

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

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

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

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

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

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

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

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

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

Notice of Sanction

Trace UK World Ltd

Introduction

Starz is a UK satellite television channel which broadcasts music videos. Alongside these, it also broadcasts texts and photographs submitted by viewers. These interactive elements are subject to the requirements of the UK Code of Broadcast Advertising ("the BCAP Code"). The Ofcom licence for this channel is currently held by Trace UK World Ltd ("the Licensee") but, when the breaches occurred, it was held by CSC Media Group Limited ("CSC"), a subsidiary of Columbia Pictures Corporation Limited.

This sanction related to the broadcast of an image containing an antisemitic caricature, submitted by a viewer. This image was intermittently shown 22 times, appearing in total for a period of 7 minutes and 5 seconds in just under an hour. In the breach decision published on 8 October 2018 in [Issue 363 of the Broadcast and On Demand Bulletin](#), Ofcom found that the caricature constituted a form of hate speech and had the potential to cause serious offence and condone discriminatory treatment, in breach of Rules 1.2, 4.2 and 4.8 of the BCAP Code:

- Rule 1.2: "Advertisements must be prepared with a sense of responsibility to the audience and to society".
- Rule 4.2: "Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards".
- Rule 4.8: "Advertisements must not condone or encourage harmful discriminatory behaviour or treatment. Advertisements must not prejudice respect for human dignity".

In accordance with Ofcom's [sanctions procedures](#), Ofcom decided that it was appropriate and proportionate in the circumstances to direct the Licensee to broadcast a statement of Ofcom's findings in this case, on a date and time to be determined by Ofcom.

The [full sanction decision](#) was published on 10 July 2019.

Broadcast Standards cases

In Breach / Not in Breach

Kitaab-ut-Tawheed, Part 59, Peace TV Urdu, 22 November 2017, 09:00

**Strengthening Your Family – The Valley of the Homosexuals –
Episode 9, Peace TV, 11 March 2018, 11:30**

**Media and Islam, War or Peace?, Peace TV, 13 November 2017, 07:30
and 14:00**

Better Half or Bitter Half, Peace TV, 13 November 2017, 18:30

Umdatul Akhaam, Part 162, Peace TV, 13 November 2017, 22:30

This Bulletin sets out Ofcom's Decisions on the five programmes above. Peace TV Urdu's licence is held by Club TV Ltd. Peace TV's licence is held by Lord Production Inc Ltd. Both licensees are majority controlled by Universal Broadcasting Corporation Limited¹.

Through monitoring, Ofcom identified content raising issues under the Code in four of these programmes. We received a complaint about the other programme.

In accordance with our published procedures, Ofcom watched all the programmes and took careful account of all the relevant information, including the individual facts of each case and the representations made by the licensees. Ofcom has decided that four of the five programmes breached the Code, and one did not. The reasons are set out in full in each of the corresponding decisions which follow this summary.

We have notified the relevant licensees that we will consider the breaches in two of the programmes, *Kitaab-ut-Tawheed* and *Valley of the Homosexuals*, for the imposition of statutory sanctions.

Kitaab-ut-Tawheed, Part 59, Peace TV Urdu, 22 November 2017, 09:00

A religious scholar gave a view on the practice of magic. The programme breached Rule 3.1 (incitement to crime), Rule 3.2 (hate speech), Rule 3.3 (abusive treatment) and Rule 2.3 (offence).

**Strengthening Your Family – The Valley of the Homosexuals –
Episode 9, Peace TV, 11 March 2018, 11:30**

The presenter discussed a religious perspective on homosexuality. The programme breached Rules 3.2 (hate speech), Rule 3.3 (abusive treatment) and Rule 2.3 (offence).

Media and Islam, War or Peace?, Peace TV, 13 November 2017, 07:30 and 14:00

The presenter gave a religious view on the punishment for apostasy. The programme breached Rules 3.2 (hate speech), Rule 3.3 (abusive treatment) and Rule 2.3 (offence).

Better Half or Bitter Half, Peace TV, 13 November 2017, 18:30

The presenter gave a religious view on child marriage. The programme breached Rule 2.3 (offence).

¹ Universal Broadcasting Corporation Limited holds 75% or more shares in both Club TV Ltd and Lord Production Inc Ltd.

Umdatul Akhaam, Part 162, *Peace TV*, 13 November 2017, 22:30

The presenter discussed specific religious texts on prescribed punishments. We did not consider this programme was in breach of our rules.

In Breach

Kitaab-ut-Tawheed, Part 59

Peace TV Urdu, 22 November 2017, 09:00

Introduction

Peace TV Urdu is a television channel broadcasting religious and other programming in Urdu from an Islamic perspective to audiences in the UK and internationally. The licence for Peace TV Urdu is held by Club TV Limited ("Club TV" or "the Licensee").

During routine monitoring, Ofcom identified a religious programme in which an Islamic scholar discussed the Islamic punishment for magicians (and those who practise magic) and appeared to advocate their execution. *Kitaab-ut-Tawheed* is a regular weekday programme which features a religious lecture by Shaikh Ashfaque Salafi ("the scholar") speaking in Urdu to a group of young men in a studio. The lectures are based on the 19th century religious text *Kitaab-ut-Tawheed* written by Muhammad ibn Abd al-Wahhab, the founder of Wahhabism. During the 55-minute programme, the scholar cited chapters and reasoning from the *Kitaab-ut-Tawheed* to justify the application of the death penalty against those accused of practising magic.

The programme was set in a studio which was made to appear like a classroom with students seated behind desks; the scholar sat behind a desk on a raised dais. The scholar spoke uninterrupted throughout the programme, and at the end of the lecture he answered a few questions from the students.

Ofcom translated the programme and gave the Licensee an opportunity to comment on its accuracy. The Licensee said that Ofcom had translated the words "sahar" [Sihr]¹ as "magic" and "magician", which it said did not represent "the full sense of these words". The Licensee expanded on what it considered to be the full meaning of these words, and we have considered this more fully below. The Licensee did not comment on any other aspect of the translation and so we relied on it for the purposes of our investigation.

The programme opened with the scholar reciting Islamic prayers. He then introduced the theological discussion about the "*Islamic punishment for magicians*". He explained that:

"There is a debate amongst scholars whether a magician should be killed or not and whether it is permitted to accept their repentance. The debate is whether the repentance of such a person should be sought, and if that person repents whether it should be accepted or whether he should simply be beheaded. Imam Malik, Imam Hanifa and Imam Hanbal² have said that such a person's punishment is that person should be beheaded. In fact, he should not be asked to repent and in fact if he chooses to repent that repentance

¹ We adopt the Licensee's spelling here. In Arabic a "Sahir" (magician) practises "Sihr" (magic).

² Imams Malik, Hanifa and Hanbal: within Sunni Islam these three jurists and theologians (along with Imam Shafi) rank as the most authoritative and their opinions form the basis of all Islamic religious law.

should not be accepted. The unreliable opinions of Imam Muhammad and Imam Shafi³ are that if such a person is asked to repent and if he repents then his repentance should be accepted, and the reasoning is that if a Murtad⁴ seeks forgiveness we accept his repentance. By way of example when Pharaoh's magicians sought repentance they were forgiven and came back into the faith. For that reason, if he seeks forgiveness then he should be forgiven. But the correct reliable and majority opinion is that the punishment for a Sahir⁵ is that the person should be killed. You cannot offer Qisas⁶ to a Mushriq⁷ or Murtad. A Sahir is more dangerous than a Mushriq or a Murtad. I want to make it clear that the magician's art or the practice of magic cannot be forgiven by way of repentance. To save his life he may seek repentance and get away with it, but at the first opportunity when he has a dispute with someone he will use his magic skills. For that reason, for the benefit of all it is better to cut it out from its roots".

The scholar then discussed the difference between miracles from God and the practice of magic. He continued:

"...we draw a distinction between a Kaafir⁸ who commits these acts before he accepts Islam and then seeks forgiveness and a Muslim or someone who is Muslim in name alone but remains a magician, we could not of course treat such a person as a Murtad and as a result such a person will try and influence others of weak faith with his wiles and magic and therefore it is better to have him killed".

The scholar briefly referred to non-Muslim people who practise magic before they "accept Islam". He then continued:

"This fatwa is given added weight because this is an authentic tradition attributed to a Sahabi⁹, and from this we can draw the inference that it is the Ijma¹⁰ of all, and that this is the opinion of Hazrat Umar Ibn Khattab¹¹. It is said that he issued an ordinance in which he said, and this is referred to in the book of Sahih Bukhari¹² that he had issued this ordinance during his caliphate that every magician male or female should be killed. As a

³ Imams Muhammad and Shafi: leading Islamic theologians and compilers of Hadith.

⁴ Murtad: An apostate from Islam.

⁵ Sahir: Magician or someone who practices magic [Sihir].

⁶ Qisas: Under Shariah Law certain crimes are eligible for Qisas, in other words an eye for an eye punishment.

⁷ Mushriq: A person who worships anyone other than the singular God.

⁸ Kaafir: A disbeliever, often used as a pejorative term to describe a non-Muslim.

⁹ Sahabi: A companion of Prophet Muhammad.

¹⁰ Ijma: Consensus of opinion.

¹¹ Caliph Umar: Umar ibn Khattab the second Caliph of Islam.

¹² Sahih Bukhari: Book of Hadith compiled by Imam Bukhari and considered one of the most reliable compilations of Hadith within Sunni Islam.

result, it is said that a companion said, we have killed three female magicians. We know that more women practise magic compared to men, of course they can be men as well, but they are mostly women. So, they said that they had found three female magicians and had them killed. Now you have the ordinance of Hazrat Umar who is the Caliph of the Muslims and you have the opinion of the companions of the Prophet, and it is recognised by all the scholars that where there is agreement this becomes the Ijma of the Muslims, and this Ijma becomes Hujjat al Sharee¹³”.

The scholar briefly spoke about the Sahih Bukhari (Book of Hadith), he then said:

“Commentators have written about this in detail and have drawn the very clear conclusion that every male or female magician should be killed. In any event three female magicians were killed. Imam Shafi has said that you first check whether that person [a magician] has committed Kufr¹⁴, then that person should be killed, and as I have discussed previously anyone who is practising magic and is simply a magician and practising satanic magic has to have committed Kufr and Shirk¹⁵. Therefore, if Satan does not aid a magician then that magician cannot commit his Kufr. Therefore, it is clear that such persons [magicians] have committed Kufr and when you combine the ability to practise magic that person becomes a danger to the Millat¹⁶, and for the sake of the Millat and wider humanity that person should be killed. So, taking all these factors together the opinion of the Sahabi's, the ordinance of Hazrat [Caliph] Umar and the fact that none of this has been challenged by any scholar it therefore becomes the binding Ijma of the Muslim community that the punishment of magicians is that they are to be killed. The book also relates the story of Hazrat Hafsa¹⁷ who it is said ordered the killing of a slave girl. The fact is Hazrat Hafsa had said that this concubine would become a free woman upon her death and would not be distributed as her chattel upon her death but freed. But this concubine was a magician and resorted to her magic rather than be grateful to Hazrat Hafsa for her kindness. Her purpose being to hasten the death of Hazrat Hafsa so that she [the slave girl] could be released quickly. As a result, she was killed, and that is further evidence of the consensus on this opinion that the punishment for a magician is that he/she should be killed. And because scholars have recorded this narration, very clearly it is an authentic tradition and without any ambiguity that Hazrat Hafsa had ordered the killing of a slave girl”.

Following a short break in the programme the scholar said:

“As I was saying Hazrat Hafsa had committed that her slave girl be released and become a free woman upon her death, but because she was a magician she did what magicians do and performed her magic to hasten the death of Hazrat Hafsa and thus gain her freedom. But in any case, she was caught and the mother of the faithful [Hazrat Hafsa]

¹³ Hujjat al Sharee: By the authority of Shariat.

¹⁴ Kufr: Disbelief.

¹⁵ Shirk: The sin of practising idolatry or associating anyone with Allah.

¹⁶ Millat: The wider Muslim community.

¹⁷ Hazrat Hafsa: A wife of prophet Muhammad.

ordered her to be killed. We therefore have further endorsement from Hazrat Hafsa that the punishment of a magician must be that he/she be killed. Imam Malik confirms that he was aware of this tradition attributed to Hazrat Hafsa, and we know from other scholars and the account of their traditions that this Hadith¹⁸ is very authentic that Hazrat Hafsa had ordered the killing of a magician, and therefore this account is without any ambiguity whatsoever. We also know from the account of Jundoo¹⁹ that he had ordered the killing of a magician, and from that the authentic account of Imam Tirmidhi²⁰ who had drawn the same conclusion and has written that the punishment for all magicians is that they be put to death. This same account is referred to by Imam Bukhari²¹ who states in one of his books that a magician is to be put to death. This magician was walking around with someone's severed head and was showing it to the crowds and getting them to pay him money which is the way of all magicians who seek money to perform their tricks. It is narrated that this magician would show a severed head and people would give him money and he would then re-attach the head to the body. Thus, this was their way of obtaining money from the public by gaining their sympathy as they wanted the magician to re-attach the head to the body and supposedly bring this person to life. But when Jundoo saw this happening he decided to come back the next day and when the magician started to perform his tricks he drew his sword and beheaded the magician forthwith. He did this bold act in the presence of the Sultan and head of state, but because he did it in the presence of the Sultan he felt that this was a contempt and he imprisoned Jundoo for a short period of time. The conclusion we can draw from all of these narrations such as the account of Hazrat Hafsa, the narration from Imam Tirmidhi, the ordinance of Hazrat Umar, and other scholars, and now from this further account we have further unambiguous endorsement that the punishment for all magicians is that they should be killed forthwith. We see that Jundoo acted with great boldness and did this noble act of killing the magician by drawing his sword and beheading him forthwith. Taken all together they further corroborate the account of Imam Tirmidhi who spoke of a person that had beheaded a magician with a sword and it is clear that this is a clear reference to Jundoo. Imam Hanbal²² has therefore drawn the conclusion that with the endorsement of these three leading Sahabi's the punishment for magicians under Shariat is death. Even if he repents and seeks forgiveness, to prevent further mischief the correct thing to do is not to listen but instead go ahead and kill the magician".

Following his lecture, the scholar answered questions from the audience. One of the students asked:

¹⁸ Hadith: Sayings of prophet Muhammad collected after his death and compiled by various scholars of Islam.

¹⁹ The identity of Jundoo is discussed earlier in the same broadcast, and the scholar speculated that this may refer either to Jundoo bin Abdullah or Jundoo bin Ka'ab. The scholar referred to both as Sahabi's (see footnote 9 above) which gave their account added gravitas.

²⁰ Imam Tirmidhi: Renowned Islamic scholar noted for his compilation of the sayings of Muhammad (Hadith).

²¹ Imam Bukhari: Renowned Islamic scholar noted for his collection of Hadith.

²² Imam Hanbal: One of the four leading great Islamic jurists of his time.

“Shaikh, if a magician places a spell upon a person is it permitted to go to the magician in an attempt to break that spell?”

The scholar replied:

“If the intention is to go to the magician in an attempt to use the same magic to break the spell that is completely haram²³...”

Another student asked:

“Regarding the question about magicians I know this is true because occasionally in our village, magicians turned up and would show us a basket in which there might be a severed head, or they would ask us to clap and they would turn a child into a snake or a pigeon, but what exactly is that?”

The scholar replied:

“Precisely, you see one thing and in reality, it is another. It is not reality it is a deception upon you...He is in reality a magician and he deceives you, but he does it for the sake of money”.

Ofcom was concerned that the statements above called on Muslim people to kill anyone who practises Sihr or magic. In Ofcom's view, the UK Muslim audience would have understood Sihr to include practices such as astrology, black magic, numerology, wearing of talismans, and other forms of divinatory magic. Ofcom understands that such practices are widespread amongst South Asian and Sunni Muslim communities in the UK.

We therefore considered the material raised potential issues under the following Code rules:

Rule 3.1: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television ... services”.

Rule 3.2: “Material which contains hate speech must not be included in television and radio programmes...”.

Rule 3.3: “Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television services... except where it is justified by the context”.

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

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

²³ Haram: Forbidden.

Response

Club TV said that the programme *Kitaab-ut-Tawheed* was broadcast in Urdu in two parts from 09:00 on 22 November 2017. It said that it was a workshop presented by Shaikh Ashfaque Salafi who had authored several books in Urdu and Arabic as well as being a prominent speaker and a public figure. The workshop was Part 59 in a series covering "Muslim beliefs and faith".

The Licensee said about the references to 'magic':

- "Ofcom's translator has translated the words 'sahar' and 'saahir' as 'magic' and 'magician', which do not represent the full sense of these words. The programme is not about Harry Houdini, Paul Daniels, David Blaine or other entertainers performing magic tricks for money or fun, it is about black magic, witchcraft, sorcery and enchantment, as viewers will understand".
- Such magic "...is a problem among the uneducated, in for example parts of the Indian subcontinent and Africa, and the intent of the programme is to show that such practices (i.e: [juju](#)), when used to deceive people and do ill to others (the examples given by the speaker include seeking to hasten someone's death, or walking round with the severed head of someone who has been killed to play tricks), are contrary to and condemned in the Islamic texts to which the speaker refers".
- A [webpage](#) it referred to set out some examples of the practices which it said the scholar was talking about. This page:
 - referred to the belief among some Indian "tribal groups" in various forms of witchcraft and sorcery including black magic;
 - detailed attacks on Indian women accused of being witches.

The Licensee also said that:

- the programme discussed the works of "renowned Islamic scholars and collectors of the Hadiths and their varying treatment of the issue of how a practitioner of witchcraft and black magic should be punished" and that the punishment for performing magic was only applicable where "there is Islamic sharia law in place";
- the speaker explained the difference of opinions of Islamic scholars on the punishment for practising magic, and he made it clear throughout the programme that it was an "Islamic punishment, meaning only used where Islamic rules applied, and there is no suggestion that such punishments should be applied elsewhere";
- the programme was broadcast for "the awareness and importance of this subject according to the teaching of Quran and hadeeth";
- the Question and Answer session made clear that "the participants (clearly not a UK audience) are not concerned with the academic issues...but rather with how to ward off the effects of evil practises";

- neither Ofcom nor the Licensee had received any complaints about the broadcast of the programme;
- the programme did not: cause harm or offence from which the audience required protection; encourage or incite the commission of crime; contain material which could be considered hate speech; and, did not constitute abusive or derogatory treatment of individuals, groups, religions or communities; and
- it wished to remind Ofcom of the Licensee's rights to freedom of expression under Article 9 and 10 of the European Convention of Human Rights ("ECHR").

The Licensee offered to make clear in future broadcasts that the punishment for magicians was only applicable in states where Shariah law is applicable, and then only after due process.

The Licensee provided further representations on the Preliminary View, which broadly fell under the following headings.

Meaning and understanding of magic

The Licensee disputed Ofcom's arguments around the definition of *Sihir* and how the audience would have understood this term. It said:

- "The witchcraft connoted by the term "Sihir" does not include the practices referred to [by Ofcom in its Preliminary View]. Sihir is a form of witchcraft where the "Sahir" (best, although imperfectly, translated as "sorcerer") seeks actively to cause harm and destruction by calling upon spirits".
- "It is a matter of scholarly consensus that practising Sihir is a sin and forbidden in Islam. Prophet Muhammad (Peace be upon him) himself stated that practising Sihir was one of the seven deadly sins – see Messenger of Allah said: "Avoid Major Sins – Joining Partners with Allah and Witchcraft" – Saheeh Al Bukhari Volume 7 Hadeeth 5764 and Saheeh Al Bukhari Volume 4 Hadith 2766".
- Given the serious nature of the harm that a Sahir can cause, many scholars consider that the correct punishment under Islamic law for practising Sihir is death. The Licensee said "This is the position of three of the four schools of Islamic law and is reflective of the fact that a practitioner of Sihir is considered an apostate. The views espoused by the scholar, therefore, represent the mainstream Islamic viewpoint on this matter. Nonetheless, under Islamic law, such a punishment is only to be inflicted by a Muslim ruler in an Islamic state under Shariah law after the Sahir is convicted by a panel of judges following due process and a trial".

Ofcom's view on likelihood.

In its Preliminary View Ofcom referred to a case, *Syedy*²⁴, in which an Imam, Jalal Uddin was murdered in the UK for practising magic. Mohammed Syedy was convicted of the murder at Manchester Crown Court in 2016. Prior to having seen the transcript of the Judge's summing up and sentencing remarks in that case, the Licensee made representations as follows:

²⁴ *R v Mohammed Syedy* (2016) Manchester Crown Court Case No: T20167130 (unreported).

- “As regards Ofcom’s consideration of the likelihood that the statements would encourage or incite the commission of crime or lead to disorder, we note with concern your reference to the case of Imam Jalal Uddin and the Judge’s remarks that his murderers saw Mr Uddin’s practice of Islamic faith healing “as a form of black magic that could not be tolerated within Islam” and that “this was a case of two members of the Muslim faith killing another member of the Muslim faith solely because they disapproved of a particular practice carried out by that person... To be clear, the practices that the Imam was undertaking do not constitute Sihr”.
- “This claim is based upon a misapprehension as to the nature of Sihr. The murder of Imam Jalal Uddin was not due to a belief on the part of his killers that what he was practising amounted to Sihr – it was due to their taking inspiration from the extremist views of ISIL”.²⁵
- “Peace TV Urdu and Shaikh Ashfaque Salafi condemn unequivocally the murder of Mr Uddin. We firmly reject any attempt to equate our views, or those of Shaikh Ashfaque, with those of ISIL”.
- “We consider that Muslims watching the programme would be perfectly aware of the distinction between the practices undertaken by Mr Uddin as part of his faith and the Sihr referred to in the programme. We strongly refute, therefore, that “the indirect call to action in the programme was likely to have been understood by the audience as being targeted at those who practise magic as part of their Islamic faith”.

Licensee’s representations on transcripts

In response to our PV, the Licensee requested sight of the Judge’s summing up and sentencing remarks in the case of *Syeedy*. Having considered the transcript, the Licensee told us:

- “Nowhere in any of the material uncovered by the prosecution was there anything to suggest that Mr Syeedy had watched Peace TV Urdu, let alone been inspired to commit murder by it.”
- “The broadcast on Peace TV Urdu on 22 November 2017 was about black magic. Even had Mr Uddin been practising black magic, any finding to that effect, and any penalty, could only be imposed under Shariah law, by the proper authorities in a state which applied Shariah law.”
- “There is simply no basis for Ofcom to conclude that this murder had anything to do with the scholarly discourse of Shaikh Ashfaque Salafi, and it should play no part in Ofcom’s

²⁵ ISIL: Daish or ISIL (Islamic State of Iraq and the Levant) is a proscribed terrorist organisation. The UK Government’s [list of proscribed terrorist organisations](#) as of 12 April 2019 states the following in relation to ISIL: “Islamic State of Iraq and the Levant (ISIL) also known as Dawlat al-'Iraq al-Islamiyya, Islamic State of Iraq (ISI), Islamic State of Iraq and Syria (ISIS) and Dawlat al Islamiya fil Iraq wa al Sham (DAIsh) and the Islamic State in Iraq and Sham – Proscribed June 2014. ISIL is a brutal Sunni Islamist terrorist group active in Iraq and Syria. The group adheres to a global jihadist ideology, following an extreme interpretation of Islam, which is anti-Western and promotes sectarian violence. ISIL aims to establish an Islamic State governed by Sharia law in the region and impose their rule on people using violence and extortion”.

decision. The crimes of Mr Syeedy and his co accused had nothing to do with Peace TV Urdu.”

- “The punishments under the Islamic texts referred to in broadcasts such as the one in question are to be imposed only in a state with Shariah Law, by the appropriate authorities in that state, under due process”.
- The broadcast was “a scholarly discourse within an academic setting”, not a guide for vigilante action.

Audience Expectation

In response to Ofcom's Preliminary View, the Licensee also argued:

- “The programmes broadcast on Peace TV Urdu are derived from a particular religious viewpoint of which its audience would be conscious. The programme-makers, the speakers who appear and the channel itself have strong religious convictions, which inform the content of our broadcasts and ground the advice given in our programmes about how to lead a good Muslim life. We accept that there may be times when the views expressed in our programmes cause offence to different sections of the public.”
- “...you state that it was of particular concern that no alternative view or challenge was offered. However, the scholar's statements amount to the mainstream view on how a Sahir should be punished. Extensive references to scripture underpinned the lecture and clearly substantiated the scholar's view. The format of the programme made it clear that the scholar was providing his own interpretation of Islamic law. Further, it is untrue that no alternative view was provided: the scholar expressly stated that “[t]here is a debate amongst scholars” and proceeded to give an alternative view. The fact that he referred to the counter view to his own as being “unreliable opinions” does not undermine the fact that such opinions were mentioned.”

Article 9 and Article 10 rights.

The Licensee, Club TV, made the following arguments related to its rights to freedom of expression and freedom of religion:

- that any curtailment of Club TV's right to broadcast such material on the grounds that it may cause offence would amount to an “unacceptable restriction on Club TV's [right to] freedom of expression” as enshrined in Article 9 of the ECHR²⁶. Club TV further argued that Article 10 of the ECHR “has been used to protect religious speech even where such speech has been provocative.”²⁷
- “enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established

²⁶ [Kokkinakis v Greece](#) [1993] ECHR 20

²⁷ [Ibragimov and others v Russia](#) (2018)

convincingly..."²⁸, and that "Any restrictions imposed must be proportionate. This was a religious broadcast of the Muslim faith, which is lawful and listened to by a voluntary audience; the views expressed are not untenable and are believed by many persons."

Licensee's Further Representations on Preliminary View

- "You state that during the programme the scholar *"provided theological justification for the killing of all those who practise magic as part of their Islamic faith"*. As set out above, this is incorrect and is due to a misapprehension as to the nature of Sihr. For this reason, we disagree that *"a significant majority of South Asian Muslim people in the UK was likely to have considered these remarks derogatory of their beliefs, customs and practice"*.
- "We refute that the statements of the scholar in the programme amounted to hate speech...we strongly disagree with your claim that the audience was *"likely to have interpreted these comments [of the scholar] as promoting and justifying hatred and violence towards Muslim people who practise magic as part of their faith"*.
- "We do not consider that the scholar's statements therefore amounted to abusive or derogatory treatment – and to the extent they may have, was mitigated by the serious harm which Muslims believe a practitioner of Sihr can cause and the limitations on who can exact punishment for such practices".
- For the reasons set out above, we do not consider that the content of the programme would have been "highly offensive... to viewers from the UK South Asian Muslim community". We refute the statement that "this community were likely to have felt offended, threatened and alarmed by the views expressed by the scholar".

Decision

Reflecting our duties under the Communications Act 2003 (section 319), Sections Two and Three of the Code require that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material in programmes including material containing hatred, abusive and derogatory treatment of individuals, groups, religions or communities.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in [Article 10 of the ECHR](#), which encompasses the broadcaster's right to transmit material, information and ideas without interference and the audience's right to receive it. We have also had regard to [Article 9 of the ECHR](#), which states that everyone "has the right to freedom of thought, conscience and religion and the right to enjoyment of human rights without discrimination on grounds such as gender or religion." In applying the Code, Ofcom

²⁸ *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 101, ECHR 2012; and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016". [Paragraph 91]

must seek to balance broadcasters' rights including freedom of expression against our duties to protect audiences.

Ofcom has also had due regard²⁹ in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as religion or belief, and those who do not.

Broadcasters can transmit programmes taking a critical view or broadcasting opinions that some viewers may find offensive, and the Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising people of differing views or beliefs. To do so would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information.

Ofcom does not seek to curb or limit the ability of a broadcaster to discuss religious texts such as the *Kitaab-ut-Tawheed*. In this context, Ofcom considered it was clearly legitimate for a religious channel such as Peace TV Urdu to broadcast a programme that discussed such texts. We recognise the Licensee's right to hold and to express "controversial opinions which may 'offend, shock or disturb', [which] are protected under Article 10". However, when transmitting material of this nature broadcasters must comply with all relevant rules in the Code, including: Rule 3.1 (prohibition on material likely to incite crime); Rule 3.2 (hate speech must be justified by the context); Rule 3.3 (material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television... except where it is justified by the context); and, Rule 2.3 (to apply generally accepted standards, and ensure that any offensive content is justified by the context).

Rule 3.1

Rule 3.1 of the Code requires that:

"Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television or radio services".

When considering whether material is in breach of Rule 3.1, Ofcom is required to assess the *likelihood* of it encouraging or inciting the commission of crime or leading to disorder. Ofcom is not required to identify any causal link between the content broadcast and any specific acts of disorder or criminal behaviour. Ofcom takes account of all the relevant circumstances, the nature of the content, its editorial context and its likely effects. Content may contain a *direct* call to action – for example, an unambiguous, imperative statement calling viewers to take some form of potentially criminal or violent action. Material may also contain an *indirect* call to action if it includes statements that cumulatively amount to an implicit call to act.

The Licensee made representations asserting that its point of view represented "the mainstream Islamic viewpoint on this matter". This is irrelevant when considering incitement to crime or disorder. Ofcom is statutorily required to apply standards which protect audiences from incitement to crime and disorder, in the interests of a democratic society.

The scholar made various statements about killing Muslim people who practise magic, which included:

²⁹ Under section 149 of the Equality Act 2010.

- *"...the correct reliable and majority opinion is that the punishment for a Sahir is that the person should be killed... I want to make it clear that the magician's art or the practice of magic cannot be forgiven by way of repentance. To save his life he may seek repentance and get away with it, but at the first opportunity when he has a dispute with someone he will use his magic skills. For that reason, for the benefit of all it is better to cut it out from its roots".*
- *"...such a person will try and influence others of weak faith with his wiles and magic and therefore it is better to have him killed".*
- *"... it is clear that such persons [magicians] have committed Kufr and when you combine the ability to practise magic that person becomes a danger to the Millat, and for the sake of the Millat and wider humanity that person should be killed".*
- *"Commentators have written about this in detail and have drawn the very clear conclusion that every male or female magician should be killed".*
- *"...when Jundoo saw this happening he decided to come back the next day and when the magician started to perform his tricks he drew his sword and beheaded the magician forthwith.....The conclusion we can draw from all of these narrations such as the account of Hazrat Hafsa, the narration from Imam Tirmidhi, the ordinance of Hazrat Umar, and other scholars, and now from this further account we have further unambiguous endorsement that the punishment for all magicians is that they should be killed forthwith".*
- *"Imam Hanbal has therefore drawn the conclusion that with the endorsement of these three leading Sahabi's the punishment for magicians under Shariat³⁰ is death. Even if he repents and seeks forgiveness, to prevent further mischief the correct thing to do is not to listen but instead go ahead and kill the magician".*

We considered that the multiple references to "should" were compounded by the unqualified statement that under Shariah law it is correct to "go ahead and kill the magician" and that magicians should be "killed forthwith".

In Ofcom's view these statements amounted to an indirect call to action for the audience to kill those who practise magic.

Ofcom next considered the nature of the magic referred to in the programmes and how the audience was likely to have understood its meaning. The word used in the programme was the Arabic word for magic, "Sihr". In common with many Arabic words, we understand that the Arabic word "Sihr" has been assimilated into Urdu, the language in which the scholar spoke, and would have been understood by most Urdu language viewers as a generic term for magic.

³⁰ Shariat: Another name for Shariah, usually used when speaking in Urdu.

In Ofcom's Preliminary View, we expressed the view that the word "Sihr" could be understood to include astrology, black magic, numerology, wearing of talismans, and other forms of divinatory magic³¹.

The Licensee in its further representations disagreed. It said: "A Muslim audience would understand it to include sorcery or witchcraft, but not "astrology... numerology, wearing of talismans, and other forms of divinatory magic". It reiterated that the references to *Sihr* in the programme were to "black magic, witchcraft, sorcery and enchantment, as viewers will understand".

Ofcom referred to [The Oxford University Press's online Islamic Studies site](#), which says that *Sihr*:

"encompasses a wide range of subjects, from white and black magic to having contacts with Jinn (non-human creatures). Its basic meaning is the same as the English word magic: falsification of reality, having contact with supernatural or psychic powers, and creating a transforming effect on the soul. The meaning, reality, and practice of magic have been dealt with in such diverse sciences as astrology, alchemy, law, and theology...".

We further noted that in his summing up in the trial of Mohammed Syeedy, Mr Justice Madison referred the jury to the evidence of the expert witness to the prosecution, Professor Robert Gleave³². He said that Professor Gleave had described *Sihr* as the harnessing of the power of supernatural spirits and stated that "the word for harnessing these powers is Sihr" and that this "has often been referred to as the practice of magic and the person who harnesses them has often been referred to as a magician³³". Mr Justice Madison said that police had recovered from Mr Uddin, who was murdered, "various exhibits which confirmed he had practised Ruqya and used taweez" and that Professor Gleave described these as "classic magician's material"³⁴.

Mr Justice Madison cited the evidence of a friend of the murdered man, as follows: "Mohammed Bashir told you that many in the Muslim community strongly believed in Ruqya but others, including Salafis, considered Ruqya to be black magic and impermissible³⁵".

He cited Professor Gleave as follows:

"Those within the faith who consider that the practice of Ruqya is acceptable regard people with the skills and personal qualities which enables them to practise Ruqya as

³¹ Sihr: [The practice of magic as understood in Islam](#). The writer of the article reproduced on the website is Toufic Fahd who was Emeritus Professor of Islamology and Arabic Literature at the University of Strasbourg.

³² Professor Gleave is Professor of Arabic Studies at the University of Exeter and Mr Justice Madison described him as having "long experience as a lecturer and a researcher into the history of Islamic thought". (*R v Syeedy*, transcript 14 September 2016, p.25 at section G).

³³ *R v Syeedy*, Transcript 14 September 2016, p.26 at sections C to D.

³⁴ *R v Syeedy*, Transcript 14 September 2016, p.25 at section F.

³⁵ *R v Syeedy*, Transcript 14 September 2016, p.25 at section F.

important and respectable people within the community but other members of the faith, including a grouping known as Salafis, take a more disapproving view of the practice of magic. Some Salafis, we were told, consider that if magic is to be practised at all, it is to be limited to the forms practised by the Prophet Mohammed himself, as described in the Koran, and this would not include the use of taweez because the use of taweez amounts to idolatry or "shirk"... And according to the Salafi doctrine, if one came across a taweez then one should burn it. Other Salafis, members of the jury, regard the practice of any magic at all as wrong. Salafis also take the view that if you continue to practise magic contrary to the Muslim faith, this makes you an unbeliever or a kaafir...Worse still you become an apostate, that is one who has renounced the faith, and most but not all Salafis believe that the penalty for apostasy is death; however it is right to say that some Salafis believe that the death penalty is only right if the magician himself has caused a death by the practice of magic and some Salafis do not believe that magicians should be executed at all. So even within the Salafi doctrine there are different schools of thought³⁶.

Evidence cited in the case indicated that Mr Syeedy referred to Mr Uddin as a "magician", in the context of a conversation about photographing or videoing Mr Uddin's use of taweez in order to expose him as a magician to the community³⁷. It also included a Facebook page in which the word "sihr" was used to refer to taweez.³⁸

On the basis of the evidence above, Ofcom considers that "sihr", as used in the Programme, referred to magic, sorcery and witchcraft. We note that the Programme represents a Wahhabi view of Islam, and that Wahhabism has its origins in Salafism. Indeed, the scholar speaking in the Programme has adopted the surname Salafi, a practice which is typical of someone wishing to indicate their adherence to the Salafi school of thought. We therefore consider that a significant proportion of the UK audience of a Salafi or Wahhabi programme would understand taweez to be a form of magic, and those practising this form of magic to be "magicians" as referred to in the programme. A significant proportion of the audience would also understand the term to encompass Ruqya.

Ofcom understands that within the UK many South Asian and Sunni Muslim people consider such practices as part of a rich long standing historical Islamic tradition which they believe in, and in some cases practice.

Advertisements for those who practice Ruqya, of the type Mr Uddin undertook, are widely found [online](#) and in popular UK based Urdu language newspapers³⁹. Often referred to as Ruqya centres, these centres can be found across the UK. Ofcom is aware that programmes

³⁶ R v Syeedy, Transcript 14 September 2016, p.27 at sections B to E.

³⁷ R v Syeedy, Transcript 14 September 2016, p.47 at section G to p.48 at section E.

³⁸ R v Syeedy, Transcript 14 September 2016, p.43 at section F.

³⁹ Further examples include [treatment](#) and [therapy](#) offered online, and advertisements appearing in *The Daily Jang* offering services to customers to rid them of black magic on Friday 29 September 2017, Saturday 4 August 2018 and 10 September 2018.

about white magic, faith healing and astrology, including coverage of taweez and Ruqya, are regularly broadcast on South Asian Muslim channels⁴⁰.

We next considered the likelihood of the inclusion of these statements in the service encouraging or inciting the commission of crime or leading to disorder. We also carefully considered the context in which the scholar's words were broadcast. Ofcom has published [Guidance](#) which makes clear that, under Rule 3.1, we consider a range of contextual factors which could increase or decrease the likelihood of content inciting or encouraging crime or disorder. For example, the likelihood could be reduced if sufficient challenge or context is provided.

As referred to above, in February 2016 Rochdale Imam Jalal Uddin was murdered by two people. The judge in this case said that his murderers saw Mr Uddin's practice of Islamic faith healing:

"...as a form of black magic that could not be tolerated within Islam".⁴¹

And that:

"...two members of the Muslim faith, killed another member of the Muslim faith solely because they disapproved of a particular practice carried out by that person...⁴²".

In its further representations the Licensee stated that "Peace TV Urdu and Shaikh Ashfaque Salafi condemn unequivocally the murder of Mr Uddin...we consider that Muslims watching the programme would be perfectly aware of the distinction between the practises undertaken by Mr Uddin as part of his faith and the Sihr referred to in the programme...the murder of Imam Jalal Uddin was not due to a belief on the part of his killers that what he was practising amounted to Sihr – it was due to their taking inspiration from the extremist views of ISIL". Peace TV Urdu stressed that "there is no suggestion that the person convicted of his murder Mohammed Hussain Syeedy, had ever watched Peace TV Urdu, or even understands Urdu".

It was not Ofcom's case that the murderers of Mr Uddin had ever watched Peace TV Urdu. We adduced this case in support of our view that a programme teaching that magicians (Sahir) must be killed forthwith is likely to incite murder.

We note that at the time the Licensee made these representations, it had not reviewed the transcript of the case. No finding was made in the case on whether the murderer was

⁴⁰ For example, in one instance [Ofcom found Venus TV in breach of the Code](#) for a programme which featured such practices in a way that was not compliant with the Code.

⁴¹ *R v Syeedy*, transcript 16 September 2016, p.5 at section B.

⁴² *R v Syeedy*, transcript 16 September 2016, p.8 at section D.

inspired by ISIL⁴³. The murderer denied that he was a supporter of ISIL but accepted that he strongly disapproved of the use of taweez⁴⁴ by Mr Uddin.

In addition, the Licensee argued "The broadcast on Peace TV Urdu on 22 November 2017 was about black magic. Even had Mr Uddin been practising black magic, any finding to that effect, and any penalty, could only be imposed under Shariah law, by the proper authorities in a state which applied Shariah law". and "As we have said previously, the punishments under the Islamic texts referred to in broadcasts such as the one in question are to be imposed only in a state with Shariah Law, by the appropriate authorities in that state, under due process". Referring to the punishment for performing "*black magic*" the Licensee argued that the programme made clear that "this is an Islamic punishment, meaning only used where Islamic rules applied, and there is no suggestion that such punishments should be applied elsewhere", and "there is no suggestion that the punishments described should be applied in any place where the penal law of Islamic Shariah does not obtain".

This caveat, that such punishments could only be applicable in an Islamic state or a state where sharia law was applicable, was not however included in the programme. Ofcom does not consider that a UK audience would regard it as implicit. In Ofcom's view, the scholar's statements were expressed in clear unequivocal terms, endorsing the opinion that those practising magic should be subjected to summary execution. The scholar said, "*it is recognised by all the scholars that where there is agreement this becomes the Ijma of the Muslims, and this Ijma becomes Hujjat al Sharee*". Ofcom understands that Hujjat al Sharee translates as "by the authority of Shariah" and is used to emphasise that a matter falls within the ambit of Shariah law without any dispute or challenge and is considered to be the consensus of all. We were concerned that, given the seriousness of the subject, the scholar made no attempt to place the matter in context during the broadcast and clarify, if this was indeed what was intended that this extreme punishment was only appropriate in an Islamic state governed under the laws of Islamic shariah.

We remain of the view, having considered the Licensee's representations, that the fact Mr Syeedy killed Mr Uddin because he believed Mr Uddin was a magician, demonstrates the likelihood that a call to kill practitioners of Sihr was likely to incite murder in the UK. Whether or not Mr Syeedy was also a supporter of ISIL (a matter on which no finding was made) or watched Peace TV Urdu is not relevant.

We also considered the likelihood that the programme would incite crime by considering the language used by the presenter, an Islamic scholar. He offered theological justification for his assertions that those individuals practising magic should be killed by citing Hadith⁴⁵. For example, he said:

- "*Commentators have written about this in detail and have drawn the very clear conclusion that every male or female magician should be killed*".

⁴³ R v Syeedy, transcript 16 September 2016, p.7 at section D.

⁴⁴ This term was explained in the case as follows: "amulets, that is small objects which can be carried by the people who wish to be healed. The Arabic word for the amulets of this kind is "taweez" and a taweez commonly takes the form of writing on a small piece of paper which is then folded up or rolled up and is either wrapped in some other paper or is put into a small receptacle of some kind."

⁴⁵ Hadith: Sayings of the prophet Muhammad.

- *“The conclusion we can draw from all of these narrations such as the account of Hazrat Hafsa, the narration from Imam Tirmidhi, the ordinance of Hazrat Umar, and other scholars, and now from this further account we have further unambiguous endorsement that the punishment for all magicians is that they should be killed forthwith”.*

The scholar further provided theological justification to rule out any alternative sanction or punishment against a magician other than summary execution by saying:

- *“Imam Hanbal⁴⁶ has therefore drawn the conclusion that with the endorsement of these three leading Sahabi's the punishment for magicians under Shariat is death. Even if he repents and seeks forgiveness, to prevent further mischief the correct thing to do is not to listen but instead go ahead and kill the magician”.*

No challenge was given to the view that the suitable punishment for the practice of *Sih*r was death. The scholar asserted that his interpretation was correct and was shared across the whole Muslim community. We considered this would have given viewers the unequivocal message that death was the only appropriate sanction against a person who practiced *Sih*r.

The scriptural examples cited by the scholar were of people killed unilaterally for practising magic, and without any regard to due process or any judicial proceedings instead, the scholar offered justification for unilateral action by saying that a magician would lie to evade punishment: *“Even if he repents and seeks forgiveness, to prevent further mischief the correct thing to do is not to listen but instead go ahead and kill the magician”.* Furthermore, the scholar endorsed this summary action and gave this view further religious sanction by saying *“So taking all of these factors together the opinion of the Sahabi's, the ordinance of Hazrat [Caliph] Umar and the fact that none of this has been challenged by any scholar it therefore becomes the binding Ijma of the Muslim community that the punishment of magicians is that they are to be killed”.*

The indirect calls to action in the programme were given added weight by the religious authority of the scholar, who the Licensee stated, “has been a lecturer on the hadiths and Fiqh⁴⁷...he has authored several books in Urdu and Arabic as well as being a prominent speaker and a public figure”. We were therefore concerned that the scholar lay great emphasis on the doctrinal justification for violence, to the extent of even ruling out repentance when he said, *“I want to make it clear that the magicians art or the practice of magic cannot be forgiven by way of repentance”.* In Ofcom's view, this gave religious justification and endorsement for violence, and was likely to encourage some more susceptible viewers to regard taking such action as sanctioned by religious authority.

This religious programme was broadcast in Urdu and would therefore have been viewed predominantly by members of the Urdu speaking Muslim community in the UK. We understand that the programme was an edition from a series of religious programmes which provided a commentary on the teachings of Muhammad ibn Abd al-Wahhab, a 19th century Islamic scholar, and founder of Wahhabism. Ofcom acknowledges the importance of the right to freedom of expression and freedom of religion. Licensees are free to broadcast programming in which scholars analyse religious texts and audiences would expect a channel such as Peace TV Urdu to contain such theological discussions. However, in Ofcom's view where matters of theology are discussed that rely so heavily on interpretation of religious

⁴⁶ Imam Hanbal: One of the four leading Islamic jurists of his time.

⁴⁷ Fiqh: The theory and philosophy of Islamic law.

terms, particularly where extreme sanctions such as the penalty of death are laid out in scripture, great care needs to be taken to ensure that no incitement to crime results.

We considered all other contextual factors throughout the 55-minute programme. We noted the following factors which in our view were likely to increase the impact of the indirect calls to action:

- the presenter was a well-known religious scholar;
- the scholar suggested throughout the programme that the killing of those who practise magic was justified by reference to history, scripture and Islamic doctrine. He laid out a clear hierarchy of religious authority, i.e. Prophet Muhammad's wife Hafsa, the 2nd Caliph Umar, leading 8th century theologian Imam Tirmidhi, and said: *"The conclusion we can draw from all of these narrations such as the account of Hazrat Hafsa, the narration from Imam Tirmidhi, the ordinance of Hazrat Umar, and other scholars, and now from this further account we have further unambiguous endorsement that the punishment for all magicians is that they should be killed forthwith"*. Further, the scholar stressed that this was the unanimous opinion or "Ijma" of all Islamic scholars and emphasised historical religious Islamic figures who all gave *"further unambiguous endorsement that the punishment for all magicians is that they should be killed forthwith"*;
- the scholar spoke uninterrupted to an audience of young students without any challenge or scrutiny of his views;
- the studio setting for the programme gave the appearance it was taking place in a classroom or lecture hall which further reinforced the impression that this was a scholarly discourse within an academic setting. This in our view added credence and weight to the statements; and
- the statements were made repeatedly through the programme which focussed entirely on this issue over its 55-minute duration.

For all the reasons above and taking all the contextual factors included in the programme as a whole, we considered this content broadcast was likely to encourage or incite the commission of crime or lead to disorder.

Our decision therefore is that Rule 3.1 was breached.

Rule 3.2

Rule 3.2 of the Code states:

"Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context".

The Code defines "hate speech" as: "all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation".

We first considered whether the statements included in the programme constituted hate speech. As set out above under Rule 3.1, the scholar made several statements in which he

said in unequivocal terms that the punishment for magicians should be death and sought to provide religious justification for this based on scripture and by reference to historical accounts involving revered Islamic figures.

Ofcom considered that, for the reasons set out above, the audience was likely to have interpreted these comments as promoting and justifying hatred and violence towards Muslim people who practise magic as part of their faith⁴⁸. In Ofcom's view this was therefore hate speech as defined by the Code.

We next considered whether there was sufficient context to justify the broadcast of hate speech in this case. The Code does not prohibit discussions about controversial issues, such as the punishment of magicians, as long as there is sufficient context. Our published Guidance to Rule 3.2 makes clear there can be editorial justification for including challenging or extreme views in programmes in keeping with audience expectations, provided there is sufficient context. However, the greater the risk the material may cause harm or offence, the greater the need for contextual justification.

The Code states that contextual factors relevant to Rules 3.2 and 3.3 of the Code may include, but are not limited to:

- the genre and editorial content of the programme;
- the extent to which sufficient challenge is provided;
- the status of anyone featured in the material; and
- the service on which the programme is broadcast and the likely size and expectations of the audience.

We therefore considered whether these or any other contextual factors were relevant to this case. Ofcom must take proper account of the broadcaster's and the audience's right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion.

We recognised theological sermons and lectures are an important form of religious expression for some Muslim people. As Peace TV Urdu is an Islamic TV station with a strong Islamic ethos broadcasting to a primarily Muslim audience, we accepted that its viewers may well expect and enjoy religious content such as lectures from Imams and scholars of Islam. In addition, the Licensee said that it broadcast this programme for "the awareness and importance of this subject according to the teaching of Quran and hadeeth".

The Licensee in its further representations stated that "Given the serious nature of the harm that a Sahir can cause, many scholars consider that the correct punishment under Islamic law for practising Sihr is death. This is the position of three of the four schools of Islamic law...The views espoused by the scholar, therefore represent the mainstream Islamic viewpoint on this matter".

⁴⁸ As set out under Rule 3.1 above the Judge in the case of the murder of Imam Jalal Uddin stated that his murder was motivated by "...two members of the Muslim faith killing another member of the Muslim faith solely because they disapproved of a particular practice carried out by that person...".

Ofcom is aware that Peace TV Urdu is widely recognised as a channel that subscribes to the Wahhabi⁴⁹ school of thought within Islam. The programme series is based on the book *Kitaab ut Tawheed* written by Muhammad ibn Wahhab, the founder of Wahhabism. The scholar quotes and uses references and examples taken from this book throughout the programme.

It is not for Ofcom to take a view on any particular branch of Islam and this applies equally with the Wahhabi school of thought. However, Ofcom notes that Wahhabism is the dominant school of thought only within Saudi Arabia and a few neighbouring Gulf states. The majority of Muslims do not subscribe to Wahhabism. For example, [Barelvism or Sufism is widely followed by Muslims of Pakistani and Indian descent](#).

However, even had we accepted the Licensee's view that the programme reflected mainstream Muslim thought, we would have disagreed with the Licensee that this was sufficient to justify the inclusion of hate speech in the programme.

As set out above under Rule 3.1, Ofcom was particularly concerned that no alternative view or challenge was provided to the view that magicians should be executed. Where mention of dissenting or alternative opinions were made in the programme, they were dismissed by the scholar, a person with religious authority. Detailed reasoning was offered by the scholar but only to reiterate the opinion of Muhammad ibn Abd al-Wahhab that all magicians should be killed and to convey that this was the uniform and unambiguous opinion of the entire Muslim community. The Licensee argued that alternative viewpoints were reflected during the programme by the scholar stating, "there is a debate amongst scholars". In Ofcom's view the value of such a statement was undermined by his categorising such alternative views as the "unreliable opinion" of others.

Taking all the elements above into consideration and taking all the contextual factors included in the programme as a whole, we considered that the contextual factors in this case were not sufficient to justify the broadcast of this example of hate speech.

Our Decision is therefore that Rule 3.2 was breached.

Rule 3.3

Rule 3.3 of the Code states:

"Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context".

The Code does not prohibit criticism of any religion or denominations. However, such criticism must not spill over into abuse. The Code has been drafted in light of the Human Rights Act 1998 and the ECHR. In the context of Rule 3.3, when assessing content compliance with the Code, Ofcom must take into consideration the right to freedom of expression, which encompasses the broadcaster's and audience's right to receive material, information and ideas without interference, as well as the right to freedom of thought, conscience and religion.

⁴⁹ Including the Washington Post article on 4 March 2015 '[The Saudi king gave a prize to an Islamic scholar who says 911 was an inside job](#)' and the [Counter Extremism Project website](#).

We first considered whether this programme contained abusive or derogatory treatment of individuals, groups, religions or communities. During the programme the scholar: provided theological justification for the killing of all those who practise magic as part of their Islamic faith; ruled out repentance or forgiveness for them; and indicated that they are a danger to the Millat⁵⁰, and should be killed for the sake of the Millat and wider humanity.

In Ofcom's view a significant majority of South Asian Muslim people in the UK was likely to have considered these remarks derogatory of their beliefs, custom and practice, given that many in this community regard the practice of magic such as Ruqya and the use of taweez as harmless and benign practices which form part of their religious faith.⁵¹ In further representations the Licensee disagreed and stated "this is incorrect and is due to a misapprehension as to the nature of Sihr", it further went on to state "we do not consider the scholar's statements therefore amounted to abusive or derogatory treatment and to the extent they may have, was mitigated by the serious harm which Muslims believe a practitioner of Sihr can cause and the limitations on who can exact punishment for such practises".

As explained above, the endorsement of the punishment of death for those accused of practising magic, the ruling out and undermining any alternative viewpoint would have been considered both abusive and derogatory treatment by many within the Muslim world who practice and believe in a particular form of benign magic.

We next considered whether there was sufficient context to justify the broadcast of this abusive and derogatory treatment. As set out above, the subject of magic and the treatment of magicians within Islam was a legitimate topic for discussion in a programme aimed at members of the Muslim community. However, Rule 3.3 is clear that individuals, groups, religions or communities must not be subject to uncontextualised abusive or derogatory treatment. For the reasons already discussed under Rule 3.1 we considered that the strength of this material was likely to have exceeded viewers' expectations and there was insufficient context to justify the broadcast of the abusive and derogatory statements about those who practise magic as part of their Islamic faith.

Our Decision is therefore that Rule 3.3 was breached.

Rule 2.3

Rule 2.3 of the Code requires that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of...religion...)".

We first considered whether the content had the potential to cause offence. Our view was that, for all the reasons already discussed above, it did. As explained, our decision is that the

⁵⁰ See footnote 16.

⁵¹ [Advice about Ruqya published on the website About Islam](#) and [advice about Ruqya published on the website Islam Online](#).

material was likely to incite crime, contained hate speech that was not justified by the context, and was abusive and derogatory towards a group of people based on their religious beliefs. We considered therefore that this content would have been highly offensive, particularly to viewers from the UK South Asian Muslim community, who form the majority of Muslims in the UK. This is because many in this community regard the practice of magic such as Ruqya and the use of taweez as harmless and benign practices which form part of their religious faith⁵². In our view many in this community were likely to have felt offended, threatened and alarmed by the views expressed by the scholar.

We next considered whether there was sufficient context to justify the broadcast of this potentially offensive content. For the reasons set out above under Rules 3.1, 3.2 and 3.3, we considered that the offence was compounded by: the position of authority of the scholar who advocated the killing of those who practise magic as part of their Islamic faith; the lack of challenge to his views; the assertions that his interpretation of this controversial subject was correct and was shared across the whole Muslim community; and the lack of clarity in the programme that this was only applicable in a country governed by Shariah law.

As above we took account of the Licensee's various representations that "The programme was broadcast for the awareness and teaching of the importance of this subject according to the teachings of Qur'an [and] hadeeth", and that it "did not consider the content of the programme would have been "highly offensive...to viewers from the South Asian Muslim community".

Taking all the elements above into consideration and having considered all of the contextual factors included in the programme as a whole and placing very significant weight on the Licensee's Article 9 rights, we considered there was insufficient context to justify the scholar's potentially highly offensive comments which exceeded generally accepted standards.

Our Decision is therefore that Rule 2.3 was breached.

Breaches of Rules 3.1, 3.2, 3.3, 2.3.

Ofcom considered the breaches in this case to be serious. We are putting the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.

⁵² Ibid.

In Breach

Strengthening Your Family – The Valley of the Homosexuals – Episode 9, Peace TV, 11 March 2018, 11:30

Introduction

Peace TV is an international satellite television channel, which broadcasts religious programmes from an Islamic perspective. The licence for the channel is held by Lord Production Inc Ltd (“Lord Production” or “the Licensee”).

Ofcom received a complaint that the above programme included statements that were “absolute[ly] vile”, “full of degrading slurs towards gay people” and “extremely offensive”. The complainant also had concerns that he came across the broadcast because his children “had accidentally put it on”.

This 24-minute programme was the ninth episode of the series *Strengthening Your Family* and focused on the issue of homosexuality and Islam. The presenter, named on screen as “*Imam Qasim Khan*” was sitting on a chair and spoke directly to camera. He made a series of statements about homosexuality, including:

“When Adam was created he was given a wife, he was given a woman to help him...and then Allah says in the Qur’an it is he who puts love in the hearts between men and women. That is what Allah says, that is the words of Allah in his perfect book the Qur’an...he says ‘he put love in the hearts between men and women’...There’s nowhere in the Qur’an, there’s nowhere in any of the traditions of Prophet Muhammad (PBUH) where Allah says, or even the Prophet of Islam, Muhammad (PBUH) says, that Allah places love in the hearts between men and men. Or love in the hearts between women and women. That’s a very unnatural type of love that is energised by the influence of Shaitaan¹”.

“The love of an intimate love, the intimate love that Allah puts between the hearts of men and women is not meant to be construed as something that gives a licence for people of the same gender to have a marital relationship with. This world plays games with words. This society plays games with words and they try to make evil seem fair-seeming, just like Allah said the Shaitaan would do. Make evil fair-seeming”.

“Homosexuality throughout the world has gone rampant, but it didn’t just begin. It’s not new, but society made an attempt to soften the blow of homosexuality by giving it softer names, like gay. Gay originally just meant someone who was happy, but they applied gay to homosexuality to soften the blow of the corruption that it represents. This is certainly not new, during the time of Lot, the Prophet in the Old Testament in the Bible...he and his wife was in a city called Sodom and Gomorrah where there was all type of sexual

¹ Satan in Arabic.

corruption that was going on...during the time of Lot, when the corruption between men and men was taking place and the sodomy that sin was named after the city. Sodom and Gomorrah, with the homosexuality and the brash, bold and insane relationship that developed between men and men was totally against the commandments of Allah”.

“Allah asked the prophets questions, he asked the corrupt people questions...he asked the people of Sodom and Gomorrah he asked them – what’s the matter with you that I created women for you and you practice your lust on men. Subhanallah². That’s an insane relationship and we try to justify it in this society, in this modern society where people seek political gain, and social gain and financial gain, from justifying corruption and disrespect for the commandments of Allah. That’s insane but that’s the way this world is, and Shaitaan is having a good time – inviting people to join him in the hell fire”.

“So, you have men sleeping with men, men marrying men, and they try to justify it by saying we’re in love and God is love...Men and men – it’s insane. But that’s the way the society is. This society is so backwards, that here’s a society that makes laws that would justify Zina³ or unlawful sex between men and women. They’ll justify it...Then they make laws now, the newest and most brash and insane laws, laws that protect homosexuals and even make it legal for them to marry each other. Men marrying men. Being on television in front of our children, kissing each other in the mouth, walking down the street, hugging and kissing – this society has gone insane. We have to be very careful brothers and sisters, that we don’t fall into that category of those who try to justify that very insane practice of homosexuality. It’s embarrassing too, that here’s a religion, the most beautiful religion, supposed to be total submission to the will of Allah. That’s what Islam is. Islam is what is called a verbal noun, which means the act of submitting, and in the act of submitting, we’re supposed to totally submit to the will of Allah. And there are people who call themselves Muslims, even call themselves imams. They’ll establish a masjid⁴ full of homosexuals and say that we are gay Muslims and we demand our rights. It’s almost too embarrassing to talk about, but we’re going to have deal with it. That doesn’t say that we’re against people who practise homosexuality, but we are against the practice of it, because if we know, those of us who understand and teach Islam the way it’s supposed to be taught; if we understand and accept the fact that Islam is strong enough to handle any type of weakness, then we welcome anyone to come in our arena and be taught Islam the way it’s supposed to be taught. But that doesn’t mean that we justify that terrible and insane act of men sleeping with men”.

“So, we have to be really careful about the punishments that will be coming to these people who try to justify homosexuality. We can’t compromise our religion and feel sorry for people who blatantly disrespect the commandments of Allah”.

² Glory be to Allah.

³ Islamic legal term referring to sex.

⁴ Mosque in Arabic.

“Politicians who seek votes and put their political careers above their obedience to almighty God will justify homosexuality, so they can win the votes of the [making inverted commas gesture with his hands] so-called gay community and they even pass laws to protect them and make them feel more and more comfortable. Politicians do it all the time, and other lawmakers, some religious leaders...will justify homosexuality and say that it's okay as long as they're nice people. It's a terrible horrible crime that parents encourage their children like they say come on out of the closet, I'm proud of my son, because he admitted that he's gay and we accept him just like he is. What kind of madness is that. This world is going mad, because Shaitaan is having a good time recruiting his dupes and make evil fair-seeming and giving us the impression that it's okay as long as they don't bother anybody. They're nice people. Some of us have relatives, they practice homosexuality, they invite them to the family reunions and they all sit around eating fried chicken and laughing and joking. And when they pass away or they die, even if they die from a disease they contracted because they are homosexual, they have a religious funeral service for them and talk about how they're a good person so they're going to heaven. They have no idea what they're saying. This world is going mad. Human beings are more ridiculous than animals. Human beings are more ridiculous than dogs sometimes because you never see a homosexual dog. Two male dogs will never be seen having, trying to have sex together. Two male cats, two male bulls, you never see two bulls trying to have sex together. Even an animal that is defiled by Islam, the pig – as nasty and corrupted and contaminated as a pig is – you never see two male pigs that are trying to have sex together. That's insanity. These are animals. Human beings are supposed to be dignified, they're thinking beings, a human being is supposed to be the thinking being”.

“Here's two human beings that are making a practice and trying to justify something that even animals don't do. Subhanallah⁵. Worse than animals. Human beings can be worse than animals. At least animal does have the dignity of confining their passion, their sexual passion, to the opposite gender of that animal. Human beings are so insane sometimes and try to justify and then have the blatant audacity to apply religion to that very insane and sinful practice, to apply religion to it. Homosexual Baptist, homosexual Methodist, homosexual Catholics, homosexual Jewish people, and embarrassingly homosexual Muslims. That's insane. What are we going to do about it? When are we going to stand up and do something about it? What can we do? What can you do legally in a country? They are some countries like the United States of America that justify and make laws to protect sin against God...”.

“Here we are, in 2013, still experiencing people who make laws to protect homosexuals, blatant laws against God...What kind of world is this? Who is gonna stand up? When are the righteous people gonna stand up in a collective voice and stand up and preach against and stop the madness of making laws that protect and encourage disobedience

⁵ An Arabic Islamic phrase used to praise Allah. Literal meaning is “God is Great”.

to the God that made us all exist...Let's stand up brothers and sisters and stand up for almighty God. May Allah help us [greetings in Arabic]".

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

- Rule 3.2: "Material which contains hate speech must not be included in television...programmes...except where it is justified by the context".
- Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television...services...except where it is justified by the context".
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

Response

Lord Production explained that the programme was "broadcast as part of a series on "Strengthening Your Family", focusing on Islamic teaching on the family, family values, and how to strengthen family bonds". It said that the presenter, Imam Qasim Khan was "a well-respected figure who has contributed over 60 lectures on a variety of subjects for Peace TV".

The Licensee made several points which it said provided contextual justification as to how Imam Qasim Khan's references about homosexuality complied with the rules set out above. Specifically, the Licensee argued that:

- the programme was "an expression of Imam Qasim Khan's views on male homosexuality, reflecting the teachings of Islam" and that his views were "based firmly on his Islamic beliefs and Islamic scriptures". It acknowledged that Imam Qasim Khan was taking "a robust stand against homosexuality, but very much from a religious standpoint";
- the Qur'an and the Hadith⁶ are very clear that homosexuality is a sin and there is a consensus amongst classical Muslim jurists to support this interpretation. To illustrate this, the Licensee quoted a number of Qur'anic and Hadith passages relating to the people of Lot. It said how the Qur'an and Hadith "treat homosexuality" would have been understood by the Muslim audience and given this they would expect "an Imam talking about homosexuality would be likely to speak from this point of view";

⁶ Sayings of the Prophet Muhammad.

- Imam Qasim Khan's concern was "with the practice of homosexuality, rather than specific individuals" and "[h]is message is that a true Muslim must stand firm to the tenets of his religion to build a strong family, and should not allow anyone to corrupt their faith";
- Peace TV is "an Islamic channel directed at Muslims with a specific emphasis on teaching how to live a religiously observant life in line with the scriptures" and the generally accepted standards are therefore "likely to differ from those on other channels". The Licensee said that viewers were likely to have expected an Imam to have strong religious convictions on homosexuality, such as those expressed by Imam Qasim Khan;
- the likelihood of harm or offence being caused would have been reduced as a result and "there is a corresponding diminution in the need for protection from such material";
- Imam Qasim Khan was "strongly critical of social acceptance of homosexuality and of the idea that those practising homosexuality should have a religious funeral service and will go to heaven even if through their active homosexuality they have contracted a disease which has led to their death"⁷; The Licensee clarified in its representations on the Preliminary View that although homosexuality is considered a sin in Islam, it is "not an act which in and of itself would deprive that individual of being a Muslim or afforded the rights of a Muslim such as a burial";
- [t]here was "no call for the punishment of homosexuals" and "no encouragement to violence against homosexuals" in the programme. However, the Licensee acknowledged that it had said that "those who try to justify homosexuality will receive Allah's punishment";
- Imam Qasim Khan was "clearly seeking to encourage viewers to use legal routes to protect the religious and moral values that are of key importance to their lives";
- "[o]ther religions may take a strong stance against the practice of homosexuality" including the Bible. By way of example, it quoted passages from the Bible (Leviticus 18:22); and,
- "[t]he law in the UK recognises that homosexuality is a matter on which people may hold strong religious convictions⁸" and the freedom of religion and freedom of expression under Articles 9 and 10 of the European Convention on Human Rights "protects even the robust and offensive expressions of such convictions⁹".

The Licensee made further representations on Ofcom's Preliminary View, including that:

- the Imam's statements that "homosexuality is unacceptable" represents the mainstream Muslim view. To support this, the Licensee referred to the IPSOS Mori report on British

⁷ The Licensee referred to research from the U.S. and the U.K. on the proportion of those living with HIV who are homosexual men.

⁸ The Licensee referred to *Pemberton v Bishop of Southwell and Nottingham [2018]*.

⁹ The Licensee referred to *Sandown Free Presbyterian Church v Advertising Standards Authority [2011]*.

Muslim attitudes that Ofcom referred to in its Preliminary View, and which reported that: "A majority of Muslims disagree that homosexuality should be legal in the UK". The Licensee argued that if the question had been about acceptability, as opposed to the legality of homosexuality, "the figures would be even more significantly weighed against";

- even if some viewers were to find the Imam's views "problematic, this should not result in a curtailment of the Imam's right to express those views when [they] are representative of a particular religious viewpoint" and "Muslims should not be prevented from espousing views that are counter to the prevailing culture but which accord with their particular viewpoint"¹⁰;
- It disagreed with "Ofcom's assertion" that the programme would have been offensive to a significant proportion of the audience, particularly those from younger age groups. It said that even if some viewers may have found the Imam's views problematic, they are likely to "accord with the overwhelming majority of his audience";
- it disagreed that the Imam's statements amounted to hate speech because he did not "call for violence or punishment of homosexuals" and that his aim is to "outlaw the practice of homosexuality itself". It argued that the Imam's statements were not "gratuitous" because "they are grounded in his Islamic beliefs and strongly held religious convictions";
- it justified the Imam's use of the word "*Shaitaan*" because it explained that Muslim people "consider any sin to be directly due to his influence";
- it argued that "the claims made by the Imam drawing a connection between homosexual people and disease is grounded in medical data"¹¹;
- It was unlikely that the audience for this programme would have been offended by the views expressed by the Imam. It referred to other programmes in the series that, it said, "focused on kindness to parents, choosing friends and respecting the Prophet";
- it said that "a person considering homosexuality to be permissible in Islam would be more serious but would not amount to apostasy until and unless a Muslim judge made such a ruling with due process".

Decision

Reflecting our duties under the Communications Act 2003(section 319), Sections Two and Three of the Code require that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material, including material containing hatred, abusive and derogatory treatment of individuals, groups, religions or communities.

¹⁰ The Licensee referred to *Kokkinakis v Greece* [1993] and *R (on the application of Core Issues Trust) v Transport For London & Anor* [2014].

¹¹ The Licensee referred to data from the US Department of Health and Human Services and the UK National Health Service.

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 have also had regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". In applying the Code, Ofcom must seek to balance broadcasters' rights, including freedom of expression, against our duties as regards the protection of audiences.

We took into account, in particular, the cases the Licensee cited to us on freedom of expression and religion in relation to the expression of views condemning homosexuality.

Ofcom has also had due regard in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as religion or belief and sexual orientation, and those who do not¹².

Broadcasters may transmit programmes taking a critical view of any subject and may broadcast opinions about these subjects that some viewers may find offensive, and the Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising the practices of people of differing religious beliefs, including in relation to sexual orientations. To do so would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules of the Code.

Rule 3.2

Rule 3.2 of the Code states:

"Material which contains hate speech must not be included in television ...programmes...except where it is justified by the context".

The Code defines "hate speech" as: "all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation".

We first considered whether the statements included in the programme and set out above constituted hate speech. During the programme, Imam Qasim Khan:

- made comparisons between homosexual people and "*an animal that is defiled by Islam, the pig*" and further added, "*as nasty and corrupted and contaminated as a pig is, you never see two male pigs that are trying to have sex together*";
- referred to homosexuality as a "*corrupted*" and "*an insane*" relationship;
- described homosexual people as "*worse than animals. Human beings can be worse than animals*";
- referred to some homosexual people dying "*from a disease they contracted because they are homosexual*";

¹² Section 149 of the Equality Act 2010.

- described homosexuality as, “a very unnatural type of love that is energised by the influence of *Shaitaan*¹³” and in the context of societal attitudes to homosexuality said it was “*Shaitaan...having a good time – inviting people to join him in hell fire*”.

We considered that these statements justified and promoted hatred based on intolerance of homosexual people by:

- comparing homosexual people to animals, specifically a pig which the speaker referred to as an animal which was “*nasty and corrupted*”;
- asserting that homosexual people contract disease (by implication HIV and AIDS) “*because they are homosexual*”; and,
- describing the practice of homosexuality as insane, corrupt and a manifestation of satanic influence.

The Licensee disagreed that the Imam's statements amounted to hate speech because he did not “call for violence or punishment of homosexuals” and that his aim was to “outlaw the practice of homosexuality itself”. We did not contend that the Imam was calling for violence or punishment of homosexual people. It is our position that these statements amounted to hate speech for the reasons set out earlier. Rule 3.2 contains nothing to suggest that only content that includes calls for violence or punishment is hate speech.

The Licensee referred us to Imam Qasim Khan's view that “*animals do not practise homosexuality*”. Ofcom is not aware of any basis for this claim and the Licensee did not provide one in its response.

We took into account the Licensee's argument that “the claims made by the Imam drawing a connection between homosexual people and disease is grounded in medical data”. The evidence it cited supports a conclusion that men who have sex with men are more at risk of contracting HIV than the general population¹⁴. What the Imam said went well beyond this. He said that homosexual people “*die from a disease they contracted because* [emphasis added] *they are homosexual*”. Any sexually active individual is at risk of contracting sexually transmitted disease, regardless of their sexual orientation. Ofcom is aware that the global HIV epidemic has always been closely linked with negative attitudes towards LGBT people, especially men who have sex with men.

Overall, we considered that the content was hate speech, as defined by the Code.

We next considered whether there was sufficient context to justify the broadcast of hate speech in this case. The Code does not prohibit discussions about controversial issues, such as the issue of homosexuality as a transgressive practice within Islam, as long as there is sufficient context. [Ofcom's Guidance to Rule 3.2](#) makes clear that there are certain genres of

¹³ See footnote 1.

¹⁴ The Licensee referred to data from the US Department of Health and Human Services which said that “in the United States, gay, bisexual, and other men who have sex with men (MSM) are the population most affected by HIV”. The Licensee also referred to the UK National Health Service who reported that “the Number of people with HIV in the UK is rising, and gay men are one of the highest risk groups”.

programming where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. However, the greater the risk the material may cause harm or offence, the greater the need for contextual justification.

In assessing whether there is a contextual justification, Ofcom must take proper account of the broadcaster's and the audience's right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion.

The right to freedom of religion is one of the foundations of a democratic society and includes the right to manifest one's religion. However, Article 9 does not protect every act motivated or inspired by a religion or conviction¹⁵, and in a democratic society a state can legitimately consider it necessary "to place restrictions on [the freedom of religion] in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected".¹⁶ We took into account, in this regard, that broadcasting is an intrusive medium in that it is broadcast directly into people's homes, and that reasoned debate is generally afforded a higher degree of protection than slogans and abusive messages¹⁷.

The Code states that contextual factors relevant to Rules 3.2 and 3.3 of the Code may include, but are not limited to:

- the genre and editorial content of the programme;
- the extent to which sufficient challenge is provided;
- the status of anyone featured in the material; and,
- the service on which the programme is broadcast and the likely size and expectations of the audience.

Peace TV is an evangelical Islamic channel. The service describes itself as catering for a wide audience of different ages and levels of knowledge about Islam. The Licensee explained that this episode of *Strengthening Your Family* was part of a series of programmes "focusing on Islamic teaching on the family, family values, and how to strengthen family bonds".

Given that this programme was part of a series, we accepted that many in the audience would have been familiar with Imam Qasim Khan's point of view on family values. Ofcom acknowledged Peace TV's audience was likely to expect programmes which focus on the Islamic principles on subjects such as homosexuality. We did not dispute that some religious texts refer to homosexuality as a sin and it was acceptable in a religious programme for the presenter to put forward the view that homosexuality is considered a sin in Islam. It was also acceptable for the presenter to put forward the view that he strongly disagreed with homosexuality. This, in itself, and depending on the context, would not have amounted to hate speech.

¹⁵ *Metropolitan Church of Bessarabia v Moldova no.45701/99* (13 December 2001).

¹⁶ *Kokkinakis v Greece* [1993] ECHR 20.

¹⁷ See e.g. *Core Issues Trust v Transport for London* [2013] EWHC 651.

In our view, however, Imam Qasim Khan's statements went beyond merely expressing a religious opinion. He used abusive and derogatory language and propagated a particularly intolerant view of homosexual people. We were mindful of the Qur'anic and Hadith texts cited by the Licensee in its response to support the view that Islam considers homosexuality as a sin. However, the programme did not feature these texts. We acknowledged that Imam Qasim Khan made an early reference to Allah "*putting love in the hearts between men and women*" as well as an acknowledgment of the story of the Prophet Lot and the people of Sodom and Gomorrah. We also took into account that the principal objection to homosexuality being expressed was disobedience to the will of God. However, there was no reference to, or interpretation of, specific religious scriptures by the Imam to support the views we identified above as hate speech. We considered that Imam Qasim Khan used this programme as a platform on which he espoused these views to broadcast a sustained attack on homosexuality that was not presented with any reference to religious scripture and was expressed in a way which was gratuitously and repeatedly abusive (See further below, under Rule 3.3) and went beyond expressing his religious view.

The Licensee argued that the majority of British Muslim people disagree that homosexuality should be legal in the UK¹⁸ and that the views expressed by the Imam represent the mainstream Muslim views on homosexuality. The Licensee argued that even if some viewers were to find the Imam's views "problematic, this should not result in a curtailment of the Imam's right to express those views when [they] are representative of a particular religious viewpoint" and "Muslims should not be prevented from espousing views that are counter to the prevailing culture but which accord with their particular viewpoint"¹⁹.

It is Ofcom's understanding that Muslims, in particular the younger Muslim diaspora across Western societies, are increasingly more accepting of homosexuality²⁰. However, we do not consider it necessary to determine either how Muslims generally or as the typical audience of this service feel about homosexuality in order to determine this case. The views given in the programme were expressed in a manner and in terms which were gratuitously offensive and hateful. We do not consider that unchallenged hate speech against homosexuality on a regulated broadcasting service would be within the expectations of a UK audience, given that sexual orientation is a protected characteristic in the UK.

We also considered that members of the Muslim community in the UK who are homosexual were likely to have been a part of the audience. The material also appeared on television at a time when children may have been watching or may have come across the programme unaware, as was case for the complainant's children.

The Licensee said that Imam Qasim Khan's concern was "with the practice of homosexuality, rather than specific individuals" and we acknowledge that he made this distinction at one

¹⁸ The licensee referred to the [IPSOS Mori report](#) on British Muslim attitudes.

¹⁹ The Licensee referred to *Kokkinakis v Greece [1993]* and *R (on the application of Core Issues Trust) v Transport For London & Anor [2014]*.

²⁰ A [2017 Pew survey in the U.S.](#) found an increase in the acceptance of homosexuality amongst Muslims living in the West, particularly the young; In a [similar poll in Canada in 2016](#), it was found that acceptability of homosexuality is most prevalent among Muslims aged 18 to 34 (47%) and those born in Canada (52%). A [2018 Ipsos Mori report into British Muslim attitudes](#) states, "Young Muslims are significantly more likely to agree that homosexuality should be legal".

point in the programme. However, in our view, it would have been clear to the audience that Imam Qasim Khan was speaking against a group of people on the basis of their sexual orientation. We also considered that some comments in specific parts of the programme which we considered constituted hate speech were aimed at homosexual people rather than the practice of homosexuality. Specifically (emphasis added):

*"It's a terrible horrible crime that parents encourage their children like they say come on out of the closet, I'm proud of my son, because **he admitted that he's gay and we accept him just like he is. What kind of madness is that**".*

*"Gay originally just meant **someone** who was happy, but they applied gay to homosexuality to soften the blow of the corruption that it represents".*

Imam Qasim Khan attacked not only homosexual practices but also referred to those who tolerate and accept homosexual practices as "*insane*", and tolerance of homosexual people as being "*a terrible horrible crime*".

No material was broadcast before or after Imam Qasim Khan's comments that provided any challenge to, criticism of, or contrast to the speaker's intolerant and derogatory views on homosexuality.

The Licensee referred to other programmes in the series that, it said, "focussed on kindness to parents, choosing friends and respecting the Prophet". However, there was no reference to these programmes in this episode. Even if this episode had pointed to other episodes discussing these themes, it is difficult to see the relevance to the discussion on homosexuality and how these could have mitigated the intolerant and derogatory views against homosexual people. We therefore took the view that most viewers were likely to have considered this broadcast in the absence of any context provided in other programmes.

We also took into account the Licensee's description of Imam Qasim Khan as an experienced and renowned religious figure in the U.S. with contributions of "over 60 lectures on Peace TV". In our view, his significant public profile would have given his statements greater weight and authority with the viewer.

Taking all the elements above into consideration and placing very significant weight on the broadcaster's Article 9 rights, we considered, on balance, that the contextual factors in this case were not sufficient to justify this broadcast of hate speech.

Our Decision is therefore that Rule 3.2 was breached.

Rule 3.3

Rule 3.3 of the Code states:

"Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television...services except where it is justified by the context".

The Code does not prohibit criticism of homosexuality or any sexual orientation. However, as set out above, such criticism must not spill over into abusive or derogatory treatment. The Code has been drafted in light of the Human Rights Act 1998 and the ECHR. In the context of

Rule 3.3, when assessing content compliance with the Code, Ofcom must take into consideration the right to freedom of expression, which encompasses the broadcaster's and 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 sexual orientation.

We first considered whether this programme contained abusive or derogatory treatment of individuals, groups, religions or communities. For the reasons set out above we considered that the programme contained hate speech against homosexual people. Further to the specific examples referred to above, Imam Qasim Khan also referred to homosexuality as being a "*corruption*" an "*insane practice*" (and on multiple occasions "*insane*") and tolerance of it being "*a terrible horrible crime*".

Ofcom therefore took the view that the broadcast contained material which amounted to abusive or derogatory treatment of a community on the basis of their sexual orientation.

We next considered whether there was sufficient context to justify the broadcast of this abusive and derogatory treatment. As set out above, the discussion of homosexuality within Islam was a legitimate topic for discussion. However, Rule 3.3 is clear that individuals, groups, religions or communities must not be subject to uncontextualised abusive or derogatory treatment. For the reasons already discussed above under Rule 3.2, we considered that the strength of this material was likely to have exceeded viewers' expectations. As a result, we considered that there was insufficient context to justify the broadcast of these gratuitously abusive and derogatory statements about homosexual people.

Our Decision is that Rule 3.3 was breached.

Rule 2.3

Rule 2.3 of the Code requires that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of...sexual orientation...)"

We first considered whether the content had the potential to cause offence. Our view was that, for all the reasons already discussed above, it had the potential to cause significant offence.

As explained, the material broadcast constituted hate speech and was abusive and derogatory towards homosexual people. By its nature, it discriminated against a group of people on grounds of their sexual orientation.

The Imam further objected to religious funeral services for deceased Muslim people on the grounds of their sexual orientation. Ofcom understands that Salat al-Janazah (funeral prayer) is an Islamic obligation and must be performed before burial by an Imam or lay Muslim, irrespective of the deceased's background and that Islam mandates a dignified burial for

every believer who does not abandon the faith during their life time²¹. The Licensee itself acknowledged that, although homosexuality is considered a sin in Islam, it is “not an act which in and of itself would deprive that individual of being a Muslim or afforded the rights of a Muslim such as a burial”. Ofcom therefore understands that the denial of Salat-al-Janazah is a particularly contentious issue and Imam Qasim Khan's unchallenged denial of the right to an Islamic burial for homosexual people would have been highly offensive. We considered this content was capable of causing significant offence to Muslim people in the UK who do not share Imam Qasim Khan's view on homosexuality. We were of the view that it was likely to have been particularly offensive to homosexual people, and especially those who may be facing a struggle to be open about their sexual orientation and identity within their community.

We next considered whether there was sufficient context to justify the broadcast of this potentially highly offensive content. For the reasons set out above under Rules 3.2 and 3.3, and in particular in that the whole discussion was given unchallenged in a context that included hate speech, we considered that Imam Qasim Khan's statements did not provide sufficient context to justify the broadcast of this potentially highly offensive material.

Our Decision is therefore that Rule 2.3 was breached.

Conclusion

Ofcom has previously considered the broadcast of abusive comments towards homosexual people in the context of religious programmes in a [published decision](#) where we made clear that such discussions must be justified by sufficient context²².

We took into consideration that, in contrast to that previous case, the Licensee stands by its decision to broadcast the material and did not consider it had made any mistake in doing so. We also gave due regard to the potential impact that the broadcast of a contemporary discussion of this nature might have on its audience, as compared to the re-broadcast of a historical discussion which an audience may perceive as outdated and inconsistent with contemporary attitudes on homosexuality. As set out above, Imam Qasim Khan's comments constituted a sustained attack on homosexual people in the context of a programme the primary focus of which was a discussion about homosexuality.

²¹ The founding Islamic jurist Imam al-Shafi'i [stated](#): “The funeral prayer of a Muslim... is not to be abandoned irrespective of him being a righteous or a sinful (Muslim).”

Further, Ofcom considered that against a background of rising hate crime against LGBT²³ people in the UK²⁴, these breaches were particularly serious²⁵.

Breaches of Rules 3.2, 3.3, and 2.3

Ofcom considered the breaches in this case to be serious. We are putting the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.

²³ Lesbian, Gay, Bisexual and Transgender people.

²⁴ There has been an increase in reported hate crimes against LGBT people in the UK – from 9% in 2013 to 16% in 2017. [Stonewall/YouGov report](#) into LGBT hate crime in the UK:

²⁵ Sexual orientation hate crime is now the second most commonly recorded hate crime in the vast majority of (police) forces – [Home Office statistics on hate crimes](#).

In Breach

Media and Islam, War or Peace?

Peace TV, 13 November 2017, 07:30 and 14:00

Introduction

Peace TV is an international satellite television channel, which broadcasts religious programmes from an Islamic perspective. The licence for the channel is held by Lord Production Inc Ltd ("Lord Production" or "the Licensee").

During routine monitoring, Ofcom viewed the above 60-minute (including promotional breaks) programme. Some of the material included words in Arabic and Urdu which we translated. The Licensee was given an opportunity to comment on the translation and did not raise any concerns about its accuracy, so we relied on it for the purposes of this investigation.

This episode of *Media and Islam, War or Peace?* was the fourth part of a series featuring Dr Zakir Naik¹ ("Dr Naik"). This programme consisted of Dr Naik answering questions from an Islamic perspective on the interpretation of a variety of Christian and Islamic scriptures in front of an audience of hundreds of Muslim and non-Muslim people in Nigeria. Some of the questions had been written in advance and were read by a moderator. Questions covered a wide range of issues, including, for example: whether Jesus Christ came back to save the world; whether the original version of the Bible was still available on Earth; and, how a Muslim person should react when non-Muslim people provoked them by making blasphemous comments on the internet and on social media. In support of his answers, Dr Naik cited chapters and reasoning from the Qur'an and other religious texts.

Approximately 20 minutes into the programme, the moderator read a question written in advance by "*a non-Muslim brother or sister*". The question to Dr Naik was about the Islamic punishment for apostasy:

"Sir, from my findings I discovered that an apostate, someone who turns away from the Deen² in Islam is to be executed according to the four schools of thoughts, even though the Qur'an says, 'let there be no compulsion in religion'. Please clarify. Thank you".

Dr Naik replied:

"As far as killing an apostate is concerned, there are differences in opinions. Some scholars say that if a Muslim becomes a Murtad³, becomes a non-Muslim, we should put

¹ Dr Zakir Naik is an Islamic televangelist and an international speaker on Islam and comparative religion. He is a presenter on Peace TV. At the time of the broadcast, Dr Naik was a Director of Universal Broadcasting Corporation Limited ("UBCL"), the parent company of Lord Production, and a Director of Lord Production. Ofcom understands that Dr Naik resigned from these two positions on 1 May 2018.

² Arabic word for religion/faith.

³ Islamic term referring to a person who was a Muslim and then rejects Islam.

him to death. Some scholars say no, he should only put to death if he propagates his new faith. There's difference of opinions. As far as the question that there is no compulsion in religion, this verse of the Qur'an is from Surah Al Baqarah Chapter Two, Verse 256, which is La Iqra Fi'deen, there is no compulsion in religion [inaudible], there is no compulsion, no one can force anyone to accept Islam at the point of the sword, but this ruling that is there is like an apostate.

In any country, a supposed person working in the army, a soldier of an army sells the documents of the country to the enemy, in most of the countries either it is death penalty, or it is a punishment of life imprisonment. Suppose an army general, or a soldier sells the secrets of the country to the enemy, in most of the countries either they will be put to death, or it will be life imprisonment. This is nothing but treason.

Similarly, Islam, if someone leaves the religion and propagates the wrong faith, it is like treason and in Islam the punishment is death, but the death penalty cannot be given by normal human being. It will have to be in the court of law and a Qazi⁴ will have to be appointed, he will give him the chance to accept Islam and then only if he is completely convinced that the person has become a Murtad, then can the Qazi in an Islamic State, not in a normal country, if the country is not an Islamic state you cannot give death penalty, it cannot be in a democratic country, it will be in an Islamic state and [inaudible] the Qazi, the chief would have to see the situation and only he can give death penalty".

Another member of the public asked Dr Naik a follow up question:

"My question is aligned with what you just said now. It is about apostasy in Islam. And, based on what you said, if I hear you clearly, heard you clearly, you said that if any person is to be killed, a Muslim that comes out of Islam, it should be in an Islamic State. That means that anybody that comes out of Islam, in an Islamic State should be killed. Did I get you right sir? I want you to make that very clear. That's the question. Can somebody be killed in an Islamic State if he comes out of Islam".

Dr Naik replied:

"The brother asked the question that in an Islamic state if somebody comes out of Islam can he be killed? Like I said in a normal country if a person sells the secrets of his country, can he be killed? Yes, he can be killed. But by whom, by the court of law of that country. Similarly, if the country has a trial, in the trial it is proven that the person has sold the secrets of the country, he can be put to death, he can do life imprisonment. Same thing in Islamic State, in an Islamic State where Islamic Shariah is followed, in an Islamic State if the Qazi takes the trial of the person, if he's caught and he is changing the religion and if it's proven, in an Islamic State only a Qazi can see to it, that if he has done treason, if he has done apostasy he can be put to death".

Later in the programme, someone referred back to Dr Naik's statements about a Muslim person leaving the faith and asked:

"I'm posing this question directly to you Doctor, you told us that if you're a Muslim and you convert to non-Muslim in an Islamic country, by the law, the Qazi, which is the judge, have the privilege or have the right to judge the person. I understood that you are from India and in this country [Nigeria] we have seen cases where the children of Imam convert

⁴ Arabic word for a magistrate or judge of a Shariah court.

and seen cases when we have children of Pastor convert to the other religion. You, as a person, if your child, your son or your daughter, decide to convert to non-Muslim, what would you do? And if it's your daughter who decides to marry a non-Muslim, what will you do, will you disown them, and what is the evidence in the Qur'an to state your action, because I believe you believe in rights when I watch some of your videos".

Dr Naik replied;

"First of all, inshallah my son and daughter would never do that. Why? Because I've trained them my son and my daughters...Hypothetically, if suppose someone's son converts or someone's son marries a non-Muslim, what should you do and give me references from the Qur'an you said. In this case, first of all you should try and tell your child that converting is wrong, with Hikma⁵, everything, with love with appreciation, give him good reasons and logic, but supposed he has been allured by someone and has been falsely maligned and falsely accepts another religion, what will I do? I will disown him...If my son becomes a non-Muslim, he does not remain my son, he may be my physical son but not my son in faith because the brotherhood of Iman⁶, the brotherhood of faith is far superior than the blood relationship...Physically he is my son but in faith he is not my son, so I disown him. Same if he marries somebody else, marry a Mushrik⁷. I may love him, I can do anything. But I will tell him that he will go to Jahanam⁸ because Islam does not permit a person to take any other religion and does not permit to marry somebody else. You have to put the pressure that you would not be part of my family at all. Physically may continue, but spiritually no, and he will not even inherit".

There was no more reference to apostasy in the remainder of the programme.

Ofcom understands that there are differing opinions about the Islamic punishment for apostasy, including whether there should be any punishment at all. Ofcom is also aware, and the Licensee acknowledged it in its Representations (see below under Response), that a limited number of Muslim majority countries have the death penalty as a punishment for apostasy written into their statutes but only in [rare cases](#) have Muslim courts sentenced people to death for this.

Ofcom considered that the content broadcast on Peace TV at 07:30 and 14:00 on 13 November 2017 raised issues under the following rules of the Code:

Rule 3.2: "Material which contains hate speech must not be included in television and radio programmes...".

Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television... except where it is justified by the context".

⁵ Arabic word meaning wisdom/philosophy/reason.

⁶ Arabic Word meaning faith.

⁷ Arabic word used to refer in Islam to Muslim people worshipping anyone else besides Allah.

⁸ Jahanam is an Arabic word referring to hell.

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

Response

Lord Production said that Peace TV was "dedicated to teaching Muslims about their religion in a balanced and responsible manner" and that it was concerned about Islam being "misrepresented and misinterpreted". It added that "Peace TV is an attempt to redress the balance".

The Licensee explained that "the channel caters for a wide range of audience of different ages and levels of knowledge about Islam" and that it selects the presenters and guests "carefully on the basis on their academic and scholarly credentials...who...understand Islam from its classical sources but also seek to explain how their faith should be applied in relation to contemporary issues".

Lord Production made several points which it stated provided contextual justification as to how Dr Naik's references to the death penalty as a punishment for apostasy in Islam complied with the rules as set out above. Specifically, the Licensee argued that:

- apostasy and the treatment of apostates was "a live issue in Islamic scholarship" and that "[discussion of such a topic...[confronts] an important area of contemporary Islamic debate...[and]...is crucial to the wider public debate about the interpretation of Islamic texts";
- Dr Naik's statements were not promoting or justifying hatred against a group of people but amounted "to an academic review of the position under Islamic law and the position in a notional Islamic State under Shariah law"; The Licensee said Dr Naik was "specifically being asked for his scholarly interpretation of the law, rather than its practical application";
- Dr Naik made clear in his answer that there were different opinions about the death penalty being the Islamic prescribed punishment for apostasy and he also explained "the differing interpretations of Islamic law by different scholars";
- Dr Naik "clearly set out a stringent due process under which apostasy should be dealt with" and made it "absolutely clear that the penalty for apostasy is a matter for an Islamic court in an Islamic state...and is not a matter for individuals [to apply] in any way". The Licensee further argued that "clearly, there is no such judicial system set up in the UK (or anywhere in the Western World) and that he was explicit that such a court

would not be appointed and, consequently such a sentence would not be passed in what he himself terms a "normal country" and a "democratic country";

- it would have been clear to the audience that Dr Naik was "not advocating putting to death apostates"; and, he was "explicit that [it] is not open for individuals to apply the penalties for apostasy set out in the Qur'an";
- the topics of the Q&A "range widely on the interpretation of both Islamic and Christian scripture" and that the issue of apostasy was "only" covered in "3 or 4 minutes" over a 46 minute programme;
- in another part of the programme in which Dr Naik discussed blasphemy and how Muslim people should react, he "specifically eschews violent" behaviour as it is against Islam;
- Dr Naik was conducting a question and answer session in front of "thousands of people" in Nigeria, a "substantial mixed Christian and Muslim population" and this would have been clear to the viewers from the Electronic Programme Guide and end credits;
- there was "no current evidence of any non-Muslim viewing of Peace TV";
- it had not received any complaint about this programme and understood that Ofcom had not either;
- programmes broadcast by Lord Production "derived from a particular religious viewpoint, of which its viewers would be aware, and that such programming includes advice to those viewers as to how to lead their lives. It should therefore not be surprising if, at times, such advice causes offence to different sections of the public".

Lord Production stated that it was "worth noting" that Ofcom found in 2012 that a similar programme presented by Dr Naik on Peace TV in breach of Rule 2.3 "although other Code rules were cited earlier in that investigation". It argued that it "would be bizarre and irrational for Ofcom to decide that a broadcaster which followed Ofcom's own guidance in a specific ruling on the issue in relation to the same speaker was in breach of what is in substance the same Code".

Finally, the Licensee stated that it would be "an unacceptable restriction" on its freedom of expression as enshrined in Article 9 and 10 of the European Convention on Human Rights ("the ECHR) to "curtail the transmission of certain views, just because they cause offence".

Lord Production made further representations on Ofcom's Preliminary View. The Licensee:

- argued that Dr Naik's view on apostasy "represents the mainstream interpretation of Islamic law". It said that "[i]t is in the mainstream position of classical Muslim jurists that apostasy is a capital crime under Islamic law". The Licensee contended that there was "scholarly consensus" for this position among Muslim jurists⁹ and that it was "the established position of all four Islamic schools of law" and therefore "the requirement to include other interpretations of Islamic law...is correspondingly lower";

⁹ The Licensee referred to Ibn Abdul Barr, Ibn Qudamah and Ibn Hazm

- argued that in some Muslim majority countries, the death penalty is the statutory requirement for apostasy but that “it is only in very rare cases that such a sentence is passed”;
- referred to Ofcom’s not in breach provisional view in relation to the investigation of another programme broadcast on Peace TV in which Ofcom said that “such punishments” are regarded by the vast majority of modern Muslim people as metaphorical and historical, rather than to be taken literally and that “the reference to a judge making a decision and a detailed description about the actions of the Prophet Muhammad” underlined the applicability of prescribed punishments by a religious (state) authority rather than an individual”¹⁰. The Licensee argued it was “difficult to see why the audience for *Media and Islam* should have a different understanding”, given Dr Naik’s statements clarified that only a qualified Qazi in a country under Shariah Law could decide of the application of the death penalty;
- the Licensee said that, when he was asked later in the programme “how he would react if his son were to leave Islam”, he did not advocate the death penalty as a punishment. Instead he said he would “disown him”. The Licensee said the audience would understand the difference between interpreting Islamic legal texts and “Dr’s Naik’s own personal reaction” to his son leaving Islam;
- calling someone a “traitor” when they have left Islam “cannot constitute hate speech”. It explained that Muslim people’s “faith is at the centre of their identity...Such a decision might to them be comparable to a betrayal akin of treason”. The Licensee drew a parallel with the death penalty in the UK which was mandatory for treason until amended by the 1998 Crime and Disorder Act and argued that “a pre-1998 broadcast in the UK about treason would not have resulted in UK viewers looking to execute traitors themselves”;
- whilst the audience in the programme included non-Muslim participants, it “does not mean that the audience for [emphasis added by the Licensee]the programme is similarly mixed”;
- “as an educational channel, Peace TV seeks to reach out beyond those who already share a particular interpretation of Islam to others whose interpretations might be different” and added that “it cannot be right that Ofcom seeks to limit Peace TV’s potential audience to only those who already share its particular point of view”;
- Dr Naik condemnation of violence and failure to call for his own son’s death would have been sufficient qualifications to mitigate the strength of what Ofcom referred to as an “unequivocal message”. The Licensee added that it was “difficult to understand why Ofcom deems there were “insufficient” and what “greater degree of explanation and contextualisation” he could have given;
- Ofcom should have given more weight to the brevity of Dr Naik’s statements in the context of the whole programme as a mitigating factor. It said that if the whole

¹⁰ Lord Production was referring to Ofcom’s provisional view in relation to the broadcast of *Umdatul Akhaam, Part 162*, broadcast on Peace TV, 13 November 2017, 22:30, in which Ofcom found that the material was not in breach of the Code. The broadcast was discussing the Islamic punishments for “peeping into someone’s house”; stealing; and consuming intoxicants, including alcohol. The Presenter talked in detail about the practical application of some of these punishments, including stoning, amputating one’s limb, and flogging.

programme had dealt with the punishment for apostasy, his statements "might arguably have carried more weight";

- there are no official statistics on crimes committed to punish apostasy in the UK and Ofcom's evidence in respect of apostates' fears that they might be targeted was "insufficient, amounting to a couple of newspaper reports";
- the Arabic word Murtaḍ is "a legal and juristic term used by Muslim scholars" meaning a Muslim person who has left Islam, and that its use in the programme was "within a specific context" and that it "should not be offensive for a person who truly rejects and leaves the Islamic Faith";
- drawing an equivalence between leaving Islam and an act of treason cannot "reasonably" amount to abusive and derogatory treatment or hate speech;
- The statements were contextualised and within audience expectations and they were not "gratuitous or unmotivated";
- The mainstream Muslim community would be well aware of Dr Naik's interpretation of the Islamic punishment for apostasy, "which makes it correspondingly less offensive to them";
- Any offence that might have been caused to those who had chosen to leave Islam or were considering leaving Islam would have been mitigated by Dr Naik's statement of the "stringent conditions under which such punishment could be handed down" and his "refusal to call for the death penalty if his own son were to leave the faith".

Decision

Reflecting our duties under the Communications Act 2003 (section 319), Sections Two and Three of the Code require that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material, including material containing hatred, abusive and derogatory treatment of individuals, groups, religions or communities.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in [Article 10 of the ECHR](#), which encompasses the broadcaster's and audience's right to receive material, information and ideas without interference. It applies not only to the content of the information but also to the means of transmission or reception, since any restriction imposed on the means necessarily interferes with the right to receive and impart information.¹¹ We have also had regard to Article 9 of the ECHR, which states that everyone has the right to freedom of thought, conscience and religion; this includes (amongst other things) the right to manifest their religion or belief, in worship, teaching, practice and observance.

Ofcom has had due regard in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between

¹¹ See for example: *Autronic v Switzerland* (1990) no. 12726/8712 ECHR 485.

those who share a relevant protected characteristic, such as religion or belief, and those who do not¹².

Broadcasters may transmit programmes taking a critical view of a particular religion or broadcast opinions that some viewers or listeners may find offensive. The Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising people of differing views or beliefs. To do so would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules of the Code.

In applying the Code, Ofcom is not expressing any view on the legitimacy of the religious beliefs held. Nor is Ofcom prohibiting the religion of Islam or preventing anyone from practising it. Ofcom is seeking, as it must, to take into consideration broadcasters' rights, including freedom of expression and freedom of religion, and to ensure audiences are protected from material which might cause harm and offence, including hate speech and derogatory treatment of individuals, groups, religions or communities.

In reaching our decision, we took into account, in particular, the cases that the Licensee cited to us on freedom of expression and religion in relation to the expression of views on Islam.

Rule 3.2

Rule 3.2 of the Code states:

"Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context".

The Code defines "hate speech" as:

"all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation".

We first considered whether the statements included in the programme and set out above constituted hate speech. In the four-minute segment, Dr Naik:

- said there were "*difference of opinions*" of Islamic scholars on the killing of apostates in that some scholars said that all apostates should be put to death and "*some scholars say no, he should only [be] put to death if he propagates a new faith*";
- compared apostasy to an act of treason in the military, for which he said: "*in most of the countries either it's the death penalty or...life imprisonment*";
- explained that "*...if someone leaves the religion and propagates the wrong faith, it is like treason and in Islam the punishment is death*"; and
- added that "*if it's proven [apostasy from Islam], in an Islamic State only a Qazi can see to it, that if he has done treason if he has done apostasy he can be put to death*".

¹² Section 149 of the Equality Act 2010.

We considered these statements justified hatred based on intolerance towards people who had left the faith of Islam to practice another faith by:

- putting forward the view that the only acceptable Islamic punishment for people leaving Islam for another religion¹³ should be death; and
- describing their decision to leave Islam for another religion as an act of "treason" which should be punished by death.

We considered that these sentiments promoted and justified hatred against a group of people on the basis of their religious belief and it was therefore hate speech as defined by the Code.

We next considered whether there was sufficient context to justify the broadcast of hate speech in this case. The Code does not prohibit discussions about highly controversial issues, such as the issue of death penalty as a punishment for apostasy as applied by Shariah law in some Islamic countries, as long as there is sufficient context. [Ofcom's Guidance to Rule 3.2](#) makes clear that there are certain genres of programming where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. However, the greater the risk the material may cause harm or offence, the greater the need for contextual justification.

In assessing whether there is contextual justification, Ofcom must take proper account of the broadcaster's and the audience's right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion.

The right to freedom of religion is one of the foundations of a democratic society and includes the right to manifest one's religion. However, Article 9 does not protect every act motivated or inspired by a religion or conviction¹⁴, and in a democratic society a state can legitimately consider it necessary "to place restrictions on [the freedom of religion] in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected"¹⁵. We took into account, in this regard, that broadcasting is an intrusive medium in that it is broadcast directly into people's homes, and that Dr Naik's statements suggested that it was appropriate for members of the Muslim community who had renounced their faith to be killed.

The Code states that contextual factors relevant to Rules 3.2 and 3.3 of the Code may include, but are not limited to:

- the genre and editorial content of the programme;
- the extent to which sufficient challenge is provided;

¹³ Our [Guidance](#) on Section Three of the Broadcasting Code states that: "In the context of Rule 3.2, Ofcom consider examples of the types of issues that may form the basis of hate speech by one person or group against another to include, but are not limited to, disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation".

¹⁴ *Metropolitan Church of Bessarabia v Moldova* no.45701/99 (13 December 2001).

¹⁵ *Kokkinakis v Greece* [1993] ECHR 20.

- the status of anyone featured in the material; and
- the service on which the programme is broadcast and the likely size and expectations of the audience.

Peace TV is an evangelical Islamic channel mainly broadcasting to a Muslim audience. The service describes itself as catering “for a wide audience of different ages and levels of knowledge about Islam”. *Media and Islam, War or Peace?* is a weekly programme in which a public audience of Muslim and non-Muslim people ask Dr Naik for an Islamic view on Islamic and Christian scriptures and on other contemporary issues. In this episode, questions from non-Muslim members of the audience were specifically sought and prioritised over questions from Muslim people. The programme began with a “recap” from a previous programme which include Dr Naik asserting that the existence of “more than ten million Arabs who are Coptic Christians” was testament that “Islam wasn’t spread by the sword” as these people had not been forced to accept Islam. A moderator invited the audience to put questions to Dr Naik. During the course of the programme the moderator also read some questions which had been written in advance. Dr Naik’s response to these questions covered a wide range of issues, including, for example: whether Jesus Christ came back to save the world; whether the original Hebrew version of the Bible was still available on Earth; an analysis of the story of Jonah from the Bible; and, how a Muslim person should react when non-Muslim people provoked them by making blasphemous comments on the internet and on social media.

Given that this was a regular episode of a weekly series, we accepted that much of the likely audience to this programme would have been familiar with Dr Naik’s own interpretation of Islam. However, because the statements made by Dr Naik in this programme amounted to hate speech, we considered that the need for a high level of contextual justification was necessary.

Ofcom acknowledged that Peace TV has the right to broadcast programmes that discuss scholarly interpretation of Islamic law and that its audience expects such content. We also acknowledged that we did not receive complaints from viewers about this content and the Licensee said it did not receive any complaints either. However, an absence of complaints does not necessarily mean that the content complied with the Code. The Licensee argued that while the audience in the programme included non-Muslim participants, it did not mean that the audience for the programme was “similarly mixed”. Nevertheless, Lord Production also acknowledged that “as an educational channel, Peace TV seeks to reach out beyond those who already share a particular interpretation of Islam to others whose interpretations might be different”. Given that Peace TV highlighted that the channel is aimed at those with differing knowledge of Islam and the emphasis in the programme on the participation of audience members who were non-Muslim, we considered that it was likely to have a wider audience than just those who agreed with the narrow interpretation of the Islamic punishment for apostasy put forward by Dr Naik. The Licensee argued that Ofcom could not seek to limit Peace TV’s potential audience to only those who already share its particular point of view. We accept this: Lord Production is free to broadcast any content to any audience, as long as it complies with the Code. In this case, the issue was that Dr Naik’s statements amounted to hate speech against those of a different religion, whose rights to religious freedom are also recognised and protected in the UK, and it was therefore in our view likely to have exceeded audience expectations for Muslim and non-Muslim viewers in the UK.

We acknowledge that Muslim people's "faith is at the centre of their identity" and that a decision to convert to another faith might be felt by some members of the Muslim community to be comparable to "a betrayal akin of treason". Comparing someone leaving Islam for another faith to a "traitor" does not, in itself, amount to hate speech. However, Dr Naik's statements went further than this, in that he said that it was an act of treason for which the appropriate punishment was death. The Licensee drew a parallel with the death penalty in the UK which was mandatory for treason until amended by the 1998 Crime and Disorder Act and argued that "a pre-1998 broadcast in the UK about treason would not have resulted in UK viewers looking to execute traitors themselves". It was not Ofcom's case that the broadcast constituted incitement to crime, it was Ofcom's case that it amounted to hate speech. We consider that stating that a person should be killed for their religious beliefs is hate speech.

Although Dr Naik explained that there were "*differences of opinion*", we disagreed with the Licensee's argument that he explained what these differences were. Both schools of thought cited by Dr Naik advocate the death penalty for apostasy, the difference between the two schools of thoughts being only that one advocates the death penalty for people who have left Islam and converted to another faith *per se* and the other advocates the death penalty only if the person leaving Islam attempts to propagate their new faith. Dr Naik's referred to these schools of thought as the only two legitimate interpretations for the punishment for apostasy. He further referred to the death penalty as "*a ruling that is there [for] apostates*". Dr Naik did not include any reference to any non-violent schools of thought, such as the opinions and views of many other mainstream Islamic scholars who argue, for example, that Islam does not prescribe the death penalty for apostasy¹⁶.

Further, there was no material broadcast before or after this segment that provided any challenge, criticism or explanation of, this interpretation. Ofcom acknowledged that, in a later question about apostasy, Dr Naik replied that if his son were to leave Islam, he would "*disown him*". However, Dr Naik's earlier statements were clear that he considered the appropriate Islamic punishment for apostasy to be the death penalty. We did not therefore consider that the later answer, in which he answered a question focusing specifically on how he, as a father, would react if his son or daughter were to leave Islam provided sufficient mitigation to his earlier assertions; it did not soften the message that a violent approach to apostasy is a part of Islamic thought.

The Licensee further argued that in relation to a question later asked by someone in the audience on how a Muslim person should react to blasphemous comments made by non-Muslim people, Dr Naik stated explicitly that Islam did not condone violence but rather that Muslim people should protest peacefully. We did not consider that these statements given in the context of his answer to a specific question about how Muslim people should react to blasphemous comments were relevant to Dr Naik's previous statements, where he stated explicitly that Islam advocated that apostates "*should be put to death*", nor that it would have been sufficient in our view to mitigate the strength of Dr Naik's unequivocal message. We considered that Dr Naik's statements would have been widely understood by the audience as endorsing hatred and intolerance towards those choosing to leave Islam and practise another faith.

¹⁶ [Faith and punishment; Apostasy, Freedom and Da'wah: Full Disclosure in a Business-like Manner; NO COMPULSION IN RELIGION: ISLAM AND THE FREEDOM OF BELIEF.](#)

We also took into account that the statements made by Dr Naik about the punishments for apostasy amounted to around four minutes of a 60-minute programme. Lord Production argued that if the whole programme had dealt with the punishment for apostasy, Dr Naik's statements "might arguably have carried more weight" but that in this case, the brevity of the statements in the context of the whole programme would have served to mitigate the hate speech. We acknowledge that brevity can be a factor in mitigating levels of offence; however, in the circumstances of this particular case we did not consider the relative brevity of the comments was sufficient in itself to mitigate the very high level of potential offence. We also considered that the other answers provided by Dr Naik, further than those set out in detail above, were concerned with unrelated topics and therefore did not mitigate the hate speech. We also took into account that Dr Naik's position as a well-known international religious speaker with a significant public profile would have given his statements greater weight and authority.

The Licensee referred to the decision Ofcom took in 2012 on a similar case to argue that it followed Ofcom's guidance in that decision on how to comply similar material with the Code. In 2012, Ofcom found the Licensee in breach of Rule 2.3 (generally accepted standards) for broadcasting similar content¹⁷. In [one programme](#) Dr Naik expressed his views on two interpretations of Qur'anic texts on how apostates from Islam should be treated. Dr Naik set out both views and said he tended to "*agree more*" with the interpretation of Qur'anic texts which states that a Muslim who converts to another religion and who then propagates that religion "*should be put to death*", as opposed to being put to death simply for becoming a non-Muslim. Ofcom found that it would have been "potentially offensive for any service to broadcast comments suggesting that it is acceptable to apply a "penalty" and kill any individual for renouncing their faith". In presenting his own theological views on apostasy, Ofcom found that: Dr Naik did not include any reference to alternative interpretations by Muslim scholars of the view that he presented nor seek to mitigate the potential offence by providing sufficient context for his remarks; and the likely expectations of some Muslim viewers and members of the public who came across this material unaware would have been exceeded. Ofcom also said in that decision that, "[it] is not for Ofcom to state how the broadcaster should make such editorial decisions to provide appropriate context, however in this case it might include, for example: Dr Naik stating that he discouraged violent action being taken against apostates or that it was not for the individual to apply these teachings themselves".

Ofcom acknowledged that in this case, Dr Naik made several statements in which he qualified that the prescribed Islamic punishment of the death penalty for apostasy from Islam could only be applied by a Qazi, in countries governed by Shariah law and that it was not for people to apply this punishment themselves. However, we considered that these qualifications were insufficient to justify the inclusion of the hate speech in the programme.

¹⁷ Rules 3.2 and 3.3 were introduced by Ofcom in May 2016, following a review of Section Three of the Code. These rules are designed to deal with content such as hate speech, and abusive and derogatory treatment which may not in itself amount to material likely to encourage or incite the commission of crime or to lead to disorder and therefore may not be captured by Rule 3.1. Prior to the review, such material would normally have been considered under the harm and offence rules in Section Two of the Code. However, Ofcom believed that there was merit in drawing attention to some of these more serious types of harm in Section Three. This also reflected Article 6 of the EU Audiovisual Media Services Directive which requires the UK to ensure that audiovisual media services do not contain incitement to hatred based on race, sex, religion or nationality.

We understand that the issue of the punishment of apostasy has been a matter of controversy within Islam for many centuries with many divergent opinions being expressed. Punishment for apostasy has been the subject of much academic debate amongst Muslim intellectuals and scholars. However, since 2012, particularly with the rise of the extremist group ISIL¹⁸, the debate around the punishment for apostasy has gone from being one of a predominantly theological and academic nature to one of wider real-world concern¹⁹. There are no official statistics on crimes committed to punish apostasy in the UK. However, Ofcom is aware that some Muslim people in the UK have spoken publicly of their fears of violence after leaving Islam and we consider our sources to be sufficient evidence that there is such a fear²⁰. There are potentially more serious consequences for Muslim people renouncing their faith today, than there were in 2012. Therefore, it is our view that including the issue of apostasy in a programme today requires a greater degree of explanation and contextualisation to ensure compliance with the Code. We considered that this was not reflected in Dr Naik's brief remarks, which lacked sufficient substance and did not reflect current diverging opinions within Islam.

The Licensee also referred to Ofcom's provisional "not in breach" finding in relation to the investigation of another programme broadcast on Peace TV²¹ in 2017 in which the presenter discussed Islamic punishments in the form of the use of physical violence, some of which were extreme such as the amputation of body parts. In our Preliminary View in that case, we took the view that these statements could have been understood to legitimise and normalise the use of physical violence. However, we also acknowledged that while these punishments may be prescribed in some religious Islamic texts, our understanding was that they are regarded by the vast majority of modern Muslim people as metaphorical and historical, rather than to be taken literally. The Licensee argued it was "difficult to see why the audience for *Media and Islam* should have a different understanding" of the punishment of apostasy by death.

¹⁸ Daish or ISIL (Islamic State of Iraq and the Levant) is a proscribed terrorist organisation. The UK Government's [list of proscribed terrorist organisations dated 15 July 2016](#) states the following in relation to ISIL: "Islamic State of Iraq and the Levant (ISIL) also known as Dawlat al-'Iraq al-Islamiyya, Islamic State of Iraq (ISI), Islamic State of Iraq and Syria (ISIS) and Dawlat al Islamiya filraq wa al Sham (DAISH) and the Islamic State in Iraq and Sham - Proscribed June 2014. ISIL is a brutal Sunni Islamist terrorist group active in Iraq and Syria. The group adheres to a global jihadist ideology, following an extreme interpretation of Islam, which is anti-Western and promotes sectarian violence. ISIL aims to establish an Islamic State governed by Shariah law in the region and impose their rule on people using violence and extortion".

¹⁹ [Isis executes more than 4,000 people in less than two years; ISIS fighter executes own mother in Syria for 'apostasy', rights groups say](#); [Life under IS rule: fear of apostasy](#); and [ISIS's Persecution of Religions](#).

²⁰ [Losing their religion: the hidden crisis of faith among Britain's young Muslims](#); [Muslim apostates threatened over Christianity](#); [What I learned when I spoke to the people who chose to leave Islam](#); [Man forced to flee his home after converting from Islam to Christianity](#) and [Bradford father 'living in fear after converting from Islam to Christianity'](#).

²¹ Lord Production was referring to Ofcom's Preliminary View in relation to the broadcast of *Umdatul Akhaam* Part 162, Peace TV, 13 November 2017, 22:30, in which Ofcom provisionally found that the material was not in breach of the Code.

Umdatul Akhaam did not involve hate speech against persons on the basis of their religion. Where such hate speech is involved, the need for appropriate contextualisation is correspondingly high. In addition, the punishments discussed in the case of *Umdatul Akhaam* were violent but the definition of the classes of persons to whom they were said to be applicable was narrow and abstruse – the examples given were unlikely to arise in practice in the UK and it would be very difficult for a third party to know whether or not they had. By contrast, it is not uncommon for a person to change their faith, and nor would a detailed knowledge of the applicable religious texts be required to determine whether or not they had. For these reasons, we consider that the audience of *Media and Islam, War or Peace?* would be less likely to consider the discussion as a purely metaphorical matter.

Finally, although anchored in the interpretation of Islam, Dr Naik was explicitly discussing the practical and contemporary application of the Islamic punishment for apostasy. In their response to our original request for comments, the Licensee acknowledged that the treatment of apostates was “a live issue in Islamic scholarship” and that “[d]iscussion of such a topic...[confronts] an important area of contemporary Islamic debate...[and]...is crucial to the wider public debate about the interpretation of Islamic texts”. We did not consider that in this context, the audience would be likely to consider the discussion as purely historical.

Lord Production is entitled to reflect different perspectives appropriate to its global outlook but it must also remain sensitive to generally accepted standards and legislation in the UK if it chooses to broadcast in this country. All content broadcast on licensed services in the UK must adhere to the Code. On balance, this content amounted to hate speech against people who had chosen to leave Islam and convert to another faith, and we considered it went beyond the expression of strong religious beliefs and it was likely to have exceeded the expectations of audiences viewing the service in the UK, given the protections afforded to religious groups and religious beliefs under UK legislation.

Taking all the elements above into consideration, we considered that the contextual factors in this case were not sufficient to justify the broadcast of this example of hate speech.

Our Decision is therefore that Rule 3.2 was breached.

Rule 3.3

Rule 3.3 of the Code states that:

“Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context”.

The Code does not prohibit criticism of any religion or denomination. However, such criticism must not spill over into derogatory treatment. The Code has been drafted in light of the Human Rights Act 1998 and the ECHR. In the context of Rule 3.3, in ensuring that material complies with the Code, Ofcom must take into consideration in particular the right to freedom of expression, which encompasses the broadcaster's and 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.

We first considered whether this programme contained abusive or derogatory treatment of individuals, groups, religions or communities. As set out above, during a four-minute segment of this programme, Dr Naik:

- indicated that leaving Islam to convert to another faith was an act of treason for which the appropriate punishment is death;
- used pejorative and offensive terms such as referring to people leaving Islam as “*Murtad*”. Ofcom acknowledged that *Murtad* is the Arabic word describing someone who has left Islam. The Licensee argued that its use in the programme was “within a specific context” and that it “should not be offensive for a person who truly rejects and leaves the Islamic Faith”. However, we note that the speaker switched from English where the term “apostate” may be neutral, in order to use the Arabic word. We have considered the [Arabic Lexicon](#), a compendium of all the main classical Arabic dictionaries²². We are aware of no use of the word in Arabic which is benign. Other translations of it are “renegade” and “hypocrite”. We therefore remain of the view that the use of the word *Murtad* to refer to an apostate from Islam has abusive and derogatory connotations, both for those within and those who have left the faith.

Ofcom therefore took the view that the broadcast contained material which amounted to abusive or derogatory treatment of a religious group i.e. those people who had chosen to leave Islam to practise another faith.

We next considered whether there was sufficient context to justify the broadcast of this abusive and derogatory treatment. As set out above, the application of the death penalty as the punishment for apostasy from Islam in some Islamic countries is a legitimate topic for discussion in a religious programme. However, Rule 3.3 is clear that individuals, groups, religions or communities must not be subject to uncontextualised abusive or derogatory treatment. For the reasons already discussed above under Rule 3.2, we considered that the strength of this material was likely to have exceeded viewers' expectations. Further, there was no material broadcast before or after this segment that provided any challenge, criticism or explanation of, this interpretation of the treatment of apostates from Islam.

We considered that there was insufficient context to justify the broadcast of the abusive and derogatory statements about apostates from Islam.

Our Decision is that Rule 3.3 was breached.

Rule 2.3

Rule 2.3 of the Code requires that:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of...religion...)”.

We first considered whether the content had the potential to cause offence. Our view was that, for all the reasons already discussed above, it did. In Ofcom's view, it is potentially

²² The [Arabic Lexicon](#) which is a compendium of all the main classical Arabic dictionaries. See [search results for مرتد](#).

highly offensive for any service to broadcast comments suggesting that it is appropriate to kill someone for what they believe. As explained, the material broadcast constituted hate speech and was abusive and derogatory towards the beliefs of people who had chosen to leave Islam *per se* or to convert to another faith. By its nature, it discriminated against a group of people on grounds of their religion and beliefs. We considered therefore that this content was likely to have been offensive to Muslim and non-Muslim people in the UK. In particular we were of the view that it was likely to have been particularly offensive and distressful to viewers who had chosen or were considering leaving Islam to practise another faith.

We next considered whether there was sufficient context to justify the broadcast of this highly offensive content. For the reasons set out above under Rules 3.2 and 3.3, we considered that Dr Naik's statements that the punishment for apostasy from Islam could only be applied by an appropriate Islamic judge in an Islamic country applying Shariah law did not provide sufficient context to justify the broadcast of this potentially offensive material. Further, there was no material broadcast before or after this segment that provided any challenge, criticism or appropriate explanation of, this interpretation of the treatment of apostates from Islam.

Our Decision is therefore that Rule 2.3 was breached.

Breaches of Rules 3.2, 3.3 and 2.3

In Breach

Better Half or Bitter Half

Peace TV, 13 November 2017, 18:30

Introduction

Peace TV is an international satellite television channel, which broadcasts religious programmes from an Islamic perspective. The licence for the channel is held by Lord Production Inc Ltd ("Lord Production" or "the Licensee").

During routine monitoring, Ofcom reviewed the above programme. Some of the material included words in Arabic and Urdu which we have translated. The Licensee was given an opportunity to comment on the translation and did not raise any concerns about its accuracy, so we relied on it for the purposes of this investigation.

This 30-minute programme discussed the Islamic perspective on marriage. The presenter, Dr Zakir Naik¹ began the programme with a series of well-known Islamic prayers, including a verse from the Qur'an². This was then followed by an introduction to the programme in which he explained it was part two in a "marriage preparatory course". During the episode, ten young women called the programme to ask Dr Naik for his Islamic advice on various issues relating to marriage and relationships, including on: whether a woman could reject or delay a marriage proposal to finish her studies; if a married couple could go to a marriage counsellor; if a woman is allowed talk to a man they are not related to; if a man who has had several relationships prior to making a proposal should be given a chance by the girl/woman he proposed to; if a woman/girl can decide how to use her dowry; the acceptable level of money to spend on food at a wedding ceremony; and, communication between spouses. He spoke directly to camera and answered calls from female viewers about relationships and marriage. One caller asked Dr Naik:

"We know that according to Islam, when a girl attains the menstruation, when she is mature she should get married. But in India in our own country a proper age of specified for a girl is 18... We see many families get their daughters get married at the age of 15 or 16, so what is [the] proper explanation for this...could you explain?"

Dr Naik replied:

"Sister there said that the earliest you can get married is after a person reaches puberty, that doesn't mean that the moment a girl reaches puberty she should get married. It is not like that, it is as soon as possible means after she reaches puberty, there can be a couple of years that can pass. But if someone wants to marry before the age of 18, though the law of the country does not give permission and as long as she does not get

¹ Dr Zakir Naik is an Islamic televangelist and an international speaker on Islam and comparative religion. He is a presenter on Peace TV. At the time of the broadcast, Dr Naik was a Director of Universal Broadcasting Corporation Limited ("UBCL"), the parent company of Lord Production, and a Director of Lord Production. Ofcom understands that Dr Naik resigned from these two positions on 1 May 2018.

² Surah Al Ahzab verse 35.

into legal implications and she solves the problem and she gets married then there is no problem at all. But in the present scenario that if the girl has to study and if she marries, I mean I feel that the right age in this scenario, average girl or person becomes a graduate at the age of 20,21 so I personally prefer that the age should be 20 to 21, 22, 23. It should not be later than that. But if someone wants to marry early it is good Mashallah³ you cannot prevent her. And if it is clashing with the law of the country, see to it you do not get into a legal implication, you don't get into a problem with the legal hassles. If you can solve you can get married sister. There is no problem at all".

A later caller asked Dr Naik the following question:

"My question is regarding the concept of Gauna⁴ – that is when a girl is married before puberty and then sent to her husband's house after attending the puberty– what is the Islamic perspective of this. In Indian terminology it's called Gauna. What has Islam got to say about it?"

Dr Naik, replied:

"The sister has a question that a girl she gets married before puberty and when she reaches puberty, before puberty she's at the place of her parents, and after puberty she goes to the in laws' place. What does Islam say? Child marriage, sister [the woman who asked the question] of younger than the age of two, three, isn't encouraged, but if it takes place, once a girl becomes mature it is her decision whether she agrees with it or not. So, if she reaches puberty and she agrees that 'my parents have married me' and then 'I want to continue the marriage' she can. If she wants to opt out, saying that 'my parents married me to a person who is not Islamic and I don't want to continue'– even if she had a Nikah⁵ she can very well break off. So the decision lies on her after she reaches puberty, after she becomes matured, whether she agrees with the decision of the parents or whatever decision was taken when she was a minor, that can be changed. But if she wants to continue she can, Islam gives permission sister. So she can, and she can go to the husband's house and then consummate the marriage sister".

Ofcom is aware that in many majority Muslim countries, the legal minimum age to marry is 16 years with parental consent⁶. In the UK, where the programme was broadcast, the legal minimum age is 16 with parental consent, and 18 otherwise, except in Scotland where it is 16. Ofcom understands that in the UK the Home Office's Forced Marriage Unit dealt with 220 suspected cases of forced marriage of children under 16 years old in 2016⁷.

³ Arabic phrase meaning "by the grace of God".

⁴ Gauna is a northern Indian custom, often practised in rural areas, and the ceremony is associated with the consummation of marriage. It is associated with the custom of child marriage.

⁵ Arabic word meaning an Islamic marriage contract.

⁶ [World minimum marriage age: Chart shows the lowest age you can get legally married around the world](#). For example: Pakistan: 16; Turkey: 16; Afghanistan: 16; Egypt: 18; Nigeria: 18; Qatar: 16; Sierra-Leone: 18; Tunisia: 18; Turkey: 17; Indonesia: 16; UAE: 18; Bangladesh: 18. However, In Saudi Arabia the age is 10 and in Iran 9.

⁷ [Forced Marriage Unit Statistics 2016](#)

We considered that this material raised issues under Rule 2.3 of the Code which states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

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

Response

Lord Production said that Peace TV was “dedicated to teaching Muslims about their religion in a balanced and responsible manner” and that it was concerned about Islam being “misrepresented and misinterpreted”. It added that “Peace TV is an attempt to redress the balance”.

The Licensee explained that it selects the presenters and guests “carefully on the basis of their academic and scholarly credentials...who...understand Islam from its classical sources but also seek to explain how their faith should be applied in relation to contemporary issues”.

Specifically, in relation to the programme, the Licensee explained that it “forms part of a series of programmes in which Dr Naik responds to practical questions from an audience in India...about marriage and relationships put to him by female callers”.

Lord Production made several points which it said provided contextual justification as to how Dr Naik's references to child marriage in Islam complied with the Rules as set out above. Specifically, the Licensee argued that:

- it was “clear from Dr Naik's answers to several [other] questions that he does not favour or encourage marriage at too young an age, or an age which conflicts with the laws of the relevant state”; The Licensee added that Dr Naik “feels the right age [to get married] is 20-23”. In its representations on the Preliminary View, the Licensee added that Dr Naik made clear that “notwithstanding the practice in some cultures in which children may be betrothed at a very young age, he does not support, much less advocate any legally binding marriage let alone consummation at a young age”;
- it was clear in context that Dr Naik did not “approve of Gauna” and was not “advocating it to an audience watching... who will be clearly aware of the legal age for marriage in the UK (16 with parental consent, 18 without)”;
- Dr Naik stated that “marriage prior to puberty is not encouraged by Islam, and thereafter only with her consent” and that “in circumstances where a girl has been married off by her parents she will be free not to continue with the marriage”;

- “There is a significant variety in marriageable ages throughout the world, both in law and in practice, particularly so in India”;
- it had not received any complaint about this programme and understood that Ofcom had not either;
- It did not believe that “in context”, Dr Naik’s remarks were harmful or offensive. In its representations on the Preliminary View, the Licensee said that “for a predominantly Muslim audience, Dr Naik’s interpretation of Islamic law would not be controversial”.

Finally, the Licensee argued that it would be “an unacceptable restriction” on its freedom of expression as enshrined in [Article 9 and 10 of the European Convention on Human Rights](#), (“the ECHR) to “curtail the transmission of certain views, just because they cause offence”.

In its representations on Ofcom’s Preliminary View, Lord Production raised additional points which it believed provided further contextual justification to Dr Naik’s comments. The Licensee:

- emphasised that the views expressed by Dr Naik related specifically to “the institution of marriage as understood by Islamic Law”. It said that Dr Naik made clear that his interpretation of Islamic Law is “subject to the law of the country in which the woman is living”;
- disputed Ofcom’s suggestion that the views expressed in the programme were not representative of the view of the mainstream Muslim community in the UK. The Licensee asserted that the idea that a father may arrange the marriage of his daughter from a young age (i.e. before she starts menstruating) is the mainstream Islamic view, as confirmed by four leading classical Muslim jurists⁸ “who have affirmed that there is a consensus amongst Muslim schools of jurisprudence on this point” in the Qur'an. It argued therefore that this would not have offended a “predominantly Muslim audience”;
- argued that the discussion in the programme focussed on betrothal, not sexual relations. The Licensee clarified that in any betrothal, consummation “would not take place until after the age of puberty”, with an age of 15-16 recommended by “a worldwide body of Muslim jurists”;
- stated that the programme was not primarily aimed at a UK audience, and pointed out that all those who called into the programme were Indian. It said nevertheless that the broadcast would have been relevant to “many UK Muslims [who] have roots in places where such marriages take place”;
- The Licensee argued that Dr Naik’s comments in the programme were intended as “practical advice” to callers from communities where such practices still exist as to how to deal with the issue of child marriage “should it arise or should it have already arisen”;
- reasserted that Dr Naik was not encouraging women below the legal age of marriage to “circumvent the law” by marrying underage if they wished to do so. The Licensee said

⁸ The four classical Muslim jurists referred to by the Licensee are: Ibn Abdul Barr, Ibn Battal, Ibn Qudamah and Ibn al-Mundhir.

that Dr Naik was addressing this comment to Muslims “throughout the world, not simply the UK” including in places where laws around child marriage are “more flexible”;

- argued that Dr Naik did not specify that the marriage of a girl previously arranged by her parents should be consummated “at the moment that puberty is reached” and that it was “disingenuous” of Ofcom to state that “Dr Naik’s statement implied that he believed a child under 16 years old was capable of consenting to sex at the age of puberty”;
- said that Dr Naik “expressly repudiates the idea of forced marriage” by making clear that if a girl had been married as a child, she was free to make the decision to break the marriage contract;
- said that Dr Naik’s comment that “*child marriage... of younger than the age of two, three, isn’t encouraged*” clearly condemned such a practice, and therefore should not have significantly exacerbated the offensiveness of his other remarks, as stated by Ofcom;
- said it failed to see how Dr Naik’s views could be highly controversial because “his views represent the mainstream interpretation of Islamic law accompanied by a practical application of that law that empowers women to have been married off by their parents to choose to break that marriage contract if they so wish”;
- said that the first caller identified in Ofcom’s programme summary and Dr Naik himself referred explicitly to the fact that the legal age of marriage is 18 in India, and that this provided sufficient context for the later discussion between Dr Naik and another caller regarding the practice of Gauna;
- argued that it is irrelevant that Dr Naik did not use his personal influence to “clearly condemn” child marriage, because Dr Naik stated clearly that his preference was for women to marry between the ages of 20 and 23.

Decision

Reflecting our duties under the Communications Act 2003 (section 319), Section Two of the Code requires that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Ofcom has taken account of the audience’s and broadcaster’s right to freedom of expression set out in Article 10 of the ECHR, which encompasses the broadcaster’s and audience’s right to receive material, information and ideas without interference. It applies not only to the content of information but also to the means of transmission or reception, since any restriction imposed on the means necessarily interferes with the right to receive and impart information⁹. We have also had regard to Article 9 of the ECHR, which states that everyone has the right to freedom of thought, conscience and religion; this includes (amongst other things) the right to manifest their religion or belief, in worship, teaching, practice and observance.

⁹ See for example, *Autronic v Switzerland* (1990) no. 12726/8712 ECHR 485.

In applying the Code, Ofcom is not expressing any view on the legitimacy of the religious beliefs held. Nor is Ofcom prohibiting the religion of Islam or preventing anyone from practising it. Ofcom is seeking, as it must, to balance broadcasters' rights, including freedom of expression and freedom of religion, against our duties to protect audiences from material which might cause harm and offence according to generally accepted standards in the UK. In reaching our decision, we took into account, in particular, the cases the Licensee cited to us on freedom of expression and religion in relation to the expression of views on child marriage in Islam.

Rule 2.3

Rule 2.3 of the Code requires that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We first considered whether the content had the potential to cause offence. In the programme Dr Naik responded to a question about marriage under the age of 18 in India by attributing the decision to consent to such a marriage on the child. He said (emphases added):

*"But if **someone wants to marry before the age of 18**, though the law of the country does not give permission and as long as **she** does not get into legal implications and **she solves the problem** and she gets married then there is no problem at all... And if it is clashing with the law of the country, see to it **you do not get into a legal implication, you don't get into a problem** with the legal hassles. **If you can solve you can get married sister**. There is no problem at all".*

In this statement Dr Naik acknowledged that even though marriage below the age of 18 in India was illegal, it was "*no problem at all*" (twice) and put the imperative on the child to "*solve*" any legal obstacles if she wanted to go ahead with marriage "*before the age of 18*". Ofcom is not aware of any possible means for a child to adhere to the law, other than by reaching the legal age of marriage. Nor is child marriage an offence committed by a child: it is the adults around that child that are responsible. Children are legally protected from it in the UK, and there are ongoing and widespread campaigns and programmes to eradicate the practice of child marriage in India¹⁰. In this context Ofcom considered Dr Naik's statements

¹⁰ The National Ministry of Women and Child Development has developed a convergent national strategy and is currently drafting a plan of action on child marriage to guide all states in the implementation of strategies to prevent the problem ([UNICEF Fact Sheet on child marriage in India](#)); India is a member of the South Asian Initiative to End Violence Against Children (SAIEVAC), which adopted a regional action plan to end child marriage. India is also one of 12 countries selected to be part of UNFPA and UNICEF's Global Programme to Accelerate Action to End Child Marriage (see [India child marriage rates](#)).

had the potential to cause considerable offence to an audience in the UK, where there is a strong Indian community.

Further, in response to a later question Dr Naik made a number of statements which appeared to equate the age of puberty with the age of consent for both marriage and sex. In the programme he said (emphases added):

*“Child marriage, sister [the woman who asked the question] of younger than the age of two, three, isn't encouraged, but if it takes place once a girl becomes mature it is her decision whether she agrees with it or not. So, **if she reaches puberty and she agrees that 'my parents have married me' and then 'I want to continue the marriage' she can. If she wants to opt out, saying that 'my parents married me to a person who is not Islamic and I don't want to continue'**- even if she had Nikah¹¹ she can very well take off. **So the decision lies on her after she reaches puberty, after she becomes matured, whether she agrees with the decision of the parents or whatever decision was taken when she was a minor, that can be changed. But if she wants to continue she can, Islam gives permission sister. So she can, and she can go to the husband's house and then consummate the marriage sister**”.*

We remain of the view that this passage implies that a child under 16 could consummate a marriage and that a child under 16 who has reached puberty is capable of consenting to sex. In its representations, Lord Production argued that Dr Naik did not specify that the marriage of a girl previously arranged by her parents should be consummated “at the moment that puberty is reached”. Nonetheless, Dr Naik clearly designated puberty as the point at which a girl may “go to the husband's house and then consummate the marriage”, rather than the legal age of consent, to which he made no reference. In the UK, the NHS states that [the average age for girls to begin puberty](#) is 11 years old and that the normal range is between 8 and 14 years old. Therefore, it is normal for a girl to begin puberty in primary school, and it would be unusual for a girl not to begin while under the age of 16.

Ofcom is aware that the practice of Gauna is still prevalent in some regions of India. India has the highest absolute number of child marriages in the world¹². However, the legal minimum age to marry in India is 18 years old¹³ and there are ongoing national and regional attempts to eradicate child marriage in India¹⁴; which has seen a reduction from 50% of girls being married under 18 to 27% over the last decade. Taking this into account, we considered that these statements were potentially offensive to a UK audience, where the legal age for an individual to consent to sex is 16, and where sex with children under 16 is illegal.

It was our view that against a background of reported forced marriages of children in the UK and abroad, Dr Naik's statements were likely to have been highly offensive to members of the Muslim community watching the programme in the UK, and also to Muslim and non-Muslim viewers who came across the material unaware.

¹¹ Footnote 4.

¹² [Statistics from UNICEF in 2017](#) that 15.5% of wwere married before they were 18, the highest absolute number in the world.

¹³ [Regarding the Prohibition of Child Marriage Act \(PCMA\) of 2006](#).

¹⁴ See footnote 8.

Ofcom was also concerned that Dr Naik referred in the programme to the marriage of a two or three-year-old. The Licensee pointed out that Dr Naik made clear in the programme that marriage at this age was not “encouraged” and in response to Ofcom’s Preliminary View, the Licensee said that it was clear that Dr Naik “does not support, much less advocate any legally binding marriage let alone consummation at a young age”. However, Dr Naik appeared to suggest that marrying a child of two or three years of age is nevertheless acceptable, and marriage of a child aged four is not subject to the mild disapproval indicated by “not encouraged”. We consider that Dr Naik’s reference to child marriage at the age of two or three had potential to add significantly to the offence.

We next considered whether there was sufficient context to justify the broadcast of this offensive content. In assessing whether there is a contextual justification, Ofcom must take proper account of the broadcaster’s and the audience’s right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion.

The right to freedom of religion is one of the foundations of a democratic society and includes the right to manifest one’s religion. However, Article 9 does not protect every act motivated or inspired by a religion or conviction¹⁵, and in a democratic society a state can legitimately consider it necessary “to place restrictions on [the freedom of religion] in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected”¹⁶. We took into account, in this regard, that broadcasting is an intrusive medium in that it is broadcast directly into people’s homes, and that children are a particularly vulnerable group¹⁷. We note that in [2017](#), the UK’s Forced Marriage Unit gave advice and support to children of 15 or under in 186 cases, 15.6% of its total case load.

As set out above, child marriage is illegal both in India and the UK. Ofcom is aware that Islamic Relief, an Islamic charity, has [campaigned on the issue of child marriage to eradicate the practice](#), and advocates 18 as a minimum age for marital consent. We were also mindful that in many Muslim majority countries the legal age for marriage is 16 years old¹⁸, which we considered to be indicative of the Muslim community’s view that marrying below 16 years old was not acceptable.

This does not mean that the issue of child marriage cannot be a subject of a programme. Under Rule 2.3 of the Code, material which has the potential to cause offence may be broadcast, as long as its inclusion in a programme is justified by the context. The Code makes clear that context includes: the editorial content of the programme; the degree of offence likely to be caused by material; the service on which the content was broadcast; the time of broadcast; and the likely expectations of the audience. We therefore considered whether these or any other contextual factors were relevant to this case. The higher the potential level of offence, the greater the need to contextualise.

Peace TV is an evangelical Islamic channel. The service describes itself as catering “for a wide audience of different ages and levels of knowledge about Islam”. *Better Half or Bitter Half* is

¹⁵ *Metropolitan Church of Bessarabia v Moldova* no.45701/99 (13 December 2001).

¹⁶ *Kokkinakis v Greece* [1993] ECHR 20.

¹⁷ See e.g. *Core Issues Trust v Transport for London* [2013] EWHC 651.

¹⁸ See footnote 5.

a regular phone-in programme during which female viewers ask Dr Naik for practical Islamic advice on relationship and marriage. Ofcom acknowledged that Peace TV has the right to broadcast programmes that discuss Islamic principles and that its audience expects such content. We also acknowledged that we did not receive complaints from viewers about this content and the Licensee said it did not receive any complaints either. However, an absence of complaints does not necessarily mean that the content complied with the Code. We accepted that many in the audience of this weekly series were likely to have been familiar with Dr Naik's own interpretation of Islam. However, as the channel is aimed at those with differing knowledge of Islam, we considered that it was also likely to have a wider audience than just those who agreed with the view put forward by Dr Naik that child marriage is acceptable.

The Licensee said that the views expressed in the programme would not have offended a "predominantly Muslim audience" because it represented the mainstream Muslim view. And that in any betrothal, consummation "would not take place until after the age of puberty", with an age of 15 to 16 recommended by "a worldwide body of Muslim jurists". However, the latter point was not made in the programme concerned. In our view it was significant that in his discussion of the Indian practice of Gauna, Dr Naik did not refer to a specific or legal age at which it may be appropriate for a girl to consummate a marriage. Instead, Dr Naik referred only to puberty as the point at which a girl may consummate a marriage: *"If she reaches puberty and she agrees that 'my parents have married me' and then 'I want to continue the marriage'... she can go to the husband's house and then consummate the marriage sister"*. As set out above, girls may experience puberty at any point from the ages of 8 to 14. Dr Naik's comments implied that, as long as puberty had taken place, it may be acceptable for girls below the legal age of consent to consummate their marriage. We considered that this view could not reasonably be regarded as one shared by the majority of the Muslim community in the UK, where the law protects children below 16 years old and where child marriage is not only illegal, but widely rejected as unacceptable and harmful for the child.

We also took into account the Licensee's argument that the programme was not aimed primarily at a UK audience, but to Muslims "throughout the world" and pointed out that all those who called in the programme were Indian. However, Peace TV is licensed in the UK and in considering audience expectations it is this audience Ofcom must consider.

The Licensee referred in its representations to the "significant variety in marriageable ages throughout the world, both in law and in practice, particularly so in India". Dr Naik answered the question about the Islamic perspective on the Indian practice of Gauna, but he did not refer to the legal minimum age of consent for marrying in the UK, where marrying before 16 without parental authorisation is illegal, nor did he refer, specifically in relation to the question of Gauna, to the fact that in India, marrying before 18 is illegal. We acknowledged that a caller had made explicit reference to the fact that the legal age of consent in India is 18 during a discussion ten minutes earlier in the programme. However, we did not consider that this reference, by another individual, was sufficient to contextualise Dr Naik's statements in relation to the practice of Gauna. Rather than referring to the legal age of consent in India, Dr Naik referred only to puberty as the qualifying factor for whether a girl may consummate such a marriage.

We acknowledged that Dr Naik referred to the "legal implication" of choosing to marry at a young age and warned that a woman should avoid getting into "legal hassles" if "her" decision to marry "clashes with the law of the country". Lord Production argued that these

comments made it clear that Dr Naik's interpretation of Islamic law is "subject to the law of the country in which the woman is living" and that was he not encouraging women below the legal age of marriage to "circumvent the law" by marrying underage if they wished to do so.

However, we considered that this argument was undermined by the Licensee's acceptance that Dr Naik was offering "practical advice" to callers which the Licensee confirmed would have been relevant to "many UK Muslims [who] have roots in places where such marriages take place". Moreover, although we acknowledged that Dr Naik referred to Indian law not giving permission to marry before 18 years old, in his following statement, Dr Naik appeared to present "*the law of the country*" as a "*problem*" which a child may solve: "*if someone wants to marry before the age of 18, **though the law of the country does not give permission and as long as she does not get into legal implications and she solves the problem and she gets married then there is no problem at all***" (emphasis added).

The Licensee disputed Ofcom's suggestion that audience members may have found the programme particularly offensive due to recent reports of forced marriages in the UK and abroad. It said that Dr Naik clearly rejected forced marriage in the programme, as shown by his affirmation that girls who had been betrothed as children have the right to reject such a marriage on reaching maturity. We took into account that Dr Naik said, "*the decision lies on her after she reaches puberty, after she becomes matured, whether she agrees with the decision of the parents or whatever decision was taken when she was a minor, that can be changed*". However, we did not consider that assigning the decision-making to the child in such cases was sufficient to mitigate any potential offence, as in practice a child under 16 reaching puberty legally cannot make an informed choice.

We acknowledged that, as part of his response to the question from the caller about the practise of Gauna, Dr Naik said that: "*if the girl has to study and if she marries I mean I feel that the right age in this scenario, average girl or person becomes a graduate at the age of 20, 21 so I personally prefer that the age should be 20 to 21, 22, 23*". We accepted that these statements would have helped mitigate the potentially offensive statements about child marriage to a limited extent in that Dr Naik stated his preference, in relation to the situation when young women are entering further education, was for these women to get married from the ages of 20 to 23. However, merely stating a preference for marriage between the ages of 20 to 23 does not mitigate the implication of Dr Naik's other statements that child marriage is permissible. These remarks were therefore not sufficient to contextualise the offence caused by Dr Naik's other statements.

We also acknowledge that in the programme Dr Naik responded to questions from ten women. Of these, three of Dr Naik's responses related to the marriageable age of women or girls. The other questions covered a range of topics relating to marriage including whether a couple could go to a marriage counsellor and if a woman/girl can decide how to use her dowry. However, we did not consider that Dr Naik's responses to these questions provided any context to justify the offence caused by the earlier statement about the acceptability of child marriage.

The Licensee argued that Dr Naik's interpretation of Islamic law would not be controversial for a predominantly Muslim audience. Ofcom acknowledged that Dr Naik's statements were made in a programme broadcast on a religious channel and that Dr Naik's freedom of religion and thoughts meant he was entitled to give his own interpretation and views on the issue of child marriage, even if his views would have the potential to cause considerable

offence. We are mindful that Lord Productions is entitled to reflect different perspectives appropriate to its global outlook but it must also remain sensitive to cultural norms and legislation in the UK if it chooses to broadcast in this country. All content broadcast on licensed services in the UK must adhere to the Code. In this case, no material was broadcast before or after this segment that provided any challenge or criticism of this view or made it clear how UK laws apply to the topics being considered, which may have mitigated some of the potential offence caused by his remarks. Moreover, Dr Naik's unchallenged statements were made in the context of a "*marriage preparatory course*" and the Licensee acknowledged that he was clearly giving practical advice on how to live, which gave these statements added weight. We also took into account that Dr Naik's position as a well-known international religious speaker with a significant public profile would have given his statements significant authority.

Further, the material was broadcast at 18:30 when families including children were more likely to be viewing. We considered that the audience was unlikely to have expected such views to be broadcast unchallenged, and especially in the early evening. Nor do we consider that the audience was likely to have expected to view content of this type broadcast on a religious channel such as Peace TV, which describes itself as "dedicated to teaching Muslims about their religion in a balanced and responsible manner".

For the reasons set out above, our view is that the material exceeded generally accepted standards and was not justified by the context. Our decision is therefore that Rule 2.3 was breached.

Breach of Rule 2.3

Not in Breach

Umdatul Ahkaam – Part 162, Peace TV, 13 November 2017, 22:30

Introduction

Peace TV is an international satellite television channel, which broadcasts religious programmes from an Islamic perspective. The licence for the channel is held by Lord Production Inc Ltd ("Lord Production" or "the Licensee").

During routine monitoring, Ofcom viewed the above programme. Some of the material included words in Arabic which we translated. The Licensee was given an opportunity to comment on the translation and did not raise any concerns about its accuracy, so we relied on it for the purposes of this investigation.

This 30-minute episode of *Umdatul Ahkaam* was Part 162 of a series of workshops conducted by Assim Al Hakeem¹ on the study of Hadiths², which was titled "*Prescribed Punishments for Peeping in Houses, Theft & Consuming Intoxicants*". The programme was set in a constructed classroom with Mr Al Hakeem sitting behind a desk facing an audience of young men. He introduced the workshop as follows:

"In our series...we're still studying the chapter that deals with the prescribed punishments. So we went through the killing, what to do, and we went through the punishment on fornication. Now we have another Hadith that deals with something that is proscribed but it is not quite known to a lot of us. And this is Hadith 351..."

Mr Al Hakeem then went on to discuss the prescribed punishment of "*peeping into a house*". He said:

"Anyone peeping into your house, trying to see what's inside, his punishment: if you have a stick, put it in his eyes or stone him or do something that does not kill him. But poking his eyes is a legitimate punishment done by the Prophet (Peace be upon him³) and this shows us how sacred houses are".

¹The Licensee explained that Mr Al Hakeem is "a Saudi based teacher and scholar". Peace TV's website described Mr Al Hakeem as "an Imam of a Masjid in Jeddah, a role which he has held for the past 20 years" and said he "travels often to Europe, Asia & Middle East for delivering Islamic lectures on invitation of local and international organizations".

²Hadiths are sayings of the Prophet Muhammad collected after his death and compiled by various scholars of Islam.

³"Peace be upon him" or "PBUH", said in Arabic in the programme.

"This is all major sins, not minor, major sins that allows a person to harm that person by poking his eye. And there is nothing wrong – no diya⁴ – no blood money. If you do this to someone who peeps in your house there is no diya, there is no compensation. You have not done anything wrong, this is of course according to Islamic law. Now can you do this in a place that does not apply Islamic law? Unfortunately not. They will put you in jail and maybe give you life and accuse you of being a terrorist".

Mr Al Hakeem then moved on to discuss "Hadith 352" which he said related "...to the prescribed punishment for stealing". One of the students read out the Hadith:

"...the Prophet (PBUH) cut off the hand of a thief for stealing a shield that was worth three dirhams⁵".

After one of the students read out the Hadith, Mr Al Hakeem explained that:

"This Hadith is telling us about a case that took place at the time of the Prophet (PBUH) a man stole a shield that was worth three Dirhams".

Another student then read out "Hadith 353" saying:

"...the Prophet (PBUH) said: the hand should be cut off for stealing a quarter of a Dinar⁶ or more".

Mr Al Hakeem then said:

"...stealing, there are a number of conditions to be applied. And one of them is Nisaab⁷ so if someone steals something that is below that, is there any prescribed punishment, is there any Hadd⁸? The answer is no. If someone steals a loaf of bread, which is nothing, so do we cut his hand off? The answer is no. So there is what is known as Nisaab for stealing and there are conditions that must be fulfilled so that we can apply this prescribed punishment.

And among the conditions is that there should not be any ambiguity so if a man steals from his wife's possessions, believing that this is his, or a boy or a man steals from his father, or the father steals from the son, or a man steals from the wallet that was used for poor and he's poor so he takes from it. An amount of money is allocated for charity

⁴ "Blood money" in Arabic.

⁵ The Dirham was a unit of weight used historically across North Africa, the Middle East, and Persia. The Dirham is still is a unit of currency in some Arab states.

⁶ The modern Dinar is the principal currency in several Arabic countries and was used historically in several more.

⁷ The Nisaab is the minimum amount of wealth which a Muslim person must possess before they become eligible to pay Zakat. This amount is often referred to as the "Nisaab threshold". Zakat is one of the five Pillars of Islam. It is the compulsory giving of a set proportion of one's wealth to charity. The Five Pillars of Islam are the five obligations that every Muslim must satisfy in order to live a good and responsible life according to Islam.

⁸ "Hadd" is an Arabic word used in Islamic Shariah to describe a prescribed punishment ordained by God.

and for the poor and a poor man comes and steals from it. We don't chop his hand because he has right in that money and so on. Among the conditions of stealing is that it has to be in secrecy. So if there is money found and someone in broad daylight while everybody is looking takes it and leaves there is no cutting of the hand. If someone does not steal but embezzles, he works in a company and every now and then he transfers money to his bank account, a little bit, a little bit, it is not stealing, because he did not do this as the conditions are supposed to be done in secret and it should be from a safe or from a place that it is kept, so if he has money but he has it in his backyard and someone comes and takes it, this is not stealing. If someone is walking and dropped his wallet, I came and took his wallet and left, this is not stealing, not that it is Halal, meaning that it is not stealing that I can demand cutting the hand. And it has to be in a place where it is kept and preserved and that suits it. So for example where do we usually safeguard sheep – in a barn. In a fenced barn. So if someone has a sheep in his house and someone steals it this is not a proper place to keep a sheep. Or has it in the back of his car and someone opens the door – this is not stealing. Where do we keep gold and silver, we keep it usually in a safe. If someone has it in the refrigerator and a thief comes in and finds it and takes it from the refrigerator it is not a suitable thing to do. Likewise, if someone who is powerful and with authority goes and takes a piece of land this is not considered to be stealing because stealing has to be in the middle of the night it has to be trying to go to places that people are not aware of. It has to be in secret.

So all of these conditions, which are very hard to implement, only can result, if fulfilled, in the amputation of a man's hand. And the first time a person steals, as mentioned in the Qur'an in Surah al Ma'idah⁹ if a man or a woman steals, their punishment is to amputate their hand. What is meant by 'hand'? The whole arm? From the shoulder? From the elbow? No. Hand is this place [grabs wrist] to the wrist. And that is why in the eye of Wudu¹⁰, of ablution, wash your faces and hands till the elbows – so now we know that this [grabs wrist again] is not enough. You have to wash your hand till the elbow [points at his elbow]. And if he steals another time, after cutting his right hand – we chop off his left foot. If he steals for the third time, we chop off his left hand, and if he steals for the fourth time, we chop off his other foot so now he has no feet and no hands. If he steals for the fifth time, this is for the judge to decide whether to flog him, to jail him, but someone who is in such case, he is definitely bad news. So may Allah protect us all from such things”.

Mr Al Hakeem then referred to “Hadith 354” about a woman who “used to deny borrowing things” and the Prophet had ordered that her hand should be cut off. After one of the students read out the Hadith, Mr Al Hakeem explained its meaning:

“[I]s this a cause for implementing prescribed punishment of cutting the hand? Scholars differ and the most authentic opinion is that it is not. Because we said that it [stealing] has to be done in secret it has to be stolen from some place that is safe, which is usually kept in, it has to become Nisaab and denying things borrowed cannot fall under the same category. So why mention it? Scholars say that because this woman was both a thief and she used to deny borrowing things...but not that cutting her hand was because of that, it was because she stole.

⁹ The 5th chapter of the Qur'an.

¹⁰ Ablution in Urdu and Arabic.

So the people of Quraysh¹¹, because it was a woman of a reputable tribe, wanted to find a way if it's possible that her hand would not be cut off. So they discussed this among themselves and they said no one would dare to speak to the Prophet (PBUH) except his beloved Osama, the son of his beloved Zayd¹². So this went to Osama and Osama a young man, in his teens, 14, probably 15 of age, went to the Prophet (PBUH) trying to intercede meaning that Prophet (PBUH) this is the last time she will not do it please forgive her. And the Prophet (PBUH) was angered by Osama's request and he said: do you intercede in one of the prescribed punishments set by Allah, this is not for me or you. And then the Prophet made a Khutba¹³ or something, gave a sermon highlighting the fact that any Nation that has this kind of intercession is doomed because this is what destroyed the previous nations. When an honourable person stole they let him go, but if it's someone that is poor or weak, they implement the prescribed punishment. And then the Prophet (PBUH) highlighted that Islamic law stated that even if my daughter Fatima, the beloved daughter of mine, if she were to steal I would have chop her hand off.

This is the ruling of Allah, there are no grey areas. It's either black or white. And this is how the Islamic nation the Islamic Ummah flourished in the beginning because there was no Wazifa¹⁴ there was no hold this for me and I'll hold that for you, rub my back and I'll rub yours. No it was straightforward. The law of Allah should be implemented and this is what had taken place".

Mr Al Hakeem then moved on to the study of "Hadith 355" which he said related "to consuming intoxicants, drinking wine, being in a state of intoxication" for which "the Prophet (PBUH) flogged with palm branches 40 lashes" and "Hadith 356" which he said stated that "it is not permissible to flog more than 10 lashes unless it is in the "prescribed punishment". He said:

"If someone is not sinful, I should not exceed 10 lashes. And the question is, that I pose to you: when can a person be not sinful, yet be flogged less than 10 lashes? This is applicable when a person is reprimanding his slave, maybe reprimanding his son this is permissible. If my son comes late, I tell him 'you have to be home by nine' and he comes at 1am. He's not drunk, he's not doing anything bad but he disobeyed me and he made me very worried about him. Islam permits me to flog him, but not more than 10 lashes. In the sense that I am reprimanding him, I am trying to make him behave like a man. Likewise if my slave – not servant – a servant is a free man I cannot flog him. If my slave also does something and disobeys me or needs to be reprimanded, Islam allows me to flog him less than 10 times, 10 lashes.

By the way, the etiquette of lashing is not what people think – a whip and bang! [makes large whipping motion]. It is a lash that does not wound, that does not shed blood. Yes lashing is not supposed to have scars and wounds on your back – this is torture. And that is why some schools of thought say that the format of lashing is that a man puts his left hand under his arm and he does this [demonstrates by putting his left hand under his right armpit and makes light, limited motions with his right wrist] he does not raise his

¹¹ Quraysh was historically an Arab tribe.

¹² Zayd was a companion of Prophet Muhammad.

¹³ A sermon in Arabic.

¹⁴ A person who intercedes on behalf of someone.

arm [raises his left arm to demonstrate the difference with the limited motion of the wrist], he does only this [repeats limited motions with his right wrist while his left hand rests under his armpit] so what's moving is my wrist. So we have to know that Islam does not promote torturing or wounding people or killing them but this is a punishment that has to be undertaken and he is not to take off his clothes, to mean that it should be on the bare flesh. He can have his t-shirt, his clothes on, but not of course an overall jacket and big blanket on his back, normal clothes would do".

We considered that this material raised issues under Rule 2.3 of the Code which states:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

Response

Lord Production said that Peace TV was "dedicated to teaching Muslims about their religion in a balanced and responsible manner" and that it was concerned about Islam being "misrepresented and misinterpreted". It added that "Peace TV is an attempt to redress the balance".

The Licensee explained that "the channel caters for a wide range of audience of different ages and levels of knowledge about Islam" and that it selects the presenters and guests "carefully on the basis on their academic and scholarly credentials...who...understand Islam from its classical sources but also seek to explain how their faith should be applied in relation to contemporary issues".

Lord Production made several points which it said provided contextual justification for Mr Al Hakeem's references to the Islamic punishments for "peeping" in a house, theft and the consumption of intoxicants which it said complied with Rule 2.3. Specifically, the Licensee argued that:

- the session featured in the programme was similar to a "Bible study session" in that students were reading out the Hadiths and Mr Al Hakeem gave an interpretation of the religious texts;
- it was made clear in the programme that the punishments are prescribed in the Hadiths, rather than by Mr Al Hakeem himself. The Licensee argued that there was no suggestion in the programme that Mr Al Hakeem advocated these punishments "be applied in a western democracy, or other than by the state";
- Mr Al Hakeem "expressly states...that the prescribed punishments ...cannot be done in a place that does not apply Islamic law". The Licensee added that Mr Al Hakeem "clearly

places the prescribed punishment in the context of Islamic scripture". By way of example, the Licensee said that Mr Al Hakeem referred to the punishment for "peeping" in someone's house as being "*done by the Prophet*", and the punishment for stealing "*as is mentioned in the Qur'an*";

- Mr Al Hakeem's reference to the treatment of slaves "clearly also places [his] words in a historical context";
- Mr Al Hakeem referred to "*some schools of thought*" on the punishment of flogging, and "the nature of the lashes that should be given" which "further indicates that the focus of the programme concerns the academic interpretation of Islamic texts". It also contended that "[i]n describing flogging Mr Al Hakeem makes clear that he favours the interpretations of the penalty which involve very light lashes involving only a wrist movement, that the person punished may still wear their clothes and so on";
- Mr Al Hakeem's views "might surprise non-Muslim viewers (if any), but they cannot be said to be harmful or offensive". It added that it was "sensible for viewers to know about Islamic penalties for intoxicants" and that "[i]nsofar as it is of practical application it is as much a lesson of morality"; and
- the episode was "Part 162 of an ongoing series" and "it would be reasonable to expect, therefore, that any viewer of the programme would at least be aware of the nature of the programme and that it was part of a series whose purpose was to discuss from [an] academic perspective the interpretation of the Hadiths".

Decision

Reflecting our duties under the Communications Act 2003 (section 319), Section Two of the Code requires that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in [Article 10 of the ECHR](#). We have also had regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". Ofcom must seek to protect broadcasters' and audiences' freedom of expression when considering compliance with the Code.

Ofcom underlines that in accordance with Articles 9 and 10 of the ECHR, licensees are free to broadcast programmes which give advice to the audience from a particular religious viewpoint. Some viewers and listeners may find such advice controversial or even offensive. Nonetheless, broadcasters can still include such advice in their programmes, provided they comply with the Code, and in particular ensure that potentially offensive content is justified by context.

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

During the 30-minute workshop, Mr Al Hakeem endorsed the use of physical violence to punish people for actions such as: "*peeping into someone's house*"; stealing; and consuming intoxicants, including alcohol. Mr Al Hakeem spoke in detail about the practical application of some of these punishments. For example, he:

- referred to “*what to do*” to deliver the Islamic punishment for “*peeping into someone’s house*”. He said: “*if you have a stick, put it in his eyes or stone him or do something that does not kill him*”;
- said that if the conditions prescribed are met, the Islamic punishment for stealing “*only can result...in the amputation of a man’s hand*”. Mr Al Hakeem then explained the different levels of amputation determined by the number of times a person had stolen. For example, he said that “*the first time a person steals, as mentioned in the Qur’an...their punishment is to amputate their hand...and if he steals another time...we chop off his left foot. If he steals for the third time we chop off his left hand, and if he steals for the fourth time, we chop off his other foot so now he has no feet and no hands*”;
- said that Islam permits the flogging of a person for lying and being intoxicated. By way of example, he referred hypothetically to his son having disobeyed him and said: “*Islam permits me to flog him, but no more than 10 lashes...to make him behave like a man*”. He then referred to the appropriate number of lashes to punish his “*slave*” if he “*disobeys me or needs to be reprimanded, Islam allows me to flog him less than 10 times, 10 lashes*”; and
- went on to describe what he meant about “*the etiquette of flogging*” and explained the “*format of lashing*” prescribed by “*some schools of thought*” while illustrating it with whipping gestures.

We considered that Mr Al Hakeem’s statements could have been understood to legitimise and normalise the use of physical violence, some of which was extreme, such as the amputation of parts of the body. Although we acknowledge that these punishments may be prescribed in some religious Islamic texts, we understand that in reality, most Muslim countries do not use traditional classical Islamic punishments¹⁵. It is also our understanding that the fact that they are currently applied in a limited number of countries is a source of ongoing debate¹⁶ across the Muslim world and several mainstream Islamic scholars have described these practices as unreasonable and inappropriate in contemporary society¹⁷. In this context, we took into account that the United Nations Secretary General recently stated that:

“[S]entences of flogging and amputation violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and that the Human Rights

¹⁵ “In reality, most Muslim countries do not use traditional classical Islamic punishments” says Ali Mazrui of the Institute of Global Cultural Studies see [Islam: Governing Under Sharia](#). We note that in our Preliminary View we indicated that we considered the punishments to be “regarded by the vast majority of modern Muslim people as metaphorical and historical, rather than to be taken literally”. However, on reflection we considered that this inference was not sufficiently substantiated by this source.

¹⁶ “Thus the role of the shariah has become a contested topic in many countries”. See [Bridging Cultures, and NEH Special Initiative](#).

¹⁷ [10 Male Muslim Scholars Who Resist Islamic Punishments](#).

Committee has determined that these penalties are not compatible with the International Covenant on Civil and Political Rights"¹⁸.

We are also aware that human rights organisations have consistently condemned these practices¹⁹. It was our view, therefore, that broadcast to an audience in the UK, this material had the potential to cause offence. In particular, offence may have been caused to those Muslim viewers who strongly reject the idea that Islam requires the application of such strong punishments in a modern society, and in particular in the UK where some of these punishments are unacceptable and could amount to an offence in UK criminal law.

We next considered whether there was sufficient context to justify the broadcast of this offensive content.

In assessing whether there was a contextual justification, Ofcom has taken particular account of the Licensee's and the audience's right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion.

As explained above, the Code does not prohibit religious discussions about deeply controversial issues, such as what might be the prescribed Islamic punishments for: "*peeping in a house*"; theft; and consuming intoxicants, as long as there is sufficient context to justify the inclusion of such offensive material.

The Code makes clear that context includes: the editorial content of the programme; the degree of offence likely to be caused by material; the service on which the content was broadcast; the time of broadcast; and the likely expectations of the audience.

Peace TV is an evangelical Islamic channel primarily targeting a Muslim audience. The service describes itself as catering "for a wide audience of different ages and levels of knowledge about Islam". It was therefore likely that most viewers would have been familiar with Islam and its teachings and the concept of religious advice on everyday matters.

Ofcom is mindful that scriptures and sacred texts of various religions refer to acts of violence and punishments which by today's standards may be considered extreme and unacceptable by society as a whole. However, we considered that the study of religious texts, including in this case the specific Hadiths (discussing the Islamic prescribed punishments for: "*peeping in a house*"; stealing; and taking intoxicants), were legitimate topics for discussion. Our concern was that in this case, Mr Al Hakeem made several statements about violent physical punishments which were likely to have been offensive and which were not challenged or criticised.

We considered however the various other ways in which the Licensee provided context for what Mr Al Hakeem said about each of the prescribed punishments. For example:

¹⁸ [Situation of human rights in the Islamic Republic of Iran.](#)

¹⁹ [Yemen: Hand and foot amputation sentence 'amounts to torture'](#); [Saudi Arabia: Save Convicts from Amputation](#); and [Situation of human rights in the Islamic Republic of Iran.](#)

- He said that the punishment for *“peeping into a house”* was *“of course according to Islamic law”* and that *“in a place that does not apply Islamic law...[t]hey will put you in jail and maybe give you life and accuse you of being a terrorist”*.
- He explained that for the punishment for stealing to be applicable, a number of conditions needed to be met, including that *“there should not be any ambiguity”* and that *“all of these conditions, which are very hard to implement, only can result, if fulfilled, in the amputation of a man’s hand”*. We considered that these explicit and implicit qualifications would have softened to some extent the strength of his statements. Mr Al Hakeem also explained in detail a number of scenarios in which the prescribed punishment would not apply. These included: stealing a sheep from a car, gold or silver from a refrigerator (rather than a safe) and embezzling small sums from a company. The improbability of some of the examples given also had the effect of limiting the impact of the detailed descriptions of amputations that followed, since it is to be doubted that a member of the audience would consider themselves to be personally targeted by the speaker’s suggested punishments.
- At the end of the explanation on amputations Mr Al Hakeem explained that on the fifth occasion the punishment would be for *“the judge to decide”*. The comments on amputation were also followed by a detailed description about the actions of the Prophet Muhammad. Both these elements of the programme underlined the applicability of prescribed punishments by a religious (state) authority rather than an individual. We also considered the emphasis in the Hadith on *“the people of Quraysh”* and the fair applicability of such punishments reduced the impact of the more detailed description of amputations which preceded it.
- Mr Al Hakeem referred to an interpretation of the punishment for taking intoxicants and being *“disobedient”* as involving *“a lash that does not wound, that does not shed blood... is not supposed to have scars and wounds on your back”* and that the person punished may still wear their clothes. He also explained that the person inflicting the punishment should limit the strength of the strike by only lightly moving their wrist. He indicated that lashing which left scars and wounds would be torture and described a form of lashing with a view to limiting the physical harm caused to the victim. We took into account that the conduct being described, a gentle tap demonstrated visually by Mr Al Hakeem, would not necessarily amount to an offence in UK criminal law. We did not accept however that the reference to flogging also being applied to slaves placed the punishment in a *“historical”* context: Mr Al Hakeem was very clearly talking about himself and therefore about the application of Islamic law today.

Further, we also considered that the fundamental basis for the programme was a theological discussion of the specific Hadiths, the text of which was read out by the students in the audience at regular intervals and referred to directly by Mr Al Hakeem. We therefore considered that Mr Al Hakeem’s statements would have been understood by the audience to form part of a theological discussion and an exposition of a religious text. We also noted that the punishments were not directed against any group with protected characteristics or who could be seen as particularly vulnerable. They did not involve hate speech against persons on the basis of their religion.

In addition, the definition of the classes of persons to whom the punishments were said to be applicable was narrow and abstruse – the examples given were unlikely to arise in practice in the UK and it would be very difficult for a third party to know whether or not they

had. For these reasons, we consider that the audience would be likely to consider the discussion as a purely metaphorical matter.

Taking all the elements above into consideration and placing significant weight on the Licensee's Article 9 rights, we considered that there was sufficient context to justify any potential offence caused by Mr Al Hakeem's statements.

We are taking this opportunity to remind broadcasters of the importance of ensuring they provide sufficient context to statements that could be interpreted as endorsing the use of violent punishment for various offences. It is essential for all Ofcom licensees to take proper account of the likely expectations of UK audiences, when considering whether and how to broadcast such material.

Given all of the above, our Decision is therefore that, on the specific facts of this case, Rule 2.3 was not breached.

Not in Breach of Rule 2.3

In Breach

Music programming

NE1FM, 19 March 2019, 10:43 and 3 May 2019, 18:15

Introduction

NE1FM is a community radio station broadcasting to the local community of Newcastle upon Tyne. The licence for NE1FM is held by Community Broadcast Initiative Tyneside Ltd ("CBITL" or "the Licensee").¹

During routine monitoring, Ofcom identified that CBITL had broadcast:

- on 19 March 2019 the track Walk on Water by Beyoncé featuring Eminem, which contained one use of each of the words "*spazzing*" and "*retarded*" as well as several partially masked uses of offensive language: three uses of "*fuck*" or "*fuckin*"; and two uses of "*bitch*"; and
- on 3 May 2019 an unedited version of the Eminem track Rap God, which contained the following examples of the most offensive language: three uses of "*motherfucking*", eight uses of "*fuck*"; and three uses of "*faggot*" or "*fag*".

We considered that the programme on 19 March 2019 had not been broadcast at a time when children were particularly likely to have been listening, but did raise potential issues under Rule 2.3 of the Code:

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

We considered that the broadcast on 3 May 2019 raised potential issues under Rule 2.3 of the Code and also Rule 1.14 of the Code:

"The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)".

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

Response

CIBTL apologised and accepted that the broadcasts had breached the Code. It added that it had recently taken over ownership of the radio station and a number of tracks had played out automatically from the previous station manager's music database². The Licensee

¹ On 10 June 2019 the service rebranded. It is now named Nova Radio North East 102.5.

² Following publication of this investigation, Ofcom was contacted by a former member of staff who had worked at NE1FM until the change of ownership of the station, and who disputed the Licensee's account as to the origin of the tracks in this case. When we contacted CIBTL on this point, the Licensee maintained its position that the content was played from the "previous music database" that had

confirmed that the offending material had been removed from the playlist, and said that it was in the process of restructuring the music upload procedure to avoid any future issues.

Decision

Reflecting our duties under the Communications Act 2003 ([section 319](#), [section 320](#)), Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material in programmes.

19 March 2019

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

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

The 19 March broadcast included three partially masked uses of the word “fuck” or “fuckin” and two uses of “bitch”. In our view, the masking was not sufficient to prevent these words being readily understood by listeners. [Ofcom's 2016 research on offensive language](#) indicates that the word “fuck” is considered by audiences to be among the most offensive language and the word “bitch” to be of medium acceptability. The track also contained one unedited use of the words “spazzing” and “retarded”, which are considered by audiences as the strongest language and highly unacceptable without strong contextualisation. Both words are seen as derogatory and highly offensive to people with mental health problems. We considered that this content clearly had the potential to cause offence to listeners.

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

Our [guidance on offensive language in radio](#) states that “in reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast”. NE1FM is a community radio station, and it is Ofcom's view that its listeners were unlikely to have considered the broadcast of this potentially offensive language during the daytime in line with their expectations for the station's output.

Ofcom took into account the Licensee's explanation for the failure and the remedial action it said it was taking to avoid such issues happening again in the future. However, for the reasons set out above, our Decision is that the broadcast was not justified by the context and was in breach of Rule 2.3.

3 May 2019

Rule 1.14 states that the most offensive language must not be broadcast when children are particularly likely to be listening.

existed at the station. Ofcom does not consider this dispute as to the facts is relevant in determining whether or not a breach of the Code took place in this case.

The track in this case contained: three uses of "motherfucking"; eight uses of "fuck"; and three uses of "faggot" or "fag".

In addition to the use of "fuck", as mentioned above, Ofcom's research on offensive language also makes clear that the words "motherfucker" and "faggot" are considered by audiences to be among the strongest examples of offensive language.

The Code states that the times "when children are particularly likely to be listening" to radio are "the school run and breakfast time, but might include other times". [Ofcom's guidance on offensive language in radio](#) states:

"broadcasters should have particular regard to broadcasting content at the following times: between 15:00 and 19:00 Monday to Fridays during term-time".

In this case the words were broadcast at 18:15 on a Friday during term time, and therefore at a time when children were particularly likely to be listening.

Ofcom took into account the Licensee's explanation for the failure and the remedial action it said it was taking to avoid such issues happening again in the future. However, our Decision is that the broadcast on 3 May 2019 was in breach of Rule 1.14.

We also considered that the language in this case was clearly capable of causing considerable offence to listeners generally. As with the 19 March broadcast, we were also of the view that the content was likely to have exceeded general audience expectations for the time of day and the station. Therefore, our Decision is that this content was also in breach of Rule 2.3.

19 March 2019: Breach of Rule 2.3

3 May 2019: Breaches of Rules 1.14 and 2.3

In Breach

News

Geo News, 16 March 2019, 16:35

Introduction

Geo News is a digital satellite news channel broadcasting in Urdu and aimed at the Pakistani community in the UK and Europe. Its licence is held by Geo TV Limited ("Geo TV" or "the Licensee").

During our assessment of a complaint about a different issue, Ofcom identified three separate sequences of flashing images in a news item which used post-production effects around a montage of footage.

Certain types of flickering or intermittent images can trigger seizures in viewers who are susceptible to photosensitive epilepsy ("PSE"). Ofcom therefore carried out an assessment of the content against [Ofcom's guidance to broadcasters on flashing images](#) ("the PSE Guidance"). The PSE Guidance states that a sequence containing flashing at a rate of more than three flashes per second which exceeds specific intensity thresholds may be potentially harmful.

Ofcom's assessment of the material identified three flashing sequences during the programme in which the limits set out in the PSE Guidance were exceeded. In each instance, flashing effects were added to still photographs, creating rapid and pronounced changes in brightness. The first sequence contained six flashes in one second of footage, the second sequence contained four flashes and was broadcast immediately after the first. The third sequence that we identified was a repeat of the first sequence, and broadcast less than a minute later.

The broadcast was not accompanied by an on-screen warning.

Ofcom considered this raised issues warranting investigation under Rule 2.12 of the Code, which states:

Rule 2.12: "Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item".

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

Response

The Licensee agreed that a flashing effect was broadcast, but considered this was "not of sufficient length" to breach the PSE Guidance. It said that "as no evidence was provided" by

Ofcom, it could not counter the assertion that the material exceeded the limits set out in the Guidance, but was “prepared to consider that the PSE Guidance may have been breached”. Geo TV said that the material was broadcast without an appropriate warning due to “human error”. It apologised for the error and added that it has taken steps to “minimise the risk of any future breach”, such as updating its internal procedures to remove the use of “photo flickering” effects on its news packages, and providing adequate warning where required in future. The Licensee added that it takes its compliance responsibilities in this area seriously and felt that it had taken appropriate steps to prevent recurrence.

Decision

Reflecting our duties under the [Communications Act 2003](#), Section Two of the Code requires that generally accepted standards are applied to the content of television services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Rule 2.12 requires broadcasters to ensure that adequate precautions are taken to minimise risk to viewers who have PSE. Given the significant potential harm that can result to viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this area.

We first considered whether the material had the potential to cause seizures in people with PSE. Ofcom's technical assessment found that just over three seconds of material were broadcast which did not comply with the PSE Guidance, and could pose a risk to viewers with PSE.

As Rule 2.12 makes clear, there may be circumstances where “it is not reasonably practicable to follow the Ofcom [PSE] guidance”, and broadcasters can demonstrate that it is editorially justified to broadcast the problematic material containing the flashing images, provided that an adequate warning is given at the start of the programme and/or programme item.

Ofcom began by assessing whether it was “reasonably practicable” for the Licensee to have followed the PSE Guidance in this case. The programme was pre-recorded and not broadcast live. The Licensee therefore had the opportunity to edit or manipulate the material to eliminate or materially reduce the flashing images in the programme which exceeded the limits set out in the PSE Guidance. Further, the flashing images in this case were post-production effects added to the news bulletin. In Ofcom's view, as it was reasonably practicable in this case for the Licensee to have followed the PSE Guidance, it was not necessary to go on to consider whether the inclusion of the flashing images was editorially justified.

We took into account that the Licensee did not provide evidence of any steps it had taken to consider or check the programme for its compliance with the PSE Guidance before broadcast. Ofcom's Decision is therefore that the Licensee failed to provide adequate protection for people with PSE, in breach of Rule 2.12.

Material containing any instance of flashing images should always be subject to appropriate robust technical checks to ensure compliance. We remind Geo TV Limited that we expect all broadcasters to have appropriate technical procedures in place to ensure compliance with the Code in this area and minimise potential harm to viewers who have PSE.

Breach of Rule 2.12

In Breach

Good Morning Britain *ITV, various dates and times*

Introduction

Good Morning Britain ("GMB") is a weekday morning news programme broadcast on ITV. The programme is compiled by ITV Broadcasting Limited ("ITV") on behalf of the Licensee, ITV Breakfast Broadcasting Limited.

During the campaign for the European parliamentary elections that took place on 23 May 2019, Ofcom received a complaint that an interview with a European parliamentary candidate was not balanced¹. In assessing this complaint, we identified four editorially-linked programmes that included interviews with candidates contesting the European parliamentary elections in the South West electoral region. These programmes were broadcast at the following dates and times (and included interviews with candidates from the parties indicated below):

- 24 April 2019, 07:49 (interview with candidate of the Brexit Party);
- 26 April 2019, 06:54 (interviews with candidates of the Liberal Democrats and UKIP);
- 30 April 2019, 07:26 (interviews with candidates of the Conservative Party and Change UK); and
- 10 May 2019, 06:54 (interviews with candidates of the Labour Party and the Green Party).

Three of the four broadcasts took place after the close of nominations in the South West electoral region on 24 April 2019.

In each programme, following the segment featuring the above candidates, a list of the parties contesting the South West electoral region was featured.

However, in the programmes broadcast on 26 April 2019 and 30 April 2019, the list of parties contesting the South West electoral region included the following seven parties:

- Brexit Party;
- Change UK;
- Conservative;
- Green Party;
- Labour Party;
- Liberal Democrats; and
- UKIP.

On these two occasions the lists as broadcast did not include the following other party and independent candidates contesting the South West electoral region:

¹ On assessment, Ofcom considered that the content in this case only raised issues warranting investigation under Rule 6.12 of the Code.

- English Democrats;
- Larch Maxey (Independent);
- Mothiur Rahman (Independent); and
- Neville Seed (Independent).

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules in Section Five of the Code. In addition, Rules 6.2 to 6.12 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the 'election period'. Section Six of the Code under the heading 'Meaning of 'election' makes clear that for the purpose of this section: "elections include a...European parliamentary election".

In the case of the European parliamentary elections which took place on 23 May 2019, the 'election period' for the South West electoral area ran from the notice of the elections on 12 April 2019 to the close of polling on 23 May 2019.

For the reasons explained in this Decision, Ofcom considered that these programmes were electoral area reports and discussions relating to the South West electoral region. Rules 6.8 to 6.12 of the Code were therefore engaged. Ofcom considered that the broadcast of this content raises potential issues under Rule 6.12 of the Code. This states:

Rule 6.12: "If coverage is given to wider election regions, for example in elections to the... European Parliament, then Rules 6.8 to 6.12 apply in offering participation to candidates². In these instances, all parties who have a candidate in the appropriate region should be listed in sound and/or vision, but it is not necessary to list candidates individually. However, any independent candidate who is not standing on a party list must be named..."

We requested the Licensee's comments on how the broadcasts complied with this rule.

Response

ITV accepted that the reports on 26 and 30 April did not comply with Rule 6.12 of the Code and apologised for the error.

The Licensee said that the 24 April 2019 programme was broadcast before nominations had closed, and therefore did not need to comply with Rule 6.12. In addition, the programme broadcast on 10 May 2019 included a full list of parties and independent candidates contesting the South West electoral region. It said that the reports on the 26 and 30 April 2019 omitted the English Democrats and the three independent candidates "due to a human error". It added that the list shown was compiled by a producer and was "double checked by another producer against several news sources". However, the news sources were not correct, and "so the error was not spotted".

ITV said that a member of the ITV compliance team identified the error during the broadcast on 30 April 2019 and that, as a result of this, the subsequent programme on 10 May 2019 was broadcast with the correct list included.

² In particular Rule 6.10 states: "Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision..."

Decision

Reflecting our duties under the Communications Act 2003 ([Section 319](#)), Section Six of the Code requires that special impartiality requirements are applied at the time of elections. In particular Section Six reflects the special requirements relating to broadcasters covering elections, as laid out in the [Representation of the People Act 1983](#) (as amended) ("the RPA").

Specifically, under section 93 of the RPA, Ofcom is required to adopt a code of practice with respect to the participation of candidates at a parliamentary or local government election in broadcast items about the constituency or electoral area in question. Therefore, Ofcom is required to put in place rules which broadcasters must comply with when they broadcast items featuring candidates – for example, discussing or raising issues about the constituencies or electoral areas they are contesting. Ofcom's code of practice is set out in Rules 6.8 to 6.12 of the Code.

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's Guidance states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover election campaigns, they must comply with the rules in Section Six of the Code, and in particular the constituency and electoral area reporting requirements in Rules 6.8 to 6.12 of the Code. These specific rules apply to the broadcast of a particular constituency and electoral area report or discussion during an election period.

Rule 6.12 requires that when coverage is given to wider election regions, such as in the case of elections to the European Parliament, Rules 6.8 to 6.12 of the Code apply. Rule 6.10 applies to single constituencies and electoral areas and requires broadcasters include a list of all candidates contesting a particular constituency or electoral area. By contrast, Rule 6.12 deals with elections where multi-member electoral regions are being contested, such as the European parliamentary elections. In such circumstances, all parties fielding a candidate in the appropriate region should be listed in sound and/or vision and any independent candidate who is not standing on a party list must be named. By virtue of Rule 6.10³, this requirement only applies after the close of nominations.

We first considered whether the four editions of *Good Morning Britain* broadcast on 24, 26 and 30 April 2019 and 10 May 2019 contained electoral area reports and discussions. Paragraph 1.41 of [Ofcom's Guidance to section Six of the Code](#) states: "...the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rule 6.9) have an opportunity to take part as appropriate".

In this case, seven candidates contesting the South West electoral region were interviewed across the four programmes. Paragraph 1.50 of [Ofcom's Guidance to section Six of the Code](#) states: "Broadcasters may structure a constituency/electoral area report or discussion over a series of broadcasts, for example in the form of a series of candidate interviews in different

³ Ibid.

programmes. However, in line with Rule 5.6⁴, the broadcaster should ensure that the fact that a constituency/electoral area report or discussion is being split over several programmes is clearly signalled to the audience, and that Rule 6.10 [and Rule 6.12] is complied with (i.e. a list of all candidates is included) in each separate programme as required”.

We considered that each of these interviews, in which the candidates gave their views about the South West electoral region (i.e. the electoral area in which they were seeking election), were electoral area reports or discussions as defined in the Code. We also considered that through statements by the presenters in each case, the audience was alerted to the fact that the four interviews were part of a series of interviews with candidates contesting the South West electoral region i.e. they were editorially linked.

After the close of nominations for the South West election region (i.e. 16:00 on 24 April 2019), it was necessary for programmes broadcast on 26 and 30 April 2019 and 10 May 2019 to include a full list of the candidates contesting the South West region. However, neither of the broadcasts on 26 or 30 April 2019 included a list of all candidates standing in the relevant region because they omitted the English Democrats candidate and the three independent candidates.

We took into account ITV's apology for the error and acknowledged that the programme on 10 May 2019 did include a full list of parties and independent candidates contesting the South West electoral region. However, Ofcom's Decision is that the broadcasts on 26 and 30 April breached Rule 6.12.

Breaches of Rule 6.12

⁴ Rule 5.6 states: “The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air”.

Resolved

Britain's Got Talent **ITV, 27 May 2019, 19:30**

Introduction

Britain's Got Talent ("BGT") is a talent series broadcast on ITV. Its licence is held by ITV Broadcasting Limited ("ITV" or "the Licensee").

Ofcom received 56 complaints about offensive language broadcast before the watershed during a live broadcast of the semi-final of the 2019 series.

During the broadcast, judge Amanda Holden was led on stage by contestant "Elizabeth" as part of a performance which had been introduced as *"one of the scariest acts we've ever had on the show"*. The act had seen Amanda contacted by ghost "Agatha", who Amanda believed was leading her back onto the stage. At 20:12, Amanda exclaimed *"fuck!"* when realising it was in fact Elizabeth on stage with her. Following this, Elizabeth said *"Amanda, the reason Agatha is connected to you is because someone very close to you is connected to her daughter. He just doesn't realise it yet"*. Audio of judge Simon Cowell was heard. He said *"I actually did once have a ghost in one of my houses. So, I do believe in them"*. Elizabeth said *"Simon, the night is still not over. I've been Elizabeth, and this is the Haunting. Thank you everyone"*.

Following audience applause, presenters Ant and Dec came on stage and Ant said:

Ant McPartlin: *"Thank you very much, Elizabeth. We'd like to apologise if you heard any bad language there from Amanda. She was very, very scared as you can see. Wow, let's cross over to our judges..."*

Ant McPartlin: *"Amanda, how was it?"*

Amanda Holden: *"I just really want to apologise if I said anything"*.

Simon Cowell: *"You did"*.

Amanda Holden: *"I said a really terrible word. I know, I know there's kids watching. I know my kids are watching so massive apologies"*.

Alesha Dixon: *"And my kids!"*

Amanda Holden: *"And yours. Everybody's watching so I apologise for that. But I can honestly tell you I feel terrified. I mean it is a terrifying, amazing, thrilling experience. But I wouldn't want anyone to go through that. I tell you what though, it's amazing, you're amazing"*.

Simon Cowell: *"We know, we heard everything. It was like being next door to you on your honeymoon night. But let me tell you something, compared to everyone else so far this is by far the most interesting act by a mile we have seen. You know why, we don't see this on the show. I know, I know"*

we are going to get in trouble over this. Don't try this at home, apologise for the swearing but it was amazing and I am a ghost".

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

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

On the facts of this case, Ofcom did not consider it necessary to seek comments from the Licensee on how the programme had complied with this rule. We sent ITV our Preliminary View, which was that this matter should be resolved. ITV confirmed that it had no comments to make.

Decision

Reflecting our duties under the [Communications Act 2003](#), Sections One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

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

[Ofcom's 2016 research on offensive language](#) clearly indicates that audiences consider the word "fuck" and variations of it to be among the most offensive language. The inclusion of the word "*fuck*" in this programme at 20:12 was therefore a clear example of the most offensive language being broadcast before the watershed.

However, we took into account that this was a live broadcast of an emotive performance involving Amanda Holden, which triggered her spontaneous reaction. We also took into account that the judges, Amanda Holden and Simon Cowell, and the presenter, Ant McPartlin, gave a full apology on-air straight after the incident.

In light of the above, Ofcom's view is that this matter is resolved.

Resolved

Advertising Scheduling cases

In Breach

Advertising minutage

CBS Drama, various dates between 6 April 2019 and 14 May 2019

Introduction

CBS Drama is a general entertainment television channel. Its licence is held by CBS AMC Networks UK Channels Partnership ("AMC Networks UK" or "the Licensee").

Rule 2 of the Code on the Scheduling of Television Advertising (COSTA) states that:

"Time devoted to advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes".

During routine monitoring Ofcom identified 25 instances when the amount of advertising broadcast on CBS Drama in a clock hour appeared to exceed the permitted allowance. We considered that this raised issues under Rule 2 of COSTA and sought comments from the Licensee on how the content complied with this rule.

Response

The Licensee acknowledged that the clock hours identified exceeded the permitted allowance of advertising and apologised.

AMC Networks UK said that although its broadcast scheduling system was set up to ensure advertising did not exceed 12 minutes in any single clock hour, the system did not recognise teleshopping spots in its calculations.

The Licensee said that following recent staff changes, the requirement to ensure that both advertising and teleshopping spots were included in hourly minutage calculations was not adequately communicated.

AMC Networks UK said its schedulers have now been provided with full COSTA training, and revised checks of its advertising minutage calculations have been introduced. It added that it is in the final stage of developing its scheduling system to prevent non-compliant transmission playlists being exported.

Decision

Reflecting our duties under the [Communications Act 2003](#), COSTA restricts the amount of advertising than can be broadcast on television. It includes rules that limit the amount of advertising that can be shown across a broadcasting day as well as during any clock hour.

We acknowledged the steps taken by the Licensee to retrain relevant staff and upgrade its systems to avoid a recurrence. However, the advertising broadcast in a clock hour exceeded the permitted amount on 25 occasions. Ofcom's Decision is that the Licensee therefore breached Rule 2 of COSTA.

We will continue to monitor the Licensee's compliance with COSTA.

Breaches of COSTA Rule 2

Note to Broadcasters

Clarification of locally-made programming requirements for commercial radio licensees

All commercial radio stations are required to deliver services in accordance with their published Formats, which form part of their licence. The Format sets out the type of broadcast output that the radio station is required to deliver. It also sets out the station's obligations for the number of hours per day the station must produce locally. [Each station's Format is published on Ofcom's website.](#)

In 2018, Ofcom [consulted on changes to amend our Localness guidelines](#) which relate to the minimum number of locally-made hours each station should provide, when these programmes should be scheduled, and the provision of local material. We also consulted on changes to the 'approved areas' from which commercial radio stations can broadcast their locally-made programming in [England, Northern Ireland and the Channel Islands](#) and [Scotland and Wales](#).

Ofcom's [Localness guidelines](#) now include the following minimum expectations:

- Local FM stations that provide local news at regular intervals throughout the day should air at least three hours of programming each weekday between 6am and 7pm which has been made in the local (or approved) area.
- Local FM stations that provide local news only at breakfast and drivetime should air at least six hours of programming each weekday between 6am and 7pm which has been made in the local (or approved) area.

The above amendments mean that there is no longer an expectation under our localness guidelines that the weekday breakfast programme will be locally-made, or that locally-made programmes will be provided at the weekends or on public holidays.

In respect of the provision of local material, the guidelines now state: "any station whose character of service requires it to provide a local service should include, as well as the level of local news specified in its Format, sufficient other local material consistent with these guidelines to deliver the required character of service".

Importantly, although these amendments give stations the flexibility to provide less locally-made programming than was the case under the previous guidelines, and for that locally-made programming to be made further from the area the station broadcasts to, we have clarified our expectations regarding the types and amount of local material that a local station should deliver. This means that listeners should still expect a locally-relevant service, irrespective of where the programmes are broadcast from.

Stations wishing to make changes to their Format which are consistent with the new Localness guidelines must apply, using our [Format Change Request form](#), to request a change to their Format and this must be approved by Ofcom before any changes are made to their output.

Licensees found to have made changes to the provision of locally-made programming which are not specified in their Format will be found in breach of their licence.

Note to Broadcasters

Clarification of original and locally-produced output requirements for community radio licensees

All community radio stations are required to deliver 'Key Commitments' which form part of their licence. The Key Commitments set out how the station will serve its target community and deliver social gain (community benefits) and include a description of the specified licensed service which licensees are required to provide. This requirement reflects Ofcom's duty to ensure a diverse range of local radio services and is a fundamental purpose for which a licence is granted.

In most cases, a licensee's Key Commitments, which form part of their licence, include a minimum requirement for the provision of 'original output' and 'locally-produced output'.

Ofcom is concerned that there appears to be a misunderstanding among some community radio licensees about the meaning of original and locally-produced output. We are therefore publishing this notice to clarify Ofcom's definitions of these types of content.

Original output

Original output is content which is first produced for, and transmitted by, the station and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or voice-tracked¹. Repeat broadcasts of original output and continuous music with no speech content other than advertisements, station idents and/or outsourced news bulletins (i.e. news bulletins produced by a third party) does not meet Ofcom's definition of original output.

Locally-produced output

Locally-produced output is content which is made and broadcast from within the station's licensed coverage area. It may include all types of local production including repeats and continuous music, as long as it is created anywhere within the licensed coverage area and is not material that is networked from other stations.

Content which is made outside the station's licensed coverage area, but edited and broadcast from within the coverage area, does not meet Ofcom's definition of locally-produced output.

The requirements for the provision of original and locally-produced output are reflected as *minimum requirements* in the Key Commitments. Each licensee's Key Commitments will specify its own individual requirement for the provision of this type of content. They will also specify whether the minimum requirement is one which must be met each day or a weekly one which can be averaged out over the course of the week.

¹ Voice tracked material is when a presenter records the speech content of the show before it is broadcast. This is then combined with the music, advertising and other elements of the show using computer software and played out, rather than the presenter being in a studio during the show and their speech content being broadcast live.

Failure to meet the minimum requirement set out in a community radio licence for the provision of original or locally-produced output as defined by Ofcom is a breach of the licence.

Ofcom expects all community radio licensees to understand the meaning of original and locally-produced content. Licensees who do not meet their minimum requirements for the provision of original and/or locally-produced output will be found in breach of their licence.

Licensees should have contingency plans in place to meet the minimum requirements in the event of unexpected circumstances e.g. presenter absences.

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with 'Key Commitments' *Radio Caroline AM Broadcasting Ltd, March 2018 to March 2019*

Introduction

Radio Caroline is a community radio station licensed to provide a service for "Suffolk and northern parts of Essex". The licence is held by Radio Caroline AM Broadcasting Ltd ("Radio Caroline" or "the Licensee").

Like other community radio stations, the Licensee is required to deliver '[Key Commitments](#)', [which form part of its licence](#). 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.

In March 2019, Ofcom received a Key Commitments change request form from Radio Caroline, requesting a reduction in the required hours of original output¹ from 144 hours per week to 120 hours per week.

In the request, the Licensee stated that it had been failing to deliver the previous minimum requirement of 144 hours of original output per week for at least 12 months before the request was submitted. Radio Caroline calculated its weekly original output on the service during this period as 126 hours.

The request from the Licensee to reduce its original output requirement was [agreed by Ofcom](#). However, we considered that the fact the Licensee had not been meeting its previous minimum weekly requirement for the 12-month period prior to the request being submitted raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Radio Caroline'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).

Response

Radio Caroline did not provide any representations on Ofcom's Preliminary View. However, the Licensee indicated to Ofcom through earlier correspondence that its failure to meet the previous minimum requirement was due to a "misinterpretation" of the definition

¹ 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 or voice-tracked. Repeat broadcasts of original output and continuous music with no speech content other than advertisements, station idents and/or outsourced news bulletins (i.e. news bulletins produced by a third party) does not meet Ofcom's definition of original output.

of original output on its part. Radio Caroline said that it “hadn’t appreciated that automated output was excluded”.

In its Key Commitment change request, Radio Caroline reiterated its commitment to maintaining its service and to complying with its Key Commitments in the future.

Decision

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

While Ofcom acknowledged Radio Caroline’s explanation that it had misinterpreted the meaning of original output, the Licensee failed to deliver the minimum amount of original output required in its Key Commitments for a period of at least 12 months prior to the Key Commitments change request being submitted.

Ofcom’s Decision is therefore that Radio Caroline is in breach of Licence Conditions 2(1) and 2(4).

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Radio Caroline AM Broadcasting Ltd (licence number CR101725BA)

Broadcast Fairness and Privacy cases

Not Upheld

Complaint by Mr Kevin Clarke

The Report: Problem Leases, BBC iPlayer, 13 April 2017

Summary

Ofcom has not upheld Mr Kevin Clarke's complaint of unjust or unfair treatment in the programme, *The Report: Problem Leases*, accessed by the complainant on BBC iPlayer on 13 April 2017.

The programme included a report about the leasing industry and in particular, the experiences of a number of golf clubs whose owners had taken out leases for global positioning systems ("GPS") equipment through Mr Clarke's company, Elumina Iberica ("Elumina"), and who had subsequently found themselves in financial difficulty after they experienced issues with raising money through advertising contracts. Mr Clarke complained that he was treated unjustly or unfairly in the programme.

Ofcom found that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in a way that was unfair to Mr Clarke.

Programme summary

A BBC Radio 4 programme entitled *The Report: Problem Leases*¹ was made available on the BBC's On Demand Programme Service, BBC iPlayer, and accessed by the complainant on 13 April 2017.

The programme featured a report by Mr Adrien Goldberg in which he investigated "*problems with leasing deals*". Mr Goldberg introduced the report:

"Britain's banks could be looking at a new toxic debt issue, some of them are exposed to millions of pounds worth of leases gone wrong. We can reveal how one bank alone has written off £2 million worth of debts owed by golf clubs... We'll hear calls for greater regulation of the leasing industry which critics say is all too willing to sign off dubious deals... And we go on the trail of a businessman who left his customers and suppliers facing huge debts and worse".

The reporter then said:

"In the UK, leasing is a 19 billion pound a year business, it provides a useful way for companies to hire equipment for a fixed period without having to go to the expense of buying it outright, but as we'll hear, the way the industry works is open to abuse, and that's left some of our taxpayer owned banks and other financial institutions having to make the difficult choice between pursuing innocent victims of broken promises when they sold leases, or writing off the debts altogether.

¹ The programme was first broadcast on BBC Radio 4 on 12 January 2012.

Andrew Smith is the victim of a leasing deal that went wrong. In early 2006, he was approached by a salesman offering him a new gadget for his golf buggies, those little motorised carts that players use to ride from hole to hole. The rep, from a Stratford-upon-Avon business called Elumina Iberica, was offering to fit his buggies with a Sat Nav style screen fitted with a GPS or global positioning system, imported from the United States”.

The reporter explained that he was at a golf club in Hertfordshire. He asked Mr Smith, the owner of the golf club, to explain how the equipment worked.

The reporter said:

“Andrew liked the deal he was being offered. The Elumina salesman explained that the golf club would have to sign a lease, but promised that virtually all of the rental cost would be met from advertising on the screens”.

Mr Smith explained the costs per month for the equipment and the amount he would receive from advertising. The reporter continued:

“Andrew Smith was reassured by the fact that the advertising revenue was being guaranteed by the same salesman who was offering him the screens. There were two separate contracts, but Andrew was sold the deal as a package. He paid the rental for the screens and at first the ad income arrived to compensate, but within a few months, the payments for the adverts became erratic and soon dried up altogether”.

Mr Smith explained the cost of having to make the monthly payments on the lease agreement while not receiving any advertising revenue in return. The reporter asked whether “any alarm bells” went off, he responded:

“We’ve always taken people at face value, probably very naïve to do that, we believed what they told us. The equipment itself was American, the biggest brand as such. We had no reason to think that there was anything dodgy at all”.

The reporter said:

“Between April 2005 and the end of 2007, many other golf clubs had been convinced and signed up too, but like Andrew Smith’s Whitehill club, they had the problem that their outgoing payments on the leases were falling due, but the incoming advertising revenue from a company called GP Ads Limited wasn’t being paid. Patrick Battersby is a solicitor representing some of the golf club owners who lost out”.

Mr Battersby said:

“Some of them had serious financial exposure, one or two that the figure was substantially in excess of £100,000. I think even exceeding £200,000”.

The reporter said:

“So what kind of action did you take then to try and recover this money?”

Mr Battersby said:

"What we did is we made demands initially of GP Ads Limited to pay the sums of money that were due and when they didn't pay we issued legal proceedings against them to recover the money".

Mr Battersby explained that, once legal proceedings were issued against GP Ads Limited ("GP Ads") in order to recover the money, the company "went into liquidation".

The reporter continued:

"Patrick Battersby's law firm had started legal proceedings against GP Ads Limited for £1 million in relation to non-payment of the advertising revenues that were sold with the GPS buggy screens, but after the company went into liquidation, the golf clubs were left in an even worse position than before. They still owed large amounts of money for the screens they had leased, but the firm that was supposed to bring in the ads to cover the cost, had gone bust.

Patrick Battersby was acting on behalf of just 15 golf clubs, but overall more than 100 clubs in Britain and Ireland were involved, so collectively Elumina's customers are likely to have been millions of pounds out of pocket. There were other losers too: American company Pro-Link, who made the GPS Equipment and started working with Elumina in 2004, claims it is owed around \$4.5 million; and, in Cannock, in Staffordshire, DNA Technologies, which helped to adapt the screen for use in the UK, also claims it has been left with unclaimed bills with devastating consequences".

Mr Dave Cotterill, the owner of DNA Technologies, said that it "had a profound impact on the business", and, that "there were losses amounting to between £140,000-£150,000 – that's the initial scale of the loss, the ultimate scale of the loss is that the company could not survive that particular hit. The company went into liquidation in March 2011".

Mr Cotterill explained the personal impact the experience had on him, and the reporter said:

"Dave Cotterill says he is £140,000 out of pocket after dealing with Elumina and is now trying to rebuild his life and win back the money he and other people are owed. But were Elumina, who sold the leases, simply unlucky in choosing GP Ads Limited as a partner to sell the advertising, or was there a closer connection?

Elumina was run by Kevin Clarke. In 2002, he had been disqualified as a company director for seven years for a range of offences, including publishing distorted and inaccurate accounts. By operating Elumina Iberica, and its various Elumina offshoots, as a sole trader, he was able to sidestep the ban on acting as a company director, and he was never officially a director of GP Ads Limited. Many, who were there at the time though, say that Kevin Clarke was its guiding hand".

Richard Selby, a former company director of GP Ads, said:

"Elumina was the parent company. Elumina sold the leases to the golf courses and at the time, in fact right up until the end, I would tell people it's all the same company. That's what I was led to believe. Elumina sold the leases, GP Ads owned the advertising right and Kevin Clarke was the owner and the boss, funded both businesses, and it was hand-in-hand a business relationship between Elumina and GP Ads".

The reporter added *"that's how Elumina's Sales Director, Jeremy Moore recalls it too"*. Mr Moore said:

"Elumina and GP Ads was Kevin's baby, he developed the companies, it was his idea, and it was all down to Kevin".

The reporter asked Mr Moore:

"So, when you went out and sold the screens on the buggies, you were selling the advertising as well to the companies? You were assuring them that the advertising would cover the cost of the lease for the screens on the buggies? And, you were doing that all effectively as one company?"

He responded:

"Yeah indeed, I was representing Elumina and GP Ads".

The reporter then said:

"With GP Ads going into liquidation, Kevin Clarke's Elumina was also finding it difficult to meet its commitments. Shanghai businessman Frank Xaio is still waiting for the delivery of 800 golf buggy screens that he paid a substantial deposit for three years ago".

In response, Mr Xaio said:

"We paid 800,000 US dollars into the bank. We were expecting a delivery of 800 units, but delivery was never done until now; and we asked for the refund of the money, a return, but this never happened".

The reporter said:

"So, Kevin Clarke had been disqualified as a company director. He was being pursued for \$800,000 by a Chinese company and he was facing questions from irate golf club owners who owed many thousands of pounds because the ad revenue Clarke's sales reps had promised, failed to arrive. So how did Clarke come to be linked with one of the country's biggest leasing brokers, Shire Leasing, and, with one of Britain's largest banks, the Bank of Scotland, which was part owned by the taxpayer? To understand that, we need to know how the leasing chain works".

Mr Moore then explained:

"The way the system works is that obviously myself, or one of the sales guys, would go in and offer the golf club a lease agreement for X amount of pounds per month for the system. That would be backed up by the fact that they were going to get paid X amount of pounds in advertising revenue. So, from a golf club point of view, they were in a position where they've got money going out, but they've also got money coming in. That agreement then is taken by us, it was given to Shire Leasing and then what Shire Leasing do, as a broker, they will back it off into different banks or different funding organisations. In this case, the vast majority of them went through Bank of Scotland".

Mr Moore explained that *"backed it off"* meant that:

"...the agreement then is between the golf course and the bank. Shire and Elumina are out of the loop, because when the bank buy[s] that piece of paper, they will pay Shire and Shire Leasing would pay Elumina. So, everybody gets their profit/money up front, apart from the bank and then they subsequently collect their rentals from the golf club over the next three, four, five years, whatever the contract term is".

The reporter explained that this was the reason the Bank of Scotland was pursuing the golf clubs who had *"signed leases with Elumina but who weren't receiving any of the promised revenue from GP Ads Limited, which had now gone bust"*.

The reporter continued:

"To an outsider it might seem remarkable that a major British bank like the Bank of Scotland should have been caught up, even through a third party, with a business like Elumina, run by disqualified company director, Kevin Clarke. But to Brendan Malkin, who first broke the 'Elumina Story' in a leasing trade magazine, it was typical of the lax way in which the industry operated".

Mr Malkin explained that there is a *"high degree of informality"* within the leasing industry and that relationships are based on friendship and trust *"more than a real thorough investigation into the credibility"* of a business.

Mr Moore said:

"They have to do certain due diligence on their customers. I actually worked for Shire Leasing at one point, and when we brought new dealers on, they were very adamant about checking them out and doing personal searches etc, etc. Ultimately, we've all since found out that, at the time, Kevin was a disqualified company director, so that should have been picked up with their searches".

The reporter then discussed in further detail the apparent relationship between Mr Clarke and Shire Leasing. He added that Shire Leasing had declined a request for an interview, but had sent the following statement with regard to the due diligence it had carried out:

"Kevin Clarke was known to Shire from a previous successful trading relationship. When Kevin Clarke approached Shire, Elumina had already established a successful venture with Pro-Link and was Pro-Link's largest distributor covering some 37 countries. Shire did carry out due diligence, as well as attending joint meetings with Kevin Clarke, Pro-Link and the Bank of Scotland".

The reporter then said:

"And what of the Bank of Scotland? There's no suggestion that they knew that the leases they bought through Shire had been sold as a package with advertising, but they certainly found out. We've obtained an email sent in September 2008 by a senior Bank of Scotland employee and circulated to three colleagues, which discusses how the bank is going to get the money it's owed. This explicitly refers to the promise of advertising revenue made to golf clubs: 'I suspect that if we go for enforcement we will be met with some very strong defences. The advertising will be intrinsically linked to the contract of hire. Unfortunately, Elumina cannot keep pleading they have done nothing wrong'".

The reporter said that the bank had continued to demand money from golf clubs until 2010, when all outstanding debts were cancelled *"almost two years after they became aware that the golf clubs were unwitting victims of a deal gone wrong"*. The reporter added that the Bank of Scotland had declined an interview, but had sent the following statement:

"We carried out a full review of the Elumina case and made a decision not to enforce a series of leasing agreements we had in place with a number of golf clubs. The vast majority of these agreements were assigned to us by Shire Leasing Plc and Bank of Scotland Equipment Finance was not in any way connected to advertising deals with individual golf clubs".

The reporter said that the Bank of Scotland had told the programme makers that *"the value of the leases it has written of is £2 million"*.

The reporter said:

"But what of the man behind Elumina? We wrote to him asking for an interview and had no response".

The sound of cars moving on a road could be heard as the reporter said:

"We've come to where Kevin Clarke lives, a vast detached house in a leafy, desirable suburb of Stratford-upon-Avon. We can see a Range Rover parked outside the front door".

The reporter knocked on the door and rang the doorbell and then said:

"Hello, I'm Adrien Goldberg from BBC Radio 4, are you Kevin Clarke?"

A person responded:

"Er, no sorry".

The reporter said:

"You look like Kevin Clarke. Excuse me, Mr Clarke, Mr Clarke, there are lots of people who would like to hear what you've got to say".

The reporter continued:

"Well we've seen photographs of Kevin Clarke and the man who came to the door looked very similar to Kevin Clarke, so similar that I would suggest that it was in fact him. But he has shut the door on us and does not appear to want to have an interview with us this afternoon."

The following day, Kevin Clarke's lawyer confirmed that he wouldn't be speaking to the BBC. But his reticence leaves many issues unresolved. Golf club owners want to know if they'll get compensation after taking out expensive leases that weren't, as they had been told, backed by advertising. Former workers and suppliers, like Dave Cotterill, want to know when they'll be paid the thousands of pounds they're still owed. Their chances of recouping any cash would appear to be slim as Kevin Clarke has been declared bankrupt".

The reporter then said: *"Elumina aren't the only company involved in leases that have gone wrong. Far from it, and it begs questions about the level to which major banks and other financial institutions are exposed"*.

The reporter then spoke about a primary school and GP surgery which had also experienced problems as a consequence of taking out leases. It also discussed the impact these types of leasing cases had on the banking industry and whether regulation of the leasing industry needed to improve.

The reporter concluded the report by stating:

"But it's a big issue for the hairdressers, teachers, doctors and golf club owners who have been left holding leases they can't afford, not to mention the banks whose involvement and financial exposure is still an unfolding story".

There was no further reference to Mr Clarke in the programme.

Summary of the complaint and broadcaster's response

Complaint

Mr Clarke complained that he was treated unjustly or unfairly in the iPlayer programme because it included allegations which were "hugely damaging" to his reputation. In particular:

- a) The programme incorrectly described the matter as a *"failed leasing deal"*. Mr Clarke said that the issue was with GP Ads and its advertising contracts, rather than with Elumina. Mr Clarke said that it was the Bank of Scotland's decision to write off the outstanding balance owed on the leases, and that some of the leases written off did not have advertising contracts associated with them. He added that it was not a failed leasing deal and there was no reason for the Bank of Scotland to write off these balances.
- b) The programme incorrectly stated that Elumina customers were left *"out of pocket"*. Mr Clarke said that it was former GP Ads' customers who were *"out of pocket"*.

Mr Clarke said that the golf clubs had purchased the equipment from Elumina and that the way in which the golf clubs chose to finance the purchase had differed, for example, some had paid for the equipment in full, while others had chosen to take up leases through Shire Leasing or alternative lenders.

Mr Clarke said that in a 2009 Northampton County Court judgment on a separate matter, it was proven that the lease contracts offered by Shire Leasing and other funders to purchase the GPS Equipment and the advertising contracts offered by GP Ads were not contractually linked in any way; the contracts were not sold as a package and were at all times separate contracts.

- c) The programme unfairly stated that the advertising revenue, which golf clubs may have expected from their contracts with GP Ads, had been guaranteed by the Elumina salesman. He said that the salesman did not promise the rental would be met by advertising payments.

- d) The inclusion of the statement that Mr Clarke was “*never officially a director of GP Ads Ltd*” *unfairly* suggested to listeners that Mr Clarke was an “unofficial director of GP Ads Ltd and/or involved in the formation, promotion or management of GP Ads Ltd”. Further, the programme referred to Elumina as a parent company, when in fact, it was run as a sole trader business by Mr Clarke. Mr Clarke said that the implication being that he was in breach of the disqualification undertaking and was therefore committing a criminal offence. Mr Clarke said that he was not a director, nor did he own any shares in GP Ads or its parent company, GP Ads SL.
- e) The programme incorrectly stated that the golf clubs had signed leases with Elumina, when, in fact, all leases were signed directly with Shire Leasing. Mr Clarke said that all the golf clubs had received the equipment from Elumina and had to repay the monthly finance payments to Shire Leasing. Mr Clarke said that Elumina customers, who chose to take out leases, were aware that they owed money.
- f) The programme implied that because Mr Clarke had previously been disqualified as a company director in an unconnected incident, there was “something untoward happening at Elumina”. In particular, Mr Clarke said that it was unfair for the programme to state that he was able to “*sidestep the ban*”. Mr Clarke said that he was legally able to operate as a sole trader, despite his disqualification.
- g) The programme unfairly stated that full due diligence had not been carried out on Mr Clarke and suggested that had it been conducted correctly, Shire Leasing would not have involved itself with Mr Clarke in view of his disqualification as a director. Further, Mr Moore unfairly stated in the programme that he had only recently found out about Mr Clarke being disqualified as a company director, when in fact, Mr Clarke had not kept this a secret and Mr Moore and Shire Leasing were aware of this.
- h) The programme incorrectly stated that Mr Frank Xaio had signed a contract with Elumina, when in fact, the contract was with a separate company, Elumina Iberica SA, which Mr Clarke was not involved with.
- i) The programme incorrectly stated that Elumina owed DNA Technologies £140,000-£150,000.

By way of background, Mr Clarke said that his sole trader business, Elumina, had sold GPS equipment to golf clubs to be installed on golf buggies and that some golf clubs had chosen to purchase it using lease finance. Mr Clarke said that Elumina was an approved supplier of Shire Leasing who provided leasing finance to the golf clubs. Some of these clubs also chose to take out an advertising contract with a separate company called GP Ads.

Broadcaster's response

The BBC said that Mr Clarke's complaint related to an edition of the programme broadcast on 12 January 2012 on BBC Radio 4, but which was still available on the BBC iPlayer. It said that Mr Clarke stated in his complaint to Ofcom that ongoing legal proceedings had prevented him from either taking part in the programme or submitting a complaint nearer to the time of the original broadcast. However, it said that, had there been a genuine concern that the broadcast in 2012 risked prejudicing legal proceedings, Mr Clarke's lawyers would have said so when they responded on his behalf to the programme makers initial enquiries. It said, failing that, his defence team would almost certainly have raised the ongoing

publication at trial. The BBC said that the only concern raised by Mr Clarke at the time was that the allegations were false and defamatory.

The BBC said that the programme included a report which investigated the £19 billion UK leasing industry and reported some of the problems associated with it. It looked at issues experienced by golf clubs whose owners said that they had lost money as a result of signing up to leases. The programme also raised questions about finance houses and banks which were involved, one of which is partly publicly owned. It said that it "firmly believed" that the investigation in its entirety was in the public interest and in strict accordance with the relevant BBC Editorial Guidelines as well as the Ofcom Broadcasting Code.

- a) The BBC said that the test as to what constituted a "failed leasing deal" was what a "reasonable person" might think of as a "failed leasing deal". It said that the programme included evidence that customers had lost large sums of money on the leases. It said that the programme makers spoke to a solicitor representing 15 golf clubs who collectively claimed a million pounds in relation to the non-payment of advertising revenues. The BBC said that banks, leasing and finance houses wrote off substantial sums of money and that, in the case of the part publicly owned Bank of Scotland, £2 million was written off. It said that this was at a time when the bank, like others, was "under intense scrutiny" over its balance sheet after being "bailed out" by taxpayers.

In support of this, the BBC provided Ofcom with a letter from the solicitors of Bank of Scotland Equipment Finance which stated its intention to make a proposal to all customers who had entered into a lease agreement relating to GPS systems supplied by Elumina Iberica. The proposal involved both parties walking away from the agreement without any liability or obligation to each other under the terms of the agreement.

The BBC said that this amounted to a "failed leasing deal" by any commonly understood definition and that it was clearly in the public interest for the programme to make it known. It said that if Mr Clarke still maintained that there was no reason for the Bank of Scotland to act as it did, his issue was with the Bank of Scotland rather than the BBC.

- b) The broadcaster said that, while Elumina's customers might have signed two contracts, these had been sold and presented by Elumina together as a package and that GP Ads was Elumina's advertising team. Therefore, it was Elumina's customers who were left "out of pocket". The BBC said that programme makers drew on information from former Elumina employees and customers on this point. It said that everyone who the programme makers had spoken to during the making of the programme had agreed that "this was how it worked" and that it was an "explicit part of the sales pitch". This was confirmed by "numerous sources as being 100% correct" and the case study in the programme also confirmed this. In support of this contention, the BBC provided Ofcom with the following documents:

- a letter addressed to Greetham Valley Golf Club from Elumina's Sales Director which referred to a "welcome pack" that included a copy of the lease contract, a copy of the advertising contract and invoicing details for advertising revenue;
- a "Statement of Truth" taken from Mr Jeremy Moore, the former Sales Director of Elumina in which he stated that Mr Clarke "operated as a Company Director and Officer" for GP Ads; and,

- a “Statement of Truth” from Mr Richard Selby, the former Director of GP Ads, in which he stated that Mr Clarke “acted as a shadow Director” of GP Ads, in conjunction with himself.
- c) The BBC said that the programme makers had “written evidence” that the costs of the lease contracts would be met by GP Ads. It said that GP Ads was the advertising arm of Elumina and that in the event of the advertising revenue failing to reach the required target, the shortfall would be covered by Elumina. In support of this, the BBC provided Ofcom with a “Long Term Advertising Contract” between GP Ads and Stockwood Vale Golf Club dated 14 February 2007 in which it was stated that GP Ads would guarantee the club a “minimum performance provision” amount equal to that of the lease payments for the GPS Equipment for a minimum period of 36 months from the lease agreements inception. Additionally, it provided a letter from Stockwood Vale Golf Club to Elumina dated 3 June 2008 which stated that a previous agreement between the club and Elumina had stipulated that, in the event of a breach of contract between GP Ads and the club, attributable to GP Ads and resulting in the non-payment of the monthly advertising revenue to the club, Elumina “undertakes to directly pay the customer in lieu of GP Ads any monthly advertising fees that are due from the date of the aforementioned breach”.
- d) The BBC said that the Director of GP Ads told the programme makers that he “didn’t do anything without the consent or say so of Mr Clarke” who “ran the show”. It said that, although Mr Clarke was unable to hold directorships between 2001 and 2009 on account of his disqualification, in practice he ran both Elumina and GP Ads. It said that there was “substantial evidence” of Mr Clarke’s connection to GP Ads and that the programme specifically did not allege a formal link, such as might constitute a criminal offence. The BBC said that it was the “spirit and not the letter of the law which was at issue” and that this would have been clear from the wording used in the programme.

The BBC referred again to the documents referenced in head b) in support of this. It also provided Ofcom with a copy of an article from Golf Business News dated 18 September 2017 in which ProLink Solutions (“ProLink”) was referred to as having entered into a “definitive agreement to acquire 100% of the outstanding shares of Elumina Iberica SA, Elumina Iberica UK Ltd, GP Ads SL, and GP Ads Ltd (collectively “Elumina”)”.

- e) The BBC said that it was incorrect to say that all of the lease agreements were signed directly with Shire Leasing. It said that the agreement with Greetham Valley Golf Club (referred to above under head b)), showed that the leases were sold by Elumina as part of a package. It said that this agreement demonstrated that an Elumina salesperson “included the lease contract alongside the advertising contract”. The BBC said that the process by which Shire Leasing and, subsequently, the Bank of Scotland became involved was carefully explained in the programme.
- f) The BBC said that it was a matter of public record that Mr Clarke was disqualified as a company director for seven years in 2002 and that the programme “did not say that Mr Clarke had broken the law”. Also, the BBC said that this fact was relevant to the investigation. The BBC added that the clear intention of the ban was to prevent Mr Clarke taking company directorships, yet he was able to continue to take an active role in running businesses. It said that, in this context, the term “sidestepped the ban” was a valid journalistic summary of the situation. The BBC said that a number of golf courses had claimed that Mr Clarke had acted as a “shadow director” of GP Ads and that this was

in breach of his undertaking under the Company Director Disqualification Act. Also, that Mr Clarke had incurred a personal liability of £1.5 million. The BBC provided Ofcom with what it said was an "extract" from a "Report of Creditors' meeting" held on 14 July 2009 in respect of Mr Clarke's proposals for an "Individual Voluntary Arrangement" to support this.

g) The broadcaster said that the programme raised "legitimate questions" around Shire Leasing's due diligence processes and that Mr Clarke and Elumina were the subject of multiple legal disputes and rulings consisting of:

- Claims against Elumina/Mr Clarke which were brought by ProLink²;
- A dispute with a significant Chinese investor;
- Employment tribunals involving claims by six former employees³;
- Claims brought against Mr Clarke by a number of companies for non-payment including to HM Revenue and Customs; and
- Legal action against Elumina in Spain.

The BBC said that, given this pattern, it was reasonable for the programme to pose the question as to whether Shire Leasing should have done business with Elumina.

h) In response to Mr Clarke's assertion that Mr Xaio had signed a contract with a separate company which Mr Clarke was not involved in, Elumina Iberica SA, the BBC said that the programme makers had documents which showed that the shareholders of Elumina were Elumina Iberica SA and Mr Clarke. The BBC said that this showed a direct connection between Elumina and Elumina Iberica SA. It provided Ofcom with what it said was an "extract" from ProLink's accounts filed in the United States in support of this. In the "extract", Elumina Iberica SA, Elumina and GP Ads were referred to together as the "Elumina Entities".

i) In response to Mr Clarke's assertion that it was incorrectly stated on the programme that Elumina owed DNA Technologies £140,000 to £150,000, the BBC said that, with interest and associated other costs, including stock which had been acquired by DNA Technologies, the amounts quoted in the programme were accurate. It said that DNA Technologies was forced into liquidation. It also provided Ofcom with a bankruptcy petition filed on the 26 January 2011 which stated that Mr Clarke owed DNA Technologies £132,821.62 for goods supplied and indicated that this figure included "invoice value, legal fees, two years' interest at 8% and loan interest".

The BBC said that the programme makers wrote to Mr Clarke inviting him to contribute to the programme and giving him due notice of the issues to be put to him, with sufficient time for him to exercise a right to reply. It said that the programme makers had not received any reply to the initial invitation from Mr Clarke or his representatives. The BBC said that, in its view, there was a clear public interest in eliciting a response from Mr Clarke. Therefore, a proposal to doorstep him was agreed as editorially justified by a senior BBC editorial figure. It

² The BBC provided Ofcom with a copy of a letter dated 5 March 2008 addressed to Mr Clarke from ProLink about the claim. It also provided Ofcom with a copy of a court judgment dated 8 July 2009 from the United States District Court of Arizona ruling against Mr Clarke and awarding damages to ProLink.

³ The BBC provided Ofcom with a copy of a judgment ruling against Mr Clarke by the Employment Tribunal on 23 February 2009.

said that Mr Clarke's response to the programme makers visit was to deny his identity, as could be heard on the programme.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr Clarke's complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View. The parties' representation, insofar as they are relevant to the complaint entertained and considered by Ofcom, are summarised below.

Complainant's representations

In response to head a) Mr Clarke said that the BBC had only provided Ofcom with a letter from the Bank of Scotland Equipment Finance's solicitors to justify its position. Mr Clarke provided Ofcom with an example of a settlement deed signed by the Bank of Scotland and a golf club.

Mr Clarke said that all parties accepted that the Bank of Scotland had written off the respective leases. Mr Clarke said that at no point had the Bank of Scotland stated that this was a "failed lease" and he referenced a part of the settlement deed entitled "No Admission" which he said contradicted the statement that it was a "failed lease". He added that the Bank of Scotland had never provided any explanation as to the reason it had issued settlement deeds to the various golf clubs.

Mr Clarke also referred to part of the Bank of Scotland's statement included in the programme: *"The vast majority of these agreements were assigned to us by Shire Leasing Plc and Bank of Scotland Equipment Finance was not in any way connected to advertising deals with individual golf clubs"*. Mr Clarke said that this statement did not explain the reason the Bank of Scotland decided to write off the debt. He said that the Bank of Scotland were instead "confirming the contracts assigned by Shire Leasing is 'not connected' to advertising deals". In other words, he said, "they are confirming that there is no link between the leases and the advertising contract". Mr Clarke said that this statement reconfirmed the findings of court judgments which had found that the contracts offered by GP Ads to the golf clubs to buy the advertising rights were not in any way linked to the lease deals.

Mr Clarke said that the Bank of Scotland had also written off leases with golf clubs who had not taken out advertising contracts. He said that this contradicted the reason given by the BBC that the Bank of Scotland had written off the leases due to the advertising contract.

Mr Clarke also said that the Bank of Scotland had never started any legal action against him for this "alleged failed leasing deal".

The complainant also said that Elumina were approved suppliers for a number of funders who provided lease finance for the purchase of GPS screens supplied by Elumina. He said that the lease contracts were identical to the ones processed by the Bank of Scotland. However, he said that none of these funders had taken the decision to write off any of the leases and that "no other funder viewed the leases as failed". Mr Clarke said that it was unfair for the BBC to have focussed on the Bank of Scotland and to have not contacted the other funders used by Elumina.

In relation to head b), Mr Clarke said that the BBC had “confused and misled listeners to the different legal entities involved and the structure deals”. He explained that Elumina had only sold GPS screens to golf clubs; and, GP Ads was a separate legal entity and bought the advertising rights from the respective golf clubs.

Mr Clarke provided Ofcom with part of a county court judgment which he said was between a funder and one of the golf clubs who had been provided with a lease finance deal. He said that the judgment found that the advertising contract and lease agreement were not linked contracts and that they were never mis-sold. He said that the lease was found to be valid.

Mr Clarke also provided Ofcom with a letter from a golf club owner who had taken out an advertising contract with GP Ads. He said this letter clearly contradicted the BBC's version of the way the contracts were sold. He said that this golf club, as well as other golf clubs that disagreed with the BBC's version of events, had not been contacted by the BBC.

In addition, Mr Clarke referred to a Shire Lease contractual checklist which he said included a statement that all golf clubs entering into a separate agreement should check its terms carefully before signing. He said that all golf clubs had signed and agreed to this which meant they were fully aware that the advertising contract was separate to the lease agreement. He added that when GP Ads went into liquidation, the golf clubs were contacted by Elumina who offered an alternative advertising contract. It said that the structure of this new contract allowed such golf clubs to mitigate all losses incurred as a consequence of GP Ads going into liquidation. Mr Clarke referred to the same letter from a golf club owner in which the golf club confirmed that it accepted the alternative advertising contract offered by Elumina and was not forced to sign it.

Mr Clarke said that the BBC programme had confirmed that “any money is owed by GP Ads Ltd”. In particular, he referred to the solicitor's comment “*when they [GP Ads] didn't pay, we issued legal proceedings against them to recover the money*” and the reporter had stated “*Patrick Battersby's law firm had started legal proceedings against GP Ads Limited for £1 million*”. Mr Clarke said that listeners would have formed the view that it was “probable” that Elumina customers would be millions of pounds out of pocket, which was not the case. Mr Clarke also said it was false for the reporter to have claimed “*Elumina customers are likely to have been millions of pounds out of pocket*” when it was accepted by all parties that the Bank of Scotland had written off the outstanding amounts owed on the leases by the golf clubs.

Mr Clarke provided an example of a golf club which had taken out an advertising contract. He said that any outstanding amounts owed on the leases by the golf clubs were written off 18 months prior to the broadcast of the programme and the golf clubs did not owe any money. Therefore, Mr Clarke said, the golf clubs could not have been “*millions of pounds out of pocket*” since any amount owed on the leases had previously been written off by the Bank of Scotland. For the same reasons, Mr Clarke also said it was incorrect to state “*and he was facing questions from irate golf club owners who owed many thousands of pounds because the ad revenue Clarke's sales reps had promised, failed to arrive*”. Mr Clarke said that the golf clubs now had GPS screens installed which they had only paid a “fraction for” because any outstanding balance had been written off; and, they had the right to sell their advertising rights to a competitor. He said that the golf clubs were “far from irate” and Mr Clarke, or any of the other legal entities, could not owe “thousands of pounds” as no money was outstanding.

Mr Clarke said that any money owed to the golf clubs was by GP Ads as a separate legal entity, not Elumina. Mr Clarke also said that it had been proven in court that he was not connected to GP Ads. Mr Clarke said that the report stated as fact that he was responsible for GP Ads' debts. Mr Clarke said that the evidence the BBC sought to rely upon, i.e. statements made by some of the golf clubs, did not support the assertion that Mr Clarke was in any way liable for the debts. Mr Clarke said that Mr Richard Selby, a Director of GP Ads, was found in court to be the sole director of GP Ads. He added that all GP Ads contracts were negotiated, authorised and signed by Mr Selby.

In relation to head c), Mr Clarke said that it was proven in court that the advertising contracts were not linked and had not been mis-sold and he referred to documentation he had supplied in response to head b).

In relation to head d), Mr Clarke said that Mr Moore and Mr Selby had provided different statements to the one supplied to the BBC. Mr Clarke said that in 2008, Mr Moore and Mr Selby had made statements in their police interviews about their respective roles in GP Ads. In particular, that Mr Selby was in charge of GP Ads Ltd and that Mr Moore was not involved in selling advertising. He said that during these interviews, no statements were made about him by either Mr Moore or Mr Selby. Mr Clarke said that in 2010, Mr Moore began making a number of false allegations against him. Mr Clarke said that the claims being made by Mr Moore and Mr Selby should have been investigated further as each had their own motivations behind making the claims about him.

In relation to head e), Mr Clarke provided a document to Ofcom which he said was between Shire Leasing and a golf club. He said that this exemplified the due diligence process carried out by Shire Leasing with each customer and that there was no involvement of Elumina in this process. Mr Clarke said that it was inaccurate for Mr Moore to state that Elumina would offer the golf club a lease agreement. He added that Mr Moore had an ulterior motive for making this statement. Mr Clarke said to state that the leases were between Elumina and the golf clubs, suggested that Elumina was being paid monies as part of a finance agreement.

In relation to head h), Mr Clarke said no distinction was made between Elumina and Elumina Iberica SA which was a separate limited company. Mr Clarke said that as he was referred to as a sole trader in the programme, viewers would have understood that the contract was between Mr Xaio and Elumina, when in fact, it was made with a separate legal company called Elumina Iberica SA.

Mr Clarke said it was false for the BBC to state that it had documentation which showed the shareholders of Elumina were Elumina Iberica SA and Mr Clarke. Mr Clarke said that Elumina Iberica SA was the sole shareholder of Elumina Iberica UK Ltd, not Elumina. He said that there were no documents which showed Mr Clarke was at any point a shareholder or director of Elumina Iberica UK Ltd. Mr Clarke said that, in any case, Elumina Iberica UK Ltd was not involved in the deal with Mr Xaio. This deal was between Elumina Iberica SA and Mr Xaio.

Mr Clarke said that Elumina Iberica SA was a limited company and Mr Mark Smart was its sole director.

Mr Clarke said the way in which ProLink had referred in its accounts to Elumina entities was irrelevant as it was a term derived by ProLink. He added that the acquisition agreement referred to the purchase of all four legal entities but that should not detract from the fact

that they were all separate legal entities with different shareholders and directors. Mr Clarke said it was unfair for the BBC not to clarify to listeners the correct entity it was referring to.

Mr Clarke provided Ofcom with a signed contract which he said was between Mr Xaio's company and Elumina Iberica SA, and subsequently, by Mr Smart. Mr Clarke said that the programme made no distinction between Elumina Iberica SA and Elumina nor did it make reference to Mr Smart. Instead, Mr Clarke said, listeners would have understood that he was being pursued for \$800,000 which was not the case. Mr Clarke said that a shareholder cannot legally be pursued for a debt owed by a limited company and it was unfair for the BBC to make such a statement. Mr Clarke said that the BBC had failed to substantiate Mr Xaio's claims that he was pursuing a debt against Mr Clarke.

Mr Clarke provided Ofcom with a letter from Mr Smart addressed to Mr Xaio which he said was evidence that Mr Xaio was aware that any legal disputes were with Elumina Iberica SA and not Mr Clarke. Mr Clarke added that Mr Xaio never pursued him for any monies owed.

In relation to head i), Mr Clarke said that the BBC had failed to establish Mr Cotterill's credibility as a contributor. Mr Clarke added that the document the BBC had relied upon had been completed three years after business dealings had concluded with Elumina and the BBC had failed to request any further corroborating evidence from Mr Cotterill. Mr Clarke said that there was no validity in Mr Cotterill's claim and that no money was owed.

In relation to whether he was provided with an appropriate opportunity to respond, Mr Clarke said that the programme makers were fully aware of his arrest and that he would not be able to respond to any request to respond to the allegations raised in the programme. He added that all the documentary evidence that Mr Clarke sought to rely upon to refute the claims being made about him were not available to him in January 2012 as it had been seized by the police and was not returned to him until 2013.

Broadcaster's representations

The BBC said that it had already demonstrated in its earlier submissions that what the programme reported was based soundly on written evidence previously supplied to Ofcom. It added that nothing in the new material Mr Clarke had produced altered its belief that the programme was fair and accurate in its portrayal of the events at the time. The broadcaster also said that at the time of production, the programme makers were not aware of Mr Clarke's arrest. It added that Mr Clarke's lawyers made no mention of any arrests or of any specific contempt issues despite having the opportunity to do so in their communication with the BBC. It also said that in its view it was inconceivable that it would not have been raised had it been a genuine concern seven years ago.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which

regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

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

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

In considering the complaint that Mr Clarke was treated unjustly or unfairly in the iPlayer programme because it included allegations which were "hugely damaging" to his reputation, Ofcom had particular regard to the following practices of the Code:

Practice 7.9 states:

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

Practice 7.12 states:

"Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair to do so".

It is important to emphasise that Ofcom is unable to make findings of fact about the claims made about Mr Clarke in the programme. Our role is to consider whether, by broadcasting the claims in the programme, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to Mr Clarke. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they were presented in the programme.

We considered each of the sub-heads in turn in deciding whether Mr Clarke was treated unfairly in the programme.

- a) We first considered whether the programme caused unfairness to Mr Clarke by incorrectly describing the matter as a "failed leasing deal".

As set out in detail above in the "Programme summary" section above, the programme explained that the Bank of Scotland had "*written off £2 million worth of debts*" owed by a number of golf clubs in the UK, after it became aware that they "*were unwitting victims of a deal gone wrong*". Mr Clarke said in his complaint that it was incorrect for the programme to refer to the matter as a "*failed leasing deal*" because "*there was no reason for the Bank of Scotland to write off these balances*".

However, as confirmed by Mr Clarke in his representations on the Preliminary View, he did not dispute the fact that the Bank of Scotland had taken the decision to write off the outstanding balances owed on the leases by the golf clubs. We took into account Mr Clarke's representations that the Bank of Scotland had itself never described it as a "failed leasing deal" and that the Bank of Scotland had not provided, in its statement to the programme, a reason for writing off the debts. However, Ofcom considered that both the history of the lease agreement, and the reason behind the Bank of Scotland's decision to write off the outstanding debts owed by the golf clubs was clearly set out in the programme. It explained that the golf clubs had originally signed a lease agreement in order to pay for GPS equipment for their golf buggies supplied by Elumina, while at the same time signing a contract with GP Ads which meant that revenue from advertising shown on the screens of the GPS equipment would meet "*virtually all of the rental cost*" of the equipment itself. It was explained that the deal started to go wrong after the golf clubs discovered that "*their outgoing payments on the leases were falling due, but the incoming advertising revenue from a company called GP Ads Limited wasn't being paid*". It also explained that, after legal proceedings were issued against GP Ads by a number of the golf clubs, the company went into liquidation. We considered that listeners would likely have understood from the explanation of the matter in the programme that the reason the lease agreement had "*gone wrong*" was because, once GP Ads went in to liquidation, those golf clubs who had relied on the advertising revenue from GP Ads to meet the cost of the equipment itself were left unable to make the monthly payments on those lease agreements. The programme also included a statement from the Bank of Scotland itself, which explained its reason for writing off the outstanding debt:

"We carried out a full review of the Elumina case and made a decision not to enforce a series of leasing agreements we had in place with a number of golf clubs. The vast majority of these agreements were assigned to us by Shire Leasing Plc and Bank of Scotland Equipment Finance was not in any way connected to advertising deals with individual golf clubs".

Taking this into account, Ofcom considered that listeners were provided with sufficient information to be able to understand and form their own view on the lease agreements and whether they amounted to "failed leasing deal[s]".

We also took into account the fact that Mr Clarke was given the opportunity to respond to the claims made about the lease agreements and the connection between Elumina and GP Ads in the programme. On 4 January 2012 the BBC wrote to Mr Clarke, requesting an interview with him for inclusion on the programme. The letter explained the BBC's intention to broadcast a programme looking at "the leasing of equipment for golf buggies which was distributed by a company called Elumina". It stated that the programme makers had spoken to "many golf club owners" who claimed to have "lost a

lot of money" and had "legitimate questions about these leasing deals which they claim were mis-sold". The letter also stated that the BBC had spoken to "former employees of Elumina and GP Ads" which it alleged was a "sister company of the Elumina Group". Having received no response to its initial letter, the BBC explained that the programme makers decided to visit Mr Clarke's home in order to "elicit a response" from him in relation to the allegations.

We also considered that Mr Clarke's decision not to participate in the programme was made clear by the reporter, who said during the programme that the BBC had written to Mr Clarke "*but had no response*". The reporter also explained that he had "*come to where Kevin Clarke lives*" before knocking on a door and asking, "*are you Kevin Clarke?*". Mr Clarke could be heard saying "*er, no sorry*" before the reporter stated, "*you look like Kevin Clarke. Excuse me, Mr Clarke, Mr Clarke, there are lots of people who would like to hear what you've got to say*". The reporter went on to explain to listeners that Mr Clarke had "*shut the door on us and does not appear to want to have an interview with us this afternoon*". He also said that "*the following day Kevin Clarke's lawyer confirmed that he wouldn't be speaking to the BBC*".

We noted Mr Clarke's view, that he was not in a position to respond to the claims being made about him and that the BBC were aware that he was not in a position to respond. However, we also note the BBC's representations that, at the time it was making the programme, the only concern that had been raised by Mr Clarke was that the allegations against him were false and defamatory, and that it had not been informed that Mr Clarke believed his participation in the programme might prejudice ongoing legal proceedings.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Clarke.

- b) Ofcom next considered whether the programme caused unfairness to Mr Clarke by incorrectly stating that Elumina customers were left "*out of pocket*". Mr Clarke said that it was former GP Ads' customers who were "*out of pocket*".

As set out in detail above in the "Programme summary" section above, the programme's reporter stated that "*Elumina's customers are likely to have been millions of pounds out of pocket*".

In considering this head of Mr Clarke's complaint, Ofcom took into account Mr Clarke's representations that Elumina and GP Ads were separate legal entities and that any money owed was by GP Ads, not Elumina.

However, we also took into account the examples provided by the BBC alongside its response, which included a letter to Greetham Valley Golf Club from Elumina's Sales Director, Mr Moore. The letter referred to a "welcome pack" which included a copy of the contract for the lease agreement, a copy of the contract for the advertising revenue with GP Ads and invoicing details for the advertising revenue. In Ofcom's view, this letter appeared to demonstrate that Elumina had provided Greetham Valley Golf Club (one of its customers) with the advertising contract with GP Ads and invoicing details for the advertising revenue which GP Ads would pay to the golf club. This appeared to suggest that at least some of GP Ads customers were also the customers of Elumina.

Additionally, it was made clear to listeners that a number of customers who had purchased GPS equipment from Elumina had signed *"two separate contracts"*, one of which was advertising contract with GP Ads to contribute to them being able to meet the monthly cost of the lease agreement for the GPS Equipment itself. The programme also explained that, after a law firm acting on behalf of 15 of the golf clubs had issued legal proceedings against GP Ads in relation to the non-payment of advertising revenues, GP Ads went into liquidation. In Ofcom's view, this explanation provided listeners with sufficient information to understand that those Elumina customers who were likely to be *"out of pocket"* were those who had also opted to sign an advertising contract with GP Ads and had relied on the advertising revenue from GP Ads in order to meet the monthly costs of the lease agreement for the GPS Equipment. Also, that the reason for this was because GP Ads had gone into liquidation, leaving the advertising revenues due to those who had signed contracts with GP Ads unpaid.

Additionally, Mr Clarke was given the opportunity to respond to the claims made about the lease agreements and the connection between Elumina and GP Ads in the programme (as detailed above at head a)). On 4 January 2012, the BBC wrote to Mr Clarke, explaining that *"many golf club owners whom the BBC have spoken to say they lost a lot of money and have legitimate questions about these leasing deals which they claim were mis sold"*. The letter also stated that the BBC had spoken to *"former employees of Elumina and GP Ads"* which it alleged was a *"sister company of the Elumina Group"*. Mr Clarke decided not to participate in the programme or provide a statement outlining his position in relation to the matter, and (as detailed above at head a)) this was subsequently made clear to listeners on the programme.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Clarke.

- c) We next considered Mr Clarke's complaint that the programme unfairly stated that the advertising revenue, which golf clubs may have expected from their contracts with GP Ads, had been guaranteed by the Elumina salesman. He said that the salesman did not promise the rental would be met by advertising payments.

As set out in detail above in the *"Programme summary"* section above, the programme's reporter explained that Mr Smith, a customer who had purchased GPS Equipment from Elumina and also signed an advertising contract with GP Ads, had been *"reassured by the fact that the advertising revenue was being guaranteed"* by Elumina's salesman. The reporter also stated in the programme that Mr Clarke had been *"facing questions from irate golf club owners who owned many thousands of pounds because the ad revenue Clarke's sales reps had promised, failed to arrive"*.

Ofcom considered the claim that the advertising revenue from GP Ads had been *"guaranteed"* or *"promised"* to customers by Elumina's salesman had the potential to materially and adversely affect listeners opinions of Mr Clarke. This is because it implied to listeners that Elumina and GP Ads were in some way connected and suggested that Elumina was giving false assurances to customers about the payment of advertising revenue, in order to sell them GPS equipment they might not otherwise have purchased.

In the BBC's response to the complaint, the BBC explained that, in making this claim, it had drawn on information obtained from former Elumina employees and customers who

all asserted that, while Elumina's customers might have signed two contracts, these were presented by Elumina as a "package". The BBC said that it had "written evidence" which demonstrated that the costs of the lease contract would be met by GP Ads and that, in the event of the advertising revenue failing to reach the required target, the shortfall would be covered by Elumina.

We took into account Mr Clarke's representations that the advertising contracts were not linked and had not been mis-sold. However, we also took into account a copy of a "Long Term Advertising Contract" provided to Ofcom by the BBC between GP Ads and Stockwood Vale Golf Club dated 14 February 2007, which appeared to state that GP Ads would guarantee the club a "minimum performance provision" amount equal to that of the lease payments for the GPS Equipment for a minimum period of 36 months from the lease agreements inception. Additionally, a letter from Stockwood Vale Golf Club to Elumina dated 3 June 2008, stated that a previous agreement between the club and Elumina had stipulated that, in the event of a breach of contract between GP Ads and the club, attributable to GP Ads and resulting in the non-payment of the monthly advertising revenue to the club, Elumina "undertakes to directly pay the customer in lieu of GP Ads any monthly advertising fees that are due from the date of the aforementioned breach". In Ofcom's view, these documents appeared to suggest the BBC had some basis on which to make the claim that the advertising revenue had been guaranteed to customers by Elumina at the time the programme was broadcast.

We also took into account the fact that Mr Clarke was given the opportunity to respond to the claims made about lease agreements and the connection between Elumina and GP Ads in the programme (as detailed above at head a)). On 4 January 2012, the BBC wrote to Mr Clarke, explaining that "many golf club owners whom the BBC have spoken to say they lost a lot of money and have legitimate questions about these leasing deals which they claim were mis sold". The letter also stated that the BBC had spoken to "former employees of Elumina and GP Ads" which it alleged was a "sister company of the Elumina Group". Mr Clarke decided not to participate in the programme or provide a statement outlining his position on the matter, and (as detailed above at head a)) this was subsequently made clear to listeners in the programme.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Clarke.

- d) Ofcom considered whether the inclusion of the statement that Mr Clarke was "never officially a director of GP Ads Ltd" unfairly suggested to listeners that Mr Clarke was an "unofficial director of GP Ads Ltd and/or involved in the formation, promotion or management of GP Ads Ltd".

Ofcom took into account the fact that, as set out in detail above in the "Programme summary" section above, the programme's reporter said in the programme that Mr Clarke "*was never officially a director of GP Ads Limited*". However, we also took into account the fact that the reporter went on to explain that "*many, who were there at the time though, say that Kevin Clarke was its guiding hand*".

We took into account Mr Clarke's representations that Mr Selby and Mr Moore had changed the statements they had originally made about his involvement. However, it is not for Ofcom to make findings of fact as to the credibility of contributors who are

featured in a programme. Instead, it is for Ofcom to consider whether or not the broadcaster has exercised reasonable care in satisfying itself that material facts have been presented fairly. In relation to Mr Selby and Mr Moore, we considered that viewers would have understood that they were expressing their own views about Elumina, based on their experience of the company. It was therefore our view that the programme had a reasonable basis for including their contribution in the programme. We therefore went on to consider the seriousness of the claim being made by them and whether it had the potential to materially and adversely affect viewers' opinions of Mr Clarke in a way that was unfair.

In Ofcom's view, listeners were not likely to have understood the reporter's statement to be an allegation, in itself, that Mr Clarke was an "unofficial director of GP Ads Ltd and/or involved in the formation, promotion or management of GP Ads Ltd". In our view, the reporter's statements made clear to listeners that although Mr Clarke had never officially been a director for GP Ads, allegations had been made by some people that he was in fact the company's "guiding hand". This was illustrated by the inclusion of a statement from Mr Selby, the former director of GP Ads, who claimed that Elumina was the "parent company" of GP Ads; that Mr Clarke was the "owner and the boss" of both Elumina and GP Ads; that he "funded both businesses"; and, that there was a "hand-in-hand" business relationship between the two companies. It was further illustrated by the statement from Mr Moore, the former Sales Director at Elumina, who said that "Elumina and GP Ads was Kevin's baby, he developed the companies, it was his idea, and it was all down to Kevin".

In addition, and already set out above in head b), we considered that Mr Clarke was given the opportunity to respond to the claims made about the connection between Elumina and GP Ads in the programme, and that it was Mr Clarke who decided not to participate in the programme or provide a statement outlining his position in relation to the matter (as detailed above at head a)). In our view, this was subsequently made clear to listeners in the programme.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Clarke.

- e) We next considered Mr Clarke's complaint that the programme incorrectly said that the golf clubs had signed leases with Elumina, when, in fact, all leases were signed directly with Shire Leasing.

As set out in detail above in the "Programme summary" section above, the programme's reporter stated that the Bank of Scotland was pursuing the golf clubs who had "signed leases with Elumina" to recover money they owed on the lease agreements.

In considering this element of Mr Clarke's complaint, Ofcom took into account a letter addressed to Greetham Valley Golf Club from Elumina's Sales Director, which was provided to Ofcom by the BBC alongside its response to the complaint. The letter appeared to refer to a "welcome pack" which included a copy of the contract for the lease agreement with Shire Leasing, a copy of the contract for the advertising revenue with GP Ads and invoicing details for the advertising revenue. The BBC said that this letter demonstrated that the leases were sold by Elumina to the golf courses as part of a package which "included the lease contract alongside the advertising contract".

In his complaint, Mr Clarke stated that Elumina was an “approved supplier of Shire Leasing” and that “each lease taken out by an individual golf course was approved by Shire” after it had carried out the relevant checks. In our view, this relationship between Elumina and Shire Leasing was clearly set out on the programme by Mr Moore, who explained that the Elumina’s salesmen “*would go in and offer the golf club a lease agreement for X amount of pounds per month for the system...that agreement then is taken by us, it was given to Shire Leasing and then what Shire Leasing do, as a broker, they will back it off into different banks or different funding organisations*”. We considered that listeners were likely to have understood from this explanation that Shire Leasing was the “*broker*” of the lease agreement by which the golf clubs had chosen to pay for the GPS equipment supplied by Elumina, and, therefore, that the contract for the lease agreement would have been between Shire Leasing and each individual golf club.

We therefore considered that the programme provided listeners with sufficient information to enable them to understand and form their own view on the relationship between Elumina and Shire Leasing.

Also, and as already set out above in head b), we considered that Mr Clarke was given the opportunity to respond to the claims made about the connection between Elumina and GP Ads in the programme, and that it was Mr Clarke who decided not to participate in the programme or provide a statement outlining his position in relation to the matter (as detailed above at head a)). In our view, this was subsequently made clear to listeners in the programme.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Clarke.

- f) We went on to consider Mr Clarke’s complaint that the programme implied that because he had previously been disqualified as a company director in an unconnected incident, there was “something untoward happening at Elumina”. In particular, Mr Clarke said that it was unfair for the programme to state that he was able to “sidestep the ban”. Mr Clarke said that he was legally able to operate as a sole trader, despite his disqualification.

As set out in detail above in the “Programme summary” section above, the reporter stated on the programme that “*In 2002, he [Mr Clarke] had been disqualified as a company director*”. It also said that “*by operating Elumina Iberica, and its various Elumina offshoots, as a sole trader, he [Mr Clarke] was able to sidestep the ban on acting as a company director*”.

We took into account the BBC’s response to Mr Clarke’s complaint, in which it said that it was a matter of public record that Mr Clarke had been disqualified as a company director for seven years in 2002 and that the programme “did not say that Mr Clarke had broken the law”. The BBC added that the clear intention of the ban was to prevent Mr Clarke taking company directorships, yet he was able to continue to take an active role in running businesses. In this context, it said that the term “sidestepped the ban” was a valid journalistic summary of the situation.

Mr Clarke did not dispute the fact that he had been disqualified as a company director in his complaint, explaining that he “*took legal advice on many different occasions from*

solicitors and barristers regarding my disqualification undertaking and I was 100% able to operate legally as a sole trader. I didn't side step anything as I traded properly in the correct manner and legal framework available to me at the time". In Ofcom's view, listeners were not likely to have understood the statement that Mr Clarke had been able to *"sidestep the ban on acting as a company director"* as an allegation, in itself, of wrongdoing on Mr Clarke's part. Rather, we considered that listeners would have understood that, despite having been disqualified as a company director, Mr Clarke was still able to legally operate Elumina by trading as a sole trader.

Additionally, we considered that the reasons behind Mr Clarke's previous disqualification as a company director were clearly set out by the reporter in the programme, who said that he had been disqualified *"for a range of offences, including publishing distorted and inaccurate accounts"*. Ofcom therefore considered that the programme provided listeners with sufficient information to understand and make up their own minds about Mr Clarke and his operation of Elumina as a sole trader despite being previously disqualified as a company director.

Further, Mr Clarke was given the opportunity to respond to the claims made about his involvement with both Elumina and GP Ads programme (as detailed above at head a)). On 4 January 2012 the BBC wrote to Mr Clarke, explaining that it was *"looking at the leasing of equipment for golf buggies which was distributed by a company called Elumina, a business we understand you ran on a day-to-day basis"*. The letter also said that the BBC had spoken to *"former employees of Elumina and GP Ads, a sister company of the Elumina Group, which the BBC understands you also ran"*. Mr Clarke decided not to participate in the programme or provide a statement outlining his position in relation to the matter, and (as detailed above at head a)) this was subsequently made clear to listeners in the programme.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Clarke.

- g) We next considered the complaint that the programme unfairly said that full due diligence had not been carried out on Mr Clarke and suggested that had it been conducted correctly, Shire Leasing would not have involved itself with Mr Clarke in view of his disqualification as a director.

As set out in the "Programme summary" section above, Mr Moore, Elumina's Sales Director, stated on the programme that *"ultimately, we've all since found out that, at the time, Kevin was a disqualified company director, so that should have been picked up with their [Shire Leasing's] searches"*. However, we also took into account the fact that the programme included a statement from Shire Leasing itself, which clarified that *"Shire did carry out due diligence, as well as attending joint meetings with Kevin Clarke, Pro-Link and the Bank of Scotland"*. In Ofcom's view, this statement from Shire Leasing made clear to listeners that it did carry out due diligence on Mr Clarke and therefore would likely have been aware of the fact that Mr Clarke had been disqualified as a company director. The statement also explained that *"Kevin Clarke was known to Shire from a previous successful trading relationship"*. Therefore, we considered that listeners would likely have understood that Shire Leasing had chosen to continue to involve itself with Mr Clarke despite his disqualification, on the basis that it had previously had a

“successful trading relationship” with him. Therefore, Ofcom did not consider that there was any unfairness to Mr Clarke in this respect.

- h) We considered the complaint that the programme incorrectly said that Frank Xaio had signed a contract with Elumina, when in fact, the contract was with a separate company, Elumina Iberica SA, which Mr Clarke was not involved with.

As set out in detail above in the “Programme summary” section above, the reporter stated on the programme that Mr Clarke *“was being pursued for \$800,000 by a Chinese company”* and that *“Shanghai businessman Frank Xaio is still waiting for the delivery of 800 golf buggy screens that he paid a substantial deposit for three years ago”*. Mr Xaio then explained on the programme that *“[w]e paid 800,000 US dollars into the bank. We were expecting a delivery of 800 units but delivery was never done until now; and we asked for the refund of the money, a return, but this never happened”*.

Ofcom considered whether or not the broadcaster had a reasonable basis on which to make the claims at the time of broadcast. In doing so, we took into account Mr Clarke's representations on Ofcom's Preliminary View, that no distinction had been drawn between Elumina and the separate company, Elumina Iberica SA, so that viewers would have incorrectly understood that Mr Xaio had contracted with Elumina.

However, we also took into account the fact that, in response to Mr Clarke's assertion that Mr Xaio had signed a contract with a separate company which Mr Clarke was not involved in, Elumina Iberica SA, the BBC said that the programme makers had documents which showed that the shareholders of Elumina were Elumina Iberica SA and Mr Clarke. The BBC said that this showed a direct connection between Elumina and Elumina Iberica SA. It also provided Ofcom with what it said was an “extract” from ProLink's accounts filed in the United States in support of this. In the “extract”, Elumina Iberica SA, Elumina and GP Ads were referred to together as the “Elumina Entities”. We also took into account the fact that Mr Clarke did appear to have some knowledge of the agreement between Elumina Iberica SA and Mr Xaio, having explained in his complaint to Ofcom that *“Mr Xaio is quite well aware that notices of legal proceedings were issued by Elumina Iberica SA against GPS Media for breach of contract and compensation for losses of profits in 2008 in the region of \$6 million. A copy of the documentation can be provided on request”*. Mr Clarke also offered to provide a copy of the contract between Elumina Iberica SA and Mr Xaio's company, GPS Media.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Clarke.

- i) We next considered Mr Clarke's complaint that the programme had incorrectly said that Elumina owed DNA Technologies £140,000-£150,000.

As set out in detail above in the “Programme summary” section above, the reporter stated that *“Dave Cotterill says he is £140,000 out of pocket after dealing with Elumina”*. Mr Dave Cotterill, the owner of DNA Technologies, explained that dealing with Elumina had a *“profound impact”* on his business and, that *“there were losses amounting to between £140,000-£150,000”* Mr Cotterill explained that this was *“the initial scale of the loss”* but that *“the ultimate scale of the loss is that the company could not survive that particular hit. The company went into liquidation in March 2011”*.

We took into account Mr Clarke's representations on Ofcom's Preliminary View, that Mr Cotterill was not credible. However, and as set out above, it is not for Ofcom to make findings of fact on the credibility of contributors who feature in a programme. Instead, it is for Ofcom to consider whether or not the broadcaster has exercised reasonable care in satisfying itself that material facts have been presented fairly. In relation to Mr Cotterill, we considered that viewers would have understood that he was expressing his own views about Elumina, based on his experience of the organisation as a customer. It was therefore our view that the programme had a reasonable basis for including his contribution in the programme. We therefore went on to consider the seriousness of the claim being made by Mr Cotterill and whether it had the potential to materially and adversely affect viewers' opinion of Mr Clarke in a way that was unfair.

The BBC stated in its response to Mr Clarke's complaint that, with interest and associated other costs, including stock which had been acquired by DNA Technologies, the amounts quoted in the programme were accurate. The BBC provided Ofcom with a bankruptcy petition filed on 26 January 2011 which stated that Mr Clarke owed DNA Technologies £132,821.62 for goods supplied. The broadcaster added that the figure included "invoice value, legal fees, two years' interest at 8% and loan interest".

In Ofcom's view, while it was clear from these statements that Mr Cotterill alleged that DNA Technologies had incurred "*losses amounting to between £140,000-£150,000*" as a direct result of dealing with Elumina, we did not consider this, in itself, amounted to an allegation that Elumina owed DNA Technologies this amount of money. For instance, the losses described by Mr Cotterill might have been incurred in various different ways as a result of DNA Technologies dealings with Elumina. However, even if the statement had amounted to an allegation that Elumina owed DNA Technologies £140,000-£150,000, this was only approximately £7,000-£18,000 more than the amount referred to in the bankruptcy petition and was not, in our view, material. Therefore, Ofcom did not consider that there was any unfairness to Mr Clarke in this respect.

Having considered heads a) to i) of Mr Clarke's complaint, and taking into particular account the fact that Mr Clarke was given an opportunity to respond to the claims made about him in the programme but chose not to do so, Ofcom's decision is that, in this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in the programme in a way that was unfair to Mr Clarke.

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

Not Upheld

Complaint by Mr Michael Hamilton *ITV News, ITV, 7 January 2019*

Summary

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

The programme included a report about a video posted online by Mr Noel Edmonds in response to an article published in The Sun newspaper about him selling his home and moving overseas following his appearance on the programme, *I'm a Celebrity... Get Me Out of Here!*. In the video, Mr Edmonds criticised the journalist (the complainant, Mr Hamilton) who had written the article. Mr Hamilton complained that he was treated unfairly in the programme, and that he was not given an opportunity to respond to the claims made about him.

Ofcom considered that the broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Hamilton, and that his position was adequately and fairly reflected in the programme.

Programme summary

On 7 January 2019, ITV broadcast an edition of its evening news programme *ITV News*. The programme included a story about Mr Noel Edmonds who had posted a video online criticising a story which had been published about him in The Sun newspaper. The article had been written by the complainant, Mr Hamilton.

The newsreader introduced the story:

"Now, Noel Edmonds has launched an extraordinary attack on The Sun newspaper after it claimed he was leaving the country 'crushed', as it said, by the public's reaction to his appearance on the ITV show 'I'm a Celebrity'. In a video rant, the TV star, who was the first to be voted out of the programme, blasted the article as disgusting lies".

A pre-recorded report was then shown. The reporter said:

"Back on our screens before Christmas. Noel Edmonds, enjoying himself and amusing viewers... He was, however, the first evicted from the series 'I'm a Celebrity'... And, apparently so 'crushed' was he by the early exit, that The Sun newspaper claims [an image of the article was shown: "I'm a Celeb Kiwi! 'Crushed' Noel plans New Zealand move"] that the presenter was selling his house and moving to New Zealand. Not so, according to an angry online rant".

A clip from Mr Edmonds' online video was then shown. He said:

"The house that I have in the UK was put on the market a couple of years ago and is now sold. And, they were told all this last week and they've still run the story that apparently, I'm going to skulk off to New Zealand. It is absolute, disgusting lies".

The reporter continued:

“Edmonds adds he loved his experience in the Australian jungle and has been inundated with work offers since. The video then ends with a direct attack on the journalist who wrote the article”.

Further footage of Mr Edmonds' video was included. He said:

“And, my personal message to Michael Hamilton, the journalist concerned who was told that it was lies, is you, sir, are the low life of British journalism. And, if there's any reason why I would go to New Zealand, it's to get away from disgusting people like you!”

The reporter concluded the report:

“In a statement, The Sun said it was unable to comment. Although, it has not heard from Noel Edmonds directly and would love to. That does now seem unlikely given he's a celebrity and staying here”.

There was no further reference to Mr Hamilton in the programme.

Summary of the complaint and broadcaster's response

Complaint

Mr Hamilton complained that he was treated unjustly or unfairly in the programme as broadcast because the programme included footage of Mr Edmonds making a “personal attack” on Mr Hamilton in which it was incorrectly stated by Mr Edmonds that he had informed Mr Hamilton about his housing situation prior to the story being published in the newspaper. Mr Hamilton said that this had the potential to cause “significant damage to his professional reputation”.

Mr Hamilton said that he was not informed that the national news programme would include the video footage and he was not given an appropriate and timely opportunity to respond to the claims being made about him. Mr Hamilton said that although ITV had asked for The Sun's response to the video, ITV did not inform The Sun that it would include the section of the video in which Mr Edmonds spoke about Mr Hamilton. He added that he should have been contacted personally about the matter as the report included a “highly personal attack on me by a celebrity which has left me open to widespread vitriol and ridicule”.

Broadcaster's response

ITV said that on 6 January 2019, a story written by the complainant, Mr Hamilton, was published on The Sun newspaper's website and in The Sun on Sunday newspaper. It said that the article reported that Mr Edmonds, was going to move abroad to New Zealand and was selling his house, because he was “crushed” by having been voted out first in the latest series of ITV's *I'm a Celebrity...Get Me Out of Here!*. It said that following The Sun's report, Mr Edmonds had taken the “unusual step” of uploading a video online, in which he complained that the report in The Sun was false and named and criticised the complainant as the author of the report. ITV said that a number of national and local news organisations had reported on Mr Edmonds' video and that the newspaper industry magazine [UK Press Gazette](#) had reported that a complaint had been lodged with the newspaper industry self-regulatory body, the Independent Press Standards Organisation, about the story. ITV added that a number of these news articles included the full

video that Mr Edmonds had posted, including references to Mr Hamilton. It said that most of the articles did not include a response from The Sun, or a response from Mr Hamilton.

ITV said that prior to broadcast, it took steps on the day of transmission to seek a response from The Sun. The broadcaster said it had phoned The Sun's press officer, seeking a statement about the video. It said that initially, the press officer had confirmed that he was aware of the video, but that he was unable to give a statement at that time. ITV said it received a call back from the press officer who said he had been trying to get hold of the "Sunday team" all day to discuss any comment but had not been able to do so. The broadcaster said that the press officer had "spoke[n] in a light-hearted manner and appeared unconcerned by the report and the approach from ITV News". The broadcaster said that it had asked for a statement again and was told by the press officer that The Sun was unable to comment, and that it had not heard directly from Mr Edmonds about the story. ITV said it was agreed with the press officer that this could be used as The Sun's statement in the report. It said that The Sun had also suggested adding the phrase "we'd love to", i.e. hear from Mr Edmonds, to the statement. The statement therefore included in the ITV News report was: *"In a statement The Sun said it was unable to comment, although it has not heard from Noel Edmonds directly, and would love to"*.

ITV said that The Sun's press officer had later phoned the ITV News desk and informed it that The Sun wanted to add to the previous statement that "Mr Hamilton is a good journalist and The Sun give him their full support". The broadcaster said that this additional statement clearly suggested that The Sun was aware that the report could include criticisms of Mr Hamilton made by Mr Edmonds as well as the criticism of the newspaper itself, and that it was responding on Mr Hamilton's behalf as well as their own behalf. ITV said that the additional comment was relayed to the team preparing the report, but that an editorial decision was taken that the first statement represented the newspaper's response to the core allegations in the video concerning the original article, and that the inclusion of this further information was not necessary.

ITV said it did not accept that Mr Hamilton was treated unfairly in the report. It said that, as set out above, prior to the broadcast, ITV had approached The Sun for comment by phone. It added that The Sun is a major news organisation with a full understanding of the requirements of news reporting, well placed to respond to media enquiries about its newspaper and its journalism.

The broadcaster said that The Sun was aware that ITV was seeking a response about Mr Edmonds' video and what was said in it, including his criticisms both of its story and the specific criticism of its journalist Mr Hamilton. It added that, at the time, The Sun would have been well aware of the content of Mr Edmonds' video. In addition, it said that the issue was already being widely reported and widely commented on social media. It also said that it was probable that other media organisations had also approached The Sun for a response. ITV said that at no point was a substantive response given about the content of the article, or the assertion that The Sun's report was inaccurate, or that Mr Edmonds had not in fact informed the newspaper and/or Mr Hamilton about his housing situation. Mr Edmonds alleged that he had contacted The Sun and Mr Hamilton about the report prior to its publication, and that The Sun simply said it had not heard from Mr Edmonds. ITV said the ITV news report had fairly reflected this disputed fact. ITV said that contrary to Mr Hamilton's assertion, The Sun was made aware that ITV was seeking a response about all issues relating to the video, including what was said about Mr Hamilton. It said that when The Sun's press officer told ITV News he had been trying to get hold of the "Sunday team", it understood that this would include Mr Hamilton himself, whose article was at the heart of the dispute.

The broadcaster said that it was not indicated nor suggested by The Sun that ITV should or must approach Mr Hamilton independently for his own comment, or that the press officer at The Sun was speaking only on behalf of the newspaper, rather than the newspaper and its journalist i.e. Mr Hamilton. The broadcaster said it was reasonable for it to approach The Sun for a response to all of the criticisms about the article in the video. It said that Mr Edmonds' criticisms of Mr Hamilton were about his professional capacity as a journalist at The Sun, for which his employer was contacted for comment and its response was reflected fairly in the broadcast report. It added that had The Sun asked it to contact Mr Hamilton directly, it would have duly contacted him.

ITV said that while in hindsight it regretted that the supplemental comment by The Sun about Mr Hamilton was not included in the report, ITV did not consider that its omission constituted unfairness to Mr Hamilton. It said it believed the broadcast fairly reflected The Sun's response to the focus of the ITV News report, i.e. Mr Edmonds' claims that The Sun article was false, and the true position had been made clear to The Sun prior to publication. ITV said that the decision not to include the additional comment was a matter of editorial discretion. In particular, it said that not all responses, or the totality of them, have to be included in a broadcast report, and judgements have to be made as to what is material to include in a report in a fast-moving news environment.

ITV also said that a decision by The Sun to remove the online article suggested that it did not stand by the accuracy of the original report, whether or not it supported its journalists and considered that Mr Hamilton was a good one. It added that it was not aware that The Sun or Mr Hamilton had ever asserted that the original article about Mr Edmonds was in fact true, following the release of Mr Edmonds' video.

The broadcaster said that in terms of tone, the ITV News report did not take sides on this controversy and the dispute between Mr Edmonds and The Sun and Mr Hamilton. ITV said the tone of the report was relatively light-hearted, but that it did describe Mr Edmonds' video as "*an extraordinary attack on The Sun newspaper*", "*a video rant*", an "*angry online rant*" and that he "*blasted the article*" and made a "*direct attack on the journalist*". ITV said that Mr Edmonds' video footage was self-evidently an emotive expression of his own opinion, and his hurt feelings about what he asserted was a false article. It said that the programme in no way endorsed the allegations Mr Edmonds made against The Sun or its journalist.

ITV concluded that it considered that as a professional journalist, writing stories about celebrities in a national tabloid newspaper, the complainant was likely to be used to public criticism from celebrities from time to time in response to such stories.

Preliminary View

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

Decision

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

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

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

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

Ofcom considered Mr Hamilton's complaint that he was treated unjustly or unfairly in the programme because the programme included footage of Mr Edmonds making a "personal attack" on Mr Hamilton in which it was incorrectly stated by Mr Edmonds that he had informed Mr Hamilton about his housing situation prior to the story being published in the newspaper and that he was not given an appropriate and timely opportunity to respond to the claims being made about him.

Practice 7.9 states:

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

Practice 7.11 states:

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

Practice 7.13 states:

"where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner".

Ofcom recognises broadcasters' right to freedom of expression and the public interest in allowing them to broadcast programmes on matters of interest to viewers freely. However, in presenting material in programme, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to people or organisations in programmes. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to a person or organisation will depend on all the particular facts and circumstances of the case including the seriousness of any allegations and the context within which it was broadcast.

As set out in the "Programme summary" above, the programme included a story about a video Mr Edmonds had posted online in which he criticised an article which had been published about him in The Sun newspaper and which he said had included false information. It was within this context that Mr Edmonds had referred to the complainant, Mr Hamilton, who had written the article, and said, "*my personal message to Michael Hamilton, the journalist concerned who was told that it was lies, is you, sir, are the low life of British journalism. And, if there's any reason why I would go to New Zealand, it's to get away from disgusting people like you!*" A statement from The Sun newspaper was then included.

We carefully considered the content of the report and we took the view that ITV's audience was likely to have understood from Mr Edmonds' comments that Mr Hamilton was aware that the information included in the article he had written about Mr Edmonds was false. In our view, given that Mr Hamilton is a journalist, any claim that he had knowingly written, and had published, an article which included false information, had the potential to materially and adversely affect viewers' opinions of him. We went on to consider the context in which the comments were made to assess whether it resulted in unfairness to Mr Hamilton.

We recognised that, as a journalist, Mr Hamilton's work could be criticised, particularly by the people he may have written about. However, that did not negate the need for ITV to have ensured he was not subject to unjust or unfair treatment. We considered that viewers were likely to have understood that ITV was reporting on the story about Mr Edmonds' criticisms, but that the broadcaster in no way endorsed the comments he was making about Mr Hamilton. We also considered that the comments were clearly attributed to Mr Edmonds, and that viewers would have understood that the comments represented his own personal views and opinions on a published story which he deemed to be false. In addition, while we recognised that Mr Hamilton was not himself contacted by ITV, we took into account that the programme included a statement from The Sun which said "*... it was unable to comment. Although, it has not heard from Noel Edmonds directly and would love to*". We considered that this reflection of The Sun's statement provided viewers with sufficient information to enable them to understand both parties' position on the matter. We therefore did not consider that the way in which the material was presented in the programme caused unfairness to Mr Hamilton.

We then considered Mr Hamilton's complaint that he was not given an appropriate and timely opportunity to respond to the comments being made about him. As set out above, we considered that Mr Edmonds' comment questioned Mr Hamilton's journalistic integrity. Therefore, we considered that, in accordance with Practice 7.11, the programme makers needed to offer Mr Hamilton an appropriate and timely opportunity to respond to it, to avoid any unfairness.

We took into account that ITV had not contacted Mr Hamilton directly about the matter and instead contacted his employer, The Sun, for a statement about the video. In our view, it was not unreasonable for the broadcaster to have approached the newspaper Mr Hamilton works for to ask for a response on a matter arising from his published work, rather than approaching him directly. In addition, we considered that it was likely that The Sun was aware of ITV's intention to include the comments about Mr Hamilton given that The Sun had later contacted ITV to comment specifically about Mr Hamilton. Given this, we considered that an appropriate opportunity was afforded to Mr Hamilton, through his employer, to respond to the comments made about him.

While we recognised that ITV did not include The Sun's additional statement that "Mr Hamilton is a good journalist and The Sun give him their full support", the statement included in the

programme directly responded to the main criticism which was levelled against Mr Hamilton, i.e. that he had been informed about Mr Edmonds' position prior to publication. We also considered that Mr Hamilton did not appear to raise concerns that The Sun had misrepresented his position in its response to the report. Given this, we considered that the broadcaster had adequately and fairly reflected Mr Hamilton's position in this regard.

Taking all of these factors into account, Ofcom concluded that there was no unfairness to Mr Hamilton in the programme as broadcast.

Ofcom has not upheld Mr Hamilton's complaint of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Ms K *North News At Six, STV, 1 November 2018*

Summary

Ofcom had not upheld this complaint by Ms K of unwarranted infringement of privacy in the programme as broadcast.

The programme included a short report on the sudden death of Ms K's infant son at her house in Aberdeen, Scotland that the police were treating as "*unexplained*". The report showed footage of the exterior of the house, including the house number and the road name. It also referred to the area in Aberdeen where the house was located. The complainant was not identified in the report.

Ofcom considered that while Ms K had a legitimate expectation of privacy in relation to the broadcast of the footage of her house in the programme, it did not outweigh the broadcaster's right to freedom of expression and the public interest in broadcasting the material. Therefore, Ms K's privacy was not unwarrantably infringed in programme as broadcast.

Programme summary

On 1 November 2018, STV broadcast on its regional evening news programme *North News At Six*, a short news report (approximately 17 seconds) about the sudden death of a child in the Mastrick area of Aberdeen. The presenter said:

"Police are investigating after the sudden death of a child at a property in Aberdeen yesterday. Enquiries are continuing at the house in the Mastrick area. Officers say the death is being treated as unexplained and a report will be submitted to the Procurator Fiscal".

Accompanying this was footage of a police van parked in a residential area. The footage focused on one house in particular, where a police officer was shown outside the property. The number of the house was visible on both the front door and on a wheelie bin. The road name was also focused on and shown towards the end of the report.

The report ended, and the footage of the complainant's house was not shown again.

Summary of the complaint and broadcaster's response

Complaint

Ms K complained that her privacy was unwarrantably infringed in the programme as broadcast.

In particular, Ms K said that despite the police telling the media to "stay back" from her address, the report included close up footage of her house, including her house number and

the name of her road. She also said that the footage also showed a police officer standing outside her house.

By way of background, Ms K said that her son had died suddenly of "cot death" in his sleep. She said that the post-mortem and toxicology results proved that this was his cause of death. Ms K said that the footage shown made her feel like "a criminal" and that she was disgusted that the report was broadcast at a time when the post mortem on her son was being performed. Ms K said that people had seen the report and had contacted her family about it.

Broadcaster's response

STV said that it took the view that the broadcast of the news report about the unexplained death of a child, which featured a police presence at, and external footage of, Ms K's home did not infringe Ms K's privacy. It said that the broadcast of the news story was a warranted public interest news story. STV said that the footage of the police presence at the property was filmed openly from a public place where members of the public had access to and could see the police presence. STV said that it took particular care to ensure that no individuals, including Ms K, were identified from the footage. It said that the broadcast was limited to the facts provided to it by the police.

STV said that it was alerted to police presence at a local address as a result of the death of a child, at that time, in unexplained circumstances. It said that in accordance with standard journalistic protocol, STV contacted the police to establish the situation, and to corroborate the news story that was emerging. STV said that the police (i.e. Police Scotland's Communications Office) had confirmed the death of a child in "unexplained" circumstances and had informed STV that, while there were no suspicious circumstances, a report was to be submitted to the Procurator Fiscal (i.e. the Crown Office and Procurator Fiscal Service – Scotland's prosecution service).

The broadcaster said that as a result of the information from the police and the ongoing police presence at the address, the story was discussed by STV's experienced senior news editors, and the decision was made to broadcast the news report based on the facts available at that time.

STV said that at no time during STV's communications with the police, either in the conversation prior to filming, or when filming at the scene, did the police: inform STV of any extenuating circumstances; indicate to STV to "stay back" from the address; or otherwise instruct STV not to investigate or to stop filming. It said that there was no reason why STV should not follow normal news gathering protocol and to broadcast the report once a clear public interest was established.

The broadcaster said that the decision to broadcast the story, including footage of the property, without seeking permission, was considered warranted due to: the circumstances and, in particular, the ongoing police presence at the property which had already alerted local public interest and knowledge; the unexplained death of a child; and, the notice that a report would be made to the Procurator Fiscal.

STV said that the news report was broadcast once and was not further reported in its catch-up service or its digital news service. The broadcaster said that it became aware of the cause of death, by natural causes, the day after broadcast.

In conclusion, STV said that it appreciated that there is a general expectation of privacy when filming in or around a person's home. However, in this instance, it said that there was no infringement of privacy because of the way STV filmed and broadcast the story. The broadcaster said that any potential infringement of Ms K's privacy was warranted in the public interest based on all the facts made available to STV by the police.

Further submissions

After receipt of STV's response to the complaint, Ms K contacted Police Scotland, which sent Ofcom an email containing its official press office release about the sudden death of Ms K's son and its interaction with STV prior to the report being broadcast.

Email from Police Scotland's Communications Office to Ofcom – 7 March 2019

Police Scotland said that it was called on 1 November 2018 by a reporter from STV who said that he heard that a baby had died and who had also given the full address of the property. It said that when asked about any sudden deaths, it had a standard set of words that it provided reactively which included how the death is being treated as "non-suspicious/unexplained/suspicious". It also said that it used the line "unexplained, but not thought to be suspicious". Police Scotland said that this option was suggested, but that the officer who approved the statement advised at the time that "unexplained" was appropriate. Police Scotland said that the officer had told the reporter that the sudden death did not appear to be "anything untoward and was just one of those sad things". It said that reporters are not often interested in sudden deaths unless there is a potential criminal element to it and so the guidance it gives usually steers them away from reporting on them.

Police Scotland said that an email was sent to the STV reporter (on 1 November 2018) with its official statement:

"Police Scotland can confirm that officers were called to the sudden death of a child within a property in the Mastrick area of Aberdeen on Wednesday October 31, 2018. Enquiries are ongoing and the death is currently being treated as unexplained. As with all sudden deaths, a report will be submitted to the Procurator Fiscal".

STV's response

Ofcom invited STV to respond to the material provided by Police Scotland. STV said it could only comment on the facts as they were presented to STV in November 2018.

STV said that journalists and broadcasters uphold the right of the public to be informed, which includes reporting news which is in the public interest. It said that if a journalist receives information about the continued police presence at a local address where a child has died suddenly, then it clearly is of interest (as happened in this instance). STV added that journalists do not set out to distress families, or other members of the public, especially where the death of a child is concerned. The broadcaster said that one of the first steps taken by all journalists is to contact the police to establish the circumstances.

STV said that while a verbal discussion took place between the STV reporter and Police Scotland on 1 November 2018, the circumstances were not made sufficiently clear. It said that the subsequent arrival of the official email provided confirmation that the matter was being treated as unexplained. STV said that on that basis, it chose to proceed to cover the

story, relying on the information that was made available to it at the time, namely: the sudden death of a child; the ongoing police presence at the property; and, the deliberately limited information provided by the police in its official statement.

Preliminary View

Ofcom prepared a Preliminary View that Ms K's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. STV decided not to make any representations, however, Ms K did make representations. Ms K's representations, insofar as they relate directly to the complaint entertained and considered by Ofcom, are summarised below.

Ms K's representations

Ms K said that her world was immediately turned upside down on the death of her baby son. She said that the report had said that her baby's death was unexplained, which she said added to her trauma with people surmising what this meant before the cause of death was confirmed by the post mortem as "cot death". Ms K said she knew it was natural to feel grief, but with this on top [i.e. the broadcast of the report by STV] had not helped her.

Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions. We also considered carefully Ms K's representations on Ofcom's Preliminary View, however, we did not consider that her representations materially altered our view not to uphold her complaint in the particular circumstances of this case.

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.

In addition to this rule, Section Eight (Privacy) of the Code contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

Ofcom considered Ms K's complaint that her privacy was unwarrantably infringed in the programme as broadcast because the report included close-up footage of her house, including her house number and the name of her road, and showed a police officer standing outside her house.

In considering this aspect of the complaint, we also had particular regard to the following practices of the Code:

Practice 8.2:

“Information which discloses the location of a person's home should not be revealed without permission, unless it is warranted”.

Practice 8.3:

“When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events”.

Practice 8.6:

“If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted”.

We first considered the extent to which Ms K had a legitimate expectation of privacy in the inclusion of footage of her home in the broadcast programme.

The Code's statement on the meaning of “legitimate expectation of privacy” makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...”.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and always be judged in light of the circumstances in which the individual concerned finds him or herself.

We first considered the nature of the material included in the programme. As set out in detail in the “Programme summary” above, the report showed a police van parked in a residential area before the footage focused on one house with a police officer stood outside.

The house number was clearly visible on both the front door and a wheelie bin outside the property. In addition, the road sign with the road name on it was shown in close-up. The report also made it clear that the police investigation was taking place at a house in the "Mastrick area" of Aberdeen.

Ofcom next considered the context in which the footage was shown in the broadcast. In this case, we took into account that the programme reported on the sudden, and at the time, unexplained death of the complainant's son, a tragic event which we recognised was clearly extremely distressing for Ms K. We took into account that the footage of Ms K's house was included in a regional news programme which was reporting on a local event and the police's investigation into it.

Ms K said in her complaint that people had contacted her about the report having seen the broadcast. Ofcom observed that, while the report disclosed the full address of where the incident had occurred, it did not refer to or identify the complainant or her child, or anyone else who lived at the property, and reflected only the limited non-specific factual information that had been released to STV by the police. Ofcom also took into account that the footage of Ms K's property appeared to have been filmed openly by the programme makers and from a public place (i.e. the public highway) from which the police activity outside the property was clearly visible to members of the public.

Ofcom recognises, however, that there are circumstances in which the broadcast of footage of a person's home and information which discloses its location may nevertheless give rise to an expectation of privacy. While we acknowledged that Ms K was not identified, the address of the property was revealed. As a result, it was likely that a small and limited number of people would have identified Ms K as the person who lived at the property. Moreover, the report also revealed that the police were investigating the death of a young child at the property. In these circumstances, we considered that the information disclosed in the report was personal and sensitive to Ms K and, as such, attracted a legitimate expectation of privacy.

There was no dispute between the parties that Ms K's consent was not obtained before broadcasting the footage. We therefore went on to consider whether the infringement of Ms K's legitimate expectation of privacy was warranted.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest 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 carefully balanced Ms K's right to privacy with regard to the broadcast of the footage with the broadcaster's right to freedom of expression. We acknowledged STV's submission that a report about the death of a young child which the police described as "unexplained" was in the public interest. While we recognised the distress Ms K said she had experienced as a result of the broadcast, and we sympathised with her grief at the loss of her child, Ofcom also took into account the genuine public interest in broadcasters being able to report news stories and impart information to the audience. In this case, we considered that the reporting of the sudden death of an infant that was being investigated by the police and

would later be subject to a public judicial inquiry, was a matter that was in the public interest.

Taking all the above factors into account, in the particular circumstances of this case, we considered that Ms K's legitimate expectation of privacy did not outweigh the broadcaster's right to freedom of expression and the public interest in reporting the story. Consequently, Ofcom concluded that there was no unwarranted infringement of Ms K's privacy in the programme as broadcast.

Ofcom has not upheld Ms K's complaint of unwarranted infringement of privacy in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 1 and 14 July 2019 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Service	Transmission date	Categories
Gogglebox	Channel 4	03/05/2019	Disability discrimination/offence
Steve Allen	LBC 97.3 FM	23/04/2019	Disability discrimination/offence
The Julia Hartley-Brewer Breakfast Show	Talk Radio	23/05/2019	Elections/Referendums

[How Ofcom conducts investigations about content standards on television and radio programmes](#)

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 14 July 2019 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
999: What's Your Emergency?	4Seven	25/06/2019	Generally accepted standards	1
Naked Attraction	4Seven	03/07/2019	Generally accepted standards	1
Naked Attraction	4Seven	04/07/2019	Generally accepted standards	1
Sewermen	5Spike	24/06/2019	Offensive language	1
The Body in the Bathroom: The Murder of Naomi Hersi	5Star	01/06/2019	Materially misleading	1
History of Islam, Life of Prophet Muhammad in Medina	ATN Bangla	07/02/2019	Generally accepted standards	1
The Official Big Top 40	Capital FM	23/06/2019	Offensive language	1
Murder by the Sea	CBS Reality	01/07/2019	Generally accepted standards	1
24 Hours in Police Custody	Channel 4	11/03/2019	Race discrimination/offence	1
999: What's Your Emergency?	Channel 4	17/06/2019	Violence	1
Ackley Bridge	Channel 4	25/06/2019	Dangerous behaviour	1
Ackley Bridge	Channel 4	02/07/2019	Materially misleading	1
Celebrity Gogglebox	Channel 4	28/06/2019	Offensive language	1
Channel 4 News	Channel 4	22/05/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	19/06/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	20/06/2019	Race discrimination/offence	10
Channel 4 News	Channel 4	25/06/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	26/06/2019	Due impartiality/bias	1
Dispatches: Battle for the Tory Party	Channel 4	08/07/2019	Due accuracy	1
First Dates	Channel 4	18/06/2019	Sexual orientation discrimination/offence	1
Food Unwrapped	Channel 4	22/10/2018	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
Leaving Neverland: Michael Jackson and Me	Channel 4	06/03/2019	Materially misleading	2
Leaving Neverland: Michael Jackson and Me	Channel 4	25/06/2019	Materially misleading	1
My Gay Dog and Other Animals	Channel 4	06/06/2019	Materially misleading	1
Naked Attraction	Channel 4	16/06/2019	Generally accepted standards	1
Naked Attraction	Channel 4	28/06/2019	Generally accepted standards	1
Sunday Brunch	Channel 4	23/06/2019	Race discrimination/offence	3
The £1 Houses: Britain's Cheapest Street	Channel 4	24/06/2019	Offensive language	1
Year of the Rabbit (trailer)	Channel 4	30/06/2019	Offensive language	1
5 News	Channel 5	26/06/2019	Generally accepted standards	2
Cyclists: Scourge of the Streets?	Channel 5	09/07/2019	Materially misleading	327
GPs: Behind Closed Doors	Channel 5	03/07/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	07/06/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	26/06/2019	Generally accepted standards	2
Jeremy Vine	Channel 5	01/07/2019	Due impartiality/bias	2
Jeremy Vine	Channel 5	02/07/2019	Due impartiality/bias	1
Jeremy Vine	Channel 5	10/07/2019	Generally accepted standards	1
Police Interceptors	Channel 5	03/06/2019	Offensive language	1
Portillo's Hidden History of Britain	Channel 5	03/07/2019	Generally accepted standards	1
Psycho Pussies 2: Mad Cat Attacks	Channel 5	22/05/2019	Animal welfare	2
The Gadget Show	Channel 5	14/06/2019	Materially misleading	1
Trawlermen: Celebs at Sea	Channel 5	01/07/2019	Animal welfare	1
Competition	Clyde 1	11/06/2019	Generally accepted standards	1
Storage Hunters UK	Dave	30/05/2019	Offensive language	1

Programme	Service	Transmission Date	Categories	Number of complaints
Domino's Pizza's sponsorship of Hollyoaks	E4	21/05/2019	Sponsorship	1
Gogglebox	E4	30/06/2019	Race discrimination/offence	1
Hollyoaks	E4	02/07/2019	Drugs, smoking, solvents or alcohol	1
Summer of Comedy (trailer)	Film4+1	29/06/2019	Sexual material	1
Afternoon Show	Harbour Radio	02/07/2019	Offensive language	1
Heart Breakfast with Jamie and Amanda	Heart FM	27/06/2019	Generally accepted standards	2
Heart Breakfast with Jamie and Amanda	Heart FM	05/07/2019	Race discrimination/offence	1
Competitions	Heart FM (Hants)	01/07/2019	Competitions	1
Islamer Etihash o Oitijjho	ION TV	11/03/2019	Promotion of products/services	1
Beecham House	ITV	23/06/2019	Animal welfare	1
Coronation Street	ITV	21/06/2019	Generally accepted standards	1
Coronation Street	ITV	24/06/2019	Generally accepted standards	1
Coronation Street	ITV	01/07/2019	Generally accepted standards	1
Coronation Street	ITV	01/07/2019	Materially misleading	1
Coronation Street	ITV	07/07/2019	Generally accepted standards	1
Coronation Street	ITV	08/07/2019	Disability discrimination/offence	1
Dickinson's Real Deal	ITV	02/07/2019	Competitions	1
Emmerdale	ITV	25/06/2019	Violence	5
Emmerdale	ITV	02/07/2019	Generally accepted standards	1
Emmerdale	ITV	08/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	17/06/2019	Generally accepted standards	1
Good Morning Britain	ITV	18/06/2019	Generally accepted standards	1
Good Morning Britain	ITV	20/06/2019	Generally accepted standards	1
Good Morning Britain	ITV	24/06/2019	Due impartiality/bias	3
Good Morning Britain	ITV	24/06/2019	Generally accepted standards	4
Good Morning Britain	ITV	25/06/2019	Generally accepted standards	6

Programme	Service	Transmission Date	Categories	Number of complaints
Good Morning Britain	ITV	26/06/2019	Generally accepted standards	4
Good Morning Britain	ITV	26/06/2019	Sexual material	1
Good Morning Britain	ITV	26/06/2019	Violence	3
Good Morning Britain	ITV	29/06/2019	Generally accepted standards	1
Good Morning Britain	ITV	01/07/2019	Due impartiality/bias	1
Good Morning Britain	ITV	01/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	02/07/2019	Sexual material	2
Good Morning Britain	ITV	08/07/2019	Generally accepted standards	1
Good Morning Britain	ITV	10/07/2019	Dangerous behaviour	2
Good Morning Britain	ITV	10/07/2019	Generally accepted standards	4
Good Morning Britain	ITV	25/07/2019	Generally accepted standards	1
ITV Evening News	ITV	06/06/2019	Generally accepted standards	1
ITV News	ITV	19/06/2019	Generally accepted standards	1
ITV News	ITV	25/06/2019	Due impartiality/bias	1
ITV News	ITV	26/06/2019	Due accuracy	1
ITV News	ITV	26/06/2019	Due impartiality/bias	1
ITV News	ITV	26/06/2019	Generally accepted standards	25
ITV News	ITV	01/07/2019	Due impartiality/bias	4
ITV News	ITV	02/07/2019	Offensive language	1
ITV News	ITV	03/07/2019	Due accuracy	1
ITV News	ITV	03/07/2019	Due impartiality/bias	1
ITV News	ITV	08/07/2019	Generally accepted standards	1
ITV News (trailer)	ITV	24/06/2019	Violence	1
Loose Women	ITV	17/06/2019	Race discrimination/offence	4
Loose Women	ITV	25/06/2019	Gender discrimination/offence	3
Loose Women	ITV	27/06/2019	Gender discrimination/offence	1
Loose Women	ITV	09/07/2019	Gender discrimination/offence	1
Lorraine	ITV	11/07/2019	Materially misleading	1
Peston	ITV	26/06/2019	Generally accepted standards	12
Peston	ITV	03/07/2019	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Psychopath with Piers Morgan (trailer)	ITV	27/06/2019	Scheduling	1
The Cruise	ITV	04/07/2019	Dangerous behaviour	1
This Morning	ITV	14/05/2019	Dangerous behaviour	1
This Morning	ITV	17/06/2019	Animal welfare	1
This Morning	ITV	18/06/2019	Sexual material	1
This Morning	ITV	20/06/2019	Generally accepted standards	2
This Morning	ITV	03/07/2019	Generally accepted standards	1
Tonight: Is Your Car Safe?	ITV	20/06/2019	Dangerous behaviour	1
Wild Bill	ITV	03/07/2019	Religious/Beliefs discrimination/offence	3
ITV News Anglia	ITV Anglia	04/06/2019	Due impartiality/bias	1
ITV News Granada Reports	ITV Granada	01/07/2019	Disability discrimination/offence	1
Optrex's sponsorship of ITV Weather Pollen Count	ITV London	02/07/2019	Sponsorship credits	1
ITV News Meridian	ITV Meridian	02/07/2019	Offensive language	1
ITV News West Country	ITV West Country	23/04/2019	Due accuracy	1
Icelolly.com's sponsorship of Family Guy / American Dad	ITV2	07/07/2019	Sponsorship	1
Love Island	ITV2	01/06/2019	Generally accepted standards	1
Love Island	ITV2	13/06/2019	Generally accepted standards	1
Love Island	ITV2	14/06/2019	Generally accepted standards	4
Love Island	ITV2	16/06/2019	Generally accepted standards	700
Love Island	ITV2	20/06/2019	Gender discrimination/offence	1
Love Island	ITV2	20/06/2019	Generally accepted standards	2
Love Island	ITV2	20/06/2019	Offensive language	1
Love Island	ITV2	20/06/2019	Sexual material	7
Love Island	ITV2	21/06/2019	Gender discrimination/offence	1
Love Island	ITV2	21/06/2019	Generally accepted standards	6
Love Island	ITV2	21/06/2019	Race discrimination/offence	4

Programme	Service	Transmission Date	Categories	Number of complaints
Love Island	ITV2	22/06/2019	Dangerous behaviour	1
Love Island	ITV2	22/06/2019	Generally accepted standards	2
Love Island	ITV2	23/06/2019	Gender discrimination/offence	36
Love Island	ITV2	23/06/2019	Sexual material	1
Love Island	ITV2	24/06/2019	Gender discrimination/offence	3
Love Island	ITV2	24/06/2019	Generally accepted standards	27
Love Island	ITV2	24/06/2019	Race discrimination/offence	5
Love Island	ITV2	25/06/2019	Gender discrimination/offence	1
Love Island	ITV2	25/06/2019	Generally accepted standards	288
Love Island	ITV2	25/06/2019	Race discrimination/offence	1
Love Island	ITV2	26/06/2019	Generally accepted standards	11
Love Island	ITV2	26/06/2019	Materially misleading	1
Love Island	ITV2	26/06/2019	Other	1
Love Island	ITV2	27/06/2019	Voting	1
Love Island	ITV2	28/06/2019	Generally accepted standards	6
Love Island	ITV2	01/07/2019	Generally accepted standards	15
Love Island	ITV2	10/07/2019	Gender discrimination/offence	10
Love Island	ITV2	Various	Generally accepted standards	2
Love Island: Aftersun	ITV2	23/06/2019	Gender discrimination/offence	4
Love Island: Aftersun	ITV2	23/06/2019	Generally accepted standards	3
What a Girl Wants	ITV2	15/06/2019	Race discrimination/offence	1
You've Been Framed!	ITV2	24/06/2019	Generally accepted standards	2
Endeavour	ITV3	29/05/2019	Advertising minutage	1
Cycling	ITV4	11/06/2019	Gender discrimination/offence	1
Real Housewives of Atlanta	ITVBe	06/07/2019	Generally accepted standards	1
Programming	Jack FM 2	24/06/2019	Sexual material	1

Programme	Service	Transmission Date	Categories	Number of complaints
Fråga Olle	Kanal 11 (Sweden)	21/05/2019	Gender discrimination/offence	1
Fråga Olle	Kanal 11 (Sweden)	22/05/2019	Gender discrimination/offence	1
Homeopathic Clinic	KTV	25/05/2019	Materially misleading	1
Iain Dale	LBC 97.3 FM	10/07/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	12/06/2019	Due impartiality/bias	2
James O'Brien	LBC 97.3 FM	21/06/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	24/06/2019	Race discrimination/offence	1
Maajid Nawaz	LBC 97.3 FM	15/06/2019	Due impartiality/bias	4
Nick Ferrari	LBC 97.3 FM	05/06/2019	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	24/06/2019	Generally accepted standards	2
Nick Ferrari	LBC 97.3 FM	26/06/2019	Sexual material	1
Nigel Farage	LBC 97.3 FM	02/06/2019	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	02/07/2019	Due impartiality/bias	1
Programming	LBC 97.3 FM	Various	Due impartiality/bias	1
Programming	LBC 97.3 FM	18/06/2019	Due impartiality/bias	1
Four in a Bed	More4	29/06/2019	Generally accepted standards	1
Advertisements	n/a	17/06/2019	Advertising placement	1
HSBC Advertisement	n/a	09/06/2019	Political advertising	1
Programming	n/a	16/01/2019	Generally accepted standards	1
Har Lamha Purjosh	New Vision TV	12/06/2019	Undue prominence	1
Timmy Mallett's Utterly Brilliant 90s!	Now 90s	20/06/2019	Scheduling	1
Where Did THAT Come From?! 90-99	Now 90s	23/06/2019	Offensive language	1
Killer in My Village (trailer)	Pick	03/07/2019	Scheduling	1
The News Hour	Premier Christian Radio	03/07/2019	Generally accepted standards	1
Salvage Hunters	Quest	23/06/2019	Race discrimination/offence	1
Radio Exe News	Radio Exe	16/05/2019	Due accuracy	1
The Chris Moyles Show	Radio X	21/06/2019	Due impartiality/bias	1
Rownd a Rownd	S4C	30/06/2019	Scheduling	1
All Out Politics	Sky News	24/06/2019	Due impartiality/bias	1
All Out Politics	Sky News	28/06/2019	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Kay Burley	Sky News	10/06/2019	Religious/Beliefs discrimination/offence	1
Kay Burley	Sky News	03/07/2019	Generally accepted standards	1
Kay Burley	Sky News	04/07/2019	Generally accepted standards	1
Press Preview	Sky News	29/06/2019	Nudity	1
Sky News	Sky News	31/05/2019	Generally accepted standards	28
Sky News	Sky News	04/06/2019	Due accuracy	1
Sky News	Sky News	04/06/2019	Due impartiality/bias	1
Sky News	Sky News	20/06/2019	Due accuracy	1
Sky News	Sky News	23/06/2019	Due impartiality/bias	1
Sky News	Sky News	24/06/2019	Due accuracy	1
Sky News	Sky News	24/06/2019	Due impartiality/bias	1
Sky News	Sky News	25/06/2019	Due impartiality/bias	1
Sky News	Sky News	25/06/2019	Generally accepted standards	1
Sky News	Sky News	26/06/2019	Generally accepted standards	1
Sky News	Sky News	28/06/2019	Generally accepted standards	2
Sky News	Sky News	02/07/2019	Due impartiality/bias	1
Sky News	Sky News	04/07/2019	Due impartiality/bias	1
Sky News	Sky News	11/07/2019	Due impartiality/bias	1
Sky News	Sky News	Various	Elections/Referendums	1
Sky Press Review	Sky News	20/06/2019	Due impartiality/bias	1
The Pledge	Sky News	30/05/2019	Materially misleading	1
Live: ICC World Cup Cricket	Sky Sports Main Event	23/06/2019	Offensive language	1
Sun, Sea and A&E	Sky Witness	26/06/2019	Generally accepted standards	1
A League of Their Own	Sky1	09/05/2019	Gender discrimination/offence	1
A League of Their Own	Sky1	25/06/2019	Race discrimination/offence	1
The Simpsons	Sky1	21/06/2019	Offensive language	1
News	Sunrise Radio DAB	24/06/2019	Disability discrimination/offence	1
Independent Republic of Mike Graham	Talk Radio	27/06/2019	Generally accepted standards	1
Julia Hartley-Brewer	Talk Radio	01/07/2019	Due impartiality/bias	1
The Late Night Alternative with Iain Lee	Talk Radio	17/06/2019	Generally accepted standards	3

Programme	Service	Transmission Date	Categories	Number of complaints
Drivetime	Talksport	25/06/2019	Due impartiality/bias	1
Talk Sport Breakfast Show	Talksport	27/05/2019	Race discrimination/offence	1
The Alan Brazil Sports Breakfast	Talksport	19/06/2019	Race discrimination/offence	1
Body Bizarre (trailer)	TLC	12/04/2019	Generally accepted standards	1
Advertising scheduling	Various	19/06/2019	Advertising minutage	1

[How Ofcom assesses complaints about content standards on television and radio programmes](#)

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

Programme	Service	Transmission Date	Categories	Number of complaints
Programming	BBC	Various	Generally accepted standards	1
BBC News	BBC 1	05/03/2019	Due impartiality/bias	1
Call the Midwife	BBC 1	03/02/2019	Materially misleading	1
Party Election Broadcast by the Scottish Conservative and Unionist Party	BBC 1	17/05/2019	Materially misleading	1
Reporting Scotland	BBC 1 Scotland	27/03/2019	Due impartiality/bias	1
The Reunion	BBC Radio 4	28/04/2019	Generally accepted standards	1
The World at One	BBC Radio 4	26/12/2018	Due accuracy	1
Today	BBC Radio 4	07/02/2019	Due impartiality/bias	1
Today	BBC Radio 4	06/03/2019	Due impartiality/bias	1

[How Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS](#)

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 14 July 2019 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories	Number of complaints
An individual	Mid Downs Radio	Other	1
An individual	Radio Ramadan Keighley	Other	1
B.R.F.M. Bridge Radio Limited	BRFM Radio	Key Commitments	1
British Telecommunications Plc	BT Sport	Listed Events	1
Global Radio Limited	Gold Radio	Other	1
n/a	n/a	Television Access Services	1
Secklow Sounds CIC	Secklow Sounds 105.5	Other	1
The Pakistan Muslim Centre (Sheffield) Limited	Link FM	Key Commitments	1
Various	Various	Television Access Services	1

[How Ofcom assesses complaints about broadcast licences](#)

Complaints outside of remit

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

Programme	Service	Transmission Date	Categories	Number of complaints
European Elections 2019	BBC 1	27/05/2019	Due impartiality/bias	1
Wimbledon	BBC 1	06/07/2019	Outside of remit	7
Programming	BBC 3	n/a	Outside of remit	1
Programming	BBC channels	03/07/2019	Outside of remit	1
Programming	BBC channels	Various	Outside of remit	1
Mail Pope	BBC Radio Wales	10/05/2019	Other	1
Year of the Rabbit (pre-transmission)	Channel 4	01/07/2019	Outside of remit	1
Advertisement	Channel 5	02/07/2019	Advertising content	1
Advertisement	Channel 5	08/07/2019	Advertising content	1
Cyclists: Scourge of the Streets? (Pre-transmission)	Channel 5	09/07/2019	Outside of remit	36
Advertisement	E4	03/07/2019	Advertising content	1
Advertisement	ITV	28/06/2019	Advertising content	1
Advertisement	ITV	02/07/2019	Advertising content	1
Advertisement	ITV	03/07/2019	Advertising content	3
Competition	ITV	10/07/2019	Outside of remit	1
The Jeremy Kyle Show	ITV	16/06/2014	Outside of remit	1
Advertisement	ITV2	08/07/2019	Advertising content	1
Love Island	ITV2	27/06/2019	Outside of remit	1
Love Island	ITV2	02/07/2019	Outside of remit	1
Advertisement	Kiss 100	03/07/2019	Advertising content	1
Advertisement	KTV	02/07/2019	Advertising content	1
Regional News in HD	n/a	n/a	Outside of remit	1
Non-editorial	NOW TV	24/07/2018	Non-editorial	1
Advertisement	SYFY	03/07/2019	Advertising content	1
Brexbox	YouTube	08/07/2019	Due impartiality/bias	1
UEFA Champions League	YouTube	01/06/2019	Outside of remit	1

[More information about what Ofcom's rules cover](#)

BBC First

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

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

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

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Programming	BBC	04/07/2019	Race discrimination/offence	1
BBC News	BBC 1	24/06/2019	Due impartiality/bias	1
BBC News	BBC 1	26/06/2019	Generally accepted standards	2
BBC News	BBC 1	30/06/2019	Due impartiality/bias	1
BBC News	BBC 1	11/07/2019	Due impartiality/bias	1
Climate Change – The Facts	BBC 1	18/04/2019	Materially misleading	1
EastEnders	BBC 1	05/07/2019	Generally accepted standards	1
European Elections 2019	BBC 1	26/05/2019	Due impartiality/bias	2
Gentleman Jack	BBC 1	30/06/2019	Sexual material	1
Glastonbury	BBC 1	30/06/2019	Advertising/editorial distinction	1
Hit List	BBC 1	29/06/2019	Fairness	1
Midlands Today	BBC 1	28/06/2019	Due accuracy	1
Our Next Prime Minister	BBC 1	18/06/2019	Due impartiality/bias	1
Panorama	BBC 1	22/11/2018	Other	1
Question Time	BBC 1	16/05/2019	Due impartiality/bias	1
Question Time	BBC 1	04/07/2019	Due impartiality/bias	1
The Andrew Marr Show	BBC 1	19/05/2019	Due impartiality/bias	1
Warren	BBC 1	29/04/2019	Promotion of products/services	1
Britain's Next Air Disaster? Drones	BBC 2	01/07/2019	Materially misleading	7
Glastonbury	BBC 2	28/06/2019	Generally accepted standards	1
Mad Cow Disease – The Great British Beef Scandal	BBC 2	11/07/2019	Materially misleading	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Politics Live	BBC 2	11/07/2019	Due impartiality/bias	1
Top Gear	BBC 2	30/06/2019	Generally accepted standards	8
Top Gear	BBC 2	30/06/2019	Offensive language	1
Top Gear	BBC 2	07/07/2019	Generally accepted standards	1
Victoria Derbyshire	BBC 2	03/06/2019	Generally accepted standards	1
Famalam	BBC 3	05/07/2019	Generally accepted standards	1
BBC News	BBC channels	Various	Due impartiality/bias	1
Programming	BBC channels	Various	Due impartiality/bias	2
Top Gear	BBC iPlayer	04/07/2019	Generally accepted standards	1
BBC News	BBC News Channel	12/06/2019	Due impartiality/bias	1
BBC News	BBC News Channel	28/06/2019	Due impartiality/bias	1
Jeremy Vine	BBC Radio 2	02/07/2019	Due impartiality/bias	1
Any Questions	BBC Radio 4	27/06/2019	Due impartiality/bias	1
Book of the Week	BBC Radio 4	Various	Offensive language	1
Desert Island Discs	BBC Radio 4	12/07/2019	Generally accepted standards	1
Heresy	BBC Radio 4	11/06/2019	Generally accepted standards	5
PM	BBC Radio 4	27/06/2019	Due impartiality/bias	1
Poetry Please	BBC Radio 4	17/03/2019	Race discrimination/offence	1
Today	BBC Radio 4	29/04/2019	Due accuracy	1
Today	BBC Radio 4	07/06/2019	Generally accepted standards	1
The Emma Barnett Show	BBC Radio 5 Live	19/06/2019	Offensive language	1
Various	BBC Radio Scotland	19/06/2019	Due impartiality/bias	1
No Country For Young Women	BBC Sounds	13/06/2019	Gender discrimination/offence	1

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 1 and 14 July 2019.

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

Programme	Service	Transmission date
Live UFC: Fight Night 153	BT Sport 3	01/06/2019

[How Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes](#)

In [Issue 370 of Ofcom's Broadcast and On Demand Bulletin](#), Ofcom announced it would be launching an investigation under its Procedures for investigating breaches of content standards for television and radio into a programme broadcast on Peace TV on 4 November 2018, *Marriage and Divorce*. After careful consideration, we took the view that the content did not raise issues under the Broadcasting Code. We therefore decided not to pursue our investigation.

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

Due to an administrative error the listing to indicate we had opened an investigation into Radio Caroline AM Broadcasting Ltd's compliance with its Key Commitments did not appear in Issue 379 of the Broadcast and On-Demand Bulletin published on 28 May 2019. This notice corrects that.

[How Ofcom assesses complaints and conducts investigations about broadcast licences](#)

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

Programme	Service	Transmission date
The One Show	BBC 1	01/05/2019

[How Ofcom considers and adjudicates upon Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS](#)