

Ofcom Broadcast Bulletin

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¹ The LRTK (Lietuvus Radijo ir Televizijos Komisija) is responsible for regulating radio and television broadcasting in Lithuania. Further information can be found on its website at: <http://www.rtk.lt/en/>.

Introduction

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

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

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

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

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

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

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

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

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

Note to Broadcasters

Broadcasting Code Review: Section Three

Section Three of the Code reflects Ofcom's statutory duty to prohibit the broadcast of material that is likely to encourage or incite the commission of crime, or lead to disorder. Ofcom also has a duty to review and revise the rules in the Code from time to time when we consider it appropriate.

The first breach of a rule in Section Three – for the broadcast of material likely to encourage or incite the commission of crime or lead to disorder – was recorded in 2012. We have since imposed three statutory sanctions for breaches of this nature.

Given our recent enforcement activity under this rule and the high risk of harm associated with the relevant content, we consider there is a need to ensure Section Three is as clear as possible. Ofcom is therefore conducting a review of this section of the Code to ensure broadcasters understand the relevant rules, and the way Ofcom applies them.

Ofcom intends to publish a consultation on the proposed amendments to the rules in Section Three of the Code in December 2015. We will notify broadcasters when the consultation period is open and the opportunity to respond begins. Stakeholders will have 12 weeks to submit a response.

If you have any questions or comments before the consultation is published, please contact SectionThreeReview@ofcom.org.uk.

Broadcasters should note that, until Ofcom has concluded its review of the Section Three rules in 2016, the current Code rules remain in force.

Standards cases

In Breach

Cops

Spike, 12 July 2015, 16:30

Introduction

Cops is a documentary style reality television series that follows law enforcement officers on patrol in the United States. The series is broadcast on Spike, a general entertainment channel which specialises in reality programmes. The licence for Spike is held by Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee").

A complainant alerted Ofcom to adult themes throughout this programme which focused on the topics of prostitution and drugs. The complainant considered it to be unsuitable for children and inappropriately broadcast before the 21:00 watershed.

This particular episode of *Cops* was a special Christmas edition entitled "*Ho Ho Ho! 2*", broadcast at 16:30 on a Sunday afternoon. It was approximately 22 minutes in duration and followed police officers on two "*prostitution stings*" in Las Vegas and two other street patrols in California and Ohio.

The programme began with a warning displayed on screen and accompanied by a voiceover stating:

"Due to the graphic nature of this program, viewer discretion is advised".

Ofcom noted in particular the following four sequences in the programme.

Sequence One

This sequence was broadcast immediately after the opening title sequence and featured Detective Boyse Francis and Police Officer Noel Roberts going undercover to "*go up to some prostitutes to see if they will solicit us, and make the street a little bit safer...*".

At approximately two minutes into the episode Officer Roberts was shown from an in-car camera driving up to a woman and inviting her into his car. She got in to the car and the following conversation took place:

Officer Roberts: *"Are you giving company?"*

Woman: *"Kinda, yeah, if you're buying?"*

Officer Roberts: *"If I'm buying? [The camera cut to Detective Francis, driving in a car behind Officer Roberts, as he listened to the conversation via a radio]..."*

Woman: *"[Returning to the in-car camera] Normally, I do \$40. What is it that you pay?... because I got my own place, I strip totally down and if we go any further it's just \$20 more".*

Both cars then parked and the woman was arrested and questioned about her offer of sex for money and whether she was involved with drugs.

Sequence Two

This sequence immediately followed and showed Officer Roberts, filmed from an in-car camera, driving up to a bus stop and inviting a very young woman into his car. The woman was shown getting into the car and confirming her fee of \$60 for having sex with Officer Roberts.

Officer Roberts parked his car alongside a main road. Detective Francis then approached.

Detective Francis: *"Hello, Las Vegas Vice. Got anything in your purse that I need to know about?"*

Woman: *"Condoms".*

Detective Francis: *"Just condoms? Ok, take your hands and put them behind your back [Detective Francis placed handcuffs on the woman's wrists]. You ever been arrested before?"*

Woman: *"Yes I have".*

Detective Francis: *"What for?"*

Woman: *"Prostitution".*

Detective Francis continued to question the young woman as Officer Roberts summarised the arrest:

"Basically what we've got right here is that she looks very young. She's claiming to be 18 but she was lying to me the whole time. We've got to verify whether she's a juvie or not. Juvenile prostitution in Las Vegas is big and it's taken very seriously so we are going to go through a long process here, verify where she's from..."

The woman was then arrested and Detective Francis continued to question her.

Detective Francis: *"Is that how you got the baby?"*

Woman: *"No I got raped, at a party".*

Detective Francis: *"How many times have you been raped if you don't mind me asking?"*

Woman: *"14 times".*

Detective Francis: *"14 times!"*

Woman: *"All of them used condoms except for this one".*

Sequence Three

This sequence featured Police Officer Jose Gonzalez driving on street patrol in Santa Ana in California. Officer Gonzalez stopped a woman he recognised as a known drug user and former prostitute, who was walking down the street with a man. He questioned her about her activities.

- Officer Gonzalez: *"So you've cleaned up obviously".*
- Woman: *"I don't do drugs or any of that anymore".*
- Officer Gonzalez: *"You don't do that anymore? Do you drink still?"*
- Woman: *"Yeah. I snort[ed] cocaine years ago before I even got to First Street. That was stopped though".*
- Officer Gonzalez: *"Yeah alright. Ok. What else have you done?"*
- Woman: *"That's it. Marijuana was my, is my, was my favourite past time you know".*

After questioning the woman, Officer Gonzalez was shown giving a lift to the man the woman was with.

- Officer Gonzalez: *"[M]y partner here will give you a ride alright? But you do me a favour. You know it and I know it that she's a prostitute OK? You've already told me that but be careful. We have a big problem out here and there are a lot of officers working this particular street so don't get yourself in trouble alright".*
- Man: *"I told her that I wouldn't treat her as prostitute because my brain injury kind of cancels that out..."*
- Officer Gonzalez: *"Are you guys getting a room after dinner?"*
- Man: *"If we do it's not gonna be for sex..."*
- Officer Gonzalez: *"OK, so you're gonna go and listen to her? Ok, well do me a favour when you're out having a relationship with her and talking with her make sure you use protection coz she's been around a while".*

Sequence Four

This sequence featured Police Officers Kelly Best and Jody Dillinger on patrol in Cincinnati in Ohio. The Officers were shown driving into a car park to investigate a woman and a man sitting in an abandoned car in according to the commentary, a *"place where prostitutes go to run their tricks and where people go to smoke crack cocaine and use heroin"*.

Officer Dillinger approached the car to question and handcuff the woman. The two officers saw indications of illegal drugs and drug-related items in the car. They handcuffed and questioned the woman, and then questioned the man:

Officer Dillinger: *"Where's the dope my man? Ok here's the thing, I'm gonna test everything I find on you and if I find a rock, the smallest amount of crack on you, you're going to jail. This isn't your car. You're not supposed to be hanging out in it. Why are your pants undone?"* [A close up shot of the man's jeans was shown with his flies undone].

Man: *"Because the zipper is [bleep] broke. It just happened today".*

Officer Dillinger: *"Ok the zipper's not broke and your pants are wet. What's the deal?"*

Man: *"The zipper would not stay up. The pants is wet because I just got through bathing and put them on".*

Officer Dillinger: *"OK. Were you picking a trick up? Stop moving around on me and answer my question. Were you picking a trick up?"*

Man: *"No I was not. This girl just came home from rehab [Officer Dillinger was shown examining the man's hands] and we was talking about kicking the heroin. It's killing her... [inaudible]"*.

A shot of Officer Best was shown searching the car seats for drugs as Officer Dillinger summarised the arrests:

"What we've got here is, this is a place where people commonly go to run tricks, pick up prostitutes. I saw them sitting in this car. I know this car has been sitting here unoccupied, abandoned, for a month and a half. I see their heads. We pull up. Neither of them knows each other's names. Neither of them have a reason for sitting in the car. We find crack cocaine, drug paraphernalia, and he's got a couple of warrants".

Officer Dillinger continued to question the woman:

Officer Dillinger: *"Here's the deal. We found crack cocaine in the car..."*

Woman: *"Ok. I had some stuff and we were gonna smoke it".*

Officer Dillinger: *"How much stuff?"*

Woman: *"I have no idea how much he had. He didn't even tell me. He just said "do you want to take a hit?" and he said it was his car and you know all that. It's not even my drug of choice".*

Officer Dillinger: *"What was it? Was it crack or heroin?"*

Woman: *"It was crack. My drug of choice is heroin. I just got out of rehab for that so..."*

Officer Dillinger: *"What did he do with the crack?... Did he have the crack pipe on him?"*

Woman: *"Yeah. He had a crack pipe..."*

Officer Dillinger: *"Do you trick?"*

Woman: *"I used to. Well yeah but I'm not. I'm trying to stop that. That's why I went to rehab".*

Officer Dillinger: *"How long have you been tricking?"*

Woman: *"Just a couple of months".*

Officer Dillinger: *"Just a couple of months? Ok. Why was his pants undone then? Were you getting ready to trick?"*

Woman: *"No, no, no, no".*

Officer Best was filmed testing a small sample of a white substance she had obtained from the car to find out whether it was an illegal drug:

"I found a little bit of crack on her side of the car. She's got priors for prostitution. This corner is where a lot of prostitutes kinda do their business. I found what looks to be some kind of crack on his side of the car. They're both in the car. His zipper was down so it's pretty much obvious what's gone on here. A lot of time prostitutes will do their thing for a little bit of crack. I'm gonna just test this real quick and see if any of it's positive. [a close up shot of the white powdery substance was shown turning blue] You can see all the blue is crack cocaine".

Ofcom considered that this material raised issues warranting investigating under the following Code Rule:

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

We therefore sought comments from Channel 5 as to how the material complied with this rule.

Response

The Licensee said that the programme was "appropriately scheduled on Spike within a run of programmes that were not expected to attract many child viewers".

Channel 5 said that the programme was "acquired as part of a series of *Cops* programmes". The Licensee said that this particular episode of *Cops* was a "special" episode and therefore "the incidents the police officers dealt with in this [episode] were [of] a similar theme, in this case prostitution".

Channel 5 detailed how programmes are assessed for "whether they are suitable for scheduling at all times...or only...scheduled at specific times" by the compliance team and assigned a "internal rating" for consideration by the scheduling team. In deciding the appropriate scheduling the Licensee said it took into account: the historical and expected audience for a proposed timeslot; the programmes scheduled immediately before and immediately after the programme; and, when the programme in question was previously scheduled.

In this case, the Licensee said that the programme was reviewed and edited, and given an internal rating of "SAT NK" which meant that "it should not be scheduled at times when children have historically watched or at times when it was likely, because of factors such as day of the week, the time of year or the preceding schedule, that

children would be watching". It added that information about the content of the programme was provided at the beginning of the programme (as detailed in the Introduction).

The Licensee explained that Spike, a "relatively new channel" launched on 15 April 2015, consisted of programming that was "largely male orientated" and expected to attract "mainly adult male viewers". Channel 5 said that this episode of *Cops* was scheduled around episodes of *Bar Rescue*, *Cowboy Builders* and a further three episodes of *Cops*, none of which "historically attract a significant child audience".

Channel 5 said that the current average child audience for Spike was 1,000 child viewers and the current average child audience for daytime episodes of *Cops* was 1,000. It had therefore "no reason to believe that many children would be watching this programme". However it pointed out that this particular episode of *Cops* attracted what it described as an "unexpected" child audience of 4,000.

The Licensee concluded that until the channel had "established its anticipated adult audience" it recognised that "there may be a child audience for the channel, particularly at weekends". Channel 5 therefore said it would ensure that this episode would not be "broadcast on Spike at weekends during the daytime, at least for the foreseeable future".

Decision

Under the Communications Act 2003 Ofcom has a statutory duty to set standards for broadcast content as appear to it to be best calculated to secure 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 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of broadcast; and, likely audience expectations.

We first assessed whether the programme included material unsuitable for children.

Ofcom considered that the programme had a clear adult tone and themes throughout. The subject matter (as set out in detail above) focused on police patrols to regulate prostitution and drug-taking. Police officers stopped and interviewed prostitutes and their clients on several occasions, discussing their sexual and drug-taking activities with them (and the evidence for it) in fairly direct terms. We considered that this episode cumulatively contained material with a clear adult tone and themes that were unsuitable for children.

We went on to assess whether the content was appropriately scheduled.

We noted that Spike's target audience is "mainly adult male viewers" and that the channel's programming is not aimed at children. Nonetheless BARB¹ viewing data indicated that 4,000 out of the total of 25,000 viewers of this programme (16% of the audience) were between 10 and 15 years old, with none aged four to nine. We noted that the programme *Police Interceptors* was broadcast immediately after this episode of *Cops*. *Police Interceptors* had 33,000 viewers, of whom 4,000 were children (all of

¹ Broadcasters' Audience Research Board (BARB) is the official source of television viewing figures in the UK.

whom were aged 10 to 15 years old). This represented about 12% of the audience. It was clear therefore that, although not aimed at children, this general entertainment channel had the potential to attract a mixed audience including children during daytime at a weekend.

We also had regard to the fact that Spike was a fairly new channel launched in April 2015. This meant that the channel had had relatively little time to form audience expectations about its content and scheduling. In Ofcom's view however audiences (and in particular parents and carers) expect material shown during the daytime at weekends on free to air channels to be appropriate for children to view. They would not, in our opinion, expect a police reality programme shown at 16:30 on a Sunday afternoon to focus so strongly on the adult themes of prostitution and drug-taking. Children were clearly going to be available to view at this time, as was confirmed by the viewing figures for this programme.

We noted that the programme began with an on-screen warning as detailed in the Introduction. In Ofcom's view however this warning provided limited useful information, referring to the "*graphic nature of this program*" and so suggesting that "*viewer discretion is advised*". Ofcom points out to broadcasters that warnings before programmes shown during the daytime may be of limited assistance in protecting children because a number of children may watch unsupervised.

For all these reasons, Ofcom considered that the episode was not appropriately scheduled. We noted that Channel 5 accepted that there may be a child audience for the Spike channel at weekends and welcomed its decision not to broadcast this episode again on the channel at weekends during the daytime.

Nonetheless Ofcom concluded that, on balance, for the reasons set out above this broadcast breached Rule 1.3.

Breach of Rule 1.3

In Breach

Family Guy

TV6 (Sweden), 16 August 2015, 14:00

Introduction

TV6 is a Swedish language channel licensed by Ofcom that is controlled and complied by Modern Times Group MTG Limited ("MTG" or "the Licensee"). MTG holds 25 Ofcom licences for separate television channels which broadcast from the United Kingdom to various Scandinavian and Eastern European countries, including Sweden. MTG's compliance department is based in London and manages compliance for all these licensees centrally. TV6 is not available on any of the United Kingdom's broadcasting platforms.

Family Guy is an irreverent adult animated comedy produced in America. It centres on life with the Griffin family, consisting of parents Peter and Lois, their teenage children Meg and Chris, their one year old son Stewie (who is highly intelligent and acts and talks like an adult), and talking dog, Brian.

Ofcom was alerted by a viewer in Sweden to references to sex, rape, and child abuse in an episode shown in the afternoon.

The storyline in this episode centred on Peter's mistaken belief that he had been raped by his male doctor when the doctor had examined Peter's prostate. After Peter discovered his friends had had similar experiences when having their prostates examined, Peter's doctor, Dr Hartman, was prosecuted for the alleged rape. Ofcom noted the following:

- After Peter believed he had been raped by the doctor, he was shown from behind standing naked in front of his bathroom mirror as he cut large clumps of hair from his head and scrawled lipstick haphazardly across his face. While doing this, Peter talked to himself and said:

"Who's that? Who are you? Where's Peter? Where is he? You're a whore. Wear your whore make-up you whore...Filthy whore. You're somebody's father you filthy whore".

- Peter talked in a bar to his friends about Dr Hartman's actions, and one friend, Quagmire (who is known for his sexually deviant practices), said:

"I have something to say. Dr Hartman violated me as well. I only went in there for a physical slash guinea pig removal. But I turned out to be the guinea pig. For his sexual experimentation".

In response, Joe, a policeman known for his directness, replied:

"You guys are a bunch of queers. And so am I".

as he admitted that he also had similar experiences in a prostate examination.

- While Peter gave evidence against Dr Hartman in the doctor's criminal trial, the episode featured a fictional re-enactment from Peter's point of view of his

prostate examination. This was depicted in black and white which showed Dr Hartman as a stereotypical villain from a silent movie. He stroked and licked a naked Peter from behind, before grasping Peter's buttocks and throwing Peter on to a pinball machine. Dr Hartman then loomed menacingly over Peter and laughed maniacally.

- During the court case against Dr Hartman, Peter realised that Dr Hartman had in fact not molested him. As a result the court reinstated the doctor's medical licence and the following exchange took place:

Peter: *"And to think I actually thought you raped me".*

Dr Hartman: *"Well, I was going to but you ran out of the room".*

Peter: *"What?"*

Dr Hartman [indicating by a non-verbal gesture that he was joking]: *"Ahh".*

Other scenes included:

- Stewie leapt onto his mother Lois in the morning while she was still in bed, and lay on her lap. Peter woke up and while his eyes were still closed, he placed his hand on Stewie's face, thinking it was one of Lois' breasts. He then started to rub Stewie's nose with his finger. Stewie looked startled. Peter said:

"Oh Lois, your breasts are great. Well, good morning, Mr Nipple. Hey there. Must be cold in here".

- Stewie reacted angrily against Lois after he had an accident, and shouted at her:

"I hope they charge you with child abuse for my broken arm. I'll testify against you just like I did against Michael Jackson".

The sequence cut to a court room, where Stewie was shown sitting in a witness box being questioned by a lawyer while in the background Michael Jackson observed the exchange:

Lawyer: *"Stewie, did Mr Jackson behave inappropriately toward you?"*

Stewie: *"Well yes, but the worst part was he never called back. [This comment prompted laughter from the courtroom]. No, but in all seriousness, yeah, he was actually pretty aggressive".*

Ofcom noted that before the programme started there was a caption in Swedish, and this was read out to viewers. As translated into English the caption said: *"The following programme contains scenes some viewers might find offensive".*

Ofcom considered that this material raised issues warranting investigation under Rule 1.3 of the code, which state:

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

We therefore sought comments from the Licensee as to how the content of this episode complied with this rule.

Response

MTG began by giving details of how it had changed its compliance of *Family Guy* on TV6 (Sweden) in response to the Ofcom Finding published in July 2015 that an episode of the programme had breached Rule 1.11 (violence must be appropriately limited in programmes broadcast before the watershed)¹. The Licensee said that, following the July 2015 breach, it had used Ofcom's decision as the basis for an "internal training session in relation to the impact and acceptability of violence in Daytime programming." The Licensee said its compliance department "screened and gave updated time restrictions for every episode of *Family Guy* in [its] catalogue, ensuring any episodes which had similar violent content were removed from the schedule." MTG also said it had placed warnings before every episode of *Family Guy* broadcast on the channel "in order to alert viewers to any potentially harmful or offensive material".

Regarding the episode broadcast on 16 August 2015, MTG said that "although some of the content...addresses controversial subjects it was felt that the overall tone was comedic and unlikely to cause harm to young viewers." The Licensee stated that "it had assessed this series in line with the cultural and viewer expectations of an animated comedy on a channel aimed at an adult audience and had taken sufficient extra steps to alert viewers with young children to the nature of the content." MTG added that it had broadcast *Family Guy* "throughout the region [of Scandinavia] across different services for over ten years without complaint or controversy until very recently", which it asserted was "indicative of the local attitude to the programme."

Turning to Peter Griffin's comments about being raped by Dr Hartman, MTG said the references centred on "the male characters' attitudes to having their prostates examined. The programme highlights this attitude as ridiculous throughout and seeks to address a societal taboo associated with the examination." The Licensee explained that characters including Lois explained to Peter on a number of occasions in the programme that the prostate examination was a normal medical procedure, and that MTG "did not regard this as offensive and especially not harmful given that it was directly addressing a reluctance among some people to receive vital medical tests." MTG considered that "the tone is comedic throughout and the issues are not presented in a way that would be viewed as disturbing or inappropriate."

The Licensee said the references to possible child abuse by Michael Jackson in Stewie's testimony in the imaginary court case against the singer did not go into any detail, apart from Stewie's description of Michael Jackson being "*pretty aggressive*". MTG added that the criminal trial of Michael Jackson on charges of child sexual abuse against him was widely covered in pre-watershed programming when the trial took place in 2003 to 2005.

MTG said that "in light of the new complaints received TV6 has now removed all *Family Guy* episodes from pre-watershed transmission and continues to assess our schedules for any issues that could arise in a similar vein."

¹ See http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb284/Issue_284.pdf, page 30.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it to be 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 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of broadcast; and, likely audience expectations.

In applying Rule 1.3, Ofcom must have regard to the right of freedom of expression of the broadcaster and audience. In accordance with the right to freedom of expression, the Code does not prohibit the broadcast of material unsuitable for children before the watershed. However, the material must be appropriately scheduled.

We first assessed whether the programme included material unsuitable for children.

Ofcom considered that the programme had adult themes and tone throughout, focusing on Peter Griffin’s belief that he had been raped and the consequences of this for him, his friends and Dr Hartman. The humour of the programme relied to a great extent on the mistaken belief of Peter and of his friends that a routine medical examination for men could be regarded as a sexual assault. The language used during this storyline was frank and adult in nature, including: Peter’s repeated use of “*whore*” to describe himself during his breakdown in front of the bathroom mirror; Joe’s reference to the group of friends being a “*bunch of queers*”; and, Dr Hartman’s joke that he would have raped Peter had he not run out of the examination room.

Peter’s fictional depiction of how he imagined Dr Hartman had attacked him showed the doctor approach Peter from behind, then lick and kiss his neck and ear, and grasp his buttocks. This was stylistically different from the rest of the episode in some respects. It was in black and white not colour, and occasionally used slow motion to highlight the evil nature of Peter’s fictional image of Dr Hartman, including Dr Hartman snapping a rubber glove on his hand while looking lasciviously towards Peter. The overall intention of these scenes, and Peter’s court testimony (“*I tried to get him to stop but he kept saying ‘Relax, I’m a doctor’*”, “*He made me feel so dirty*”) was to suggest a serious sexual assault had taken place.

The adult tone and themes were also reflected for example in the scenes when Peter unwittingly fondled Stewie’s nose thinking it was Lois’ nipple, and the courtroom sequence with Michael Jackson².

Ofcom considered that cumulatively the episode contained material with adult themes, subject matter and tone that were unsuitable for children.

We went on to assess whether the content was appropriately scheduled. Appropriate scheduling is judged according to all the relevant factors. These include such points as: the nature of the content; the likely number and age range of children in the audience; and, the nature of the channel.

² In June 2005, after a four-month trial, Michael Jackson was acquitted of 10 charges of child abuse.

Ofcom's Guidance about observing the watershed on television³ states that broadcasters should pay particular attention to post-watershed content which they wish to broadcast before the watershed. In this Guidance we note that:

"Some programmes or content, however, even if rigorously edited or carefully scheduled, may not be suitable for broadcast pre-watershed because of their adult themes or repeated offensive language (even if 'bleeped')".

Family Guy is well known as an animated comedy series aimed at an adult audience. The storylines, jokes and visual humour are frequently adult in theme and tone and challenge viewers. Programmes in the series therefore often – as in this case – contain material unsuitable for children. To Ofcom's knowledge, licensees who broadcast this content to a UK audience have done so after the watershed.

This episode of *Family Guy* focused to a great extent, as set out above, on the adult theme of Peter Griffin's belief that he had been raped, and the consequences of this for him, his friends and Dr Hartman. This theme was reflected cumulatively in the programme's adult tone, in sexual references, and in some instances of offensive language.

Ofcom noted MTG's representations that TV6 (Sweden) is aimed at males aged 15 to 34. However this episode started at 14:00 (Swedish time), well in advance of the 21:00 watershed. Further this programme was broadcast early on a Sunday afternoon, 16 August 2015, during Swedish school holidays. Children would therefore have been available to view at this time.

We had regard to the fact that according to MTG it had been broadcasting *Family Guy* for a number of years to Swedish viewers. This meant that the audience's expectations would have developed accordingly. In Ofcom's view, however, audiences (and in particular parents and carers) – including those in Sweden – expect material shown during the daytime at weekends on free to air channels to be appropriate for children to view. They would not, in our opinion, expect an animated comedy shown at 14:00 on a Sunday afternoon to focus so strongly on the adult theme of rape, with other sexual references and offensive language.

We noted that MTG did broadcast an on-screen and spoken warning before the programme started as detailed in the Introduction. In Ofcom's view this information helped to a limited extent to provide some protection to child viewers. However warnings before programmes shown during the daytime may be of limited assistance in protecting children because a number of children may watch unsupervised.

Ofcom acknowledges that the inclusion of adult themes and tone in an animated or cartoon programme can distance viewers from those themes and tone and mitigate their potentially unsuitability for child viewers to some extent. However, this does not mean that adult themes and tone included in pre-watershed animated or cartoon comedy programmes do not need to be suitably limited. Pre-watershed programmes must comply with Rule 1.3 the Code. Whether they do so depends on the nature of the content and appropriate scheduling.

MTG argued that the adult themes and tone were justified because: the prostate examination was a normal medical procedure; the Licensee "did not regard this as offensive and especially not harmful given that it was directly addressing a reluctance

³ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

among some people to receive vital medical tests”; and, “the tone is comedic throughout and the issues are not presented in a way that would be viewed as disturbing or inappropriate.” Although the programme to some extent highlighted that a prostate examination is a normal medical procedure, it did so by presenting it in the context of adult themes, an adult tone and some offensive language. As a result it was not appropriate for children to view. Similarly, in Ofcom’s view, although the comedic tone helped to a limited extent to lessen the potential harm to child viewers, it was not sufficient to counteract the overall effect of the adult themes and tone of this programme.

Many younger children potentially in the audience may not have understood the adult themes, and sexual and other references aimed at an adult audience. Ofcom was of the view however that a number of older children in the audience would have been likely to have understood a considerable number of the references. The fact that they did so, did not mean either that such references and themes in this pre-watershed broadcast made this content suitable for them to view, or that it was appropriately scheduled.

Ofcom took into account the Licensee’s point that attitudes to *Family Guy* in Sweden might differ from those in the UK. We therefore considered, when reaching a view in this case, whether viewer attitudes to protecting children from unsuitable material in a pre-watershed programme in Sweden might differ significantly from those in the UK. The MRTV, the Swedish Broadcasting Authority, provided some background information to Ofcom about the regulatory and cultural context to help inform our decision⁴. The MRTV explained that it had provisions analogous to Rule 1.3 with the same broad purpose of protecting children from unsuitable material broadcast before the watershed. It pointed out that it applied these provisions in a Swedish context, in which the MRTV focused in particular on protecting minors from violent or pornographic content during the day. The MRTV however confirmed that its approach was broadly consistent with Ofcom.

All Ofcom licensees must comply with the Code, wherever their audience is located. Ofcom gives some limited latitude when applying the Code if cultural norms differ appreciably between the UK and other countries. However, in Ofcom’s opinion, viewer and regulatory attitudes to protecting children from unsuitable material in daytime programming do not differ appreciably between Sweden and the UK. We also took into account that MTG deliberately chose for TV6 (Sweden) to be regulated by Ofcom, and therefore comply with the Code, rather than be regulated by the Swedish authorities.

Overall, when taking all of the above factors into account, we considered that the adult tone and themes throughout this episode, together with the cumulative impact of the sexual references and adult language, were not consistent with audience expectations of a programme shown at 14:00 on a Sunday. We therefore considered that this content was not appropriately scheduled and there was a breach of Rule 1.3.

As noted above, Ofcom recorded a breach of Section One of the Code against TV6 (Sweden) recently as a result of it broadcasting an episode of *Family Guy* pre-

⁴ In accordance with Ofcom Guidelines for dealing with regulators of other EU (and EFTA) states:

http://stakeholders.ofcom.org.uk/binaries/broadcast/international/Procedural_Guidelines.pdf

watershed. That previous case⁵ concerned violent material, whereas the current case related to unsuitable adult themes and tone. Ofcom is arranging a meeting with the Licensee to discuss how it approaches the compliance of pre-watershed programmes on TV6 (Sweden).

Breach of Rule 1.3

⁵ See http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb284/Issue_284.pdf, page 30.

In Breach

The Maizee Maiz Show

Ujima Bristol 98 FM, 28 July 2015, 14:00

Introduction

Ujima Bristol 98 FM is a community radio station broadcasting to BME communities in the St Pauls and Easton areas of Bristol. *The Maizee Maiz Show* is a discussion and music programme. The licence for Ujima Bristol 98 FM is held by Ujima Radio CIC (“Ujima Radio” or “the Licensee”).

A complainant alerted Ofcom to the broadcast of offensive language during this programme. A music track *Reach For Me* by the performer Jeanie Marie was broadcast which included the word “*fuck*”.

Ofcom considered the material raised issues warranting investigation under following Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast...when children are particularly likely to be listening...”.

We therefore asked the Licensee how the material complied with this rule.

Response

Ujima Radio admitted that the programme had not complied with Rule 1.14 of the Code and it expressed its “sincere apologies” for this incident.

The Licensee said that *The Maizee Maiz Show* is a “flagship show that highlights hard to reach young people’s issues”. It said that this particular edition was a “one off music special” during which Ujima Radio “played music which isn’t normally on our playlist”. It added that “juggling different guests and numerous amounts of content needing to be edited may have resulted in a mix up of tracks”.

The Licensee said that as a result of this incident it had implemented a “more rigorous music selection system to help avoid this type of mistake being made in the future”, and written and spoken to all of its presenters regarding the use of offensive language. It added that it was also ensuring all volunteers would receive a “refresher” course in relation to 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 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...”.

Ofcom research on offensive language¹ notes that the word “fuck” or its variations are considered by audiences to be amongst the most offensive language.

The Code states that the phrase “when children² are particularly likely to be listening” refers to: “the school run and breakfast time, but might include other times”. Ofcom’s guidance³ on offensive language in radio notes that:

“For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:

- between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays”.

In this case, the word “*fuck*” was broadcast during the afternoon on a Tuesday during the school holidays. Ofcom noted the various steps the Licensee had taken to improve compliance. However, because the most offensive language was broadcast at a time when children were particularly likely to be listening, the programme breached Rule 1.14.

Breach of Rule 1.14

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

² The Code says that “children” means: “people under the age of fifteen years”.

³ Ofcom Guidance, Offensive language on radio, December 2011, paragraph 13 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>).

In Breach

Alex Dyke

BBC Radio Solent, 12 August 2015, 10:00

Introduction

A total of 45 complainants alerted Ofcom to a discussion about breastfeeding that morning show presenter Alex Dyke introduced on this programme. In summary, complainants considered that Alex Dyke was extremely offensive about: breastfeeding; women who breastfeed; and those who support it. Complainants considered Alex Dyke to have been “shocking”, “sexist” and “disgusting”.

At the beginning of this particular programme, the presenter, Alex Dyke, introduced the discussion topic of breastfeeding as follows:

“I’ve got one of those taboo subjects I want to talk about. There’s kind of stuff that particularly in this day and age guys should say but I’m going to tell you what guys are thinking. Okay? There’s this kind of stuff. There’s stuff that we should be saying, particularly as a broadcaster – it is 2015 – but there’s the stuff that guys are really thinking: Ladies, Mums, we don’t like breastfeeding in public. We don’t honestly, we don’t. Something in the paper about this today, and, funnily enough, I experienced this yesterday. Er, mother who breastfeeds her son and her friend’s child, she sparked a firestorm on the internet. There is a picture here, it’s in most of the tabloids today. It is seen as a special bond between mother and baby, but this breastfeeding picture has sparked a frenzy online and divided opinion across the world. For the photograph doesn’t just portray a woman breastfeeding her 16 month-old son, she’s also at the same time, breastfeeding her friend’s 18 month-old boy. Now, yesterday I was on a bus, and there was a lady on this bus – she was quite a big girl – she had a toddler with her, a baby, some shopping stuff and she starts to breastfeed her baby on the bus. I didn’t know where to look. She’s putting me in an embarrassing situation. I didn’t really realise what was going on, I thought she was just cuddling her baby. Then I looked over and I realised what was going on and I wanted to look away but the bus was packed. There was nowhere else to look. Breastfeeding’s unnatural. I mean, I know it’s natural, but it’s kind of unnatural. It’s the kind of thing that should be done in a quiet and private nursery. We don’t want it in public, do we, fellas, come on?”

Alex Dyke discussed the issue of breastfeeding with several listeners who contacted the programme by telephone. He also made a number of references to breastfeeding in public, including the following:

“[Breastfeeding] was OK in the Stone Age when we knew no better. And people didn’t have their own teeth. When we didn’t have washrooms”;

“[Breastfeeding]’s not a great look”.

“You wouldn’t get your yummy mummies doing [breastfeeding]”.

“Men don't like it, they don't like it in public”.

Alex Dyke also referred to women who breastfed in public as: *“history teachers, geography teachers”, “librarian-types with moustaches”, “Brownie pack leaders”, and “earth mothers... the ones with moustaches, the ones who work in libraries, the ones who wear hessian”.*

In addition, the presenter suggested that breastfeeding women might wear *“breastfeeding signs”* around their necks or breastfeeding *“hats”*. He also labelled men who support breastfeeding in public as being *“wimps who are scared of their wives”*.

Alex Dyke broadcast the following apology on 13 August 2015, the day after the original programme:

“Yesterday on the show I spoke about breastfeeding. The comments I made during the programme were unacceptable and I would like to apologise for any offence caused”.

The presenter broadcast the following second apology a week later on 20 August 2015, when he returned to presenting the programme following a suspension:

“On Wednesday's show last week I made comments which, on reflection, were comments which were misguided, ill-judged and showed a lack of understanding and empathy with women who breastfeed. I have had time away from my radio show, and had space to think about what I said. I'd like to once again say I'm sorry for any offence these remarks caused, and know they were unacceptable. I have read many of the points of view sent to me and I've learnt a lot from the many conversations I've had in the last few days. Today is not the right time to revisit the topic, but it is something we will do at some point in the future”.

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

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

We therefore sought comments from the BBC as to how Alex Dyke's comments detailed above complied with this rule.

Response

The BBC accepted that “even within the context of the [Alex Dyke] show's normal format and the expectations of regular listeners, Alex Dyke's comments went beyond what was acceptable”.

By way of background the BBC said that: “Alex Dyke’s weekday morning show is a long-running feature on BBC Radio Solent and attracts a loyal regular audience”. It added that regular listeners are aware that Alex Dyke would engage listeners by “positing a bizarre or controversial view at the top of the programme and inviting listeners to challenge him on it”.

In this case, the BBC said that as a result of a news story about breast feeding: “Mr Dyke invited listeners to share their thoughts on breastfeeding in public, which he professed himself to be uncomfortable with...While that in itself is a genuinely held view, his further comments were intended as the sort of tongue-in cheek humour and exaggeration that regular listeners have come to expect from him”. In addition, the BBC said that “some callers did challenge [Mr Dyke] on air”.

The BBC argued that the fact that BBC Radio Solent station received two complaints about Alex Dyke’s various statements “suggests that the majority of those actually listening to the programme understood the spirit in which the comments were intended”. The BBC added, however, that the programme “subsequently generated discussion on social media websites, which triggered a much larger volume of complaints to the BBC”.

As a result of this incident, the BBC said that: the presenter “acknowledged the degree of offence that his comments had caused to some people”; senior editorial staff “made very clear to Mr Dyke” that his comments were “unacceptable”; Alex Dyke broadcast an apology the day after the original broadcast; the presenter was suspended “for a period in order to allow time to review the situation”; and, responses including Mr Dyke’s apology were sent to all those who had complained via the BBC website.

The BBC said that prior to Alex Dyke’s reinstatement he was required to undertake “refresher training, ‘listening back’ sessions, and conversations with the Editor”, which enabled the BBC to be sure “he had genuinely considered the effect of his comments”. It added that on 20 August 2015, Alex Dyke resumed broadcasting and at the beginning of his programme broadcast on that day he made a further apology.

The BBC also outlined further improvements it had put in place to improve compliance, such as the recruitment of a second producer to provide “additional editorial oversight” for the programme, and daily pre-broadcast checks of the proposed programme content of the *Alex Dyke* programme by senior staff.

In conclusion, the BBC said that: “Discussions are on-going at the station about providing an opportunity, when the time is right, for an in-depth look at the issues around breastfeeding involving relevant expert groups”.

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, which includes providing adequate protection for members of the public from harmful and/or offensive material. This objective is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment, as contained in Article 10 of the European Convention on Human Rights.

Ofcom took into account that, when discussing sensitive issues such as breastfeeding in public (particularly in the format of a live phone-in discussion programme), there is potential for remarks which are broadcast to cause offence. The Code places no prohibition on the broadcasting of offensive material – to do so would be an inappropriate restriction on a broadcaster's and the audience's freedom of expression. It is crucial that broadcasters are free to make programmes and allow discussions on air about issues like breastfeeding, and be able to include in these broadcasts views or remarks which may cause offence or may not be widely held. Broadcasters however must be mindful of how such views or comments are presented to ensure any offence is justified by the particular context. Rule 2.3 of the Code states that the broadcast of potentially offensive material must be justified by the context.

In coming to a Decision in this case, we therefore assessed first whether the material in this programme had the potential to cause offence.

During this programme, Alex Dyke introduced as a discussion topic the issue of breastfeeding in general, and breastfeeding in public in particular, and stated in unequivocal terms that men *"don't like breastfeeding in public"*. In making this point initially, Alex Dyke referred to his experience of having seen a woman (*"she was quite a big girl"*) breastfeed on a bus the previous day. The presenter then went on repeatedly to label breastfeeding in public as *"unnatural"*. He also described the activity as *"OK in the Stone Age when we knew no better"* and *"not a great look"*. Alex Dyke variously referred to women who breastfeed in public as: *"history teachers, geography teachers"*; *"librarian-types with moustaches"*; *"brownie pack leaders"*; and *"earth mothers... the ones with moustaches, the ones who work in libraries, the ones who wear hessian"*. In addition, the presenter suggested that breastfeeding women might wear *"breastfeeding signs"* around their necks or breastfeeding *"hats"*. He also labelled men who support breastfeeding in public as being *"wimps who are scared of their wives"*. We considered that these statements clearly had the potential to cause considerable offence.

We therefore went on to consider whether the broadcast of this potentially offensive material was justified by the context. As noted in the Code, context includes but is not limited to: the editorial content of the programme, the service on which the material was broadcast, the time of broadcast, what other programmes are scheduled before and after, the degree of harm or offence likely to be caused, likely audience expectations, warnings given to viewers, and the effect on viewers who may come across the material unawares.

This case involved a presenter on a morning discussion radio programme. Ofcom's Guidance¹ on offensive language in radio acknowledges that there is a rich and welcome tradition of live, hard-hitting, speech-based current affairs content, featuring presenters (e.g. 'shock jocks') or other contributors, which may present challenging listening to some audience members. Consistent with the right to freedom of expression, Ofcom recognises the importance of broadcast content of this type, provided that any potential offence is justified by the context. Therefore, while it was legitimate for the BBC to broadcast content that might be challenging in relation to sensitive matters such as breastfeeding, we analysed whether any factors may have contextualised Mr Dyke's statements.

¹ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>, paragraph 39.

We took into account that Alex Dyke is a presenter on a BBC local radio station with a loyal listenership and that he is known for dealing with issues by highlighting a controversial view and inviting listeners to challenge him on it. We considered that Alex Dyke raising the issue of breastfeeding in public would not have exceeded the likely audience expectations of this programme. However, by stating in unequivocal terms that he disapproved of breastfeeding in public, and his labelling of it as *“unnatural”*, *“OK in the Stone Age when we knew no better”* and *“not a great look”* would have been likely to have caused considerable offence. In reaching this view, Ofcom recognised that breast feeding is widely practised² within the UK population, and the fact that NHS advice³ states that breastfeeding is the “healthiest way to feed [a] baby”.

Mr Dyke’s opposition to breastfeeding mainly focused on this activity when carried out in public. However, we considered that his criticism would also have been understood as a criticism of breastfeeding in general and in particular as stereotyping certain women whom he perceived likely to breastfeed in public. We considered that the potential for offence was exacerbated by the fact that throughout the programme Alex Dyke dismissively stereotyped certain women (*“history teachers”*; *“geography teachers”*; *“librarian-types”*; *“Brownie pack leaders”*; and *“earth mothers”*) in what was clearly meant to be a pejorative manner. In addition, he used particularly disparaging descriptions of some of these groups of women (women *“with moustaches”* or who *“wear hessian”*).

We considered a further element increasing the level of offence was Alex Dyke’s categorical assertion that all men disapproved of breastfeeding in public (*“Men don’t like it, they don’t like it in public”*). Although challenged on this viewpoint on several occasions by both male and female callers, he dismissed these concerns by labelling men who supported breastfeeding in public as being, for example, *“wimps who are scared of their wives”*.

We noted the BBC’s statement that Alex Dyke’s disapproval of breastfeeding in public “is a genuinely held view” and that his further statements “were intended as the sort of tongue-in-cheek humour and exaggeration that regular listeners have come to expect from him”. The fact that broadcaster only received initially two complaints about this programme suggested, in the BBC’s view, that “the majority of those actually listening to the programme understood the spirit in which the comments were intended”. We were not persuaded by these arguments. While regular listeners may have been accustomed to Mr Dyke’s form of delivery, we considered that in this particular case his comments were capable of causing considerable offence. In addition, we considered that listeners unused to his presenting style would have not been likely to have perceived the presenter to have been adopting a “tongue-in-cheek” approach in this case. This was due to, in our view, the unequivocal manner in which Alex Dyke put forward his criticisms of breastfeeding in public and of women who feed their children in this way.

We noted that some audience members who contacted the programme by telephone did seek to challenge Alex Dyke’s views during the programme. In particular, one

² For example, the NHS Information Centre performs an Infant Feeding Survey every five years. The figures from the 2010 survey were published in November 2012 and showed that the proportion of babies breastfed at birth in the UK rose in the preceding five years by 5%, from 76% to 81% (see <http://www.unicef.org.uk/BabyFriendly/About-Baby-Friendly/Breastfeeding-in-the-UK/UK-Breastfeeding-rates/>).

³ See <http://www.nhs.uk/conditions/pregnancy-and-baby/pages/why-breastfeed.aspx>

listener said to Mr Dyke that: *"What we need is for you to shut up, you stupid man!"* This caller also labelled the presenter as being *"Totally, totally wrong, narrow-minded, old-fashioned, stupid"*. These contributions were very brief. Also we considered that the effect of these comments by audience members who challenged the presenter was undercut to some degree by the dismissive way, both directly and indirectly, that Mr Dyke dealt with those callers who disagreed with him. For example, at one stage Alex Dyke said the following to a male caller who had challenged his views: *"You're only saying this because you're scared of your wife"*. In our view therefore these comments helped to mitigate the level of offence caused by Alex Dyke's remarks only to a very limited extent.

For all the reasons above we concluded that the offence was not justified by the context.

We noted the various steps taken by the BBC, including the apologies which were broadcast on air, and sent to all those who had complained via the BBC website; the compliance training undertaken by Alex Dyke; and, the changes to compliance processes introduced on Radio Solent including daily pre-broadcast checks of the proposed programme content of the *Alex Dyke* programme by senior staff.

Nevertheless, in this case Alex Dyke made a series of statements over a substantial part of his programme which both stereotyped women who breastfed and were likely to be perceived as misogynistic. We were particularly concerned that Alex Dyke had been permitted to broadcast highly offensive comments with apparently minimal editorial oversight and concluded that the programme had breached Rule 2.3.

Breach of Rule 2.3

In Breach

News

CHSTV, 27 April 2015, 22:00

Introduction

CHSTV is a free-to-air satellite general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The Licence for CHSTV is held by CHS TV Limited ("CHS Ltd" or "the Licensee").

During monitoring, we noted the following news report broadcast on 27 April 2015 at 22:00. This was the day before Mayoral Elections took place in parts of Bangladesh¹. Ofcom commissioned an independent translation of the report. We gave the Licensee an opportunity to comment on this transcript and CHS Ltd confirmed that the translation was accurate.

Newsreader: *"BNP² Senior Vice Chairman Tareq Rahman has expressed his concern that Awami League³ has been conspiring to cast 30%-40% vote before 8am in the morning of the Election Day⁴. For this reason, he has requested the voters to line up in the polling stations in the early morning. He also has asked the new generation to capture election irregularities in their mobile phones in the form of photos and video clips and spread those inside and outside the country through social media. He has said that Awami League will definitely steal votes⁵ as they will not be able to sustain without this. He told all these in a programme organised by the UK BNP at an auditorium in East London. A report from Mohammad Jubair with Rezaul Karim Mirdha in charge of the camera".*

[The report began at this point.]

Tareq Rahman: *"The verdict will go in favour of the people".*

Reporter: *"BNP Senior Vice Chairman Tareq Rahman has clearly said that without stealing votes or vote robbery, Awami League will never be able to win. Otherwise, it will be difficult to maintain the existence of the party. He told these in a gathering organised in East London in memory of the late UK ex-president of the party Mr Komor Uddin".*

¹ On 28 April 2015 City Mayoral Elections took place for two city corporation posts in Dhaka and one in Chittagong.

² The Bangladesh Nationalist Party ("BNP") is the main opposition party in Bangladesh.

³ The Bangladesh Awami League ("Awami League") is the current ruling party in Bangladesh.

⁴ See Footnote 1.

⁵ By stealing votes, Ofcom understood Mr Rahman to allege the Awami League would rig the elections by placing irregular votes in ballot boxes before voting began.

- Tareq Rahman: *"They will steal [votes]. They will steal because it is in their bone-marrow. They will not be able to survive in Bangladesh without stealing votes. If there is an election in Bangladesh without irregularities then it will be difficult to find the existence of Awami League. That's why whether you call it vote theft, vote robbery, or vote hijack, they have to do it. Now they will have to do it even more. Why? They have to steal votes to protect them from the trial they have to face due to the people they have killed in the past 5/6 years and the money they have looted in the last 5/6 years".*
- Reporter: *"Tareq Rahman requested the voters to line-up in the polling station from 6am in the morning and return home with the results".*
- Tareq Rahman: *"Please be in the lines in front of the polling stations, for at least a day, at 6am even at 5am. I have a request to the brothers and sisters of the new generation, please let the world know any irregularities, any wrong doings that you may see in any place. Whether it is by capturing a photo, a video, through Facebook, whatever way is convenient for you, please let the countrymen know the incidents of vote theft happening in any place".*
- Reporter: *"The gathering was presided over by the UK BNP president Saesta Chowdhury Kuddus and conducted by Koiser Ahmed. Other people who spoke at the gathering include, International Secretary Mahidur Rahman, ex-acting president Mia Moniur Alam, ex-convenor M A Malek, ex-Secretary barrister M A Salam and many others. Tareq Rahman said if there were an appropriate government, Ilyas Ali⁶ and Salahuddin⁷ could have been found".*
- Tareq Rahman: *"If there were a genuine government, there would have been a fair investigation of the money looted from three million people through share market. If there were a genuine government directly elected by the people, then we could have found Ilyas Ali. If there were a genuine government, then we could have found Salahuddin, we could have found many of our brothers whose whereabouts are not known".*
- Reporter: *"He requested the people of the country to stand beside BNP for the sake of the country".*
- Tareq Rahman: *"They have introduced the country to the world, as a country of killing and disappearance of people, so it is the responsibility of the 160 million people to protect the country, to bring the country at a normal state. The people of the country need to shoulder this responsibility. BNP alone will not be able to achieve this. BNP*

⁶ Ilyas Ali is a BNP politician who was last seen in Dhaka on 17 April 2012. Members of the BNP have alleged that Awami League was responsible for the disappearance, although this is denied by the party.

⁷ Salahuddin Ahmed is the chief spokesman for the BNP. At the time of broadcast (27 April 2015) Mr Ahmed had been reported missing, but was subsequently found in late May 2015.

proceeds with the people and that's why the people need to come forward".

Rule 6.1 states: "The rules in Section Five, in particular the rules relating to matters of political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums".

As this report dealt with the Bangladeshi Mayoral elections taking place on 28 April 2015, and was broadcast the day before polling for these elections took place, Rule 6.1 was applicable. By virtue of this rule, the City Mayoral Elections that took place in Bangladesh on 28 April 2015 were considered by Ofcom to be a "major matter of political or industrial controversy and major matter relating to current public policy". As a consequence, the rules in Section Five of the Code applied in relation to this programme, but in particular Rules 5.11 and 5.12. Ofcom therefore considered the material broadcast on 27 April 2015 raised issues warranting investigation under Rule 6.1 and under the following rules:

Rule 5.11: "In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes."

Rule 5.12: "In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented."

In addition, as the material above was presented as part of a news report, we also considered it raised issues under Rule 5.1. This states:

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

We therefore asked the Licensee how the material complied with this rule.

Response

The Licensee said that in Bangladesh the publication of any statements made by Mr Rahman was "banned by the current government of Bangladesh" and "no television or print media [in Bangladesh] is therefore allowed to publish or broadcast his comments".

The Licensee also said it had previously "contacted officials of the current [Bangladeshi] government on numerous occasions to comment on statements" by Mr Rahman but "it became clear that they cannot and will not respond".

For these reasons, the Licensee said it considered the news report was "as impartial in the circumstances" as possible. The Licensee also emphasised that the election took place in Bangladesh and that "no person in the UK was allowed to vote" in the election.

Despite this, the Licensee admitted that it could see “how this type of reporting might give rise to potential issues under [...] the Code”. However, the Licensee stated that it was not its “intention or [...] aim to break or bypass the rule in any way or form”.

The Licensee also told Ofcom that “in an effort to stay within the letter of the rules [it] has now issued a directive [to its staff] to contact the Bangladeshi government for their comment on anything that [it] broadcast[s] from Mr Rahman”.

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 elections.

When applying the requirement to preserve due impartiality, Ofcom recognises the importance of the right to freedom of expression, as contained in Article 10 of the European Convention on Human Rights.

Ofcom’s Guidance⁸ to Section Six (Elections and Referendums) of the Code (“the Section Six Guidance”) states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover elections, they must comply with the rules set out in Section Six of the Code. The Section Six Guidance makes clear that “Rule 6.1 applies to the coverage of elections or referendums both inside and outside the UK”.

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 on one hand, 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.

The effect of Rule 6.1 is to ensure broadcasters must preserve due impartiality in their coverage of elections and referendums. This is to help ensure that elections are conducted fairly. Rule 6.1 requires broadcasters’ coverage of elections to comply with the rules in Section Five.

Due to the fact that the Mayoral Elections in Bangladesh were a matter of major political or industrial controversy and major matter relating to current public policy, Rules 5.11 and 5.12 applied in this case. These require due impartiality to be preserved by broadcasters in their coverage of major matters of political or industrial controversy and major matters relating to current public policy. In addition, when dealing with such matters, “an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes”.

In assessing whether due impartiality has been preserved, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. “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.

⁸ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

We therefore assessed whether in accordance with Rules 5.11 and 5.12 in the broadcast of 27 April 2015, “due impartiality was preserved” and “an appropriately wide range of significant views were included” and “given due weight”. We noted that this news report included serious and highly critical allegations by the Senior Vice Chairman of the Bangladesh Nationalist Party, Tareq Rahman, against the ruling Awami League party. They included that Awami League would “*definitely steal votes*” in the following day’s mayoral elections. Mr Rahman also alleged that Awami League had killed people and “*looted*” money.

Given the serious nature of the allegations made in the report and their relevance to the elections taking place the day after this news report was broadcast, it was necessary for the Licensee to ensure that due impartiality was preserved in the way they were presented. In particular Rule 5.12 requires that in dealing with electoral matters “an appropriately wide range of significant views must be included and given due weight.” It is not Ofcom’s role to decide what in the circumstances of this case the Licensee needed to have done to comply with the relevant due impartiality rules. It could for example in the news item have reflected the views of the Awami League in the news item to some extent, or perhaps demonstrated in an appropriate way that it had given the Awami League an appropriate and timely opportunity to respond to the critical statements being made by Mr Rahman.

We noted however that at no point did the news report reflect the viewpoint of the Awami League at all in response to these highly critical statements, or even refer to any attempts made by the Licensee to seek comment from the Awami League on these specific allegations.

In coming to our Decision in this case, we noted the Licensee’s assertion that Awami League “will not respond to any remarks or comments by Mr Rahman”. However, Ofcom’s guidance to Section Five of the Code⁹ (“the Section Five Guidance”) clearly states:

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

We noted that no such techniques were used in the news report.

We also noted the Licensee’s comments that “the stance of the current Government is well known in the Bangladeshi community”. However, the Section Five Guidance makes clear that broadcasters “must not assume prior knowledge on the part of the audience of particular alternative views”. We therefore considered that any prior knowledge the audience may have had of Awami League’s possible conduct during the mayoral elections or likely response to the allegations made in the report did not remove the requirement for the report to have been presented with due impartiality.

⁹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

Given the above, Ofcom concluded that the material breached Rule 6.1 (with reference to Rules 5.11 and 5.12).

In addition, as the material formed part of a news broadcast, it was also required to comply with Rule 5.1. This requires news to be “presented with due impartiality”. This obligation applies potentially to any matter covered in a news programme, not just matters of political or industrial controversy and matters relating to current public policy.

In this case, the news report represented the views of Tareq Rahman, the Senior Vice Chairman of the BNP. These views were highly critical of the Awami League party and included serious accusations about its electoral and other conduct. Furthermore, they were broadcast a matter of hours before polls opened in the Mayoral Elections taking place in Bangladesh.

Accordingly, this report dealt with a matter which needed to be presented with due impartiality in news programmes of this nature.

Ofcom has set out above the reasons why we considered that the viewpoint of the Awami League needed to be represented in the report to some extent or, in the absence of any viewpoint of the Awami League being available, other possible editorial techniques could have been used to ensure due impartiality. In the absence of alternative viewpoints, or other editorial techniques that may have preserved due impartiality, we considered this news report was also in breach of Rule 5.1.

Breaches of Rules 5.1 and 6.1 (and 5.11 and 5.12)

In Breach

Chart Show's Top 40 Singles Chart

Chart Show TV, 31 August 2015, 14:00

Introduction

Chart Show TV is a music television channel operated by CSC Media Group Limited ("CSC Media" or "the Licensee").

Chart Show's Top 40 Singles Chart is a regular programme which features a countdown of the top 40 music videos in the UK at the time of broadcast. Ofcom received a complaint from a viewer that the video for the song *Body on Me* by Rita Ora and Chris Brown, which appeared in the programme on 31 August 2015, featured a visual reference to Beluga vodka.

Ofcom viewed the video and noted that, during a scene involving an embrace between Rita Ora and Chris Brown, there was a three-second close-up shot of a bottle of Beluga vodka and some glasses.

Ofcom requested information from the Licensee to decide whether the reference constituted product placement as defined in the Code¹. The Licensee confirmed that there was no commercial arrangement in place between CSC Media, the producer of *Chart Show's Top 40 Singles Chart*, or any 'connected person' and Beluga, to air the reference to Beluga vodka. Ofcom therefore considered that the complaint raised issues warranting investigation under the following rule of the Code:

Rule 9.5: "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming."

We therefore asked CSC Media for their comments on how the video complied with this rule.

Response

The Licensee stated that the shot of the bottle of Beluga vodka was left in the video in error. It explained that its edit and compliance team had made a number of edits to the video to remove sexualised content and that, in concentrating on ensuring that the video was compliant from that perspective, the shot of a Beluga vodka bottle had been missed.

¹ The Code defines product placement as "The inclusion in a programme of, or reference to, a product, service or trademark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not product placement".

CSC Media emphasised that the reference was not aired as a result of a commercial arrangement between themselves and any other party. The Licensee also told us that the video was withdrawn and the product shot edited out, as soon as it had been alerted to the issue by Ofcom, and that it had reminded its staff about the importance of ensuring that similar material was not broadcast.

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 a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including Rule 9.5 among other rules.

Ofcom’s published guidance² on Rule 9.5 states: “Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. A product that is integral to a scene may justify a greater degree of product exposure...However, where a product is used as a set prop, care should be taken to avoid close-up or lingering shots.”

In this case, a bottle of Beluga vodka was shown full screen for over three seconds during the middle of a music video. The product did not form part of the narrative of the video, which was about an imagined relationship between the two singers. As such, we considered that including a lingering close-up shot of the product could not be not justified editorially and resulted in it being given undue prominence.

We noted that the Licensee: acknowledged the material had been broadcast in error; had re-edited the material once it had been made aware of the complaint; and reminded its staff about the importance of ensuring compliance with all aspects of the Code. However, for the reasons set out above, we have recorded a breach of Rule 9.5 of the Code.

Breach of Rule 9.5

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

In Breach

Azan-e-Magrib

Bangla TV, 8 July 2015, 21:20

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

A complainant alerted Ofcom to sponsorship credits broadcast during *Azan-e-Magrib*, a three-minute Islamic call to prayer sponsored by Icon College of Technology and Management, and JMG Cargo and Travel.

We viewed the material and obtained an independent translation of it. We noted that, on a number of occasions, two sponsorship credits appeared together in the left-hand corner of the screen. The first credit consisted of the text "*Icon College of technology & management*", followed by a telephone number and a website address, underneath a logo for the same organisation. The logo included the message: "*Educating for better jobs*". The second credit consisted of the text (incorporating the organisation's logo) "*JMG cargo*", followed by a telephone number and a website address. The right-hand side of the screen showed scenes of pilgrims attending the Sacred Mosque in Mecca. This visual content was accompanied by the Azan¹.

Section Nine of the Code requires programme sponsorship to be identified clearly by means of sponsorship credits, which must be broadcast at the beginning and/or during and/or end of the sponsored programme. However, sponsorship credits may not be shown during sponsored programmes in which product placement² is prohibited. Rule 9.12(a) of the Code prohibits product placement in religious programmes produced under UK jurisdiction³. Ofcom's Guidance to Section Nine of the Code makes clear that (in the context of Section Nine) a religious programme "is a programme that covers religious acts of worship or whose main focus is religious belief". As a call to prayer, *Azan-e-Magrib* was a religious programme within the terms of Rule 9.12(a) of the Code.

Ofcom therefore considered the material raised issues warranting investigation under Rule 9.23 of the Code, which states:

"Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme."

¹ An Azan (or Adhan) is an Islamic call to prayer or worship, recited by the muezzin (the appointed person at a mosque to lead such calls) at prescribed times of the day.

² Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

³ As also set out in Section Nine of the Code, "programmes produced under UK jurisdiction" means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the Audiovisual Media Services Directive).

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

Response

Bangla TV acknowledged that there had been a breach of the Code, stating: “It was an unfortunate mistake by our commercial team in the busy month of Ramadan. We have already disciplined our commercial team to avoid any such mistake in future.” The Licensee further explained that its senior management, commercial and compliance teams had recently undergone a number of personnel changes, which it recognised was “not an excuse”, but had caused some disruption for it as “a small company”. Bangla TV added that it “sincerely regret[ted] the mistake”, and had taken action to “avoid [making] such [a] mistake again in future”, including training and guidance for its staff.

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 a number of standards objectives. These include that “the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes” and “the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)”. The Act prohibits the inclusion of product placement in religious programmes made under UK jurisdiction. These standards are reflected in, among other rules, Rule 9.12(a) of the Code, which prohibits product placement in religious programmes, and Rule 9.23 of the Code, which prohibits the broadcast of sponsorship credits during programmes in which product placement is prohibited.

Azan-e-Magrib was a religious programme under the terms of the Code, as demonstrated by the words of the Azan:

*“God is the greatest, God is the greatest
God is the greatest, God is the greatest
I bear witness that there is no deity worthy of worship except God
I bear witness that there is no deity worthy of worship except God
I bear witness that Muhammad is the Messenger of God
I bear witness that Muhammad is the Messenger of God
Hasten to the prayer
Hasten to the prayer”*

Although sponsorship credits may be broadcast before and/or after religious programmes, Rule 9.23 prohibits them from being shown during such programmes. On a number of occasions during this programme, sponsorship credits for Icon College of Technology and Management and JMG Cargo and Travel appeared on the screen. The content was therefore in breach of Rule 9.23, as acknowledged by the Licensee. Bangla TV explained this compliance failure with reference to “the busy month of Ramadan”, and the disruptive impact of multiple personnel changes on “a small company”. Ofcom emphasises that licensees are required to ensure compliance with the Code at all times and regardless of the size of their operations.

We note the steps Bangla TV said it had taken to improve compliance in this area. However, in issue 264 of Ofcom's Broadcast Bulletin dated 20 October 2014⁴, Ofcom recorded a previous breach of Rule 9.23 against another edition of *Azan-e-Magrib*, broadcast on Bangla TV on 7 July 2014, for the inclusion of sponsorship credits during a religious programme. We are concerned that the Licensee has again breached this prohibition and therefore have requested that the Licensee attend a meeting with Ofcom to discuss its compliance processes.

Breach of Rule 9.23

⁴ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb264/obb264.pdf>.

Not in Breach

Panorama

BBC1, 3 August 2015, 20:30

Introduction

Panorama is BBC1's long running and well established current affairs programme, featuring interviews and investigative reports on a wide variety of subjects. Since 2007 the programme has usually been approximately 30 minutes in duration and scheduled at 20:30 on a Monday evening, although occasionally the programme is longer and shown later in the channel's schedule. The episode in this case, *Fighting Terror with Torture*, was presented by reporter Hilary Andersson.

Ofcom received four complaints from viewers who objected to the programme depicting violent and graphic re-enactments of torture. Two complainants referred to child viewers and considered this material to be inappropriately scheduled before the watershed.

The programme

Before the programme started it was introduced by the pre-broadcast announcement as follows:

"Now on BBC1, how far should we go in the fight against terrorism? With disturbing details of CIA methods condemned as torture, Hilary Andersson reports now for Panorama".

In the headline sequence which began the programme, the reporter said she was investigating *"America's secret programme of enhanced interrogation condemned as torture"*. She continued by asking whether the *"extreme methods used after 9/11 yielded life saving intelligence?"* and stating that in the programme for *"the first time a CIA waterboarding victim describes his ordeal"*. She also said that *"tonight we hear how Britain shared in intelligence straight from the torture room"*.

The programme laid out the following background:

- After terrorist attacks by al-Qaeda on the World Trade Centre and other high profile locations in the US on 9 September 2001, the US started what it described as the "War on Terror". As part of the War on Terror various individuals thought to be linked in some way with al-Qaeda came were apprehended and detained by the US.
- When questioning these individuals in 11 secret locations around the world the US Central Intelligence Agency ("CIA") was authorised to use various extreme methods known as the "Enhanced Interrogation Programme".
- Following his election as US President in 2008, President Obama shut down the CIA interrogation programme using these extreme methods and the Senate Select Committee on Intelligence ("the Committee") began an investigation. The Committee's report was published in December 2014. According to *Panorama*, the Committee's verdict on the CIA's use of the extreme interrogation methods was *"damning"*. In an interview in the programme, the Chair of the Committee,

Senator Dianne Feinstein, said that as a result of the CIA's use of extreme interrogation methods against suspected Islamist terrorists "*no actionable intelligence [was] gained*".

- The Committee's findings were disputed by some former members of the CIA who were interviewed in the programme. One, Buzzy Krongard (CIA Executive Director from 2001-2004), confirmed that the extreme methods could be described as "*torture*". He also stated that the CIA passed potentially useful information extracted by these methods to British intelligence and that in his opinion British intelligence must have known that the CIA was employing these interrogation techniques.
- An interview was included with Mohammed El-Shari'ya, who had been imprisoned and interrogated by the US at a secret location in Afghanistan because they thought he was a member of al-Qaeda (an allegation he has always denied). Mr El-Shari'ya described being interrogated by CIA agents who used "waterboarding" and "black-out boxes".

The programme included re-enactments of waterboarding and black-out boxes and also of a third technique known as "walling"¹. The three re-enactments all took place under the supervision of a former US Navy instructor, Malcolm Nance (who had experience of using the techniques when training US military personnel to resist extreme interrogation methods), and of a medical team. It was made clear to viewers on several occasions in the programme that all the individuals who underwent the re-enactments had given their informed consent and could end their simulated interrogation immediately at any time. The re-enactments all took place in a large and bare hangar.

The following sequences were broadcast:

1. "Black-out box": This sequence had a duration of around two and a half minutes and was shown five minutes into the programme at approximately 20:35. The reporter Hilary Andersson, was shown being pushed towards and being aggressively ordered by three hooded and masked men to get into a wooden box which was painted black. The reporter speaking in commentary said the box had a number of small airholes and was so small the reporter could only crouch in it on her hands and knees, and not move around. Once Hilary Andersson was inside, the lid was slammed shut and locked. A small camera inside the box recorded the reporter's reactions. After two minutes, Hilary Andersson said the box had become "*suffocatingly hot and claustrophobic*". At around 20:36 one of the hooded men placed a loudspeaker next to the black-out box which played loudly the sounds of a baby wailing and crying. Close-ups of Hilary Andersson's face filmed from within the box showed her visibly disturbed by these sounds of crying. The reporter, speaking in commentary said that after ten minutes in the box she had found it difficult to breathe, and the reporter was shown shortly afterwards distressed, shouting and banging on the walls of the box, asking to be released. Two of the masked men unlocked the box after Hilary Andersson had been confined in it for about 12 minutes, and pulled her up into a standing position, shouting "*stand up*" as they did so. She was helped out of the box and appeared shocked and dazed.

¹ "Walling" is an interrogation technique in which the person being interrogated is pushed violently against a "*flexible wall*".

2. “Walling”: This sequence began 12 minutes into the programme at around 20:42 and lasted approximately 45 seconds. A rectangular wooden wall approximately eight feet high and ten feet wide was shown fixed to one side of the large hangar where the re-enactments were taking place. Two masked men were shown leading a third hooded person towards the wooden wall, where another masked man was waiting. The hooded person was held against the wooden wall by the first two masked men, and the third masked man pulled off the hooded person’s hood to reveal that it was Hilary Andersson. The third masked man then gripped the reporter’s collar tightly and, after shouting *“look at me, look at me, look at me”* into the reporter’s face, slammed her back against the flexible wooden wall five times. The final slam against the wall was shown in slow motion and Hilary Andersson was shown to grimace. The third masked man released her collar and ordered her not to move. In commentary the reporter said of this experience: *“It hurts. It’s shocking”*.
3. “Waterboarding”: This sequence had a duration of around two minutes and began 18 minutes into the programme at about 20:48. In the briefing before this re-enactment Malcolm Nance said: *“This is not controlled drowning. It is drowning in the end...Done wrong the person can die...”*. The reporter explained in commentary that the programme was demonstrating this interrogation procedure accurately for the first time in public but would not show all the details. One of Malcolm Nance’s team, Chris Sampson, had volunteered for the demonstration under *“strictly controlled conditions with medical backup”*. Chris Sampson was shown being blindfolded and strapped to a sloping wooden table by three hooded men with his head at the lower end. His head was placed in a special block so it was immobilised. A hooded man instructed Chris Sampson to stay still and answer questions, and then at about 20:49 he began to pour water over Mr Sampson’s face and mouth while shouting taunting questions such as: *“You are drowning?”* and *“Were you born a bunny rabbit?”* Chris Sampson was shown to be in distress and choking with his legs flailing. After eighteen seconds Mr Sampson indicated he could bear no more. The men unstrapped Chris Sampson quickly and rolled him on to the floor to recover. Paramedics checked him and then Hilary Andersson was shown asking Sampson: *“Your heart still pounding?”* He replied: *“Maybe a bit, yeah. I’m pretty sure it wouldn’t take long to break”*.

Ofcom’s investigation

Having received the complaints, Ofcom assessed the content and considered that it raised potential issues warranting investigation under the following rules:

- Rule 1.3: “Children must... be protected by appropriate scheduling from material that is unsuitable for them”.
- Rule: 2.3 “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation)”.

Ofcom therefore asked the BBC how the programme complied with these two rules.

Response

The BBC argued that the programme complied with Rules 1.3 and 2.3.

Rule 1.3

The BBC said that, although it was scheduled pre-watershed at 20:30, *Panorama* had a long and well established reputation for covering sometimes difficult and challenging subjects which parents might feel are unsuitable for children. “The subject of this particular episode was...of significant public interest and reporting it would, inevitably, involve the depiction of potentially disturbing material if the subject was to be done justice and its adult audience to be served appropriately”. The broadcaster added that “the familiarity of parents in the audience with *Panorama*’s reputation is itself a significant safeguard against children being exposed to inappropriate material”. The BBC argued that the pre-broadcast announcement (see Introduction) – which it described as “a strong content warning” – provided a further safeguard by warning the audience about the type of material which would be depicted later in the programme.

Rule 2.3

The broadcaster said that the pre-broadcast information also warned the audience generally about the content of the programme. The BBC also pointed to various other steps it took in editing and structuring the programme to mitigate the extent to which the content might cause harm or offence. Throughout the programme it was repeatedly made clear that: what was being shown were reconstructions of CIA methods, not actual scenes of torture; those taking part had volunteered to take part in the programme; “detailed safety precautions” were in place; and the re-enactments could be ended at any moment by the person undergoing them, and this was seen to happen.

The BBC added that what it considered “the most potentially disturbing scenes” – those depicting waterboarding – were deliberately shown later in the programme. This was so that they were shown “as close to the watershed as possible and when the subject and the style of presenting it had been made clear”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that persons under the age of eighteen are protected, and that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. These duties are reflected in Section One and Section Two of the Code respectively.

In reaching a Preliminary View in this case, Ofcom has taken account of the audience’s and broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom needed to seek an appropriate balance between ensuring children and members of the public in general were adequately protected from material which may be considered harmful or offensive on one hand, and the broadcaster’s and audience’s right to freedom of expression on the other.

The Code contains no prohibition on showing distressing or graphic content before the watershed because the broadcast of such material may be appropriately

scheduled and justified by the context. Ofcom believes that, taking into account the right to freedom of expression, it is important for current affairs programmes to be able to report freely on subjects in the public interest. However, when broadcasting such material, broadcasters must comply with the Code.

Rule 1.3

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content, the time of the broadcast, the likely audience expectation keeping in mind the availability of children to view during school time, weekends and holidays.

We first considered whether the programme contained material unsuitable for children.

Ofcom noted that programme contained reconstructions of three extreme methods of interrogation used by the CIA: the reporter Hilary Andersson being confined in a small and claustrophobic “black-out box” for 12 minutes while the screams of a distressed baby were played loudly; the reporter being slammed aggressively five times against a flexible wooden wall in a procedure known as “walling”; and, a volunteer, Chris Sampson, being “waterboarded”. These methods have all been condemned by some as forms of torture. It was clear to viewers from what they saw of, and heard from, those taking part in the reconstructions that these extreme methods caused them considerable pain and distress. This was especially the case in Ofcom’s view with the “waterboarding” where Mr Sampson was shown to flail his legs and choke with distress. We therefore concluded that the programme contained distressing material unsuitable for children.

We then went on to assess whether the programme had been appropriately scheduled.

Panorama is the BBC television’s longest running and flagship current affairs documentary programme, and has a well-established history of investigative reporting on controversial matters on BBC’s main public service television channel. Ofcom considered that these factors shaped to some extent the likely expectations of the audience when this programme was shown. Many in the audience, including parents and carers, would have expected challenging current affairs content on this channel at this time.

The subject of this episode was the secret programme of extreme interrogation methods used by CIA against suspected Islamist terrorists, which a number of people have described as forms of torture. To illustrate these methods, and their effect on those who were subject to them, the programme interviewed a man who had been interrogated in this way (Mohammed El-Shari’ya). It also staged reconstructions of three of these procedures with volunteers. This content was therefore challenging and likely to cause some level of distress to any children in the audience.

Panorama has a long and well established reputation for showing challenging content, and for covering subjects which are the subject of intense public controversy and debate. It is also well known that the programme is aimed at an adult audience and that from 2007 the programme has usually been approximately 30 minutes long and scheduled at 20:30 on Monday evenings. Because of its serious subject matter and approach, it was Ofcom’s view that even though this programme was broadcast

on a Monday night during the summer school holidays, it was reasonable for the BBC to assume that there would not be a significant proportion of children in the audience.

Ofcom's guidance on Section One of the Code² states: "It is accepted that it is in the public interest that, in certain circumstances, news programmes may show material which is stronger than may be expected pre-watershed in other programmes as long as clear information is given in advance so that adults may regulate the viewing of children".

Before the programme started the pre-broadcast announcement informed viewers that the programme contained "*disturbing details of CIA methods condemned as torture*". Warnings before programmes shown before the watershed may be of limited assistance in protecting children because a number of children may watch unsupervised. However in Ofcom's view, broadcasters can reasonably expect fewer children to be watching, and fewer of them to be watching unsupervised, as the 21:00 watershed approaches. They can expect parents and carers to play an important role in supervising what television children in their care are watching. In Ofcom's view, therefore, this pre-broadcast information, through alerting adults to the content, together with the fact that a number of parents and carers were familiar with *Panorama* as a long-running and serious current affairs programme aimed at adults, did help to provide some protection to child viewers.

The start of the programme also contained material informing viewers about the challenging content to be shown later in the programme. The reporter referred for example to: "*America's secret programme of enhanced interrogation condemned as torture*"; "*extreme methods used after 9/11*"; and the programme featuring for "*the first time a CIA waterboarding victim*" describing "*his ordeal*". Further, she illustrated her introductory commentary by showing brief footage in black and white of the reconstructions of the "black-out box", "walling" and "waterboarding" interrogation techniques featured later in the programme.

We took into account that:

- what in our opinion was the least challenging content of these reconstructions – the "black-out box" – was shown first at approximately 20:35;
- the "walling" sequence, which had more potential to cause distress, began at approximately 20:42 and was shorter, with a duration of around 45 seconds; and
- the material which in our opinion was the most challenging – the "waterboarding" sequence – commenced at approximately 20:48, shortly before the watershed.

Ofcom also noted that it was made clear on a number of occasions in the programme that: the scenes showing extreme methods of interrogation were clearly identified as reconstructions of CIA procedures, not footage of real events; all the participants were volunteers and could (and were shown to) stop the re-enactments at any time; and the reconstructions all took place under medical supervision. The participants all spoke about their experiences in the programme, and it was therefore clear to viewers that, although distressed by what they had undergone, all fully recovered quickly. These factors in Ofcom's view helped mitigate any potential distress to child viewers.

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

Ofcom had careful regard in this case to the right to freedom of expression of the broadcaster and the audience. Clearly the use by the CIA of interrogation methods condemned as torture was a subject of significant public interest in the UK, especially since the programme contained allegations that the CIA had shared information extracted by these methods with British intelligence personnel and that British agencies were aware of the use of these methods. This subject by its nature was controversial. By broadcasting a programme of this nature before the watershed, the BBC needed to balance the editorial aim of informing viewers in a full and frank way against the requirement to give appropriate protection to any children who might be watching before the watershed. For all the reasons set out above, Ofcom's view was that the BBC, when broadcasting this programme before the watershed at 20:30, achieved this balance.

This programme was therefore appropriately scheduled, and Rule 1.3 was not breached.

We did however note that the BBC described the pre-broadcast announcement in this case to have been a "strong content warning". Although Rule 1.3 was not breached in this case, Ofcom considered that the pre-broadcast information could and should have been more specific in warning parents and carers about the nature of the powerful and graphic content in the programme that followed, for example by referring clearly to the reconstructions of the extreme methods of interrogation included in the programme.

Rule 2.3

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

We first considered whether the programme had the potential to cause offence. The programme featured three graphic reconstructions of extreme and violent methods of interrogation condemned as torture. The distress suffered by the participants was visible. This material, in our view, was clearly capable of causing offence.

We therefore went on to consider whether the broadcast of these sequences was justified by the context. In reaching a view on this point, we took account of many of the same factors outlined above under Rule 1.3 when assessing whether the same material was appropriately scheduled. Ofcom noted in particular that: *Panorama* has a long-established history of investigative reporting on controversial matters on BBC One, aimed at an adult audience which expects the programme to contain challenging material, and it is regularly scheduled at 20:30 on a Monday night; there was a warning about the content before the programme started; the most distressing scenes of "waterboarding" were shown about 12 minutes before the watershed; and it was made repeatedly clear to viewers that the scenes with the extreme methods were all re-enactments using volunteers only and subject to detailed safety precautions. Ofcom also took careful account of the right to freedom of expression of the broadcaster and the audience when considering Rule 2.3. This right is especially important in the context of broadcasters wishing to make and transmit programmes to mass audiences about subjects of considerable public interest which may contain – as here – content which may cause offence to some adults in the audience.

For all these reasons, the broadcast of this potentially offensive material was justified by the context. The BBC therefore applied generally accepted standards in this case and Rule 2.3 was not breached.

Not in Breach of Rules 1.3 and 2.3

Advertising Scheduling cases

In Breach

Advertising minutage

TLC (Slovenia), 14 June 2015, 22:00

Introduction

TLC broadcasts documentaries and reality programmes on cable and satellite platforms. The licence for the service is owned by Discovery Communications Europe Limited ("the Licensee").

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

"time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes".

Ofcom was alerted to an incident that occurred on the Slovenian feed of the service that resulted in the 22:00 clock hour exceeding the permitted allowance by five minutes and 20 seconds.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA and therefore sought comments from the Licensee as to how the material complied with this rule.

Response

The Licensee said that the incident was caused by a technical failure specific to the Slovenian feed of TLC. It explained that this feed contained two additional triggers for local advertising to be broadcast in the 20:00 clock hour. However, the Licensee added that these additional triggers did not feature in the schedule it sent to its Broadcast Schedule Operations team and as such, concluded that the fault occurred during transmission.

The Licensee acknowledged that a similar incident happened with this particular feed of TLC in October 2014 and that additional checks had been introduced to prevent unscheduled advertising breaks from going to air. The Licensee said unfortunately, the breaks were overlooked on this occasion.

In a bid to resolve the matter, the Licensee said it had sent its sales agency alternative equipment. It added, however, that it will continue to closely monitor the advertising break insertions on this particular feed until the matter is resolved.

The Licensee said that upon being made aware of the issue by Ofcom, it arranged to drop the equivalent amount of advertising gained from the incident.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is 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 (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted the Licensee’s decision to drop advertising minutage from its schedules to compensate for the overrun. We also noted the measures it has undertaken to identify and resolve the problem. However, the amount of advertising in this clock hour significantly exceeded the permitted allowance and therefore breached Rule 4 of COSTA.

As referenced by the Licensee, a significant minutage overrun was caused by a similar set of circumstances in October 2014¹. We are therefore concerned that a further significant breach of COSTA has occurred for the same reason.

Ofcom puts the Licensee on notice that it will consider further regulatory action in the event of a recurrence.

Breach of Rule 4 of COSTA

¹ See Ofcom Broadcast Bulletin 278
(http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb278/Issue_278.pdf)

Broadcast Licence Conditions cases

In Breach

Retention and production of recordings

1 Ummah FM (Reading), 24 to 26 August 2015

Introduction

1 Ummah FM is a community radio station licensed to provide a service for the Muslim community of Reading. The licence is held by 1 Ummah FM Community Interest Company ("1 Ummah CIC" or "the Licensee").

Ofcom received a complaint regarding the Licensee's compliance with its Key Commitments¹. We therefore asked 1 Ummah CIC for recordings of its audio across three days in August so that we could assess the complaint.

The Licensee responded that, due to a problem with its computer, the recordings for the dates requested were "missing".

Ofcom considered that this raised issues warranting investigation under Condition 8(2)(a) and (b) of 1 Ummah CIC's licence, which require the Licensee to:

"(a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...

(b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction..."

We therefore sought formal comments from the Licensee on its compliance with these conditions.

Response

The Licensee submitted a list of 22 days for which it could provide recordings out of the previous 42 days. 1 Ummah CIC described its equipment as "very temperamental", and said that "hopefully we will be getting some new equipment which will be much more reliable for storing recordings and backing up files". The Licensee also stated that "we have since rectified the recording issue and worked around it the best we can".

Subsequently, the Licensee stated that it was "now in the process of ensuring that all future recordings are done without failure".

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the Licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after

¹ 'Key Commitments' 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.

broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

In this case, the Licensee admitted to Ofcom that it had not retained recordings requested by Ofcom, and was therefore unable to provide them to us. The Licensee therefore breached Licence Conditions (8)(2)(a) and (b).

Ofcom noted that the Licensee had explained it was now “in the process” of ensuring that it was able to retain recordings. Under its licence, 1 Ummah CIC is required to ensure that it makes, retains and can produce recordings to Ofcom on request. We will be monitoring the Licensee’s ability to provide recordings in the near future.

Breaches of Licence Condition 8 are significant because they impede Ofcom’s ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom’s ability to carry out its statutory duties in regulating broadcast content.

We are therefore putting 1 Ummah CIC on notice that, should similar compliance issues arise in the future, we will consider taking further regulatory action.

Breaches of Licence Conditions 8(2)(a) and (b), in Part 2 of the Schedule to the community radio licence held by 1 Ummah FM Community Interest Company (licence number CR000214BA).

In Breach

Broadcasting licensees' late-payment of licence fees

Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles¹. Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables².

The payment of a licence fee is a requirement of a broadcasting licence³. Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

In Breach

The following radio licensees failed to pay their annual licence fees by the required payment date. These licensees have therefore breached their broadcast licences.

The outstanding payments have now been received by Ofcom. Ofcom will not be taking any further regulatory action in these cases.

Licensee	Licence Number	Service Name
90 Media Group Ltd	RLCS000101BA	Radyo Play FM
Big City Radio CIC	CR000038BA	Big City Radio
Panjab Radio Ltd	DP000072BA	Panjab Radio
Panjab Radio Ltd	RLCS000121BA	Panjab Radio
Salford Community Radio Ltd	CR000035BA	Salford City Radio

Breach of Licence Conditions 3(1) and (2) in Part 2 of the Schedule of the relevant licences.

¹

http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

² http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff_Tables_2015_16.pdf

³ As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

Fairness and Privacy cases

Upheld

Complaint by the Radio and Television Commission of Lithuania (“the LRTK”)¹

Today, NTV Mir Lithuania, 15 March 2015

Summary

Ofcom has upheld the complaint made by the LRTK of unjust or unfair treatment in the programme as broadcast.

The programme, an edition of NTV Mir Lithuania’s news programme, included a report about a military exercise in Lithuania. However, the report was interrupted by an onscreen message which stated that:

“In view of the decision made by the Lithuanian Radio and TV Committee, cable network operators do not have access to the transmission of this broadcast as it contradicts Paragraphs 1, 2 and 3 of Article 19 of the Law on the Provision of Information to the Public. We apologise for any inconvenience”.

The message remained onscreen for approximately five minutes before the news programme resumed.

Ofcom found that the message displayed was clearly misleading and would have left viewers in no doubt that the LRTK was restricting the content of news programming that could be broadcast. Ofcom considered that the misleading nature of the message was likely to materially and adversely affect viewers’ perceptions and understanding of the LRTK and its regulatory role. For these reasons, Ofcom concluded that the inclusion of the onscreen message in these circumstances created unfairness to the LRTK.

Introduction and programme summary

NTV Mir Lithuania is a Lithuanian channel that is licensed to Baltic Media Alliance Ltd (“BMAL”) by Ofcom. As the channel is operated under a UK broadcasting licence it is subject to Ofcom’s Codes.

BMAL provided Ofcom with a recording of the original programme broadcast and a recording of the programme subsequently broadcast on 15 March 2015 containing an onscreen message (the subject of this complaint). As the programme was broadcast in Russian, English translations were obtained of both versions by Ofcom and provided to the complainant and broadcaster. Both parties’ comments on the translations were then sent to the independent translation company for its views. Having assessed all of the comments made, appropriate amendments were made by Ofcom and the parties were provided with final versions of the translated transcripts. The parties were informed that Ofcom would use the transcripts to investigate the complaint.

¹ The LRTK (Lietuvus Radijo ir Televizijos Komisija) is responsible for regulating radio and television broadcasting in Lithuania. Further information can be found on its website at: <http://www.rtk.lt/en/>.

On 15 March 2015, NTV Mir Lithuania broadcast its evening news programme.

A report about ten minutes into the programme began:

“Military exercise in Lithuania. President Dalia Grybauskaite watches over the manoeuvres through binocular glass”.

At this point, the sound faded and an onscreen message was displayed:

“In view of the decision made by the Lithuanian Radio and TV Committee, cable network operators do not have access to the transmission of this broadcast as it contradicts Paragraphs 1, 2 and 3 of Article 19 of the Law on the Provision of Information to the Public. We apologise for any inconvenience”.

The message was onscreen for approximately five minutes after which the news programme resumed beginning with a report about a fire in a shopping centre in the Russian city of Kazan.

Summary of the complaint and the broadcaster’s response

The LRTK complained that it was treated unjustly or unfairly in the programme as broadcast because an onscreen message stated wrongly that the LRTK had ruled that a particular news report could not be broadcast. The LRTK explained that it did not have the authority to ban material prior to broadcast and that the message implied that it was acting as a censor.

In response, BMAL began by providing background information in order to demonstrate the “double standard” that it said the LRTK used in communications with Ofcom, Lithuanian TV providers, the Lithuanian public, and BMAL.

It said that attention needed to be paid to the punitive actions of the LRTK from 2014 to 2015. It said that on 19 March 2014 the LRTK placed a three month ban on network operators broadcasting particular NTV Mir Lithuania produced programmes. It explained that formally, the network providers were the subjects of this decision. However, while the LRTK claimed that this decision had no direct impact on BMAL, BMAL said that this was not the case. It said that because the network providers were neither entitled, nor technically capable of changing the programming of the channel, they were “forced to exceed the scope of LRTK requirement and to turn off the entire channel for 3 months”. It therefore said that:

“The illegitimate decision of LRTK has a) prompted operators to violate the agreement with the broadcaster, b) provoked operators into breaking their obligations towards subscribers, c) instigated financial losses by BMAL which were presented to the courts of Lithuania”.

It pointed out that while the LRTK had stated that “it is forbidden for operators to change the broadcasted programme”, two of its previous decisions had obliged network providers to do this.

It said that the LRTK “deliberately causes confusion and deludes to justify its actions against BMAL channels”.

BMAL next went on to explain that it considered that the LRTK had been “satisfied with [the] broadcaster’s actions”. It said that this was evidenced by the contradictory information in the initial complaint made by email on 19 March 2015 to Ofcom with

that published on the Lithuanian news channel Lietuvos Rytas. It pointed out that when asked about the replacement of the news story in question with the onscreen message, the Chairman of the LRTK had stated that:

“The only thing that matters is that they did not show anything what, according to them, could violate our laws. It would be much worse if they had published the forbidden information”².

BMAL highlighted that the article also stated that the Chairman of the LRTK was satisfied with the decision not to broadcast the particular item on NTV Mir Lithuania and that “According to him, finally the attention was paid to the spread of forbidden information and the Commission received the respective reaction”³.

Further, it said the article quoted the Chairman as saying:

“It is gratifying to know that the broadcasters themselves notice the forbidden information which cannot be broadcasted and by any means strive to prevent it”⁴.

It was BMAL’s view that the above information demonstrated that “LRTK and its manager are satisfied with the event of the onscreen message” and that the Chairman of the LRTK in fact “took credit of the channel’s better control of its content to his own efforts and efforts of LRTK”.

BMAL said that given the above, “the association of LRTK, which according to the complainant, was unjustly contained in the message, was confirmed indirectly in the media by the complainant himself”. BMAL therefore said that the message could not be deemed misleading.

BMAL also said that the audience figures for Lietuvos Rytas were 890 626 in March 2015 whereas the figures for NTV Mir Lithuania at the same time were 194 000. It therefore said that the potential impact of the allegedly misleading information in the broadcast onscreen message was “significantly less” than the “informational effect” of the Chairman of the LRTK’s comments expressing his “satisfaction” experienced from the broadcast of the onscreen message.

BMAL said that, given the above, it did not accept the claims submitted to Ofcom by the LRTK “whilst expressing an opposite opinion in public communications”.

BMAL then went on to discuss what it considered to be “the actual reasons behind the onscreen message and the role of the complainant”.

BMAL explained that its interpretation of what was prohibited by the law with regards to broadcasting was significantly different to that of the LRTK. It said that given this it had repeatedly asked the LRTK to “specify which topics exactly or which ways of presentation specifically are interpreted by LRTK as forbidden”. It said that the LRTK had not provided a “meaningful” response.

² <http://www.lrytas.lt/-/14266965771425070807-vietoj-lietuvos-prezident%C4%97s-%C5%BEalia-lentel%C4%97-ekrane.htm>

³ See footnote 2.

⁴ See footnote 2.

It said that despite this, the “illegitimate” sanctions of the LRTK (against NTV Mir Lithuania in March 2015 and REN TV Lietuva in January 2015) had established a precedent and afforded a more thorough analysis of news topics by BMAL’s programming department. BMAL said that it did not consider that the broadcast programme contained any content in violation of the law. However, given the LRTK’s previous decisions, the programming department thought it appropriate in the circumstances to cover the particular news story in question with an onscreen message and to refer to the opinion of the LRTK. It explained further stating:

“BMAL does not consider that the information provided in the Programme was prohibited by the Law. Therefore, the text of the message could not state that it was an autonomous decision of BMAL.

Under the constant pressure of LRTK (precedent-setting decisions, defamatory complaints to Ofcom, and constant discrediting of BMAL in Lithuanian media), BMAL had to create a corresponding onscreen message. Therefore the message text contained a reference to LRTK”.

It continued, adding:

“It must be admitted that although LRTK had really no decision on the particular Programme, LRTK made its previous punitive decisions on similar programmes that have established a legal precedent. It means that, from the standpoint of the general UK legislation, such precedent-setting decisions are justifiably applicable to all similar future cases”.

BMAL said that considering the “massive bullying” of BMAL with “vexatious” complaints by LRTK to Ofcom from the end of 2014, it had no doubt that had the particular news item in question been broadcast, then the LRTK would “...rush with a new complaint on the Programme with a phrasing like ‘incitement to hatred, calls for insubordination to authority, biased presentation of information, aspiration to put psychological pressure’ and other absurdities...”.

It said that despite demonstrating satisfaction with the fact that the news item was not shown, the LRTK “still found a reason to be dissatisfied”. It said that this coupled with the LRTK’s refusal to accept BMAL’s settlement proposal demonstrated the complainant’s “biased attitude” towards BMAL.

Finally, BMAL went on to respond to the specific complaint made. It said that:

“In contrast to LRTK statements, the extraordinary complaining activity of LRTK stacked against BMAL is the best acknowledgement of LRTK’s aspiration to become a censor of BMAL services”.

BMAL said that the inclusion of the statement in the broadcast programme about the LRTK was not unfair to the complainant because:

- it was not excessive either in its scope, or regarding the programme content it referred to;
- it was used in conjunction with the specified law, for which LRTK acts as a watchdog;

- it was used in conjunction with network operators/providers who are direct entities under LRTK's authority;
- the Chairman of the LRTK, Mr Vaitekunas, publicly expressed satisfaction with the programme, he himself called it a "respective reaction"⁵, and BMAL said that he had "hailed non-dissemination of banned content 'by any means'⁶"; and,
- it did not materially mislead the audience so as to cause harm or offence to anyone.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that the LRTK's complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The broadcaster made representations which are (insofar as they were relevant to the complaint as entertained and considered by Ofcom in the Preliminary View) summarised below. The complainant did not submit any representations.

BMAL's representations

Ofcom's Preliminary View stated that BMAL's programming department "...did not dispute the fact that the LRTK had not made a decision that the particular news report could not be broadcast". In response, BMAL said that whether or not the LRTK had made a decision on the particular news report was not the only prerequisite for justifying the reference to the LRTK in the onscreen message. BMAL argued that: "...the facts of LRTK's punitive decisions made earlier on similar broadcast were sufficient grounds fully applicable to the particular broadcast".

BMAL also pointed out that Ofcom's Preliminary View stated that the regulation of NTV Mir Lithuania as a broadcaster did not come under the jurisdiction of the LRTK but came under Ofcom's regulatory jurisdiction. However, the Preliminary View also stated that "...it was not for Ofcom to...take into consideration previous decisions made by it [the LRTK] with regards to BMAL". BMAL said that "it well was and is". It said that: "When the regulator of the some other state makes its own decisions directly and materially affecting the Ofcom's licensee while Ofcom seems (or, openly admits) not to care about it – it means Ofcom voluntarily surrenders its authority". BMAL said that "...[the] LRTK does de-facto censors our services (no matter before or after the broadcast) despite of their non-coming under [the] LRTK's jurisdiction".

Decision

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

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

⁵ See footnote 2.

⁶ See footnote 2.

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

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

From the information provided to Ofcom by both parties it was clear that there was a history of dispute between them. However, it is important to point out at the outset that for the purposes of considering this complaint, it was not for Ofcom to make a determination on how the LRTK conducted its duties as a regulatory body or take into consideration previous decisions made by it with regards to BMAL. Nor is it for Ofcom to speculate as to the motivation of the complainant in making the complaint. Ofcom will only consider the content of the programme as broadcast and whether the inclusion of the particular onscreen message created unfairness contrary to the Code.

Turning to the complaint itself, the LRTK complained that it was treated unjustly or unfairly in the programme as broadcast because an onscreen message wrongly stated that it had ruled that a particular news report could not be broadcast. The LRTK explained that it did not have the authority to ban material prior to broadcast and that the message implied that it was acting as a censor.

When considering and deciding complaints of unjust and unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. In particular, we had regard to Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of genuine public interest. However, broadcasters have an obligation when presenting material facts to take reasonable care not to do so in a way that would cause unfairness to an individual or organisation.

In assessing this complaint, we began by considering the nature of the claim made and whether it had the potential to materially and adversely affect viewers' opinions of the LRTK in a way that was unfair. We then went on to consider whether, if it did have the potential to cause such unfairness, the manner in which the claim was presented in the programme resulted in unfairness to the LRTK.

As already set out in the "Introduction and programme summary" section above, we noted that the news report was replaced with the onscreen message:

“In view of the decision made by the Lithuanian Radio and TV Committee, cable network operators do not have access to the transmission of this broadcast as it contradicts Paragraphs 1, 2 and 3 of Article 19 of the Law on the Provision of Information to the Public. We apologise for any inconvenience”.

We considered that it was likely that viewers would have understood this to mean that the LRTK had made a decision in its official capacity as the broadcast regulator of Lithuania to prevent NTV Mir Lithuania from broadcasting the particular news report which was replaced by the onscreen message. We also considered that the message had the potential to give viewers the impression that the LRTK could intervene regarding the content of programming on NTV Mir Lithuania prior to its broadcast, therefore effectively “censoring” that content. We noted BMAL’s response to the complaint, summarised above, relating to the reasoning behind why BMAL’s programming department considered the wording of the message appropriate, but also noted that it did not dispute the fact that the LRTK had not made a decision that the particular news report could not be broadcast.

Ofcom considered that it was important to note that the regulation of NTV Mir Lithuania as a broadcaster does not come under the jurisdiction of the LRTK. The channel is operated under a UK broadcasting licence held by BMAL which meant that the channel came within Ofcom’s regulatory jurisdiction. We therefore considered that the claim made in the onscreen message had the clear potential to materially and adversely affect viewers’ opinions of the LRTK in a way that was unfair to it.

Ofcom next considered the manner in which the statement was presented. It was Ofcom’s view that the message would be understood by viewers to be an unequivocal statement of fact. We considered therefore, viewers would have been left in no doubt that the news report had been prevented from being broadcast because of direct intervention by the LRTK.

Given the factors set out above, Ofcom considered that the message displayed was clearly misleading and would have left viewers in no doubt that the LRTK was restricting the content of news programming that could be broadcast. Ofcom considered that the misleading nature of the message was likely to materially and adversely affect viewers’ perceptions and understanding of the LRTK and its regulatory role. For these reasons, Ofcom concluded that the inclusion of the onscreen message in these circumstances created unfairness to the LRTK.

Ofcom has upheld the LRTK’s complaint of unjust or unfair treatment in the programme as broadcast.

Upheld

Complaint by Mr Jaswant Singh Bharj and Mrs Amrik Kaur Bharj

Kaumi Masle, Sangat Television, 7 February 2015

Summary

Ofcom has upheld Mr Jaswant Singh Bharj's and Mrs Amrik Kaur Bharj's complaint of unjust or unfair treatment in the programme as broadcast.

The programme included a discussion about a recent County Court judgment in relation to the ownership of the Miri Piri Gurdwara ("the Gurdwara"), a Sikh temple in Southall, west London. The programme alleged that the three co-owners (including Mr and Mrs Bharj) had not managed the Gurdwara's money in an appropriate manner and suggested that they had taken money which properly belonged to the Gurdwara for their own benefit.

Ofcom found that the broadcaster did not take reasonable steps to satisfy itself that material facts about Mr and Mrs Bharj in relation to the claim made in the programme regarding the complainants' management of the Gurdwara's were not presented, disregarded or omitted in a manner which gave viewers an unfair impression of them.

Introduction and programme summary

Sangat Television ("Sangat TV") is a television service providing religious and general entertainment content in English and Punjabi. It can be received throughout the UK and in parts of Europe, but is primarily directed towards the Sikh community in the UK.

A transcript in English (translated from the original Punjabi and English) of the programme broadcast on 7 February 2015 was prepared by an independent translation company for Ofcom. Both parties to the complaint were given a copy of it and provided comments which were taken into account by the translator. An amended, final version of the translation was then sent to the parties. Neither party raised any objections to Ofcom using it for the purpose of investigating the complaint.

On 7 February 2015, Sangat TV broadcast an edition of *Kaumi Masle*, a programme in which the presenter, Mr Sukhvinder Singh, and two regular guest contributors, Mr Davinder Singh and Mr Amrik Singh Gill, discussed issues of importance to the Sikh community in the UK. One of the topics discussed during the programme was a recent County Court Judgment about the ownership of the Miri Piri Gurdwara ("the Gurdwara"), a Sikh temple in Southall, west London. The presenter said that the judge had found that "33% goes to Mr Sohan Singh Dhesi, 34% will be in the name of...Mr Jaswant Singh Thekedar and 33% goes to his wife Mrs Amrik Kaur".

The presenter went on to say that people in the Sikh community were discussing whether it was appropriate for the Gurdwara to be owned privately. For example, he said that people had asked:

"Is it possible that land purchased for the Gurdwara and belonging to it can be held as private property so that its rent can be expropriated on the first day of every month by the individuals Mr Sohan Singh Dhesi, Mr Thekedar and his wife?"

What about the re-mortgages they obtained on the Gurdwara building? They took five re-mortgages, and can they distribute hundreds of thousands of pounds among themselves?"

The presenter also said:

"I want to hold a debate with those individuals who have made this place their private property. I have just informed you about the court order that has arrived but I am unable to give you any answers to the questions: Can Gurdwara property be held privately by certain individuals? Can the temple money, which people donate in the name of the Guru for community use, be used for oneself, for personal benefit?"

In addition, both the presenter and Mr Gill encouraged viewers to campaign for the ownership of the Gurdwara to be transferred to the community. For example, Mr Gill (who appeared to be addressing the viewers directly) said:

"Your fight is for justice about how and in what way the community purchased that place to build an excellent Gurdwara – not for some people to take hold of it and sit tight, and keep taking mortgages on it and run their businesses. They are kidding people and people do not see it for themselves [sentence dropped]".

A short while later, the presenter informed viewers that Mr Dhesi had said that he would put his share of the Gurdwara into a trust before saying:

"What remains in this problem is the other two shares given to other persons as their personal property. They may put up shops there, run businesses, receive rent or give it on lease and the community donations will go to them. It is Gurdwara property and we have heard about it being placed in trusts".

At this point, Mr Gill interrupted to say:

"I think they should not do it because money earned in this way is like poison – mercury. They too should place it with the trust and the building of the Gurdwara should be made excellent...Make this Gurdwara communal and then no-one would have an objection".

The presenter also said that the Gurdwara was established in 1995, initially on the basis of an interest-free loan, and then through a mortgage. He said: *"The mortgage term on the Gurdwara was seven years and the amount was £82,000 plus something. The mortgage instalments were paid by the Gurdwara"*. He then said:

"five re-mortgages were obtained on this building, which were not used for the Gurdwara. Mr Sohan Singh Dhesi had been obtaining these re-mortgages and, through the judge at the court, we will find out clear cut on the 1st of April how much money went to whom. He has clearly stated in his verdict that these mortgages were employed by Mr Jaswant Singh Thekedar. What percent of the amount of these re-mortgages went to whom, plus the Gurdwara rent of £2000 every month was paid out to Sohan Singh Dhesi, minus the mortgage [instalments] which Sohan Singh Dhesi paid to the bank against the re-mortgages, where does the balance [rent minus mortgage instalment] go? You will find this out on the 1st of April. If community money [inaudible] goes to a private individual, it is a matter of great regret. Where will the community go if no one pays attention despite obtaining this information? This is the history of the Gurdwara. It is confirmed that people donated and I am one of those who gave

money to purchase this property. It was given as interest-free loan to build the Gurdwara – not to build someone’s private property. But Mr Sohan Singh Dhesi has made it his private property; Mr Jaswant Singh Thekedar has made it his private property and he has added his wife’s name to own it as private property”.

In addition, the presenter said that he had:

“a large number of documents which show which persons took money via account to account transfers. I will not show these here on Sangat TV, but I will show them when the other party is sitting with me. I will show them to Mr Sohan Singh Dhesi, Mr Jaswant Singh Thekedar and his wife who have become the [legal] owners. I will show which money went where through cheques and account to account transfers, etc. Amounts of 20,000 and 20,000 belonging to the Gurdwara were transferred to the account of Mr Sohan Singh Dhesi; from his account these were transferred to the account of Mr Jaswant Singh Thekedar’s wife; these are amounts of 20,000 and 20,000, 10,000 and 10,000, which have been paid out to solicitors, companies, etc. Then we will ask why this money was paid out? Then they will reply if they borrowed this money, or they purchased some materials, or they purchased houses”.

The presenter then said:

“My question to the entire community is: Can private property belong to the Gurdwara? Can we obtain rent from it for personal use? Can we usurp its donations? Can we expropriate money obtained by re-mortgaging it? If not, then this money should be returned to the Gurdwara. During these 20 years, several hundred thousand pounds, millions of pounds in lieu of rent and mortgages [sentence dropped]. It should be refunded to the Gurdwara whether it is Mr Sohan Singh Dhesi, Mr Jaswant Singh Thekedar or his wife [who have taken it]. We request these three to account for every penny. This money does not belong to an individual and it should be refunded to the Gurdwara”.

The presenter also said that during the preceding twenty years the maintenance of the Gurdwara had been neglected and listed a number of alleged defects with the property. He said that he did not *“blame any one person [for] all these things”*. He then said that, in time, it would become clear whether responsibility lay with *the [management] committee of the time or the trustees or the owners”* before adding: *“...but the private property has been made out of it. Can it be private property? It belongs to the entire community”.*

Towards the end of the programme, the presenter said:

“As regards the hundreds of thousands of pounds that were obtained through re-mortgages, will these be returned to the Gurdwara or will you [i.e. Mr Dhesi, Mr Bharj and Mrs Bharj] distribute it among yourselves? These are the people’s questions which I have brought to you through Sangat TV. I am not saying who usurped these and who did not. Absolutely not. But you must reply about the money obtained through five re-mortgages taken by Mr Sohan Singh Dhesi. Where is that money? Where is the rent amount that has been paid? And if this really is your personal property – the court has decided that it is your personal property and the community has accepted this verdict – and according to the court verdict it is your personal property and you can keep it, then should we hang a notice in the Gurdwara stating [on your behalf]: ‘This property belongs to us, so and so, and the money donated here comes to us’?”

On several occasions the presenter spoke of his wish to debate the matter of the Gurdwara's ownership, and particularly what had happened to the funds which he said had been raised for the Gurdwara by the community, with the three individuals whom the judge had named as its legal owners. However, none of these individuals (a group which included the complainants) contributed to the programme.

Summary of the complaint and the broadcaster's response

Mr and Mrs Bharj complained that they were treated unjustly or unfairly in the programme as broadcast because the presenter said that they had "taken illegal loans" and "had no right to claim rent" despite the court's finding that they were part owners of the Gurdwara. Mr Bharj said that these claims had tarnished his image and that of his family.

In response, Sangat TV said that although matters relating to loans, mortgages and rent in connection with the Gurdwara were discussed, the programme did not suggest that the complainants had "taken illegal loans" or "had no right to claim rent". It added that although the presenter questioned if it was appropriate for a Gurdwara to be privately owned, on several occasions he also said that there were issues relating to mortgages and/or rent that "needed to be clarified" and maintained that this was "an area that needed addressing".

Sangat TV also said that on 11 February 2015 it sent a letter to Mr and Mrs Bharj and Mr Dhesi at the Gurdwara to tell them about the edition of *Kaumi Masle* it had broadcast on 7 February 2015 and to invite them to contribute to another edition of the programme. The broadcaster said that this letter gave the three recipients an opportunity to: "discuss the matter further; to explain to the congregation [of the Gurdwara] the intention of the court action [i.e. the court hearing which found that the Gurdwara was jointly owned by Mr and Mrs Bharj and Mr Dhesi] and [to respond to] the matters the congregation had raised on the issue of donations received for the Gurdwara, the rent and the mortgages". Sangat TV said that it did not receive a response from the complainants to this invitation. The broadcaster concluded its response by repeating its invitation for Mr and Mrs Bharj and Mr Dhesi to take part in a programme.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr and Mrs Bharj's complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View and their comments (insofar as they were relevant to the complaint as entertained and considered by Ofcom in the Preliminary View) are summarised below.

Mr and Mrs Bharj's representations

With regard to the letter which Sangat TV said it had sent to Mr and Mrs Bharj (and Mr Dhesi) at the Gurdwara on 11 February 2015, Mr and Mrs Bharj said that it was well-known in the community (and, in particular by the presenter of the programme, Mr Sukvinder Singh), that following the "forceful takeover of the Gurdwara" on the 5 February 2015, Mr and Mrs Bharj would not have received any post sent to them at the Gurdwara.

Sangat TV's representations

Sangat TV said that Ofcom had failed to take account of the fact that the “Gurdwara Miri Piri issue was mentioned in the programme in the context of the County Court decision and the facts, as stated in the broadcast, were the views of the presenter based strictly on the decision [in] the [court] judgment”. It said that the presenter made this clear at several specific points during the programme and that it was not necessary for the programme to have obtained “any individuals’ views when a decision has been made [on the relevant matter] by a learned judge”.

Sangat TV also said that Ofcom had “grossly erred in its view that ‘viewers were likely to have understood the presenter’s comments to be allegations that the co-owners had taken large sums of money, either through re-mortgaging the Gurdwara or by claiming rent which properly belonged to Gurdwara, for their own benefit’ because the comments made by the presenter about these matters were “strictly based on the arguments presented in court and the decision of the judge on this matter”. In particular, Sangat TV said that the judge had stated that “that a mortgage for the amount of £82,000 had been taken on the Gurdwara premises and a further five re-mortgages were obtained on this building, which were not used for the Gurdwara”; that “these mortgages were employed by Mr Jaswant Singh Thekedar”; and, that “the Gurdwara rent of £2000 every month was paid out to Sohan Singh Dhesi, minus the mortgage [instalments] which Sohan Singh Dhesi paid to the bank against the re-mortgages”.

In addition, Sangat TV said that although it was not necessary for it to have sought Mr and Mrs Bharj’s views to avoid unfairness to them, it had, nevertheless, attempted to obtain their views, but had been hindered because it did not have an up-to-date contact address for them. The broadcaster also said that during the programme, the presenter repeatedly invited Mr and Mrs Bharj to come to Sangat TV to clarify their position with regard to the matters discussed in the programme.

Decision

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

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

In reaching our Decision, we carefully considered all the relevant material provided by both parties. This included a recording and translated transcript, agreed by both parties, of the programme as broadcast and both parties’ written submissions and supporting documentation. Ofcom also took careful account of the representations made by the complainants and the broadcaster in response to being given the opportunity to comment on Ofcom’s Preliminary View on this complaint. After careful consideration of Mr and Mrs Bharj’s and Sangat TV’s representations, we concluded that the points raised by both parties did not materially affect the outcome of Ofcom’s Decision to uphold the complaint.

When considering and deciding complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as

broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Ofcom Broadcasting Code (“the Code”).

Ofcom assessed Mr and Mrs Bharj’s complaint that they were treated unjustly or unfairly in the programme as broadcast because the presenter said that they had “taken illegal loans” and “had no right to claim rent” despite the court’s finding that they were part owners of the Gurdwara.

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

Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

We began by considering the seriousness of the allegations and whether it had the potential to materially and adversely affect viewers’ opinions of Mr and Mrs Bharj in a way that was unfair. We then went on to consider whether, if it did have this potential, the manner in which the allegations were presented in the programme resulted in unfairness.

As set out in the “Introduction and programme summary” section above, one of the topics discussed during the programme was whether it was appropriate for the Gurdwara to be owned privately by Mr and Mrs Bharj and Mr Dhesi. In particular, we noted that the presenter repeatedly asked where the “*hundreds of thousands of pounds*” that he said were obtained through “*five re-mortgages*” had gone, said that the money had not been used for the Gurdwara; and, questioned if Mr and Mrs Bharj and Mr Dhesi would return the money to the Gurdwara or if they could or would distribute it among themselves. He also said that “*amounts of 20,000 and 20,000 belonging to the Gurdwara were transferred*” to Mr Dhesi’s account and from there to the accounts of the complainants and asked for what this money was used. In addition, in reference to the co-owners management of money connected to the Gurdwara the presenter said: “*can [the rent paid to the Gurwara] be expropriated on the first day of every month by the individuals Mr Sohan Singh Dhesi, Mr Thekedar and his wife?*” and “*Can we usurp its [the Gurdwara’s] donations? Can we expropriate money obtained by re-mortgaging it?*”

We noted that Sangat TV argued that the programme did not specifically state that the complainants had taken “taken illegal loans” or “had no right to claim rent” and acknowledged that the programme did not include these specific statements. We also observed that many of the presenter’s comments in relation to the taking out of mortgages and collection and use of rents in connection with the Gurdwara were expressed as questions to the co-owners of the Gurdwara (i.e. the complainants and Mr Dhesi) and notably as questions which the presenter said that the congregation of the Gurdwara was asking. However, we considered that regardless of the fact that the presenter framed many of his comments as questions and that the statements cited in the complaint were not actually made in the programme, viewers were likely to have understood the presenter’s comments to be allegations that the co-owners had taken large sums of money, either through re-mortgaging the Gurdwara or by claiming rent which properly belonged to Gurdwara, for their own benefit. We observed that, in its representations on the Preliminary View, the broadcaster argued that Ofcom was mistaken in reaching this conclusion because the references in the

programme to the specific details of the mortgages and rents taken out or paid in relation to the Gurdwara were taken directly from statements made by the judge who heard the case regarding the ownership of the Gurdwara. We accepted that these particular details may well have been drawn from comments made by the judge during the case and, therefore, that it was reasonable for the programme to have included them. Nonetheless, the cumulative effect of all the comments made about this subject during the programme, and notably the repeated questions about where the money had gone, and the use of the terms “*expropriated*” and “*usurp*” (even when couched as questions), in relation to the complainants, meant, in Ofcom’s view, that the comments amounted to serious allegations that Mr and Mrs Bharj had acted improperly in relation to the money. Such was the serious nature of the allegation, that Ofcom considered that they had the clear potential to materially and adversely affect viewers’ opinions of Mr and Mrs Bharj.

Having established that the comments made about Mr and Mrs Bharj amounted to serious allegations which were likely to materially and adversely affect viewers’ opinions of them, we next considered whether the inclusion of the presenter’s comments in the programme as broadcast resulted in unfairness to the complainants. Ofcom acknowledged the broadcaster’s right to freedom of expression and that they must be able to broadcast programme on matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals and organisations in programmes.

Whenever a programme alleges wrongdoing or makes other significant allegations against an individual or organisation, the broadcaster must ensure compliance with the Code to avoid unjust or unfair treatment. To this end, broadcasters should normally:

- give the individual or organisation concerned an appropriate and timely opportunity to respond; and
- reflect any response in an appropriate way on air; and/or
- at least reflect the fact that the broadcaster has sought comment from the individual or organisation concerned; and/or
- place the allegations in an appropriate context (by, for example, explaining it is based on one source or is unverified or by representing a counter-balancing viewpoint).

Given this, Ofcom then assessed what steps, if any, the broadcaster took to satisfy itself that material facts were not presented, disregarded, or omitted in a way that was unfair to Mr and Mrs Bharj. Sangat TV provided Ofcom with no evidence that it took any reasonable steps before the broadcast of the programme in this regard. In particular, we noted that Mr and Mrs Bharj were not provided with an opportunity to respond to the allegations made in the programme. In fact, it seemed that the programme makers had only sought a response from Mr and Mrs Bharj following the broadcast of the programme. Also, we considered that the presenter did not attempt to place the allegations relating to Mr and Mrs Bharj in any form of context, for example, by explaining that the allegations reflected his own opinion, or that Mr and Mrs Bharj had not been contacted about the truth or otherwise of his comments. We noted that in its response to the Preliminary View, the broadcaster argued that while

it was not necessary for it to have provided Mr and Mrs Bharj with an opportunity to respond to the claims made about them in the programme, it had attempted to obtain their views but had been hindered from doing so because it did not have a contact address for them. Notwithstanding this, however, we considered that the fact remained that the programme did not offer Mr and Mrs Bharj an opportunity to respond to the series allegations made about them before the programme was broadcast. For the reasons set out above, and because nowhere else in the programme was anything said to balance or place into appropriate context the comments made by the presenter about the complainants, we considered that the allegations made against Mr and Mrs Bharj in the programme as broadcast that they had taken large sums of money that belonged to the Gurdwara and used it for their own private benefit were serious in nature and had the clear potential to materially and adversely affect viewers' opinions of Mr and Mrs Bharj and their conduct in relation to their co-ownership of the Gurdwara in a way that was unfair to them.

Ofcom concluded therefore, that in the particular circumstances of this case, the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr and Mrs Bharj.

Ofcom has upheld Mr and Mrs Bharj's complaint of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr Abdiwali Elmi

Immigration Street, Channel 4, 24 February 2015

Summary

Ofcom has not upheld Mr Abdiwali Elmi's complaint of unwarranted infringement of privacy in the programme as broadcast.

The programme was introduced by a "vox pop" sequence in which local residents were asked for their views on the purpose of the programme and on the different nationalities of the people living on Derby Street in Southampton (the street featured in the programme). One of the "vox pops" contributors, Mr Elmi, was shown giving his views on the purposes of making a documentary about immigration. His face was shown unobscured and his voice was clearly heard as he spoke to the programme makers.

Ofcom found that Mr Elmi did not have a legitimate expectation of privacy in relation to the broadcast of the footage of him in the programme. On that basis, Ofcom concluded that Mr Elmi's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 24 February 2015, Channel 4 broadcast *Immigration Street*, a documentary programme about the difficulties encountered by the programme makers as they attempted to make a television programme about immigration by exploring the lives of the people living on Derby Road, an ethnically diverse street in Southampton. The programme included footage of local people being interviewed about their views on the impact immigration had had in the area and, in particular, the benefits and perceived pitfalls of immigration.

The programme was introduced by its narrator as:

"This is the story of what happened during an attempt to make a television programme about immigration. Filmed on an ethnically diverse street in Britain. But as the cameras rolled, residents who wanted to speak up for the community discovered that some of their neighbours didn't want their street to be the subject of a programme about immigration. It became a national news story, leading to political pressure, local demonstration and physical intimidation from gangs".

The above introduction was interspersed with footage of various residents swearing at the programme makers and telling them, for instance, to "*get out*", and "*we don't need you*", along with brief footage of news coverage and political comment. The narrator went on to explain how controversial the subject of immigration was and stated that:

"The last national census revealed that 86% of people living in Britain describe themselves as White British. Around Derby Road, it was 17%".

The programme then showed a "vox pop" style sequence in which local residents were asked for their views on the purpose of the programme and on the different

nationalities of the people living on Derby Road. One of the “vox pops” contributors, Mr Elmi, was shown on three occasions giving his views on the aims of the programme.

The first piece of footage of Mr Elmi was shown briefly of him saying “*African Nigerian, Asian*”.

Later in the introduction sequence, the narrator said:

“If anyone can have an informed and honest conversation about the impact of immigration, it’s the people that live and work on this road. And in March of 2014, that conversation began”.

Mr Elmi was then shown being asked by the programme makers:

“What do you think about the idea of “Immigration Street” [the programme] and this place being a sort of melting-pot for people?”.

Mr Elmi replied:

“It depends on the aim of the documentary. If it is to educate people about different cultures and different communities living peacefully together in the street, yes, I think it would be good. And this street would be a good example for that”.

Later in the introduction, Mr Elmi said:

“But if the media is not responsible enough, and the aim is to actually show a negative side of immigrants then that would be a problem, and I wouldn’t like to be part of that, but yeah, generally, it depends what the aim of that documentary is”.

There was no further footage of Mr Elmi included in the programme. Mr Elmi was not named, but his face was shown unobscured and his voice was heard clearly.

Further into the programme, the narrator explained that five weeks into the filming, newspapers reported on the making of a documentary about immigration in Southampton and published articles and photographs relating to it. The media coverage also led to politicians and other commentators discussing the purpose of the programme and its use of the word “*immigrant*”. The programme reflected the media and wider interest in the making of the programme and the divergence of opinion surrounding it. It included the views of some residents who wanted to speak up for the community and contribute to the documentary, and the views of others, including local politicians, who objected strongly to the filming and for the street to be the subject of a programme about immigration.

The programme also documented the growing level of intimidation and aggression some of the local residents displayed against those residents who willingly contributed to the programme and against the programme makers as the programme continued to be made. The programme explained that extra security staff had been employed to ensure that the filming continued and to reassure those who wished to contribute. The programme included footage of some individuals intimidating the programme makers and contributors with threats and trying to disrupt filming.

Towards the end of the programme, a residents' meeting with the programme makers was shown. The footage of the meeting displayed the hostility of some of the residents towards the making the programme despite assurances given by the programme's producer. A week after the meeting, the narrator explained that the levels of intimidation had risen and that a man who had defended a contributor to the programme had been "*beaten up and hospitalised*" and that programme makers had been threatened with an acid attack. The programme's narrator said that this incident led to the programme makers' security team deciding it was no longer safe to film on Derby Road. The programme concluded with footage of two residents arguing and swearing at each other.

Summary of the complaint and the broadcaster's response

Mr Elmi complained that his privacy was unwarrantably infringed in the programme as broadcast because the programme included footage of him without his consent.

Mr Elmi said that he had agreed to be interviewed because he was told by the programme makers that they were only collecting material to show Channel 4 in order to get the programme commissioned. He said that he was assured that his contribution would not be included in the programme. Mr Elmi said that the broadcast had caused him huge embarrassment as he had told his friends, family and the local community, who were predominantly against the programme, that he would not be part of it. Mr Elmi also said that by not informing him that he was going to be included in the programme, the programme makers had put his personal safety at risk.

In response, Channel 4 explained that the filming of Mr Elmi took place on 6 March 2014 and that the programme makers were looking to film local residents to discuss the issue of immigration. Since Mr Elmi's complaint, Channel 4 said that it had contacted the programme makers who interviewed him. The programme makers said that the interview was done without prior arrangement and that before any filming of Mr Elmi started, they told him that they were filming people in the specific area of Derby Road for a potential documentary series for Channel 4 about immigration (with a working title of "Immigration Street"). The programme makers said that a crew member asked Mr Elmi if he was happy to be filmed and that he had replied that he was. Channel 4 said that while this initial conversation between the programme makers and Mr Elmi was not recorded, they were clear that such a conversation did take place in the way described.

Channel 4 said that the programme makers then recorded a 13 minute long interview with Mr Elmi (the unedited footage of which was provided to Ofcom). The broadcaster said that the unedited footage showed that the programme makers made it clear to Mr Elmi that the filming was for a proposed (but unconfirmed) television documentary, rather than one which would definitely appear on television, and that the footage showed that Mr Elmi seemed entirely happy to be filmed for the purpose of such a programme.

The broadcaster said that the programme makers did not ask Mr Elmi to sign a release form, nor did they mention it at any point during the filming and making of the programme, as they felt that his consent on camera, in agreeing willingly to be filmed, was sufficient. It said that Mr Elmi did not request that his interview could not be used or included in any television programme and that at no time following the interview did Mr Elmi contact the programme makers to tell them that he did not consent to footage of him being broadcast. Nor did he say anything that could have reasonably given the broadcaster that impression.

Channel 4 said that when the programme came to be edited, the programme makers had considered whether to include the footage of Mr Elmi in the programme, and if his face should be obscured. Given the small amount of footage used, the nature of Mr Elmi's contribution (akin to a "vox pop" containing nothing of a private nature), and the fact that Mr Elmi consented to be filmed and to answer the questions put to him by the filming crew, Channel 4 said that the programme makers had reasonably assumed that they had obtained Mr Elmi's consent to include the footage of him in the proposed programme, should it be made and broadcast. Channel 4 said that if it had had any doubt as to whether Mr Elmi had consented to the interview and to its inclusion in a future broadcast of a programme, the subject matter and aims of which had been described to him, his contribution would not have been included (as was the case with a number of other contributors). For all these reasons, Channel 4 said that it was reasonable for the programme makers to assume that Mr Elmi had given his consent to appear in the programme.

Channel 4 also said that Mr Elmi was an adult and had been filmed entirely willingly in a public place. It also said that what was included in the programme was a short piece to camera in which he commented on the aims of the programme and that nothing in what was included in the programme could possibly be classified as private or confidential. As a result, Channel 4 said that Mr Elmi did not have a legitimate expectation of privacy with regards to footage of him included in the programme as broadcast and therefore that there had been no infringement of his privacy.

Channel 4 acknowledged Mr Elmi's concern about the programme putting his personal safety at risk, given that the programme was controversial in that some local residents had been strongly opposed to filming taking place and, as was recorded in the programme itself, there were some incidents of intimidation. However, Channel 4 did not believe that there was anything about the nature of the footage featuring Mr Elmi and included in the broadcast programme that could reasonably have placed him in any danger. The broadcaster said that notwithstanding, and without prejudice to its stated position in relation to Mr Elmi's complaint of unwarranted infringement of privacy, as a gesture of goodwill, it had taken the unilateral decision to remove Mr Elmi's contribution from all future broadcasts of the programme.

Ofcom's initial Preliminary View

Ofcom prepared an initial Preliminary View in this case, where Mr Elmi's complaint was upheld. The complainant did not provide further comments on the initial Preliminary View, however Channel 4 made representations, which are summarised below.

Channel 4 stated that the only footage of Mr Elmi included in the broadcast programme were "short snippets" of him commenting on the aims of the programme, and that there was nothing in that material which was of a private nature or in relation to which Mr Elmi could reasonably have a legitimate expectation.

In Channel 4's view, it appeared that Ofcom had proceeded on the basis that, because the nature or focus of the programme had changed from that originally envisaged, this had meant that Mr Elmi's "mere appearance and his general comments about the aims of a series about immigration" had become private matters. Channel 4 stated that such an approach was incorrect. Rather, the broadcaster submitted that the filming, the footage included in the programme and the information contained within it "simply do not have any of the requisite qualities of 'privacy' and do not engage Mr Elmi's Article 8 rights". Channel 4 further submitted

that the fact that the focus of the final broadcast programme was different from that anticipated at the time of filming may have affected 'consent', but it did not, and could not, "convert entirely non-private matters into private ones".

Channel 4 also stated that Ofcom had failed to consider adequately the actual words that were used by Mr Elmi, where the comments included in the programme as broadcast were "entirely reasonable and even-handed" and no proper reasons were given in the initial Preliminary View as to why Mr Elmi would have had a legitimate expectation of privacy in relation to those words at the time of transmission. In Channel 4's view, it would have been clear to the viewer that the vox pop with Mr Elmi had taken place at the start of the filming process and that no reasonable viewer would have concluded that Mr Elmi was 'siding' with the programme makers.

Finally, Channel 4 stated that if Mr Elmi's Article 8 rights had been engaged and he did have a legitimate expectation of privacy (which the broadcaster denied), the making and broadcast of the footage was warranted in the public interest; this was reflected, first in the important issues that the programme raised, where it focused on immigration and the difficulties in making such a programme within a local community, and second in terms of the broadcaster's right to freedom of expression and the viewers' right to receive that information.

Having given careful consideration to these representations, we invited Mr Elmi to comment on Channel 4's representations. These are summarised below.

Mr Elmi stated that he had not given Channel 4 consent for the footage of him to be broadcast and that he had not signed a release form, but that Channel 4 had proceeded on an assumption that consent had been given, based on the fact that he had allowed the programme makers to interview him. Mr Elmi reiterated that he was told verbally prior to his interview that the footage was to be shown to Channel 4 solely for the purpose of commissioning a documentary.

Mr Elmi stated that, during the filming process, he confirmed with the programme makers a number of times that they would not broadcast his interview. Mr Elmi also said that he declined Channel 4's request to do further interviews.

Finally, Mr Elmi disagreed with Channel 4's view that including the footage of him in the programme as broadcast was justified by the public interest, particularly when this was at the expense of personal safety to the individuals featured in the footage.

Having given careful consideration to these representations, we considered that in light of the matters Channel 4 had raised, particularly in relation to its assertion that there was nothing in the broadcast material which was of an inherently private nature to Mr Elmi and which could have reasonably given rise to a legitimate expectation of privacy, it would be appropriate to reconsider the complaint and broadcaster's response and prepare a revised Preliminary View.

Ofcom's revised Preliminary View

Having reconsidered the case in light of the representations made by Channel 4 on the initial Preliminary View (see above), Ofcom issued a revised Preliminary View that the complaint should not be upheld. Both parties were given the opportunity to make representations on the revised Preliminary View. Channel 4 made representations on drafting changes that did not affect the outcome of the revised Preliminary View, but Mr Elmi made no further comments. Ofcom noted that neither

party made representations in relation to its view not to uphold the complaint. Our decision is set out below.

Ofcom's Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting material. We also examined the unedited footage of Mr Elmi's interview by the programme-makers and the transcript of it. Ofcom also took careful account of the representations made by both parties in response to Ofcom's Preliminary View and revised Preliminary View.

Ofcom considered Mr Elmi's complaint that his privacy was unwarrantably infringed in the programme as broadcast because the programme included footage of him without his consent.

In considering whether or not Mr Elmi's privacy was unwarrantably infringed in the programme as broadcast, Ofcom had regard to Practice 8.4 which states that broadcasters should ensure that actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual concerned, unless broadcasting without their consent is warranted. We also had regard to Practice 8.6 of the Code, which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom first assessed the extent to which Mr Elmi had a legitimate expectation of privacy in relation to the footage of him included in the programme as broadcast. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its particular facts.

Ofcom carefully examined the footage of Mr Elmi broadcast in the programme. We noted that Mr Elmi was shown three times in the introduction to the programme as a contributor to a "vox-pop" style sequence in which local residents were asked for their views on the possibility of making a documentary about immigration and on the different nationalities of the people living on Derby Road, Southampton. Mr Elmi was first shown after the narrator said: *"If anyone can have an informed and honest conversation about the impact of immigration it's the people that work and live on this road and in March 2014 that conversation began"*. In the footage broadcast of him, Mr Elmi mentioned some of the nationalities living on the street and gave his views on the nature and purpose of the programme. Mr Elmi was not named in the

programme, however, his face was shown unobscured and his voice was not disguised. We considered therefore that Mr Elmi was identifiable from this footage as someone who either resided or worked in the area.

Ofcom noted that Mr Elmi had been filmed openly in a public place, namely a public street, and in full view of anyone present. After viewing the unedited footage of Mr Elmi, we also noted that he appeared to have actively participated throughout the filming process by agreeing to be interviewed by the programme makers for approximately 13 minutes. We recognised that there may be circumstances where an individual may have a legitimate expectation of privacy in relation to the broadcast of footage that was filmed in a public place, when some activities and conditions may be of such a private nature that filming or recording could involve an expectation of privacy. Whether an individual has an expectation of privacy in a public case will depend on the circumstances of the case.

In this particular case, Ofcom took account of the fact that five weeks into the filming of the programme (and subsequent to the footage of Mr Elmi being obtained), the programme-makers started to receive considerable media coverage. There was also a growing level of opposition and hostility from certain local residents towards both the film crew and the contributors to the programme. In particular, we noted that a number of contributors were intimidated and threatened (at times, violently), for taking part in the programme. The intimidation was such that, as the filming continued, extra security staff was employed to protect the programme makers and reassure contributors. As a result, the focus of the programme shifted so that it was no longer about the impact of immigration in a particular street, but about the *making* of a documentary about immigration. The footage filmed by the programme makers – including the interview with Mr Elmi – was used in that context.

Ofcom noted Channel 4's representations that the change in focus of the programme from that anticipated at the time that Mr Elmi was filmed, to that when the programme was broadcast, could not turn entirely non-private information and matters into private ones. We further noted Channel 4's view that the words used by Mr Elmi in the programme as broadcast did not have the requisite quality of privacy, such as to give rise to a legitimate expectation of privacy.

In Ofcom's view, it is necessary to take into account all the circumstances in which information pertaining to an individual has been obtained, and the context in which that information is then subsequently broadcast, when assessing whether or not that individual has a legitimate expectation of privacy. Such circumstances must be considered objectively on a case-by-case basis.

It is on that basis that Ofcom carefully assessed whether Mr Elmi had a legitimate expectation of privacy in the material which was broadcast. We acknowledged Channel 4's point, that the excerpt of the programme-maker's interview with Mr Elmi which was included in the programme as broadcast did not reveal any information which could reasonably be considered to be of a particularly sensitive and private nature to him. Rather, the statements included in the programme as broadcast reflect Mr Elmi's balanced and relatively neutral views on a topic that is not inherently private to him, namely the making of a documentary about immigration. Ofcom also took account of the fact that Mr Elmi appears to have spoken voluntarily to the programme makers, in circumstances where it was clear to him that he was being filmed and he may have reasonably expected that part of that footage might be subsequently broadcast. After careful consideration, we agreed with Channel 4's submission that the broadcast footage of Mr Elmi did not contain anything of a private and personal nature which would have engaged his Article 8 rights. Given these

circumstances, even if it is the case that the focus of the programme changed as between the time that Mr Elmi was filmed and the time that the programme was broadcast, Ofcom found that Mr Elmi did not have a legitimate expectation of privacy in the footage included of him in the programme as broadcast. Consequently, it was not necessary for Ofcom to go on to consider whether or not any infringement of Mr Elmi's privacy was warranted.

Therefore, Ofcom has not upheld Mr Elmi's complaint of unwarranted infringement of privacy in the programme as broadcast.

Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 17 and 30 October 2015 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
The Andy Bush Show	Absolute Radio	14/10/2015	Generally accepted standards	1
BBC News	BBC 1	25/10/2015	Outside of remit	1
BBC News	BBC 1	27/10/2015	Generally accepted standards	1
BBC News at One	BBC 1	28/10/2015	Scheduling	1
Class of 92: Out of Their League	BBC 1	29/10/2015	Outside of remit	1
EastEnders	BBC 1	22/10/2015	Generally accepted standards	3
EastEnders	BBC 1	23/10/2015	Transgender discrimination/offence	1
Have I Got a Bit More News for You	BBC 1	12/10/2015	Race discrimination/offence	1
Have I Got News for You	BBC 1	09/10/2015	Generally accepted standards	1
Have I Got News for You	BBC 1	23/10/2015	Disability discrimination/offence	1
Is Britain Racist?	BBC 1	21/10/2015	Due impartiality/bias	3
Regional News and Weather	BBC 1	30/10/2015	Scheduling	1
Saturday Kitchen	BBC 1	25/10/2015	Generally accepted standards	1
Strictly Come Dancing	BBC 1	17/10/2015	Nudity	1
Strictly Come Dancing	BBC 1	17/10/2015	Voting	1
Strictly Come Dancing	BBC 1	24/10/2015	Generally accepted standards	2
Strictly Come Dancing	BBC 1	24/10/2015	Offensive language	19
Strictly Come Dancing	BBC 1	25/10/2015	Generally accepted standards	1
Sunday Morning Live	BBC 1	18/10/2015	Generally accepted standards	8
The Apprentice	BBC 1	28/10/2015	Generally accepted standards	1
The One Show	BBC 1	20/10/2015	Offensive language	7
The VIP Paedophile Ring: What's the Truth?	BBC 1	06/10/2015	Harm	3
The VIP Paedophile Ring: What's the Truth?	BBC 1	16/10/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Nolan Live	BBC 1 Northern Ireland	30/09/2015	Generally accepted standards	1
Watchdog	BBC 1 Scotland	15/10/2015	Crime	1
Building Cars Live	BBC 2	20/10/2015	Generally accepted standards	1
Gymnastics	BBC 2	28/10/2015	Race discrimination/offence	2
Russell Howard's Good News	BBC 2	22/10/2015	Religious/Beliefs discrimination/offence	1
The Daily Politics	BBC 2	Unknown	Race discrimination/offence	1
The Game Changers	BBC 2	15/09/2015	Offensive language	1
The Commute	BBC 2 Northern Ireland	23/10/2015	Generally accepted standards	1
Is Britain Racist?	BBC 3	05/10/2015	Race discrimination/offence	7
Stacey Dooley Investigates: Saving the Cyber Sex Girls	BBC 3	19/10/2015	Under 18s - Coverage of sexual and other offences	1
BBC News	BBC News Channel	20/10/2015	Outside of remit	1
The Scott Mills Show	BBC Radio 1	28/10/2015	Religious/Beliefs discrimination/offence	1
BBC News	BBC Radio 4	18/10/2015	Generally accepted standards	1
PM	BBC Radio 4	27/10/2015	Scheduling	1
Robert Newman's Entirely Accurate Encyclopaedia of Evolution	BBC Radio 4	22/10/2015	Race discrimination/offence	1
Iain Lee	BBC Three Counties Radio	29/10/2015	Outside of remit	1
Moto GP Live	BT Sport 2 HD	25/10/2015	Due impartiality/bias	1
Harron Homes' sponsorship of Capital Weather	Capital FM (Yorkshire South & West)	Various	Commercial communications on radio	1
Capital Breakfast With Graeme & Sarah	Capital FM 97.1	20/10/2015	Scheduling	1
Wild and Weird	CBBC	18/10/2015	Scheduling	1
4NewsWall.com promotion	Channel 4	28/10/2015	Offensive language	2
Bernard Matthews' sponsorship of The Simpsons	Channel 4	19/10/2015	Generally accepted standards	1
Bernard Matthews' sponsorship of The Simpsons	Channel 4	20/10/2015	Sponsorship credits	1
Bernard Matthews' sponsorship of The Simpsons	Channel 4	22/10/2015	Sponsorship credits	1
Bernard Matthews' sponsorship of The Simpsons	Channel 4	Various	Sponsorship credits	3
Channel 4 News	Channel 4	08/07/2015	Due impartiality/bias	56

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Channel 4 News Summary	Channel 4	15/10/2015	Due impartiality/bias	1
Girls to Men	Channel 4	13/10/2015	Transgender discrimination/offence	5
Gogglebox	Channel 4	23/10/2015	Drugs, smoking, solvents or alcohol	1
Hollyoaks	Channel 4	20/10/2015	Violence and dangerous behaviour	2
It Was Alright in the 1990s	Channel 4	17/10/2015	Nudity	2
My Transgender Kid	Channel 4	06/10/2015	Under 18s in programmes	2
Sex Diaries: Webcam Couples	Channel 4	28/09/2015	Sexual material	1
The Three Day Nanny	Channel 4	27/10/2015	Gender discrimination/offence	1
Can't Pay? We'll Take it Away!	Channel 5	26/09/2015	Offensive language	2
Can't Pay? We'll Take it Away!	Channel 5	21/10/2015	Violence and dangerous behaviour	1
CSI: Cyber	Channel 5	06/10/2015	Generally accepted standards	1
Funniest Fails, Falls and Flops	Channel 5	17/10/2015	Scheduling	3
GPs: Behind Closed Doors	Channel 5	21/10/2015	Generally accepted standards	1
Police Interceptors	Channel 5	26/10/2015	Generally accepted standards	1
The Wright Stuff	Channel 5	15/10/2015	Due impartiality/bias	1
News	Channel i	03/09/2015	Materially misleading	1
Obhimot	CHSTV	21/09/2015	Due impartiality/bias	2
All Stars	CITV	02/10/2015	Offensive language	1
Kelloggs' sponsorship of CITV	CITV	Various	Sponsorship	1
Super Scoreboard	Clyde 1	21/10/2015	Race discrimination/offence	7
Stuart Robinson	Cool FM (Northern Ireland)	Various	Scheduling	1
Halfords' sponsorship of Motoring on Dave	Dave	16/10/2015	Sponsorship credits	1
Bad Robots	E4	22/09/2015	Under 18s in programmes	2
Charmed	E4	15/10/2015	Outside of remit	1
How to Live the Chelsea Life	E4	19/10/2015	Generally accepted standards	2
How to... Show Off Your Talent	E4	20/10/2015	Generally accepted standards	2
The Perks of Being a Wallflower	Film4	04/10/2015	Scheduling	1
Programming	Gay Network / Chat Box	19/10/2015	Outside of remit	1
The Hairy Bikers: Mums Know Best	Good Food Channel	21/10/2015	Disability discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Heart Breakfast with Ed, Troy & Paulina	Heart FM (Bristol)	14/10/2015	Religious/Beliefs discrimination/offence	1
Programming	Heart FM (Sussex)	22/08/2012	Generally accepted standards	1
Blood and Glory: The Civil War in Colour (trailer)	History	19/10/2015	Scheduling	1
Kabbo Kothay Eid	Iqra Bangla	27/09/2015	Advertising minutage	1
Anadin's sponsorship of The Chase	ITV	15/10/2015	Sponsorship credits	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	16/10/2015	Sponsorship credits	1
Coronation Street	ITV	16/10/2015	Religious/Beliefs discrimination/offence	1
Downton Abbey	ITV	18/10/2015	Generally accepted standards	8
Emmerdale	ITV	15/10/2015	Race discrimination/offence	1
Emmerdale	ITV	27/10/2015	Violence and dangerous behaviour	36
Emmerdale & Coronation Street	ITV	20/10/2015	Scheduling	1
Good Morning Britain	ITV	13/10/2015	Disability discrimination/offence	12
ITV News at Ten and Weather	ITV	12/10/2015	Due accuracy	1
ITV News at Ten and Weather	ITV	16/10/2015	Crime	1
Loose Women	ITV	16/10/2015	Disability discrimination/offence	1
Loose Women	ITV	22/10/2015	Scheduling	1
Loose Women	ITV	26/10/2015	Transgender discrimination/offence	4
Loose Women	ITV	28/10/2015	Generally accepted standards	1
Loose Women	ITV	30/10/2015	Transgender discrimination/offence	1
Lorraine	ITV	21/10/2015	Nudity	1
Midwinter of the Spirit	ITV	09/10/2015	Under 18s - Coverage of sexual and other offences	1
Party Political Broadcast by the Conservative Party	ITV	08/10/2015	Materially misleading	1
Pick Me!	ITV	27/10/2015	Flashing images/risk to viewers who have PSE	1
SSE's sponsorship of ITV's coverage of Rugby World Cup 2015	ITV	Various	Generally accepted standards	1
The Chase	ITV	16/10/2015	Fairness	1
The Jeremy Kyle Show	ITV	12/10/2015	Violence and dangerous behaviour	1
The Jeremy Kyle Show	ITV	15/10/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Jeremy Kyle Show	ITV	20/10/2015	Race discrimination/offence	1
The Millionaire Matchmaker	ITV	19/10/2015	Race discrimination/offence	1
The X Factor	ITV	08/10/2015	Competitions	1
The X Factor	ITV	11/10/2015	Generally accepted standards	1
The X Factor	ITV	18/10/2015	Generally accepted standards	21
The X Factor	ITV	24/10/2015	Generally accepted standards	2
The X Factor	ITV	24/10/2015	Religious/Beliefs discrimination/offence	1
The X Factor	ITV	24/10/2015	Scheduling	1
The X Factor	ITV	25/10/2015	Advertising minutage	1
The X Factor	ITV	25/10/2015	Generally accepted standards	6
The X Factor	ITV	25/10/2015	Scheduling	1
The X Factor	ITV	28/10/2015	Harm	1
The X Factor	ITV	Various	Generally accepted standards	1
This Morning	ITV	20/10/2015	Due impartiality/bias	41
This Morning	ITV	20/10/2015	Offensive language	3
ITV News Central	ITV Central	12/10/2015	Generally accepted standards	1
Holland and Barrett's sponsorship of London Weekend Weather	ITV London	09/10/2015	Sponsorship credits	1
ITV News London	ITV London	25/10/2015	Due accuracy	1
Back to the Future	ITV2	21/10/2015	Outside of remit	1
Celebrity Juice	ITV2	19/10/2015	Animal welfare	1
Keith Lemon's Back T'future Tribute	ITV2	21/10/2015	Disability discrimination/offence	1
Sunday Night at the Palladium	ITV3	20/09/2015	Animal welfare	1
Warner Leisure Hotels' sponsorship of Heartbeat	ITV3	12/10/2015	Sponsorship credits	1
The Only Way is Essex	ITVBe	07/10/2015	Generally accepted standards	1
The Only Way Is Essex	ITVBe	14/10/2015	Animal welfare	2
The Real Housewives of Cheshire	ITVBe	14/09/2015	Race discrimination/offence	1
Station ident	Jack FM (Oxfordshire)	20/10/2015	Generally accepted standards	1
Partaj	Kanal 5	04/10/2015	Generally accepted standards	1
Andrew Pierce	LBC 97.3 FM	03/10/2015	Due impartiality/bias	1
Nick Ferrari	LBC 97.3 FM	27/10/2015	Religious/Beliefs discrimination/offence	1
Ken Livingstone and David Mellor	LBC 97.3FM	17/10/2015	Due impartiality/bias	1
Lucy Beresford	LBC 97.3FM	17/10/2015	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Nick Ferrari	LBC 97.3FM	Various	Due impartiality/bias	1
Night Cops	Pick TV	22/10/2015	Materially misleading	1
Born Survivor: Bear Grylls	Quest	16/09/2015	Scheduling	1
Johnny Vaughan	Radio X	20/10/2015	Race discrimination/offence	1
The Chris Moyles Show	Radio X	20/10/2015	Gender discrimination/offence	1
Help! I Caught It Abroad (trailer)	Really	15/10/2015	Generally accepted standards	1
News	RT	13/10/2015	Due accuracy	1
News	RT	14/10/2015	Due impartiality/bias	1
News	RT	Various	Due accuracy	1
Press Preview	Sky News	28/10/2015	Generally accepted standards	1
Sky News at 11 with Mark Longhurst	Sky News	17/10/2015	Due impartiality/bias	1
Sky News with Anna Jones	Sky News	17/10/2015	Due impartiality/bias	7
Sky News with Colin Brazier	Sky News	20/10/2015	Due impartiality/bias	1
Sunrise	Sky News	11/10/2015	Due impartiality/bias	1
Bring the Noise	Sky1	22/10/2015	Fairness	1
Stop Search Seize	Sky1	18/10/2015	Generally accepted standards	1
Yeh Hai Mohabbatein	Star Plus	19/10/2015	Scheduling	1
Alan Brazil Sports Breakfast	Talksport	30/10/2015	Race discrimination/offence	1
It's Supernatural	TBN UK	10/09/2015	Exorcism, the occult and the paranormal	1
Jesse Duplantis Ministries	TBN UK	06/09/2015	Materially misleading	1
Paradise Hotel	TV3	19/10/2015	Scheduling	1
Adult chat services	Various	16/10/2015	Generally accepted standards	1
Various	Various	Various	Advertising minutage	1

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

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

Licensee	Licensed service	Categories
Community Development Horizons Limited	Raaj FM	Key Commitments
Preston Community Radio 23	City Beat Preston	Key Commitments
Bristol Community FM Limited	Bristol Community FM	Key Commitments

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television and radio adverts, or accuracy in BBC programmes.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

Complaints about television or radio programmes

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
Advertisements	Channel 4	22/10/2015	Advertising content	1
Advertisements	Channel 4	24/10/2015	Advertising content	1
Advertisements	Channel 4	27/10/2015	Advertising content	1
Advertisements	Comedy Central	17/10/2015	Advertising content	1
Advertisements	E4	21/10/2015	Advertising content	1
Teleshopping	Ideal World	24/10/2015	Advertising content	1
Advertisements	ITV	18/10/2015	Advertising content	1
Advertisements	ITV	23/10/2015	Advertising content	1
Advertisements	ITV	26/10/2015	Advertising content	1
Advertisements	ITV2	27/10/2015	Advertising content	1
Advertisements	ITVBe	19/10/2015	Advertising content	2
Advertisements	More4	18/10/2015	Advertising content	1
Advertisements	Movie Mix	23/10/2015	Advertising content	1
BBC Sport	BBC	Various	Advertising/editorial distinction	1
BBC News	BBC 1	21/10/2015	Due impartiality/bias	1
BBC News at Six	BBC 1	26/10/2015	Due impartiality/bias	1
Have I Got News for You	BBC 1	09/10/2015	Due impartiality/bias	1
Question Time	BBC 1	16/10/2015	Due impartiality/bias	1
The One Show	BBC 1	07/10/2015	Due accuracy	1
Watchdog	BBC 1	15/10/2015	Materially misleading	1
Russell Howard's Good News	BBC 2	22/10/2015	Due impartiality/bias	1
News Quiz	BBC Radio 4	23/10/2015	Due impartiality/bias	1
Global Health	BBC World Service	21/10/2015	Materially misleading	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 17 and 30 October 2015.

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

Programme	Broadcaster	Transmission date
Benefit Brits By The Sea	5*	14 and 19 October 2015
South Park (trailer)	Comedy Central	14 September 2015
A Good Year	Film4 +1	6 October 2015
Jekyll and Hyde	ITV	25 October 2015
A League of Their Own	Sky Sports 1	14 October 2015

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 Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
Council House Crackdown	BBC 1	24 July 2015
Britons Living Behind the Veil	BBC News Channel	7 September 2015
How the Rich Get Hitched	Channel 4	1 September 2015

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

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

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

Licensee	Licensed Service
1 Ummah FM Community Interest Company	1 Ummah 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/>.