

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>, Ofcom must include these standards in a code or codes. These are listed below.

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

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. 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 and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>2</sup>.

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

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

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

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

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

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

<sup>2</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases

## Note to Broadcasters

### Pilot period: on air references to websites used for paid-for viewer participation and interaction

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In Bulletin 186<sup>1</sup>, published on 18 July 2011, Ofcom announced its intention to conduct a year-long pilot period within which websites could be referred to on air as acceptable routes of paid-for audience participation or interaction with programmes, subject to certain conditions.

We invited stakeholders to submit comments on the proposal. This note discusses the comments received and gives our response to them, and announces the revised terms on which the pilot period will now be run.

#### The pilot period proposal: background

Rule 9.26 of the Code states:

“Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements”.

This rule seeks to ensure that paid-for audience participation and interaction takes place through a means of communication rather than merely a money transfer instrument, and helps to maintain the distinction between programming and advertising.

Ofcom’s current guidance in this area<sup>2</sup> explains that these means are limited to premium-rate telephone and text messages and ‘apps’ downloaded to mobile phones and other mobile devices.

However, in both the guidance and the Note published in Bulletin 186 we made clear that we recognised the benefits potentially offered – to both consumers and broadcasters – by converging communications platforms, devices and applications. Because of the speed of change in this area we proposed that a trial period should operate within which broadcasters could add websites as mechanisms through which paid-for participation and interaction with programmes could be offered, subject to certain terms.

#### The pilot period proposal: terms

We proposed that, during the pilot period, where an app is referred to on air as a means of paid-for viewer participation or interaction under Rule 9.26, it would also be acceptable for the broadcaster to include on air references to website interfaces or

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<sup>1</sup> Available at <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb186/obb186.pdf>

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

webpages which are directly linked to that app as an alternative means by which the viewer can pay for the participation or interaction.

'Apps' in this context are defined by Ofcom's guidance as "...software applications downloaded to mobile phones and related devices." We have not to date used the term to apply to applications available on websites. Therefore, our proposed pilot period was to allow a website interface to be promoted on air only where it was 'directly linked' to an app downloadable to a mobile phone or related device.

Further, we also proposed that licensees **would only be able to refer on air to website interfaces or webpages directly linked to apps as routes for paid-for participation or interaction where participation also occurs through premium rate service ("PRS") entry routes.** This would ensure that third party verification (as required by the Ofcom licence condition) would apply across all means of paid-for participation.

### **The pilot period proposal: comments received**

Seven organisations submitted comments. The seven comprised four broadcasters, one telephony company, one digital communications company and a website operator.

The comments received are set out below in four broad subject areas, with an accompanying response from Ofcom to each area.

All but one of the submissions welcomed the pilot period announcement; objections were in the main about detail rather than principle. One respondent's brief response was confined to welcoming the pilot period: the discussion below therefore relates to the remaining six submissions.

All of the responses concentrated on voting applications of paid-for viewer interaction.

#### **1) The proposed need for a link between a mobile app and a website**

The submissions generally opposed the proposed linkage, as follows:

- i) Five respondents considered that Ofcom's proposal was too narrow and limited the intended benefit of the pilot period by requiring a direct link between a mobile/device-based app and a website. Several of these respondents indicated that website-based applications were now widely used, which may not necessarily be accessed via mobiles.
- ii) Some of the respondents referred to the proposed link requirement therefore effectively creating a need for broadcasters to commission a very basic mobile app which may have no real reason to exist other than to connect the user to the website, and to justify on air reference to a website for the purposes of the pilot, so producing an artificial result in which viewers simply ignored the app and went straight to the website.
- iii) In view of the concurrent growth of different types of apps and devices, the respondents considered that the pilot period should not be limited by means of the direct link Ofcom had proposed between a mobile/device-based app and a website. They argued that paid-for participation by any type of app would provide a simpler user experience. One respondent also pointed out that this would not

create additional consumer protection risks (particularly as PRS routes would be required by the pilot and third party verification would therefore apply). Another respondent pointed out that consumer protections also already exist in this area through sale of goods and consumer protection regulation.

- iv) Another respondent suggested changing the requirement to one where website interfaces or webpages should be directly linked to the *broadcaster* rather than to a device-based application.

#### Ofcom response

We recognise the speed and effect of convergence. Our concern is to balance the benefits that viewers and broadcasters can derive from a greater diversity of means for paid interaction with due protection for programmes by preventing them becoming vehicles for selling services, i.e. adopting the characteristics of advertising. In that respect, money transfer conduits such as credit cards and inter-bank transfers are hallmarks of advertising and direct response sales rather than (paid-for) communication between audience and broadcaster.

However, the characteristics and uses of telephony and the web have developed in such a way that meaningful divisions between ‘means of communication’ and ‘means of payment’ are now highly arguable. In those circumstances, we consider it may be a false distinction to limit the means by which viewers are able to participate to websites which are directly linked to mobile and device-based apps since viewers are unlikely to consider that there is any difference between a website which is linked to an app and one which is not.

Further, and separately, we acknowledge the point made about the ease with which an app-website link – conceptual or functional – could be minimised or side-stepped by broadcasters so rendering the linkage futile in any event. We are inclined to accept that the linkage proposed is of doubtful utility for the pilot period.

In light of those considerations, we have concluded that, during the pilot period, it would not be appropriate to limit on air references only to those websites which are directly linked to mobile and device-based apps used for those purposes. **During the pilot period, broadcasters will therefore be able to refer to any website through which paid-for participation may take place** (see ‘Finalised terms of the pilot period’ below for full details).

Given that conclusion, it is not necessary to consider comments regarding the suggestion that a website directly linked to an app would offer little more consumer protection than any other website.

We consider that the proposal that broadcasters should be the linking factor would be satisfied by a broadcaster’s decision to contract with any particular website operator. In relation to Rule 9.26, broadcasters are unlikely to provide on-air references to websites over which they have no control or with which they have no contractual relationship. As a result, Ofcom has also concluded that it is unnecessary to require any other direct link between the broadcaster and the website for the purposes of the pilot project.

## **2) The proposed need for the use of PRS**

In our proposals, we set out our view that paid-for participation through websites should only be allowed where PRS were also offered as a means of participation. The reason for this was to ensure that third party verification, as required by the Ofcom licence condition, would apply across all routes and so reduce the risk of compliance failures in the conduct of viewer competitions and votes. The submissions on this proposal were as follows:

- i) One respondent strongly opposed this proposed requirement, describing it as “prohibitive” due to the financial implications of providing multiple routes in the case of a number of programme formats which it considered did not require a PRS route.
- ii) Another respondent said that it supported the measure, referring to the consumer protection benefits resulting from the use of PRS and the associated third party verification.
- iii) Another respondent relied in part on the third party verification imposed through the use of PRS mechanisms to strengthen its argument for allowing voting through websites unlinked to mobile or device-based apps: if a PRS entry route is included as a condition of the pilot period, the required third party verification would be carried out across all platforms, so adding to the argument for allowing voting through websites unconnected to mobile or device-based apps, since these would be brought within the system of verification.

### Ofcom response

Ofcom imposed third party verification as an Ofcom licence condition for PRS voting and competition entry in 2008 following well publicised compliance failures. Where votes or competition entries are received by a broadcaster through PRS and other routes, the verification required for the PRS embraces the non-PRS means: the scheme as a whole must be verified to enable the integrity of the PRS system to be established.

For that reason we proposed that PRS be a condition of the pilot period in which web-based voting and competition participation is allowed. The prior evaluation of systems and their active monitoring which is required by the PRS condition assists in detecting and putting right any technical or other issues that may be present and therefore ensures that viewers can be confident that paid-for viewer participation offers a genuine ability to participate. We therefore remain of the view that the verification requirements associated with the use of PRS should apply equally to participation which is paid-for through alternative routes. During the pilot period, this can be ensured through a requirement to offer PRS as a means of participation where a website is also offered and **Ofcom is therefore maintaining this requirement.**

Ofcom wishes to clarify that it has always been intended that the pilot period will be limited to **audience voting and competition schemes** and it is for this reason that Ofcom has included the requirement for a PRS means of entry to be used in conjunction with the use of website paid-for participation. The use of PRS ensures that voting and competition schemes are administered fairly through the verification requirements imposed under the broadcast licences and it is important that such verification is assured for the protection of viewers. As a result, the promotion of paid-

for participation through web interfaces and websites will only be permitted for audience voting and competition schemes and not for other forms of participation.

### **3) Other points made in submissions**

Respondents also made the following points in relation to Ofcom's proposals:

- i) One respondent supported Ofcom's overall proposal for the pilot period by highlighting the advantages of greater certainty to the viewer of the cost of interacting through non-PRS means. Premium rated voice calls (generally, calls made to 09 numbers) can be charged at much higher rates than the benchmark BT price when made from mobiles. The respondent was aware of viewers experiencing 'bill shock' after placing votes via PRS routes. By contrast, the respondent referred to the viewer benefits of set price voting through apps, as would be experienced by viewers as a result of the pilot period.
- ii) The same respondent further supported Ofcom's proposal by indicating its confidence in its ability to authenticate and audit votes cast through web-based mechanisms.
- iii) Another respondent raised a point in relation to the proposed duration of the pilot period. It suggested that where a particular voting scheme operating under the terms of the pilot was not completed by the pilot's expiry in August 2012, Ofcom should be flexible and allow the scheme to run its course.
- iv) Another respondent took issue with the idea of a pilot period altogether. It suggested that the pace and demand for innovation was such that Ofcom should instead make a "clear and prompt statement" about the scope for the use by broadcasters of emerging proprietary platforms. It stated that what it described as Ofcom's "tentative approach" would risk curbing an innovative, progressive sector.

#### **Ofcom response**

Ofcom is willing to agree in principle that where paid-for participation begins within the pilot period and operates under its terms, it may continue after the end of the pilot period and until the scheme in question has ended. However we reserve the right to find otherwise should any regulatory issues arise. (See the note further below about Ofcom's likely actions after the pilot period).

In relation to the respondent's view summarised at iv) above, we do not believe that the pace and demand for innovation removes the need for careful consideration of the rules and licence conditions intended to protect both consumers and programme integrity. Ofcom has proposed a pilot period in order to ensure that any issues arising can be effectively dealt with but has not, at this stage, ruled out a longer term solution.

### **Finalised terms for the pilot period**

After careful consideration of the responses we will now operate the year-long pilot under the following terms:

- **The pilot period begins on Monday 22 August 2011 and will end on Monday 20 August 2012.**

- **The pilot period will apply only to audience voting and competition schemes.**

The pilot period therefore does not allow on air references to websites as a means for paid-for audience interaction with or participation in programmes for any other reasons such as advice from a studio guest, submitting comments or views on news stories or taking part in TV call-ins.

- **A PRS means of entry must be one of the routes available, and third party verification will therefore apply across all available routes.**
- **Provided that all the above conditions are met, self-standing websites or apps downloadable to mobile phones and related devices, or both, may be referred to on air as means for viewers to vote or submit competition entries, subject to other relevant Code rules.**

Websites, apps and mobile devices are proprietary communication tools whose branding and web addresses amount to 'products' under Ofcom's rules (as opposed to generic means of communication such as the public telephone network). Broadcasters must be mindful of the need to ensure that **references to proprietary properties are not promotional or unduly prominent – in the context of voting shows and competitions – and must comply with Rules 9.1 to 9.5 of the Code.**

Where a vote or competition entry is free (including where no more than normal carriage cost is chargeable) any means of contact may be used: Rule 9.26 does not apply.

After the pilot period Ofcom will assess its impact and associated issues. If appropriate in the light of that assessment we may decide to undertake a more wide-ranging formal review of this area of the Code and its application.

Broadcasters should contact John Stables at Ofcom ([john.stables@ofcom.org.uk](mailto:john.stables@ofcom.org.uk)) if they have any questions about the pilot period.

## Standards cases

### In Breach

#### Various programmes

*Believe TV, 21 and 22 December 2010, 4 January 2011 and 1 February 2011*

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#### Introduction

Believe TV is a service which broadcasts Christian programming and is located in the religious section of the Sky electronic programme guide.

The channel broadcasts programmes which include “testimony”, where members of the churches featured proclaim how health problems, financial issues or other personal matters have been alleviated through healing from a pastor or other religious leader and their faith in God. Believe TV also features other Christian programming including preaching and healing from churches in the UK and around the world. The licence for Believe TV is held by The Light Academy Limited (“the Licensee”).

In January 2011 the Advertising Standards Authority (“ASA”) informed Ofcom that it had written to the Licensee on 22 December 2010 regarding the broadcast on Believe TV of two programmes, featuring the ‘televangelist’ Paul Lewis, on 21 and 22 December 2010. Both programmes featured Paul Lewis’s ‘Miracle Olive Oil Soap’ which it was claimed has healing properties that can cure serious illnesses such as cancer.

#### Paul Lewis Ministries, Believe TV, 21 December 2010, 09:40

For example the following exchange took place in this programme.

Paul Lewis: *“I told you to take a bath with one of my olive oil soaps and what happened?”*

Woman: *“I have cancer no more”.*

The ASA informed the Licensee that the broadcasts on 21 and 22 December 2010 contained similar claims by Paul Lewis to those which had already been the subject of an ASA adjudication<sup>1</sup> in May 2007. Further, the ASA advised the Licensee that Ofcom had also previously recorded breaches of the Broadcasting Code (“the Code”) in relation to content containing similar claims by Paul Lewis that had been transmitted by two other broadcasters in 2008<sup>2</sup>.

In response to the ASA, the Licensee confirmed that following the ASA notification, the Paul Lewis Ministries content had been removed from its schedules as of 24 December 2010 onwards, and that in any event the content was editorial and not advertising. The ASA therefore referred the material of 21 and 22 December 2010 to

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<sup>1</sup> [http://www.asa.org.uk/ASA-action/Adjudications/2007/5/Deal-TV-Limited/TF\\_ADJ\\_42553.aspx](http://www.asa.org.uk/ASA-action/Adjudications/2007/5/Deal-TV-Limited/TF_ADJ_42553.aspx)

<sup>2</sup> See <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb113/> and <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb117/>

Ofcom for further investigation, as well as further material broadcast on Believe TV (not featuring Paul Lewis) the ASA had recorded on 4 January 2011.

Ofcom reviewed this material and agreed with the view expressed by the Licensee to the ASA that the content being investigated in this case should be regarded as editorial and not advertising and therefore that the Code applied.

Ofcom noted content featuring Paul Lewis on 21 and 22 December 2010. Further Paul Lewis content did not feature in the content broadcast on 4 January 2011 provided by the ASA nor in any material broadcast which Ofcom subsequently reviewed. However, separately Ofcom was also concerned that other material broadcast on Believe TV, on these three dates, contained examples of potentially unsubstantiated and dangerous claims about the healing of serious conditions such as infertility and cancer.

The following are examples of content, referred to Ofcom from the ASA, and broadcast by the Licensee on 21 and 22 December 2010 and on 4 January 2011:

*Pastor Alex Omokudu Healing Ministry Testimonies, 22 December 2010, 10:00*

A cancer healing “testimony” was made by a woman who had attended a healing by Pastor Alex Omokudu at the Victorious Pentecostal Assembly (VPA). She said she had originally collapsed with “a tumour in her head”. Her relative, standing at her side, explained that after the woman with the tumour left hospital she went to the VPA and “purchased” Ribena (allegedly representing the blood of Christ) and “oil”. Her relative explained that the woman with the tumour stopped taking her medication for seizures, continued to take Ribena, and that when she went for a scan she was told “*there wasn’t a problem*”.

*Bishop Climate Irungu Ministries, 4 January 2011, 15:00*

Bishop Climate Irungu spoke directly to screen and recounted healing a woman with cancer. He stated that following the healing she returned to the doctor the “*cancer had stopped growing and now it was shrinking*”.

Ofcom considered that such material raised potentially serious issues under the Code. In particular, Ofcom was concerned about the risk that as a result of watching the “testimonies” and preaching, viewers with serious medical conditions would either not seek or discontinue conventional medical treatment.

Ofcom notified the Licensee, in advance of a formal investigation, to take immediate steps to ensure that the content broadcast on the service did not include similar potentially dangerous or unsubstantiated claims referred to above. Ofcom also notified the Licensee of its concerns about the apparent promotion of products such as CDs and DVDs in some of its programming. Ofcom informed the Licensee that it would be undertaking further monitoring of the service.

In addition, Ofcom noted that in the content viewed, commercial products were referred to as follows.

*UK World Evangelism, 21 December 2010, 08:30*

Presenter: “*I want to introduce you to some of my ministry material. And I want to encourage you to get them. You can phone to get them or get them through our website [telephone and website details on screen]. One of them is Sing Africa II DVD [holds up DVD] which just came out the*

*press. Why not order this. It will be a blessing to you. Sing Africa II. And be a winner. The Lord bless you as you listen to this. And also you can get this CD of Sing Africa II CD [holds up the CD]. If you want it in CD or DVD you can get it. Or you can get it in tape [holds up the tape].”*

*Paul Lewis Ministries, 21 December 2010, 09:40*

Paul Lewis: *“And my friend, as I go off the air I want to tell you about a book that I wrote [holds up the book]. It’s called Walking in the Spirit. I wrote this book there in Israel on the at blue, sandy blue shore sea of Galilee, where 95% of Jesus’ miracles was performed. His ministry miracle ministry was performed. And I want to tell you how to get one of this book. It will bless your soul. One of my books. Call for it. Log in on our website that’s how can you get Dr Paul Lewis’ book Walking in the Spirit.”*

Having notified the Licensee to take immediate steps to remove potentially dangerous or unsubstantiated claims from its service, Ofcom conducted further monitoring of Believe TV on 1 and 2 February 2011. Having considered this material, Ofcom did not find any evidence of further broadcasts featuring Paul Lewis. However, on these further dates monitored (1 and 2 February 2011), Ofcom noted further broadcast content which raised similar issues under the Code to those noted in the material referred to Ofcom by the ASA, for example:

- Cancer healing “testimonies” and claims.
- Members of the congregation at the VPA claiming to give up their medication as a result of the receiving healing at the church.
- Members of the congregation at VPA claiming to have disregarded conventional medical advice and treatment in favour of healing at the church.
- Infertility healing “testimonies” and claims.
- Claims of healing of other serious medical illnesses, for example: blood pressure problems, heart disease and drug and alcohol addictions.

Ofcom therefore wrote to the Licensee on 21 March 2011 pointing to specific examples of content that raised potential issues under the Code. Ofcom invited the Licensee to make formal representations to Ofcom setting out how it considered this material complied with the following rules of the Code<sup>3</sup>:

- Rule 2.1: Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.
- Rule 4.6: Religious programmes must not improperly exploit any susceptibilities of the audience.
- Rule 10.2: Broadcasters must ensure that the advertising and programme elements of a service are kept separate.

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<sup>3</sup> All references to the Broadcasting Code in this finding refer to the December 2010 Code which was in force at the time of the broadcasts.

**Rule 10.3:** Products and services must not be promoted in programmes. This rule does not apply to programme-related material.

In view of the potential seriousness of the issues involved in this case, Ofcom also required the broadcaster to attend a meeting, which took place at the end of February 2011. At the meeting the Licensee explained its general compliance arrangements going forwards and sought to reassure Ofcom that it was fully aware of its obligations as a licensee under the Code.

The Licensee also advised Ofcom that it had reviewed its approach to compliance and had employed additional staff to carry out this function in house.

## **Response**

The Licensee did not provide formal representations in response to Ofcom's request of 21 March 2011 for formal comments on how certain material complied with specific provisions of the Code. It did, however, provide Ofcom with general compliance guidance notes which it had prepared following its meeting with Ofcom in late February 2011. The guidance included the earlier ASA and Ofcom breach decisions relating to the Paul Lewis material broadcast on other programme services in 2007 and 2008 and a summary of other relevant rules.

## **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: "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of harmful material; "broadcasters exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes"; and that "religious programmes do not involve any improper exploitation of any susceptibilities of the audience for such a programme."

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section Two of the Code so as to provide adequate protection for members of the public from harmful material; and with Section Four of the Code to ensure that religious programmes do not improperly exploit any susceptibilities of the audience (see above for the specific provisions).

In reaching this decision Ofcom has taken account of the right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights ("ECHR"). Article 10 provides for the right of freedom of expression, which provides that everyone has the right to freedom of expression including the right to hold opinions and to receive and impart information and ideas without interference from a public body, and that the exercise of this right may be subject to restrictions and conditions as are prescribed by law and are necessary in a democratic society in the interests, for example of public safety and/or for the protection of health or morals. 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 Code and the requirements of statutory and common law. Therefore under section 3 (4) of the Act, Ofcom is specifically required, when performing its general duties, to have regard (where relevant) to the need to

secure that the application of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material is in the manner that best guarantees an appropriate level of freedom of expression.

Ofcom has also had regard to Article 9 of the ECHR which states that everyone “has the right to freedom of thought, conscience and religion.” This Article goes on to make clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others.”

Broadcast content may therefore include material in which individuals express their experiences of healing through prayer and which includes religious preaching where prayer is presented as a means of supporting individuals through illness and personal difficulties. In considering this case, Ofcom has had due regard to this and taken into account that a number of people find comfort and solace from prayer or a belief in faith healing when ill or encountering personal difficulties. Prayer and faith have also been reported by some to be materially important factors in the recovery of a number of individuals from illnesses.

Ofcom’s statutory duties are not to question or investigate the validity of religious belief or its consequences but to require broadcasters to comply with the standards in the Code in order to: provide adequate protection for members of the public from harmful material being broadcast; and ensure that religious programmes do not involve any improper exploitation of any susceptibilities of the audience for such programmes.

Therefore when investigating concerns that may arise from the broadcast of content which includes “testimony” of healing of serious illnesses from believers or preachers who offer healing, Ofcom must have regard to the right to freedom of expression and freedom of religion of the broadcaster and audience, taking into account that the exercise of that right is subject to Ofcom’s various statutory duties to provide adequate protection for the public from potentially harmful material and to prevent audiences for religious programmes being improperly exploited.

However, potential compliance issues may arise under the Code where such content has the potential to lead to harm or where there is any likelihood for the content to improperly exploit any susceptibilities of the audience. In considering the content broadcast on the service Believe TV, Ofcom’s concerns focussed specifically on material that it considered to have the potential to cause harm or exploitation as a result of:

- claims of healing of serious illnesses such as cancer<sup>4</sup> and other illnesses where potential conventional medical treatment may also be required but was not referred to; and
- claims that conventional medication and treatment for serious and other illnesses could be abandoned in the place of healing or non-conventional treatments such as soap, Ribena and anointed olive oil.

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<sup>4</sup> The Cancer Act 1939 (section 4) makes it a criminal offence for anyone to publish an advertisement offering to treat any person with cancer or prescribe any remedy or to give any advice in connection with treatment

**Rule 2.1 (protection of the public) and Rule 4.6 (religious programmes must not improperly exploit any susceptibilities of the audience)**

Rule 2.1 states that generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material. This rule is specifically concerned with the protection of viewers from harm.

In assessing whether there was a breach of Rule 2.1, Ofcom therefore had to consider whether the “testimonies” broadcast could have encouraged viewers to believe that the illnesses featured could or should be treated through faith healing or anointment with certain products *alone*. If this was the case, there was a potential for harm because some viewers with serious illnesses - especially more vulnerable ones - may not seek, or abandon existing, conventional medical treatment on the basis of what they had seen on Believe TV. This clearly could potentially have damaging, and possibly even fatal, effects. As part of this consideration, Ofcom needed to examine whether the Licensee took any steps to provide adequate protection for viewers (who may be of the view from the content that faith healing alone can cure or treat individuals) for example by supplying appropriate information to viewers advising them to consult a qualified doctor.

Rule 4.6 states that religious programmes must not improperly exploit any susceptibilities of the audience. The Code guidance<sup>5</sup> makes clear to broadcasters that when they are soliciting a response from their audience, such as an invitation to viewers to purchase a product which claims to have healing properties, they need to take care and recognise the possible risk to audience members, particularly the vulnerable.

**Broadcast content**

All of the content on Believe TV was religious programming, being programmes which dealt with matters of religion as the central subject, or a significant part, of the programme.

Examples of the broadcast content

(1) *Paul Lewis Ministries, Believe TV, 21 and 22 December 2010*

Ofcom reviewed two examples of content broadcast on Believe TV on 21 and 22 December 2010 with specific reference to Rules 2.1 and 4.6 of the Code. These programmes featured Paul Lewis preaching directly to camera and clips of him “healing” in a church environment.

As previously noted, Paul Lewis programmes promoting “Miracle Olive Oil Soap” previously featured in an advertisement broadcast on another channel (Deal TV)<sup>6</sup>, which was found in breach of the BCAP Code in 2007; and in editorial content on two

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<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section4.pdf>

<sup>6</sup> [http://www.asa.org.uk/ASA-action/Adjudications/2007/5/Deal-TV-Limited/TF\\_ADJ\\_42553.aspx](http://www.asa.org.uk/ASA-action/Adjudications/2007/5/Deal-TV-Limited/TF_ADJ_42553.aspx)

other channels (Passion TV and Ben TV)<sup>7</sup> which led to a breach of Rule 4.6 of the Code in 2008 for exploiting the susceptibilities of the audience.

In the material broadcast on Believe TV, Ofcom noted members of the church speaking to Paul Lewis about the “healing” they experienced after using a product endorsed by him also referred to as ‘Miracle Olive Oil Soap’. This product, and its associated healing, was available to viewers by ringing a telephone number promoted on screen at the same time. Examples of references made to the healing properties of the product are detailed below:

Believe TV, 21 December 2010

[A female member of the congregation stated]:

*“Dr Paul Lewis came and he told me to take a bath with one of his olive oil soaps...I have no cancer no more”.*

Believe TV, 22 December 2010

[Paul Lewis speaking to a woman with diabetes and receiving kidney dialysis]:

*“God is going to heal your body. God will give you brand new kidneys without an operation. I want you to take a bath with this soap tonight...your diabetes is going to be healed”* and;

[A second female member of the congregation stated]:

*“I used that soap last night. My left arm was bothering me and my lower back. I used that soap and the pain just went away”.*

Ofcom noted that the above testimonies were presented in such a way so as to clearly encourage viewers to believe that the ‘Miracle Olive Oil Soap’ alone could heal serious illnesses, including cancer, kidney failure and diabetes and that conventional medical treatment of the illness was not required for this healing to take place, for example: *“God will give you brand new kidneys without an operation...your diabetes is going to be healed”.*

In addition, Ofcom also noted that, during the broadcast on 21 December, Paul Lewis was featured speaking directly to camera saying:

*“...there is a lady watching. Her name is Michelle...you are sick in body. Why don't you call me? Let me send you my Miracle Olive Oil Soap. Let the Lord work a miracle in your life...reach out your hands towards my hands. Let me pray with you.”* An on-screen caption stated *“Call Now For Your FREE Miracle Olive Oil Soap Inside UK [freephone number] Outside UK [local rate number]”*

*“there is a woman right now...you are three months behind your mortgage and you feel like they are going to take your house. No they won't. I promise you they won't. Why don't you pick up the phone and call me. Call that toll free number. Let me rush you my Miracle Olive Oil Soap.”* An on-screen caption stated *“Call Now For Your FREE Miracle Olive Oil Soap Inside UK [freephone number] Outside UK [local rate number]”*

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<sup>7</sup> See <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb113/> and <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb117/>

The content broadcast on Believe TV on 21 and 22 December 2010 clearly stated that healing could, and indeed would, take place should viewers obtain the product being promoted on screen by calling the on-screen number.

(2) Other content on Believe TV, 21 and 22 December 2010, 4 January and 1 February 2011

Whilst viewing the Paul Lewis material, Ofcom also noted other content on Believe TV that raised potential issues under Rule 2.1 and Rule 4.6 of the Code. This included programme content featuring “testimonies” with Pastor Alex Omokudo from the Victorious Pentecostal Assembly (VPA), a church in London, and a programme featuring healing preaching from Bishop Climate Irungu. Some illustrative examples of this content are set out below:

*Pastor Alex Omokudu Healing Ministry Testimonies*

Believe TV, 21 December 2010, from 17:20

A healing “testimony” was presented by a man who said he had been diagnosed with a terminal brain tumour and had two years to live. He said he came to the VPA at that time and Pastor Alex Omokudu said he would live. His daughter asked him what did he use and he said: “I use olive oil”. In response Pastor Omokudu commented: *“We have the answer. Doctors do not have the answer – we have got the answer. We have got the answer to healing”.*

Believe TV, 22 December 2010, 10:00

A cancer healing “testimony” was made by a woman who said she had collapsed with *“a tumour in her head”*. Her relative, standing at her side, explained that after the woman with the tumour left hospital she went to VPA and “purchased” Ribena (allegedly representing the blood of Christ) and “oil”. Her relative explained that the woman with the tumour stopped taking her medication for seizures, continued to take Ribena, and that when she went for a scan she was told *“there wasn’t a problem”*.

Believe TV, 1 February 2011, 01:10

A “testimony” from a woman was broadcast in which she explained her medical history of *“pressure”* and *“pain”* and her need to take prescribed medications *“to reduce pressure and to sleep”*. The woman held up the bag of tablets and stated: *“since I came to VPA I have never taken any of these tablets”*. This clip was repeated several times on this date.

Believe TV, 1 February 2011, 01:34

A “testimony” was broadcast from a man who was told he had cancer. He said he visited Pastor Alex Omokudu and started *“drinking Ribena and oil”*. He said: *“the results of tests say I am now clear.”* Pastor Alex Omokudu responded: *“Cancer free, cancer free, cured cancer again. This is a miracle. It will never come near you again. Cancer free.”*

Believe TV, 1 February 2011, 06:48

A “testimony” was broadcast from a woman who had experienced *“kidney and heart problems and hypertension”* who said she was healed of these medical conditions at VPA.

Believe TV, 1 February 2011, 06:48

A “testimony” was broadcast by a woman experiencing pain in her knee and lower back. She stated that she was *“not going to go to the GP”* and would take the *“anointing oil”* instead. She said the next day her pains had gone.

### *Bishop Climate Irungu Ministries*

Ofcom also noted that output broadcast on 4 January 2011 and 1 February 2011 featured Bishop Climate Irungu speaking directly to camera and recounting incidences of his healing. He encouraged viewers throughout the broadcast to call an on-screen number to a “*prayer line*” and they would receive healing.

#### Believe TV, 4 January 2011, 15:21

Bishop Irungu called on any person viewing with “*an abnormal growth growing out of their body*” to call the prayer line immediately and he would “command” the body to “*function...properly*” and the growth to die. He also recounted healing a woman with cancer and when she returned to the doctor the “*cancer had stopped growing and now it was shrinking*”.

#### Believe TV, 1 February 2011, 03:19

Bishop Irungu has “premonitions” of illnesses being experienced by viewers who are watching and encourages the viewers to call two onscreen numbers. Bishop Irungu states:

- “*A lady...with a cyst of her ovaries. God is healing you tonight*”
- “*Someone... with an alcoholic problem. Call that number. I am going to give you deliverance.*”
- “*A woman...addicted to drugs and smoking. Call that number right now.*”
- “*High blood pressure, leukaemia...I want to pray with you...call the number. Do not delay.*”

With reference to the Paul Lewis, Pastor Alex Omokudu and Bishop Climate Irungu examples detailed above, Ofcom concluded that all of this material was intended to demonstrate to viewers that the healing or treatment of very serious illnesses, including cancer, could be achieved exclusively through healing provided by a product such as soap, Ribena or oil and/or through contacting a prayer line or by Pastor Alex Omokudu or Bishop Irungu. In summary, the “testimonies” and healing examples set out above included:

- numerous references to healing cancer, or illnesses presented as cancer, through faith healing or anointed products such as ‘Miracle Olive Oil Soap’, oil and Ribena alone;
- statements, from some of those providing “testimony”, that prescribed medication would no longer be taken (see 22 December 2010 at 10:00); or they would not be “*going to the doctor*” in favour of healing from the church (see 1 February 2011 at 06:48;
- references which endorsed faith healing over conventional medical treatment for example, Dr Alex Omokudu: “*doctors do not have the answer – we have the answer*”(21 December 2010 at 17:20); and
- suggestions that conventional medical treatment would not even be required if the product was used such as, Paul Lewis: “*God will give you brand new kidneys without an operation...your diabetes is going to be healed*”.

### Ofcom’s findings

Ofcom therefore considered whether the Licensee had taken any appropriate steps to provide the audience with adequate protection from harm, as required by Rule 2.1 when broadcasting this content on its service.

Ofcom considered this was especially important when considering cancer healing claims because Section 4 of the Cancer Act 1939 makes it a criminal offence for anyone to publish an “advertisement” offering to treat anyone with cancer or give any advice with the connection or treatment of cancer. Whilst the editorial content on Believe TV may not be interpreted strictly as an “advertisement”, the existence of such a crime on the statute book highlights that Parliament considered the public provision of any advice on how to treat cancer to be in a special category, and therefore that it should be tightly regulated in the public interest and only made by those specially authorised to do so.

Having reviewed all of the content extensively, Ofcom could not identify any steps that the Licensee had taken to place a caveat around the claims for faith healing, or provide information to put the claims into any form of context and therefore provide adequate protection to viewers. How such adequate protection might be achieved is an editorial matter for the individual broadcaster. However, Ofcom noted for example that there were: no references for the need for people with any potentially serious illness to consult a doctor; nor any advisory text on-screen suggesting to viewers that they should seek medical advice before abandoning prescribed medicines; nor any examples where it was made clear that individuals making “testimonies” of healing had continued or were continuing to receive conventional medical treatment for serious illnesses.

It is Ofcom’s conclusion therefore that some viewers may have reasonably understood that serious medical conditions could be healed through faith healing or healing with special products alone and that conventional medical treatment could be abandoned or not even sought in favour of faith healing or special products alone.

Given that some viewers who may have watched this material may also have been suffering from serious medical conditions, and were therefore likely to be in a vulnerable state, Ofcom also concluded that this material clearly had the potential to cause harm, and possibly very serious harm. In view of the fact that the Licensee did not take steps to provide viewers with adequate protection from this potential harm by providing any context to the claims made, Ofcom concluded that the Licensee did not apply generally accepted standards. Rule 2.1 was therefore breached.

With reference to Rule 4.6, Ofcom noted that the Paul Lewis content clearly presented to viewers that healing occurred, or would take place, directly as a result of the purchase and use of ‘Miracle Olive Oil Soap’. Further, those giving “testimony” at the VPA stated that their healing came about through attendance at the church with Pastor Alex Omokudu and through the purchase of products such a Ribena (representing the blood of Christ) and anointing oil.

In addition, Ofcom noted that the examples of material featuring Bishop Climate Irungu encouraged viewers to call a prayer line and healing could, and indeed would, take place if the viewer telephoned the on-screen number. For example, during a programme broadcast on 4 January 2011, Bishop Irungu offered anointment to a man with “*an abnormal growth on his neck*” and called on any other person viewing with “*an abnormal growth*” to call the prayer line and he would offer anointment to make the body “*function...properly*”.

In Ofcom’s view this material was aimed, in particular, at potentially vulnerable viewers such as those in financial difficulties or experiencing serious illness and had the potential to improperly exploit their vulnerability. In addition the cumulative effect of the repeated “testimony” or healing related to the examples broadcast in these programmes on Believe TV was significant, especially for vulnerable viewers. This

was all the more notable because, as already detailed above, the broadcaster did not provide any additional information to viewers to seek medical advice or to maintain medical care whilst receiving faith healing and the self selecting audience of Believe TV, given that it is a religious service, were less likely to question the content broadcast and be susceptible to the claims presented.

Consequently, potentially vulnerable viewers who may have been in the audience, were left with the repeated impression, through the “testimony” and preaching broadcast on the service, that healing of serious medical conditions could, and would, take place if the promoted products such as soap, oil and Ribena were acquired, or if telephone calls were made to a prayer line or when attendance at the church took place. Further, the claims made in the programmes were not supported or substantiated by any form of objectively verifiable evidence.

Given that the content was also soliciting a response from viewers and such individuals experiencing serious illnesses may be vulnerable to the healing claims being made, Ofcom concluded that there was a material risk that susceptible members of the audience may be exploited by the material broadcast on Believe TV. This was a breach of Rule 4.6.

**Rule 10.2 (the separation of advertising and programme elements) and Rule 10.3 (the promotion of products during programmes)**

One of the fundamental principles of European broadcasting regulation is that advertising and programming (that is editorial content) must be kept distinct. This is set out in Article 19 of the Audiovisual Media Services (AVMS) Directive which is in turn reflected in the Code rules for commercial references in television programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

Rule 10.2 of the Code states that broadcasters must ensure that the advertising and programme elements of a service are kept separate.

Rule 10.3 of the Code requires that products and services must not be promoted in programming. There is a limited exception to this rule for the promotion of programme-related material (“PRM”). The Code defines PRM as products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme.

The purpose of Rules 10.2 and 10.3 is to ensure that commercial references in programmes do not compromise the editorial independence of the broadcaster. Editorial (programming) and advertising elements should be kept separate in order to prevent programmes from becoming vehicles for promoting products.

**Broadcast Content**

Examples of the broadcast content:

(1) Paul Lewis Ministries, Believe TV, 21 and 22 December 2010

As set out above, the ‘Miracle Olive Oil Soap’ was directly promoted through on-screen text, through a series of testimonies and from Paul Lewis speaking to camera, e.g. *Why don't you call me? Let me send you my Miracle Olive Oil Soap. Let the Lord work a miracle in your life...reach out your hands towards my hands. Let me pray*

*with you.*” An on-screen caption stated “*Call Now For Your FREE Miracle Olive Oil Soap Inside UK [freephone number] Outside UK [local rate number]*”.

In addition, Ofcom noted that during the programme *Paul Lewis Ministries* broadcast on 21 December 2010, Paul Lewis stated the following.

Paul Lewis: *“And my friend, as I go off the air I want to tell you about a book that I wrote [holds up the book]. It’s called Walking in the Spirit. I wrote this book there in Israel on the at blue, sandy blue shore sea of Galilee, where 95% of Jesus’ miracles was performed. His ministry miracle ministry was performed. And I want to tell you how to get one of this book. It will bless your soul. One of my books. Call for it. Log in on our website that’s how can you get Dr Paul Lewis’ book Walking in the Spirit.”*

(2) Other content on Believe TV, 21 and 22 December 2010, 4 January and 1 February 2011

Ofcom noted that during the programme *UK World Evangelism* broadcast on Believe TV on 21 December 2010, the presenter clearly promoted tapes, CDs and DVDs.

Presenter: *“I want to introduce you to some of my ministry material. And I want to encourage you to get them. You can phone to get them or get them through our website [telephone and website details on screen]. One of them is Sing Africa II DVD [holds up DVD] which just came out the press. Why not order this? It will be a blessing to you. Sing Africa II. And be a winner. The Lord bless you as you listen to this. And also you can get this CD of Sing Africa II CD [holds up the CD]. If you want it in CD or DVD you can get it. Or you can get it in tape [holds up the tape].”*

The presenter made calls to action to viewers to buy the products: “*You can phone to get them or get them through our website [telephone and website details on screen]*” and “*This is a message that will bless your life. You need to listen to it, order it!*”

Ofcom’s findings

The items described on air (as set out above) appeared to Ofcom to be self-standing commercial products produced by Paul Lewis (the ‘Miracle Olive Oil Soap’ and his book) and, in the case of the other content, tapes, CDs and DVDs produced by the ministry. Ofcom could find no evidence that any of these products were directly derived from the programmes in question, or that they were intended to allow viewers to benefit fully from, or to interact with, the programme. Therefore Ofcom concluded that the products did not meet the Code’s definition of PRM.

Ofcom considered that the manner in which all these products were described on air was highly promotional, as set out above. The references to the products included a number of claims about what would happen to viewers who purchased the products (for example: “*Let the Lord work a miracle in your life...*”, “*Why not order this? It will be a blessing to you. Sing Africa II. And be a winner*”, and “*This is a message that will bless your life. You need to listen to it, order it!*”).

The references to the products also included a number of ‘calls to action’ and direct encouragements to viewers to purchase the products, including contact details and sources for purchase (for example: “*Call Now For Your FREE Miracle Olive Oil Soap*”

*Inside UK [freephone number] Outside UK [local rate number]”; “Call for it. Log in on our website that’s how can you get Dr Paul Lewis’ book Walking in the Spirit.”; and “You can phone to get them or get them through our website [telephone and website details on screen]”*

Ofcom therefore found that the products were promoted overtly, in breach of Rule 10.3 of the Code.

In both cases, Ofcom considered that the references to the products were made in such a highly promotional manner that they appeared akin to advertising within a programme. Ofcom therefore also found the programmes in breach of Rule 10.2 of the Code.

## **Conclusion**

The protection of viewers from harm and exploitation is a fundamental requirement of the Code. This is particularly the case where those viewers are vulnerable and therefore likely to be more susceptible to any claims made, and where some of those claims were made overtly and in a manner which was akin to advertising.

In this finding Ofcom records breaches of Rules 2.1, 4.6, 10.2 and 10.3 of the Code. Although the contraventions of Rules 10.2 and 10.3 cause concern, Ofcom considers that the breaches of Rules 2.1 and 4.6 it has recorded in this case are so serious as to warrant consideration of a statutory sanction. These breaches occurred because over a period of several months the Licensee clearly did not have adequate compliance arrangements in place and, as a consequence, potentially put its viewers at risk of harm to their health and safety, and of exploitation.

When Ofcom in 2008 previously recorded breaches against Paul Lewis content broadcast on other channels in 2007 and 2008, the regulator stated that the breaches of Rule 4.6 were very serious because the promotions of the Paul Lewis products improperly exploited the susceptibilities of vulnerable viewers of these religious channels. By failing to ensure it was aware of previous adjudications relating to similar Paul Lewis content, the Licensee broadcast further Paul Lewis content of this type and other similar content, as detailed in this finding. This raised similar concerns relating to Rule 4.6 of the Code and exploited the susceptibilities of the most vulnerable viewers.

The Licensee also broadcast material where there was a likelihood that significant potential harm may have resulted. It is Ofcom’s view that any material broadcast which may lead to a material risk to the health and safety of the audience must always be considered a significant breach of the Code.

In deciding what further regulatory action to take in this case, Ofcom took into consideration all relevant circumstances in addition to the material broadcast by the Licensee.

Ofcom considered that at no time were steps taken by the Licensee to provide adequate protection to members of the public from harm or exploitation, taking into account the fact that the self selecting audience of Believe TV, given that it is a religious service, may have been less likely to question the potentially harmful and exploitative content broadcast. The Licensee did not appear to have adequate compliance arrangements in place prior to its meeting with Ofcom. At this meeting the Licensee sought to reassure Ofcom of its compliance arrangements. The internal

guidance note provided by the Licensee after the meeting however did not reassure Ofcom of the adequacy of the Licensee's compliance procedures going forward.

Ofcom also had regard to what it considered was the Licensee's overall very poor compliance, as demonstrated by its failure to keep itself informed about and act on the previous ASA and Ofcom breaches for the Paul Lewis content, and to ensure it was fully aware of the requirements of the Code and its responsibilities as a broadcaster. This poor compliance placed vulnerable viewers directly at risk of harm and exploitation.

For all these reasons, Ofcom considers the breaches of Rules 2.1 and 4.6 specifically set out above relating to various broadcasts between 22 December 2010 and 1 February 2011 and recorded in this finding are particularly serious. They are also repeated.

Consequently, the Licensee is put on notice that the breaches of Rules 2.1 and 4.6 in this case are being considered for the imposition of a statutory sanction.

**Ofcom advises all broadcasters transmitting religious content containing examples of faith healing or "testimonies" of such healing to ensure that viewers who are vulnerable and/or suffering from serious illnesses are adequately protected from potential harm and exploitation.**

During this investigation, Ofcom has uncovered potential further concerns with the operation of this channel. These are currently under investigation by Ofcom's Licensing team.

**Breaches of Rules 2.1, 4.6, 10.2 and 10.3**

## In Breach

### Coverage of the Baishakhi Mela

Channel S, 8 May 2011, 15:24

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#### Introduction

Channel S is a free-to-air satellite general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel S is held by Channel S Global Limited (“Channel S” or “the Licensee”). This programme consisted of live coverage of the ‘Baishakhi Mela’ event in East London. This event is an annual open air music and cultural festival held in the London Borough of Tower Hamlets to celebrate the Bengali New Year.

A viewer alerted Ofcom to a programme featuring a speech by Ken Livingstone, the Labour Party candidate for the May 2012 London Mayoral Election, in which he criticised the current Mayor of London, Boris Johnson. The complainant considered that the programme was not duly impartial and became an “election rally” for Ken Livingstone.

Ofcom reviewed a half-hour section of Channel S’s coverage of the ‘Baishakhi Mela’ event commencing at approximately 15:00. Ofcom noted that at one point during the coverage of the ‘Baishakhi Mela’ event, the Labour party politician, Ken Livingstone, was introduced onto the stage and he delivered the following speech:

*“Thank you very much brothers and sisters. Just to say, I’m really proud to be here in one of the most vibrant communities in this city. One that’s been transformed in my lifetime, and one that adds so much to the quality of life of this city. This is an amazing place, but let’s not forget in this greatest city in the world, there is still too many people, poor people, people who can’t get a job, people who can’t get a home, and we need to have a fairer city as well as such an amazing diverse one. That’s the promise I give to you: Tower Hamlets and the East End of London will always be at the centre of my heart, my attention. We want to make it a better place for everybody to live, and be in a situation where the rest of the world sees London as a beacon of tolerance, of people living side by side. We went through a terrible attack in 2005: people who wanted to divide our city, but we stood together. And that was our great strength. That’s what we will build on. And I’ll have to tell you if I’m elected Mayor next year, we’re going to build a lot more in terms of: better transport; better housing; and jobs for the communities that Boris Johnson has neglected. Thank you very much”.*

Ofcom considered the material raised issues warranting investigation under 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”.*

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

## Response

In its response, Channel S said that the 'Baishakhi Mela' event was organised by Tower Hamlets Council, who had invited representatives of different political parties to attend the event. In addition, the Licensee attached a list of the invitees to the event, and said that Tower Hamlets Council "provided an advance running order, from which we understood that other local council guests from other political parties were invited to appear, in accordance with Ofcom requirements, but on the day they did not". In conclusion, Channel S said it did "not consider that Channel S has breached Rule 5.5".

## Decision

Under the special impartiality requirements of the Communications Act 2003, Ofcom has a duty to ensure 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.

Rule 5.5 therefore 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."

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 Code and the requirements of statutory and common law. It should be noted that 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 the present one), to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy. Therefore, while 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 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 consisted of live coverage of the 'Baishakhi Mela' cultural festival that took place in the East End of London. At one point during the programme, Ken Livingstone, the Labour Party's candidate for the 2012 London Mayoral Election was shown coming on to the festival stage and delivering the speech laid out in the Introduction. In this speech, Ken Livingstone briefly set out some of the policy prescriptions that, in his view, were needed in London; and criticised the policies of the current Mayor of London, Boris Johnson.

Section Six of the Code lays out the applicable Code Rules with which broadcasters must comply when covering candidates in elections. The Rules in Section Six only apply during the relevant 'election period'<sup>1</sup>. In this case the programme was broadcast before the election period for the 2012 London Mayoral Election began. Therefore, the Rules contained in Section Six of the Code were not applicable in this case<sup>2</sup>.

This programme however featured Ken Livingstone, a candidate in a forthcoming election (the May 2012 London Mayoral Election), discussing policy issues in relation to the electoral area in which he is seeking election. Ofcom therefore considered that the programme dealt with a matter of political controversy - namely, policy issues relating to the office of Mayor of London, and specifically the policies of Ken Livingstone, the prospective Labour Party candidate for the 2012 London Mayoral Election. Rule 5.5 was therefore applicable.

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.

We noted that a number of representatives of different political parties had been invited to attend the 'Baishakhi Mela' event by the organisers of the event, Tower Hamlets Council. However, the fact that such invitations had been extended by Tower Hamlets Council, did not remove the need for Channel 5, as the responsible Licensee, to reflect, in an appropriate way, alternative viewpoints in the programme to the viewpoint put forward by Ken Livingstone, the prospective Labour party candidate in the future London mayoral election.

Due to the fact that this programme was broadcast outside an election period, there was no obligation for the Licensee to ensure the participation of other prospective candidates in the 2012 London Mayoral Election in the programme. However, Rule 5.5 did require that alternative viewpoints to that expressed by Ken Livingstone needed to be reflected within the programme.

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<sup>1</sup> Under the Code the 'election period' for London Mayoral Elections begins with "the last date for publication of notices of the election".

<sup>2</sup> Under Rules 6.9 and 6.10 the Code, during an election period, if a broadcaster transmits an item dealing with a constituency or electoral area that features a candidate in that constituency or electoral area, then the broadcaster must ensure that: each of the major parties is offered an opportunity to take part; as well as those parties with evidence of significant previous or current electoral support.

Within the coverage viewed by Ofcom, we could not identify any alternative views which could be reasonably and adequately classed as supportive of, or which sought to explain the policies of, for example, the Conservative party or Liberal Democrat party, in relation to the forthcoming 2012 London Mayoral Election. This programme when considered alone gave a completely one-sided view on this matter of political controversy – that of Ken Livingstone. Further and importantly, the Licensee did not provide to Ofcom any evidence of alternative viewpoints being broadcast on the service, either in the whole of the programme itself, or in any 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.

### **Breach of Rule 5.5**

## In Breach

### Wife Swap

*Discovery Real Time, 28 May 2011, 14:00*

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#### Introduction

A complainant alerted Ofcom to the use of the word “fucking” in this programme.

*Wife Swap* is a well established reality television series in which couples from different backgrounds exchange lives and families for two weeks.

The first one and a half minutes of this programme comprised a brief introduction to the families taking part in this episode and some footage from later parts of the programme that showed some of the participants arguing with each other. Offensive language that occurred in that footage was bleeped.

However, approximately six minutes into the programme a woman stated to camera:

*“each bed has to be made to perfection and each one takes a good seven to eight minutes?...I’m...seven to eight minutes to make a fucking bed?”*

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

“The most offensive language must not be broadcast before the watershed...”

Discovery Real Time is owned and operated by Discovery Communications Europe Limited (or “the Licensee”).

Ofcom requested formal comments from the Licensee on how the programme material complied with Rule 1.14.

#### Response

Discovery Real Time explained that the offensive language had occurred during this broadcast “due to human error”. It explained that it had implemented a number of internal processes with regards to programme material that contains offensive language to “ensure no further breaches of this nature occur”. These processes include:

- the review of all future episodes of *Wife Swap* scheduled pre-watershed to ensure all examples of offensive language have been removed;
- “second level checking” for material that includes high levels of offensive language;
- investigating the technical possibilities of using IT systems to highlight problematic content at the earliest opportunity; and
- the implementation of additional training sessions with staff to ensure they are aware of “the need to be particularly vigilant about offensive language ...”.

The Licensee explained “Discovery makes every endeavour to ensure its compliance level for content is high. We hope the [internal processes highlighted] demonstrate to

Ofcom the seriousness with which we treat this issue and our commitment to ensuring no further breaches of this nature occur.”

## Decision

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

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. Such language is unacceptable before the watershed, whatever the audience profile of the channel.

Ofcom welcomes the action taken by the licensee, since it became aware of the transmission. However, Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...”. The broadcast of the word “fucking” in this programme was therefore a clear breach of Rule 1.14.

Further, Ofcom notes that the broadcast content for all Discovery services is compiled on a central basis. Since 2008, three breaches of Rule 1.14 have been recorded in relation to programmes broadcast on Discovery network services<sup>2</sup>, all of which had resulted from human error. As a result, in 2009, Ofcom required the licensee to attend a meeting to discuss its compliance procedures.

Broadcasters are under a clear duty to ensure that robust procedures are in place to ensure full compliance with the Code. Ofcom does not expect any recurrence of these issues on Discovery services.

## Breach of Rule 1.14

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

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb100/issue100.pdf>  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb102/issue102.pdf>  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb130/issue130.pdf>  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb130/issue130.pdf>

## In Breach

### Provision of recordings

*Leeds Community Radio, 3 May 2011, 21:30 to 22:30*

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#### Introduction

Leeds Community Radio was a temporary radio service targeting the multi-ethnic South Asian community in Leeds which broadcast under a restricted service licence (“RSL”) between 22 April and 19 May 2011. The licence for this station was held by Mr Leslie Cooke (“the Licensee”).

On 25 May 2011, following receipt of a complaint about the service, Ofcom wrote to the Licensee requesting Mr Cooke to provide a recording of programming the Licensee broadcast on 3 May 2011. The Licensee failed to respond to this request by the deadline given and also a later, subsequent deadline set in writing by Ofcom.

Given the Licensee’s failure to provide the recording as requested, Ofcom considered the case raised issues warranting investigation under Condition 8 of the station’s licence. Condition 8 (2) of the licence states that:

“In particular, the Licensee shall:

- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time check reference; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...”

We therefore requested the Licensee’s comments as to how he complied with this Licence Condition. Mr Cooke did not provide any comments but did provide a recording to Ofcom at a later date. This recording was for 3 May 2011 but did not include the programme referred to by the complainant.

We therefore wrote to the Licensee again on 25 July 2011, asking him to confirm whether the recording we had received was correct and, if not, asked him to provide the correct recording by 2 August 2011. Despite a number of emails from, and phone calls by, Ofcom to the Licensee, as of 22 August 2011, Ofcom had not received the recording of the programme referred to by the complainant.

#### Response

In correspondence the Licensee apologised for his delay in responding to Ofcom and said that this was due to the Licensee’s manager having been away. Mr Cooke also stated that the Licensee took the rules and regulations of Ofcom very seriously and had explained this to his presenters and staff.

#### Decision

Ofcom noted that it formally asked Mr Cooke on several occasions to provide a recording of the output at the date and time specified so that Ofcom could listen to it and decide whether it raised issues under the Code. The Licensee failed on four

occasions to provide the recording forthwith on Ofcom's request, as required by his licence, and provided no valid reasons to justify his repeated failure in this respect. We therefore concluded that the Licensee had breached Condition 8 (production of recordings forthwith) of his licence to broadcast.

All breaches of Condition 8 are serious because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This therefore affects Ofcom's ability to carry out its statutory duties in regulating broadcast content.

Ofcom notes the Licensee's apology. We nevertheless intend to monitor closely the compliance with licence conditions of this Licensee going forward, should he or individuals formally associated with this RSL licence, apply for a licence to broadcast in the future.

### **Breach of Licence Condition 8(2)(b)**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*Star Plus, Star Gold, 6 May 2011 to 10 July 2011, various dates and times*

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#### Introduction

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

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

During monitoring, Ofcom noted 12 instances when Star TV (the Licensee responsible for the compliance of Star Gold and Star Plus) broadcast in excess of 12 minutes of advertising in one clock hour. While Ofcom was considering these potential infringements, the Licensee alerted Ofcom to four further occasions when it had exceeded 12 minutes of advertising.

Ofcom considered the case raised issues warranting investigation under Rule 4 of COSTA and therefore sought formal comments about all of these incidents from Star TV under this Rule.

#### Response

Star TV accepted that the amount of advertising in the clock hours identified exceeded the limits imposed by COSTA. It said a new scheduling software system had been introduced at the time when these instances occurred, which failed to ensure that programmes ended at the scheduled time. Star TV explained that “this means the break actually begins later than scheduled, which in turn pushes the following breaks, or in some instances commercials from the same break, into the following clock hour.”

The Licensee provided information about the advertising minutage broadcast in the clock hours immediately before those in question to demonstrate the “on-air scheduling team had originally booked under 12 minutes of commercials in each hour, in line with COSTA, but due to the system error, the breaks did not go out at the scheduled time”.

Star TV said it was now introducing additional measures to ensure such instances do not occur again. The Licensee said this included extra staff recruitment to monitor the system on a daily basis and ensure the breaks are going out at the scheduled time, and a new procedure where staff “double-check and confirm the playlist” before it is broadcast. The Licensee said it has already begun these extra checks and “will continue to monitor the daily playlists, while we look at other scheduling software systems to remove this problem entirely.”

Star TV said it felt its actions in this area showed it takes its compliance responsibilities “extremely seriously” and would continue to monitor the situation.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of all of its licensees’ compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast on Star TV was in breach of Rule 4 of COSTA.

Ofcom welcomed the measures taken by the Licensee to address this compliance failure, and acknowledged that these errors were the result of mistakes in a software system rather than the Licensee overbooking advertising space in these clock hours.

Nevertheless, the number of breaches in this finding (16) alongside the significant period of time in which they occurred indicated to Ofcom a serious compliance problem. Moreover, Ofcom is concerned that this problem has not yet been remedied at the time of writing, when there are additional similar incidents still under investigation. Ofcom now expects the licensee to resolve the situation as soon as possible to avoid the need for further regulatory action.

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

## In Breach

### Advertising minutage

*The Africa Channel, 16 May 2011 to 7 July 2011, various dates and times*

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#### Introduction

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

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

During monitoring, Ofcom noted 17 instances when The Africa Channel broadcast in excess of 12 minutes of advertising in one clock hour. Ofcom considered these incidents raised issues warranting investigation under Rule 4 of COSTA and therefore sought formal comments about all of these incidents from The Africa Channel under this Rule.

#### Response

The broadcaster admitted the minutage overruns and offered an “unreserved apology”. The Africa Channel said these incidents were the “result of human error” and that it has now “put in place a monitoring process to ensure there is not a repeat” of the situation, The broadcaster also said it is carrying out “scheduling training to improve awareness and prevent this from recurring.”

The Africa Channel wanted to reassure Ofcom that the “total advertising” on the channel was within the COSTA limits and these overruns “were simply the result of scheduling errors” and that there “was no intention to benefit from them.”

The broadcaster said it is taking in new staff and is “constantly improving (its) workflow” and that the “new procedures that have been put in place will prevent errors like this” in the future.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of all of its licensees’ compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast on The Africa Channel was in breach of Rule 4 of COSTA.

Ofcom noted the broadcaster’s assurances that new procedures have been put in place to avoid any repetition of these incidents. However, we considered that the Licensee’s proffered explanation – human error – was inadequate to justify 17

minutage overruns over a period of nearly two months. Ofcom concluded that these breaches demonstrated a serious compliance failure at the channel. Ofcom therefore expects The Africa Channel to urgently and successfully address this matter to avoid any future recurrences and any resulting need for further regulatory action.

**Breach of COSTA Rule 4**

## In Breach

### Advertising minutage

*Zing, 18 October to 12 December 2010, various dates and times*

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#### Introduction

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

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

During monitoring, Ofcom observed that between 18 October and 12 December 2010, there were 28 separate incidents when Zing transmitted more advertising than the permitted allowance of 12 minutes in a single clock hour. Ofcom noted advertising overruns that ranged from five seconds to three minutes and 37 seconds in a single clock hour.

Ofcom wrote to Zee TV, the Licensee which owns and operates Zing, a music television channel that broadcasts in Hindi to a South East Asian audience, to request its comments under Rule 4 of COSTA.

#### Response

Zee TV informed Ofcom that the infringements had occurred as a result of changes being made to programme durations after the finalised transmission schedule had been issued, which had resulted in a series of advertising overruns. Zee TV stated that in order to prevent further infringements it had introduced the following additional compliance procedures:

- providing monthly break patterns for each programme, with any essential changes to the pattern to be co-ordinated between the operations, scheduling, IT and airtime sales teams;
- a system of manual checks to be conducted by both the airtimes sales and scheduling teams to prevent excess advertising from being scheduled. In the event that overbooking still occurs the computerised system will alert schedulers to the error so this can be corrected in advance of transmission;
- once the transmission schedule is generated, changes cannot be made unless approved by two nominated UK based staff (the channel controller and the scheduler). Any excess advertising generated by these changes will then be dropped; and
- the transmission team to perform a final check on the advertising minutage for each clock hour, after the transmission schedule is issued and before the day’s channel transmission, to ensure that any changes to programme lengths have not created advertising overruns.

#### Decision

Ofcom found that the amount of advertising broadcast by Zing was in breach of Rule 4 of COSTA.

Ofcom noted that Zee TV has taken further steps to ensure compliance with COSTA. However these compliance failures followed a previous breach recorded by Ofcom<sup>1</sup>, covering a series of earlier minutage overruns on Zing, between 3 and 14 September 2010. In those cases, Zee TV had informed Ofcom that sufficient procedures had been implemented to minimise the risk of a recurrence.

Ofcom is particularly concerned that Zee TV's procedures were clearly not robust enough to prevent further overruns, resulting in multiple, and some in some instances, substantial, breaches of Rule 4 of COSTA. Ofcom will monitor Zing closely and is likely to consider further regulatory action if these additional compliance procedures prove inadequate and this problem recurs.

### **Breaches of Rule 4 of COSTA**

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<sup>1</sup> Ofcom Broadcast Bulletin 173  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/817960/issue173.pdf>

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

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

<b>Channel</b>	<b>Transmission date and time</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
Attheraces	12 June 2011, 19:00	COSTA Rule 4	Ofcom noted, during monitoring, that Attheraces exceeded the permitted advertising allowance by 50 seconds.  <b>Finding: Breach</b>

## Resolved

### Resolved findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

“On public service channels, time devoted to television advertising and teleshopping spots must not exceed

- i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
- ii) subject to (i) above, an average of 8 minutes an hour between 6pm and 11 pm.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
S4C	1 August 2011, 18:00 to 23:00	COSTA Rule 4(a)	<p>S4C notified Ofcom that on 1 August the channel broadcast one more minute than permitted between 18:00 and 23:00.</p> <p>Ofcom noted S4C’s explanation that the overrun was the result of a combination of an unusual series of events: schedule changes stemming from the NUJ strike of that day; ten hours of live programming from the Eisteddfod; a failure in the broadcaster’s minutage counter and a programme supplier delivering programme part durations which were different to those which had been previously agreed with S4C. Together, these caused the centre break that was scheduled after 23:00 to be brought forward into the previous hour. Ofcom also noted that S4C has alerted staff to follow instructions on breaks and is monitoring its output carefully.</p> <p><b>Finding: Resolved</b></p>

Sianel	Dyddiad ac amser darlledu	Cod a rheol	Crynodeb o'r canfyddiad
S4C	1 Awst 2011, 18:00 to 23:00	COSTA Rheol 4(a)	<p>Hysbyswyd Ofcom gan S4C, ar 1 Awst, bod y sianel wedi darlledu un funud yn fwy nag a ganiateir rhwng 18.00 a 23.00</p> <p>Nododd Ofcom esboniad S4C bod y gor redeg yn ganlyniad i gyfuniad o gyfresi annisgwyl o ddiwyddiadau: newidiadau amserlen yn deillio o streic NUJ y diwrnod hwnnw; deg awr o ddarlledu byw o'r Eisteddfod; methiant yng nghownter cyfif munudau'r darlledwr a chyflenwr rhaglen yn cyflwyno rhannau rhaglen oedd o gyfnod o amser oedd yn wahanol i'r rhai y cytunwyd arnynt yn flaenorol gydag S4C. Gyda'i gilydd roedd hyn yn golygu bod y cyfnod egwyl canol oedd wedi'i amserlennu ar ôl 23.00 wedi cael ei ddwyn ymlaen i'r awr flaenorol. Nododd Ofcom hefyd bod S4C wedi hysbysu staff i ddilyn cyfarwyddiadau ar gyfnodau egwyl ac mae'n monitro ei allbwn yn ofalus.</p> <p><b>Canfyddiad: Wedi'i Ddatrys</b></p>

Rule 16 of COSTA states that:

“Restrictions apply when inserting advertising breaks during the following programmes:

- a) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;”

Additionally, Rule 3 f) of COSTA states that

“films’ means cinematographic works and films made for television.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
AXN (Italy), AXN Southern Europe Ltd	4 April 2011	COSTA Rule 16a	Ofcom noted during monitoring that, on 4 April 2011, AXN (Italy) broadcast a film that contained one more internal break than the number permitted by Rule 16a of

			<p>COSTA for a film with a scheduled duration of 110 minutes.</p> <p>AXN Southern Europe Ltd, which operates and complies AXN (Italy), said this was an isolated occurrence and the result of the film having been transmitted with an incorrect file format. Sony had added an additional check had been added to the scheduling process to ensure correct formats were chosen in future. All other movies were checked for compliance and the confirmed break pattern re-distributed to all relevant staff.</p> <p><b>Finding: Resolved</b></p>
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## Broadcast Licence Condition cases

### Community radio station compliance reports

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This finding was originally published on 4 August 2011.

Community radio stations are, under the terms of The Community Radio Order 2004 (“the Order”), defined as local radio stations provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They are also required to deliver social gain, be run on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

Anyone applying for a community radio licence is required to set out proposals as to how they will meet these various statutory requirements. If they are awarded a licence, their proposals are then included in their licence so as to ensure their continued delivery. This part of a community radio station's licence is known as the 'key commitments'.

Given that each station's 'key commitments' are designed to ensure that the station continues to provide the service for which it has been licensed, it is of fundamental importance that Ofcom is able to monitor delivery of these 'key commitments'. Licensees are therefore required to submit an annual report setting out how they have been meeting their licence obligations.

In addition to the requirements set out above, there are also statutory restrictions on the funding of community radio stations (section 105(6) of the Broadcasting Act 1990, as modified by the Community Radio Order 2004). Specifically, no community radio station is allowed to generate more than 50% of its annual income from the sale of on-air advertising and sponsorship. In certain circumstances, some stations are not allowed to carry any paid for advertising or sponsorship.

Like the 'key commitments' explained above, it is of fundamental importance that Ofcom is able to verify that a licensee is complying with its licence requirements relating to funding. In this respect too, we require licensees to submit an annual report setting out how they have met their licence obligations.

Station annual reports also inform Ofcom's own annual report on the sector and late submission of annual reports from individual stations impacts on this.

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

Licence condition 9(1) states:

9. General provision of information to Ofcom

- (1) The Licensee shall maintain records of and furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, estimates, returns, reports, notices or other information as Ofcom may require for the purpose of exercising the

functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act and in particular (but without prejudice to the generality of the foregoing):

(a) a declaration as to the Licensee's corporate structure in such form and at such times as Ofcom shall specify;

(b) such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee is on any ground a disqualified person by virtue of any of the provisions in Section 143 (5) of the 1996 Act and/or Schedule 2 to the 1990 Act or whether the requirements imposed by or under Schedule 14 to the Communications Act are contravened in relation to the Licensee's holding of the Licence;

(c) such information as Ofcom may reasonably require for the purposes of determining whether the Licensee is complying with the requirements of the Community Radio Order 2004 for each year of the Licensed Service;

(d) such information as Ofcom may reasonably require for the purposes of determining the extent to which the Licensee is providing the Licensed Service to meet the objectives and commitments specified in the Community Radio Order 2004; and

(e) the provision of information under this section may be provided to Ofcom in the form of an annual report which is to be made accessible to the general public.

## In Breach

The following stations have failed to submit their annual reports despite repeated requests for this information. These licensees have therefore been found **in breach** of their licences.

Continued failure to submit an annual report despite repeated requests to do so may potentially warrant the consideration of a statutory sanction. 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.

Station	Code and rule / licence condition	Summary finding
Boundary Sound, Newark-on-Trent	Community Radio licence condition 9(1)	Boundary Sound did not submit its annual key commitments and financial reports by the date required. (Date required 29 June 2011; neither report has been received) Finding: <b>In breach</b> , with sanction under consideration as neither report has been received.
TMCR, Thorne and Moorends (South Yorkshire)	Community Radio licence condition 9(1)	TMCR did not submit its annual key commitments and financial reports by the date required. (Date required 29 June 2011; key commitments report received 25 July, financial report not received.) Finding: <b>In</b>

		<b>breach</b> , with sanction under consideration in relation to the financial report, which has still not been received.
Voice of Africa Radio, East London	Community Radio licence condition 9(1)	Voice of Africa Radio did not submit its annual key commitments and financial reports by the date required. (Date required 29 June 2011; key commitments report received 7 July, financial report not received.) Finding: <b>In breach</b> , with sanction under consideration in relation to the financial report, which has still not been received.

## Resolved

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

Station	Code and rule / licence condition	Summary finding
Cheshire FM, mid Cheshire	Community Radio licence condition 9(1)	<b>Resolved</b>
Cross Rhythms Teesside, Stockton on Tees	Community Radio licence condition 9(1)	<b>Resolved</b>
Felixstowe Radio, Felixstowe	Community Radio licence condition 9(1)	<b>Resolved</b>
NE1 FM	Community Radio licence condition 9(1)	<b>Resolved</b>
Radio JCom, Leeds	Community Radio licence condition 9(1)	<b>Resolved</b>
Swindon 105.5, Swindon	Community Radio licence condition 9(1)	<b>Resolved</b>
Unity FM, Birmingham East	Community Radio licence condition 9(1)	<b>Resolved</b>

## In Breach

### Breach of Licence Condition

#### *Radio Sandwell*

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This finding was originally published on 4 August 2011.

#### **Introduction**

Radio Sandwell is a community radio station licensed to provide a service for the African Caribbean community and other residents of West Bromwich and the surrounding area of Sandwell. It has been on air since May 2010 and the output is presented by volunteers. The licence is held by Sandwell African Caribbean Development Agency Limited ("the Licensee"). Community radio licences are granted for a five-year period and broadcasting a service, as well as providing other outputs (such as opportunities for volunteers) described in the licence, is required throughout the licence period.

The station's licence includes as an annex a 'key commitments' document which sets out what the radio station is required to broadcast (which is based on the promises made by the station in its original application for the licence). The key commitments include a description of the programme service, social gain (community benefit) objectives (such as training provision), arrangements for access for members of the target community, opportunities to participate in the operation and management of the service, and accountability to the community.

A Radio Sandwell listener contacted Ofcom at the beginning of March 2011 to inform us that the station did not appear to be broadcasting. A few days later we had a call from another listener to say that the station appeared to be transmitting pre-recorded material only.

Radio Sandwell's key commitments include a requirement to provide ten hours of live output a day, and therefore if the station was not broadcasting or if only pre-recorded material was being broadcast the Licensee might be operating in breach of its licence terms.

Following the listener report that the station was not broadcasting, we wrote to the station to seek its comments. The Licensee assured us that there had been "no break in the Station's broadcasting and Radio Sandwell continues to broadcast and provide a valuable service to the community of Sandwell."

At the end of March, Ofcom engineers attended Radio Sandwell's transmission site as part of routine monitoring and found that the station appeared to be transmitting all of its output from a laptop computer linked to the transmitter (rather than from a studio). This laptop was running a software programme that appeared to be playing pre-recorded output only.

We consequently wrote to the Licensee on 30 March 2011 to ask how Radio Sandwell was meeting its key commitments; specifically what the output was comprised of at that time, what live output was being offered and how volunteers and members of the target community were being granted access to the service. We also asked for recordings of output broadcast on two specified days. The Licensee did not comply with our request for recordings and for information by the stipulated deadline

and was subsequently found in breach of its licence for failing to provide information and recordings<sup>1</sup>.

As part of that breach process the Licensee was given an opportunity to make representations to Ofcom about how it felt it had complied with its licence obligations to provide information and recordings to Ofcom. In its representations the Licensee admitted that Radio Sandwell had broadcast using a laptop wired to the transmitter. However, the Licensee also stated that this was an isolated situation due to a transmission failure occurring on Friday 8 April 2011 and that the station was broadcasting its usual output again from Tuesday 12 April 2011.

Ofcom engineers had visited the Radio Sandwell transmission site at the end of March; the Licensee, however, referred to a period almost two weeks later as the isolated technical failure leading to the station transmitting pre-recorded material from a laptop connected directly to the transmitter. Ofcom therefore sought further clarification from the Licensee on how it felt the output broadcast was meeting the station's key commitments, how much live output was being offered as part of the service and what the output comprised.

In its response in an email dated 18 June, the Licensee admitted that, due to a move to new studio premises, the station had to "devise a method of keeping the output transmitting whilst we dismantled the studio to transport to the new location". Following the studio move as well as technical problems with the connection between the studio and the transmitter, Radio Sandwell broadcast pre-recorded output for a "total of seven weeks from Friday 25<sup>th</sup> February 2011 to Wednesday April 13<sup>th</sup> 2011". Further, the Licensee stated that, during this seven week period, the output broadcast was comprised of "diverse mix of music (relative to the demographic) and pre-recorded shows by some of the Radio Sandwell volunteer presenters. The output was also interspersed with community adverts and announcements regarding the temporary disruption to the service, and so as not to sound repetitive, new music mixes and pre-recorded programmes were introduced to the output periodically."

On this basis, Ofcom again wrote to the Licensee on 23 June 2011 to ask how it considered its output complied with the licence conditions relating to key commitments delivery. Conditions 2(1) and 2(4), contained in Part 2 of the Schedule to the licence, state that:

2(1) "The Licensee shall provide the Licensed Service specified in the Annex for the licence period."

and

2(4) "The Licensee shall ensure that the Licensed Service<sup>2</sup> accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period."

## Response

In a letter dated 5 July 2011 the Licensee apologised for its actions that led to a situation where "a temporary license breach was probable". It said that, having had a

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/Radio\\_Sandwell\\_breach.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/Radio_Sandwell_breach.pdf)

<sup>2</sup> The service that the station is licensed to provide, as described in its 'key commitments'.

major change in staff, it had wrongly assumed that the former Radio Sandwell operating staff had informed Ofcom that the station was relocating its studio and that this could result in a break in transmission. The Licensee asserts that it was confident that this information had been relayed to Ofcom.

The Licensee said it had to secure new premises quickly and had envisaged the timeframe for the studio move to be no more than two weeks. Added to the studio move, the Licensee said the station then suffered technical difficulties in linking the studio transmission to the transmitter.

In summary, the Licensee said “we tried to faithfully re-create the regular output during the laptop period and genuinely had no notion that we may be putting the licence in jeopardy and since Wednesday April 13<sup>th</sup> we’ve had a stable link to the transmitter”.

## **Decision**

By failing to provide the required live output of ten hours per day the Licensee was not providing the service as described in its key commitments, and therefore is in breach of the licence conditions referred to above. Ofcom has therefore formally recorded this breach by the Licensee.

Ofcom notes that, although we had been in dialogue with the station since mid-March 2011, Radio Sandwell had not been providing its key commitments since 25 February 2011, and this did not come to light until early June after extended correspondence. We note that in its early correspondence the Licensee appeared to have misled us about what was happening at Radio Sandwell, the planned studio move, the decision to suspend normal output for a short period, and the subsequent technical and other difficulties that led to no live output being broadcast for a period of seven weeks.

A note to broadcasters was published in the 28 March 2011 Broadcast Bulletin<sup>3</sup> regarding breaks in transmissions. Ofcom also wrote to all community radio licensees later that month and made it clear that licensees should contact Ofcom if they foresee or are experiencing any problems, such as technical issues, building works or studio moves that may affect their ability to provide their broadcast service. Ofcom made it clear in this correspondence that providing the licensed service is a fundamental function of a community radio service and failure to do so is a significant breach of the licence.

Community radio stations are, under the terms of The Community Radio Order 2004, defined as local radio stations provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They are also required to deliver social gain, be run on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

Any organisation applying for a community radio licence is required to set out proposals as to how it will meet these various statutory requirements. If it is awarded a licence, its proposals are then included in the licence so as to ensure their continued delivery. As referred to above this part of a community radio station's licence is known as the 'key commitments', and it is designed to ensure that each

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb178/obb178.pdf>

community radio station continues to provide the service for which it has been licensed.

Ofcom has formally notified the Licensee that we are considering this licence contravention for the imposition of a statutory sanction in light of its seriousness.

**Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Sandwell African Caribbean Development Agency Limited (licence number CR176)**

## In Breach

### Breach of Licence Condition

*Boundary Sound, community radio service for Newark-on-Trent, 23 June 2011 to present*

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This finding was originally published on 4 August 2011.

#### Introduction

Boundary Sound is a community radio station licensed to provide a service for residents of Newark on Trent and the surrounding area of Nottinghamshire. It has been on-air since 1 January 2009, and the licence expires on 31 December 2013. The licence is held by Boundary Sound CIC Ltd ("the Licensee").

Community radio licences are granted for a five-year period and broadcasting a service, as well as providing other outputs (such as opportunities for volunteers) described in the licence, is required throughout the licence period.

On 23 June 2011 it was brought to our attention that Boundary Sound had ceased broadcasting its licensed service. In addition, a notice had been published on the station's website saying the following: "It is with deep regret that we have to announce the closure of Boundary Sound, due to financial circumstances beyond our control. Transmission on 102.6fm ended at 7pm on Thursday 23 June 2011."

"We would like to take this opportunity to extend our sincere thanks to all the advertisers and guests who have supported the station since its launch and especially since the station began broadcasting full time in January 2009. Thanks must also go to the many volunteers who gave so generously of their time and expertise to bring high quality, full-time community radio to Newark and the surrounding villages."

Accordingly, on 24 June Ofcom wrote to the Licensee to ask how it was complying with the following two conditions in its licence relating to the delivery of its service.

1. Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:

"The Licensee shall provide the Licensed Service specified in the Annex\* for the licence period."

2. Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex<sup>1</sup> so as to maintain the character of the Licensed Service throughout the licence period."

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<sup>1</sup> The annex sets out the radio station's 'key commitments'. The key commitments include a description of the programme service, social gain (community benefit) objectives (such as training provision), arrangements for access for members of the target community, opportunities to participate in the operation and management of the service, and accountability to the community. Boundary Sound's key

## Response

The Licensee sent two letters on 6 July. The second letter was headed 'Boundary Sound Summary of Activities' and in it the Licensee confirmed that it was no longer providing its radio service. The Licensee said "on Thursday June the 23<sup>rd</sup> the bailiff telephoned...and [said] that transport was on the way to remove goods and equipment from the station. This subsequently happened and therefore Boundary Sound was no longer able to broadcast".

The Licensee did not give an indication in its first letter of 6 July of whether or when it would be in a position to re-commence broadcasting, but implied that this would only be possible if it was able to "obtain further investment of cash into Boundary Sound CIC". However, it also said it may "try and persuade Ofcom to enable the transfer of the licence to a new company"<sup>2</sup>. It went on to say "we will ensure that the future organisation will have the right management structure and finance in order to move forward strongly to provide community radio in Newark", but it did not indicate a timetable for this plan, nor identify the new company to which it would request that the licence be transferred.

## Decision

By ceasing to provide its licensed service from 23 June 2011, the Licensee was in breach of licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence. Ofcom has therefore formally recorded this breach by Boundary Sound CIC Ltd.

The Licensee set out the circumstances that had led to its equipment being seized. We note that this was as a result of legal action that had been ongoing for many months, and because the Licensee was not able to pay in full money owed as a result of county court judgements. We note also that the company's recent problems coincided with personal difficulties being experienced by some of the key station personnel. While the seizure of station equipment by bailiffs meant the service could no longer be provided, it is the responsibility of a Licensee to manage its affairs so that the service it is licensed to deliver continues to be provided.

In its response the Licensee has not set out a clear plan or timetable to re-commence the service. The Licensee suggests a number of options for the future, and the option it appears to wish to pursue (requesting that the licence be transferred to another entity) would mean that the current Licensee would not re-commence the service itself.

As Boundary Sound has not resumed broadcasting its licensed service since 23 June 2011, this breach by the Licensee is continuing. Provision by a Licensee of its licensed service is the fundamental purpose for which a community radio licence is

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commitments can be found here

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr167.pdf>

<sup>2</sup> A licence can only be transferred from one body to another with the written consent of Ofcom. The legislation stipulates that such consent shall not be given unless Ofcom is satisfied that the person (body or company) to whom it is proposed to transfer the Licence would be in a position to comply with all of the licence conditions throughout the remainder of the licence period.

granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided. In addition, choice for listeners is reduced.

The Licensee did not specifically state whether 'off-air' activities included in the licence (as set out in the Licensee's key commitments) are being delivered. These include 'social gain' (such as training programmes) and access to and participation in the service (volunteering opportunities, for example). Taking into account the Licensee's confirmation that goods and equipment have been removed from the station, as well as the website announcement stating that the station has closed and thanking volunteers for their past input, it seems unlikely that off-air key commitment activities are being delivered. This is to the potential disadvantage of the target community.

It is a duty placed upon Ofcom to ensure optimal use is made of the electromagnetic spectrum. This non-provision of a licensed radio service by Boundary Sound is not optimal use of that radio spectrum.

The seriousness of this breach of licence conditions is such that the Licensee is put on notice that the breach will be considered by Ofcom for the imposition of a statutory sanction.

**Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Boundary Sound CIC Ltd (licence number CR167).**

## In Breach

### Breach of Licence Condition

#### *Angel Radio Isle of Wight*

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This finding was originally published on 11 August 2011.

#### Introduction

Angel Radio Isle of Wight ("Angel Radio") is a community radio station licensed to provide a service for the over 60s of Newport and the surrounding area of the Isle of Wight. It has been on air since March 2007 and the output is presented by volunteers. The licence is held by Angel Radio Isle of Wight Ltd ("the Licensee"). Community radio licences are granted for a five-year period and can be extended for one period of no more than five years. The licence for Angel Radio has been extended and will expire in 2017. Broadcasting a service, as well as providing other outputs (such as opportunities for volunteers) described in the licence, is required throughout the licence period.

The station's licence includes as an annex a 'key commitments' document which sets out what the radio station is required to broadcast (which is based on the promises made by the station in its original application for the licence). The key commitments include a description of the programme service, social gain (community benefit) objectives (such as training provision), arrangements for access for members of the target community, opportunities to participate in the operation and management of the service, and accountability to the community.

On 21 July 2011 Ofcom's attention was drawn to an online newspaper article which stated that Angel Radio was appealing for funds to help get the station back on air after its receiver broke down. The article detailed that the receiver sending the signal from the studio in Cowes to the transmitter site had broken down and needed to be replaced. Further, it was reported that the station estimated that it would take up to three weeks for live programming to resume, and that in the meantime the station intended to produce pre-recorded programmes to broadcast until the receiver had been repaired or replaced.

We immediately contacted the station, who confirmed that Angel Radio did not broadcast any output at all between 17 July and the morning of 20 July, after which it had been broadcasting pre-recorded and automated output via a laptop computer connected directly to the transmitter.

The 'key commitments' for Angel Radio include a requirement to provide six to eight hours of live output a day, and therefore if the station was not broadcasting or if only pre-recorded material was being broadcast, the Licensee might be operating in breach of its licence terms.

We consequently wrote to the Licensee on 21 July 2011 to ask how it considered it was complying with the licence conditions relating to key commitments delivery. Conditions 2(1) and 2(4), contained in Part 2 of the Schedule to the licence, state that:

- 2(1) "The Licensee shall provide the Licensed Service specified in the Annex for the licence period."

and

- 2(4) “The Licensee shall ensure that the Licensed Service<sup>1</sup> accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.”

## Response

In a letter dated 29 July 2011, the Licensee explained that the station was unable to broadcast live programming from Sunday 17 July to Tuesday 26 July due to equipment failure caused by a power surge from a lightning strike. The Licensee said that this was outside the station’s control, and that they had tried to offer the *best possible service* for their listeners until live broadcasting could resume. [Angel Radio managed to reconnect its live broadcasting through a temporary link while the damaged equipment underwent repairs.]

The Licensee apologised for not informing Ofcom that the station was off air, but said that listeners were kept informed through a message on the station website.

## Decision

Although we sympathise with the station that it suffered a technical failure and understand that this was outside the Licensee’s control, it remains the case that the station did not get in touch with Ofcom directly to inform us of what was happening.

This was despite the fact that a note to broadcasters was published in the 28 March 2011 Broadcast Bulletin<sup>2</sup> regarding breaks in transmissions. Ofcom also wrote to all community radio licensees later that month and made it clear that licensees should contact Ofcom if they foresee or are experiencing any problems, such as technical issues, building works or studio moves that may affect their ability to provide their broadcast service. Ofcom made it clear in this correspondence that providing the licensed service is a fundamental requirement of a community radio service and failure to do so is a significant breach of the licence.

Community radio stations are, under the terms of The Community Radio Order 2004, defined as local radio stations provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They are also required to deliver social gain, be run on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

Any organisation applying for a community radio licence is required to set out proposals as to how it will meet these various statutory requirements. If it is awarded a licence, its proposals are then included in the licence so as to ensure their continued delivery. As referred to above this part of a community radio station's licence is known as the 'key commitments', and it is designed to ensure that each community radio station continues to provide the service for which it has been licensed.

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<sup>1</sup> The service that the station is licensed to provide, as described in its ‘key commitments’.

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb178/obb178.pdf>

By failing to provide the required live output of six to eight hours per day during the period 17-26 July, the Licensee was not providing the service as described in its key commitments, and was therefore in breach of the licence conditions referred to above. Ofcom has therefore formally recorded this breach by the Licensee.

**Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Angel Radio Isle of Wight Ltd (licence number CR007)**

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Simon Curtis

*David Walliams' Awfully Good TV, Channel 4, 4 January 2011*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Simon Curtis.

On 4 January 2011, Channel 4 broadcast David Walliams' Awfully Good TV, a one-off programme which looked back on programming which was "so truly, staggeringly, compellingly bad it becomes awfully good". The programme looked at different types of programming, one of which was quiz shows. David Walliams introduced this item by saying:

*"Sometimes in life, you have to know your limitations [...] if you're not let's say, very bright, it's probably not a good idea to go on a quiz show that tests your mental agility. And by not very bright I mean, astoundingly thick".*

The programme then showed a clip of Mr Simon Curtis participating in Mastermind. In particular, it showed Mr Curtis' 'specialist subject round' in which he scored one point.

Following the broadcast of the programme, Mr Curtis complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

In summary, Ofcom found that:

- The re-use of the material did not result in unfairness towards Mr Curtis as it would have been clear to viewers that the programme was not a serious examination of his character, intelligence or competence.
- It was not incumbent on the programme to discuss any of Mr Curtis' other television performances in order to achieve fairness.
- It was not incumbent on the programme makers to seek Mr Curtis' consent to include footage of his Mastermind performance in the programme as broadcast.

#### Introduction

On 4 January 2011, Channel 4 broadcast *David Walliams' Awfully Good TV*, a one-off programme which looked back on programming which was described at the beginning of the programme as, "so truly, staggeringly, compellingly bad it becomes awfully good". The programme looked at different types of programming, one of which was quiz shows. The well known comedian, writer and actor David Walliams introduced this item by saying:

*"Sometimes in life, you have to know your limitations [...] if you're not let's say, very bright, it's probably not a good idea to go on a quiz show that tests your mental agility. And by not very bright I mean, astoundingly thick".*

The programme then showed a clip of Mr Simon Curtis participating in the BBC television general knowledge quiz show *Mastermind*. In particular, it showed Mr

Curtis' 'specialist subject round' in which he scored one point. Whilst showing Mr Curtis' performance, Mr Walliams said in voiceover:

*"It's Mastermind! Oooh, Jim Carrey films? This ought to be WELL easy..."*

*(AFTER PASS 1)*

*Okay, bit nervous...*

*(AFTER PASS 4)*

*Okay – my question. Do you know who Jim Carrey is?*

*(ONE POINT)*

*STADIUM STYLE CHEER*

*(PASS)*

*Hmmm... surely it's better to just score nothing...*

*He didn't do well, but it still gets him entry to the exclusive Mastermind Club..."*

Following the broadcast of the programme, Mr Curtis complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

### **The Complaint**

In summary, Mr Curtis complained that he was treated unfairly in the programme as broadcast in that:

- a) He was unfairly portrayed as being of low intelligence.

Mr Curtis said that not being good at quizzes, especially when as in this case it was only one quiz, was not an indicator of low intelligence.

- b) Material facts were unfairly omitted from the programme, namely:

- It was in fact a *Mastermind* semi-final, and Mr Curtis had qualified for that stage by winning a first round show.
- 18 months previously Mr Curtis had won £250,000 on *Who Wants to be a Millionaire?*

- c) He did not give consent for the material to be broadcast.

By way of background, Mr Curtis' said that his *Mastermind* performance was discussed recently on *Richard Bacon's Beer and Pizza*, but the producers had asked for his consent before including it in the programme. No such consent was sought by *David Walliams' Awfully Good TV*.

### **Channel 4's Response**

- a) Channel 4 first responded to the complaint that Mr Curtis was unfairly portrayed as being of low intelligence

Channel 4 said that David Walliams' introductory comments were not a literal assessment of Mr Curtis' general IQ level but a comment about his remarkably poor performance in the context of a subject matter he professed to be his specialist subject, particularly in the context of a light-hearted show about some of television's less successful moments. Channel 4 said that David Walliams' comments reflected the style of the programme and his exuberant performance well known to millions of viewers.

Channel 4 said that viewers would be well aware that Mr Curtis was above average IQ in order to appear on such a high profile show in the first place. It said that, therefore, viewers would not take the "astoundingly thick" comment literally, only that this was the worst performance ever seen on *Mastermind* in relation to a chosen specialist subject. Channel 4 said that this was also made clear from the voiceover did not discuss his intelligence, but merely commented on his astonishingly bad performance.

Channel 4 said that it should also be noted that Mr Curtis had participated in a television programme in which contestants were asked to compete to display the depth and breadth of their knowledge on their chosen subject matter. Channel 4 said that it understood that Mr Curtis' was the worst ever performance on the specialist subject round of *Mastermind*. Channel 4 said that the programme complained of therefore merely highlighted Mr Curtis' lack of judgement in choosing his subject matter, since he either chose an inappropriate subject or failed to revise appropriately for that subject, when he knew that he would be tested and critiqued on a programme watched by millions.

Channel 4 said that "astoundingly thick" was a fair comment, considering Mr Curtis' very poor performance on a subject matter he chose as his specialist subject.

- b) Channel 4 responded to the complaint that material facts were unfairly omitted from the programme, in particular that the programme did not mention: that the *Mastermind* footage was from a semi-final and Mr Curtis had qualified for that stage by winning a first round show; and that 18 months previously Mr Curtis had won £250,000 on *Who Wants to be a Millionaire?*

Channel 4 said that there was no need to include this information in the programme as this brief item focused on the worst quiz performances, not the best ones. It said that the item was about the worst performance in *Mastermind* history and merely reported what was already widely reported in the press and media, which Mr Curtis himself acknowledged.

- c) Channel 4 then responded to the complaint that Mr Curtis did not give consent for the material to be broadcast.

Channel 4 said that Mr Curtis did not directly consent to appear in the programme. However he did agree to appear in *Mastermind* and would have understood that the footage might subsequently be used in other programmes. Channel 4 said that Mr Curtis acknowledged in his complaint that he signed an appearance waiver at the time of recording. It said that the programme producer obtained the BBC's permission to include the *Mastermind* footage (including Mr Curtis' contribution) in the programme and the BBC confirmed to the programme producer that the contestants had signed an all rights contract or an all rights release form. Channel 4 said that, as such, the programme producer was not required to obtain Mr Curtis' direct consent. The fact that the producer of the

*Richard Bacon Beer and Pizza Show* sought Mr Curtis' consent before using the *Mastermind* footage did not create any obligation upon the producer of the Channel 4 programme to do likewise.

Channel 4 said that it did not appear that Mr Curtis' circumstances had changed to the extent that it would be appropriate to seek further consent from him.

## Decision

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

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

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

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.

- a) Ofcom first considered the complaint that Mr Curtis was unfairly portrayed as being of low intelligence. In doing so, Ofcom had regard to Practice 7.8 of the Code which states that broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a latter or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster's own material.

Before examining the specific passage of the programme relating to Mr Curtis, Ofcom considered the nature of the programme as a whole. Ofcom noted that the programme was clearly intended to be a light-hearted and humorous look at past television events and programmes. It did so in a biting and satirical manner from the outset of the programme. Ofcom considered that this programme clearly did not purport to be a serious examination of past television events and that this would have been clear to viewers from the outset.

In that context, Ofcom examined the section of the programme concerning Mr Curtis. Introducing this section of the programme, David Walliams said:

*"Sometimes in life, you have to know your limitations [...] if you're not, let's say, very bright, it's probably not a good idea to go on a quiz show that tests your mental agility. And by not very bright I mean astoundingly thick".*

This section of the programme, labelled "*Baffling Quiz Moments*", included an edited version of Mr Curtis' *Mastermind* performance, in which he answered only one question correctly. Whilst it was being shown, Mr Walliams made the following comments:

*“It’s Mastermind! Oooh, Jim Carrey films? This ought to be WELL easy...Okay, bit nervous...Okay – my question. Do you know who Jim Carrey is?”*

*(ONE POINT)*

*STADIUM STYLE CHEER*

*(PASS)*

*Hmmm... surely it’s better to just score nothing...*

*He didn’t do well, but it still gets him entry to the exclusive Mastermind Club...”*

Ofcom recognised that these comments carried the potential to be offensive and insulting to Mr Curtis. However, Ofcom took the view that it would have been clear to viewers from the beginning of the programme that Mr Walliams (himself best known as a comedian) intended to provide humorous and light-hearted opinion and comment on examples of past television clips. Ofcom considered that it would have been clear to viewers that all Mr Walliams’ comments were made in this manner, and were not intended in any material way to be a serious examination of Mr Curtis’ character, intelligence or competence.

Ofcom also took into account that the relevant (albeit edited) clip of Mr Curtis’ specialist subject performance was included in the programme, alongside Mr Walliams’ remarks. Ofcom took the view that, as sufficient context in which the comments were made was provided to viewers, viewers perception of Mr Curtis would not have been materially altered as a result of the programme’s reference to him.

Taking the above factors into account, namely the nature and content of the programme together with the inclusion of the sufficient context of Mr Walliams’ comments, Ofcom concluded that the re-use of the material did not result in unfairness towards Mr Curtis.

Ofcom therefore found no unfairness in this regard.

- b) Ofcom then considered whether material facts were unfairly omitted from the programme. In particular, that the footage used of Mr Curtis was from a *Mastermind* semi-final and that he had won £250,000 on *Who Wants to be a Millionaire?* a year earlier.

Ofcom again noted the nature and context of the programme and precisely what reference was made to Mr Curtis. Ofcom also bore in mind that decisions as to what information to include and exclude in a programme is a matter of editorial discretion, provided the programme as broadcast is fair.

Ofcom noted that the programme referred only to Mr Curtis’ *Mastermind* performance. As set out in head a) Ofcom took the view that this was not a serious examination of Mr Curtis’ character, intelligence or competence and that this would have been clear to viewers from the outset, and that the context of Mr Walliams’ comments were clearly presented in the programme.

Taking all of the above factors into account, Ofcom took the view that it was not incumbent on the programme to discuss any of Mr Curtis' other television performances in order to achieve fairness.

Ofcom therefore found no unfairness in this regard.

- c) Ofcom then considered whether the programme makers should have sought Mr Curtis' consent before broadcast.

Ofcom noted that Mr Curtis had consented to appear in the *Mastermind* programme and that this material was re-used for another purpose in this programme. Ofcom noted that the Code allows the re-use of material in this manner provided that it does not create unfairness. For the reasons set out under decision heads a) and b) above, Ofcom has found that no unfairness was created by the re-use of this material.

Furthermore, Ofcom noted that Mr Curtis had signed an appearance waiver when filming *Mastermind*. Ofcom also took into account Channel 4's submission that the programme's producer obtained the BBC's permission to include the *Mastermind* footage and that the BBC had confirmed to them that the contestants had signed an all rights contract or an all rights release form. Having considered these points, Ofcom considered that the broadcaster had taken reasonable and appropriate steps, in ensuring whether it was able to broadcast the television clips it did.

In such circumstances, it was not incumbent on the programme makers to seek Mr Curtis' consent to include footage of his *Mastermind* performance in the programme as broadcast.

Ofcom has therefore found no unfairness in this regard.

**Accordingly, Ofcom has not upheld Mr Curtis' complaint of unfair treatment in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 1 August 2011

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Balls of Steel	Kanal 5	07/03/2011	Disability discrimination/offence	1
Baylis' sponsorship of Hirsty and Helen in the Morning	Wyvern FM	23/06/2011	Commercial communications on radio	1
Democratic Forum	Democracy Channel	13/04/2011	Generally accepted standards	7
EastEnders	BBC 1	18/04/2011	Generally accepted standards	1
EastEnders	BBC 1	18/04/2011	Generally accepted standards	1
Evening with Akram Rahi	DM Digital	13/04/2011	Religious/Beliefs discrimination/offence	1
Law & Order (trailer)	Channel 5	05/06/2011	Sexual material	1
Lorraine	ITV1	11/05/2011	Materially misleading	30
The Brave One	Film4	16/06/2011	Scheduling	1
The Execution of Gary Glitter (trailer)	Channel 4	08/11/2009	GAS	1
The Execution of Gary Glitter	Channel 4	09/11/2009	GAS	1
The Execution of Gary Glitter	Channel 4	09/11/2009	GAS	1
The Game of Thrones	Sky Atlantic	30/05/2011	Sexual material	1
The Jeremy Kyle Show	ITV1	21/03/2011	Generally accepted standards	3
The Jeremy Kyle Show	ITV2	21/03/2011	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	30/06/2011	Generally accepted standards	1
The Joy of Teen Sex	Channel 4	19/01/2011	Sexual material	124
The Joy of Teen Sex	Channel 4	26/01/2011	Sexual material	41
The Joy of Teen Sex	Channel 4	02/02/2011	Sexual material	164
The Joy of Teen Sex	Channel 4	09/02/2011	Drugs, smoking, solvents or alcohol	89
The Joy of Teen Sex	Channel 4	n/a	Materially misleading	1
The Joy of Teen Sex	Channel 4	n/a	Nudity	1
The Killing (trailer)	Film4	29/06/2011	Scheduling	1
The Preview Show	Sky Livingit	15/03/2011	Advertising content	1
The Sex Education Show: Stop Pimping Our Kids	Channel 4	19/04/2011	Sexual orientation discrimination/offence	1
The Sex Education Show: Stop Pimping Our Kids	Channel 4	19/04/2011	Sexual material	1
The Sex Education Show: Stop Pimping Our Kids	Channel 4	19/04/2011	Sexual material	1
The Sex Education Show: Stop Pimping Our Kids	Channel 4	19/04/2011	Under 18s in programmes	1
The Sex Education Show: Stop Pimping Our Kids	Channel 4	20/04/2011	Disability discrimination/offence	1
The Sex Education Show: Stop Pimping Our Kids	Channel 4	20/04/2011	Materially misleading	1
The Sex Education Show: Stop Pimping Our Kids	Channel 4	20/04/2011	Generally accepted	1

Pimping Our Kids			standards	
The Sex Education Show: Stop Pimping Our Kids	Channel 4	20/04/2011	Generally accepted standards	1
Ticket promotion	Capital FM	09/06/2011	Materially misleading	1

## Complaints Assessed, not Investigated

### Between 12 July and 1 August 2011

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118's sponsorship of ITV Movies	ITV1	n/a	Materially misleading	1
118 118's sponsorship of ITV Movies	ITV1	n/a	Generally accepted standards	2
118 118's sponsorship of ITV Movies	ITV2	12/07/2011	Generally accepted standards	1
118 118's sponsorship of ITV Movies	ITV2	18/07/2011	Crime	1
4thought.tv	Channel 4	16/07/2011	Sexual orientation discrimination/offence	1
8 Out of 10 Cats	Channel 4	15/07/2011	Offensive language	1
Absolute Radio	Jeff Lloyd's Drive Time	15/07/2011	Generally accepted standards	1
Adventure Time	Cartoon Network	17/05/2011	Generally accepted standards	1
America's Got Talent	ITV2	12/07/2011	Animal welfare	1
America's Got Talent	ITV2	14/07/2011	Materially misleading	1
Andy Goldstein	Talksport	23/07/2011	Disability discrimination/offence	1
Angry Boys	BBC 3	29/07/2011	Race discrimination/offence	1
Art Attack	CITV	19/07/2011	Crime	1
Ary News	Ary News	02/07/2011	Generally accepted standards	1
BBC News	BBC News Channel	07/07/2011	Nudity	1
BBC News at Ten	BBC 1	18/07/2011	Generally accepted standards	1
Beaver Falls	E4	27/07/2011	Generally accepted standards	1
Being N-Dubz	4 Music	11/06/2011	Offensive language	1
Blackberry Presents: Jessie J Live in London	Channel 4	25/06/2011	Sexual material	1
Breakfast	Amber Sound FM	19/07/2011	Generally accepted standards	1
Breakfast	BBC 1	14/06/2011	Religious/Beliefs discrimination/offence	1
Breakfast	BBC 1	28/07/2011	Animal welfare	1
Breakfast Show	BBC Radio 2	16/07/2011	Offensive language	1
Britain and Ireland's Next Top Model	Sky Living	12/07/2011	Generally accepted standards	1
Britain and Ireland's Next Top Model	Sky Living	18/07/2011	Harm	1
Britain and Ireland's Next Top Model (trailer)	Living TV	13/07/2011	Offensive language	1
Bruno Mars "Grenade"	Various	n/a	Harm	1

BT Vision sponsorship credit	Channel 4+1	16/07/2011	Generally accepted standards	1
BT Vision's sponsorship of Drama on 4	Channel 4	23/07/2011	Generally accepted standards	1
Butchered	Dave	29/06/2011	Animal welfare	1
Capital Breakfast With Johnny and Lisa	Capital FM	06/06/2011	Race discrimination/offence	1
Capital FM Breakfast Show	Capital FM	28/06/2011	Offensive language	1
Carry on Dick	Channel 4	19/07/2011	Scheduling	1
Casualty	BBC 1	04/06/2011	Materially misleading	1
Celebrity Juice (trailer)	ITV2	n/a	Scheduling	1
Celebrity Who Wants to be a Millionaire?	ITV1	15/07/2011	Competitions	1
Channel 4 News	Channel 4	09/07/2011	Due impartiality/bias	2
Channel 4 News	Channel 4	28/07/2011	Privacy	1
Come Dine With Me	Channel 4	13/07/2011	Offensive language	1
Come Dine with Me Extra Portions	Channel 4	23/07/2011	Sexual material	1
Coronation Street	ITV1	11/07/2011	Generally accepted standards	1
Coronation Street	ITV1	14/07/2011	Under 18s in programmes	1
Coronation Street	ITV1	29/07/2011	Generally accepted standards	1
Coronation Street	ITV1	n/a	Religious/Beliefs discrimination/offence	1
Cricket: First Test	Sky Sports 1	21/07/2011	Promotion of products/services	1
Daily Cooks Challenge	ITV3	12/07/2011	Materially misleading	1
Dance Bangla Dance Junior	Zee Cafe	08/07/2011	Under 18s in programmes	1
Danny Dyer's Deadliest Men: Living Dangerously	Sky 1	15/07/2011	Crime	1
Daybreak	ITV1	27/07/2011	Religious/Beliefs discrimination/offence	3
Daybreak	ITV1	28/07/2011	Competitions	1
Daybreak	ITV1	29/07/2011	Offensive language	2
Deal or No Deal	Channel 4	18/07/2011	Gambling	1
Deal or No Deal	Channel 4	22/07/2011	Age discrimination/offence	1
Dinner Date	ITV1	14/07/2011	Generally accepted standards	1
Dinner Date	ITV1	14/07/2011	Scheduling	1
Dinner Date	ITV1	14/07/2011	Sexual material	1
Dinner Date	ITV1	15/07/2011	Generally accepted standards	1
Dirty, Sexy Things	Channel 4	23/07/2011	Scheduling	1
Dirty, Sexy Things (trailer)	E4	30/06/2011	Sexual material	1
Dirty Sexy Things (trailer)	E4+1	10/07/2011	Scheduling	1
Dispatches	Channel 4	11/07/2011	Due impartiality/bias	17
Dispatches	Channel 4	18/07/2011	Due impartiality/bias	1
DM 6th Anniversary Show	DM Digital	09/07/2011	Materially misleading	1

Doctors	BBC 1	25/07/2011	Generally accepted standards	1
Doctors	BBC 1	27/07/2011	Offensive language	1
Double Lesson	Channel 4	15/07/2011	Offensive language	1
Drive Time	Talksport	14/06/2011	Violence and dangerous behaviour	1
EastEnders	BBC 1	11/07/2011	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	28/07/2011	Religious/Beliefs discrimination/offence	1
Embarrassing Bodies: Live from the Clinic	Channel 4	22/06/2011	Nudity	1
Emmerdale	ITV1	27/07/2011	Offensive language	1
Emmerdale	UTV	11/07/2011	Sexual material	1
ER	Sky Atlantic	13/07/2011	Sexual material	1
Everybody Quite Likes Justic	BBC Radio 4	06/07/2011	Disability discrimination/offence	1
F1: Grand Prix	BBC 1	n/a	Outside of remit / other	4
Family Guy	BBC 3	10/07/2011	Disability discrimination/offence	1
Family Guy (trailer)	BBC 3	10/07/2011	Scheduling	1
Fatal Attraction (trailer)	Film4	10/07/2011	Scheduling	1
Football Coverage	Various	n/a	Other	1
Fosters sponsorship credit	Channel 4	13/07/2011	Materially misleading	1
Four in a Bed	Channel 4	08/07/2011	Generally accepted standards	1
Four Weddings	Sky Living	24/04/2011	Sexual material	1
Game of Thrones	Sky Atlantic	n/a	Nudity	1
Geordie Finishing School for Girls	BBC 3	26/07/2011	Generally accepted standards	7
George Michael "Outside"	WTF	24/06/2011	Sexual material	1
Good Morning Ulster	Radio Ulster	14/06/2011	Generally accepted standards	1
Grand Designs	More4	28/06/2011	Nudity	1
Harveys' sponsorship of Coronation Street	ITV1	n/a	Generally accepted standards	1
Have I Got a Bit More News for You	BBC 2	09/07/2011	Religious/Beliefs discrimination/offence	1
Help! My House is Falling Down	Channel 4	21/07/2011	Materially misleading	1
Hollyoaks	E4	15/07/2011	Violence and dangerous behaviour	1
Hollyoaks Omnibus	E4	23/07/2011	Nudity	1
Homes from Hell	ITV1	12/07/2011	Due accuracy	1
Intezar e Faraj	Hidayat TV	12/07/2011	Religious/Beliefs discrimination/offence	1
ITV3 Ident	ITV3	n/a	Animal welfare	1
ITV News and Weather	ITV1	19/07/2011	Due impartiality/bias	1
Jack	BBC 2	16/07/2011	Offensive language	1
James O'Brien	LBC	14/07/2011	Due impartiality/bias	1
James O'Brien	LBC 97.3FM	22/07/2011	Generally accepted standards	1

Jarnail Singh Bhindranwale Speech	Sikh TV	02/06/2011	Generally accepted standards	1
Jeff Randall Live	Sky News	11/07/2011	Offensive language	1
Jo Frost: Extreme Parental Guidance	Channel 4	06/07/2011	Under 18s in programmes	1
John Kearns	City Beat 96.7FM	02/06/2011	Offensive language	1
Kay Burley Live	Sky News	12/07/2011	Due impartiality/bias	1
Kill it, Cut it, Use it	BBC 3	29/06/2011	Animal welfare	1
Live With Harjap	MATV	25/07/2011	Offensive language	1
Loose Women	ITV1	04/07/2011	Harm	1
Loose Women	ITV1	28/07/2011	Gender discrimination/offence	1
Loose Women	ITV1	n/a	Competitions	1
Lorraine	ITV1	14/07/2011	Due impartiality/bias	1
Lorraine	ITV1	14/07/2011	Undue prominence	1
Luke Nguyen's Vietnam	Good Food	25/07/2011	Animal welfare	1
Midsomer Murders	ITV1	24/07/2011	Offensive language	1
Midsomer Murders	ITV1	n/a	Nudity	1
Missing	Alibi	17/07/2011	Generally accepted standards	1
Murnaghan	Sky News	24/07/2011	Generally accepted standards	1
News	Sky News	14/07/2011	Generally accepted standards	1
News update	Channel 5	24/07/2011	Generally accepted standards	1
Newsnight	BBC 2	25/07/2011	Religious/Beliefs discrimination/offence	1
Nothing to Declare	Sky Living	23/07/2011	Offensive language	1
One Foot in the Grave	Gold +1	11/07/2011	Offensive language	1
Penn and Teller: Fool Us	ITV1	23/07/2011	Materially misleading	1
Penn and Teller: Fool Us	ITV1	23/07/2011	Religious/Beliefs discrimination/offence	3
Penn and Teller: Fool Us	ITV1	23/07/2011	Under 18s in programmes	1
Perfume	BBC 4	28/06/2011	Sexual orientation discrimination/offence	1
Peter Andre: Here to Help	ITV2	14/07/2011	Generally accepted standards	1
Premier Christian Radio	Premier Christian Radio	08/07/2011	Sexual orientation discrimination/offence	1
Premier Christian Radio	Premier Christian Radio	n/a	Materially misleading	1
Press Preview	Sky News	16/07/2011	Product placement	1
Programme promo	Sky Sports	25/07/2011	Materially misleading	1
Psychic TV	Psychic TV	23/07/2011	Exorcism, the occult and the paranormal	1
Racing	At the Races	n/a	Materially misleading	1
Regular Show	Cartoon Network	28/06/2011	Sexual material	1

Rock and Chips	Gold	03/07/2011	Generally accepted standards	1
Rum Sodomy And The Lash Trailer	Yesterday	14/07/2011	Generally accepted standards	1
Sex and the City	Comedy Central	27/06/2011	Generally accepted standards	1
Sex and the City	Comedy Central	n/a	Scheduling	1
Sex and the City (trailer)	Comedy Central	10/07/2011	Scheduling	1
Sex and the City (trailer)	Comedy Central + 1	10/07/2011	Generally accepted standards	1
Shameless	Dave	22/07/2011	Animal welfare	1
Shameless USA	More4	21/07/2011	Animal welfare	1
Silent Library	5*	19/07/2011	Generally accepted standards	1
Silent Witness	BBC 1	27/06/2011	Violence and dangerous behaviour	2
Sirens	Channel 4	04/07/2011	Generally accepted standards	1
Sky News	Sky News	09/07/2011	Due accuracy	1
Sky News	Sky News	14/07/2011	Due impartiality/bias	1
Sky News	Sky News	15/07/2011	Due impartiality/bias	1
Sky News	Sky News	19/07/2011	Generally accepted standards	1
Sky News	Sky News	22/07/2011	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	28/07/2011	Due impartiality/bias	1
Sky News	Sky News	n/a	Privacy	1
Sky News	Sky News on Freeview	05/07/2011	Other	1
Sky News at 6 with Andrew Wilson	Sky News	22/07/2011	Due impartiality/bias	1
Sky News at 6 with Andrew Wilson	Sky News	23/07/2011	Violence and dangerous behaviour	2
Sky promotion for Haye v Klitschko	Sky	n/a	Materially misleading	1
Sonisphere Radio	Sonisphere Radio	08/07/2011	Offensive language	1
Spartacus: Blood and Sand	Sky 1	n/a	Nudity	1
Sponsorship of Wycliffe	ITV3	26/07/2011	Scheduling	1
SportXXX1	Northern Birds / Essex Babes	22/01/2011	Participation TV - Harm	1
SportXXX1	Northern Birds / SportxxxGirls	10/02/2011	Participation TV - Harm	1
Star Plus	Star Plus	n/a	Materially misleading	1
Steve Allen	LBC	n/a	Competitions	1
Steve Allen	LBC	04/07/2011	Generally accepted standards	1
Street Summer (trailer)	Channel 4	25/07/2011	Crime	1
Street Summer (trailer)	Channel 4 / E4	n/a	Crime	1
STV News at Six	STV	12/07/2011	Due impartiality/bias	1
STV News at Six	STV	15/07/2011	Privacy	1

Sunrise	Sky News	23/07/2011	Due impartiality/bias	1
Sunrise Law Show	Sunrise TV	10/07/2011	Promotion of products/services	1
Sunrise Radio	Sunrise	14/07/2011	Due accuracy	1
T4	Channel 4	23/07/2011	Sexual material	1
Teen Wolf	Sky Living	14/07/2011	Generally accepted standards	1
The Big Questions	BBC 1	19/06/2011	Due impartiality/bias	1
The Chris Evans Breakfast Show Richard Madeley Sits In	BBC Radio 2	22/07/2011	Generally accepted standards	1
The Gibley Boys	CITV	20/07/2011	Generally accepted standards	1
The Hour	STV	13/07/2011	Religious/Beliefs discrimination/offence	1
The Jeremy Kyle Show	ITV1	12/07/2011	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	13/07/2011	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV1	29/07/2011	Materially misleading	1
The John Murray Show	Leith FM	12/07/2011	Due impartiality/bias	1
The Killing (trailer)	Channel 4	14/07/2011	Violence and dangerous behaviour	1
The Marriage Ref	ITV2	13/07/2011	Sexual orientation discrimination/offence	1
The Night Watch	BBC 2	12/07/2011	Sexual material	2
The Now Show	BBC Radio 4	15/07/2011	Offensive language	1
The Pranker	BBC 3	15/07/2011	Information/warnings	1
The Removal Men	Channel 5	20/07/2011	Animal welfare	1
The Royal Welsh Show	S4C	18/07/2011	Generally accepted standards	1
The Sex Education Show	Channel 4	19/07/2011	Generally accepted standards	1
The Sex Education Show	Channel 4	19/07/2011	Sexual material	2
The Sex Education Show	Channel 4	26/07/2011	Materially misleading	1
The Sex Education Show	Channel 4	26/07/2011	Nudity	6
The Sex Education Show (trailer)	Channel 4	19/07/2011	Scheduling	1
The Sex Researchers	Channel 4	30/06/2011	Materially misleading	1
The Simpsons	Channel 4	15/07/2011	Offensive language	1
The Simpsons	Channel 4	n/a	Generally accepted standards	1
The Today Programme	BBC Radio 4	29/07/2011	Offensive language	1
The Vue Film Show	Channel 4	07/07/2011	Advertising/editorial distinction	1
This Morning	ITV1	12/07/2011	Generally accepted standards	1
This Morning	ITV1	18/07/2011	Gender discrimination/offence	2
Top Gear	BBC 2	10/07/2011	Transgender discrimination/offence	1
Top Gear	BBC 2	13/07/2011	Transgender discrimination/offence	1
Top Gear	BBC 2	31/07/2011	Generally accepted standards	2

Torchwood: Miracle Day	BBC 1	28/07/2011	Sexual material	10
Torchwood: Miracle Day	BBC 2	25/07/2011	Drugs, smoking, solvents or alcohol	1
Traffic Cops	BBC 1	14/07/2011	Offensive language	2
Traffic Cops	Watch	17/07/2011	Offensive language	1
Trailer	Channel 4	20/07/2011	Race discrimination/offence	1
TV Licensing promo	BBC 1	28/07/2011	Generally accepted standards	2
UK Border Force	Pick TV	24/06/2011	Race discrimination/offence	1
Undercover Boss (trailer)	Channel 4	02/07/2011	Scheduling	1
Undercover Boss (trailer)	Channel 4	05/07/2011	Scheduling	1
UTV Live	UTV	11/07/2011	Generally accepted standards	1
Various	Various	n/a	Advertising minutage	1
Wall of Fame	Sky1	18/07/2011	Animal welfare	1
Wallander	BBC 4	09/07/2011	Offensive language	1
Wallander	BBC 4	09/07/2011	Offensive language	1
Who Wants to be a Millionaire	STV	15/07/2011	Premium Rate Services	1
Zoo UK	Pick TV	15/07/2011	Offensive language	1

## Investigations List

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

Here is an alphabetical list of new investigations launched between 28 July and 17 August 2011.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Advertising minutage	Channel 5	Friday, 05 August 2011
Advertising minutage	MTV	Saturday, 02 July 2011
Advertising minutage	S4C	Monday, 01 August 2011
Advertising minutage	Sky Atlantic	Wednesday, 22 June 2011
Advertising minutage	Sky Sports News	Saturday, 02 July 2011
Advertising scheduling	Chello Zone	various
Advertising scheduling	Dolphin TV	various
Advertising scheduling	ESPN	various
Advertising scheduling	Sky Sports	various
Advertising scheduling	Syfy	various
Advertising scheduling	Universal	various
Advertising scheduling	Viva	various
ARY News	ARY News	Monday, 18 July 2011
Being Erica	E4	Thursday, 11 August 2011
Jaguar's sponsorship of International Cricket	Sky Sports 1	Saturday, 30 July 2011
Live at the Apollo	Comedy Central	Monday, 01 August 2011
Lorraine	ITV1	Wednesday, 25 May 2011
Naked Weapon	FilmBox	Sunday, 22 May 2011
News	Channel 5	Tuesday, 24 May 2011, Sunday, 29 May 2011, and Saturday, 04 June 2011
Newsnight	BBC 2	Wednesday, 22 June 2011
Roger Day	BBC Radio Kent	Wednesday, 22 June 2011
Station ident	106 Jack FM (Solent)	Tuesday, 02 August 2011
Tafheem Al Masyal	Takbeer TV	various
The World's Strictest Parents	BBC 3	Sunday, 14 August 2011
Tour De France 2011 Live	ITV4	Tuesday, 19 July 2011
Trailer for Pro Bull Riders	Extreme Sports	Tuesday, 19 July 2011

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

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

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

For fairness and privacy complaints go to:

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