

Ofcom Broadcast Bulletin

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Contents

Introduction	3
<u>Note to Broadcasters</u>	
Amendment to Ofcom Guidance to Section Two of the Code: on-air warnings about charges incurred by calls made outside voting and competition windows	4
Standards cases	
<u>In Breach</u>	
Music Video: Nicki Minaj – “Beez in the Trap” <i>Channel Starz, 27 April 2012, 14:20</i>	6
<u>Resolved</u>	
Britain’s Got Talent <i>ITV1, 6 May 2012, 19:30</i>	8
<u>Not in Breach</u>	
Britain’s Got Talent <i>ITV1, 31 March 2012, 20:00 and 1 April 2012, 13:00</i> <i>ITV2, 1 April 2012, 19:00 and 6 April 2012, 19:00</i> Britain’s Got Talent: Live Semi-final <i>ITV1, 9 May 2012, 19:30 and ITV2 on 10 May 2012, 16:00</i>	11
Advertising Scheduling cases	
<u>Resolved</u>	
Resolved findings table <i>Code on the Scheduling of Television Advertising compliance reports</i>	17
Other Programmes Not in Breach	18
Complaints Assessed, Not Investigated	19
Investigations List	26

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

Note to broadcasters

Amendment to Ofcom Guidance to Section Two of the Code: on-air warnings about charges incurred by calls made outside voting and competition windows

Background

Ofcom's Guidance Note to Section Two of the Code has for some years included the following guidance about the use of premium rate telephony services (PRS) in relation to Rules 2.13 to 2.16 (Broadcast competitions and voting):

Ofcom understands that PRS provision now generally allows lines to be closed at the end of voting and competition entry periods such that calls made outside those periods do not incur a premium charge. Arrangements in which calls continue to be so charged outside allotted entry or voting periods are very much more likely to be found in breach of the Code (or of licence conditions, as appropriate). Broadcasters should make every effort to ensure that PRS charges are not applied in such circumstances. **Generally, because network charges may be incurred, broadcasters should make clear to audiences that early or late calling may attract some charge.**

(Emphasis added.)

The guidance was drawn up after Ofcom had been advised that carriage or network charges were applied in many cases even where a premium charge was avoided and the caller advised by recorded message that their vote or entry was out of the specified time window.

The effect of the highlighted sentence above is to alert broadcasters to the desirability of on-air warnings to viewers or listeners in such circumstances. In line with this guidance, at the time of any on-air calls to action to call a PRS line for a competition or for voting, broadcasters often give a warning such as: *"Please do not call before the lines open or after the lines have closed as your vote/entry will not be counted, but you may still be charged."*

Why we have amended the guidance

We have now been made aware of evidence which demonstrates that all charges can be avoided if suitable technical arrangements are made by the telecommunications company responsible for terminating calls to the numbers used by the broadcaster. We understand that such technical arrangements will result in the connection of calls made outside the specified time window not in fact being completed, thereby avoiding any carriage or network charge being applied to the caller.

Given this evidence we are amending the guidance to state explicitly that a broadcaster need not give such on-air warnings provided it has ensured that the telecommunications company it is working with has made the necessary technical arrangements so that an out-of-time call to the phone numbers it publicises as part of votes, competitions and so on will incur no charge at all.

The final sentence of the guidance quoted above has therefore now been amended as follows:

Generally, because network charges may be incurred, broadcasters should make clear to audiences that early or late calling may attract some charge, **unless steps have been taken to ensure that such calls are not in fact terminated and that no charge at all can be incurred.**

(Emphasis added)

The Guidance has been changed as above, can be found at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf> and comes into effect at the same time as publication of this Note.

Other points to note

Broadcasters wishing to avoid giving warnings about out-of-time calls should bear in mind three important points.

First, Ofcom wishes to reiterate that nothing in this note changes the general need to make audience competition and voting deadlines absolutely clear to the audience to ensure compliance with Rules 2.13 to 2.16.

Further, when considering warnings related to audience interaction, broadcasters need to think very carefully about the clarity of charging statements if both voice calls and text routes are offered. The absence of a warning about out-of-time voice calls should not obscure any clarification about charges for out-of-time texts, if applicable.

Lastly, we wish to be absolutely clear that **broadcasters who do not include carriage or network cost on-air warnings will be expected in the event of challenge to be able to demonstrate to Ofcom the steps they have taken to avoid any charge being applied to out-of-time calls and to demonstrate that these steps are fully effective.**

Broadcasters should contact John Stables at Ofcom (john.stables@ofcom.org.uk) if they have any questions about the amendment to the guidance or its effect.

Standards cases

In Breach

Music Video: Nicki Minaj – “Beez in the Trap”

Channel Starz, 27 April 2012, 14:20

Introduction

Channel Starz¹ is a music television channel. The licence for Channel Starz is held by Mushroom Television Limited (or “the Licensee”).

During routine monitoring of the channel, Ofcom noted a sequence of flashing images in the music video *Beez in the Trap* by Nicki Minaj. No warning was broadcast before or during the video.

Certain types of flashing images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out a technical assessment of the flashing images in the music video. We noted that there were five distinct sequences, occurring at various points in the video, where rapidly repeated ‘fast cuts’ between images exceeded the brightness change and screen area limits set out in Ofcom guidance to broadcasters on flashing images². The total duration of the sequences containing non-compliant flashing images was approximately 8 seconds.

Ofcom considered the material raised issues warranting investigation under Rule 2.12 of the Code, which states:

“Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item”.

Ofcom therefore wrote to the Licensee and asked it to explain how this material complied with Rule 2.12.

Response

The Licensee explained that the video file provided by the record company was marked as compliant with Ofcom’s PSE guidance and was broadcast on this (incorrect) basis. The Licensee also notified Ofcom that it went into liquidation on 22 June 2012.

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,

¹ The channel is licensed by Ofcom as ‘Channel Starz’, but is broadcast and listed on the Sky EPG as Starz TV.

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

one of which is 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”.

Given the significant potential harm to viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard. Further, Ofcom’s Guidance in this area (and the annexed Guidance Note on flashing images which is based on scientific research), are intended to limit the incidence of seizures.

In this case, Ofcom’s test of this material found that it clearly did not comply with the limits set out in our published Guidance concerning PSE.

While Ofcom acknowledges that the Licensee broadcast this music video in good faith, it is the responsibility of all broadcasters to ensure compliance with the Code before transmitting any material. On this occasion the Licensee had failed to check and correctly identify broadcast material as problematic in advance of transmission. The broadcast was in breach of Rule 2.12 of the Code.

Breach of Rule 2.12

Resolved

Britain's Got Talent

ITV1, 6 May 2012, 19:30

Introduction

Britain's Got Talent is a talent series, broadcast on ITV1, which aims to find an 'unknown star' from the general public to perform at the annual Royal Variety Performance. For the 2012 series, one way that viewers could vote was via a downloadable smartphone application. Users of the application could purchase three votes for £1.49 for use during any voting period in the series. The first voting period began in the first of six semi-finals broadcast on 6 May 2012.

A viewer alerted Ofcom to a technical problem with the application. The viewer had purchased votes but received an error message when attempting to use them.

Ofcom considered the matter raised substantive issues warranting investigation under Rule 2.14 of the Code, which states:

"Broadcasters must ensure that viewers are not materially misled about any broadcast competition or voting."

We therefore asked ITV Broadcasting Limited ("ITV") how it had complied with Rule 2.14. ITV complies the programme for Channel Television, the licensee responsible for this programme on behalf of the ITV Network.

Response

ITV said it takes its obligations under the Code extremely seriously, particularly those involving interactivity and premium rate services. It added that in addition to its own interactive team, a number of experienced third party providers were involved in the planning and implementation of the application. Several tests had been performed to ensure the usability and operational stability of the platform.

ITV explained that when voting opened, the application's display changed from a *Britain's Got Talent*-style buzzer to a voting selection screen and this led to a significant increase in connection requests. It said that, unfortunately, the platform's firewall was not able to process the high volume of interactions that occurred directly after voting lines opened. This meant that while some users were able to use votes that they had purchased, others were not and some were charged for votes that they did not receive and so could not use.

ITV attributed the problem to a "firewall mis-configuration" on the part of the voting platform provider. It said that the provider did not load-test the full infrastructure end-to-end and did not anticipate the firewall problem that occurred. ITV added that the platform provider accepted full responsibility for this oversight and the subsequent capacity issues caused by the firewall.

ITV said that after an initial investigation, it took the decision to discontinue the application for the rest of the series and implement refund procedures for those who had purchased unused votes. Where possible, users of the application were sent two messages containing information about how to apply for a refund. An announcement

to this effect was also broadcast during the third semi-final and published on the ITV website.

Following the incident, ITV undertook a full review of the matter to inform any similar innovations in the future. ITV said that changes to the process will include enhanced overall project management, the requirement for ITV project managers to review all test data, and improved communication between developers and platform providers so that risks can be identified at an early stage.

While it regretted the incident, ITV said that it did not deliberately or negligently mislead the audience about the nature of the vote or its operation. It argued that approximately 49 per cent of votes bought via the application were processed correctly.

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 “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”.

These objectives are reflected in, among other rules, Rule 2.14, which serves to prevent broadcast competitions and voting from misleading the audience in such a way as to cause material harm, such as financial loss.

Ofcom noted that audience voting via smartphone applications is a relatively new concept and that the various testing phases undertaken by ITV or its contractors did not reveal any capacity issues. Nonetheless, under the terms of its Ofcom licence, ITV is responsible for ensuring that all of its audience voting systems are robust. Ofcom was therefore concerned that the application was unable to handle demand when voting opened. This meant that a significant proportion of viewers who had responded to the programme’s invitation to purchase voting credits via the app were unable to use them and that therefore viewers were effectively misled, albeit unintentionally.

We expect licensees to take all steps and efforts that are reasonably practicable to ensure the integrity and robustness of the systems they use. However, we accept that technical problems can arise particularly during live transmissions. An example of the latter in the context of normal telephone voting might be known limitations of network traffic volume on exchanges: these might prevent votes being cast through overloading (though not resulting in costs to unsuccessful callers).

In this case we were of the view that the cause of the problem contained elements both of preventable design weakness and less easily anticipated patterns of demand.

We noted ITV’s swift action to cancel the application and provide details of how users could obtain a refund. We also noted ITV’s review of its processes to avoid a recurrence should it use a similar voting mechanism in future programming.

In view of the Licensee’s remedial measures, Ofcom considers the matter resolved and does not expect a recurrence of the problem and takes this opportunity to remind ITV of its obligations under the Code in this area and its responsibilities under its licence in relation to its communications with viewers.

In future, when launching new interactive applications that are untested, we expect all broadcasters to take a precautionary approach to the trial and deployment of any new technology.

Resolved

Not In Breach

Britain's Got Talent

ITV1, 31 March 2012, 20:00 and 1 April 2012, 13:00

ITV2, 1 April 2012, 19:00 and 6 April 2012, 19:00

Britain's Got Talent: Live Semi-final

ITV1, 9 May 2012, 19:30 and ITV2 on 10 May 2012 at 16:00

Introduction

Britain's Got Talent is a talent series, broadcast on ITV1, which aims to find an 'unknown star' from the general public to perform at the annual Royal Variety Performance.

Audition: 31 March 2012

The episode of *Britain's Got Talent* broadcast on 31 March 2012 was pre-recorded and showed an early audition stage that took place in Blackpool. The programme included a variety of performances from members of the public, including acts such as singers, an act with performing dogs, a Cliff Richard impressionist, musicians and a poet. One of the performances in this programme was a burlesque act performed by a woman named Beatrix Von Bourbon. This item was shown at around 20:25. A total of 75 complainants alerted Ofcom to her act. In summary the complainants considered the performance was inappropriate for broadcast during a family show because it contained images and themes unsuitable for a child audience.

Ofcom noted that the programme included: a brief introductory piece about Beatrix Von Bourbon in which she explained that she had a background in ballet and tap dance; her two minute burlesque act performed to the audio track "Feeling Good" by the band Muse, during which she removed her skirt, jacket and bra (underneath she wore nipple tassels and her breasts were masked with an on-screen graphic), leaving her wearing a corset, knickers, stockings and shoes; a brief interview backstage following her performance with the programme presenters, Ant and Dec; and, a short clip of the judge David Walliams taking the contestant's discarded clothes off stage.

We noted that this episode was repeated on three occasions: first, on ITV1 on 1 April 2012 at 13:00; secondly on ITV2 on 1 April 2012 at 19:00; and lastly on ITV2 on 6 April 2012 at 19:00. The majority of complaints received by Ofcom concerned the broadcast on 31 March 2012.

Semi-final: 9 May 2012

The live semi-final broadcast on 9 May 2012 starting at 19:30 also included a performance by Beatrix Von Bourbon. Ofcom noted that approximately one hour into this programme a brief introductory piece about Beatrix Von Bourbon was broadcast and her performance followed. It lasted approximately one and half minutes. She began by wearing a long sleeveless gown and gloves, both of which she then removed to reveal a pair of gold satin camisole knickers, shoes and a top that comprised a bra and large beaded necklace. While her back was turned to the audience, Beatrix Von Bourbon then removed this top and she concluded her act in this position. This shot of her was partially obscured by two assistants who held large ostrich feather fans. Prior to receiving feedback from the judges, she was handed a large, knee-length fur wrap to wear, which covered her torso and thighs. Ofcom received 15 complaints about this broadcast. As with the broadcast on 31 March

2012 the complainants considered the programme material contained images and themes unsuitable for a child audience.

We noted that this episode was repeated on ITV2 on 10 May 2012 at 16:00.

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

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

Ofcom issued new guidance about observing the watershed in September 2011¹. This states that: “It is important to note that in pre-watershed content, Ofcom would not expect to see singers and dancers wearing clothing that does not adequately cover their bodies (in particular their breasts, genital area and buttocks)”.

We therefore asked ITV Broadcasting Limited (“ITV”), how this content had complied with Rule 1.3. ITV complied the programme for Channel Television, the licensee responsible for this programme on behalf of the ITV Network.

Response

ITV said that “the programme celebrates a variety of entertainment and British talent and therefore showcases a wide range of different types of act, not all of which will always be to everyone’s taste”. The Licensee said that “both ITV commissioners and the producers consider very carefully the suitability of all performances for the family audience that the programme attracts, and the expectations of viewers, in particular those of parents”. It added that in this case Beatrix Von Bourbon’s performance was “a highly stylised combination of comedy, mime and dance, rather than simply striptease”.

Audition: 31 March 2012

Regarding the performance broadcast on 31 March, the Licensee said that it drew on a tradition of ‘saucy’ British humour, rather than being overtly erotic or sleazy and “at the conclusion of the routine Beatrix remained clothed (including nipple tassels), ... [and] there was a graphic overlay to further conceal her breasts”. ITV said that this performance was carefully edited with wide shots and cutaways so as not to linger on the removal of clothing or partial nudity and to “render the performance as a whole suitably inexplicit”.

With regard to audience expectations, the Licensee said that this is the sixth series of *Britain’s Got Talent* and in previous series the programme has featured burlesque acts and other types of acts which involve partial nudity, which had been edited and masked appropriately and not caused widespread offence or complaint. ITV said that it was careful to ensure that Beatrix’s audition was treated in a consistent manner with previous acts of a similar nature.

Semi-final: 9 May 2012

With regard to the live broadcast on 9 May 2012, ITV said that it was “particularly conscious of the need for careful planning in relation to every aspect of this performance ... since there was no opportunity on this occasion for editing or post-

¹ Published 30 September 2011:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

production masking”. The Licensee added that this informed both the content and manner in which the act was filmed.

ITV said that “the choreography and choice of costume was informed by the requirement not to be overly revealing or sexualised, and included the use of large fans, a large bead necklace, gold camisole knickers, and bra cups under a bra”. With regard to the filming of the act, the Licensee said that the performance was carefully planned and the studio cameras were positioned so that at the end of her act, when Beatrix turned her back to the camera to remove her top, viewers were only able to see her back and this view was also partially obscured by large fans held by two assistants. The Licensee added that after her act during the discussion with the judges she was shown wearing a large wrap, and during the results show later that evening she wore the full length purple gown in which she had started her act earlier.

The Licensee said that it acknowledges “that not all parents will consider the act appropriate for primetime entertainment programming, and we regret any offence caused.... Nevertheless we do not believe that the inclusion of this performance exceeded the expectations of the family audience, or that it was unsuitable for children”.

Decision

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

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. This rule is not prescriptive and it does not stipulate material or themes that require appropriate scheduling to protect children. Instead it requires that appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

When applying the requirement to protect persons under the age of eighteen, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without unnecessary interference by public authority. However, the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to protect under-eighteens.

As Ofcom noted in its 2011 guidance on observing the watershed on television², family viewing programmes raised particular concerns amongst the parents and carers surveyed in Ofcom’s 2011 research. The guidance states that “[w]hile Ofcom acknowledges these programmes are not made for children, they nevertheless tend to attract a significant child audience and therefore broadcasters should ensure that the content is suitable for family viewing *throughout the duration* of the programme.... In the entertainment and talent genres, particular areas of concern include the sexualised clothing and dance routines of performers and/or guest artistes...”.

² See footnote 1.

Broadcasters are also required to take particular care if repeats of the content are scheduled during the daytime when it is likely children will be watching, some unaccompanied by a parent or other adult.

Audition: 31 March 2012

We considered first whether the material broadcast on 31 March was unsuitable for children. Ofcom noted that when this programme was originally broadcast it began at 20:00 (the performance in question occurred at 20:26) and was repeated at various times (all prior to the 21:00 watershed) on three different dates during the following week.

The performance in question was a burlesque act, which is a variety genre characterised by flirtatious comedy, mime, dancing and striptease. We noted that this performance lasted approximately two minutes and contained shots of: Beatrix Von Bourbon; the judges; the presenters, Ant and Dec; and various members of the audience. The performer began by wearing a red jacket and skirt, which she removed to reveal a corset, stockings and bra. She also had an intricate tattoo covering her upper body and left arm.

The routine itself had some flirtatious overtones and included images of Beatrix Von Bourbon adopting some mildly provocative positions. The most noticeable example was when, with her back to the audience, she looked over her shoulder as she slowly unzipped the back of her skirt to very briefly reveal a partial view of her buttocks, at which point the camera zoomed out at speed. The act culminated in Ms Von Bourbon removing her bra; however she was wearing nipple tassels which were only partially visible as there was an on-screen graphic in the form of two stars obscuring her breasts. She continued to wear her corset, stockings, knickers and shoes at the end of the performance. We noted the performance was mostly shot from a wide angle (so minimising the potential impact of the flirtatious or limited sexualised overtones of the act) and as ITV highlighted was “carefully edited” to ensure that there were no close up images, or images of any significant duration, that focused on her removing her clothes or her partial nudity.

Where there were close up images, these focused on her face and upper body, particularly to show her facial expressions. The camera shots changed quickly and the images were intercut with reactions from the judges, the presenters and members of the audience, resulting in the shots of the individual dance movements and postures adopted by Ms Von Bourbon being very brief.

Ofcom is aware that some viewers may find the sexualised nature of burlesque performances potentially offensive. However we noted that the images of Ms Von Bourbon adopting mildly provocative positions and limited and partial nudity were fleeting, and the act itself was performed in the manner of a dance that required skill and training. As already pointed out Ofcom guidance states that: “It is important to note that in pre-watershed content, Ofcom would not expect to see singers and dancers wearing clothing that does not adequately cover their bodies (in particular their breasts, genital area and buttocks)”. The performance included a very brief image of the performer’s partially obscured buttocks when she unzipped her skirt. We considered this image was on the margins of acceptability and remind the broadcaster to take particular note of Ofcom’s guidance cited above in future.

The programme is part of a long running series on ITV1 and ITV2 that includes a variety of acts that appeal to wide range of viewers including children and adults. We noted that the programme was repeated after its original broadcast on both services at various times of the day before the 21:00 watershed during the following six day period. We also noted that the format and style of the series, including the types of

acts included, were similar in nature to the previous series that have been broadcast over recent years. In our opinion this programme, and in particular this burlesque performance by Ms Von Bourbon, would therefore not have exceeded the likely expectations of the vast majority of the ITV1 and ITV2 audience – either when originally broadcast or when repeated.

We also took account of the fact that *Britain's Got Talent* is a programme made for a family audience, rather than a programme directed at children, although it does attract a number of child viewers. Audience figures for these programmes demonstrate that on ITV1 on Saturday 31 March 2012 and Sunday 1 April 2012 for example *Britain's Got Talent* attracted 1,600,000 and 92,000 child viewers (aged between 4 and 15 years) respectively. These figures represented 13.9% and 8.9% of the total viewers respectively. Audience viewing figures for the broadcasts on ITV2 on Sunday 1 April 2012 and Friday 6 April 2012 attracted 139,000 and 131,000 child viewers respectively. This represented 16.5% and 18.2% of the total number of viewers for each programme. Although there were a reasonably high number of children in the audience we considered the broadcaster had taken adequate steps to limit the images of nudity and ensure the material was suitable for broadcast before the watershed.

Ofcom was of the view therefore that, taken as a whole, the performance by Ms Von Bourbon was presented in a style which would not have exceeded the likely expectations of the audience on the various dates it was broadcast. With reference to the content, the performance and partial nudity was in Ofcom's opinion appropriately limited and suitably brief in duration. We considered that while some forms of burlesque dancing would be considered inappropriate for a child audience, this performance was presented carefully by the broadcaster to take account of the pre-watershed audience and did not convey an overtly sexualised theme.

We therefore concluded, on balance, that this performance was appropriately scheduled and the broadcaster complied with Rule 1.3.

Semi-final: 9 May 2012

Ofcom considered first whether the material broadcast on 9 May was suitable for children.

As highlighted above this semi-final was broadcast live. Ofcom noted that there were no close-up images of Ms Von Bourbon as she removed her gown, gloves or top and that at the end of her act images of her were obscured partly by large ostrich feather fans. Additionally we considered the act was mildly flirtatious, not overtly sexual and given the manner in which it was shot, the potential for the material to be unsuitable for children was significantly reduced. We also took into account that the performance was shorter in length than the performance on 31 March 2012 and the images of the performer removing her gown, gloves and necklace were of a limited duration.

While we noted that this episode attracted a significant child audience of 1,057,000, which represented approximately 11% of the total audience for this programme, we considered the broadcaster had taken sufficient steps as highlighted above to ensure the material was suitably limited to take account of the relatively high proportion of child viewers.

The act was presented as requiring a particular level of skill, a factor that was highlighted by two of the judges. We also noted that the programme started at 19:30 and the burlesque act was broadcast at approximately 20:34. The performance was

signposted at the start of the programme by means of a pre-recorded sequence to remind viewers of the participants taking part in this particular episode and again prior to the act itself, by the presenters, Ant and Dec. Parents and carers were therefore given appropriate information in advance of the act should they not wish child viewers to watch it.

Overall Ofcom considered that – as with the performance on 31 March 2012 – the act and partial nudity on this occasion were appropriately limited and brief in duration, and the act as a whole would not have exceeded the audience's likely expectations for a programme of this nature on this channel. We considered that ITV took various measures as outlined above to take account of the pre-watershed audience and the performance did not have an overtly sexualised theme. We therefore concluded that this content was appropriately scheduled, and the broadcaster did not breach Rule 1.3.

Not in Breach of Rule 1.3

Ofcom reminds broadcasters that programmes that attract family audiences with child viewers shown before the 21:00 watershed, and which contain material which may be unsuitable for children, require careful presentation to ensure compliance with the Code. Broadcasters should take particular care to provide appropriate protection for children when showing repeats of such programmes during the daytime when it is likely children will be watching, some unaccompanied by a parent or other adult.

Advertising Scheduling Findings

Resolved

Resolved 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
BuzMuzik	14 June 2012, 19:00	COSTA Rule 4	<p>BuzMuzik notified Ofcom that a technical error in the system which inserts advertising breaks resulted in the insertion of an extra advertising break, and 14 minutes and 30 seconds of commercials being played instead of the scheduled 11 minutes.</p> <p>The broadcaster said that to avoid recurrence since that incident, automated breaks have been manually checked before the schedule is put live, and the software has also been updated to fix the issue.</p> <p>Resolved</p>

Other Programmes Not in Breach

Up to 2 July 2012

Programme	Broadcaster	Transmission Date	Categories
Jerry Springer	Sky Living	03/05/2012	Generally accepted standards
News	Russia Today	10/02/2012	Race discrimination/offence
Nizam e Mustafa	Ummah Channel	12/04/2012	Religious/Beliefs discrimination/offence
Question Everything	Controversial tv	06/05/2012	Materially misleading

Complaints Assessed, not Investigated

Between 19 June and 2 July 2012

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
4Music	4Music	09/06/2012	Scheduling	1
4thought.tv	Channel 4	25/06/2012	Generally accepted standards	2
4thought.tv	Channel 4	28/06/2012	Generally accepted standards	4
50 Greatest Plastic Surgery Shockers	E4	19/06/2012	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	15/06/2012	Religious/Beliefs discrimination/offence	2
8 Out of 10 Cats	Channel 4	15/06/2012	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	22/06/2012	Generally accepted standards	11
8 Out of 10 Cats	Channel 4	25/06/2012	Generally accepted standards	7
A Girl's Guide to 21st Century Sex	5*	23/04/2012	Sex/Nudity	1
A Touch of Frost	ITV3	18/06/2012	Violence and dangerous behaviour	1
An Idiot Abroad	Sky1	20/06/2012	Religious/Beliefs discrimination/offence	1
Audio Description	Various	n/a	Television Access Services	1
BBC News	BBC News Channel	19/06/2012	Outside of remit / other	1
BBC News	BBC News Channel	26/06/2012	Outside of remit / other	1
BBC News at Six	BBC 1	27/06/2012	Generally accepted standards	1
Bear Grylls: Born Survivor	Discovery	26/06/2012	Animal welfare	1
Big Body Squad	Channel 5	30/06/2012	Outside of remit / other	1
Big Fat Gypsy Weddings	More4	21/06/2012	Animal welfare	1
Bikesure's sponsorship of Isle of Man TT on ITV4	ITV4	n/a	Gender discrimination/offence	1
BMIbaby.com's sponsorship of ITV Granada Weather	ITV1 (Granada)	n/a	Materially misleading	1
Bombardier's sponsorship of prime time on Dave	Dave	22/06/2012	Gender discrimination/offence	1
Boots' sponsorship of Embarrassing Bodies	Channel 4	12/06/2012	Materially misleading	1
Boulton and Co	Sky News	22/06/2012	Due impartiality/bias	1
Brainiac: Science Abuse	Sky1	13/06/2012	Offensive language	1

Brainiac: Science Abuse	Sky1	20/06/2012	Scheduling	1
Brainiac: Science Abuse	Sky1	21/06/2012	Scheduling	2
Breakfast	BBC 1	27/06/2012	Materially misleading	1
Breakfast Show	Heart West Midlands	08/06/2012	Generally accepted standards	1
Carte D'Or's sponsorship of ITV Mystery Dramas	ITV1	17/06/2012	HFSS	1
Channel 4 News	Channel 4	26/06/2012	Outside of remit / other	3
Channel Promotion	Comedy Central	23/06/2012	Generally accepted standards	1
CheekyBingo.com's sponsorship of The Jeremy Kyle Show	ITV1	22/06/2012	Gambling	1
CheekyBingo.com's sponsorship of The Jeremy Kyle Show	ITV2	20/06/2012	Gambling	1
Cities of the Underworld	Military History	21/06/2012	Offensive language	1
Come Dine with Me	Channel 4	15/06/2012	Sexual material	1
Coronation Street	ITV1	n/a	Product placement	1
Coronation Street	ITV1	18/06/2012	Offensive language	2
Coronation Street	ITV1	20/06/2012	Nudity	1
Coronation Street	ITV1	27/06/2012	Outside of remit / other	1
Daybreak	ITV1	18/11/2011	Harm	1
Daybreak	ITV1	12/06/2012	Drugs, smoking, solvents or alcohol	1
Daybreak	ITV1	26/06/2012	Crime	1
Daybreak	ITV1	29/06/2012	Generally accepted standards	1
Desi Radio	Desi Radio	03/06/2012	Generally accepted standards	1
Dev	BBC Radio 1	02/07/2012	Scheduling	1
Dickinson's Real Deal	ITV1	24/06/2012	Competitions	1
Digital On-screen Graphics	Pick TV	n/a	Outside of remit / other	2
DM Celebrations	DM Digital	27/06/2012	Materially misleading	1
Don't Tell the Bride	Really	10/06/2012	Offensive language	1
EastEnders	BBC 1	20/06/2012	Advertising/editorial distinction	1
EastEnders	BBC 1	22/06/2012	Disability discrimination/offence	1
EastEnders	BBC 1	22/06/2012	Generally accepted standards	4
EastEnders	BBC 1	25/06/2012	Outside of remit / other	1
EastEnders	BBC 1	26/06/2012	Outside of remit / other	1
Elite Days	Elite TV	17/06/2012	Participation TV - Offence	1
Embarrassing Bodies	Channel 4	26/06/2012	Nudity	1
Emmerdale	ITV1	21/06/2012	Advertising scheduling	1
Episodes	BBC 2	22/06/2012	Offensive language	1

Escape to Victory	ITV4	17/06/2012	Generally accepted standards	1
Euro 2012	BBC 1	16/06/2012	Outside of remit / other	1
Euro 2012	ITV	20/06/2012	Nudity	1
Euro 2012 Live	ITV1	17/06/2012	Competitions	1
Euro 2012 Live	ITV1	17/06/2012	Outside of remit / other	1
Euro 2012 Live	ITV1	19/06/2012	Gender discrimination/offence	1
Euro 2012 Live	ITV1	19/06/2012	Outside of remit / other	1
Euro 2012 Live	ITV1	22/06/2012	Generally accepted standards	1
Euro 2012 Live	ITV1	23/06/2012	Outside of remit / other	1
Euro 2012 Live	STV	19/06/2012	Outside of remit / other	1
Extraordinary People: The Baby With a New Face (trailer)	Channel 5	22/06/2012	Generally accepted standards	1
Extreme Fishing with Robson Green	Channel 5	28/06/2012	Animal welfare	1
Extreme Fishing with Robson Green	Channel 5	02/07/2012	Offensive language	1
Famous Lives: Victor Spinetti	BBC2	20/06/2012	Offensive language	1
Fear Itself (trailer)	5*	17/06/2012	Scheduling	1
Fist of Fury / TheBig Boss - Medium	SyFy / Sky Livingit	n/a	Television Access Services	1
Flog It!	BBC 2	23/06/2012	Outside of remit / other	1
French Open	ITV4	04/06/2012	Generally accepted standards	1
French Open 2012	ITV4	11/06/2012	Generally accepted standards	1
Gordon Behind Bars (trailer)	Channel 4	17/06/2012	Generally accepted standards	1
Gordon Behind Bars (trailer)	Channel 4	n/a	Crime	1
Greg Burns	Capital FM	14/06/2012	Sexual material	1
Greg James	BBC Radio 1	14/06/2012	Drugs, smoking, solvents or alcohol	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	16/06/2012	Generally accepted standards	1
Holby City	BBC 1	12/06/2012	Generally accepted standards	1
Hollyoaks	Channel 4	22/06/2012	Scheduling	1
Hollyoaks	E4	29/06/2012	Materially misleading	1
Hood Tour	The Community Channel	18/06/2012	Religious/Beliefs discrimination/offence	1
Hostel: Part II	Channel 5	30/06/2012	Generally accepted standards	4
In Good Company	Film 4	21/06/2012	Offensive language	1
Isle of Wight Festival 2012	Sky Arts 1 HD	24/06/2012	Materially misleading	3
Isle of Wight Festival Highlights	Sky1	24/06/2012	Outside of remit / other	1
Jessie	The Disney Channel	07/06/2012	Race discrimination/offence	1

Katie	Sky Living	26/06/2012	Outside of remit / other	1
Kismat Aur Kundli (Live)	Venus TV	07/05/2012	Participation TV - Harm	1
Law Show	PTV Prime	14/05/2012	Advertising/editorial distinction	1
Lewis	ITV3	01/07/2012	Advertising minutage	1
Lifers	Channel 4	25/06/2012	Disability discrimination/offence	1
Lifers	Channel 4	25/06/2012	Generally accepted standards	1
Lifers	Channel 4	25/06/2012	Outside of remit / other	1
Line of Duty	BBC 2	26/06/2012	Sexual material	1
Live at the Apollo	BBC 1	16/06/2012	Race discrimination/offence	1
Live Roulette	Smart Live Casino	n/a	Participation TV - Misleadingness	1
London Tonight	ITV1 London	22/06/2012	Generally accepted standards	1
Look Who's Talking	Gold	10/06/2012	Offensive language	1
Lookaround	ITV1 Border (English)	20/06/2012	Outside of remit / other	1
Mad Mad World	ITV1	30/06/2012	Generally accepted standards	1
Made On Sunday	BBC Radio 2	17/06/2012	Generally accepted standards	1
Man v Food	Dave	19/06/2012	Harm	1
Marco Pierre White's Kitchen Wars	Channel 5	07/06/2012	Violence and dangerous behaviour	1
Marco Pierre White's Kitchen Wars	Channel 5	14/06/2012	Violence and dangerous behaviour	2
Marco Pierre White's Kitchen Wars	Channel 5	21/06/2012	Violence and dangerous behaviour	1
Marco Pierre White's Kitchen Wars	Channel 5	28/06/2012	Competitions	1
Marco Pierre White's Kitchen Wars	Channel 5	28/06/2012	Violence and dangerous behaviour	6
Married to the Moonies	Channel 4	31/05/2012	Animal welfare	1
Match of the Day Live	BBC 1	09/06/2012	Flashing images/risk to viewers who have PSE	1
Match of the Day Live	BBC 1	18/06/2012	Product placement	2
Match of the Day Live	BBC 1	24/06/2012	Generally accepted standards	4
Match of the Day Live	BBC 1	28/06/2012	Outside of remit / other	1
Match of the Day Live	BBC 1	01/07/2012	Race discrimination/offence	1
Midsomer Murders	ITV1 London	20/06/2012	Offensive language	1
Midsomer Murders	ITV1 London	20/06/2012	Sexual material	1
Mike and Chelsea In the Morning	Key 103	12/06/2012	Race discrimination/offence	1
Mrs. Brown's Boys	BBC 1	23/06/2012	Offensive language	1
My Daughter the Teenage Nudist	More4	01/07/2012	Generally accepted standards	1
Mystery Voice Competition	Heart FM	n/a	Competitions	1
News	Real Radio	18/05/2012	Harm	1

	Scotland			
Newsnight	BBC 2	25/06/2012	Generally accepted standards	1
Newsnight	BBC 2	26/06/2012	Due impartiality/bias	1
Newsnight	BBC 2	26/06/2012	Generally accepted standards	1
Newsnight Scotland	BBC 2 Scotland	27/06/2012	Outside of remit / other	1
Night Owls	Metro Radio	19/06/2012	Animal welfare	1
Olympics Torch Relay	BBC (Red Button)	17/06/2012	Due impartiality/bias	1
One Born Every Minute (trailer)	Channel 4	29/06/2012	Scheduling	1
One Night in Turin	ITV4	20/06/2012	Generally accepted standards	1
Parents (trailer)	Sky 1	24/06/2012	Generally accepted standards	1
Pirates of the Caribbean: Dead Man's Chest	BBC 3	30/05/2012	Offensive language	1
Programming	BBC Radio 1	n/a	Offensive language	1
Programming	BBC Radio 1	15/06/2012	Sexual material	1
Programming	BBC channels	n/a	Outside of remit / other	1
Quadrophenia: Can You See the Real Me?	BBC 4	29/06/2012	Outside of remit / other	1
Real Sex: Some Like it Hot	5*	02/06/2012	Sexual material	1
Regional News and Weather	BBC 1	26/06/2012	Religious/Beliefs discrimination/offence	1
Rob Dunger	BBC Radio Suffolk	09/06/2012	Generally accepted standards	1
Royal Ascot	BBC 1	19/06/2012	Outside of remit / other	1
Sex: How to Do Everything	5*	24/04/2012	Sexual material	1
Simon Mayo Drivetime	BBC Radio 2	27/06/2012	Crime	1
Sky News	Sky News	22/06/2012	Outside of remit / other	1
Sky News	Sky News	22/06/2012	Sponsorship	1
Sky News with Colin Brazier	Sky News	23/06/2012	Sexual material	1
Sky News with Dermot Murnaghan	Sky News	02/07/2012	Generally accepted standards	1
Sky promotions	Sky	n/a	Materially misleading	1
Sky Sports promotions	Sky Sports	n/a	Political advertising	1
Spartacus: Blood and Sand	Pick TV	15/06/2012	Advertising scheduling	1
Stand Up for the Week	Channel 4	01/06/2012	Race discrimination/offence	1
Station ident	Jack FM (Oxford)	19/06/2012	Religious/Beliefs discrimination/offence	1
Steve Allen	LBC 97.3FM	11/06/2012	Generally accepted standards	1
Sunday Brunch	Channel 4	17/06/2012	Generally accepted standards	1
Sunrise	Sky News	27/06/2012	Race discrimination/offence	1

Supersize vs Superskinny	More 4	22/06/2012	Nudity	1
T4	Channel 4	30/06/2012	Offensive language	1
Take Me Out	ITV2	15/06/2012	Generally accepted standards	1
Tetley Original's sponsorship of Family Movies	Channel 5	19/05/2012	Harm	1
The Archers	BBC Radio 4	20/06/2012	Offensive language	1
The Bachelor	Channel 5	n/a	Competitions	1
The Big Bang Theory	E4	18/06/2012	Hypnotic and other techniques	1
The Big Bang Theory	E4	26/06/2012	Advertising minutage	1
The Chris Evans Breakfast Show	BBC Radio 2	08/06/2012	Generally accepted standards	1
The Chris Moyles Show	BBC Radio 1	25/05/2012	Scheduling	1
The Graham Norton Show	BBC 1	22/06/2012	Race discrimination/offence	1
The Graham Norton Show	BBC 1	25/06/2012	Race discrimination/offence	1
The Hairy Bikers: Mums Know Best	BBC 2	19/06/2012	Harm	1
The Hot 10	MTV Hits	21/06/2012	Race discrimination/offence	1
The Jeremy Kyle Show	ITV1	19/06/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	27/06/2012	Generally accepted standards	1
The Last House on the Left	ITV4	22/06/2012	Generally accepted standards	1
The Last House on the Left	ITV4	25/06/2012	Generally accepted standards	1
The Million Pound Drop Live	Channel 4	22/06/2012	Outside of remit / other	1
The Million Pound Drop Live	Channel 4	23/06/2012	Race discrimination/offence	3
The Million Pound Drop Live	Channel 4	29/06/2012	Outside of remit / other	1
The Only Way is Essex	ITV2	13/06/2012	Race discrimination/offence	1
The Secret Millionaire	Channel 4	24/06/2012	Harm	1
The Simpsons	Channel 4	14/06/2012	Offensive language	1
The Store	ITV1	17/06/2012	Outside of remit / other	1
The Wright Stuff	Channel 5	06/06/2012	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	19/06/2012	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	29/06/2012	Offensive language	1
This Morning	ITV1	25/06/2012	Generally accepted standards	9
This Morning	ITV1	28/06/2012	Disability discrimination/offence	1
This Morning	ITV1	28/06/2012	Generally accepted standards	1
Trapped	CBBC	28/06/2012	Crime	1

US Open Golf	Sky Sports 1	15/06/2012	Race discrimination/offence	1
Vampire Forensics	National Geographic	13/06/2012	Generally accepted standards	1
Various programmes	Various	n/a	Drugs, smoking, solvents or alcohol	1
Wimbledon 2012	BBC 1	25/06/2012	Outside of remit / other	1
Wimbledon 2012	BBC 1	28/06/2012	Surreptitious advertising	1
Wimbledon 2012	BBC 1	30/06/2012	Outside of remit / other	1
Wimbledon 2012	BBC 2	26/06/2012	Flashing images/risk to viewers who have PSE	1
Y Byd ar Bedwar	S4C	17/04/2012	Due impartiality/bias	1
You've Been Framed!	ITV1	24/06/2012	Under 18s in programmes	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 5 and 18 July 2012.

Programme	Broadcaster	Transmission Date
Advertising minutage	MTV Live	17/05/2012
Advertising scheduling	The Africa Channel	01/05/2012
Big Brother	Channel 5	28/06/2012
Chat Box	Chat Box	06/07/2012
Dispatches: Murdoch, Cameron and the £8 Billion Deal	Channel 4	11/06/2012
Kiss Breakfast Show	Kiss 100	28/06/2012
Making the Magic: Disneyland Paris - 20th Anniversary	Channel 5	15/04/2012
Psychic Today	Psychic Today	20/06/2012
The Secret Millionaire	Channel 4	11/06/2012

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/>.