

# **Ofcom Broadcast Bulletin**

**Issue number 185**  
**4 July 2011**

# Contents

Introduction	4
--------------	---

## Notice of Sanction

<b>Satellite Entertainment Limited</b> <i>Multiple breaches of TLCS Licence Condition 11, September to October 2010</i>	5
--	---

## Broadcast Licence Condition cases

Broadcasting licensees' Relevant Turnover returns	7
---	---

## Note to Broadcasters

Ofcom's policy on deadline extensions	10
---------------------------------------	----

## Standards cases

### In Breach

#### **Red Light**

*Red Light 1, (Channel 911), 3 April 2011 23:53 to 01:00*  
*Red Light 1, (Channel 911), 9 April 2011, 21:00 to 21:35*  
*Red Light 1, (Channel 911), 13 April 2011, 21:03 to 21:45*  
*Red Light 1, (Channel 911), 13 April 2011, 22:00 to 23:00*

#### **Bang Babes**

*Red light 1, (Channel 911), 10 April 2011, 00:00 to 01:00*

#### **Red Light 2**

*Red Light 2 (Channel 902), 2 April 2011, 00:05 to 01:00*

#### **Xplicit**

*Red Light 2, (Channel 902), 12 April 2011, 22:12 to 23:00*  
*Red Light 2, (Channel 902), 13 April 2011, 00:11 to 01:00*

#### **Red Light 3**

*Red Light 3 (Channel 948), 10 April 2011, 22:10 to 23:00*

#### **100% Horny**

*Red Light 3 (Channel 948), 6 April 2011, 22:00 to 23:00* 11

#### **Northern Birds**

*SportXXX1, 12 March 2011, 21:30 to 22:00*  
*and 13 March 2011, 01:00 to 01.20*

#### **Asian Babes,**

*Live XXXBabes, 14 March 2011, 00:00* 23

#### **Elite Nights**

*Elite TV 2 (Channel 914), 19 March 2011, 00:27 to 00:46*  
*Elite TV 2 (Channel 914), 10 April 2011, 22:17 to 22:55* 29

#### **Bluebird Daytime TV**

*Babeworld TV, 14 April 2011, 13:45 to 14:45* 34

<b>Adult chat advertisement content</b>	
<i>Get Lucky TV, 10 April 2011, 22:00 to 22:20</i>	38
<b>Matt Forde</b>	
<i>Talksport, 28 March 2011, 00:20, 4 April 2011, 00:15, 11 April 2011, 00:18 and 2 May 2011, 00:15</i>	42
<b>Bahrain Special</b>	
<i>Ahlulbayt TV, 29 March 2011 and 31 March 2011, 18:00</i>	48
<b>Bahrain Revolution</b>	
<i>Hidayat TV, 25 March 2011, 19:00</i>	56
<b>Hourly Urdu News</b>	
<i>ARY News, 17 March 2011, 20:00</i>	
<b>Criminals Most Wanted</b>	
<i>ARY News, 17 April 2011, 15:00</i>	61
<b>Advertisement for Health Food Center</b>	
<i>OBE, 24 January 2011, 11:00</i>	65
<b>PS3 sponsorship of Five Movies</b>	
<i>Channel 5, Channel 5 HD, 5* and 5 USA, 3 February 2011 to 25 March 2011, various dates and times</i>	70
<b>SK Vibemaker</b>	
<i>Rinse FM, 30 March 2011, 14:00 to 17:00</i>	74
<u>Resolved</u>	
<b>FA Cup Final</b>	
<i>ITV1, 14 May 2011, 17:00</i>	76
<b>Fairness &amp; Privacy cases</b>	
<u>Upheld</u>	
<b>Complaint by Trust Inheritance</b>	
<i>Rip Off Britain, BBC1, 7 December 2010</i>	79
<u>Not Upheld</u>	
<b>Complaint by Unison</b>	
<i>Dispatches: What's The Point Of The Unions, Channel 4, 27 September 2010</i>	85
<b>Other programmes not in breach</b>	104

## Introduction

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

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

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

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

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

The BCAP Code can be found at:

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

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

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

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

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

---

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

## Notice of Sanction

### Satellite Entertainment Limited

*Multiple breaches of TLCS Licence Condition 11, September to October 2010*

---

#### Introduction

Satellite Entertainment Limited (SEL) owns and operates four television services. All of these channels are on the Sky platform and each is operated under a Television Licensable Content Service (TLCS) licence issued by Ofcom under section 13 of the Broadcasting Act 1990.

All of SEL's channels are located in the 'adult' section of the Sky electronic programme guide and are available freely without mandatory restricted access. The channels provide daytime chat and (post watershed) 'adult' sex chat services encouraging viewers to call a premium rate service (PRS) telephone number and talk to an onscreen presenter.

On 24 June 2011, Ofcom published its decision to impose a statutory sanction on SEL in respect of three of its services – Live XXX Babes, Northern Birds, and Essex Babes – for failing to comply with Condition 11 of each of the relevant TLCS licences.

In total, Ofcom imposed a total financial penalty of **£90,000**.

#### Summary of Decision

SEL was found to have breached Condition 11 nine times in a six week period across September and October 2010.

Licence Condition 11 requires that:

- (1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint...
- (2) In particular, the Licensee shall: (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction.

Ofcom found SEL in breach of this licence condition for failing to provide, when requested, recordings of programmes on the following dates:

- 8 September 2010
- 26/27 September 2010
- 21 September 2010
- 16 September 2010
- 27 September 2010
- 23 September 2010
- 24 September 2010
- 12 October 2010
- 13 October 2010

After considering all of the evidence and representations made to it, the Committee decided that these Licence Condition 11 breaches were so serious and repeated that a financial penalty should be imposed. The Committee then also considered the level of the fine to be imposed, in accordance with Ofcom's Penalty Guidelines.

The Licensee argued in mitigation that it had 'rented out' its services to a third party which had assumed control of all aspects of the channels, including compliance.

In summary, the Committee considered that the Licensee's refusal to supply Ofcom with recordings constituted a very serious licence contravention. The Committee noted that the Licensee's behaviour served only to frustrate the regulatory process and that this was unacceptable.

The Committee further considered that for a six week period the Licensee had lost control of its own services. The Committee found this failure to maintain control of its services to fall far beneath the standards required of a Licence holder.

Having regard to the serious and repeated nature of the breaches, and having regard to the Licensee's representations and Ofcom's Penalty Guidelines, the Committee decided that it was appropriate and proportionate in the circumstances to impose a financial penalty on SEL.

The Committee imposed financial penalties (payable to HM Paymaster General) on SEL of £10,000 for each breach of Condition 11 of the licences. SEL was therefore fined a total of **£90,000**.

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/satellite-entertainment.pdf>

## Broadcast Licence Condition cases

### Broadcasting licensees' Relevant Turnover returns

---

Ofcom is partly funded by the licence fees it charges television and radio licensees. In setting these fees, Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles<sup>1</sup>. Chief among these principles is that for all television and for national and local analogue radio licensees, the fees they are required to pay are based on a percentage of their turnover from related activities. This is known as Relevant Turnover.

In order to enable Ofcom to charge licensees the appropriate fee, each licensee is required each year to submit to Ofcom a statement of its Relevant Turnover for the last but one calendar year. This provision of information is a licence requirement<sup>2</sup>. As well as enabling the charging of fees, this information is also used by Ofcom to fulfil its obligations regarding market reporting. It can therefore be seen that submission of Relevant Turnover is an extremely important requirement upon all relevant broadcasting licensees.

Failure by a licensee to submit an annual Relevant Turnover return when required represents a serious and fundamental breach of a broadcast licence, as the absence of the information contained in the return means that Ofcom is unable properly to carry out its regulatory duties.

#### In Breach

The following licensees have failed to submit their Relevant Turnover returns, despite repeated requests for this information. These licensees have therefore been found **in breach** of their licences. As a consequence of this serious and continuing licence breach, Ofcom is putting these licensees on notice that their present contravention of their licences is being considered for the imposition of a statutory sanction, including licence revocation.

Television licensees	
Licensee	Service Name
Destiny Broadcasting	Praise TV
Sikh Media Limited	Sikh TV
Euro Bangla Limited	Euro Bangla TV
PAK (UK) TV Limited	Prime TV
Thane Direct UK Limited	Think Thane

---

<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

<sup>2</sup> Contained in Licence condition 12 for television licensees, and Licence Condition 9 for radio licensees.

Thane Direct UK Limited	Thane Direct
TV Enterprises Limited	NTAI
Volkswagen Group Universal Limited	Audi Channel
Thane Direct UK Limited	Thane Direct International
DM Digital TV Limited	DM Digital
Hidayat Television Limited	Hidayat TV
The Light Academy	Believe TV
New OBE Channel Limited	OBE
<b>Radio licensees</b>	
Central Air Radio Limited	Radio XL

## Resolved

The following licensees failed to submit their Relevant Turnover return in accordance with the original deadline, but have subsequently submitted a late return. For these licensees, we therefore consider the matter **resolved**.

<b>Television licensees</b>	
<b>Licensee</b>	<b>Service Name</b>
Al Ehya Digital TV Limited	Noor TV
ATN Bangla UK Limited	ATN Bangla UK
CTV International Limited	CTV
Gala Alderney Limited	Gala TV
Middlesex Broadcasting Corporation Limited	MATV Punjabi
Middlesex Broadcasting Corporation Limited	MATV Music
Playphone Europe Limited	Playphone
Propeller TV Limited	This is Yorkshire
Regis1 Limited	Sangat
Sci Fi Channel Europe Limited	Sci Fi Romania
Shorts International Limited	Shorts TV

South For You Limited	South For You
Trans Europe Media Limited	NR TV
Rainbow Television	Rainbow TV
A&A Inform Limited	Russian Hour
Smart TV Broadcasting	Casino TV
Smart TV Broadcasting	Akilli TV
MGM Channel NLF Limited	The MGM Channel
Travel Channel International Limited	Travel Channel HD
Travel Channel International Limited	Travel Channel
Travel Channel International Limited	Travel Channel TV
Travel Channel International Limited	Retail TV
Travel Channel International Limited	Travel Channel 2
Travel Channel International Limited	The Travel Channel
Turner Broadcasting System Europe Limited	TCM2
Turner Broadcasting System Europe Limited	TCM Clasico
<b>Radio licensees</b>	
Brighton and Hove Radio Limited	Juice 107.2
London Greek Radio Limited	London Greek Radio
Imagine FM Limited	Imagine FM
Spectrum Radio Limited	Spectrum Radio
Heartland Radio Foundation Limited	Heartland FM
Dune FM Limited	Dune FM

## Note to Broadcasters

### Ofcom's policy on deadline extensions

---

On 1 June 2011, Ofcom published its revised procedures for handling broadcasting complaints, cases and sanctions. The revised procedures streamline our processes to improve the speed in which we carry out investigations and allow for more responsive decision making for the benefit of all stakeholders.

As part of this, the revised procedures include shorter targets for Ofcom to complete the assessment of complaints and investigations. The procedures also clearly set out the length of time in which broadcasters are required to respond to requests from Ofcom, such as requests for recordings and representations on potential breaches of the relevant codes.

Ofcom is putting all broadcasters on notice that it expects them to respect all deadlines set by Ofcom so it is able to meet the new shorter targets for carrying out assessments and investigations. As such, Ofcom will now only grant extensions to deadlines in exceptional circumstances. In those circumstances, Ofcom expects the broadcaster to notify Ofcom as soon as possible if it is unable to meet a deadline, and to provide sufficient reasons why this is the case.

Broadcasters should note that in cases where a broadcaster fails to meet a deadline for the provision to Ofcom of a recording and/or information requested by Ofcom, it is likely to proceed as a matter of course to investigate the matter under the relevant licence condition and record a breach of that licence condition and, if appropriate, consider taking further regulatory action.

In cases where a broadcaster fails to meet a deadline for the provision of representations to Ofcom during the course of an investigation, and has not been granted an extension, Ofcom may proceed to reaching its decision on the case on the basis of the information available to it at the time.

Ofcom's revised procedures are available here:

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

## Standards cases

### In Breach

#### Red Light

*Red Light 1, (Channel 911), 3 April 2011 23:53 to 01:00*  
*Red Light 1, (Channel 911), 9 April 2011, 21:00 to 21:35*  
*Red Light 1, (Channel 911), 13 April 2011, 21:03 to 21:45*  
*Red Light 1, (Channel 911), 13 April 2011, 22:00 to 23:00*

#### Bang Babes

*Red light 1, (Channel 911), 10 April 2011, 00:00 to 01:00*

#### Red Light 2

*Red Light 2 (Channel 902), 2 April 2011, 00:05 to 01:00*

#### Xplicit

*Red Light 2, (Channel 902), 12 April 2011, 22:12 to 23:00*  
*Red Light 2, (Channel 902), 13 April 2011, 00:11 to 01:00*

#### Red Light 3

*Red Light 3 (Channel 948), 10 April 2011, 22:10 to 23:00*

#### 100% Horny

*Red Light 3 (Channel 948), 6 April 2011, 22:00 to 23:00*

---

### Introduction

*Red Light, Bang Babes, Red Light 2, Xplicit, Red light 3, and 100% Horny* are segments of televised interactive adult sex chat advertisement content broadcast on the services Red Light 1, Red Light 2 and Red Light 3. These three services are available freely without mandatory restricted access on Sky channel numbers 911, 902 and 948 respectively. These services are in the 'adult' section of the Sky Electronic Programme Guide ("Sky EPG"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

The licence for Red Light 1 is owned and operated by Just4Us TV Limited ("Just4Us"); and the licences for Red Light 2 and Red Light 3 are owned and operated by Playboy UK TV Limited/ Benelux Ltd ("Playboy TV"). Just4Us TV Limited is a wholly owned subsidiary of Playboy TV UK/Benelux Limited. Playboy TV complies all three services.

Ofcom received a complaint about the content listed above. In summary the complainant considered the material was "becoming more and more sexually explicit" and "is clearly way beyond what could be deemed acceptable". Ofcom also monitored these services as part of a periodical monitoring exercise of the adult sex chat sector.

#### 1. Red Light 1, Red Light 1 (Channel 911), 3 April 2011 23:53 to 01:00

Here the naked female presenter was shown spitting onto her breasts, wiping saliva onto her buttocks and letting saliva drip onto her genital area. The broadcast also

included images of the presenter: rubbing oil all over her body, particularly onto her breasts; pouring oil onto her buttocks; adopting sexual positions, such as on her back with her legs wide open to camera; mimicking sexual intercourse; mimicking oral sex on a man using her fingers; and gyrating her hips whilst applying pressure with her cupped hand to cover her genital area. During the broadcast the presenter was also shown using the telephone to cover her genital area.

2. Red Light, Red Light 1 (Channel 911), 9 April 2011, 21:03 to 21:35

In the broadcast, the female presenter wore a thong, bra, stockings and red knee-high boots. During the broadcast she: adopted sexual positions such as lying on her back with her legs wide open, albeit away from camera, sometimes for prolonged periods; mimed sexual intercourse; stroked her breasts and thighs and bunched her thong. On several occasions during the broadcast the presenter gave the impression she was touching her genital area, however the image was obscured by her leg or camera angle.

3. Bang Babes, Red Light 1 (Channel 911), 10 April 2011, 00:00 to 01:00

The female presenter was wearing a thong, stockings and red knee-high boots. During the broadcast the presenter was shown bunching her thong and pouring oil onto her inner thighs, buttocks and genital area. The presenter: adopted sexual positions such as on all fours with her buttocks to camera and on her back with her legs wide open to camera; gyrated her hips; and mimicked sexual intercourse. The presenter later removed her thong and applied pressure with her cupped hand to cover her genital area whilst adopting various sexual positions. On one occasion her genital area was briefly visible. During the broadcast on at least three occasions the presenter gave the impression she was touching her genital area; however the image was obscured by her leg or camera angle.

4. Red Light, Red Light 1 (Channel 911), 13 April 2011, 21:03 to 21:45

Here the presenter wore a white lace strapless bra, white thong and white shoes. During the broadcast she: adopted sexual positions, such as on all fours and on sitting with her legs wide open to camera; mimicked sexual intercourse, sometimes for prolonged periods; massaged her breasts; and stroked her body. At times her outer genital area was visible and at one point her left nipple was visible.

5. Red Light, Red Light 1 (Channel 911), 13 April 2011, 22:00 to 23:00

This broadcast contained the same presenter as the broadcast at 21:03 to 21:45 above. On several occasions throughout this broadcast she adopted sexual positions, such as with her legs wide open to camera or with her buttocks to camera and her outer genital area was visible.

Some images were prolonged and intrusive, in particular: while the presenter was lying on her back with her crotch area raised and the camera angle was pointing down onto her crotch; when she was on all fours with her buttocks to camera, gyrating her hips; and when she was leaning backwards with her legs wide open to camera and mimicking sexual intercourse. The presenter was also shown stroking her inner thighs and outer labial area.

6. Red Light2, Red Light 2 (Channel 902), 2 April 2011, 00:05 to 01:00

The presenter wore a pink thong, black knee high boots and a black fetish outfit of black straps and buckles that exposed her breasts. On several occasions she mimicked oral sex on a man (using her fingers) and then let the saliva drip down her face, as if to emulate ejaculate. There were also close up images of the presenter spitting onto her breasts and letting saliva drip down her face, again as if to emulate ejaculate. Her clothing did not adequately cover her outer labial area. The broadcast included images of the presenter adopting sexual positions which included intrusive shots, for example approximately 25 minutes into the broadcast, the presenter was shown bending over with her buttocks to camera and later on her back with her legs open to camera and her outer labia were clearly visible.

7. Xplicit, Red Light 2 (Channel 902), 12 April 2011, 22:12 to 23:00

The presenter was wearing a white thong, white bra, white stockings and white shoes. She later removed her bra. Her clothing did not adequately cover her outer genital area. There were prolonged, intrusive shots of the presenter as she adopted various sexual positions, for example 12 minutes into the broadcast the presenter was on all fours with her buttocks to camera, gyrating her hips and mimicking sexual intercourse and later on her back with her legs open to camera. During the broadcast the presenter stroked her outer labial area and spanked her buttocks.

8. Xplicit, Red Light 2 (Channel 902), 13 April 2011, 00:11 to 01:00

The presenter was wearing a white thong, white stockings and white shoes. The presenter's clothing did not adequately cover her outer genital area. During the broadcast the presenter was shown pouring oil onto her buttocks and genital area and later rubbing it into her genital area. There were intrusive images of the presenter as she bent over with her buttocks to camera. She also adopted sexual positions such as on her back with her legs wide open to camera, gyrated her hips and mimicked sexual intercourse whilst applying pressure with a cupped hand to cover her genital area.

9. 100% Horny, Red Light 3 (Channel 948), 6 April 2011, 22:01 to 23:00

The presenter was wearing black knee high boots, black PVC top, stockings and a black bra which was pulled down to expose her breasts. During the broadcast she stroked her breasts and inner thighs. At times her outer genital area was not adequately covered. She adopted various sexual positions, for example on all fours with her buttocks to camera and on her back with her legs wide open to camera and mimicked sexual intercourse. During the broadcast she bunched her thong, which resulted in her genital contours being visible through the fabric of her underwear.

10. Red Light 3, Red Light 3 (Channel 948), 10 April 2011, 22:10 to 23:00

The presenter wore red stockings, black shoes and a black and red corset. Her clothing did not adequately cover her outer genital area. During the broadcast she was shown mimicking sexual intercourse, which included intrusive shots: for example four minutes into the broadcast the presenter bent over with her buttocks to camera and later was on her back with her legs wide open to camera. While in these positions her outer genital area was visible. During the broadcast the presenter stroked her outer genital area and on one occasion her anal area, and she was also shown spanking her buttocks. At approximately 45 minutes into the broadcast the

presenter mimicked oral sex on a man and was then shown with saliva in her mouth, as if to emulate ejaculate.

### Request for comments

Ofcom asked Playboy TV to provide comments as to how the following broadcasts complied with BCAP Code Rule 4.2:

- *Red Light 1*, Red Light 1 (Channel 911), 3 April 2011 23:53 to 01:00
- *Bang Babes*, Red Light 1 (Channel 911), 10 April 2011, 00:00 to 01:00
- *Red Light*, Red Light 1 (Channel 911), 13 April 2011, 22:00 to 23:00
- *Red Light2*, Red Light 2 (Channel 902), 2 April 2011, 00:05 to 01:00
- *Xplicit*, Red Light 2 (Channel 902), 12 April 2011, 22:12 to 23:00
- *Xplicit*, Red Light 2 (Channel 902), 13 April 2011, 00:11 to 01:00
- *100% Horny*, Red Light 3 (Channel 948), 6 April 2011, 22:00 to 23:00
- *Red Light 3*, Red Light 3 (Channel 948), 10 April 2011, 22:10 to 23:00

BCAP Code Rule 4.2 states:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Ofcom asked Playboy TV to provide comments as to how the following broadcasts complied with BCAP Code Rule 32.3:

- *Red Light*, Red Light 1 (Channel 911), 9 April 2011, 21:00 to 21:35
- *Red Light*, Red Light 1 (Channel 911), 13 April 2011, 21:03 to 21:45

BCAP Code Rule 32.3 states:

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

### Response

Playboy TV provided a response to each piece of programme material:

#### 1. *Red Light 1*, Red Light 1 (Channel 911), 3 April 2011 23:53 to 01:00

The Licensee explained that the presenter rubbed oil onto her body, but avoided the anal, labial and genital area. She also gyrated her hips and kept her genital area covered at all times, never exposing any labial or anal detail. Playboy TV explained that “all these acts appear to be within the ‘Ofcom guidance on the advertising of telecommunications-based sexual entertainment services and daytime chat services’ document, and subsequent verbal advice”. It added: “However, the very brief spitting and wiping of saliva does contravene the guidance and the presenters have been informed not to repeat this action. Whilst we believe that cupping genitals is actually safer in terms of coverage than a flat hand, we have now suspended cupping until we have clarity on the issue”.

2. Red Light, Red Light 1 (Channel 911), 9 April 2011, 21:00 to 21:35

The Licensee explained that “the clothing worn by the presenter did not expose her breasts, or reveal labial or anal detail. Therefore it appears to fall within the guidance received in the document referenced above”. Playboy TV stated: “Adoption of sexual positions, breast stroking (through underwear) and mimicking sexual intercourse is also permitted under the same document. The presenter bunched her thong, but this did not result in anal, labial, or genital area being exposed, therefore also staying within the guidance”.

The Licensee confirmed that “timing restrictions were applied to the advertisements as they were deemed unsuitable for children, and therefore broadcast after the watershed. Whilst we believe we have operated within the current rules and guidance, we have since toned down some of the more sexual behaviour to appear a little later in the evening”.

3. Bang Babes, Red Light 1 (Channel 911), 10 April 2011, 00:00 to 01:00

The Licensee explained that its comments from 1. also apply to this broadcast, which all appears to fall within current guidelines. It explained “the only exception is the extremely brief showing of genitalia, which was clearly accidental, and immediately caught by the camera operator who zoomed in within a second, in order to avoid it”.

4. Red Light, Red Light 1 (Channel 911), 13 April 2011, 21:03 to 21:45

The Licensee explained that its comments from 2. also apply here, and all appeared compliant except for the brief nipple exposure, which was unintentional and immediately rectified within a few seconds.

5. Red Light, Red Light 1 (Channel 911), 13 April 2011, 22:00 to 23:00

The Licensee explained that “the sexual positions included here all fall within the guidelines, and there does not appear to be any labial detail present, however there may be some confusion as to what constitutes labial detail”. It explained that “our stance has always been that the skin between the thighs and the labia majora is not labial detail. However I assume that this is what is being objected to, as this is the only visible portion of the presenter’s genital area. Therefore from when we first received this complaint, we have changed the presenters clothing, and required that they wear garments which more adequately cover their genital area”.

The Licensee explained that its internal guidelines for camera operators is to keep to mid-shots, and never go in for close-ups or extreme close-ups on genital areas. It agreed however that the shot which Ofcom highlighted may still convey a feeling of intrusion that Ofcom wants to avoid. The Licensee stated that it will take appropriate action to ensure its producers and camera operators are aware that images of this nature are unacceptable.

6. Red Light2, Red Light 2 (Channel 902), 2 April 2011, 00:05 to 01:00

Playboy TV explained that “the attire of the presenter, and sexual acts portrayed, including mimicking oral sex, appear to fall within the guidelines and subsequent advice”. It agreed that spitting and the dripping of saliva to emulate ejaculate are not permitted, and explained that the relevant presenter and production crew have been disciplined. The Licensee did not agree that the shot marked by Ofcom was intrusive. It considered “the presenter is obviously showing her bottom, but it is covered up and

it is not close to the camera, however this may be an issue of underwear width again, which should now be resolved”.

7. *Xplicit*, Red Light 2 (Channel 902), 12 April 2011, 22:12 to 23:00

The Licensee explained that its response to 1. and 5. also apply here.

8. *Xplicit*, Red Light 2 (Channel 902), 13 April 2011, 00:11 to 01:00

The Licensee explained that its response to 5 also applies here.

9. *100% Horny*, Red Light 3 (Channel 948), 6 April 2011, 22:01 to 23:00

The Licensee explained that its response to 5. also applies here. It added “though we can see [that] the presenter’s individual contours make this feel particularly stronger than other clips” and “the saliva emulating ejaculate was not permitted and will not be repeated”.

10. *Red Light 3*, Red Light 3 (Channel 948), 10 April 2011, 22:10 to 23:00

The Licensee stated “the all-fours position of the presenter between the times noted by Ofcom, did not feel intrusive. Her underwear was significantly larger than the presenter’s in 5., 7., and 8., and did not reveal any outer labia”. It conceded that the images of the presenter bunching her underwear were too strong and therefore will ensure the presenters wear adequate clothing and ensure camera operators use mid-shots only in such cases.

### Summary

In summary Playboy TV explained that “although most of these programmes were examined under Rule 4.2 of the BCAP Code, there is no evidence to suggest that serious or widespread offence was caused by any of these broadcasts, in fact quite the opposite. Ofcom monitoring or a solitary public or competitor complaint were the sole instigators of these enquiries”.

It added “However, we recognise there are always areas for improvement and there are a few which have been identified here, specifically the labial detail, which we had previously construed to mean rather more detail than we were permitting. However, as mentioned above, a change of underwear type will prevent this reoccurring, and also lead to a reduction of an “intrusive feel” to shots. The incidents of saliva dripping and spitting are limited, but will be eradicated from future broadcasts”.

### **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.<sup>1</sup> Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading,

---

<sup>1</sup> Section 3(2)(d) of the Act

harmful or offensive in television and radio services is prevented.”<sup>2</sup> This standards objective is contained in the BCAP Code.

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

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, broadcasters should note that the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code provides that:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Rule 32.3 of the BCAP Code states:

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

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the ‘adult’ section); any warnings; and mandatory restricted access. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

On 28 January 2011 Ofcom published detailed guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services<sup>3</sup>. This clearly sets out what Ofcom considers to be acceptable to broadcast on these services, both pre- and post-watershed.

For example this guidance explicitly states that adult chat broadcasters should:

- at no time broadcast invasive shots of presenters’ bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged;

---

<sup>2</sup> Section 319(2)(h) of the Act

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

- at no time broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object;
- ensure that presenters' clothing adequately covers their anal, labial or genital areas. They should also avoid adjusting their clothing (including clutching or bunching) which results in anal, labial or genital areas being exposed;
- at no time include shots of presenters spitting onto their or others' bodies, or include shots of presenters using other liquids, such as oil and lotions, on their genital or anal areas.
- at no time broadcast shots of presenters using liquids of a sort or in a way which suggests the liquid is ejaculate.

Ofcom has also made clear in published decisions what sort of material is unsuitable to be broadcast in adult interactive chat advertisements without mandatory restricted access<sup>4</sup>.

Ofcom considered the following broadcasts in respect of BCAP Code Rule 4.2:

- *Red Light 1*, Red Light 1 (Channel 911), 3 April 2011 23:53 to 01:00
- *Bang Babes*, Red Light 1 (Channel 911), 10 April 2011, 00:00 to 01:00
- *Red Light*, Red Light 1 (Channel 911), 13 April 2011, 22:00 to 23:00
- *Red Light2*, Red Light 2 (Channel 902), 2 April 2011, 00:05 to 01:00
- *Xplicit*, Red Light 2 (Channel 902), 12 April 2011, 22:12 to 23:00
- *Xplicit*, Red Light 2 (Channel 902), 13 April 2011, 00:11 to 01:00
- *100% Horny*, Red Light 3 (Channel 948), 6 April 2011, 22:01 to 23:00
- *Red Light 3*, Red Light 3 (Channel 948), 10 April 2011, 22:10 to 23:00

In Ofcom's view the sexual images included in these broadcast were strong and capable of causing offence. In all cases the broadcasts included material that is clearly inconsistent with Ofcom's guidance. For example:

- On Channel 911: 3 April 2011 23:53 to 01:00, Channel 902: 2 April 2011, 00:05 to 01:00 and Channel 948: 10 April 2011, 22:10 to 23:00 - the broadcasts included images of the presenters miming oral sex on a man and then spitting on their bodies to emulate ejaculate, in one case the saliva dripped onto the genital area of the presenter concerned.
- During the broadcasts on Channel 911: 3 April 2011 23:53 to 01:00, Channel 911: 10 April 2011, 00:00 to 01:00 and Channel 902: 13 April 2011, 00:11 to 01:00 - Ofcom noted the material included images of the presenters using either a cupped hand or on one occasion a telephone to cover their genital area. In all cases there was obvious pressure between the hand or telephone and the genital area. Ofcom noted that during the broadcast on 10 April 2011, the presenter's genital area was briefly visible. Ofcom does not prohibit nudity in adult sex chat services. However, as set out in the guidance, images of

---

<sup>4</sup> For example:

- *Elite Nights*, Elite TV and Elite TV 2: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>
- *Bluebird TV*: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>
- *Dirty Talk Live*: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb171/>

anal, labial or genital areas are prohibited within the context of adult chat advertisements that are freely available without mandatory restricted access. In light of this we would caution against the use of naked presenters on such channels.

- Ofcom noted during the broadcast on Channel 911: 10 April 2011, 00:00 to 01:00 the presenter poured oil onto her genital area, and during the broadcast on Channel 902: 13 April 2011, 00:11 to 01:00, the presenter was shown pouring oil onto her buttocks and genital area and later rubbed it into her genital area.
- Ofcom noted during the following broadcasts the presenters wore clothing that did not adequately cover their genital areas: Channel 911: 13 April 2011, 22:00 to 23:00, Channel 902: 12 April 2011, 22:12 to 23:00, Channel 902: 13 April 2011, 00:11 to 01:00, Channel 948: 10 April 2011, 22:10 to 23:00 and Channel 948: 6 April 2011, 22:01 to 23:00. During the broadcast on Channel 902: 2 April 2011, 00:05 to 01:00, Ofcom noted the presenter's outer labia were visible.
- During the broadcast on Channel 948: 6 April 2011, 22:01 to 23:00 the presenter bunched her thong, which resulted in her genital contours being visible through the fabric of her underwear.
- During the broadcast on Channel 911: 13 April 2011, 22:00 to 23:00 and Channel 902: 13 April 2011, 00:11 to 01:00 Ofcom noted the material included intrusive, intimate shots of the presenter who was the same in both broadcasts. These included intrusive images of the presenter as she bent over with her buttocks to camera and whilst the presenter was lying on her back with her crotch area raised and the camera angle was pointing down onto her crotch.

The examples highlighted above include images that are not permitted in adult chat broadcast advertisements that are freely available without mandatory restricted access. Ofcom noted that in conjunction with those images the presenters performed various other actions including: stroking their bodies; gyrating their hips; massaging oil into their breasts; and mimicking sexual intercourse. The combination of these images and action resulted in strong sexual material.

Under BCAP Code Rule 4.2 in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether suitable scheduling restrictions were applied to this content. Ofcom noted that this content was broadcast well after the watershed and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed, within context. Ofcom also took account of the fact that the channels are positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in this case, given the content included prolonged and frequent scenes of a strong sexual nature, the location of the channel in the adult section of the EPG was not sufficient to ensure serious or widespread offence against generally accepted standards was not caused. This was regardless of the fact the content was shown between the hours of 22:00 and 01:00. Ofcom was also concerned at the degree of

offence likely to be caused to viewers who might come across this material unawares.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material which was broadcast was not capable of causing serious or widespread offence against generally accepted moral, social or cultural standards. Specifically, this material should not have been broadcast within the context of adult chat advertisements that were freely available without mandatory restricted access.

Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

Ofcom then considered the following broadcasts in respect of BCAP Code Rule 32.3:

- *Red Light*, Red Light 1 (Channel 911), 9 April 2011, 21:00 to 21:35
- *Red Light*, Red Light 1 (Channel 911), 13 April 2011, 21:03 to 21:45

The Guidance states: “After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive.” Ofcom has also made clear in numerous previous published findings that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed<sup>5</sup>.

In applying BCAP Code Rule 32.3 Ofcom had first to decide if the broadcast material was unsuitable for children. With regards to these two broadcasts on 9 and 13 April 2011, Ofcom noted that on a number of occasions between 21:00 and 21:30 the female presenters adopted sexually provocative positions - for example, lying on their back with their legs wide open to camera, sometimes for prolonged periods. During the broadcasts Ofcom noted the presenters regularly stroked and massaged their breasts and mimicked sexual intercourse.

Ofcom noted on several occasions during the broadcast on 9 April 2011 the presenter clearly gave the impression that she was touching her genital area; however the image was obscured by the camera angle or her leg. Ofcom also noted that the presenter in the broadcast on 13 April 2011 was not wearing clothing that adequately covered her genital area or breasts and on one occasion her left nipple was visible.

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

Ofcom then considered under BCAP Code Rule 32.3 whether relevant timing or scheduling restrictions had been applied by Playboy TV to this broadcast. Ofcom

---

<sup>5</sup> For example:

- Red Light Central, Extreme, 23 February 2011, 21:00 to 21:50  
(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb182/obb182.pdf>)
- Free Blue 1 Babeworld.tv, 9 July 2010, 21:00 to 21:30  
(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb168/issue168.pdf>)
- Sport XXX Babes, 16 May 2010, 21:00 to 21:30  
(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>)

took account of the fact that the channels are in the 'adult' section of the Sky EPG. However this programme was broadcast on a channel without mandatory restricted access in the period immediately after the 21:00 watershed, when some children may have been available to view, some unaccompanied by an adult. Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the "adult" section of the EPG without mandatory restricted access directly after the 21:00 watershed. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast so soon after 21:00. Further, the broadcast of such relatively strong sexualised content was inappropriate to advertise adult sex chat so soon after the 21:00 watershed.

These broadcasts were therefore in breach of BCAP Code Rule 32.3.

Ofcom notes that Playboy TV offered its apologies and explained that it has taken action since Ofcom contacted it regarding the above broadcasts to improve compliance. However, we are concerned about the strength of the material broadcast on the above occasions, particularly in light of the recent published findings of material complied by Playboy TV<sup>6</sup> and the publication of the Guidance (and related meeting at Ofcom with all daytime and adult sex chat licensees).

Ofcom has stated that it will not tolerate repeated breaches of the BCAP Code in this area by services operating in the sector of daytime and adult chat and will not hesitate to take appropriate enforcement action where necessary<sup>7</sup>. In the finding published in Broadcast Bulletin 174 (see footnote 6), Ofcom warned Just4Us and Playboy TV that it would not expect further breaches of the BCAP Code to occur again.

In light of the serious and repeated Code breaches recorded in this finding, and other breach findings recently recorded against Playboy complied material, Playboy TV and Just4us Limited are put on notice that these present contraventions of the BCAP Code are being considered by Ofcom for statutory sanction.

***Red Light 1, Red Light 1 (Channel 911), 3 April 2011 23:53 to 01:00: Breach of BCAP Rule 4.2***

***Bang Babes, Red Light 1 (Channel 911), 10 April 2011, 00:00 to 01:00: Breach of BCAP Rule 4.2***

***Red Light, Red Light 1 (Channel 911), 13 April 2011, 22:00 to 23:00: Breach of BCAP Rule 4.2***

---

<sup>6</sup> Recent published findings:

- 40nNaughty, Red Light Lounge, four pre-watershed broadcasts, 13 October 2010 to 13 November 2010 and 40nNaughty, Red Light Central, one post-watershed broadcast, 6 November 2010, available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>
- Red light Central, *Extreme*, 23 February 2011, 21:00 to 21:50, available at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb182/obb182.pdf>

<sup>7</sup> See Note to Broadcasters, Broadcast Bulletin 172, available at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb172/issue172.pdf>

***Red Light2***, Red Light 2 (Channel 902), 2 April 2011, 00:05 to 01:00: Breach of BCAP Rule 4.2

***Xplicit***, Red Light 2 (Channel 902), 12 April 2011, 22:12 to 23:00: Breach of BCAP Rule 4.2

***Xplicit***, Red Light 2 (Channel 902), 13 April 2011, 00:11 to 01:00: Breach of BCAP Rule 4.2

***100% Horny***, Red Light 3 (Channel 948), 6 April 2011, 22:00 to 23:00: Breach of BCAP Rule 4.2

***Red Light 3***, Red Light 3 (Channel 948), 10 April 2011, 22:10 to 23:00: Breach of BCAP Rule 4.2

***Red Light***, Red Light 1 (Channel 911), 9 April 2011, 21:00 to 21:35: Breach of BCAP Code Rule 32.3

***Red Light***, Red Light 1 (Channel 911), 13 April 2011, 21:03 to 21:45 Breach of BCAP Code Rule 32.3

## In Breach

### Northern Birds

*SportXXX1, 12 March 2011, 21:30 to 22:00 and 13 March 2011, 01:00 to 01:20*

### Asian Babes,

*Live XXXBabes, 14 March 2011, 00:00*

---

#### Introduction

Northern Birds is televised interactive adult sex chat advertisement content broadcast on Sky Channel 954. Asian Babes is televised interactive adult sex chat advertisement content broadcast on the Live XXXBabes channel on Sky Channel 950. These services are freely available without mandatory restricted access and are situated in the 'adult' section of the Sky electronic programme guide ("EPG"). Viewers are invited to contact onscreen presenters via premium rate telephony services ("PRS"). The female presenter dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

The licences for both the Northern Birds and Live XXX Babes services are held by Satellite Entertainment Limited ("SEL" or "the Licensee"). SEL is responsible for the compliance of the Asian Babes content broadcast on the LiveXXXBabes service.

Ofcom received two complaints about content broadcast on Northern Birds and Live XXX Babes. The complainants were concerned about sexual content capable of causing offence.

*Northern Birds, SportXXX1, 12 March 2011, 21:30 to 22:00 and 13 March 2011, 01:00 to 01:20*

The female presenter was wearing an outfit which consisted of two thin strips of leopard print fabric placed over her nipples only and one thin strip of fabric which covered her genital area only, revealing her pubic area and her outer labia. During the broadcast the presenter: positioned her buttocks full to camera revealing her anal and labial area and thrust her buttocks repeatedly to camera to mime sexual intercourse; positioned herself on her back with her legs wide open to camera revealing her labia and proceeded to massage and stroke her genital area so as to mime masturbation; and, sat upright on her knees with her legs slightly parted gyrating her body up and down so as to mimic sexual intercourse. She adopted each of these separate positions for prolonged periods.

Ofcom also received a complaint about the same female presenter featured above between 01:00 to 01:20. The presenter was naked and lay on her back with her legs wide open to camera with her hand placed firmly against her genital area. In this position she thrust her hips forward, whilst her hand remained in close contact with her genital area, so as to mime masturbation. The presenter then put on part of the outfit worn earlier, which consisted of a thin leopard print strip of fabric, to cover only her genital area but she did so in such a way so as to reveal her labia and pubic area. As she lay on her back with her legs open to camera she pulled the fabric tight against her genitals and pulled it backward and forwards so as to simulate masturbation. In this position there were very prolonged and close up images of the presenter's genital area which resulted in this image entirely filling the screen.

Asian Babes, Live XXX Babes, 14 March 2011, 00:00

Here the presenter wore a black thong and a black basque which was pulled down to reveal her breasts, and she adopted various sexual positions. These included: lying on her side and opening her legs to camera revealing her labia and anal detail; and, thrusting her buttocks to camera revealing anal detail. In addition, whilst lying with her legs open to camera she touched and stroked her genital area so as to mime masturbation.

On viewing the recordings provided by the Licensee, Ofcom noted that the quality was very poor and was of the view that it was not of broadcast quality.

Request for comments

Ofcom considered that this material raised issues under BCAP Code Rule 4.2, as set out below. Therefore we sought comments from the Licensee as to how this material complied with BCAP Code Rule 4.2 which states:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

In addition, Condition 11 of the Television Licensable Content Service (TLCS) licence states:

“... the Licensee shall:

make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein;<sup>1</sup>

and, in addition, the TLCS Guidance Notes for Licence Applicants (Paragraph 76) requires the Licensee to ensure:

“recordings must be of a standard and in a format which allows Ofcom to view the material as broadcast”<sup>2</sup>

Given that the recordings were not in Ofcom’s view of broadcast quality, Ofcom also sought comments relating to the quality of the recordings with respect to the requirements set out in the TLCS Guidance Notes and requested that the Licensee provide further recordings which were of broadcast quality.

**Response**

The Licensee did not submit any comments to Ofcom with respect to the material broadcast and BCAP Code Rule 4.2 or the quality of the recordings by the deadline set by Ofcom. Ofcom extended the deadline but the Licensee continued not to reply.

Ofcom therefore proceeded to make a decision regarding the content in the absence of formal representations by the Licensee.

---

<sup>1</sup> [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_licence.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_licence.pdf)

<sup>2</sup> [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_guidance.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf)

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.<sup>3</sup> Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”.<sup>4</sup> This standards objective is contained in the BCAP Code.

Since 1 September 2010 all PRS-based daytime and ‘adult chat’ television services are no longer regulated as editorial content but as long-form advertising i.e. teleshopping. As stated above, from that date the relevant standards code for such services became the BCAP Code rather than the Broadcasting Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998.

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

Rule 4.2 of the BCAP Code provides that:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Before the dates when the Licensees broadcast the programmes which are the subject of the present finding, Ofcom has made clear in numerous published decisions what sort of material is unsuitable to be broadcast in adult interactive chat advertisements without mandatory restricted access.<sup>5</sup>

---

<sup>3</sup> Section 3(2)(d) of the Act

<sup>4</sup> Section 319(2)(h) of the Act

<sup>5</sup> For example:

- Elite Nights  
Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35  
Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25  
Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45  
Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20  
Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30  
Broadcast Bulletin 179 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>

In addition, on 28 January 2011 Ofcom published detailed Guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services.<sup>6</sup> This clearly sets out to all relevant licensees what Ofcom considers to be suitable for broadcast on these services, both pre- and post-watershed. For example, this guidance explicitly states that adult chat broadcasters should:

- at no time broadcast invasive shots of presenters' bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged; and
- at no time broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object.

Northern Birds, SportXXX1, 12 March 2011, 21:30 to 22:00 and 13 March 2011, 01:00 to 01:20

The above broadcast was considered in respect of BCAP Code Rule 4.2.

Ofcom noted that at 21:30, when the presenter was positioned with her legs open to the camera, her labia were visible. This was because the item of clothing worn consisted only of a very thin strip of fabric. In addition, during the broadcast from 21:30, when the presenter thrust her buttocks to camera, she revealed further labial detail and also her anal area.

Ofcom also noted that during the material broadcast at 21:30, whilst the presenter was positioned with her legs open to camera revealing her labia, she stroked and rubbed her genital area with her hand so as to mime masturbation. These images were shown for prolonged periods of time.

During the later broadcast at 01:00, Ofcom noted that the presenter was initially naked and used her hand to cover her genital and anal area whilst she adopted various sexual positions. Whilst covering her genital area, she used her hand to apply firm pressure on her genitals as she thrust her hips backwards and forwards to mime masturbation. Ofcom was particularly concerned that later images of the presenter massaging her genital area and pulling the thin strip of fabric tightly over her vagina to reveal her labia were extremely intrusive, filling the entire screen for prolonged periods of time.

In Ofcom's view the sexual images included in these broadcasts were strong and capable of causing offence. In both cases the broadcasts included material that is explicitly prohibited under Ofcom's guidance, as set out above. Both broadcasts therefore contained material which raised issues under BCAP Code Rule 4.2.

Under BCAP Code Rule 4.2, in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether suitable scheduling restrictions were applied to this content by the Licensee. Ofcom noted that this content was broadcast at 21:30 and 01:00 respectively and the fact that viewers generally expect channels to broadcast stronger material after the 21:00 watershed, in context. Ofcom also acknowledged the fact that Northern Birds is positioned in the adult section of the EPG and that viewers may expect the broadcast

---

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

of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in this case, Ofcom noted prolonged, intrusive and frequent scenes of a sexual nature in which genital and anal detail was clearly visible. As the Guidance makes clear broadcasters should *at no time* broadcast invasive shots of presenters' bodies and *at no time* broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object.

It was therefore Ofcom's view that the location of the channel in the 'adult' section of the EPG was not sufficient to ensure serious or widespread offence against generally accepted standards was not caused, particularly at 21:30, but also at 01:00. With specific reference to the material broadcast at 21:30, Ofcom was particularly concerned at the degree of offence likely to be caused to viewers who might come across this material unawares, given the material reviewed was broadcast at 21:30 which is just after the watershed transition period.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material which was broadcast was not capable of causing serious or widespread offence against generally accepted moral, social or cultural standards. Specifically, this material should not have been broadcast within the context of adult chat advertisements that were freely available without mandatory restricted access. Therefore, Ofcom concluded that the material breached Rule 4.2 of the BCAP Code.

Asian Babes, Live XXX Babes, 14 March 2011, 00:00

Ofcom considered this broadcast in respect of BCAP Code Rule 4.2.

Ofcom noted that one of the presenters, who was wearing a black thong, lay on her side and opened her legs full to camera. In this position she stroked and lightly massaged her genital area to mime masturbation and revealed labial and anal detail. Whilst positioned with her buttocks to camera, the presenter thrust her body vigorously so as to mime sexual intercourse and revealed anal detail. These positions were adopted for prolonged periods of time.

In Ofcom's view the sexual images included in these broadcasts were strong and capable of causing offence. The broadcast included material that is explicitly prohibited under Ofcom's guidance, as set out above. The broadcast therefore contained material which raised issues under BCAP Code Rule 4.2.

Under BCAP Code Rule 4.2, in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether suitable scheduling restrictions were applied to this content. . Ofcom noted that this content was broadcast from midnight and the fact that viewers generally expect channels to broadcast stronger material after watershed, in context. Ofcom also acknowledged the fact that Asian Babes is positioned in the 'adult' section of the EPG and that viewers may expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in this case Ofcom noted that the presenter revealed genital and anal detail and she frequently touched her genital area. The Guidance makes clear broadcasters should *at no time* broadcast invasive shots of presenters' bodies and *at no time* broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object.

Therefore, it is Ofcom's view, that the location of the channel in the 'adult' section of the EPG was not sufficient to ensure that serious or widespread offence against generally accepted standards was not caused by broadcast of this content after midnight.

Taking into account the factors above, Ofcom has concluded that the scheduling restrictions overall were not sufficient so as to ensure that serious or widespread offence against generally accepted standards was not caused by this content. Specifically, this material should not have been broadcast within the context of adult chat advertisements that were freely available without mandatory restricted access. Therefore, Ofcom concluded that the material breached Rule 4.2 of the BCAP Code.

Ofcom considers that these breaches of the BCAP Code are serious and significant. Ofcom has taken comprehensive steps to ensure that Licensees are fully aware of the rules concerning what is and what is not appropriate material to be broadcast on adult chat services. These have included: Ofcom publishing numerous Code breach decisions in the Ofcom Broadcast Bulletin, various Ofcom statutory sanctions decisions, and most recently issuing the Guidance and having a meeting with licensees to explain the Guidance and its importance to them. Ofcom is also concerned that the Licensee did not provide to Ofcom broadcast quality recordings as set out in the TLCS Guidance Notes for Licence Applicants (Paragraph 76). Consequently, these breaches will be held on the Licensee's compliance record and we will consider further regulatory action should further similar breaches be recorded.

#### **Breaches of BCAP Code Rule 4.2**

## In Breach

### Elite Nights

*Elite TV 2 (Channel 914), 19 March 2011, 00:27 to 00:46*

*Elite TV 2 (Channel 914), 10 April 2011, 22:17 to 22:55*

---

#### Introduction

*Elite Nights* is televised interactive adult sex chat advertisement content broadcast from 21:00 on Sky channel 914. This service is available freely without mandatory restricted access and is in the 'adult' section of the Sky Electronic Programme Guide ("EPG"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers. The service *Elite TV 2* is owned and operated by Over 18 TV Limited ("Over 18 TV" or "the Licensee").

As a result of Ofcom's continuing concerns about compliance in this sector, Ofcom conducts occasional monitoring of adult chat channels. In these cases, Ofcom noted that the broadcasts contained the following content.

#### *Elite Nights, Elite TV 2 (Channel 914), 19 March 2011, 00:27 to 00:46*

The female presenter was wearing a revealing black thong which she removed at 00:40 so that she was naked. During the broadcast (and before she removed her thong) she was shown in various positions for prolonged periods of time, including: lying on her front with her legs open to camera; straddled over a bench with her buttocks to camera; lying on her back with her legs open and at times pulled back towards her head; and bent over a bench with her buttocks towards camera. After the presenter removed her thong she was shown lying on her back with her legs apart and away from camera. While in these positions the presenter was shown pouring and massaging oil onto her breasts, buttocks and legs. She was also shown dribbling oil over her anal area (on top of her thong). The broadcast included images of the presenter repeatedly and heavily thrusting her buttocks for relatively prolonged periods of time, and very close up shots between the presenter's legs. Due to the skimpy underwear she was wearing her outer genital area was shown. While the presenter was naked she was shown turning over and her anus was briefly shown.

#### *Elite Nights, Elite TV 2 (Channel 914), 10 April 2011, 22:17 to 22:55*

The female presenter was wearing a white lace body and white fishnet stockings. At various points during the broadcast the presenter was standing over the camera with her legs open. This resulted in a number of prolonged shots between the presenter's legs. The presenter was also shown in various other positions for prolonged periods of time, such as: bending over on all fours with her buttocks to camera; and lying on her back with her legs open to camera. While in these positions viewers were shown very close up and frequent images of the presenter's crotch area, often for prolonged periods of time. She was also shown touching and rubbing around her genital and anal area for prolonged periods of time.

The rules governing broadcast advertising are set by the Broadcast Committee of Advertising Practice ("BCAP") with the approval of Ofcom. BCAP performs its function by setting, monitoring and amending the UK Code of Broadcast Advertising

("the BCAP Code"), with Ofcom retaining back-stop enforcement powers. The investigation of complaints relating to daytime chat and adult sex chat broadcast services – which are types of broadcast advertising - remain however a matter for Ofcom. (Please see Ofcom's statement published on 3 June 2010<sup>1</sup> for further details).

### Request for comments

Ofcom asked Over 18 TV to provide comments on how these broadcasts complied with Rule 4.2 of the BCAP Code:

"Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards."

### **Response**

With regard to its post watershed material the Licensee said that has "made great efforts to ensure our nighttime content meets the applicable standards". It said that measures it has taken include: "banning the use of hand-held camera work"; "instructing presenters to be appropriately clothed and limit movements to those of a less sexualised style than previously practiced"; and the "implementation of a new internal compliance monitoring system. We now have a fully trained member of staff monitoring all of our channels 24 hours a day".

The Licensee said that the material above broadly complied with Ofcom guidance, however it accepted that "there are some instances of overly intrusive camera work and, on occasions, the content appears on the outer edges of what could be considered acceptable". It said however that in relation to both broadcasts, "despite the shortcomings, which we accept, we feel that, on the whole, the material is highly unlikely 'to cause serious or widespread offence'".

### *Elite Nights, Elite TV 2 (Channel 914), 19 March 2011, 00:27 to 00:46*

Over 18 TV said that "on some occasions the positions adopted, together with the camera work, have resulted in material which appears stronger than intended due to the skimpy nature of the presenter's outfit". It added that "the use of body oil was not thought to be prohibited" and the close up shots only occurred after midnight. However it said that "we can now see that the combination of the close-ups and the presenter's skimpy thong served to increase the strength of the content". The Licensee said that after the presenter removed her underwear "she takes care not to show her genitals to camera". It stated that "we accept that... the presenter briefly shows her anal area when turning over. The shot lasts for around one second and is not likely to have been widely noticeable". It added that it will make sure it guards against this happening again in all future broadcasting.

### *Elite Nights, Elite TV 2 (Channel 914), 10 April 2011, 22:17 to 22:55*

Over 18 TV said that "we can confirm with regret that the cameraman responsible for filming this show acted in contravention of our own internal compliance guidance". It said that they "no longer permit the use of hand-held cameras so as to avoid this angle/style of filming". It added that it "has reprimanded the member of staff in question".

---

<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/consultations/participationtv3/statement/>

It made the following points in mitigation: the images were broadcast after 22:00; “the presenter had full underwear on at all times and full coverage of her genital region”; and “the intrusive camera-work was of relatively short duration”.

The Licensee said that “in both cases, the material was transmitted on channels located within the adult section of the Sky EPG... and was fully in line with viewer expectations”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.<sup>2</sup> Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”.<sup>3</sup> This standards objective is contained in the BCAP Code.

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

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, broadcasters should note that the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code provides that:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

On 28 January 2011 Ofcom published detailed guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services.<sup>4</sup> This clearly sets out to all relevant licensees what Ofcom considers to be acceptable to broadcast on these services, both pre- and post-watershed. For example this guidance explicitly states that adult chat broadcasters should:

---

<sup>2</sup> Section 3(2)(d) of the Act

<sup>3</sup> Section 319(2)(h) of the Act

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

- “at no time broadcast invasive shots of presenters’ bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged”;
- “at no time broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object”; and
- “at no time include shots of presenters spitting onto their or others’ bodies, or include shots of presenters using other liquids, such as oil and lotions, on their genital or anal areas”.

In addition to this published guidance, Ofcom has made clear in published decisions what sort of material is unsuitable to be broadcast in adult interactive chat advertisements without mandatory restricted access.<sup>5</sup>

The two broadcasts contained material which raised issues under BCAP Code Rule 4.2, as has been accepted to some extent by the Licensee. In Ofcom’s view the sexual images included these broadcasts were strong and capable of causing offence. In both cases the broadcasts included material that is explicitly prohibited under Ofcom’s guidance, as set out below.

*Elite Nights, Elite TV 2 (Channel 914), 19 March 2011, 00:27 to 00:46*

At the beginning of this broadcast the presenter was wearing a very revealing thong, which she later removed so that she was naked. The presenter’s genital area was shown in close up at various points in the broadcast and an image of her anus was clearly shown (albeit very briefly). In addition, the broadcast showed the presenter dribbling oil over her anal area on top of her thong. As a consequence the broadcast

---

<sup>5</sup> For example:

- Elite Nights  
Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35  
Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25  
Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45  
Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20  
Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30  
Broadcast Bulletin 179 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>
- Bluebird TV  
Live XXX Babes, 23 September 2010, 23:20 to 00:00  
Northern Birds, 24 September 2010, 00:25 to 02:15  
Live XXX Babes, 12 October 2010, 21:30 to 22:30  
Live XXX Babes, 13 October 2010, 21:30 to 23:00  
Broadcast Bulletin 174 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;
- Red Light Central, 6 November 2010, 21:48 to 22:30  
Broadcast Bulletin 174 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;
- Bluebird TV, Live 960, 25 September 2010, 00:20 to 01:30  
Broadcast Bulletin 174 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;

included some very strong images. These strong and intrusive shots were then combined with images of the presenter repeatedly and heavily thrusting her buttocks and pelvis for relatively prolonged periods of time, as though miming sexual intercourse, and repeatedly massaging oil over her breasts.

*Elite Nights, Elite TV 2 (Channel 914), 10 April 2011, 22:17 to 22:55*

This broadcast included numerous shots between the presenter's legs while she was in various sexual positions. Some of these shots were extremely close up and prolonged. As a consequence the broadcast included some very strong and intrusive images. The presenter was also shown touching and rubbing around her genital and anal area for prolonged periods of time.

Under BCAP Code Rule 4.2, in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether suitable scheduling restrictions were applied to this content by the Licensee. Ofcom noted that on both occasions the content was broadcast significantly after the watershed, from 00:27 and 22:17 respectively, and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed, within context. Ofcom also took account of the fact that the Elite TV 2 channel is positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in this case, given the content included in the two broadcasts included prolonged and frequent scenes of a sexual nature (provided for the purpose of sexual arousal), the location of the channel in the adult section of the EPG was not sufficient to ensure that serious or widespread offence against generally accepted standards was not caused by this content. Ofcom was concerned at the degree of offence likely to be caused to viewers who might come across this material unawares, particularly in the case of the 10 April 2011 broadcast at 22:17.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material which was broadcast was not capable of causing serious or widespread offence against generally accepted moral, social or cultural standards. Specifically, this material should not have been broadcast within the context of adult chat advertisements that were freely available without mandatory restricted access. Therefore Ofcom concluded that this material included in the two broadcasts breached Rule 4.2 of the BCAP Code.

Ofcom considers that these breaches of the BCAP Code are serious and significant. Ofcom has taken several steps to ensure that Licensees are fully aware that the material broadcast on adult chat services is suitable for broadcast without mandatory restricted access. This has included publishing decisions Ofcom has made in this area on the Ofcom website, meeting with Licensees operating in this sector and most notably issuing Guidance. Consequently, these breaches will be held on the Licensee's compliance record and we will consider further regulatory action should further similar breaches be recorded.

***Elite Nights, Elite TV 2 (Channel 914), 19 March 2011, 00:27 to 00:46: Breach of BCAP Code Rule 4.2***

***Elite Nights, Elite TV 2 (Channel 914), 10 April 2011, 22:17 to 22:50 Breach of BCAP Code Rule 4.2***

## In Breach

### Bluebird Daytime TV

*Babeworld TV, 14 April 2011, 13:45 to 14:45*

---

#### Introduction

*Bluebird Daytime TV* is interactive daytime chat advertisement content broadcast on the service Babeworld TV (Sky channel number 908). The service is available freely without mandatory restricted access and are situated in the 'adult' section of the Sky electronic programme guide ("EPG"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The presenters generally dress and behave in a flirtatious manner. The service is owned and operated by Babeworld TV Limited ("Babeworld TV" or "the Licensee").

Ofcom received a complaint about the above broadcast. The complainant said that he was "shocked to see a girl on a daytime babe phone-in channel adopting sexually explicit positions and facial mannerisms". The complainant added that broadcasts like this "should only be shown after the watershed not in the daytime when children can easily see them".

The female presenter was wearing a cropped black bra top, high cut latex red hot pants (which revealed a significant proportion of her buttocks) and black stiletto shoes. During most of the broadcast she was shown lying on her stomach (side on) with her legs open (away from camera). The presenter was also shown: repeatedly gyrating and rocking her buttocks while her legs were open; repeatedly stroking her legs and buttocks and occasionally her breasts; and licking her lips. The broadcast also included six shots of the camera panning up and down the presenter's legs, with close up shots of the presenter's buttocks.

The rules governing broadcast advertising are set by the Broadcast Committee of Advertising Practice ("BCAP") with the approval of Ofcom. BCAP performs its function by setting, monitoring and amending the UK Code of Broadcast Advertising ("the BCAP Code"), with Ofcom retaining back-stop enforcement powers. The investigation of complaints relating to daytime chat and adult sex chat broadcast services - which are types of broadcast advertising - remain however a matter for Ofcom. (Please see Ofcom's statement published on 3 June 2010<sup>1</sup> for further details).

#### Request for comments

Ofcom asked Babeworld TV to provide comments on how this broadcast complied with Rule 32.3 of the BCAP Code:

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

---

<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/consultations/participationtv3/statement/>

## Response

Babeworld TV said that “this genre of content has received widespread publicity over the years and it would be reasonable to say that most Sky subscribers, if not all of them, would be well aware of the adult section and the content they could and actually expect to find there”. It added that “any Sky subscriber who has concerns over a minor accessing the adult channels is easily able to block this section”.

The Licensee said that “it is certainly not our intention to provide content of a sexual nature. We were aiming to provide content that was light hearted and possibly flirtatious...” Babeworld TV said that it did not consider the material in breach of the BCAP Code as “we were not advertising a sexual service”.

It continued that “only an adult could interpret the content shown in a sexual context”. Babeworld TV said that the clothing the presenter was wearing “shows off her legs but this alone could not be construed as sexual content. There are many pop videos which are far more sexual in overtone”. It said that the service Babeworld TV is clearly labelled and broadcast within the adult section of the Sky EPG and therefore aimed specifically at adults.

With regard to the behaviour of the presenter, the Licensee said that the presenter was lying “in a comfortable position which can be adopted by all ages” and “is not a sexual position”. Babeworld said that in the studio the broadcaster usually plays up tempo, energetic music and encourages “the presenters to keep moving as viewers have complained that static presenters look boring”.

The Licensee also stated that: the presenter licked her lips “for only a few seconds”; she stroked her legs “due to the material of the mattress...so this was never meant in a sexual manner”; “she was not at any point on all fours”; “she was moving her bottom but not in a sexual manner. She was simply moving her bottom in time to the music played in the studio”; and she was “not making sexual facial mannerisms”.

Babeworld TV apologised “unreservedly if any of our daytime content has been misconstrued and caused offence”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.<sup>2</sup> Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”.<sup>3</sup> This standards objective is contained in the BCAP Code.

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

---

<sup>2</sup> Section 3(2)(d) of the Act

<sup>3</sup> Section 319(2)(h) of the Act

Rule 32.3 of the BCAP Code provides:

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

BCAP Code Rule 32.3 makes clear that children should be protected by relevant timing (and so appropriate scheduling) restrictions from material which is unsuitable for them. Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the ‘adult’ section); and any warnings. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

On 28 January 2011 Ofcom published detailed guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services.<sup>4</sup> This clearly sets out what Ofcom considers to be acceptable for broadcast on these services, both pre- and post-watershed. For example this guidance explicitly states that daytime chat broadcasters should:

- “ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks”;
- “not broadcast images of presenters touching or stroking their bodies in a suggestive manner”; and
- “not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses”.

Ofcom has also made clear in published decisions what sort of material is unsuitable to be broadcast in daytime interactive chat advertisements.<sup>5</sup>

Ofcom noted that during this broadcast the female presenter was wearing high cut revealing hot pants that exposed a significant amount of her buttocks. In Ofcom’s view, while in this outfit the presenter acted in a sexualised manner by adopting a sexual position for much of the one hour broadcast. The presenter was shown lying on her stomach with her legs open (albeit away from camera) for prolonged periods of time, and while in this position the presenter repeatedly and clearly gyrated her buttocks mimicking sexual intercourse. She also repeatedly touched and stroked her legs and buttocks in a sexually provocative manner. This imagery was combined with

---

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

<sup>5</sup> For example:

Elite Days, Elite TV (Channel 965), 30 November 2010, 12:00 to 13:15

Elite Days, Elite TV (Channel 965), 1 December 2010, 13:00 to 14:00

Elite Days, Elite TV 2 (Channel 914), 8 December 2010, 10.00 to 11:30

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>

40nNaughty, Red Light Lounge, October/November 2010, Broadcast Bulletin 174 at

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;

The Pad, Tease Me TV 2, 19 October 2010, 17:00 to 18:00, Broadcast Bulletin 172 at

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb172/>;

numerous close-up panning shots of the presenter's legs and buttocks. In Ofcom's view, the revealing clothing, the sexual position held for relatively prolonged periods and repeated actions of the presenter were intended to be sexually provocative in nature and the broadcast of such sexualised content was inappropriate to advertise daytime chat. In light of this behaviour and imagery, Ofcom concluded that under BCAP Code Rule 32.3 the material included in these daytime broadcasts was clearly unsuitable for children.

Ofcom then considered under BCAP Code Rule 32.3 whether relevant timing or scheduling restrictions were applied to these broadcasts by the Licensees. Ofcom noted that the service Babeworld TV is situated in the 'adult' section of the EPG. However, the broadcast was transmitted during the day when children may have been watching television, some unaccompanied by an adult. Taking into account the factors above, Ofcom has concluded that relevant timing and scheduling restrictions were not applied to the broadcasts so as to offer adequate protection to children.

Ofcom therefore concluded that this material breached Rule 32.3 of the BCAP Code.

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

## In Breach

### Adult chat advertisement content

*Get Lucky TV, 10 April 2011, 22:00 to 22:20*

---

#### Introduction

The service *Get Lucky TV* (Sky channel number 909) broadcasts interactive adult chat advertisement content from 21:00. The service is available freely without mandatory restricted access and is in the 'adult' section of the Sky electronic programme guide ("EPG"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers. The service is owned and operated by Grandiose Ltd ("Grandiose" or "the Licensee").

As a result of Ofcom's continuing concerns about compliance in this sector, Ofcom conducts occasional monitoring of adult chat channels.

In this case, Ofcom noted that between 22:00 and 22:20 the broadcast showed a female presenter wearing a white crop shirt, short tartan skirt and white skimpy thong underneath, knee high white socks and black stiletto shoes. As 22:04 the presenter removed her top and bra. During the broadcast the presenter was shown, for prolonged periods of time: lying on her front, side and back, all with her legs wide open to camera. While in these positions the camera was focused on the presenter's genital and anal area for prolonged periods of time and her outer genital and anal area were shown in close up. While in these positions she was also shown repeatedly thrusting her hips and buttocks and lightly touching around her genital area.

The rules governing broadcast advertising are set by the Broadcast Committee of Advertising Practice ("BCAP") with the approval of Ofcom. BCAP performs its function by setting, monitoring and amending the UK Code of Broadcast Advertising ("the BCAP Code"), with Ofcom retaining back-stop enforcement powers. The investigation of complaints relating to daytime chat and adult sex chat broadcast services - which are types of broadcast advertising - remain however a matter for Ofcom. (Please see Ofcom's statement published on 3 June 2010<sup>1</sup> for further details).

#### Request for comments

Ofcom asked Grandiose to provide comments on how this broadcast complied with Rule 4.2 of the BCAP Code:

"Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards."

#### Response

Grandiose said that "the content was in conformity with Ofcom guidance" and "would not cause serious or widespread offence". It stated that the material was broadcast

---

<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/consultations/participationtv3/statement/>

“after 22:00 on an appropriately licensed channel within the adult section of the Sky EPG” and said that “on more than one occasion the presenter emphasised that the content was adult in nature [and] that they [viewers] needed to be over the age of 18”.

The Licensee said that “there were no physically intrusive or unduly prolonged shots” and “on average, a period of 2 minutes would elapse before the presenter altered position”. It also said that “no anal or genital detail was revealed” and “the presenters’ pants, which substantially covered her genital area, remained on”. The licensee added that “the only close up shot was when the camera panned to the presenter’s face” and “the presenter was careful not to be seen touching her genital or anal area”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.<sup>2</sup> Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”.<sup>3</sup> This standards objective is contained in the BCAP Code.

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

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, broadcasters should note that the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code provides that:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

On 28 January 2011 Ofcom published detailed guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat

---

<sup>2</sup> Section 3(2)(d) of the Act

<sup>3</sup> Section 319(2)(h) of the Act

services.<sup>4</sup> This clearly sets out to all relevant licensees what Ofcom considers to be acceptable to broadcast on these services, both pre- and post-watershed. For example this guidance explicitly states that adult chat broadcasters should:

- “at no time broadcast invasive shots of presenters’ bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged”; and
- “at no time broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object”.

Ofcom has also made clear in published decisions what sort of material is unsuitable to be broadcast in adult interactive chat advertisements without mandatory restricted access.<sup>5</sup>

In Ofcom’s view the sexual images included in this broadcast were strong and capable of causing offence. The presenter was wearing a revealing thong and during the broadcast she was shown in various sexual positions. The presenter repeatedly positioned her legs wide apart to camera, and while doing so her genital and anal area were shown in close up. As a consequence the broadcast included some very intrusive images. As set out above, Ofcom guidance cautions against physically intrusive, intimate shots of any duration. Further, some of these intrusive images of the presenter’s crotch area were shown for up to two minutes, and therefore, in our view, they were also shown for prolonged periods of time. These strong images were also combined with images of the presenter repeatedly thrusting her buttocks and pelvis as though miming sexual intercourse, and miming masturbation by touching around her genital area.

---

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

<sup>5</sup> For example:

- Elite Nights  
Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35  
Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25  
Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45  
Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20  
Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30  
Broadcast Bulletin 179 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>
- Bluebird TV  
Live XXX Babes, 23 September 2010, 23:20 to 00:00  
Northern Birds, 24 September 2010, 00:25 to 02:15  
Live XXX Babes, 12 October 2010, 21:30 to 22:30  
Live XXX Babes, 13 October 2010, 21:30 to 23:00  
Broadcast Bulletin 174 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;
- Red Light Central, 6 November 2010, 21:48 to 22:30  
Broadcast Bulletin 174 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;
- Bluebird TV, Live 960, 25 September 2010, 00:20 to 01:30  
Broadcast Bulletin 174 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;

Under BCAP Code Rule 4.2, in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether suitable scheduling restrictions were applied to this content by the Licensee. Ofcom noted that this content was broadcast after the watershed at 22:00 and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed, within context. Ofcom also took account of the fact that the Get Lucky TV channel is positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in this case, given the content included prolonged and frequent scenes of a sexual nature (provided for the purpose of sexual arousal), the location of the channel in the adult section of the EPG was not sufficient to ensure that serious or widespread offence against generally accepted standards was not caused by this content. Ofcom was concerned at the degree of offence likely to be caused to viewers who might come across this material unawares.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material which was broadcast was not capable of causing serious or widespread offence against generally accepted moral, social or cultural standards. Specifically, this material should not have been broadcast within the context of adult chat advertisements that were freely available without mandatory restricted access. Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

#### **Breach of BCAP Code Rule 4.2**

## In Breach

### Matt Forde

*Talksport, 28 March 2011, 00:20, 4 April 2011, 00:15, 11 April 2011, 00:18 and 2 May 2011, 00:15*

---

#### Introduction

Matt Forde presents a daily late night 'phone-in' programme on Talksport, the speech-based station. In his programme, the presenter covers a range of news and current affairs issues through comment, interviews and interaction with listeners who contact the programme by telephone. The licence for Talksport, a national speech-based commercial broadcaster, is held by UTV Radio (GB) Ltd ("Talksport").

During the period immediately preceding the recent May 2011 Scottish Parliamentary Elections, Ofcom received a complaint about the broadcaster's coverage of those elections for the constituency of Mid Fife and Glenrothes ("the Constituency"). In particular, the complainant was concerned that Talksport had not invited Jim Parker of the All Scottish Pensioners Party ("ASPP") to participate in the *Matt Forde* programme's coverage of the Constituency.

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, such programmes must comply with the specific rules set out in Section Six of the Code which apply during an "election period"<sup>1</sup>. In particular, where broadcasters deal with "constituency" matters they must comply with Rules 6.8 to 6.13 of the Code. These cover any "constituency report or discussion" (which Rule 6.9 of the Code defines as "items about [a candidates] particular constituency").

The following interviews were conducted in editions of the *Matt Forde* programme (collectively "the Programmes"):

- on 28 March 2011, the presenter interviewed Callum Leslie, the Liberal Democrat Party candidate standing in the Constituency;
- on 4 April 2011 ("the 4 April programme"), the presenter interviewed Allan Smith, the Conservative Party candidate standing in the Constituency;
- on 11 April 2011 ("the 11 April programme"), the presenter interviewed the Scottish Nationalist Party ("SNP") MP, Angus MacNeil, who was introduced as speaking on behalf of Tricia Marwick, the SNP candidate standing in the Constituency; and
- on 2 May 2011 ("the 2 May programme"), the presenter interviewed Sean Dilley, Talksport's political correspondent, specifically on Labour party policies. This was due to the fact that neither the Labour Party candidate in the Constituency, Claire Baker, nor another Labour Party representative were able to participate.

---

<sup>1</sup> In the case of the Scottish Parliamentary Elections, the 'election period' ran from the dissolution of the Scottish Parliament on 22 March 2011 to the close of poll on 5 May 2011.

For the reasons explained in the Decision, Ofcom considered the Programmes above constituted a linked constituency report and discussion about the Constituency. We noted that following the interviews held in the 4 April programme and 11 April programme, Matt Forde read out a list of candidates standing in the Constituency, but did not mention the name of Jim Parker, the candidate standing in the Constituency on behalf of the ASPP.

During our investigation, we considered the Programmes under the following Rules of the Code:

- Rule 6.8: “Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion”;
- Rule 6.9: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”; and
- Rule 6.10: “In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)”.

In particular, Ofcom considered whether the Programmes raised issues under Rule 6.11 of the Code, which states:

“Any constituency or electoral area report or discussion after the close of nominations<sup>2</sup> must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision”.

We asked Talksport for its comments on how the Programmes complied with Rule 6.11.

## Response

Talksport acknowledged that following the interviews held in the 4 April programme and the 11 April programme, Matt Forde read out a list of candidates standing in the constituency “that had been sourced by the programme’s producers from the BBC’s website from March 28<sup>th</sup> (the day before the returns deadline for the election on March 29<sup>th</sup>). This BBC list did not include the name of Jim Parker, the candidate for the All Scotland Pensioners party”.

The broadcaster said that after being contacted by Ofcom following the 11 April programme “we became aware that we had broadcast an incomplete list of candidates on those previous two occasions. As a result Matt Forde read a complete list of candidates, including Jim Parker, on 18<sup>th</sup> April”. Talksport added that the

---

<sup>2</sup> In the case of the Scottish Parliamentary Elections, the close of nominations was 29 March 2011.

presenter also read out a complete list of the candidates standing in the Constituency before and after the interview in the 2 May programme.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of certain standards. In particular, Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives set down in the Act, including that: due impartiality is preserved within television and national radio services on matters of political or industrial controversy and matters relating to current public policy. These standards are contained in the Code. Broadcasters are required to comply with the rules in Section Five of the Code so as to ensure that the due impartiality requirements of the Act are complied with. In addition, Section Six of the Code reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended). See above for the specific Code provisions).

Ofcom’s guidance to Section Six (Elections and Referendums) of the Code (“the Guidance”)<sup>3</sup> states that there is no onus on broadcasters to do election coverage. However, if broadcasters choose to cover election campaigns, they must ensure that they comply with the Rules set out in Section Six of the Code, and in particular the constituency reporting Rules laid out in Rules 6.8 to 6.13 of the Code. These are specific Rules that apply when a broadcaster is broadcasting a particular constituency report during an election period.

The Guidance states that: “Rule 6.9 requires that if a candidate takes part in an item about his/her constituency then the broadcaster must ensure that each of the major parties<sup>4</sup> is offered an opportunity to take part, as well as those with evidence of significant previous or current electoral support (Rule 6.10)”. In addition, Rule 6.11 requires that if broadcasters include constituency reports in their programming, then the constituency reports must include a list of all candidates<sup>5</sup> standing, giving first names, surnames and their party labels.

In order to determine whether the constituency reporting Rules (Rules 6.8 to 6.13) applied in this case, we first had to determine whether the Programmes contained constituency reports or discussions. The Guidance states that a constituency report occurs “when the report or the candidate focuses on his/her constituency”. In this case, we noted the following:

- in the 28 March programme, the presenter conducted an interview with the Liberal Democrat party candidate in the Constituency, Callum Leslie. Topics covered in the interview included tuition fees and education. We noted that Matt Forde prefaced this interview by saying:

---

<sup>3</sup> See [http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6\\_2009.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6_2009.pdf)

<sup>4</sup> The Code defines the ‘major parties’ in Scotland as: the Conservative Party; the Labour Party; the Liberal Democrat Party; and the SNP.

<sup>5</sup> The full list of candidates standing in the Constituency was: Claire Baker (Labour Party); Callum Leslie (Liberal Democrat party); Tricia Marwick (SNP); Jim Parker (ASPP); and Allan Smith (Conservative Party).

*“I’ve got Callum Leslie on the line now. Callum, I had a brief chat with [Callum Leslie] on Twitter earlier, is a Parliamentary candidate up in Scotland...We should point out that there are other candidates standing in the election as well up there in, where is it, what’s the constituency?”.*  
Callum Leslie replied: *“My constituency is Mid Fife and Glenrothes”;*

- in the 4 April programme, the presenter conducted an interview with the Conservative party candidate in the Constituency, Allan Smith. Topics covered in the interview included fuel tax and education. We noted that Matt Ford prefaced this interview by saying:

*“As part of a special election series, we look at one random constituency in the UK and interview all the people in that election. Last week, we spoke to Callum Leslie, the Lib Dem prospective Parliamentary candidate for Mid Fife and Glenrothes. This week we are joined by Allan Smith, Conservative prospective Parliamentary candidate for Mid Fife and Glenrothes”;*

- in the 11 April programme, the presenter conducted an interview with Angus MacNeil, an SNP MP. Topics covered in the interview included fuel tax and tuition fees. We noted that Matt Forde prefaced this interview by saying:

*“As part of a special election series, we look at one random constituency in the UK and interview all the people in that election. We’ve spoken to: Callum Leslie, the Liberal Democrat prospective Parliamentary candidate for Mid Fife and Glenrothes; and Allan Smith, the Conservative prospective Parliamentary candidate for Mid Fife and Glenrothes. This week, we’re joined by Angus MacNeil, SNP MP for Na-h-Eileanan an Iar, who is speaking on behalf of Tricia Marwick, the SNP’s prospective Parliamentary candidate for Mid Fife and Glenrothes”;*

and

- in the 2 May programme, the presenter conducted an interview with Talksport’s political correspondent, Sean Dilley. We noted that Matt Forde prefaced this interview by saying:

*“Talksport has offered the Labour candidate, Claire Baker, the same opportunity as other candidates to appear. However, neither Claire Baker or a representative are able to take part. Talksport’s political correspondent, Sean Dilley, is on the line to talk over Labour’s views, policies and perspective”.*

Topics covered in the interview included the Scottish Labour party manifesto, fuel tax and tuition fees.

We considered that two candidates (representing the Liberal Democrat Party and Conservative Party) standing in the Constituency were given the opportunity to give their views, within the Programmes, about policies affecting the constituency in which they were seeking election. Therefore, we considered that the Programmes constituted a linked constituency report or discussion about the Constituency.

As long as the Code is complied with, it is an editorial matter for broadcasters whether they structure constituency reports or discussions as a single programme item or as separate programme items over separate but linked programmes. In this

case, we noted that Talksport, in the first of the Programmes (the 28 March programme), did not inform the audience that it would be conducting interviews with other candidates in the Constituency during the election period. Broadcasters should ensure, therefore, in line with Rule 5.6<sup>6</sup> of the Code, that when they conduct a series of interviews with candidates standing in a particular constituency over the election period that they inform the audience of the other interviews.

#### Rules 6.8 & 6.9

In order to ensure compliance with Rule 6.9 of the Code, the Code makes clear that if a candidate is given an opportunity to discuss matters relating to his electoral area then broadcasters must ensure that other candidates from the major parties should also be offered an opportunity to take part. Ofcom noted that Talksport had invited the SNP candidate in the constituency to be interviewed during the election period, but she could not participate and an SNP MP was interviewed instead. In addition, Talksport informed Ofcom that it had twice invited the Labour Party candidate in the Constituency to take part in the *Matt Forde* programme, but that on both occasions, neither the Labour Party Candidate in the Constituency nor a Labour Party representative could take part. As a result, Talksport said that “Sean Dilley [the Talksport political correspondent] agreed to be interviewed by Matt Forde on ‘Labour’s views, policies and perspectives’ after confirming with the Scottish Labour Party that they were happy for this to happen”. Given the above, we considered that Talksport had complied with Rule 6.9 of the Code.

In addition, we considered that by including interviews with Angus MacNeil, the SNP MP, giving an SNP perspective, and Talksport’s political correspondent, giving a Labour Party perspective, Talksport also complied with Rule 6.8 of the Code, which requires that due impartiality is “strictly” maintained in a constituency report or discussion.

#### Rule 6.10

We noted that the complainant in this case was concerned that Talksport had not invited the ASPP candidate standing in the Constituency to participate in the *Matt Forde* programme’s coverage of the Constituency. However, under Rule 6.10 of the Code, when considering whether to include candidates from parties other than the major parties in constituency reports or discussions, broadcasters are only required to offer the opportunity to take part to candidates representing parties with previous significant electoral support or where there is evidence of significant current support. Ofcom noted that the ASPP was only launched on 14 March 2011, and we were not aware of evidence of previous significant electoral support or significant current support for the ASPP<sup>7</sup>. Given the above, we considered that there was no requirement on Talksport to offer an opportunity to the ASPP to participate in the *Matt Forde* programme’s coverage of the Constituency. Therefore, there was no breach of Rule 6.10 in this case.

#### Rule 6.11

Given that the Programmes constituted a linked constituency report or discussion, we also had to ascertain whether the Programmes had complied with Rule 6.11 of the

---

<sup>6</sup> Rule 5.6. States: “The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air”.

<sup>7</sup> For example, there were no ASPP Members of the Scottish Parliament, when the 2011 Scottish parliamentary Elections were called.

Code, which requires that, after the close of nominations, constituency reports or discussions must include a list of all the candidates standing (in sound and/or vision).

#### 28 March 2011

In this case, Ofcom noted that as the 28 March programme was broadcast before the close of nominations on 29 March 2011, there was no requirement on the broadcaster to include a full list of candidates, as laid out in Rule 6.11 of the Code, in the 28 March programme.

#### 4 and 11 April 2011

We noted, and the broadcaster confirmed, that the 4 April programme and 11 April programme did not include a full list of all five candidates standing in the Constituency. We considered that, although a candidate for the Constituency was not being interviewed in the 11 April programme, that the requirement to comply with Rule 6.11 remained given that this programme was one of four linked programmes constituting the constituency report or discussion about the Constituency.

In addition, we noted that in an edition of the *Matt Forde* programme, broadcast on 18 April 2011, even though no candidate in the Constituency was being interviewed, Matt Forde read out a full list of the five candidates standing in the Constituency. However, we considered that despite the broadcaster reading out a list of the candidates on 18 April 2011 (i.e. in a programme which was not a constituency report or discussion relating to the Constituency), Talksport had failed to include a full list of candidates in two separate programmes in a linked constituency report or discussion about the Constituency (i.e. the 4 April programme and the 11 April programme). We therefore considered that Talksport had breached Rule 6.11 of the Code.

#### **Breach of Rule 6.11**

## In Breach

### Bahrain Special

*Ahlulbayt TV, 29 March 2011 and 31 March 2011, 18:00*

---

#### Introduction

Ahlulbayt TV is a satellite television channel serving the Shi'a Muslim community in the UK. The licence for Ahlulbayt TV is held by Ahlulbayt Television Network Ltd ("Ahlulbayt TV" or "the Licensee"). *Bahrain Special* was a pair of programmes broadcast on 29 March 2011 and 31 March 2011 ("the Programmes") that focused on the pro-democracy demonstrations and political unrest that had been happening in Bahrain at that time.

A viewer considered that the Programmes:

- only included the "Iranian" Shi'a Muslim viewpoint on the events in Bahrain, and not the viewpoints of different political parties or other Islamic traditions within Bahrain, such as Sunni and Wahabi<sup>1</sup> Islam; and
- were "saying Saudi Arabia and Sunnis and Wahabis are calling for all Shi'as to be murdered and the Shi'as have to fight them";
- were calling for the Bahraini Government to be overthrown by "terrorist groups" within Bahrain loyal to the Iranian Government.

Ofcom noted that the Programmes discussed the ongoing pro-democracy demonstrations and political situation in Bahrain. The programme broadcast on 29 March 2011 consisted of: videos clips which were reported as showing various events that had taken in Bahrain (e.g. footage of protesters clashing with Bahraini police and Saudi Arabian armed forces; images of injuries suffered by the protesters; and footage of Shi'a mosques that had been reported to have been burnt down by Bahraini police); a studio presenter receiving and responding to questions put by viewers; and a live interview between the presenter and the Shi'a Muslim cleric, Sayed Mahdi Al-Modarressi. The programme broadcast on 31 March 2011 consisted of: a pre-recorded "*humanitarian appeal*" by Sayed Mahdi Al-Modarressi in relation to the situation in Bahrain; and a live interview between the presenter and Sayed Mahdi Al-Modarressi.

By way of background, it is Ofcom's understanding that members of the Shi'a Muslim tradition make up the majority of the population of Bahrain, and members of the Sunni Muslim tradition dominate the political institutions in that country. It has been widely reported that one of the main reasons for the pro-democracy demonstrations has been the calls for greater political rights for the Shi'a majority population.

We noted that the Programmes included a range of statements, including the following, which could be interpreted as being highly critical of: the policies and actions of the Bahraini Government; and also the Saudi Arabian Government's policies and actions in support for the Bahraini Government. For example:

---

<sup>1</sup> Wahabism, a form of Sunni Islam, is the dominant tradition of Islam practised within Saudi Arabia.

The presenter:

*"Any mosques that are having a high turnout from the Shi'a community in Bahrain [are] being destroyed".*

*"They are trying to wipe out people because they belong to a certain theology [i.e. Shi'a Islam]"*.

*"The violence taken out against protesters is indescribable".*

*"We've seen videos coming out of Saudi Arabia: those described as the Wahabi school of thought...[Wahabi Muslims are] dancing in their own gatherings saying: 'we've succeeded because we've been killing the Shi'as'"*.

*"This really is a crime against humanity".*

*"The [Bahraini] Government has been oppressing their citizens for years"*

*"I am sure you have seen the pictures on the internet of: people's heads being blown off; of people's heads being blown apart; of people's brains on the ground; and their limbs all over the place".*

The interviewee (Sayed Mahdi Al-Modarressi):

*"It's a long established and abundantly documented fact that authorities in Bahrain have practised systematic discrimination and brutal repression of its majority Shi'a population".*

*"Right now we're facing a tragedy of unprecedented proportions. Saudi forces have entered the country...Bahrain's Shi'as face the prospect of Shi'a sectarian cleansing... which is being perpetrated by those who label Shi'as as apostates, heretics".*

*"What we are seeing today is a new kind of ethnic cleansing".*

*"The reason the mainstream media isn't reporting on the situation in Bahrain is because Saudi money goes a long way".*

*"You have the Saudi armies along with the Al Khalifa<sup>2</sup> brutal dictators of Bahrain attacking hospitals".*

*"You can't really go any lower than inviting a foreign [i.e. Saudi Arabian] army to literally invade your own country".*

*"The Saudis clearly want people not to judge their active aggression, their invasion of a foreign country".*

Ofcom considered whether the programmes referred to above raised issues under Rule 3.1 of the Code, which states that:

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

---

<sup>2</sup> The Al Khalifa family is the ruling family of Bahrain.

For the reasons set out in the Decision, we did not consider that the material complained about raised potential issues under Rule 3.1 and we did not ask the Licensee to comment. However, we asked Ahlulbayt TV how it complied with Rule 5.5 of the Code which states that:

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

## Response

In its response, Ahlulbayt TV maintained that the Programmes were part of several programmes “covering the situation in Bahrain” and did include alternative points of view in line with Rule 5.5 of the Code. The broadcaster added that the information about the situation in Bahrain was “quite consistent with the repeated reports provided by Amnesty International...detailing the [Bahraini] regime’s atrocities”.

Ahlulbayt TV pointed to alternative viewpoints that it had provided within its programming: “For example, our live discussion show *‘Behind The Headlines’* has regularly featured phone calls from guests such as Nabeel Rajab - the head of the independent Bahraini Human Rights Commission - who has repeatedly pledged his support to the revolution on a rights-based platform. We have also interviewed people like Mohammed Al-Maskati, Ebrahim Sharif, and Dr. Munira Fakhro who are Sunni Muslims and have been involved in the protests”. Furthermore, the broadcaster said that “several of our other shows, specifically our programme *Eyewitness*, has taken great pains to emphasise the fact that this uprising is not sectarian in nature, but rather in line with the host of other Arab revolutions taking place across the Middle East”.

Ahlulbayt TV also said that the Programmes “involved ‘live’ call-ins from the viewers, and provided a chance for anyone, including the complainant, to present their own points of view. More importantly, the producer and host of the programme in question...also attempted to contact the Bahraini embassy for their views, but did not receive any response”.

In relation to the complainant’s reference to Iran, Ahlulbayt TV stated that any allegation that it was propagating an “Iranian” Shi’a viewpoint was “fallacious” as “Shi’a ideology predates the modern Iranian state by more than a millennium, and Shi’a Muslims constitute the majority” in a number of countries other than Iran. In addition, the broadcaster said that Sayed Mahdi Al-Modarressi was not speaking on behalf of any government but was “expressing his own independent views”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material. Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives set down in the Act, including that: “material likely to encourage or incite the commission of crime or lead to disorder is not included in television or radio services”; and due impartiality is preserved within television and national radio services on matters of political or industrial controversy and matters relating to current public policy. These standards are contained in the Code.

Broadcasters are required to comply with the rules in: Section Three of the Code to ensure that programmes do not incite crime or lead to disorder; and Section Five of the Code so as to ensure that the due impartiality requirements of the Act are complied with (see above for the specific provisions).

In reaching its decisions, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Applied to broadcasting, Article 10 therefore protects the broadcaster's right to transmit material as well as the audience's right to receive it as long as the broadcaster ensures compliance with the Rules of the Code and the requirements of statutory and common law. It should be noted the importance of the right of freedom of expression has been recognised to be at its highest in relation to political matters, including the manner of expression exercised by journalists in relation to political matters. The Convention continues:

"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others..."

The broadcaster's right to freedom of expression is therefore not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the need, in cases such as these, to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy. Therefore, whilst any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

Ofcom noted that the Programmes consisted of: videos clips which were reported as showing various events that had taken in Bahrain; a presenter receiving and responding to questions put in telephone calls from viewers; and a live interview between the presenter and a Shi'a Muslim cleric.

Ofcom considered whether the Programmes:

- were inciting: Shi'a Muslims to retaliate against alleged acts of violence by "Saudi Arabia and Sunnis and Wahabis"; and, "terrorist groups" within Bahrain loyal to the Iranian Government to overthrow the Bahraini Government; and
- provided appropriate alternative viewpoints on a matter of political controversy (i.e. were duly impartial).

### Incitement

Rule 3.1 of the Code is concerned with the likelihood of the encouragement or incitement of crime. In this case Ofcom therefore assessed whether there were any references within the programmes which could be characterised as inciting or encouraging: Shi'a Muslims to carry out acts of violence; or individuals or groups to

overthrow the Bahraini Government. In deciding this, Ofcom focussed in particular on whether the comments as they were presented contained a direct or implied call to action which would be likely to encourage or incite the commission of crime or lead to disorder.

In considering Rule 3.1 we are required to address the likelihood of the commission of a crime. In particular, we have considered whether the references in the programmes included a direct or indirect call to action that would have encouraged, for example, Shi'a Muslims to take violent or criminal action against members of the Sunni Muslim community in retaliation for any reported acts of violence undertaken by the Bahraini Government and Saudi Arabian armed forces against Bahraini Shi'a citizens.

We noted that the editorial line taken within the Programmes was strongly critical of the Bahraini Government, and the support given to it by the Saudi Arabian Government. Within the Programmes, both the presenter and, in particular Sayed Mahdi Al-Modarressi made clear the need, in their opinion, for action to be taken in reaction to the political situation in Bahrain. For example, the presenter said:

*"It's time for us to all stand up and take action".*

In addition, Sayed Mahdi Al-Modarressi said:

*"It's not even about sectarianism...the government is making it out to be that way...It's about pure and simple morality...It's about preventing the bloodshed".*

However, we also noted that Sayed Mahdi Al-Modarressi went on to suggest a number of practical actions that viewers of the Programmes might take, such as sending e-mails, starting petitions and holding rallies. For example, he said:

*"Send messages everywhere. Get people to begin to care".*

*"Try and help the families of the injured...help them financially*

In both of the Programmes, Sayed Mahdi Al-Modarressi also made direct appeals to the international community in relation to the situation in Bahrain. For example, he said:

*"I appeal to the international community...I appeal to the human rights organisations, I appeal to the organisations that protect the rights of women and children...Come and help save Bahrain from these individuals".*

Ofcom believed that the calls to action within the Programmes such as these would not, on any reasonable view, have been likely to: encourage or incite the commission of a crime against any existing or named group or Government; or been seen as an attempt to lead viewers to disorder; or encourage any potentially criminal action. The Programmes were therefore not in breach of Rule 3.1 of the Code.

### Due impartiality

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side

of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured.

This programme dealt exclusively with the recent series of popular demonstrations that have taken place in Bahrain in the early months of 2011, which have focused on calls for political reforms and equality, in particular for Bahrain's majority Shi'a population. This was an issue that has attracted considerable news coverage and controversy, and has continued to do so. Given this, Ofcom considered that the programme dealt with a matter of political controversy. Rule 5.5 was therefore applicable. The Programmes included a large number of statements that Ofcom considered all of which being highly critical of: the actions of the Bahraini Government; and also the Saudi Arabian Government's policies and actions in support for the Bahraini Government.

In assessing whether due impartiality has been applied in this case, the term "due" is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In this case, Ofcom considered that the programme included a number of viewpoints, but all of them were critical of the Bahraini state's policies and actions in relation to dealing with the popular demonstrations happening in that country, and the Saudi Arabian armed forces' intervention in the situation in Bahrain. In summary, the programme accused the Bahraini government, with the support of Saudi Arabian armed forces, of committing "*a crime against humanity*"; "*Shi'a sectarian cleansing*" and "*attacking hospitals*".

We noted that the Programmes (whilst condemning what was seen as the violence of the Bahraini authorities, supported by Saudi Arabian armed forces, towards Bahrain's majority Shi'a population) did include the following statements. These claimed that the popular demonstrations within Bahrain also included members of the Sunni Muslim community in Bahrain:

*"We saw Sunnis and Shi'as holding hands in the protests; we saw the nation coming together, Sunni and Shi'a against the Government"*

*"We can see at the same time there are people celebrating because people who belong to the Shi'a faith are dying, so in a sense we can see a two-sided thing. But the truth, the reality, is this is a not a sectarian issue although the government and police are trying to make it out to be. We see that the nation has come together. And now the Sunnis and Shi'as are together. We're hand in hand. There is a unity in that country and we are standing up against the Government".*

*"The protesters on the streets in Bahrain are not Shi'as only".*

In addition, the broadcaster pointed to other programmes in its service which had included "Sunni Muslims...[who] have been involved in the protests". However, we did not note, and the broadcaster did not provide evidence of, the Programmes including any views from a Wahabi Muslim perspective. Ofcom is aware that there might be different sections of Bahraini society that hold different views on the political situation within Bahrain. Ofcom is aware, as mentioned above, that in adjudging due

impartiality, the Code does not require that every facet of every argument has to be represented. In this case, we considered that the principal alternative viewpoints that needed to be reflected in the Programmes were those of the Bahraini and Saudi Arabian Governments and not the viewpoint of the Bahraini Wahabi Muslim community. We are aware that there are some theological differences between different strands of Sunni Islam, including the differences between Wahabi Islam and other strands of the Sunni Muslim tradition. However, as outlined above, we considered that the viewpoints of some Sunni Muslims had been reflected either within the Programmes or editorially linked programmes.

We noted the submission of Ahlulbayt TV that the information in the Programmes about the situation in Bahrain was “quite consistent with the repeated reports provided by Amnesty International...detailing the [Bahraini] regime’s atrocities”. However, just because the viewpoint being articulated within the Programmes chimed with the viewpoint of a non-governmental organisation did not obviate the requirement for Ahlulbayt TV to comply with the due impartiality requirements of the Code.

We also noted the broadcaster’s submission that it had “provided a chance for anyone, including the complainant, to present their own points of view” within the programme broadcast on 29 March 2011. Ofcom recognises that in audience participation programmes where viewers or listeners are encouraged to telephone in to a programme, while broadcasters can encourage callers from different perspectives, it cannot ‘manufacture’ them. However, whether or not viewers or listeners make calls, it is the responsibility of the broadcaster to ensure that due impartiality is maintained. Therefore, in the situation where a matter of political controversy is being covered in a programme and there are no views being expressed in opposition to the viewpoint being featured, broadcasters must have systems in place to ensure that due impartiality is maintained. For example, if a presenter or broadcaster is aware that they are receiving few audience interventions with an alternative point of view, they could consider: summarising, within the programme, what that alternative point of view is; having available interviewees to express alternative views; or challenging those audience interventions they are receiving more critically. However, ultimately, how due impartiality is maintained is an editorial matter for the broadcaster.

Similarly, we noted Ahlulbayt TV’s submission that it had “attempted to contact the Bahraini embassy for their views, but did not receive any response”. By attempting to obtain the participation within the Programmes of an organisation to provide an alternative viewpoint, the broadcaster did not discharge its obligations under Section Five of the Code. In such circumstances, if a broadcaster cannot obtain, for example an interview or statement laying out a particular viewpoint on a matter of political or industrial controversy and matter of current public policy, then the broadcaster must find other methods of ensuring that due impartiality is maintained. These might include some of the editorial techniques outlined in the paragraph above.

We noted the complainant in this case had claimed that Ahlulbayt TV was providing the “Iranian” Shi’a Muslim viewpoint on the events in Bahrain. We also noted the broadcaster’s strong repudiation of this view. In addition, we noted that in the programme broadcast on 31 March 2011, Sayed Mahdi Al-Modarressi strongly refuted any allegation that the pro-democracy demonstrations in Bahrain had been instigated by the Iranian state. Ofcom is aware that the Iranian state has denied any involvement in the events in Bahrain. In light of these factors, Ofcom considered that the Programmes, by denying the involvement of the Iranian state in the pro-

democracy demonstrations in Bahrain, did sufficiently reflect the viewpoint of the Iranian Government.

The Programmes therefore did sufficiently set out certain alternative viewpoints. However, given the above, we considered that the programme did not contain any alternative views which could be reasonably and adequately classed as supportive of, or which sought to explain the policies and actions of the Bahraini or Saudi Arabian States i.e. the Bahraini state's policy in relation to dealing with the popular demonstrations happening in that country; and the Saudi Arabian State's intervention in the situation in Bahrain.

Overall, this *programme when considered alone* gave a one-sided view on this matter of political controversy. Further and importantly, the broadcaster did not provide any evidence of views of the Bahraini or Saudi Arabian governments on this issue being included in a *series of programmes taken as a whole* (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience). Ofcom therefore considered the programme to be in breach of Rule 5.5 of the Code.

It is important to note that the broadcasting of highly critical comments concerning the policies and actions of any state (such as happened here) is not, in itself, a breach of due impartiality. It is essential that current affairs programmes are able to explore and examine controversial issues and contributors are able to take robust and highly critical position. However, depending on the specifics of the issue, it may be necessary, in order to fulfil the requirements of due impartiality to ensure that alternative viewpoints are broadcast.

### **Breach of Rule 5.5**

## In Breach

### Bahrain Revolution

*Hidayat TV, 25 March 2011, 19:00*

---

#### Introduction

Hidayat TV is a satellite television channel, which describes itself as “serving the Muslim community in the UK and Europe.” The Licence for Hidayat TV is held by Hidayat Television Limited (“Hidayat TV”). *Bahrain Revolution* was a programme that consisted of footage of a demonstration held outside the BBC offices in Manchester on 21 March 2011 (“the Manchester Demonstration”). The demonstrators were voicing: their opposition to the actions of the Bahraini Government (with the support of Saudi Arabian armed forces) against the pro-democracy demonstrations happening in Bahrain at that time; and their dissatisfaction with the BBC’s approach to reporting the situation in Bahrain.

Ofcom received a complaint that the programme showed demonstrators waving placards which showed graphic images of dead bodies. On viewing the material, Ofcom noted that this programme consisted of an unusual editorial format: the programme was 20 minutes long with no commentary or other intervention by, for example, a presenter. Just over half of the programme consisted of footage of the Manchester Demonstration; the second half of the programme included a number of short statements to cameras made by various demonstrators at the Manchester Demonstration.

Ofcom did not consider the images on demonstrators’ placards presented any potential issues under the Code. However, whilst assessing the programme, Ofcom noted that just over half of the programme consisted of footage of the Manchester Demonstration, with prominence being given to demonstrators waving placards and shouting slogans. These placards and slogans contained statements that could be interpreted as being highly critical of: the actions of the Bahraini Government; and also the Saudi Arabian Government’s support for the Bahraini Government<sup>1</sup>. For example:

*“Down with the Monarchy we want democracy”.*

*“Stop murdering protesters”.*

*“Bahrain: The massacre of human rights”.*

*“Stop the genocide of Bahrain”.*

*“Occupation no more. We don’t want a Saudi State”.*

We also noted that the second half of the programme consisted of short statements to camera made by various demonstrators, which could be interpreted as being highly critical of: the actions of the Bahraini Government; and also the Saudi Arabian Government’s support for the Bahraini Government. For example:

*“Rights have been taken from Bahrainis because they are Shi’a”.*

---

<sup>1</sup> It has been widely reported that Saudi Arabian armed forces have been deployed in Bahrain in support of the Bahraini Government.

*“Instead of sending people to sort out their problems [the Saudi Arabian Government] send[s] in tanks and do this massacre because they are not regarding Shi’as as human”.*

*“We have come out today to support the Bahraini people: rights for freedom; for freedom of expression; freedom of speech; right of participation in power; justice; equality; the employment opportunities for all the Bahraini people without separation between Sunnis or Shi’as”.*

*“The people of Bahrain has suffered enough under the autocracy of Al Khalifa<sup>2</sup>. It’s time to act now...Saudi Arabia should pull out of Bahrain”.*

Ofcom asked Hidayat TV for its comments as to how the programme, and in particular the above statements, complied with Rule 5.5 of the Code, which states:

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

## Response

In its response, Hidayat TV said that the programme was featuring “updates of the current situation” in Bahrain, and “the statements that were expressed could not be controlled as [the protesters] have the freedom of speech”. In addition, the broadcaster did not “create controversy as numerous other channels had already covered this topic”, and that “viewers requested that we cover this” subject matter. Given the above, Hidayat TV maintained that the programme complied with Rule 5.5 of the Code.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of certain standards. In particular, Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives set down in the Act, including that: due impartiality is preserved within television and national radio services on matters of political or industrial controversy and matters relating to current public policy. These standards are contained in the Code. Broadcasters are required to comply with the rules in Section Five of the Code so as to ensure that the due impartiality requirements of the Act are complied with (see above for the specific provisions).

When interpreting due impartiality, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Applied to broadcasting, Article 10 therefore protects the broadcaster’s right to transmit material as well as the audience’s right to receive it as long as the broadcaster ensures compliance with the Rules of the Code and the requirements of statutory and common law. It should be noted the importance of the right of freedom of expression has been recognised to be at its highest in relation to political matters, including the

---

<sup>2</sup> The Al Khalifa family is the ruling family of Bahrain.

manner of expression exercised by journalists in relation to political matters. The Convention continues:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”.

The broadcaster’s right to freedom of expression is therefore not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the need, in cases such as these, to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy. Therefore, whilst any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

Ofcom also recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured.

This programme dealt exclusively with the recent series of popular demonstrations that have taken place in Bahrain in the early months of 2011, which have focused on calls for political reforms and equality, in particular for Bahrain’s majority Shi’a population<sup>3</sup>. This is not surprising given that this was an issue that has dominated the news and has attracted much controversy. Given this, Ofcom considered that the programme dealt with a matter of political controversy. Rule 5.5 was therefore applicable. Most of the programme consisted of film footage of the Manchester Demonstration, with no commentary or mediation from a presenter. We noted the programme featured different placards, slogans and short statements to camera by various demonstrators, which contained statements all of which Ofcom considered highly critical of: the actions of the Bahraini Government; and also the Saudi Arabian Government’s support for the Bahraini Government.

Despite the unusual programme format, we considered that the programme was clearly presented as a self contained editorial package entitled *Bahrain Revolution*. It was Ofcom’s view that the cumulative effect of: the footage of the demonstrators; the demonstrators’ placards; and the short statements to camera by various protesters, would have been likely to have been viewed by the audience as articulating a particular viewpoint, namely, that of those calling for political reforms and equality within Bahrain, in particular for the majority Shi’a population.

In assessing whether due impartiality has been applied in this case, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

---

<sup>3</sup> It is Ofcom’s understanding that the dominant positions of power in Bahrain are held by members of the Sunni Muslim community.

In this case, Ofcom considered that the programme included a number of viewpoints, but all of them were critical of the Bahraini state's policy in relation to dealing with the popular demonstrations happening in that country, and the Saudi Arabian armed forces' intervention in the situation in Bahrain. In summary, the programme accused the Bahraini government, with the support of Saudi Arabian armed forces, of "*murdering protesters*" and committing "*genocide*". In addition, there were various calls for: political reforms within Bahrain, in particular for the benefit of the majority Shi'a population; and the withdrawal of Saudi Arabian involvement in Bahrain.

We considered that the programme did not contain any alternative views, which could be reasonably and adequately classed as supportive of, or which sought to explain the actions of the Bahraini or Saudi Arabian States i.e. the Bahraini state's policy in relation to dealing with the popular demonstrations happening in that country; and the Saudi Arabian State's intervention in the situation in Bahrain.

We noted the submission of Hidayat TV, that: "the statements that were expressed could not be controlled as [the protesters] have the freedom of speech". However, the content of the programme was pre-recorded. Also, whether or not protesters have a right to freedom of speech is a separate matter to the obligations imposed upon broadcasters by the Code. Under the Code, the broadcaster was perfectly at liberty to include the various statements made by the protesters at the Manchester Demonstration. However, given that a matter of political controversy was being covered in this case, it was incumbent on the broadcaster to include some appropriate reflection of the alternative viewpoints so as preserve due impartiality. We also noted Hidayat TV's submission that it did not "create controversy as numerous other channels had already covered this topic". However, just because a particular subject matter has received coverage on other broadcast channels, did not obviate the requirement for Hidayat TV to comply with the due impartiality requirements of the Code. Similarly, the fact that a particular and controversial viewpoint receives extensive coverage on a particular channel, does not in any way dilute another channel's duty to preserve due impartiality in its service.

Ofcom recognises that there may be a number of ways that broadcasters can ensure that alternative viewpoints are included within its programming. For example, they could: summarise, within the programme, what those alternative points of view are; or include interviewees to express alternative views. However, ultimately, how due impartiality is maintained is an editorial matter for the broadcaster.

Overall, in this case, the programme gave a one-sided view on this matter of political controversy. Further, and importantly, the broadcaster did not provide any evidence of alternative views on this issue in a series of programmes taken as a whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience). Ofcom therefore considered the programme to be in breach of Rule 5.5 of the Code.

It is important to note that the broadcasting of highly critical comments concerning the policies and actions of any state (such as happened here) is not, in itself, a breach of due impartiality. It is essential that current affairs programmes are able to explore and examine these issues and contributors are able to take robust and highly critical positions. However, depending on the specifics of the issue, it may be necessary, in order to fulfil the requirements of due impartiality as set out in the Act as well as the Code to ensure that alternative viewpoints are broadcast. In this case, such viewpoints (i.e. the position of the Bahraini and Saudi Arabian Governments in

this case) were not given either in the programme itself, or elsewhere on the licensed service within the series of programmes as a whole.

### **Breach of Rule 5.5**

## In Breach

### Hourly Urdu News

ARY News, 17 March 2011, 20:00

### Criminals Most Wanted

ARY News, 17 April 2011, 15:00

---

#### Introduction

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

#### Hourly Urdu News

Hourly Urdu News originates from Pakistan and is transmitted at certain times of the day on ARY News. This particular broadcast on 17 March 2011 included the following news item:

[Translated from Urdu:] *"In the city of Sialkot, a very strange child has been born. This infant has lion-like stripes on his body. The infant was born in 'Agoki' – a suburb of Sialkot. The infant has marks on his body that resemble the stripes on a lion's skin and there are red marks around his mouth and eyes. The infant's parents believe that it is God's will and they have brought the child home [from hospital]. People around the area have been gathering in large numbers to see the infant. Doctors are saying that the cause of these defects is genetic problems and it usually leads to the drying and cracking of skin. Doctors have also said that the rate of such births is 1 in 300,000 and the chances of survival are extremely low."*

Almost throughout, filmed images were shown of the small baby, which appeared to be in distress, bleeding from its eyes and through slits in the skin of its arms and torso. These images were shown for over thirty seconds, while the news presenter read the script above, and continued to be broadcast in silence for more than fifteen seconds after the voiceover had ended.

A viewer contacted Ofcom, as he was shocked and disturbed by the news item, which he considered unsuitable for broadcast before the 21:00 watershed.

Ofcom asked ARY for its comments as to how this material complied with Rule 2.3 of the Code, which states:

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

#### Criminals Most Wanted

This documentary, which was broadcast in Urdu, included both real footage and reconstructions, which were indicated onscreen. Lasting approximately fifty minutes, it concerned *"the strange news"* that cannibals exist and told the true story of two brothers in Pakistan, who had removed a dead body from its grave and cooked parts

of it. Shortly into the programme the following warning was broadcast, both as an onscreen graphic and voiced by the presenter:

*"We request that viewers do not allow children or people of a weaker disposition to watch this episode of 'Criminals Most Wanted', as the facts and truth are very painful."*

Later in the programme this warning was repeated, just before images of the mutilated corpse and a cooking pot containing a body part were shown. An onscreen graphic then indicated that the content of the pot was the ankle from the corpse, which the presenter said was being made into soup.

The documentary was presented in a very dramatic manner with, for example, a soundtrack of suspenseful music.

A viewer contacted Ofcom, as she was "shocked, disgusted and upset" by these images. She also considered that the broadcast was "like a film trailer – very dramatic, repetitive and insensitive", "violated the rights of a helpless dead lady" and reflected a "lack of ethics and [an] obsession for broadcasting success."

Ofcom asked ARY how this second broadcast complied with Rule 1.3 of the Code, which states:

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

We also asked how it complied with Rule 2.3 of the Code (set out above).

## **Response**

### Hourly Urdu News

ARY said that the news item in question immediately followed one concerning a family that had lost 3 family members to, and had had another 3 members disabled by, a mysterious illness. The broadcaster added that "both news items were special features in order to create awareness" in the community in Pakistan. Nevertheless, it apologised for any offence the news item had caused to its UK viewers. While ARY considered the material to have been "justified by the context", it acknowledged that "the newscaster should have warned the viewers which could have helped to avoid the distress and offence caused...", adding that it had taken "the necessary action as it was aired and ... made sure it did not repeat." The broadcaster said it had "instructed [its] broadcast division and ... will ... make sure that any such item in future will be given special attention during broadcast", giving Ofcom an assurance that it would no such mistake would recur.

### Criminals Most Wanted

ARY apologised, as this programme was not intended for broadcast in the UK. It had been broadcast in error due to the last minute cancellation of a current affairs programme.

The broadcaster noted the warnings that had been given near the beginning of the programme and just before the images of concern to the complainant were broadcast. Nevertheless, ARY assured Ofcom that such material "will no longer be available to the UK library in its Pakistan transmission hub".

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material. Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure, among other things, “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 standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Ofcom considers that the standards it has set for the protection of children to be amongst the most important. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

### Hourly Urdu News

Ofcom considered the images broadcast of the small baby, bleeding from its eyes and through slits in the skin of its arms and torso, and clearly in distress were potentially offensive. We therefore went on to consider whether this potential offence was justified by the context. In assessing context Ofcom takes account of factors such as the editorial content of the programme, the service, any warnings, audience expectations, time of broadcast and the degree of offence.

Although a news programme, in Ofcom’s opinion the extensive footage of the distressed baby was gratuitous. There appeared to be no legitimate editorial or other reason for showing the child almost throughout the news presentation. The length of the item and distressing nature of images in Ofcom’s view were likely go beyond the expectations of viewers of this channel, whether members of the UK Pakistani community or others, at 20:00. The degree of offence was heightened by leaving the moving images on screen, in silence, for over fifteen seconds after the news presenter had finished reading the script. Ofcom further notes that no warning was broadcast to viewers either before or during the news item – which the broadcaster acknowledged was an error.

The potential offence created by broadcast of this content was therefore in the circumstances of this case not justified by the context. The broadcaster did not apply generally accepted standards in breach of Rule 2.3 of the Code.

### Criminals Most Wanted

Any television programme concerning cannibalism and containing some fairly graphic descriptions and images of cannibalism has a clear potential to offend viewers, especially when broadcast at 15:00.

### Rule 2.3

In relation to Rule 2.3, Ofcom therefore considered whether the material was justified by the context. We noted that ARY did not attempt to justify broadcast of the material but acknowledged that the programme was not intended for broadcast in the UK and was transmitted in error.

Ofcom noted that the documentary featured a considerable amount of reconstructed material and was presented in a dramatic style. We considered that the broadcast of real footage showing images of the victim’s mutilated corpse and her ankle being

cooked in a pot (for human consumption) were not only disturbing, but unnecessarily graphic in this context. The degree of offence capable of being caused by this content was therefore considerable, especially for viewers who came across the material unawares. It was therefore likely to fall outside the expectations of a UK audience, especially one watching at 15:00. There were two warnings broadcast but in Ofcom's opinion they were inadequate to justify the degree of offence which the material had the potential to cause. Ofcom note that no warning at all was broadcast before the documentary began.

Ofcom considered that the broadcaster had failed to ensure fully that material which may cause offence was justified by the context, in breach of Rule 2.3 of the Code. We therefore welcomed ARY's assurance that this programming will no longer form part of its library of material for broadcast to the UK.

#### Rule 1.3

Regarding Rule 1.3, the programme was broadcast at 15:00 on a Sunday, when children may have been watching television unaccompanied by an adult. Ofcom considered that the subject matter, the sensational way in which it was portrayed, the suspense it was clearly trying to create and the graphic images shown clearly made the material unsuitable for children. For the reasons stated above in relation to Rule 2.3, children were not protected from this content by appropriate scheduling. Rule 1.3 was therefore also breached.

***Hourly Urdu News, 17 March 2011: Breach of Rule 2.3***

***Criminals Most Wanted, 17 April 2011: Breaches of Rule 1.3 and Rule 2.3***

## In Breach

### Advertisement for Health Food Center

OBE, 24 January 2011, 11:00

---

#### Introduction

OBE broadcasts a range of educational and entertainment programmes from various regions, including Africa and the Caribbean. The licence for the channel is held by New OBE Channel Limited.

Throughout the broadcast of a programme called *Focus on Ghana*, which concerned “*The Signing Ceremony For The TRADE FINANCE FACILITY 2010/2011*”, OBE also broadcast the following advertisement, which was scrolled across a lower portion of the screen, spatially separated from the programme in a banner:

*“For all your specific health needs, high blood pressure, high cholesterol, diabetes, infertility, fibroid, hairloss, aphrodisiac and weight problems call the Health Food Center on 0207 387 9289”.*

#### Scheduling of the advertisement

A viewer contacted Ofcom about the advertisement, as it was broadcast for a total of fifty-seven minutes throughout the programme.

We therefore asked the broadcaster for its comments on the matter with regard to Rule 4 of COSTA, which states, among other things, that:

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

#### Content of the advertisement

Ofcom noted that the advertisement claimed that a variety of medical conditions (i.e. “*high blood pressure, high cholesterol, diabetes, infertility, fibroid, hairloss, aphrodisiac and weight problems*”) could be addressed by the Health Food Center. Further, we noted that it did not refer to how the advertiser would address them (e.g. by the provision of certain foods, supplements, medicines and/or clinical treatments).

We therefore asked the broadcaster for its comments on the claim, together with those of the advertiser and any substantiation in support of it, with regard to the following Rules of the BCAP Code:

#### Section 3 (Misleading Advertising)

- 3.1 “Advertisements must not materially mislead or be likely to do so.”
- 3.2 “Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner. Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the advertisement is constrained by

time or space, the measures that the advertiser takes to make that information available to consumers by other means."

- 3.9 "Broadcasters must hold documentary evidence to prove claims that the audience is likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation."

#### Section 11 (Medicines, medical devices treatments and health)

- 11.3 "Advertisements must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional (see rule 11.9). That does not prevent advertising for spectacles, contact lenses or hearing aids."
- 11.9 "Services including Clinics, Establishments and the like Offering Advice on, or Treatment in, Medical, Personal or other Health Matters - Advertisements are acceptable only if the advertiser can provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of their skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications."
- 11.13 "Broadcasters may accept advertisements for services offering remote personalised advice on medical or health matters only if all staff providing that advice are suitably qualified and subject to regulation by a statutory or recognised medical or health professional body and the advice given is in accordance with its relevant professional codes of conduct (see rule 11.9)."
- 11.15 "Unless allowed by a product licence, words, phrases or illustrations that claim or imply the cure of an ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable."

#### Section 12 (Weight control and slimming)

- 12.15 "Advertisements for establishments offering weight-control or slimming treatments are acceptable only if they make clear that dietary control is necessary to achieve weight loss. An exception is made for clinics and other establishments that provide immediate weight loss surgery under suitably qualified medical supervision and are run in accordance with rule 11.9. Those clinics and establishments must not refer to the amount of weight that can be lost."

#### Section 13 (Food, food supplements and associated health or nutrition claims)

- 13.4 "Only nutrition claims listed in the Annex of Regulation 1924/2006 are permitted in advertisements. Authorised health claims in the Community Register or claims that would have the same meaning for

the audience may be used in advertisements:

[www.ec.europa.eu/food/food/labellingnutrition/claims/community\\_register/authorised\\_health\\_claims\\_en.htm](http://www.ec.europa.eu/food/food/labellingnutrition/claims/community_register/authorised_health_claims_en.htm)<[http://www.ec.europa.eu/food/food/labellingnutrition/claims/community\\_register/authorised\\_health\\_claims\\_en.htm](http://www.ec.europa.eu/food/food/labellingnutrition/claims/community_register/authorised_health_claims_en.htm). Depending on the nature of the claim Regulation 1924/2006 contains a number of complex transitional periods, including those for health claims which are still being assessed for adoption to the EU list of permitted health claims (and which comply with existing national provisions) and for trade marks or brand names in use prior to 1 January 2005. There is no transition period for disease risk claims which are prohibited until authorised. BCAP advises advertising industry stakeholders to take advice on the effect of the Regulation."

13.4.2 "Advertisements that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim. Advertisements must not give a misleading impression of the nutrition or health benefits of the product as a whole and factual nutrition statements should not imply a nutrition or health claim that cannot be supported. Claims must be presented clearly and without exaggeration."

13.6.2 "These are not acceptable in advertisements for products subject to this section: ...Claims that state or imply a food prevents, treats or cures human disease. Reduction-of-disease-risk claims are acceptable if authorised by the European Commission."

## Response

### Scheduling of the advertisement

With regard to Rule 4 of COSTA, OBE said it "had no idea that [a] crawling advertising message on television should not be more than 12 minutes" adding that, in any event, its compliance officer was not in the UK at the time Health Food Center had approached it.

OBE therefore apologised for the broadcast of material that it had had no intention to scroll throughout *Focus on Ghana*, but for "an honest mistake which was made by the staff when the advertiser approached the office in [the compliance officer's] absence."

### Content of the advertisement

OBE said that it chose to scroll the advertisement during *Focus on Ghana*, as the advertiser intended to establish a Health Food Center in Accra, Ghana. While the broadcaster considered that the scroll could possibly "generate interest [in] the Ghana market", it noted that there was no direct connection between the advertisement and any of the programme content.

The broadcaster added that the advertisement had been written by a cameraman who works for a commercial public service broadcaster and OBE had therefore "accepted it in confidence".

OBE said it had "checked the licences on the product" and believed the Health Food Center was a legitimate business. However, it did not refer to Rules 3.1, 3.2, 3.9, 11.3, 11.9, 11.13, 11.15, 12.15, 13.4, 13.4.2 and 13.6.2 of the BCAP Code or provide any substantiation in support of the claim that the medical conditions of "high blood

*pressure, high cholesterol, diabetes, infertility, fibroid, hairloss, aphrodisiac and weight problems*” could be addressed by the Health Food Center. Further, it provided no comments from the advertiser.

Nevertheless, the broadcaster apologised “for not checking the medical documents before scrolling [the advertisement]” and assured Ofcom that it would not broadcast the material again.

## **Decision**

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

Ofcom also has a duty to set such standards for broadcast content as appear to it best calculated to secure specific standards objectives. The relevant objectives in this instance are identified under the headings, below.

### Scheduling of the advertisement

Ofcom has a statutory duty under the Act to secure the standards objective, “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with.”

Any advertising scrolled in a spatially separated banner during the broadcast of a programme, counts towards the amount of advertising permitted under COSTA, which reflects European requirements, as detailed in Chapter VII of the AVMS Directive<sup>1</sup>. Rule 4 of COSTA restricts the time devoted to television advertising and teleshopping spots in any clock hour to twelve minutes.

The advertisement in this instance was broadcast continuously for fifty seven minutes in a single clock hour (i.e. between 11:00 and 12:00), in breach of this Rule.

Ofcom noted OBE’s response that it was unaware of the limitations on advertising minutage for advertising that appeared on screen in a scrolling banner. This raised serious questions about its ability to comply with regulatory requirements, as required under its licence to broadcast.

### Content of the advertisement

Ofcom has a statutory duty under the Act to secure the standards objective, “that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.”

To this end, and under a memorandum of understanding (“MoU”) with Ofcom, the Broadcast Committee of Advertising Practice administers the Advertising Code. While broadcast advertising complaints are generally considered by the Advertising Standards Authority (“ASA”), under the same MoU, COSTA issues are not. In this instance, the complaint concerned a COSTA issue and Ofcom has therefore also considered the advertising content issue that arose during the investigation process.

Ofcom noted that OBE appeared to have considered that the production of the advertisement script by a commercial public service broadcast cameraman ensured

---

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

compliance with the relevant BCAP Code requirements. We did not agree and have reminded OBE of its responsibilities under Rule 1.2 of the BCAP Code, which states:

“Advertisements must be prepared with a sense of responsibility to the audience and to society.”

Ofcom also noted that OBE said it had “checked the licences on the product” and believed the Health Food Center was a legitimate business. Nevertheless, Ofcom remains unclear how the broadcaster was able to verify the advertiser’s business, given that neither OBE nor the advertiser provided any substantiation in support of the claim that the medical conditions of *“high blood pressure, high cholesterol, diabetes, infertility, fibroid, hairloss, aphrodisiac and weight problems”* could be addressed in some way by the advertiser.

Further, we noted that neither the broadcaster nor the advertiser provided any comment with regard to Rules 3.1, 3.2, 3.9, 11.3, 11.9, 11.13, 11.15, 12.15, 13.4, 13.4.2 and 13.6.2 of the BCAP Code, and therefore provided no clarification on how the Health Food Center addressed such medical conditions (e.g. by the provision of certain foods, supplements, medicines and/or clinical treatments).

Rule 3.9 of the BCAP Code states clearly that claims may be regarded “as misleading in the absence of adequate substantiation.”

In the absence of any substantiation or substantive comment concerning any BCAP Code rules, Ofcom therefore considers that the advertisement was likely to materially mislead viewers, in breach of Rules 3.1, 3.2 and 3.9. Further, we considered the advertisement was also in breach of Rules 11.3, 11.9, 11.13, 11.15, 12.15, 13.4, 13.4.2 and 13.6.2 of the BCAP Code, as Ofcom had no detail of Health Food Center’s approach to, or capability of, addressing any of the medical conditions identified in the advertisement.

We therefore welcome the broadcaster’s apology and its assurance that it would not broadcast the advertisement again. However, given the serious potential harm to viewers involved in this case, Ofcom considers that it represents a serious breach in compliance. We have therefore put OBE on notice that any similar breach, registered by Ofcom or ASA in the future, is likely to result in consideration of further regulatory action.

#### **Breach of Rule 4 of COSTA**

#### **Breaches of Rules 3.1, 3.2, 3.9, 11.3, 11.9, 11.13, 11.15, 12.15, 13.4, 13.4.2 and 13.6.2 of the BCAP Code**

## In Breach

### PS3 sponsorship of Five Movies

*Channel 5, Channel 5 HD, 5\* and 5 USA, 3 February 2011 to 25 March 2011, various dates and times*

---

#### Introduction

Ofcom received 17 complaints about the loudness of the sponsorship credits broadcast around Five Movies between 3 February and 15 March 2011<sup>1</sup>.

Ofcom conducted a technical assessment of the sponsorship credits and judged that they were excessively noisy. We therefore requested Channel 5's comments in relation to Rule 9.17 of the Code and Rule 4.7 of the BCAP Code.

Rule 9.17 of the Code:

"Sponsorship must comply with both the content and scheduling rules that apply to television advertising."<sup>2</sup>

Rule 4.7 of the BCAP Code:

**"Television only** – Advertisements must not be excessively noisy or strident. The maximum subjective loudness of advertisements must be consistent and in line with the maximum loudness of programmes and junction material.

Broadcasters must endeavour to minimise the annoyance that perceived imbalances could cause, with the aim that the audience need not adjust the volume of their television sets during programme breaks. For editorial reasons, however, commercial breaks sometimes occur during especially quiet parts of a programme, with the result that advertisements at normally acceptable levels seem loud in comparison.

Measurement and balancing of subjective loudness levels should preferably be carried out using a loudness-level meter, ideally conforming to ITU recommendations<sup>3</sup>. If a peak-reading meter<sup>4</sup> is used instead, the maximum level of the advertisements must be at least 6dB less than the maximum level of the programmes<sup>5</sup> to take account of the limited dynamic range exhibited by most advertisements."

---

<sup>1</sup> Ofcom also received four complaints about the sponsorship credits broadcast between 20 March and 25 March 2011. See Response for further details.

<sup>2</sup> The Code was revised on 28 February 2011: prior to this date this was Rule 9.3 of the Code.

<sup>3</sup> The relevant ITU recommendations are ITU-R BS1770 Algorithms to measure audio programme loudness and true-peak audio level and ITU-R BS1771 Requirements for loudness and true-peak indicating meters.

<sup>4</sup> Peak-reading meters should be a PPM Type IIa as specified in BS6840: Part 10, Programme Level Meters.

<sup>5</sup> Normal convention for analogue audio is that the peak sound level of programmes is set to be no higher than +8dBm, which corresponds to 6 on a peak-reading meter. The peak sound

## Response

Channel 5 submitted that when assessing the loudness of sponsorship credits, reference should be made to programmes across the channel, rather than taking individual programmes in isolation. It referred to Rule 4.7 of the BCAP Code which states that “the maximum subjective loudness of advertisements must be consistent and in line with the maximum loudness of programmes and junction material.” Channel 5 submitted that the words “advertisements” and “programmes” are in the plural, not the singular, hence the rule does not state that the volume of every advertisement must be no greater than the volume of that part of the programme in which it is found.

Channel 5 explained that the technical assessment of all its sponsorship credits, channel promotions and commercials is outsourced to a technical company which is instructed by Channel 5 to use both the ‘peak reading’ and ‘subjective loudness’ methods to assess the volume of these channel elements.

Channel 5 also referred to the Advertising Standards Authority’s ‘Background Briefing’ on sound levels published in June 2009<sup>6</sup> which states that “Broadcasters should now be better able to match the sound levels of ads with the sound output of the whole channel”. The broadcaster submitted that this clearly states that it is the sound level of a channel as a whole against which the loudness of advertisements must be judged.

The broadcaster submitted that it has instructed the outsourced company to measure the volume of sponsorship credits using two separate methods: i) the peak reading method; and ii) the subjective loudness method.

### Peak reading method

Channel 5 told Ofcom that it has provided the technical company with a Technical Delivery Code which states that the audio levels of sponsorship credits must peak to lower levels than programming on the channel. This ensures that the channel’s output is in accordance with Rule 4.7 of the BCAP Code, as the audio levels of sponsorship credits must be 6dB lower than the maximum audio level of programmes across the channel.

### Subjective loudness method

Channel 5 explained that as well as using the peak reading method, it has also instructed the technical company to subjectively assess the volume of Channel 5’s sponsorship credits. To do this, the technical company compare the sponsorship credits to previous sponsorship credits which they know are compliant.

If the technical company is concerned that a sponsorship credit might not be compliant with the Technical Delivery Code or might fail the subjective loudness test, it is instructed to refer its concerns to the Channel 5 Broadcast Operations Department.

---

level of advertisements should therefore be limited to +2dBm or 4.5 on a peak-reading meter. Note: +8dBm corresponds to a digital audio level of -10dBm relative to digital clipping level. ITU-R BS.645 and EBU recommendation R68-2000 describe how analogue audio levels should be translated into digital levels.

<sup>6</sup> <http://www.asa.org.uk/Resource-Centre/Background-Briefings.aspx>

Channel 5 explained that in this case, the technical company had checked that the sponsorship credits passed the peak reading test. However, as a result of human error, the technical company failed to carry out the subjective loudness test.

The broadcaster explained that it withdrew the sponsorship credits from transmission on 15 March 2011 after being contacted by Ofcom. It subjectively assessed the sponsorship credits and realised that although they passed the peak reading test, because they had insufficient dynamic range, viewers would be experiencing unacceptably loud volumes. To rectify this, the audio was then re-processed through one of its editing suites to reduce peak levels by 2dB.

However, despite Channel 5 stating that it had ceased transmission of the original sponsorship credits on 15 March 2011 and had re-processed them to make them compliant, Ofcom received four further complaints about the volume of the sponsorship credits around Five Movies between 20 March and 25 March 2011.

Ofcom conducted a technical assessment of these sponsorship credits and judged that they were excessively noisy. Ofcom therefore requested Channel 5's comments in relation to Rule 9.17 of the Code and Rule 4.7 of the BCAP Code in respect of these sponsorship credits.

Channel 5 reiterated that on 15 March 2011, it withdrew the sponsorship credits and arranged for the audio to be reduced. However, it explained that the credits were on three video tapes, and that due to human error, the third video tape was not withdrawn and therefore the audio of those particular sponsorship credits was not reduced. On 26 April 2011, Channel 5 became aware of this error and immediately removed the sponsorship credits from transmission. The audio of the sponsorship credits was reduced by a further 2dB in line with the sponsorship credits that had already been re-processed.

Channel 5 said that it sincerely regretted the error and reiterated that it is in the process of upgrading its transmission facilities, including adding into its processes a specific audio level comparison, which it considers will further reduce the risk of any similar complaint in the future.

In its response Channel 5 also informed Ofcom that, in subsequently reviewing all of the sponsorship credits which had been originally assessed by its technical service provider (before the audio levels were reduced), it had become aware that its technical service provider's assessment of their audio levels was incorrect. It found that the sponsorship credits did not comply with Channel 5's Technical Delivery Code because they were "less than 6dB below PPM 6"<sup>7</sup>. Channel 5 said that it had raised its concerns with its technical services provider which had made all relevant personnel aware of the error.

## **Decision**

Ofcom notes that the maximum subjective loudness of the PS3 sponsorship credits which were broadcast around Five Movies between 3 February and 15 March 2011 was not consistent and in line with the maximum loudness of programmes and junction material. This meant that the sponsorship credits were too loud in relation to

---

<sup>7</sup> PPM or Peak Programme Meter is a technical instrument used to indicate the volume of an audio signal. The BCAP Code requires that the peak level of advertisements should be at least 6dB below the maximum level of the programmes.

the volume of other elements on the channel, and were in breach of Rule 4.7 of the BCAP Code.

Ofcom agrees that when assessing the loudness of sponsorship credits, consideration can be given to the loudness of the channel as a whole. Indeed, Rule 4.7 of the BCAP Code acknowledges that commercial breaks may sometimes occur during quiet parts of a programme. Nonetheless, in the case of the PS3 sponsorship credits, we considered that their loudness was excessive even compared to other representative station output (e.g. continuity, programme promotions, advertisements, and other programmes).

Ofcom further noted the particular 'subjective loudness monitoring method' adopted by Channel 5's technical provider. However, assessments of subjective loudness should normally be made with reference to specific target loudness levels, rather than to items which have previously been found to be compliant.

Rule 9.17 of the Code requires that sponsorship must comply with television advertising rules. Therefore, by breaching Rule 4.7 of the BCAP Code, the sponsorship credits were also in breach of Rule 9.17 of the Code.

Ofcom acknowledges that the broadcaster has a good compliance record in this area and that the original issue occurred due to human error. However, Ofcom is concerned that having brought the error to Channel 5's attention, a further human error occurred which meant that not all of the sponsorship credits were withdrawn from transmission and re-processed to make them compliant.

Ofcom welcomes the fact that Channel 5 is in the process of upgrading its transmission facilities to reduce the risk of any similar issue arising in the future.

#### **Breaches of Rule 9.17 of the Code and Rule 4.7 of the BCAP Code**

## In Breach

### SK Vibemaker

*Rinse FM, 30 March 2011, 14:00 to 17:00*

---

#### Introduction

Rinse FM is a community radio station that broadcasts to the Inner London area. Aimed at 15 to 24 year olds, its output is based around London's urban music scene. In its key commitments, the station pledged to place "particular emphasis on the needs and aspirations of young people."

One listener contacted Ofcom to complain about the prevalence of offensive language in songs broadcast by the station and provided the afternoon of 30 March 2011 as an example. The complainant said the matter was brought to her attention by her 12 year-old son who was listening to the programme.

Having listened to the broadcast, Ofcom noted frequent instances of the word "fuck" or a derivative (up to five times in a ten minute period) not only in pre-recorded songs but also in live performances by guests. No apology was made during the entire broadcast.

Ofcom therefore considered whether this programming raised issues under Rule 1.14 of the Code. This states that:

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

We asked the broadcaster how the programming complied with this Rule.

#### Response

Rinse FM accepted that "some of the language used during the stated broadcast was inappropriate" and unreservedly apologised for any offence it caused to listeners.

The broadcaster explained that it had commenced broadcasting (on 7 February) just a few weeks before the date of the broadcast which is the subject of this complaint, and its compliance function was not fully operational at that time.

Rinse FM added that it was aware of its commitments and responsibilities under the Code and was "in the middle of an educative process (small group seminars and meetings) whereby we [Rinse FM] were sharing that information, in a systematic and detailed manner, with all...on-air volunteers and presenters."

The broadcaster said that upon notification from Ofcom about the complaint, it provided all presenters with documentation reminding them of the Code requirements. It also rearranged its programme schedule so that potentially offensive material was restricted to a post-9pm broadcast.

#### Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards

that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that people under eighteen are protected.

Ofcom assessed the language included the programme in relation to Rule 1.14 of the Code.

Ofcom’s research on offensive language<sup>1</sup> indicates that the word “fuck” and its derivatives are examples of the most offensive language. Rule 1.14 states that the most offensive language must not be broadcast when children are particularly likely to be listening.

Ofcom noted that the complainant stated that her 12 year-old son was listening to the programme. Further, given the station’s target age range and scheduling of the programme (14:00 to 17:00), Ofcom considered it was likely that a significant number of children would have been listening. The material containing the most offensive language was therefore in breach of Rule 1.14.

Ofcom noted Rinse FM’s explanation for the broadcast of the most offensive language and the remedial action it undertook to prevent further occurrences. However, irrespective of the fact that at the time of the complaint the station was less than two months into its five-year licence, Ofcom was concerned that Rinse FM management had not detected these incidents before Ofcom brought them to their attention, nor briefed all of its presenters about fundamental Code issues such as the broadcast of the most offensive language before allowing them to go to air. Ofcom also considered that the matter was particularly unfortunate in view of the station’s target audience.

### **Breach of Rule 1.14**

---

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

## Resolved

### FA Cup Final

ITV1, 14 May 2011, 17:00

---

#### Introduction

Following the 2011 FA Cup Final, Ofcom received 13 complaints about offensive language used in post-match interviews by two Manchester City players. Viewers objected to the use of the word “*fucking*” by Micah Richards and the word “*shit*” by Mario Balotelli.

We noted that soon after the finish of the FA Cup Final, live post-match interviews were held with two players from the winning team, Manchester City. In the first interview, the interviewer asked Micah Richards: “*How does that feel?*” In response, Micah Richards said:

*“It’s unbelievable really, words can’t describe it, you know. We’ve worked hard all season and we’ve won it. I just can’t believe it. I’m just - Look at the fans! - Fucking - They’ve been there since day one”.*

In Ofcom’s opinion the expletive was clearly audible.

In the second interview, which happened very shortly after the first, the interviewer asked Mario Balotelli: “*Was that your best game you’ve ever played for Manchester City?*” In response, Mario Balotelli said:

*“I said I play all my season was shit – can I say that? My season wasn’t good”.*

Ofcom therefore considered whether this programme raised issues under the following Rules of the Code:

Rule 1.14: “The most offensive language must not be broadcast before the watershed (in the case of television)...”; and

Rule 1.16: “Offensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context...”.

We asked ITV Broadcasting Limited (“ITV”), who compiled the programme on behalf of the ITV Network for ITV1, how the programme complied with these rules.

#### Response

ITV apologised for any offence caused by the inclusion of any offensive language in this programme. The broadcaster said that Micah Richards, said the word “*fuck*”, which ITV acknowledged was “not very clear...[but] audible”. The broadcaster added that Mario Balotelli used the word “*shit*” and “[f]ollowing our usual protocol for live programming, ITV’s presenter then apologised for the language used”.

ITV said that the interviews in this case were live and “[g]iven the fact the interviews were arranged quickly on the pitch and took place minutes after the final whistle...it

was not possible to give the players the usual briefing about language, as it would be in most post-match interviews away from the pitch”.

The broadcaster said that the language used was spontaneous and not pre-meditated, and stated its belief that “in the circumstances of live football coverage and with emotions running high at the end of the game, most viewers would be prepared for the possibility of some strong language”. ITV added that “[w]e believe that the immediate apology by the presenter would also have served to lessen any offence caused”. In addition, the offending words were removed from the versions of the live interviews placed on ITV’s website, [itv.com](http://itv.com).

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material. Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research<sup>1</sup> on offensive language (“the Research”) clearly notes that the word “fuck” and its derivatives are considered by audiences to be very offensive. Such language is unacceptable before the watershed, whatever the audience profile of the channel. In addition, Rule 1.16 states that offensive language must not be broadcast before the watershed unless it is justified by the context. The Research notes that whilst the word “shit” is considered acceptable in some contexts pre-watershed, care needed to be taken over the use of this word particularly when children are likely to be watching.

Ofcom considered the use of the offensive language in question had the potential to cause offence, not least due to the number of children who would have been likely to have been in the audience for the live broadcast of a football match of this magnitude, broadcast well before the watershed. Ofcom then assessed whether there were any contextual factors and any actions taken by the broadcaster which might have limited the potential for offence.

We noted that soon after the finish of the FA Cup Final, live post-match interviews were held with two players from the winning team, Manchester City in which offensive language was used. Ofcom noted that the offensive words were spontaneously used by two players, clearly excited and emotional after winning a very important football match, and that the players in question were not using the offensive language in an aggressive manner, targeted at individuals.

Following the second of the two interviews, with Mario Balotelli, the studio presenter, Adrian Chiles, came on air to say the following:

---

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

*“In answer to Mario’s question: No, you can’t use language like that. Our apologies if you were offended by that. I know there’s lot of kids watching. But, emotions are running very high straight after the final whistle”.*

We noted this prominent apology on air immediately after the interviews, and that the broadcaster removed the offensive language from the online versions of the interviews. In view of the steps taken by the broadcaster to mitigate the offence in this case, Ofcom considered the matter resolved.

## **Resolved**

## Fairness and Privacy Cases

### Upheld

#### Complaint by Trust Inheritance

*Rip Off Britain, BBC1, 7 December 2010*

---

**Summary:** Ofcom has upheld this complaint of unfair treatment made by Trust Inheritance.

An edition of BBC1's consumer affairs programme, *Rip Off Britain*, looked at the importance of wills. It examined the case of Mrs Margaret Walker, who said she had been "ripped off" by a will writing firm. She explained that she and her former partner had responded to an advertisement and talked about the cost of the will writing package they bought, for which they had to take out a loan with the company. She expressed concern about the sales techniques used to sell them the package and a solicitor said on the programme that he was concerned that Mrs Walker had paid for services she did not require. Although the company that sold the package to Mrs Walker was not named, part of its address was briefly visible in the footage.

In summary, Ofcom found that the programme included a significant allegation, namely that the company, Trust Inheritance, had "ripped off" Mrs Walker and that the company was not given an opportunity to respond to this.

#### Introduction

On 7 December 2011, BBC1 broadcast an edition of its consumer affairs programme, *Rip Off Britain*, which looks at "rip offs" that affect British consumers. The programme included an item looking at the importance of wills. The presenter, Jennie Bond, said that, alongside a push to encourage people to make a proper will, there had been "*a sudden burst of companies who all claim they can meet your needs [to write a will] for less money than a traditional solicitor*". She said that such firms were not regulated. Ms Bond looked at the case of Mrs Margaret Walker, who appeared on the programme and said she had been "ripped off" by such a firm. She explained that she and her former partner had responded to an advertisement and then paid for the services of a company that offered to help with drafting their wills and dealing with their estates after death. She talked about the cost of the package they bought, for which they had to take out a loan with the company, and the sales techniques used to sell the package to her and her former partner. A solicitor said on the programme that he was concerned that Mrs Walker had paid for services she did not require.

As the presenter looked at the cost of the package Mrs Walker bought, the programme included brief footage of the relevant paperwork. Although the company that sold the package to Mrs Walker, Trust Inheritance, was not named, part of its address was briefly visible in the footage.

In summary, Ofcom found that the programme included a significant allegation, namely that Trust Inheritance had "ripped off" Mrs Walker and that the company was not given an opportunity to respond to this.

Mr Alan Spencer, an executive director of Trust Inheritance, complained to Ofcom that the company was treated unjustly or unfairly in the programme as broadcast.

## **The Complaint**

### **Trust Inheritance's case**

In summary, Mr Spencer complained that Trust Inheritance was treated unfairly in the programme as broadcast in that the company was unfairly portrayed, as the programme suggested that Mrs Walker had been “ripped off” and that her situation did not warrant the company’s product. The programme included a selective account of the case, which was extremely complicated. At no time between the company seeing Mrs Walker in 2008 and her contacting the company in 2010 was the company aware that she was not happy.

By way of background, Mr Spencer said that, although the company was not named, as the BBC said it would not be, paperwork was clearly identifiable as its product with the address clearly shown.

### **The BBC's case**

The BBC said that Mr Spencer had not pointed to any specific matters relating to Mrs Walker’s case that he considered were omitted or misrepresented.

The BBC said that the independent expert on the programme, Mr Gary Rycroft, reviewed the paperwork pertaining to Mrs Walker’s estate and the arrangements she made with Trust Inheritance and formed an expert opinion based on that material. The BBC said that Mr Rycroft was a practising solicitor with particular expertise in family inheritance issues, and a member of the Executive Committee of the Law Society’s Probate Section and was therefore well placed to comment on Mrs Walker’s plans for her estate and the appropriateness of the services sold to her.

The BBC said that the programme included a clip of Mr Rycroft in which he expressed the view that Mrs Walker’s situation was not so complicated that it required the services sold to her and that the true cost for the services she required should have been much lower than what she had in fact been charged.

As regards Mr Spencer’s point that his firm was not aware that Mrs Walker was unhappy with her arrangements, the BBC said that it did not follow that the firm’s arrangements with her were unfairly or inaccurately portrayed. The BBC said that the programme had made it clear that Trust Inheritance, on being made aware of the programme’s interest in Mrs Walker’s arrangements, had since resolved her case, allowing Mrs Walker to cancel the agreement for a fee.

The BBC said that the programme makers wrote to Mr Andrew Hall, marketing director of Trust Inheritance, on 7 October 2010, setting out what would be said about Mrs Walker’s experience with Trust Inheritance and inviting the company to participate in a filmed interview. This offer was not taken up. The BBC said that the letter detailed some of the principal areas of concern that the programme would be looking at and asked the company a number of questions relating to Mrs Walker’s situation.

The BBC noted that Mr Spencer said that, despite this letter from the programme makers, Trust Inheritance believed that they would not feature in the programme, given an email from the producer of the programme sent on 9 November 2010, which said:

“We will not be naming Trust Inheritance in our story and will respond to your letter shortly”.

The BBC noted that Mr Spencer believed that this email, coupled with the fact that the programme makers had not sent a substantive reply to an earlier letter from solicitors acting for Trust Inheritance on 20 October 2010, gave the clear impression that Trust Inheritance would not be featured in the programme. The BBC did not agree that the email noting that Trust Inheritance would not be referred to by name had the effect of withdrawing the earlier letter alerting the company to the nature of the programme’s coverage of Mrs Walker’s experience. The BBC said that it was regrettable that a full response was not offered to the letter from Trust Inheritance’s lawyers. The BBC apologised for that, but said it was not reasonable to assume that, because that letter did not receive a reply, Trust Inheritance would not be featured in the programme.

The BBC said that in a letter to Trust Inheritance the programme makers had said that the company would not be named in the report. However the programme makers failed to notice that the company details were visible in the paperwork shown in the programme. The BBC said that it was regrettable that the resulting inadvertent identification of Trust Inheritance disappointed the company’s expectations in this respect, but maintained that the programme was not unfair and that the identification of the company did not therefore result in any unfairness. The programme makers had obscured the Trust Inheritance details in the repeat broadcast of the programme, in recognition of the earlier assurance and as a gesture of goodwill.

## **Decision**

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

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

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

When considering complaints of 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. Ofcom had regard to this Rule when reaching its decision on the complaint below.

Ofcom considered the complaint that the company was unfairly portrayed in that the programme suggested that Mrs Walker had been “ripped off” and that her situation did not warrant the company’s product. The programme included a selective account of the case, which was extremely complicated. At no time between the company seeing Mrs Walker in 2008 and her contacting the company in 2010 was the company aware that she was not happy.

In considering this part of the complaint, Ofcom had regard to Practices 7.9 and 7.11 of the Code. Practice 7.9 states that when broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Practice 7.11 states that that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted Mr Spencer's position that, although the company was not named, as the BBC said it would not be, paperwork shown was clearly identifiable as its product. Ofcom considered that, as part of the address was visible on screen, albeit briefly, the company was identifiable from the broadcast as the company responsible for the providing Mrs Walker with the will services investigated in the programme. Ofcom noted that the programme makers had obscured the Trust Inheritance details in the repeat broadcast of the programme.

Ofcom then noted the relevant part of the programme, which was introduced by Mrs Bond saying:

*"Two years ago, pensioner Margaret Walker... came across an advert for a will writing service. The price on it was just £49, so she and her former partner arranged for a salesman to come to their home...But almost as soon as the salesman arrived, there was a problem".*

Mrs Walker then said:

*"...we each of us told him what we wanted and he said that it sounded a little bit sort of difficult and might not be as simple as to be able to be fitted into a £49 will and that it would take a bit more work and so it would be more expensive".*

Ms Bond said that the salesman had suggested that a personal estate plan might be the best option and Mrs Walker said:

*"He kept talking about this package, this plan, where everything would be done for our Executors and he said it would be much cheaper to go through his company to do that than to go through solicitor and banks, they would charge a lot more money. And he just sort of then slid the price list across, after we'd decided to go with the plan, because it sounded, you know, to be pretty fair for the money that, you know he was talking about like, and he said two grand or just over two grand. It sounded feasible".*

The BBC's wills expert, Mr Rycroft, then commented:

*"My understanding is that Margaret's situation wasn't too complicated for a £49 will, I understand that she wanted to make provisions for her partner and for some loved ones. That is a fairly standard situation and I would have thought that could have been dealt with under a fairly standard will. I'm really horrified and upset that a vulnerable person like Margaret has paid for so called legal services that she didn't require. Margaret has a very modest estate and any monies that she does have upon death should be passing to her chosen beneficiaries, not to anyone else. The real problem we have here is that these people are not regulated. There is no way of policing what they are doing and if you have a problem, there is no one to help you".*

Ms Bond said that the exact cost of the package was £2,400 but that because Mrs Walker could not pay that outright the salesman had suggested a loan agreement, which resulted in a final bill of £3,142.20, plus a £100 deposit. Mrs Walker said that she had told the salesman that she could not afford that price but her partner had suggested that together they could manage it. Mr Rycroft then said:

*"Margaret needed a straightforward, simple will that would have cost somewhere in the region of £100. She didn't need anything else at this point in time, after her death her executors would have been free to take such advices as they needed at that time. They could have gone to see a solicitor at that time and it would probably have cost them something like £400 to £500 to deal with Margaret's estate, if that's what they wanted to do. Alternatively, they could have done to the probate registry and dealt with the estate themselves at no cost".*

Mrs Walker explained that the salesman had spent several hours at her home, that she had been feeling unwell and had not taken everything in. She said:

*"You're just opening a drain, throwing the money down and it's gone. And you're not getting anything back for it. There's no reason to have this will".*

The presenter said that Mrs Walker had regretted her decision ever since but that she had now had "a breakthrough", in that for a fee of £150 the company had agreed to cancel the will and settle the loan agreement on her behalf and concluded this part of the programme by saying:

*"Margaret's relieved the matter can now come to a close. But she remains £1,500 out of pocket and still without a will. And she dearly wishes she had never seen that advert in the first place".*

Taking into account what was said by Mrs Walker, Mr Rycroft and the presenter, Ofcom considered that the programme clearly made a significant allegation that the company that sold Mrs Walker her will services had "ripped her off". In these circumstances, Trust Inheritance should have been given an appropriate and timely opportunity to respond to the allegation.

Ofcom noted that on 7 October 2010 the producer of the programme wrote to Trust Inheritance about the proposed programme and asked for the company's response to the following points:

- Why Mrs Walker was not offered a simple £49 will which she had seen advertised and requested.
- Why this was not deemed suitable or adequate for Mrs Walker's needs.
- Why the selling of a Personal Estate Plan to Mrs Walker for £2400 (with £3142.20 being the total cost of the credit agreement) was justified, especially as it should have been clear that this was more expensive than she could afford.
- Why it was justified to offer clients a five year credit agreement for what may be an unnecessary service.

Ofcom noted that solicitors acting for Trust Inheritance responded on 20 October 2010. This letter set out in detail the background to Mrs Walker's dealings with the company and explained that the situation was not straightforward as Mrs Walker and

her partner both had children from former relationships, some of whom they wished to exclude from their wills. The letter explained that simple wills would have left the surviving partner with significant difficulties in the administration of the other estate and that both Mrs Walker and her partner had expressed concern about this and that, for this reason the salesman had recommended a personal estate plan. The letter explained that it had been open to Mrs Walker to cancel the agreement at the time, had she wished to, but that in fact she had not indicated that she wished to cancel until two years after signing the agreement. The letter also responded to the specific questions set out above and explained that, two years after signing the agreement but before the BBC's involvement, Trust Inheritance had agreed that she could cancel the agreement. The letter stated that Trust Inheritance would wish to provide a statement to be included in the programme. On 9 November 2011 the producer responded to this letter. She said:

"We will not be naming Trust Inheritance in our programme for Rip Off Britain and will respond to your letter shortly".

Neither Trust Inheritance nor their solicitors did receive such a response and there was no further correspondence between the parties until after the broadcast. Ofcom noted the BBC's position that, while it was regrettable that no response to the solicitors' letter was sent, it was not reasonable for Trust Inheritance to assume the company would not feature in the programme. In Ofcom's view it was indeed regrettable that no response was sent and it was not unreasonable for Trust Inheritance to have assumed that, having received no response to the detailed solicitors' letter sent on 20 October 2010, the company would not feature in the programme.

Ofcom noted that the programme included Trust Inheritance's position by way of brief commentary, as set out above, explaining that the company had cancelled the will and settled the loan agreement. However, in Ofcom's view this brief commentary, which did not refer to any of the background information provided by the solicitors acting for Trust Inheritance and was clearly critical of the company which provided the service to Mrs Walker, did not sufficiently represent Trust Inheritance's position. In these circumstances, Ofcom took the view that the programme included a significant allegation about the company to which it was not given an appropriate and timely opportunity to respond and that the commentary did not adequately reflect the detailed response to the allegations which had been provided by Trust Inheritance.

Ofcom therefore found that the programme was unfair to Trust Inheritance.

**Accordingly, Ofcom has upheld Trust Inheritance's complaint of unfair treatment.**

## Not Upheld

### Complaint by Unison

*Dispatches: What's The Point Of The Unions, Channel 4, 27 September 2010*

---

**Summary:** Ofcom has not upheld this complaint of unjust and unfair treatment made by Unison.

This programme looked at what the potential response by the Trade Union movement might be to the Government's Spending Review in 2010 and questioned how much power trade unions wielded today. It also suggested that some unions, including Unison, had let down their members or had bullied them into taking strike action.

The allegations made about Unison concerned its policy on equal pay claims for low paid women members. It included contributions from two former Unison members, who gave accounts of their experiences when dealing with the union. The programme also included interview footage of Mr Dave Prentis, the General Secretary of Unison, who responded to the allegations that some female members had felt let down by the union and that they did not get union support in equal pay disputes.

In summary, Ofcom found the following:

- The broadcaster and programme makers had taken sufficient measures to ensure that consent given by Unison in contributing to the programme was "informed consent".
- It was unlikely that viewers' understanding of Unison (and its relationship with the three contributors) would have been materially affected in the programme in a way that was unfair and it took the view that the broadcaster had taken reasonable care to ensure that material facts were not presented, omitted or disregarded in a way that resulted in unfairness to Unison.
- Notwithstanding the short time given in interview for a response, Unison (through Mr Prentis) was given an appropriate and timely opportunity to respond to the allegations.

### Introduction

On 27 September 2010, Channel 4 broadcast an edition of its documentary series *Dispatches*. This edition, entitled *What's The Point Of The Unions*, looked at what the potential response by the Trade Union movement might be to the Government's Spending Review in 2010 and questioned how much power trade unions wielded today. The programme also examined a number of specific allegations that the three main trade unions, namely the RMT<sup>1</sup>, Unite and Unison, had let down their members or had bullied them into strike action.

The allegations made in the programme about Unison concerned its policy on equal pay claims for low paid women. The programme included interview footage of Mrs Roberta ("Bobbi") Dalton, a former home care worker and Unison member and

---

<sup>1</sup> The National Union of Rail, Maritime and Transport Workers.

representative. The programme alleged that Mrs Dalton had turned to her union for support in her claim and the claims she made on behalf of six other female care workers for back pay from the council that had employed them. Mrs Dalton claimed in the programme that, at a meeting between two council managers and a Unison representative, documents relating to the women's claims were torn up in front of her. The programme went on to state that Mrs Dalton took the claims to an Employment Tribunal without the support of Unison and eventually obtained some of the back pay claimed by the women from the council. Later in programme, Mrs Dalton, who was described as "*an unpaid Unison official*", alleged that she had been obstructed from speaking at union meetings about equal pay claims. The programme also included her claim that the stress caused to Mrs Dalton through her experience with Unison had forced her into early retirement.

The programme also referred to the work of Mr Stephan Cross, a lawyer who specialised in discrimination claims for equal pay and who had represented many women who "*like Bobbi [Mrs Dalton], feel let down by the unions*". The programme alleged that Unison, along with other unions, had previously worked with local councils to "*head off*" legal action in relation to equal pay claims. To illustrate this claim, the programme included interview footage of Mr Stuart Hill, who was introduced as now working with Mr Cross after being expelled from Unison for handing out leaflets at a meeting organised by a number of unions for women employees to sign new employment agreements with a local council. Mr Hill stated that the leaflets explained to the women that they should not sign away their legal rights before calculating what those rights were worth. However, Mr Hill said that as the women reached the doors of the meeting, a Unison official was taking the leaflets from them and told them that no notice should be taken of Mr Hill or his leaflets. The programme stated that Mr Hill believed that some of the women at the meeting could have received a considerable amount more money from the council if they had taken legal action and ignored the advice of their unions.

The part of the programme focusing on Unison concluded with interview footage of Mr Dave Prentis, the General Secretary of Unison. Mr Prentis was shown responding to the allegations that women who had spoken to the programme makers had said that they felt let down by the union and that they did not get union support in equal pay disputes. It was also put to Mr Prentis that the union focused its efforts on keeping bonuses for male workers and that there had been instances where union representatives and employers had been telling women to sign new employment agreements.

Unison complained to Ofcom that it was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Unison's case**

In summary, Unison complained that it was treated unfairly in that:

- a) Its contribution to the programme was obtained without its "informed consent". In particular, Unison complained that:

- It was misled as to the nature and purpose of the programme.

Unison complained that the programme makers had told it that the purpose of the programme was to examine the likely impact the proposed government

cuts would have on industrial relations. However, the part of the programme which focused on Unison dealt entirely with its alleged failure to serve the interests of its female members in relation to equal pay claims.

- It was not informed about the areas of questions to be put to Mr Prentis.

Unison complained that it was not told that the allegation that Unison, while publicly proclaiming its readiness to support its members, was, in reality, refusing to support them would be put to Mr Prentis.

- It was not informed of about the nature of other likely contributions to the programme.

Unison complained that no mention had been made to it by the programme makers that Mrs Dalton, Mr Cross or Mr Hill would be included in the programme. Unison said that it only became aware of Mr Cross' inclusion in the programme at the interview with Mr Prentis. Unison also said that it only became aware that Mr Hill and Ms Dalton would be included in the programme after the interview with Mr Prentis had been conducted.

- It was not made aware of a significant change to the programme which may have affected its consent to participate.

Unison complained that the focus of the programme was not the likely impact of the proposed government spending cuts on industrial relations, but rather the alleged failure of the union to serve the interests of its female members in relation to equal pay claims.

b) The programme portrayed Unison unfairly. In particular, Unison complained that:

- The programme omitted to make it clear to viewers that Mrs Dalton, Mr Cross and Mr Hill all had a long history of dispute with the union.
- Mrs Dalton and Mr Hill were presented in the programme as being independent and reliable critics of Unison when, in fact, they had "axes to grind". Mr Hill, who worked for Mr Cross, had a financial interest in the allegations that the union was not serving the interest of its low-paid female members properly.

c) Unison was not given an appropriate and timely opportunity to respond to the allegations made in the programme.

In particular, Unison said that the programme makers failed to put the allegations about its treatment of women in relation to equal pay claims in anything but the most general terms, despite the fact that the programme itself featured specific allegations made by Mrs Dalton and Mr Hill. Unison also said that neither it, nor its unidentified representatives referred to in some of the allegations made by Mr Hill and Mrs Dalton, were given the opportunity to respond.

### **Channel 4's case**

In summary, Channel 4 responded to Unison's complaint of unfair treatment as follows:

a) In response to Unison's complaint that its contribution had been obtained without its "informed consent", Channel 4 said:

- Nature and purpose of the programme.

Unison was not misled as to the nature and purpose of the programme. Channel 4 said that in an emailed letter to Unison's press office on 24 August 2010, the programme makers stated that the programme:

"...will include an examination of the current state of the Trade Unions, looking at areas such as organization, finances, strategies for defending the interests of their members and mitigating the impact of the cuts on their membership and on services".

Channel 4 said that this remained the nature and purpose of the programme throughout its production, up until and including broadcast. Channel 4 said that following this email, on 15 September 2010, the programme's assistant producer was approached by a member of Unison's press office at the TUC Conference to ask what the subject areas for the interview would be and to confirm that it was a *Dispatches* programme that was being made. She commented that *Dispatches* normally did undercover investigations and asked if this was one. The assistant producer said it was not and that the interview would be quite straightforward.

- Areas of questioning.

Channel 4 said that in this conversation between Unison's press officer and the assistant producer the press officer asked what areas the programme wanted to cover. The programme makers said they would ask about:

- how the unions would be likely to respond to the cuts that would be announced in a few weeks time;
- how the cuts would impact on women in general, given that the Fawcett Society report had recently suggested they would disproportionately affect women and that two thirds of public sector workers were women;
- how this would impact on Unison and their members, given that 80% of Unison members were women;
- the issues of equal pay and single status agreements<sup>2</sup>; and
- the women who the programme makers had spoken to and who had been critical of the way the issue had been dealt with.

Channel 4 said that Unison's press officer had mentioned that equal pay was a complex area and then asked if the programme makers had gone to Birmingham to look at the issue. The programme's assistant producer replied that they had looked at the north east of England.

Channel 4 said that it was unaware of what briefing Mr Prentis received from his press office staff in advance of the interview. However, it was accepted by

---

<sup>2</sup> Single status agreements are an attempt by local authorities to end pay discrimination among their employees by reviewing pay and grading structures.

Unison in its complaint that equal pay was discussed with the union's press officer as being part of the content of the programme. Therefore, the complaint that they were not informed of question areas to be put to Mr Prentis was unfounded.

- Other likely contributions.

In relation to the involvement of Mr Cross, Mrs Dalton and Mr Hill, Channel 4 said that the programme makers were not obliged to advise contributors of the identities of other contributors. Channel 4 said that Ofcom's Broadcasting Code ("the Code") did not require this and stated that contributors should normally be advised at an appropriate stage "about the areas of questioning and, wherever possible, the nature of other likely contributions". Channel 4 said that this did not require that prospective contributors be supplied with the names of other contributors and was only relevant where it would otherwise result in unfairness.

Channel 4 said that Unison was notified in advance of the areas of questioning to be put to Mr Prentis in interview, including the issue of equal pay. Channel 4 said that Unison accepted that all three individuals were well known to the union and that Mr Cross was explicitly mentioned in the interview.

Channel 4 said that Mr Cross was well known to the public for engaging in equal pay litigation including some cases against unions, including Unison, for alleged failures of representation. It said that failing to advise Unison in advance of interview that Mr Cross was to be a contributor did not mean that Unison was unaware of the nature of other contributions. Any discussion of equal pay issues would discuss the extensive litigation that occurred.

Channel 4 said that Mrs Dalton's case was seen in the programme alongside the experiences of two sisters who were members of another union. Mr Hill's contribution was to speak about a joint public meeting of unions where union members were urged to sign agreements.

Channel 4 said that many female Unison members had turned to private lawyers to fight for their rights on equal pay as they were dissatisfied with Unison's position. The response that Mrs Dalton had received from Unison on this issue was the same as in many other cases. It said that Mrs Dalton and the two other women who belonged to another union were included in the programme as examples of circumstances which had been well aired in public before.

- Significant change to the programme.

Channel 4 said that the fact that Unison was advised in advance of interview that the issues of equal pay and single status agreements were to be discussed was ample flagging to the union that criticisms and allegations such as were put to Mr Prentis in interview were likely.

Channel 4 said that it was not unfair for these issues to be raised with Unison's most senior officer. Channel 4 said that Unison had been advised that its "strategies for defending its members would be examined in the programme". Likewise, the fact that equal pay was to be discussed was made explicit in advance. Channel 4 said that the nature of the criticisms to be

discussed at interview could therefore have come as no surprise to Mr Prentis, as his union had been defending such criticisms for some years.

Channel 4 also said that Mr Prentis was an experienced senior representative of his union and had answered the allegations put to him robustly and fluently. He did not refuse to answer the questions, did not ask to consult with colleagues before replying and did not prematurely halt the interview. Channel 4 said that it was unlikely that any of the matters put to him were a surprise to him given the history surrounding equal pay disputes.

Channel 4 said that it was put to Mr Prentis explicitly that women would ask if the union could be relied upon to defend them now, given the history of the equal pay issue. Mr Prentis responded to that question with a strong defence of his union. The union had been notified of this question area in advance and there was no unfairness in raising this question at the interview.

Channel 4 said that Mr Prentis' contributions were not entirely focused on the equal pay issue. Footage of from his interview was included in the programme in which he talked about generating a campaign of industrial action against the proposed government cuts and footage from his speech at the TUC Conference was also included.

Channel 4 said that the interview which dealt with the issue of equal pay was set in a context which fairly set out the campaign that Unison had embarked upon in relation to current public spending. The programme highlighted the places Unison had members, the extent of that membership and the effect of cuts on that membership, especially women. As the programme stated, an overwhelming majority of Unison's membership was female.

In these circumstances the programme makers did not make a "significant change to the programme". Examining Unison's track record in serving its female members was entirely justified and completely in context of the programme as described to Unison. Channel 4 said that as the proposed government spending cuts were predicted to disproportionately hit women, the question of how well the union would fight for its women members was critical.

- b) In response to Unison's complaint that the programme omitted to make it clear to viewers that Mrs Dalton, Mr Cross and Mr Hill all had a long history of dispute with the union, Channel 4 said that it was made absolutely clear in the programme that Mrs Dalton had a long history of dispute with the union over the defence of her own case in relation to equal pay and also in relation to her efforts to help other women. Mrs Dalton described numerous instances where she had been in dispute with Unison officials and over a number of years.

Channel 4 said that nothing in Mrs Dalton's history of dispute with Unison rendered her contribution invalid. She had every right to put her view across and her opinion, just as Mr Prentis did. Her "axe to grind" was made explicit to viewers, who could then judge her contribution accordingly.

With regard to Mr Cross, Channel 4 said that his position as a solicitor taking claims was made explicit in the programme. However, his use in the programme was to discuss cases taken against employers. Nowhere in the programme did he discuss cases taken against Unison, nor was he asked about any criticism he had of the union.

Channel 4 said that the programme made clear that Mr Hill was working for Mr Cross and that he had been expelled from Unison. No attempt was made to hide this or mislead viewers. He was introduced as:

*“Stuart Hill was on the pavement. He was working for Stefan Cross, having been expelled by his union, Unison. He was handing out leaflets”.*

Channel 4 also said that viewers were not led to believe that Mr Hill was “an independent or reliable critic” of Unison without an “axe to grind”. It was made explicit to the audience that both he and Mrs Dalton had a history of dispute with the union and that Mr Hill was working for a claimant lawyer. The viewers, Channel 4 said, could then form their own view of the reliability of what they said.

- c) In response to Unison’s complaint that it, and in particular Mr Prentis, was not given an appropriate and timely opportunity to respond to the allegations made in the programme, Channel 4 said that Mr Prentis was given the opportunity to respond to the allegations made in the programme. It said that he was well used to answering searching questions in relation to his Union’s actions.

Channel 4 said that, after the interview, Mr Prentis had commented to the assistant producer about the level of criticism the programme makers had found. When the assistant producer said that the programme had come across a lot of anger, particularly in the north east, Mr Prentis had replied “I know”.

Channel 4 said that, as the interview footage included in the programme showed, the significant allegations regarding the equal pay issue were put to Unison at the interview with Mr Prentis. In particular, the significant allegations that were put to Mr Prentis were that:

- the programme makers had spoken to women who felt let down by Unison, which they said had not been supporting when they turned to it for help;
- male members of unions were getting bonuses negotiated by their unions and unions had put their efforts into maintaining the pay deals obtained for male employees rather than in bringing women’s remuneration up to par; and
- women had told the programme makers that at meetings up and down the country union representatives and Council representatives had sat side by side telling women to sign deals.

Channel 4 said that it was implicit from Mr Prentis’ answer to the last allegation that these deals could be viewed as disadvantageous to women, as taking legal action may be a better option. It said that was noteworthy that Mr Prentis described his union’s policy as being in place “for at least 5 years”, given that Equal Pay legislation and disputes both pre-dated that period.

Channel 4 said that the significant allegations of failures by Unison were therefore squarely put to Mr Prentis, robustly answered by him and this exchange was fairly reflected in the broadcast programme.

Channel 4 said that Mrs Dalton’s contribution was used in the programme as an example of the criticisms that the programme makers put to Unison. The significant allegation was that the union had failed its women members and had collaborated with Council representatives to conclude disadvantageous global

deals. Mrs Dalton's contribution described the obstructions she encountered for opposing the union's stance. Mr Hill described the obstruction he encountered while trying to advise women to take independent advice other than from the union or the employers.

Channel 4 said that neither of these contributions amounted to significant allegations that required the identification of individuals and responses from them. To have done so may have been unfair to such individuals, given that the significant allegation was that the union had made deals with employers. The fact that union representatives assisted in implementing such policy was not a significant allegation, especially where the union's position was vigorously defended by Mr Prentis. The allegations put to Mr Prentis and defended by him were sufficiently wide to cover the behaviour referred to by the other contributors and were specific enough to allow the union to defend its position.

### **Unison's comments in response**

In summary and in response to Channel 4's statement, Unison said that:

- a) In relation to the complaint that Unison was misled as to the nature and focus of the programme and in response to Channel 4's argument that Mr Prentis' contributions "were not 'entirely' focused on the equal pay issue as now claimed by the union", Unison asserted that, when viewed as a whole, the focus of the programme in relation to Unison was correctly characterised as being "*almost entirely on alleged failures properly to serve the interests of women members in relation to equal pay claims*". This focus had been upon historical matters, rather than upon the future in the face of proposed government cuts.

Unison disputed the accuracy of Channel 4's account of the conversation between Unison's press officer and the assistant producer. Unison said that the conversation was initiated by the press officer for the purpose of determining whether there were any last-minute changes to the proclaimed intention of looking at current issues facing Unison as a result of the impending cuts, and how it intended to fight them on behalf of its members, the majority of whom were women. Unison did not dispute that the first three items cited in the list set out by Channel 4 were discussed. Nor did it dispute that equal pay was mentioned. However, it said that Unison's press officer did not recall any mention of single status agreements and denied that there was any mention of the programme makers having talked to women who had been critical of the way the issue of equal pay had been dealt with. Her recollection was that she was told by the programme makers that "we've talked to some people in the North East", which she took as a reference to having spoken to regional or branch officials about the issue of cuts.

Unison said that all conversations between Unison's press officer and the assistant producer and the other programme makers (approximately six conversations before the TUC Conference) were in the context of a programme about the proposed cuts, not equal pay. Earlier conversations had been about where the cuts would fall hardest and, contrary to the assertion made in the response, Ms Mitchell's query about whether the programme makers had gone to Birmingham was not in relation to the issue of equal pay, but in relation to cuts, as the city was the focus of intense media interest on that issue at that time. At no time did the assistant producer state that the programme had interviewed people who had been expelled from Unison and who were critical of Mr Prentis.

- b) Unison said that the assertions that the programme made clear that Ms Dalton and Mr Hill had axes to grind in relation to the union, and as a result, the audience were in a position to judge the credibility of their contributions were “fallacious”.

Unison said that Ms Dalton’s account of her dispute with Unison, which was wholly unquestioned by the programme, demonstrated no basis for Channel 4’s assertion that viewers were in a position to judge her credibility. Mrs Dalton’s account was the only account presented and it was presented as the truth. Against this background, the mere reference to the fact that Mr Hill was “*expelled*” from Unison was insufficient to enable the viewer to question his credibility, since, without any other explanation, the viewer would assume that he, like Ms Dalton, had been punished “*for raising uncomfortable issues*”. Like Ms Dalton, his was the only account presented and it was presented as the truth.

- c) Unison said that while it made a number of complaints arising from a lack of information about areas of questioning and of the nature of other likely contributions, its most serious complaint of unfairness arose from the fact that the programme made 13 serious allegations against it and its representatives which were never put to the union at all.

This unfair treatment was exacerbated by the fact that, prior to broadcast, and in response to concerns raised by Unison, Channel 4 provided an express assurance that any significant allegations regarding Unison which were not covered by the interview with Mr Prentis’ interview “would return to you”. It did not do so.

Unison said that the 13 allegations that were never put to Unison at all may be summarised as follows:

- i) That when Ms Dalton turned to Unison and went to a meeting with forms filled in by home care workers asking for back pay, two managers and a union representative tore the forms up in front of her;
- ii) Unison did not support Ms Dalton when she took the case to Employment Tribunal herself on behalf of six carers;
- iii) Unison was wrong not to support these women as they had good legal claims;
- iv) Unison was more concerned with keeping the peace with councils than supporting the needs of its members;
- v) Unison was asking women to sign away their legal rights before getting a calculation of what they were worth;
- vi) As women got to the door to a meeting organised for women to sign settlement agreements with the council, the Unison official snatched leaflets handed out by Mr Hill for the purpose of trying to explain to women that they should not sign away their rights before finding out what they were worth, shouted “*take no notice of him take no notice of him, don’t read it don’t read it its rubbish*” and crunched them up and put them in the bin;
- vii) That there “*was a kind of push to get people to sign, not to give them any independent advice but to bulldoze them*”;

- viii) That women Unison members could have got substantially more money from their employers if they had ignored its advice;
- ix) That Unison was not representing the interests of its members;
- x) That steps were taken at union meetings to silence Mrs Dalton, an *“unpaid Unison official”* who was *“helping women with equal pay claims”* in that, as soon as the subject of equal pay claims came up, someone would put their hand up and nominate her to leave the room or nominate that she was not to take part in the discussion;
- xi) That Unison was *“vindictive”* and *“malicious”* in suspending Mrs Dalton for exceeding her brief as a union representative when *“all [she] ever wanted to do was to help the people that couldn’t help themselves”*;
- xii) That the stress of this forced Ms Dalton into early retirement and that, without the likes of her, female members of Unison would never have been told about their rights to compensation and that those who did not have the good fortune to meet people like her remain ignorant and it is now too late for them; and
- xiii) That Unison was guilty of gross hypocrisy in that, whilst it publicly proclaimed its readiness to support members, the reality was that it refused to do so and took steps to silence those who tried to offer support.

Unison said that Channel 4 did not dispute the fact that the 13 allegations were made, nor that they were serious, but did not make any attempt to engage with them. Instead, its response concerned itself with whether Unison was given appropriate advance notice of the general questions that were put to Mr Prentis in relation to equal pay. Unison said that Mr Prentis would have been prepared to take part in the interview even if he had been made aware in advance that these issues would be raised.

#### **Channel 4’s final statement in response**

In summary, Channel 4 responded in a final statement that it had responded to Unison’s complaint as entertained by Ofcom. The response sought to deal with Unison’s complaint of unfairness, despite the difficulty in identifying the cause of the alleged unfairness.

- a) Channel 4 did not accept that Unison was not given advance notice that the interview with Mr Prentis would deal with the equal pay issue. In any event, as Unison maintained that *“Mr Prentis would nevertheless have taken part in the interview had he known in advance that the issue of equal pay would be raised”*, Channel 4 said that no unfairness could have arisen even if Unison’s assertion that advance notice was not given was true and that Unison’s reply bolstered Channel 4’s point that Mr Prentis was well equipped to deal with the interview and the points that were put to him.
- b) Channel 4 made no further, specific response to the particular issues raised under this head of complaint.
- c) Channel 4 said that all significant allegations were put to Unison in the interview with Mr Prentis and that Unison’s position was fairly and accurately reflected in

the programme. Channel 4 said that Ofcom's entertainment decision, appropriately, did not ask it to address Unison's 13 specific points.

Channel 4 said that it did not consider that Unison's 13 points were significant allegations in terms of the Code. However, in the interests of dealing with this complaint, Channel 4 addressed them below:

- i) Channel 4 said that this was not a significant allegation in terms of the Code. Unison had not denied that one of their representatives behaved in this way and the managers and union representative were not identified. The significant allegations put to Mr Prentis were that the union was not supportive of women, put all its efforts into maintaining the pay deals obtained for male employees and sat side by side with Councils arguing that women should sign deals put forward by the employers.

Given that the overarching allegations put to Unison were denied by Mr Prentis, it would have been unduly onerous to put each example of lack of support to Unison simply for it to be followed with a denial. Viewers could judge Mrs Dalton's credibility on her telling of this anecdote, which was illustrative of the significant allegation made that the union allied itself with the employers on this issue.

- ii) Channel 4 said it noted that this was not denied by Unison and that it was not an allegation.
- iii) Channel 4 said that the programme did not include this allegation and that the fact that Mrs Dalton successfully took the claims on her own behalf and for five others without union assistance was a stated fact. Any inference that Unison drew from this would not be a significant allegation.
- iv) The allegation that the union put all their efforts into maintaining the pay deals obtained for male employees and sat side by side with councils arguing that women should sign deals put forward by the employers was put to Mr Prentis and he denied it.
- v) Channel 4 said that this was not a quotation from the programme, but that the allegation was put to Mr Prentis. Mr Hill was shown describing his attendance at a meeting held by the local Council and several unions. He said he was handing out leaflets and:

*"I was trying to put....them out to them and to try to say to them.... Don't sign away your legal rights before you get a calculation of what your rights are worth".*

Channel 4 said that Mr Hill was relating his memory. He was identified as working for a solicitor's firm and, later in the programme, he set out his view that members of another union could have received more money if they had taken individual claims rather than if they signed up for a global settlement. The interview with Mr Prentis had addressed this issue and it was implicit from his response that union brokered deals could be viewed as disadvantageous to women as taking legal action may be a better option.

- vi) Channel 4 said that this was not a serious allegation against Unison or "significant" in terms of the Code.

- vii) Channel 4 said that this statement was made by Mr Hill, whose position as an employee of Mr Cross was made explicit in the programme, and that this recollection was not “significant” in terms of the Code.
- viii) Channel 4 said that the programme made it clear that the two sisters were members of another union, not Unison, and that no unfairness arose for Unison.
- ix) Channel 4 said that it was not clear where Unison considered this allegation was made in the programme, but that allegations about the union letting down its members and failures in their representation were put to Mr Prentis in interview and he responded robustly in Unison’s defence.
- x) Channel 4 said that that this was not an allegation and certainly not a significant allegation and noted that Unison did not deny it.
- xi) Channel 4 said that it was clearly Mrs Dalton’s opinion that Unison was vindictive and malicious in relation to what had happened to her and that this was not a significant allegation.
- xii) Channel 4 said that Mrs Dalton claimed that stress forced her into early retirement and that this was her subjective perception. Unison did not deny that Mrs Dalton had assisted individuals to make claims without Unison assistance. The point made in the programme, that if unions did not alert their members to their legal rights then claims would be time-barred, was not an allegation.
- xiii) Channel 4 said that these allegations were not made 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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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

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

When considering complaints of 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. Ofcom had regard to this Rule when reaching its decisions on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that Unison’s contribution was obtained without its “informed consent”. In particular, it considered the complaint that Unison: was misled as to the nature and purpose of the programme; not informed

of the areas of questioning; not told the other likely contributors; and not made aware of significant change to the programme.

When considering this head of complaint, Ofcom had regard to whether the programme makers were fair in their dealings with Unison as a potential contributor to the programme (as outlined in Practice 7.2 of the Code). In particular, it considered whether Unison gave its informed consent to participate in the programme, as outlined in Practice 7.3 of the Code which sets out that in order for a potential contributor to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; be informed about the areas of questioning and wherever possible, the nature of other likely contributions; and, any changes to the programme that might affect their decision to contribute. Ofcom also took into account whether or not Mr Prentis, the General Secretary of Unison who was interviewed for the programme, was a willing and active participant throughout the interviewing process.

Ofcom considered the following sub-heads to this complaint in order to reach an overall decision as to whether Unison's informed consent had been obtained.

- Misled as to the nature and purpose of the programme.

Ofcom noted that on 24 August 2010, the programme makers sent an email to Unison's press office, requesting an interview with Mr Prentis to be recorded at the end of the TUC Conference. The email stated that the programme would examine "the likely impact of the proposed government cuts on industrial relations in the UK". The email went on to state that the response of the trade union movement to the cuts would be key and that the programme would include:

"an examination of the current state of the Trade Unions, looking at such areas as organisation, finances, strategies for defending the interests of their members and mitigating the impact of the cuts on their members and on services".

Ofcom also noted that this email was followed up by a conversation between the programme makers and Unison's press office at the TUC Conference on 15 September 2010. During this conversation, the subject areas for the interview were discussed. While Unison did not dispute that this conversation took place, Ofcom noted that there was disparity between the recollection of the programme makers (who stated that Unison's press office had been made aware that the issue of equal pay and single status agreements would be looked at and that they had spoken to women who had been critical of the way the issue had been dealt with) and Unison (who said that the conversation had been in the context of a programme about the proposed government cuts and not equal pay).

Ofcom recognised that there was a conflict between the complainant's recollection and that of the programme makers and noted that there was no documentary material provided in the submissions that assisted it in determining the content of the conversation in question. However, Ofcom's remit is to consider and adjudicate on complaints of unfair treatment (and unwarranted infringement of privacy) and as such is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of

events. Its role is to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast.

Ofcom considered that the description of the nature and purpose of the programme, given in the programme maker's letter to Unison's press office dated 24 August 2010, was broad in its scope. Nevertheless, Ofcom considered that it fairly represented the content of the programme as broadcast. Ofcom noted that the stated purpose of the programme was to explore "the likely impact of the proposed government cuts on industrial relations" and to examine "the current state of the Trade Union movement, looking at such areas as organisation, finances, strategies for defending the interests of their members...". In these circumstances, it was reasonable for Unison to have expected that the programme would include, to some extent, comment on how unions, and Unison in particular, defended the interests of their members and to test this by reference to instances where criticism had been laid against it. It was also Ofcom's view that the stated purpose of the programme was made sufficiently clear to Unison through the questions put to Mr Prentis (see head c) below for extract of the interview).

- Not informed of the areas of questioning or the other likely contributors.

In relation to the complaint that Unison was not informed of the areas of questioning, Ofcom recognises that there is no obligation on the programme makers or the broadcaster to provide contributors with a comprehensive list of questions to be asked, however, contributors should (unless justified otherwise) be given sufficient information about the areas around which the questioning will focus so that their given consent to participate is "informed".

Ofcom again noted the programme makers' email of 15 September 2010 and the undisputed content of the conversation that took place between the programme makers and Unison's press office at the TUC Conference (as detailed above). While the scope of the areas that the programme makers stated they intended to explore was broad, Ofcom considered that the areas of questioning were sufficiently communicated to the complainant. Ofcom also noted that although questions relating specifically to equal pay and the union's record in dealing with this issue may not have been detailed to Mr Prentis before his interview, Mr Prentis engaged fully in responding the reporter's questions and articulated his points in answer robustly and in a manner which would have left viewers in no doubt of Unison's position.

In relation to this element of Unison's complaint, Ofcom recognised that the programme makers and broadcaster were not obliged to disclose the identity or nature of other contributions to the programme unless failure to do so was likely to create unfairness to other contributors. Ofcom was satisfied that the content of the contributions from Mrs Dalton, Mr Cross and Mr Hill consisted of nothing that could be reasonably construed as creating a situation that led to unfairness to Unison in the programme as broadcast. Although Ofcom acknowledged that the specific details relating to these contributors were not put to Unison during the programme making process, the general thrust of their criticism of the union was put to Mr Prentis in interview and he was able to respond robustly. Ofcom therefore found that it was not incumbent on the programme makers or the broadcaster to have informed the complainant of the other likely contributors when securing its consent to participate in the programme. It also found that the areas of questions had been made

sufficiently clear to the complainants in a way that did not invalidate its consent.

- Not made aware of significant change to the programme.

Ofcom recognises that the Code requires that contributors be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate and which might cause material unfairness.

Again, Ofcom took the view (as detailed in the Decision relating to “nature and purpose” above) that, while broad in its scope, the programme’s purpose was sufficiently set out by the programme makers to Unison’s press office and the programme as broadcast fairly reflected that purpose. In these circumstances, Ofcom was satisfied that there were no significant developments or changes during the making of the programme which would have affected Unison’s consent. In these circumstances, Ofcom took the view that the nature of the programme did not significantly change in a manner which would have affected the complainants consent to participate.

In light of all the above factors, Ofcom did not consider that Unison was misled about the nature and purpose of the programme, or that the nature of the programme significantly changed in a way that materially affected Unison’s consent to participate. It also did not consider that it was incumbent on the programme makers or the broadcaster to inform the complainant of the other likely contributors and that the areas of questions were adequately put to it. Therefore, Ofcom concluded that the broadcaster and programme makers had taken sufficient measures to ensure that consent given by Unison in contributing to the programme was “informed consent”.

Ofcom found no unfairness to Unison in this respect.

- b) Ofcom then considered Unison’s complaint that it was portrayed unfairly in the programme in that the programme omitted to make it clear to viewers that Mrs Dalton, Mr Cross and Mr Hill had a long history of dispute with the union and that they presented as being independent and reliable critics when, in fact, they had axes to grind.

In considering this head of complaint, Ofcom had regard to whether the portrayal of Unison was consistent with the broadcaster’s obligation to ensure that material facts had not been presented in a way which was unfair (as outlined in Practice 7.9 of the Code).

In considering this head of complaint, Ofcom first took note of how Mr Cross, Mrs Dalton, Mr Hill and were presented in the programme as broadcast. Ofcom noted that Mr Cross was introduced in the programme as:

*“...a lawyer who became known as ‘The Man Who Launched a Thousand Writs’...Stefan Cross is suing councils nationwide under the Equal Pay Act for discrimination. He’s representing thousands of women, many, like Bobby Dalton, feel let down by the unions”.*

Ofcom noted that Mr Cross’ contribution appeared in the part of the programme which looked at examples of cases where women claimed that their unions had not given them the support they thought they should have had in dealing with

equal pay disputes. However, Ofcom also noted that Mr Cross' contribution itself focused on bonuses given to male street cleaners and refuse collectors and the reasons given by some local authorities to justify discriminatory pay scales. It was clear to Ofcom that neither Mr Cross' introduction nor his contribution referred directly to any specific involvement with Unison or any criticism of it. In these circumstances, it was Ofcom's view that there it would not have been materially relevant for the programme to include a reference to any "history of dispute" Mr Cross or his clients had had with Unison. Ofcom therefore considered that the omission of such a reference in the programme did not amount to a material fact being omitted in a way that was unfair to Unison.

Ofcom then considered Mr Hill's contribution and the manner in which he was presented in the programme. Ofcom noted that Mr Hill was introduced in the programme as:

*"...working for Stefan Cross, having been expelled by his union Unison. He was handing out leaflets".*

Ofcom then noted Mr Hill's contribution itself in which he gave his own account of what he claimed to have seen at a meeting between the unions, a local authority and female employees about offers of compensation for years of being paid less than male employees. In particular, Mr Hill said that:

*"The Unison official, I recognised her, she snatched the leaflets and she was shouting 'take no notice of him, take no notice of him, don't read it, it's rubbish', she was scrunching the leaflets ups and throwing them in the black bin".*

Ofcom appreciated that Mr Hill's account referred to an unnamed "Unison official", however, it took the view that he was giving his personal recollection of an incident that he claimed he had witnessed at a particular meeting. Ofcom noted that Unison questioned the reliability and independence of Mr Hill's account on the basis that he had an "axe to grind" with the union. However, Ofcom considered that the manner in which Mr Hill was introduced and the nature of his contribution in the programme were sufficient to make it clear to viewers that he was giving a personal account, as he was entitled to do. Ofcom also took the view that it was clear that Mr Hill had been expelled from Unison and was working for Mr Cross and that viewers would have been in a position to have reached their own conclusions about the credibility or otherwise of Mr Hill's contribution. Therefore, Ofcom considered that it was legitimate for the broadcaster to have included Mr Hill's contribution in the programme and that it had been presented in a way that was unlikely to have materially affected viewers understanding of Unison in a way that was unfair to it.

Ofcom next considered the manner in which Mrs Dalton was presented in the programme and noted the way she was introduced:

*"We're now going to meet a woman who paid all her union dues for years but now questions what she got in return".*

Mrs Dalton's contribution to the programme was significantly longer than those of Mr Cross and Mr Hill and contained a number of incidences of negative experiences she claimed she had had with her former union, Unison. Again, Ofcom recognised that Mrs Dalton's contribution contained criticism of Unison and its officials. However, it took the view that her contribution reflected her

personal account and view of her experiences and that these were presented as such in the programme. It was clear, in Ofcom's view, that viewers would have been in little doubt that Mrs Dalton had been in dispute with Unison for some time and that her experiences had left her feeling somewhat embittered towards her former union. Ofcom considered that, given this context, viewers would have understood Mrs Dalton's position and would have been able to reach their own conclusions on the reliability, or otherwise, of her contribution.

Taking all these factors into account, Ofcom considered that the inclusion of Mrs Dalton, Mr Hill and Mr Cross in the programme was unlikely to materially affect viewers' understanding of Unison, and its relationship with the three contributors, in a way that was unfair and that the broadcaster had taken reasonable care to ensure that material facts were not presented, omitted or disregarded in a way that portrayed Unison unfairly.

Ofcom therefore found no unfairness to Unison in this respect.

- c) Ofcom considered Unison's complaint that it was not given an appropriate and timely opportunity to respond to the allegations in the programme. In particular, Unison said that the programme makers failed to put the allegations about its treatment of women in relation to equal pay claims in anything but the most general terms, despite the fact that the programme itself featured specific allegations made by Mrs Dalton and Mr Hill. Unison also said that neither it, nor its unidentified representatives referred to in some of the allegations made by Mr Hill and Mrs Dalton, were given the opportunity to respond.

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

The provisions of the Code require broadcasters to put allegations of wrongdoing, incompetence or other significant allegations to those concerned. In Ofcom's view, the fact Unison did not consider that it had been given the opportunity to comment on individual points or issues did not necessarily amount to unfairness. On the contrary, Ofcom's Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of a genuine public interest. However, in presenting significant allegations, reasonable care must be taken not to do so in a way that causes material unfairness to individuals or organisations and to provide an opportunity for the individual or organisation to respond to such allegations. In this particular case, Ofcom recognised that it was in the public interest for the broadcaster to include allegations such as those included by the programme, but that it needed to be consistent with the requirements of the Code.

As already set out in detail in Decision head a) above, Ofcom noted that Unison was initially approached by the programme makers about contributing to the programme by an email dated 24 August 2010. It also noted that a further conversation took place between the assistant producer and Unison's press officer at the TUC Conference in which further details about the programme and Mr Prentis' interview were discussed. While Ofcom appreciated that there was some dispute between the parties about what was understood by the email and the subsequent conversation, Ofcom took the view that it would have been sufficiently clear to Unison what the stated purpose of the programme was and considered that it would have been reasonable to assume that Unison

understood that a programme such as *Dispatches* was likely to comment on its performance and to criticise it.

Ofcom acknowledged that Unison believed that it should have been told about the 13 specific allegations to be made in the programme in relation to the claims by Mr Hill and Mrs Dalton surrounding the issue of equal pay. However, it also noted that Unison also acknowledged that the programme makers had put the allegations to it, though its questions to Mr Prentis, in “the most general terms”.

Ofcom noted the footage of Mr Prentis’ interview in the programme and, in particular, the content of the questions asked of him that related to the issue of equal pay. It noted the following exchange between Mr Prentis and the programme’s reporter:

Reporter: *“I mean we have spoken to other women and frankly they feel let down by Unison, and when they turn to the union for help with equal pay disputes they said you weren’t there for them”.*

Mr Prentis: *“yeah but...”*

Reporter: *“The men were all getting bonuses and the women weren’t”.*

Mr Prentis: *“But they, the actual agreements that were reached, you know, were, they’re of another generation and it was employers who wanted to give those bonuses and we had to...yeah but we also...”*

Reporter: *“But the unions negotiated them and you didn’t then bring the women up and you put all your efforts into keeping the bonuses for the men and not bring the women up to par?”*

Mr Prentis: *“Yeah, not true. No, that’s not true. We’ve negotiated all through the country that has brought women up and in a large number of cases, because the, you know, we can’t get it up to the level of the men, the men have come down to that level and we have negotiated really difficult agreements for our members to get equal pay”.*

Reporter: *“But there have been meetings up and down the country, we’ve spoken to women who have gone to them and union reps and council reps were sitting side by side and telling the women to sign”.*

Mr Prentis: *“The policy of our union is to actually say to anybody who signs one of these agreements, ‘this is what the employer is offering you, but you do have a legal right’ and where any woman, any woman, decides that they would prefer to take a legal case, we will take that case, and that has been our policy for at least five years”.*

In Ofcom’s view, although the allegations put to Mr Prentis in interview did not go into detail about the claims made by particular individuals (namely Mr Hill and Mrs Dalton), the issues raised by the reporter clearly set out the overarching and significant allegation that Unison had not been supportive of some of its female members in disputes relating to equal pay and single status agreements. Ofcom acknowledged these allegations had been made to Mr Prentis during his interview, which could be construed as being a short time in which to expect a

contributor to formulate a response. However, Ofcom considered that Mr Prentis, as General Secretary of one of the largest trade unions, would have been aware of the general allegations made against Unison about its handling of members' claims and that he was more than able to respond to them. In particular, Ofcom noted from Mr Prentis' interview footage as broadcast in the programme that his response had been articulate and robust in defence of his union's record over the past five years and made it clear what Unison's policy was in relation to female members wishing to take legal action in equal pay disputes.

Ofcom concluded that despite the fact that the allegations about equal pay and single status agreements were put to Mr Prentis in interview and not in advance, he was able to provide an articulate and considered response and which was represented in the programme. It was not incumbent on the broadcaster to put the specific claims made by Mrs Dalton and Mr Hill to Unison for comments as Ofcom considered that their contributions to the programme were illustrative of the main, significant allegations that some female members of Unison felt let down by their union, especially in relation to equal pay and single status agreements. In these circumstances, Ofcom took the view that, notwithstanding the short time given for a response, Unison, through Mr Prentis, was given an appropriate and timely opportunity to respond to the allegations.

Ofcom, therefore, found no unfairness to Unison in this respect.

**Accordingly, Ofcom has not upheld Unison's complaint of unfair treatment in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 13 June 2011

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118 sponsorship credits	ITV1	n/a	Generally accepted standards	1
118 118's sponsorship of ITV Movies	ITV2	04/06/2011	Generally accepted standards	1
118 118's sponsorship of ITV Movies	ITV2	n/a	Harm	1
4Music	4Music	n/a	Sexual material	1
5 News at 5	Channel 5	01/06/2011	Due accuracy	1
60 Minute Makeover	ITV1	05/06/2011	Harm	1
A Very Dangerous Doctor	Channel 4	12/05/2011	Due impartiality/bias	1
Accidentally on Purpose	Channel 4	10/06/2011	Transgender discrimination/offence	1
Airline	Pick TV	04/06/2011	Animal welfare	1
All Watched Over by Machines of Loving Grace	BBC 2	06/06/2011	Generally accepted standards	1
Angry Boys	BBC 3	07/06/2011	Sexual orientation discrimination/offence	1
Ant and Dec's Push the Button	ITV1	12/03/2011	Offensive language	1
Archer (trailer)	5*	23/05/2011	Generally accepted standards	1
At the Races	Racing Channel	17/05/2011	Materially misleading	1
Aviva's sponsorship of ITV Drama Premiers	ITV1	06/06/2011	Generally accepted standards	1
Aviva's sponsorship of ITV Drama Premiers	ITV1	07/06/2011	Generally accepted standards	1
Breakfast	BBC 1	04/06/2011	Offensive language	1
Breaking a Female Paedophile Ring	Channel 4	26/05/2011	Generally accepted standards	1
Britain's Got Talent	ITV1	29/05/2011	Competitions	5
Britain's Got Talent	ITV1	29/05/2011	Race discrimination/offence	1
Britain's Got Talent	ITV1	30/05/2011	Sexual material	7
Britain's Got Talent	ITV1	31/05/2011	Drugs, smoking, solvents or alcohol	1
Britain's Got Talent	ITV1	31/05/2011	Materially misleading	3
Britain's Got Talent	ITV1	31/05/2011	Generally accepted standards	9
Britain's Got Talent	ITV1	31/05/2011	Outside of remit / other	1
Britain's Got Talent	ITV1	31/05/2011	Sexual material	1
Britain's Got Talent	ITV1	01/06/2011	Drugs, smoking, solvents or alcohol	1
Britain's Got Talent	ITV1	01/06/2011	Race discrimination/offence	4
Britain's Got Talent	ITV1 +1	01/06/2011	Participation TV - Misleadingness	1

Britain's Got Talent	ITV1	02/06/2011	Animal welfare	1
Britain's Got Talent	ITV1	02/06/2011	Competitions	5
Britain's Got Talent	ITV1	02/06/2011	Generally accepted standards	6
Britain's Got Talent	ITV1	03/06/2011	Animal welfare	2
Britain's Got Talent	ITV1	03/06/2011	Competitions	3
Britain's Got Talent	ITV1	03/06/2011	Voting	1
Britain's Got Talent	ITV1	n/a	Competitions	1
Britain's Got Talent	ITV1	n/a	Materially misleading	1
Britain's Got Talent Final	ITV1	04/06/2011	Competitions	1
Britain's Got Talent Final	ITV1	04/06/2011	Gender discrimination/offence	2
Britain's Got Talent Final	ITV1	04/06/2011	Voting	1
Britain's Got Talent Final	ITV1	04/06/2011	Voting	4
Britain's Got Talent Final	ITV1	04/06/2011	Gender discrimination/offence	1
Britain's Got Talent Results	ITV1	31/05/2011	Advertising/editorial distinction	1
Britain's Got Talent Results	ITV1	02/06/2011	Competitions	1
Camelot	Channel 4	11/06/2011	Offensive language	13
Case Histories	BBC 1	06/06/2011	Generally accepted standards	6
Celebrity Juice	ITV2	28/05/2011	Gender discrimination/offence	1
Channel 5 News update	Channel 5	09/06/2011	Generally accepted standards	1
Channel promotion	Comedy Central	28/05/2011	Surreptitious advertising	1
Channel promotion	Comedy Central	30/05/2011	Surreptitious advertising	1
Channel promotion	Comedy Central	01/06/2011	Surreptitious advertising	1
Chase & Status "Time"	WTF	26/05/2011	Offensive language	1
Chase & Status "Time"	WTF	28/05/2011	Offensive language	1
Coronation Street	ITV1	n/a	Due accuracy	1
Coronation Street	ITV1	14/04/2011	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	29/05/2011	Offensive language	1
Coronation Street	ITV1	30/05/2011	Race discrimination/offence	3
Coronation Street	ITV1	31/05/2011	Under 18s in programmes	10
Coronation Street	ITV1	02/06/2011	Generally accepted standards	1
Coronation Street	ITV1	03/06/2011	Generally accepted standards	1
Coronation Street	ITV1	06/06/2011	Drugs, smoking, solvents or alcohol	1
Coronation Street Omnibus	ITV1	04/06/2011	Scheduling	1
Da Dick and Dom Diaries	CBBC	12/06/2011	Animal welfare	1
Deal or No Deal	Channel 4	07/06/2011	Race	2

			discrimination/offence	
Dennis and Gnasher	CBBC	09/06/2011	Generally accepted standards	1
Diagnosis Live From the Clinic	Channel 4	25/05/2011	Nudity	1
Diagnosis Live from the Clinic (trailer)	Channel 4	various	Generally accepted standards	12
Dispatches	Channel 4	23/05/2011	Materially misleading	3
Doctor Who	BBC 1	28/05/2011	Generally accepted standards	1
Doctor Who	BBC 1	04/06/2011	Religious/Beliefs discrimination/offence	1
Doctors	BBC1	01/06/2011	Religious/Beliefs discrimination/offence	1
Don't Tell the Bride	BBC 3	06/06/2011	Offensive language	1
EastEnders	BBC 1	27/05/2011	Generally accepted standards	1
EastEnders	BBC 1	30/05/2011	Sexual material	11
EastEnders	BBC 1	10/06/2011	Product placement	1
EastEnders Omnibus	BBC 1	05/06/2011	Sexual material	1
Elite Days	Television X	18/05/2011	Participation TV - Protection of under 18s	1
Elite Nights	Elite TV 2	21/05/2011	Participation TV - Offence	1
Embarrassing Fat Bodies	Channel 4	06/06/2011	Materially misleading	1
Embarrassing Fat Bodies	Channel 4	06/06/2011	Nudity	2
Embarrassing Illnesses	Discovery Home & Health	n/a	Generally accepted standards	1
Emergency with Angela Griffin	Sky1	04/05/2011	Fairness & Privacy	1
Emmerdale	UTV	24/05/2011	Generally accepted standards	1
Emmerdale	ITV1	31/05/2011	Due impartiality/bias	1
Eraza sponsorship credit	Blighty	22/05/2011	Materially misleading	1
Family Guy	BBC 3	30/05/2011	Religious/Beliefs discrimination/offence	1
Forensic Investigators (trailer)	CBS Reality	20/05/2011	Violence and dangerous behaviour	1
Four in a Bed	Channel 4	30/05/2011	Religious/Beliefs discrimination/offence	1
Government Radio adverts on 2010 Student Finance	XFM	05/06/2011	Advertising content	1
Grand Prix Forum	BBC Interactive	29/05/2011	Race discrimination/offence	1
Green Green Grass	Gold	16/05/2011	Race discrimination/offence	1
Have I Got a Bit More News for You	BBC 2	14/05/2011	Animal welfare	1
Have I Got News for You	BBC 1	27/05/2011	Generally accepted standards	1
Have I Got News for You	BBC 1	03/06/2011	Religious/Beliefs discrimination/offence	88

Have I Got News For You	BBC2	11/06/2011	Offensive language	1
Holby City	BBC 1	31/05/2011	Sexual material	12
Injustice	ITV1	06/06/2011	Offensive language	2
Injustice	ITV1	08/06/2011	Materially misleading	1
Islamic Masayal	DM Digital	04/05/2011	Religious/Beliefs discrimination/offence	1
ITV News at Ten and Weather	ITV1	31/05/2011	Due impartiality/bias	1
Julia Hartley Brewer	LBC 97.3FM	19/05/2011	Generally accepted standards	1
Little Howard's Big Question	BBC 2	04/06/2011	Generally accepted standards	1
Long Lost Family	ITV1	19/05/2011	Harm	1
Loose Women	ITV1	03/06/2011	Drugs, smoking, solvents or alcohol	1
Made in Chelsea	E4	23/05/2011	Generally accepted standards	1
Mark Hurley's Happy Hour	Redshift Radio	30/04/2011	Competitions	3
Matt Forde	Talksport	21/05/2011	Race discrimination/offence	1
Meridian Tonight	ITV1 Meridian	03/06/2011	Outside of remit / other	1
Midsomer Murders	ITV1	09/06/2011	Offensive language	1
Much Ado About a Minor Ting	Channel 4	28/05/2011	Violence and dangerous behaviour	1
News, Sport, Weather	Sky News	05/06/2011	Due accuracy	1
Newsround	BBC 1	07/06/2011	Scheduling	1
Old Speckled Hen sponsorship credit	Dave	n/a	Sexual material	1
Outlaw	Channel 5	09/06/2011	Violence and dangerous behaviour	1
Panorama	BBC 1	31/05/2011	Generally accepted standards	5
Patrick Billington Show	Viking FM	09/05/2011	Competitions	1
Politics and Media	Islam Channel	25/05/2011	Due impartiality/bias	1
Popstar to Operastar	ITV	n/a	Competitions	1
Rabbit Chat and Date	Rabbit Chat and Date	12/06/2011	Generally accepted standards	1
Red Light Central	Red Light 3	19/05/2011	Participation TV - Offence	1
Red Light Central	Red Light 1	25/05/2011	Participation TV - Offence	1
Red Light Lounge	Red Light 3	21/05/2011	Participation TV - Offence	1
Road Wars	Pick TV	04/06/2011	Materially misleading	1
Russell Howard's Good News	BBC 3	31/03/2011	Transgender discrimination/offence	33
School of Silence	CBBC	17/05/2011	Generally accepted standards	1
Scott & Bailey (trailer)	ITV1	27/05/2011	Violence and dangerous behaviour	1
Scott and Bailey	ITV1	29/05/2011	Offensive language	1
Scott and Bailey	ITV1	12/06/2011	Generally accepted	1

			standards	
Simon Mayo	BBC Radio 2	08/06/2011	Generally accepted standards	1
Sky News with Colin Brazier	Sky News	28/05/2011	Generally accepted standards	1
Sky News, BBC News, ITV News, Channel 4 News, Channel 5 News	Sky, BBC, ITV, Channel 4, Channel 5	n/a	Race discrimination/offence	1
So You Think You Can Dance	BBC 1	14/05/2011	Voting	1
So You Think You Can Dance	BBC 1	04/06/2011	Sexual material	1
SOS International	TV3 Sweden	20/04/2011	Advertising/editorial distinction	1
Springwatch	BBC 2	09/06/2011	Sexual orientation discrimination/offence	1
Springwatch	BBC 2	09/06/2011	Sexual orientation discrimination/offence	1
Sri Lanka's Killing Fields	Channel 4	14/06/2011	Out of Remit (Pre-Transmission)	13
Steve Wright in the Afternoon	BBC Radio 2	18/10/2010	Exorcism, the occult and the paranormal	1
Strangeways	ITV1	16/05/2011	Crime	5
Strangeways	ITV1	16/05/2011	Crime	1
Strangeways	ITV1	16/05/2011	Generally accepted standards	1
Strangeways	ITV1	16/05/2011	Generally accepted standards	1
T4	Channel 4	28/05/2011	Sexual material	1
The Apprentice	BBC 1	18/05/2011	Race discrimination/offence	1
The Apprentice: You're Fired!	BBC 2	01/06/2011	Generally accepted standards	1
The Apprentice: You're Fired!	BBC 2	08/06/2011	Gender discrimination/offence	1
The Bassman	Capital Radio	10/06/2011	Sexual material	1
The Blame Game	BBC 1 Northern Ireland	20/05/2011	Generally accepted standards	1
The Breakfast Show	Absolute Radio	29/05/2011	Competitions	1
The Fairy Jobmother (trailer)	More4	07/06/2011	Harm	1
The Graham Norton Show	BBC 1	27/05/2011	Generally accepted standards	1
The Human Centipede	SyFy	11/06/2011	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	07/06/2011	Crime	1
The Million Pound Drop Live	Channel 4	27/05/2011	Materially misleading	1
The News Quiz	BBC Radio 4	08/10/2010	Offensive language	3
The News Quiz	BBC Radio 4	27/05/2011	Disability discrimination/offence	1
The One Show	BBC 1	30/05/2011	Sexual material	1
The Scheme	BBC 1 Scotland	23/05/2011	Drugs, smoking, solvents or alcohol	5
The Shadow Line	BBC 2	12/05/2011	Animal welfare	1

The Shadow Line	BBC 2	09/06/2011	Generally accepted standards	1
The Simpsons	Channel 4	06/06/2011	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	12/05/2011	Materially misleading	1
The Wright Stuff	Channel 5	27/05/2011	Race discrimination/offence	1
The Wright Stuff	Channel 5	31/05/2011	Generally accepted standards	1
The Wright Stuff	Channel 5	10/06/2011	Animal welfare	1
The Zone	ITV1	07/06/2011	Gambling	1
This Morning	ITV1	03/06/2011	Generally accepted standards	1
This Morning	ITV1	07/06/2011	Disability discrimination/offence	1
Today	BBC Radio 4	01/06/2011	Race discrimination/offence	1
Tony Blackburn standing in for Steve Wright in the Afternoon	BBC Radio 2	29/04/2011	Race discrimination/offence	2
TV Licensing Advert	BBC1	24/05/2011	Harm	1
TV Licensing Advert	BBC1	26/05/2011	Harm	2
UTV Live Tonight	UTV	03/03/2011	Due impartiality/bias	1
Waterloo Road	BBC 1	08/06/2011	Offensive language	1
Westwood	BBC Radio 1Xtra	20/05/2011	Sexual material	1
Woman's Hour Drama - Once More With Feeling	BBC Radio 4	30/05/2011	Offensive language	1