

# **Ofcom Broadcast Bulletin**

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## Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), the most recent version of which took effect on 28 February 2011 and covers all programmes broadcast on or after 28 February 2011. The Broadcasting Code can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 28 February 2011 are covered by the version of the Code that was in force at the date of broadcast.

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.

- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
- the prohibition on 'political' advertising;
  - sponsorship (see Rules 9.16 and 9.17 of the Code for television broadcasters);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>1</sup>; and
  - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found at:

[www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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<sup>1</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted.

## Standards cases

### In Breach

#### **Hillsborough Castle Agreement: Advertisement placed by the Office of the First Minister and Deputy First Minister**

*Various radio broadcasters (Northern Ireland), 16 and 17 February 2010, various times*

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#### **Introduction**

Ofcom received a complaint from Jim Allister QC, leader of the political party, the Traditional Unionist Voice (“TUV”), about a radio advertisement placed by the Office of the First Minister and Deputy First Minister (“OFMDFM”). The advertisement concerned the Hillsborough Castle Agreement (“the Agreement”), which had been announced on 5 February 2010. The complainant alleged that the advertisement amounted to ‘political’ advertising, in contravention of the Communications Act 2003 (“the Act”).

Ofcom has a statutory duty, under section 319(2)(g) of the Act, to secure the standards objective “that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services.”

Political advertising is prohibited on radio and television under the terms of section 321(2) and 321(3) of the Act and, for radio, Section 2 Rule 15 of the Broadcast Committee of Advertising Practice (“BCAP”) Radio Advertising Standards Code (“the Advertising Code”)<sup>1</sup>. The relevant extracts of the Act and the Advertising Code are included at the end of this Finding.

For most matters, the Advertising Code is enforced by the Advertising Standards Authority. Ofcom, however, remains responsible, under the terms of a Memorandum of Understanding between Ofcom and the ASA, for enforcing the rules on ‘political’ advertising.

The advertisement was broadcast on the following seven radio stations, across Northern Ireland:

- Q97.2 FM (Coleraine), Q101.2 FM (Omagh and Enniskillen) and Q102.9 FM (Londonderry), owned by Northern Media Group (“NMG”);
- Downtown Radio and Cool FM (Northern Ireland), owned by Bauer Media (“Bauer”);
- Citybeat (Greater Belfast), owned by CN Group; and
- U105 (Belfast), owned by UTV Media.

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<sup>1</sup> BCAP’s Radio Advertising Standards Code was in force at the time of the transmission of the advertisement in this case. However, that Code has since been superseded by BCAP’s UK Code of Broadcast Advertising (which came into force on 1 September 2010).

The advertisement lasted 30 seconds and featured Peter Robinson MLA (DUP), the First Minister, and Martin McGuinness MP MLA (Sinn Féin), the Deputy First Minister. It consisted of the following:

First Minister: *“Today’s Agreement is the surest sign that there will be no going back to the past.”*

Deputy First Minister: *“We need to make life better for our children, for our grandchildren. That is what this agreement must mean in practice.”*

Announcer: *“That was the First Minister and Deputy First Minister talking about the Hillsborough Castle Agreement. To read it in full, visit [nidirect.gov.uk](http://nidirect.gov.uk) or phone 101 to request a copy.*

*“The Hillsborough Castle Agreement – securing a better future for all.”*

The complainant considered the advertisement to be “political advertising by OFMDFM in promotion of the Hillsborough political deal on ... radio.” He believed the advertisement was in breach of the Act, as its purpose was “to promote their political deal and perception, rather than mere public information” He continued: “The laudatory content of their contributions puts them in the territory of promoting and selling their political message ... rather than merely providing information.”

#### Central copy clearance

In considering the complainant’s concerns, Ofcom first sought to establish whether appropriate central copy clearance had been obtained in advance of the advertisement’s broadcast.

Section 1 Rules 4.2 and 4.6 of the Advertising Code require that commercial radio broadcasters obtain, “central clearance” for “special categories” of advertisement from the Radio Advertising Clearance Centre (“RACC”), prior to broadcast.

Rule 4.7 of the Advertising Code, states that such categories include “Political, industrial or public controversy matters (including COI/Government and Council campaigns)...”

Ofcom contacted the RACC, which said that it had not cleared the advertisement for broadcast. We asked the broadcasters to confirm whether this was the case, and told them that, if RACC clearance had not been obtained, the advertisement was not to be broadcast again until such approval had been, as required under Rule 4.6 of the Advertising Code.

No broadcaster had sought RACC clearance before broadcasting the advertisement, which was not broadcast again on any station.

Ofcom therefore also asked each broadcaster for its comments with regard to the following Rules from Section 1 of the Advertising Code:

Rule 4.6 (Central Copy Clearance): “‘Special categories’ of advertisement or sponsorship (whether broadcast locally, regionally or nationally) need particular care. They must be sent to the RACC for central clearance”;

Rule 4.7 (The Special Categories are:): "...Political, industrial or public controversy matters (including COI/Government and Council campaigns)..."

### Content of the advertisement

Section 321(2) of the Act explains that an advertisement contravenes the prohibition on political advertising if it is:

- a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
- b) an advertisement which is directed towards a political end; or
- c) an advertisement which has a connection with an industrial dispute.

An advertisement may therefore fall foul of the prohibition on political advertising either because of the character of the advertiser or because of the content and/or character of the advertisement. Section 321(3) sets out an inclusive, non-exhaustive list of examples of "objects of a political nature" and "political ends".

In considering the complainant's objection to the alleged 'political' nature of the advertisement, Ofcom took into account that it had been placed by OFMDFM which is described on its website<sup>2</sup> as "a fully functioning department of the Northern Ireland administration". A general exception to the statutory scheme of section 321 exists at section 321(7)(a) of the Act. This applies to advertisements of "a public service nature" that have been inserted by or on behalf of a government department:

"(7) Provision included by virtue of this section [section 321] in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of—

- (a) an advertisement of a public service nature inserted by, or on behalf of, a government department...;"

In relation to the advertisement's content, Ofcom therefore first sought responses from OFMDFM (the advertiser) and the relevant broadcasters, as to whether the advertisement was of "a public service nature", before reaching a decision on whether the exception at section 321(7)(a) applied in this case.

### **Responses – central copy clearance**

NMG said it was aware of its requirement to obtain RACC clearance for special categories of advertising, which it does "regularly, if not on a weekly basis." It added that it was common practice for large advertising agencies handling the production of radio advertisements to obtain central clearance before sending them to NMG stations for broadcast, especially when they are to be broadcast by a number of stations. The broadcaster admitted that it should have made sure it had verified RACC clearance before the advertisement went to air. To avoid this happening again, NMG said its production teams had been issued with revised instructions for dealing with advertisements from advertising agencies, whereby an advertisement cannot be put to air unless RACC clearance has been verified and placed on file.

Bauer noted that the advertisement was being broadcast as part of a cross-media campaign that included a number of commercial radio stations from various radio

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<sup>2</sup> <http://www.ofmdfmi.gov.uk/>

groups. It said that the stations: “Downtown Radio/Cool FM accepted the copy from the agency (FIRE IMC) representing the OFMDFM in good faith, mistakenly believing it was effectively a public information message, and that, de facto, it had the backing of the main political parties (DUP, Alliance Party, SDLP and Sinn Fein)”. Bauer added that, “perhaps due to the credibility of the source, coupled with the cross community, fact-finding, nature of the content, it raised no concerns with ourselves, nor indeed, with any of the other radio stations”. Nevertheless, it admitted that, in hindsight, RACC clearance should have been sought, although it considered “the source (OFMDFM) of the advertisement and indeed the copy content (encouraging listeners to read a document online) created unique mitigating circumstances in the political history of NI”. Bauer added that, due to these factors, it “failed to classify the advertisement as political, which, in that case, would have naturally defaulted to insistence on RACC clearance.” To ensure no recurrence, Bauer said it had “re-affirmed the guidelines for the acceptance of campaign copy, both externally and internally.”

Citybeat said it had “received the booking for the ... advert from Fire IMC with the copy title of “OFMDFM”.” It added that “the agency Media Director has confirmed that the account handler had omitted to forward this to RACC to have the copy cleared which is not in line with company procedure.” Nevertheless, the broadcaster admitted that it had “naively acted on previous experience, trust and with the assumption that due process had been followed; we were mistaken and should have requested the clearance number prior to the advertisement going to air”. Citybeat said that the members of its sales staff were “now under the instruction that ALL Agencies supplying adverts have now to supply the copy clearance number prior to adverts going to air.”

U105 said it had a policy of obtaining central clearance for any advertisements it believed to qualify as ‘special category’. It added: “the advertisement was received by U105 in the middle of the afternoon before transmission. As is station policy we listened to the advertisement when received and, based on our interpretation of the code, we classed it as public information and not special category. We therefore did not seek RACC-clearance information from the agency in advance of broadcast.” The broadcaster said that it was reissuing the Advertising Code to all relevant staff and had “scheduled a discussion of the ... code ... to reinforce awareness and understanding of the issues involved.”

### **Decision – central copy clearance**

Ofcom noted the varying circumstances that had led each broadcaster to air the advertisement without central clearance by RACC.

Nevertheless, Section 1 Rule 4.6 of the Advertising Code is unequivocal. It requires that central clearance must be obtained from the RACC, if the advertisement falls into a ‘special category’, as set out by Rule 4.7.

In the case of Government or council campaigns (which fall within the definition of ‘special categories’), any radio advertisements must therefore be approved for broadcast by the RACC. Broadcasters must ensure that RACC clearance has been obtained prior to broadcast, irrespective of any agreement they may have made with, or expectation they may have of, any third party (e.g. an advertising agency).

In this instance, the broadcasters failed to ensure that the advertisement had been centrally cleared for broadcast, in breach of Section 1 Rule 4.6 of the Advertising Code. Ofcom welcomed the action each broadcaster had taken to avoid recurrence.

### **Responses – content of the advertisement: “public service nature”**

In response to Ofcom’s question on whether this advertisement was of a “public service nature” and therefore fell into the general exception to the statutory scheme:

NMG submitted that it:

- “considered the advertisement to be “of a public service nature” because it was asking people to read the agreement, not form any particular opinion of it, and because it came from OFMDFM”;
- “[understood] how the comments by politicians in the advertisement could be construed as being political”, but noted that they were interview extracts from news footage that had been broadcast widely at the time and therefore believed its listeners would have recognised them as such; and
- noted that, “whether the system is right or wrong, the decision on whether an advertisement is of a political or public service nature rests with a third party”, by which Ofcom assumes it was referring to the RACC.

Bauer stated that:

- “...Downtown Radio/Cool FM accepted the copy from the agency (FIRE IMC) representing the OFMDFM in good faith, mistakenly believing it was effectively a public information message, and that, de facto, it had the backing of the main political parties (DUP, Alliance Party, SDLP and Sinn Fein)...”;
- “...Essentially the core message of the advertisement was to direct audiences toward a website where they could see and peruse the Hillsborough Agreement for themselves...”;
- “...On reflection, however, and understanding the TUV’s democratic right to their anti-agreement viewpoint, we can retrospectively accept their complaint that the advertisement could be deemed as directed towards a political end.”

Citybeat stated that:

- the advertisement was “booked on behalf of OFMDFM ... to inform the public of how they could obtain copies of the agreement for a greater understanding of [it] and not for political positioning or towards a political end”; and
- it “deem[ed] that this advertisement is covered under the exception contained in section 321(7) of the Act where there is a provision for advertisements placed of a “public service nature” on or behalf of a government department”, as “the purpose of the advertisement was to inform the people of Northern Ireland that should they wish to read the agreement in full that they visit [nidirect.gov.uk](http://nidirect.gov.uk) website or phone 101 to obtain a copy of the agreement.”

U105 said that:

- it believed that “the purpose of the ad was to inform and educate the public by means of imparting information ... [by] directing them to a website and phone

number for a copy of the Hillsborough Castle Agreement”, which it considered to be in the public interest.

OFMDFM considered that:

- “it was ... vital in the working of [its] institutions that as many of the public were informed of how to gain access to what was a significant agreement for local people”;
- “this would enable each individual to properly consider the effects of such an agreement and lead to a more informed and balanced debate”;
- “such information [was] clearly in the public interest and the purpose was clearly to educate and to inform the public”;
- “an opinion poll [indicating] a high level of support for the Agreement (72%) ... [underlined] the argument that the content of the advertisement [was] not controversial or partisan”;
- “the objective of the campaign was simply to make people aware of the agreement, encourage them to read it and if they had any comments to forward these to our First Minister and Deputy First Minister”;
- “the advertisement would not effect [sic] the public perception of the agreement” – “Clearly because the First Minister and the Deputy First Minister had already at press conferences endorsed the agreement, the fact that the advertisement used material from a press conference would not have the effect of persuading listeners that the agreement was to be supported, as it is most unlikely that any listener would not already be aware of this from headline news coverage”; and
- this was a public information advertisement and it believed that section 321(7)(a) of the Act applied.

#### **Decision – content of the advertisement: “public service nature”**

As described above, Section 321(7)(a) of the Act contains a general exception to the statutory scheme which operates by disapplying the previous subsections in relation to an advertisement of a “public service nature” placed by or on behalf of a government department.

Public service advertising has a long history. By way of example, previous advertisements of a public service nature placed by government departments have included campaigns imparting information and/or advice to the public about health matters, road safety, fire prevention, or encouraging literacy.

In Ofcom’s view, the primary determinant of an advertisement of a public service nature is that the advertisement’s purpose is to inform and educate the public by means of imparting information which is in the public interest. When determining whether an advertisement is of a public service nature, Ofcom will do so on a case by case basis.

In addition to considering the advertisement’s purpose, Ofcom is also likely to consider other factors such as: the nature of the advertisement’s subject matter; the

nature of any information or advice given; the manner in which information or advice is given; the timing and context of the advertisement's broadcast; and the degree of any controversy that might be associated with the subject matter and/or contents of the advertisement.

It should be noted that in considering this decision, Ofcom drew the distinction between whether the wider policy may be considered by most people to be in the public interest (in this case, political agreement on the future of Northern Ireland) and whether the advertisement itself was of a public service nature. It is not the role of Ofcom to comment on such wider matters and this decision should not be interpreted as passing any such comment.

In assessing whether the advertisement in this case was of a public service nature, Ofcom first considered relevant background and the purpose of the advertisement.

### Background

Ofcom noted the timing and context in which the advertisement was broadcast on 16 and 17 February 2010. The Hillsborough Castle Agreement ("the Agreement") had been reached on 5 February 2010, following a lengthy period of negotiation between the UK and Irish Governments and Northern Ireland political parties. While there was broad support for the Agreement in Northern Ireland, this was not universal. In particular, in terms of Northern Ireland political parties, the SDLP, the Ulster Unionist Party and the TUV had all publicly expressed varying degrees of concern or reservation about the Agreement.

### Purpose of the advertisement

Ofcom noted that OFMDFM stated that "it was ... vital in the working of [its] institutions that as many of the public were informed of how to gain access to what was a significant agreement for local people" and that "this would enable each individual to properly consider the effects of such an agreement and lead to a more informed and balanced debate". Ofcom noted OFMDFM's assertion that "such information [was] clearly in the public interest and the purpose was clearly to educate and to inform the public".

Ofcom noted that OFMDFM had stated that "an opinion poll [indicating] a high level of support for the Agreement (72%) ... the argument that the content of the advertisement [was] not controversial or partisan".

Ofcom also noted that OFMDFM argued that the objective of the campaign was "...simply to make people aware of the agreement, encourage them to read it, and if they had any comments to forward these to our First Minister and Deputy First Minister." Further, OFMDFM stated that it considered "...the advertisement would not effect [sic] the public perception of the agreement. Clearly because the First Minister and the Deputy First Minister had already at press conferences endorsed the agreement, the fact that the advertisement used material from a press conference would not have the effect of persuading listeners that the agreement was to be supported, as it is most unlikely that any listener would not already be aware of this from headline news coverage."

Ofcom accepted that, at the end of the advertisement, the announcer did direct listeners to where they could read or obtain a copy of the Agreement. However we did not consider that this material was illustrative of the advertisement's overall purpose. Contrary to other information in OFMDFM's description of the objective of

the campaign, we could find no material within the advertisement that encouraged listeners who had any comments on the Agreement to forward these to the First Minister and Deputy First Minister.

Furthermore, Ofcom noted that OFMDFM had submitted that material within the advertisement (clips of the First Minister and Deputy First Minister speaking about the Agreement) had been taken from a previous press conference, and therefore it argued that this material would not have had the effect of persuading listeners that the agreement was to be supported, as they were likely to have already been aware of this material from previous news coverage.

Ofcom did not agree. Ofcom considered that the fact that some listeners may have been aware of the comments made by the First Minister and the Deputy First Minister at a prior press conference did not necessarily prevent the inclusion of these comments in the advertisement from “persuading listeners that the agreement was to be supported”. In particular, Ofcom noted OFMDFM’s own description of the press conferences in question, in which the First Minister and the Deputy First Minister had clearly “endorsed the agreement”. Ofcom considered that, on balance, the inclusion of these endorsing comments, made by two politicians, the First Minister and the Deputy First Minister, at a press conference, gave the advertisement the purpose of portraying the Agreement in a positive light, rather than to inform and educate the public on where they could obtain a copy of the Agreement. Ofcom also considered some additional factors.

#### Additional factors

As stated above, when considering whether an advertisement is of a public service nature, Ofcom will do so on a case by case basis, and is likely to take into account a range of other factors. In this case, Ofcom also took into account, in particular:

- the manner in which the information within the advertisement was imparted; and
- the timing and context of the advertisement’s broadcast.

In relation to the manner in which the information was imparted, as stated above, Ofcom noted that the advertisement made reference to where listeners could obtain a copy of the Agreement. However, Ofcom was also of the view that this information was imparted in a manner that made it appear secondary, in comparison to the emphasis and weight given within the advertisement to the positive descriptions of it by the politicians – the First Minister and the Deputy First Minister – and the announcer. In particular, Ofcom noted the positive phrases used to describe the Agreement – “...the surest sign that there will be no going back to the past”, “...make life better for our children, for our grandchildren. That is what this Agreement must mean in practice”. Further, in the final line of the advertisement, the announcer stated: “*The Hillsborough Castle Agreement – securing a better future for all*”.

In considering the nature of these positive descriptions, Ofcom took into account the timing and context of the advertisement’s broadcast. As set out above, Ofcom noted that the majority of the audience may have already had a reasonable understanding and knowledge of the Agreement, given the widespread and long-running media coverage of it in Northern Ireland.

As such, Ofcom was of the view that the positive endorsements of the Agreement could not be described as informing or educating the public by means of imparting

information that was in the public interest, but as promoting and portraying the Agreement and OFMDFM in a positive and favourable light.

#### Conclusion on “public service nature”

In light of these factors and taking account of all the submissions made by OFMDFM and the radio broadcasters, it appeared to Ofcom that the positive endorsements of the Agreement that featured in the advertisement had the purpose of encouraging listeners to consider the Agreement and OFMDFM in a positive light, and to support it.

As such, Ofcom concluded that the overall purpose of the advertisement, and the manner in which it was imparted, was not to inform and educate the public by means of imparting information or advice that was in the public interest.

Ofcom therefore found that the advertisement was not of a public service nature and did not fall within the exception set out in section 321(7) of the Act.

#### **Content of the advertisement: “political advertising”**

Having reached the above decision, Ofcom then went on to consider whether the advertisement was political, as defined by the Act. We considered the content against sections 321(2) and 321(3) of the Act and Section 2 Rule 15(b) of the Advertising Code (see the relevant legislative and Code extracts at the end of this Finding).

We therefore requested comments from the advertiser, OFMDFM, and the broadcasters with regard to sections 321(2) and 321(3) of the Act and Section 2 Rule 15(b) of the Advertising Code. In particular, we sought their views with regard to the following provisions of section 321 of the Act:

“(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is...

(b) an advertisement which is directed towards a political end...”; and

“(3) For the purposes of this section objects of a political nature and political ends include each of the following...

(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;

(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.”

#### **Responses – content of the advertisement: “political advertising”**

In response to Ofcom’s request for comments under sections 321(2) and (3) of the Act and Section 2 Rule 15(b) of the Advertising Code:

NMG submitted that:

- it disagreed with Ofcom’s decision that section 321(7) of the Act was not applicable in this instance, but it respected Ofcom’s position, “as the ultimate arbitrator in these matters”;

- “if it is the case that section 321(7) of the Act does not apply, then we can appreciate how Ofcom could conclude that any of [the relevant sections of the Act] could be applied to this advertisement”;
- it “has learned from this experience and has re-educated staff and implemented revised procedures. Primarily this concerns procedures to ensure ad copy coming from any source, including established and respected advertising agencies, is RACC approved”; and
- it “did not intentionally broadcast this advertisement against the rules, nor does Northern Media Group hold any political opinion on any of the issues involved. The Northern Media Group was put together to reflect the broad religious traditions in Northern Ireland and we pride ourselves on our impartiality and our balanced coverage.”

Bauer stated that:

- “Regarding Section 321(2)(b), as the advertisement’s intention was to make people aware, encourage them to peruse the Agreement and provide feedback, we would question whether this served a political purpose;”
- “In hindsight, we do not contest that the tone and execution of the advertisement could be construed as perhaps pro-Agreement and pro-OFMDFM, but we would argue that it did provide a public information service. Furthermore we would contest that the objective of the advertisement was to encourage the population to read the document for themselves, engage in the process and form their own opinion”;
- “Regarding Section 321(3)(f) which highlights issues of public controversy, we would again question whether the advertisement ‘influenced’ public opinion. This is subjective and we would respectfully ask if there is any evidence or research that proves listeners/readers were influenced in a particular direction?”
- “Regarding Section 321(3)(g) and whether the interests of ‘a party or other group of persons organised’ served a political end, we would reiterate that the core essence of the advertisement was to direct listeners/readers to a website to form their own opinion on the Agreement. We would question whether this served a political end”;
- “...we would not have accepted this advertisement if we, in any way, thought it was purely of a political nature. The copy we received, at that time, encouraged our listeners to read a document we believed was ‘of a public service nature’. The gravitas of the source – OFMDFM – provided assurance that this indeed was the case”;
- “...in summary, we do have concerns over the creative execution of the advertisement and believe that this is the rub. It was a government placed advertisement, asking for an audience to read a document on a website. We did not believe this to be of a political nature whatsoever, but we can and do understand, how the creative used perhaps could be seen as having political overtones”; and

- “The context of what was happening within Northern Ireland is a mitigating factor and should be taken into consideration. At the time, the media were understandably in overdrive as the Agreement began to unfold and there was a real thirst for information about its content. OFMDFM acted to inform the public, via both press and radio, encouraging the reading of same.”

Citybeat stated that:

- “After reading and considering [Ofcom’s] findings and conclusions [concerning whether the advertisement was of a “public service nature”] we would subsequently like to state that on reflection of same the Hillsborough Castle Agreement advertisement placed on behalf of the OFMDFM could have been deemed to be of a political nature and therefore should not have been transmitted”; and
- “This [was] a mistake on our part and one for which we are sorry; that being said the station is now more vigilant in our requests for copy clearance details from all advertising agencies and clients alike.”

U105 submitted that:

- “historically the advertising placed by any of the local agencies on behalf of the government has been of a public service nature e.g. road safety, fire prevention, health matters or encouraging literacy. We had no reason to believe that this ad was different in nature to previous public information ads”;
- “It was not our belief that the advertisement placed was politically motivated as opposed to aimed at raising public awareness of an issue. It was our belief at the time that the advertisement placed was public information placed by an elected government in Northern Ireland, as constituted by the Office of the First and Deputy First Minister, which we did not believe would be [in] contravention of the Act”;
- it had “organised a session for all sales and managerial staff on the relevant areas of the Communications Act 2003, in particular Section 321”;
- while it acknowledged Ofcom’s view, it remained the broadcaster’s view that “the purpose of the ad was to inform and educate the public by means of imparting information, in this case a call to action directing them to a website and phone number for a copy of the Hillsborough Castle Agreement”, which was why RACC clearance had not been sought.

OFMDFM argued the following:

- It reminded Ofcom that “the context in which the advertisement was released was at the end of a lengthy period of negotiation involving the UK Government, the Irish Government and our major political parties. The Agreement was not to be the subject of a referendum but it was considered vital in the working of our institutions that as many of the public were informed of how to gain access to what was a significant agreement for local people. This would enable each individual to properly consider the effects of such an agreement and lead to a more informed and balanced debate.” OFMDFM therefore considered “such information [was] clearly in the public interest and the purpose was clearly to educate and to inform the public”, adding that “an

opinion poll indicated a high level of support for the Agreement (72%) and this underlines the argument that the content of the advertisement is not controversial or partisan”;

- It noted Ofcom’s reference to the SDLP, the Ulster Unionist Party and the TUV having “all publicly expressed varying degrees of concern or reservation about the Agreement” (in ‘Background’ of our decision concerning “public service nature”, above). In response, OFMDFM detailed the political framework in which this advertisement was placed: “The NI Executive at its meeting on 11 February 2010 considered a paper on the implementation of the Hillsborough Agreement, including the need for community consultation and that this would be supported by communications activities. At the time the Executive’s membership was made up of representatives of the DUP, Sinn Fein, UUP and the SDLP. The Alliance Party subsequently took up the Justice Department on 12 April 2010. The TUV is not represented on the Executive as they have no seats in the Assembly. The radio advertisement was part of this community consultation exercise”;
- In response to Ofcom’s reference to finding no material in the advertisement that encouraged listeners who had any comments on the Agreement to forward these to the First Minister and Deputy First Minister (in ‘Purpose of the advertisement’ of our decision concerning “public service nature”, above), OFMDFM said: “The radio advertisement referred people to our website, where more detailed information was available, with details of how and where to send comments.” OFMDFM provided a screenshot demonstrating this, adding that it was unfeasible to provide such detailed information in a short radio advertisement;
- OFMDFM said that the clips used in the advertisement from speeches made by the First Minister and Deputy First Minister “were widely used news clips and were not intended to influence. In what was a short advertisement they were a creative tool to attract attention and register with the listener”;
- OFMDFM considered that Ofcom had taken a very narrow interpretation of “public service nature”. It said: “Communications in the environment the Executive operates ... are challenging and any efforts to inform or make the public aware of issues like the Hillsborough Agreement will always face a challenge from those who are in opposition to the Executive’s view.”
- With regard to assessing whether the advertisement was “directed towards a political end”, OFMDFM reaffirmed that its purpose was to inform people about the Agreement. It added that “it was vital in the working of our institutions that as many of the public were informed of how to gain access to what was a significant agreement for local people. To advertise so that members of the public are aware that an agreement between politicians has been concluded might be considered to be directed towards a political end in its narrowest sense, that is that citizens should be fully informed of current developments”. However, OFMDFM considered that “it must be the intention of [section 321(2)(b) of the Act] to prohibit advertising which is directed towards a political end in that it promotes taking a side in a political argument or controversy.” As already stated there was a widespread consensus in favour of the Agreement and this was reflected when the Assembly came to vote on the issue when 83.8% of Members of the Assembly voting supported the devolution of policing and justice on the terms set out in the Agreement.

- With regard to assessing whether the advertisement was “influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy”, OFMDFM said that “the purpose of the advertisement was to alert people to the availability of the Agreement, point them to the website where more information was available, with details of how to respond.” It added that “in any event the degree to which this was a matter of controversy in the United Kingdom was limited. There were no Members of the United Kingdom Parliament opposed to the Agreement and only one party voted in the Northern Ireland Assembly against devolution of policing and justice on the terms of the Agreement.”
- With regard to assessing whether the advertisement was “promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends”, OFMDFM reiterated that “the context in which the advertisement was released was at the end of a lengthy period of negotiation involving the UK Government, the Irish Government and our political parties. It continued: “An important aspect of this Agreement was community consultation. This was recognised in a paper considered by Executive Ministers (four parties) on 11 February when they discussed the outworkings of the Agreement. Given that the work from the Hillsborough Castle Agreement will impact on OFMDFM, it was appropriate for the Department to take this forward and to advertise where the public can find copies of the Agreement. The development of the campaign followed from the recognition at the Executive for community consultation to be undertaken and for OFMDFM to take the lead.” OFMDFM did not consider that this constituted “promoting the interests of a party or other group of persons”, adding that “the interests that the advertisement sought to promote were not the interests of a party or other political group but rather the general public interest in ensuring that all members of the public who took an interest in current issues should have access to the Agreement.”
- OFMDFM suggested that “the public environment that the NI Executive is operating in is more politically complex than other areas covered by Ofcom”, concluding that “it is not surprising that communications from the Executive will be criticised by the TUV, which has publicly voiced its opposition to the whole concept of our local political institutions. Given this context, it considered that the radio advertisement was simply “part of a broader community consultation and communications campaign to encourage the public to read the document and forward any comments to the First Minister and deputy First Minister.”

### **Decision – content of the advertisement: “political advertising”**

It is Ofcom’s statutory duty to regulate broadcast advertising so as to ensure that the regulatory regime set out in the Act is enforced, and to set standards in line with the objectives specifically set out in the Act.

Since commercial broadcasting began in the UK in the 1950s, Parliament has made clear through successive Acts of Parliament concerning broadcast regulation that political advertising should not be permitted on either television or radio.

*The legislation has not made it any part of Ofcom’s statutory duty or function to form any judgement about the merits or otherwise of such advertising campaigns. Indeed,*

*it appears to Ofcom that the prohibition and wording in the Act is drafted in such a way so as to ensure that Ofcom cannot differentiate between what some may describe as “good politics” and “bad politics”. Rather, Ofcom must, as a matter of law, only look at whether political advertising requirements have been complied with.*

Section 321 of the Act sets out the ways in which an advertisement can contravene the prohibition on political advertising because it is “directed towards a political end”.

Having taken into account the representations of the advertiser, OFMDFM, and the broadcasters, Ofcom considered that section 321(3)(f) (“influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy”) and section 321(3)(g) (“promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends”) were the most relevant provisions for consideration in this case.

As set out above, in Ofcom’s decision that the advertisement was not of a public service nature, we noted that, at the end of the advertisement, the announcer directed listeners to where they could read or obtain a copy of the Agreement. However, Ofcom was also of the view that this information was imparted in a manner that made it appear secondary, in comparison to the emphasis and weight given within the advertisement to the positive descriptions of the Agreement by politicians – the First Minister and the Deputy First Minister – and the announcer.

In particular, Ofcom noted the positive phrases used to describe the Agreement (“...the surest sign that there will be no going back to the past” and “...make life better for our children, for our grandchildren. That is what this Agreement must mean in practice”). Further, in the final line of the advertisement, the announcer stated: “*The Hillsborough Castle Agreement – securing a better future for all*”.

Ofcom had therefore concluded that the positive endorsements of the Agreement could not be described simply as informing or educating the public by means of imparting information that was in the public interest, but as promoting and portraying the Agreement and the OFMDFM in a positive and favourable light.

#### Section 321(3)(f)

Ofcom then considered whether the advertisement (and the positive endorsements of the Agreement within the advertisement) had been directed towards influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy, in contravention of section 321(3)(f) of the Act.

In this respect, Ofcom took into account the press conference at Hillsborough Castle on 5 February 2010 (the day that the Agreement was announced), from which the clips included in the advertisement of the First Minister, Peter Robinson, and Deputy First Minister, Martin McGuinness, talking about the Agreement had been taken. Ofcom noted that, during the same press conference, Peter Robinson had also made the following statements:

“In the next few weeks we will take this Agreement to the people of Northern Ireland. We will ask them to endorse that Agreement, the Agreement that we have reached during this negotiation process, and that will be a very considerable step forward...”; and

“. ....Central to my party’s position on policing and justice devolution is the support from the Assembly parties. I have consistently said that this is an essential factor and a parallel indicator of community confidence. With the

necessary community confidence and the faithful implementation of this Agreement we will move to agree the devolution of policing and justice on 9<sup>th</sup> March”.

It is therefore Ofcom’s view that, at the time of the advertisement’s broadcast (16 and 17 February 2010), OFMDFM considered public endorsement of the Agreement to be a necessary and important element of its successful implementation.

Further, Ofcom noted that it was OFMDFM’s position that: “The NI Executive at its meeting on 11 February 2010 considered a paper on the implementation of the Hillsborough Agreement, including the need for community consultation and that this would be supported by communications activities”. OFMDFM also described the radio advertisement as being “part of this community consultation exercise”, which it referred to “as being an important aspect of this Agreement”.

In Ofcom’s view, the use of the press conference clips in the advertisement, which promoted the Agreement and portrayed it in a positive light, did not act solely as “a creative tool to attract attention and register with the listener”, as OFMDFM had argued. Instead, Ofcom considered that the clips sought to persuade listeners of the merits of the Agreement and why it was a good thing. Ofcom took into account that the advertisement was broadcast at a time when public endorsement of, and “community confidence” in, the Agreement was being actively sought by OFMDFM. As such, Ofcom found that the favourable portrayal of the Agreement in the advertisement could be viewed as being directed towards influencing listeners’ opinion of the Agreement, in advance of them considering it for themselves, after the announcer had given details of where it was available.

Ofcom then turned to consider whether the matter of the Agreement could be described as a matter of public controversy in the UK. As set out above in Ofcom’s decision that the advertisement was not of a public service nature, it should be noted that **Ofcom’s remit to consider this matter did not extend to, or therefore involve, any judgement on the merits of the Agreement itself.**

Ofcom took into account that OFMDFM had submitted that: “an opinion poll indicated a high level of support for the Agreement (72%) and this underlines the argument that the content of the advertisement is not controversial or partisan”. Further OFMDFM had also argued that: “there was a widespread consensus in favour of the Agreement and this was reflected when the Assembly came to vote on the issue when 83.8% of Members of the Assembly voting supported the devolution of policing and justice on the terms set out in the Agreement”.

With regard to the Assembly vote to which OFMDFM referred, Ofcom noted that it took place on 9 March 2010, three weeks after the broadcast of the advertisement. In any event, the test on which section 321(3)(f) relies does not relate to political controversy, but to whether a matter can be judged to be one of wider *public* controversy.

In relation to the opinion poll to which OFMDFM referred, Ofcom noted that no detailed information was provided about its scope or size, or the date of this poll. On its face, the poll result appeared to indicate a reasonably high level of public support for the Agreement – although certainly not unanimous support. Nevertheless, Ofcom takes the view that, for the purposes of section 321, a level of public support does not necessarily preclude an issue from being a matter of public controversy.

It appeared to Ofcom that, irrespective of the levels of support for the Agreement, to which OFMDFM referred as evidence of a lack of public controversy, a significant vocal minority, including the complainant, the leader of the TUV, held an opposing view. Further, at the time of the broadcast of the advertisement, there remained a number of outstanding issues relating to the implementation of the Agreement which Ofcom considered to be relevant.

Taking all the circumstances into account, Ofcom judged that it was reasonable to consider the Agreement, and the past and ongoing political process of negotiation and implementation – in particular, surrounding the devolution of policing and justice powers – as a long-standing matter of public controversy in Northern Ireland.

Ofcom therefore concluded that the advertisement's favourable tone and portrayal of the Agreement resulted in it being directed towards influencing public opinion on the Agreement itself and the political process related to both the Agreement and its implementation. Further, Ofcom considered this matter to be a matter of public controversy (in the UK). The advertisement therefore contravened section 321(3)(f) of the Act and was in breach of Section 2 Rule 15b (Political, Industrial and Public Controversy) of the Advertising Code.

#### Section 321(3)(g)

Ofcom next considered whether the advertisement had been directed towards promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends, in contravention of section 321(3)(g) of the Act.

Ofcom assessed the content of the advertisement and, again, considered the press conference at Hillsborough Castle on 5 February 2010 (the day that the Agreement was announced), from which the clips included in the advertisement of the First Minister, Peter Robinson, and Deputy First Minister, Martin McGuinness, talking about the Agreement had been taken.

Ofcom noted OFMDFM's argument that "given that the work from the Hillsborough Castle Agreement will impact on OFMDFM, it was appropriate for the Department to take this forward and to advertise where the public can find copies of the Agreement. The development of the campaign followed from the recognition at the Executive for community consultation to be undertaken and for OFMDFM to take the lead". Ofcom also noted that OFMDFM did not consider that this constituted "promoting the interests of a party or other group of persons", adding that "the interests that the advertisement sought to promote were not the interests of a party or other political group but rather the general public interest in ensuring that all members of the public who took an interest in current issues should have access to the Agreement."

As previously stated, OFMDFM is a department of the Northern Ireland administration, and is therefore permitted within the Act to advertise, so long as the advertisement is of a public service nature.

However, in Ofcom's view, the advertisement gave significant prominence to the First Minister and the Deputy First Minister, by featuring these two elected politicians as representatives of their respective political parties – Peter Robinson MLA, the First Minister and leader of the Democratic Unionist Party (DUP) and Martin McGuinness MP MLA, the Deputy First Minister and member of Sinn Féin. The advertisement not only featured these politicians but conveyed their support for, and promotion of, the Agreement, by explaining why it was good for the future of Northern Ireland.

Ofcom considers that the advertisement promoted the Agreement through its favourable tone and positive portrayal. This resulted in it being directed towards influencing public opinion on the Agreement, the political process related to it, and its implementation. The advertisement therefore sought to promote an outcome that was aligned with the political interests of the First and Deputy First Ministers.

It is also clear from elements of the press conference that key aspects of the Agreement reflected specific policy positions or objectives held by the First and Deputy First Ministers and that gaining support for the Agreement was itself core to securing their political positions. For example, Peter Robinson had stated that:

“...Central to my party’s position on policing and justice devolution is the support from the Assembly parties. I have consistently said that this is an essential factor and a parallel indicator of community confidence. With the necessary community confidence and the faithful implementation of this Agreement we will move to agree the devolution of policing and justice on 9<sup>th</sup> March”.

Ofcom therefore concluded that the advertisement gave prominence to two elected politicians holding the positions of First Minister and Deputy First Minister. This prominence, when coupled with the overall favourable tone and positive portrayal of the Agreement in the advertisement, resulted in it being promotional for the First and Deputy First Ministers and their respective political parties. The advertisement was therefore directed towards promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends, in contravention of section 321(3)(g) of the Act, and in breach of Section 2 Rule 15b (Political, Industrial and Public Controversy) of the Advertising Code.

#### **Breaches of Section 1 Rule 4.6 of the Advertising Code (Central Copy Clearance)**

#### **Breaches of Section 2 Rule 15b of the Advertising Code (Political, Industrial and Public Controversy)**

#### **Extracts from the relevant legislation and code**

##### Communications Act 2003

Section 319:

*(1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.*

*(2) The standards objectives are—*

...

*(g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;*

Section 321:

*Objectives for advertisements and sponsorship*

*(1) Standards set by OFCOM to secure the objectives mentioned in section 319(2)(a) and (g) to (j)—*

*(a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and*

*(b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances).*

*(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is—*

*(a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;*

*(b) an advertisement which is directed towards a political end; or*

*(c) an advertisement which has a connection with an industrial dispute.*

*(3) For the purposes of this section objects of a political nature and political ends include each of the following—*

*(a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;*

*(b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;*

*(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;*

*(d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;*

*(e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;*

*(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;*

*(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.*

*(4) OFCOM—*

*(a) shall, in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and*

*(b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable OFCOM to impose requirements with respect to any of those matters that go beyond the provisions of OFCOM's standards code.*

*(5) OFCOM must, from time to time, consult the Secretary of State about—*

*(a) the descriptions of advertisements that should not be included in programme services; and*

*(b) the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services.*

*(6) The Secretary of State may give OFCOM directions as to the matters mentioned in subsection (5); and it shall be the duty of OFCOM to comply with any such direction.*

*(7) Provision included by virtue of this section in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of—*

*(a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or*

*(b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 or by paragraph 18 of Schedule 12 to this Act.*

*(8) In this section “programme service” does not include a service provided by the BBC.*

BCAP Radio Advertising Standards Code, Section 2 Rule 15(b)

**The effect of the Communications Act is to require Ofcom to ensure that...**

**b) No advertisement is broadcast by, or on behalf of, any body whose objects are wholly or mainly of a political nature, and no advertisement is directed towards any political end.**

The term ‘political’ here is used in a wider sense than ‘party political’. The prohibition includes, for example, issue campaigning for the purposes of influencing legislation or executive action by local, or national (including foreign) governments.

Particular care is required where advertising mentions any government, political party, political movement or state-specific abuse, so as not to break the spirit of these rules, which are intended to prohibit lobbying or electioneering on politically controversial or partisan issues.

## In Breach

### Red Light Central

*Extreme, 23 February 2011, 21:00 to 21:50*

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*Red Light Central* is televised interactive adult sex chat advertisement content broadcast on the service *Extreme*, which is available freely without mandatory restricted access on Sky channel number 916. This channel is situated in the 'adult' section of the Sky Electronic Programme Guide ("Sky EPG"). The licence for this service is owned and operated by Playboy UK TV Limited ("Playboy TV" or "the Licensee"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

Ofcom received a complaint about alleged inappropriate adult content broadcast at various times between 21:00 and 21:50 on 23 February 2011. The complainant considered the content was highly sexualised and that the presenter was "miming sexual intercourse and oral sex" and considered such material was more appropriate after 22:00.

Ofcom noted the female presenter was wearing red fishnet stockings, red bra and thong, black knee high leather boots, a short black leather skirt hitched up around her waist and a denim waistcoat. On several occasions between 21:00 and 21:30, and throughout the remainder of the broadcast, the presenter knelt on all fours with her buttocks pointing upwards and towards the camera but at an angle, and lay on her back with her legs open to camera. While in these positions she gyrated her hips in a sexual manner so as to mimic sexual intercourse and at times her genital area was not adequately covered. She also stroked her thighs and breasts, opened her mouth in a sexual rather than flirtatious manner, and briefly mimed oral sex. Ofcom noted the images described above were shown very shortly after the 21:00 watershed, starting at 21:02.

The rules governing broadcast advertising are set by the Broadcast Committee of Advertising Practice ("BCAP") with the approval of Ofcom. BCAP performs its function by setting, monitoring and amending the UK Code of Broadcast Advertising Practice ("BCAP Code"), with Ofcom retaining back-stop enforcement powers. Ofcom has however retained responsibility for regulation of certain services under the BCAP Code. These include 'daytime chat' and 'adult sex chat' services. As a consequence, all output from these channels must comply with the BCAP Code.

On 28 January 2011 Ofcom published detailed guidance on the Advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the "Chat Service Guidance")<sup>1</sup>. This guidance note is intended to assist licensees who carry 'daytime chat' and/or 'adult chat' material to understand the likely interpretation of the BCAP Code that Ofcom will apply.

Ofcom therefore considered whether this material raised issues under Rule 32.3 of the BCAP Code:

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

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

We asked Playboy TV to explain how the material complied with this rule.

### **Response**

In response the Licensee said “[we] understand that presenters wearing thongs is not prohibited after the watershed”, though it bore in mind that shots of the presenter should not be “prolonged and invasive” when wearing this clothing. The Licensee added “we did not broadcast any physically intrusive, intimate shots, and the prolonged shots we aired were not close-ups and were at a sufficient distance to avoid intrusion”.

Playboy TV admitted that in this material “the presenter’s skin around her vagina is sometimes not completely covered by her underwear” although it did not consider this to show “labial detail”. However it agreed to ensure that the presenter “wears adequate garments which fully cover this area in future”.

The Licensee stated “there was some gyrating and jiggling, plus brief miming of masturbation, but nothing too vigorous, and certainly less explicit than would be shown after 22:00”.

Playboy TV pointed to a sentence in the Chat Service Guidance published by Ofcom on 28 January 2011 that states: “After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive”. The Licensee explained: “the content in the referenced programme does indeed get progressively stronger, with the presenter removing more of her clothes after 21:30, with her movements gradually more sexual throughout, yet nothing as vigorous or revealing as can be found post 22:00”. Playboy TV continued that what is permitted under the BCAP Code between 21:00 and 22:00 is “still somewhat grey in terms of compliance and we would welcome any further guidance”. It added “the brief sentence [in the guidance document] is all we have to go on and is unfortunately very subjective”.

Playboy TV told Ofcom that “we take our responsibilities very seriously and have absolutely no intention of breaching the Code. If [Ofcom] believes we have crossed the line then we will take immediate steps to tone down our broadcasts, and will continue working with Ofcom to ensure our channels remain compliant”.

### **Decision**

Since 1 September 2010 all PRS-based daytime and “adult chat” television services have no longer been regulated as editorial content but as long-form advertising i.e. teleshopping. From that date the relevant standards code for such services became the BCAP Code rather than the Broadcasting Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human

Rights, as incorporated in the Human Rights Act 1998. However, broadcasters should note that the advertising content of 'adult chat' services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

In the context of broadcasts on television of material soon after the 21:00 watershed, Rule 32.3 of the BCAP Code is substantially equivalent to Rule 1.6 of the Broadcasting Code. Rule 1.6 provides that:

"The transition to more adult material must not be unduly abrupt at the watershed (in the case of television)... For television, the strongest material should appear later in the schedule."

BCAP Code Rule 32.3 makes clear that children should be protected by relevant timing (and so appropriate scheduling) restrictions from material which is unsuitable for them. Appropriate timing and scheduling restrictions are judged according to factors such as: the likely number of children in the audience; the likely age of those children; and whether the advertisement was broadcast during school time or during school holidays. The watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

In applying BCAP Code Rule 32.3 Ofcom had first to decide if the broadcast material was unsuitable for children. With regards to this broadcast, Ofcom noted that on a number of occasions between 21:00 and 21:30 (and as early as 21:02) the female presenter adopted sexually provocative positions - for example, kneeling on all fours with her buttocks in the air pointing towards the camera and gyrating her hips. She was also seen lying on her back for prolonged periods with her legs open to camera. She also stroked her thighs and breasts, opened her mouth in a sexual rather than flirtatious manner, mimed intercourse and briefly mimed oral sex. A number of these shots were repeated and prolonged. The Chat Service Guidance explicitly states: "Ofcom cautions against less intrusive shots that may become unacceptable by virtue of their being prolonged."

In Ofcom's view, the revealing clothing and repeated actions and sexual positions and actions of the presenter were intended to be sexually provocative in nature. In light of this behaviour and imagery, Ofcom concluded that under BCAP Code Rule 32.3, this material was clearly unsuitable for children.

Ofcom then considered under BCAP Code Rule 32.3 whether relevant timing or scheduling restrictions had been applied by Playboy TV to this broadcast. Ofcom took account of the fact that the Extreme channel is in the 'adult' section of the Sky EPG. However this programme was broadcast on a channel without mandatory restricted access in the period immediately after the 21:00 watershed, when some children were likely to be available to view, some unaccompanied by an adult. Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the 'adult' section of the EPG without mandatory restricted access directly after the 21:00 watershed. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast so soon after 21:00. Further, the broadcast of such relatively strong sexualised content was inappropriate to advertise adult sex chat so soon after the 21:00 watershed.

This broadcast was therefore in breach of BCAP Code Rule 32.3.

Rule 32.3 makes clear that children should be protected by relevant timing (and so appropriate scheduling) restrictions from material which is unsuitable for them. Ofcom made clear in numerous previous published findings, and underlined recently in the Chat Service Guidance, that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed<sup>2</sup>. Ofcom was therefore particularly concerned that the sexualised images described above were broadcast directly after the watershed, from as early as 21:02.

### **Breach of BCAP Code Rule 32.3**

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<sup>2</sup> For example:

Dirty Talk Live, Dirty Talk, 2 September 21:00 to 22:00

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb171/>

Free Blue 1 Babeworld.tv, 9 July 2010, 21:00 to 21:30

(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb168/issue168.pdf>)

*Sport XXX Babes*, 16 May 2010, 21:00 to 21:30

(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>)

## In Breach

### Somer Valley FM's Jukebox Hour

*Somer Valley FM, 28 February 2011, 17:00*

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#### Introduction

Somer Valley FM is a community radio station that broadcasts to the Norton Radstock and Wandsdyke areas of Somerset. The station broadcasts a regular early evening request programme in which listeners are invited frequently to select songs to be played on air. Listeners can make their requests via text message (at standard network rate), e-mail or the station's Facebook page (free of charge).

Ofcom received a complaint from a listener who had discovered that the edition of *Somer Valley FM's Jukebox Hour* transmitted on 28 February 2011 had been recorded prior to its broadcast. During the broadcast of the programme, the listener had called the station to speak to the station manager (also the presenter). The listener was informed that he was on leave and therefore unable to take the call.

The listener was concerned that the presenter's invitations to listeners for song requests were misleading as there was no possibility that the pre-recorded programme would fulfil them. Ofcom also received a complaint from another listener who had similar concerns.

In view of the issues raised by the complainants, Ofcom sought comments from the broadcaster under Rule 2.2 of the Code.

Rule 2.2: "Factual programmes or items or portrayal of factual matters must not materially mislead the audience."

#### Response

Somer Valley FM said that its text service "attracts a monthly cost of £29.38 to the station" and its sole purpose "is to maximize ways listeners can contact and have input into their community station." Referring to the standard rate charges applying to text messages, it added that it "would never see such as service as a profit making exercise" but rather a means to complement the other methods of contact such as Facebook and email.

Somer Valley FM explained that the "airing of this programme arose due to the unusual circumstance" of the presenter being "unexpectedly absence [sic.] from the station." Whilst it said that the programme broadcast immediately before this edition of *Somer Valley FM's Jukebox Hour* had "alluded to the fact" that the presenter was absent, it admitted that this was not stated within the programme itself.

The broadcaster explained that it had intended to carry over any listener requests to the next live airing of the programme. However, it acknowledged that the programme did not inform listeners that this would occur. The broadcaster therefore conceded that listeners may not have been aware that this programme had been pre-recorded and may have been encouraged to request a song with the expectation of it being played during the programme. It did however confirm that no text message requests were received from listeners during the broadcast in question.

Somer Valley FM offered its “unreserved” apologies that it “inadvertently may have misled the listener” and said that as a result of the incident it has tightened its procedures to ensure that listeners of pre-recorded shows “will be fully aware that any requests will be carried over to another programme.” Additionally, it has instructed presenters to make clear during appeals for requests that should the station be unable to fulfil requests during the current show, they will be carried over to the next edition.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to require the application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives. These standards are contained in the Code.

Rule 2.2 of the Code states that “the portrayal of factual matters must not materially mislead the audience.” Broadcasters must ensure that programmes do not contain information that could cause material harm to audiences, for example in the form of financial loss or a breach of audience trust.

In this case, Ofcom was concerned that the programme repeatedly gave the impression that it was being broadcast live. In particular, we noted the following:

*“Up and running, live at 5. Somer Valley’s Jukebox Hour. Good to have your company.”*

*“Treat me as a jukebox. What would you like on the dancefloor this evening? Open for negotiation.”*

*“Good evening to Karl...you’re saying you’re enjoying the show as always. Could I play a Doors track?”*

*“I’ve just nipped downstairs, right, to go and see who’s texted in and all that kind of caper, for the Jukebox Hour.”*

Additionally, Ofcom noted that the hour-long programme contained four invitations to listeners to make requests by text message. As a result of these calls to action, and the comments quoted above, Ofcom considered that listeners were likely to have perceived that the programme was being broadcast live and that if they requested songs, these would be played. However, because the programme had already been recorded, there was no possibility that requested songs could be played during the programme’s transmission.

Ofcom recognised that the request service in this case was either free (via email or the station’s Facebook page) or in the case of text messages, charged at listeners’ standard network rate, and that the broadcaster did not seek to profit from it. We also note that no song requests were, in fact, received during this programme’s broadcast, and that no financial loss was therefore incurred by listeners. However, presenting a pre-recorded programme that invited audience participation in this way nevertheless risked a breach of listeners’ trust.

Ofcom has previously highlighted the importance of broadcasters' protection of audience trust in relation to calls to action in pre-recorded radio programming, as follows:

- *Saturday Early Breakfast* (on Dream 100 FM) – Broadcast Bulletin issues 103 (25 February 2008)<sup>1</sup> and 115 (11 August 2008)<sup>2</sup>;
- *Overnight Hit Mix* (on Your Radio, West Dunbartonshire...) and *Saturday Night Warm-Up* (on NMG stations, Northern Ireland) – Broadcast Bulletin issue 127 (9 February 2009)<sup>3</sup>;
- *The Classic 9 at 9* (on Radio Hartlepool) – Broadcast Bulletin issue 142 (28 September 2009)<sup>4</sup>

Additionally, in Broadcast Bulletin issue 127, Ofcom issued a note to broadcasters<sup>5</sup> on the matter in which it made clear “that licensees should consider the risk of a fundamental breach of trust between a broadcaster and its audience.”

In this case, Ofcom concluded that this pre-recorded programme was materially misleading because it was deliberately presented as being live and (through the inclusion of repeated invitations to listeners to request songs to be played during the programme) was deliberately constructed in such a way as to convince listeners that they could interact with the programme (including by paid for communications like text message) when in fact listeners could not interact with the programme. In the circumstances, the programme had the potential to cause a breach of listeners' trust. The programme was therefore in breach of Rule 2.2 of the Code.

We note the measures the broadcaster has put in place following the incident to ensure that pre-recorded programming is signposted clearly and its listeners are made aware that song requests may not be fulfilled during the current programme. As such, Ofcom does not expect a recurrence of this compliance issue.

## **Breach of Rule 2.2**

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<sup>1</sup> Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb103/issue103.pdf>

<sup>2</sup> Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb115/issue115.pdf>

<sup>3</sup> Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb127/issue127.pdf>

<sup>4</sup> Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb142/issue142.pdf>

<sup>5</sup> Available to view at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb127/issue127.pdf> (page 17)

## Fairness and Privacy Cases

### Upheld

#### Complaint by Mr Maziar Bahari

*News Item, Press TV, 1 July 2009*

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**Summary:** Ofcom has upheld this complaint of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme. Ofcom regards these breaches of Rules 7.1 and 8.1 to be of a serious nature. It will therefore consider whether this case warrants the imposition of a sanction.

On 1 July 2009, Press TV reported on an attack on a Basij<sup>1</sup> base in Tehran by the supporters of the unsuccessful Iranian presidential candidate, Mr Hossein Mousavi, during a post-election demonstration. The item contained footage of people throwing stones and what appeared to be petrol bombs at the base and it stated that the reporting of the demonstration by some TV news channels had been biased. In particular, the item stated that Channel 4 News had chosen only to show footage of the security forces shooting, apparently without provocation, at the demonstrators but had ignored pictures showing the demonstrators throwing petrol bombs.

The item went on to state that the complainant, Mr Maziar Bahari, had provided the footage of the demonstration to Channel 4 News and that it was not clear whether Mr Bahari had happened to be at the demonstration by “*chance*” or whether “*his presence was pre-planned*”. This was followed by what appeared to be interview footage of Mr Bahari in which he said:

*“On Monday, 15 June [2009], I sent a report about the attack against the base, a military base of Basij to Channel 4 News as well as to Newsweek Magazine”.*

Simons Muirhead and Burton Solicitors complained to Ofcom on behalf of Mr Bahari that he was treated unfairly and that his privacy was unwarrantably infringed in the making and broadcast of the programme.

In summary, Ofcom found as follows:

- Press TV’s presentation of Mr Bahari in the programme broadcast was unfair in that it omitted material facts and was placed in a context in which inferences adverse to Mr Bahari could be drawn.
- Press TV did not obtain Mr Bahari’s consent to his participation in the programme and this contributed to the overall unfairness to Mr Bahari in the item broadcast.
- Press TV’s filming and broadcast of the interview without Mr Bahari’s consent while he was in a sensitive situation and vulnerable state was an unwarranted infringement of Mr Bahari’s privacy.

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<sup>1</sup> The Basij is an Iranian volunteer militia force.

## Introduction

On 1 July 2009, Press TV Limited (“Press TV”), a licensed satellite broadcaster in the United Kingdom<sup>2</sup>, broadcast a news item that reported on an attack that had taken place on 15 June 2009 on a Basij base in Tehran by the supporters of the unsuccessful Iranian presidential candidate, Mr Hossein Mousavi, during a post-election demonstration. The item contained images of demonstrators throwing stones and what appeared to be petrol bombs at the buildings. The programme’s presenter commented that the reporting of the demonstration by some TV news channels had been biased by not showing the attacks on the base by the demonstrators. Footage obtained by Press TV of demonstrators attacking the base and footage taken from the *Channel 4 News* report of the security forces shooting at the demonstrators from the roof of the base were shown together by way of comparison.

The report then showed what appeared to be interview footage of Mr Bahari in which he said he had sent a report about the attack against the base to *Channel 4 News* and to Newsweek magazine.

Simons, Muirhead and Burton Solicitors (“Simons, Muirhead and Burton”) complained to Ofcom on behalf of Mr Bahari about the broadcast report.

## The Complaint

By way of background to the complaint, Simons, Muirhead and Burton said that Mr Bahari, a documentary maker and Newsweek reporter, was in Iran reporting on the presidential elections in June 2009. In a statement dated 21 December 2009 made by Mr Bahari and submitted to Ofcom along with the complaint, Mr Bahari said that he was arrested on 21 June 2009 for “undermin[ing] the security of the [Iranian] nation” and was held in Evin prison in Tehran for 118 days, of which 107 days were spent in solitary confinement. On 29 June 2009, Mr Bahari said that he was told by an interrogator that he was suspected of espionage and that, if found guilty, the death penalty might follow. However, he was also told that he would be freed if he made a televised statement about the role of the Western media in the post-presidential election demonstrations. Mr Bahari said that the following day, he was interviewed in a room of the prison by three Iranian broadcasters, including Press TV. Mr Bahari said that the questions the broadcasters asked had been prepared by the Iranian authorities holding him and that he had read the answers from a script, also prepared by the authorities. Mr Bahari said that he was reminded by the interrogator during the course of the interviews of the consequences of failing to give “accurate answers”. Mr Bahari said that it would have been clear to all the broadcasters that he was giving the interview under duress. Mr Bahari said that he was unaware that the footage of him taken at the press conference had been broadcast in the United Kingdom until his release and return to the United Kingdom in October 2009.

## Mr Bahari’s case

In summary, Simons, Muirhead and Burton complained on behalf of Mr Bahari that he was treated unfairly in breach of rule 7.1 of the Broadcasting Code (“the Code”) in that:

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<sup>2</sup> Press TV is funded by Iranian tax-payers and from certain other sources e.g. advertising revenue.

- a) Press TV conducted and filmed an interview with Mr Bahari in prison without his consent and in circumstances in which Press TV should have been aware that his participation was under duress.
- b) Mr Bahari was portrayed unfairly in the programme as broadcast in that:
  - i) the programme failed to make it clear the circumstances of the interview and that Mr Bahari's statement was made under duress;
  - ii) the broadcast item presented Mr Bahari's comments in a way to suggest that, as a journalist, he was biased;
  - iii) by stating that "*it was not clear if Bahari was at the scene by chance or whether his presence was pre-planned*", the report unfairly suggested that Mr Bahari may have been part of the attack on the Basij base during post-presidential election demonstrations in Iran.

Simons, Muirhead and Burton also complained on behalf of Mr Bahari that his privacy was unwarrantably infringed in the making and broadcast of the programme in breach of rule 8.1 of the Code in that:

- c) footage of him being interviewed in prison under duress and in a state of distress was filmed and broadcast without his consent.

In answer to Press TV's responses to these complaints (set out below), Simons, Muirhead and Burton said that Press TV had not provided any information to show that Mr Bahari's interview was arranged and conducted with his informed consent. It said that Mr Bahari's account of how he was forced to give this interview remained unchallenged. Up until the broadcast of the footage in the news report on 1 July 2009, Mr Bahari's whereabouts had been unknown to his family and employers who had been concerned about his disappearance after his arrest by the Iranian authorities on 21 June 2009.

Simons, Muirhead and Burton said that Press TV chose selected excerpts of Mr Bahari's interview and it failed to inform, therefore substantially misleading, its viewers that the footage was not given freely and that he was reading from a script in an interrogation room.

### **Press TV's case**

In summary and in response to the complaint of unfair treatment in the programme as broadcast, Press TV said that:

- a) Press TV said that Mr Bahari did not dispute the truth and accuracy of the extract of the interview with him which it broadcast. It therefore made no logical sense to claim that it was required to get consent for a statement which Mr Bahari had publicly proclaimed or that the broadcast of that statement was unfair to him.

Press TV said that it played no part in the events Mr Bahari alleged about being mistreated during his detention at Evin prison and it was not in any position to confirm or deny his allegations. It said that it was not Press TV's policy to accept or use "scripted" interview questions prepared by a third party, nor would it put pressure on an individual to give an interview or continue recording if an individual requested the recording to stop.

b)

- i) Press TV said that Mr Bahari's detention was of such a public nature that the omission of any indication that his comments were made while he was in detention was not unfair to him.
- ii) Press TV said that there was nothing in the item that suggested that Mr Bahari, as a journalist, was biased. It said that the item did suggest that *Channel 4 News'* coverage of the incident may have been biased because of the selective footage it showed, but that this was not the same as implying that Mr Bahari was a biased journalist. Press TV said that there was nothing in the item that suggested that Mr Bahari had any role in determining which portions of the footage he had sent to *Channel 4 News* would be broadcast.
- iii) Press TV said that the statement in the item that referred to Mr Bahari's presence at the demonstration was simply a statement of the facts as understood by Press TV at the time and that it was not clear how Mr Bahari became to be at the scene. Press TV said that whether Mr Bahari had received information that there was going to be an attack on the base or whether he happened to be at the scene by chance did not necessarily mean that he played any role in the attack.

In summary and in response to the complaint of unwarranted infringement of privacy in the making and broadcast of the programme, Press TV said that:

- c) Press TV said that Mr Bahari did not have a legitimate expectation of privacy because he was in the public eye. It said that Mr Bahari had become a public figure and his detention was of international significance. Press TV also said that the public interest in the events of 15 June 2009 at the Basij base outweighed any right to privacy that Mr Bahari may have had.

Press TV said that there were conflicting reports about the attack on the base and it was a matter of public interest to determine whether security forces at the base opened fire on innocent people or whether they were justified in defending the base from attack and preventing weaponry falling into the wrong hands. It was therefore important to obtain the account of the journalist who was central to the controversy. Press TV said that Mr Bahari was in a unique position to clarify what he saw and did during the attack.

## 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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of it and written submissions and supporting material from both parties.

### Unfair treatment

When determining complaints of unfair treatment, Ofcom considers whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

- a) Ofcom first considered the complaint that Press TV conducted and filmed an interview with Mr Bahari while he was in prison, without his consent and in circumstances where it should have known he was acting under duress.

Press TV's response to the complaints made on behalf of Mr Bahari accepts that the interview it conducted with him took place whilst he was in prison. For example, in its letter of 4 August 2010 to Ofcom, it said: "Mr Bahari's detention was of such a public nature, not indicating in the news item that his comments came while he was in detention was not a material fact omitted in a way that was unfair to him."

In relation to whether Mr Bahari consented to the interview, Ofcom noted Press TV's statement that it is not its policy to accept questions prepared by a third party or to put pressure on an individual to give an interview if requested not to. However, Ofcom observed that it had not stated in its response that it specifically sought Mr Bahari's express consent to the interview it conducted with him while he was in prison nor that it followed any of the practices set out at Practice 7.3 of the Code, such as telling Mr Bahari about the nature and purpose of the programme, providing a clear explanation of why he had been asked to contribute, and informing him of the nature of other contributions. Furthermore, it has implicitly acknowledged that it did not obtain Mr Bahari's consent to his participation in the broadcast news item. In its email of 8 September 2010, it said: "It makes no logical sense to claim that it is required to get consent for a statement which Mr Bahari himself has publicly proclaimed..."

Accordingly, Ofcom is satisfied that Press TV conducted and filmed an interview with Mr Bahari while he was in prison and did not obtain his consent to the interview or to its inclusion of an extract of that interview in its broadcast.

In relation to Mr Bahari's complaint that Press TV should have been aware that he was giving the interview under duress, Ofcom assessed the evidence presented to it by the parties. Mr Bahari provided witness evidence that he made it clear to his interviewers that he was answering their questions under duress, that the interviewers read identical questions from a prepared script and that it was obvious to his interviewers that his own answers were also scripted. While Press TV has said that its policy is to prepare its own interview questions and it has never accepted questions scripted by a third party, it has not provided any witness evidence from its interviewer in support of that assertion and it has been unable to locate the unedited footage of the interview. It has said that the broadcast extract from Mr Bahari does not corroborate his claim that he was acting under duress at the time. However, Ofcom considered that the extract in question was so short that it was of little probative value in this regard. Therefore, having considered all the evidence before it, Ofcom considered that the weight of evidence supported Mr Bahari's contention that Press TV should have been aware from the circumstances that he gave an interview to them under duress.

As Press TV has said, however, there will only be a breach of rule 7.1 of the Code if Press TV's failure to obtain Mr Bahari's consent to an interview, conducted in circumstances in which it should be known he was acting under duress, resulted in unfairness to Mr Bahari in the programme as broadcast. This is considered below under the second limb of Mr Bahari's complaint.

- b) Ofcom considered whether or not Mr Bahari was unfairly portrayed in the programme. In assessing this head of complaint, Ofcom considered whether each of the three particular instances specified by the complainant, either individually or taken together in circumstances where no consent was obtained, caused unfairness to Mr Bahari in the programme as broadcast. The individual elements of complaint were that:
- i) the programme failed to make it clear the circumstances of the interview and that Mr Bahari's statement was made under duress.
  - ii) the broadcast item presented Mr Bahari's comments in a way to suggest that, as a journalist, he was biased.
  - iii) the report unfairly suggested that Mr Bahari may have been part of the attack on the Basij base during post-presidential election demonstrations in Iran.

Practice 7.9 of the Code states that broadcasters must 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.

- i) In the extract of the interview footage of Mr Bahari which was broadcast by Press TV, he was shown seated at a table, saying:

*"On Monday, 15 June [2009], I sent a report about the attack against the base, a military base of Basij to Channel 4 News as well as to Newsweek Magazine".*

It has been accepted by Mr Bahari that these comments, whether scripted or not, were factually accurate. If taken in isolation, they only disclosed to viewers that on a particular day he had sent a report to *Channel 4 News* and to *Newsweek* magazine about the attack on the Basij base. If considered in that light, the circumstances in which the comments were obtained might not appear to be material.

However, in assessing whether there has been an omission of material facts giving rise to unfairness in breach of Rule 7.1, the context in which the interview extract appeared and the inferences that might be drawn from that must also be taken into account. This is assessed in ii) and iii) below.

- ii) Ofcom then considered whether the broadcast item presented Mr Bahari's comments in a way to suggest that, as a journalist, he was biased.

Ofcom noted Mr Bahari's comments that were included in the programme, as set out under decision head b) i) above. It also took note of the context in which Mr Bahari's comments were included at the end of the item. In particular, Ofcom noted the news item opened with footage of what appeared to be demonstrators attacking the base and vehicle with stones and petrol bombs. The presenter accompanied these images by stating that "*Press TV*

*has obtained new pictures from an attack on a Basij base...".* The presenter went on to say that:

*"This is how some TV news channel reports have been top heavy with bias over the events unfolding on the streets of Tehran".*

The item then went on to include footage that was shown by *Channel 4 News* and the presenter claimed that *Channel 4 News* had ignored pictures of the demonstrators attacking the base with petrol bombs. Ofcom noted that the presenter then stated that:

*"Channel Four's version only highlighted the part [of the demonstration] that involved the allegedly unprovoked shots fired by the security forces from the rooftop of the [base]."*

Both the footage obtained by Press TV and the footage from the *Channel 4 News* report were shown simultaneously for comparison. Immediately following this, Ofcom noted that the presenter stated that the footage used by *Channel 4 News* had been provided to it by Mr Bahari after which footage of Mr Bahari's interview was shown, with a caption "*Maziar Bahari, Newsweek Journalist*".

Ofcom noted Press TV's submission that the item did not suggest that Mr Bahari had any editorial role in deciding what footage would be included in the *Channel 4 News* report. It also noted that nowhere was it stated in the item that the footage said to have been obtained by Press TV had come from the same source as the footage used by *Channel 4 News*.

Ofcom noted that Mr Bahari's comments were factually accurate and that the item had not explicitly stated that he was a biased journalist. However, Ofcom took the view that the inclusion of footage of Mr Bahari in the context of the item, which questioned the impartiality of *Channel 4 News* and other Western news reports, along with identifying Mr Bahari as a Western news reporter and the provider of the footage, had the following effect. It implied that Mr Bahari had provided selective footage of the demonstration to *Channel 4 News*, or at the very least, had been complicit in working with the Western media who were prepared to report the demonstration in a misleading way.

Given the context within which Mr Bahari's interview extract was included and the inferences that resulted, Ofcom considered that it was a material omission not to reveal that the footage of Mr Bahari had been taken in a prison where he was being held by the Iranian authorities as a suspected spy and that he had provided the interview under duress. While information about Mr Bahari's detention was in the public domain as a result of other media reports at the time, Press TV could not be certain that its viewers had seen those reports or, if they had, that they would have recalled them at the time of the broadcast. Furthermore, Ofcom saw no evidence that the particular circumstances of the interview as described by Mr Bahari were in the public domain at the relevant time. By failing to make clear that Mr Bahari's interview was conducted in prison and under duress, viewers were denied knowledge of what Ofcom considered to be significant material facts, given their potential to affect the way in which viewers regarded the news report and the inferences which they drew from the report in relation to Mr Bahari.

Taking account of this, the fact that the interview was given under duress, the absence of Mr Bahari's consent to the broadcast, or any evidence from Press TV that it told him the purpose of the news item and the nature of the other contributions, Ofcom therefore concluded that the inclusion of Mr Bahari's comment in this context in the broadcast news item was unfair to Mr Bahari.

- iii) The report unfairly suggested that Mr Bahari may have been part of the attack on the Basij base during post-presidential election demonstrations in Iran.

Ofcom noted the full statement made by the programme's presenter about Mr Bahari's presence at the Basij base:

*"Britain's Channel 4 News in its coverage of the attack ignored pictures that showed rioters were attacking the base with Molotov Cocktails. Channel 4's version of the incident only highlighted the part that involved the allegedly unprovoked shots fired by the security forces from the rooftop of the building in question. The officials also confirmed later that the building housed an armoury. Journalist Maziar Bahari says he provided the pictures of the June 15 attack to Channel 4. It's not clear if Bahari was at the scene by chance or whether his presence was pre-planned."*

Ofcom also noted that the presenter's comments accompanied footage taken by Mr Bahari and provided to *Channel 4 News* of what appeared to be demonstrators attacking the Basij base with petrol bombs.

While Ofcom noted Press TV's submission that the comment was presented by the presenter as a non-committal explanation for Mr Bahari's presence at the base, Ofcom took the view that the comment, taken in the context of the item as a whole, had the potential to leave the impression with viewers that Mr Bahari had, in some way, played an active part in demonstrations or, at the very least, had been present other than as an impartial journalist. In Ofcom's view, this was sufficient, when taken in the context of the report as a whole, to leave viewers with ambiguity about the nature of his involvement in the attack on the base.

Given this ambiguity, Ofcom considered that the programme should have revealed that the footage of Mr Bahari had been obtained while he was being held by the Iranian authorities as a suspected spy and that he had provided the interview under duress. While information about Mr Bahari's detention was in the public domain as a result of other media reports at the time, Press TV could not be certain that its viewers had seen those reports or, if they had, that they would have recalled them at the time of the broadcast. Furthermore, Ofcom saw no evidence that the particular circumstances of the interview as described by Mr Bahari was in the public domain at the relevant time. By failing to make clear that Mr Bahari's interview was conducted in prison and under duress, viewers may have been denied knowledge of what Ofcom considered to be significant material facts, given their potential to affect the way in which viewers regarded the news report and the inferences which they drew from the report in relation to Mr Bahari.

Taking account of this, the fact that the interview was given under duress, the absence of Mr Bahari's consent to the broadcast, or any evidence from Press TV that it told him the purpose of the news item and the nature of the other contributions, Ofcom therefore concluded that the presenter's comment in the

broadcast news item in relation to how Mr Bahari came to be at the Basij base, was unfair to Mr Bahari.

In conclusion, Ofcom considered that the programme as broadcast did portray Mr Bahari in a way that resulted in unfairness to him. Therefore, Ofcom has upheld head b) of the complaint.

### Privacy

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

### Footage of interview filmed without consent

Ofcom considered the complaint that Mr Bahari's privacy was unwarrantably infringed in the making of the programme in that footage of him being interviewed under duress was filmed without his consent.

In considering this particular head of complaint, Ofcom had regard for Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted.

Ofcom first considered whether or not Mr Bahari had a legitimate expectation of privacy in relation to being filmed.

In considering the extent of privacy to which Mr Bahari could have legitimately expected when being filmed, Ofcom took account of the place where the filming took place, the nature of the information filmed and the circumstances of the activity in question. Ofcom takes the view that in a situation where an individual is being interviewed at a press conference in which he has chosen freely to participate, there are cameras openly on show and broadcast journalists are in attendance, that individual must accept that what they say and do will be recorded and filmed for subsequent broadcast. Ofcom considers that individuals in such a position would generally have no legitimate expectation in relation to being filmed. In the circumstances of this particular case, while Ofcom recognised that Mr Bahari was filmed being interviewed at what appeared to be a press conference, it also recognised that it took place in a room in Evin Prison. Ofcom considers that the rooms within the prison are only accessible by authorised personnel and that access to inmates and the general public are limited and restricted. Ofcom also noted the circumstances in which Mr Bahari was in the prison, namely that he had been arrested for allegedly "undermining the security of the [Iranian] nation", an extremely serious charge that led to him spending a total of 118 days in the prison before being released. Ofcom considered that Mr Bahari was filmed in a highly sensitive situation and in a vulnerable state (in that, he was filmed while being held by the Iranian authorities and interviewed under duress) and therefore a situation in which he would have expected a significant degree of privacy.

Ofcom noted Press TV's submission that, notwithstanding the sensitivity of his situation, Mr Bahari did not have a legitimate expectation of privacy since he had become a public figure following the events of 15 June 2009 and his detention was a matter of international significance. Ofcom rejected that position – there was no evidence that Mr Bahari was aware of press reports of his detention while he was in custody, or any evidence to suggest that he had taken action voluntarily so as to waive his right to privacy.

Ofcom concluded, therefore, that the filming of Mr Bahari in these circumstances was intrusive and that he had an expectation of privacy in relation to being filmed.

Given this conclusion, Ofcom considered that the programme makers should have secured Mr Bahari's consent to being filmed while in prison.

Ofcom has already concluded in head a) of the Decision above that Press TV failed to demonstrate to Ofcom that it had taken measures to ensure that Mr Bahari's consent to participate in the programme had been secured and should have been aware that he gave the interview under duress. In these circumstances, and for the purposes of considering Mr Bahari's complaint, Ofcom considered that Mr Bahari's consent to being filmed had not been given.

Ofcom then went on to consider the broadcaster's competing right to freedom of expression and the public interest in reporting the events of 15 June 2009 at the Basij base and the audience's right to receive information and ideas without unnecessary interference. Ofcom considered whether, in the circumstances, there was a sufficient public interest to justify the intrusion into Mr Bahari's privacy by filming him without his consent.

Ofcom noted the public interest justification given by Press TV in its submissions that reporting the events of 15 June 2009 at the Basij military base outweighed any right to privacy Mr Bahari may have had and that he was in a unique position to clarify what he saw and did during the attack on the base. While Ofcom recognised the public interest in securing such a report, Ofcom considered that this did not justify filming Mr Bahari in such a sensitive situation and while he was in a vulnerable state without having secured his consent.

Ofcom considered that Press TV's filming without consent of Mr Bahari in custody in an interview given under duress was a significant intrusion into his privacy and, on balance, was not outweighed by the public interest in filming Mr Bahari in relation to the Basij base attack. Ofcom therefore found that Mr Bahari's privacy was unwarrantably infringed in the making of the programme.

#### *Footage of interview broadcast without consent*

Ofcom considered the complaint that Mr Bahari's privacy was unwarrantably infringed in the programme as broadcast in that footage of him being interviewed under duress was broadcast without his consent.

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

In considering whether Mr Bahari privacy was infringed in the programme as broadcast, Ofcom first considered the extent of privacy to which Mr Bahari could

have legitimately expected that the footage of him filmed giving the interview would not be broadcast. As set out in the preceding paragraphs that relate to Mr Bahari's expectation in being filmed, Ofcom's view is that individuals who choose freely to be interviewed by broadcasters in circumstances where there are cameras openly on show and broadcast journalists in attendance must accept that what they say and do will be recorded and filmed for subsequent broadcast. Ofcom therefore considers that individuals in such a position would, generally, have no legitimate expectation that all or some of the footage filmed of them would not be subsequently broadcast.

For the reasons set out above, however, Ofcom considered that Mr Bahari was entitled to expect a significant degree of privacy while he was being held in custody. Ofcom concluded, therefore, that filming Mr Bahari in the circumstances of this case was intrusive and that he had an expectation of privacy in relation to its broadcast.

Given this conclusion, Ofcom considered that Press TV should have secured Mr Bahari's consent to the broadcast of the interview extract. As set out under head a) of the Decision, Press TV has implicitly acknowledged that it did not obtain Mr Bahari's consent to the broadcast.

Ofcom then went on to consider the broadcaster's competing right to freedom of expression and the public interest in reporting the events of 15 June 2009 at the Basij base and the audience's right to receive information and ideas without unnecessary interference. Ofcom considered whether, in the circumstances, there was a sufficient public interest to justify the intrusion into Mr Bahari's privacy by broadcasting the footage without his consent.

Ofcom noted the public interest justification given by Press TV in its submissions that establishing the events of 15 June 2009 at the Basij base outweighed any right to privacy Mr Bahari may have had and that he was in a unique position to clarify what he saw and did during the attack on the base. Ofcom recognised that the broadcast of such a report is capable of serving the public interest. However, the extract of Mr Bahari's interview which was broadcast did not provide any such clarification – on Press TV's own case, it merely revealed that he had provided footage of those events to Channel 4 News. Ofcom considered this information was of very limited public interest and did not outweigh Mr Bahari's entitlement to privacy while he was in such a sensitive situation and vulnerable state. Therefore, Ofcom concluded that the public interest in broadcasting Mr Bahari's interview did not justify the significant intrusion into his privacy by doing so without his consent. Ofcom therefore found that Mr Bahari's privacy was unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has upheld Mr Bahari's complaint of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme.**

**Ofcom regards these breaches of Rules 7.1 and 8.1 to be of a serious nature. It will therefore consider whether this case warrants the imposition of a sanction.**

## Other Programmes Not in Breach

Up to 2 May 2011

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
Derren Brown: Miracles for Sale (trailer)	20/04/2011	Channel 4	Religious/Beliefs discrimination/offence	1
10 O'Clock Live	21/04/2011	Channel 4	Religious/Beliefs discrimination/offence	5
10 O'Clock Live	21/04/2011	Channel 4	Generally accepted standards	1
10 O'Clock Live	23/04/2011	Channel 4	Generally accepted standards	1
4thought.tv	18/04/2011	Channel 4	Scheduling	1
5 Brides 1 Wedding competition	21/04/2011	TFM 96.6 FM	Competitions	1
5 Live Sport	14/04/2011	BBC Radio 5 Live	Transgender discrimination/offence	1
A Different Breed	20/04/2011	Sky1	Sexual orientation discrimination/offence	1
A Referendum Broadcast on Behalf of the No Campaign	11/04/2011	ITV1	Generally accepted standards	1
A Referendum Broadcast on Behalf of the No Campaign	11/04/2011	ITV1	Due accuracy	1
Aviva's sponsorship of ITV Drama Premiers	18/04/2011	ITV1	Gender discrimination/offence	1
BBC News at Ten	27/04/2011	BBC 1	Nudity	1
Being N-Dubz (trailer)	08/04/2011	Channel 4	Offensive language	1
Bluebird Daytime	05/03/2011	Babeworld.tv	Participation TV - Harm	1
Brainiac: Science Abuse	23/04/2011	Pick TV	Sexual material	1
Britain's Got More Talent	17/04/2011	ITV2	Sexual material	2
Britain's Got More Talent	22/04/2011	ITV2	Sexual material	2
Britain's Got More Talent	23/04/2011	ITV2	Sexual material	1
Britain's Got More Talent	22/04/2011	ITV2	Generally accepted standards	1
Britain's Got Talent	16/04/2011	ITV1	Outside of remit / other	1
Britain's Got Talent	30/04/2011	ITV1	Generally accepted standards	7
Britain's Got Talent	16/04/2011	ITV1	Under 18s in programmes	1
Britain's Got Talent	30/04/2011	ITV1	Nudity	1
Campus	05/04/2011	Channel 4	Disability discrimination/offence	7
Campus	05/04/2011	Channel 4	Race discrimination/offence	4
Campus	12/04/2011	Channel 4	Sexual orientation discrimination/offence	2
Carla's Song	06/04/2011	Film4	Due impartiality/bias	2
Carry on Matron	22/04/2011	ITV3	Sexual material	2
Channel 4 News	27/04/2011	Channel 4	Due impartiality/bias	2
Channel 4 News	27/04/2011	Channel 4	Generally accepted standards	1
Channel Promotion	20/04/2011	Comedy	Hypnotic and other	1

		Central	techniques	
Channel Promotion	30/04/2011	Comedy Central	Hypnotic and other techniques	1
Christopher and His Kind	19/03/2011	BBC 2	Sexual material	1
Come Dine with Me	24/04/2011	Channel 4	Generally accepted standards	1
Comic Relief 2011	18/03/2011	BBC 1	Disability discrimination/offence	1
Cookery School	07/02/2011	Channel 4	Religious/Beliefs discrimination/offence	1
Coronation Street	14/04/2011	ITV1	Product placement	1
Coronation Street	01/05/2011	ITV1	Harm	1
Coronation Street	02/05/2011	ITV1	Generally accepted standards	2
Coronation Street	22/04/2011	ITV1	Materially misleading	1
Cowboy Builders	22/04/2011	Channel 5	Generally accepted standards	1
Dad's Having a Baby: A Bodys shock Special	07/04/2011	Channel 4	Generally accepted standards	1
Dave's One Night Stand	21/04/2011	Dave	Generally accepted standards	1
Daybreak	15/04/2011	ITV1	Advertising/editorial distinction	1
Daybreak	20/04/2011	ITV1	Generally accepted standards	1
Daybreak	18/04/2011	ITV1	Generally accepted standards	1
Daybreak	19/04/2011	ITV1	Due impartiality/bias	1
Dick and Dom Show	16/04/2011	CBBC	Generally accepted standards	1
Down The Line	22/03/2011	BBC Radio 4	Religious/Beliefs discrimination/offence	1
Dr T and the Women	05/02/2011	Channel 4	Generally accepted standards	1
EastEnders	26/04/2011	BBC 1	Race discrimination/offence	1
Emmerdale	21/04/2011	ITV1	Generally accepted standards	1
Every Number 1 Of The 90s!	23/04/2011	Viva	Materially misleading	1
FA Cup Semi-Final Live: Manchester City v Manchester United	16/04/2011	ITV1	Offensive language	1
FA Cup Semi-Final Live: Manchester City v Manchester United	16/04/2011	ITV1	Disability discrimination/offence	1
Geoff Lloyd's Hometown Show	12/04/2011	Absolute Radio	Religious/Beliefs discrimination/offence	1
Glee	18/04/2011	E4	Generally accepted standards	1
Grand Designs	21/04/2011	More4	Offensive language	1
Great British Hairdresser	07/03/2011	E4	Disability discrimination/offence	1
Gtech Sweepers' sponsorship of Grimefighters	12/04/2011	ITV1	Sexual material	1
Have I Got News for You	08/04/2011	BBC 1	Offensive language	1
Have I Got News for You	22/04/2011	BBC 1	Gender	1

			discrimination/offence	
Heart Breakfast with Matt and Caroline	08/04/2011	Heart 96.4FM	Generally accepted standards	1
Hidayat TV	25/03/2011	Hidayat TV	Violence and dangerous behaviour	1
Holby City	19/04/2011	BBC 1	Race discrimination/offence	1
Hollyoaks	14/04/2011	Channel 4	Animal welfare	1
How It's Made	20/04/2011	Quest	Animal welfare	1
ITV News and Weather	09/04/2011	ITV1	Due accuracy	1
ITV News and Weather	23/04/2011	ITV1	Generally accepted standards	1
ITV News and Weather	21/04/2011	ITV1	Drugs, smoking, solvents or alcohol	1
ITV News at Ten and Weather	20/04/2011	ITV1	Due accuracy	1
Jackass (trailer)	15/03/2011	Sky Livingit	Violence and dangerous behaviour	1
Julia Hartley Brewer	14/04/2011	LBC 97.3FM	Due impartiality/bias	1
Kerry Katona: The Next Chapter	01/05/2011	ITV2	Offensive language	1
Little Lodgers	06/03/2011	Channel 5	Generally accepted standards	1
Long Lost Family	21/04/2011	ITV1	Violence and dangerous behaviour	1
Loose Women	18/04/2011	ITV1	Gender discrimination/offence	1
Lucky Star	10/04/2011	Lucky Star	Participation TV - Offence	1
Mamma Mia!	09/04/2011	ITV1	Offensive language	1
More British Royal Weddings	19/04/2011	Yesterday	Materially misleading	1
Naked Britain	25/04/2011	Pick TV	Gender discrimination/offence	1
Naked Britain	02/05/2011	Pick TV	Nudity	1
Newsbeat	15/04/2011	BBC Radio 1	Disability discrimination/offence	1
Paul O'Grady Live	15/04/2011	ITV1	Race discrimination/offence	1
Premier League Football	17/04/2011	Sky Sports 1	Offensive language	10
Premier League Football	01/05/2011	Sky Sports 1	Generally accepted standards	1
Programme trailers	25/04/2011	ITV1	Scheduling	1
Project Parent	05/04/2011	CBBC	Race discrimination/offence	1
QI	25/04/2011	Dave	Sexual material	1
QI	28/04/2011	Dave	Offensive language	1
QI	30/04/2011	Dave	Offensive language	1
Red Light 2	05/04/2011	Red Light 2	Participation TV - Harm	1
Runaway	15/04/2011	CBBC	Generally accepted standards	1
Running in Heels	24/04/2011	Channel 4	Age discrimination/offence	1
Saturday Kitchen	09/04/2011	BBC 1	Materially misleading	8
See You in Court	29/03/2011	BBC 1	Crime	1
Sing If You Can	16/04/2011	ITV1	Harm	2

Sing If You Can	16/04/2011	ITV1	Animal welfare	3
Sing If You Can	20/04/2011	ITV2	Religious/Beliefs discrimination/offence	1
Sky News	25/04/2011	Sky News	Generally accepted standards	1
Sky News	26/04/2011	Sky News	Due accuracy	1
South Riding	20/02/2011	BBC 1	Generally accepted standards	1
Spaced	23/04/2011	Dave	Materially misleading	1
Spirited Away	23/04/2011	BBC 2	Violence and dangerous behaviour	1
STV News at Six	14/04/2011	STV	Drugs, smoking, solvents or alcohol	1
Super Casino	15/04/2011	Channel 5	Participation TV - Misleadingness	1
The 50 Funniest Moments 2010	23/04/2011	E4	Animal welfare	1
The Alan Titchmarsh Show	21/04/2011	ITV1	Sexual material	1
The Alan Titchmarsh Show	26/04/2011	ITV1	Nudity	1
The Game of Thrones	18/04/2011	Sky Atlantic	Sexual material	1
The Good Wife	21/04/2011	More4	Race discrimination/offence	1
The Grand National	09/04/2011	BBC 1	Gambling	1
The Hotel	24/04/2011	Channel 4	Offensive language	2
The Hotel Inspector	01/05/2011	Channel 5	Competitions	1
The Hunks	19/04/2011	Sky Living	Gender discrimination/offence	1
The Hunks	19/04/2011	Sky Living	Sexual orientation discrimination/offence	1
The Jeremy Kyle Show	26/04/2011	ITV1	Sexual orientation discrimination/offence	1
The Jeremy Kyle Show	18/04/2011	ITV1	Transgender discrimination/offence	1
The Jeremy Kyle Show	21/04/2011	ITV1	Race discrimination/offence	1
The Million Pound Drop Live	29/04/2011	Channel 4	Age discrimination/offence	1
The Office: An American Workplace (trailer)	various	Comedy Central	Disability discrimination/offence	14
The Poseidon Adventure	02/05/2011	Film4	Offensive language	1
The Reckoning	18/04/2011	ITV1	Offensive language	1
The Royal Wedding	29/04/2011	ITV1	Generally accepted standards	1
The Royal Wedding Crashers	25/04/2011	Channel 4	Generally accepted standards	1
The Secret Millionaire	26/04/2011	Channel 4	Materially misleading	1
The Simpsons	20/04/2011	Sky1	Religious/Beliefs discrimination/offence	1
The Wright Stuff	14/04/2011	Channel 5	Generally accepted standards	64
The Wright Stuff	21/04/2011	Channel 5	Generally accepted standards	1
The Zone	03/03/2011	ITV1	Participation TV - Misleadingness	1
This Morning	19/04/2011	ITV1	Generally accepted standards	1

This Morning	19/04/2011	ITV1	Religious/Beliefs discrimination/offence	1
This Morning	11/04/2011	ITV1	Competitions	1
This Morning	21/04/2011	ITV1	Sexual material	1
This Morning	27/04/2011	ITV1	Sexual material	1
This Morning	26/04/2011	ITV1	Competitions	1
Three in a Bed	21/04/2011	Channel 4	Offensive language	1
Top Gear	24/04/2011	BBC 2	Drugs, smoking, solvents or alcohol	1
Tracy Beaker's The Movie of Me	11/04/2011	CBBC	Offensive language	1
UEFA Champions League	27/04/2011	ITV1	Race discrimination/offence	4
UEFA Europa League	14/04/2011	Channel 5	Materially misleading	1
Wanted	02/04/2011	ITV1	Sexual material	3
What the Papers Say	17/04/2011	BBC Radio 4	Religious/Beliefs discrimination/offence	1
What's New Scooby Doo	25/04/2011	Cartoon Network Too	Gender discrimination/offence	1
William and Kate Royal Engagement	19/04/2011	Blighty	Materially misleading	1
World Championship Snooker	02/05/2011	BBC 2	Generally accepted standards	4
World Snooker	20/04/2011	BBC Red Button Sports	Drugs, smoking, solvents or alcohol	1
Would I Lie to You?	28/04/2011	Dave	Offensive language	2
Would I Lie To You?	28/04/2011	Dave	Offensive language	1
Would I Lie To You?	02/05/2011	Dave	Offensive language	1
You've Been Framed!	25/04/2011	ITV1	Generally accepted standards	1