

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 objectives¹, 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 advertising².

The BCAP Code is at: 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.

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

² 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

Standards cases

In Breach

Ummah Talk

The Islam Channel, 14 October 2009

Politics and Beyond

The Islam Channel, 16 October 2009

This Review Decision replaces a decision published in Ofcom's Broadcast Bulletin on 8 November 2010.

Introduction

The Islam Channel is a specialist religious channel that broadcasts on the Sky digital satellite platform and is directed at a largely Muslim audience in the UK and elsewhere. Its output ranges from religious instruction programmes to current affairs and documentary programmes.

Complaint

In March 2010, the Quilliam Foundation ("Quilliam"), which describes itself as a "counter-extremism" think-tank, published a report called *Re-programming British Muslims - Sky Channel 813* ("the Quilliam Report").¹ The Quilliam Report was an analysis of the Islam Channel's output over a number of months, looking in particular at various religious and political programmes broadcast in 2008 and 2009. The Quilliam Report made a number of allegations about compliance of the Islam Channel with the Ofcom Broadcasting Code ("the Code").

Ofcom's investigation

In Ofcom's view, some of these allegations raised potential issues under the Code. Ofcom therefore requested recordings of the relevant material. Having watched the recordings, Ofcom decided to investigate six programmes in relation to potential due impartiality issues.

In line with Ofcom's Procedures for the handling of broadcasting standards or other licence-related cases ("the Procedures"),² Ofcom asked the broadcaster how the programmes complied with rules in Section 5 of the Code on due impartiality. In light of the Islam Channel's response, Ofcom decided that four of the programmes did not raise potential issues under the Code. Only the two programmes that in Ofcom's opinion raised potential issues are discussed below.

The first of these was *Ummah Talk* (14 October 2009), a live discussion programme focusing on issues of interest to the Islamic community, with guests both in the studio and participating by telephone. This particular programme dealt with the policy of the Palestinian President, Mahmoud Abbas, in relation to a UN Report into Israeli military

¹ The Quilliam Report is available at:
<http://www.quilliamfoundation.org/images/stories/islamchannelreport.pdf>.

² These procedures were in force at the time of Ofcom's investigation, available here:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/standards.pdf>.

operations in Gaza in December 2008/January 2009 and their aftermath (“the Goldstone Report”);³ and Israel’s policy towards Palestine, including its treatment of Palestinian prisoners held by Israel.

The second programme was *Politics and Beyond* (16 October 2009), also a live discussion programme focusing on political issues, with guests in the studio and participating by telephone. This particular programme dealt with Israel’s military operations in Gaza in December 2008/January 2009 and their aftermath, including allegations that war crimes were committed by Israel.

Ofcom asked the broadcaster how the programmes, in discussing the issues described above, complied with Rule 5.5 of the Code, which provides that due impartiality must be preserved by broadcasters in their coverage of matters of political or industrial controversy and matters relating to current public policy. Under the Code, this may be achieved within a programme or over a series of programmes taken as a whole.

Islam Channel’s response

In its response, the Islam Channel said that the programmes did not deal with controversial matters but were *“merely factual and in line with international law and the stance of the British government”*.

The broadcaster made some general comments about media coverage of the Israeli-Palestinian conflict. It referred to a study entitled *“Bad News from Israel”*,⁴ which according to the Islam Channel said that *“Israelis are quoted and speak in interviews over twice as much as Palestinians and there are major differences in the language used to describe the two sides. This... influences how viewers understand the conflict”*⁵.

The Islam Channel stressed the importance of its right to freedom of expression *“which is fundamental to allow the channel to broadcast an alternative perspective on current affairs in comparison to other mainstream channels”*. It also stressed its special remit which is *“to broadcast programmes for its majority Muslim audience globally with very different expectations”*. The Islam Channel said that: *“It is... hugely important to recognise the importance of the consensus viewpoint of the vast majority of our viewers on issues relating to Israel/Palestine and to recognise that certain viewpoints strongly presented may indeed create huge controversy and an outcry from our viewing public which could be extremely damaging to the channel’s standing and integrity”*.

It stated that over its programming it had invited numerous guests to provide an Israeli viewpoint, however *“few are prepared to accept the channel’s invitation to participate in programme discussions. We have been successful in persuading more moderate Israeli supporters to participate in discussions - but rarely on issues relating directly to Israel”*.

³ *Human Rights in Palestine and Other Occupied Arab Territories*, Report of the United Nations Fact Finding Mission on the Gaza Conflict, 15 September 2009.

⁴ Greg Philo and Mike Berry, Glasgow University Media Group, published by Pluto Press, 2004.

⁵ The reference for this can be found in Philo and Berry, 2004: 157 and 296.

The broadcaster said that nevertheless it *“always seeks to maintain impartiality and show alternative perspectives within programmes or with linked programmes”*.

The broadcaster also said that it was unreasonable for Ofcom to raise issues relating to programmes broadcast a long time ago, when broadcasters are only obliged under their licence to retain footage for 60 days.

The broadcaster’s comments in relation to the two specific programmes Ofcom was investigating are summarised below.

Ummah Talk, 14 October 2009

The Islam Channel said that *Ummah Talk* is a discussion programme looking at issues affecting the *“Muslim Ummah or community”*. This particular programme was presented by Azad Ali, and the two guests on the programme were Ismail Patel (Chairman of Friends of Al Aqsa) and Silvia Nikolaou-Garcia (Researcher, The Middle East Monitor).

According to the Islam Channel, the discussion came in the wake of the Goldstone Report, and the language of the programme participants was *“entirely consistent with the language used within the findings of the UN Commission’s report”* which had, for example, stated that Israel had adopted a *“policy aimed at punishing the Gaza population”*.

The broadcaster stated that *“the Palestinians’ struggle is considered legitimate and in full accord with the principles of international law”*, and it indicated where international organisations agreed with the views expressed within the programme. For example, the comments by the guest Ismail Patel about water shortages *“echo the views of the most respected human rights organisations including Amnesty International... as well as the views of the majority of Islam Channel’s viewers”*. In addition, *“references are made by one guest referring to Gaza as a prison. This is acceptable and normal discourse used by the majority of the channel’s viewers. It is also the language used by the UK Prime Minister”*.

The Islam Channel said comments critical of Palestinian President Mahmoud Abbas related to his reaction to the Goldstone Report. According to the broadcaster, there had been Palestinian and international criticism of the withdrawal, at the behest of the Palestinian Authority and President Abbas, of *“the draft resolution condemning Israel and calling for the transfer of the report to the UNSC⁶”*. In addition, the broadcaster said that according to media reports in October 2009, *“Richard Falk, the UN High Commissioner for Human Rights and a special UN Reporter attacked Abbas for supporting the delay of a discussion on the Goldstone report”*. The Islam Channel said that *“Our presenter attempted to capture the mood of the majority of the channel’s viewers when he echoed the sentiments of the UN High Commissioner”*.

The Islam Channel stated that *“the comments made [in the programme] were not ‘controversial’ but were based on facts as evidenced above and in line with our audience expectations”* and therefore did not breach Rule 5.5 of the Code.

Politics and Beyond, 16 October 2009

⁶ i.e. the UN Security Council

The Islam Channel said that *Politics and Beyond* is a discussion programme looking at UK and international political issues. This particular programme was presented by Anas Altikriti (Founder of the Cordoba Foundation) and the three guests on the programme were Michael Massih QC, Andrew Slaughter MP and Dan Machover (Chair of Lawyers for Palestinian Human Rights).

In its comments, the broadcaster referred Ofcom to the response it had given in relation to the 14 October 2009 edition of *Ummah Talk*, as set out above.

Summary of original decision

In a decision published on 8 November 2010, Ofcom found that the two programmes were in breach of Rule 5.5 of the Code (“the Due Impartiality Decision”).⁷

In respect of *Ummah Talk*, the Due Impartiality Decision concluded that the programme did not contain any alternative views which could reasonably and adequately be classed as supportive of, or which sought to explain, the policies and actions of Palestinian President Mahmoud Abbas in relation to the Goldstone Report, or of the Israeli government towards Palestine, including its treatment of Palestinian prisoners. The programme therefore gave a one-sided view on these matters, which were matters of political controversy (see further below). Moreover, the Islam Channel did not provide to Ofcom evidence of alternative views being presented in a series of programmes taken as a whole.

In relation to the broadcaster’s argument that the views expressed in the programme were not ‘controversial’, the Due Impartiality Decision stated that the fact that a certain viewpoint is likely to be held by the overwhelming majority of the Islam Channel’s likely audience, or by other institutions, does not mean that the issue is not one of political controversy in terms of the Code. The Islam Channel’s belief that it does, demonstrates a lack of understanding about the due impartiality requirements of the Code.

In respect of *Politics and Beyond*, the Due Impartiality Decision concluded that there were no viewpoints presented which could reasonably be portrayed as coming from an Israeli perspective in relation to the issues of war crimes alleged to have been committed by Israel in Gaza in January 2009, and the possibility of arrest for war crimes of Israeli politicians visiting other countries such as the UK. The Due Impartiality Decision acknowledged that a programme broadcast by the Islam Channel four months later included an interview with Israel’s former ambassador to Germany in which he gave his views on the subject of arrests for war crimes. However, this programme was not broadcast within an appropriate period of the first and could not therefore be considered to be an ‘appropriately linked’ programme under the Code.

The Due Impartiality Decision also noted the “*particular circumstances of this broadcaster*” and cited an Ofcom Sanctions Committee Decision of 2007⁸ that “[recognised and applauded] *the Islam Channel’s aims to provide alternative views*”,

⁷ Broadcast Bulletin 169: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>.

⁸ <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/islamchannel.pdf>

but expressed concern at the lack of understanding the Islam Channel showed in respect of the due impartiality requirements of the Code.

Request for Review

The Islam Channel wrote to the Executive on 19 November 2010 requesting a review of the Due Impartiality Decision. It considered that the Due Impartiality Decision contained a material mistake of fact, in that the programmes considered in breach by Ofcom did not deal with matters of political controversy but rather with facts.

In addition, the Islam Channel stated that the Due Impartiality Decision gave no weight to the findings of the report *"Bad News from Israel"*,⁹ which, in the broadcaster's words, *"determined that there exists a profound bias 2:1 in favour of the Israeli position within our mainstream media"*. The Islam Channel said that it had *"a journalistic obligation to work against what is clearly a crude in-balance in reporting of this [Israeli-Palestinian] conflict"*.

The Islam Channel also said that its right to freedom of expression was not taken into account in the Due Impartiality Decision, in particular *"the freedom of expression of the channel to provide an alternative viewpoint on various topics of discussion"*.

Grant of review

Ofcom decided to grant the request for a review of the Due Impartiality Decision because it considered that, in stating that the Due Impartiality Decision gave no weight to the findings of the report *"Bad News from Israel"* and that the Islam Channel's right to freedom of expression, in particular its freedom to provide an alternative viewpoint, was not taken into account, the Islam Channel had put forward a case that the Due Impartiality Decision was materially flawed and that there was a compelling reason why the review should be granted.

In accordance with the Procedures, Ofcom therefore referred the case to the Broadcasting Review Committee ("the Committee").

Ofcom did not refer the Due Impartiality Decision to the Committee on the ground that it contained a material mistake of fact: that the programmes considered in breach by Ofcom did not deal with matters of political controversy but rather with facts - because it was Ofcom's view that the Due Impartiality Decision had already addressed the Islam Channel's objection in this regard and so the broadcaster had not made a case that the Due Impartiality Decision was materially flawed and that there was a compelling case for review on this point.

The Committee's decision

The Committee reviewed all the relevant material before reaching its decision.

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

⁹ op.cit.

The Committee considered whether the editions of *Ummah Talk* and *Politics and Beyond* complied with Rule 5.5 of the Code, which provides that due impartiality must be preserved by broadcasters on matters of political or industrial controversy and matters relating to current public policy. This may be achieved within a programme or over a series of programmes taken as a whole. A “series of programmes taken as a whole” means 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. References in this decision to programmes which are “appropriately linked” are references to this definition.

In assessing whether due impartiality has been preserved, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. 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. “Context” is important. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster how it ensures due impartiality is maintained.

Ofcom’s Guidance on Section 5 of the Code makes clear that the rules on due impartiality apply to national and international matters although the impartiality due to a non-national matter *may* be less. Given that the Israeli-Palestinian conflict is a significant international matter which is of UK national concern, it was not a matter in relation to which the Committee considered the impartiality due to be less.

When considering due impartiality the Committee had regard to context, including the service on which the material was broadcast, the likely size and composition of the potential audience and the likely expectation of the audience. The Committee took into account the fact that the broadcaster was directing its service to a largely Muslim audience. It acknowledged that the Islam Channel’s approach to due impartiality would be influenced by the likely expectation of its audience, including what the Islam Channel described as “*the consensus viewpoint of the vast majority of our viewers on issues relating to Israel/Palestine*”.

The Committee also took account of the right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights. The right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference from a public body. However it is not an absolute right. The exercise of these freedoms may be subject to such restrictions and conditions as are prescribed by law and necessary in a democratic society, for example in the interests of national security, territorial integrity or public safety, or for the protection of the rights of others. 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.

There is no prohibition under the Code on broadcasters discussing controversial subjects or including a particular view within a programme: to prohibit this would be an unacceptable restriction on a broadcaster’s freedom of expression. However Section Five of the Code makes clear that in doing so, broadcasters must ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is favoured unduly. In that way, Section Five acts to limit, to some extent, freedom of expression.

In considering the programmes in question, the Committee therefore had regard to the right to freedom of expression of the Islam Channel and its audience - which is

considered to be at its highest in relation to political matters - whilst taking into account that the exercise of that right is subject to certain restrictions including the need for broadcasters to comply with the due impartiality requirements set out in the Code.

The Committee noted that *Bad News from Israel*¹⁰ was a study of television news coverage of the Israeli-Palestinian conflict, carried out between 2000 and 2002 by members of the Glasgow University Media Group. Its conclusions were, in summary, that UK television viewers showed a limited understanding of the Israeli-Palestinian conflict and that the conflict was reported in a superficial and frequently misleading manner. The study found that in the samples of media content assessed, there appeared to be an imbalance in favour of the Israeli perspective on the conflict: there was an emphasis on Israeli casualties; journalists sometimes used the language of official Israeli statements as their own direct speech in reports; and the Israeli position was more frequently legitimised by the language used and explanations given.

The Committee noted the findings of *Bad News from Israel*. However it did not consider them directly relevant to the question of whether *Ummah Talk* and *Politics and Beyond* complied with Rule 5.5. This was because the findings related to content across a number of different media services, whereas the due impartiality requirements of the Code do not seek to maintain balance across a range of broadcasting services but require each individual broadcaster to preserve due impartiality in programming on its own service.

The Committee also noted that the Islam Channel considered it had “a *journalistic obligation to work against what is clearly a crude in-balance in reporting of this [Israeli-Palestinian] conflict*”. The Committee acknowledged the importance of the Islam Channel in providing a platform for different views and broadening the debate on key international issues. However the Committee emphasised that in doing so the Islam Channel must comply with the due impartiality requirements of the Code.

Ummah Talk, 14 October 2009

The Committee noted that in this programme the presenter, Azad Ali, interviewed Ismail Patel by telephone and Silvia Nikoloau-Garcia, who was in the studio.

As indicated above, Ofcom did not refer the Due Impartiality Decision in relation to *Ummah Talk* to the Committee on the ground put forward by the Islam Channel that it contained a material mistake of fact in that the programme did not deal with matters of political controversy but rather with facts. The Committee therefore noted the finding of the Due Impartiality Decision in that regard:

“[Ofcom] noted the Islam Channel’s contention that the comments made throughout the programme were not controversial because they echoed similar views held amongst a number of international organisations, as well as the channel’s audience. However, the Code is clear in its definition of “matters of political and industrial controversy.” This states that: “Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate”. Ofcom considered that - whilst there is... clearly a large range of viewpoints that can be classed as critical of, for example, the policies and actions of the state of Israel in relation to Palestine - there are also viewpoints in support of the Israeli State. Under the Code, broadcasters must ensure compliance with Section Five,

¹⁰ op.cit.

when dealing with a matter of political or industrial controversy or relating to current policy, even where there may not be parity overall in the amount of support for a particular viewpoint on a particular matter.

[...]

[Ofcom] noted the broadcaster's submissions that the viewpoints expressed in the programme were: "acceptable and normal discourse used by the majority of the channel's viewers"; and were supported by a range of international organisations. Therefore, in the Islam Channel's view "the comments made [in the programme] were not 'controversial' but were based on facts as evidenced above and in line with our audience expectations". Just because a particular viewpoint on an issue of political or industrial controversy or matter relating to current public policy is likely to be supported by the overwhelming majority of a channel's audience (or various international and political institutions) does not obviate the need for broadcasters to comply with Section Five of the Code. The fact that the broadcaster in this case considered that just because a certain viewpoint was widely held (especially amongst its likely audience) that... issue was not an issue of political controversy in terms of [the] Code demonstrates a lack of understanding, on the part of the Islam Channel, in relation to the due impartiality requirements of the Code."

The Committee then turned to a consideration of whether due impartiality had been preserved in this edition of *Ummah Talk* taking into account the grounds for review. The Committee considered that with the exception of one comment made by the presenter Azad Ali (see below), the contributions of the presenter and guests could all be characterised as critical of President Abbas and the Palestinian Authority in relation to the Goldstone Report; and of the Israeli government's policy towards Palestine, and in particular its treatment of Palestinian prisoners under its jurisdiction.

For example, the Committee noted the following statements, made at different points in the programme:

Azad Ali (AA): "... many commentators have mentioned that Gaza is basically an open prison blocked from all sides and this is what's taking place - I mean people look after prisoners better than what's happening here."

Ismail Patel (IP): "In a way, if you're a prisoner, you'd be better off than if you were in Gaza. As a prisoner, the prison guards have a duty to feed you and clothe you. But, what is happening in Gaza is they've blockaded it, and allowed people to rot literally".

AA: "Again, collective punishment taking place in the West Bank".

IP: "Israel and America is a friend of [President Mahmoud] Abbas. Without Abbas, they know they won't be able to get away with what they are getting away with, with finishing the Palestinians. Abbas is being propped up by the enemies of the Palestinian people".

IP: "Mahmoud Abbas has been exposed. He has no longer the legitimacy to be the President of the Palestinian people".

AA: "We were talking about Mahmoud Abbas, how he has, you know, kind of betrayed the Palestinian cause, Palestinian people, by deferring this report which is trying to, attempting to, put war criminals on trial".

IP: *"When we look at the specifics of the Palestinian issue we realise that the word duplicity, what it means in the Palestinian issue. I mean, Palestinians have one Israeli prisoner, who the whole world is talking about. Even now after over a year his picture is on the front page of British newspapers. Over 12,000 Palestinians are languishing in Israeli jails. Their plight, their status, is ignored. It is not even mentioned".*

AA: *"I think it also highlights the Zionist propaganda and how well it's managed to cover the truth – like you said almost the entire world knows of that one Israeli prisoner, but 12,000 Palestinian prisoners and the world's media can't even name a single one. I think it shows the duplicity."*

The Committee noted in particular that a number of the comments quoted above were made by the presenter, Azad Ali. Presenters may express views on matters of political controversy within the limits of the Code. However alternative viewpoints must be appropriately represented. Given the difficulty faced by the Islam Channel in finding guests to provide an Israeli perspective on issues of this nature, which the Committee acknowledged, the role of the presenter in providing balance is crucial. In this case, the Committee noted that not only did the presenter not provide balance but he frequently endorsed the views expressed by the programme's guests (as, for example, in the final statement quoted above).

The Committee noted two comments made by the presenter which reflected criticism of Palestinian armed groups in the Goldstone Report:

"Also of course Goldstone mentions about the Palestinian rocket attacks, how they were indiscriminate and didn't distinguish between civilian and military targets"

"Goldstone does criticise that [Palestinian rocket attacks] as well. I mean it's a balanced report. He has criticised the Palestinians and criticised the Israelis".

However the Committee considered that since these were the only references in the programme to an alternative point of view on the issues discussed, they were not sufficient to ensure due impartiality had been preserved in the programme. For instance, a further explanation of the context and purpose of the Goldstone Report, and a fuller acknowledgement of its findings of violations of international law by Palestinian armed groups, would have assisted in preserving due impartiality on the matters discussed.

In addition, the Committee noted that in providing its representations in relation to *Ummah Talk*, the broadcaster had not put forward any evidence that alternative views on these issues were presented in a series of programmes taken as a whole.

Politics and Beyond, 16 October 2009

The Committee noted that in this programme the presenter, Anas Altikriti, interviewed Michael Massih QC by telephone, and Andrew Slaughter MP and Daniel Machover in the studio.

The Committee noted that the introduction to the programme was missing from the recording which had been provided to the Committee, making it difficult to assess the aim of the programme in its early stages. The Committee also noted that the Islam Channel had not provided representations specifically in relation to this programme.

As indicated above, Ofcom did not refer the Due Impartiality Decision in relation to *Politics and Beyond* to the Committee on the ground put forward by the Islam Channel that it contained a material mistake of fact in that the programmes considered in breach by Ofcom did not deal with matters of political controversy but rather with facts. The Committee therefore noted the finding of the Due Impartiality Decision in that regard:

"[Ofcom] considered that the 16 October Programme dealt with an issue of political controversy, namely, Israel's military activities (including allegations of war crimes committed by Israel) in Gaza in January 2009, and their aftermath."

The Committee considered that this edition of *Politics and Beyond* primarily discussed the legal basis and precedents for, and the likely implications of, Israeli officials being prosecuted in a country such as the UK for war crimes allegedly committed in Gaza; and whether the impetus for development of the law in this area should come from politicians or lawyers. The Committee was of the view that the legal elements of this discussion were closely related to the matters of political controversy described above.

The Committee considered whether due impartiality had been preserved in the programme. It acknowledged that the arguments made by the participants were frequently complex. For example the Committee noted the following statement by Daniel Machover in which he presented his view of Israel's arguments in relation to international humanitarian law:

"And what Israel is trying to do... is they're actually trying to change the law. They're trying to say - well, this is all about terrorism, it's dealing with terrorism, you America, you Britain, you don't want the law to be applied to us because it's going to apply to you. And what they're really trying to do is say the law doesn't fit modern era, we need to fight against terrorism, we need a freer hand, all these things, laws that are there to protect civilians shouldn't be there anymore. So they're trying to drag all these very important laws that are there to protect civilians and people who don't participate in combat, they just want to forget all those, we're fighting against terrorism, we need to change the rules of the game. And what we need - the civilised world needs - is to stand up and say "no", the rules of the game are really clear and they're there to protect the innocent and the civilians. It doesn't matter if you're fighting a "terrorist" enemy or an organised enemy with an organised army - you need to protect civilians from becoming targets. And what Israel is trying to do is to say civilians are legitimate targets. That's actually what they said, I believe, if you look carefully at what they said in this recent conflict in Gaza."

The Committee noted that at one point the presenter, Anas Altikriti, referred to a potentially negative implication of attempts to prosecute Israeli officials:

"Some have said that now as a result of this flurry of cases brought against Israeli officials, that the UK is quickly becoming - and I think this was quoted in Haaretz in an article written by an Israeli journalist - that the UK is quickly becoming a no go zone for Israeli officials. Now, many on the other side will say well that doesn't really help anyone, because that doesn't really mean that those people won't go on doing what they are doing and what these cases are brought against them in order to address. So in a sense why prevent people or why deter people from coming to the UK when maybe it may be more useful for them to come here, face a sort of a public enquiry, listen to the other point of view and you know have that kind of debate and

negotiation, at least that is some of the feedback that we're getting – now that people won't come here, what kind of benefit has anyone gained from that?"

However the Committee considered that all the contributions could reasonably be characterised as critical of the Israeli state, noting for example the following statement by Andrew Slaughter MP:

"If you look at a case like Gaza, well the crimes are continuing. The collective punishment of the people of Gaza is still continuing",

and in particular this statement by Daniel Machover:

"You've got to deal with the fact that there's a big driver within the Israeli society for there to be wars because it generates jobs, it generates money... so these things are complicated, and no I don't think we have absorbed all of the lessons of the Second World War. Certainly Zionism and the way that it behaves and was set up as a settler colonial project I don't think did learn the lessons of the Second World War".

In the Committee's view, no Israeli government perspective on the issue of war crimes allegedly committed by Israel during its military operations in Gaza in December 2008/January 2009 and on the potential arrest for war crimes of Israeli politicians visiting other countries was presented in the programme (via the presenter or otherwise).

The Committee also noted that in its representations in relation to *Politics and Beyond*, the broadcaster did not provide any evidence that alternative views on these issues were presented in a series of programmes taken as a whole. The Due Impartiality Decision had referred to an edition of *Ummah Talk* broadcast in January 2010 - which had included an interview with Israel's former ambassador to Germany in which he gave his views on the subject of arrest of Israeli politicians abroad for war crimes - but Ofcom had considered that this programme, being broadcast nearly four months after *Politics and Beyond*, was not broadcast "within an appropriate period" and therefore could not be considered to preserve due impartiality over a series of programmes taken as a whole. The Committee concurred with this view.

Politics and Beyond, 30 September 2009

The Committee noted that the broadcaster's objection to Ofcom raising issues relating to programmes that were broadcast several months (in this case 9 months) prior to Ofcom seeking comments from the broadcaster was addressed and rejected in Ofcom's decision in relation to two editions of *IslamiQa* published on 8 November 2010.¹¹ That decision pointed out that Ofcom has an obligation to consider evidence of potential breaches of the Code irrespective of when a programme may have been broadcast; and that the Quilliam Report made a number of allegations in March 2010 about compliance of the Islam Channel with the Code, some of which appeared to be potentially serious. However the Committee acknowledged that Ofcom's request for comments on *Ummah Talk* and *Politics and Beyond* was made some time after those programmes were broadcast and that it may therefore have been difficult for the

¹¹ Ofcom Broadcast Bulletin 169. Note that that part of the decision which relates to *Muslimah Dilemma* is replaced by the decision in relation to *Muslimah Dilemma* published in this Broadcast Bulletin.

broadcaster to point to other programmes in its output as preserving due impartiality over a series of programmes taken as a whole.

The Committee took this into account when reaching its decision and specifically considered whether an edition of *Politics and Beyond* broadcast on 30 September 2009 ("the 30 September programme"),¹² which had also discussed the Goldstone Report, could be said to have provided evidence in the Islam Channel's favour, that due impartiality was preserved by it on the matters of political controversy discussed in either *Ummah Talk* and *Politics and Beyond* over a series of programmes taken as a whole. (The Committee noted that the Islam Channel had not represented that the 30 September programme preserved due impartiality in this way).

The Committee noted that in the 30 September programme, the Islam Channel had included in the discussion one guest¹³ who presented a different view, stressing for example that the Goldstone Report had found that violations of human rights and international humanitarian law were committed both by Israel and Hamas, and that the violations committed by one side did not justify those of the other. However, the Committee did not consider that this on its own provided sufficient balancing material to justify a finding that the Islam Channel had preserved due impartiality on the matters discussed in *Ummah Talk* and *Politics and Beyond* over a series of programmes taken as a whole. For instance the 30 September programme, broadcast two weeks earlier than *Ummah Talk*, had not discussed President Abbas' reaction to the Goldstone Report; and it did not present, for example, an Israeli government perspective to balance the views expressed in *Ummah Talk* and *Politics and Beyond*.

However the Committee considered that the 30 September programme was evidence that the Islam Channel was able to provide alternative views on issues related to the Israeli-Palestinian conflict, while at the same time taking into account the likely expectation of its audience as to its coverage of such issues.

Conclusion

The Committee took account of the difficulty the Islam Channel stated it faces in finding guests to represent the viewpoint of the Israeli government. The Israeli-Palestinian conflict is, however, a matter of political controversy and the Islam Channel, in presenting these issues, was therefore obliged to ensure some discussion of the policies and actions of the Israeli government which represented its viewpoint. This could have been achieved, for example, by putting that viewpoint forward through presenters' comments or questions to programme guests.

In reaching its decision, the Committee also took into account the likely expectation of the Islam Channel's audience in relation to discussion by the broadcaster of the Israeli-Palestinian conflict and related issues. The Committee noted that Rule 5.5 does not require the Islam Channel to give an equal division of time to every view or to represent every argument and every facet of every argument. However it is required to ensure that alternative viewpoints are adequately represented. In the case of these programmes, such viewpoints (i.e. the views of the Israeli government,

¹² At the beginning of this investigation, Ofcom asked the Islam Channel for comments on how the 30 September programme complied with Rule 5.5 of the Code. In light of the Islam Channel's response, Ofcom decided that the 30 September programme did not raise potential issues under the Code.

¹³ Frederick Abraham, Human Rights Watch

and of President Abbas in relation to the Goldstone Report) were not presented in the programmes themselves or in a series of programmes taken as a whole.

The Committee stressed that the broadcasting of highly critical comments concerning the policies and actions of a state (as in these programmes) is not, in itself, a breach of the Code rules on due impartiality. It is essential that current affairs programmes are able to explore and examine issues and that contributors are able to take robust and highly critical positions. However, a broadcaster must preserve an adequate and appropriate level of impartiality in its presentation of matters of political controversy. In the case of these programmes, the Committee considered that the Islam Channel failed to do so, for the reasons set out above.

The Committee therefore considered that both *Ummah Talk* and *Politics and Beyond* were in breach of Rule 5.5.

Breaches of Rule 5.5

The Committee was of the view that whilst these breaches did not merit consideration for the imposition of a statutory sanction, it did have significant concerns about the Islam Channel's understanding and compliance processes in relation to Section Five of the Code, particularly as the Islam Channel has previously been fined for breaches of the Code relating to 'due impartiality'. Therefore, in all the circumstances, it was considered appropriate for the Islam Channel to be invited to attend a meeting with Ofcom to discuss how improvements can be made to its compliance processes in relation to Section Five of the Code.

In Breach

Muslimah Dilemma

The Islam Channel, 12 April 2009

This Review Decision replaces that part of a decision published in Ofcom's Broadcast Bulletin on 8 November 2010 which relates to *Muslimah Dilemma*.

Introduction

The Islam Channel is a specialist religious channel that broadcasts on the Sky digital satellite platform and is directed at a largely Muslim audience in the UK and elsewhere. Its output ranges from religious instruction programmes to current affairs and documentary programmes.

Complaint

In March 2010, the Quilliam Foundation ("Quilliam"), which describes itself as a "counter-extremism" think-tank, published a report called *Re-programming British Muslims - Sky Channel 813* ("the Quilliam Report").¹ The Quilliam Report was an analysis of the Islam Channel's output over a number of months, looking in particular at various religious and political programmes broadcast in 2008 and 2009. The Quilliam Report made a number of allegations about compliance of the Islam Channel with the Ofcom Broadcasting Code ("the Code").

Ofcom's investigation

In Ofcom's view, some of these allegations raised potential issues under the Code. Ofcom therefore requested recordings of the relevant material. Having watched the recordings, Ofcom decided to investigate three programmes in relation to potential harm and offence issues.

One of the three programmes was *Muslimah Dilemma*, a discussion programme (in English) considering topical issues from an Islamic perspective. This particular edition, broadcast on 12 April 2009, discussed sexual relations within marriage in the context of new legislation introduced in Afghanistan. The presenter interviewed a studio guest (Dr Nazreen Nawaz) and a guest speaking on the telephone from Afghanistan.

In line with Ofcom's Procedures for the handling of broadcasting standards or other licence-related cases ("the Procedures"),² Ofcom asked the broadcaster how the programme complied with Rule 2.3 of the Code, which requires broadcasters to ensure that material which may cause offence is justified by the context. In particular Ofcom asked for the broadcaster's comments on the following statements made by Nazreen Nawaz:

"And really the idea that a woman cannot refuse her husband's [sexual] relations – this is not strange to a Muslim because it is part of maintaining that

¹ The Quilliam Report is available at:
<http://www.quilliamfoundation.org/images/stories/islamchannelreport.pdf>.

² These procedures were in force at the time of Ofcom's investigation, available here:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/standards.pdf>.

strong marriage. In fact it is a bit strange, the converse is strange. To refuse relations would harm a marriage”.

“But it shouldn’t be such a big problem where the man feels he has to force himself upon the woman because the understanding should be created within the system through the implementation of all the laws of Islam, that inshAllah marriage is about seeking tranquillity, it’s about harmony that should be in the mind of the man and woman alike”.

Islam Channel’s response

The Islam Channel said that *Muslimah Dilemma* was a programme that dealt with women’s and general social issues and their effect on the Muslim community. It *“tackles both controversial as well as taboo subjects which the Muslim community may not have had an open discussion about up until now”* and *“aims to provide practical advice and long term solutions which emanate from Islam”*.

The Islam Channel stated that the discussion in this particular programme was about new laws passed in Afghanistan which could be interpreted to allow rape within marriage and also to restrict women from leaving the house without their husbands’ permission. The two guests on the programme were Nazreen Nawaz and Fatana Gallani (Founder of the Afghanistan Women’s Council).

According to the Islam Channel, the new Afghan legislation was *“seen [in the western media] to be condoning rape within marriage, however, according to the Afghan guest on the programme, the law was not seen like that in Afghanistan. The show then discussed why it had been interpreted in that way”*.

The broadcaster added that Nazreen Nawaz described *“how a harmonious marriage is created and maintained through a sense of commitment, physical, emotional, and sexual between the husband and wife”*. The Islam Channel said that it is clearly mentioned that the implementation and understanding of the Islamic laws should result in the man not *“forcing himself upon the woman”*. The broadcaster represented that when asked directly whether this is condoning rape within marriage, Nazreen Nawaz does not agree that it does, and that she went on to say that *“marriage is about tranquillity”*.

In conclusion, the Islam Channel said that the programme was *“discussing the different interpretations of the law and the cultural and Islamic differences from the west”* and that the Islam Channel *“does not condone or encourage marital rape”*.

Summary of original decision

In a decision published on 8 November 2010, Ofcom found that all three programmes were in breach of Rule 2.3 of the Code (“the Offence Decision”).³

In relation to *Muslimah Dilemma*, the Offence Decision concluded that the statement that *“it shouldn’t be such a big problem where the man has to force himself upon the woman”*, when interpreted to have its literal and most straightforward meaning (i.e. that when a husband feels he has to force himself on his wife, this should not be considered to be a problem), together with the statement that *“...the idea that a woman cannot refuse her husband’s relations this is not strange to a Muslim because*

³ Broadcast Bulletin 169: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>.

it is part of maintaining that strong marriage” could be construed as the interpretation of the studio guest that Islamic law does not allow a wife to refuse to have sexual relations with her husband.

The Offence Decision found that the views expressed in the programme might have suggested to many in the audience that it would be permissible for a husband to oblige his wife to have sexual relations against her will, which had the potential to cause offence; and that even taking into account the fact that the Islam Channel often broadcasts programmes containing discussion of Islamic teachings, the potentially offensive material was not justified by the context, in particular because no mediating or counteracting views or condemnation of marital rape were broadcast within the programme. The programme was therefore in breach of Rule 2.3.

Request for review

The Islam Channel wrote to the Executive on 19 November 2010 requesting a review of the Offence Decision. It stated that the Offence Decision in respect of *Muslimah Dilemma* contained a material mistake of fact in that it misinterpreted the words of Nazreen Nawaz to mean that she was of the view that when a husband feels he has to force himself on his wife, this should not be considered a problem. Nazreen Nawaz never expressly stated that she condones marital rape when asked by the presenter. The Islam Channel said that it was shocking that Ofcom could come to this conclusion after viewing the programme as a whole, and that Nazreen Nawaz considered it a “*slandorous accusation*”.

It also argued that insufficient weight was given to the arguments put forward by the Islam Channel about the cultural and social context of the programmes under scrutiny or the expectations of their audience. The Islam Channel had not received a single letter of complaint from viewers about the programmes found in breach by Ofcom, but if it began to dilute the religion of Islam it would receive complaints on a daily basis. The broadcaster said that according to Ofcom’s guidance notes, as a ‘specialist religious’ channel it is allowed to proclaim its doctrines and beliefs “*at the lowest risk of giving offence*”.

The Islam Channel said its right to freedom of expression had not been taken into account, in particular its freedom to provide an alternative viewpoint on topics of discussion. It added that *Muslimah Dilemma* had not been broadcast for over a year.

Grant of review

Ofcom decided to grant the request for a review of the Offence Decision in respect of *Muslimah Dilemma* because it considered that, in stating that the words of the studio guest were misinterpreted by Ofcom, the Islam Channel had put forward a case that the Offence Decision in relation to *Muslimah Dilemma* was materially flawed due to a mistake of fact and that there was a compelling reason why the review should be granted. In accordance with the Procedures, Ofcom therefore referred the case to the Broadcasting Review Committee (“the Committee”).

Ofcom stated that in reviewing this decision the Committee would consider the context in which the material was broadcast and take into account the Islam Channel’s right to freedom of expression, and would also consider its statement that *Muslimah Dilemma* has not been broadcast on the Islam Channel for over a year.

The Committee's decision

The Committee reviewed all the relevant material before reaching its 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; 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 and/or offensive material.

The Committee considered whether the edition of *Muslimah Dilemma* complied with Rule 2.3 of the Code, which requires that in applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context. The Code also requires that appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

In considering the application of Rule 2.3 to the programme, the Committee therefore took 'context' into account. Context includes factors such as the editorial content of the programme; the service on which the material is broadcast; the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes; and the likely size and composition of the potential audience and likely expectation of the audience.

The Committee also took account of the right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights ("the ECHR"). The right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference from a public body. The exercise of these freedoms may be subject to such restrictions and conditions as are prescribed by law and necessary in a democratic society, for example for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the reputation or the rights of others. Applied to broadcasting, Article 10 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.

The Committee recognised that a number of Ofcom licensees broadcast programming that derives from a particular religious or spiritual viewpoint. The Committee took account of Article 9 of the ECHR which provides that everyone has the right to freedom of thought, conscience and religion. This right includes freedom, in public or private, to manifest one's religion or belief in teaching and practice. 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, for example for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

The Committee acknowledged that programming that derives from a particular religious or spiritual viewpoint will include advice to followers of particular faiths as to how to lead their lives which may cause offence to different sections of the audience. However, broadcasters are permitted to deal with religious interpretations of various matters so long as the material complies with the requirements of the Code, including that generally accepted standards are applied. Therefore broadcasters should not be prohibited from transmitting potentially offensive material as long as it is justified by

the context. The Committee recognised that it would be an unacceptable restriction of a broadcaster's and audience's freedom of expression and freedom of thought, conscience and religion to curtail the transmission of certain views just because they might cause offence.

The Committee noted that the programme discussed new legislation in Afghanistan and the reaction of western media to that legislation. The Committee considered that the principal aim of the programme was to correct what the programme's guests perceived as western misunderstanding of the legislation. However the Committee considered that in seeking to correct this perceived misunderstanding, the participants - in particular Nazreen Nawaz - also expressed more general views on relations within marriage, including sexual relations.

The Committee noted by way of background the following explanation about the new Afghan legislation

The new Afghan law discussed was the Shi'a Personal Status Law, which regulates the personal affairs of Shi'a community members. The law was approved by the Afghan national assembly in February 2009 and signed by President Karzai in March. In April 2009 there was national and international criticism of the law (which resulted in it being reviewed). The law included an obligation for a woman to obey her husband in sexual matters and restricted women's freedom of movement. Some Afghan women, including MPs and human rights activists, protested certain provisions of the law.⁴

The Committee first considered whether the content of the programme was potentially harmful or offensive. It noted the following discussion between the presenter (P) and Nazreen Nawaz (NN):

P: *"...So Nazreen, just to quickly touch on this law because the accusations are very strong like Fatana is saying. Isn't it just a cultural misunderstanding or is it a justification of rape within marriage which is what people are saying?*

NN: *I think this is the thing isn't it, the whole discussion has been surrounded by a sensationalist coverage by the media, so you have highly charged language such as rape in marriage or enslavement of the woman or restriction, imprisonment of the woman, highly charged language.*

P: *And the funny thing, the strangest thing is, sorry to cut you there, that our sister Fatana from Afghanistan is saying that this is not how the Afghan women are viewing it.*

NN: *Well I think this is the point, the point is that one of the reasons for this hysteria is because particular western politicians and the western media are judging Islam through the lenses of western liberalism...*

[...]

⁴ This text was provided by Ofcom to the broadcaster to confirm its accuracy, in preparation for the Committee's deliberations; the broadcaster had no comments.

*...The verse in the Qu'ran that says live with them [women] on a footing of kindness and justice, so Islam says this is the relationship that should be there between husband and wife in marriage and part of that is the fact that both should fulfil the intimacy towards one another, that's part of a strong marriage. And really **the idea that a woman cannot refuse her husband's relations this is not strange to a Muslim because it is part of maintaining that strong marriage.** In fact it is a bit strange, the converse is strange. To refuse relations would harm a marriage. And because Islam views the unit of marriage so importantly then this would be something strange.*

P: So you don't think that this is condoning rape then in marriage?

NN: *This is the point, this is seen through the lenses of a western eye...*

A few minutes later, Nazreen Nawaz said the following:

NN: *"...The problem like the sister says, the Muslim women do not see these individual laws as a problem they see it as part of... the Islamic laws. The problem arises because our countries today in the Muslim world they only implement partial aspects of Islam, partial aspects of Islam will not achieve what the values of Islam look to achieve in marriage or look to achieve between a husband and wife...*

[...]

*...For example in marriage it shouldn't have to be a case that it leads, I mean obviously it happens sometimes but **it shouldn't be such a big problem where the man feels he has to force himself upon the woman** because the understanding should be created within the system through implementation of all the laws of Islam, that...marriage is about seeking tranquillity, it's about harmony that should be in the mind of the man and the woman alike. So I think this is the overriding problem in our countries is the system or lack of Islam as a whole, comprehensive implementation of Islam in our countries..."*

In considering this material, the Committee noted the broadcaster's strongly-made representations that neither the programme's guests and presenter, nor the Islam Channel, condone or encourage marital rape. However, in order to decide whether the material was potentially harmful or offensive, the Committee had to consider the material as broadcast and whether, on the basis of what was said and in context, that content was potentially harmful and offensive.

The Committee was of the view that the words "*it shouldn't be such a big problem where the man feels he has to force himself upon the woman*" (second text in bold above), when considered in the context of the discussion and in particular of the words immediately preceding them (underlined above), were intended to convey to the audience that "the problem of a husband feeling he has to force himself upon his wife should not arise", rather than that "when a husband feels he has to force himself on his wife, this should not be considered to be a problem". The Committee accepted and considered it important to record that it considered that the former meaning was Nazreen Nawaz's intended meaning. However the Committee considered that there was sufficient ambiguity in the words used for members of the audience to have understood otherwise. The material was therefore potentially harmful and offensive.

The Committee also considered that Nazreen Nawaz's comment that *"obviously it happens sometimes"* (underlined above) may have given the impression to viewers that she accepted and did not condemn the fact that sometimes a husband does force himself on his wife (although the Committee accepted that this is not in fact Dr Nawaz's view) and therefore contributed to the potential offence.

Moreover, Nazreen Nawaz's statement that *"the idea that a woman cannot refuse her husband's relations this is not strange to a Muslim because it is part of maintaining that strong marriage"* (first text in bold above) was likely to have been understood by viewers as her interpretation that Islamic law does not allow a wife to refuse to have sexual relations with her husband. While accepting that there was arguably a distinction between this and the view that a husband is permitted to force himself on his wife, the Committee considered that this statement was also potentially harmful and offensive given it was capable of suggesting to viewers that it would be permissible for a husband to have non-consensual sexual relations within marriage.

The Committee considered that, taken together, the statements in bold and underlined above were potentially harmful and offensive because their meaning was ambiguous and/or unclear, and they could be interpreted to mean that it is permissible for a husband to have sexual relations with his wife without her consent.

The Committee then turned to a consideration of the contextual factors that might justify or mitigate the potential harm and offence and provide the necessary protection for the audience, as required by the Code. The Committee recognised that the discussion about relations within marriage was nuanced, and that Nazreen Nawaz made a number of points that were likely to have been understood by viewers as encouraging husbands and wives to treat each other with kindness and respect. For example:

"The verse in the Qu'ran that says live with them [women] on a footing of kindness and justice, so Islam says this is the relationship that should be there between husband and wife in marriage and part of that is the fact that both should fulfil the intimacy towards one another, that's part of a strong marriage".

"Marriage is about seeking tranquillity, it's about harmony that should be in the mind of the man and the woman alike".

The Committee also acknowledged that the programme condemned violence towards women generally, in Afghanistan and the west, and noted Nazreen Nawaz's view that only implementation of all the laws of Islam will *"achieve what the values of Islam look to achieve in marriage"*.

The Committee also took into account the religious and cultural context of the programme and the likely expectations of the audience. The programme was broadcast on a channel aimed at a Muslim audience, and discussed how marriage is viewed in Islam and by Muslims. The Committee fully acknowledged that the Islam Channel has the right to broadcast programmes that discuss Islamic principles and that its audience expects such discussion. The Committee noted the Islam Channel's representation that it had not received any letters of complaint from its viewers about the programme.

However the Committee also took into account that the Code requires broadcasters to apply generally accepted standards - in this case generally accepted standards for

a largely Muslim audience in the UK and elsewhere - to protect members of the public from the inclusion of harmful and/or offensive material.

The Committee considered that in a programme discussing an issue such as the need for consent to sexual relations within marriage, a broadcaster has a responsibility to make clear that certain behaviour, including a husband engaging in sexual relations with his wife without her consent, is unacceptable. The Committee noted that there was no clear condemnation of forced sexual relations within marriage in the programme. It was particularly concerned that the programme could have led some female viewers to believe that marital rape, while undesirable, sometimes happened and had to be accepted.

The Committee considered that the broadcaster could have taken steps to mitigate the potential harm and offence but had not done so. For example, the presenter could have asked Nazreen Nawaz to clarify the statements referred to above and the programme could have clearly condemned forced sexual relations within marriage; the presenter or another guest could have provided an alternative explanation of why the new Afghan law had been criticised by the western media and a different view of a woman's ability to refuse her husband's sexual relations; and the programme could have noted that rape within marriage is a crime in the UK.

In conclusion therefore, the Committee considered that whilst the potential for harm and offence arose from the ambiguity and/or lack of clarity of certain statements made, given the serious nature of the potential harm, the broadcaster should have taken a precautionary approach. The Islam Channel argued that the fact the programme never expressly stated that marital rape was condoned meant that it raised no issues under the Code. However, the Committee found that in view of the lack of any mediating or alternative views on sexual relations within marriage, and any clear condemnation of forced sexual relations within marriage, the potentially harmful and offensive material was not justified by the context and therefore did not comply with Rule 2.3.

The Committee did not consider that it was relevant to the question of the programme's compliance with the Code that *Muslimah Dilemma* had not been broadcast on the Islam Channel for over a year.

The programme was therefore in breach of Rule 2.3.

Breach of Rule 2.3

In Breach

Torchwood

Watch, 5 and 21 September 2011, 16:00

Introduction

Four complainants alerted Ofcom to offensive language and violent content in episodes of this programme broadcast in the afternoon on the general entertainment channel Watch.

Torchwood is a spin-off drama of the popular science fiction series *Doctor Who*. It is aimed at an adult audience and was first broadcast on BBC television after the 9pm watershed.

An episode broadcast on Watch on 5 September 2011 contained one use of the word “*fucking*” and fifteen examples of milder offensive language including “*shit*”, “*bollocks*” and “*pissed*”. This episode also featured a scene in which a character’s neck was bitten open causing a considerable amount of blood to spray from the wound.

The episode broadcast on 21 September 2011 featured the stabbing of a male character shortly after he answered his front door.

Watch is owned and operated by UKTV (“UKTV” or “the Licensee”).

Having viewed the material, we considered it raised issues warranting investigation under the following Code rules:

- Rule 1.11: “Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes before the watershed...and must also be justified by the context.”
- Rule 1.14: “The most offensive language must not be broadcast before the watershed...”
- Rule 1.16: “Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.”

We therefore sought comments from the Licensee under these rules.

Response

UKTV apologised for any distress and upset caused to its viewers and did not dispute that the incidents raised compliance issues. The Licensee said that *Torchwood* was complied by a third party supplier. UKTV said it had withdrawn *Torchwood* from its schedules and it would not broadcast further episodes until the entire series had been reviewed. It had also identified other potentially problematic titles from the library of programmes complied by the same supplier and marked them for review. UKTV added that this process would take “a matter of weeks” and while it was prioritising the review, it acknowledged that “during this period there is a risk of a repeated failure”.

To avoid another compliance failure of this type, however UKTV said that all its programmes “which are scheduled for pre-watershed transmission, and which have been derived from a post watershed master will be evaluated prior to their being scheduled on any of the UKTV channels.”

Decision

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

Rule 1.11

Rule 1.11 requires violence in pre-watershed programming to be “appropriately limited” and “justified by the context.”

5 September 2011

Following an extended and menacing build up scene, the episode broadcast on 5 September 2011 depicted a creature with a human body but the head of a monster attacking a man by biting into his neck. The scene in question contained a relatively brief, mid-range shot of the attack, showing blood spurting profusely from the man’s neck

21 September 2011

The attack included in the programme broadcast on 21 September 2011 showed a man being attacked when he opens his front door to another man while his terrified wife and children witness the violence. The sequence began with the attacker’s arm changing suddenly into a sharp weapon which he plunges into the man’s stomach. The first impact was very briefly shown in wide shot before cutting to a shot of the victim’s face, with blood spilling from his mouth. The scene then cut between blood splattered mid-shots and close-ups of the manic attacker as he stabbed the man several times in the stomach (but not showing any shots of the point of impact), the face of the victim as he fell to the ground and the reaction of the victim’s family.

Ofcom did not consider the violence contained in these two sequences to be appropriately limited for broadcast at 16:00 because of their length, level of detail and menacing nature.

Ofcom went on to consider whether the violence shown was justified by the context. *Torchwood* is now a well-established series. It is aimed however at an adult audience and when first shown on BBC television is scheduled at 21:00. We also note that the Watch channel is aimed at an adult audience. These scenes in Ofcom’s opinion however were not in keeping with audience expectations for broadcast at 16:00 and had the potential to distress younger viewers. In Ofcom’s view, there was not sufficient justification for broadcasting these scenes of violence at 16:00 on this channel when children were available to view. Both programmes were therefore in breach of Rule 1.11 of the Code.

Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language¹ clearly notes that the word “fuck”

¹ Audience attitudes towards offensive language on television and radio, August 2010

and its derivatives are considered by audiences to be among the most offensive language. The episode broadcast on 5 September 2011 at 16:00 included the word “fucking” and was therefore in breach of Rule 1.14 of the Code.

Rule 1.16

Rule 1.16 states that offensive language must not be broadcast before the watershed unless justified by the context; but in any event frequent use of such language must be avoided before the watershed. In addition to the word “fucking”, the hour long episode broadcast on 5 September 2011 contained fifteen examples of other offensive language including “shit”, “bollocks” and “pissed”. Ofcom considered these fifteen instances of offensive language in a one hour broadcast to be frequent and as such, this episode breached Rule 1.16 of the Code.

Broadcasters are under a clear duty to ensure that robust procedures are in place to ensure full compliance with the Code. Ofcom noted the Licensee’s review of potentially problematic material but was concerned by its acknowledgement of the possibility of a “repeated failure” before the review was complete.

In Broadcast Bulletin 191², Ofcom recorded a breach of Rule 1.14 of the Code for the pre-watershed broadcast of the most offensive language on another UKTV service: Really.

In the circumstances, Ofcom does not expect a recurrence and takes this opportunity to remind the Licensee and all other television broadcasters that it has recently published guidance on the scheduling of material broadcast before the watershed, which is available on the Ofcom website at:

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

Torchwood, Watch, 5 September 2011, 16:00
Breaches of Rules 1.11, 1.14, 1.16

Torchwood, Watch, 21 September 2011, 16:00
Breach of Rule 1.11

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

² Ofcom Broadcast Bulletin 191 - <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb191>

In Breach

The Exorcist

Gem TV, 20 September 2011, 18:30 and 21 September 2011, 11:30

Introduction

A complainant drew Ofcom's attention to the morning and early evening scheduling of *The Exorcist*, the notorious 1970s horror film.

Gem TV is a Farsi (Iranian) language channel broadcasting via the Hotbird 6 satellite. The channel can be received in Europe and the Middle East. The licence for this channel is held by General Entertainment & Music Ltd ("GEM Ltd" or "the Licensee"). The transmission times noted above are UK times.

The British Board of Film Classification (BBFC) rates the *The Exorcist* at '18' for theatrical and video release.

Ofcom considered the scheduling of the film to raise an issue warranting investigation under Rule 1.23 of the Code, which states:

"BBFC 18-rated films or their equivalent must not be broadcast before 2100 on any service (except for pay per view services), and even then they may be unsuitable for broadcast at that time".

Ofcom therefore sought GEM Ltd's comments in respect of this Code rule.

Response

GEM Ltd said that it accepted that it had made a mistake in scheduling. However, the Licensee told us, because the channel broadcasts in Farsi for Iranian viewers its programme times and schedules are based on Iranian time. The Licensee stated that the film's scheduling would therefore have been compliant with the Code when judged against Iranian local time.

The Licensee apologised and stressed that it strives to comply with Ofcom's rules.

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, two of which are that "persons under the age of eighteen are protected", and that "generally accepted standards are applied to the content 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 1.23 plays an important role in protecting viewers, and in particular younger viewers, from inappropriate scheduling of material judged by the BBFC to be suitable only for adult audiences.

Given *The Exorcist's* themes of self-mutilation, possession and violence, Ofcom considered this film to be clearly unsuitable for children.

Ofcom noted the Licensee's comments in respect of its target audience being in Iran, but rejected this as a defence. First, the transmission of *The Exorcist* at 11:30 UK time was inappropriately scheduled even when assessed against local Iranian time. The same time slot would have been 15:00 in local Iranian time, still well before the 21:00 watershed.

Second, and more importantly, where a service can be received in more than one time zone, scheduling considerations made under the Code are judged against the earliest time at which the service can be received (i.e. the most westerly time zone). For GEM TV this is UK time. In that respect we would point out that the complaint was made by a viewer in the UK.

For *The Exorcist* to have been scheduled in the morning and early evening therefore represented two clear and serious breaches of the Code.

We have reminded GEM Ltd of its responsibilities under its Ofcom licence. Any recurrence of this issue is likely to result in the consideration of the imposition of statutory sanctions.

Breaches of Rule 1.23

In Breach

Big Brother

Channel 5, 23 and 30 September 2011, 21:00

Introduction

A complainant alerted Ofcom to the broadcast of the words “fuck” and “fucking” in the opening sequence in an episode of this well-known reality show broadcast on 23 September 2011. Ofcom noted a similar incident in the eviction show broadcast the following week.

Both episodes began at 21:00 with clips of notable events in the Big Brother house from the previous week. Each pre-title sequence contained two instances of the word “fuck” or “fucking”. In the case of the episode transmitted on 23 September 2011, Ofcom noted the word “fucking” was broadcast at eleven seconds and again 16 seconds after the 21:00 watershed. On 30 September, the word “fuck” was broadcast 18 seconds and the word “fucking” 31 seconds after the watershed.

Having viewed the material, we considered it raised issues warranting investigation under the following Code rule:

Rule 1.6 “The transition to more adult material must not be unduly abrupt at the watershed For television the strongest material should appear later in the schedule.”

Ofcom sought comments from Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) under this rule.

Response

Channel 5 regretted that the viewer was offended by the strong language but stated that it was of the view that “this placement of limited strong language did not make the transition to adult content ‘unduly abrupt’”. The Licensee maintained it “acted reasonably and responsibly and made its decision to include strong language in the pre-titles only after serious consideration and due regard was given (at senior levels) to the relevant Ofcom rules”.

Channel 5 said that Rule 1.6 does not “prohibit an ‘abrupt’ transition to more adult content nor does it specify...that strong language should not be included in programmes until a certain set time - for example, 9.05 or 9.10pm.” The Licensee added that the use of “duly” (in Rule 1.6) in its view incorporated “elements of the transition to adult content being ‘improper, inappropriate and/or without editorial justification’.” Channel 5 said that the use of strong language in these programmes was “completely editorially justified” and therefore the transition to strong language was not unduly abrupt.

The Licensee said the inclusion of the words “fuck” and “fucking” in these programmes’ opening titles was editorially justified owing to several factors. It argued that viewers’ familiarity with the *Big Brother* format, the fact the programmes began transmission at the watershed and the unambiguous warning that accompanied both episodes about “*strong language from the start*” provided a clear context and sufficiently prepared viewers for the opening sequence. Channel 5 said that in both

episodes, the “first instance of the word ‘fuck’ was ... broadcast around 30 seconds after viewers were warned”. It therefore considered that it “included appropriate information to viewers in a timely manner which then assisted them to decide to view ... (and/or prevent their children from doing so)”. It also pointed out that the earliest broadcast of the word “fuck” or “fucking” in these programmes was at 11 seconds after the watershed and therefore it was of the view that “the programmes did not include strong language ‘immediately’ after the watershed.”

Channel 5 explained that the pre-titles sequences were “a fast-paced snapshot of the main events “ in the house which was “essential to remind viewer of the ‘build up’ to the eviction”. It argued that in both programmes, the strong language reflected the “heightened tensions” and “represented the genuine feelings of the Housemates.” Channel 5 added that it was important to broadcast the language unedited in the pre-titles to ensure the pre-titles were not misleading and so ensure “that voting patterns [of viewers] were not influenced”.

Channel 5 pointed to Ofcom’s research¹ which concluded that there are “mixed views on the use of the word ‘fuck’ post-watershed’.” The Licensee argued that “whilst the words ‘fuck’ and ‘fucking’ are considered to be amongst some of the strongest language by some viewers, ‘fuck’, particularly when used post-watershed, is not considered to be ‘the’ most offensive language”, citing “cunt” and “motherfucker” as examples.

The Licensee said the two *Big Brother* programmes were “distinguishable from those programmes which Ofcom previously found to be in breach of rule 1.6” and referred to findings regarding the broadcast of *Amores Perros* on TCM and *Hell’s Kitchen USA* reported in Broadcast Bulletins 102² and 186³ respectively. *Amores Perros* featured “brutal dog fights, graphic violence...and strong language...without a clear warning preceding the programme” and the broadcast of *Hell’s Kitchen USA* contained 18 uses of the word fuck or a derivative in the first 11 minutes of the programme. Channel 5 argued that the episodes of *Big Brother* did not contain “graphic violence” and “the frequency of the strong language was not as high or as concentrated as Hell’s Kitchen [USA]”

Channel 5 also referred to five Ofcom decisions regarding the use of the word “fuck”, or a derivative in live pre-watershed episodes of *Big Brother* from previous series of *Big Brother* broadcast on Channel 4 or E4. Ofcom resolved all these cases and did not record breaches of the Code. Channel 5 said that these earlier findings indicate that Ofcom “has previously distinguished between audience expectations of *Big Brother* pre-watershed and post-watershed, the latter including strong language”. While acknowledging that these five cases concerned live broadcasts, the Licensee did not consider it “logical, reasonable or consistent to conclude that the Channel 4 and E4 programmes had less potential to harm children” particularly since they were shown before the watershed.

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

² Ofcom Broadcast Bulletin 102 - <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb102>

³ Ofcom Broadcast Bulletin 186 - <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb186>

The Licensee also made reference to the preceding programmes (*The Gadget Show* and *Ultimate Police Inspectors*) which, it said, are not “targeted at under 16 viewers”, or “viewed by a large proportion of under 16s”.

Decision

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

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

As Ofcom noted in the recent Guidance on observing the watershed on television⁴, “Content that commences after the watershed should observe a smooth transition to more adult content. It should not commence with the strongest material.”

Recognising that children may not have ceased viewing at exactly 21:00, Rule 1.6 is designed to avoid a sudden change to material that would only be deemed suitable for a post-watershed broadcast.

Rule 1.6 is not prescriptive. It does not stipulate a certain set time after the watershed when broadcasters may start to transmit the most offensive language. What constitutes an “unduly abrupt” transition to more adult material depends on the context: for example, factors such as the editorial content of the programme, the time it is broadcast and the expectations of the audience. Clearly however, bearing in mind that there is an absolute prohibition on the most offensive language immediately before 21:00 (Rule 1.14), a broadcaster would need very strong reasons to justify starting to broadcast the most offensive language in the period immediately *after* the 21:00 watershed.

Ofcom noted that the episode broadcast on 23 September featured housemate Rebeckah saying “*are you fucking crackers?*” 11 seconds after the watershed and less than six seconds into the programme. The second use of “fucking” was 16 seconds after the watershed. The episode on broadcast 30 September featured housemate Harry shouting “*stay the fuck out of other people’s business*” 18 seconds after the watershed, and another housemate used “fucking” 31 seconds after the watershed. We therefore did not accept Channel 5’s argument that “the programmes did not include strong language ‘immediately’ after the watershed”.

Ofcom therefore went on to consider whether there was sufficient editorial justification for broadcasting this strong language repeatedly within the 31 seconds after the watershed.

We acknowledged that the programmes’ pre-title sequences served as reminders about the preceding weeks’ notable events. We also recognised Channel 5’s aim to reflect accurately both the tension between contestants and the different personalities in the house.

Ofcom’s research however confirms that the word “fuck” and its derivatives are regarded as examples of the most offensive language with the capacity to cause a considerable degree of offence. Ofcom’s research does not confirm, as Channel 5

⁴ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

suggests, that this word is widely regarded as less offensive than certain others that the Licensee referred to when used after the watershed. In Ofcom's opinion most viewers of *Big Brother* do not expect examples of the most offensive language in a pre-recorded sequence during the first 31 seconds of the programme after the watershed, particularly when broadcast on a public service channel like Channel 5.

Ofcom noted that viewers of *Big Brother* do expect some degree of offensive language and that there was a warning of strong language immediately before these programmes started. We noted Channel 5's argument that the preceding programmes (*The Gadget Show* on 23 September 2011 and *Ultimate Police Interceptors* on 30 September 2011) were unlikely to attract a high child audience. Audience figures, do bear this out. On 23 September, there were 82,000 4-15 year olds watching *The Gadget Show*. However this figure rose significantly to 155,000 during *Big Brother*. Likewise, on 30 September, 55,000 4-15 years olds watched *Ultimate Police Interceptors*. This figure rose sharply to 168,000 during *Big Brother*. Therefore, Ofcom considered that in cases like this – where a programme broadcast after the watershed attracts *more* child viewers than the preceding programme – it is especially important for a broadcaster to apply Rule 1.6 to ensure people under eighteen are appropriately protected.

Channel 5 also argued that it was necessary to include the strong language unedited in the pre-title sequences to ensure viewers were not misled and voting patterns influenced. Ofcom disagreed. Voting did not close until much later in the programme after the broadcast had featured several other longer clips of events in the house which reflected more accurately the personalities and tensions there. Ofcom did not consider that any examples of the most offensive language needed to be included in the pre-title sequences to ensure viewers were not misled in relation to the voting.

Ofcom also noted the Licensee's references to previous Ofcom findings. Each case decided by Ofcom is determined according to its particular facts. There is therefore often limited value in referring to precedent cases. In Ofcom's view there are important differences between the present case and the previous Ofcom decisions Channel 5 referred to.

- The findings referred to by the Licensee about other broadcasts of *Big Brother* all related to *live* programmes which also in each case included apologies by the presenter or continuity announcer. In the current case, the offensive language was deliberately selected and inserted into two pre-recorded sequences.
- The comparison to the finding regarding *Amores Perros* was not in Ofcom's view, relevant, as the breach of Rule 1.6 in that case related to the broadcast of a film rated '18' by the BBFC, containing both violence and offensive language, on a specialist channel.

Regarding *Hell's Kitchen USA*, Ofcom recorded a breach of Rule 1.6 for both the frequency of the use of word "fuck" or "fucking" in the first eleven minutes of the programme and the fact they were used close to the watershed. Whether there is an "abrupt transition" after the watershed depends on all the facts of a case. The fact that there was clearly a breach of this rule based on the facts of the *Hell's Kitchen USA* case does not mean that Rule 1.6 can only be breached in exactly the same circumstances.

Taking the above factors into account, Ofcom did not consider there was sufficient editorial justification to include repeated use of the most offensive language in these

programmes so soon after the watershed. The two uses of the word “fuck” or “fucking” in each programme in the period directly after the watershed did in Ofcom’s view constitute an “unduly abrupt” transition to more adult material at the watershed. Rule 1.6 was therefore breached.

Breaches of Rule 1.6

In Breach

****Babes

Red Light 1 (Channel 911), 1 September 2011, 00:00 to 01:00

Red Light Central

Red Light 2 (Channel 902), 26 August 2011, 22:32 to 23:00

Red Light 2 (Channel 902), 2 September 2011, 22:55 to 23:05

Red Light 2 (Channel 902), 5 September 2011, 21:03 to 21:35

Introduction

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

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

Ofcom received two complaints about the content listed above. In summary the complainants were concerned about the level of sexual content which they considered was capable of causing offence and the level of sexual imagery immediately after the watershed.

1. *Red Light 1*, 1 September 2011, 00:00 to 01:00

The presenter was wearing a black latex thong and red shoes. The broadcast included prolonged images of the presenter adopting sexual positions, such as with her legs wide open to camera, often mimicking sexual intercourse. At various points during the broadcast intrusive images of the presenter's genital area were shown. Approximately 18 minutes into the broadcast, the presenter was shown pouring oil onto her buttocks and anal area and three minutes later spitting onto her fingers and letting the saliva drip down onto her genital area, as if to emulate ejaculate. Throughout the broadcast the presenter was shown touching her outer genital area and massaging oil into her legs and breasts.

Approximately 50 minutes into the broadcast the presenter spoke directly to viewers to encourage further calls:

"Come on, bend me over, give me a spank, stretch me open. Do whatever you want. I'm up for it. I want every hole filled up with your dirty, hot, sticky muck. Come on you naughty boys, call me right now".

2. *Red Light 2*, 26 August 2011, 22:32 to 23:00

In this broadcast the presenter wore a black thong, black knee high boots and a black fetish outfit of black straps and buckles that exposed her breasts. The broadcast included images of the presenter adopting sexual positions sometimes for prolonged periods, for example approximately eight minutes into the broadcast the presenter was shown lying on her back with her legs wide open to camera for over four minutes. Her underwear did not adequately cover her outer genital area and this was particularly noticeable when the presenter bent over with her buttocks to camera.

3. *Red Light 2*, 2 September 2011, 22:55 to 23:05

The presenter wore a pink thong, black shoes, black lace stockings and a pink one-piece outfit that exposed her breasts. The broadcast included images of the presenter adopting sexual positions which included prolonged images of the presenter lying on her back with her legs wide open to camera, during which she gyrated her hips to mimic sexual intercourse and stroked her breasts and inner thighs. The broadcast also included intrusive, intimate images of her genital area, in particular when the presenter was shown bending over with her buttocks to camera for approximately one minute. Whilst in this position, the camera focussed on her crotch area, clearly showing outer genital and anal detail.

4. *Red Light 2*, 5 September 2011, 21:04 to 21:35

Here the presenter wore: an open purple satin shirt, which exposed her bra; a black skirt; thong; stockings; suspenders; and shoes. During the broadcast she adopted sexual positions, such as on all fours, bending over the desk and squatting on the desk with her legs wide open to camera, sometimes for prolonged periods; mimicked sexual intercourse; gyrated her hips; and stroked her breasts and buttocks throughout the broadcast. Ofcom noted the presenter pulled her skirt up to expose her buttocks at the start of the broadcast and by 21:16 she had removed her skirt and shirt and wore her underwear only.

Ofcom considered the material broadcast on *Red Light 1* on 1 September and on *Red Light 2* on 26 August and 2 September 2011 raised issues warranting investigation under Rule 4.2 of the UK Code of Broadcast Advertising ("the BCAP Code"):

Rule 4.2 "Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards."

The content broadcast on *Red Light 2* on 5 September 2011 raised issues meriting investigation under Rule 32.3 of the BCAP Code:

Rule 32.3 "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."

Ofcom asked Playboy TV to provide comments on how the above broadcasts complied with BCAP Code Rules 4.2 and 32.3 as indicated.

Response

In summary Playboy TV said that: “We respect entirely the Code and Guidelines and we have absolutely no policy of trying to transgress them.”

1. *Red Light 1*, 1 September 2011, 00:00 to 01:00

Playboy TV acknowledged that the use of saliva and explicit language during the broadcast on 1 September 2011 was unacceptable and that it has since “taken immediate steps to re-communicate our guidelines and to emphasise to our presenters their responsibilities in this regard”.

The Licensee added that the Chat Service Guidance prohibits “liquids being applied to the genitalia...” However Playboy TV stated that in the broadcast on 1 September 2011 “although oil is being used by the presenter, we do not see that it is being applied directly to the genital area. We therefore do not consider this aspect of the broadcast to be in breach of the July Guidance” [i.e. Ofcom’s guidance on the advertising of telecommunication-based sexual entertainment services – the “Chat Service Guidance”¹].

With regards to the intrusive images, Playboy TV said that: “We had understood that for images to be intrusive contrary to the July 2011 ‘guidance’ they would have to be close-up for a long period or else extremely intrusive for a short period...we respect entirely the position of OFCOM on intrusive and indecent imagery, but in this case we feel it is purely a matter of editorial judgement as to what constitutes ‘unacceptably’ intrusive shots and where the ‘red line’ beyond which a shot is intrusive, lies”.

Playboy TV said that “it is well accepted in this genre of ‘adult’ content that the attitude and body language of the lady presenters (as well as their attire) will be more suggestive than for content outside the ‘adult’ EPG section”. The Licensee added that in their opinion Ofcom’s interpretation of the Chat Service Guidance is inconsistent with the detailed compliance discussions they have had with Ofcom in the past.

2. *Red Light 2*, 26 August 2011, 22:32 to 23:00

Playboy TV disputed that the presenter in the broadcast on 26 August 2011 was wearing clothing that did not adequately cover her genital area. The Licensee said: “As Ofcom will know, since our previous compliance discussions with Ofcom in April of this year, part of our compliance changes has been a substantial increase in the size of the underwear worn by our presenters”.

As regards to the prolonged images in this broadcast Playboy TV said “We have avoided physically intrusive shots and especially prolonged close-ups in deference to what we understood to be Ofcom’s detailed views as to acceptability”. It added that it would appreciate the chance to revisit this issue with Ofcom.

3. *Red Light 2*, 2 September 2011, 22:55 to 23:05

Playboy TV’s comments on this broadcast with regards to: the intrusive, intimate images; inadequate underwear; and prolonged images of the presenter lying on her back with her legs wide open to camera, are addressed in their response above.

¹ ‘Chat Service Guidance’ refers to the Ofcom guidance published on 27 July 2011:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

4. *Red Light 2*, 5 September 2011, 21:04 to 21:35

Playboy TV did not provide detailed comments on the content of this broadcast; they did however comment on its scheduling. Playboy TV said: "It is well accepted that the attitude and body language of the lady presenters (as well as their attire) will be more suggestive than for content outside the 'adult' EPG section". It added that "where you have content that is 'adult' content in the first place, it is by its very nature 'strong' in that from the outset it has an adult tone. In terms of the adult section of the EPG it might be said that the programming starts off as 'strong' and becomes stronger as the night goes on. As you can see, these are wide terms that are to a large extent subjective".

Playboy TV added that Ofcom's decision regarding the material broadcast immediately after the watershed and its suitability for children appears in their view to be at odds with the Chat Service Guidance. That guidance specifically permits 'stronger' yet 'restrained' content to be broadcast immediately after the watershed and yet it appears that such material may be considered unsuitable for children.

Playboy TV said that "in the case of our adult chat services, the nature and content of the service is clear to viewers and people who navigate to our services do so in the full knowledge of what they are about to see. We urge Ofcom to see the two complaints that have instigated this adjudication in their true context. We do not see them as genuine expressions of widespread public discontent with our services."

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 has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that "the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented" and another is that "persons under the age of eighteen are protected." These standards objectives are contained in the BCAP Code.

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

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

Rule 4.2 of the BCAP Code provides that:

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

Rule 32.3 of the BCAP Code states:

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

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

On 28 January 2011 Ofcom published detailed guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services². This clearly sets out what Ofcom considers to be acceptable to broadcast on these services, both pre- and post-watershed.

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

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

Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in adult interactive chat advertisements without mandatory restricted access³.

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

³ For example:

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

Ofcom noted that we informed Playboy TV on 4 July 2011 that it was being considered for the imposition of a statutory sanction in relation to material that had been broadcast earlier this year in April 2011⁴.

The material being assessed by Ofcom in this case was broadcast later on various dates between 26 August 2011 and 5 September 2011.

BCAP Code Rule 4.2

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

Red Light 1, 1 September 2011, 00:00 to 01:00

Red Light 2, 26 August 2011, 22:32 to 23:00

Red Light 2, 2 September 2011, 22:55 to 23:05

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

- On *Red Light 1*: 1 September 2011 - the presenter (who was wearing a thong) was shown pouring oil onto her anal and genital area; there were intrusive images of her genital area; she used sexually explicit language; and used saliva to emulate ejaculate which she dripped onto her genital area.
- On *Red Light 2*: 26 August 2011 - the broadcast contained prolonged images of the presenter adopting sexual positions, such as with her legs wide open to camera and her underwear did not adequately cover her outer genital area.
- During the broadcast on *Red light 2*: 2 September 2011 - the material included prolonged images of the presenter in sexual positions such as on her back with her legs wide open to camera and intimate shots of the presenters' genital area. Her underwear did not adequately cover her outer genital area or anal area.

The examples highlighted above include images that are not permitted in 'adult chat' advertising content that is freely available without mandatory restricted access. Ofcom noted that in conjunction with those images the presenters performed various other actions including: stroking their bodies; gyrating their hips; massaging oil into their legs and/or breasts; and mimicking sexual intercourse. The Chat Service Guidance does not prohibit such actions during 'adult chat' advertising content. However the combination of these images and actions together with the use of sexually explicit language and saliva to imitate ejaculate resulted in the material broadcast on 1 September being of a strong sexual nature. The material broadcast on 26 August 2011 and 2 September 2011 was not as strong in comparison; however Ofcom considered the broadcasts clearly contained material that did not comply with the Chat Service Guidance.

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

⁴ Published 4 July 2011: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>

the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in the case of the material broadcast on 1 September 2011, given the content included material of a strong sexual nature, the location of the channel in the 'adult' section of the EPG was not sufficient to ensure serious or widespread offence against generally accepted standards was not caused. This was regardless of the fact the content was shown between the hours of 00:00 and 01:00. Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares.

Ofcom noted the material broadcast on 26 August 2011 and 2 September 2011 contained prolonged images of the same presenter with her legs wide open to camera, which resulted in her crotch being focal point of the shot. Although the shots were not physically intrusive, Ofcom considered the images were unacceptable due to the fact they were prolonged – in one case over four minutes in length. The Chat Service Guidance specifically cautions against "less intrusive shots that may become unacceptable by virtue of their being prolonged". The broadcast on 2 September also contained a physically intrusive and intimate shot of the presenter's buttocks and crotch as she bent over: her underwear did not adequately cover her outer genital area or anal area. This shot lasted approximately one minute.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material which was broadcast was not capable of causing serious or widespread offence against generally accepted moral, social or cultural standards.

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

BCAP Code Rule 32.3

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

Red Light 2, 5 September 2011, 21:04 to 21:35

The Guidance states: "After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive. There should not for example be any miming of sexual acts between 9 and 10pm". Ofcom has also made clear in numerous previous published findings that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed⁵.

⁵ For example:

- Red Light, Red light 1, 9 and 13 April 2011, 21:00 to 21:45
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>
- Red Light Central, Extreme, 23 February 2011, 21:00 to 21:50
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb182/obb182.pdf>
- Free Blue 1 Babeworld.tv, 9 July 2010, 21:00 to 21:30
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb168/issue168.pdf>
- *Sport XXX Babes*, 16 May 2010, 21:00 to 21:30

In applying BCAP Code Rule 32.3 Ofcom had first to decide if the broadcast material was unsuitable for children. Ofcom noted that on a number of occasions between 21:04 and 21:35 in the broadcast of 5 September 2011, the female presenter adopted sexually provocative positions - for example, on all fours on a desk with her bare buttocks raised and lying on her back with her legs wide open to camera, sometimes for prolonged periods. During the broadcasts Ofcom noted the presenter regularly stroked her breasts, buttocks and legs and mimicked sexual intercourse.

In Ofcom's view, the revealing clothing, sexual positions and actions of the presenter were intended to be sexually provocative in nature. In light of this behaviour and imagery, Ofcom concluded that this material was clearly unsuitable for children.

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by Playboy TV to this broadcast. Ofcom took account of the fact that the channels are in the 'adult' section of the Sky EPG. However this material was broadcast on a channel without mandatory restricted access in the period immediately after the 21:00 watershed, when some children may have been available to view, some unaccompanied by an adult. Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the 'adult' section of the EPG without mandatory restricted access directly after the 21:00 watershed. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast so soon after 21:00, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. Further, the broadcast of such sexualised content was inappropriate to advertise adult sex chat so soon after the 21:00 watershed.

This broadcast was therefore in breach of BCAP Code Rule 32.3.

Ofcom has recently recorded a number of serious and repeated breaches of the BCAP Code⁶ against Playboy TV and Just4Us which led to the imposition of a financial penalty totalling £110,000⁷. These present contraventions of the BCAP Code are another example of poor compliance by the Licensee, particularly with regards to the material broadcast on 1 September 2011 that was of a strong sexual nature. Playboy TV is put on notice that any further similar contraventions of the BCAP Code will be considered for further regulatory action by Ofcom.

Decision:

*******Babes*, Red Light 1, 1 September 2011, 00:00 to 01:00**

Breach of BCAP Code Rule 4.2

***Red Light Central*, Red Light 2, 26 August 2011, 22:32 to 23:00**

Breach of BCAP Code Rule 4.2

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>

⁶ Broadcast Bulletin 185, 4 July 2011:
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb185/>

⁷ Published 9 November 2011:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Just4Us-Sanction.pdf>

***Red Light Central*, Red Light 2, 2 September 2011, 22:55 to 23:05
Breach of BCAP Code Rule 4.2**

***Red Light Central*, Red Light 2, 5 September 2011, 21:03 to 21:35
Breach of BCAP Code Rule 32.3**

In Breach

Debate Night

Ummah Channel, 3 September 2011, 22:00

Introduction

The Ummah Channel is a satellite television service which aims “to promote knowledge of Islam through educating viewers to fulfil their spiritual and religious development”. The licence for Ummah Channel is held by Ummah Channel Limited (“Ummah Channel” or “the Licensee”).

This edition of *Debate Night* was the first of three programmes broadcast on three consecutive days starting on 3 September 2011, that debated when the Islamic holiday of Eid¹ should be celebrated in the UK.

17 complainants alerted Ofcom to the 3 September programme because they considered the programme:

- incited “hatred” against non-Barelvi² Muslims;
- stated non-Barelvi Muslims celebrated Eid on the “wrong day”; and
- Encouraged Barelvi Muslims to storm mosques that celebrated Eid on the “wrong day”.

Ofcom employed the services of an independent translator, a native Urdu speaker, to translate the programme and produce a transcript of the content from the original Urdu. We noted the following statements made by callers to the programme:

“If you are in Saudi Arabia, you have to follow them because otherwise you will be oppressed by the tyrants but we here do not follow them...[Saudis] have no fear for the laws of Allah and Sharia and they are transgressing. And Allah has no love for those who transgress. They are not following the Sharia and it appears in some ways that they are not even Muslims”.

“Before these, Mecca was ruled by others – the Saudis captured the country; their [Saudi] beliefs are filthy. People need to be told that they [Saudis] are expropriating in the name of the holy places but they grossly insult those holy places...These cruel people [Saudis] have destroyed our holy places. You need to tell people that their beliefs are filthy and we hate them not because of some personal reasons but because they insult our ancestors, our beliefs, and use inappropriate words about Prophet Muhammad. That is why we have differences with them and people should stop blindly following them.”

¹ Eid (or Eid al-Fitr) is the Muslim holiday which marks the end of the holy month of Ramadan. Ofcom understands that the exact date of Eid cannot be predicted, as it depends on a confirmed sighting of the new moon which determines the end of the month of Ramadan. This has led different parts of the Muslim community across the world celebrating Eid on different days in 2011.

² Barelvi Islam is a Muslim tradition prevalent in the Indian Sub-Continent.

In addition, we noted a Muslim scholar (who was one of four panellists in the studio) made the following statements:

“When [the Saudis] celebrate Eid on a day of Ramadan, they are publically insulting that month – even if they fast for their whole lives, they cannot atone for this sin”.

“If you see wrongdoing going on, then stop it physically. If you have no power, then stop it verbally. If that too is not possible, then consider it as wrongdoing in your heart... We are not even talking about [the Saudis] filthy erroneous beliefs with regards to Allah and his Prophet but just moon-sighting, which is damaging and destroying the worship done by simple Muslims. If you cannot do so with your hands or tongue then at least condemn them”.

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

Rule 3.1: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services”.

Rule 4.2: “The religious beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment”.

Ofcom therefore asked the Licensee how the content complied with these rules.

Response

Ummah Channel said that this edition of *Debate Night* was the first of three “linked” three hour programmes. The series focused on the debate surrounding the timing of the festival of Eid within the UK Muslim community. The Licensee said “it had been widely reported that the day announced by Saudi Arabia for Eid this year may well not have been arrived at by the right methodology”. The Licensee continued: “Effectively [the debate] has split the Muslim community. Many believe that Saudi Arabia got the day wrong, and their methodology raised questions to UK Muslims i.e. should they be following Saudi Arabia”.

In order to cover the range of viewpoints in the debate, Ummah Channel said that it had invited a range of views to be aired over the three editions of *Debate Night*, although “clearly this would be uncomfortable for some of the audience given the doctrines which are being followed”. However, the Licensee said that all programme participants “signed an in-house declaration confirming they understood their regulatory and legal obligations in giving their personal opinions on air”.

In relation to rule 4.2, the Licensee said, whilst the debate covering the timing of the festival of Eid in the UK has been “heated within the Muslim community” the three editions of *Debate Night* had “given the community as a whole...their say (which they did) and seek resolution”. The result had been that the “over riding outcome of this series has been the national campaign to unify the approach” to the timing of the festival of Eid within the UK Muslim community.

However, Ummah Channel said that in the edition of *Debate Night* broadcast on 3 September 2011 “a scholar did state their views in a manner which, it seems, caused offence and the channel received complaints directly, which have been dealt with”. In addition, the Licensee said that the content of concern was “a small part of...nine hours of live television debate”.

In relation to Rule 3.1, the Licensee said that the comments made by the scholar in the programme broadcast on 3 September 2011 were made “in the heat of the debate [and] were not intended to be interpreted literally”. Ummah Channel forwarded to Ofcom a letter of apology from the scholar, who expressed his sincere apologies for any comments he had made, and said his intention had been “to try and create unity in celebrating Eid”.

The Licensee outlined the actions it had taken following the broadcast of 3 September 2011:

- it suspended the scholar in question from taking part in any Ummah Channel programming pending the outcome of the Licensee’s investigation into the matter;
- it issued an apology in the edition of *Debate Night* broadcast on 5 September 2011, as well as a “public apology which was published in the press”; and
- it would be appointing an external compliance consultant to “assist us in ensuring that our systems and procedures are the best way they can possibly be and that the risk of a repeat of this incident...is kept to an absolute minimum”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application 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 to secure the standards objectives, including that: “material likely to encourage or incite the commission of crime or lead to disorder is not included in television and radio services”; “broadcasters exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes”; and “religious programmes do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination”. These duties are reflected in Sections Three and Four of the Code.

In reaching this decision Ofcom has taken account of the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights (“ECHR”). Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority.

Ofcom 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”.

The programme in question consisted of a presenter and four panellists responding to telephone calls from viewers asking questions about the timing of the festival of Eid within the UK Muslim community. This programme, broadcast on 3 September 2011 was the first of three programmes, broadcast on three consecutive days, on this debate. The debate centred on the fact that, while some Muslims in many places

including Saudi Arabia considered that the festival of Eid should be celebrated on 30 August 2011, other Muslims, including Barelvi Muslims in the Indian Sub-Continent, considered that the festival of Eid should be celebrated on 31 August 2011. It is Ofcom's understanding that the difference in dates arises from different methodologies used for the sighting of the new moon, which marks the end of the holy month of Ramadan.

We noted that different callers and one of the panellists in the programme, who was an Islamic Scholar, commented on the position of non-Barelvi Muslims in Saudi Arabia and those who follow that tradition of Islam within the UK, on the issue of the timing of Eid and the methodology used for the sighting of the new moon. We considered whether the statements by callers and the scholar: incited hatred and/or violence against non-Barelvi Muslims; and/or subjected non-Barelvi Muslims to abusive treatment.

Incitement

Rule 3.1 of the Code states that:

"material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television and radio service".

The rule is concerned with the likelihood of broadcast material encouraging or inciting crime or leading to disorder.

Ofcom is mindful of the often heated theological debates within Islam over the timing of Eid. In this case Ofcom therefore assessed whether the following statement, which referred to non-Barelvi Muslims, made by an Islamic scholar, would be understood within a context that would be likely to encourage a crime of hatred or violence, or lead to disorder.

"If you see wrongdoing going on, then stop it physically. If you have no power, then stop it verbally. If that too is not possible, then consider it as wrongdoing in your heart... We are not even talking about [the Saudis'] filthy erroneous beliefs with regards to Allah and his Prophet but just moon-sighting, which is damaging and destroying the worship done by simple Muslims. If you cannot do so with your hands or tongue then at least condemn them".

In considering Rule 3.1, we are required to address the *likelihood* of the commission of a crime against a follower of the non-Barelvi tradition of Islam or of disorder being created. In particular, we considered whether this statement in the programme included a direct or indirect call to action with a reasonable likelihood it would have encouraged or incited, for example, Barelvi Muslims to take violent or criminal action against non-Barelvi Muslims or lead to disorder.

We recognised that phrases such as *"If you see wrongdoing going on, then stop it physically"* and *"If you cannot do so with your hands or tongue then at least condemn them"* could be construed, to some limited degree, as having the potential to encourage some form of physical action (possibly including assault or violence) against, or lead to disorder involving, members of the non-Barelvi Muslim tradition of Islam.

However, it was Ofcom's overall view that this one statement on its own would not be likely to encourage or incite the commission of crime or to lead to disorder. Therefore, Ofcom did not consider that the broadcaster breached Rule 3.1.

Whilst Ofcom did not consider that the material was likely to result in the incitement of a crime or lead to disorder, we considered this statement was at the limits of acceptability. Ofcom would therefore urge broadcasters to apply extreme caution when complying such material, especially in the context of sometimes heated debates between different religious denominations.

Abusive treatment

Rule 4.2 of the Code requires that:

“The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.”

According to Section Four of the Code, a “religious programme” is one “which deals with matters of religion as the central subject, or as a significant part, of the programme”. In Ofcom’s opinion the edition of *Debate Night* broadcast on 3 September 2011 was clearly a religious programme.

The Code provides scope for the followers of one religion to engage in religious debate with, or criticise, other religions provided they comply with the Code, and in particular the general requirements for religious programmes set out in Section Four. It is therefore Ofcom’s view that the theme of this programme, namely a debate, including questions being asked by viewers, on the issue of over the timing of Eid in the UK, was clearly a legitimate theological discussion for a religious programme. Such an approach is rooted in the broadcaster’s and the audience’s right to freedom of expression and of religion.

However, the Code requires that if programmes engage in this sort of debate the material broadcast should not include comments and references which might reasonably be considered to subject the religious views and beliefs of non-Barelvi Muslims to abusive treatment. When considering “abusive treatment” in religious programmes under Rule 4.2, Ofcom assesses if the broadcasts included statements which sought to revile, attack or vehemently express condemnation towards another religion without sufficient justification by the context. The Code does not prohibit legitimate criticism of any religion, but such criticism must not spill over into gratuitous abuse.

We noted that during the programme, there were a number of statements made by an Islamic scholar, and by viewers who contacted the programme by telephone, which were derogatory and abusive about non-Barelvi Muslims in Saudi Arabia, and those who follow that tradition of Islam within the UK. For example during the programme, we noted the following statements about non-Barelvi Muslims in Saudi Arabia, and those who follow that tradition of Islam within the UK: “*their [Saudi] beliefs are filthy*”; “*You need to tell people that their beliefs are filthy and we hate them*”; and “*We are not even talking about [the Saudis’] filthy erroneous beliefs*”.

Given the above, it was Ofcom’s view that the use of such terms and references when taken together amounted to “abusive treatment” of the religious views and beliefs of non-Barelvi Muslims in Saudi Arabia, and those who follow that tradition of Islam within the UK.

In reaching our decision, we noted Ummah Channel’s submission that the potentially problematic content in the edition of *Debate Night* broadcast on 3 September 2011 was “a small part of the overall series...spanning nine hours of live television

debate”. However, we noted there was no content within the programme broadcast on 3 September 2011 to mitigate the broadcast of abusive content in this case.

Ofcom welcomes the broadcaster’s apology and the steps it has taken to ensure that going forward such programmes are fully compliant with the Code. However, given the points set out above Ofcom considers that the broadcaster was in breach of Rule 4.2 of the Code.

We note that Ofcom recorded various breaches of Rule 4.2 against the Ummah Channel in Ofcom Broadcast Bulletin 167 published in May 2010³. In that Finding, we noted that Ummah Channel stated that it was implementing a number of procedures to ensure that material of a similar nature could not be broadcast again. These were:

- all live transmissions with an interactive viewer element would have a 30 second delay to broadcast, and be watched by staff who have a “thorough understanding” of compliance who would, if necessary, mute any broadcast; and
- all scholars appearing in programming would be informed of their obligation to adhere to regulations relating to the Broadcasting Code and sign a form of agreement to comply.

Although the breach of Rule 4.2 in the present case was not as serious as the breaches recorded in Ofcom Broadcast Bulletin 167, we are concerned that a similar breach of the Code occurred despite enhanced compliance procedures that Ummah Channel put in place. Therefore, if any similar breaches should happen in future, we are putting Ummah Channel on notice that we would consider taking further regulatory action.

Breach of Rule 4.2
Not in Breach of Rule 3.1

³ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb167/issue167.pdf>

Advertising Scheduling Cases

In Breach

Advertisement for Harvey Water Softeners

Open Heavens TV, April to August 2011, various dates and times

Introduction

The Advertising Standards Authority (“the ASA”) drew Ofcom’s attention to this advertisement.

The advertisement was broadcast on the channel Open Heavens TV (“OHTV”). OHTV is a satellite channel carrying general entertainment and religious programming, aimed at African-Caribbean audiences. The licence for this channel is held by Hollywood Classics Movies Ltd (“HCM” or “the Licensee”).

The ASA had previously found the advertisement in breach of the BCAP Broadcast Advertising Standards Code (“the BCAP Code”) in respect of provisions for misleading advertising, substantiation of claims, and claims for medical devices and treatments.¹

Following its investigation into the claims made in the advertisement, the ASA referred it to Ofcom as it appeared also to raise issues under the rules that govern the requirements for teleshopping and the maximum allowable amount of advertising that television channels can transmit.

The advertisement was 30 minutes long and included product demonstrations, tests on hard and softened water, testimonials from customers and invitations to arrange home visits. At no point in the half-hour feature was there any direct offer for sale of any product or service.

Ofcom therefore considered that the broadcast raised issues warranting investigation under the definition of teleshopping given at paragraph 3 h) of COSTA, which states:

“‘teleshopping’ means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment”.

Teleshopping features or ‘windows’ must be at least 15 minutes long. While there is no upper limit on the duration of teleshopping windows, broadcast material that does not contain direct offers cannot be classed as teleshopping. As COSTA imposes limits on the amount of other advertising that a broadcaster can transmit each hour, we therefore also considered the broadcast raised issues warranting investigation under COSTA Rule 4, which states:

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

We therefore sought HCM’s comments under the above rules.

¹ The ASA’s report can be found at http://www.asa.org.uk/ASA-action/Adjudications/2011/10/Hollywood-Classics-Movies-Ltd/SHP_ADJ_161372.aspx

Response

HCM said that the advertisement had been transmitted 133 times between April and August 2011.

The Licensee told us that the advertisement was constructed as a long-form teleshopping format with the aim of providing viewers with the opportunity to arrange a free, no obligation demonstration of the product. Given the nature of the product, the Licensee said, the free demonstration approach is used by the advertiser as the best way to show potential purchasers the benefits of having a soft water system fitted. To this end contact details and explanations were given.

However, the Licensee told us that it had misunderstood the element of the definition of teleshopping given in COSTA 3 h) that a direct offer must be one made "... in return for payment". HCM stressed its view that viewers would nevertheless have clearly recognised the item as an advertisement, despite its not containing actual offers for sale remotely.

HCM accepted that in the absence of direct offers requiring payment the advertisement did not meet the necessary criteria to fall within the definition of COSTA 3 h). But it said there had been no intention to breach COSTA Rule 4 in respect of advertising minutage; and viewers would not have been confused about whether the item was advertising or editorial content.

The Licensee also noted an explanation given in the recently published Ofcom Broadcast Bulletin 193² that, "In all teleshopping the direct offers must be constant or nearly so. In that respect Ofcom advises that constant on-screen displays giving product, price and ordering details should be used in teleshopping".

HCM confirmed that the advertisement would not be broadcast again in the current form.

Decision

Under the Communications Act 2003, Ofcom has a duty to secure the standards objective "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with."

One aspect of the UK's international obligations is the regime for the control of advertising 'minutage' contained within the Audiovisual Media Services (AVMS) Directive³ and implemented by COSTA. As explained above, COSTA restricts the time that can be used for television spot advertising in any clock hour to 12 minutes.

The advertisement for Harvey Water Softeners had a scheduled duration of 30 minutes. Were this broadcast to be general advertising it would be in breach of the hourly limits imposed. However, were the broadcast to be teleshopping it would be exempt from those limits.

² Available at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb193/obb193.pdf>

³ Chapter VII, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

Teleshopping must be distinct from both programming and spot advertising: as a form of advertising exempted from the usual advertising 'minutage' restrictions, teleshopping must adopt a particular character. Without this, the dispensations available for teleshopping lose purpose and justification.

COSTA paragraph 3 h) states that teleshopping is a form of advertising "which includes" direct offers. The wording of this definition derives directly from the AVMS Directive which states that "teleshopping" means direct offers broadcast to the public with a view to the supply of goods or services ... in return for payment ...".

Because no direct offers were made in the course of the 30 minute advertisement it could not qualify as teleshopping and was not therefore exempt from the 12 minute hourly limit that applies to general advertising.

Each of the 133 transmissions of the advertisement by HCM was therefore in breach of COSTA Rule 4.

In reaching this decision, Ofcom agreed with the Licensee's view that the advertisement was very unlikely to be confused with programming. However, we placed no weight on this point: the regulatory requirements for teleshopping formats are not designed to ensure that they are clearly identifiable as advertising per se – although compliance with those requirements will ensure their ready recognition as both advertising and as a particular form of it. Rather, they seek to define teleshopping as a form of advertising that is exempt from minutage restrictions. Other rules, contained in the BCAP Code, require that advertising – whether general advertising or other forms such as teleshopping – is kept distinct from programming.

Ofcom notes the Licensee's acceptance that the advertising breached the terms of COSTA and welcomes its confirmation that the advertisement will not run again in its current form. Given that the Licensee has now confirmed its previous misunderstanding of the relevant requirements, we do not expect any recurrence of this issue.

Breaches of COSTA Rule 4

In Breach

Advertising minutage

MPL, 6 September 2011, 07:00 to 23:00

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 of output on Media Platform Limited (“MPL” or “the Licensee”), Ofcom noted six occasions on 6 September 2011 when MPL broadcast in excess of 12 minutes of advertising in a clock hour:

Clock Hour	Advertising minutage broadcast
07:00	13:00
11:00	14:20
17:00	13:25
18:00	24:25
20:00	14:40
22:00	13:15

Ofcom considered all of these cases raised issues warranting investigation under Rule 4 of COSTA and therefore asked MPL for its comments on how its output during these clock hours had complied with this rule.

Response

The Licensee admitted the advertising minutage overruns and apologised for the situation. MPL said that a technician made a mistake in calculating the channel’s advertising minutage because a former colleague responsible for the channel’s compliance with COSTA said that the maximum allowance per hour was 15 rather than 12 minutes. In addition, the Licensee said that in one clock hour, where over 24 minutes of advertising was carried, it had “forgotten to insert one program between two advertising [breaks]”.

MPL said that in future it would take care to comply with COSTA and that it has introduced a new compliance role controlling advertising minutage.

Decision

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

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

In this case, Ofcom found that the amount of advertising broadcast on MPL was in breach of Rule 4 of COSTA on six occasions. Ofcom was particularly concerned by the breach of Rule 4 in the 18:00 clock hour, given the substantial nature of the overrun – 12 minutes and 25 seconds.

Ofcom noted the Licensee's assurances that it has put new procedures in place to avoid any repeat of these incidents. However, we are concerned that, rather than being familiar with the COSTA rules, compliance staff at MPL relied on incorrect information from a former colleague to calculate its advertising allowance. It is a condition of MPL's Ofcom licence that it has appropriate procedures in place to ensure compliance with Ofcom codes. Ofcom is putting the Licensee on notice that it will continue to monitor MPL's compliance with COSTA and any recurrences may result in further regulatory action.

Breaches of Rule 4 of COSTA

In Breach

Advertising Minutage

E!, 14 and 20 September 2011, various times

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 several occasions where E! had transmitted more than the permitted 12 minutes of advertising in one clock hour:

- On 14 September 2011, six clock hours contained 13 minutes of advertising.
- On 20 September 2011, one clock hour contained 12 minutes and 35 seconds of advertising.

Ofcom considered the case raised issues warranting investigation in respect of Rule 4 of COSTA and therefore sought formal comments about this incident from E Entertainment UK Ltd (“E!” or “the Licensee”) in relation to this rule.

Response

The Licensee said that the incidents could be “attributed to an unfortunate human error.” It explained that to improve its processes, it had “consolidated our transmissions systems in house” which “involved a change in transmission operators.”

E! said that on 14 September 2011, a “promotional element wasn’t available for air as scheduled” and instead of selecting an item from “an approved list of replacement material”, the operator “mistakenly used a commercial spot”. However, it pointed out these advertisements “were not booked in through our adsales” and consequently, it said that it had not been paid for their broadcast.

The Licensee said it intended to instigate an “increased level of training” for all relevant staff and introduce a policy “whereby any changes to the automaton system are to be checked with a[n] operational channel representative”.

The Licensee made no reference to the incident on 20 September 2011.

Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has

transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees' compliance with COSTA.

In this case, in the first incident on 14 September 2011, the Licensee's advertising minutage overran by a minute in each of six clock hours on this date. While we noted the Licensee's point that it did not benefit financially from the broadcast of these extra advertisements, Ofcom was concerned that a single human error caused several breaches of Rule 4 of COSTA in quick succession.

We were also concerned that the Licensee failed to acknowledge or provide any explanation for the second incident, involving a 35 second overrun, that occurred on 20 September 2011.

In Ofcom Broadcast Bulletin 186, Ofcom recorded a breach of Rule 4 of COSTA against the Licensee for transmitting 20 seconds more advertising than permitted. In view of this previous breach and the Licensee's proposed actions to improve compliance, we do not expect a recurrence.

Breaches of Rule 4 of COSTA

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Star Plus	13 August 2011, 14:00 and 22:00	COSTA Rule 4	Ofcom noted, during monitoring, that clock hours 14:00 and 22:00 on Star Plus included ten and 140 seconds more than the permitted advertising allowance, respectively. Finding: Breach
Vintage TV	19 September 2011, 21:00	COSTA Rule 4	Ofcom noted, during monitoring, that one clock hour contained 90 seconds more advertising than the permitted allowance. Finding: Breach

Fairness and Privacy Cases

Not Upheld

Complaint by Ms G

Police Interceptors, Channel 5, 18 July 2011

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programme as broadcast made by Ms G.

This programme looked at the work of a police rapid response road crime unit in South Yorkshire and the various incidents that members of the unit dealt with. This edition showed police officers trying to track down a couple who had failed to pay a taxi fare. The police officers were shown knocking at houses in the road in an attempt to identify where the couple lived. One of the houses knocked at belonged to Ms G who was shown in the programme answering her door in her dressing gown. When asked by the police officers who she lived with, Ms G was heard saying “...I live on my own”. While Ms G’s face was obscured in the programme, her voice could be heard and her house and car were shown. Ms G was not identified in the programme in any other way.

Ms G complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

Ofcom found that Ms G had a legitimate expectation of privacy in the circumstances, however, taking into account the steps taken by the broadcaster and the programme makers to limit any intrusion into her privacy, the public interest in filming and subsequently broadcasting footage showing the work of the police outweighed Ms G’s expectation of privacy. Her privacy was therefore not unwarrantably infringed in the programme as broadcast.

Introduction

On 18 July 2011, Channel 5 broadcast an edition of the series *Police Interceptors*. The series followed a rapid response road crime unit in South Yorkshire and showed various incidents dealt with by police officers in the course of their duty.

One such incident involved a complaint from a taxi driver that two passengers had failed to pay him for the fare after a night out. The taxi driver was shown taking two police officers to a residential road in the Chapeltown area of Sheffield where he had dropped off the two passengers who had made off without paying him. The taxi driver was unable to remember exactly which house the passengers had gone into and the programme showed the police officers knocking at houses in the road in an attempt to identify where the passengers lived. One of the houses knocked at by the police officers belonged to the complainant, Ms G. She was shown in the programme answering her door in her dressing gown. When asked by one of the police officers who she lived with, Ms G was heard to say “...I live on my own”. Ms G’s face was obscured in the programme, but her voice was heard and her house and car was shown (albeit, the registration plate was also obscured). Ms G was not identified in the programme in any other way.

Following the broadcast of the programme, Ms G complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

Summary of the complaint and the broadcaster's response

Ms G complained that her privacy was unwarrantably infringed in the programme as broadcast in that she was shown in the programme having been woken up at midnight and had the light of the camera shining on her. She said that she did not know it was a camera until the footage was broadcast in the programme. Ms G said that although her face was obscured, she was identified by her voice and house and car which were shown in the programme (albeit that the car registration plate and her face was obscured). By way of background to her complaint, Ms G said that she worked in a bank and that she was heard to say in the programme that she lived alone.

In response, Channel 5 said that it did not agree that Ms G's privacy was unwarrantably infringed in the programme as broadcast, nor did it believe that she said that she lived alone, although the audio at that point, it said, was indistinct.

Channel 5 said that the programme showed the police officers knocking on Ms G's door at around midnight and Ms G opening the door, apparently in her dressing gown, and saying approximately 15 words in response to the questions put to her by the police officers. Channel 5 said that although it accepted that in the circumstances Ms G, a wholly innocent party in the situation, had a legitimate expectation of privacy, it did not believe that the footage broadcast infringed her privacy because of the steps taken to obscure her identity.

Channel 5 said that it took steps to ensure that neither Ms G nor where she lived would be identified. Channel 5 said that the fact that the taxi driver misidentified Ms G's property demonstrated that there was nothing particularly distinctive about the exterior of her property. In addition, Channel 5 said that it was nearly midnight when filming took place and so it was very dark and little of the exterior of her property could be seen in the brief footage that was broadcast. Channel 5 said that there were no "long shots" of Ms G's house included in the programme, no street name was identified, and the house number was obscured, as were those of her neighbour and the couple who eventually handed over the taxi fare. Channel 5 said that it and the programme makers also ensured that the brief glimpses of Ms G's face were pixellated and that the registration plates of cars parked in the street that may have led to identification of Ms G were also obscured.

In light of the above, Channel 5 said that it did not believe that it was correct to suggest that the fleeting shots of Ms G that remained in the programme with a snatch of indistinct conversation could have identified Ms G, or at least, not to anyone other than those who knew her very well and who were therefore likely to be aware of the fact that she lived on her own. In the circumstances, Channel 5 said that it did not believe that the footage broadcast in the programme infringed Ms G's privacy or disclosed to anyone who did not already know, that she lived on her own.

Channel 5 said that in the event that Ofcom considered that, despite the steps taken to obscure Ms G's identity, the broadcast footage did interfere with her private life, it would argue that any such interference was very limited and that it was warranted in the circumstances. Channel 5 said that it was clearly in the public interest to demonstrate the varied work carried out by the police and the difficulties they sometimes encounter in their work. The footage and audio of Ms G included in the programme was a necessary and effective part of the story of the police officers in this case. The officers had been informed that a man and a woman had evaded the

taxi fare and as part of their investigations they therefore knocked on Ms G's door and enquired whether there was also a man at the address. Channel 5 said that it believed that Ms G responded that she was on her own. While it may have been possible to have told this story without the footage and audio, Channel 5 said that that would ignore the realities of this kind of programme. The footage and audio conveyed the message more strongly than narrative alone could have done. Channel 5 said that both it and the programme makers had taken all reasonable steps to mask Ms G's identity and that it considered that any interference with Ms G's private life that broadcast of the brief, pixellated footage and indistinct audio may have constituted was very limited and was outweighed by the public interest and Channel 5's right to freedom of expression.

Channel 5 said that while it regretted any distress the broadcast of the programme may have caused Ms G, it held the view that to uphold her complaint would amount to a disproportionate interference with Channel 5's right to freedom of expression.

Decision

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

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

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

This is reflected in how Ofcom applies Rule 8.1 of the Ofcom's Broadcasting Code ("the Code"), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

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

Ofcom considered the complaint that Ms G's privacy was unwarrantably infringed in the programme as broadcast in that she was shown in the programme and that although her face was obscured, she was identified by her voice, house and car which were shown in the programme.

In considering this complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not there had been an unwarranted infringement of Ms G's privacy in the programme as broadcast, Ofcom considered the extent to which Ms G could have legitimately expected that the footage of her and her property would not be broadcast without her consent.

Having carefully examined the footage of Ms G broadcast in the programme, Ofcom noted that Ms G was shown wearing a dressing gown after apparently being woken up by the police officers who had knocked on her front door. Ofcom noted that Ms G's face was obscured in the programme, although her voice was audible. Ofcom also noted that in answer to one of the police officers' question about whether a man lived in her house, Ms G was heard to say "*No, I live, I'm on my own*". Footage of the exterior of Ms G's house was shown in the programme as was her car which was parked in the road. Ofcom noted that both the number of Ms G's house and the car registration plate had been obscured in the programme as broadcast. Ofcom noted too that the filming appeared to have been conducted openly by the programme makers, although Ofcom recognised that it had been dark at the time and that the camera operator may not have been clearly visible to Ms G.

Ofcom considered that Ms G was not the focus of this particular part of the programme and it took the view that the footage of her and her property was used in the programme to depict the events as they happened and to show the lengths the police officers had to take to find the couple who had failed to pay their taxi fare. Although the part of the programme that featured Ms G and her property was approximately 45 seconds in duration, the footage of Ms G herself lasted approximately eight seconds.

Ofcom also considered the character of the information that was revealed or disclosed in the programme and the context in which it was disclosed. Ofcom recognised that in this particular case, Ms G had not been identified by name in the programme and that the programme makers had taken steps to reduce Ms G's identity being revealed by obscuring her face, her house number and her car registration number in the programme. It noted too that the house numbers and car registration plate numbers of other vehicles in the road were obscured and that the road name was not disclosed in the programme and that only the area name of "*Chapelton*" revealed to viewers the location in Sheffield where the incident had taken place. However, despite the efforts made by the programme makers to obscure Ms G's identity, Ofcom took the view that the inclusion of Ms G's voice, along with the footage of her and her house and her car and the additional information that she lived alone, were pieces of information that when considered together rendered Ms G identifiable, and her identity would have been particularly discernable to those who knew her.

Ofcom recognised that the filming of an individual's home may give rise to an expectation of privacy as might the circumstances in which an individual is filmed and that footage is subsequently broadcast. In the particulars of this case, Ofcom considered that Ms G had been filmed in a vulnerable situation, i.e. being awoken late at night by the police and answering their questions while dressed in her dressing gown, and that the broadcast of that footage had the potential to be embarrassing to her and had revealed that she lived alone. Ofcom considered that whether an individual lived alone or not was information that could reasonably be considered to be private and that it would be reasonable to expect that such information would not be revealed to a wider audience in a programme without consent.

Given that the potentially embarrassing and vulnerable circumstances in which Ms G was filmed and that personal information about her, i.e. that she lived alone, was disclosed in the programme, Ofcom considered that Ms G had an expectation that the footage of her would not be broadcast without her prior consent being obtained by the broadcaster unless it was warranted to proceed without consent. However, Ofcom took into account the various steps taken by the broadcaster and the programme makers to limit the infringement into Ms G's privacy. In particular, Ofcom again noted that Ms G's face had been obscured along with the number on her front door and her car registration number plate. It also noted that the exact location of the road where Ms G lived was not disclosed in the programme and that only the area location of "*Chapeltown*" was disclosed. These factors, in Ofcom's view, significantly limited the degree to which the broadcasting of the programme infringed Ms G's expectation of privacy.

Having found that Ms G had a legitimate expectation of privacy in relation to the footage of her included in the programme without her consent, but that the degree to which this legitimate expectation had been infringed was limited, Ofcom went on to consider the broadcaster's competing right to freedom of expression and the public interest in examining the work of the police and the audience's right to receive information and ideas without unnecessary interference. In this respect, Ofcom considered whether, in the circumstances there was a sufficient public interest to justify the intrusion into Ms G's privacy.

Ofcom considered that showing the varied and often difficult incidents experienced by police officers in dealing with a wide variety of offences and problems and in developing the public's understanding of the range of situations dealt with by the police was a matter of genuine public interest. In particular, Ofcom considered that the public interest in broadcasting programmes showing the work of the police in circumstances which illustrated the challenges faced by police officers when faced with various levels of criminal behaviour such as in this case in identifying the whereabouts of a couple who had failed to pay for their taxi fare and how the police decided to deal with the situation, was significant.

On balance therefore, Ofcom concluded that the broadcaster's right to freedom of expression and to receive and impart information and ideas without interference, in these particular circumstances, outweighed Ms G's expectation of privacy in relation to the broadcast, of footage of her and the disclosure that she lived alone in the programme without her consent. Ofcom found there was no unwarranted infringement of Ms G's privacy in the programme as broadcast.

Accordingly, Ofcom has not upheld Ms G's complaint of unwarranted infringement of privacy in the programme as broadcast.

Other Programmes Not in Breach

Up to 28 November 2011

Programme	Broadcaster	Tx date	Categories
Advertising minutage	Wedding TV	22/09/2011	Advertising minutage
Geo TV	Geo TV	02/08/2011	Retention and production of recordings
Naked Weapon	FilmBox	22/05/2011	Generally accepted standards
Programmes	On FM	22/06/2011	Offensive language
Tennents' sponsorship of Batman	ITV4	17/10/2011	Sponsorship credits
The Jeremy Kyle Show	ITV1 London	07/09/2011	Offensive language
Waterloo Road	BBC 1	14/09/2011	Violence and dangerous behaviour

Complaints Assessed, not Investigated

Between 15 and 28 November 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
90210	E4	14/11/2011	Sexual material	1
11th Hour	ARY News	25/10/2011	Generally accepted standards	1
4oD smartphones promotion	Channel 4	08/11/2011	Materially misleading	1
4oD smartphones promotion	Channel 4	16/11/2011	Materially misleading	2
4oD smartphones promotion	E4+1/Channel 4	n/a	Materially misleading	1
4thought.tv	Channel 4	22/11/2011	Religious/Beliefs discrimination/offence	1
5 News at 5	Channel 5	14/11/2011	Generally accepted standards	1
A League of Their Own	Sky2	23/11/2011	Race discrimination/offence	1
A Very British Party	Watch	15/11/2011	Generally accepted standards	1
Afternoon Play	BBC Radio 4	12/10/2011	Generally accepted standards	1
Alan Carr: Chatty Man	Channel 4	13/11/2011	Age discrimination/offence	2
Alan Carr: Chatty Man	Channel 4	27/11/2011	Generally accepted standards	1
All Star Family Fortunes	ITV2	26/11/2011	Generally accepted standards	3
Argumental	Dave	08/11/2011	Gender discrimination/offence	1
Ary News	ARY News	30/10/2011	Due impartiality/bias	1
Autumnwatch Unsprung	BBC 2	11/11/2011	Sexual orientation discrimination/offence	1
B&Q's sponsorship of Beeny's Restoration Nightmare	Channel 4	03/11/2011	Advertising content	1
BBC Licence Fee	BBC	n/a	Outside of remit / other	1
BBC News	BBC 1	26/11/2011	Outside of remit / other	1
BBC News	BBC 2	23/11/2011	Generally accepted standards	1
BBC News	BBC News Channel	05/11/2011	Generally accepted standards	1
BBC News at Six	BBC 1	10/11/2011	Generally accepted standards	1
BBC News at Six	BBC 1	17/11/2011	Violence and dangerous behaviour	1
BBC News at Six	BBC 1	18/11/2011	Generally accepted standards	1
BBC News at Six	BBC 1	18/11/2011	Offensive language	1
BBC News at Six	BBC 1	25/11/2011	Outside of remit / other	1
BBC News at Ten	BBC 1	16/11/2011	Violence and dangerous behaviour	2
BBC News at Ten	BBC 1	17/11/2011	Race	1

			discrimination/offence	
BBC News at Ten	BBC 1	24/11/2011	Outside of remit / other	1
BBC Red Button	BBC	17/11/2011	Materially misleading	1
Beeny's Restoration Nightmare	Channel 4	17/11/2011	Offensive language	1
Bid TV	Bid TV	21/11/2011	Premium rate services	1
Big Brother	Channel 5	09/11/2011	Offensive language	1
Big Brother's Bit on the Side	Channel 5	11/11/2011	Generally accepted standards	12
Big Brother's Bit on the Side	Channel 5	11/11/2011	Offensive language	1
Black Mirror (trailer)	Channel 4	20/11/2011	Scheduling	1
Bluebird 40+	Northern Birds	30/10/2011	Participation TV - Offence	2
Bluebird TV	Essex Babes / SportxxxGirls	17/11/2011	Participation TV - Offence	1
Bluebird TV	SportxxxGirls	24/10/2011	Participation TV - Offence	1
Breakfast News	BBC 1	17/11/2011	Generally accepted standards	1
Breakfast Show	New Style Radio	21/11/2011	Format	1
Britain on the Fiddle	BBC 1	03/11/2011	Outside of remit / other	1
CBeebies Bedtime Story	CBeebies	15/11/2011	Sexual material	1
Celebrity Juice	ITV2	10/11/2011	Disability discrimination/offence	1
Channel Promotion	Comedy Central	06/11/2011	Hypnotic and other techniques	1
Children in Need 2011	BBC 1	18/11/2011	Offensive language	1
Children in Need 2011	BBC 1	18/11/2011	Race discrimination/offence	1
Children in Need 2011	BBC 1	18/11/2011	Sexual material	1
Children in Need Rocks Manchester	BBC 1	17/11/2011	Scheduling	5
Come Dine with Me	Channel 4	14/11/2011	Sexual material	1
Come Fly with Me	BBC 3	24/11/2011	Race discrimination/offence	1
Continuity announcements	Various	n/a	Outside of remit / other	1
Cops Uncut	Quest	17/11/2011	Offensive language	1
Coronation Street	ITV1	14/11/2011	Animal welfare	1
Coronation Street	ITV1	14/11/2011	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	17/11/2011	Gender discrimination/offence	1
Criminal Minds	Sky Living	22/11/2011	Scheduling	1
Daybreak	ITV1	17/11/2011	Outside of remit / other	1
Derren Brown	Channel 4	11/11/2011	Materially misleading	1
DM Drama	DM Digital	13/11/2011	Outside of remit / other	1
Doctors	BBC 1	07/11/2011	Nudity	1
Doctors	BBC 1	15/11/2011	Animal welfare	1
EastEnders	BBC 1	27/10/2011	Generally accepted standards	1
EastEnders	BBC 1	14/11/2011	Generally accepted standards	1

EastEnders	BBC 1	15/11/2011	Generally accepted standards	1
EastEnders	BBC 1	24/11/2011	Generally accepted standards	1
EastEnders	BBC 1	24/11/2011	Race discrimination/offence	1
EastEnders	BBC 1	23/11/2011	Generally accepted standards	1
Emmerdale	ITV1	27/10/2011	Scheduling	1
Emmerdale	ITV1	10/11/2011	Offensive language	2
Emmerdale	ITV1	15/11/2011	Generally accepted standards	6
Emmerdale	ITV1	16/11/2011	Generally accepted standards	1
Emmerdale	ITV1	24/11/2011	Generally accepted standards	2
England v Sweden	BBC Radio 5 Live	15/11/2011	Race discrimination/offence	1
Family Guy (trailer)	FX	22/11/2011	Sexual material	1
Filthy Rotten Scoundrels	BBC 1	11/11/2011	Generally accepted standards	1
Fish Town	Sky Atlantic	14/11/2011	Offensive language	1
Format	Angel Radio (Isle of Wight)	n/a	Format	1
Four Lions	Film 4	15/11/2011	Generally accepted standards	1
Fox News	Fox News	04/11/2011	Due impartiality/bias	1
Frank Skinner's Opinionated	BBC 2	10/11/2011	Sexual orientation discrimination/offence	1
Fresh Meat	Channel 4	16/11/2011	Generally accepted standards	1
Gambling advertising	Various	n/a	Gambling	1
Game of Thrones	Sky Atlantic	20/11/2011	Sexual material	1
Geoff Lloyd's Hometown Show	Absolute Radio	11/11/2011	Generally accepted standards	1
George and Suzie in the Morning	Clyde 1	21/11/2011	Generally accepted standards	1
George and Suzie in the Morning (promotion)	Clyde 1	17/11/2011	Drugs, smoking, solvents or alcohol	1
George and Suzie in the Morning (promotion)	Clyde 1	20/11/2011	Drugs, smoking, solvents or alcohol	1
Gillette Soccer Saturday	Sky Sports News	26/11/2011	Generally accepted standards	1
Glory TV	Glory TV	07/09/2011	Religious/Beliefs discrimination/offence	1
Go Greek for a Week	Channel 4	07/11/2011	Race discrimination/offence	37
Golf	Sky Sports 3	22/11/2011	Materially misleading	1
Good Rocking Tonight	Radio Caroline	18/10/2011	Generally accepted standards	1
Hairy Bikers' Best of British	BBC 2	23/11/2011	Religious/Beliefs discrimination/offence	1
Harry Hill's TV Burp	ITV1	29/10/2011	Sexual material	1
Harry Hill's TV Burp	ITV1	12/11/2011	Race discrimination/offence	3
Harry Hill's TV Burp	ITV1	13/11/2011	Race	1

			discrimination/offence	
Harry Hill's TV Burp	ITV1	19/11/2011	Sexual material	1
Harry Hill's TV Burp	ITV1	19/11/2011	Sexual orientation discrimination/offence	1
Harry Hill's TV Burp	ITV1	20/11/2011	Sexual orientation discrimination/offence	1
Hollyoaks	Channel 4	15/11/2011	Scheduling	1
Hollyoaks	Channel 4	22/11/2011	Advertising/editorial distinction	1
iCarly	Nickelodeon	11/11/2011	Offensive language	1
I'm A Celebrity, Get Me Out of Here / The X Factor	ITV1	n/a	Scheduling	1
I'm a Celebrity, Get Me Out of Here Now!	ITV2	13/11/2011	Race discrimination/offence	1
I'm a Celebrity, Get Me Out of Here Now!	ITV2	15/11/2011	Gender discrimination/offence	1
I'm a Celebrity, Get Me Out of Here Now!	ITV2	15/11/2011	Race discrimination/offence	1
I'm a Celebrity, Get Me Out of Here Now!	ITV2	27/11/2011	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here!	ITV1	n/a	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	13/11/2011	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here!	ITV1	14/11/2011	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	16/11/2011	Advertising scheduling	1
I'm a Celebrity, Get Me Out of Here!	ITV1	16/11/2011	Race discrimination/offence	1
I'm a Celebrity, Get Me Out of Here!	ITV1	17/11/2011	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	17/11/2011	Nudity	1
I'm a Celebrity, Get Me Out of Here!	ITV1	19/11/2011	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	19/11/2011	Gender discrimination/offence	2
I'm a Celebrity, Get Me Out of Here!	ITV1	20/11/2011	Animal welfare	9
I'm a Celebrity, Get Me Out of Here!	ITV1	20/11/2011	Gender discrimination/offence	2
I'm a Celebrity, Get Me Out of Here!	ITV1	22/11/2011	Gender discrimination/offence	1
I'm a Celebrity, Get Me Out of Here!	ITV1	22/11/2011	Offensive language	1
I'm a Celebrity, Get Me Out of Here!	ITV1	24/11/2011	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	27/11/2011	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here!	ITV1	27/11/2011	Harm	1
I'm a Celebrity, Get Me Out of Here! (trailer)	ITV1	17/11/2011	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here! (trailer)	ITV1	18/11/2011	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here! (trailer)	ITV1	n/a	Generally accepted standards	1

I'm a Celebrity, Get Me Out of Here! (trailer)	ITV1	n/a	Generally accepted standards	1
Inside Out	BBC 1	14/11/2011	Outside of remit / other	1
International Football Friendly	ITV1	12/11/2011	Outside of remit / other	1
It's All About Amy (trailer)	Channel 5	12/11/2011	Scheduling	1
It's All About Amy (trailer)	Channel 5	26/11/2011	Scheduling	1
ITV Bingo.com's sponsorship credits	ITV	n/a	Violence and dangerous behaviour	1
ITV News and Weather	ITV1	17/11/2011	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	21/11/2011	Offensive language	2
ITV News at Ten and Weather	ITV1	24/11/2011	Generally accepted standards	1
ITV Player (promotion)	ITV1	18/11/2011	Materially misleading	1
ITV1 Winter promotion	ITV1	20/11/2011	Scheduling	1
ITV2 promotion	ITV1	19/11/2011	Scheduling	3
ITV2 promotion	ITV1	20/11/2011	Scheduling	1
Celebrity Juice (trailer)	ITV2	28/11/2011	Scheduling	1
I've Never Seen Star Wars	BBC Radio 4	09/11/2011	Generally accepted standards	9
Jackpotjoy.com's sponsorship of Deal or No Deal	Channel 4	24/11/2011	Generally accepted standards	1
James O'Brien	LBC 97.3FM	23/11/2011	Generally accepted standards	1
Jamie's Great Britain	Channel 4	15/11/2011	Animal welfare	1
Jeremy Vine	BBC Radio 2	11/11/2011	Religious/Beliefs discrimination/offence	1
Jeremy Vine	BBC Radio 2	22/11/2011	Outside of remit / other	1
Jimmy Carr: Making People Laugh (trailer)	Channel 4	18/11/2011	Race discrimination/offence	1
Jonathan Creek	Watch+1	13/11/2011	Offensive language	1
Knowing (trailer)	Channel 4	16/11/2011	Scheduling	1
Kundli Aur Kismat / Future & Fortune	Sunrise TV	03/11/2011	Exorcism, the occult and the paranormal	1
Kyon Banea Krorapati	Sony TV	05/10/2011	Product placement	1
Lee Nelson's Well Good Show	BBC 3	14/10/2011	Gender discrimination/offence	1
Lewis	ITV3	18/11/2011	Advertising scheduling	1
Life's Too Short	BBC 2	17/11/2011	Offensive language	1
Listen Against	BBC Radio 4	10/11/2011	Generally accepted standards	1
Live at the Apollo	BBC 1	25/11/2011	Generally accepted standards	1
Live at the Apollo	BBC 1	25/11/2011	Race discrimination/offence	2
Loose Women	ITV1	16/11/2011	Generally accepted standards	1
Lorraine	ITV1	08/11/2011	Sexual material	1
Lorraine	ITV1	16/11/2011	Due impartiality/bias	1
Lorraine	ITV1	17/11/2011	Generally accepted standards	1
Lorraine	ITV1	17/11/2011	Offensive language	3

Lynx "Happy End of the World" (advertisement)	Various	n/a	Political advertising	1
Masterchef Australia	Watch	14/11/2011	Offensive language	1
May the Best House Win	ITV1	23/11/2011	Sexual material	1
Michael Jackson: The Live Seance	Pick TV	14/11/2011	Generally accepted standards	1
Midsomer Murders	ITV3	22/11/2011	Advertising scheduling	1
Mini Coupé's sponsorship of The Jonathan Ross Show	ITV1	n/a	Nudity	1
Misfits	E4	06/11/2011	Sexual material	1
Mithian Gallaan	Radio Faza 97.1 FM	27/09/2011	Due impartiality/bias	1
Mongrels	BBC 3	14/11/2011	Violence and dangerous behaviour	1
Morden i Midsommer	Kanal 8	16/10/2011	Advertising minutage	1
MTV EMA 2011	MTV Hits	07/11/2011	Nudity	1
MTV Official Top 20 UK	MTV	02/11/2011	Drugs, smoking, solvents or alcohol	1
Neil Caddy At Breakfast	Pirate FM	17/11/2011	Generally accepted standards	2
New Australian Masterchef	Watch	13/11/2011	Offensive language	1
New You've Been Framed!	ITV1	19/11/2011	Generally accepted standards	1
New You've Been Framed!	ITV1	19/11/2011	Religious/Beliefs discrimination/offence	1
News	BBC / ITV	n/a	Due impartiality/bias	1
News update	Channel 5	11/11/2011	Generally accepted standards	1
Newsnight	BBC 2	18/11/2011	Generally accepted standards	1
Newsnight	BBC 2	25/08/2011	Outside of remit / other	1
Nick Ferrari	LBC 97.3FM	10/11/2011	Religious/Beliefs discrimination/offence	1
Nicky Campbell	BBC Radio 5 Live	28/11/2011	Sexual material	1
Not Going Out	Dave	07/11/2011	Sexual material	1
OK! TV	Channel 5	21/11/2011	Generally accepted standards	1
Oops TV	Sky1	15/11/2011	Animal welfare	1
Panorama	BBC 1	03/11/2011	Outside of remit / other	1
Panorama	BBC 1	21/11/2011	Outside of remit / other	1
Phones 4 U's sponsorship of Harry Hill's TV Burp	ITV1	08/10/2011	Scheduling	1
Phones 4 U's sponsorship of Harry Hill's TV Burp	ITV1	12/11/2011	Generally accepted standards	1
Phones 4 U's sponsorship of Harry Hill's TV Burp	ITV1	19/11/2011	Scheduling	1
Phones 4 U's sponsorship of Harry Hill's TV Burp	ITV1	26/11/2011	Scheduling	3
Phones 4 U's sponsorship of Harry Hill's TV Burp	ITV1	n/a	Scheduling	1
Phoneshop (trailer)	E4	01/11/2011	Flashing images/risk to viewers who have PSE	1
Piers Morgan's Life Stories	ITV1	12/11/2011	Outside of remit / other	1
Power Snooker Masters	ITV4	19/11/2011	Religious/Beliefs	3

Trophy			discrimination/offence	
Press Preview	Sky News	21/11/2011	Due impartiality/bias	1
Press Preview	Sky News	22/11/2011	Due impartiality/bias	1
QI XL	BBC 2	12/11/2011	Outside of remit / other	1
Radio Northampton	Radio Northampton	28/10/2011	Race discrimination/offence	1
Regional News and Weather	BBC 1	21/11/2011	Outside of remit / other	1
Remembrance Day	Mix 96.2 Aylesbury	11/11/2011	Generally accepted standards	1
Rev	BBC 2	10/11/2011	Generally accepted standards	1
Rev	BBC 2	17/11/2011	Generally accepted standards	1
Richard Herring's Objective	BBC Radio 4	15/11/2011	Religious/Beliefs discrimination/offence	1
Rickie, Melvin & Charlie in the Morning	Kiss	16/11/2011	Crime	1
River Cottage Veg	Channel 4	20/11/2011	Generally accepted standards	4
River Cottage Veg	Channel 4 + 1	13/11/2011	Animal welfare	1
Ross Kemp Back on the Frontline	Sky1	14/11/2011	Religious/Beliefs discrimination/offence	1
Rude Tube	Channel 4	18/11/2011	Generally accepted standards	1
Shameless (trailer)	Baby TV	03/11/2011	Scheduling	1
Shipwrecked: The Island	Channel 4	27/11/2011	Sexual orientation discrimination/offence	2
Shipwrecked: The Island	E4	22/11/2011	Sexual orientation discrimination/offence	2
Simon Mayo Drivetime	BBC Radio 2	21/11/2011	Outside of remit / other	1
Sitcom Does.... (trailer)	Eden+1	02/11/2011	Offensive language	1
Six Days and Seven Nights	BBC 2	15/10/2011	Offensive language	1
Sky News	Sky News	09/11/2011	Due impartiality/bias	1
Sky News	Sky News	14/11/2011	Race discrimination/offence	1
Sky News Report	Sky	n/a	Due accuracy	1
Soaps	Various	n/a	Scheduling	1
Something for the Weekend	BBC 2	13/11/2011	Race discrimination/offence	1
Sorority Girls	E4	14/11/2011	Gender discrimination/offence	1
Sponsorship credits	Challenge TV and Pick TV	n/a	Sponsorship credits	1
Stephen Fry in America	BBC 4	15/11/2011	Scheduling	1
Steve Allen	LBC 97.3FM	11/11/2011	Animal welfare	2
Steve Berry	Talksport	27/11/2011	Race discrimination/offence	1
Steven Nolan	Radio 5 Live	13/11/2011	Generally accepted standards	1
Strictly Come Dancing	BBC 1	12/11/2011	Offensive language	16
Strictly Come Dancing	BBC 1	13/11/2011	Outside of remit / other	1
Strictly Come Dancing	BBC 1	19/11/2011	Offensive language	2
Strictly Come Dancing	BBC 1	19/11/2011	Voting	1

Sun, Sea and A&E	Sky1	12/11/2011	Offensive language	1
Sunrise	Sky News	23/11/2011	Due impartiality/bias	1
Sure Men sponsorship credit	Sky Sports	11/11/2011	Sponsorship credits	1
That's Britain!	BBC 1	23/11/2011	Crime	1
The Big AI Show	The Revolution 96.2 FM	11/11/2011	Generally accepted standards	1
The Bubble	Dave	23/11/2011	Offensive language	1
The Cafe	Sky1	23/11/2011	Animal welfare	1
The Chris Moyles Show	BBC Radio 1	11/11/2011	Generally accepted standards	1
The Chris Moyles Show	BBC Radio 1	11/11/2011	Offensive language	1
The Chris Moyles Show	BBC Radio 1	17/11/2011	Race discrimination/offence	1
The End of God?: A Horizon Guide to Science and Religion	BBC 4	10/11/2011	Outside of remit / other	1
The Fifth Element	Channel 5	27/11/2011	Offensive language	1
The Food Hospital	Channel 4	08/11/2011	Outside of remit / other	1
The Food Hospital	Channel 4	15/11/2011	Advertising/editorial distinction	1
The Gadget Show	Channel 5	14/11/2011	Competitions	1
The Hotel Inspector	Channel 5	13/11/2011	Offensive language	1
The Hotel Inspector	Channel 5	n/a	Materially misleading	1
The Impressions Show	BBC 1	09/11/2011	Disability discrimination/offence	1
The Jeremy Kyle Show	ITV1	11/11/2011	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	14/11/2011	Offensive language	1
The Jury	ITV1 HD	08/11/2011	Outside of remit / other	1
The Jury	ITV1	11/11/2011	Materially misleading	1
The Man Who Killed Michael Jackson	Channel 4	10/11/2011	Materially misleading	1
The News Quiz	BBC Radio 4	05/11/2011	Offensive language	1
The Now Show	BBC Radio 4	11/11/2011	Disability discrimination/offence	1
The Phantom of the Bay competition	The Bay 96.9FM	27/08/2011	Competitions	1
The Queen's Hidden Cousins	Channel 4	17/11/2011	Privacy	1
The Real Radio Legends	Real Radio North East	25/11/2011	Generally accepted standards	1
The Sex Education Show	Channel 4	19/07/2011	Scheduling	1
The Sex Education Show	Channel 4	23/08/2011	Sexual material	1
The Simpsons	Sky1	20/11/2011	Offensive language	1
The Simpsons	Sky1	25/11/2011	Offensive language	1
The Walking Dead	FX	21/11/2011	Animal welfare	1
The Walking Dead	FX	25/11/2011	Animal welfare	1
The Witch Doctor Will See You Now (trailer)	National Geographic	17/11/2011	Generally accepted standards	1
The Wright Stuff	Channel 5	15/11/2011	Due impartiality/bias	1
The Wright Stuff	Channel 5	15/11/2011	Generally accepted standards	2
The Wright Stuff	Channel 5	21/11/2011	Due impartiality/bias	1

The Wright Stuff	Channel 5	28/11/2011	Race discrimination/offence	1
The X Factor	ITV1	22/10/2011	Generally accepted standards	2
The X Factor	ITV1	05/11/2011	Voting	1
The X Factor	ITV1	12/11/2011	Voting	1
The X Factor	ITV1	13/11/2011	Scheduling	64
The X Factor	ITV1	20/11/2011	Generally accepted standards	1
The X Factor	ITV1	n/a	Outside of remit / other	1
The X Factor	ITV1	n/a	Scheduling	1
The X Factor	ITV1	n/a	Voting	1
The X Factor	ITV1	n/a	Voting	1
The X Factor	ITV1	n/a	Voting	1
The X Factor	ITV1	05/11/2011	Flashing images/risk to viewers who have PSE	2
The X Factor	ITV1	12/11/2011	Advertising scheduling	3
The X Factor	ITV1	12/11/2011	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV1	12/11/2011	Gender discrimination/offence	22
The X Factor	ITV1	12/11/2011	Generally accepted standards	5
The X Factor	ITV1	12/11/2011	Offensive language	6
The X Factor	ITV1	12/11/2011	Race discrimination/offence	1
The X Factor	ITV1	12/11/2011	Voting	5
The X Factor	ITV1	19/11/2011	Advertising scheduling	3
The X Factor	ITV1	19/11/2011	Advertising/editorial distinction	1
The X Factor	ITV1	19/11/2011	Offensive language	1
The X Factor	ITV1	19/11/2011	Voting	1
The X Factor	ITV1	26/11/2011	Hypnotic and other techniques	1
The X Factor / I'm a Celebrity, Get Me Out of Here!	ITV1	14/11/2011	Nudity	1
The X Factor USA	ITV2	18/11/2011	Under 18s in programmes	1
The Xtra Factor	ITV2	05/11/2011	Sexual material	3
The Xtra Factor	ITV2	19/11/2011	Disability discrimination/offence	1
The Xtra Factor	ITV2	20/11/2011	Generally accepted standards	1
This Morning	ITV1	09/11/2011	Drugs, smoking, solvents or alcohol	1
This Morning	ITV1	23/11/2011	Generally accepted standards	1
This Morning	ITV1	25/11/2011	Scheduling	1
This Week	BBC 1	17/11/2011	Outside of remit / other	1
Today	BBC Radio 4	n/a	Outside of remit / other	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	n/a	Advertising content	1
To Buy Or Not To Buy	BBC 2	14/11/2011	Animal welfare	1

Tool Academy	E4	15/11/2011	Generally accepted standards	13
Tool Academy	E4	20/11/2011	Generally accepted standards	1
Tool Academy	E4	20/11/2011	Nudity	1
Top Boy	Channel 4	03/11/2011	Race discrimination/offence	1
Top Gear	Dave	13/11/2011	Violence and dangerous behaviour	1
Top Gear USA	BBC 3	25/11/2011	Offensive language	1
UK Border Force	Pick TV	n/a	Materially misleading	1
UK Hot 40	4Music	17/11/2011	Generally accepted standards	1
Unreported World	Channel 4	11/11/2011	Due impartiality/bias	2
Vacancy	Channel 5	18/11/2011	Scheduling	1
Victoria Derbyshire	BBC Radio 5 Live	14/11/2011	Generally accepted standards	1
Viewer competition	True Entertainment	n/a	Competitions	1
Waterloo Road	BBC 1	09/11/2011	Offensive language	1
Waterloo Road	BBC 1	09/11/2011	Sexual material	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	19/11/2011	Generally accepted standards	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	n/a	Generally accepted standards	6
World War II: The Last Heroes	Channel 4	05/11/2011	Materially misleading	1
World War II: The Last Heroes	Channel 4	19/11/2011	Generally accepted standards	1
X Factor Results Show	ITV1	27/11/2011	Nudity	1
X Factor Results Show	ITV1	13/11/2011	Flashing images/risk to viewers who have PSE	1
X Factor Results Show	ITV1	13/11/2011	Offensive language	1
X Factor Results Show	ITV1	20/11/2011	Advertising scheduling	3
X Factor Results Show	ITV1	20/11/2011	Offensive language	6
X Factor Results Show	ITV1	20/11/2011	Outside of remit / other	1
X Factor Results Show	ITV1	20/11/2011	Scheduling	1
X Factor Results Show	ITV1	20/11/2011	Voting	3
X Factor Results Show	ITV1	27/11/2011	Advertising scheduling	1
X Factor Results Show	ITV1	27/11/2011	Voting	9
Young Apprentice	BBC 1	21/11/2011	Outside of remit / other	1
Yours, Mine and Ours	Channel 5	20/11/2011	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 1 and 14 December 2011

Programme	Broadcaster	Transmission Date
BMW: A Driving Obsession	CNBC	30 November 2011
Bridezillas	Really	27 November 2011
Flashing images	Flava	10 November 2011-12-16
Miss Arab London	Al Alamia	n/a
My Transsexual Summer	Channel 4	22 November 2011
Shipwrecked: The Island	Channel 4	11 December 2011
The One Show	BBC 1	30 November 2011
The Wright Stuff	Channel 5	06 December 2011
Competitions	Travel Channel	n/a
Wife Swap	Discovery Real Time	15 November 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/>.