

# **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 objectives<sup>1</sup>. 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 Act<sup>2</sup>.

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 advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) 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

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

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

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

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.**

## Standards cases

### In Breach

#### It Takes a Thief to Catch a Thief

Channel 5, 22 March 2014, 10:30

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##### Introduction

*It Takes a Thief to Catch a Thief* (“*It Takes a Thief...*”) is a documentary series which features a police officer, Will Davies, and former thief, Richard Taylor. They demonstrate the vulnerability of different retail businesses to shoplifting and show how security can be improved. The series is broadcast by Channel 5 (or “the Licensee”).

In this episode, the two presenters visited a convenience shop in Cirencester. Nine complainants alerted Ofcom to the use of offensive language. In particular, five of these complainants objected to offensive language being broadcast in this pre-watershed programme on a Saturday morning when they were watching with their children, some of whom were five and six years old.

We noted that during this programme, the following language was used:

- two instances of “*arsehole*”;
- three instances of “*bastard*”;
- one instance of “*pisses*”;
- three instances of “*shit*”, and
- one instance of “*twat*”.

In addition we noted five uses of bleeped offensive language broadcast in this programme.

We considered the material raised issues warranting investigation under Rule 1.16 of the Code, which states:

“Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”.

We therefore asked Channel 5 how the programme complied with this rule.

##### Response

In its initial representations, the Licensee explained that this programme had originally been broadcast at 20:00 and was reviewed by senior Channel 5 compliance staff “to ensure that language which was considered unsuitable for daytime broadcast did not appear” when the programme was repeated during the daytime. The Licensee said that it had taken “special account” of Ofcom’s research

on offensive language (“the Ofcom Research”<sup>1</sup>). It added that according to this research, in relation to pre-watershed broadcasts: “‘arse’ is a word with higher acceptability...; ‘piss/pissed’ is a word with higher-to-medium acceptability...; ‘bastard’ and ‘shit’ have medium acceptability...; and ‘twat’ is a word with medium-to-lower acceptability...”. In the Licensee’s view, consistent with the Ofcom Research, the: “use of those words was not impermissible in pre-Watershed broadcasts”.

The Licensee said that “[s]pecial consideration was given to whether or not the word ‘twat’ ought to be retained” in the programme for broadcast during daytime. It continued: “The context of the use was critical: the word was not used in an offensive or aggressive way. Rather, a young man recognises a friend whose image is shown on a large mobile television screen and who is seen to be shop-lifting. The young man jokes that he would tell his friend words to the effect ‘You’re a twat’”. In this context, Channel 5 argued that the use of “twat” meant “idiot” and (consistent with the Ofcom Research<sup>2</sup>) was therefore acceptable for use during daytime.

The Licensee said that a “pre-watershed version” of the programme was then cleared by Channel 5’s legal team and classified as: ‘SAT-Not Around Kids’. The Licensee explained that this coding meant that the Channel 5 Scheduling team was required to take the following factors into account when scheduling the programme:

“Schedule anytime except when kids are likely to be watching (because this is a timeslot on 5 where they normally watch, or it is school holidays, or it is before or after a programme aimed directly at or likely to attract large audiences of Kids)”.

In addition, the Licensee said that its legal team: “stipulated that any pre-Watershed broadcast should include the following information for viewers:

At the start: ‘Including offensive language as well as scenes of criminal activity and anti-social behaviour that some viewers may find distressing’.

Into part 2: ‘Including offensive language as well as scenes of criminal activity and anti-social behaviour that some viewers may find distressing’”.

However, Channel 5 said that: “due to human error the specific warning for offensive language was omitted from the announcement made when the programme went to air at 10.30 on 22 March 2014. This was because the words ‘including offensive language as well as’ were inadvertently omitted from the Compliance information included on the Channel 5 system”.

The Licensee said that as a result of this error, it had reviewed its internal records to ensure that all pre-watershed versions of programmes are correctly labelled and reviewed by its compliance team to ensure compliance with the Code.

In its representations on Ofcom’s Preliminary View in this case, Channel 5 made several further points. Firstly, it said that: nothing in the Preliminary View: “[made] clear whether or not, had the specified warning gone out as intended by Channel 5,

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

<sup>2</sup> Channel 5 quoted Ofcom’s research on offensive language which says: “Many thought that [‘cock’ or ‘twat’] were often used in a lighthearted manner and not usually in a way which is likely to cause offence...some participants interpreted [‘twat’] as a strong term for ‘idiot’” (see Ofcom Research, p.92).

the result would be different; and the Preliminary View: “suggests that it would *never* be permissible to broadcast the programme in question in the timeslot in question”. The Licensee referred to another episode of *It Takes a Thief...* broadcast on 15 March 2014 at 10:45, which according to Channel 5, contained “12 instances of language that might be considered offensive, two of which occurred in the first two minutes of the programme”, had included a specific warning for offensive language, but had not been found in breach of the Code by Ofcom. The Licensee concluded that Ofcom must consider “the absence of the warning for offensive language to be the critical difference” between the two editions.

Second, Channel 5 made reference to a statement<sup>3</sup> in Ofcom’s Preliminary View concerning audience expectations, by stating that the programme in this case was the second edition of *It Takes a Thief...* that had been broadcast on a Saturday morning. It added that the first edition of *It Takes a Thief...*, which had been broadcast on 15 March 2014 at 10:45 had not been found in breach of the Code (see above). The Licensee said that: “any regular viewing audience would have been aware of the likely content of the programme given the previous week’s broadcast” on 15 March 2014.

Third, Channel 5 expressed concerns as to whether Ofcom was being consistent in its decision-making. In this regard, it referred to eight published<sup>4</sup> Ofcom decisions in which Ofcom had considered the cases to be resolved, and in each case: “the relevant broadcaster had a system in place which failed as result of human error” The Licensee stated that it did not understand: “why, in this case, Ofcom’s approach is different”. On a related point, Channel 5 referred to Ofcom having: “investigated 10

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<sup>3</sup> In Ofcom’s Preliminary View, it stated: “...the programme would not have been in line with the likely audience expectations for a public service weekend daytime audience”.

<sup>4</sup> Channel 5 cited the following decisions:

- *Monty Python Live (Mostly)*, Gold, 20 July 2014, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb263/obb263.pdf>
- *The Simpsons*, Channel 4, 9 April 2014, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>
- *Drivetime*, 107 Jack FM, 3 March 2014, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2541/obb255.pdf>
- *BBC News at One*, BBC 1, 18 February 2014, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>
- *Real Housewives of Beverley Hills*, Lifetime, 23 January 2014, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>
- *Nothing to Declare – Australia*, Sky Living, 20 January 2014, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb252/obb252.pdf>
- *Brit Cops: Frontline Crime*, Pick TV, 4 June 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb239/obb239.pdf>
- *Trailer for Blood +*, Animax, 6 June 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2361/obb237.pdf>

other [Channel 5] programmes<sup>5</sup>...broadcast in similar daytime slots, containing similar language, and found that Channel 5 had not breached” the Code. In the Licensee’s view: “it appears that Ofcom has accepted that Channel 5 has appropriate procedures in place and that the steps it takes to comply with [the Code], including necessary edits and warnings, are appropriate”. Given all the above, the Licensee suggested it would be appropriate for Ofcom to consider the current case as resolved.

## 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 objective is reflected in Section One of the Code.

Rule 1.16 states that offensive language must not be broadcast before the watershed, unless it is justified by the context and that, in any event, frequent use of such language must be avoided before the watershed.

Consistent with the broadcaster’s and audience’s right to freedom of expression, there is no prohibition on mild or moderately offensive language being broadcast before the watershed, as long as there is contextual justification. Ofcom’s Guidance on Rule 1.16 states: “Milder language in the early part of the evening may be acceptable, for example, if mitigated by a humorous context. However, in general, viewers and listeners do not wish to hear frequent or regular use of such language, including profanity, before 2100<sup>6</sup>”.

In this case, we noted there were ten instances of offensive language during this 60 minute programme, some just a few minutes from its start. We took into account the Ofcom Research<sup>7</sup> on offensive language concerning the offensive words used in this programme. We noted that generally audiences consider that: “arse” is unlikely to cause offence, even when used in programmes before the watershed. In comparison, the words “piss” or “pissed”, “bitch” and “shit”, and especially “twat”, although not considered to be among the most offensive language, had greater potential to cause offence in programmes before the watershed. In addition we also noted that there were five uses of bleeped offensive language broadcast in this programme. All of this content, in our view, and especially the word “twat”, would have therefore have had the potential to cause offence.

We went on to consider whether the uses of offensive language in this case could be justified by the context.

Ofcom noted that this programme had originally been broadcast at 20:00 and that Channel 5 had taken various steps to edit and schedule the programme for broadcast on a Saturday morning, when children were likely to be in the audience. In fact BARB viewing data indicate that there were 25,000<sup>8</sup> viewers aged 16 or under

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<sup>5</sup> This is a reference to a number of editions of *It Takes thief...The Hotel inspector* and *Can’t Pay, We’ll Take It Away*, broadcast between 9 February 2014 and 12 April 2014 that Ofcom had assessed but had decided, did not raise issues warranting investigation.

<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>7</sup> See footnote 1.

(or 13.4% of the total audience), and the programme was preceded by *Milkshake!* – a programme aimed at pre-school children – and *Dog Rescuers* – which would have been likely to attract child viewers.

We considered the context in which the various offensive words had been used. In our opinion, the fact that only one of the ten offensive words (i.e. “arse”) used in this programme would have been unlikely to have caused offence to audiences pre-watershed (according to the Ofcom Research), heightened the potential for offence in this case. Ofcom also considered that the effect of these ten uses of offensive language was likely to have been exacerbated by five uses of bleeped offensive language also broadcast in the programme.

We noted that Channel 5 considered the word “twat” in this programme was used in a light-hearted manner consistent with its meaning in effect “idiot”. In this context, Channel 5 argued that the use of “twat” meant “idiot” and (consistent with the Ofcom Research<sup>9</sup>) was therefore acceptable for use during daytime. We considered the relevant sequence in the programme which showed a large mobile television screen being driven around Cirencester (where the convenience shop which was the subject of this programme was located). This large mobile television screen (described as a “screen [...] on wheels”) showed CCTV footage of shoplifters stealing merchandise from the convenience shop. The programme commentary stated:

*“These screens on wheels have a proven track record and were used by police to catch looters involved in the summer riots of 2011, but never in Cirencester”.*

Soon after there was the following exchange between Richard Taylor (“RT”) and a young man (“YM”):

RT: *“What would you do if you recognised somebody on there?”*

YM: *“What would I do if I recognised somebody on there? I recognise quite a few people on there”.*

RT: *“So what are you going to do? Are you go to the police and tell them, like?”*

YM: *“Obviously not, no. I would go and laugh at the person [inaudible]”.*

RT: *“What would you say to them?”*

YM: *“I would say, ‘You’re a twat! You’re in the middle of town on a massive screen stealing a chocolate bar’”.*

Although we considered that the word “twat” was used in a relatively light-hearted manner in this instance, we did not think that in this case this outweighed the fact that, as mentioned above, the Ofcom Research<sup>10</sup> has found that this offensive word, although not considered to be among the most offensive language, had greater potential to cause offence in programmes before the watershed.

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<sup>8</sup> 12,000 of the children viewing were aged four to nine.

<sup>9</sup> See footnote 2.

<sup>10</sup> See the Ofcom research, p.92.

We also took into account that the Ofcom Research<sup>11</sup> found that when offensive words are used in anger, audiences find them less acceptable. At one point, the shopkeeper featured in the programme, in describing what he would want to do to any shoplifter he might find, said the following in an aggressive manner whilst clenching a bag of sweets:

*“Why should I let someone walk in my shop and nick: I’ll stuff it down their throat. Choke the bastard to death! I hate them with a vengeance”.*

Later in the programme, the same shopkeeper was shown on CCTV footage aggressively shouting *“Thieving little bastard!”* at a young shoplifter he had just caught in his shop trying to steal merchandise. In addition, at the end of this programme in the ‘teaser’ highlighting what would be shown in the following episode, a brief confrontation was shown with one of the presenters, Will Davies, arguing with a shopkeeper of a charity shop:

Shopkeeper: *“Don’t be an arsehole!”*

Will Davies: *“I’m not being an arsehole!”*

Shopkeeper: *“Don’t patronise me!”*

Will Davies: *“I’m a police officer. I’ve come in to help the charity!”*

We considered that these instances of aggressive use of offensive language would have increased the potential for offence in this case.

In reaching our Decision, we took into account Channel 5’s representation that: “due to human error the specific warning for offensive language was omitted from the announcement made when the programme went to air”. We noted that the actual warning provided at the beginning of this programme was as follows:

*“With scenes of criminal activity and anti-social behaviour which some viewers may find distressing”.*

In our view, this warning was insufficient to alert viewers (and in particular parents) to the nature and frequency of the offensive language in this programme. In particular, it did not alert viewers to the fact that offensive language was being used within the first two minutes of the programme. We took into account Channel 5’s representations about the unintended absence of a specific warning for offensive language in this case due to human error. The Licensee also referred to another episode of *It Takes a Thief...* broadcast on 15 March 2014 at 10:45, which according to Channel 5, contained “12 instances of language that might be considered offensive, two of which occurred in the first two minutes of the programme”, had included a specific warning for offensive language, but had not been found in breach of the Code by Ofcom. The Licensee concluded that Ofcom must consider “the absence of the warning for offensive language to be the critical difference” between the two editions.

Although of some assistance to parents or carers monitoring children’s viewing, we do not consider that a warning will always necessarily be sufficient on its own to mitigate the effect of offensive language. In the case of younger children watching programmes unaccompanied by an adult (as could well be the case on a weekend

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<sup>11</sup> Ibid., p.62.

morning shortly after a programme aimed at pre-school children), a warning of offensive language may serve relatively little value.

In addition, Ofcom had previously assessed the other episode of *It Takes a Thief...* broadcast on 15 March 2014 at 10:45. This programme contained seven instances of offensive language, not 12 as maintained by Channel 5. We considered that the frequency and nature of offensive language was materially greater in the current case. Therefore, we did not accept Channel 5's comparison of the two editions of *It Takes a Thief...* as being relevant.

In terms of wider contextual factors, we noted that this programme was a serious documentary featuring the frustrations and challenges faced by shopkeepers tackling shoplifters. As such, it was not surprising that the programme featured a number of aggressive and emotional confrontations between individuals. However, we considered that the editorial narrative of this programme, together with all the factors above, did not provide sufficient editorial context to justify these ten instances of offensive language broadcast on a Saturday morning when a significant number of children were available to view (and did in fact view) the programme, some of them potentially unaccompanied by adults. In particular, we considered that the programme would not have been in line with the likely audience expectations for a public service channel weekend daytime audience.

In this regard, we took account of the Licensee's representation that: "any regular viewing audience would have been aware of the likely content of the programme given the previous week's broadcast" on 15 March 2014, which had been found as not in breach of the Code by Ofcom. We disagreed with this argument. As mentioned above, we considered that the frequency and nature of offensive language was materially less in the edition of *It Takes a Thief...* broadcast on 15 March 2014, and therefore it would not necessarily have prepared a public service channel weekend daytime audience for the content of the programme in the present case, broadcast a week later. In addition, and importantly, in our view the ten uses of offensive language in the edition of *It Takes a Thief...* broadcast on 22 March 2014 amounted to "frequent use...before the watershed". As Rule 1.16 and the accompanying Guidance makes clear, frequent or regular use of such language must be avoided before 21:00.

We noted Channel 5's suggestion that Ofcom should consider the current case to be resolved. The Licensee cited eight published<sup>12</sup> Ofcom decisions in which Ofcom had considered the cases resolved, and in each case, Channel 5 said: "the relevant broadcaster had a system in place which failed as result of human error". On a related point, Channel 5 referred to Ofcom having: "investigated 10 other [Channel 5] programmes<sup>13</sup>...broadcast in similar daytime slots, containing similar language, and found that Channel 5 had not breached" the Code. In the Licensee's view: "it appears that Ofcom has accepted that Channel 5 has appropriate procedures in place and that the steps it takes to comply with [the Code], including necessary edits and warnings, are appropriate".

While the eight previous published Ofcom resolved decisions cited by Channel 5 involved compliance failures resulting from human error, they also involved a different set of factors in each case, including the nature of the content, the channel, and the time of broadcast. Therefore, just because Ofcom had decided to resolve

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<sup>12</sup> See footnote 5.

<sup>13</sup> See footnote 6.

those published cases did not mean it was appropriate for the present case to be resolved as well. Similarly, we did not agree with Channel 5 that its comparison with “10 other [Channel 5] programmes...broadcast in similar daytime slots, containing similar language” was relevant in this case. We considered that the frequency and nature of offensive language in the programme in the present case was materially greater than in the ten other programmes cited by the Licensee.

We acknowledged that as a result of this case Channel 5 had reviewed its internal records to ensure that all pre-watershed versions of its programmes were correctly labelled and compliant with the Code.

However, for all the reasons above, we concluded that there was frequent use of offensive language in this programme before the watershed and this use was not justified by the context. The programme therefore breached Rule 1.16 of the Code.

### **Breach of Rule 1.16**

## In Breach

### Big Brother

Channel 5, 7 August 2014, 12:15

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#### Introduction

*Big Brother* is a well-known reality show, broadcast by Channel 5 (or “the Licensee”). Over the course of ten weeks, a number of members of the public (“the Housemates”) live together in the Big Brother House (“the House”) where they compete to win a cash prize. In entering the House, contestants agree to live in a controlled environment, isolated from the outside world. The conversations and actions of the Housemates are recorded and edited into a one hour programme which is shown every night and then repeated the following day around midday.

Ofcom received three complaints about a conversation between five of the Housemates (Chris, Ashleigh, Ash, Winston and Helen) that contained several uses of the words “piss” “pissing” or “pissed”. The complainants considered that the frequency with which the words were used was inappropriate given the pre-watershed scheduling of this repeat programme.

The conversation centred on whether the behaviour of Chris, who appeared to be drunk, irritated Ashleigh. We noted 14 instances of the words “piss”, “pissing” or “pissed” within a 50 second part of the conversation:

Helen: *“Ashleigh’s pissed off”.*

Chris: *“She is pissed off I know”.*

Helen: *“You must have done something to piss her off”.*

Chris: *“Yeah, I think I have, yeah”.*

Helen: *“It must have been strong points you were trying to make”.*

Chris: *“No it’s just...”.*

Ash: *“Are you pissed off?”*

Ashleigh: *“I’m not pissed off. You must have taken that upon yourself”.*

Winston: *“Are you pissed Chris?”*

Chris: *“Yeah”.*

Winston: *“Sweet”.*

Chris: *“That is sweet but I have pissed off Ashleigh”.*

Ashleigh: *“You haven’t pissed off Ashleigh. You’re pissing off Ashleigh because you keep saying I’ve pissed off Ashleigh”.*

Chris: *“Exactly. That’s it. That’s it”.*

- Ashleigh: *“So stop saying that you’ve pissed off Ashleigh”.*
- Chris: *“Me and Ashleigh are fine. ‘Cause I am just arguing and I don’t even know what I’m arguing about. It is true, though isn’t it?”*
- Ash: *“You’re arguing for the sake of arguing”.*
- Helen: *“Chris, stop opening your mouth”.*
- Chris: *“I’m not intended to piss you off, I just am. I just can’t help myself”.*
- Helen: *“Are you a piss off merchant?”*
- Chris: *“I am, yeah. I get all weird and child-like”.*
- Helen: *“It’s alright. That’s what I was put here to do, just piss everyone off”.*

Ofcom considered this material raised issues warranting investigation under Rule 1.16 of the Code, which states that:

*“Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”.*

We therefore asked Channel 5 how the programme complied with this rule.

## **Response**

Channel 5 said when this episode of *Big Brother* was scheduled for a daytime repeat, it was reviewed to ensure that language considered unsuitable for daytime broadcast did not appear in the programme. It added that considerable effort was made to ensure that the daytime version of this episode did not contain frequent use of such language. Channel 5 produced a list of all language-related edits it had made to the original post-watershed broadcast. (The list indicated that no uses of the words “piss”, “pissed” or “pissing” had been removed for this pre-watershed broadcast).

The Licensee said that the first question in any consideration of a possible breach of Rule 1.16 is whether or not offensive language is involved. It added that in order to establish this, it is necessary to look at the context in which it was used. Channel 5 argued that not every person in the audience has the same reaction to the same word and that it is always a question of context, unless the general consensus is that a word is inherently offensive.

The Licensee said that according to Ofcom’s own research<sup>1</sup> on offensive language, the words “piss” and “pissed” are words of higher-to-medium acceptability in pre-watershed broadcasts. This is because many of the participants in the research considered the words frequently used in everyday life and not usually in a context which is likely to offend people. Channel 5 said that in accordance with the research, it concluded that these words were “not impermissible” in pre-watershed broadcasts.

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

The Licensee submitted that none of the language identified was used in connection with violent or particularly aggressive behaviour, and the tone of the conversation was light and in keeping with the kind of banter that was frequently heard in the House when alcohol had been consumed. Channel 5 said for these reasons, it took the view that the words “were not offensive because they were not used in an offensive way or in a way that could be construed as offensive”.

The Licensee therefore took the view that as the language in question was not offensive, the question of its frequency was not relevant.

Consequently, the Licensee cleared this version for pre-watershed broadcast but noted that it needed to be ‘scheduled with care’. Channel 5 explained that when scheduling such programmes consideration is given to factors such as the time of year, the inherited audience and the specific time of day. With reference to this particular programme, it said that only 2% of the overall audience were children.

The Licensee said that in addition it instructed the programme to carry a warning by the continuity announcer before the programme was broadcast for viewers to “*expect some fruity language and high jinks*”. Channel 5 said that in its view, this information was sufficient to prepare viewers for the kind of language they might expect in this programme, particularly given its well-established reputation.

Taking the above factors into account, Channel 5 did not consider the programme breached Rule 1.16 of the Code.

## Decision

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

Rule 1.16 states that offensive language must not be broadcast before the watershed, unless it is justified by the context and that, in any event, frequent use of such language must be avoided before the watershed.

Ofcom’s Guidance on Rule 1.16 makes clear that: “Milder language in the early part of the evening may be acceptable, for example, if mitigated by a humorous context. However, in general, viewers and listeners do not wish to hear frequent or regular use of such language, including profanity, before 2100<sup>2</sup>”.

Ofcom noted that, in this case, the Licensee considered that the words “piss”, “pissed” and “pissing” were not examples of offensive language because they were “not used in an offensive way or in a way that could be construed as offensive”. Consequently, Channel 5 considered that the element of the rule regarding their frequency was not engaged. Ofcom disagreed.

Ofcom’s research<sup>3</sup> on offensive language indicates that, for some viewers, the words “piss”, “pissed” or “pissing” are more acceptable than stronger language, particularly when used in a non-aggressive way. However the research also makes clear that some viewers find the use of these words offensive and unacceptable in certain

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>3</sup> See Footnote 1

contexts, such as during the daytime when young children may be watching, even in circumstances when the language is not used aggressively (see pages 50 and 56 of the research report). In Ofcom's view, and consistent with our research, the words used during this 50 second sequence ("piss" and "pissed") were likely to cause offence to viewers when used before the watershed.

We took into account that *Big Brother* is a well-established reality programme that is known to contain offensive language and frank conversations between housemates. We also noted the light-hearted and non-aggressive tone of the discussion.

However, Rule 1.16 not only requires offensive language broadcast before the watershed to be justified by the context. It also states that: "In any event, frequent use of such language must be avoided before the watershed". This is consistent with Ofcom's Guidance on Rule 1.16 (see above). Ofcom accepts that words such as "piss", "pissing" and "pissed" may be included in pre-watershed broadcasts. Nevertheless, it does not follow that a broadcaster is permitted to use these offensive words frequently in a pre-watershed programme. Ofcom noted that in this sequence lasting 50 seconds there were 14 uses of "piss", "pissing" and "pissed". This was clearly in Ofcom's view "frequent use" of offensive language.

Ofcom noted that, although the overall child audience was relatively low, audience figures indicated that the number of child viewers for this programme varied between 0 and 14,000. This demonstrated that a considerable number of children were available to view on a Thursday lunchtime during school holidays, and did indeed watch parts of the programme. We also had regard to the warning broadcast before the programme. Although of some assistance to parents or carers monitoring children's viewing, we did not consider that the warning was sufficient to mitigate the effect of the frequent use of offensive language.

Taking all the above factors into account, Ofcom did not consider the Licensee took appropriate steps to avoid frequent use of offensive language in this pre-watershed programme. The programme therefore breached Rule 1.16 of the Code.

### **Breach of Rule 1.16**

## In Breach

### The Hotel Inspector Returns

Channel 5, 5 July 2014, 10:05

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#### Introduction

*The Hotel Inspector* is a factual entertainment series broadcast by Channel 5 (or “the Licensee”) featuring hotelier Alex Polizzi. In each episode Alex Polizzi visits a failing hotel in the UK and attempts to reverse the business’ fortunes by giving advice and suggestions to the owner. In *The Hotel Inspector Returns*, she goes back to hotels she had previously advised to discover whether her suggestions have been implemented and the businesses have become more successful.

This series was originally broadcast at 21:00 and repeated at various times of the day.

In this episode, broadcast on a Saturday morning, Alex Polizzi revisited a family owned hotel in Essex. Ofcom received three complaints about offensive language in this particular episode.

We noted that during this programme, which was 60 minutes long, the following language was used:

- one instance of “*bitch-slapped*”;
- one instance of “*shitty*”;
- two instances of “*arse*”;
- two instances of “*shit*”;
- three instances of “*bollocks*”; and
- three instances of “*bloody*”.

Ofcom considered the material raised issues warranting investigation under Rule 1.16 of the Code, which states that:

“Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”.

We therefore asked Channel 5 how the programme complied with this rule.

#### Response

In its initial representations, Channel 5 said when this episode was scheduled for a daytime repeat it was reviewed to ensure that language which was considered unsuitable for daytime broadcast did not appear in the programme.

The Licensee said that according to Ofcom's research<sup>1</sup> on offensive language ("the Ofcom Research") in relation to pre-watershed broadcasts: "'arse' is a word with higher acceptability...; 'bloody' and 'bollocks' are words with higher-to-medium acceptability...; and 'bitch' and 'shit' have medium acceptability". In the Licensee's view, consistent with the Ofcom Research, the: "use of those words was not impermissible in pre-Watershed broadcasts".

Channel 5 said that *The Hotel Inspector Returns* is not a programme designed to be attractive to children and referred to viewing figures which indicated that children averaged around 4% of the audience of the series overall. It therefore argued that it had no reason to expect that children would be viewing *The Hotel Inspector Returns* in significant numbers.

The Licensee submitted that none of the language identified was used in connection with violent or particularly aggressive behaviour and being a well-established series, viewers were used the heated exchanges between the Inspector and proprietors about shortcomings and remedies.

The Licensee said that in addition, it gave viewers information that the programme contained "*Tempers flaring and rude language*" before it was broadcast and this information was sufficient to prepare viewers about the kind of language they might expect in the programme.

In subsequent representations on Ofcom's Preliminary View that the material breached Rule 1.16, Channel 5 accepted that insufficient thought had been given to the scheduling of this particular episode of *The Hotel Inspector Returns*. It stressed that this had not been a case in which Channel 5 had been "seeking to flout Rule 1.16 or push a boundary".

However, the Licensee argued that although it is a public service broadcaster, audiences do not necessarily have the same expectations of Channel 5 as they do of a broadcaster such as the BBC. It said that the fact that Ofcom had received only three complaints about the programme suggested that it was within audience expectations of Channel 5 daytime programming at weekends.

Nevertheless, the Licensee said that, as a result of Ofcom's investigation (and before Ofcom's Preliminary View had been received by Channel 5), its procedures had been reviewed and tightened, and specific training about Rule 1.16 had been given to relevant staff.

## 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 objective is reflected in Section One of the Code.

Rule 1.16 states that offensive language must not be broadcast before the watershed, unless it is justified by the context and that, in any event, frequent use of such language must be avoided before the watershed.

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

Consistent with the broadcaster's and audience's right to freedom of expression, there is no prohibition on mild or moderately offensive language being broadcast before the watershed, as long as there is contextual justification. Ofcom's Guidance on Rule 1.16 states: "Milder language in the early part of the evening may be acceptable, for example, if mitigated by a humorous context. However, in general, viewers and listeners do not wish to hear frequent or regular use of such language, including profanity, before 2100<sup>2</sup>".

In this case, we noted there were 12 instances of offensive language during this 60 minute programme, with two just a few minutes from its start (including one in the sequence before the opening titles). We took into account relevant Ofcom Research<sup>3</sup> concerning the offensive words used in this programme. We noted that generally audiences consider that, the word "arse" is unlikely to cause offence, even when used in programmes before the watershed. In comparison, the words "bloody", "bollocks", "bitch" and "shit", although not considered to be among the most offensive language, had greater potential to cause offence in programmes before the watershed. The inclusion of these words in this programme therefore had the potential to cause offence to viewers.

We went on to consider whether the uses of offensive language in this case could be justified by the context.

We noted that this programme had originally been broadcast at 21:00 and that Channel 5 had taken various steps to edit the programme for broadcast on a Saturday morning, when children were likely to be in the audience.

In terms of wider contextual factors, we noted that the programme was about real-life businesses and had a clear narrative theme about the owners' resistance to change. It showed disagreements within the management team and the eventual happy ending where a compromise was found and the hotel survived. As the conflict between the participants was a significant element of the storytelling, it was unsurprising that it featured some arguments.

Ofcom took into account that the instances of offensive language were either part of Alex Polizzi's comments to the camera, or part of fairly light-hearted exchanges between the hotel management. We therefore accepted that the offensive language was not used in a particularly aggressive manner and this mitigated potential offence to some extent.

We acknowledged that *The Hotel Inspector Returns* is not a programme aimed at children and that, historically, viewing figures have indicated that children do not watch the programme in large numbers. However, viewing figures showed that this particular episode was watched by 20,000 children, equating to over 11% of the audience. Ofcom noted that *Milkshake!* – a programme aimed at pre-school children – was broadcast from 06:00 to 10:00<sup>4</sup>. Given the very close proximity of this programme to *The Hotel Inspector Returns*, Ofcom took the view that Channel 5 had reason to expect that a significant number of children were likely to be available to view immediately after 10:00 that morning.

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>3</sup> See footnote 1.

<sup>4</sup> Access (showbiz news) was broadcast between 10:00 and 10:05

In Ofcom's view, and consistent with our research, the language included in this pre-watershed programme (in particular the use of "bitch") was likely to cause offence to viewers. We noted that some of the language was broadcast in the first 30 seconds of the programme before the opening titles and just five minutes after *Milkshake!* had ended.

Further, we considered that the editorial narrative of this programme, together with all the factors above, did not provide sufficient editorial context to justify these 12 instances of offensive language broadcast on a Saturday morning when a significant number of children were available to view (and did in fact view) the programme, some of them potentially unaccompanied by adults.

We acknowledged the Licensee's point about the different expectations audiences may have of different public service broadcasters. However, Ofcom considered that the programme would not have been in line with the likely expectations for any public service channel weekend daytime audience, irrespective of the pre-transmission information that was broadcast.

Importantly, in our view the 12 uses of offensive language in this programme amounted to "frequent use...before the watershed". As Rule 1.16 and the accompanying Guidance makes clear, frequent or regular use of such language must be avoided before 21:00.

Ofcom noted the Licensee's recognition that it had given insufficient thought to the scheduling of the programme. We also noted the measures taken by the Licensee to review and improve its procedures to ensure compliance with Rule 1.16. However, for all the reasons above, we concluded that the programme breached Rule 1.16 of the Code.

### **Breach of Rule 1.16**

## In Breach

### Bait Car

*truTV, 23 August 2014, 15:30*

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#### Introduction

*Bait Car* is an American factual entertainment television series. Each programme features incidents in which undercover police officers leave a 'bait car' (a high-tech vehicle fitted with hidden cameras) unattended and unlocked to lure would-be car thieves. After the vehicle is stolen, the officers track the vehicle and arrest the thieves.

The programme is shown on truTV, a general entertainment channel that broadcasts on digital terrestrial and satellite platforms. The licence for truTV is held by Turner Broadcasting System Europe Limited ("Turner" or "the Licensee").

Ofcom was alerted by a complainant to offensive language in this programme. Although all offensive language had been bleeped, where there was poor audio quality, subtitles appeared. These subtitles contained 19 uses of "f\*\*k" or "f\*\*\*\*\*g" to reflect fully bleeped uses of the word "fuck" or "fucking", and two uses of "m\*\*\*\*\*r" to reflect fully bleeped instances of the word "motherfucker".

The complainant believed that although this offensive language had been bleeped, the language used was made clear by the accompanying subtitles.

Ofcom considered the material raised issues warranting investigation under Rule 1.3 of the Code, which states:

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

We therefore requested comments from Turner as to how the programme complied with this rule.

#### Response

The Licensee apologised "sincerely and unreservedly" for broadcasting this programme before the watershed and said "it was never [its] intention to do so".

Turner explained that it has a "clear policy" to deal with potentially offensive language which includes "the complete masking of these words when included [...] in subtitles". It also said it does not allow "subtitles in which letters are replaced with asterisks".

Turner told Ofcom that the programme had been complied by an "experienced member of staff and all offensive language was noted along with the subtitles". The Licensee said that this member of staff recommended that all the offensive material "should be obscured or removed by the editor" but "unfortunately, the editor failed to edit the tape and the unedited programme was scheduled for broadcast". Turner said that the editor "no longer works for truTV".

The Licensee said that the error had been spotted during routine monitoring as the programme was being broadcast and was immediately removed from the schedules.

Turner said it had taken steps to prevent a recurrence of this issue by for example reviewing programmes edited by the former employee for similar errors, and introducing an additional process to check programmes after they had been edited.

Although the Licensee fully acknowledged that the programme should not have been broadcast at 15:30, it pointed to the fact that BARB ratings indicated that no children were watching the broadcast. Turner said that truTV is not aimed at children and targets an older audience. Turner admitted however that “we are conscious that the channel is not encrypted and it is possible for children to come across the channel”.

## 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 “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Ofcom first assessed whether the broadcast contained material unsuitable for children.

Ofcom noted this 22-minute programme included 19 bleeped uses of the words “fuck” and “fucking” and two bleeped uses of the word “motherfucker”. Although these words were not audible, the 21 accompanying subtitles “f\*\*k”, “f\*\*\*\*\*g” and “m\*\*\*\*\*r”, made clear to viewers the language that had actually been used. Ofcom’s research on offensive language<sup>1</sup> notes that the word “fuck” and “motherfucker” are considered by audiences to be amongst the most offensive language. In Ofcom’s view the broadcast of the subtitles at the same time as the repeated bleeped words made clear the specific offensive language being used, and made the material unsuitable for children.

We then considered whether the material was appropriately scheduled. Appropriate scheduling is judged by a number of factors including: the likely number and age range of the audience; the start and finish time of the programme; and, likely audience expectations.

Ofcom took into account, as pointed out by the Licensee, that truTV is not a channel aimed at children and that BARB ratings indicated that no children watched this programme. However, Ofcom noted that the programme was broadcast at 15:30 on a Saturday when there was a significant likelihood that children were available to view. We also noted that the channel is freely available on a number of television platforms (including the digital terrestrial platform) and children may come across it unawares. We therefore did not consider that the programme had been appropriately scheduled.

We took into account that the Licensee said that it had itself spotted this compliance error during routine monitoring and taken various steps to help prevent similar mistakes in future. Nonetheless, for the reasons stated above, we concluded that the programme was in breach of Rule 1.3.

## Breach of Rule 1.3

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

## In Breach

### Scotland Tonight

STV Glasgow, 18 September 2014, 14:58

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#### Introduction

STV Glasgow is the local television service for Glasgow. The licence for STV Glasgow is held by STV Glasgow Limited (“STV” or “the Licensee”).

On 19 September 2014, the Licensee alerted Ofcom to a current affairs programme that it had broadcast at 14:58 the previous day, while polling<sup>1</sup> was underway for the Scottish Independence Referendum. STV said that on 18 September 2014, it had “inadvertently” broadcast a repeat of a programme dealing with the Scottish Independence Referendum, which had originally been broadcast on 17 September 2014 on STV Glasgow, as well as on the regional Channel 3 services for central and northern Scotland<sup>2</sup>.

On assessing this 28 minute programme, we noted that the presenter introduced it as follows:

*“It’s time for Scotland to decide”.*

The whole of this programme was devoted to discussion of the Scottish Independence Referendum. During the programme, there was an item on various final opinion polls relating to the Referendum, including an opinion poll conducted by Ipsos-Mori on behalf of STV.

Rule 6.1 of the Code requires that programmes dealing with referendums must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.3 to 6.7 of the Code apply to programmes broadcast during the designated period running up to the date of referendums in the UK known as the ‘referendum period’<sup>3</sup>. Section Six of the Code under the heading ‘Meaning of “referendum”’ makes clear that for the purpose of this section: “a referendum...includes a UK-wide, national or regional referendum but does not extend to a local referendum”.

Ofcom considered the material raised issues warranting investigation under the following rules of the Code:

Rule 6.4: “Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post)”.

Rule 6.5: “Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. (For European

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<sup>1</sup> On 18 September 2014, polling stations were open between 07:00 and 22:00.

<sup>2</sup> The licences for the regional Channel 3 services in central and northern Scotland are held by STV Central Ltd and STV North Ltd respectively, which along with the Licensee in this case, are part of the STV Group.

<sup>3</sup> In the case of the 2014 Scottish Independence Referendum, the ‘referendum period’ ran from 30 May 2014 to the close of polling (i.e. 22:00) on 18 September 2014.

Parliamentary elections, this applies until all polls throughout the European Union have closed)".

We therefore sought the Licensee's comments as to how this material complied with these rules.

## Response

STV said that *Scotland Tonight* is a current affairs and news programme that is broadcast live on STV Glasgow as well as the two STV regional Channel 3 services: "most weekdays and is generally suitable for a repeat transmission on STV Glasgow the following day". However, the Licensee accepted that in this case, the edition of *Scotland Tonight* which had been broadcast live on 17 September 2014: "was not suitable for repeat on the day of the Scottish Independence Referendum". It added that this "unfortunate incident" had been caused by: "human error". STV said that although this programme "did not contain any new material that was not already in the public domain, it was unsuitable for broadcast as it did not comply with Rules 6.4 and 6.5 of the Code". The Licensee added that as a result, it had alerted Ofcom to this incident.

STV said that it had put "many additional systems and controls in place during the unusual lengthy Referendum period". Therefore, the Licensee said it was "disappointed" that it had not prevented a repeat of *Scotland Tonight* being shown on polling day. As a result of this case, STV said that it had further reviewed its internal procedures, and that: "Remedial steps have been taken to prevent a similar mistake happening again".

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code. Section Six of the Code sets out the particular rules that apply at the time of referendums.

Rule 6.4 requires that discussion of election issues must finish when the polls open. Rule 6.5 requires that broadcasters must not publish the results of any opinion poll on polling day itself until polling closes.

In this case, we noted a current affairs programme that focused on the last day of campaigning during the Scottish Independence Referendum, and which included the contents of various opinion polls, had been broadcast by STV Glasgow while polling stations were open for the Scottish Independence Referendum on 18 September 2014.

In reaching our Decision, we took into account that the Licensee had: immediately alerted Ofcom to this matter; accepted that the programme "did not comply with Rules 6.4 and 6.5 of the Code"; and proactively taken steps to improve compliance in this area. However, the purpose of Rules 6.4 and 6.5 is to ensure that broadcast coverage on the day of a referendum does not directly affect voters' decisions.

Due to the fact that the programme contained both discussion of the Referendum and the result of various opinion polls, we considered the programme was clearly in breach of Rules 6.4 and 6.5.

**Breaches of Rules 6.4 and 6.5**

## In Breach

### Communal Affairs

ATN Bangla, 9 June 2014, 16:50

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#### Introduction

ATN Bangla is a news and general entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for ATN Bangla is held by ATN Bangla UK Limited (“ATN Bangla” or “the Licensee”).

A complainant drew Ofcom’s attention to broadcast material that appeared to be an advertisement placed by the Bangladesh Nationalist Business Forum, congratulating Lutfur Rahman on his re-election as Mayor of Tower Hamlets<sup>1</sup>.

The item was 30 seconds long and consisted of a single static slide featuring three photographs of Forum members, a larger photograph of Lutfur Rahman, and Bengali text. The item also carried a voice-over in Bengali. Ofcom commissioned an independent translation of the item.

The item’s audio, translated from Bengali (as broadcast) into English, stated:

*“The Bangladesh Nationalist Business Forum, Luton, UK and the Luton Bangladeshi Community are very delighted and proud of Mr Lutfur Rahman who has been re-elected as the mayor of London Tower Hamlets as expected. On behalf of the Business Forum, Chairman Mr Harmuz Miah, Secretary Mr Selim Miah and Treasurer Mr Faizur Rahman welcome the respected mayor and extend their best wishes to him. They also wish his success”.*

Text shown on-screen, also translated, stated:

*“Congratulations and best wishes, on behalf of the Nationalist Business Forum, Luton, UK and the Luton Bangladeshi community, to Mayor Lutfur Rahman for getting elected as the Mayor of London Tower Hamlets.*

*Best wishes from [names and titles of the Treasurer, Secretary and President of the Forum, with photographs of each, and the name and photograph of Lutfur Rahman]”.*

The Licensee informed Ofcom that the item was ‘community affairs’ programming and had not been broadcast in return for payment or other valuable consideration. We concluded that the item must be regarded as programme material and therefore subject to the Code.

As the item was a message broadcast in support of an elected politician, we considered it raised issues warranting investigation under Rule 5.5 of the Code, which states:

“Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person

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<sup>1</sup> Lutfur Rahman, the first directly elected Executive Mayor of Tower Hamlets, was elected to office on 21 October 2010 and re-elected on 22 May 2014.

providing a service... This may be achieved within a programme or over a series of programmes taken as a whole”.

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

## **Response**

The Licensee told us that the item formed part of a programme called *Communal Affairs* “...designed to enable community organisations to make announcements of meetings, events and community related activities to maintain social relations across [the] Bangladeshi community”. The Licensee told us that the purpose of the programme was wholly to promote community relations and “...is not political at all”. The Licensee said further that the programme was designed to announce community news in a cost effective manner and thus the programme comprised items made up merely of voice-over and still images. The Licensee said, however, that viewers would have identified *Communal Affairs* as programming as it had been preceded by a channel logo and a title sequence.

ATN Bangla said that the local elections of May 2014 “turned into a community celebration” because of the high concentration of people from Bangladeshi backgrounds in Tower Hamlets and the election of Lutfur Rahman – the “only executive mayor from a Bangladeshi background [who] was elected in [the] entire country”. After the elections, the Licensee said, there were many community gatherings in different parts of the country, including one held by the Bangladeshi Nationalist Business Forum in Luton.

The Licensee said that it considered the item to have complied with Rule 5.5 because it was broadcast as part of a programme that only makes announcements of community news and that the item concerned a gathering held by a community organisation (Bangladeshi Nationalist Business Forum).

ATN Bangla told us that a two-stage assessment was carried out before the item was broadcast. It was first assessed by a reporter who covered the news and then it was assessed by the programme producer along with the editor to ensure that it complied with the Code.

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This standard is contained in Section Five of the Code. Broadcasters are required to ensure that they comply with the impartiality requirements of the Act, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

Ofcom therefore considered the broadcast material’s compliance with Rule 5.5 of the Code, which states:

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

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

However, the broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, although any Ofcom licensee has the freedom to include and/or discuss matters of political or industrial controversy and matters relating to current public policy in its programming, broadcasters must, in doing so, always comply with the Code.

In this case, Ofcom firstly had to ascertain whether the requirements of Section Five of the Code should be applied: that is, whether the content in this case was dealing with matters of political or industrial controversy and/or matters relating to current public policy. We noted that the item was a brief statement that informed ATN Bangla viewers about the pride and delight experienced by members from a Bangladeshi community group about the re-election of Lutfur Rahman as Mayor of Tower Hamlets, both congratulating him and wishing him success.

Just because editorial content refers to political organisations or figures does not necessarily mean that the rules in Section Five are applicable. Furthermore, in judging the applicability of Section Five in any case, Ofcom will take into account the manner in which political issues are dealt with, and how they are presented within programming.

We considered that the item, although brief, touched on matters relating to political controversy and current public policy in the UK, and specifically in Tower Hamlets i.e. the election of Lutfur Rahman as the Mayor of Tower Hamlets and his policies. Although the material broadcast did not contain any comment on policy and was broadcast nearly three weeks after the election had been held, it offered congratulations to a local politician on his electoral success, and did so with the approval of a community association and individual office holders within it. In broadcasting material supportive of an elected politician, the item publicised Lutfur Rahman in wholly uncritical terms and attached to him the support of a community and business forum.

Secondly, having established that the requirements of Section Five of the Code applied, Ofcom had to consider whether due impartiality had been preserved. In this context, under the Code, the term "due" means adequate or appropriate to the subject and nature of the programme. Therefore, "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Ofcom considered that the broadcast material in this instance served as a self-standing expression of a specific viewpoint – generally, a viewpoint supportive of Mr Rahman and his policies – in relation to a matter of political controversy (i.e. the recent election held in Tower Hamlets in which Mr Rahman had been elected). The material also voiced implied support for any future policy actions taken by Mr Rahman whilst in office as mayor of Tower Hamlets. The item did not contain any alternative view that could reasonably and adequately be classed as being critical of, or in opposition to, any of Lutfur Rahman’s policies, record or public profile. Neither did the Licensee, in its response, identify any material broadcast on ATN Bangla that had contained any viewpoints in opposition to, or critical of, Mr Rahman and his policies.

In any event, we doubted that items such as this one could be balanced by other items containing opposing points of view. As an independent and self-standing statement placed in the schedule without having been commissioned by a broadcaster, it is in Ofcom’s view difficult to see how the repeated broadcast of items such as this can be taken in aggregate to be a body of programming planned over time by the broadcaster, unlike conventional, scheduled programming.

In reaching our Preliminary View, we noted that the broadcast material was part of a selection of items<sup>2</sup> preceded by a brief title sequence for *Communal Affairs*. We also took account of the Licensee’s explanation that the item’s purpose was, “to enable community organisations to make announcements of meetings, events and community related activities to maintain social relations across [the] Bangladeshi community”. Ofcom recognises that broadcasters serving particular communities will want to provide content that presents issues of topical interest to their target audience. In Ofcom’s view, however, this cannot justify the inclusion of inherently partial material on a matter of political controversy in the UK or elsewhere.

Ofcom therefore concluded that the broadcasts of this item were in breach of Rule 5.5 of the Code.

In a Finding published in issue 237<sup>3</sup> of Ofcom’s Broadcast Bulletin, we found a community announcement shown by the Licensee in breach of Rule 5.5 of the Code, noting that the broadcast of items that could only be viewed as self-standing pieces intended to promote a particular political interest could not be justified under the Code because they may be of topical interest to their target audience. As we made clear at that time, Ofcom had previously recorded breaches of Section Five due to the broadcast of community announcements of which the Licensee ought to have been aware. We put the Licensee on notice that we may consider any similar future breaches for the imposition of statutory sanctions. We are concerned that despite the clear and specific guidance given by Ofcom in the Finding cited above, the Licensee broadcast the material in this case.

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<sup>2</sup> Items appearing before Bangladesh Nationalist Business Forum concerned the Plaistow Jamia Islamia and the British-Bangladesh Chamber of Commerce; the item following publicised a Ramadan Conference.

<sup>3</sup> See issue 237 of Ofcom’s Broadcast Bulletin at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2361/obb237.pdf>.

Following a number of breaches by the Licensee of Section Nine of the Code<sup>4</sup>, we held a meeting with the Licensee to discuss its procedures in August 2014 at which it set out changes it would make to ensure compliance with the Code. As the material in the present case was broadcast before we met ATN Bangla, we do not intend to consider this case for sanction at this time.

However, we would remind ATN Bangla that in the event of further breaches, we may take further regulatory action and will take account of the present case in reaching a decision whether to do so.

### **Breach of Rule 5.5**

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<sup>4</sup> See issue 259 (and references therein) of Ofcom's Broadcast Bulletin at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>.

## In Breach

### Item for Pakistan Tehreek e Insaaf

ARY News, 1 to 5 August 2014, various times

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#### Introduction

ARY News provides news and general entertainment programming, in Urdu and English, to the Pakistani community in the UK. The licence for ARY News is held by ARY Digital (UK) Limited (“ARY” or “the Licensee”).

A complainant drew Ofcom’s attention to what he considered to be an advertisement placed on ARY News by Pakistan Tehreek e Insaaf (“PTI”) – a political party in Pakistan – in breach of the ban on political advertising contained within the Communications Act 2003 (“the Act”).

Ofcom obtained a recording of the item, which was 45 seconds long. It contained both audio and text in Urdu. We therefore commissioned an independent translation of the item.

The item opened with a shot of a large crowd at a political rally. The crowd was chanting, “*Who is going to save Pakistan? We are. We are*”. The footage of the crowd remained on screen throughout most of the item. Video of Imran Khan<sup>1</sup> speaking to camera was superimposed over these crowd scenes. He said:

*“The match fixers of Pakistan have robbed the public of their mandate. With the grace of Allah, I will get you back what is your right. On 14th August<sup>2</sup> come with me, help me, financially, and also participate in this, so that we can have the Pakistan that we dreamt of, we can have the Pakistan of Quaid E Azam<sup>3</sup> and we can fulfil that dream”.*

While Imran Khan spoke, a song was played in the background. It contained the words:

*“Pakistan, with the grace of Allah; Pakistan, with the grace of Allah, with the grace of Allah, with the grace of Allah”.*

Details of a bank account in the name of PTI, together with a Pakistani email address, were displayed twice during the broadcast.

We sought the Licensee’s comments on the terms under which the item had been included in its schedule. The Licensee informed us that the item had not been transmitted in return for payment or other valuable consideration, but “because of its topical content i.e. the promotion of an Independence Day demonstration in Pakistan on August 14”.

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<sup>1</sup> Imran Khan is the Chairman of Pakistan Tehreek-e-Insaaf.

<sup>2</sup> Ofcom understands that PTI organised marches, that took place on 14 August 2014 (the Independence Day public holiday in Pakistan), to protest against the Pakistani Government in relation to allegations of vote rigging in the May 2013 Pakistani General Election.

<sup>3</sup> Quaid E Azam, meaning ‘Great Leader’, is a reference to Muhammad Ali Jinnah, the founder of Pakistan.

Given the Licensee's assertions that no money was accepted for the broadcast, Ofcom concluded that the item must be regarded as programme material and was therefore subject to the Code.

As the item consisted solely of a message from a political organisation, we considered that it raised issues warranting investigation under the following rules of the Code:

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

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

We therefore sought ARY's comments on how the item complied with these rules.

## **Response**

ARY confirmed that the item had been broadcast on 55 occasions over the five days, 1 to 5 August 2014, and apologised "for the human error that led to this promotion...".

The Licensee said the item had been "assessed as information of interest to the UK Pakistani community with solicitations that were considered relevant to Pakistan only". ARY said this was a mistake and it appreciated "that repeat broadcast was giving airtime to Imran Khan's cause". The Licensee added that it understood how serious this was and said it had "introduced a stricter approvals process for promotions to ensure they are properly assessed to check they qualify as promotions in terms of what they contain and how they are scheduled...".

### Rule 5.5

ARY said it had not appreciated that the "repeat broadcast of this Independence Day event might give prominence to one political party", which was an oversight, adding that "the item was suspended as soon as the issue was brought to [its] attention". The Licensee said it had commissioned staff training "from an external compliance consultant".

### Rule 9.2

ARY said "the promotion was scheduled after [an advertisement] and at the end of the programme break", adding that a channel ident was "scheduled after the promotion to indicate the end of the programme break and return to the programme". The Licensee said that "in order to make the status of the promotion clear, [the channel ident] should have been shown...after the [advertisement]" and before the item.

## **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This standard is contained in Section Five of the Code. Broadcasters are required to ensure that the impartiality requirements of

the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy (see above for the specific provisions).

Ofcom also has a statutory duty under the Act to ensure that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. Articles 20 and 23 of the EU Audiovisual Media Services Directive (“the AVMS Directive”) set out strict limits on the amount and scheduling of television advertising. The AVMS Directive also requires that advertising is distinguishable from other parts of the programme service: “Television advertising...shall be readily recognisable and distinguishable from editorial content...and...shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means”. The purpose of this distinction is to prevent viewers being confused or misled about the status and purpose of the material they are watching and to protect viewers from surreptitious advertising. It also prevents editorial content from being used to circumvent the restrictions on advertising minutage.

The AVMS Directive requirements are reflected in, among other Code rules, Rule 9.2, which requires that editorial content is kept distinct from advertising.

Ofcom therefore considered the item’s compliance with Rules 5.5 and 9.2 of the Code.

#### Rule 5.5

This rule states:

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

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

However, the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, although any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

In this case, Ofcom firstly had to ascertain whether the requirements of Section Five of the Code should be applied: that is, whether the content in this case was dealing

with matters of political or industrial controversy and/or matters relating to current public policy. We noted that the item was a brief statement that both alerted viewers of ARY News to a demonstration organised by PTI and sought funds for the political party.

Just because editorial content refers to political organisations or political figures does not necessarily mean that the rules in Section Five are applicable. Furthermore, in judging the applicability of Section Five in any case, Ofcom will take into account the manner in which political issues are dealt with, and how they are presented within programming.

We considered the item clearly implied particular viewpoints on the current status of political discourse in Pakistan, promoting marches, organised by the political party, PTI, to protest against the Pakistani Government in relation to allegations of vote rigging in the May 2013 Pakistani General Election. In particular, the PTI leader, Imran Khan said that by participating in the marches, the Pakistani public could “*have the Pakistan of Quaid E Azam*”. We noted that the Licensee had acknowledged an oversight on its part in failing to notice that the “repeat broadcast of this Independence Day event might give prominence to one political party”. However, In Ofcom’s view, regardless of the number of times the item was broadcast, it clearly touched on matters of political controversy in Pakistan. The fact that the statements were presented as standalone pieces of editorial content articulating a single political viewpoint would have helped to increase their likely effect on viewers – namely, members of the Pakistani community in the UK.

Having established that the requirements of Section Five of the Code should be applied, we then went on to consider whether due impartiality had been preserved. In making this assessment, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. 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. The context in which programme material appears, including the particular characteristics of the programme, is important to judgments of what is duly impartial.

Ofcom considered that the item was a self-standing expression of the specific viewpoints of PTI on particular matters of political controversy and matters relating to current public policy. The item did not contain any alternative views, which could be reasonably and adequately classed as critical or counter to those of PTI. We noted that the Licensee had not said in its representations that it had also carried items containing viewpoints in opposition to, or critical of the PTI and its policies, although that question was specifically put to it by Ofcom.

In any event, we doubted that items such as this one could be balanced by other items containing opposing points of view. As an independent and self-standing statement placed in the schedule without having been commissioned by a broadcaster, it is in Ofcom’s view difficult to see how the repeated broadcast of items such as this can be taken in aggregate to be a body of programming planned over time by the broadcaster, unlike conventional, scheduled programming.

Secondly, we noted that this PTI item contained calls to action – to attend a political demonstration/rally and to fund the political party – rather than merely offer discussion of a particular point of view. Consequently, it was our view that any such item could only be viewed as a self-standing piece intended to promote a particular

political interest. By its very nature, therefore, such an item presented no opportunity for duly impartial consideration of a matter of political controversy.

In reaching our Preliminary View, we took account of the Licensee's view that the item was topical, being the "promotion of an Independence Day demonstration in Pakistan on August 14". Ofcom recognises that broadcasters serving particular communities will want to provide content that presents issues of topical interest to their target audience. In Ofcom's view, however, this cannot justify the inclusion of inherently partial items concerning matters of political controversy or matters relating to public policy.

Given the above, Ofcom therefore concluded that the item complained of breached Rule 5.5.

### Rule 9.2

This rule states:

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

In this instance, we considered the item was a self-standing message, of short duration and containing calls to action, which appeared to have been produced by, or on behalf of, PTI. There were no conventional programme elements present (i.e. a presenter, a studio or programme titles etc.). As such, it strongly resembled an advertisement and was, in Ofcom's view, very much more likely to be perceived by viewers as an advertisement than as a programme. Ofcom noted that ARY said "the promotion was scheduled after [an advertisement] and at the end of the programme break", and a channel ident should have been broadcast after the advertisement (and not after the promotion), "in order to make the status of the promotion clear". However, Ofcom did not agree that the repositioning of a channel ident would have necessarily alerted viewers to that fact that the item was programming (and not advertising).

In view of the item's presentation within the Licensee's schedule Ofcom concluded that it was not distinct as programme material and that Rule 9.2 had been breached.

The right to broadcast comes with responsibilities. It is important that broadcasters maintain due impartiality and do not use their licensed service as a platform to broadcast inherently partial items on matters of major political controversy and major matters relating to current public policy. Ofcom notes that ARY has commissioned a programme of staff training. We therefore expect the Licensee to improve its compliance in this area.

### **Breaches of Rules 5.5 and 9.2**

## Broadcast Licence Condition Cases

### Broadcasting licensees' late and non- payment of licence fees

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Ofcom is partly funded by the licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the aggregate amount of fees paid by licensees meets the cost of Ofcom's regulation of broadcasting. The principles which Ofcom applies when determining the fees to be paid by licensees are set out in the Statement of Charging Principles<sup>1</sup>. The detailed fees and charges which are payable by broadcasting licensees are set out in Ofcom's Tariff Tables<sup>2</sup>.

The payment of a fee is a licence requirement<sup>3</sup>. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence, as it means that Ofcom is unable properly to carry out its regulatory duties.

#### In Breach

The following licensees have failed to pay their annual licence fee in accordance with the original deadline. These licensees have therefore **breached** the relevant condition of their licence.

As a consequence of this serious and continuing licence breach, **Ofcom is putting these licensees on notice that this breach of their licence is being considered for the imposition of a statutory sanction, which may include licence revocation.**

Television Licensees		
Licensee	Licence Number	Service Name
AATW Limited	TLCS001642BA	Channel AKA
Ayngaran International (UK) Limited	TLCS001415BA	Ayngaran Plus
Direction Television Limited	TLCS001291BA	Direction TV
Divine Television Foundation	TLCS001523BA	Divine TV
Executive Decision Limited	TLCS001530BA	Airfi
Footprint Media Holdings (BVI) Limited	TLCS001641BA	High TV 3D
HI TV UK Limited	TLCS001223BA	HiTV
International Media Centre Limited	TLCS001269BA	IMC TV
Millennium Media House Limited	TLCS001631BA	Klear
MWN Entertainment Limited	TLCS001738BA	Muslim World Network
Navid Limited	TLCS001553BA	Bayan TV
NN24(UK) Limited	TLCS001609BA	NN24

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[http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

2 [http://stakeholders.ofcom.org.uk/binaries/research/Tariff\\_Tables\\_2001112.pdf](http://stakeholders.ofcom.org.uk/binaries/research/Tariff_Tables_2001112.pdf)

3 Contained in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

Sit-Up Limited	DTPS000044BA	Price Drop
Up and Coming TV Limited	TLCS001217BA	Samaa

### Resolved

The following licensees failed to pay their annual licence fee in accordance with the original deadline, and therefore breached the relevant condition of their licence. They have subsequently submitted a late payment and we therefore consider the matter **resolved**. This decision will be kept on record and will be taken into account should any similar issues arise in the future.

Television Licensees		
Licensee	Licence Number	Service Name
Ariana Radio & Television Network	TLCS001086BA	Ariana International
ARISE Media UK Limited	TLCS001677BA	Arise News
Bangla TV (UK) Limited	TLCS000415BA	Bangla TV
Daar Communications (UK) Limited	TLCS001209BA	AIT Movistar
Daar Communications (UK) Limited	TLCS001026BA	AIT Int
DM Global Media Limited	TLCS100193BA	DM News Plus
Euroasia Media Limited	TLCS001616BA	Dunya TV
Greener Technology Limited	TLCS001094BA	BEN TV
Global Music Television Limited	DTPS000109BA	Heart TV
Global Music Television Limited	TLCS001659BA	Capital TV
i14News Limited	TLCS100023BA	i14News
Independent Television Limited	TLCS001753BA	IT TV
Midland Multi Media Limited	TLCS000544BA	KBC
Middlesex Broadcasting Corporation	TLCS000384BA	MATV(Punjabi)
SA Channel PVT Limited	TLCS100194BA	SA TV
Sundance Channel (UK) Limited	TLCS001370BA	Sundance
Sunrise TV Limited	TLCS000640BA	Sunrise TV
TalkTalk Group Limited	TLCS001743BA	TalkTalk Player EPG
TV Enterprises Limited	TLCS000743BA	NTAI
TV Two Limited	TLCS001501BA	Planet Pop
Vintage Entertainment Limited	TLCS001477BA	Vintage TV

## In Breach

### Provision of licensed service

*Castle FM (Leith), 5 September to date*

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#### Introduction

Castle FM is a community radio station licensed to provide a service for the residents of Leith in Scotland. The licence is held by Leith Community Mediaworks Ltd (“LCMWL” or “the Licensee”).

‘Key Commitments’<sup>1</sup> form part of each community radio station’s licence and are contained in an annex to the licence. They set out how the station will serve its target community and include a description of the programme service.

Earlier this year, Ofcom recorded breaches by LCMWL of the licence conditions, including failure to provide the licensed service. In recording these breaches we put the Licensee on notice that, should similar compliance issues arise in future, we would consider taking further regulatory action which might include consideration of a statutory sanction<sup>2</sup>.

On 5 September 2014, following a complaint to Ofcom, our engineers confirmed that Castle FM’s antenna had been moved from its authorised location and the station was transmitting from an alternative, unauthorised transmission site in central Edinburgh<sup>3</sup>.

Consequently, Ofcom’s engineers visited the transmission site and the unauthorised transmitter was switched off. The Licensee was informed that in order to broadcast from a site other than the one stated in its licence, it would need to submit a ‘Technical Change Request’ for Ofcom’s consideration. A form was subsequently submitted but rejected, on the basis that the proposed new transmitter location would be an inappropriate site from which to serve Leith. To date, the Castle FM service is not being provided from the licensed location.

Ofcom considered that this raised issues warranting investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to LCMWL’s licence. These state, respectively:

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

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

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<sup>1</sup> Castle FM’s Key Commitments:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000080.pdf>

<sup>2</sup> See Ofcom Broadcast Bulletin, Issue 254, 19 May 2014 at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>

<sup>3</sup> Ofcom is currently investigating LCMWL’s compliance with the technical annex of its licence.

We therefore requested formal comments from the Licensee on how it had complied with these conditions.

### **Response**

The Licensee did not provide a response.

A revised technical plan was subsequently submitted to Ofcom. This is currently under consideration.

### **Decision**

Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. This is reflected in the licence conditions requiring the provision of the specified licensed service. Where a service is not being provided in accordance with the licence, choice for listeners is likely to be reduced. In the case of a service being off air, the listener is clearly not served at all.

Ofcom has concluded that the Licensee is in breach of its licence for failing to provide its licensed service in accordance with its Key Commitments. These breaches follow breaches of the same licence conditions by LCMWL that were recorded in issue 254 of Ofcom's Broadcast Bulletin<sup>4</sup>.

In light of this, Ofcom puts the Licensee on notice that it is considering taking further regulatory action.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Leith Community Mediaworks Ltd (licence number CR000080BA).**

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<sup>4</sup> See footnote 2.

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed 28 October and 3 November 2014 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>	<b>Categories</b>
Wilsons of Rathkenny's sponsorship of Traffic and Travel	Downtown Radio	21/08/2014	Commercial communications on radio

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

## Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 28 October and 3 November 2014 because they did not raise issues warranting investigation.

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

For more information about how Ofcom assesses conducts investigations about content standards, go to:

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Breakfast	BBC 1	28/10/2014	Harm	1
Continuity announcement preceding EastEnders	BBC 1	23/10/2014	Generally accepted standards	1
Doctor Who	BBC 1	25/10/2014	Disability discrimination/offence	1
EastEnders	BBC 1	14/10/2014	Sexual material	1
EastEnders	BBC 1	27/10/2014	Drugs, smoking, solvents or alcohol	1
Have I Got News for You	BBC 1	24/10/2014	Generally accepted standards	1
Have I Got News for You	BBC 1	24/10/2014	Race discrimination/offence	1
Not Going Out	BBC 1	17/10/2014	Gender discrimination/offence	1
Pointless	BBC 1	27/10/2014	Outside of remit / other	1
Strictly Come Dancing	BBC 1	11/10/2014	Scheduling	1
Watchdog	BBC 1	30/10/2014	Materially misleading	8
BBC World News	BBC 2	03/11/2014	Due accuracy	1
Peaky Blinders	BBC 2	16/10/2014	Generally accepted standards	1
Peaky Blinders	BBC 2	16/10/2014	Violence and dangerous behaviour	1
Tom Kerridge's Best Ever Dishes	BBC 2	10/10/2014	Gender discrimination/offence	1
Life is Toff	BBC 3	01/11/2014	Offensive language	1
People Like Us	BBC 3	29/10/2014	Materially misleading	1
Greg James	BBC Radio 1	30/10/2014	Offensive language	1
Vanessa Feltz standing in for Jeremy Vine	BBC Radio 2	29/10/2014	Due impartiality/bias	1
The News Quiz	BBC Radio 4	24/10/2014	Due impartiality/bias	1
The News Quiz	BBC Radio 4	24/10/2014	Offensive language	1
The News Quiz	BBC Radio 4	25/10/2014	Offensive language	1
Today	BBC Radio 4	09/10/2014	Due impartiality/bias	1

World at One	BBC Radio 4	29/10/2014	Generally accepted standards	1
5 Live Consumer Team with Martin Lewis	BBC Radio 5 Live	20/10/2014	Commercial communications on radio	1
Good Morning Devon	BBC Radio Devon	27/10/2014	Due accuracy	1
Capital Xtra	Capital Xtra	17/10/2014	Offensive language	1
100 Days of UKIP	Channel 4	N/A	Outside of remit / other	2
24 Hours in Police Custody	Channel 4	06/10/2014	Violence and dangerous behaviour	1
Channel 4 News	Channel 4	27/10/2014	Due impartiality/bias	1
Four Lions	Channel 4	26/10/2014	Generally accepted standards	1
Grand Designs	Channel 4	29/10/2014	Generally accepted standards	1
Sarah Beeny's How to Sell Your Home	Channel 4	27/10/2014	Materially misleading	1
Stand Up To Cancer	Channel 4	17/10/2014	Materially misleading	1
Dallas	Channel 5	Various	Outside of remit / other	1
Channel i Superstar	Channel i	13/09/2014	Product placement	1
Bowie at Breakfast	Clyde 1	14/10/2014	Competitions	1
Friends	Comedy Central	01/11/2014	Scheduling	1
Advertising	Discovery HD	02/11/2014	Advertising content	1
Advertising	E4	26/10/2014	Advertising content	1
Star Trek	Film 4	16/10/2014	Television Access Services	1
American Dad	Fox	27/10/2014	Generally accepted standards	1
All New You've Been Framed	ITV	27/10/2014	Due impartiality/bias	1
Channel Ident	ITV	22/10/2014	Violence and dangerous behaviour	1
Coronation Street	ITV	08/10/2014	Generally accepted standards	1
Coronation Street	ITV	15/10/2014	Generally accepted standards	1
Elizabeth II: The Diplomat Queen	ITV	13/06/2013	Materially misleading	1
Emmerdale	ITV	10/10/2014	Violence and dangerous behaviour	1
Emmerdale	ITV	27/10/2014	Scheduling	1
ITV News at Ten and Weather	ITV	22/10/2014	Generally accepted standards	2
ITV News at Ten and Weather	ITV	29/10/2014	Generally accepted standards	2
Loose Women	ITV	28/10/2014	Generally accepted standards	1
Murderland	ITV	n/a	Generally accepted standards	1
Smyths Toys Superstores' sponsorship of You've Been Framed	ITV	25/10/2014	Generally accepted standards	1

The Chase	ITV	29/10/2014	Generally accepted standards	1
The Chase: Celebrity Special	ITV	25/10/2014	Offensive language	1
The Jeremy Kyle Show	ITV	24/10/2014	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV	28/10/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	31/10/2014	Generally accepted standards	1
The Jonathan Ross Show	ITV	25/10/2014	Drugs, smoking, solvents or alcohol	1
This Morning	ITV	10/10/2014	Disability discrimination/offence	1
This Morning	ITV	27/10/2014	Under 18s in programmes	1
This Morning	ITV	30/10/2014	Generally accepted standards	1
You've Been Framed!	ITV	25/10/2014	Violence and dangerous behaviour	1
Meridian News	ITV Meridian	20/10/2014	Due impartiality/bias	1
Celebrity Juice	ITV2	30/10/2014	Generally accepted standards	1
Fake Reaction	ITV2	27/10/2014	Generally accepted standards	1
Release the Hounds	ITV2	27/10/2014	Generally accepted standards	1
Darts	ITV4	01/11/2014	Generally accepted standards	1
TOWIE: All Back to Essex	ITVBe	08/10/2014	Sexual orientation discrimination/offence	1
James O'Brien	LBC 97.3FM	10/10/2014	Generally accepted standards	1
Steve Allen	LBC 97.3FM	29/10/2014	Disability discrimination/offence	1
Style and Trends	NTV	11/09/2014	Product placement	1
Stalker (trailer)	Sky Living +1	26/10/2014	Scheduling	1
Sky News	Sky News	03/08/2014	Due impartiality/bias	1
Sky News	Sky News	28/10/2014	Due accuracy	1
Sky News with Colin Brazier	Sky News	07/10/2014	Due accuracy	1
Sky News with Kay Burley	Sky News	27/10/2014	Due impartiality/bias	1
Sunrise	Sky News	07/10/2014	Due accuracy	1
SPL : St Mirren v Celtic	Sky Sports 1	27/09/2014	Political advertising	1
Champions League Football	Sky Sports 5	22/10/2014	Race discrimination/offence	1
Soccer Saturday	Sky Sports 5	04/10/2014	Gender discrimination/offence	1
Advertising	Various	Various	Advertising content	2
Forbidden History	Yesterday	15/10/2014	Religious/Beliefs discrimination/offence	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 30 October and 5 November 2014.

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

Programme	Broadcaster	Transmission date
Advertising minutage	SAB	15 September 2014
Advertising minutage	PTC Punjabi	24 September 2014
Advertising minutage	Liverpool FC TV	27 September 2014
Advertising minutage	Smash Hits	28 September 2014
Advertising minutage	ESPN	28 October 2014
Advertising minutage	Showcase 2	Various
Dapper Laughs: On the Pull	ITV2	Various
EastEnders	BBC 1	6 October 2014
Giants @ Nationals - MLB: NLDS Game 1	ESPN HD	3 October 2014
Live: UFC Nelson v Story	BT Sport 2	4 October 2014
The Jeremy Kyle Show	ITV	4 November 2014
The Walking Dead	Fox TV	13 October 2014

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

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

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

<b>Licensee</b>	<b>Licensed Service</b>
ATN Bangla UK Ltd	ATN Bangla UK

The following cases are investigations Ofcom has launched as a result of issues raised in the relevant Community Radio Licensees' Annual Reports.

<b>Licensee</b>	<b>Licensed Service</b>
1 Ummah FM Community Interest Company	1 Ummah FM
Afro Caribbean Millennium Centre	New Style Radio 98.7 FM
Alive Christian Media Limited	Alive Radio
Angel Radio Limited	Angel Radio Havant
Awaz FM Limited	Awaz FM
B.R.F.M. Bridge Radio Limited	BRFM (Bridge FM)
BFBS Aldershot Limited	BFBS (Aldershot)
BFBS Catterick Limited	BFBS (Catterick)
BFBS Edinburgh Limited	BFBS (Edinburgh)
BFBS Salisbury Plain Limited	BFBS (Salisbury Plain)
Big City Radio CIC	Big City Radio
Bradford Community Broadcasting Limited	BCB 106.6 FM
Canterbury Youth and Student Media Limited	CSR 94.7 FM
Castledown Radio Limited	Castledown Radio
Community Broadcast Initiative Tyneside Limited	NE1FM
Corby FM Limited	Corby Radio
Coventry & Warwickshire Media Community Limited (CWMC)	Radio Plus
Crescent Community Radio Limited	Crescent Radio
Down Community Radio Limited	Down FM
Drive 105 (Community Radio) Limited	Drive 105 FM

Eclectic Productions UK	Reprezent 107.3 FM
Fantasy Radio Limited	Fantasy Radio
Glastonbury FM Community Interest Company	Glastonbury FM
Halton Community Radio	Halton Community Radio (HCR)
Huntingdon Community Radio (Media) Limited	HCRfm
In2beats	In2beats FM
Ipswich Community Radio	Ipswich Community Radio
Kane FM Limited	Kane FM
Leisure FM Limited	Leisure FM
Lionheart Radio & Media Community Interest Company	Lionheart Radio
Lisburn Community Radio Limited	Lisburn City Radio
Llandudno Community Radio Limited	Tudno FM
Mearns Community Radio Limited	Mearns FM
Meridian FM Radio	Meridian FM 107
Radio Asian Fever CIC	Radio Asian Fever
Radio Fiza Limited	Radio Faza 97.1 FM
Radio Ikhlas Limited	Radio Ikhlas
Radio Winchcombe Limited	Radio Winchcombe
Shine FM	Shine FM
Sittingbourne Community Radio Limited	SFM
Soundart Radio Limited	Soundart Radio 102.5 FM
Speysound Radio Limited	Speysound Radio
Sunny Govan Community Media Group	Sunny Govan Radio
Tees Valley Christian Media	Cross Rhythms Teesside
The Vibe Watford Limited	Vibe 107.6 FM
Tulip Radio Limited	Tulip Radio

Uckfield Community Radio Limited	Uckfield FM
Ujima Radio CIC	Ujima Radio
Verulam Community Radio Limited	Radio Verulam
Voice of Africa Radio	Voice of Africa Radio
West Hull Community Radio Limited	West Hull Community Radio
Wirral Christian Media Limited	Flame CCR
Wythenshawe Community Media	Wythenshawe FM

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

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