place in Pakistan and whether Pakistan should be a member of SAARC. Introducing the debate, Arnab Goswami ("AG") introduced Tarek Fatah ("TF"), a panellist who was critical of Pakistan as follows:

AG: *"And I am delighted to have with me in the studio of Newshour tonight, for the first time in the studios, Tarek Fatah, well known author and columnist. It's a pleasure to have you, sir, in the studio. Thank you very much. Well, we come closer together on this. I wanna start with you. What would you say, first, to your colleagues in Pakistan now that SAARC has been scrapped. Is it time that they learn some lessons?"*

TF: *"They have identified themselves as B grade Arabs. Their heritage is Indian, they deny it. They should stay with the organisation for Islamic countries or they should stay with the Arab league. Why should SAARC be held hostage?"*

Shortly afterwards, Arnab Goswami ("AG") invited two Pakistani contributors, Rashid Qureshi and Shafqat Saeed, to the debate in the following manner:

AG: *"Is becoming a regional pariah enjoyable situation for you? Shafqat Seed is it for you?"*

SS: *"To whom are you asking the question. Address your panellist?"*

AG: *"You decide which one of you is speaking. This is the problem, Shafqat Saeed, you answer. Today, know your situation. You—"*

SS: *"My situation is alright [inaudible] You have a stupid reason to undo this SAARC. This region is nothing without Pakistan".*

AG: *"One second, Shafqat Saeed, one second. Understand today you are globally notorious and you are globally notorious because you are an international pariah. You understand the seriousness of it? Never before has a country hosting a multi-lateral event faced a combined black out and boycott by other countries. This has never happened before. It's not India anymore. Bhutan doesn't trust you—"*

SS: *"Who will be [inaudible] paid back? [inaudible due to AG shouting] you will—"*

AG: *"[shouting over SS] What do you mean paid back? Don't threaten people, are you declaring war? You are declaring war on South Asia because you have been boycotted. You have become an international embarrassment!"*

Ofcom considered the above content raised issues warranting investigation under Rule 5.9 of the Code:

"Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of "personal view" or "authored" programmes or items, and

chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views”.

Ofcom therefore asked the Licensee how the content complied with this rule.

Response

Times Global stated its belief that it had complied with Rule 5.9.

It said that in *The Newshour* it “always ensure[s] debates have a representative selection of guests who represent the varying key views, for and against, on the issue(s) being debated”. It added that: “We try and convey a high energy with these debates, to help the viewers understand the issues and for them to be able to make their own conclusions”.

The Licensee said that the *Newshour* series focused on: “the issue of terror and how it affected particularly regions like India & Balochistan, the growing concerns over Indo-Pak relations due to cross border terror and significantly the aftermath of the attacks that took place in Uri, India”; and the “key issues and concerns and most importantly voiced the questions that the people of India were putting forward”. Times Global said the debates featured in *The Newshour* programmes “were represented by as many factions as possible and multiple views were put forth by the panellists who participated on these shows”.

Times Global said that “With constant attacks being carried out on Indian soil, by terror forces from across the border, the pulse of the nation and sentiments in the minds of the Indian public and viewers were at a high pitch”. Therefore, it said that the programmes sought to concentrate on “what India should be focusing on at that juncture, in relation to Pakistan”. Further, such issues were “put out in the form of questions during these programmes and an open debate was conducted amongst the participants”.

The Licensee said the programme broadcast on 1 August 2016 “primarily raised questions on the issue of terrorism...and the alleged involvement of Pakistan in promoting and aiding terrorist activities in India”. It added that the programme “also focused on the support extended to terrorism by the blatant lack of will on the part of the Pakistani government and its Army in curbing such acts across the borders”.

Times Global provided background information on the various statements within the 1 August 2016 programme (as included in the Introduction), and said these were “based on concrete facts, detailed research, data and reports, including national and international viewpoints on the subject of Pakistan's role in promoting terrorism”.

The Licensee said that the programme was an “internal debate and consciously did not have guest from Pakistan as it was the same day that Pakistan provoked India by allowing a march close to the Wagah border led by terrorists like Hafiz Saeed and Syed Sallahudin”. However, Times Global added that within the series *The Newshour* as a whole, the viewpoint of “Pakistan and its government” was regularly represented. It provided details of various

Pakistani guests that had been featured on *The Newshour*¹⁰, which included “representatives of the Pakistani ruling party, which heads the government”. On the issue of linked programmes, Times Global argued that “there is a clear nexus between the Pakistani establishment and the terror outfits operating out of its territory. And yet, despite the expressions we use in our debates when referring to this terror nexus, we have ensured Pakistani representation in the interests of fairness”.

The Licensee also made representations about the various editions of *The Newshour* broadcast during August and September 2016. It argued that *The Newshour* “over this very difficult time in India, did its best to allow the various views to be heard through the debating structure used in this programming”. It added that although the programme “clearly does not follow the same pattern as UK based news services, it did not attempt to promote any particular view of the upheaval occurring at that sensitive point of time”. Rather, it said that as a news channel “completely independent from Government, political parties, pressure groups and religious bodies” it had “tried to reflect the varying views that were mainly based both in India and Pakistan”.

Times Global also argued that “It cannot be the purpose of our channel to exactly balance the views from Pakistan or other countries in a rigid fashion to ensure that equal voice is given to all parties. It added that, in its view, over the range of its output it had “observed the spirit of the 'Due Impartiality' rule.

The Licensee said it strives “to bring in as much objectivity as possible in our broadcasts”. It added that the various editions of *The Newshour* “had strong representations with guests present from Pakistan i.e. spokespersons of the ruling party, former members of the military establishment, former diplomats, and journalists”.

Times Global also argued that *The Newshour* content needs to be “viewed in perspective and particularly in the overall context of our coverage over the last few months, primarily reflecting the public debate and political discussions on Pakistan. The relevant broadcasts complained about were therefore a continuation of the overall coverage of the channel, which at this time primarily focused on the terror attacks in India and India's position on the same”.

Concerning the presenter, Arnab Goswami, The Licensee said that “we can understand some people's views that the presenter's role on these programmes seemed to be rather overwhelming and confrontational”. However, it added that “he is no longer associated with the channel and has moved out of the organization”. Times Global also said that the presenters who had replaced Mr Goswami had “a very different approach” and had been “bringing in a wide range of reactions and comments from the participants on the show, while ensuring that no personal views” are included in the programmes.

In conclusion, Times Global said that as a result of the Ofcom investigation, it had “conducted extensive discussions with the current team, specifically drawing attention to Ofcom Rules and Guidance” It added that it had also taken steps to “conduct training programmes” for its news teams and it stated its belief that “our coverage on sensitive issues such as these should always be undertaken keeping in mind the pertinent rules and guidance”.

¹⁰ See footnote 4.

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 the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

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

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster's and audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression 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. Therefore, 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.

Ofcom underlines that the broadcasting of highly critical comments concerning the policies and actions of any government or state agency is not, in itself, a breach of rules on due impartiality. However, depending on the specific circumstances, it may be necessary to reflect alternative viewpoints or provide context in an appropriate way to ensure that Section Five is complied with.

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.

Rule 5.9 states:

"Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of "personal view" or "authored" programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement

for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views”.

The Code does not prohibit presenters of non-news programming from expressing their views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or 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).

We recognise there is a long tradition of political interviewers and presenters of current affairs programmes, including discussion programmes like *The Newshour*, robustly challenging the viewpoints of interviewees and panellists to ensure all viewpoints are appropriately scrutinised. In our view, the role of a presenter in challenging the viewpoints of politicians, political commentators, experts and other contributors is an essential feature of current affairs programme as it exposes audiences to a range of viewpoints on political or industrial controversy or matters relating to current public policy. However, under the Code, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality.

Ofcom acknowledged that during the two-month period when the 19 programmes in this case were broadcast, there was a period of notably heightened tension between the Indian and Pakistani Governments. As such, we recognised that Times Now, as a news channel broadcasting from the Indian perspective would want to cover the ongoing relationship between India and Pakistan. In such circumstances, we also recognised that as a channel broadcasting from an Indian perspective, Times Now may have been more likely to broadcast content that took a more critical perspective of the policies and actions of the Pakistani State. However, as an Ofcom licensee, Times Global had to ensure that it adequately reflected alternative viewpoints.

We also recognised that Arnab Goswami, as the established presenter of *The Newshour* was known to audiences as having a unique hard-hitting style. He was also known for vocally expressing his views on the various matters under discussion in *The Newshour*.

Ofcom first considered whether the requirements of Section Five of the Code should be applied: that is, whether the subject of the debate concerned matters of political or industrial controversy or matters relating to current public policy. In our view, the 19 programmes in this case all contained a number of highly critical statements about the policies and actions of the Pakistani Government towards Kashmir and alleged terrorist activities towards India. They also featured highly critical discussion about the Pakistani Government's policies and actions in other areas such as its treatment of the separatist movement in the Pakistani province of Balochistan. We considered that the programmes clearly dealt with matters of political controversy and matters relating to current public policy. The Licensee was therefore required to preserve due impartiality to comply with Rule 5.9 of the Code.

The programmes included a number of statements that were critical and gave a one-sided view of Pakistan's policies and actions in relation to, for example, alleged terrorist activities towards India. Given the gravity of the various criticisms being made about Pakistan (for example, Pakistan was variously described as a: “*failed state*”; “*terrorist nation*” and “*international pariah*”), we considered that a key relevant alternative viewpoint was one that

reflected the opinion of the Pakistani Government, in particular challenging the criticisms made about Pakistani Government within the programmes.

As outlined in the Introduction, each debate on *The Newshour* included three or four contributors that could reasonably be described as supporting the Pakistani Government or Pakistan more generally. These contributors included: Pakistani political analysts and commentators; retired Pakistani diplomats; retired senior members of the Pakistani armed forces; Pakistani journalists; and both current and retired Pakistani politicians.

However, our concern is this case was the manner in which any views that could be characterised as: either being representative or supportive of the Pakistani Government; or challenging the Indian Government's policies towards Pakistan; or otherwise arguing that the Indian Government should be more conciliatory towards Pakistan, were treated. We considered that the role and actions of Arnab Goswami were the crucial factor in determining whether due impartiality had been preserved in this case. Throughout all the programmes, Mr Goswami made clear his position on the topic under discussion and consistently expressed views that were heavily critical of the Pakistan Government and correspondingly supportive of the Indian Government. Ofcom underlines that presenters in non-news programmes can express views that are critical or supportive of particular nation states but they must not promote their views in a way that compromises the requirement for due impartiality.

In assessing Arnab Goswami's role within the programmes, we noted the Licensee's statement that: "With constant attacks being carried out on Indian soil, by terror forces from across the border, the pulse of the nation and sentiments in the minds of the Indian public and viewers were at a high pitch". Therefore, it said that the programmes sought to concentrate on "what India should be focusing on at that juncture, in relation to Pakistan". Further, such issues were "put out in the form of questions during these programmes and an open debate was conducted amongst the participants". We noted, therefore, that the structure of the debates included within *The Newshour* followed a similar pattern, whereby Arnab Goswami would introduce the debate topic and then direct discussion during the debate by asking particular panellist questions related to the debate topic.

In reaching our Decision, we considered the various ways in which Arnab Goswami treated the various viewpoints being expressed in the programmes. Times Global said the debates featured in *The Newshour* programmes "were represented by as many factions as possible and multiple views were put forth by the panellists who participated on these shows". However, in our view, throughout the programmes, Arnab Goswami took a position that was consistently highly aggressive towards those panellists that could be described as taking a position that was either supportive of the Pakistani Government or suggesting that the Indian Government should adopt a more conciliatory attitude towards Pakistan. For example, when dealing with panellists who were supportive of the Pakistani Government, Arnab Goswami would consistently adopt a highly aggressive and confrontational tone. Frequently, when asking a question to such panellists, he typically afforded them very little opportunity to answer his question, and aggressively interrupted them, such as in the following example from the 4 August 2016 programme:

AG: *"What were you scared of? Were you scared that Rajnath walked into your territory and your soil and confronted you with the bare truth about your support for terrorism. Have the courage to listen to him. Barrister Zahid Saeed open the debate. It's a free debate after that. Yes Barrister Zahid Saeed".*

- ZS: *"Your home minister was welcome in Pakistan—".*
- AG: *"[AG interrupts shouting] Why was he censored?"*
- ZS: *"I'm trying to, I'm trying to explain. Can you please keep quiet please for a few minutes. He left before they could even answer what he was saying —"*
- AG: *"[Interrupts shouting] Absolute lies! Absolute lies! Absolute lies! How can you lie on Indian television like that Sir? Sorry, but how can you lie? [inaudible]"*
- ZS: *"You have so much venom in you that its bursting out of you. You must listen! —"*
- AG: *"I am asking you why you sent home our home minister. And you know why ZAHIR Saeed because you're scared because Rajnath Singh walks out of your hollow promises".*

Similarly, in the 28 September 2016, there was the following exchange between Arnab Goswami and a Pakistani contributor, Shafqat Saeed:

- AG: *"Is becoming a regional pariah enjoyable situation for you? Shafqat Seed is it for you?"*
- SS: *"To whom are you asking the question. Address your panellist?"*
- AG: *"You decide which one of you is speaking. This is the problem, Shafqat Saeed, you answer. Today, know your situation. You—"*
- SS: *"My situation is alright [inaudible] You have a stupid reason to undo this SAARC. This region is nothing without Pakistan".*
- AG: *"One second, Shafqat Saeed, one second. Understand today you are globally notorious and you are globally notorious because you are an international pariah. You understand the seriousness of it? Never before has a country hosting a multi-lateral event faced a combined black out and boycott by other countries. This has never happened before. It's not India anymore. Bhutan doesn't trust you—"*
- SS: *"Who will be [inaudible] paid back? [inaudible due to AG shouting] you will—"*
- AG: *"[shouting over SS] What do you mean paid back? Don't threaten people, are you declaring war? You are declaring war on South Asia because you have been boycotted. You have become an international embarrassment!"*

There were also examples when Arnab Goswami, after posing a question to a panellist supporting the Pakistani Government, would aggressively interrupt them, and then immediately allow a panellist from a viewpoint that was critical of the Pakistani Government to speak uninterrupted and at length, such as in the 1 August 2016 programme:

- AG: *"And I want to know from Mufti Nasir-ul-Islam, whether he agrees with such a statement. When these people say they, 'we will hoist the Pakistani flag in Kashmir' I want him to tell me whether he feels that's a home grown problem'. G.D. Bakshi I will come back but let Mufti Nasir-ul-Islam reply to me please".*

- MNI: *"Mr Arnab Goswami, do you, do you hear me?"*
- AG: *"I'm hearing you loud and clear".*
- MNI: *"Ok. Let me begin by paying my tribute to Burham Wami?—"*
- AG: *"Eh listen—".*
- MNI: *"—and 70 others who were martyred".*
- AG: *"No, no, no. Here you see. I will not, no, no, no one second, Mufti Nasir-ul-Islam, Mufti Nasir-ul-Islam. You, no, no, no, Mufti Nasir-ul-Islam you don't have to say things to provoke. I can tell you. I can, no, no, no, one second I will not allow you. Nalin Kohli's on the debate!"*
- NK: *"Any innocent person is not somebody who can be idolised. Next you'll be saying we should pay tribute to Osama bin Laden. Another time he's going to say we should pay tribute to somebody else. terrorist is a terrorist! It doesn't matter those, those who want [continues to talk over MNI's attempts to talk] participate in democracy and get the aspirations each one is welcome. Those who give up their weapons are welcome but all these tributes of terrorist please not on any show—".*

Arnab Goswami also voiced his enthusiastic support for panellists who were critical of the Pakistani Government, as shown by the following example from the 8 August 2016 programme:

- AM: *"Baloch and India are one. We are one. Why shouldn't India be involved in Balochistan? I say it is the right of India, not only the right of India, it is the moral responsibility of India to openly support Balochistan. The main foreign interference in Balochistan is the presence of your military boots".*
- AG: *"[Shouting] Well said!"*
- AM: *"How many have you killed of my blood and bone?"*
- AG: *"[Shouting] Well said!"*
- AM: *"How many have you killed and how many do you want to kill?"*
- AG: *"[Shouting] Answer him, Ambassador, answer him!"*
- SAH: *"Do you know the Geneva Convention? Do you know the lines of diplomacy? If India supports Balochistan openly, this will amount to intervention—".*
- AG: *"[shouting] What about Kashmir?! What about Kashmir?! What about Kashmir?!"*
- SAH: *"Kashmir is a disputed area".*
- AG: *"Oh for God's sake! For God's sake".*

In our view, throughout the 19 programmes in this case, Mr Goswami adopted a markedly different approach when interacting with panellists who were critical of the policies and actions of the Pakistani Government, compared with panellists who supported the policies and actions of the Pakistani Government.

Ofcom underlines it is an editorial matter for broadcasters how they preserve due impartiality, including the format of any programmes they may broadcast dealing with matters of political controversy and matters relating to current public policy. Therefore, in principle it is possible for presenters in panel discussion current affairs programmes to robustly put forward their own views and challenge different viewpoints. However, the editorial format of a programme, and in particular the manner in which a presenter moderates a panel discussion, must not compromise due impartiality.

We took into account that Times Global argued that it had “tried to reflect the varying views that were mainly based both in India and Pakistan”. The programmes did include guests who represented the viewpoint of the Pakistani Government and/or opposed the various criticisms being made of Pakistan more widely. However, we did not consider that over the series of programmes taken as a whole these viewpoints were given sufficient opportunity to be expressed to ensure that the audience was presented with the various sides of the topics under debate.

We also considered the various other representations made by Times Global. First, the Licensee said that *The Newshour* “clearly does not follow the same pattern as UK based news services”. We agree. Ofcom’s published Guidance states that Ofcom research has demonstrated that in relation to due impartiality “there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience”¹¹. However, the Guidance goes on to state that: “Broadcasters can criticise or support the actions of particular nation-states in their programming, as long as they, as appropriate, reflect alternative views on such matters”.

Second, Times Global also argued that “It cannot be the purpose of our channel to exactly balance the views from Pakistan or other countries in a rigid fashion to ensure that equal voice is given to all parties. It added that, in its view, over the range of its output it had “observed the spirit of the 'Due Impartiality' rule. As mentioned above, the Code makes clear that 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 every argument has to be represented. However, alternative viewpoints must be reflected as appropriate. For the reasons described above, we did not consider this happened in this case.

Finally, the Licensee said that *The Newshour* content needs to be “viewed in perspective and particularly in the overall context of our coverage over the last few months, primarily reflecting the public debate and political discussions on Pakistan. The relevant broadcasts complained about were therefore a continuation of the overall coverage of the channel, which at this time primarily focused on the terror attacks in India and India's position on the same”. However, in order to comply with Rule 5.5, alternative viewpoints had to be reflected, as appropriate in programme or series of programmes taken as a whole. Therefore, a television broadcaster cannot rely on its coverage over its schedule as a whole as evidence of how it may have reflected alternative views on a particular matter.

¹¹ See https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf, paragraph 1.14.

In reaching our Decision, we took into account that the Licensee told us that the presenter "...is no longer associated with the channel and has moved out of the organization"¹². Times Global also said that the presenters who had replaced Mr Goswami had "a very different approach" and had been "bringing in a wide range of reactions and comments from the participants on the show, while ensuring that no personal views" are included in the programmes. In addition, the Licensee said, as a result of the Ofcom investigation, Times Global had "conducted extensive discussions with the current team, specifically drawing attention to Ofcom Rules and Guidance". It had also taken steps to "conduct training programmes" for its news teams

However, for all the reasons above, we considered that the presenter used the advantage of his regular appearances in the 19 programmes in this case to promote his views in a way that compromised the requirement for due impartiality.

Our Decision, therefore, is that the programmes were in breach of Rule 5.9 of the Code.

Breaches of Rule 5.9

¹² Ofcom understands that Arnab Goswami resigned from Times Now in early November 2016.

In Breach

Grace to You

Premier Christian Radio, 25 January 2017, 19:00

Introduction

Premier Christian Radio is a 24-hour national radio station providing Christian programming including news, debate, teachings and Christian music. The licence for Premier Christian Radio is held by Christian Communications Limited ("PCR" or "the Licensee").

Grace to You is a twenty seven minute programme featuring the sermons and teachings of American pastor Dr John MacArthur. The programme is one part of a four hour weekly sequence of teaching programmes from a variety of Christian leaders and viewpoints.

A complainant alerted Ofcom to comments made during the programme by Dr John MacArthur. A part of his sermon used language that was pejorative and offensive to other faith groups, referring to the followers of other faiths as "*demon worshippers*", and their God(s) as "*demons*".

During the programme at about 19:06, the following comments were made by Dr John MacArthur:

"If you worship any other than the true God, and the true Christ then you are a demon worshipper".

"If you are a Muslim and you are worshipping Allah, you're worshipping demons, demons, demon deceivers and impersonators of the true God. Demons are behind all false religions..."

"All false religion is demonic and people are not through the means of false religion ascending to God, they are descending to demons".

"God said Israel made me jealous with what is not God to provoke me to anger with their idols, because they were worshipping Satan and the kingdom of Satan. So when you think of a Buddhist or Muslim or Mormon or Hindu or Jews, don't think of them as making the best effort they can to worship the true God, they're demon worshippers. God is not in those idols; Satan is in those idols..."

Ofcom considered this raised issues under Rules 2.3 and 4.2 of the Code which state:

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

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

Rule 4.2 “The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment”.

We asked the Licensee how the material complied with these rules.

Response

The Licensee explained that “Dr John MacArthur comes from the more conservative wing of Christian teaching” and that he was “preaching in this broadcast from 1 Corinthians, which is a letter the Apostle Paul writes to the church in Corinth” in which he “warns the readers against worshipping, and making sacrifices to, false Gods or idols”. In addition, the Licensee explained that Dr MacArthur “refers to these other gods as ‘demons’ throughout the passage, and suggests offerings to idols are not harmless but are participating with ‘demons’. A conservative, theological view of this passage would maintain, therefore, that any engagement with anything other than the Christian God, including what they would term the gods of other faiths, is centred around ‘demons’”.

PCR went on to state that “this is a conservative position which would be fairly broadly taught in churches across the country”. In addition, it argued that “as a Christian broadcaster, it is clearly central to our audience that they are able to use the entire Bible as the centre of their faith and this is an example of a difficult and controversial piece of the Bible, of the sort where it is, frankly, very difficult for us to offer the conservative position, in a teaching format, within the confines of the code”.

The Licensee pointed out that “We regularly discard or heavily edit potential programming to ensure compliance at all times, and we do accept that it would have been better on this occasion to remove the references to the specific faith groups mentioned within the broadcast in order to ensure better compliance to rule 4.2”.

The Licensee said that as a result of this complaint it had “refreshed” its training with its producers on the content of the Code to ensure compliance. It added that following Ofcom’s contact on this case, “we discussed the issue on the next edition of Right of Reply, where we outlined a more liberal Christian view on this issue, and a different interpretation of the Bible passage in question”.

In response to our Preliminary View PCR stated “We accept your decision that we are in breach of the two codes. Our intention is to offer our audience a Christian worldview, not to cause any undue offence to other groups and we clearly got things wrong this time”. It further went on to say that “As a result we have reviewed and reinforced our internal processes to ensure that teaching programmes are checked even more thoroughly; staff involved have been disciplined and will continue to be checked...” In conclusion, the Licensee stated that all its programmes were preceded with a disclaimer stating “Premier gives space for Christians to have their say, and this programme may not reflect the views of everyone”.

Decision

Rule 2.3

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

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights ("ECHR"). We've also taken into account Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". Ofcom seeks an appropriate balance between ensuring members of the public are adequately protected from harmful or offensive material and the right to freedom of expression and the right to freedom of thought, conscience and religion.

Ofcom seeks to ensure members of the public are adequately protected from material which may be considered offensive whilst protecting the right to freedom of expression.

The Licensee has a right as a broadcaster largely serving a Christian audience in the UK, to broadcast material from a Christian perspective on issues which may be of interest to its listeners. It is acceptable for Dr John MacArthur to preach on any aspect of Christianity and to refer to scripture as part of his sermon or religious discourse. Ofcom recognises that it would be an unacceptable restriction on a broadcaster's and audience's freedom of expression to curtail such views just because they could cause offence.

However, under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by the context. Context is assessed by a range of factors including: editorial content; the degree of offence; the effect of the material on listeners who might come across it unawares; warnings; and, likely audience expectations.

We first considered whether the programme included potentially offensive material.

Dr MacArthur's referred to followers of other religions as "*demon worshippers*", and "*worshipping Satan and the kingdom of Satan*".

In Ofcom's view, making comments such as "*If you are a Muslim and you are worshipping Allah, you're worshipping demons*" and "*so when you think of a Buddhist or Muslim or Mormon or Hindu or Jews, don't think of them as making the best effort they can to worship the true God, they're demon worshippers*" and to describe the beliefs of non Christian faiths as demonic and satanic had the potential to be considered offensive by followers of those other faiths and listeners in general.

This was particularly the case for followers of the faiths mentioned, for whom references to "*demons*"², "*demon worshipping*", and "*worshipping Satan*" would have overwhelming negative connotations, given those faiths' fundamental rejection of demonic or satanic worship. We therefore considered that the views expressed in the programme abused the religious views and beliefs of people of other faiths and had the potential to cause considerable offence.

¹Demons: <https://en.oxforddictionaries.com/definition/demon>

Ofcom recognises that it is acceptable for critical views of other faiths to be expressed which listeners may find offensive but broadcasters must ensure those views do not spill over into pejorative abuse. This is particularly the case where religious texts are being interpreted rather than quoted, which may involve an increased potential to offend.

We then went on to look at whether it was justified by the context. Ofcom considered that there would need to be very strong, if not exceptional, contextual factors to justify the inclusion of this particular material.

This was a religious programme on a Christian channel. The audience would have expected to see programmes promoting and exploring Christian beliefs. Ofcom recognises the Licensee's right to freedom of expression and religion and would not seek to curb broadcasters from expressing a viewpoint, even discussing a "controversial piece of the Bible".

The Christian pastor in this programme made a number of statements that were both critical of and offensive to other faiths during his sermon. The comments were presented as facts, and made in unequivocal terms.

The Licensee argued that the pastor was preaching from the Bible. However, we took into account that although the Bible details the offering of sacrifices and worshipping idols, there is no evidence of Biblical texts naming specific faith groups. We noted the Licensee's own admission that "it would have been better on this occasion to remove the references to the specific faith groups mentioned within the broadcast...".

Ofcom considered that Dr John MacArthur's comments carried added weight and a greater potential to offend by virtue of his position as a pastor preaching from a Christian platform. The programme did not reflect differing interpretations of the religious texts and no alternative perspective was offered to counter his strong views on other faiths.

The Licensee itself stated Dr MacArthur offered a "conservative" commentary of the Biblical verses quoted. In Ofcom's view, it was incumbent on the Licensee to provide additional explanation and/or an alternative perspective of the text to provide appropriate context. We took into account that PCR had "discussed the issue on the next edition of Right of Reply, where we outlined a more liberal Christian view on this issue, and a different interpretation of the Bible passage in question". However, we considered this was not sufficient to provide the necessary context to justify the degree of offence in this case.

Our Decision is that the programme breached Rule 2.3.

Rule 4.2

Reflecting our duties under the Communications Act 2003³, Section Four requires that "The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment"

Ofcom considers "abusive treatment" in religious programmes under Rule 4.2 to include statements which revile, attack or vehemently express condemnation towards another religion without sufficient justification by the context. The Code does not prohibit legitimate criticism of any religion but such criticism must not spill over into pejorative abuse.

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

As stated above Ofcom does not seek to curb or limit the ability of a broadcaster to discuss religious texts such as the Bible. In particular, the Human Rights Act 1998 and the ECHR give the right to freedom of expression and encompass the audience's right to receive material, information and ideas without interference as well as the right to freedom of thought, conscience and religion and the right to enjoyment of human rights without discrimination on grounds such as religion.

Ofcom accepts that Biblical texts can be discussed in programmes, even if this involves a critique of other faith groups. However, it is incumbent upon the Licensee to ensure such a critique does not subject the religious views and beliefs of other faiths to "abusive treatment".

In Ofcom's view, for the reasons explained above, the comments made by Dr John MacArthur constituted "abusive treatment" and were delivered as fact and in unequivocal terms. Ofcom acknowledged that theological disputes exist between different religions on interpretation of religious texts or between different traditions within the same religion. We also acknowledged that the Code does not prohibit the members of one religious tradition from criticising the beliefs of another religious tradition. However, theological differences do not permit the broadcast of statements that subject particular religions to abuse.

In Ofcom's view, to describe followers of other faiths as "*demon worshippers*", "*demon deceivers*" and "*worshipping Satan*" were terms that were clearly pejorative and abusive of the beliefs of others. The risk of offence would be exacerbated by the fact that an authority figure was using religious text to justify the use of such terms and the propagation of these views.

Ofcom's Decision is that the broadcast had subjected other faiths to abusive treatment and also breached Rule 4.2.

Ofcom welcomed the Licensee's: recognition that it had breached the Code in this case; statement that the "staff involved have been disciplined and will continue to be checked" and steps it had taken to improve its compliance processes.

Breaches of Rules 2.3 and 4.2

In Breach

Studio 66 Mornings

Television X, 14 November 2016, 06:30

Introduction

Television X is a channel specialising in interactive chat services. It is freely available on satellite, cable and terrestrial platforms and is situated in the 'adult' section of electronic programme guides ('EPGs'). The licence for the service is held by Portland Broadcasting Limited ("Portland" or "the Licensee").

Studio 66 Mornings is a segment of interactive 'daytime chat' advertising content broadcast on Television X.

The content consisted of presenters inviting viewers to contact the presenters via premium rate telephony services ("PRS"). There were also advertisements for pictures, videos and other chat services via PRS text message in graphics super-imposed over the main content, at the bottom and right hand side of the screen.

Ofcom was alerted by a complaint to two video sequences of topless women fondling their breasts, which occupied a small area on the bottom-right hand corner of the screen. These were labelled *Naughty Hard Vids* and included a shortcode SMS text number. The sequences were of 15 and 30 seconds duration and each typically appeared once every minute and were part of the version of *Studio 66 Mornings* that was broadcast on Television X from 06:30 to 08:30¹ on 14 November 2016.

Ofcom considered this² raised issues under the following rules of the BCAP Code: the UK Code of Broadcast Advertising ("the BCAP Code"):

Rule 23.3 "Advertising for telecommunications-based sexual entertainment services must not be broadcast before 9pm or after 5:30am".

Rule 32.3 "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them".

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

¹ According to the Licensee's representations, *Naughty Hard Vids* was spotted as still being broadcast at 08:30 on 14 November 2016, at which point the content was removed from Television X's output.

² Ofcom separately assessed the content of *Studio 66 Mornings* simulcast on the separately licensed service, Studio 66 TV 2, at the same time as on Television X. We found that the video material labelled *Naughty Hard Vids* was not included in the Studio 66 TV 2 broadcast.

Response

The Licensee said that the content was a simulcast of the feed originating from the separately licensed television service Studio 66 2³.

Portland said that as the content was produced and complied by 914 TV Limited ("914 TV") – the licence holder for the service Studio 66 2 – it sought representations from 914 TV in relation to this incident. Portland's response therefore included comments from 914 TV.

According to the Licensee, 914 TV had:

- said that the broadcast of the advertisement, *Naughty Hard Vids*, on Television X occurred as a result of "human error" as it should have been "switched off" by 05:30. However, 914 TV had added that the "individual responsible for adjusting the setting on each of the four machines" that transmit Studio 66 2's content⁴, "failed to do so on the machine that simulcasts to Television X". It had added that the broadcast of *Naughty Hard Vids* on Television X continued until 08:30, when it was removed from Television X's output;
- accepted that the broadcast of *Naughty Hard Vids* between 06:30 and 08:30 raised compliance issues and sincerely apologised for the incident. However, it had added that the advertisement was "inadvertently" broadcast on a channel located within the adult section of EPGs which should mean that "few, if any children would have been watching". 914 TV had further added that the content of the advertisement (and the channel in general) would have been very unlikely to appeal to children and consequently, it had hoped that "the likelihood that they would have noticed or attempted to react to the advertisement would have been very small". 914 TV had also pointed out that the content being advertised could only have been received by "a handset that was age-verified by the relevant mobile network operator and therefore, it would not have been possible for children to purchase the advertised service"; and
- said that it takes compliance with the BCAP Code very seriously and had taken a number of steps to seek to eliminate the risk of a recurrence of this or similar scheduling errors. This included a "secondary check that the on-screen promotions are correct for the time of day by a member of the production team each day prior to broadcast". In addition, it said that new updated guidance had been provided to all staff members regarding the transition from night-time to daytime content.

Portland said it took compliance with the Broadcasting Code and the BCAP Code very seriously and said that it had also implemented an additional tier of live monitoring of its channels when third party content is broadcast during the daytime.

Decision

Reflecting our duties under the Communications Act 2003⁵, the BCAP Code contains rules which ensure that the inclusion of harmful advertising in television services is prevented.

³ See footnote 2.

⁴ Each machine broadcast the content of Studio 66 2 to a different service within the 'adult' section of EPGs.

⁵ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

There are rules which permit 'daytime chat' and 'adult chat' services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which restrict their content to exclude inappropriate material. These rules apply to both 'daytime chat' and 'adult chat' services.

Ofcom must have regard to the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. However, the advertising content of 'adult chat' and 'daytime chat' services has much less latitude than editorial material. The primary intent of advertising is to sell products and services, and we take this context into account.

Ofcom recognised that this advertisement was transmitted in error and that neither Portland nor 914 TV sought to defend the broadcast of this material. Television X is situated within the 'adult' section of EPGs and the content is unlikely to appeal to children. However, the advertisement for *Naughty Hard Vids* which contained several topless women fondling their breasts was broadcast repeatedly for a period of approximately two hours from 06:30.

On 4 February 2013, Ofcom published guidance⁶ on the advertising of telecommunications-based sexual entertainment services and PRS 'daytime chat' services ("the Chat Service Guidance"). This clearly sets out what Ofcom considers to be acceptable to broadcast on these services. For example, the Chat Service Guidance states that 'adult chat' advertising is acceptable between 21:00 and 05:30 only, and also explicitly states that 'adult chat' broadcasters should not "broadcast shots of bare breasts [after 05:30 and] before 22:00".

Rule 23.3

Rule 23.3 of the BCAP Code states: "Advertising for telecommunications-based sexual entertainment services must not be broadcast before 9pm or after 5:30am."

The BCAP Code defines telecommunications-based sexual entertainment services as "voice, text, image or video services of a sexual nature that are made available to consumers via a direct-response mechanism and are delivered over electronic communication networks".

Ofcom confirmed that the content advertised in this case was a telecommunications-based sexual entertainment service, as it contained video content showing naked women acting in a sexualised way.

The repeated broadcast of the advertisement labelled *Naughty Hard Vids* between 06:30 and 08:30 clearly breached Rule 23.3.

Rule 32.3

Rule 32.3 of the BCAP Code states: "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."

Given that the content showed topless women fondling their breasts, we were of the view that it was unsuitable for children.

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0012/24060/bcap-guidance.pdf

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to this broadcast. Ofcom took account of the Licensee's various arguments that: the channel Television X is in the 'adult' section of EPGs which should mean that "few, if any children would have been watching"; the content would have been very unlikely to appeal to children; and the service being advertised could only have been received by "a handset that was age-verified by the relevant mobile network operator and therefore, it would not have been possible for children to purchase the advertised service".

Ofcom did not believe the accessibility of the advertised service was relevant in this case. This was because it was still possible for any children in the audience to view the images shown on screen.

The Chat Service Guidance requires all 'adult chat and 'daytime chat' services to be placed within the 'adult' or similarly identified section of EPG listings. However, it also states that the "presentation of daytime chat should always be suitable for wide audiences, that is for audiences including children and young persons...should they come across it unawares." Additionally, it states that daytime broadcasters should:

- "ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks"; and
- "not broadcast images of presenters touching or stroking their bodies in a suggestive manner, in particular avoiding breasts, thighs, crotches and buttocks".

Given that the advertisement featured these elements, we did not consider that Portland had adhered to relevant time restrictions. Therefore, the content also breached Rule 32.3.

Conclusion

Ofcom noted the measures 914 TV and Portland said they had taken to ensure that the transition between night-time and daytime transmission would be managed effectively, including that live third party day-time content provided to the Licensee would be monitored for compliance purposes by Portland.

Although the material was produced and complied by 914 TV, Ofcom reminds Portland, as the Ofcom licensee, that it is responsible for all content broadcast on the service Television X.

Breaches of Rules 23.3 and 32.3 of the BCAP Code

In Breach

Studio 66 Nights

Studio 66, 6 January 2017, 22:00

Introduction

Studio 66 is a television channel specialising in interactive chat services. It is freely available on the satellite platform and situated in the 'adult' section of electronic programme guides ('EPGs'). The licence for the service is held by 914 TV Limited ("914 TV" or "the Licensee")

Studio 66 Nights is a segment of interactive 'adult chat' advertising content. Viewers are invited to contact presenters via premium rate telephony services ("PRS").

Ofcom received one complaint about an incident that occurred shortly after 22:00. The presenter wore a see-through vest top and a short black skirt. At 22:05, she placed a laptop computer on a table behind her and bent over to operate it, causing her skirt to move upwards. Her genital area was covered by her underwear, but this exposed her buttocks. The camera then zoomed in so that the presenter's buttocks occupied most of the screen for approximately 45 seconds.

Ofcom considered this raised issues under Rule 4.2 of the BCAP Code: the UK Code of Broadcast Advertising ("the BCAP Code"):

"Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards".

We therefore sought comments from the Licensee as to how the material complied with this rule.

Response

914 TV apologised for this incident and said that having investigated the matter, it had concluded that the incident was "simply a case of poor decision making on the camera operator's part". It accepted however that in light of Ofcom's published guidance, the content may have contravened Rule 4.2 of the BCAP Code.

The Licensee said that the presenter was experiencing difficulty logging in to the system on her laptop and instead of "taking her off-screen while the matter was resolved, the camera operator chose to zoom in on the part of the presenter closest to them". It added, however, that it was "very clear there that was no intention to create any sort of sexualised imagery" from what it described as "lazy and poor camera work."

914 TV said that following the incident, it held a meeting with the camera operator and arranged a refresher evening for all relevant staff to reiterate both Ofcom's and its own guidance so that the possibility of such issues occurring again would be minimised.

The Licensee said that only one complaint was received about the content and that the material was inadvertently broadcast post-watershed on a channel located within the adult section of the EPG. It therefore argued that the content would have been "very unlikely" to

cause harm or offence. However, 914 TV concluded by stating its on-going commitment to compliance with the BCAP Code.

Decision

Reflecting our duties under the Communications Act 2003¹, the BCAP Code contains rules which ensure that the inclusion of offensive advertising in television services is prevented. There are rules which permit 'daytime chat' and 'adult chat' services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which restrict their content to exclude inappropriate material. These rules apply to both 'daytime chat' and 'adult chat' services.

Rule 4.2 of the BCAP Code states: "Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards".

Ofcom must have regard to the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. However, the advertising content of 'adult chat' and 'daytime chat' services has much less latitude than editorial material. The primary intent of advertising is to sell products and services, and we take this context into account.

On 4 February 2013, Ofcom published guidance² on the advertising of telecommunications-based sexual entertainment services and PRS 'daytime chat' services ("the Chat Service Guidance"). This clearly sets out what Ofcom considers to be acceptable to broadcast on these services post-watershed. For example, guidance explicitly states that 'adult chat' broadcasters should:

- "at no time broadcast invasive shots of presenters' bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged".

Ofcom took into account the nature of the content in this case which involved a close-up prolonged shot of the presenter's buttocks. We also took into account that this content was broadcast after the watershed and that viewers generally expect on all channels that stronger material may be shown at this time. Studio 66, is positioned in the 'adult' section of the EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in an 'adult' section of an EPG than on channels in other sections.

However, the content was of a type which Ofcom's Chat Service Guidance clearly indicates as being unacceptable on 'adult chat' services. Further, Ofcom did not consider the positioning of the channel in the 'adult' section of the EPG or its time of broadcast at 22:05 were sufficient to prevent the material from causing widespread offence against generally accepted standards.

Ofcom noted the Licensee's acknowledgement that the content may have contravened Rule 4.2 of the BCAP Code and the measures 914 TV had undertaken to improve compliance in this area. However, for all the reasons given above, Ofcom concluded that the material breached Rule 4.2 of the BCAP Code.

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

² https://www.ofcom.org.uk/_data/assets/pdf_file/0012/24060/bcap-guidance.pdf

Breach of Rule 4.2 of the BCAP Code

In Breach

News in Brief

ESAT UK, 17 November 2016, various times

Dr. Dima Negeo on the formation of Ethiopia National Movement

ESAT UK, 12 and 17 November 2016, various times

Introduction

ESAT UK is a general entertainment television channel serving the Ethiopian community in the UK and Europe. The licence for the service is held by Ethiopian Satellite Television UK Ltd ("ESAT" or "the Licensee").

During routine monitoring Ofcom identified the following programmes:

News in Brief

Compiled in Washington DC and read in English, this programme was a six-minute news summary, repeated throughout 17 November 2017 as part of a block of programming of approximately two hours in duration. It comprised the following four presenter-read items:

- The formation of the Ethiopian National Movement ("ENM") by four political (opposition) parties¹ – the newsreader ended this item with the statement:

"Ethiopians at home and in the Diaspora have been urging opposition political parties to have coalition and unity in a bid to do away with the tyrannical regime that is facing uprising in all corners of the country".

- An interview by Radio France International with the Chairman of the Patriotic Ginbot 7 ("PG7"), Professor Berhanu Nega – the newsreader reported on the interviewee's reference to *"the lies of the Ethiopian regime"* and *"[call] on the international communities to act before the country is plunged into civil war and humanitarian catastrophe."* The newsreader added:

"[Professor Berhanu Nega] described the West's foreign policy towards Ethiopia as myopic, which ignores basic human rights of the people that are suffering under tyranny. He said the West is focussing on what's called 'War on Terror', while the regime's destabilised a country of 100 million people...Nega said a brutal regime in Ethiopia... is leading the country into total abyss..."

- The Ethiopian Tourism Minister *"admitting [the tourist] industry has been seriously drained following the martial law [in Ethiopia]"* – the newsreader added:

"The Minister addressed a meeting of the [struggling] industry...[not only have] the number of tourists decreased drastically following the state of emergency but those tourists who are in the country already have faced problems at checkpoints, banks and

¹ Oromo Democratic Front, Patriotic Ginbot 7 Movement for Unity and Democracy, Afar People's Party and Sidama National Democratic Movement

internet access, which has been blocked by the regime...The state of emergency declared earlier in October bans diplomats travelling beyond 40 kilometres – 25 miles – radius outside the capital, Addis Ababa. The regime [has]...seen the negative impact on tourism [and] issued a directive saying [tourists] can travel anywhere without any prior authorisation. That directive has come too little too late, as the state of emergency has already taken a toll on the country's hospitality industry... Representatives of the tour [operators] who attended the meeting also, pressed their disappointment over the Government's action that caused the cancellation of travel to countries, which they say paralysed the industry. They say the cancellation has led to the bankruptcy of local tour operators. The unrest in Amhara and Oromia regions in the country has kept tourists away from the country, seriously affecting the income the country generates from the hospitality industry. Several Ministry media outlets are calling [for] tour operators and local tour guides to protect tourists who have cancelled their trip to Ethiopia's destination[s] in the month of October, which otherwise is a month of tourism boom. The UK FCO's advising against all travel to some regions in the east and all but essential travel in central parts...the report by the Telegraph said... The US Department...last week stated it issued a travel warning advising citizens against what it called non-essential travel, after the...minority regime declared a state of emergency, following a year of daily anti-government protests".

- The United States ambassador saying "the shut-down of the internet by the regime has severely affected its activities" – the newsreader added:

"[Responding] to complaints by Ethiopians who are having difficulty in communicating with them due to the blockage of the internet and social media, the embassy said it shows the frustration of the public. The embassy further [said] the blockage of the internet has also affected some of the opportunities that the United States offers to Ethiopians. It said the restriction [makes] it far more difficult to let people know about...important opportunities, like the Mandela Washington Fellowship application or the Diversity Visa Lottery and other programmes or events that may be of interest..."

We considered the programme raised issues under the following Code rule:

Rule 5.1 "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

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

Dr. Dima Negeo on the formation of Ethiopia National Movement

Following the formation of the Ethiopia National Movement ("ENM") on 11 November 2016, this "ESAT Exclusive" was an interview repeated throughout 12 and 17 November 2016, in blocks of programming of approximately two hours in duration. In the 50-minute programme, the interviewer introduced Dr Negeo as Vice-chair of the Oromo Democratic Front ("ODF") and Chairman of the Executive Committee of the ENM. (The ODF is one of four political opposition parties² that formed the ENM.) When asked about the movement's "vision and mission", Dr Negeo said:

² See footnote 1

“Well, the Ethiopian National Movement...aims at the uniting Ethiopia’s diverse political movements...to bring them into a united struggle to overcome the current political crisis in our country and also the political fragmentation that exists in Ethiopia. So the aim of the movement is to bring together as many of Ethiopia’s political movements as possible into a broad national democratic movement, to be able to support the ongoing popular struggle in the country and bring an end to the 25 years of brutal rule of the TPLF³ regime and replace it with a broad democratic transitional government that includes all the stakeholders in the country and leads the country towards a democratic and federal state”.

When asked about how difficult it was to bring political parties together to form the ENM, Dr Negego’s response included:

“We ended at declaring the movement now, mainly because of the ongoing struggle in the country... the situation has actually forced the ruling party to declare a state of emergency, which is in a way an admission that it will not rule the country in the old ways, and the people have also refused to be ruled in such a way, so the regime has already admitted that it is incapable of maintaining control of the country, so the Oromo popular movement has been gaining momentum and strength, and spreading from one region to the other – from the rural to the urban areas, so now it involves millions of people who are engaged in a campaign of protests and resistance against the 25 years repressing rule of the Government...”.

When asked why the ENM would succeed, as previous coalitions had failed, Mr Negego concluded his response by saying:

“...The current regime has been trying to divide and create the divisions and animosity among peoples and within, in fact, the peoples themselves, for the last 25 years – that’s how they’ve maintained their rule – so a policy of divide and rule. We believe that the people have now overcome these machinations of the Government and they are pushing for a more united and mass country-wide struggle to bring an end to this regime”.

When asked what the position of the ENM would be in any transitional period, Dr Negego concluded by saying:

“...Well, at the moment, the TPLF is still in power – it controls the military, it has security services...it has lost the confidence of the people, so it rules by force. To bring about a stable political order in our country we believe that a broad-based national conference should be convened – that is inclusive of everybody and that conference should decide on the best way towards a transitional process. That’s how it should come. But first the national conference needs to be convened and if the TPLF or the current ruling party is willing to be part of the solution, instead of being part of the problem, they still have the opportunity to do so. If they don’t, they will be swept away by the popular movement like their predecessors. So we hope they would learn from the fate of all the regimes before them and be part of the solution for our country’s political future”.

When asked for his “hopes for the country”, “having spent most of [his] life involved in Ethiopia’s struggle”, Mr Negego concluded the interview by saying:

³ Tigrayan People's Liberation Front

"...looking now at the maturity of the Ethiopian peoples...during the past year we saw how people are showing solidarity amongst each other, in spite of the regimes' machinations, and I very much hope and am very optimistic – especially at this stage – that this current regime will be the last tyrannical – the last undemocratic regime – in the history of our country".

Ofcom considered that this programme was dealing with matters of political controversy and matters relating to current public policy – i.e. the policies and actions of the Ethiopian Government. We also considered the material raised issues under the following Code rule:

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

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

Response

The Licensee said the programmes were "produced by ESAT International, a sister organisation based in the USA, and [broadcast] on ESAT UK...".

In response to Ofcom's Preliminary View, it added that:

- ESAT UK aims to fill an "information vacuum and serve the Ethiopian Community in the United Kingdom and Europe most of whom have left their home due to political persecution"; and
- the absence of "media freedom and basic human rights" was acknowledged by the Foreign and Commonwealth Office in 2014⁴, and "political space and critical voices are generally absent in Ethiopia", with the "the declaration of the state of emergency in October 2016 [having] signalled further restrictions on freedom of expression".

ESAT said that "owing to the absence of basic universal rights and lack of alternative media in Ethiopia [it believed] that Ofcom ought to apply a higher test to any potential complaint, usually directed from those who are content with the taking away rights of freedom of expression, to ensure the human rights of its audience to obtain free and accurate information is respected".

News in Brief

ESAT said it "[understood] that news must be reported with impartiality", adding that, "although under the Code there is no requirement on broadcasters to provide an alternative viewpoint in all stories or all issues in the news, [it understood that] attempts to get the views of the Ethiopian Government on the news items [had] failed".

⁴ See: <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2014/human-rights-and-democracy-report-2014>; in particular, the case study at: <https://www.gov.uk/government/case-studies/ethiopia-media-freedoms>

The Licensee said it therefore “[acknowledged] that the frustrated attempt to get alternative views on the topic ought to have been stated at the end of the piece”, adding that this “[would] be rectified in future”.

In response to Ofcom's Preliminary View, the Licensee said it was “human error which [had] led to the omission of the statement confirming the frustrated attempts to obtain the view of a representative of the Ethiopian Government at the end of the bulletin”, but “ESAT UK still [believed] that the news item broadcast [was] accurate in content and its sources [were] sufficiently indicated in the bulletin. ESAT said this “provided its audience an insight to events covered in the item which would have not been achieved otherwise”.

The Licensee said that, “given the above background on the political situation in Ethiopia and absence of an alternative media to provide another perspective on governance and political topics, [it believed] that Ofcom ought to consider if it has struck the right balance between freedom of expression and regulatory intervention and ensure that the threshold for intervention should be high in this circumstance”.

Dr. Dima Negeo on the formation of Ethiopia National Movement

ESAT said that, “owing to the unsettled political situation in Ethiopia⁵, there are various political groups operating at home and abroad working for democratic and constitutional rights of the constituency they represent”, adding that “opposition groups in Ethiopian politics are said to be fragmented and have been trying to form a united movement to promote freedom and democracy for a while, and Ethiopia National Movement signified a landmark moment”.

The Licensee said it recognised that, “while there are movements opposing the Ethiopian Government accused of violation of basic human and constitutional rights of its citizens, there are groups with different views and the Ethiopian Government itself”. However, ESAT asked Ofcom to note that “the target audience of ESAT UK programs are Ethiopians in the UK and Europe who have left their home land due to steady erosion of their basic human and constitutional rights”.

ESAT said that, “despite the repeated reluctance of other political groups and the Ethiopian Government to appear on ESAT UK to express their view on this and other development[s] in Ethiopian politics, ESAT UK had been working on broadcasting the view of these groups...in a series of interviews of their representatives.” It added that, “unfortunately, due to financial and contractual difficulties with satellite broadcasters, the plan was cut short when ESAT UK went off-air on 19 November 2016”.

The Licensee said it “plans to address any concerns of neutrality and impartiality by addressing this issue soon when it is back on air again, although there [have] been significant political developments in Ethiopia and around the world since, which [have] superseded this event”.

In response to Ofcom's Preliminary View, ESAT clarified that “the programmes broadcast were only part of a series of items intended to be broadcast on the channel, providing an opportunity to rectify instances which appear not to comply with the codes indicated in the investigation”.

⁵ https://www.washingtonpost.com/opinions/ethiopia-meets-protests-with-bullets/2016/10/11/Of54aa02-8f14-11e6-9c52-0b10449e33c4_story.html?utm_term=.00b998a92e28

Decision

Background

Reflecting our duties under the Communications Act 2003⁶ (“the Act”), Section Five of the Code requires that news included in television and radio services is presented with due impartiality and the special impartiality requirements are met.

Under Rule 5.1, news must be reported with due accuracy and presented with due impartiality. Rule 5.5 requires that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

The Code makes clear that the term “due” means adequate or appropriate to the subject matter. “Due impartiality” does not therefore mean an equal division of time has to be given to every view, or that every argument has to be represented. Due impartiality can be preserved in a number of ways, and it is an editorial decision for the broadcaster as to how it ensures this. Depending on the specific circumstances, it may be necessary to reflect alternative viewpoints in an appropriate way. The context in which programme material appears, including the particular characteristics of the programme, is important to judgments of what is duly impartial.

Ofcom takes account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcasters’ freedom to discuss any controversial subject or point of view in their programming, and compliance with Section Five.

In this instance, “to ensure the human rights of its audience to obtain free and accurate information is respected”, ESAT suggested that “a higher test to any potential complaint” ought to apply, “owing to the absence of basic universal rights and lack of alternative media in Ethiopia...usually directed from those who are content with...taking away rights of freedom of expression”. Ofcom reminds the Licensee that this investigation is the result of routine monitoring. Nevertheless, in seeking to balance the broadcasters’ freedom of expression and compliance with Section Five, Ofcom has carefully considered, among other things, the political climate in Ethiopia, to which both the Licensee and the programmes under investigation refer.

News in Brief

Rule 5.1 requires broadcasters to present news with “due impartiality”.

This obligation applies potentially to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. A key part of Ofcom’s analysis is an assessment of whether a particular view or response needed to be reflected, or context provided, to ensure due impartiality, and – if so – whether it was appropriately reflected or provided. This is a matter of judgement, to be decided taking account of all the relevant circumstances.

Broadcasters have the right to interpret news events as they see fit, as long as the content complies with the Code. However, the Code guidance makes clear that broadcasters should

⁶ <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

take care before making any unequivocal interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations.

News in Brief comprised four relatively short items, each of which commented on the Ethiopian Government and/or its policies or actions. Ofcom was of the view that each item contained various comments that were directly or implicitly critical of, or in opposition to, the Ethiopian Government. For example:

- in the first item, the Ethiopian Government was described by the newsreader as *"the tyrannical regime"*;
- in the second item, the newsreader reported on the PG7 opposition party Chairman's reference to *"the lies of the Ethiopian regime"*;
- in the third item, the newsreader referred to the negative impact on Ethiopia's tourist industry of the Government-issued *"state of emergency"*, referring to its directive that *"[tourists] can travel anywhere without any prior authorisation"* as *"too little too late"*, due to *"the state of emergency [having] already taken a toll on the country's hospitality industry"*; and
- in the final item, the newsreader reported on the USA embassy's view that *"the shut-down of the internet by the [Ethiopian] regime...shows the frustration of the public..."* and *"[makes] it far more difficult to let people know about...important opportunities..."*.

Ofcom was therefore concerned that every news item in the bulletin contained material critical of, or in opposition to, the Ethiopian Government, two of which were not the reported views of third parties but the apparent views of the Licensee – i.e. reference to the Ethiopian Government as *"the tyrannical regime"* and reference to its directive that *"[tourists] can travel anywhere without any prior authorisation"* as *"too little too late"*. We therefore considered the cumulative effect of this material, taken in the context of the entire bulletin.

Ofcom accepted that the service, ESAT UK, reports to, and is therefore likely to report news from the perspective of, Ethiopians living outside Ethiopia – i.e. in the UK and Europe. However, the only material we were able to identify that appeared not to present a critical view of the Ethiopian Government's actions occurred in the third news item in the bulletin. This referred to both the Ethiopian Tourism Minister's presence at a meeting of industry representatives and the call of *"several Ministry media outlets...[for] tour operators and local tour guides to protect tourists who have cancelled their trip to Ethiopia's destination[s] in the month of October"*. We considered these references insufficient either to represent a view counter to the material criticising or opposing the Ethiopian Government, or to provide appropriate context for this material throughout the broadcast.

The Licensee acknowledged that its *"frustrated attempt to get alternative views"*, which had arisen due to human error, *"ought to have been stated at the end of the piece"*. Ofcom considered that this would have been helpful. Nevertheless, Ofcom is of the view that a single statement concerning the Licensee's failure to obtain alternative views would have been insufficient in this case to ensure due impartiality, in a news programme that was comprised only of items criticising or opposing the Ethiopian Government. In such circumstances, broadcasters should find other ways of reflecting alternative views where required. For

example, Ofcom's published Guidance⁷ to Section Five lays out examples of editorial techniques for maintaining due impartiality where alternative viewpoints are not readily available.

In this instance, Ofcom therefore concluded that alternative views were not appropriately reflected to ensure due impartiality was maintained in *News in Brief*.

Although ESAT subsequently said it believed the news bulletin was "accurate in content and its sources [were] sufficiently indicated", which "provided its audience an insight...which would have not been achieved otherwise", Ofcom had not challenged this position. Ofcom considered whether due impartiality was maintained in the broadcast. For the reasons stated above – and having sought to ensure an appropriate balance between the broadcaster's freedom of expression and compliance with the Section Five of the Code – we do not consider it was.

Ofcom considered that *News in Brief* was in breach of Rule 5.1 of the Code.

Dr. Dima Negeo on the formation of Ethiopia National Movement

Rule 5.5 of the Code requires that: "Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved..."

Ofcom first considered whether Rule 5.5 applied in this case – that is, whether this programme concerned matters of political or industrial controversy or matters relating to current public policy. *Dr. Dima Negeo on the formation of Ethiopia National Movement* was an interview concerning the recent formation of the ENM, in which its Executive Committee Chairman said:

"Well, the Ethiopian National Movement...aims at the uniting Ethiopia's diverse political movements...to bring them into a united struggle to overcome the current political crisis in our country and also the political fragmentation that exists in Ethiopia. So the aim of the movement is to bring together as many of Ethiopia's political movements as possible into a broad national democratic movement, to be able to support the ongoing popular struggle in the country and bring an end to the 25 years of brutal rule of the TPLF regime and replace it with a broad democratic transitional government that includes all the stakeholders in the country and leads the country towards a democratic and federal state".

Given this outlined the principal aim of a new Ethiopian political movement as replacing the country's current government, Ofcom considered that any debate surrounding the topic was clearly a matter of political controversy. Rule 5.5 was therefore engaged.

Ofcom went on to assess whether this programme preserved due impartiality by, for example, reflecting alternative viewpoints, as appropriate. The following comments were made by Dr Dima Negeo:

"...the aim of the [ENM] is...to be able to support the ongoing popular struggle in the country and bring an end to the 25 years of brutal rule of the TPLF regime and replace it with a broad democratic transitional government..."

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0018/24534/section5.pdf.

"We ended at declaring the movement now, mainly because of the ongoing struggle in the country... the situation has actually forced the ruling party to declare a state of emergency, which is in a way an admission that it will not rule the country in the old ways, and the people have also refused to be ruled in such a way, so the regime has already admitted that it is incapable of maintaining control of the country...millions of people who are engaged in a campaign of protests and resistance against the 25 years repressing rule of the Government..."

"...The current regime has been trying to divide and create the divisions and animosity among peoples and within, in fact, the peoples themselves, for the last 25 years – that's how they've maintained their rule – so a policy of divide and rule"

"...the TPLF is still in power – it controls the military, it has security services...it has lost the confidence of the people, so it rules by force ... if the TPLF or the current ruling party is willing to be part of the solution, instead of being part of the problem, they still have the opportunity to do so. If they don't, they will be swept away by the popular movement like their predecessors..."

"...I very much hope...that this current regime will be the last tyrannical – the last undemocratic regime – in the history of our country..."

Ofcom accepts that, ESAT's interview with ENM's Executive Committee Chairman was inevitably going to present a critical view of the Ethiopian Government and its real and/or perceived policies, as ENM comprised a coalition of four Ethiopian political opposition parties. However, at no point did the interviewer challenge Dr Negeo's view of such matters.

References made to the Ethiopian Government and real/perceived policies associated with it included: "25 years of brutal rule of the TPLF regime"; "the regime has already admitted that it is incapable of maintaining control of the country"; "25 years repressing rule of the Government"; "the TPLF...rules by force..."; "if the TPLF or the current ruling party is [un]willing to be part of the solution...they will be swept away by the popular movement"; and, "the last tyrannical – the last undemocratic regime – in the history of our country". Ofcom was of the view that the Ethiopian Government's views on such references should have been represented to ensure due impartiality was preserved.

Rule 5.5 of the Code permits the preservation of due impartiality to be "achieved within a programme or over 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. The Licensee said "ESAT UK had been working on broadcasting the view of [other political groups and the Ethiopian Government]...in a series of interviews of their representatives", which it had failed to achieve by the time the channel ceased broadcasting as a result of financial and contractual difficulties. Further, we took into account that the channel "plans to address any concerns of neutrality and impartiality by addressing this issue soon when it is back on air again..."

Nevertheless, given the 50-minute interview formed part of a two-hour block of programming and was repeated throughout 12 and 17 November 2016, we considered that such views should have been broadcast in the programme or in appropriately timely editorially linked programming. The Licensee did not provide any evidence as to how it had presented alternative viewpoints on the matters in question 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. Further, the Licensee said it “[planned] to address any concerns of neutrality and impartiality by addressing this issue soon when it is back on air again”, and subsequently clarified that “the programmes broadcast were only part of a series of items intended to be broadcast on the channel, providing an opportunity to rectify instances which appear not to comply with the codes indicated in the investigation”. It is Ofcom’s view that the preservation of due impartiality cannot be ensured on such an open-ended basis.

For the reasons given above, Ofcom considers the Licensee failed to preserve due impartiality on matters of political controversy and matters relating to current public policy, in breach of Rule 5.5 of the Code.

Breach of Rule 5.1: News in Brief

Breach of Rule 5.5: Dr. Dima Negeo on the formation of Ethiopia National Movement

Resolved

Sky News Tonight

Sky News, 20 February 2017, 19:10

Introduction

A complainant alerted Ofcom to the inclusion of offensive language in a news report about protests against Donald Trump.

The live footage of one demonstration featured a protester holding a banner that read *"Trump is a cunt"*. This was visible for approximately three seconds.

We considered this raised potential issues under Rule 1.14 of the Code which states:

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

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

Response

Sky said that while covering an anti-Donald Trump demonstration in Cardiff "the movement of the protesters, as well as the fact that it was dark, militated against us. The young woman holding the [banner with the offensive language] loomed out of the dark suddenly, and by the time the words had been assimilated, she had gone past in exactly three seconds". It added that the broadcast was been overseen from its secondary gallery at Millbank where "the screens are smaller and slightly less clear than in our usual gallery". Therefore, the Licensee said that the offensive language was not "immediately picked up by the Output Editor or the Director".

Sky said that "shortly after the live pictures went out, one of the gallery staff raised a concern that there may have been an offensive banner in the crowd". It added that the gallery staff confirmed the inclusion of the offensive language when they checked the footage during the next commercial break. The Licensee took the view that "by the time the content of the banner had been confirmed too much time had elapsed to make an apology beneficial to the viewer". It said it had also decided not to return for further live coverage of the Cardiff demonstration later that day.

By way of mitigation, the Licensee said that the offensive language had been broadcast "after 7pm at night on a news programme largely dedicated to politics, public policy issues, and foreign news" and therefore it was unlikely to attract children.

In conclusion, Sky said that "[e]ven before the period of regular demonstrations against Donald Trump in the post-inauguration period", it reminded all the staff of the importance to be vigilant over protest banners and placards both on video and in live situations" and "of the need to be alert to the dangers of live broadcasting". However, it said that following the incident, programme teams were warned to be "vigilant" for any similar banners in Sky News content.

Decision

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

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed. Ofcom research² on offensive language clearly states that the word "cunt" and similar words are considered by audiences to be among the most offensive language.

In this case, a banner reading "*Donald Trump is a cunt*" was clearly legible for three seconds and was shown before the watershed.

However, Ofcom took into account that: the report was live; the offensive language appeared on screen relatively briefly; and, on becoming aware of the incident, the Licensee decided not to broadcast further live from this demonstration. Following the incident Sky had also warned its programme teams to be vigilant for any similar banners in Sky News content.

For all these reasons, our Decision is therefore that the matter is resolved.

Resolved

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

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

Broadcast Licensing cases

In Breach

Providing a service in accordance with 'Key Commitments' *BRFM (Isle of Sheppey), 25 to 27 October 2016 and 9 to 15 January 2017*

Introduction

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

Like other community radio stations, BRFM is required to deliver the 'Key Commitments' which form part of its licence¹. These set out how the station will serve its target community, and also include a description of the programme service.

Ofcom received a complaint that BRFM was not delivering some of the programming requirements set out in the station's Key Commitments.

We requested recordings of three days of BRFM's output, covering Tuesday 25, Wednesday 26 and Friday 27 October 2016.

We identified some potential issues with BRFM's delivery of the following Key Commitments:

- Local news and information is a mainstay of daily programming' (from the 'Description of character of service').
- Speech. The main types of speech output broadcast over the course of each week are: local and community news, information and discussion programmes and output produced by local community organisations and/or schools.
- The service provides original output for an average of 12 hours per day (across the week).

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

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

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

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

¹ The Key Commitments are contained in an annex to BRFM's licence. They can be viewed in full at: <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000107.pdf>

Response

In response to Ofcom's request for comments on how BRFM had complied with its Key Commitments, the Licensee stated that it was compliant with the requirements contained in its Key Commitments to provide local and community news and information, but not for discussion programmes on the particular days Ofcom had requested recordings for. It listed the times during the week where discussion programmes were regularly broadcast, and stated that details of local events were provided throughout BRFM's programming. It explained that during autumn and winter, the Isle of Sheppey was "relatively quiet" (as the area is heavily reliant upon tourism) and so local news stories tend to be "sparse". At these times of year, BRFM explained that the station instead tends to focus on "local travel information".

BRFM said that it broadcast from 06:30 to midnight seven days per week, and that all programming was locally produced with original content.

Considering the Licensee's contention that the station was airing local and community news and discussion programming, we requested a second set of recordings from days of the week on which such programming was normally broadcast. We also asked the Licensee to specify at what times we could hear local and community news in the original set of recordings provided.

BRFM provided the additional recordings, and provided examples from the first set of recordings of what it identified as being local and community news. This material consisted of local weather forecasts, tide times updates, traffic news updates, commercials and sponsorship messages from local businesses and 'What's on' information.

In Ofcom's Preliminary View, which was sent to BRFM, we stated that local travel and weather information that would satisfy the Key Commitment requirement to broadcast "information" does not satisfy the requirement to broadcast local and community news. In addition, we stated that commercial messages cannot qualify as editorial content.

Our Preliminary View was that BRFM's failure to broadcast any local or community news breached that particular Key Commitment, and was not consistent with the station's 'Character of Service'.

The Licensee accepted Ofcom's Preliminary View and said it would be reinstating local news broadcasts.

Decision

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

While BRFM was producing local material (such as travel and weather) that would satisfy the Key Commitment requirement to broadcast "information", the station was clearly not satisfying the requirement to broadcast local and community news. In particular, commercial messages from local businesses cannot constitute editorial content. The failure to broadcast any local or community news was particularly significant given BRFM's Character of Service, which states that "Local news and information is a mainstay of daily programming."

We did, however, consider that a community show, broadcast three times per week, satisfied the requirement for "discussion programmes," and we were also satisfied that BRFM was producing the required amount of original output per day, and that it was airing output produced by local community organisations and/or schools.

We welcomed BRFM's confirmation that it would reinstate local news broadcasts. However, BRFM's failure to broadcast any local or community news between 25 to 27 October 2016 and 9 to 15 January 2017 breached Licence Conditions 2(1) and 2(4), as set out above.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by BRFM (licence number CR000107).

In Breach

Providing a service in accordance with 'Key Commitments' NE1 FM (Newcastle-upon-Tyne), January 2017

Introduction

NE1 FM is a community radio station licensed to provide a service for "parts of central Newcastle-upon-Tyne, in particular those areas with high levels of deprivation". The licence is held by Community Broadcast Initiative Tyneside Limited ("NE1" or "the Licensee").

Like other community radio stations, NE1 is required to deliver 'Key Commitments', which form part of its licence.¹ These set out how the station will serve its target community and deliver social gain (community benefits), and also include a description of the programme service.

Ofcom received a complaint that the programme schedule on NE1's own website appeared to suggest that the station was not delivering the minimum of 10 hours per day of original output that is required by its Key Commitments. Original output is defined by Ofcom as output that is first produced for and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or 'voice-tracked'. Repeat broadcasts of original output do not count towards the minimum requirement, and neither does continuous music.

We asked NE1 to confirm the hours of original output that it was currently broadcasting. NE1 responded that its hours of original output per day were as follows:

- Monday – nine hours
- Tuesday – 10 hours
- Wednesday – 11 hours
- Thursday – nine hours
- Friday – seven hours
- Saturday – nine hours
- Sunday – eight hours

There were only two days per week when the station was meeting its original output requirement. Measured over the course of the week, the station was delivering 63 hours of original output against the required minimum of 70 hours per week.

Ofcom considered this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to NE1's licence. These state, respectively:

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

¹ NE1's Key Commitments are contained in an annex to its licence and can be found at:
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000050.pdf>.

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

We requested comments from NE1 on how it was complying with these conditions.

Response

The Licensee accepted that it was not delivering the hours of original output required by its Key Commitments, and apologised for its failure to do so.

It explained that NE1's studios are located within a community college, which has limited opening hours but provides the station with rent-free accommodation. In order to increase the amount of original output going forward, the Licensee said “we will be encouraging those already associated with NE1 to contribute more to NE1 FM and examining the possibility of live broadcasts originating outside the building. This will help overcome the restrictions imposed by the opening hours of the College itself.”

Decision

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

The Licensee admitted that it had not been delivering the amount of original output required by its Key Commitments. We noted that the reason for this was essentially a logistical one, in that volunteers were only able to access the studio at certain times of the day because of the opening hours of the community college in which NE1 is based.

However, while we accept the Licensee's explanation and note its future plans, we were concerned that it had not previously made Ofcom aware of this situation, or sought to change its Key Commitments in light of these logistical difficulties.

We would remind all community radio licensees of the importance of ensuring that they are practically able to deliver their Key Commitments, and that if they are unable to they should ask to change them accordingly².

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Community Broadcast Initiative Tyneside Limited (licence number CR000050BA).

² There is a specific process for this, under which Ofcom considers a request to change Key Commitments against various criteria before deciding whether or not to agree to it.

Fairness and Privacy cases

Upheld

Complaint by Mr Husain Abdulla on behalf of Mr Hassan Mashaima *February Box, Al Arabiya News Channel, 27 February 2016*

Summary

Ofcom has upheld this complaint made by Mr Husain Abdulla on behalf of Mr Hassan Mashaima (referred to herein as Mr Mashaima's complaint) of unjust or unfair treatment and unwarranted infringement of privacy.

Al Arabiya News broadcast a programme in February 2016 about an attempt in February and March 2011, by a number of people including the complainant, Mr Hassan Mashaima, to change the governing regime in Bahrain from a Kingdom to a Republic. The programme included footage of the complainant as he explained the circumstances which had led to his arrest and conviction for his participation in these activities.

Ofcom found that:

- The programme included footage of an interview with Mr Mashaima which had the potential to materially and adversely affect viewers' perception of him and the broadcaster did not make clear what steps it had taken to ensure that material facts had not been presented, omitted or disregarded in a way that was unfair to Mr Mashaima.
- The broadcaster had not provided Mr Mashaima with an appropriate and timely opportunity to respond to the allegations of wrongdoing being made about him in the programme as broadcast.
- Mr Mashaima had a legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of him without his consent. In the circumstances, Mr Mashaima's legitimate expectation of privacy was not outweighed by the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference. The broadcaster had therefore unwarrantably infringed Mr Mashaima's privacy in respect of the obtaining of the material included in the programme and in the programme as broadcast.

Programme summary

On 27 February 2016, Al Arabiya News Channel broadcast its investigative news programme, *February Box*.

Al Arabiya News Channel is a news channel broadcast in Arabic. An English translation was obtained by Ofcom and distributed to the complainant and the broadcaster for comment. Both parties confirmed to Ofcom that the translated transcript accurately represented the content of the programme and that they were satisfied that Ofcom could use the translation for investigating the complaint.

The presenter introduced this programme and said:

"We will show you videotaped and documented details that are broadcast for the first time concerning the accusations of a Bahraini cell accused of trying to change the governing regime in the Kingdom of Bahrain from a Kingdom to a Republic. We will show you the accusations of other parties who have helped and supported this project as well. Details and secrets of the black box of the Bahraini crisis and the serious accusations".

During the introductory part to the programme, footage of the King of Bahrain, Hamad bin Isa Al Khalifa, was shown saying:

"We went through a test by God Almighty, but no [inaudible] it was for a period of [inaudible] I swear I am not able to specify the time but 30 years from the Iraqi war until present [inaudible]. This plan, as a plan, has failed".

The presenter then said:

"This is the first official comment after the entry of the Peninsula Shield Force to Bahrain in March 2011 where the King of Bahrain, Hamad bin Isa Al Khalifa, appears wearing a military uniform during a meeting with members of the Bahraini army and the Peninsula Shield Force, and declares that Bahrain is subject to a plot that was arranged several years ago. The talk about the plot was repeated afterwards in the declarations of many Bahraini and Gulf officials".

Later, Mr Mashaima was shown, along with footage of other people who subsequently appeared or were interviewed in the programme. Mr Mashaima was then shown making a speech in which he said: *"the alliance for the Republic will cooperate closely and seriously with all sides and personalities that share the same objectives and methodology of work"*. Following this, he was shown in different footage saying:

"The Republic is a clear mistake and I am ready to apologise...apologise to the people. I accept [I have] to apologise because this was a mistake and shouldn't have happened, it should have been solved by dialogue and so...At the end, we don't want to lie to people. I had the intention, if I had the opportunity, to say in a public speech to the people that I made a mistake in this matter, even if the others are not convinced, at least I am convinced that this was not a good choice, and maybe, maybe I tell you if I had time, I would have backed down".

A caption was then shown which read: *"Hassan Mashaima, born in 1948, founded the Haq Movement that calls for the establishment of an Islamic Republic the Iranian Way. Sentenced to life imprisonment"*.

On-screen text was then shown in a question and answer format. It was not clear from the footage who had asked the questions, but the answers appeared to be from Mr Mashaima:

"Q: What are the interests of Hezbollah behind paying your travel and accommodation costs and behind helping you to get released?"

A: Because Hezbollah was the one who invited me to Beirut".

The programme's presenter then explained that Mr Mashaima was the leader of the Haq Movement which he described as an *"unauthorised movement in Bahrain"*. The presenter said that Mr Mashaima confirmed in his interview that:

"When he decided to return from London to Bahrain, he went to Lebanon first to meet Hassan Nasrallah, the Secretary General of Hezbollah, accused of supporting the unrest in Bahrain".

Mr Mashaima was then shown saying:

"To our brothers and sisters in Bahrain I say, be patient and defend your rights. I tell them, here because I know the persons, I tell them you have wise, intelligent and courageous leaders at the same time, listen to them and consort with them".

Further text was shown in the question and answer format:

Q: *"What was the decision taken after the meeting?"*

A: *To coordinate among the associations for the sake of constitutional monarchy.*

Q: *Did you present the point of view of Hassan Nasrallah in the meetings held with all political associations upon your return to Bahrain?*

A: *I presented it to Al Wefaq Society and Al Wafa Party¹ only.*

Q: *Did you meet with Hassan Nasrallah another time?"*

The presenter then said:

"During the investigations, Hassan Mashaima states a lot of details that Al-Arabiya Channel broadcast for the first time. Hassan Mashaima admits that he transferred the views of Sayyed Hassan Nasrallah to Al Wefaq Society and Al Wafa Party only without the rest of the opposition parties. He admits as well that the Lebanese Security arrested him at Beirut Airport based on an international arrest warrant. However, Hezbollah members violated the orders of the Lebanese MP Hassan Fadlallah".

Footage of Mr Mashaima was then included in the programme in which he said:

"Sayyed Hassan was telling me, what is your position and I told him our opinion is stable and we do, like all other Wefaq politicians, and so he said: 'Anyway, all what I recommend you to do is to coordinate with Al Wefaq Society and political societies and to unite with them. Be unified in your position'. He focused on the matter of understanding, coordination and unity as they felt that Al Wefaq earlier...like we were in Al Wefaq then we got separated, etc. so he is saying that this is an opportunity for you to have a unified position".

A telephone conversation between the presenter and the Lebanese MP Mr Hassan Fadlallah was included in the programme in which he was asked about his involvement in Bahrain and whether he had released Mr Mashaima from the airport in Beirut. Mr Fadlallah said that it was

¹ Al Wefaq Society and Al Wafa Party are political parties in Bahrain and both have representatives in the Bahraini parliament.

the first time he had been approached about the matter and that he would discuss it with the presenter once he had been provided with further details of the allegations being made against him.

Further text in the question and answer format was shown in which Mr Mashaima answered questions about a meeting he had with Sheikh Hassan Hamada, another meeting he had at the office of Mr Hassan Nasrallah and a dinner he had with Mr Adnan, Dr Saeed Al-Shehabi and the members of the Iraqi Parliament The presenter then explained that:

"According to the investigations of the Bahraini Security that arrested Hassan Mashaima, the latter admits that the meeting with Nasrallah was in the presence of his Office Manager, Sheikh Hassan Hamada, and the subject of the discussion was about coordinating with the opposition Shiite Al Wefaq Society due to the old and close relationship with Hezbollah, and that he met there with the two, Al Wefaq MP Mohammed Mezal and Hassan Sultan. The trip to meet Hassan Nasrallah was not easy, even to an old ally like Hassan Mashaima as he admitted that Hezbollah members forced him to switch cars several times for security reasons. Before travelling to meet Nasrallah in Lebanon, Mashaima met in London with members of the Iraqi Dawa Party, under the coordination of the opposition leader, Saeed Al-Shehabi, Secretary General of the banned Bahrain Freedom Movement. He confirmed that the relationship between the Dawa Party and the Bahrain Free Movement is 20 years old and the meeting took place at Iran's Abrar Foundation in London".

Footage of Mr Mashaima was shown saying:

"I got a call first from Hezbollah Office in London saying that they want to see me in Lebanon and that they will call me from Lebanon. Indeed, I got a call within minutes and I was on the road, I was not indoors, and they told me that they want to see me before going back to Bahrain, so I said OK and I booked a ticket and travelled on the same night through Qatari Airways, I passed by Qatar as transit then I went to Lebanon. When I got to Lebanon I was arrested by the passport security personnel as they told me that there is an arrest warrant against me from the Interpol. Two Hezbollah members interfered and I was released under their liability, provided that they keep my passport. Indeed, I stayed for two days or so, [and] then they gave me my passport to go back to Bahrain. On the same day, I went to the office of Sheikh Hassan, like I told you, his office was one room and I took a rest because I was tired from the trip... and I stayed there that day. There was a guy there called Hassan Sultan, he is [a] member of Al Wefaq and I met him the same morning I arrived. He was staying at a hotel, we chatted a bit and then he left, and then a Sheikh called Mezal, an MP".

Further text in the question and answer format was shown:

"Q: You mentioned in your statement that Abdullah Al Ghuraifi told you that the opinion of the Kuwaiti association, i.e. Ali Al Matrouk, Saleh Ashour and Adnan Abdul Samad is to open the road as well?

A: True.

...

Q: Did Sheikh Hassan Hamada, the leader in Hezbollah, call Mohammed Hadi Al Ghuraifi during that?

A: *No, He called me on my phone and talked to me personally.*

Q: *What did you two talk about?*

A: *He told me that he is following the events in Bahrain and then asked me if we need money or weapons”.*

No further footage of, or reference to, Mr Mashaima was included in the programme. The circumstances surrounding the convictions of other people who were said to be part of similar movements were also included in the programme.

Summary of the complaint

Unfair and unjust treatment

- a) Mr Mashaima complained that he was treated unjustly or unfairly in the programme as broadcast because:
- i) footage of him making a false confession (which had been obtained under torture) was included in the programme to portray him as a criminal and terrorist.
 - ii) the programme omitted to state that a Bahrain Independent Commission of Inquiry² ('BICI') had confirmed in 2011 that he had been mistreated and tortured while in detention, leading to his confession, and that the BICI had also recommended that the court case against him be dropped. Further, other agencies, including the UN, had documented Mr Mashaima's torture.
 - iii) the programme did not provide him with an opportunity to respond.

By way of background, Mr Mashaima said that suffering and distress was caused by the inclusion of the footage in the programme as it resulted in an inaccurate reconstruction of events being made on the basis of false confessions. Further, the footage had been used as an “attack against vulnerable people” and no balance had been presented in the report. For example, the programme did not mention that there was information available which challenged the narrative of the programme.

Unwarranted infringement of privacy

- b) Mr Mashaima complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the footage had been filmed in private by officials in the Ministry of the Interior in Bahrain.
- c) Mr Mashaima complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without his consent.

² In July 2011, King Hamid bin Isa Al Khalifa established the BICI to investigate and report on the events which had occurred in Bahrain in February and March 2011 and any subsequent consequences. It included allegations of human rights abuses.

Broadcaster's response

Al Arabiya News said that the programme was broadcast around the anniversary of the "troubles" in Bahrain³. The broadcaster said that the related events that took place in Bahrain and elsewhere, were "without doubt politically controversial and continue to be so today". The broadcaster added that Al Arabiya News and news outlets worldwide have on many occasions reported on said events, not only during the initial occurrence but still today.

Al Arabiya News said that these events, and similar events that are happening everyday around the world "elicit strong emotional responses from many people, those both directly and indirectly involved in any way to such events". Despite this, Al Arabiya News said that broadcasters must be given freedom to express such controversial and emotional topics and continue to inform and provide for the public interest. The broadcaster said that the programme in this case covered a very topical and ongoing story in its region and worldwide.

Head a)

In its initial representations, Al Arabiya News said that the interview footage of Mr Mashaima had been provided to it by the Special Security Force Command of Bahrain⁴ ("SSFC") in April 2012. The broadcaster further said that it "had strong reason to believe" that the interview of Mr Mashaima had been filmed in March 2012, but it was "working to provide further evidence of the same to Ofcom". On seeking further comment from the broadcaster on this point, Al Arabiya News confirmed to Ofcom that the footage had been taken in March 2012. It also stated that a 'stringer' (a freelance journalist) had been provided with Al Arabiya News' equipment to film the interview on the broadcaster's behalf. Al Arabiya News informed Ofcom that it had not given the stringer any further instructions about the filming. In its initial representations, the broadcaster also said that, on reviewing the material, it considered there was "no obvious reason to second-guess or question the genuineness of the interview" which included the alleged circumstances surrounding the statements made by Mr Mashaima.

The broadcaster said that as the interview was filmed in March 2012, the 2011 Bahrain Independent Commission of Inquiry report, which contained findings of mistreatment and torture which led to Mr Mashaima's "confession", was not applicable to Mr Mashaima's 2012 statements. Further, Al Arabiya News said that if the "confession" referenced in head a) i) was the same "confession" referenced in head a) ii) then the complainant had possibly incorrectly identified the programme as containing the "confession" as the interview contained in the programme was conducted in 2012, after the publication of the 2011 report.

Al Arabiya News said that while the findings of the 2011 report were "deplorable", the report detailed a "confession" that had obviously taken place years prior to the 2012 interview broadcast in the programme. In any event, the broadcaster said that it presented the interview in a manner that attempted to at all times provide Mr Mashaima's full sentences and complete answers without editing any significant portion of the footage to ensure that his views were clearly communicated to the audience.

³ In February and March 2011, mass demonstrations took place calling for political, economic and social reform in Bahrain.

⁴ The SSFC is a parliamentary law enforcement body under the command of the Ministry of Interior in Bahrain.

Further, the broadcaster said that, in its view, Mr Mashaima's demeanour during the entirety of the interview did not in any way suggest the interview was being conducted while he was under duress or being tortured. It said that he appeared to be speaking in a calm manner and on his own accord.

Heads b) and c)

Al Arabiya News said that while the interview may have been filmed in a private setting, it was "obvious" that Mr Mashaima was aware that he was being filmed and, as far as the broadcaster was aware, there was no indication that it was explained to Mr Mashaima that the interview was private or that it would not be shared, or made, public.

Further, the broadcaster said that Mr Mashaima is a very public figure and that he has voluntarily placed himself in a position that invites attention and comment. Al Arabiya News also said that the particular events being discussed during the interview were of significant public interest in that the events in Bahrain related directly to the ongoing conflict between Saudi Arabia and Iran. The broadcaster stated that numerous news outlets worldwide had covered and continued to cover the same story as it was presented in the programme. To illustrate this, the broadcaster provided website links to various online news articles.

Al Arabiya News said that it was necessary for current affairs and news broadcasters to have the freedom to explore controversial and emotional topics and to take a critical, even unpopular, position on such topics. The broadcaster added that it always strives to represent fairly in a programme the views of all parties involved and to take the necessary steps to comply with Ofcom's Broadcasting Code.

Ofcom's initial Preliminary View

Ofcom prepared its initial Preliminary View that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant did not submit any representations. Al Arabiya News made the following representations on the initial Preliminary View, set out below.

Al Arabiya News reiterated that Mr Mashaima is a "very" public figure who was heavily involved in the ongoing political, and often violent, turmoil in the Middle East. Given this, the broadcaster said that Mr Mashaima's privacy was not infringed.

Al Arabiya News said that Mr Mashaima was aware that he was being filmed and because of this, it would have been clear to him that the purpose of the interview was to provide his statements in response to the various questions. Further, the broadcaster said that it was reasonable to believe that an individual of Mr Mashaima's high profile and political involvement would have understood that an interview which was being recorded for this purpose and which was also to be shared with the public, would then be broadcast. The broadcaster added that Mr Mashaima spoke comfortably during the interview and there was nothing said or done by Mr Mashaima to indicate that this was not the case.

Ofcom's initial Adjudication

Following receipt of the parties' submissions on the initial Preliminary View, Ofcom prepared an initial Adjudication on this case which found that each head of Mr Mashaima's complaint should be upheld.

After receiving a copy of this Adjudication, Mr Abdulla informed Ofcom that Mr Mashaima disputed the date when the broadcaster said the footage had been filmed. Mr Mashaima said he was only filmed once and that this had taken place in May or June 2011, rather than early 2012 as stated by the broadcaster. In addition, he said that he gave the interview "during his detention, under conditions of torture, and when he was powerless".

On receiving these comments, we considered it was necessary to seek further representations from the broadcaster to enable us to properly adjudicate in this case. We also asked the broadcaster if it could provide Ofcom with any further information which might assist in confirming the date on which the interview was filmed, for example, a copy of the unedited footage or any supporting correspondence.

In response, Al Arabiya News said that it wished to reiterate its statements regarding the date of the footage. It said that when it received the interview material, the date of the interview was stated to Al Arabiya News as taking place in early 2012. Al Arabiya also confirmed that it did not have any additional material to provide.

Having carefully assessed the representations of both parties, Ofcom considered, in light of the further points raised, that we should review our initial Adjudication, particularly in relation to our findings under heads a)i) and a)ii) of the complaint and prepare a revised Preliminary View.

Ofcom's Revised Preliminary View

Having further considered the case in light of the representations made by Mr Abdulla on the initial Adjudication (see above), Ofcom issued a revised Preliminary View that the complaint should be upheld. Both parties were given the opportunity to make representations on the revised Preliminary View and neither chose to do so. Our decision is set out below.

Decision

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

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

In reaching a decision in this case, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of the programme agreed by both parties, and both parties' written submissions and representations, including the representations made by both parties in response to the initial Adjudication.

Unjust or unfair treatment

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code").

- a) We considered whether the programme resulted in unfairness to Mr Mashaima by reviewing each sub-head of Mr Mashaima's complaint and assessing whether, when taken either individually or together, it resulted in unfairness to Mr Mashaima. The sub-heads of the complaint were that Mr Mashaima was treated unjustly or unfairly in the programme because:
 - i) footage of him making a false confession (which had been obtained through torture) was included in the programme to portray him as a criminal and terrorist.
 - ii) the programme omitted to state that the BICI had confirmed in 2011 that he had been mistreated and tortured while in detention, leading to his confession, and that the BICI had also recommended that the court case against him be dropped. Further, other agencies, including the UN, had documented Mr Mashaima's torture.
 - iii) the programme did not provide him with an opportunity to respond.

We had particular regard to Practices 7.3, 7.9 and 7.11 of the Code. Practice 7.3 sets out that individuals who are invited to make a contribution to a programme should normally, at an appropriate stage, be given sufficient information about (amongst other things): the nature and purpose of the programme; when (if known) and where the programme is likely to be first broadcast; the kind of contribution the individual is expected to make (for example, whether it will be live or pre-recorded, edited or unedited); the areas of questioning and, wherever possible, the nature of other likely contributions; and any changes to the programme that might affect their decision to contribute. Taking these measures is likely to result in any consent that is given being 'informed' consent (which, for the purposes of Rule 7.1 and the Code more generally means 'consent').

Practice 7.9 states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation. Practice 7.11 states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

It is important to note that it is not Ofcom's role to determine whether the statements being made in the programme by Mr Mashaima were obtained through torture, but rather, whether the broadcaster has taken reasonable care to satisfy itself that material facts were not presented disregarded or omitted in a way that was unfair to Mr Mashaima.

- i) Mr Mashaima was introduced as having been sentenced to "*life imprisonment*" and the programme included footage and transcripts of an interview with him in which he appeared to speak openly about his attempt to change the governing regime in

Bahrain. This included a discussion about his alleged associations with Hezbollah⁵, an organisation which in many countries, including Bahrain, is regarded as a terrorist organisation. Therefore, in our view, the inclusion of this footage in the programme, in the context in which it was shown, would have been understood by viewers as Mr Mashaima willingly providing his first-hand account of the events which had led to his arrest and subsequent conviction.

Given this, and the fact he was shown to be discussing his alleged associations with a terrorist organisation, we considered that the programme had the clear potential to materially and adversely affect viewers' opinions of him. As such, the broadcaster should have taken reasonable steps to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Mashaima.

Ofcom first considered the application of Practice 7.3 and the extent to which Al Arabiya News had taken steps to provide Mr Mashaima with the information set out above. We took into account the broadcaster's statements that a stringer had filmed the SSFC's interview on the broadcaster's behalf, using its equipment, and that Al Arabiya News had not given the stringer any further instructions about the filming.

Mr Mashaima was a contributor to the programme broadcast by Al Arabiya News, in circumstances where a stringer was acting on the broadcaster's behalf in attending the SSFC interview and obtaining the relevant footage for the purpose of it being broadcast. We took into account the broadcaster's representations in response to the Preliminary View that Mr Mashaima would have been aware that the purpose of the interview was to provide his statements in response to the various questions and that the interview would therefore be broadcast. However, in the absence of Al Arabiya News providing instructions to the stringer as to how that filming should have been conducted (for example, explaining the information that Mr Mashaima should be provided under Practice 7.3), it was not clear that any steps had been taken to inform the complainant as to the nature and purpose of the programme, or to provide him with any of the information set out above. Given this, it was not clear that the broadcaster had Mr Mashaima's informed consent to contribute to its programme.

Ofcom next considered the application of Practice 7.9 and the extent to which Al Arabiya News had exercised reasonable care in satisfying itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Mashaima. We noted the broadcaster's statement that, as the footage had been filmed in March 2012, after the publication of the BICI report, the findings of mistreatment and torture contained in that report were not applicable to the confessions Mr Mashaima was shown to be making in the programme. We further noted the broadcaster's statement that, on reviewing the footage, it considered there was "no obvious reason to second guess or question the genuineness of the interview". We noted too, that the broadcaster said that it presented the interview in a manner that attempted to provide Mr Mashaima's full sentences and complete answers without editing any significant portion of the footage.

Ofcom also took into account the further representations made by Mr Abdulla on Mr Mashaima's behalf, that Mr Mashaima had only been filmed once and that this had been in May or June 2011, rather than in 2012. Further, we noted Mr Mashaima's

⁵ According to the Home Office, the Hezbollah Military Wing is a proscribed terrorist organisation whereas Bahrain considers the entire organisation as terrorist.

comments that the interview had taken place “during his detention, under conditions of torture, and when he was powerless”.

In Ofcom's view, the representations received from the broadcaster and from the complainant give rise to a factual discrepancy as to exactly when the relevant interview footage of Mr Mashaima was filmed. On the information submitted by the parties, it has not been possible for Ofcom to resolve this issue.

However, given the particular context and circumstances in which the interview of Mr Mashaima took place, there may be little material difference as to when the footage was filmed, either in May/June 2011 (as Mr Mashaima maintains), or in March 2012 (as the broadcaster maintains). In either case, there is no dispute between the parties that the interview took place while Mr Mashaima was being detained in prison. Even if the footage was filmed in 2012, it remains the case that, only a few months earlier (in November 2011), the BICI had found that confessions made during 2011 by individuals, including Mr Mashaima, had been obtained under torture. Given this, we did not accept the broadcaster's representations that there was a material distinction to be drawn between the confessions which were made in May/June 2011, and the confessions which may have subsequently been made in March 2012.

Ofcom took into account the factual background to Mr Mashaima's complaint. We understood that, during 2012, Mr Mashaima was among a group of people who had sought to have his conviction overturned on the basis that he had made confessions as a result of torture. Ofcom understood that these proceedings were still pending as at the date that the broadcaster said the stringer had provided the footage to Al Arabiya News. Despite this, it does not appear that the broadcaster questioned the SSFC or the stringer about the purposes for, and circumstances in which, the interview had taken place, or about the circumstances which had led to Mr Mashaima agreeing to it in the first place. We considered that these questions and steps may have been particularly relevant in circumstances where the footage was filmed prior to the outcome of Mr Mashaima's re-trial and subsequent appeal.

Mr Mashaima's re-trial and subsequent appeal resulted in a Bahraini court upholding his conviction in September 2012 and Bahrain's highest court, the Court of Cassation, confirming that decision in January 2013. Mr Mashaima currently remains in prison in Bahrain. Given the high-profile and well-publicised nature of these events, it is Ofcom's view that Al Arabiya News was aware, or ought to have been aware, at least by the date of the broadcast (27 February 2016), that the statements being made by Mr Mashaima in the footage, which the broadcaster said was filmed in early 2012, may not have accurately or fairly represented his account of events. Notwithstanding the position maintained by Mr Mashaima during his re-trial and appeal however, it does not appear that the broadcaster sought to verify with him (or his representatives) the veracity or accuracy of the footage that had been passed to it by the stringer.

Given the facts set out above, we considered that the broadcaster had not followed the requirements as set out in Practices 7.3 and 7.9 of the Code. However, as set out in the Foreword to Section Seven of the Code, a failure to follow Practices will only constitute a breach of Rule 7.1 where it results in unfairness to an individual or organisation in the programme as broadcast. We therefore went on to consider

whether the inclusion of the footage of Mr Mashaima in the programme resulted in unfairness to him.

As stated above, Ofcom considered that the inclusion of the footage of Mr Mashaima in the programme as broadcast would have given viewers the reasonable impression that he was confessing to having committed the crimes for which he was convicted and that he was willingly providing details of those events, such that the statements he was making could be taken as fact. In Ofcom's view, it was not clear that Mr Mashaima had in fact consented to the footage being included in the broadcast programme. He was in custody and, as established by the BICI, had been tortured during 2011. There was no reference made, either to the fact that he had sought to appeal his conviction in a court of law on the basis that confessions he had made had been obtained under torture, or to the fact that his re-trial and appeal had continued after the relevant footage had been filmed.

Taking these factors into account, and in the absence of any further steps being taken by the broadcaster to ensure that material facts were not presented, disregarded or omitted in a way that was unfair, we considered that the way the footage of Mr Mashaima was presented in the programme was unfair to him.

- ii) As noted in head a) i) above, we considered that the inclusion of the footage of Mr Mashaima in which he appeared to speak openly about his attempt to change the governing regime in Bahrain had the clear potential to materially and adversely affect viewers' opinions of him and that the broadcaster should have taken reasonable steps to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Mashaima.

Ofcom understood that, on 23 November 2011, the BICI published its report into, amongst other things, allegations of human rights abuse against prisoners who had been arrested in connection with the events which took place in February and March 2011. The BICI report referred specifically to Mr Mashaima and the events which had led to his arrest. It also stated that 14 political leaders (including Mr Mashaima) had been mistreated, the purpose of which in many cases appeared to be to "obtain statements of confessions incriminating the detainee in question" or in other cases "to obtain statements from the detainee with a view of using the statements against other individuals" and for the purpose of "retribution and punishment".

Ofcom noted the broadcaster's response that, because the confessions made by Mr Mashaima in the broadcast footage post-dated the BICI report, the findings contained in that report did not apply to the statements made in the broadcast footage.

We also noted the comments made by Mr Abdulla on Mr Mashaima's behalf, that the footage of Mr Mashaima included in the programme was filmed in 2011, rather than in 2012, and that it had been obtained under torture.

As set out above, it was not possible for Ofcom to determine exactly when the footage was filmed. As already stated, however, we did not accept the broadcaster's representations, that there was a distinction to be drawn between the confessions made in 2011 and any further confessions which may have been made in March 2012. Even if the footage was filmed in 2012, it remained the case that, only a few months earlier (in November 2011), the BICI had found that confessions made during 2011 by

individuals, including Mr Mashaima, had been obtained under torture. Therefore, in Ofcom's view, there was little material distinction to be drawn with respect to the date on which the footage was filmed.

Ofcom understood, that it was the BICI's report which provided the basis on which Mr Mashaima's subsequent re-trial was instigated, as set out above. In our view, the BICI report was therefore material to the broadcast footage, insofar as it may have provided viewers with relevant contextual background regarding Mr Mashaima's case. This was particularly the case in circumstances where, after the filming of the footage, Mr Mashaima continued to maintain in the Bahraini courts that his conviction was based on confessions he had made under torture.

As with head a) i) of this complaint, Ofcom then went on to consider whether the omission of a reference to the BICI report may have resulted in unfairness to Mr Mashaima. We considered that, given the way in which the programme was presented, and in the absence of any reference to the BICI report, viewers may have reasonably gained the impression that Mr Mashaima was confessing to having committed the crimes for which he was convicted. This omission may therefore have had the potential to impact detrimentally on viewers' ability to gain a full understanding of Mr Mashaima's situation, such that they may have perceived him in a way that was unfair.

Taking these factors into account and given the context in which the footage of Mr Mashaima was included in the programme, Ofcom considered that the absence of a reference to the BICI report was a material omission which resulted in unfairness to Mr Mashaima.

- iii) We considered that the footage of Mr Mashaima, together with the comments being made by the presenter about the events being discussed, amounted to allegations of wrongdoing by Mr Mashaima. Normally, in such circumstances, the broadcaster should ensure that the person or organisation concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

We recognised that Mr Mashaima appeared to speak openly about the events leading up to his conviction and in our view, people in such a position would generally be regarded as having been given an appropriate and timely opportunity to respond.

However, we also understood that Mr Mashaima's interview took place while he was an inmate at a Bahraini prison, prior to his re-trial and appeal being heard. Further, as set out above, it is not clear that Mr Mashaima had been informed as to the purpose of the filming, or that it would be broadcast to the general public, such that he had consented to being interviewed for those purposes.

As set out in relation to heads a) i) and ii) of the complaint above, it did not appear to Ofcom that the broadcaster had taken steps, either to find out the circumstances which had led to Mr Mashaima agreeing to participate in this interview, or to seek his views on the footage as broadcast. It is Ofcom's view that, given the events which occurred after the broadcast footage was filmed and provided to the broadcaster (namely, Mr Mashaima's re-trial and appeal), the broadcaster was aware, or ought to have been aware, that the statements being made in the footage were at odds with

Mr Mashaima's subsequent appeal for his conviction to be overturned on the grounds that he had confessed under torture. In these circumstances, it is Ofcom's view that Mr Mashaima (or his representatives) should have been given an opportunity to respond to the footage.

As with heads a) i) and ii) of this complaint, Ofcom went on to consider whether the failure by the broadcaster to provide Mr Mashaima (or his representatives) with an appropriate and timely opportunity to respond to the footage resulted in unfairness to him. Again, given the way that the programme was presented, and in the absence of Mr Mashaima being given an opportunity to comment on the footage and for those views to be reflected in the programme, Ofcom considered it likely that viewers would have gained the impression that Mr Mashaima had confessed to the serious crimes for which he was convicted, when in fact this may not have been the case.

Taking the above factors into account, Ofcom considered that Mr Mashaima was treated unfairly in that he was not been given an appropriate and timely opportunity to comment on the footage of him included in the programme.

Therefore, taking each element of complaint into account separately, Ofcom found that material facts were presented, omitted or disregarded in a way that portrayed Mr Mashaima unfairly in the programme as broadcast and that he was not given an appropriate opportunity to comment on the footage of him included in the programme. We also considered the programme, as a whole, to reach a view as to whether it was unfair to the complainant. For all the reasons set out above, Ofcom considered that, when taken as a whole, the way in which Mr Mashaima was portrayed resulted in unfairness to him.

Unwarranted infringement of privacy

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- b) We first considered Mr Mashaima's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the footage had been filmed in private by officials in the Ministry of the Interior in Bahrain.

Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

We assessed the extent to which Mr Mashaima had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

Mr Mashaima was filmed as he spoke about the circumstances which had led to his conviction. From viewing the footage, it appeared that the filming of Mr Mashaima took place openly and that he understood that he was being filmed. At the time of the filming Mr Mashaima had been convicted of a serious crime in Bahrain for which he was sentenced to life imprisonment.

As set out above, however, it was not clear to Ofcom that Mr Mashaima had been informed about the purpose for which he was being filmed or that he understood that the material recorded might subsequently be included in the programme as broadcast. We also understood that Mr Mashaima's interview had been conducted by the SSFC in what appeared to be a private room. Although it was not clear exactly where this room was located, we considered it likely that access to it would have been limited, given that Mr Mashaima was serving a prison sentence at the time. We also took into account the nature of statements being made, which in our view were of a highly sensitive and confidential nature, particularly in circumstances where the filming occurred prior to the outcome of Mr Mashaima's re-trial and appeal. Therefore, taking all these factors into account, we considered that filming in these circumstances pointed towards a higher expectation of privacy, particularly as the environment in which the filming took place was highly sensitive.

We next considered whether Mr Mashaima had consented to the obtaining of the relevant material. We recognised that it appeared Mr Mashaima was aware he was being filmed, however, as noted above, it did not appear that Mr Mashaima was provided with the information set out under Practice 7.3, or that he had consented to speaking openly for the purposes of the broadcast programme. In these circumstances, we therefore considered that Mr Mashaima's consent to be filmed had not been obtained.

Having come to the view that Mr Mashaima had a legitimate expectation of privacy in relation to the footage, and that that footage had been obtained without his consent, it appeared to Ofcom that there may have been an infringement of Mr Mashaima's legitimate expectation of privacy. We then went on to consider whether any such infringement was warranted.

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

Ofcom considered carefully Al Arabiya News' response as summarised above and its reasons for arguing that the filming was justified in the public interest. We took into account that the programme discussed matters which would have been of significant public interest in that they concerned ongoing events in Bahrain. Further, we considered it was important for the broadcaster to be able to make a programme of this nature and to film the first-hand testimonies of people who had been involved in the events discussed in the programme. However, while we recognised the public interest in including the testimony of Mr Mashaima, we considered that it did not warrant filming him in such a sensitive situation without having taken further measures to verify the circumstances which had led to his interview and to ensure his consent had been obtained.

On this basis, Ofcom considered that Mr Mashaima's legitimate expectation of privacy was unwarrantably infringed in the obtaining of the broadcast footage.

- c) We next considered Mr Mashaima's complaint that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without his consent.

We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

We considered the extent to which Mr Mashaima had a legitimate expectation of privacy in relation to the footage of him being included in the programme, taking into account the context in which he was filmed, as set out in detail in head b) above. For the reasons already set out at head b), we considered that the footage of Mr Mashaima included in the programme as broadcast showed him in a highly sensitive environment. We therefore considered that he had a legitimate expectation of privacy regarding the inclusion of the footage in the programme as broadcast.

As noted in head b) above, it did not appear that Mr Mashaima's consent to be filmed had been secured. It also did not appear that the broadcaster had subsequently obtained his consent for the interview to be broadcast.

We therefore went on to consider whether the broadcast of the material was "warranted" within the meaning set out in the Code (see above under head b)).

We carefully balanced Mr Mashaima's right to privacy regarding the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. We acknowledged Al Arabiya News' view that Mr Mashaima was a public figure who had voluntarily placed himself in a position that invited attention and comment. Further, we considered there was a public interest in the programme including the testimonies of individuals who had been involved in the events which occurred in Bahrain in February and March 2011. However, as with head b) above, although we recognised the public interest in including the testimony of Mr Mashaima, we considered that it did not warrant the intrusion into his legitimate expectation of privacy in such a sensitive situation without having taken further measures to verify the circumstances which had led to the interview and to confirm that his consent had been obtained.

On this basis, Ofcom considered that Mr Mashaima's legitimate expectation of privacy was unwarrantably infringed in the broadcast of the footage of him included in the programme.

Ofcom has upheld Mr Mashaima's complaint of unjust or unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Ofcom considers the breaches of Rules 7.1 and 8.1 of the Code to be serious. We are therefore putting the broadcaster on notice that we intend to consider the breaches for the imposition of a statutory sanction.

Not Upheld

Complaint by Mrs Marjorie Osborne, made on her behalf by Mr David Grant

The Nightmare Neighbour Next Door, Channel 5, 13 October 2016

Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mr Grant on behalf of Mrs Osborne.

The programme discussed incidents between the complainant, Mrs Osborne, and her neighbours, Ms Karen Price and Mr Carl Mills. Mrs Osborne choose not to appear in the programme, but CCTV footage of her and footage of her home was filmed and subsequently broadcast in the programme.

Ofcom found that, in the circumstances of this case, Mrs Osborne did not have a legitimate expectation of privacy either in connection with the obtaining of material of her and her home included in the programme or in the subsequent broadcast of this footage. Therefore, there was no unwarranted infringement of Mrs Osborne's privacy.

Programme summary

On 13 October 2016, Channel 5 broadcast an episode of *The Nightmare Neighbour Next Door*, a series which featured a number of stories of neighbour disputes. This particular episode included an incident concerning Ms Karen Price and Mr Carl Mills and their neighbour, Mrs Marjorie Osborne (the complainant).

In the opening sequence, the programme's narrator introduced the neighbour disputes which would feature in this episode. In relation to the incident concerning Mrs Osborne, the narrator said: "*small acts of kindness turn into big problems*" and footage, taken from a CCTV camera belonging to Mr Mills, was broadcast which showed Mrs Osborne and Mr Mills in disagreement outside the house. Mr Mills said: "*She didn't like it. She kicked off as though like she was a demon*".

Later in the programme, the narrator introduced Ms Price and Mr Mills, who were said to be looking forward to their "*new life*" in a house on the outskirts of Bolton, Lancashire, with their four children. A road sign which said "Welcome to Horwich" was shown. A wide shot of a residential street was also shown which included the complainant's house in the background.

The narrator continued that "*not long after moving in they met their next door neighbour, 75-year old homeowner Marjorie*". Accompanying the narration was an image of Mrs Osborne, which was taken in darkness with her face obscured, and shown for a few seconds. Mr Mills and Ms Price explained that at first they had a good relationship with Mrs Osborne but after a while they felt she was becoming too "*personal*" and intrusive. Ms Price described how Mrs Osborne had bought their two younger children Christmas presents, but that she had found the number of presents she had given to be inappropriate and returned them, and this had led to the incident.

Later, footage of the front of the complainant's house was shown; an ornamental bear sitting on top of the door frame and a "Welcome" sign next to the front door were briefly visible. The narrator then stated: *"With the neighbours' relationship ruined, things turned nasty"* and a view of the street was shown which included the complainant's house. A wide shot of the road with the complainant's house in the background was again shown.

Later in the programme, the narrator reintroduced the story by stating: *"In Bolton, the Mills thought their neighbour Marjorie was getting too close for comfort"*. An image of the first floor of a house was shown which included the ornamental bear and the first floor windows.

Ms Price added that she felt that Mrs Osborne was ruling her family and that Mrs Osborne was *"too nice to be kind"*. At this point, the image of Mrs Osborne was broadcast again for a few seconds as the narrator went on to explain how an alleged incident between Mrs Osborne and her son *"crossed a boundary for Karen"*. Ms Price explained how her son had run in from the garden very upset because Mrs Osborne had shouted at him for playing roughly with his sister. The narrator added *"this was the final straw and the Mills wanted more privacy so they had a fence erected around their garden"*. Mr Mills said that once the fence was erected, Mrs Osborne *"didn't like it one bit and she kicked off from someone so nice...in a few seconds...to someone like a demon and I couldn't believe it."*

The narrator said that the Housing Association then became involved, but that *"to the Mills' surprise they were the ones accused of threatening and abusive behaviour"*. Footage of the street was again shown which included a number of houses, and the complainant's house could be seen in the background. Footage of the complainant's house was shown in close up and comprised of a shot moving from the first floor to the ground floor.

Later, the letter from the Housing Association was shown. It made clear that Mr Mills and Ms Price were now subject to an Injunction Order and that they risked losing their home or even going to prison if they breached it. The narrator said that in order to prove that they were not the cause of the problem, the family installed a CCTV camera at the front of their home and *"it didn't take long for the camera to capture a confrontation"*.

The programme then included CCTV footage showing Ms Price and Mr Mills working in the front garden of their home. In the far left hand corner of the screen, Mrs Osborne was visible sweeping the pavement in front of her house. Given the distance from which the image was recorded, her face was obscured. Interspersed with the CCTV footage were clips of Mr Mills outside his house speaking to camera about Mrs Osborne's behaviour. He stated that she was sweeping the *"muck"* into the drain by the Mills' house rather than the drain by her own home. Mr Mills explained how he reversed his car closer to Mrs Osborne's house to make room for a large vehicle to pass and then demonstrated how Mrs Osborne's sweeping splashed muddy water on his car. He also said that Mrs Osborne had banged her brush against his car *"on purpose and waiting for a reaction from us"*. The CCTV footage continued to show Mrs Osborne in the far corner sweeping close to Mr Mills' car. Mr Mills then explained how he then got his own brush and began sweeping in the opposite direction to his neighbour *"to give her some of her own back"*. The CCTV footage was then shown in close up, it showed the neighbours close to one another sweeping furiously in opposite directions. Mr Mills said that as she was *"absolutely determined"* he walked away.

The narrator then stated that *"Marjorie declined to take part in this programme"* and that as relations between her and the Mills family had now deteriorated, Mr Mills had terminated the tenancy on their house and they were moving away. Ms Price said they felt very angry about it

and that they were "*the victims of it all*". Footage of the road was then shown again and the complainant's house could be seen in the background.

No further footage of, or references to, Mrs Osborne were included in the programme.

Summary of the complaint and the broadcaster's response

- a) Mr Grant complained that Mrs Osborne's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because footage of her and her home was filmed without her consent.

By way of background, Mr Grant said that the filming took place despite the local Council having asked the programme makers to leave the area because they had not obtained permission to film. He also said that despite having been informed that Mrs Osborne did not want to participate in the programme, the programme makers continued to call at her house and sent her a letter in order to try to obtain an interview. Mr Grant said that the programme makers were aware at the time of filming that Mrs Osborne was frail and distressed by both the situation with her neighbours and the filming.

Channel 5 said that it did not agree that Mrs Osborne's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast. It added that the programme makers were "highly professional" and experienced and had made all five series of *The Nightmare Neighbour Next Door*. Channel 5 said the programme makers frequently liaised with both sides in such disputes and, in its experience, have always treated all parties with respect and courtesy, despite the tensions that frequently exist. It said that in this case it was no different.

The broadcaster explained that ideally, the programme makers endeavour to get both sides of the story from the parties. It said that in this case, they were approached by Mr Mills and Ms Price about the anti-social behaviour and harassment they felt they had been subjected to over the years from both Mrs Osborne and another family who lived in the road. It added that Mr Mills and Ms Price felt frustrated that that they were having to arrange to move home as complaints made by them to the local authority controlled housing association responsible for the housing in the area had not been upheld, but that allegations about them, which they said were untrue, seemed to them to have been adopted by the housing association as fact.

Channel 5 explained that, having decided that this was a story that they wished to investigate further, it understood that the programme makers contacted Mrs Osborne by telephone on 16 October 2015, explained what the programme was about, and invited her to consider giving her side of the story. It said that Mrs Osborne indicated that she had had trouble from her neighbours, Mr Mills and Ms Price, but that she did not want to be interviewed for the programme. The broadcaster said that Mrs Osborne confirmed that the programme makers could contact her in order to give her an opportunity to reply to any allegations that may be made about her. Channel 5 said that on 1 November 2015, the programme makers telephoned Mrs Osborne out of courtesy to say that they would be filming in the area in the next few days and that she confirmed that she wanted nothing to do with the programme.

The broadcaster said that filming took place with Mr Mills and Ms Price on 3 November 2015 and between 18 and 20 November 2015. While filming on 18 November 2015, Mrs

Osborne approached the film crew. When they explained who they were, Mrs Osborne said that she did not wish to be involved and went inside her house. Channel 5 said that on 18 February 2016, in accordance with the provisions of Ofcom's Broadcasting Code ("the Code"), and Mrs Osborne's previous agreement to being contacted for the purposes of a right of reply, the programme makers wrote to her setting out the allegations that had been made about her and giving her an opportunity to respond. The programme makers then received a letter of 26 February 2016 from Mrs Osborne's MP which asked the programme makers not to contact Mrs Osborne again, or include the allegations made by Mr Mills and Ms Price in the programme.

Channel 5 said that it understood that once the programme makers had replied to Mrs Osborne's MP, they did not contact Mrs Osborne again, and did not call or visit the area again. It said that all filming had been completed in November 2015. The broadcaster contended that it was apparent that the programme makers took reasonable and proper steps to try to fact check and verify the allegations that had been made and to provide Mrs Osborne with a right of reply.

It said that contrary to Mr Grant's allegations, the programme makers did not "continue to call" at Mrs Osborne's house, in fact it said that they never called at her house. During the course of their fact checking and investigations, Channel 5 said it understood that the programme makers were in contact with the local authority and had permission to film in the area. It said that, contrary to Mr Grant's allegation, at no point did the Council ask the film crew to leave the area.

Filming of Mrs Osborne's home

Channel 5 said that it was correct that filming took place in the street and footage was obtained of the street and the houses on the street without objection from Mrs Osborne. It said that any filming of the exterior of Mrs Osborne's property was from a public place and disclosed no private information about either Mrs Osborne or her property. It added that there could be no reasonable expectation of privacy in relation to the filming of the exterior of a property visible from a public street and the filming of such a property from a public street could not amount to an unwarranted infringement of privacy.

Filming of Mrs Osborne

Channel 5 said that Mrs Osborne was not filmed by the programme makers and the still photograph of Mrs Osborne and the footage of Mrs Osborne and Mr Mills sweeping water in opposite directions came from Mr Mills' CCTV cameras, which it understood were not hidden from view.

The broadcaster said that there is no general rule about when matters are or are not private. Each case turns on its own facts. However, it added that the law is clear that the mere taking of a photograph or the filming of a subject will not amount, in itself, ordinarily to a breach of Article 8 of the European Convention of Human Rights ("ECHR"). In support of this, the broadcaster cited *Wood v Commissioner of Police for the Metropolis*¹.

¹ [2009] EWCA Civ 414. Lord Justice Laws said this at paragraph 31:

"...ordinarily the taking of photographs in a public street involves no element of interference with anyone's private life and therefore will not engage Article 8(1), although the later publication of such photographs may be a different matter. Here, I should again cite *Campbell v MGN Ltd*..."

For these reasons, Channel 5 said no privacy right of Mrs Osborne was infringed by the CCTV recordings in which she appeared. It added that the CCTV footage showed Mrs Osborne when she was in a public place and where she could have been witnessed by anyone who was present.

- b) Mr Grant complained that Mrs Osborne's privacy was unwarrantably infringed in the programme as broadcast because it included images and footage of her and her home without her consent. Mr Grant said that the programme identified Mrs Osborne by name and that the footage of her home included "identifying features".

Channel 5 said it did not agree that Mrs Osborne's privacy was unwarrantably infringed in the programme as broadcast by the inclusion of her first name, an image of her, footage of her or footage of her home without her consent.

The broadcaster said that the programme makers were informed that Mr Mills and Ms Price had made a number of complaints over a number of years to the police and to the local authority about the behaviour of Mrs Osborne and another family. They were also informed that Mrs Osborne and the other family had made many complaints to the police and the local authority about the behaviour of Mr Mills and Ms Price. In correspondence to Mr Mills and Ms Price, the local authority indicated that in investigating complaints it had contacted "surrounding residents" and "partner agencies" and that it had received "corroborative evidence from a number of different households" about the alleged behaviour of Mr Mills and Ms Price. Channel 5 said that the programme makers had also spoken to a previous resident from the street who confirmed to them that there were issues between all the neighbours and that, in their view, Mrs Osborne and some other neighbours did like to "wind up" Mr Mills and Ms Price (and their family) as they were housing association tenants, while some of the others owned their own properties.

Channel 5 said that even without involving the police and local authority, the disputes between the parties were not a private matter and were known by many, if not all, of the residents of the street and any other people the parties may have discussed their difficulties with.

Lord Hoffman said this at paragraphs 73-74:

"In the present case the pictures were taken without Miss Campbell's consent. That in my opinion is not enough to amount to a wrongful invasion of privacy. The famous and the not so famous who go out in public must accept that they may be photographed without their consent..."

Lord Hope of Craighead said this at paragraph 122:

"The taking of photographs in a public street must...be taken to be one of the ordinary incidents of living in a free community. The real issue is whether publicising the content of the photographs would be offensive..."

Finally, Baroness Hales of Richmond at paragraph 154:

"We have not so far held that the mere fact of covert photography is sufficient to make the information contained in the photograph confidential. The activity photographed must be private."

It said that in the programme, the precise location of this neighbour dispute was not disclosed and Mrs Osborne was only referred to as "Marjorie" throughout. The only occasions that Mrs Osborne was seen in the programme were a still from Mr Mills' CCTV and CCTV footage of Mrs Osborne and Mr Mills sweeping water on the street in opposite directions. Channel 5 contended that due to the poor quality of the CCTV and the fact that the still picture was very dark, it did not believe that Mrs Osborne was recognisable by anyone who did not already know who she was. As a result, only people who were already aware of the longstanding neighbour dispute would have been likely to have identified Mrs Osborne as being one of the neighbours involved in this particular dispute and they would already have been aware of the information disclosed in the programme.

Channel 5 said that if a person is not identifiable to the public at large, no question of privacy arises. In all the circumstances, there could not have been any infringement of privacy in the broadcast of this programme.

The broadcaster said that even if Ofcom did consider that Mrs Osborne had a legitimate expectation of privacy that had been infringed in some way by the broadcast of the programme, the right to freedom of expression of both Mr Mills and Ms Price and Channel 5 and the public interest in broadcasting the footage would outweigh any such privacy right.

Channel 5 said that the right to freedom of expression includes the right to hold opinions and to receive and impart information and ideas without interference by public authority. It added that Mr Mills and Ms Price wished to, and were entitled to, tell their story. They had requested assistance from the police and the local authority with issues that had arisen over a number of years between them, Mrs Osborne and some other families. Channel 5 said that both the police and local authority investigated Mr Mills and Ms Price's complaints and the complaints against them by the other parties. However, they were frustrated that it appeared that as the other parties could corroborate each other's accounts, those complaints (which they were adamant were untrue) were accepted by the local authority, but their own complaints were not. Channel 5 said that Mr Mills and Ms Price firmly believed that they were being harassed by their neighbours who were making their lives (and the lives of their children) intolerable.

The broadcaster said that Mr Mills and Ms Price were then informed that if there was any repeat of the upheld complaints of anti-social behaviour by them, the local authority would seek an injunction, breach of which could lead to a maximum prison term of two years and that the local authority would seek possession of their home. It said that rather than take the risk of further untrue, but corroborated, complaints leading to the consequences set out above, they felt that they had no option but to move. They felt they were the victims who had been failed by the system.

For all the reasons set out above, Channel 5 said that it did not accept that this programme contravened the Code.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant made representations which are (insofar as they were relevant to the complaint

as entertained and considered by Ofcom in the Preliminary View) summarised below. The broadcaster did not submit any representations.

Mr Grant's representations on behalf of the complainant

Mr Grant said, on behalf of the complainant, that Ofcom was incorrect to refer to the incident as a 'dispute'. He said that Mrs Osborne was a victim of a "sustained and grievous act of criminal intimidation" which resulted in an order threatening her neighbours with prison. Mr Grant said he tried to advise the programme makers of this, including by writing to their local MP. He said that Article 8 of the ECHR protected the "psychological integrity" of individuals and their right not to be psychologically interfered with, and the right to control the dissemination of information about one's private life, including photographs and images taken covertly. He said that the broadcaster had a "legal and moral duty" to protect the safety and wellbeing of those in its films. He added that the programme had a negative psychological effect on Mrs Osborne and on her daughter whom Mrs Osborne cared for.

Decision

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

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

In reaching this Decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, both parties' written submissions, and supporting documentation. Ofcom also took careful account of the representations made by the complainant in response to being given the opportunity to comment on Ofcom's Preliminary View. After careful consideration of Mr Grant's representations, we concluded that the points raised by him did not alter our Preliminary View not to uphold the complaint.

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

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

- a) We first considered Mr Grant's complaint that Mrs Osborne's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because footage of her and her home was filmed without her consent.

Ofcom had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

Ofcom considered the extent to which Mrs Osborne had a legitimate expectation of privacy, in the circumstances, first regarding the obtaining of the footage of her and then in relation to the footage of her home.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts. In particular, as stated in the Code, there may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

First, we considered the obtaining of the footage of Mrs Osborne which had been captured by her neighbour's CCTV camera. We noted that the programme stated that "*the Mills' installed CCTV at the front of their home*" as a consequence of the breakdown in relations between the parties. Footage of the front of their property was shown during the programme, but the CCTV camera was not evident from the footage that was used in the programme. However, in its response to the complaint, Channel 5 said that it understood the CCTV cameras "were not hidden from view". Ofcom also considered that, given Mrs Osborne lived next door to Mr Mills and Ms Price and that the neighbours were in a dispute which had involved outside agencies (such as the police and local council), it was likely, in our view, that Mrs Osborne would have been aware of the existence of the CCTV cameras.

We reviewed the edited footage that was broadcast in the programme. We took into account that Mrs Osborne was filmed in the CCTV footage on the road outside her property, this footage was filmed solely from Mr Mills' and Ms Price's CCTV camera and they had provided it to the programme makers for the purpose of assisting them in telling their side of the story. Further, the image of Mrs Osborne included in the programme was a still image captured by the CCTV camera.

We recognised Mrs Osborne was filmed sweeping away water into a drain and that a minor stand-off between Mr Mills and Mrs Osborne was also filmed, i.e. they were seen sweeping water vigorously towards one another. Further, it was not clear from either parties' submissions whether Mrs Osborne was aware that such footage of her had been captured by a CCTV camera and, even if she was aware of this, it appeared to Ofcom unlikely that she would have been aware that this footage would subsequently be included in the programme. This incident occurred in a public place, i.e. on the road outside Mr Osborne's property and could have been witnessed by any member of the public present. In addition, Ofcom considered that the act of sweeping by Mrs Osborne, and the still image of her in which it was not possible to distinguish her facial features, could not reasonably be regarded as showing her engaged in, or revealing, anything private or sensitive about her.

Next, we considered the extent to which Mrs Osborne had a legitimate expectation of privacy in relation to the obtaining of the footage of her property which was filmed by the programme makers. The programme makers had filmed general views of the street on

which Mrs Osborne lived and a number of shots of her property in closer aspect, including the upper windows of her house and included decorative, ornamental details in her porch and front door area. We also understood that Mrs Osborne was aware that the programme makers were filming and that she had told them that she did not wish to be involved. However, it appeared that Mrs Osborne's house was filmed openly and from a public place. Further, in Ofcom's view, none of the footage filmed of Mrs Osborne's house, including the shots of her windows in closer aspect or any ornamental details, captured anything that could reasonably be considered private or sensitive to Mrs Osborne.

Taking all these factors into account, we considered that, in the particular circumstances of the case, Mrs Osborne did not have a legitimate expectation of privacy in relation to the obtaining of the footage of her and her property.

Ofcom acknowledged Mr Grant's comment in his representations on the Preliminary View that he did not characterise the situation as a 'dispute', but rather that Mrs Osborne had been harassed by her neighbours, and that Mrs Osborne's neighbours had been the subject of an injunction due to their behaviour. However, issues relating to criminal and/or civil harassment fall outside of the scope of Ofcom's remit and Ofcom can only consider complaints as they relate to the matters falling within the scope of the Code in relation to the obtaining and broadcast of material in programmes.

We acknowledged Mr Grant's comments that Mrs Osborne had found the incident which occurred between herself and her neighbours distressing, and had been further distressed by the programme which discussed this incident. We carefully considered the distress caused to Mrs Osborne by the programme and whether or not the material obtained of her and her property engaged her privacy rights. For the reasons explained above, we did not consider that Mrs Osborne had a legitimate expectation of privacy in relation to the obtaining of the footage of her and her property.

Therefore, Ofcom found that Mrs Osborne's privacy was not unwarrantably infringed in connection with the obtaining of this material for inclusion in the programme.

- b) Ofcom went on to consider Mr Grant complaint's that Mrs Osborne's privacy was unwarrantably infringed in the programme as broadcast because it included images and footage of her and her home without her consent. Mr Grant said that the programme identified Mrs Osborne by name and that the footage of her home included "identifying features".

Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. We also had regard to Practices 8.2 and 8.4 of the Code. Practice 8.2 states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted. Practice 8.4 states that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted.

In this case, as set out in the 'Programme Summary' above, footage filmed by the programme makers of Mrs Osborne's home was included in the programme. This consisted of a variety of shots of Mrs Osborne's property which included: a general view of

the street which included Mrs Osborne's property in the background; a shot of Mrs Osborne's house in which decorative, ornamental detail of her front door area was visible; and, a shot moving from the first floor window of her home down to the front door in closer aspect.

Ofcom first considered the extent to which Mrs Osborne had a legitimate expectation of privacy regarding the inclusion of the CCTV footage of her in the programme as broadcast. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be considered in light of the circumstances in which the individual finds him or herself.

We recognised that the CCTV footage of Mrs Osborne and the still image was of poor quality and her face was not discernible from the footage (due to the quality of the footage which was grainy and the angle from which it was taken). However, we noted that: Mrs Osborne's first name "Marjorie" was broadcast; images of the street on which she lived were broadcast and the area of "Horwich" was identified; and that her former neighbours, Ms Price and Mrs Mills, talked openly about their experiences and were identifiable in the programme. Taking these factors into account, it was our view that Mrs Osborne may have been identifiable to people who either knew her or were aware of the incidents that had occurred between the neighbours. However, due to the quality of the images which were broadcast she was not widely identifiable.

As set out in head a) above we considered that the CCTV footage and still image did not show Mrs Osborne engaged in, or revealed, anything that was particularly private or sensitive.

Ofcom also took into account the wider context in which the footage was broadcast, in that it was used to illustrate the incidents that had occurred between Mrs Osborne and her neighbours. We recognised that the broadcast of the footage linked her with the events which were discussed in detail during the programme.

We noted Mr Grant's comments in response to the Preliminary View that Mrs Osborne had been harassed by her neighbours and that the broadcast of the programme had distressed Mrs Osborne. As noted in relation to head a) above, issues relating to criminal and/or civil harassment fall outside of the scope of Ofcom's remit and Ofcom can only consider complaints as they relate to the matters falling within the scope of the Code in relation to the obtaining and broadcast of material in programmes.

We recognised that a breakdown of a relationship between people may be sensitive to those involved. Ofcom acknowledged that the events which occurred between Mrs Osborne and her neighbours had the potential to be distressing to Mrs Osborne in themselves, and that the broadcast of the detail of them may have compounded her distress. We carefully considered the distress caused to Mrs Osborne by the programme and whether or not the material broadcast engaged her privacy rights. Looking specifically at the details of the particular incident between Mrs Osborne and her neighbours we did not consider that anything that was broadcast was private to Mrs Osborne.

Taking all the above factors into account, it was our view that, in the particular circumstances, Mrs Osborne did not have a legitimate expectation of privacy in regard to the broadcast of the CCTV footage in the programme.

Next, we considered the extent to which Mrs Osborne had a legitimate expectation in relation to the broadcast of footage of her home.

We examined the footage of Mrs Osborne's house in the programme and the context in which it appeared. Although the programme referred to Mrs Osborne's neighbour's living in Horwich, Bolton, the exact location of the house, for example the street name or the house number, was not given. We also observed that it was a semi-detached house which looked very similar to many other houses. We therefore considered it unlikely that viewers who were not familiar with the houses in the area would have been able to identify Mrs Osborne's house and its location.

We also took into account that the footage included in the programme was a general view of the street, which featured the house in the background as well as a shot in closer aspect which showed decorative and ornamental detail around the doorway. Although the first floor windows of Mrs Osborne's house were shown in the footage, it was not possible to see inside the property. As already set out in head a) above, it was our view that this footage did not reveal anything particularly private or sensitive about Mrs Osborne.

Taking all the above factors into account, we considered that Mrs Osborne did not have a legitimate expectation of privacy in relation to the broadcast of footage of her and the exterior of her house and, as such, it was not necessary for Ofcom to consider whether any infringement of her privacy was warranted.

Therefore, Ofcom found that Ms Osborne's privacy was not unwarrantably infringed in the programme as broadcast.

Ofcom has not upheld Mr Grant's complaint on behalf of Mrs Osborne of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 27 March and 17 April 2017 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements¹.

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

Programme	Service	Transmission date	Categories
Good Morning Britain	ITV	15 September 2016	Under 18s in programmes

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

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

¹ A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC. On 29 March 2017, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The investigations in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 27 March and 17 April 2017 because they did not raise issues warranting investigation¹.

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

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

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

Programme	Service	Transmission Date	Categories	Number of complaints
Gogglebox	4Seven	20/03/2017	Nudity	1
Christian O'Connell's 80s Breakfast	Absolute 80s	03/04/2017	Materially misleading	1
News	Absolute Radio	23/03/2017	Due accuracy	1
Ghajini	B4U movies	13/03/2017	Violence	1
Antiques Roadshow	BBC 1	26/03/2017	Generally accepted standards	1
BBC Breakfast	BBC 1	24/03/2017	Generally accepted standards	1
BBC News	BBC 1	07/03/2017	Flashing images/risk to viewers who have PSE	1
BBC News	BBC 1	16/03/2017	Generally accepted standards	1
BBC News	BBC 1	23/03/2017	Generally accepted standards	1
BBC News	BBC 1	23/03/2017	Religious/Beliefs discrimination/offence	1
Casualty	BBC 1	11/03/2017	Disability discrimination/offence	1
Casualty	BBC 1	18/03/2017	Generally accepted standards	1
Comic Relief 2017	BBC 1	24/03/2017	Gender discrimination/offence	2
Comic Relief 2017	BBC 1	24/03/2017	Generally accepted standards	117
Comic Relief 2017	BBC 1	24/03/2017	Offensive language	10
Comic Relief 2017	BBC 1	24/03/2017	Offensive language	7
Comic Relief 2017	BBC 1	24/03/2017	Religious/Beliefs discrimination/offence	5
Comic Relief 2017	BBC 1	24/03/2017	Scheduling	49
Comic Relief 2017	BBC 1	24/03/2017	Sexual material	117

¹ A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC. On 29 March 2017, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The complaints in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

Programme	Service	Transmission Date	Categories	Number of complaints
Comic Relief 2017	BBC 1	24/03/2017	Sexual material	22
Comic Relief 2017	BBC 1	24/03/2017	Sexual orientation discrimination/offence	1
Comic Relief 2017	BBC 1	24/03/2017	Violence	7
Comic Relief 2017	BBC 1	25/03/2017	Scheduling	1
Comic Relief 2017: Graham Norton's Big Chat Live	BBC 1	24/03/2017	Generally accepted standards	2
Comic Relief 2017: Russell Brand's Stand Off	BBC 1	25/03/2017	Offensive language	5
EastEnders	BBC 1	17/03/2017	Violence	3
EastEnders	BBC 1	28/03/2017	Crime and disorder	1
EastEnders	BBC 1	28/03/2017	Sexual material	1
Holby City	BBC 1	14/03/2017	Generally accepted standards	1
Imagine... Alice Neel: Dr Jekyll and Mrs Hyde	BBC 1	06/03/2017	Generally accepted standards	1
Mrs Brown's Boys (trailer)	BBC 1	17/03/2017	Offensive language	1
Six Nations: France v Wales	BBC 1	18/03/2017	Gender discrimination/offence	1
The Graham Norton Show	BBC 1	24/02/2017	Generally accepted standards	1
This Week	BBC 1	23/03/2017	Race discrimination/offence	1
Spotlight	BBC 1 Northern Ireland	28/03/2017	Generally accepted standards	1
Comic Relief 2017: Greg Davies' Hot Tub Half Hour	BBC 2	24/03/2017	Generally accepted standards	1
Meet the Lords	BBC 2	27/02/2017	Race discrimination/offence	2
Top Gear	BBC 2	12/03/2017	Dangerous behaviour	1
Top Gear	BBC 2	12/03/2017	Offensive language	1
Simon Mayo Drivetime	BBC Radio 2	23/03/2017	Generally accepted standards	1
The Chris Evans Breakfast Show	BBC Radio 2	27/03/2017	Race discrimination/offence	1
Helen Keen's It Is Rocket Science	BBC Radio 4	01/03/2017	Generally accepted standards	1
Today	BBC Radio 4	29/03/2017	Crime and disorder	1
Afternoon Edition	BBC Radio 5 Live	27/03/2017	Offensive language	1
Allison Ferns	BBC Radio Sussex	22/03/2017	Religious/Beliefs discrimination/offence	1
Mornings and More	Bishop FM	16/02/2017	Due impartiality/bias	1
Station ident	Bob FM (Hertford)	26/03/2017	Generally accepted standards	1
Breakfast Show	Capital Radio	14/03/2017	Sexual material	1

Programme	Service	Transmission Date	Categories	Number of complaints
Teens Who Kill (trailer)	CBS Reality	16/03/2017	Scheduling	1
Channel 4 News	Channel 4	06/03/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	13/03/2017	Due impartiality/bias	2
Channel 4 News	Channel 4	15/03/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	19/03/2017	Nudity	1
Channel 4 News	Channel 4	27/03/2017	Gender discrimination/offence	1
Channel 4 News	Channel 4	31/03/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	03/04/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	04/04/2017	Due accuracy	1
Dispatches	Channel 4	27/03/2017	Due accuracy	1
Dispatches: Isis – The Battle for Iraq	Channel 4	06/04/2017	Due impartiality/bias	1
Dogs Behaving Badly	Channel 4	11/03/2017	Animal welfare	36
Dogs Behaving Badly	Channel 4	11/03/2017	Generally accepted standards	1
Escape to the Chateau	Channel 4	08/04/2017	Offensive language	3
F1 Chinese Grand Prix Qualifying	Channel 4	08/04/2017	Offensive language	1
Googlebox	Channel 4	17/03/2017	Generally accepted standards	1
Hollyoaks	Channel 4	21/03/2017	Scheduling	1
House of Windsor	Channel 4	22/03/2017	Generally accepted standards	1
How'd You Get So Rich?	Channel 4	06/03/2017	Materially misleading	1
How'd You Get So Rich?	Channel 4	27/03/2017	Sexual material	1
Kitchen 999: Emergency Chefs	Channel 4	06/04/2017	Offensive language	1
Posh Pawn	Channel 4	17/03/2017	Sexual orientation discrimination/offence	1
President Trump: How Scared Should We Be?	Channel 4	03/04/2017	Due impartiality/bias	2
President Trump: How Scared Should We Be?	Channel 4	03/04/2017	Offensive language	1
President Trump: How Scared Should We Be? (trailer)	Channel 4	03/04/2017	Due impartiality/bias	1
Programming	Channel 4	31/03/2017	Scheduling	1
Programming	Channel 4	05/04/2017	Generally accepted standards	1
Supervet	Channel 4	02/03/2017	Offensive language	1
Tattoo Fixers	Channel 4	20/03/2017	Race discrimination/offence	1
Tattoo Fixers	Channel 4	27/03/2017	Materially misleading	1
The Last Leg	Channel 4	17/03/2017	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Last Leg	Channel 4	07/04/2017	Disability discrimination/offence	1
The Secret Life of the Zoo	Channel 4	28/03/2017	Generally accepted standards	1
The Simpsons	Channel 4	08/04/2017	Generally accepted standards	1
Undercover Boss USA	Channel 4	03/03/2017	Gender discrimination/offence	1
PSL Cricket Live Show	Channel 44	05/03/2017	Due impartiality/bias	1
Can't Pay? We'll Take It Away!	Channel 5	05/04/2017	Generally accepted standards	1
Can't Pay? We'll Take It Away!	Channel 5	12/04/2017	Generally accepted standards	1
Conan the Barbarian	Channel 5	03/04/2017	Sexual material	1
Farage Fans and UKIP Lovers	Channel 5	04/03/2015	Due impartiality/bias	1
GPs Behind Closed Doors	Channel 5	08/03/2017	Under 18s in programmes	1
Gypsy Kids: Our Secret World	Channel 5	05/04/2017	Offensive language	1
Inside Kings Cross	Channel 5	06/03/2017	Offensive language	1
Michael Jackson's This Is It	Channel 5	29/03/2017	Materially misleading	1
NCIS	Channel 5	17/03/2017	Violence	1
Police Interceptors	Channel 5	03/04/2017	Race discrimination/offence	1
Shannon Matthews: The Mother's Story	Channel 5	06/04/2017	Materially misleading	1
The Gadget Show	Channel 5	10/03/2017	Sexual material	1
The Gadget Show	Channel 5	17/03/2017	Sexual material	1
The Last Days of George Michael	Channel 5	24/03/2017	Generally accepted standards	3
The Wright Stuff	Channel 5	01/03/2017	Suicide and self harm	1
The Wright Stuff	Channel 5	02/03/2017	Generally accepted standards	1
The Wright Stuff	Channel 5	15/03/2017	Due impartiality/bias	1
The Wright Stuff	Channel 5	27/03/2017	Race discrimination/offence	2
The Wright Stuff	Channel 5	29/03/2017	Due impartiality/bias	3
The Wright Stuff	Channel 5	29/03/2017	Offensive language	1
The Wright Stuff	Channel 5	05/04/2017	Generally accepted standards	1
Channel i News	Channel i	25/03/2017	Violence	1
Bizaardvark	Disney Channel	09/03/2017	Scheduling	1
Taggart	Drama	18/03/2017	Advertising minutage	1
Made in Chelsea	E4	27/03/2017	Dangerous behaviour	1
Vivica fox Black Magic	Fox	07/03/2017	Generally accepted standards	1
Sam & Amy Breakfast Show	Gem 106	30/03/2017	Sexual orientation discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
News	Geo TV	02/02/2017	Generally accepted standards	1
Money in the Music Competition	Heart FM	16/03/2017	Competitions	1
Holiday and Cruise Clinic	Holiday and Cruise Channel	16/02/2017	Undue prominence	1
Murder Comes to Town	Investigation Discovery	14/03/2017	Advertising placement	1
Ant and Dec's Saturday Night Takeaway	ITV	11/03/2017	Dangerous behaviour	1
Ant and Dec's Saturday Night Takeaway	ITV	11/03/2017	Offensive language	1
Ant and Dec's Saturday Night Takeaway	ITV	11/03/2017	Race discrimination/offence	1
Ant and Dec's Saturday Night Takeaway	ITV	18/03/2017	Generally accepted standards	2
Ant and Dec's Saturday Night Takeaway	ITV	18/03/2017	Nudity	1
Ant and Dec's Saturday Night Takeaway	ITV	24/03/2017	Gender discrimination/offence	1
Ant and Dec's Saturday Night Takeaway	ITV	25/03/2017	Offensive language	1
Ant and Dec's Saturday Night Takeaway	ITV	08/04/2017	Materially misleading	11
Britain's Got Talent (trailer)	ITV	07/04/2017	Generally accepted standards	1
Broadchurch	ITV	03/04/2017	Suicide and self harm	1
Coronation Street	ITV	17/03/2017	Generally accepted standards	1
Coronation Street	ITV	20/03/2017	Offensive language	1
Coronation Street	ITV	20/03/2017	Violence	1
Coronation street	ITV	22/03/2017	Due accuracy	1
Coronation Street	ITV	24/03/2017	Generally accepted standards	1
Coronation Street	ITV	31/03/2017	Generally accepted standards	11
Coronation Street	ITV	03/04/2017	Dangerous behaviour	1
Coronation Street	ITV	07/04/2017	Crime and disorder	1
Emmerdale	ITV	14/03/2017	Scheduling	1
Emmerdale	ITV	16/03/2017	Generally accepted standards	3
Emmerdale	ITV	29/03/2017	Nudity	8
Emmerdale	ITV	04/04/2017	Sexual material	2

Programme	Service	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	10/04/2017	Generally accepted standards	3
Emmerdale	ITV	11/04/2017	Generally accepted standards	1
Fruit-tella's sponsorship of Little Big Shots	ITV	08/03/2017	Dangerous behaviour	1
Fruit-tella's sponsorship of Little Big Shots	ITV	29/03/2017	Dangerous behaviour	1
Good Morning Britain	ITV	08/03/2017	Generally accepted standards	5
Good Morning Britain	ITV	22/03/2017	Generally accepted standards	2
Good Morning Britain	ITV	23/03/2017	Generally accepted standards	1
Good Morning Britain	ITV	24/03/2017	Generally accepted standards	1
Good Morning Britain	ITV	10/04/2017	Competitions	1
Grand National (trailer)	ITV	25/03/2017	Generally accepted standards	1
International Football (trailer)	ITV	17/03/2017	Materially misleading	1
ITV News	ITV	23/03/2016	Religious/Beliefs discrimination/offence	1
ITV News	ITV	20/03/2017	Scheduling	1
ITV News	ITV	22/03/2017	Due accuracy	1
ITV News	ITV	22/03/2017	Materially misleading	1
ITV news	ITV	23/03/2017	Generally accepted standards	1
ITV News at Ten	ITV	16/02/2017	Due impartiality/bias	1
ITV News Special	ITV	22/03/2017	Generally accepted standards	1
ITV2 (trailer)	ITV	25/03/2017	Scheduling	1
Judge Rinder	ITV	24/03/2017	Scheduling	1
Live International Football	ITV	22/03/2017	Generally accepted standards	1
Loose Women	ITV	09/11/2016	Generally accepted standards	1
Loose Women	ITV	20/03/2017	Sexual material	1
Loose Women	ITV	21/03/2017	Sexual material	1
Loose Women	ITV	31/03/2017	Generally accepted standards	1
Loose Women	ITV	03/04/2017	Scheduling	1
Loose Women	ITV	07/04/2017	Transgender discrimination/offence	2
Loose Women	ITV	10/04/2017	Offensive language	1
Loose Women	ITV	13/04/2017	Sexual material	1
Peston on Sunday	ITV	12/03/2017	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Play to the Whistle	ITV	07/03/2017	Age discrimination/offence	1
Saturday Night Take Away	ITV	08/04/2017	Dangerous behaviour	1
Seat's sponsorship of Mystery Drama on ITV	ITV	03/04/2017	Sponsorship credits	1
Six Nations Rugby Live	ITV	11/03/2017	Race discrimination/offence	1
Speeding Wars	ITV	30/03/2017	Gender discrimination/offence	1
SSE's sponsorship of ITV National Weather	ITV	08/03/2017	Sponsorship credits	1
The Chase (trailer)	ITV	11/04/2017	Race discrimination/offence	1
The Jeremy Kyle Show	ITV	20/03/2017	Generally accepted standards	1
The Jeremy Kyle Show	ITV	23/03/2017	Violence	1
The Jeremy Kyle Show	ITV	03/04/2017	Generally accepted standards	1
The Kyle Files	ITV	20/03/2017	Scheduling	1
The Nightly Show with Gordon Ramsay	ITV	27/03/2017	Transgender discrimination/offence	7
The Nightly Show With Gordon Ramsay	ITV	29/03/2017	Offensive language	1
The Nightly Show with Gordon Ramsay	ITV	30/03/2017	Generally accepted standards	1
The Nightly Show with Gordon Ramsay	ITV	30/03/2017	Offensive language	2
The Nightly Show With Gordon Ramsay	ITV	31/03/2017	Offensive language	1
The Nightly Show With Gordon Ramsay	ITV	02/04/2017	Offensive language	2
The Voice UK	ITV	04/03/2017	Voting	1
The Voice UK	ITV	12/03/2017	Race discrimination/offence	3
This Morning	ITV	23/03/2017	Generally accepted standards	1
This Morning	ITV	11/04/2017	Generally accepted standards	1
Vera	ITV	23/03/2017	Generally accepted standards	1
You've Been Framed!	ITV	01/04/2017	Sexual material	4
You've Been Framed!	ITV	08/04/2017	Nudity	2
ITV News London	ITV London	16/03/2017	Due impartiality/bias	1
ITV News	ITV Meridian	05/04/2017	Materially misleading	1
Catchphrase	ITV2	26/03/2017	Scheduling	1
Celebrity Juice	ITV2	08/04/2017	Generally accepted standards	1
Celebrity Juice Live	ITV2	23/03/2017	Generally accepted standards	1
Celebrity Juice Live	ITV2	25/03/2017	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Family Guy	ITV2	06/03/2017	Disability discrimination/offence	1
Ibiza Weekender	ITV2	05/03/2017	Generally accepted standards	1
ITV Hub (trailer)	ITV2	22/03/2016	Materially misleading	1
Two and a Half Men	ITV2	07/04/2017	Sexual material	1
You've Been Framed! Gold	ITV2	10/04/2017	Scheduling	1
Doctor at Large	ITV3	01/03/2017	Sexual material	1
Specsavers audiologists' sponsorship of ITV3 Mornings	ITV3	29/03/2017	Sponsorship credits	1
Advertisements	ITV4	17/03/2017	Advertising minutage	1
The Only Way is Essex	ITVBe	Various	Race discrimination/offence	1
The Real Housewives of Cheshire	ITVBe	27/03/2017	Materially misleading	3
Våra Pinsamma Kroppar (Embarrassing Bodies)	Kanal 11	27/02/2017	Gender discrimination/offence	1
Iain Dale	LBC 97.3 FM	23/03/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	06/03/2017	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	29/03/2017	Due impartiality/bias	1
Katie Hopkins	LBC 97.3 FM	19/03/2017	Offensive language	1
Katie Hopkins	LBC 97.3 FM	19/03/2017	Religious/Beliefs discrimination/offence	1
Katie Hopkins	LBC 97.3 FM	26/03/2017	Race discrimination/offence	1
Katie Hopkins	LBC 97.3 FM	26/03/2017	Race discrimination/offence	1
Matt Frei	LBC 97.3 FM	08/04/2017	Race discrimination/offence	1
Nick Ferrari	LBC 97.3 FM	10/02/2017	Materially misleading	1
Nick Ferrari	LBC 97.3 FM	16/03/2017	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	30/03/2017	Race discrimination/offence	1
Nigel Farage	LBC 97.3 FM	23/03/2017	Religious/Beliefs discrimination/offence	1
Steve Allen	LBC 97.3 FM	04/03/2017	Race discrimination/offence	1
Steve Allen	LBC 97.3 FM	27/03/2017	Race discrimination/offence	1
Shelagh Fogarty	LBC 97.3FM	03/04/2017	Materially misleading	1
James O'Brien	LBC Radio	06/03/2017	Due impartiality/bias	1
Britain's Next Top Model	Lifetime	20/03/2017	Race discrimination/offence	1
Befarmaeed Sham (Come Dine with Me)	Manoto TV	11/08/2016	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Stage	Manoto TV	24/02/2017	Voting	1
Car SOS	More 4+1	29/03/2017	Crime and disorder	1
Come Dine With Me	More4	02/04/2017	Race discrimination/offence	1
Geordie Shore	MTV	28/03/2017	Violence	8
Just Tattoo Of Us	MTV	03/04/2017	Dangerous behaviour	1
Just Tattoo Of Us	MTV	03/04/2017	Materially misleading	1
Comedy Bigmouths	My5	31/03/2017	Race discrimination/offence	1
Road Wars	Pick	21/03/2017	Under 18s in programmes	1
Toby Tarrant	Radio X	17/03/2017	Gender discrimination/offence	1
Going Underground	RT	01/02/2017	Due impartiality/bias	1
Going Underground	RT	08/02/2017	Due impartiality/bias	1
Various	RT	12/12/2016	Due impartiality/bias	1
Sheppey FM	Sheppey FM	11/04/2017	Offensive language	1
Richard Dicky Dodds Show	Signal 107	21/03/2017	Generally accepted standards	1
All Out Politics	Sky News	16/03/2017	Due accuracy	1
Brexit Begins (trailer)	Sky News	15/03/2017	Due impartiality/bias	1
Sky News	Sky News	15/03/2017	Due impartiality/bias	1
Sky News	Sky News	18/03/2017	Due impartiality/bias	1
Sky News	Sky News	20/03/2017	Race discrimination/offence	1
Sky News	Sky News	22/03/2017	Due impartiality/bias	1
Sky News	Sky News	22/03/2017	Scheduling	3
Sky News	Sky News	24/03/2017	Crime and disorder	2
Sky News	Sky News	28/03/2017	Generally accepted standards	1
Sky News	Sky News	30/03/2017	Crime and disorder	1
Sky News	Sky News	02/04/2017	Violence	1
Sky News (trailer)	Sky News	25/03/2017	Sexual material	1
Sunrise	Sky News	09/03/2017	Due impartiality/bias	1
Sunrise	Sky News	06/04/2017	Generally accepted standards	1
WWE Supercard's sponsorship of Wrestling	Sky Sports 5	22/03/2017	Sponsorship credits	1
Guerrilla	Sky1	13/04/2017	Materially misleading	1
Jamestown (trailer)	Sky1	13/04/2017	Offensive language	1
The Simpsons	Sky1	30/03/2017	Offensive language	1
Can't Pay? We'll Take It Away!	Spike	23/03/2017	Under 18s - coverage of sexual and other offences	1
Programming	Studio 66 TV	17/02/2017	Under 18s in programmes	1
Scotland Tonight	STV	16/03/2017	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Iain Lee	Talk Radio	22/03/2017	Offensive language	1
Iain Lee	Talk Radio	23/03/2017	Offensive language	1
News	Talk Radio	22/03/2017	Generally accepted standards	1
The Sports Bar	Talksport	03/04/2017	Generally accepted standards	1
The Two Mikes	Talksport	28/03/2017	Race discrimination/offence	1
Advertising minutage	Travel Channel	12/03/2017	Advertising minutage	2
Little House on the Prairie	True Movies+1	14/03/2017	Animal welfare	1
Aftonbladet Morgon	TV3	07/03/2017	Materially misleading	1
This is 40	TV8 Sweden	13/03/2017	Gender discrimination/offence	1
Vote 17	UTV	04/03/2017	Due impartiality/bias	2
Diet Coke's sponsorship	Various	Various	Sponsorship credits	1
Programming	Various	01/03/2017	Sexual material	1
Kye Kahte Hai Sitari	Venus TV	17/02/2017	Materially misleading	1
Balls Deep	Viceland	17/02/2017	Offensive language	1
Grimm (trailer)	W	11/03/2017	Scheduling	1

Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS ²

Programme	Service	Transmission date	Categories	Number of complaints
BBC News at Six	BBC 1	13/12/2016	Due accuracy	1
Woman's Hour	BBC Radio 4	30/01/2017	Transgender discrimination/offence	1
News/Reporting Scotland	BBC Scotland	24/01/2017	Due accuracy	1

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

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

² The complaints in this table were originally made to the BBC Trust before Ofcom took over the regulatory responsibility for matters of due accuracy, due impartiality, elections and referendums in BBC programmes on 22 April 2017. These complaints were passed to Ofcom because the BBC Trust did not reach its final decision before this date.

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

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

https://www.ofcom.org.uk/data/assets/pdf_file/0019/31942/general-procedures.pdf

Licensee	Licensed service	Categories
YourTV Manchester Limited	That's Manchester	Programming Commitments (local TV)
That's Solent Limited	That's Solent	Programming Commitments (local TV)
That's Oxford Limited	That's Oxford	Programming Commitments (local TV)
That's Solent Limited	That's Solent	Programming Commitments (local TV)
Channel 5 Broadcasting Limited	5 USA	Television Access Services

Complaints outside of remit¹

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service does not fall within the scope of regulation².

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

Complaints about television or radio programmes

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

Programme	Service	Transmission Date	Categories	Number of complaints
Explore The Dark with Alex Armani	2 Bays Radio (Scarborough)	17/04/2017	Outside of remit	1
Advertisement	5Star	25/03/2017	Advertising content	1
Programming	BBC	Various	Other	1
BBC News	BBC 1	26/03/2017	Other	1
Comic Relief 2017	BBC 1	24/03/2017	Undue prominence	1
The Andrew Marr ³ Show	BBC 1	13/11/2016	Generally accepted standards	1
Various ⁴	BBC 1	Various	Due impartiality/bias	1
Newsnight	BBC 1	27/03/2017	Other	1
Amazing Hotels	BBC 2	27/03/2017	Outside of remit	1
Advertisement	Channel 5	08/04/2017	Advertising content	1
Gregg Scott	Coast and County Radio (Scarborough)	20/03/2017	Other	1
New Tricks	Dave	30/03/2017	Outside of remit	1
Advertisement	Drama	24/03/2017	Advertising content	1
Advertisement	E4	29/03/2017	Advertising content	1

¹ This table was amended after publication to correct a factual inaccuracy

² A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC. On 29 March 2017, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The complaints in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

³ The BBC Trust had reached a decision on this complaint prior to Ofcom taking on its BBC duties in this area from 3 April 2017. The BBC Trust's decision is final.

⁴ The BBC Trust had reached a decision on this complaint prior to Ofcom taking on its BBC duties in this area from 22 March 2017. The BBC Trust's decision is final.

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	E4	30/03/2017	Advertising/editorial distinction	1
Advertisement	Ideal World	12/04/2017	Advertising content	1
Advertisement	ITV	11/03/2017	Advertising content	1
Advertisement	ITV	04/04/2017	Advertising content	1
Advertisement	ITV	10/04/2017	Advertising content	1
Advertisement	ITV	10/04/2017	Advertising content	1
Advertisement	ITV	10/04/2017	Advertising content	1
ITV Racing Live	ITV	14/03/2017	Outside of remit	1
ITV Regional News	ITV	08/04/2017	Other	1
Meridian Tonight	ITV	24/03/2017	Outside of remit	1
Emmerdale	ITV2	31/03/2017	Other	1
Advertisement	Lifetime	09/04/2017	Advertising content	1
Advertisement	Pick	12/04/2017	Advertising content	1
Welcome to Mayfair	Really	05/04/2017	Outside of remit	1
Advertisement	Sky	31/03/2017	Advertising content	1
Advertisement	Sky News	30/03/2017	Advertising content	2
The Prisoner	True Entertainment	21/03/2017	Outside of remit	1

Complaints about the BBC, not assessed¹

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

Here are alphabetical lists of complaints about the BBC that Ofcom was unable to assess. This is because Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision. The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC	07/04/2017	Due accuracy	1
All Round to Mrs Brown's	BBC 1	25/03/2017	Offensive language	1
BBC News	BBC 1	30/03/2016	Due impartiality/bias	1
BBC News	BBC 1	21/03/2017	Due impartiality/bias	3
BBC News	BBC 1	22/03/2017	Due impartiality/bias	1
BBC News	BBC 1	23/03/2017	Due accuracy	1
BBC News	BBC 1	25/03/2017	Due impartiality/bias	3
BBC News	BBC 1	28/03/2017	Advertising content	2
BBC News	BBC 1	29/03/2017	Due impartiality/bias	2
BBC News	BBC 1	30/03/2017	Due impartiality/bias	2
EastEnders	BBC 1	20/03/2017	Scheduling	1
EastEnders	BBC 1	03/04/2017	Generally accepted standards - other	1
EastEnders	BBC 1	11/04/2017	Generally accepted standards - other	2
Holby City	BBC 1	11/04/2017	Generally accepted standards - other	1
The Andrew Marr Show	BBC 1	02/04/2017	Due impartiality/bias	2
Various	BBC 1	19/03/2017	Due impartiality/bias	1
BBC News North West	BBC 1 North West	24/03/2017	Due impartiality/bias	1
South East Today	BBC 1 South East	05/04/2017	Generally accepted standards - other	1
Indian Ocean with Simon Reeve	BBC 2	06/02/2017	Offensive language	1
Newsnight	BBC 2	05/04/2017	Due impartiality/bias	1
Top Gear	BBC 2	27/03/2017	Advertising content	1
Clique	BBC 3	26/03/2017	Sexual material	1
BBC News	BBC News	17/08/2016	Due accuracy	1
BBC News at 10	BBC News 24	29/11/2016	Due impartiality/bias	1

¹ This table was amended after publication to correct a factual inaccuracy

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Today	BBC Radio 4	07/06/2016	Due impartiality/bias	1
5 Live Breakfast	BBC Radio 5 Live	28/03/2017	Due impartiality/bias	1
Various	BBC Radio 6	16/03/1987	Due impartiality/bias	1
The Kaye Adams Programme	BBC Radio Scotland	n/a	Due impartiality/bias	1

For more information about how Ofcom deals with BBC television, radio and on demand complaints, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/how-ofcom-deals-with-bbc-complaints>

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 27 March and 17 April 2017¹.

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

Programme	Service	Transmission date
ATN Bangla Shongbad	ATN Bangla UK	30 January 2017
Tour Down Under	Bike	21 January 2017
Drivetime	Gravity FM	24 February 2017
Breakfast	Jack FM (Oxford)	17 March 2017
Botched	Kanal 5	07 March 2017
Highway Thru Hell	National Geographic	26 March 2017

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

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

¹ A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC. On 29 March 2017, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The investigations in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

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

Programme	Service	Transmission date
News	Channel 4	20 February 2017
News	Channel 44	4 December 2016
Fatal Fog: The Winter Roadside Rescue	Channel 5	6 March 2017

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

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

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

Licensee	Licensed Service
Sunny Govan Community Media Group	Sunny Govan Radio
Western Isles Community Radio Ltd	Isles FM

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

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