

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act².

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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

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

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

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

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

Statement

Ofcom's decisions on the broadcast coverage related to the killing of Fusilier Lee Rigby on 22 May 2013

This statement was originally published on 30 September 2013¹.

Ofcom has completed its investigation into the broadcast coverage of the killing of Fusilier Rigby on 22 May 2013. However, due to ongoing criminal proceedings, Ofcom is delaying the publication of its decisions. Ofcom will publish its decisions on completion of the criminal proceedings.

Background

On 17 June 2013² Ofcom announced that it was investigating a number of news programmes which contained footage relating to the killing of Fusilier Lee Rigby on 22 May 2013.

On 15 July 2013³ Ofcom also announced that it was investigating a number of broadcasts which contained interviews with the Muslim cleric, Anjem Choudary.

In Ofcom's opinion this content warranted investigation under the following rules of the Code:

Rule 1.3: "Children must...be protected by appropriate scheduling from material that is unsuitable for them".

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

¹ See: <http://media.ofcom.org.uk/2013/09/30/ofcom%E2%80%99s-decisions-on-the-broadcast-coverage-related-to-the-killing-of-fusilier-lee-rigby-on-22-may-2013/>

² See issue 232 of Ofcom's Broadcast Bulletin, available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb232/>

³ See issue 234 of Ofcom's Broadcast Bulletin, available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb234/>

Standards cases

In Breach

Encrypted Material Broadcast Free To Air

ExGirlfriends, 4 June 2013, 22:00

Introduction

ExGirlfriends is a channel broadcasting on the digital satellite platform which transmits 'adult sex material' content from 22:00 until 05:30 with mandatory restricted access¹. For the remainder of the time pre-recorded advertising content is shown without mandatory restricted access. The licence for this channel is owned by Playboy TV UK/Benelux Limited ("Playboy TV" or "the Licensee").

Ofcom received a complaint that 'adult sex material' was broadcast without the required mandatory restricted access on the channel from 22:00 on 4 June 2013.

Following some general advertising content, at about 22:00 a credit was shown which read "*Unseen Talent*". The service then played a clip without mandatory restricted access which lasted around five minutes. This featured a woman on a bed. At the beginning of the clip, she was wearing a skirt and a top. During the sequence, she:

- pulled up her skirt, presenting her buttocks towards the camera and also showed her genitals. She then moved her body as though to mime she was having sex;
- rubbed her genital area through her knickers;
- pulled up her top to reveal her breasts and stroked her nipples while looking towards the camera;
- removed her skirt, again positioning her buttocks towards the camera, and pulled aside her knickers to show her genitals and anus;
- removed her underwear, with the camera zooming in on her genitals and anus; and
- removed her top, fully exposing her breasts, as she lay on her back, spread her legs, and rubbed her genital area.

Ofcom considered that the programme raised issues warranting investigation under Rule 1.18 of the Code, which states:

"Adult sex material – material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation – must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services with mandatory restricted access..."

We asked the Licensee for its comments on how this material complied with Rule 1.18 of the Code.

¹ The Code states that: "Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view."

Response

The Licensee explained that the compliance failure resulted from an unfortunate error over the time when encryption should have started.

Playboy TV said that a member of staff provided incorrect scheduling data to the platform provider, which manages mandatory restricted access on the digital satellite platform. As a result of this error by the Licensee the 'adult sex material' was played at 22:00 on 4 June 2013 without mandatory restricted access because the schedule submitted by Playboy mistakenly labelled the content as 'adult chat'.

Playboy TV said that this was an unfortunate and rare incident, resulting from a number of unprecedented changes at the company, such as a reduction in the number of its channels, restructuring, the relocation of staff overseas, and the outsourcing of technical departments. The Licensee explained that new checks have been introduced to ensure listings are now correctly married to schedules prior to broadcast.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the intrusion in such services of offensive and harmful material".

When setting and applying standards 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.

Rule 1.18 requires that 'adult sex material' is only permitted to be broadcast between the hours of 22:00 and 05:30. Additionally, Rule 1.18 requires that such material must be broadcast on premium subscription services and pay per view/night services with mandatory restricted access and the Licensee should have adequate measures in place to ensure subscribers are adults.

Graphic images of a woman taking off her clothes and masturbating, and close-up shots of her genital and anal areas were broadcast at 22:00. Ofcom considered this was clearly 'adult sex material', i.e. it contained images of a strong sexual nature which were broadcast for the primary purpose of sexual arousal or stimulation. We noted the representations of the Licensee that this material was broadcast unencrypted as a result of human error, and that it has taken action to prevent such errors from happening again. The content was however in breach of Rule 1.18.

Breach of Rule 1.18

In Breach

Caught on Camera

CBS Reality, 22 June 2013, 00:00

Introduction

CBS Reality is a channel which broadcasts reality programmes. The licence for CBS Reality is held by CBS Chellozone UK Channels Partnership (“CBS Chellozone” or “the Licensee”).

A complainant alerted Ofcom to the above programme, objecting to it showing footage of the physical abuse of a very young child without due sensitivity.

The programme was preceded by this warning: *“The following programme contains scenes of a violent nature”*. The programme was an hour in duration and was made up of a number of items based on closed-circuit television footage of people committing various crimes, intercut with interviews with the victims and eye witnesses. The programme started with a preview section which showed brief clips of the incidents featured in the programme. In this case the clips featured were of: people rioting in a street, with a man jumping on top of parked taxi; a fight between two men in a bridal shop; an altercation between a police officer and a man who had received a parking ticket; a man being abusive on a bus; a woman caught stealing; a nanny physically abusing an infant; and, a woman using her car to push another car out of its parking space.

The video footage of a nanny, Janine Campbell, physically abusing an eleven month old boy was about five minutes in duration. Commentary explained that the child’s mother, Amanda Hammock, had had suspicions that her nanny was not treating her son appropriately, and so arranged for the nanny to be filmed surreptitiously while looking after him at Amanda Hammock’s home. A number of extracts of this closed-circuit television footage were included in the item.

The programme’s narrator introduced the item:

“In our next video, a parent’s worst nightmare – disturbing and graphic footage of a child being severely mistreated”.

As the narrator spoke three incidents of the infant being violently abused were shown (incident one, incident two and incident four, as described below). Menacing music was played and the black and white CCTV footage was shown changing colour as it was suffused with red.

The narrator then gave a running commentary, speaking in a dramatic tone, on the following six incidents of abuse inflicted on the infant. Menacing music continued to be played over the commentary.

Incident One

Janine Campbell picked up the infant by both arms, swung him around by his arms and threw him into a playpen. The narrator described the incident:

“First, Janine Campbell can be seen forcefully grabbing the 11 month old by the arms, spinning the child and tossing him into his playpen”.

Incident Two

The nanny lifted up the infant, this time by one arm only, and then threw him with some force to the floor. The commentary said:

“Later, as the infant plays alone in the corner, Campbell returns to the living room, lifts the baby into the air by one arm and slams him onto the floor”.

Incident Three

The nanny was shown carrying the infant into the living room, throwing him down onto the floor, and then smacking him on his bottom with the palm of her right hand. The narrator described the incident:

“Moments later Campbell drops the boy on the floor and again slaps him on the bottom”.

Incident Four

Janine Campbell kicked a football sized ball at the infant’s head while he sat on the floor. It missed him so she then picked the ball and, with arms raised above her head, threw the ball at the infant’s head while he sat on the floor, resulting in him being knocked over. The commentary stated:

“Then, with the baby’s back to her, Campbell kicks the ball at him, picks it up and with arms raised over her head hurls the ball at the baby’s head. The force is so strong the 11 month old is knocked over”.

Incident Five

The nanny threw a cloth at the infant, while again he was seated on the floor, and then slapped him around the head with the palm of her hand, knocking him to the floor. The narrator said:

“Campbell emerges from the kitchen, throws a rag at the infant and slaps him on the head. Again the boy falls over”.

Incident Six

Janine Campbell bent over the baby boy and hit him 11 times either with the palm of her hand or the infant’s sock. The infant was blocked from view in this scene by a sofa. The narrator stated:

“Campbell grabs the child and smacks him with either her hand or his sock 11 times”.

The narrator then summarised:

“In just under two hours the 11 month old is thrown, hit with his toys and slapped. Immediately the Hammocks turn the video over to police. Campbell is arrested and charged with abuse”.

While the narrator was speaking some of the instances of abuse (incidents one, four and five, as described above) were shown again, this time in slow motion and in red. The images were shown as three separate box clips of footage which appeared on screen simultaneously. The images of abuse then remained on screen for approximately ten seconds as still images.

The item then cut to footage of the court hearing and showed the judge, Janine Campbell and Amanda Hammock speaking. Footage of the abuse of the infant was shown again several times during this sequence (including incidents one, four and five being shown again, as above, in slow motion, in red and as still images on the screen). The narrator concluded the item:

“Remarkably the child did not suffer any obvious injuries. For her abuse of the infant Campbell is convicted and sentenced to eight years in prison, followed by seven years probation”.

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

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

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

Response

CBS Chellozone defended its showing of this material, pointing out that the programme was broadcast at midnight, three hours after the watershed. It also explained that there were crime focused programmes broadcast on either side of *Caught on Camera*, and that the footage included in the programme of the nanny abusing the infant was available, unrestricted, online on YouTube.

The Licensee said that CBS Reality had an adult audience and the size of the audience for this particular programme was 50 percent lower than it had expected. It added that its audience:

“...expect to be shocked on occasion and when justified, by real life, hard-hitting editorial which is reflective of contemporary society”.

CBS Chellozone also referred to the warning broadcast before the programme began, pointers throughout the programme which indicated that violent scenes were included (for example the commentary *“In our next video, a parent’s worst nightmare – disturbing and graphic footage of a child being severely mistreated”*), and the fact that the narrator ended the segment by saying:

“Remarkably, the child did not suffer any obvious injuries. For her abuse of the infant, Campbell [the nanny] is convicted and sentenced to eight years in prison, followed by seven years’ probation”.

With regards to the style of commentary (a detailed, blow by blow description of each assault on the infant), and the repetition of the footage of the six incidents of abuse, as detailed above, the Licensee said the production style and format of the programme was reflected in the other sections of the programme and in the many other episodes of the programme previously broadcast over several years:

“Repeating sequences of CCTV footage is inherent in this series and is a television grammar with which CBS Reality viewers are familiar”. CBS Chellozone said that it would be unreasonable for it to have been expected to present this one section of the programme in a different fashion to the rest of the programme and other episodes.

The Licensee added that, due to the nature of the section of the programme in question, a decision was made to identify this episode of the programme as a post-watershed programme which required a pre-programme announcement warning the audience about the violent content.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards are applied...so as to provide adequate protection for members of the public from the inclusion...of harmful and/or offensive material”. This objective is reflected in Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of material that may cause offence is justified by the context. Context is assessed by reference to a range of factors including but not limited to: the editorial content of the programme; the service on which the material is broadcast; the time of broadcast; what other programmes are scheduled before and after the programme; the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description; audience expectations; and, the extent to which the nature of the content can be brought to the attention of the potential audience.

In reaching its decision in this case, Ofcom has taken careful account of the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Ofcom must therefore seek an appropriate balance between ensuring members of the public are protected from material which may be considered harmful on the one hand, and the broadcaster’s and audience’s right to freedom of expression on the other.

Ofcom first considered whether the broadcast material had the potential to cause offence.

In Ofcom’s opinion, a programme featuring footage of the malicious and violent physical abuse of an 11 month old child was clearly capable of causing offence. We considered in this case that the level of potential offence was increased by the fact that the various incidents of abuse were repeated numerous times (sometimes in slow motion) throughout the duration of this five minute item.

Ofcom next went on to consider whether the offence was justified by the context.

Caught on Camera was a real-life crime entertainment programme broadcast on CBS Reality, a channel devoted to showing reality television. It presented clips of amateur footage of real life situations of people behaving in a criminal manner, unaware that they were being filmed. This particular edition of the programme included various crimes caught on camera, such as people rioting in the street, with a man jumping on top of parked taxi, and a fight between two men in a bridal shop (see Introduction for the other items). In Ofcom’s view the inclusion of the segment

featuring six incidents of physical child abuse, was not consistent with the programme's regular range and type of crimes featured. Viewers of *Caught on Camera* would be accustomed to viewing footage featuring a diverse range of criminal behaviour. However, in Ofcom's opinion viewers would be unlikely to expect a segment on physical child abuse to be included in the programme.

Ofcom also took into account that *Caught on Camera* as a series is not, and this particular episode was not, a serious observational documentary. One of its primary purposes was not in Ofcom's opinion to present footage of people committing crimes with the aim of providing information to the public about the work of the police or how to prevent crime, but to provide entertainment. We noted that the item featuring the abuse of the infant presented the footage using music, editing, and descriptive commentary to create a heightened sense of drama, and repeated each of the incidents of abuse several times (sometimes in slow motion).

Ofcom considered that this footage, and the way it was presented in the programme, were capable of creating a considerable degree of offence. This was because any material showing the physical abuse of a child has the potential to be distressing, and the potential for offence was heightened in the current case as the child was only 11 months old, was shown being repeatedly violently abused and the footage of the abuse itself was repeated several times, sometimes in slow motion. For example, Incident One (footage of the nanny picking up the infant by both arms, swinging him around, and throwing him into a playpen) was shown eight times throughout the whole item (three times in slow motion), which was approximately five minutes in duration. The other incidents of violence were repeated as follows:

- Incident Two: shown five times (once in slow motion)
- Incident Three: shown twice
- Incident Four: shown six times (three times in slow motion)
- Incident Five: shown four times (twice in slow motion)
- Incident Six: shown four times

The potential for offence was increased in Ofcom's view by the detailed descriptions of each of the separate incidents of violence, the use of dramatic music and the use of visual devices (such as colouring some of the black and white footage and still images red).

The programme was broadcast after the watershed at midnight and between two other crime related programmes. Clearly it is better for broadcasters to show material more appropriate for adults later in the schedule. The broadcast of content showing the physical abuse of a very young child has the potential to cause considerable offence, and so to comply with the Code requires a correspondingly strong justification by context. As already pointed out, this type of crime (child abuse) did not appear consistent with the usual sort of content of real life crime programmes like *Caught on Camera*, or the broadcasts which immediately preceded and followed this episode. Even though broadcast after midnight, the strength of this material and the way it was treated, in Ofcom's view, would have exceeded audience expectations.

Ofcom noted the pre-programme warning and that the narrator introduced the item by referring to: "*a parent's worst nightmare – disturbing and graphic footage of a child being severely mistreated*". In Ofcom's opinion audience expectations would only have been adjusted to a very limited extent by these warnings. They did not provide in any way sufficient justification to feature the repeated and graphic footage of the abuse as it was presented in the item in the programme, bearing in mind the strong emotions and distress such images can generate.

In reaching its decision, Ofcom took account of the Licensee's representations that the style of commentary and the repetition of the footage of the six incidents of abuse reflected the style of the programme previously broadcast over several years, and that it would be unreasonable for it to have been expected to present this one section of the programme in a different fashion to the rest of the programme and other episodes. Ofcom was concerned by this response of the Licensee. In accordance with the right to freedom of expression it is essential that broadcasters can make programmes about, and include footage of, challenging and distressing subjects like child abuse. In doing so however programme makers must comply with the Code. This means in particular that as necessary the material must be appropriately limited and scheduled, and justified by the context. In this case Ofcom considered that the inclusion of repeated and graphic footage of the physical abuse of a very young child in a programme primarily designed to present footage of real life crime in a dramatic and entertaining way was insensitive and inappropriate.

Given all the above factors, Ofcom concluded that the offence was not justified by the context and that the broadcaster did not apply generally accepted standards. Rule 2.3 was therefore breached.

Breach of Rule 2.3

In Breach

News

IBC Tamil, 3 December 2012, 15:00 and 8 December 2012, 20:00

Introduction

IBC Tamil is a digital radio service broadcast on terrestrial and satellite platforms and aimed at the Tamil community in the UK. The licence for IBC Tamil is held by Sathy Media Limited (“Sathy Media” or “the Licensee”).

Ofcom received a complaint about news items in the above programmes from Mr Rajasingham Jayadevan. The news items referred to the complainant and he considered that they were “highly” partial. In addition, Rajasingham Jayadevan said that the news reports were inaccurate in that he stated that he had not – as stated in the programmes – been “arrested”, nor had he in the past handled money in a “fraudulent manner”.

The news bulletins in question were broadcast in Tamil. Ofcom commissioned an independent translation and transcript of the output. In summary, Ofcom noted that the news bulletins included reports about the alleged actions of Mr Jayadevan at the Wembley Eelapatheeswara Hindu Temple. In particular, it was reported that he had been arrested by the police after allegedly carrying an act of violence, and of having carried out other acts of fraud and violence in the past.

3 December 2013 programme

We noted that the leading news headline read out by the presenter said that:

“Jayadevan who had been working against the Liberation Tigers of Tamil Eelam¹ has been arrested by the British police this morning when he was engaged in violence in the Wembley Eelapatheeswara Temple”.

Having read out the other news headlines, the presenter then read out the following news report about Mr Jayadevan:

“Jayadevan of Wembley Eelapatheeswara Temple who engaged in working against Tamil nationalism and speaking over the radio criticising the Tamil national leader was arrested this morning by the British police when he was involved in violence. This person who went into the Temple this morning engaged in violence by grabbing the neck of the Temple’s Management Trust Chairman, T. Sri Moorthy, and pushed him out of the Temple. Following this, the police came to this place. The police that rushed to this place made inquiries on the basis of the information provided by those who were in there, handcuffed and arrested Jayadevan and then took him away to the police station. In relation to this, the secretary of the Temple management trust, Wijayarajah, advised IBC Tamil, saying that Jayadevan had been involving himself in the past in enormous land-related frauds and in fraudulently handling collections of Temple funds, as well as in violence. Further, he [Wijayarajah] informed [IBC Tamil] that following the

¹ The Liberation Tigers of Tamil Eelam (“LTTE”) are the separatist militant organisation formerly based in northern Sri Lanka. The LTTE was defeated by Sri Lankan Government armed forces in 2009.

assault on the chairperson of the management trust, a complaint was made to the police and that they came and arrested [Jayadevan] on the basis of appropriate evidence. It is to be noted that this Jayadevan has criticised the national leader, Tamil nationalism and the Liberation Tigers of Tamil Eelam in certain media on many occasions”.

At the end of the programme, while reading out the closing headlines, the presenter said the following:

“Jayadevan who had been working against the Liberation Tigers of Tamil Eelam has been arrested by the British police this morning when he was engaged in violence in the Wembley Eelapatheeswara Temple”.

8 December 2013 programme

The presenter read out the following leading news headline:

“It is alleged that Mr Jayadevan was warned that he should not engage in an activity of this sort in the future and released on the basis of the instruction that he would be subjected to a severe punishment if he does engage in such activity”.

Having read out the other news headlines, the presenter then said the following:

“We did broadcast in the news of the IBC Tamil that Mr Jayadevan of Wembley Eelapatheeswara Temple was arrested by the British police when he was engaged in violence in the Temple on last Monday and was released later after a few hours. It is alleged that he was warned that he should not engage in an activity of this sort in the future and released on the instruction that if he does engage in similar activity, then he would be subjected to a severe punishment. But, he had returned to the Temple and asked the manager in there in a loud voice to give him the key for the safe where the money was kept. Following this, the manager had informed [Mr] Wijayarajah [a work colleague of Mr Jayadevan from the Temple]. They advised that Jaya[devan] was again showing an interest in the money box and that these activities furnish proof that he had handled money in the past in a fraudulent manner”.

At the end of the programme, while reading out the closing headlines, the presenter said:

“It is alleged that Mr Jayadevan was warned that he should not engage in an activity of this sort in the future and released on the basis of the instruction that he would be subjected to a severe punishment if he does engage in such activity”.

Ofcom considered the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

“News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

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

Response

Sathy Media said that it never intended to “cause damage of any sort to Mr Jayadevan and if the broadcast has been perceived in such a way then IBC Tamil Radio offers to Mr Jayadevan to put right anything that he feels was wrong in coming on to the radio station or on the phone”. In addition, and by way of mitigation for including Mr Jayadevan in its programming, the Licensee said that “we would like to point out immediately that the broadcast[s] were not the words of any individual working for IBC Tamil Radio”. It also stated its view that: “due to presenters and researchers being overzealous in...their attempt to broadcast a story, [they] neglected to present both sides of the story”. It said that, as a result: “impartiality was not upheld strictly”.

Sathy Media said that “Factual inaccuracies [were] not present” in this case. The Licensee explained the background to the broadcast on 3 December 2013, saying that it had telephoned a work colleague of Rajasingham Jayadevan, “a Mr Wijayarajah who is a well known and reliable person working at the Wembley Eelapatheeswara Temple”. It added that in that conversation “it was reported that Mr Jayadevan had been involved in violence and that he had been arrested and taken to the police station”. The Licensee also said that: “Based on the accepted reliability of Mr Wijayarajah, not only by IBC Tamil radio but of the Tamil community as a whole and some other media, and on common known information pertaining to Mr Jayadevan, there were mentions of other aspects of Mr Jayadevan’s history, including his involvement with [the] LTTE when he was with them and against them”.

Sathy Media also said that in addition to the above steps: “Mr Jayadevan was approached to provide his account of the events and to refute Mr Wijayarajah’s account and accusations...[O]ur Presenters did not broadcast that Mr Jayadevan was asked for comment but neglected to offer any” and therefore “we breached the impartiality aspect of rule 5.1”. However, Sathy Media stated its belief that it had been “fair in our attempts to gain comment from” Rajasingham Jayadevan.

The Licensee stated its belief that the information concerning Mr Jayadevan was “from a reliable source and of common knowledge [and] therefore considered to be accurate” and that the issue of any factual inaccuracies in the programmes was due to: “problems of translation between 2 languages”.

Sathy Media said that Mr Jayadevan had “objected to the broadcast” and therefore the Licensee had “offered him the opportunity to clear up anything that he objected to and to put right any aspect of the broadcast that he believed to be false”. According to Sathy Media, however, Mr Jayadevan “refused this offer, which still remains”.

The Licensee concluded: “Following an internal review of the presenter and researchers’ broadcast[s] for the last quarter of 2012, the two have been let go. All our broadcast staff have been refreshed of our procedures and guidelines”. The Licensee said that these guidelines require that: “a story would need 2 people to confirm it. And if an allegation has been levelled at any individual, that individual should have the opportunity to contend those allegations on air or provide comment. When this is not possible, either another view that would contest the initial claims should be aired or the listeners should be told of the individual’s refusal to make a comment”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content of programmes as appear to it best calculated to secure the standards objectives, including that news included in television and radio services is reported with due accuracy and presented with due impartiality. These objectives are reflected in Rule 5.1 of the Code which states that: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

When applying the requirement to report news with due accuracy and preserve due impartiality in news, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without unnecessary interference by public authority.

Article 10 is also clear, however, that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society as well as for the protection of the reputation or the rights of others. The requirement for news to be reported with due accuracy and presented with due impartiality reflects these considerations and necessarily obliges broadcasters to ensure appropriate balance in presenting news so that, for example, neither side of a controversy is unduly favoured.

The requirement in Rule 5.1 that news is reported with due accuracy and presented with due impartiality applies potentially to any issue covered in a news programme where there is more than one viewpoint, and not just matters of political or industrial controversy and matters relating to current public policy. In judging whether due accuracy and due impartiality have been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. In the context of “due impartiality” in particular, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Therefore, in considering the issues raised under Rule 5.1 by this case Ofcom has had regard to how the matter was presented, including whether – and if so, to what extent – differing viewpoints were reflected.

We recognise that this case dealt with a news item relating to allegations about a particular member of the Tamil community, Mr Jayadevan. The Code does not prohibit news from including views critical of individuals or institutions provided that any views that are included are reported with due accuracy and presented with due impartiality. The central issue for Ofcom in this case therefore is an assessment of the manner in which the criticisms of Mr Jayadevan made in the news item were presented.

In this case, Ofcom noted that there were news reports in two separate bulletins about the alleged activities and views of Mr Jayadevan. In each programme, there was a short reference to the news report about Mr Jayadevan in both the opening and closing headlines. Furthermore, the length of the main news report in each programme was over a minute and a half in the case of the programme broadcast on 3 December 2013, and approximately a minute in the case of the programme

broadcast on 8 December 2013. The news items variously described Mr Jayadevan as having been “*arrested by the British police this morning when he was engaged in violence*”, and “*grabbing the neck of the [Wembley Eelapatheeswara] Temple’s Management Trust Chairman...and pushed him out of the Temple*”. In addition, Mr Jayadevan was accused as, in the past, having been involved “*in enormous land-related frauds and in fraudulently handling collections of Temple funds, as well as in violence*”.

We noted that the complainant had disputed the accuracy of the reporting of facts included in these two broadcasts, such as the allegation that he had been arrested, and that he had handled money in a “fraudulent manner”. We therefore considered that these critical statements about Mr Jayadevan were clearly controversial, and on the accuracy of these statements there would be more than one viewpoint – not least that of Mr Jayadevan.

In assessing whether any particular news item has been reported with due accuracy and presented with due impartiality, we take into account all relevant facts in the case, including: the nature of the coverage, and whether there are varying viewpoints on a news story and – if so – how a particular viewpoint, or viewpoints, on a news item could be or are reflected within news programming. At no point, as corroborated by the Licensee, did the reports reflect Mr Jayadevan’s viewpoint on the significant allegations being made against him, nor did the reports even suggest that he had at any point been asked to comment.

In reaching a decision in this case, we have taken into account the various representations made by Sathy Media. Firstly, we had regard to the Licensee’s representations that: “Factual inaccuracies [were] not present” in this case; and that the issue of any factual inaccuracies in the programmes was due to “problems of translation between 2 languages”. However, we noted that Sathy Media did not identify any inaccuracies in the independent translation obtained by Ofcom.

Second, we noted the Licensee’s statement, by way of mitigation, that the “broadcast[s] were not the words of any individual working for IBC Tamil Radio”. However, the fact that viewpoints expressed in the programmes were not those of the Licensee did not lessen Sathy Media’s duty to preserve due impartiality in this case.

Third, we noted that in this case, the Licensee had based its reports about Mr Jayadevan on the viewpoint of one of the latter’s work colleagues, a Mr Wijayarajah. It put particular weight on this viewpoint because of the “accepted reliability” of Mr Wijayarajah amongst, for example, the “Tamil community as a whole and some other media”. However, just because an individual is reported to have a particular standing within a community, does not mean a broadcaster should not, depending on the facts of a particular news story, seek to reflect alternative viewpoints, especially as in this case, where the news reports centred on serious and critical allegations against a named individual.

Finally, Sathy Media said that Mr Jayadevan had “objected to the broadcast” and had refused the offer to respond to the allegations being made against him. As mentioned above, we noted that the programmes in this case did not refer to the fact that the Licensee had attempted to obtain Mr Jayadevan’s response to the allegations being made against him. In particular, we noted Sathy Media’s statement that “our Presenters did not broadcast that Mr Jayadevan was asked for comment but neglected to offer any” and therefore “we breached the impartiality aspect of rule 5.1”. However, as Ofcom’s published Guidance to Rule 5.1 of the Code states: “...if a

news item includes criticism of individuals or organisations, then broadcasters should consider whether they need to...reflect any refusal to comment of that individual or organisation”². The Guidance further states that: “Where a broadcaster attempts to seek alternative views, but these are not readily available (for example, an individual or organisation declines to give an interview or give comments), there are a range of editorial techniques for maintaining due impartiality. For example, broadcasters could: seek alternative viewpoints from a range of sources; summarise with due objectivity and in context the alternative viewpoints, for example, through interviewees expressing alternative views; make clear with appropriate frequency and prominence that a broadcaster has sought alternative views from particular individuals or organisations; and/or ensure that the views expressed in a news item are challenged critically by presenters and reporters within the programmes”³.

We noted Sathy Media’s statement that it never intended to “cause damage of any sort to Mr Jayadevan”. In addition, we noted that the Licensee had “let go” the presenter and researcher involved in the programmes in this case, and reminded all broadcast staff of its various internal guidelines to help ensure the preservation of due impartiality. However, on the facts of this case, we concluded that the Licensee did not take appropriate steps to ensure the story concerning Mr Jayadevan was, in both bulletins, reported with due accuracy and presented with due impartiality. Ofcom has therefore found the material to be in breach of Rule 5.1 of the Code.

In this Broadcast Bulletin, we are also recording a breach of Section Seven (Fairness) of the Code for the same broadcasts.

Ofcom notes that this breach of Rule 5.1 follows a very similar breach of that rule, recorded against the Licensee in issue 206 of Ofcom’s Broadcast Bulletin⁴. We are therefore concerned that Sathy Media’s compliance in this area appears to remain inadequate. We are therefore requiring the Licensee to attend a meeting to explain its compliance procedures in relation to its news output.

Breaches of Rule 5.1

² See paragraph 1.12,
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

³ Ibid. paragraph 1.17.

⁴ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb206/obb206.pdf>

In Breach

Sky Poker.com bonus promotion

Sky Poker, 16 April 2013, 22:45

Introduction

Sky Poker is a teleshopping channel transmitted on the Sky digital satellite platform. Because the material broadcast on the channel includes a direct offer to viewers in return for payment – in this case for transactional gambling – it is classified by Ofcom as teleshopping, in other words long-form advertising.

The licence for Sky Poker is held by British Sky Broadcasting Ltd (“Sky” or “the Licensee”). Sky Poker is also the name of an associated website.

Because it is a form of advertising, the Sky Poker channel is subject to the UK Code of Broadcast Advertising (“the BCAP Code”) that governs broadcast advertising. For most matters the BCAP Code is enforced by the Advertising Standards Authority (“the ASA”). Ofcom, however, remains responsible for enforcing the rules in respect of certain types of advertising, including teleshopping transactional gambling.

We received a complaint that a bonus offer on Sky Poker was misleading. The bonus offer was presented on a ‘ticker’ shown on the screen with scrolling text which read:

“Join Sky Poker today and get a 200% first deposit bonus up to £500 plus £10 completely free. See www.skypoker.com for further details.”

Other than the text “See www.skypoker.com for further details” no other reference to terms and conditions was included.

Ofcom examined the terms and conditions on the Sky Poker.com website. Conditions applied to both components of this specific offer and to offers more generally.

Free 200% bonus conditions

These conditions included the following:

- “Your bonus will be released £10 at a time. Each time you earn 500 poker points, £10 will be credited to your account within 72 hours of reaching the 500 point threshold.”
- “The maximum bonus amount that can be earned as part of this offer is £500 for a 1st deposit of £250 or more and earning 25,000 poker points in the promotional period.”
- “Your bonus will be added to your cash balance but will be non-withdrawable. You must play through the bonus amount once before it can be withdrawn.”
- “New customers will have 30 days from the date of registration to claim all of their bonus entitlement.”
- “The 500 poker points awarded on registration do not count towards the earning requirements of this promotion.”

“Poker points” were explained on the website as a method of ‘Weighted Contribution’ whereby points are earned by players who “put money into the pot and create action for all the players at the table.” Only players who contribute to the pot earn Poker Points.

Free £10 conditions

The conditions that attached to the “free” £10 were these:

- “You can use your £10 on scheduled tournaments and Sit n Go's only.”¹
- “Your free bonus will be credited as 2 x £2.20 tokens and 2 x £3.30 tokens.”
- “You may combine these tokens to enter a tournament of higher value. For example, you could enter a tournament with a £5.50 buy in by combining the £2.20 and £3.30 tokens.”
- “Tournament tokens are non-withdrawable.”

General Conditions

The following appeared among the general conditions:

- “Customers who wish to be part of any of the mentioned Sky Poker promotions must ensure that they play at Sky Poker before playing any other Sky Betting and Gaming product i.e. Sky Vegas, Sky Bet or Sky Bingo.”
- “Only customers registering through internet or mobile devices are eligible for the promotion. Customers registering through TV are not eligible.”
- “Customers using Moneybookers or Neteller are not eligible for this promotion.”

Given the description of the offers made on screen, the nature and wording of the qualification and the actual conditions that applied to the offers, we considered the offer to warrant investigation under the following rules of the BCAP Code:

BCAP Code Rule 3.1: “Advertisements must not materially mislead or be likely to do so.”

BCAP Code Rule 3.2: “Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the advertisement is constrained by time or

¹ A ‘Sit n Go’ tournament is an online poker tournament without a scheduled starting time that begins whenever a pre-defined number of players have put up a specified sum of money in return for an equal number of chips.

space, the measures that the advertiser takes to make that information available to consumers by other means.”
BCAP Code Rule 3.10: “Advertisements must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.”

BCAP Code Rule 3.25: “Advertisements must make clear the extent of the commitment consumers must make to take advantage of a “free” offer.”

We therefore sought Sky’s comments on how the offer complied with the above rules.

Response

Sky explained that the offer had run on both the Sky Poker.com website and on the Sky Poker television channel. The offer run on the website had already been investigated by the ASA under the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the “CAP Code”) which applies to non-broadcast advertising. The ASA had upheld the complaint made against the website².

Because the ASA had investigated the website offer and recorded a breach of the CAP Code, Sky considered issues of ‘double jeopardy’ would arise if Ofcom were to investigate the offer as it appeared on the TV channel Sky Poker under the BCAP Code that applies to all broadcast advertising.

Sky told us that it had taken all steps necessary to rectify its breach of the CAP Code.

However, Sky said that, despite its view that Ofcom should not investigate the matter after the ASA had done so, it wished to make full submissions on the case.

Free 200% bonus conditions

In respect of the wagering requirements, the Licensee said that the poker points system works in a similar way to loyalty card schemes operated by supermarkets, with players rewarded with a portion of the “rake”³. Sky explained that there were a variety of ways that players could earn poker points, making the cash equivalent difficult to determine. However, at a basic conversion rate 6 poker points would be earned for every £1 of rake, meaning that a player would need to contribute a maximum of £4,166 in rake to reach the 25,000 poker points required to receive the full bonus amount. Sky stated that a player could achieve the points with a lower spend, depending on his or her specific pattern of play, but would not need to contribute more than £4,166 to reach 25,000 points.

Sky stressed that, although 25,000 poker points were required to achieve the maximum bonus, customers received £10 bonus increments for every 500 points they earned. Sky told us that 500 point increments were widely achieved, and that therefore players would benefit from bonuses in relation to that level of play.

² The ASA’s published adjudication is available at:
http://www.asa.org.uk/Rulings/Adjudications/2013/6/Bonne-Terre-Ltd/SHP_ADJ_226017.aspx

³ The rake is the commission charged by the game operator on the amount wagered by players during each hand.

Sky told us that in April 2013, when the programme in question was broadcast, 11 customers achieved 25,000 poker points within a 30 day period.

Free £10 conditions

In relation to the requirement that the £10 bonus was used in scheduled tournaments or Sit n Go games only, although Sky accepted that this was a limitation on the use of the bonus, it did not consider it to be a significant one. It said that both Sit n Go and scheduled tournaments were available 24 hours a day on the Sky Poker website and made up the majority of players' play on site. The Licensee said that on an average day, more than double the number of those playing on cash tables participated in tournaments, representing a clear majority of all participants. Finally, Sky argued that the restriction was in line with industry practice. Given these points, Sky did not feel that restricting the bonus to scheduled tournaments and Sit n Go games greatly limited its use.

As to the condition that the £10 bonus was 'non-withdrawable', Sky said that the £10 was given to eligible customers in the form of tournament tokens which could be used for play on Sky Poker. Sky considered that the terms and conditions of the offer made clear to consumers that the token was not immediately withdrawable (i.e. is not cash), and had first to be used to play on Sky Poker.

Sky said that the requirement that the credit must be used before withdrawal was the only restriction it imposed in that respect. Sky did not consider this restriction was either unusual or onerous; on the contrary, Sky believed it was "much less onerous than most competitor offers which require a number of plays before amounts can be withdrawn." The Licensee told us that it had noted that this type of free promotion had not been judged by the ASA to be unfair or in breach of the CAP Code in the past, and that Sky had relied upon its understanding of the ASA view reached in relation to non-broadcast advertisements in continuing to make available these introductory offers.

Sky said that this offer did not breach the principle or specifics of BCAP Rule 3.25 as explained in published CAP and BCAP guidance on the use of "free". Sky told us that the customer received the £10 credit in their account without any charge or cost whatsoever. It said that the credit could be used on Sky Poker in the same way as any deposit in a customer account with the sole restriction that it must be used once before it can be withdrawn. Sky maintained that this commitment was made clear to customers through the promotion's terms and conditions.

Given these points, Sky considered that this offer and its conditions did not breach Rule 3.25 of the BCAP Code. The Licensee considered the offer was consistent and compliant with past rulings by the ASA and established industry practice.

General Terms

On the matter of the requirement that players play Sky Poker before other casino games, Sky told us the offer explicitly applied to the first deposit of customers who joined Sky Poker (i.e. new customers). Further, Sky said that immediately preceding the 'must play Poker first' condition was a term which clarified that a customer who already held a Sky Betting & Gaming account was not considered a "new customer" for the purposes of these promotions.

The Licensee said that this stipulation arose because all Sky Betting & Gaming products (Sky Poker, Sky Bet, Sky Vegas and Sky Bingo) were accessed by

customers through one registered linked account across all products. Given that this offer related to the Sky Poker product only, Sky considered this term clarified that the first deposit and play using the customer's Sky Betting & Gaming account must be on Sky Poker, as both bonus amounts relate to and are contingent on Sky Poker play only.

The Licensee also explained that the exclusion of registration via television was a legacy term that had been withdrawn over a year previously.

As to the exclusion of certain forms of money transfer, Sky said that this term restricted the use of two very minor forms of electronic payment, used by only a very small percentage of Sky Poker players. Sky pointed out that other more popular and verifiable electronic payment methods were allowed, including PayPal.

It was Sky's view that the offers and their conditions were reasonable in breadth and scope, and were in line with industry practice and compliant with the requirements of the advertising codes.

Although the Licensee felt that the offer itself was compliant, in light of Ofcom's investigation and the findings reached by the ASA on the same material facts, Sky did accept that errors were made in how the material qualifications and terms of the offer were presented to viewers.

Sky accepted that these errors resulted in breaches of Rules 3.1, 3.2, 3.10 and 3.25 of the BCAP Code. The Licensee told us that this was clearly a major issue, for which it sincerely apologised.

The Licensee said that this mistake and breaches were certainly unintended and purely down to human error and a breakdown in compliance process resulting from the following factors:

- that many similar offers with comparable conditions are made across the industry. Because the offer appeared in the live ticker on a service viewed by online poker enthusiasts, Sky considered that its viewers would be familiar with offers of this kind and the industry standard qualifications associated with them;
- given the very limited space available on the ticker, the offer specifically referred to the Sky Poker website at www.skypoker.com where full terms and conditions of the offer could be found and reviewed before new customers registered for the offer. Sky acknowledged, however, that, upon review, material terms were not adequately displayed or easily found on site by viewers; and
- Sky Poker had historically operated separately from the rest of BSkyB. As a result the offer had been rolled out across all Sky Poker media channels and presented on air without passing BSkyB's standard compliance review process. The Licensee explained this had been a critical error which it had addressed.

The complaint had highlighted gaps in its overall compliance procedure, Sky said, and the need for better co-ordination between compliance across product areas when it was promoting offers across different media.

In light of this, since having received Ofcom's letter, Sky had removed reference to the offers on the Sky Poker Channel pending its own compliance investigation. After review and further consideration of this process, it had reduced the poker points requirement per £10 disbursement to 250 points (from 500 points), thereby halving

the maximum bonus fulfilment amount to 12,500 points within 30 days of first deposit. The Licensee said this change would increase the marketing costs associated with the offer but would make bonus payment awards much easier for more of its new customers to achieve.

Sky told us that it had also revised all offer materials to state clearly that terms and conditions apply to the bonus offers. It said it had made the terms much more visible and clear on site prior to registration.

In relation to a more effective compliance process, Sky told us:

“[it] had a number of internal decisions involving the necessary stakeholders and experts in this area to discuss the errors that were made, better educate the necessary product owners and establish key personnel responsible for the compliance of all future offers on the Sky Poker Channel. As a part of this a formal compliance process has been established where written sign-off must be obtained from the necessary compliance and legal advisors by the marketing teams/product owners before any offers can be aired. This process has been agreed and communicated to all necessary personnel and will be effective with immediate effect.”

Finally, Sky sincerely apologised for the lapse of process and errors in display of terms in this case. Sky stressed to us that it takes its compliance responsibilities very seriously and was disappointed that this error had occurred. The Licensee said it would appreciate Ofcom’s understanding of the specifics of what it said was an isolated case and wished to reassure Ofcom that the error would not be repeated because of the “connected and robust compliance processes” it had put into place.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

Section 3 of the BCAP Code is concerned with misleading advertising. Among other rules it contains the following:

BCAP Code Rule 3.1: “Advertisements must not materially mislead or be likely to do so.”

BCAP Code Rule 3.2: “Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the advertisement is constrained by time or space, the measures that the advertiser takes to make that information available to consumers by other means.”

BCAP Code Rule 3.10: “Advertisements must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.”

BCAP Code Rule 3.25: “Advertisements must make clear the extent of the commitment consumers must make to take advantage of a “free” offer.”

In Ofcom’s view, the facts of this case divide into two core areas: that area covered by BCAP Code Rules 3.1, 3.2 and 3.10, i.e. general misleadingness by virtue of the omission or lack of clarity of attached conditions; and the further consideration of the use of “free” under BCAP Code Rule 3.25.

First, however, we wish to make clear Ofcom’s position in respect of circumstances in which broadcast and non-broadcast advertising raise essentially similar issues, and in particular where there has been a prior or related investigation by the ASA into non-broadcast material. Such a situation does not affect Ofcom’s duty to investigate the very limited categories of broadcast advertising that fall within its remit. The CAP Code that applies to non-broadcast advertising is quite separate to the BCAP Code for broadcast advertising. The two codes’ respective self-regulatory and statutory footings mean that neither the CAP Code’s provisions nor any decision reached under it can be considered by Ofcom as an authority in its decision making.

In cases such as this one where complaints are lodged with the ASA and Ofcom, the regulators must reach independent decisions. That this should be so is not only a consequence of the quite separate bases on which the ASA and Ofcom operate but, more practically, because the characteristics and expectations of the different media in which the advertisements appear will vary widely.

Misleadingness and the need to make clear significant conditions

Ofcom noted that the material complained about appeared in a ticker shown on the screen with scrolling text which read:

“Join Sky Poker today and get a 200% first deposit bonus up to £500 plus £10 completely free. See www.skypoker.com for further details.”

We noted the Licensee’s acceptance of the breaches of BCAP Rules 3.1, 3.2 and 3.10.

The terms of the 200% bonus were such that, in summary:

- The bonus would be released incrementally on each occasion that a player earned 500 points;
- The full bonus had to be earned within 30 days; and
- Up to £4,166 had to be played through the ‘rake’ for the full 25,000 bonus points to be earned.

The terms of the £10 bonus, in summary:

- meant that the value was notional, i.e. the bonus was for £10 in gameplay tokens with no transferable cash value in themselves;

- restricted the types of games that the tokens could be used in to scheduled and Sit n Go tournaments; and
- meant the sum could only be withdrawn if it had been ‘converted’ to cash as part of a player’s winnings following its use in a tournament,

The terms of the General Conditions required initial play in Sky Poker games.

Ofcom accepted that the reference to the bonus in the ticker had been qualified. We also noted that Sky Poker.com is a specialist service likely to be of appeal mostly to those with some knowledge of the game and of the terms and conditions which sometimes apply to offers.

Nevertheless, in Ofcom’s view the ‘play through’ requirement was a very significant condition. It meant that a new player would potentially have to wager up to £4,166 within a limited time period before earning the £500 bonus referred to in the broadcast.

Consequently, we concluded that because the Licensee had omitted to provide sufficiently full and clear references to the wagering conditions, the way the offer was advertised breached BCAP Rules 3.1 (misleadingness), 3.2 (omission of material information), and 3.10 (failing to state significant limitations and qualifications).

We wish to be clear that in some cases we believe it will be reasonable for conditions to be left to steps taken after seeing advertising. Whether that is so will depend on all the circumstances, but particularly on the reasonable prior knowledge of those to whom the advertising is addressed, the nature of the conditions and what qualification is given in the advertising and how. In this case we considered the wagering condition so onerous that the reference to the website was insufficient, and the advertising was therefore in breach of the rules given above.

Use of “free”

BCAP Code Rule 3.25 requires that commitments a consumer must make to take advantage of a free offer are made clear.

In this case, we concluded that the ‘virtual’ nature of the £10 bonus – i.e. that it was in effect a simulated value that could only be used to play games on the advertiser’s site – was such a significant qualification that the explanation on the Licensee’s site served to contradict the impression given by initial claim “£10 completely free”. As a result, we concluded that BCAP Rule 3.25 had also been breached.

We noted the Licensee’s commitment in light of the complaints to the ASA and to Ofcom to change the nature of the conditions to make them less onerous. We also took full account of the willingness shown by the Licensee to examine and change its procedures for the compliance of gambling bonus offers.

In particular, we noted that Sky accepted it had made mistakes in its presentation of the offer. Although it believed the offer to be “compliant”, the Licensee offered a full apology for the presentational errors.

We considered that breaches of each of the rules cited in this Finding should be recorded. Licensees offering incentives to gamble must ensure that the conditions they attach to those incentives are sufficiently clear to viewers, even where, as here,

some prior knowledge and understanding of industry standards and practice might be assumed.

Because Sky indicated that it was intending to change the nature of the qualifications of offers explained to viewers, we wish to be clear that this Finding does not bind Ofcom as to any decision it may take in the future about the presentation of bonus offers. This Finding should not, therefore, be taken to accept or approve either the generality or any specifics of the changes Sky proposed in light of the decisions reached by Ofcom or by the ASA.

Breaches of BCAP Code Rules 3.1, 3.2, 3.10 and 3.25

Resolved

Brit Cops: Frontline Crime

Pick TV, 4 June 2013, 21:00

Introduction

Brit Cops: Frontline Crime is a fly-on-the-wall documentary series following the work of UK police. The licence for Pick TV is held by British Sky Broadcasting Limited (“Sky” or “the Licensee”).

A complainant alerted Ofcom to offensive language broadcast frequently at the very beginning of the programme.

Ofcom noted that the opening pre-title sequence featured an altercation between a man and the film crew during which he was heard to say “*get that camera out my fucking face*”. The following segment featured the arrest of a man who used the word “fuck” or a variation of that word ten times when shouting at the officers arresting him. The word “fuck” or a variation of that word was therefore broadcast a total of eleven times in the first three minutes of the programme immediately after the 21:00 watershed.

Ofcom noted there was no pre-transmission warning about the offensive language that followed.

Ofcom considered the material raised issues warranting investigation under Rule 1.6 of the Code, which states:

“The transition to more adult material must not be unduly abrupt at the watershed...”.

We therefore asked the Licensee for its comments as to how the material complied with this rule.

Response

Sky said that although Pick TV is a general entertainment channel, its content does not generally target children and this was underlined by the fact that only 2% of the audience for this particular episode of *Brit Cops* were children. The Licensee explained that in its view the fly-on-the wall format of police documentaries like *Brit Cops* is now well established and that viewers should expect to see actual crimes and violent, heated incidents without intervention from the film crew.

However, Sky acknowledged this episode should have carried a warning before the start of the programme to alert Pick TV viewers that it contained strong language from the outset but said that unfortunately on this occasion no warning was made. Sky apologised for what it described as an “unintentional omission” and explained that it has since conducted a check of all five series of *Brit Cops* to ensure that where appropriate, warnings were carried.

Decision

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

Rule 1.6 of the Code states that the transition to more adult material must not be unduly abrupt at the watershed and adds that the strongest material should appear later in the schedule.

As Ofcom noted in its Guidance on observing the watershed on television¹ “Content that commences after the watershed should observe a smooth transition to more adult content. It should not commence with the strongest material.” Recognising that children may not have ceased viewing at exactly 21:00, Rule 1.6 is designed to avoid a sudden change to material that would only be deemed suitable for a post-watershed broadcast.

Rule 1.6 is not prescriptive. It does not stipulate a certain set time after the watershed when broadcasters may start to transmit the most offensive language. What constitutes an “unduly abrupt” transition to more adult material depends on the context: for example, factors such as the nature of the offensive or harmful material, the editorial content of the programme, the time it is broadcast and the expectations of the audience.

Broadcasters must take care to ensure that there is a smooth transition from the position immediately before the watershed when the most offensive language, for example the word “fuck” or a variation, should not be broadcast at all, to the position immediately following the watershed when the most offensive language is allowed provided it complies with the Code, and Rule 1.6 in particular.

In this case the word “fuck” or a variation were broadcast eleven times in the first three minutes of this programme, which started at 21:00. Further, no warning was given to viewers about this frequent use of the most offensive language before the broadcast began. We therefore considered that the transition at the watershed was unduly abrupt.

However, Ofcom noted: that Pick TV does not generally show programmes aimed specifically at children; Sky’s admission that the absence of a warning in this case was an error on its part; and, the subsequent checks that Sky made to all other series of *Brit Cops* to ensure that if necessary they would be preceded by any necessary warning about offensive language. Taking these factors into account, we considered the matter resolved.

Resolved

¹ Protecting the Under-Eighteens: Observing the watershed on television and music videos, September 2011
(<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>)

Advertising Scheduling Findings

Resolved

Resolved findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
ITV4	7 July 2013, 21:00	COSTA Rule 4	<p>Ofcom received notification from ITV Broadcasting Limited (“ITV”) that it had exceeded the permitted advertising allowance in the 21:00 hour by a total of two minutes and ten seconds.</p> <p>ITV said the incident during the broadcast of live sport was owing to a miscalculation of the amount of advertising that had been transmitted during this hour.</p> <p>ITV immediately advised those responsible of the impact of their error and said that it would forcefully address this incident.</p> <p>Resolved</p>
More4	6 March 2013, 11:00	COSTA Rule 4	<p>Ofcom received notification from the licence holder for More4, (Channel 4) that it had exceeded the permitted advertising allowance in the 11:00 clock hour by a total of four minutes.</p> <p>Channel 4 said it has two versions of the film that was broadcast during the incident. Owing to human error, the film was incorrectly logged as being the longer version. The transmission of the shorter version moved the schedule forward and caused the internal break scheduled for 12:05 to be</p>

			<p>broadcast in the 11:00 clock hour.</p> <p>Following the incident, Channel 4 added more resource to the team responsible for checking that programmes are logged correctly. It added that its technical team has improved the way transmission data is presented so that discrepancies are easier to identify.</p> <p>Resolved</p>
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Broadcast Licence Condition cases

Correction

Shorts International Limited

Broadcasting licensees' Relevant Turnover returns

In issue 238 of the Broadcast Bulletin¹, published on 23 September 2013, Ofcom set out details of licensees who had failed to submit their Relevant Turnover returns, as required.

Shorts International Limited failed to submit its Relevant Turnover return in accordance with the original deadline, but subsequently submitted a late return. Due to an administrative error, it was listed as being in breach of its licence, but should have been recorded as being resolved. An amendment has now been made to that issue of the Broadcast Bulletin to correct this.

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb238/obb238.pdf>

Fairness and Privacy cases

Upheld in Part

Complaint by Bindmans LLP on behalf of Mr Rajasingham Jayadevan

News Bulletin, IBC Tamil, 3 and 8 December 2012

Summary

Ofcom has upheld in part this complaint of unjust or unfair treatment made by Bindmans LLP on behalf of Mr Rajasingham Jayadevan.

On 3 December 2012, IBC Tamil broadcast an edition of its news bulletin (in Tamil) which contained a report about an altercation which had occurred at a Hindu Temple in Wembley, north London. The report stated that Mr Jayadevan had been arrested by police following an assault at the Temple and also alleged that Mr Jayadevan had been involved *“in the past in enormous land related frauds and in fraudulently handling collections of Temple fund”*.

On 8 December 2012, IBC Tamil broadcast another edition of its news bulletin which contained a report which again stated that Mr Jayadevan *“had handled money in the past in a fraudulent manner”*.

Mr Jayadevan, through his legal representatives, Bindmans LLP (“Bindmans”), complained that he was treated unjustly or unfairly in the programme as broadcast.

Ofcom found that:

- The news bulletins of 3 and 8 December 2012 made significant allegations of fraud relating to Mr Jayadevan which were presented in a way that was likely to materially and adversely affect listeners’ perceptions of Mr Jayadevan unfairly. Consequently, Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts in relation to Mr Jayadevan’s actions were presented in the programme in a way that was fair to him.
- In relation to the programmes’ omission of some additional background information about the dispute at the Temple, Ofcom considered it was unlikely that listeners’ perceptions of Mr Jayadevan would have been substantially altered by the omission of this information, given that they would have already been significantly altered by the fact Mr Jayadevan had committed an assault.
- Mr Jayadevan was not given an appropriate or timely opportunity to respond to the significant allegations made about him in the 3 and 8 December 2012 news bulletins.

Introduction and programme summary

IBC Tamil is a digital radio service broadcast on terrestrial and satellite platforms aimed at the Tamil community in the UK. The licence for IBC Tamil is held by Sathy Media Limited.

On 3 December and 8 December 2012, IBC Tamil broadcast editions of its daily news bulletins in Tamil¹. The news bulletin broadcast on 3 December 2012 contained a report about an altercation at a Hindu Temple. The reporter stated that Mr Jayadevan had been arrested by the police that morning “*when he was engaged in violence*” at a Temple in Wembley, north London and that he had:

“...grabbed the neck of the Temple’s management trust chairman, T Sri Moorthy and pushed him out of the Temple.”

The report stated that Mr Jayadevan was then handcuffed and arrested by police who took him to a police station. The report said that the secretary of the Temple management trust, Mr Wijayarajah, had told IBC Tamil that Mr Jayadevan:

“...had been involved himself in the past in enormous land related frauds and in fraudulently handling collections of Temple funds, as well as in violence.”

The news bulletin broadcast on 8 December 2012 followed up on the story IBC Tamil had broadcast on 3 December 2012 regarding Mr Jayadevan. The reporter again stated that Mr Jayadevan had been arrested by police after he was “*engaged with violence*” and further stated that Mr Jayadevan had been warned by police that “*he should not engage in an activity of this sort in the future*” and if he did he would “*be subjected to a severe punishment*”. The report stated that despite this warning Mr Jayadevan had subsequently returned to the Temple and behaved in such a way so as to “*furnish proof that he had handled money in the past in a fraudulent manner*”.

Summary of the complaint and the broadcaster’s response

Bindmans complained on behalf of Mr Jayadevan that he was treated unjustly or unfairly in the programme as broadcast in that:

- a) The material facts were presented, disregarded or omitted in a way that was unfair to Mr Jayadevan in that:
 - i) The 3 December 2012 news bulletin stated that Mr Jayadevan had in the past been involved in an “enormous” land related fraud and in fraudulently handling the collection of Temple funds. Bindmans said that these unfounded allegations, which were potentially of a serious criminal nature, had been broadcast to a national audience.

By way of background, Bindmans said that these allegations were based on a highly partial and disgruntled source.

In response and before addressing the particular elements of the complaint, IBC Tamil said that it had never been its intention to cause damage or upset to Mr Jayadevan and that the contents of broadcasts were not the words of any individual involved with IBC Tamil. It said that the information in the report on 3 December 2012 that Mr Jayadevan had been arrested was given to the broadcaster by Mr Wijayarajah, who was a work colleague of Mr Jayadevan from the Temple.

¹ Ofcom commissioned English translations of the bulletins from an independent translator. Ofcom gave the broadcaster a reasonable opportunity to comment on whether the translations were fair and accurate but it did not comment. Ofcom therefore concluded that the accuracy of the translations was not disputed in any way by the broadcaster.

IBC Tamil said that Mr Wijayarajah was a well known and respectable member of the Temple as well as being well respected by the Tamil community. IBC Tamil said that it therefore believed that Mr Wijayarajah's testimony on what had taken place was correct and that there was no reason, as far as IBC Tamil was concerned, for him to give incorrect information.

- ii) The news bulletin on 3 December 2012 did not provide sufficient context to the dispute at the Temple or explain why Mr Jayadevan had attempted to get the chairman of the Temple's management trust (Mr Sri Moorthy) to leave the Temple offices and cease handling cash.

By way of background Bindmans stated that prior to the altercation, the trustees "became concerned" that the Executive Committee was not "properly accounting for the Temple monies and began moves to disband" it. It added that the Executive Committee had strongly resisted this and "continued to try to handle the Temple monies in the face of orders not to do so from the Trustees". Bindmans stated that, on the morning of 3 December 2012, Mr Jayadevan had telephoned the Temple and was informed by the manager that a number of members of the Executive Committee had "demanded the keys to the office and the collection boxes" which was refused because of the dispute. Bindmans said that Mr Jayadevan had called the police and then attended the Temple, but by the time he arrived the police had been and gone. It explained that Mr Jayadevan's position was that when he arrived at the Temple he found Mr Sri Moorthy selling tickets and "handling cash". Ofcom noted that it was Mr Jayadevan's position that he had asked Mr Sri Moorthy to leave and when he did not, the situation "became heated" and he had pushed Mr Sri Moorthy. Bindmans said that Mr Jayadevan had voluntarily attended a police station where he accepted a caution for assault.

IBC Tamil did not specifically address this aspect of Mr Jayadevan's complaint in its written response.

- iii) The 8 December 2012 news bulletin contained a highly serious and unfounded allegation of wrong doing that Mr Jayadevan had handled money in a fraudulent way. In addition, Bindmans said that Mr Jayadevan denied the allegation in the news report that he had demanded the key to the safe where the money was kept and that he was seeking access to the money for himself for other improper reasons.

By way of background, Bindmans added that Mr Jayadevan worked in accountancy and that the news bulletins had turned into a "smear campaign" against him.

In response, IBC Tamil said that the comments made in the broadcast were not its words, but those of Mr Wijayarajah. It added that Mr Jayadevan was well known in the Tamil community and "his history is also well known and common knowledge and can be verified".

IBC Tamil reiterated that the information in the programme was from Mr Wijayarajah, who it considered to be a reliable source and "had no reason to doubt and it is for this reason that these matters were broadcast".

- b) Mr Jayadevan was not given an appropriate and timely opportunity to respond to the significant allegations in the news bulletins in that:

- i) He was not contacted prior to the broadcast of the serious allegations in the 3 December 2012 news bulletin.

By way of background, Bindmans said that that IBC Tamil could have reached Mr Jayadevan via his mobile telephone, for which the number could have been obtained through the Temple office. Bindmans said that had Mr Jayadevan have been contacted, he would have immediately denied the allegations.

In response, IBC Tamil said that immediately after it was understood that Mr Jayadevan was not happy about the news bulletins, he was offered the opportunity to come on to the radio station and put his views forward and to clear up any matters that he wished to. It said that Mr Jayadevan refused the offer.

- ii) Mr Jayadevan was not contacted prior to the broadcast of the serious allegations in the 8 December 2012 news bulletin.

By way of background, Bindmans said that following the broadcast of the news bulletin on 3 December 2012, Mr Jayadevan had contacted IBC Tamil to complain that the report had contained inaccurate and unjustified smears against him. At this point, Mr Jayadevan was offered the opportunity of an interview on IBC Tamil which he declined. Bindmans said that Mr Jayadevan was not informed prior to the broadcast on 8 December 2012 of the news bulletin that further allegations would be made against him and, if he had been so informed, he would have provided a denial for broadcast.

In response, IBC Tamil said that there was no “smear campaign” against Mr Jayadevan and that he was given an appropriate and timely opportunity to respond to the news bulletin, but that he chose not to. IBC Tamil added that the offer to come on the radio station remained open to him.

Representations on Ofcom’s Preliminary View

Ofcom prepared a Preliminary View in this case that Mr Jayadevan’s complaint should be upheld in part. In commenting on that Preliminary View, in summary Bindmans’ main points and IBC Tamil’s response (directly relevant to the complaint responded to by the broadcaster and considered by Ofcom) were as follows.

Bindmans’ representations

In relation to head a) ii) of the complaint, Bindmans said that the part of the broadcast report referred to by Ofcom in its Preliminary View did not form the basis of Mr Jayadevan’s complaint. It said that Mr Jayadevan’s complaint was based on the allegations by IBC Tamil that Mr Jayadevan had committed fraud.

Bindmans said that the nature of Mr Jayadevan’s complaint was that the omission of any reference in the broadcasts to an ongoing dispute at the Temple was unfair to Mr Jayadevan. It added such an omission meant that some listeners would not know that the sole source of the fraud allegations, Mr Wijayarajah, was a partial and disgruntled source.

Bindmans noted that under this head of complaint Ofcom, in its Preliminary View, had referred to an extract from the radio broadcast which stated that Mr Jayadevan had “*engaged in violence*” and that a “*complaint was made to the police*”. Bindmans

said that it did not contend that this passage was unfair to Mr Jayadevan and, therefore, Ofcom had concluded that a passage which Mr Jayadevan did not contend was unfair, was unfair – causing a finding that part of Mr Jayadevan’s complaint should not be upheld.

IBC Tamil’s representations

IBC Tamil reiterated that it believed Mr Wijayarajah was a reliable source and said that it did not see the relevance of going into the history between the two men before broadcasting the news, because it would not have altered listeners’ perceptions of Mr Jayadevan as he had already been involved in an altercation and the police had been called.

In respect of the fraud allegations in the 3 and 8 December 2012 news bulletins, IBC Tamil said that it “has enough evidence and witnesses” against Mr Jayadevan to “prove a case”.

Decision

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

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

In reaching its Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a translation of the programmes as broadcast, and both parties’ written submissions, including supporting material and the written correspondence between Mr Jayadevan and the broadcaster. Ofcom also took careful consideration of the representations made by Bindmans and IBC Tamil in response to being given the opportunity to comment on Ofcom’s Preliminary View on this complaint (which was to uphold in part). While Ofcom has attentive regard to the comments of both parties in finalising this Decision, it concluded that the further point raised by Bindmans did not materially affect the outcome of this complaint.

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

- a) Ofcom first considered the complaint that the material facts were presented, disregarded or omitted in a way that was unfair to Mr Jayadevan.

In doing so Ofcom had regard for Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom considered the following sub-heads of complaint in order to reach an overall Decision as to whether Mr Jayadevan was unfairly treated in the programme as broadcast by the way material facts were presented, disregarded or omitted.

- i) Ofcom first assessed the complaint that the 3 December 2012 news bulletin stated that Mr Jayadevan had in the past been involved in an “enormous” land related fraud and in fraudulently handling the collection of Temple funds. Bindmans said that these unfounded allegations, which were potentially of a serious criminal nature, had been broadcast to a national audience.

The news report, which was part of a news bulletin, reported an altercation at the Temple which subsequently resulted in Mr Jayadevan accepting a caution for assault. Ofcom recognises the broadcaster’s right to freedom of expression and the right of members of the Tamil community to receive and impart views in news programmes on topics of genuine public interest and it considered that the subject of the report was itself such a topic. However, with this right comes the responsibility for the broadcaster to ensure that material facts are not presented, omitted or disregarded in a way that creates unfairness to an individual or organisation.

Ofcom first considered the material that was broadcast in the 3 December 2012 news bulletin. It noted in particular the following read by the news reader:

“...the secretary of the Temple management trust, [Mr] Wijayarajah, advised IBC Tamil, saying that [Mr] Jayadevan had been involved himself in the past in enormous land related frauds and in fraudulently handling collections of Temple funds, as well as in violence.”

Ofcom considered that the report clearly alleged that Mr Jayadevan had been involved in both “enormous” land based fraud and “fraudulently handling collections of Temple funds”. Ofcom considered that these comments amounted to significant allegations that questioned Mr Jayadevan’s honesty and integrity and also suggested he was involved in criminal behaviour.

Ofcom noted that IBC Tamil did not provide any further evidence to substantiate the claims about Mr Jayadevan made in the report beyond the testimony of one individual, Mr Wijayarajah, who it said was “a respectable member of the Temple and a reliable source”. Ofcom noted too the background to the complaint and the explanation given by Bindmans that it was Mr Jayadevan’s position that a dispute had arisen at the Temple between members of the trustees (including Mr Jayadevan) and the Executive Committee, of which Mr Wijayarajah was a member. This was not disputed by the broadcaster in its statement in response. Given therefore that the one source that the broadcaster relied on appeared to have been in a dispute with Mr Jayadevan, Ofcom considered that it was imperative that the broadcaster further substantiated the claims. In its representations on Ofcom’s Preliminary View, IBC Tamil said that it had “evidence and witnesses” to prove the allegations of fraud against Mr Jayadevan. However it did not provide any further information to Ofcom to substantiate this serious claim. Ofcom therefore considered there was an insufficient evidential basis for the report to include the specific allegations of fraud against Mr Jayadevan.

Ofcom took the view that the programme made significant allegations about Mr Jayadevan on the basis of the testimony of one individual, who according to the complainant was partial through his involvement in the dispute at the Temple. In Ofcom's view, the presentation of the allegations in the programme was likely to materially and adversely affect listeners' perceptions of Mr Jayadevan in a way that was unfair to him. Consequently, Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts in relation to Mr Jayadevan's actions were presented in the programme in a way that was fair to him.

- ii) Ofcom considered the complaint that the news bulletin on 3 December 2012 did not provide sufficient context to the dispute at the Temple or explain why Mr Jayadevan had attempted to get the chairman of the Temple's management trust (Mr Sri Moorthy) to leave the Temple offices and cease handling cash.

In relation to this sub-head of complaint, Ofcom noted the following extract from the programme:

"[Mr Jayadevan] went into the Temple this morning [and] engaged in violence by grabbing the neck of the Temple's management trust chairman T Sri Moorthy and pushing him out of the Temple...Further, [Mr Wijayarajah] informed [IBC Tamil] that following the assault on the chairperson [a] complaint was made to the police and that they came and arrested [Mr Jayadevan] on the basis of appropriate evidence."

As set out in sub-head a) i), Ofcom noted that Bindmans had explained that it was Mr Jayadevan's position that a dispute had arisen at the Temple between members of the trustees (including Mr Jayadevan) and the Executive Committee, of which Mr Sri Moorthy was also a member and that the conflict occurred at a time when the trustees were taking steps to disband the Executive Committee.

Ofcom considered whether the background information provided by Bindmans (on behalf of Mr Jayadevan) relating to the Temple dispute, specifically that there was a dispute between two parties, not being included in the report resulted in unfairness to Mr Jayadevan.

As noted in head a) i) above, Ofcom recognises the broadcaster's right to freedom of expression and the right of members of the Tamil community to receive and impart views in news programmes on topics of genuine public interest, such as this report.

Ofcom did not consider that the additional information about the background to the altercation at the temple i.e. that two parties (of which Mr Wijayarajah and Mr Jayadevan were on opposing sides) at the Temple were in dispute, would have altered listeners' perceptions of Mr Jayadevan in relation to why Mr Jayadevan had attempted to get Mr Sri Moorthy, the chairman of the Temple's management trust, to leave the Temple offices and cease handling cash. The focus of the news report was that Mr Jayadevan had committed assault, and the background to the complaint submitted by Bindmans confirmed that he accepted a police caution for it. Mr Jayadevan had therefore committed a criminal offence which involved an aggressive act and this, in Ofcom's view, would have already significantly altered listeners'

perceptions of him. The extra detail about Mr Wijayarajah's alleged reliability on this issue would not have materially changed this.

Ofcom considered that while the background to the altercation (i.e. the dispute between the trustees of the Temple and the Executive Committee) may have explained the motivation for Mr Jayadevan's actions, this additional information would not have significantly altered listeners' perceptions of Mr Jayadevan, given that they would have already have been materially altered by the fact he had committed assault.

When considering complaints of unjust or unfair treatment, Ofcom considers the programme as a whole. Although in its complaint form Bindmans did not specifically refer to the programme extract as set out above, Ofcom considered it was relevant when considering this aspect of the complaint.

In relation to this sub-head of complaint Ofcom therefore found that the broadcaster had taken reasonable care to satisfy itself that material facts in relation to Mr Jayadevan's actions were presented in the programme in a way that was fair to him.

- iii) Ofcom considered the complaint that the 8 December 2012 news bulletin contained a highly serious and unfounded allegation of wrong doing that Mr Jayadevan had handled money in a fraudulent way. In addition, Bindmans said that Mr Jayadevan denied the allegation in this IBC Tamil news bulletin report that he had demanded the key to the safe where the money was kept and that he was seeking access to the money for himself for other improper reasons.

When considering this aspect of Mr Jayadevan's complaint Ofcom had regard for Practice 7.9 as set out in head a) above.

Ofcom carefully considered the news bulletin broadcast on 8 December 2012 and noted in particular that the report stated that Mr Wijayarajah had informed IBC Tamil that Mr Jayadevan:

"...returned to the Temple and asked the manager in there in a loud voice to give him the key safe where the money was kept...They advised that Jaya [Mr Jayadevan] was again showing interest in the money box and these activities furnish proof that he had handled money in the past in a fraudulent manner."

Ofcom again noted IBC Tamil's response that the comments broadcast were not the words of IBC Tamil but those of Mr Wijayarajah, who it considered to be a reliable source and that Mr Jayadevan's "history is also well known and common knowledge and can be verified".

Ofcom considered that the claim that Mr Jayadevan demanded the key to the safe where the money was kept combined with the statement that he had acted in a "fraudulent manner" in the past amounted to a significant allegation that questioned Mr Jayadevan's honesty and integrity and also suggested he was involved in criminal behaviour.

Ofcom again noted the public interest in broadcasting the news report. However, as set out in head a) i) above, it is incumbent on the broadcaster to ensure that there is a sufficient evidential basis to broadcast significant

allegations about individuals or organisations. As with the allegation made in the report broadcast on 3 December 2012, the basis for this allegation was one individual, who Mr Jayadevan's legal representative said, was in dispute with him at the time of the broadcasts. Ofcom again noted that despite saying it had "enough evidence and witnesses" to support the fraud allegations, IBC Tamil did not provide any documentation to substantiate this claim. Ofcom therefore considered there was an insufficient evidential basis for the report to include the specific allegation about fraud.

Further, Ofcom noted that in a letter dated 6 December 2012 from Mr Jayadevan to IBC Tamil, Mr Jayadevan set out his view that the report broadcast on 3 December 2012 was "slanderous" and had amounted to a character assassination. Mr Jayadevan also complained that the report had not been verified by an independent source or with him. Mr Jayadevan also said that he had reported the matter to Ofcom and was considering legal action against the broadcaster. Despite the fact that it should have been clear to the broadcaster from this correspondence that Mr Jayadevan disputed the allegations made in the 3 December 2012 report, this was not reflected in the 8 December 2012 news report which featured substantially similar allegations.

Having had regard to all of the above, Ofcom took the view that the programme broadcast on 8 December 2012 made significant allegations about Mr Jayadevan on the basis of the testimony of one individual. In Ofcom's view, the presentation of the allegations in the programme was likely to materially and adversely affect listeners' perceptions of Mr Jayadevan in a way that was unfair to him. As noted above, a similar allegation had been broadcast in a news bulletin on 3 December 2012 and Mr Jayadevan had stated to the broadcaster that he disputed the allegations, however this was not made clear in the 8 December 2012 report. Ofcom considered that given Mr Jayadevan's professional position as an accountant the repeated allegation that he was involved in fraud was potentially very damaging to him.

Consequently, Ofcom concluded that the broadcaster did not take reasonable care to satisfy itself that material facts in relation to Mr Jayadevan's actions were presented in the programme in a way that was fair to him.

- b) Ofcom considered the complaint that Mr Jayadevan was not given an appropriate and timely opportunity to respond to the significant allegations in the news bulletins.

When considering the complaint Ofcom took into consideration Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

- i) Specifically, Ofcom considered the complaint that Mr Jayadevan was not contacted prior to the broadcast of the serious allegations in the 3 December 2012 news bulletin.

For the reasons already given at head a) i) above, Ofcom considered that the suggestion on air that Mr Jayadevan had been involved in "*enormous land related frauds and in fraudulently handling collections of Temple fund*" amounted to a significant allegation against Mr Jayadevan.

Normally, where significant allegations are made about an individual in a programme, as they were in this particular case, then that individual should be given an appropriate and timely opportunity to respond to them.

In the particular circumstances of this case, Ofcom noted that the broadcaster had made no attempt to contact Mr Jayadevan prior to the broadcast of the programme. It noted too that the broadcaster did not provide an explanation as to the reasons it did not seek Mr Jayadevan's response to the allegations.

Ofcom was careful to consider the public interest in broadcasting the story. As already mentioned in head a) above, Ofcom considered the news bulletin to be of genuine public interest and that listeners would expect a story of such importance to be covered by the IBC Tamil news bulletin. While it was important that the broadcaster should have been able to broadcast a report on this subject, Ofcom considered that because of the nature of the allegations made about Mr Jayadevan it was incumbent on the broadcaster to have contacted, or attempted to contact, Mr Jayadevan to seek his comments or should not have broadcast the specific allegations about fraud in the news report, the primary focus of which was the altercation at the Temple. Ofcom did not consider it was sufficient for the broadcaster to offer Mr Jayadevan the opportunity to respond only after the broadcast of the report.

For these reasons Ofcom concluded that the broadcaster had not given Mr Jayadevan an appropriate and timely opportunity to respond to the significant allegations made about him in the report. In these circumstances, Ofcom considered that Mr Jayadevan was treated in a way that was unjust or unfair to him.

- ii) Ofcom considered the complaint that Mr Jayadevan was not contacted prior to the broadcast of the serious allegations in the 8 December 2012 news bulletin.

For the reasons set out in head b) above, Ofcom considered that the allegation that Mr Jayadevan demanded the key to the safe where the money was kept combined with the statement that he had acted in a "*fraudulent manner*" in the past amounted to a significant allegation as it implied that Mr Jayadevan had acted in a dishonest and improper way. He should therefore have normally been offered an opportunity to respond. Ofcom also noted, as in head b) i) above, that there was a public interest in broadcasting the news bulletin.

Ofcom noted that the broadcaster did not provide it with copies of any relevant records of communication or correspondence between the programme makers and Mr Jayadevan despite being requested to do so. However, Bindmans provided Ofcom with a letter from Mr Jayadevan to the broadcaster dated 6 December 2012 which referred to a telephone conversation of the same date, the contents of which are set out in head b) (Summary of the complaint and the broadcaster's response) above. Mr Jayadevan's letter also referred to the fact that during the telephone conversation he had been given the opportunity to appear on IBC Tamil to counter the allegations made in the 3 December 2012 bulletin but that he had declined. IBC Tamil responded to Mr Jayadevan's letter on 7 December 2012 stating that the source for the 3 December 2012 news bulletin was Mr Wijayarajah and "the information was later corroborated by others".

Ofcom considered the broadcaster's response that it had given Mr Jayadevan an "appropriate and timely opportunity to respond to the news bulletin but he chose not to". However, IBC Tamil did not provide any paperwork to substantiate this claim. Ofcom did not consider that the offer to Mr Jayadevan to appear on IBC Tamil, which appears to have been made to Mr Jayadevan in the context of the 3 December 2012 news bulletin to constitute an appropriate and timely opportunity to respond. This is because Mr Jayadevan was not aware on 6 December 2012 that IBC Tamil intended to broadcast further allegations that he had acted in a "*fraudulent manner*" in the 8 December 2012 news bulletin. Further, from the correspondence between Mr Jayadevan and the broadcaster on 6 and 7 December 2012, Ofcom considered that it should have been clear to the broadcaster that Mr Jayadevan denied the allegations, yet his position was not reflected in the report broadcast on 8 December 2012.

Ofcom was also concerned that IBC Tamil considered that it was appropriate redress for Mr Jayadevan to "agree on a date and time when he can come on to the radio and have his say", given the substantial time that has passed since the broadcast of the news bulletins. As set out in Practice 7.11 of the Code, if a programme alleges wrongdoing or incompetence or makes significant allegations, those concerned should be given an appropriate and timely opportunity to respond; usually this should be in the programme in which the wrong doing is alleged. It is not sufficient for broadcasters to offer that opportunity only after the broadcast of the programme.

Taking all the factors above into account, Ofcom concluded that, the broadcaster had not given Mr Jayadevan an appropriate and timely opportunity to respond to the significant allegations made about him in the reports broadcast on 3 and 8 December 2012. In these circumstances, Ofcom considered that Mr Jayadevan was treated in a way that was unjust or unfair to him.

Accordingly, Ofcom has upheld in part Mr Jayadevan's complaint of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mrs Jacqueline Graham-Kevan on behalf of Ms Bethany Graham-Kevan, her daughter

Police Interceptors, Channel 5, 11 February 2013

Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast made by Mrs Jacqueline Graham-Kevan on behalf of her daughter Ms Bethany Graham-Kevan.

The programme complained of was an episode of *Police Interceptors*, a programme which followed police officers carrying out their duties and investigating various suspected illegal activities. In this episode, a police officer was shown investigating why a woman, Ms Graham-Kevan, had stopped her car on a roundabout without apparent reason.

Mrs Graham-Kevan complained to Ofcom that footage of her daughter Ms Graham-Kevan was filmed and broadcast in the programme without her knowledge or consent.

Ofcom found that:

- Ms Graham-Kevan had a legitimate expectation of privacy, albeit limited, in the circumstances.
- Deciding whether a person has such an expectation when being filmed while being arrested or under arrest, Ofcom's approach is to take account of all the relevant circumstances: for example whether the filming took place in a public place; whether the individual was vulnerable in any way (e.g. through the consumption of alcohol or drugs or because of an illness or disability); whether the person concerned was a minor; whether the footage showed the person doing something or disclosed information about them which was confidential, sensitive or personal; the time that had elapsed between the events depicted in the footage and its broadcast (or re-broadcast); and any change in factual circumstances between the events depicted and its broadcast which may affect the extent to which the material could be considered to be private or confidential (for example, whether since the arrest the individual concerned was charged and/or found guilty of any offences).
- In this case the public interest in filming and subsequently broadcasting footage showing the work of the police outweighed Ms Graham-Kevan's expectation of privacy. Therefore, Ms Graham-Kevan's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme or in the programme as broadcast.

Introduction

On 11 February 2013, Channel 5 broadcast an episode of *Police Interceptors*, a programme which followed police officers carrying out their duties and investigating various suspected illegal activities. In this episode, a police officer was shown

investigating why a woman, Ms Graham-Kevan, had stopped her car on a roundabout without apparent reason. When the police officer questioned her about what she was doing, Ms Graham-Kevan appeared to be confused about where she was. Suspecting that Ms Graham-Kevan was driving under the influence of drugs, the police officer arrested her and she was taken to a police station. Footage of Ms Graham-Kevan's handbag being searched in the police station was shown in the programme, along with two photographs of her which had been removed from her handbag and placed on a desk. The photographs appeared to be modelling photographs of Ms Graham-Kevan which showed her naked back. The programme's commentary said that the woman was later charged with possession of cannabis and ketamine and driving whilst unfit through drugs.

Ms Graham-Kevan was not named in the programme and her face and car registration number plate were obscured. However, her voice was not disguised.

Following the broadcast of the programme, Mrs Graham-Kevan complained to Ofcom on behalf of her daughter that her daughter's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

Summary of the complaint and the broadcaster's response

Mrs Graham-Kevan complained that Ms Graham-Kevan's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- a) Footage of Ms Graham-Kevan being arrested for driving under the influence of drugs, and of photographs of her taken from her handbag after a police search, was filmed without her knowledge or consent.

Mrs Graham-Kevan also complained that Ms Graham-Kevan's privacy was unwarrantably infringed in the programme as broadcast in that:

- b) Footage of Ms Graham-Kevan being arrested for driving under the influence of drugs was included in the programme without her knowledge or consent. Footage of photographs taken from Ms Graham-Kevan's handbag after a police search was also included without her knowledge or consent. Mrs Graham-Kevan said that her daughter had not been advised that the footage taken of her would be broadcast nationwide. Mrs Graham-Kevan also said that while her daughter's face and car registration number plate were obscured in the programme, photographs of her daughter modelling were shown and the inclusion of the photographs allowed her daughter to be identified by her friends who began texting and "Facebooking" her.

Mrs Graham-Kevan explained that her daughter had been suffering from depression, and that the arrest and its subsequent broadcast had caused further serious mental distress.

Channel 5 responded to both heads of complaint together. It said that neither it nor Raw Cut Television (the company which produced the programme) knew that Ms Graham-Kevan suffered from mental health issues. Channel 5 set out what it considered to be the pertinent disclosed facts with regard to the recording and subsequent broadcast of footage of and information about Ms Graham-Kevan:

- Ms Graham-Kevan was driving her vehicle on a public highway whilst under the influence of drugs;
- Ms Graham-Kevan was detained by police officers and her person, car and possessions were searched;
- Ms Graham-Kevan was arrested by police officers who suspected she had committed the criminal offence of driving whilst under the influence of prohibited substances;
- Ms Graham-Kevan was charged by police officers with the offence of driving whilst under the influence of prohibited substances;
- Ms Graham-Kevan had photographs of her professional modelling work in her handbag when the police searched her belongings; and
- Ms Graham-Kevan was convicted of the offences with which she was charged.

Channel 5 argued that none of this information was private to Ms Graham-Kevan and no reasonable person would legitimately expect that those facts were and would remain private and therefore neither the filming nor the broadcast of the relevant footage attracted the protection of Article 8 European Convention on Human Rights (“the ECHR”)¹. Accordingly, neither the filming nor the broadcast of the relevant footage involved a contravention of any right of privacy held by Ms Graham-Kevan.

Specifically with regard to the photographs of the complainant, Channel 5 said that:

- Unless in possession of information not contained in the photographs, or the broadcast, the photographs were incapable of being used to identify anyone, including Ms Graham-Kevan;
- The photographs showed the naked back of a model complete with tattoos or body art which might, or might not, be permanent;
- The photographs were not private, rather they were modelling shots intentionally created for the purpose of being disseminated and were therefore inherently public documents.

Channel 5 therefore also considered that nothing about the photographs attracted the protection of Article 8 of the ECHR² on the part of Ms Graham-Kevan and that there was therefore no question of a contravention of any right of privacy held by Ms Graham-Kevan in the filming or broadcast of the footage of the photographs taken from her handbag.

The broadcaster added that, even if Ofcom considered that Ms Graham-Kevan had an expectation of privacy in the circumstances, there was a clear public interest in the footage being obtained and broadcast. To support its position, Channel 5 outlined the premise of the programme:

“...It...focuses on the human cost to the persons who commit crimes, whether they are convicted or cautioned or released without further action. It does this with a view to educating the public about the risks they take when they seek to transgress the law, engage in conduct that may be considered by some to be socially acceptable but is contrary to law or interfere, intentionally or otherwise, with the officers’ execution of their public duties”.

In its view:

¹ Article 8 of the ECHR enshrines the right of respect for private and family life.

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“...the programme is underpinned by the clearest public interest – in seeing the consequences of stupid or reckless decisions (such as drinking and driving, driving too fast, driving unlicensed etc.) and the myriad of ways in which such conduct may impact adversely on society, members of the public, members of the police force and the lives of the person making the relevant decision”.

Channel 5 considered that any right to privacy which Ofcom might find to be held by Ms Graham-Kevan was outweighed by its right to freely communicate the issues covered in the programme to its audience.

It said given that, in its view, Ms Graham-Kevan did not have a reasonable expectation of privacy, there was no obligation for it to have taken steps to try to protect her privacy. Nonetheless, the programme makers had obscured Ms Graham-Kevan's face and car registration number plate in the programme.

With regard to the complaint that the photographs from Ms Graham-Kevan's handbag were not obscured, Channel 5 said that:

- The programme makers were not aware that the photographs were of Ms Graham-Kevan because nothing about them clearly identified her;
- There was no right of privacy attached to the photographs;
- There was no obligation on the part of the programme makers to conceal the identity of Ms Graham-Kevan.

Channel 5 also stated that, in any case, any right to privacy held by Ms Graham-Kevan specifically in relation to these photographs was outweighed by its right to freely communicate the issues covered in the programme to its audience.

Decision

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

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

In reaching its Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript, and both parties' written submissions. The parties chose not to make any representations on Ofcom's Preliminary View.

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

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted³.

- a) Ofcom considered first Mrs Graham-Kevan's complaint that her daughter's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that she was filmed being arrested for driving under the influence of drugs without her knowledge or consent. Mrs Graham-Kevan also complained that footage of photographs of Ms Graham-Kevan was filmed without her knowledge or consent.

Ofcom took into consideration Practice 8.5 of the Code, which states that any infringement of privacy in connection with the obtaining of material included in the programme should be with the person's consent or be otherwise warranted.

In considering whether or not Ms Graham-Kevan's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first considered the extent to which she had a legitimate expectation of privacy in the circumstances in which she was filmed.

Ofcom noted from the footage included in the programme that Ms Graham-Kevan was filmed while being questioned and arrested by a police officer on a public highway. The police officer was investigating why Ms Graham-Kevan had stopped her car on a roundabout without apparent reason. Ms Graham-Kevan was filmed sitting behind the wheel of her car whilst being questioned. She was filmed while apparently unable to follow simple tasks, like keeping her hands on the steering wheel, and when the police officer questioned her about what she was doing, Ms Graham-Kevan appeared to be confused about where she was and what was going on. Suspecting that Ms Graham-Kevan was driving under the influence of drugs, the police officer arrested her and she was taken to a police station. Ms Graham-Kevan was filmed being unable to sit up unaided when the police officers tried to help her in to the back of the police vehicle. The programme's narrator commented:

"This girl is struggling to simply sit up for herself, it's chilling to think that she was behind the wheel of a car".

and

"She's so spaced out that she didn't even attempt to cover up some very incriminating evidence".

It appeared to Ofcom from the footage included in the programme that Ms Graham-Kevan had been filmed openly, on a public highway, by the programme makers and that they had not concealed the fact that they were filming her and her involvement with the police.

Ofcom recognises that there can be circumstances in which an individual can have a legitimate expectation of privacy in a public place. Ofcom took the view that the programme makers had filmed Ms Graham-Kevan while she was in a

³ The explanation of the meaning of "warranted" under Rule 8.1 of the Code identifies revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations, disclosing incompetence that affects the public, as examples of public interest.

vulnerable state, because she was in a confused state under the influence of drugs. Ofcom also had regard to the fact that an individual's involvement in police investigations is often not a matter of public record until a person has been charged with a criminal offence and that the arrest of an individual may be an event of some sensitivity. In the particular circumstances of this case, Ofcom considered that despite the public and open nature of the filming, the programme makers had filmed Ms Graham-Kevan in a situation that could reasonably be regarded as sensitive (being arrested whilst in a vulnerable and confused state due to her intoxication), and in which she may have expected some degree of privacy. In the particular circumstances of this case, Ofcom concluded on balance, and with particular regard to Ms Graham-Kevan's vulnerability because she was in a confused state whilst under the influence of drugs, that she had an expectation of privacy in relation to the obtaining of the material of her being arrested. However, given the public and open circumstances in which Ms Graham-Kevan was filmed being arrested on the public highway on suspicion of having committed a criminal offence, Ofcom considered that her expectation of privacy as regards the obtaining of this footage was limited.

Ofcom also considered whether Ms Graham-Kevan had a legitimate expectation of privacy specifically in relation to the filming of footage of her handbag being searched and of its contents at a police station. The programme makers filmed the police searching Ms Graham-Kevan's handbag. This included the filming of the removal of two photographs of Ms Graham-Kevan, which were then placed on a desk. The photographs appeared to be modelling photographs which showed the naked back of a woman. We are informed by the complainant that these were photographs of Ms Graham-Kevan.

Ofcom was of the view that there is normally an element of sensitivity and privacy about the contents of a person's handbag. This footage was filmed in an office at the police station, an area which was not accessible to the general public, in the context of a police search of the handbag and in which the photographs were not the focus of the relevant footage. Ofcom considered that in light of the nature of the photographs of Ms Graham-Kevan (showing the complainant's naked back) they were personal to the complainant. In addition, while Ofcom noted Channel 5's position that Ms Graham-Kevan may have made the photographs available to some people, it was not aware of any evidence to suggest that they had been published or widely disseminated in a public forum. In these circumstances (the filming of photographs which showed Ms Graham-Kevan's naked back) Ofcom considered that Ms Graham-Kevan had a limited legitimate expectation of privacy with regards to the filming of these photographic images of her found in her handbag. This expectation of privacy was limited however because there was nothing in the footage of the photographs (apart from the naked back of a woman) which connected the photographs to Ms Graham-Kevan.

Having established that Ms Graham-Kevan had a legitimate expectation of privacy (albeit limited), with reference to both the filming of the footage of her being arrested and of photographs of her being removed from her handbag, Ofcom assessed whether the programme makers had secured Ms Graham-Kevan's consent for the footage of her and the photographs of her to be filmed. Ofcom understood that Ms Graham-Kevan had been under the influence of drugs and in a confused state at the time of filming and therefore was unlikely to have understood any attempts to inform her of the situation. In addition, Ofcom noted that within its submission Channel 5 did not indicate that the programme makers had sought consent for the filming and subsequent broadcast of the footage of Ms Graham-Kevan and the photographs. Ofcom therefore considered that the

programme makers did not obtain Ms Graham-Kevan's "informed consent" to film her or her belongings.

Ofcom weighed the broadcaster's competing right to freedom of expression and need to have the freedom to gather information and film incidents in the making of programmes without undue interference, against Miss Graham-Kevan's right to privacy. In this respect, Ofcom considered whether there was sufficient public interest to justify the intrusion into Ms Graham-Kevan's privacy by filming her and personal photographs of her in the particular circumstances without her consent. The Code makes it clear that: "If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy."

Ofcom considers that there is a significant public interest in the work of the police and similar organisations being featured and examined in broadcast programmes: for example, showing the varied and often difficult incidents experienced by police officers in their work; developing the public's understanding of the range of situations dealt with by the police (for example, driving under the influence of drugs and being in possession of drugs); and, highlighting for viewers the dangers and consequences of illegal or reckless conduct.

As noted above, the programme makers had not obtained Ms Graham-Kevan's prior consent to filming. However, in Ofcom's view, given the particular circumstances of this case, there was a genuine and significant public interest in filming the material without having secured this consent. Ofcom takes the view that it would be an undesirable and disproportionate restriction of broadcasters' freedom of expression and editorial freedom for programme makers to be unduly constrained from filming material in circumstances like those in the present case because they were required but would be unable or would find it difficult to obtain consent from those involved prior to filming taking place (for example, while an arrest is taking place).

Having taken into account all the factors above, Ofcom considered that, in these particular circumstances, the broadcaster's right to freedom of expression and to film without interference, and the public interest served by enabling the filming (and thereby subsequently the broadcast) of footage illustrating the impact of driving while under the influence of drugs and the experience of the police of dealing with such situations, outweighed Ms Graham-Kevan's limited legitimate expectation of privacy. Ofcom therefore found that there was no unwarranted infringement of Ms Graham-Kevan's privacy in connection with the obtaining of material for inclusion in the programme.

- b) Ofcom next considered Mrs Graham-Kevan's complaint that her daughter's privacy was unwarrantably infringed in the programme as broadcast in that footage of Ms Graham-Kevan being arrested for driving under the influence of drugs was included in the programme without her knowledge or consent. Mrs Graham-Kevan also complained that footage of photographs taken from Ms Graham-Kevan's handbag after a police search was included in the programme without Ms Graham-Kevan's knowledge or consent.

In considering this 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 of privacy is warranted.

In determining whether or not Ms Graham-Kevan's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which Ms Graham-Kevan had a legitimate expectation of privacy in relation to the footage of her arrest and of the photographs of her removed from her handbag as broadcast.

As above, Ofcom noted that the programme included footage of Ms Graham-Kevan being arrested for driving whilst under the influence of drugs. Ms Graham-Kevan was shown sitting behind the wheel of her car whilst being questioned and she was shown to be clearly under the influence of drugs. At the end of the programme, the commentary stated that Ms Graham-Kevan was convicted as follows:

"The girl was later charged with possession of cannabis and ketamine, along with driving whilst unfit through drugs. She was disqualified from driving for two years and was given a community and unpaid work order".

Whether or not someone who has been filmed while being arrested and while under arrest has a legitimate expectation of privacy as regards the broadcast of that footage depends on all the relevant circumstances: for example (depending on their relevance to any particular case) whether the filming took place in a public place, whether the individual was vulnerable in any way (e.g. through the consumption of alcohol or drugs or because of an illness or disability), whether the person concerned was a minor, whether the footage showed the person doing something or discloses information about them which was confidential, sensitive or personal, the time that had elapsed between the events depicted in the footage and its broadcast (or re-broadcast), and any change in factual circumstances between the events depicted and its broadcast which may affect the extent to which the material could be considered to be private or confidential (for example, whether since the arrest the individual concerned was charged and/or found guilty of any offences).

Ofcom noted that the footage of Ms Graham-Kevan being arrested which was broadcast had been filmed in a public place. However it depicted her in a confused and vulnerable state in that she was under the influence of drugs, and she was shown being arrested, which may be a sensitive situation. Ofcom took account also of the fact that by the date of the broadcast Ms Graham-Kevan had been convicted of a criminal offence after her arrest and the fact of and nature of her conviction would have been public knowledge. Taking all the relevant factors into consideration, on balance Ofcom considered that Ms Graham-Kevan had a legitimate expectation of privacy in relation to the broadcast of her arrest that was shown. This expectation was limited however because the filming had taken place in a public place and by the date of broadcast Ms Graham-Kevan had been convicted of a criminal offence in relation to the events depicted in connection with her arrest.

Ofcom also considered the extent to which Ms Graham-Kevan had a legitimate expectation of privacy in relation to the footage of the photographs of her removed from her handbag as broadcast. Footage of Ms Graham-Kevan's handbag being searched in a police station was shown in the programme, along with two photographs of her which had been removed from her handbag and placed on a desk. The photographs appeared to be modelling photographs which showed the naked back of a woman. The complainant has informed us that the photographs were of Ms Graham-Kevan.

Ofcom was of the view that there is normally an element of sensitivity and privacy about the contents of a person's handbag which would be regarded by the individual to be personal and private to them. In particular, Ofcom considered that in light of the nature of the images (notably the fact that they were of the complainant's naked back) they were personal to the complainant. Ofcom also took note of the fact that Ms Graham-Kevan's handbag was shown being searched in an office in a police station, an area that was not public, in the context of a police search of the handbag and in which the photographs were not the focus of the relevant footage. In addition, while Ofcom noted Channel 5's position that Ms Graham-Kevan may have made the photographs available to some people, it was not aware of any evidence to suggest that they had been published or widely disseminated in a public forum. In these circumstances, Ofcom therefore considered that Ms Graham-Kevan did have a limited legitimate expectation of privacy with regards to the broadcast of footage of the photographs of her taken from her handbag. This expectation of privacy was due to the fact that the photographs were of Ms Graham-Kevan's naked back. It was limited however because there was nothing in the footage of the photographs (apart from the naked back of a woman) which connected the photographs to Ms Graham-Kevan.

Having established that Ms Graham-Kevan had a legitimate expectation of privacy (albeit limited) in relation to the broadcast of footage of her being arrested and of the photographs of her, Ofcom then considered whether Ms Graham-Kevan was identifiable in the programme as broadcast.

Ofcom noted that the broadcaster had taken steps to protect Ms Graham-Kevan's identity, in that both her face and car registration number plate were obscured. However, Ofcom also noted that her voice had not been disguised. Notwithstanding the broadcaster's efforts to conceal Ms Graham-Kevan's identity, Ofcom considered it to be conceivable that viewers who knew Ms Graham-Kevan well might recognise her from, for example, her car, clothing, hair and voice. Ofcom considered therefore that Ms Graham-Kevan was potentially identifiable from the footage included in the programme.

With regards to the footage of Ms Graham-Kevan's handbag being searched and the photographs of Ms Graham-Kevan being shown, in her complaint to Ofcom, Mrs Graham-Kevan stated that it was the broadcasting of footage of these photographs of Ms Graham-Kevan which allowed her to be identified. She said "...these photos were of my daughter on a modelling shoot and were immediately identified by friends who began texting her and Facebooking her." Ofcom notes Channel 5's assertion that "...the photographs are incapable of identifying anyone." In Ofcom's view, the photographs showed only the naked back of a woman and they were not the focus of the footage in question or shown in close-up such as to draw the viewer's attention to them. In addition, Ofcom's view was that the footage included of the photographs was very brief and included nothing to connect her to the photographs.

Having therefore concluded that Ms Graham-Kevan had a limited legitimate expectation of privacy in relation to the footage of her included in the programme, Ofcom then assessed whether the programme makers had secured Ms Graham-Kevan's consent for the footage of her to be broadcast. Mrs Graham-Kevan told Ofcom that it was only when Ms Graham-Kevan's friends started texting her and contacting her on Facebook, that they became aware of the footage being broadcast in the programme. Ofcom therefore understands that the programme makers did not obtain Ms Graham-Kevan's consent to broadcast the footage of

her and the photographs. In addition, as stated above, Ofcom noted that Channel 5 did not indicate in its submissions that the programme makers had sought consent from the complainant for the broadcast of the footage of Ms Graham-Kevan and of the photographs.

Having established that Ms Graham-Kevan had a legitimate expectation of privacy (albeit limited) with reference to the broadcast of the footage of her being arrested and of the photographs of her which were removed from her handbag, Ofcom went on to weigh the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference, against Ms Graham-Kevan's right to privacy. In particular, Ofcom considered whether there was sufficient public interest to justify the intrusion into Ms Graham-Kevan's privacy through the broadcasting of identifiable footage of her and of her photographs.

Ofcom recognises that there is genuine public interest in broadcasting programmes of this nature. However, it should not be assumed by broadcasters that a public interest justification will exist in all circumstances for all broadcasts of a particular programme of this type. Broadcasters and programme makers must consider whether it is appropriate to seek to disguise in some way or not identify at all individuals who feature in such programmes (e.g. someone who is questioned, detained, arrested, or charged). Regard should be given to, for example, the actions of the individual, what details about the individual are to be featured, any particular vulnerability of the individual in the circumstances in which they are featured, what information about the individual may or may not already be in the public domain by the time of broadcast (for example, whether or not the individual was subsequently charged and/or convicted of any relevant criminal offence), and any public interest justification for interfering with any expectation of privacy the individual may have.

In the circumstances of this particular complaint, Ofcom took account of the facts that: Ms Graham-Kevan was filmed whilst in a vulnerable and confused state and seemed unaware of the fact that she was being filmed and was therefore not in a position to give her consent to it; Channel 5 had taken some steps to protect Ms Graham-Kevan's identity, by obscuring her face and car registration number plate; and, Ms Graham-Kevan by the date of broadcast had been convicted of the criminal offence of driving whilst unfit through drugs (a matter of public record) in relation to the incident for which she was arrested and that this had involved potential danger to herself and the public.

As already explained above, Ofcom considered that there is a significant public interest in the work of the police and similar organisations being featured and examined in broadcast programmes. In the particular circumstances of this case, Ofcom concluded that there was a significant public interest in: showing the varied and often difficult incidents experienced by police officers in their work; developing the public's understanding of the range of situations dealt with by the police (for example, driving under the influence of drugs and being in possession of drugs); and, highlighting for viewers the dangers and consequences of illegal or reckless behaviour.

Ofcom therefore concluded that in the circumstances of this case the broadcaster's right to freedom of expression and the public interest served by showing the work of the police and broadcasting this illustration of the danger of driving whilst under the influence of drugs, outweighed Ms Graham-Kevan's limited expectation of privacy in relation to the broadcast of footage of her and

photographs of her without her consent. Ofcom therefore found there was no unwarranted infringement of Ms Graham-Kevan's privacy in the programme as broadcast.

Accordingly, Ofcom has not upheld Mrs Graham-Kevan's complaint, made on behalf of her daughter Ms Graham-Kevan, of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Other Programmes Not in Breach

Up to 23 September 2013

Programme	Broadcaster	Transmission Date	Categories
Britain's Got Talent	ITV	Various	Under 18s in programmes
Dispatches	Channel 4	15/07/2013	Scheduling
Emmerdale	ITV	09/07/2013	Violence and dangerous behaviour
Most Haunted	Pick TV	18/03/2013	Scheduling
Myra Hindley: The Untold Story	Channel 5	24/07/2013	Scheduling
Teen Wolf	Pick TV	14/08/2013	Scheduling

Complaints Assessed, not Investigated

Between 10 and 23 September 2013

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
15 Minute Drama: Life in the Freezer - Lamb and Apricots	BBC Radio 4	19/09/2013	Offensive language	1
A League of Their Own	Sky1	20/09/2013	Nudity	1
A Touch of Cloth	Sky1	25/08/2013	Generally accepted standards	2
Ace Ventura: Pet Detective	Channel 5	25/08/2013	Scheduling	1
Advertisements	Various	Various	Advertising minutage	1
Agatha Christie's Poirot	ITV3	04/09/2013	Offensive language	1
Air Crash Investigation	National Geographic +1	08/08/2013	Due accuracy	1
Alan Carr: Chatty Man	Channel 4	13/09/2013	Generally accepted standards	2
Aldi's sponsorship of Neighbours	Channel 5	05/09/2013	Generally accepted standards	1
A-List Playlist	Chart Show TV	12/09/2013	Scheduling	1
America's Got Talent	ITV2	Various	Advertising scheduling	1
Appeals for funds	Sunrise Radio	13/09/2013	Appeals for funds	1
Appeals for funds	Sunrise Radio	Various	Appeals for funds	2
Barely Legal Drivers	BBC 3	27/08/2013	Harm	1
BBC News	BBC News Channel	02/09/2013	Violence and dangerous behaviour	1
BBC News	BBC Radio 4	20/09/2012	Scheduling	1
BBC News	BBC Radio 4	20/09/2013	Outside of remit / other	1
BBC News at One	BBC 1	10/09/2013	Violence and dangerous behaviour	1
Benefits Britain 1949 (trailer)	Channel 4	Various	Materially misleading	1
Big School	BBC 1	23/08/2013	Generally accepted standards	1
Big School	Channel 5	28/08/2013	Under 18s in programmes	1
Big Star's Little Star	ITV	22/09/2013	Sexual material	1
Big Top 40	Radio Tay	21/07/2013	Competitions	1
Blackout	4seven	15/09/2013	Violence and dangerous behaviour	1
Blackout	Channel 4	09/09/2013	Generally accepted standards	1

Bouncers	Channel 4	05/09/2013	Generally accepted standards	1
Bouncers	Channel 4	10/09/2013	Generally accepted standards	1
Brainiac: Science Abuse	Challenge	21/09/2013	Gender discrimination/offence	1
Breakfast	BBC 1	17/09/2013	Outside of remit / other	8
Breakfast	BBC 1	18/09/2013	Outside of remit / other	11
Breakfast	BBC 1	20/09/2013	Generally accepted standards	5
Breakfast	BBC 1	20/09/2013	Outside of remit / other	1
Breakfast Show	Capital FM	01/09/2013	Scheduling	1
Breakfast Show	Sunrise Radio	26/07/2013	Competitions	1
BT Sport promotion	BT Sport	Various	Materially misleading	1
BT Sport promotion	BT Sport 1	Various	Materially misleading	1
Business Daily	BBC World Service	14/08/2013	Religious/Beliefs discrimination/offence	1
Celebrity Big Brother	Channel 5	22/08/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	22/08/2013	Outside of remit / other	1
Celebrity Big Brother	Channel 5	23/08/2013	Animal welfare	16
Celebrity Big Brother	Channel 5	23/08/2013	Scheduling	1
Celebrity Big Brother	Channel 5	24/08/2013	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	24/08/2013	Generally accepted standards	3
Celebrity Big Brother	Channel 5	24/08/2013	Outside of remit / other	3
Celebrity Big Brother	Channel 5	24/08/2013	Race discrimination/offence	21
Celebrity Big Brother	Channel 5	25/08/2013	Offensive language	1
Celebrity Big Brother	Channel 5	25/08/2013	Race discrimination/offence	19
Celebrity Big Brother	Channel 5	26/08/2013	Outside of remit / other	1
Celebrity Big Brother	Channel 5	27/08/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	27/08/2013	Outside of remit / other	1
Celebrity Big Brother	Channel 5	28/08/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	29/08/2013	Generally accepted standards	24
Celebrity Big Brother	Channel 5	30/08/2013	Drugs, smoking, solvents or alcohol	2
Celebrity Big Brother	Channel 5	30/08/2013	Generally accepted standards	13
Celebrity Big Brother	Channel 5	01/09/2013	Generally accepted standards	2
Celebrity Big Brother	Channel 5	02/09/2013	Generally accepted standards	3

Celebrity Big Brother	Channel 5	04/09/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	08/09/2013	Religious/Beliefs discrimination/offence	1
Celebrity Big Brother	Channel 5	09/09/2013	Generally accepted standards	2
Celebrity Big Brother	Channel 5	09/09/2013	Offensive language	1
Celebrity Big Brother	Channel 5	09/09/2013	Voting	1
Celebrity Big Brother	Channel 5	10/09/2013	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	12/09/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	12/09/2013	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	13/09/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	13/09/2013	Nudity	1
Celebrity Big Brother	Channel 5	13/09/2013	Offensive language	1
Celebrity Big Brother	Channel 5	Various	Undue prominence	1
Celebrity Big Brother	Channel 5	Various	Voting	1
Celebrity Big Brother's Bit on the Psych	Channel 5	24/08/2013	Generally accepted standards	1
Celebrity Big Brother's Bit on the Psych	Channel 5	07/09/2013	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	22/08/2013	Gender discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	23/08/2013	Generally accepted standards	2
Celebrity Big Brother's Bit on the Side	Channel 5	23/08/2013	Religious/Beliefs discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	29/08/2013	Generally accepted standards	1
Celebrity Juice	ITV2	12/09/2013	Race discrimination/offence	1
Celebrity Juice	ITV2	19/09/2013	Generally accepted standards	1
Channel 4 ident	Channel 4	06/09/2013	Animal welfare	1
Channel 4 News	Channel 4	11/09/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	16/09/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	19/09/2013	Due impartiality/bias	1
Channel 4 Weather	Channel 4	30/07/2013	Religious/Beliefs discrimination/offence	1
Charity appeal	Channel Nine UK	19/07/2013	Charity appeals	1
Charity appeal	DM Digital	13/04/2013	Charity appeals	1
Charity appeal	DM Digital	20/04/2013	Charity appeals	1
Charlie Sloth	Radio 1Xtra	19/02/2013	Age discrimination/offence	1

Chickens	Sky1	05/09/2013	Generally accepted standards	1
Chickens (trailer)	Sky 1	06/09/2013	Generally accepted standards	1
Claimed and Shamed	BBC 1	16/09/2013	Outside of remit / other	1
Confetti	BBC 1	16/09/2013	Generally accepted standards	1
Construction Squad: Operation Homefront	Channel 5	13/09/2013	Offensive language	1
Continuity announcement	E4	16/09/2013	Gender discrimination/offence	1
Coronation Street	ITV	15/07/2013	Race discrimination/offence	1
Coronation Street	ITV	16/08/2013	Generally accepted standards	5
Coronation Street	ITV	26/08/2013	Under 18s in programmes	1
Coronation Street	ITV	28/08/2013	Product placement	1
Coronation Street	ITV	04/09/2013	Product placement	1
Coronation Street	ITV	09/09/2013	Materially misleading	1
Coronation Street	ITV	16/09/2013	Outside of remit / other	1
Countryfile	BBC 1	15/09/2013	Outside of remit / other	1
Crank 2: High Voltage	Channel 5	21/09/2013	Generally accepted standards	1
Daybreak	ITV	28/08/2013	Generally accepted standards	1
Daybreak	ITV	20/09/2013	Generally accepted standards	1
Doc Martin	ITV	09/09/2013	Generally accepted standards	1
Doc Martin	ITV	09/09/2013	Under 18s in programmes	7
Doc Martin	ITV	16/09/2013	Outside of remit / other	1
Don't Trust the B---- In Apartment 23	E4	12/09/2013	Generally accepted standards	1
Downton Abbey	ITV	22/09/2013	Advertising scheduling	1
Drive Time	Talk Sport	16/08/2013	Competitions	1
E.T. The Extra-Terrestrial	ITV	22/09/2013	Offensive language	1
EastEnders	BBC 1	09/09/2013	Race discrimination/offence	1
EastEnders	BBC 1	16/09/2013	Generally accepted standards	1
EastEnders	BBC 1	17/09/2013	Generally accepted standards	1
Educating Yorkshire	Channel 4	12/09/2013	Materially misleading	1
Emmerdale	ITV	24/07/2013	Scheduling	1
Emmerdale	ITV	25/07/2013	Scheduling	193
Emmerdale	ITV	02/09/2013	Scheduling	1
Emmerdale	ITV	16/09/2013	Scheduling	1
Emmerdale	ITV	17/09/2013	Scheduling	1

Emmerdale	ITV	19/09/2013	Offensive language	2
Emmerdale	ITV	19/09/2013	Scheduling	1
Emmerdale	ITV	19/09/2013	Violence and dangerous behaviour	1
Emmerdale	ITV	Various	Generally accepted standards	1
Emmerdale Omnibus	ITV2	28/07/2013	Violence and dangerous behaviour	1
Football (trailer)	ITV	06/09/2013	Materially misleading	1
Four Rooms	Channel 4	13/09/2013	Generally accepted standards	1
Frank Turner and Bastille @ Reading	BBC 3	23/08/2013	Disability discrimination/offence	1
Galaxy Radio	Galaxy Radio 102.5	11/08/2013	Outside of remit / other	1
Get the Party Started: Top 10	Viva	07/09/2013	Generally accepted standards	1
Glenn and Lorna's Breakfast Show	Real Radio	09/08/2013	Competitions	1
Grand Designs	More4	10/09/2013	Offensive language	1
Greg Burns	Capital FM	17/09/2013	Scheduling	1
Greg James	BBC Radio 1	26/08/2013	Scheduling	1
Halfords' sponsorship credits	ITV2	14/09/2013	Generally accepted standards	1
Halfords' sponsorship of Dave	Dave	12/09/2013	Generally accepted standards	1
Hancock	Channel 5	15/09/2013	Offensive language	1
Hollyoaks	Channel 4	11/09/2013	Scheduling	2
Hollyoaks	Channel 4	12/09/2013	Violence and dangerous behaviour	1
Hollyoaks	Channel 4	18/09/2013	Generally accepted standards	1
Hollyoaks	Channel 4	Various	Generally accepted standards	1
Hollyoaks	E4	18/09/2013	Generally accepted standards	1
How Not to Get Old	Channel 4	28/08/2013	Materially misleading	3
iCarly competition	Nickelodeon	Various	Competitions	1
Insidious (trailer)	Channel 4	07/09/2013	Scheduling	1
ITV News	ITV	Various	Scheduling	1
ITV News at Ten and Weather	ITV	10/09/2013	Due accuracy	1
ITV News at Ten and Weather	ITV	12/09/2013	Due accuracy	1
ITV News Central	ITV (Central)	07/09/2013	Offensive language	1
ITV News Granada Reports	ITV (Granada)	09/09/2013	Generally accepted standards	1
ITV Player promotion	ITV	14/09/2013	Violence and dangerous behaviour	2
Jamie's Money Saving Meals	Channel 4	09/09/2013	Product placement	1
Jimmy Carr: Telling Jokes	Channel 4	13/09/2013	Disability discrimination/offence	1
Jimmy Carr: Telling Jokes	Channel 4	13/09/2013	Generally accepted standards	1

Ken Bruce	BBC Radio 2	16/09/2013	Outside of remit / other	1
Lessons 'Arab Autumn' for Afghanistan	BBC Persian	21/08/2013	Outside of remit / other	1
Live Championship	Sky Sports 1	Various	Outside of remit / other	1
Lovely Molly	Sky Movies Sci-Fi/Horror	13/09/2013	Scheduling	1
Made In: Origins of Belly Dancing	Levant TV	Various	Outside of remit / other	1
Mantracker	Extreme Sports	12/09/2013	Offensive language	1
Marvin	Capital FM	17/09/2013	Outside of remit / other	1
Midlands Today	BBC 1 (Midlands)	02/09/2013	Religious/Beliefs discrimination/offence	1
Most Shocking	Pick TV	08/09/2013	Generally accepted standards	1
My Parents Are Aliens	CITV	12/09/2013	Scheduling	3
Myra Hyndley: The Untold Story (trailer)	Channel 5	14/07/2013	Scheduling	1
Naked and Afraid (trailer)	Discovery Channel	07/09/2013	Scheduling	1
Naked and Afraid (trailer)	Discovery Science +1	11/09/2013	Scheduling	1
Newsnight	BBC 2	29/08/2013	Outside of remit / other	1
Nick Jones	Sunshine Radio 855	13/09/2013	Generally accepted standards	1
NPR	BBC World Service	02/08/2013	Outside of remit / other	1
Only Connect	BBC 2	27/08/2013	Generally accepted standards	1
Panorama	BBC 1	09/09/2013	Outside of remit / other	1
Panorama	BBC 1	19/09/2013	Outside of remit / other	2
Peter Popoff	The Gospel Channel	11/09/2013	Outside of remit / other	1
Phones 4U's sponsorship of Films on 4	Channel 4	14/09/2013	Generally accepted standards	1
Phones 4U's sponsorship of Films on 4	Channel 4	15/09/2013	Generally accepted standards	1
Premier League Football	Sky Sports 1	01/09/2013	Offensive language	2
Prince William's Passion: New Father, New Hope	ITV	15/09/2013	Animal welfare	1
Programming	BBC	n/a	Outside of remit / other	1
Programming	BBC channels	Various	Outside of remit / other	3
Programming	BBC Radio 4	Various	Outside of remit / other	1

Programming	Sky Sports News	Various	Promotion of products/services	1
Programming	Sky Sports News	Various	Promotion of products/services	1
Programming	Television X	27/06/2013	Sexual material	1
Programming	Various	Various	Generally accepted standards	1
Programming	Various	Various	Outside of remit / other	1
QI	BBC 2	13/09/2013	Religious/Beliefs discrimination/offence	1
Ramsay's Hotel Hell	Channel 4	26/08/2013	Generally accepted standards	1
Red Button	BBC Red Button	26/08/2013	Outside of remit / other	1
Regional News and Weather	BBC 1	20/09/2013	Outside of remit / other	1
Ricky Gervais: Science	E4	11/09/2013	Generally accepted standards	1
Ricky Gervais: Science	E4	12/09/2013	Generally accepted standards	1
RSPCA Animal Rescue	Sky Living	18/08/2013	Generally accepted standards	1
Rude Tube	E4	08/09/2013		1
Salvage Hunters	Quest	22/09/2013	Outside of remit / other	1
Saw: The Final Chapter	5*	06/08/2013	Generally accepted standards	1
Scotland Tonight Referendum Special	STV	05/09/2013	Due impartiality/bias	1
Scotland's Talk In	Forth 2	25/08/2013	Generally accepted standards	1
Secret Dealers	ITV	29/08/2013	Competitions	1
Secret Dealers	ITV	29/08/2013	Offensive language	2
Sexters	5*	25/03/2013	Sexual material	1
Shadow of Ahmad Shah Massoud	BBC Persian	09/09/2013	Outside of remit / other	1
Show Me Show Me	CBeebies	04/09/2013	Outside of remit / other	1
Sikh Channel Live	Sikh Channel	19/08/2013	Generally accepted standards	1
Sky Atlantic/Sky Sports	Sky Atlantic/Sky Sports	n/a	Outside of remit / other	1
Sky Broadband's sponsorship of ITV Showcase Drama	ITV	05/09/2013	Generally accepted standards	2
Sky News	Sky News	18/09/2013	Due accuracy	1
Sky News	Sky News	18/09/2013	Generally accepted standards	1
Sky News with Kay Burley	Sky News	22/08/2013	Due accuracy	1
Soccer A.M.	Sky Sports 1	07/09/2013	Race discrimination/offence	1
South Park	Comedy Central	20/09/2013	Generally accepted standards	1

Storm	Storm	06/08/2013	Participation TV - Harm	1
Street Patrol UK	BBC 1	16/09/2013	Harm	1
Sue Ellison	Halton Community Radio	27/08/2013	Disability discrimination/offence	1
Sunday Brunch	Channel 4	18/08/2013	Crime	1
Taggart	Drama	09/09/2013	Outside of remit / other	1
Teen Exorcists	BBC 3	12/09/2013	Fairness & Privacy	1
Teen Exorcists	BBC 3	12/09/2013	Religious/Beliefs discrimination/offence	2
Teen Exorcists	BBC 3	14/09/2013	Religious/Beliefs discrimination/offence	1
The Alan Titchmarsh Show	ITV	09/09/2013	Race discrimination/offence	1
The Alan Titchmarsh Show	ITV	11/09/2013	Harm	2
The Andrew Marr Show	BBC 1	21/07/2013	Due impartiality/bias	1
The Big Bang Theory	Channel 4	14/08/2013	Flashing images/risk to viewers who have PSE	1
The Big Debate	BBC 1 (Scotland)	18/09/2013	Generally accepted standards	1
The Breakfast Show	Capital Radio	10/09/2013	Scheduling	1
The Burrowers: Animals Underground	BBC 2	30/08/2013	Animal welfare	1
The Culture Show at Edinburgh	BBC 2	21/08/2013	Generally accepted standards	1
The Football League Show	BBC 1	15/09/2013	Outside of remit / other	1
The Fried Chicken Shop	Channel 4	23/09/2013	Outside of remit / other	1
The Hotel Inspector	Channel 5	28/08/2013	Nudity	1
The Jeremy Kyle Show	ITV	18/09/2013	Generally accepted standards	1
The Jeremy Kyle Show	ITV	19/09/2013	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	22/08/2013	Generally accepted standards	1
The Killer Prophet: Born To Kill	Channel 5	21/08/2013	Scheduling	1
The Last Leg	Channel 4	11/09/2013	Generally accepted standards	1
The One Show	BBC 1	17/09/2013	Race discrimination/offence	1
The One Show	BBC 1	17/09/2013	Violence and dangerous behaviour	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	10/09/2013	Scheduling	1
The Real Housewives of Vancouver	ITV2	13/09/2013	Scheduling	1

The Simpsons	Channel 4	10/09/2013	Generally accepted standards	1
The Simpsons	Sky1	15/09/2013	Scheduling	1
The Simpsons	Sky1	21/09/2013	Scheduling	1
The Super Saturday Hit List	4Music	14/09/2013	Scheduling	1
The Wonder of Dogs	BBC 2	21/09/2013	Animal welfare	1
The World's Most Stupid Criminals	Dave	07/09/2013	Generally accepted standards	1
The Worlds Stupidest Criminals	Dave	13/08/2013	Race discrimination/offence	1
The Wright Stuff	Channel 5	06/09/2013	Generally accepted standards	1
The Wright Stuff	Channel 5	12/09/2013	Race discrimination/offence	1
The Wright Stuff	Channel 5	18/09/2013	Outside of remit / other	1
The X Factor	ITV	31/08/2013	Outside of remit / other	1
The X Factor	ITV	07/09/2013	Disability discrimination/offence	2
The X Factor	ITV	07/09/2013	Offensive language	1
The X Factor	ITV	08/09/2013	Materially misleading	1
The X Factor	ITV	15/09/2013	Outside of remit / other	1
The X Factor	ITV	15/09/2013	Scheduling	3
The X Factor	ITV	21/09/2013	Generally accepted standards	1
The X Factor	ITV	21/09/2013	Offensive language	1
The XFM Breakfast Show	XFM	09/09/2013	Sexual orientation discrimination/offence	1
This Morning	ITV	10/09/2013	Generally accepted standards	5
Through the Keyhole	ITV	31/08/2013	Offensive language	1
Through the Keyhole	ITV	14/09/2013	Outside of remit / other	1
Through the Keyhole	ITV	21/09/2013	Generally accepted standards	1
Top Boy	Channel 4	10/09/2013	Generally accepted standards	2
True Stories - Sex: My British Job (trailer)	Channel 4	22/09/2013	Scheduling	1
Wendell and Vinnie	Nickelodeon	16/09/2013	Generally accepted standards	1
Whitechapel	ITV	04/09/2013	Violence and dangerous behaviour	1
Yosemite Park Slayer: Born to Kill? (trailer)	Channel 5	29/08/2013	Scheduling	1
You've Been Framed!	ITV	14/09/2013	Generally accepted standards	1
You've Been Framed!	ITV2	12/09/2013	Under 18s in programmes	1

Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 12 and 25 September 2013.

Programme	Broadcaster	Transmission date
Advertisements	NDTV	10 September 2013
Advertisements	Pop	28 August 2013
Commercial Communications	The Breeze (Andover)	6 September 2013
Colin Murray	Talksport	9 September 2013
Deadly Women: Without Conscience	Investigation Discovery	20 August 2013
Doctors	BBC 1	12 September 2013
ITV News Granada Reports	ITV (Granada)	10 September 2013
Khara Sach	ARY News	12 August 2013
Scientologists at War	Channel 4	17 June 2013
Swinger Wives (Trailer)	TLC	13 September 2013
Where in the World	The Breeze (Portsmouth)	9 September 2013

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

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

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

For fairness and privacy complaints go to:

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