

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

The BCAP Code is at:

<http://www.bcap.org.uk/Advertising-Codes/Broadcast-HTML.aspx>

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

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

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

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

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

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

## Standards cases

### In Breach

#### Line of Duty

*BBC 2, 17 July 2012, 21:00 and 24 July 2012, 21:00*

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#### Introduction

*Line of Duty* is a five part British police drama series which features a police anti-corruption unit known as AC-12. The storyline of this series focuses on the character Detective Sergeant Steve Arnott (“DS Arnott”), who is transferred from the police counter-terrorism squad to AC-12. He goes on to investigate an anti-corruption case involving the police force’s top detective, DCI Gates, who has covered up a crime committed by his mistress.

A complainant alerted Ofcom to violent scenes in the episode broadcast on 17 July at 21:00 which featured the character Ryan Pilkington (“Ryan”), a child runner for a highly violent criminal gang, in several scenes where he attempts to sever DS Arnott’s fingers using bolt cutters.

On reviewing the series, Ofcom noted the 13 year-old child actor playing Ryan (“the child actor”) was featured extensively in the episode broadcast on 17 July and the next episode broadcast on 24 July. During these episodes, we noted the following:

#### 17 July episode

DS Arnott is shown in the middle of a large warehouse, his right hand clamped fast in a workman’s vice. DS Arnott’s face and neck have blood on them and he appears to be suffering from both pain and distress. He has been captured by the criminal gang and is now being tortured by them.

The gang’s child runner Ryan approaches DS Arnott and holds a mobile phone to the police officer’s ear. Having listened to the voice on the other end of the line, DS Arnott attempts to speak, but falters. Unable to understand the policeman, Ryan taunts him by saying, “*Speak up you div...What?*”

DS Arnott responds by lurching forward towards Ryan and appears to head butt Ryan in the face. Shortly afterwards, Ryan – who has blood pouring from his nose as a result of the head butt – holds a pair of bolt cutters and shouts “*Give it, give it, now hold his hand out and give me that fucking finger*”. The sequence then shows close-ups of DS Arnott’s right hand in the vice and his fingers being forcibly straightened, before cutting to external shots of a building over which were dubbed the sound of DS Arnott screaming in pain.

The action then returns to shots of DS Arnott with his hand in the vice. Close-ups of DS Arnott’s fingers being straightened out by hands in black gloves, along with close-ups of the jaws of the bolt cutters being closed onto one of DS Arnott’s fingers, are shown.

Ryan holds and tightens the bolt cutters, then the sequence cuts to a close-up of DS Arnott’s face grimacing in agony and screaming. As Ryan continues to strain to close the bolt cutters, he is heard shouting, “*You bastard, you bastard, what have you got to say now?*” to which DS Arnott replies, “*I am arresting you for grievous bodily harm*”

*and false imprisonment*”. The sequence ends with shots of Ryan squeezing with determination on the bolt cutters and a close-up of DS Arnott screaming in pain. This sequence is accompanied by dramatic music and effects depicting the sound of straining bolt cutters.

### 24 July episode

Ryan is shown being interviewed under caution at a police station by Detective Constable Kate Fleming (“DC Fleming”) in the presence of his social worker, solicitor and a number of other police officers. During the interview DC Fleming directs the following question to Ryan:

*“You’re on a bad road and you need to get off it. Tell me what you know about the men who were holding DS Arnott. We know the same men were involved in a series of incidents. Two men were killed in Greek Lane. A drug dealer named Wesley Duke was hung from a lamp post and a woman named Jackie Laverty was snatched from her own home. Four murders Ryan – I need to know you had nothing to do with them?”*

This is followed by both Ryan and his solicitor denying any knowledge of the incidents or the men referred to by DC Fleming. Ryan makes repeated claims not to know the answers to DC Fleming’s questions, and continues to be uncooperative, prompting DC Fleming to say:

*“You’re a tough kid Ryan, or at least you think you are; where did you get those injuries?...If you carry on like this the place you are going has sixteen year-olds, seventeen year-olds and they are built like brick sheds, how do you think you’ll fare against one of those lads? They knock your teeth out Ryan; they do that so you give a better blow job.”*

The character Ryan is seen in vision, clearly affected by this last statement, while a female voice from out of shot is heard to say, *“I don’t think that is very helpful DC Fleming.”*

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

- Rule 1.28: “Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.”
- Rule 1.29: “People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.”

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

### **Response**

In response to Ofcom’s request for comments, the BBC provided: information relating to the steps taken *before* production; as well as more specific information regarding the appearance of the child actor *during* the production of the drama, in particular the

two episodes detailed in the Introduction; and finally information relating to the period post-production.

### Pre-production

The BBC set out the steps taken before production to highlight how any potential emotional risks to the child actor, which might have resulted from his participation in this series, were taken into consideration before filming. The BBC explained that the potential emotional risks “had to be taken into account before [the child actor] was actually cast for the part and during scripting – both of which, of course, took place before filming could be planned and specific filming risks considered”. The BBC explained the steps it took, which included the following:

- the programme makers consulted Section 9 of the BBC’s Editorial Guidelines which is concerned with “Children and Young People as Contributors” and reflects the relevant requirements of the Code;
- the decision to cast the 13 year-old child actor, in his first acting role and six weeks after he first started at drama school, was made after an audition and following a number of conversations with him and his parents;
- the decision was made in consultation with his parents, after they had viewed the scripts and were content with what their child was required to do and be exposed to during the making of the drama;
- the child actor’s parents were also content that the nature of the role did not present any significant risk of consequences after broadcast which might affect his well-being or dignity;
- the child actor took part in acting workshops and the Casting Director concluded that the child actor “could cope with the emotional demands of the role”;
- the production team working on the set with the child actor consisted of a number of highly experienced programme makers whose backgrounds all included working with child actors, including the writer/producer Jed Mercurio who is a qualified medical doctor;
- the experienced programme makers involved in the decision to cast the child actor took the view that he “well understood the distinction between fiction and reality”;
- the Executive Producer at the BBC also met the child actor at the script read-through and agreed with the decision of the programme makers;
- the programme makers took the view that the child actor’s parents were “well-qualified to assess whether he was emotionally and intellectually capable of playing the role” and were only motivated by considerations of his welfare and best interests and therefore no external professional advice was taken;
- the programme makers appointed the writer/producer Jed Mercurio to act as the main point of contact for the child actor and to oversee his welfare throughout production. The Line Producer took this role on the day of filming for the episode which was broadcast on 24 July 2012; and

- the BBC also confirmed that a children's entertainment licence was obtained and provided a copy of this to Ofcom.

### During production

The BBC explained that, as set out above, the considerations given to the child actor's emotional well-being were largely taken at an early stage of the production process. It stated: "[W]e believe that overall the decisions and arrangements made minimised any risk of emotional harm to [the child actor] during the filming process itself."

Further, the BBC explained that the programme makers were "in constant dialogue" with the child actor's parents "before, during, and after every filming day." The production team also assured the BBC that if, at any point in the process, they or the child actor's parents had felt he was "unsettled or upset by any aspect of his involvement, they would not have hesitated to end it".

In addition, the BBC stated that the child's physical welfare during the production of the drama was safeguarded by health and safety risk assessments which provided the framework for his involvement in the filming.

The BBC explained how these steps were applied during the production of each of the specific episodes below:

#### *17 July episode*

The BBC specifically commented on the application of Rules 1.28 and 1.29 with regard to the "bolt cutters" episode broadcast on 17 July.

The broadcaster explained that the risk assessment undertaken "confined itself to setting out the physical risks associated with filming". The child actor's physical welfare was taken care of through the close involvement of a stunt co-ordinator whilst this scene was being filmed. All of the action was discussed and rehearsed in "slow time" and body pads were available and used where appropriate. The camera angles were set up to "help make the violence look real while at the same time protecting [the child actor]" and the cameras were set in a safe working area so there was no risk of physical injury. The use of two cameras limited the time that the child had to spend on set thereby removing the child actor from the set as soon as his contribution was shot and minimising his exposure to the violence being enacted. With regard to the use of the bolt cutters the BBC explained that specifically constructed prop bolt cutters with soft jaws were used.

Although this risk assessment was limited to the physical risks, the BBC also referred to its earlier comments regarding the steps taken before production to limit the potential emotional risks which might arise in relation to using a child actor in this drama. The BBC said that these potential risks had been taken into account before the child actor was cast for the part and during scripting. The BBC stated that overall these "decisions and arrangements made minimised any risk of emotional harm" during the filming process.

In addition, the BBC also highlighted that the child actor's mother, who was acting as his chaperone, was on set throughout the filming of the scene. The BBC added that although the programme makers had already satisfied themselves that the child actor was emotionally and intellectually capable of playing his role without suffering anxiety

or distress, had any anxiety or distress become apparent, he would have been removed from the set immediately and appropriate care would have been offered.

Further, the BBC stated, had any issues relating to the child actor's welfare and dignity arisen, post-production appropriate care and advice would have been made available. However, the BBC said that it was the case that no such issues arose.

#### *24 July episode*

The BBC explained that the child actor had been present throughout the filming of the scene, detailed in the Introduction, and broadcast on 24 July. The BBC acknowledged that best practice was not followed during the filming of the scene, and said that: "[I]t would have been preferable for the contributions from [the child actor] and the character DC Fleming to have been filmed separately to avoid his exposure to the language that was used."

The BBC then went on to explain why best practice was not followed on this occasion and why the child actor was exposed to the sexually explicit language used by the character DS Fleming in the scene. The BBC said that, in pre-production discussions regarding many aspects of the scripts, the BBC's Executive Producer was advised by the BBC's Editorial Policy Unit that the child actor's emotional and physical welfare was "paramount" and that, among other recommendations provided to him, the child actor "should be removed from the set in the instance of potentially distressing language or action whenever possible". The BBC said that it was also made clear to the Executive Producer by the Editorial Policy Unit that specialist advice was available to the production company from the BBC's Advisor for Working with Children.

However, the BBC explained that, in this particular instance, the Executive Producer had not applied the general advice provided by the BBC's Editorial Policy Unit regarding the removal of the child actor from the set whenever possible in the instance of potentially distressing language being used. The BBC said the Executive Producer and the production company "did not regard the scene in question as one to which the general advice on removing [the child actor] from the set was applicable."

The BBC further explained that this was because "it was not felt that this scene was such that it might result in distress to [the child actor]" and that "neither the BBC Executive Producer, nor [the production company] saw anything in the script which, in their judgement, exceeded [the child actor's] ability to cope emotionally and intellectually". Further, the BBC considered that this judgement was shown to be "correct", as evidenced by the subsequent statement provided by the child actor's mother (submitted by the BBC to Ofcom and detailed below) and the child actor's own record of his experience in press interviews. However, the BBC conceded that "best practice would have guarded against the possibility that the assessment was mistaken".

In terms of preparing a risk assessment, the BBC explained that it did prepare a full risk assessment in relation to this episode although this, like the previous assessment, was concerned with the potential physical risks, and it referred to this being a requirement of health and safety legislation focusing on workplace hazards. However, the BBC added, as detailed above, that any potential emotional risks as a result of his involvement in this series had been given "full consideration" some time prior to the filming risk assessment.

Further, the BBC stated that Ofcom's Guidance in relation to Rules 1.28 and 1.29 uses the term "risk assessment" only in the context of pre-production checks addressed to the child's circumstances and not in connection with the ongoing consideration of a child's suitability for a particular role or the possible impact on a child actor's emotional welfare of participation in a particular scene. The BBC stated its view that the more relevant term in cases such as this is "due care" and in this respect the BBC considered that the programme makers did exercise due care through the assessment of his suitability for the role and, in the event, the BBC was of the view that this proved "well-founded and accurate".

### Post-production

With reference to any steps taken post-production to ensure Rules 1.28 and 1.29 were applied, the BBC wished to point out that neither episode resulted in any apparent harm, distress or anxiety to the child actor.

To support this statement, the BBC submitted an account by the child actor's mother, written several months after filming was completed, highlighting her son's very positive experience in his first acting role. She highlighted the information provided to her prior to filming, her consent and the fact that she felt comfortable with the scenes and language.

The BBC confirmed that the episodes were viewed by the BBC's Editorial Policy Unit following filming and at the pre-transmission stage. With specific reference to the episode broadcast on 24 July, which the BBC acknowledged did not follow best practice, the BBC stated that "this scene was shot and edited in a way which gave the [Editorial Policy Unit] Advisor the impression that best practice had been adhered to" and therefore it was inferred that the child actor had not been present during the shooting of this scene. The BBC said that no concerns were therefore raised about this either following filming or at the pre-transmission stage. It was only after Ofcom raised its concerns regarding the scene with the BBC that it was confirmed that the child actor had, in fact, not been removed from the scene during filming.

The BBC said it would have been "impractical" for the Editorial Policy Unit to follow up the advice it had given to the Executive Producer that the child actor should be removed from the set in the instance of potentially distressing language whenever possible. It said that as a standard practice no follow-up checks on this kind of advice are made as the compliance responsibility lies with the editorial and production teams.

The BBC went on to explain in its response that BBC Editorial Policy would be holding a training session with the Controller, Commissioners and Executive Producers in BBC Drama regarding the protection of children in their productions. The BBC said that best practice would be reviewed in all phases of production through the examination of particular scenarios to ensure that "effective and appropriate procedures are adhered to at all stages from pre-production compliance discussion, through production, to transmission".

### **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that "persons under the age of eighteen are protected". This duty is reflected in Section One (Protecting the Under-Eighteens) of the Code.

In reaching this decision Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. In particular, Ofcom's research in this area has demonstrated that both adults and children value and enjoy under-eighteens being represented in programming<sup>1</sup>.

The Code does not prohibit the participation of under-eighteens in drama programmes such as *Line of Duty* (or, indeed, any programmes), providing their content, and the participation of any under-eighteens in that content, complies with the relevant Code rules.

Rule 1.28 of the Code states that:

"Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis."

Rule 1.29 of the Code states that:

"People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes."

Ofcom has published detailed Guidance which was drafted with the assistance of child experts and child welfare groups. The purpose of the Guidance is to help broadcasters achieve the appropriate level of protection for under-eighteens in programmes when seeking to ensure compliance with Rules 1.28 and 1.29 ("the Code Guidance")<sup>2</sup>.

Importantly, as is made clear in the Code Guidance, expert opinion indicates that the vulnerability of participants can vary widely depending on age, maturity and individual circumstances. In Rule 1.28, the phrase "physical and emotional welfare and the dignity of people under eighteen" indicates the broad potential impact that participating in a programme might have on this age group. In short, broadcasters need to make careful decisions when involving under-eighteens in programmes, and that need will be especially acute in the case of certain types of programmes and specific content within them.

The Code Guidance also makes clear that an important consideration for broadcasters in this area is the development of documented guidelines for working with under-eighteens, and that production staff are made fully aware of these so that they have clear information on the broadcaster's key considerations in this area. In this respect, Ofcom noted in this case that the BBC had confirmed that the programme makers had consulted Section 9 of the BBC's Editorial Guidelines which

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<sup>1</sup> *Children in Programmes: An independent research report for Ofcom by Sherbet Research* (2007), [http://stakeholders.ofcom.org.uk/market-data-research/other/tv-research/children\\_in\\_programmes](http://stakeholders.ofcom.org.uk/market-data-research/other/tv-research/children_in_programmes).

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

is headed “Children and Young People as Contributors”. This directly refers to and reflects the requirements of Rules 1.28 and 1.29 of the Code<sup>3</sup>.

Ofcom considered these guidelines to be very clear and thorough in their reflection of the Code’s requirements and the importance of the welfare of any under-eighteen participating in programmes being paramount.

Ofcom went on to consider the steps that the BBC and production staff had implemented during the production process to take due care of the welfare and dignity of the child actor, as required by Rule 1.28.

Ofcom noted that the BBC took a number of steps to seek to protect the child actor in terms of his involvement in the programme before production and during production. These included: obtaining the informed consent of the child’s parents who had viewed the script and had confirmed they were content with what the child actor would be exposed to; minimising the time the child actor spent on the set of the episode filmed on 17 July by using two cameras; ensuring physical risk assessments were carried out for both episodes; and the fact that the BBC obtained, and complied with the conditions of, child entertainment licences for the child actor.

However, Ofcom noted that the 13 year-old child appeared in this challenging post-watershed drama and was filmed participating in scenes which were of a particularly violent nature and included sexually explicit language. For example, as set out in the Introduction, Ofcom noted the child actor playing the role of Ryan involved in the following during the 17 July episode:

- being apparently head butted by DS Arnott;
- holding a pair of bolt cutters in a torture scene and shouting: “*Give it, give it, now hold his hand out and give me that fucking finger*”; and
- straining to close the bolt cutters on one of DS Arnott’s fingers, as the policeman grimaces in agony and screams, and shouting: “*You bastard, you bastard what have you got to say now?*”

In addition, during the 24 July episode, DC Fleming appears in a scene with the child actor playing the character Ryan where he is being interviewed under caution. DC Fleming speaks to directly the child actor playing Ryan and says: “*You’re a tough kid Ryan, or at least you think you are; where did you get those injuries?...If you carry on like this the place you are going has sixteen year-olds, seventeen year-olds and they are built like brick sheds, how do you think you’ll fare against one of those lads? They knock your teeth out Ryan; they do that so you give a better blow job.*”

Ofcom noted that in its response the BBC set out the steps it had taken before production to ensure that the child actor had the intellectual and emotional maturity to handle the scenes he was asked to participate in and therefore meet the requirement of ensuring that due care was taken over his physical and emotional welfare. These steps included engaging with his parents and production staff about his suitability before filming commenced.

However, Ofcom’s Guidance specifically states that: “[D]epending on the programme genre, it may be beneficial to seek advice from an appropriately qualified

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<sup>3</sup> See paragraphs 9.2.1 and 9.2.2.

professional, such as a child counsellor or psychologist, who does not have a vested interest in the child's participation." In this case, therefore, Ofcom was particularly concerned that there did not appear to be anyone who was independent and had no direct interest in the child actor's participation in the series involved in the decision making regarding his participation. Rule 1.28 specifically states that ensuring due care applies "irrespective of any consent given by the parent". Further, Ofcom's Guidance suggests that broadcasters "consult appropriately qualified experts on the likely impact of participation where they reasonably can, especially in extreme or unusual cases". Ofcom is of the view that the violent nature of the "bolt cutter" scene and the sexually explicit language used by DC Fleming were such "extreme" cases and, given the child actor's direct involvement in both scenes, would have warranted the broadcaster to seek expert opinion on whether it was appropriate for the child actor to participate in them.

We noted the BBC's statement that in relation to the scene broadcast on 24 July, the Executive Producer did not apply the general advice given to him by the BBC's Editorial Policy Unit that the child actor be removed from the set whenever possible in the instance of potentially distressing language being used. We noted the BBC's statement that the Executive Producer had not regarded this scene as one to which the general advice applied, and that he should have applied this advice and directed the production company to remove the child actor at the point where the sexually explicit language was used. Specifically, the BBC has accepted that the contributions of DC Fleming and the child actor should have been filmed separately to avoid the child actor's exposure to the sexually explicit language.

Ofcom was concerned that the BBC relied upon steps taken prior to 4 August 2011, when the child actor was cast to play the role of Ryan, to judge the potential emotional risks associated with a scene that was filmed several weeks later in mid-October 2011. Although we acknowledge that the production team was in contact with the child actor's parents throughout filming, Ofcom was alarmed to note that the BBC did not consider that any ongoing formal risk assessment of the potential emotional impact of the child actor's participation, which may have included a third party assessment, was required for either episode because it was of the view that this matter had been given full consideration prior to production.

Ofcom also noted the BBC's view that Ofcom's Guidance only uses the term "risk assessment" in the context of pre-production checks and not in connection with the "ongoing" consideration of a child actor's suitability. However, the Guidance does clearly state that production staff should be made "fully aware" that the "physical and emotional welfare and well-being of under-eighteens" should be a central concern *throughout* the production process. A formal risk assessment which considers not only the physical but also the emotional welfare of a child participant is one way in which broadcasters can achieve this, particularly in circumstances where a child will be involved in more challenging or potentially distressing content, as was clearly the case in this instance.

We noted that in this case:

- no BBC or production staff who had considered the storyline and the child actor's performance had conducted an ongoing formal risk assessment for each episode which considered the potential emotional risks as to the appropriateness of including a 13 year-old child in the specific scenes of violence and sexually explicit language as set out above;

- there was no third party assessment by a child counsellor or psychologist, who did not have a vested interest in the child's participation, before production or during production, despite the scenes in which the 13 year-old child actor was directly involved featuring intense violence and sexually explicit language;
- the BBC's Executive Producer did not apply the best practice advice of the BBC's Editorial Policy Unit to remove the child actor from the set whenever possible in the instance of potentially distressing language being used. In the case of the filming of the sexually explicit language for the 24 July episode, the BBC's Executive Producer made the decision not to apply this advice on the basis that there was nothing in the script which, in his and the programme makers' judgement, exceeded the child actor's "ability to cope emotionally and intellectually"; and
- the BBC's Editorial Policy Unit did not realise that best practice advice had not been adhered to when reviewing the material pre-transmission and did not raise any concerns about the child actor's participation in the scene featuring sexually explicit language because the scene was shot and edited in a way which implied the child actor had not been present throughout the shooting of the scene.

It is Ofcom's view that, in circumstances where a child actor was participating in a violent adult drama which included sexually explicit language, there could have, and there should have, been a particular focus on the steps required to comply with Rules 1.28 and 1.29.

We acknowledge that the BBC had given due consideration to the physical risks the child actor might face during filming. However, Ofcom is of the view that the BBC's failure to take the steps highlighted above in relation to the child actor's emotional welfare reflected a serious lapse of its compliance with the Code.

We recognise that there may be circumstances in which it might be appropriate for a parent to have a substantial role in relation to a child's contribution to a programme. However, in the Code Guidance, we make clear that whilst we "do not seek to lessen the importance of the views of parents or guardians on children's participation...many parents and guardians will not be familiar with the production process or have a full understanding of the implications of their child's participation". This is particularly relevant in this case because this was the child actor's first acting role and it was the first time that his mother had accompanied him on set and acted as his chaperone. In Ofcom's view, it appeared that the BBC and production staff had relied on their own opinions and the consent and supervision of the child actor's parents, in particular his mother, without engaging a third party to assess whether the child actor's participation in the challenging content of this drama might involve potential risks to his emotional welfare.

Given the highly adult violent nature and sexually explicit language used in the episodes, and the child actor's direct involvement with this material in each case, we considered that the steps taken by the BBC were insufficient to ensure that due care was taken of the emotional welfare of the child actor, irrespective of the consent given by the child actor's parents. The episodes on 17 and 24 July 2012 were therefore in breach of Rule 1.28 of the Code.

With regard to Rule 1.29, we noted the representations made by the BBC by the child actor's mother almost a year after her son's participation in the series in which she confirmed that the experience had been positive. In addition, Ofcom noted the

comments made by the BBC that there was no “apparent” harm, distress or anxiety to the child actor.

Therefore, on the basis of the evidence available to Ofcom on this issue, we considered there was no breach of Rule 1.29 of the Code.

Although we have not recorded a breach of Rule 1.29 in this case, Ofcom was particularly concerned about the child actor’s exposure to sexualised language. We took into account the fact that the compliance advice to follow best practice to safeguard the child’s welfare had not been applied on the basis of a judgement made by the Executive Producer and programme makers that the child’s exposure to this language would not have exceeded his “ability to cope emotionally and intellectually”. It was a matter of concern to Ofcom that this judgement had been made despite the Editorial Policy Unit’s advice on safeguarding the child’s emotional welfare by removing him whenever possible from the set in the instance of potentially distressing language being used. It was also a concern to Ofcom that this matter had not come to the BBC’s attention until after Ofcom contacted the BBC to express its concerns about this scene. In this instance, Ofcom took the view that the fact that Rule 1.29 of the Code was not breached was despite the lack of steps being taken by the BBC, rather than because of any steps that BBC and production staff did in fact take.

Ofcom is requiring the BBC to attend a meeting to reiterate the paramount importance of ensuring its compliance with the Code rules to protect child participants in its programmes.

**Breach of Rule 1.28**

## Note to Broadcasters

### The involvement of people under eighteen in programmes

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**Ofcom is taking this opportunity to remind all broadcasters of the paramount importance of ensuring their compliance with the relevant Code rules in this area.**

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. We consider the protection of children to be among the most significant of all our statutory duties.

In addition to those rules in Section One of the Code which serve to protect children in the viewing or listening audience, there are two rules specifically relating to children who participate in any way in programmes. These rules aim to balance children’s right to participate in programmes against the requirement that broadcasters take appropriate care of children:

Rule 1.28: “Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.”

Rule 1.29: “People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.”

In 2007, Ofcom commissioned an independent qualitative research study to explore the views of children and parents on children’s participation, particularly in non-fiction programmes. You can find it here:  
<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/rpt.pdf>.

The research showed that both adults and children value and enjoy young people being represented in programmes. However, given that the consequences of participation may vary widely depending on the age, maturity and individual circumstances of the child or young person involved, Guidance was seen as a way of helping to safeguard the welfare of under-eighteens during the different stages of their participation in programmes.

As a result, Ofcom issued detailed Guidance to accompany Rules 1.28 and 1.29 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section1.pdf>). This sets out the key points of best practice broadcasters should take into account when ensuring their compliance with Rules 1.28 and 1.29. The Guidance was compiled with the input of broadcasters, programme makers, child experts and child welfare groups.

**Ofcom reminds all broadcasters very strongly that, not only must they have robust procedures in place to ensure their compliance with Rules 1.28 and 1.29 of the Code, but they must also ensure that those procedures are adhered to at all times.**

Broadcasters should note that, in light of the previous Finding in this issue of the Bulletin, and a number of complaints about children's participation in other programmes which Ofcom has considered recently, Ofcom will be taking the following actions to ensure broadcasters' compliance in this area:

- requiring relevant broadcasters to attend a meeting (or meetings) at Ofcom to discuss the requirements of Rules 1.28 and 1.29 of the Code; and
- undertaking a programme of spot check monitoring of broadcasters' compliance with Rules 1.28 and 1.29.

Any broadcasters who have immediate queries or concerns about Rules 1.28 and 1.29 should contact Alison Marsden at [Alison.Marsden@ofcom.org.uk](mailto:Alison.Marsden@ofcom.org.uk).

## In Breach

### Paigham-e-Mustafa

Noor TV, 3 May 2012, 11:00

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#### Introduction

Noor TV is a digital satellite television channel that broadcasts programmes about Islam in a number of languages, including English, Urdu and Punjabi. It can be received in the United Kingdom, Europe, Africa, the Middle East and Asia. The channel appears in the international section of the Sky electronic programme guide. Its aim, as stated on its website, is to “present a balanced, moderate and true face of Islam to both Muslims and non-Muslim communities across the globe”. Its primary target audience is young Muslims, “especially young people who have been born in the UK”. The licence for this channel is held by Al Ehya Digital Television Limited (“Al Ehya” or “the Licensee”).

A viewer alerted Ofcom to statements made during the programme that appeared to the viewer to be inciting people to commit murder.

The programme was predominantly in Urdu, was approximately one hour and 30 minutes in duration and featured a presenter, Allama Muhammad Farooq Nazimi (“Mr Nazimi” or “the presenter”). Mr Nazimi answered questions about a wide range of issues and personal conduct relating to Islam and Islamic teachings. The questions were provided by people who called in live, or sent in queries, from various countries, including the United Kingdom, countries in Western Europe such as Holland and Germany, and Pakistan. The presenter sat alone in the studio and spoke directly to camera.

Ofcom first commissioned a transcript of the programme limited to the relevant sections containing Mr Nazimi’s comments, translated into English by an independent translator. In response to a query from the Licensee about the context of certain statements in this transcript, Ofcom asked the translator of the transcript to summarise the content of the whole programme, review the word for word translation of relevant sections, and revise it as necessary. A copy of the second, revised transcript was then sent to the Licensee, whose solicitor replied, “Our clients have reported they see no problem with your transcript”<sup>1</sup>.

Ofcom watched the recording of the broadcast and carefully assessed the transcript of the whole programme.

At approximately one hour and 18 minutes into the programme Mr Nazimi answered a question from a caller, who was identified as “brother Yasir Nahif” (“Mr Nahif”), who asked:

*“What is the punishment for the individual who shows disrespect for Prophet Muhammad?”<sup>2</sup>*

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<sup>1</sup> This Finding therefore quotes from, and is based on, this second and revised version of the translation.

<sup>2</sup> This is the spelling of the name of Prophet Mohammed used in the transcript of the programme. In this Finding Ofcom quotes directly from the transcript, including clarifications

In response to the question from Mr Nahif, we noted the following remarks made by Mr Nazimi:

*“There is no disagreement about this [the punishment]; there is absolutely no doubt about it that the punishment for the person who shows disrespect for the Prophet is death. No one [among the Islamic scholars] disagrees about this. No one disagrees about this. The Koran, hadeeth [orally transmitted quotes of Prophet Muhammad], the actions of the companions of Prophet Muhammad, all testify to this [punishment] and there is no room for doubt in it. Whoever shows disrespect for Prophet Muhammad will be given death penalty. The procedure for carrying out the death penalty is that if there is an Islamic government operating in a country, then the Islamic government will carry out the implementation of this punishment to the one who shows disrespect for the Prophet. However, if there are no Islamic laws [implemented], if Islamic Law is not being abided by, if the Islamic Law is being shredded and is in tatters – and this environment prevails in Pakistan, then [drops the sentence]. You saw a few months ago, a man specifically said that the Islamic law which was especially designed to protect the sanctity of Prophet Muhammad, whom Allah praises and protects, was a black law. By saying so, he slighted the law and committed insolence against Prophet Muhammad. Then what happened? You saw what happened. The man who did it [killed the Governor] is Mumtaz Hussein<sup>3</sup>. He is a Ghazi<sup>4</sup> and we can absolutely not say that his act was a wrong act [because] the Koran and hadeeth [orally transmitted traditions], testify that the punishment of the one who shows disrespect for the Prophet is death.”*

Ofcom also noted the following statements made by Mr Nazimi:

*“However, I will state again that it was the duty of the government [to execute the Governor] but the government was not carrying out this duty. The government was supporting him [the Governor]. The government was providing support to him. Obviously, the consequence had to be that which happened. If this will happen [i.e. if the Prophet will be allegedly slighted] then the slaves of Mustafa [Muhammad] cannot tolerate<sup>5</sup>. A true slave, a true lover [of Prophet Muhammad], if he finds one disrespecting and slighting his Lord [Muhammad] in front of him, and he remains quiet and tolerates it, then surely he loses his faith. We are not saying that this should be done. We say one should obey the law. However, if one is not abiding by the law [of Muhammad’s sanctity], if the one [the Governor] supposed to protect the law [of Muhammad’s sanctity] is tearing it apart, then the same consequences*

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inserted and shown by the use of square brackets, and the spelling of the Prophet’s name and others in the transcript may vary from that in common usage.

<sup>3</sup> Here Mr Nazimi referred to the case of Pakistani bodyguard Mumtaz Hussein (more commonly referred to in the media as Malik Mumtaz Hussain Qadri) who shot dead the Punjab governor Salmaan Taseer in early 2011. Salmaan Taseer had been a vocal critic of Pakistan’s blasphemy law. This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet Mohammed.

<sup>4</sup> Ghazi is an honorific title for someone who has killed in the name of Islam.

<sup>5</sup> Ofcom understood the foregoing passage to mean that a true believer of Islam would not be able to tolerate hearing the Prophet being insulted.

[i.e. murder] will follow. I salute Mumtaz Hussein Ghazi [the assassin of Governor Taseer] in the whole world, and I salute others such as Ghazi IIm Deen<sup>6</sup>, and other lovers of Mustafa [Muhammad] who sacrificed their lives to protect the sanctity of Prophet Muhammad, and who sacrificed all they had to protect the sanctity of their Lord. We consider it a matter of pride to line our eyes with the dust lying at their [the assassins] feet and we salute those who protect the sanctity of our Lord [Muhammad] and we pray for ourselves too, O Allah, accept us among those who protect the sanctity of our beloved [Muhammad]. There is no privilege in the world greater than this that the Exalted Allah should select and accept one to [kill to] protect the sanctity of our beloved Lord [Muhammad].”

The presenter concluded his answer to Mr Nahif’s question as follows:

“No one can be more fortunate than the one who loses his life, wealth and children for the sake of glorifying our beloved Lord whom Allah praises and protects. I say the aim of establishing Noor TV, and the slogan of the founder of Noor TV, is the protection of the sanctity of Prophet Muhammad. When we say it, and it is the particular slogan of the honourable Pir Sahib<sup>7</sup>: Elevate the lowly to heights through the power of love illuminate the world through the love of Muhammad. Who does it mean? It means in the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one’s own method. Our way is the peaceful way but when someone crosses the limits, faith-base emotions are instigated... The mission of our life is to protect the sanctity of our beloved Lord. May Allah accept us wherever there is a need [to kill a blasphemer]. We are ready and should be ready at all times [to kill a blasphemer].

Ofcom considered that these comments in the programme raised issues under Rule 3.1 of the Code, which states that:

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

In addition, the material complained of raised issues under Rule 4.1:

“Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.”

Given, as noted above, that the programme consisted of Mr Nazimi answering viewers’ questions about Islam and Islamic teachings, Ofcom was satisfied that the programme was a “religious programme” within the meaning adopted in Section Four of the Code.

It is important to note in relation to Rule 3.1 that Ofcom is required to consider the *likely* effect of material included in a service. This is fundamentally different from the test that would apply for bringing a criminal prosecution.

We therefore asked the Licensee how the statements made in the programme by Mr Nazimi as set out above complied with the requirements of Rules 3.1 and 4.1.

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<sup>6</sup> This is a reference to an earlier assassin who, it is reported, killed in the name of Islam.

<sup>7</sup> Ofcom understands this to be a reference to the Noor TV’s founder, Shaykh Allau-ud-din Siddiqui.

## Response

In its initial representations in relation to Mr Nazimi's remarks, Al Ehya stated that the caller in question was ringing from Pakistan, and that it was made clear by the presenter that the particular aspects of Islamic law that he was explaining only applied in Islamic controlled countries. The presenter also made clear, the Licensee claimed, that no one should take the law into their own hands, but instead such matters should be left to the "Government of that Country"; and "...only in the absence of that was a matter left to individuals".

However the Licensee stated that: "Noor TV does understand that since such matters were broadcast, it could be misunderstood by anyone in this Country". In addition, Al Ehya said it would "arrange for a statement to be broadcast detailing and clarifying the situation" if Ofcom required, and that the presenter had been "removed" from broadcasting on the Licensee's service, whose motto is "Love Peace and Harmony".

Al Ehya later made further and more detailed representations on Ofcom's Preliminary View that it had breached Rules 3.1 and 4.1.

### Rule 3.1

Al Ehya put forward various points arguing, in summary, that the statements made by the presenter were not likely to encourage or incite crime and did not reach the "benchmark" of criminal liability. The Licensee suggested that Ofcom was "taking a hard line and prejudiced view of this particular programme".

The Licensee said first that any impact that the statements made by the presenter might have had on young Muslims would have been "totally limited" because at 11:00, the time at which the material was broadcast, younger people would have been at school or college.

Second, Al Ehya went on to suggest that there was "nothing new or unknown" in the statements made by the presenter relating to the implementation of Islamic law: they are set out in the Koran and it is a requirement that they are taught to young Muslims. Further the Licensee referred to various instances of violence and sacrifice in the Christian Bible, and suggested Ofcom was approaching "this situation in quite a different way in that which it might if any Priest of the Christian Church was reading segments of the Bible that contained such remarks".

Third, the Licensee said that "[w]hilst radicals and extremists exist" Ofcom – in assessing the statements in the programme – showed "scant regard to the fact that nothing has been said which is not in the everyday teaching of the contents of the Holy Koran and other Holy documents. The interpretation of those is clearly something which is of the individual and becomes dependent on the circumstances of the particular Country lived in". It went on to say that "[y]ounger people in the UK tend to speak English rather than Urdu and observe the laws of the UK in relation to their religion".

The Licensee also criticised Ofcom for referring to examples of: "[V]iolence in other [Western] Countries where blasphemy of the Prophet had taken place (by non-Muslims)<sup>8</sup> ...Noor resents the implication that [the] broadcast [of the problematic statements] is likely to incite or create a situation in the UK or Western countries of a

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<sup>8</sup> See below in section headed "Decision".

similar type of recrimination...[T]he violence in those Countries only exemplifies that it is a known factor of the Holy Koran.”

However, the Licensee said it regretted that “the Broadcaster’s [i.e. presenter’s] comments on duty [i.e. the duty on Muslims to take action against blasphemers against Mohammed] may have been misinterpreted”. On 12 November 2012 Al Ehya informed Ofcom that it was considering broadcasting within a “few days” of that date a statement clarifying its position, and in particular that the broadcast reflected the views of the presenter and “not the general view of Noor or policy of Noor”. The Licensee subsequently informed Ofcom on 11 December 2012 that a “statement of the station’s clarification [sic]” was broadcast on 10 December and 11 December. Al Ehya said it had also considered broadcasting a live phone-in programme “to discuss what was said and clarify and explain views” but it had decided against this idea because the Licensee thought that this might “cause heated debate and discussion on the fundamentals of Islamic Law and [was] in itself likely to cause far more problems”.

#### Rule 4.1

In response to Ofcom’s Preliminary View that it had breached Rule 4.1, the Licensee stated that it had: employed a consultant to provide its staff with compliance training; translated the Code into Urdu to make it easier for its staff to understand; appointed “an overall party” to be in charge of programmes to ensure compliance with the rules”; and “severely restricted” the number of live broadcasts on the Channel “so that a review of any statements therein can be considered alongside the rules”.

The Licensee stated further that the programme complained of was broadcast live, the “Controller who monitors programmes...had to leave his post [in the studio] because of a breakdown of equipment in the adjoining room” and that he returned “just in time to hear the statement that [the presenter’s] words were in relation to a state of affairs and states where there was no Islamic Law or Islamic Law being abided by”. The Controller did not think these comments raised any issues and “did not think that it [was] reasonable that the Broadcaster [i.e. the presenter] himself should constantly have to repeat throughout the programme that his comments related to situations where Islamic Law was not being carried out in Islamic regimes”.

#### **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives. These include that, under section 319(2)(b), “material likely to encourage or incite the commission of crime or lead to disorder is not included in television or radio services”; and that, under section 319(2)(e), broadcasters exercise the proper degree of responsibility “with respect to the content of programmes which are religious programmes”.

These duties are reflected in Sections Three and Four of the Code respectively. Rules 3.1 and 4.1 of the Code, as referred to above, give effect to the standards objectives set out in section 319(2) at paragraphs (b) and (e) respectively.

In considering the issues relating to this decision Ofcom has taken careful 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, and as the Legislative Background to

the Code states “encompasses the audience’s right to receive creative material, information and ideas without interference” by public authority.

Ofcom has also had regard to Article 9 of the ECHR. Article 9 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”.

Ofcom noted that the programme consisted of Mr Nazimi speaking directly to camera and answering questions from viewers who called the programme or who texted their queries in to it. When answering the question from Mr Nahif (“*What is the punishment for the individual who shows disrespect for Prophet Muhammad?*”) Mr Nazimi delivered a monologue to camera in which he expounded what he held out to be Islamic teaching on this issue. We considered that this was a religious programme broadcast on a channel aimed at a Muslim audience that broadcasts both within the UK and to the Middle East and Asia.

We considered the material against Rules 3.1 and 4.1 of the Code.

Rule 3.1: Material likely to encourage or incite the commission of crime or to lead to disorder

Rule 3.1 states:

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

In considering the material under Rule 3.1 we are required to assess the *likelihood* of it encouraging or inciting the commission of crime or of leading to some form of disorder. This is fundamentally different from the test that would apply for bringing a criminal prosecution.

In this case, statements were broadcast that it was acceptable, or even the duty of a Muslim, to murder any person thought to have shown disrespect to the Prophet Mohammad where the relevant government had failed to take any action. We therefore assessed whether these statements were likely to encourage or incite criminal action against individuals who might be deemed to have criticised or insulted the Prophet Mohammed; or to lead to disorder. As part of this assessment, we considered whether the presenter’s statements in the programme included any direct or indirect calls to action.

In the programme complained of, Mr Nazimi stated that it was an undisputed fact that the Islamic punishment for anyone who “*shows disrespect for the Prophet*” was the death penalty.

He said:

*“There is no disagreement about this [the punishment]; there is absolutely no doubt about it that the punishment for the person who shows disrespect for the Prophet is death. No one [among the Islamic scholars] disagrees about this. No one disagrees about this. The Koran, hadeeth [orally transmitted quotes of Muhammad], the actions of the companions of Prophet Muhammad, all testify to this [punishment] and there is no room for doubt in it.*”

Mr Nazimi outlined the procedure “for carrying out the death penalty”, stating that:

*“[I]f there is an Islamic government operating in a country, then the Islamic government will carry out the implementation of this punishment to the one who shows disrespect for the Prophet. However, if there is no Islamic laws [implemented], if Islamic Law is not being abided by, if Islamic Law is being shredded and is in tatters – and this environment prevails in Pakistan, the [drops the sentence]. You saw a few months ago...”*

The presenter then gave the example of Mumtaz Hussein<sup>9</sup>, who murdered the Punjab Governor Salmaan Taseer for allegedly criticising Pakistan’s blasphemy laws, and praised him as an Islamic hero:

*“The man who did it [killed the Governor] is Mumtaz Hussein. He is a Ghazi<sup>10</sup> and we can absolutely not say that his act was a wrong act [because] the Koran and the hadeeth [orally transmitted traditions] testify that the punishment of the one who shows disrespect for the Prophet is death.”*

*“I salute Mumtaz Hussein Ghazi [the assassin of Governor Tasser] the whole world, and I salute others such as Ghazi Ilm Deen<sup>11</sup>, and other lovers of Mustafa [Muhammad] who sacrificed their lives to protect the sanctity of Prophet Muhammad... There is no privilege in the world greater than this that the Exalted Allah should select and accept one to [kill to] protect the sanctity of our beloved Lord [Muhammad]... No one can be more fortunate than the one who loses his life, wealth and children for the sake of glorifying our beloved Lord whom Allah praises and protects.”*

The presenter concluded his answer by stating:

*“[I]n the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one’s own method. Our way is the peaceful way but when someone crosses the limits, faith-based emotions are instigated... The mission of our life is to protect the sanctity of our beloved Lord May Allah accept us wherever there is a need [to kill a blasphemer]. We are ready and we should be ready at all times [to kill a blasphemer].”*

We considered that the broadcast of the various statements made by the Islamic scholar outlined above was likely to encourage or incite the commission of crime. Our reasons for this are set out in the following paragraphs.

A number of the remarks in Ofcom’s opinion amounted to direct calls to action. In particular, we interpreted some of Mr Nazimi’s comments to be a generic call to all Muslims (and not just members of the Muslim community within Pakistan)<sup>12</sup> encouraging or inciting them to criminal action or disorder by unambiguously stating

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<sup>9</sup> This individual is more commonly referred to in the media as Malik Mumtaz Hussain Qadri.

<sup>10</sup> Ghazi is an honorific title for someone who has killed in the name of Islam.

<sup>11</sup> As above, this is a reference to an earlier assassin who murdered in the name of Islam.

<sup>12</sup> See for example: *“[I]n the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one’s own method... We are ready and we should be ready at all times [to kill a blasphemer].”*

that the appropriate penalty for showing disrespect to Muhammad was the death penalty. He stated that they (all Muslims) had a duty to kill anyone who criticises or insults the Prophet Mohammed where the government had failed to take action, and praised Mumtaz Hussein for taking the law into his own hands and murdering Salmaan Taseer. We noted that such actions were couched as being justified, and even required, as a duty on all Muslims, according to the tenets of Islamic law and theology. We believe that on a reasonable interpretation of the presenter's remarks, he was personally advocating that all Muslims had a duty to carry out the actions he suggested.

In considering the likelihood of the inclusion of these statements in the service encouraging or inciting the commission of crime or leading to disorder, we also carefully considered the context within which the presenter's words were broadcast. The self-stated purpose of Noor TV is to provide a service aimed at the Asian community both within the UK and in the Middle East and Asia, and in particular "young people who have been born in the UK". As noted already, the fact that Mr Nazimi gave his views directly to camera would, in our view, have been likely to have given additional authority to what he was saying, as he explained Islamic teachings to a Muslim audience without interruption or any challenge being given to his views.

Ofcom noted the Licensee's representation that the impact of the presenter's statements on young Muslims in the UK would have been "totally limited" because the programme was broadcast at "11 am in the morning of a work school college day". Whether or not Rule 3.1 is breached relates to a range of factors, but one of the most important is the nature of the audience. Here the broadcast was principally aimed at Muslims of all ages and of both sexes in the UK. In Ofcom's view the nature of the broadcast would have made it likely that it encouraged Muslims of any age or either sex to take violent and criminal action if they deemed someone to have shown disrespect for the Prophet Muhammed. It is also Ofcom's view, that the category of people who might be receptive to extreme Islamic views would not be limited only to those who regularly attend work, school or college, but would also encompass young people, and older people, who are unemployed or for any other reason watching television during the daytime. In view of this, Ofcom did not find that the impact of the presenter's statements was materially limited by the time at which the programme was broadcast.

In Ofcom's opinion, the fact that these views were being expounded by a presenter who was held out to be an expert on Islamic teaching, a person who held a position of authority and respect within the Muslim community, speaking direct to camera, would have given the comments extra weight. The overall message of encouraging or inciting criminal acts would have been reinforced by the following statement by Mr Nazimi towards the end of the programme:

*"No one can be more fortunate than the one who loses his life, wealth and children for the sake of glorifying our beloved Lord whom Allah praises and protects ...[I]n the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one's own method. Our way is the peaceful way but when someone crosses the limits, faith-based emotions are instigated ... The mission of our life is to protect the sanctity of our beloved Lord. May Allah accept us wherever there is a need [to kill a blasphemer]. We are ready and we should be ready at all time [to kill a blasphemer]."*

At no point in the programme did the presenter condemn any killing or violent action that had been or might in the future be committed by individuals in response to a

perceived insult to, or perceived blasphemy against, the Prophet Mohammed. The only attempt Mr Nazimi made in the statements identified in the Introduction to lessen the potential impact of his remarks was his statement that people should obey the law of the state they lived in (“*We are not saying this should be done. We say one should obey the law*”). However, the possible mitigating effect of this comment was immediately undermined by a subsequent statement that it was acceptable for Muslims – indeed a duty for them – to kill people who had insulted the Prophet if national laws did not prescribe death as the appropriate punishment (“*[D]isrespectful people should be eliminated... We are ready and we should be ready at all times to [to kill a blasphemer]*”).

In addition to the example of Mumtaz Hussein, who murdered Salmaan Taseer, we are conscious of a number of examples of violence against people in Western countries who have allegedly insulted the Prophet Mohammad or Islam. Dutch filmmaker Theo Van Gogh was murdered by Muhammad Bouyeri in 2004 following the condemnation of his film “Submission” by Islamic clerics, and in the same year Danish cartoonists received death threats following the publication of illustrations which included depictions of the Prophet. In November 2011 there was a fire bomb attack on a magazine in Paris for publishing a satirical cartoon of the Prophet. Further Ofcom takes note of evidence that young Muslims in the UK can be radicalised and as a result take violent and criminal action as a result of watching videos of Muslims with extreme views: see for example the case of Roshanara Choudhary who was sentenced in November 2012 to life imprisonment for stabbing Stephen Timms MP<sup>13</sup>.

In reaching our decision, we took account of the submissions made to Ofcom by Al Ehya that Ofcom needed to take proper account of “the surrounding statements and circumstances relating to this caller”. Having studied the programme as broadcast and the transcript of the whole programme carefully, we did not believe that the remarks of the presenter quoted above were taken out of context. Rather, and as laid out in the Introduction, we considered that the context of Mr Nazimi’s remarks was clear. Ofcom noted certain comments where Mr Nazimi explicitly linked the criminal actions he was advocating to Pakistan’s blasphemy law (for example: “*You saw a few months ago, a man specifically said that the Islamic law which was especially designed to protect the sanctity of Prophet Muhammad<sup>14</sup>, whom Allah praises and protects, was a black law. By saying so, he slighted the law and committed insolence against Muhammad. Then what happened? You saw what happened. The man who did it [killed the Governor] is Mumtaz Hussein*”). Mr Nazimi then went on to praise the killer and his action. As already pointed out, Mr Nazimi’s remarks were not confined to the subject of Pakistan’s blasphemy law, nor only to Pakistan or actions taken in that country (as demonstrated by the statement: “*in the whole world, there should be slaves of Mustafa [Muhammad] everywhere, and disrespectful people should be eliminated. One has to choose one’s own method...*”). Contrary to what the Licensee said to Ofcom, Mr Nazimi did not make it clear in the broadcast that the obligation on Muslims to kill individuals who showed disrespect to the Prophet only applied in

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<sup>13</sup> Mr Justice Cooke told Choudhary: “You intended to kill in a political cause and to strike at those in government by doing so... You did so as a matter of deliberate decision making, however skewed your reasons, from listening to those Muslims who incite such action on the internet.” See: <http://www.bbc.co.uk/news/uk-england-london-11682732>.

<sup>14</sup> Here Mr Nazimi referred to Pakistan’s blasphemy law. This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet Muhammad.

Islamic controlled countries, nor did he underline that no one should take the law into their own hands. Mr Nazimi said that that it was unanimously agreed among Islamic scholars that the death penalty was the appropriate response to blasphemy, that in Islamic countries this penalty should be applied by the state, but that if the state failed to do this (or the blasphemy took place in a non-Islamic state), “*disrespectful people should be eliminated.*” In view of these points, and the fact that Noor TV broadcasts to a predominantly Muslim audience both within the UK and in the Middle East and Asia, Ofcom considered it was likely that viewers in the UK and other non-Islamic countries would have understood the remarks as being equally applicable to them as to viewers in Pakistan or other Islamic countries. Ofcom in fact noted that in its submissions the Licensee conceded “that since such matters were broadcast, it could be misunderstood by anyone in this Country”.

We also had careful regard to the other detailed submissions that the Licensee made to Ofcom.

Al Ehya firstly challenged Ofcom’s Preliminary View that the presenter’s statements were likely to encourage crime and that they would be far from sufficient to establish criminal liability. As Ofcom pointed out at the start of the Decision section of this finding, we are required to assess the *likelihood* of broadcast material encouraging or inciting the commission of crime or of leading to some form of disorder. Ofcom has a statutory duty under section 319(2)(b) of the Communications Act 2003 to secure that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services. Rule 3.1 sets a regulatory requirement on broadcasters not to include such content and Ofcom’s enforcement of the standards objectives under the Communications Act has no bearing on the criminal law or any question of establishing criminal liability in relation to that content. In this case, for the reasons set out above, Ofcom considers there was a sufficient likelihood of the broadcast statements encouraging or inciting the commission of crime. Ofcom has reached this conclusion on the basis on an objective and dispassionate assessment of the relevant facts and having taken account of all the evidence. Ofcom’s conclusion does not result, as the Licensee suggested, from Ofcom “taking a hard line and prejudiced view of this particular programme”.

Second, Ofcom noted the Licensee’s representations that: there was nothing new in the teachings expounded in the programme which were based on the Koran and which would have been well known to viewers; and there are instances of violence and sacrifice in the Christian Bible and that Ofcom would have approached the matter differently if the statements had been made by a Christian priest. Ofcom is of course aware that there are some texts in the Koran and related documents, well known to Muslims, suggesting that those who blaspheme against or show disrespect towards the Prophet Muhammed should be severely punished, including by execution. Ofcom is also aware that these texts are many hundreds of years old and that they are subject to various interpretations. Precisely however because some extremist Muslims have sought to use various passages from these Koranic texts to seek to justify taking very violent action against those whom they deem to have insulted the Prophet, an important responsibility lies on Ofcom licensees to take due care in providing appropriate balance and context to any discussion of those passages.

Ofcom considers it important to note that the purpose of Rule 3.1 is not to prevent material being broadcast which includes discussion or recital of passages from ancient religious scripture and sacred texts that refer to acts of violence and retribution. However, broadcasters transmitting material under an Ofcom licence

(who must therefore ensure compliance with UK broadcasting rules) must ensure that such material is not featured in a way that would be likely to incite or encourage viewers to undertake criminal acts and thereby be in breach Rule 3.1. In Ofcom's view the presenter's statements were held out to be the unequivocal teaching of the Koran, which Muslims had a duty to obey. The teachings were not presented in a balanced or wider context which clearly condemned those who murdered or took violent action in any country against those deemed to show disrespect for the Prophet, and nor did the presenter unambiguously limit the scope of his remarks to countries where Islamic law applied.

Ofcom is aware that there are references to violence and retribution in the religious scripture and sacred texts of other religions. Ofcom's approach under Rule 3.1 would be no different if it considered that a broadcaster had featured passages from those sources in a way that would be likely to incite or encourage viewers to commit criminal acts.

We also noted Al Ehya's representations which criticised Ofcom's references in the provisional view to violent acts carried out by extremist Muslims in Western countries. Ofcom acknowledges that such acts are exceptional and that most Muslims condemn them without hesitation. We consider that these references are necessary and appropriate because they provide evidence that there are Muslims who have been radicalised by Muslim extremists exhorting them to take violent action against those considered to have shown disrespect for the Prophet Mohammed. The examples underline that the likelihood of extreme statements by Muslims being broadcast on channels licensed in the UK leading to criminal acts is not speculation but a sobering and real possibility.

Finally Ofcom took account of the fact that the Licensee says it: broadcast "a statement of the station's clarification [sic]" on 10 and 11 December 2012; and, had also considered whether to discuss the issues raised by Ofcom's investigation in a "live phone-in programme", but decided not to do the latter because this might cause "heated debate" and "far more problems". In response Ofcom noted that the Licensee only broadcast its clarification of the presenter's remarks for the first time on 10 December 2012, which was almost six months after the date (12 June 2012) that Ofcom wrote to the Licensee informing it of the investigation under Rule 3.1, and six weeks after the date (24 October 2012) when Ofcom sent Al Ehya its Preliminary View in this case setting out provisional breaches of Rules 3.1 and 4.1. As far as Ofcom is aware the Licensee has not at any point broadcast any form of apology for, or condemnation of Mr Nazimi's remarks, and neither on air or in correspondence with Ofcom expressed unequivocal regret that he made these comments in the way he did (the Licensee regretted only in its submissions that "the Broadcaster's [i.e. presenter's] comments on duty [i.e. the duty on Muslims to take action against blasphemers against Mohammed] may have been misinterpreted".)

Ofcom is mindful that scriptures and sacred texts of various religions refer to acts of violence and punishments which by today's standards may be considered extreme and unacceptable by society as a whole. While the Code does not prevent teachings of this kind being referred to, or discussed, in programmes, it is important that they are not presented in a way that would incite or encourage viewers to an extent that would breach the Code. In Ofcom's view the presenter's statements in this case were held out to be the unequivocal teaching of the Koran, which Muslims had a duty to obey. The teachings were not presented in a balanced or wider context and further, the potentially mitigating material that was included could not reasonably be

understood to limit the scope of the remarks to only countries where Islamic law applied. In view of this, and in particular that at no point in the programme did the presenter or the broadcaster condemn the actions of people who murdered in the name of Islam, Ofcom did not find that the fact that the teachings may have been well known to viewers who had studied the Koran, or that similar to teachings could be found in the scriptures of other religions, made the manner in which the Licensee presented the teachings any less likely to incite or encourage the commission of crime.

In light of all of the above considerations, Ofcom reached the view that Al Ehya had broadcast material likely to encourage or to incite the commission of crime or to lead to disorder. Accordingly, Ofcom has found the Licensee in breach of Rule 3.1 of the Code.

Rule 4.1: Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes

Rule 4.1 states:

“Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.”

Section Four of the Code sets out that 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 this programme was clearly a religious programme because it consisted of a presenter answering viewers’ questions about various issues related to Islamic theology and Islamic teachings.

Broadcasters can transmit programmes taking a critical view of a particular religion or broadcasting opinions that some viewers may find offensive, provided they do so with a proper degree of responsibility. The comments made in this programme by Mr Nazimi and set out above were made in the context of a religious programme made for a predominantly Muslim audience. The Code does not prevent followers of one religion from being able to express views rejecting or criticising people of differing views or beliefs. However, Rule 4.1 does require the Licensee to exercise the proper degree of responsibility when, for example, hyperbole or more extreme views are broadcast in religious programmes which could be deemed offensive to people in the audience who hold different views and beliefs.

We noted from Al Ehya’s submissions that it conceded that Mr Nazimi’s remarks “could be misunderstood by anyone in this Country” and that Mr Nazimi had been “removed” from broadcasting on the Licensee’s service, whose motto is “Love Peace and Harmony”.

In its representations to Ofcom the Licensee stated that it employed a consultant “in the earlier part of” 2012 to give compliance training to its staff; and then at various dates after 3 May 2012: translated the Code into Urdu to make it easier for its staff to understand (because their knowledge of the English language “is very much imperfect”); put “an overall party in charge of programmes to ensure compliance with the [Ofcom] rules”; and “severely restricted” live broadcasts to make it easier to review in advance problematic content.

Licensees must ensure they exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes. This requires them to

have robust compliance systems in place. In considering the adequacy of the Licensee's compliance arrangements, we noted the Licensee's representations that the programme was broadcast live and that a Controller was present in the studio during the programme's transmission. However, Ofcom also noted the Licensee's explanation that the Controller had had to leave the studio "because of a breakdown of equipment in the adjoining room", and that he only returned "just in time to hear the statement that [the presenter's] words were in relation to a state of affairs and states where there was no Islamic Law or Islamic Law being abided by". According to the Licensee, the Controller did not consider these remarks, nor the presenter's subsequent remarks, problematic and in any event "did not think it reasonable that the Broadcaster [ie presenter] himself should constantly have to repeat throughout the programme that his comments related to situations where Islamic Law was not being carried out in Islamic regimes". Ofcom considered that these submissions illustrated the exceptionally poor editorial judgment of the Controller and demonstrated a failure on the part of the Licensee to exercise the proper degree of responsibility required under Rule 4.1. The transcript shows that Mr Nazimi made some of his most inflammatory remarks at the end of this response (e.g. "[D]isrespectful people should be eliminated. One has to choose one's method.", and "May Allah accept us wherever there is a need [to kill a blasphemer]. We are ready and we should be ready at all times [to kill a blasphemer].") The Controller failed to recognise immediately the seriousness of the remarks and take appropriate action.

The Licensee suggested in its response to Ofcom that the presenter "made clear" on air that the death penalty for showing disrespect to the Prophet Mohammad "only applied in Islamic controlled countries and that no one should take the law into their own hands but left to the Government of that Country and only in the absence of that was a matter left to individuals". As discussed above, these matters were not made clear by Mr Nazimi.

Ofcom is very concerned that Al Ehya still does not appear to recognise the very serious issues raised by the broadcast of Mr Nazimi's comments. The presenter may have been "removed" from the channel but the Licensee has provided no evidence as to when this measure was taken, to demonstrate, for example, whether the presenter was dismissed before Al Ehya was contacted by Ofcom or only in response to being put on notice of Ofcom's investigation.

Further, Ofcom took account of the fact that the Licensee says it: broadcast a clarificatory statement on 10 and 11 December 2012; but rejected the idea of a live phone-in programme to discuss and explain the views expressed in the broadcast because this might cause "heated debate" and "far more problems". As already mentioned above, this clarificatory statement was only transmitted many months after the broadcast in May 2012 which raised serious potential Code issues under Rule 3.1, and as far as Ofcom is aware the Licensee has not at any point broadcast any form of unequivocal apology for, or condemnation of, Mr Nazimi's remarks. Ofcom points out that it is a matter for a licensee to make its own editorial decisions. But, Ofcom is concerned that in its opinion the Licensee has still not recognised the full gravity of the statements made by Mr Nazimi.

Given the above, we considered that the broadcaster did not exercise the proper degree of responsibility with respect to the content of this religious programme. The programme was in breach, therefore, of Rule 4.1 of the Code.

The breaches of Rules 3.1 and 4.1 in this case are regarded by Ofcom as serious breaches of the Code. This is because Ofcom views any incident where a licensee

has allowed content to be broadcast that is likely to encourage or incite the commission of crime or to lead to disorder as a significant contravention of the Code.

**Ofcom therefore puts the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.**

**Breaches of Rules 3.1 and 4.1**

## In Breach

### Rock All Stars

Scuzz TV, 19 August 2012, 20:40

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#### Introduction

Scuzz TV is a UK digital satellite television channel that broadcasts rock and 'pop-punk' music videos and music related entertainment programming at channel number 374 on the Sky Electronic Programme Guide and channel number 503 on the Freesat platform. The licence for this channel is held by CSC Media Group Limited ("CSC Media" or the "Licensee").

During a block of music video programming called *Rock All Stars*, Scuzz TV broadcast a music video by the American 'rap-rock' band Hollywood Undead performing a track called "Undead" ("the video") at 20:40. The video, which was set in a motel room, intercut footage of the band performing the track to camera with footage of the male band members 'partying' with female performers and fans in various locations including a motel bedroom, a bathroom and by a swimming pool.

The video, which lasted for just over three minutes and 30 seconds, included over 25 uses of language such as "fuck", "motherfuckers", "fucking" and "faggots", for example:

*"You know I don't give a fuck what you think or say."*

*"Now, I see that motherfuckin' writin' on the wall."*

*"Fuck all haters I see 'cause I hate that you breathe I see you duck, you little punk, you little fuckin' disease."*

*"Motherfuckers, don't know but you better watch what you say. From these industry fucks to these faggot ass punks. You don't know what it takes to get this motherfuckin' trunk."*

*"Johnny's taking heads off of all the faggots who hate. 'Cause I am good motherfucker, there's a price to pay. Get out my gun motherfucker and it's judgment day."*

*"Undead, motherfuckin' time to ride, ride. Undead, watch you fuckers just die, die."*

Ofcom was also concerned by the imagery included in this video. We noted in particular: over 35 brief but close-up shots of naked or near naked breasts; around 20 close-up shots of women's buttocks in bikinis or underwear; frequent close-up shots of women climbing onto or simulating sexual actions with men and other women; scenes in which male band members fondled the breasts of female performers; footage in which two semi-naked female performers simulated sex acts together in a shower cubicle while a male band member vomited into a toilet; shots of illegal drug paraphernalia; and a sequence in which a female performer appeared to take illegal drugs and then perform sex acts on herself and with others. The video concluded with shots of the band members violently smashing up the contents of the motel room, and then throwing the broken items into the swimming pool.

Ofcom received two complaints from viewers about the broadcast of this video on Scuzz TV. One complained that a music video containing “unedited female nudity” and “obscene language throughout the video” had been broadcast before the watershed. The other complained that the video was “degrading to women” and “was the closest thing to rape” he had seen in a music video.

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

- Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them.”
- Rule 1.10: “The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:...
- must generally be avoided and in any case must not be condoned, encouraged or glamorised in...programmes broadcast before the watershed (in the case of television)...unless there is editorial justification[.]”
- Rule 1.14: “The most offensive language must not be broadcast before the watershed (in the case of television)[.]”
- Rule 1.16: “Offensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context.”
- Rule 1.21: “Nudity before the watershed must be justified by the context.”
- Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, [and] violation of human dignity[.]”

Ofcom therefore asked the Licensee for its formal comments on how the music video complied with the above rules.

## Response

In its initial representations the Licensee described the broadcast of this video before the watershed as a “frustrating lapse in our usually robust compliance procedures”. It explained that, although the video had been checked for compliance by the Licensee and designated as “Post Watershed”, it was “possible in some unusual circumstances for the scheduling software’s automatic safety check to pass [some post-watershed videos] by.”

CSC Media explained that viewers were able to submit requests to the channel by email for particular music videos to be broadcast on Scuzz TV, and that the video had been scheduled to be broadcast twice on 19 August 2012 in response to such a request. With regard to the first and earlier scheduled broadcast, the Licensee stated, the scheduling error was spotted by the Channel Manager, and the video had been removed from the schedule before broadcast. However, the second scheduled broadcast was not identified by the Licensee’s software or staff and consequently the video was broadcast in error at 20:40.

The Licensee stated that as a result of this incident it: had removed the video from its catalogue, “so that it will never be played again across our channels”; was implementing changes to its software having “identified the failure in the scheduling system”; and was checking the way in which all of its 24,000 plus music videos were marked up for compliance purposes. The Licensee apologised for any offence caused and gave assurances to Ofcom that it was confident it had rectified the “loophole” in its scheduling system. It pointed out that the current incident was only the “third breach of our compliance process” across its 16 television channels in over four years. It also said that it was “of some comfort” that according to BARB viewing figures the video had a “zero rating” for children, and the number of people viewing the video would have been very small.

CSC Media also made detailed representations in response to Ofcom’s Preliminary View that it had breached Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3, and that these contraventions were so serious that they should be considered for a statutory sanction.

In summary, the Licensee fully accepted that the broadcast of the video was a breach of the Code resulting from “an unfortunate collision of technical and human error”, and therefore considered it was “unnecessary and overtly damaging to our brand [for Ofcom] to examine each breach of each rule when we have already acknowledged [the] breach”.

CSC Media also challenged Ofcom’s Preliminary View that the Licensee should be considered for a statutory sanction, arguing that this was disproportionate. It put forward the following main arguments in support of this view.

First, CSC Media suggested that Ofcom should place greater weight: on the hitherto good compliance record of the Scuzz channel when viewed in isolation (this was the first ever breach of the Code recorded against Scuzz); and on what the Licensee viewed as CSC Media’s good compliance record overall over the previous four years (it holds the licences for 16 television services, and during the previous four years had broadcast over 3.6 million pieces of programming, excluding advertisements, but had only been found by Ofcom to have breached the Code twice as regards unsuitable content).

Second, and linked to these points, the Licensee argued that the Preliminary View presented the Licensee’s compliance record in an unfair light. (In its initial response to Ofcom, CSC Media had stated that the current complaint was only the “third breach of our compliance process” across its 16 television channels in over four years. In response, in its Preliminary View Ofcom had noted that it had in fact recorded eight Code breaches against the Licensee during that period.) The Licensee argued that, of the eight breaches referred to by Ofcom in its Preliminary View, only two were breaches of the Code as regards showing unsuitable content, while four related to breaches of the COSTA advertising code, and one was for failing to properly warn the audience that a video contained flashing images. The Licensee contended that the four breaches of the COSTA code should not be given disproportionate weight compared to the two breaches concerning unsuitable content – each of these having been “caused by human error, after over 3.6 million content broadcasts across 16 broadcast streams”.

Third, the Licensee argued that Ofcom had failed to give proper weight to the fact that the BARB audience figures indicated that no children were watching the channel at the time the video was broadcast. It cited Ofcom’s “Music Video: Flo Rida – *Turn*

*Around (5,4,3,2,1)*” breach finding in Broadcast Bulletin 180<sup>1</sup> as an example of an Ofcom decision in which a licensee, 4Music, had been found in breach of the Code, but not sanctioned, even though Ofcom found that up to 12,000 children between the ages of four and 15 had been watching.

Fourth, CSC Media argued that it was being treated inconsistently compared to other licensees who had previously been found by Ofcom to have breached the Code. By way of example the Licensee cited a previous Ofcom finding about the music video *“Blinded by the Lights”* by The Streets (Broadcast Bulletin 24<sup>2</sup>), in which a licensee had been found to be in breach of the Code because it had broadcast a music video four times across two channels which contained “strong language (“fuck”, “cunt”), excessive violence, graphic depictions of drug taking and sexual imagery”, but was not considered for a sanction.

Fifth, the Licensee argued that Ofcom’s Preliminary View had failed to give due weight to other factors: for example, the speed with which the Licensee had acted to remove the offending video from its playlist and tighten its compliance procedures in response to being put on notice that Ofcom was investigating the broadcast; or to the fact that the video had been broadcast as a result of human error. CSC Media believed all these circumstances, together with the facts that the Licensee admitted its error and did not attempt to justify the breach, should be taken by Ofcom as evidence that the Licensee is a responsible broadcaster that exercises sound editorial judgement. Instead, the Licensee argued, it appeared from Ofcom’s Preliminary View that Ofcom (incorrectly) regarded the fact that the Licensee had not attempted to justify the broadcast of the video as evidence that it did not take its responsibilities seriously enough.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it to be best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

These duties are reflected in Sections One and Two of the Code respectively. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Ofcom considers the standards it has set for the protection of children to be among the most important. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”<sup>3</sup>. The Code is drafted in accordance with Article 10 of the European

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<sup>1</sup> Broadcast Bulletin 180, 20 April 2011, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf>.

<sup>2</sup> Broadcast Bulletin 24, 13 December 2004, [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb\\_24/bull.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb_24/bull.pdf).

<sup>3</sup> Section 3(4)(g) of the Act.

Convention of Human Rights, as incorporated in the Human Rights Act 1998, which includes the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference from a public authority.

In reaching a decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements of the Act.

Ofcom also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the rock, 'thrash metal' and 'rap-rock' genres are known to include visual and verbal references to sex, the 'hard living' lifestyles of rock band members and their followers, and the larger than life, and often shocking, onstage and public personas of the band members. However, while music videos must have room for innovation and creativity, Ofcom has a statutory duty with regard to all programmes – including music videos (whatever genre) – to ensure that under-eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

### Rule 1.3

Rule 1.3 requires that: "Children must be protected by appropriate scheduling from material that is unsuitable for them." This watershed of 21:00 is widely identified by viewers as the time after which they may progressively expect to find material which is aimed at an adult audience. Before 21:00 material unsuitable for children should not, in general, be shown.

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 time of the broadcast; and likely audience expectations.

In this case, Ofcom had to consider first whether the material broadcast was unsuitable for children. Ofcom noted that the lyrics contained the frequently repeated use of the words "*fuck*", "*motherfucker*", "*fucking*" and "*faggots*". Further, as set out in the Introduction, we also noted that that the video included a significant quantity of close-up images of naked or near-naked breasts, women's buttocks in bikinis or underwear, and semi-naked female performers dancing provocatively, while simulating sex acts by themselves, with each other and with members of the band. We also took into account the depiction of what appeared to be illegal drug paraphernalia in the video, along with scenes of what appeared to be illegal drug taking. Finally, Ofcom noted the violent delivery of the lyrics and the band's performance, the offensive hand gestures made by band members to camera, the acts of violent destruction of property, and the rough manner in which the male performers were seen to treat the female performers in some scenes (for example one scene in which a woman appeared to be being choked by a man in a sexual context).

It was Ofcom's view that the content of this music video was extremely unsuitable for children. Ofcom therefore went on to consider whether this material was

appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

We took into consideration the genre of music featured on Scuzz TV, and the 'hard living' image that is commonly projected by artists performing within this genre. Ofcom considered that the channel was not likely to appeal to children. Ofcom also took into account the Licensee's comments that BARB viewing figures indicated that no children were watching the broadcast of this video. However, given that the video was broadcast before the watershed during the school summer holidays, Ofcom was of the view that there was nevertheless a likelihood of children being available to view this material at this time.

We noted that the Licensee had admitted that the broadcast had been a "lapse" and a "breach", and had occurred in error.

Given the particularly unsuitable nature of this content for children and the availability of children to view it before the watershed during the school summer holidays, Ofcom found that the Licensee had not taken adequate steps to protect children from this unsuitable material by appropriate scheduling. The material was therefore in breach of Rule 1.3.

#### Rule 1.10

Rule 1.10 requires that: "The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol...must generally be avoided and in any case must not be condoned, encouraged or glamorised in...programmes broadcast before the watershed (in the case of television)...unless there is editorial justification[.]"

This video contained close-up shots of illegal drug paraphernalia, and a particularly prominent sequence in which a female performer inhaled what appeared to be an illegal drug, appeared to become sexually aroused, and then performed sex acts on herself, and with other male and female performers, in the context of several 'partying' scenes featuring the band members.

It was a concern to Ofcom that the use of illegal drugs depicted in this video was presented in the context of the potentially aspirational 'partying' lifestyle of the band's members. Ofcom considered that, within the context of this particular music genre, this depiction had the potential to glamorise the use of illegal drugs. We therefore considered whether the use of illegal drugs in this video shown before the watershed was editorially justified.

Ofcom acknowledges that the video depicted the 'hard living' lifestyle of the band's members which viewers may associate with the 'rap-rock' genre of music featured on Scuzz TV, and therefore to that limited extent the material was shown within a relevant niche cultural context. However, given the availability of children to view this material before the watershed and during the school summer holidays, Ofcom did not consider that this amounted to sufficient editorial justification for the inclusion of these images in this video.

In view of the above and taking into account the Licensee's admission that the video had been broadcast in error, Ofcom found the material to be in breach of Rule 1.10.

### Rule 1.14

Rule 1.14 requires that: “The most offensive language must not be broadcast before the watershed (in the case of television)[.]”

As referred to above (and set out in the Introduction), Ofcom found that the video contained the frequent and repeated use of the words “*fuck*”, “*motherfucker*” and “*fuckin*g”.

Ofcom research on offensive language clearly notes that the word “*fuck*” and its derivatives are considered by audiences to be amongst the most offensive language<sup>4</sup>.

The broadcast of this video containing multiple instances of the most offensive language before the watershed was therefore a clear breach of Rule 1.14.

### Rule 1.16

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

The video included a number of uses of the word “*faggots*” and its derivative “*fag*”. Ofcom’s research indicates that the word “*faggot*” is considered to be a derogatory and offensive word, particularly when used to insult gay and bisexual men<sup>5</sup>.

Ofcom therefore considered whether the use of this offensive language in the video was justified by the context. We took into account that the words “*faggots*” and “*fag*” were used in the lyrics in an aggressive and derogatory manner. Further, as noted above, Ofcom considered that it was likely that children were available to view this video given that it was broadcast before the watershed during the school summer holidays. We also noted that the Licensee had admitted the video was broadcast in error and did not offer any editorial justification for the broadcast of this offensive language at this time. Therefore, we considered that the broadcast of the offensive language described above was not justified by the context, in breach of Rule 1.16 of the Code.

### Rule 1.21

Rule 1.21 requires that: “Nudity before the watershed must be justified by the context.”

As set out in the Introduction, the broadcast of this video before the watershed included a considerable amount of nudity: over 35 brief but close-up shots of naked or near naked breasts and around 20 close-up shots of women’s buttocks in bikinis or underwear. Ofcom noted that the images of nudity were all presented in a highly sexualised context.

We therefore went on to consider whether this nudity was justified by the context.

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<sup>4</sup> *Audience attitudes towards offensive language on television and radio* (2010): <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>.

<sup>5</sup> *Audience attitudes towards offensive language on television and radio* (2010): <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>.

We took into account that the video was broadcast on a channel that specialised in a genre of rock that is understood by viewers to be more extreme in nature than the type of music played on more mainstream music video channels. We also considered that the channel was not therefore likely to appeal to children, as evidenced by the BARB viewing data which indicated that no children were watching this particular broadcast (although 1,000 adults were watching). Nevertheless we concluded that the audience for this channel was unlikely to expect the broadcast of such frequent images of nudity in a highly sexualised context throughout this video at this time before the watershed.

We noted that the Licensee had admitted that the video had been broadcast in error and did not offer any justification for the broadcast of this content at this time.

Ofcom concluded that the context was insufficient to justify the broadcast of the nudity in this case, in breach of Rule 1.21.

### Rule 2.3

Rule 2.3 requires that: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, [and] violation of human dignity[.]”

Ofcom considered first whether the content was potentially offensive; and, if so, whether the offence was justified by the context. Context includes, for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; the likely size and composition of the potential audience; and the likely expectation of the audience.

We considered that the music video in this case contained various instances of images and language which had the potential to be highly offensive to the audience. For example, as mentioned above, Ofcom’s research on offensive language clearly notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language; and that the word “faggot” is considered by audiences to be offensive and derogatory when directed at particular groups of people, in particular gay and bisexual men<sup>6</sup>. In addition, we considered the highly sexualised images, as described above, the images of violence and illegal drug taking, and the way in which the male band members were depicted treating the female performers, had the potential to be highly offensive.

We therefore went on to consider whether this offensive material was justified by the context.

We took into account that the video was broadcast on a channel that specialised in a genre of rock that is understood by viewers to be more extreme in nature than the type of music played on more mainstream music video channels. We also considered that the channel was not therefore likely to appeal to children, as evidenced by the BARB viewing data which indicated that no children were watching this particular broadcast (although 1,000 adults were watching). We also considered that the video portrayed the type of ‘hard living’ and ‘partying’ lifestyle that is commonly associated with this kind of band, and that the audience of Scuzz TV might expect to be portrayed at some points in the schedule. Nevertheless, given the potentially highly offensive nature of the content in this case, we concluded that the audience for this

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<sup>6</sup> See Footnote 5.

channel was unlikely to expect the broadcast of numerous examples of highly sexualised imagery and instances of the most offensive language at this time before the watershed.

We noted that the Licensee had admitted that the video had been broadcast in error and did not offer any justification for the broadcast of this content at this time.

Ofcom concluded that the context was insufficient to justify the broadcast of the offensive content in this case, and that the Licensee did not apply generally accepted standards, in breach of Rule 2.3.

### Conclusion

This case involved the broadcast of material that was extremely unsuitable for children and had the potential to be highly offensive to the audience. Ofcom therefore considers the breaches of Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3 in this case to be serious. Ofcom was particularly concerned that the Licensee described the broadcast of this video before the watershed and during the school summer holidays as having occurred as a result of a 'loophole' and staff error.

Before reaching a final decision on this case, Ofcom took careful account of CSC Media's representations on its Preliminary View.

Ofcom noted and acknowledged that the Licensee accepted straightaway that it had breached the Code in this case. The broadcast material however was highly unsuitable for children and had the potential to cause considerable offence to members of the public for a variety of reasons (but principally the very frequent use of offensive and the most offensive language, numerous shots of sexualised imagery and nudity and the depiction of illegal drug taking). This variety of reasons underlined why Ofcom believed it was necessary and appropriate to assess this content and record breaches of the Code, against several rules of the Code.

CSC Media also put forward various arguments challenging Ofcom's Preliminary View that it was appropriate for these breaches to be considered for a statutory sanction.

First, CSC Media suggested that Ofcom should place greater weight on the good compliance record of the Scuzz TV channel when viewed in isolation and on what the Licensee viewed as CSC Media's good compliance record overall over the previous four years. Second, and linked to these points, the Licensee argued that the Preliminary View presented the Licensee's compliance record in an unfair light. In response, Ofcom's view is that it has placed appropriate weight on the compliance record of both the Scuzz TV channel by itself, and of CSC Media overall. In considering sanctions, Ofcom has over recent years consistently maintained a policy of having regard to all the breaches of its codes recorded against particular licencees where they are ultimately held by the same person, who also controls a centralised team responsible for compliance at all these same services<sup>7</sup>. This is the case here, with CSC Media controlling 16 channels with a centralised compliance department for all 16 services. Ofcom notes that it has recorded eight breaches of its codes against CSC Media over the past four years, two of which have involved the

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<sup>7</sup> See for example the sanction imposed against MTV Europe on 4 June 2008: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/mtv.pdf>.

broadcast of unsuitable material before the watershed. Ofcom considers this compliance record is not especially weak but nor is it exemplary.

Third, the Licensee argued that Ofcom had failed to give proper weight to BARB audience figures indicating that no children watched the video when broadcast, and contrasted Ofcom's treatment of CSC Media in the Preliminary View (a recommended sanction) with that of other licensees: 4Music, for broadcasting the Flo Rida music video "*Turn Around (5,4,3,2,1)*" (video broadcast three times, no sanction even though up to 12,000 children between the ages of four and 15 were watching); and MTV (video broadcast three times, no sanction even though up to 1,000 children between the ages of four and 15 were watching).

The data provided by BARB only give an indication of the number of people watching a particular channel at a particular time, which is why Ofcom in the Code and in its Guidance<sup>8</sup> advises broadcasters to have regard to the "*likely* [emphasis added] number and age range of children in the audience, taking into account school time, weekends and holidays". With particular reference to sexual images, Ofcom's Guidance states: "[T]he cumulative effect of certain images or combination of images can result in material of a sexualised nature in music videos which is unsuitable for child viewers and could cause offence." Further, Ofcom's view is that the unsuitable and offensive content shown pre-watershed in the "Undead" music video and fully detailed above was of a wholly different order to that in the Flo Rida video. The breaches of the Code in this present case are much more serious as a result. Even though there is no evidence from BARB that any children watched the "Undead" video when it was broadcast, in Ofcom's opinion it is likely that some children could have been watching, some unaccompanied.

CSC Media also argued that it was being treated inconsistently compared to other licensees, and by way of example cited a 2004 Ofcom breach decision about the music video "*Blinded by the Lights*" by The Streets (Broadcast Bulletin 24<sup>9</sup>) where the licensee was not considered for sanction. In response Ofcom notes that this decision was made eight years ago under the relevant ITC Programme Code not under the Broadcasting Code, and under procedures for standards investigations and sanctions which were superseded several years ago. In Ofcom's view, there are no comparable precedents with the present case referred to by the Licensee which suggested that a decision to consider the current Code breaches for sanction would be inconsistent, unfair or unreasonable.

Fifth, the Licensee argued that Ofcom's Preliminary View did not give due weight to other factors, such as: the speed of its response to this compliance failure; and the seriousness overall with which the Licensee approaches its compliance responsibilities. In response, Ofcom confirms that it has taken account of the facts that: the Licensee immediately admitted that the broadcast of the video breached the Code; it was broadcast in error; the Licensee has taken steps to rectify the problem that permitted the broadcast to take place; and that overall the Licensee has appeared to Ofcom hitherto to take its compliance responsibilities seriously.

Nonetheless, Ofcom also notes that CSC Media has not put forward any reasons to demonstrate that the very high levels of unsuitability of the video for pre-watershed broadcast and of offensiveness were less than those set out in Ofcom's Preliminary

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<sup>8</sup> "Protecting the Under-Eighteens: Observing the watershed on television and music videos", <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

<sup>9</sup> See Footnote 2.

View. This music video may only have been broadcast once pre-watershed, but these breaches of Code are in Ofcom's view sufficiently serious as to warrant consideration of a sanction.

**Ofcom therefore puts the Licensee on notice that it is considering these breaches for the imposition of a statutory sanction.**

**Breaches of Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3**

## In Breach

### Islam Channel News

*The Islam Channel, 8 June 2012, 21:10*

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#### 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. Its output ranges from religious instruction programmes to current affairs and documentary programmes. The licence for the Islam Channel is held by Islam Channel Limited (“Islam Channel” or “the Licensee”).

Ofcom received a fairness complaint from Dr Usama Hasan regarding a news item in the above programme, in which he was referred to as having made a complaint to the Charity Commission in relation to “*potential links to a terrorist and extremist group*” and the Masjid Al-Tawhid Mosque in East London<sup>1</sup>. Whilst reviewing the news bulletin in question, we noted what appeared to be a pre-recorded package where the reporter said the following over various images, including pictures of the Mosque and of Dr Hasan:

*“The Charity Commission is investigating a mosque in East London over what’s been described as potential links to a terrorist and extremist group. The Commission says it’s beginning a statutory enquiry into Masjid Al-Tawhid in Leyton. The action was instigated by a letter from Imam Usama Hasan who left the Mosque following past disputes. Members of the Mosque say there were long-standing issues and disputes with Hasan, who they accuse of attempting to fulfil a vendetta against the mosque via his claims of extremist links. The mosque in fact points out that [Dr Hasan’s] complaints date back to the mosque’s previous management and that his claims of possible links to terrorists are completely unfounded. The Mosque’s current chairman Mehmud Patel said he was shocked to hear the accusations and that Hasan had at no point raised the complaints with the mosque.”*

A reporter then read out the following statement from Talat Sultan, who was described in the news report as a Trustee of the Mosque:

*“This is clearly a smear campaign and an attempt to undermine the current arbitration process. We are seeking legal advice on the course of action we should take. In consultation with our lawyer we are currently preparing a press release, which will be made public later this week inshallah.”*

Ofcom considered the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

*“News, in whatever form, must be reported with due accuracy and presented with due impartiality.”*

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

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<sup>1</sup> Ofcom’s Adjudications on the fairness complaint by Dr Hasan are included in this Bulletin at pp.70-76.

## Response

The Islam Channel said that the news item in question was “important” because it referred to the “first investigation carried out by the Charity Commission with regards to a link with terrorism and a mosque”. The Licensee added that as its service “caters mainly for Muslims...our audience would expect us to report on a crucial news item that is so important to the community”. However, it added that although “our audience would expect us to broadcast [the news item in question] we understand this should not interfere with us complying with [any] Rule [of the Code] or any other statutory regulation”.

The Islam Channel said “it was imperative that the news item was to be aired after a BBC report about the same investigation” had been broadcast the previous day. In the Licensee’s view “after the airing of the BBC news item which only appeared to speak to Dr Hasan, we could see the necessity to address the balance by not only inviting Dr Hasan for comments but also the Al-Tawhid Mosque”. However, the Islam Channel wished to stress that it had not based its compliance decisions “on another broadcaster’s programmes”. Furthermore, according to the Licensee, the fact that the BBC had covered this particular story was less important than the fact that this “was the first time the Charity Commission had investigated a Mosque and therefore it was in the public interest” to cover this story.

The Islam Channel said that it took “all necessary steps to contact Dr Hasan” prior to the broadcast of the news programme in question, so that he could comment on the news item. In summary, the Licensee said that:

- on 8 June 2012, prior to the broadcast of this programme, and after “numerous” attempts, a producer did in fact manage to speak, by telephone, to Dr Usama Hasan, “hours before the broadcast” of the news programme in this case. Dr Usama Hasan was then invited to comment on the news item;
- however during the telephone conversation “the line was suddenly cut and the conversation ended”, and that subsequently “many attempts were made to make contact with [Dr Usama Hasan] but without success”;
- while the producer was attempting to contact Dr Usama Hasan on 8 June 2012, the producer managed to speak with Sheikh Hasan, Dr Usama Hasan’s father, whom the producer requested to “contact his son [i.e. Dr Usama Hasan] and persuade him to appear on the news programme”;
- the producer “did not think it would be befitting for Sheikh Hasan to comment on the news item as it was about Dr Usama Hasan’s complaint to the Charity Commission. The Islam Channel added that “there was nothing stopping us from asking [Sheikh] Hasan [to] comment...[H]owever we also chose not to ask for his involvement as he is a regular presenter on the Islam Channel and it may be deemed to be a conflict of interest”; and
- the producer also talked to Dr Usama Hasan on 9 June 2012 (i.e. the day after the broadcast of the news programme in this case). During this conversation, Dr Usama Hasan agreed to appear in an edition of *Politics and Media* that was to be broadcast on the channel, on 11 June 2012 (i.e. three days after the broadcast of the news programme in this case).

The Licensee said Dr Usama Hasan appeared in the above edition of *Politics and Media* and was able to comment on the issues covered in the news item in relation to Masjid Al-Tawhid Mosque. In this way, the Islam Channel said that it “editorially linked the said news item with our *Politics and Media* programme which was aired within an appropriate period”. The Licensee made the following points about why, in its view, the news programme in this case broadcast on 8 June 2012 was editorially linked with the edition of *Politics and Media*, broadcast on 11 June 2012:

- the Islam Channel stated that “before the news programme went out [on 8 June 2012] the Producer [of the news programme] had a reasonable understanding that Dr Hasan was going to appear in the *Politics and Media* programme” on 11 June 2012;
- the Licensee stated its view that “by broadcasting the news and then inviting Dr Hasan to the [edition of *Politics and Media*] broadcast on 11<sup>th</sup> June would have been sufficient as they are editorially linked under Rule 5.5 of the Code, which states that due impartiality may be achieved “over a series of programmes taken as a whole”<sup>2</sup>;
- both programmes “dealt with the same subject matter, namely the Charity Commission’s investigation of the Al Tawhid Mosque”. Therefore, according to the Islam Channel, in this case “a news programme and a current affairs programme regarding the same subject matter [were broadcast], containing the same items belong[ing] to the same cluster”;
- the programme broadcast on 11 June 2012 was broadcast within “an appropriate period” after the news programme broadcast on 8 June 2012; and
- in relation to Rule 5.6<sup>3</sup> of the Code, the Licensee said that: “[W]e did promote the forthcoming transmission of the *Politics and Media* programme with full details of the guests both on the Islam Channel and via Twitter on multiple occasions each day between the news broadcast on Friday 8<sup>th</sup> June 2012 and the screening of the *Politics and Media* programme on Monday 11<sup>th</sup> June 2012.”

The Islam Channel said that “if there is a news report about two opposing parties and we are unable to contact one party after many attempts then we are still within our rights to report the news as long as we comply” with the Code. In addition, the Licensee said that: “The BBC reported about the same subject matter without comments from the Al-Tawhid Mosque, if we were restricted from broadcasting this would be a breach of our rights under Article 10 of the European Convention on Human Rights.”

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<sup>2</sup> The Code defines a “series of programmes taken as a whole” as: “[M]ore 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. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a ‘cluster’ or ‘season’ of programmes on the same subject.”

<sup>3</sup> Rule 5.6 states: “The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air.”

In summary, the Licensee said that it had “clearly” complied with Rule 5.1 “by ensuring that we contacted not only Dr Hasan but also his father” and because the news programme was editorially linked with the edition of *Politics and Media*, broadcast on 11 June 2012.

## Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that news included in television and radio services is presented with due impartiality. This duty is reflected in Rule 5.1 of the Code, which states that: “News, in whatever form, must be reported with due accuracy and presented with due impartiality.”

When applying the requirement to report news with due accuracy and preserve due impartiality in news, 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 (“the 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 unnecessary interference by public authority.

Article 10 is also clear, however, that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society as well as for the protection of the reputation or the rights of others. The requirement for news to be reported with due accuracy and presented with due impartiality reflects these considerations and necessarily obliges broadcasters to ensure appropriate balance in presenting news so that, for example, neither side of a controversy is unduly favoured.

The requirement in Rule 5.1 that news is presented with due impartiality applies potentially to any issue covered in a news programme where there is more than one viewpoint, and not just matters of political or industrial controversy and matters relating to current public policy. In judging whether due impartiality is preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. In the context of “due impartiality” in particular, “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 the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Therefore, in considering the issues raised under Rule 5.1 by this case Ofcom has had regard to how the matter was presented, including whether – and if so, to what extent – differing viewpoints were reflected.

We recognise that this case dealt with a news story of public interest, to the UK Muslim community in particular. The news item related to Dr Usama Hasan’s complaint to the Charity Commission concerning the Masjid Al-Tawhid Mosque. It is important that broadcasters – in fulfilment of their and the audience’s right to freedom of expression – are able to report such stories to their viewers or listeners. The Code does not in any way prohibit news from including views critical of individuals or institutions, however that news must be reported with due accuracy and presented with due impartiality. The central issue for Ofcom in this case therefore is an assessment of the manner in which the statements made in the news item about Dr Usama Hasan, and the complaint he had been reported to have made to the Charity Commission, were presented.

In this case, Ofcom noted that the news item variously described Dr Usama Hasan as:

- “*attempting to fulfil a vendetta against*”;
- making “*completely unfounded*” claims about; and
- undertaking “*a smear campaign*” against

the Masjid Al-Tawhid Mosque.

In assessing whether any particular news item has been presented with due impartiality, we take into account all relevant facts in the case, including: the nature of the coverage; whether there are varying viewpoints on a news story; and – if so – how a particular viewpoint, or viewpoints, on a news item could be or are reflected within the news programming. We noted that at no point did the report reflect Dr Usama Hasan’s viewpoint on the statements being made against him and the complaint he had made to the Charity Commission concerning the Masjid Al-Tawhid Mosque, nor did it even suggest that he had at any point been asked to comment. Given the critical nature of the statements made about Dr Usama Hasan, we considered it was incumbent on the Islam Channel to ensure that Dr Usama Hasan’s viewpoint was presented in the news item to at least some extent to counter the adverse statements made in the report about Dr Hasan’s motives in complaining to the Charity Commission. Although the broadcaster made various attempts to contact Dr Hasan for comment, Islam Channel neither referred to those attempts in any way in the news item nor reported the comments of Dr Hasan on the matter already in the public domain (specifically referred to by the Licensee and included in the BBC news report broadcast on 7 June 2012).

In reaching a decision in this case, we have taken into account the Licensee’s various representations.

Firstly, we noted the Islam Channel’s representation that it was necessary to broadcast this news item due to: its importance; and the fact that the channel “caters mainly for Muslims...[and] our audience would expect us to report on a crucial news item that is so important to the community”. We fully acknowledge and welcome the desire of broadcasters catering for particular communities to broadcast news stories which will be of particular interest to their target audience, in this case the UK Muslim community. However, in doing so, all broadcasters must comply with the due impartiality requirements of the Code.

Second, the Licensee made reference to a BBC report news report about the Masjid Al-Tawhid Mosque, broadcast the day preceding the news programme in this case, and the fact that, according to the Islam Channel “the BBC news item...only appeared to speak to Dr Hasan, [and] we could see the necessity to address the balance by not only inviting Dr Hasan for comments but also the Al-Tawhid Mosque”. We noted the Licensee’s representations that: it had not based its compliance decisions “on another broadcaster’s programmes”; and the fact that the BBC had covered this particular story was less important than the fact that this “was the first time the Charity Commission had investigated a Mosque and therefore it was in the public interest” to cover this story. We recognise that broadcasters will want to cover in their news programmes stories that are in the public interest, and which may have been reported by other broadcasters. Furthermore, it is an editorial decision for the broadcaster as to which individuals it includes in its programming. However, a

broadcaster licensed by Ofcom, in presenting a news story, which may be covered by other broadcasters, must – as necessary and appropriate – reflect any alternative viewpoint. Broadcasters licensed by Ofcom must always comply with the due impartiality requirements of the Code.

On a related point, the Islam Channel argued that as the “BBC reported about the same subject matter without comments from the Al-Tawhid Mosque, if we were restricted from broadcasting this would be a breach of our rights under Article 10 of the European Convention on Human Rights”. In reaching our decision in this case, we have taken account of the broadcaster’s and audience’s right to freedom of expression, as set out in Article 10 of the ECHR. The requirement for news to be presented with due impartiality reflects the fact that the exercise of the rights contained in Article 10 carries with it duties and responsibilities, which may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society as well as for the protection of the reputation or the rights of others. Irrespective of the Licensee’s opinion about any content broadcast on BBC licence fee-funded services, the Code, in the context of Article 10, necessarily obliges broadcasters to ensure appropriate balance in presenting news so that, for example, neither side of a controversy is unduly favoured. Any potential issues relating to the reporting of news on BBC licence fee-funded services are matters for the BBC Trust to investigate and regulate as appropriate: they do not provide any basis for the Licensee not to comply with its obligations under Rule 5.1 of the Code.

Third, we acknowledged the various steps taken by the Islam Channel to contact Dr Usama Hasan, prior to the broadcast of the news programme in question, so that he could comment on this news item. In line with the broadcaster’s and audience’s right to freedom of expression, Ofcom underlines that the broadcasting of highly critical comments by particular individuals of others is not, in itself, a breach of Rule 5.1 and the rules on due impartiality. It is an editorial matter for the broadcaster as to how it maintains due impartiality. Ofcom noted that in this case, the Licensee said it approached Dr Usama Hasan on numerous occasions, and was only able to talk to Dr Usama Hasan “hours before the broadcast” on 8 June 2012. Furthermore, during that conversation, according to the Islam Channel, “the line was suddenly cut and the conversation ended”, and that subsequently “many attempts were made to make contact with [Dr Usama Hasan] but without success”. However, despite these various attempts, it was, on the facts of this case, the responsibility of the Licensee to find an alternative way of ensuring that the news item was presented with due impartiality.

The Islam Channel, in broadcasting a news item where alternative views were not readily available (because Dr Usama Hasan declined to give an interview or give comments), might have considered various alternative editorial techniques for maintaining due impartiality. For example, the Licensee could have: reported the comments made by Dr Hasan on this matter already in the public domain; sought other alternative viewpoints to counter the critical statements being made about Dr Usama Hasan; summarised with due objectivity and in context the allegations being made by Dr Usama Hasan about alleged extremist links at the Masjid Al-Tawhid Mosque; summarised alternative viewpoints to the statements being made about Dr Usama Hasan with due objectivity and in context within a programme, for example, through interviewees expressing alternative views; made clear that they sought comments from Dr Usama Hasan but none were provided; and/or ensured that the criticisms being made about Dr Usama Hasan were challenged more critically by presenters and reporters within the news programme. However, Ofcom recognises that it is an editorial matter for the broadcaster as to how it presents news with due impartiality.

Fourth, and on a related point, the Islam Channel said that “if there is a news report about two opposing parties and we are unable to contact one party after many attempts then we are still within our rights to report the news as long as we comply” with the Code. As mentioned above, just because the Licensee approached Dr Usama Hasan for his comments and he did not respond, this did not in any way mean that they were prevented from reporting this story. However, as has already been made clear above, there were several ways in which the Licensee could have reflected appropriately Dr Usama Hasan’s viewpoint in the news item: most obviously from other sources of information in the public domain<sup>4</sup>.

Fifth, we noted the Islam Channel’s representation that it did not ask Sheikh Hasan, the father of Dr Usama Hasan, to comment on the issues covered in the news item, because, for example, “he is a regular presenter on the Islam Channel and it may be deemed to be a conflict of interest”. Ofcom underlines that it is an editorial matter for the broadcaster as to which individuals it might ask to participate in a news item in some way, for example by commenting on a particular news story. However, we note that the Code did not prohibit the Islam Channel from, for example, asking Sheikh Hasan, the father of Dr Usama Hasan, to comment on the issues covered in this news item from his son’s point of view. Depending on what Sheikh Hasan may have said, this could have enabled the Licensee to fulfil its duties under Rule 5.1.

Finally, we noted that Dr Usama Hasan appeared in an edition of *Politics and Media* broadcast three days after the news item in this case, when he was able to comment on the various issues relating to the Masjid Al-Tawhid Mosque, and which had been the subject of the news item in the present case. In this way, the Licensee said that it had “editorially linked the said news item with our *Politics and Media* programme which was aired within an appropriate period”. We noted the Islam Channel’s various arguments that the news programme broadcast on 8 June 2012 and the edition of *Politics and Media* broadcast on 11 June 2012 should be both considered as part of a “series of programme taken as a whole”, as defined in Rule 5.5<sup>5</sup>. In relation to one of these arguments, we considered that just because the producer of the news programme in this case, broadcast on 8 June 2012, “had a reasonable understanding that Dr Hasan was going to appear in the *Politics and Media* programme” on 11 June 2012 was not sufficient to editorially link the two programmes in this case.

In relation to the other arguments made by the Licensee in this area, Ofcom acknowledges that there are a number of ways in which different programmes might be editorially linked. In this case, we noted that: both programmes dealt with the same subject matter, namely the Charity Commission’s investigation of the Al Tawhid Mosque; and that Dr Usama Hasan appeared in the edition of *Politics and Media* broadcast only three days after the news item in this case. However, in our view, it was not the case that that programme and the news programme under consideration were “editorially linked”. This is because at no point during the news programme broadcast on 8 June 2012, were there any statements or content that signalled to viewers that Dr Usama Hasan would be appearing in the edition of *Politics and Media* broadcast on 11 June 2012, and would be discussing the issues relating to the Masjid Al-Tawhid Mosque in the later programme. Therefore, the audience to the news programme would not have been aware that that programme was part of the “same cluster” of programmes as the edition of *Politics and Media* broadcast on 11 June 2012, as stated to be the case by the Licensee.

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<sup>4</sup> See for example: <http://www.bbc.co.uk/news/uk-england-london-18359041>.

<sup>5</sup> See Footnote 2.

We considered that whilst the news programme was making some serious and critical comments about Dr Usama Hasan, the audience to this news item would not have been made aware that another programme to be broadcast three days later would be providing viewpoints to counter the serious criticisms being made of Dr Usama Hasan. In this regard, we did not accept the Islam Channel's argument that it made clear to the audience of the news programme broadcast on 8 June 2012 that that report was editorially linked with the programme broadcast on 11 June 2012 because the Licensee had promoted the latter programme "both on the Islam Channel and via Twitter on multiple occasions each day between the news broadcast on Friday 8<sup>th</sup> June 2012 and the screening of the *Politics and Media* programme on Monday 11<sup>th</sup> June 2012". Given the gravity and critical nature of the comments being made about Dr Usama Hasan in the news programme, we considered it was incumbent on the Licensee to alert viewers of the 8 June 2012 news programme of the fact that the issue of Dr Usama Hasan and the Masjid Al-Tawhid Mosque would be revisited in the edition of *Politics and Media* broadcast three days later if the two programmes were to be "editorially linked". We therefore considered that the audience for the news item in this case would not have been aware of the later programme, and therefore the two programmes could not be considered to be "editorially linked" for the purposes of preserving due impartiality.

Given the above, we concluded that in the specific circumstances of this case the Licensee did not take appropriate steps to ensure the story concerning Dr Usama Hasan was presented with due impartiality. Ofcom has therefore found that, on balance, the material was in breach of Rule 5.1 of the Code.

#### **Breach of Rule 5.1**

## In Breach

### Good Cop (Trailer)

*BBC1 HD, 6 August 2012, 18:40*

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#### Introduction

*Good Cop* is a police drama that centres on the murder of a policeman in the line of duty, and the revenge which a fellow officer takes against the killers.

A complainant alerted Ofcom to excessive violence in what appeared to be a trailer for this drama shown in the early evening on 6 August 2012 on BBC1 HD. The item was preceded by a BBC1 channel ident, and lasted four minutes and three seconds in total. It consisted of various scenes from *Good Cop* edited together without commentary or details of when and on which channel the full programme would be shown. In summary, the sequence of shots told the story of how two police officers were on duty at night and were called to a house because of the noise caused by a party. One officer, separated from his partner, entered the house alone and was set upon by a group of men. They knocked the police officer to the ground, assaulted him violently and dropped a large television on him, while his partner looked on helplessly through a locked metal gate which stopped him from entering the house. After this sequence the injured police officer and his partner were taken in an ambulance to a hospital and the title of the programme, *Good Cop*, was shown on the screen.

Ofcom considered the material raised issues warranting investigation under Rules 1.3 and 1.11 of the Code, which state:

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

Rule 1.11: “Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed...and must also be justified by the context.”

We therefore wrote to the BBC to ask how this broadcast complied with these rules.

#### Response

The BBC said it did not seek to argue that the content of the *Good Cop* trailer was “justifiable in terms of Rules 1.3 and 1.11 of the Code”.

The BBC said it transmits a series of trails, collectively called a ‘barker’, in the 30 minute slot at 18:30 on weekdays when BBC1 HD is unable to carry the BBC’s regional news programmes. The BBC said for the first eight minutes a screen card is displayed, with text advising viewers to switch to BBC1 to receive their regional news. The remainder of the slot, the BBC said, publicises some of the corporation’s output while continuing to display on-screen text advising viewers to change channel.

The BBC said the ‘summer barker’ shown on BBC1 HD, which featured material from *Good Cop*, was first shown on 15 June 2012. After that initial transmission, however, the BBC said it reviewed the content “following internal concerns that some of the material was too strong for the timeslot”. The *Good Cop* material was then edited

before the 'barker' was transmitted again on various dates, including on 6 August 2012. The BBC added: "With hindsight, we accept that some of the content of the re-edited *Good Cop* section...remained stronger than was appropriate for that time of the evening, even allowing for the uniqueness of this slot and the fact that a very small proportion of the audience remain watching BBC1 HD (around 29,000) and accordingly a relatively small number of children." The BBC said the *Good Cop* 'barker' had now been withdrawn.

It added that the 'barker' was not produced by the BBC department which normally produces BBC trails and "it was therefore not subject to the usual compliance procedure which would have been followed had it been a standard trail". The BBC said this situation "has now been identified as a shortcoming in the BBC's compliance process, but we can assure Ofcom that considerable discussion has taken place at senior management level about the issue".

The BBC said the department which produced the *Good Cop* trail has been reminded of the need for "particular vigilance" with regard to pre-watershed content. The BBC added that a new compliance procedure had been put in place to ensure all completed 'barkers' are reviewed by BBC1 HD's Head of Scheduling, or another senior editorial figure, before they are broadcast.

## **Decision**

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

### **Rule 1.3**

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them.

In applying Rule 1.3, Ofcom must have regard to the need for standards to be applied "in the manner that best guarantees an appropriate level of freedom of expression". The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, which sets out the right of a broadcaster to impart information and ideas, and the right of the audience to receive them, without unnecessary interference by public authority. In accordance with the fundamental right to freedom of expression, the Code does not prohibit the broadcast of material unsuitable for children. However, broadcasters are required to ensure that children are protected from unsuitable material by appropriate scheduling.

Ofcom first assessed whether the *Good Cop* 'barker', as broadcast on 6 August 2012, contained material unsuitable for children. The trailer lasted for just over four minutes and initially appeared to portray a quiet night for two uniformed police officers. On arriving at the house to which they were called, one police officer knocked on the front door and the music stopped. After splitting up so the second officer could check the back entrance, the first officer walked through the open front door into a dark and seemingly empty hallway. Spotting a man sitting on the stairs with a baseball bat, the officer asked the man to put the bat down, but the man stood up and defiantly shook his head. At this point three other men appeared out of unlit rooms to surround the police officer. The sequence then cut to the second police

officer at the back of the building as sound of a violent attack could be heard. Arriving at a locked metal gate to the rear of the house, the second officer saw his colleague lying on the floor and called his name in desperation. Some of the attackers threw bottles at the second policeman, taunting him and calling out “*Move you pigs*”, before they laughed and one of the group of men lifted up a large television and threw it down on the police officer lying on the floor (the impact was not shown).

The remainder of the trail showed the police officer who had been attacked in the house being carried out of an ambulance on a stretcher. It then cut to the second police officer, walking home at night in torrential rain. When shutting his bedroom door, the officer left a bloody hand print on the door. The police officer then produced a gun from inside his coat and dropped it on the bed before rubbing off the blood stain and running a bath.

Ofcom noted that the build up to the attack in the house was full of suspense and menace, and the attack itself (although filmed or edited in such a way so as not to show the actual points of impact on the policeman being attacked) was quite lengthy, intense and threatening. This material conveyed realistic and menacing violence which, in Ofcom’s view, was clearly not suitable for children to view.

We then assessed whether the content was appropriately scheduled. Appropriate scheduling is judged against 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.

As already pointed out – and acknowledged by the BBC, which voluntarily stopped showing the *Good Cop* ‘barker’ in the early evening – some of the material contained in it was inappropriate for children because it was too strong. Further, the material was shown on BBC1 HD during the Olympic Games, when many viewers of all ages were watching the coverage of the Games on BBC1 HD. Ofcom did not consider that viewers, and in particular parents, would have expected this level of intense violence to be shown on BBC1 HD at about 18:40 during the Olympic Games period, especially in a trailer which viewers would have come across without warning.

Ofcom notes that the total audience appears to have been very small (around 29,000) at 18:40, and that the trailer was shown after a screen card lasting eight minutes which directed viewers to turn to their BBC regional channel. Nonetheless this violent material was transmitted in the early evening on a high profile BBC HD television channel, and in Ofcom’s view it was important that the children who were available to view this channel at this time were protected from this content.

Ofcom therefore concluded that children were not in this case protected from unsuitable material by appropriate scheduling, and there was a breach of Rule 1.3.

#### Rule 1.11

The violence shown onscreen is described above. Ofcom took into account that no physical blows were seen to land on the police officer who was being attacked. But following the menacing build up, this ‘barker’ featured an intense, sadistic, and unprovoked attack unsuitable for a pre-watershed trailer. The violence was not therefore appropriately limited and there was a breach of Rule 1.11.

Ofcom noted that the BBC accepted with hindsight that the material broadcast should

not have been shown because it was too strong for this early evening timeslot, and that it has subsequently tightened up its compliance procedures. However we were concerned that the procedures in place at the BBC to ensure all trailers complied with the Code were clearly inadequate in the period leading up to and including August 2012.

### **Breaches of Rules 1.3 and 1.11**

## Not In Breach

### The X Factor

ITV1, 9 September 2012, 20:00

ITV2, 10 September 2012, 01:05, 10 September 2012, 20:00 and 11 September 2012, 00:15

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#### Introduction

The episode of *The X Factor* broadcast on 9 September 2012 was pre-recorded and showed early auditions that took place in London. One of the participants in this programme was a Britney Spears impersonator named Lorna Bliss (“Lorna”). The programme started at 20:00 and Lorna’s performance was shown at approximately 20:50. A total of 35 complainants alerted Ofcom to her act. In summary the complainants considered the performance was inappropriate for broadcast during a family show because Lorna’s outfit and performance were unsuitable for a child audience.

Ofcom noted that the programme featured a one and a half minute introductory piece about Lorna which included: images of her entering the venue with other auditionees; an interview to camera, in which she explained that she was a Britney Spears impersonator who had appeared on various other television programmes such as *This Morning*, *GMTV* and *Britain’s Got Talent* and had also travelled to countries such as Italy, Japan and Australia as a Britney Spears impersonator; a short interview with the presenter Dermot O’Leary in which she stated that she is an “*entertainer and Britney Spears impersonator*”; a short sequence filmed backstage with another auditionee who described her outfit as “*a bit see through*”; and a sequence prior to her performance on stage in which she was seen talking, in a flirtatious manner, to a member of the production crew and later bending over to touch her toes (with her buttocks to camera) in order to warm up before her audition.

The above sequence was followed by Lorna’s one and a half minute performance to the audio track “Dance ’Til the World Ends” by Britney Spears, which consisted of: Lorna singing the track and performing a dance routine on stage; sitting astride the judge Louis Walsh and pushing his head into her breasts (although this image was limited); chasing the judge Gary Barlow around the auditorium; lying across the lap of a member of the audience who was seated; crawling across the floor and then walking back onto stage before the audio track was abruptly stopped. As she stood on stage, the camera briefly moved up her body, putting a focus on it and her outfit, before the audition ended.

Throughout the programme Lorna Bliss was shown wearing a lime green bikini (which exposed her buttocks) with a fishnet body stocking over the top and black boots. By the end of her performance her body stocking had slipped below her breasts, exposing her bikini top.

We noted that this episode was repeated on three occasions on ITV2: firstly on 10 September 2012 at 01:05, secondly on 10 September 2012 at 20:00 and lastly on 11 September 2012 at 00:15. The complaints received by Ofcom concerned the broadcast on ITV1 on 9 September 2012 only.

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

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

Ofcom issued new Guidance about observing the watershed in September 2011<sup>1</sup>. 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).” The Guidance goes on to state that: “While Ofcom acknowledges [family viewing] 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.”

ITV Broadcasting Limited (“ITV” or “the Licensee”) managed the compliance of the programme for Channel Television, the licensee responsible for this programme on behalf of the ITV Network.

We therefore asked ITV for its formal comments on how this content complied with Rule 1.3.

## Response

ITV said that the “programme features a wide range of performers at the audition stages, not all of which will always be to everyone’s taste”. ITV said that both it and “the producers Thames/Syco consider very carefully the suitability of all performers for the family audience that the programme attracts, and the expectations of viewers, and in particular those of parents”. It added that it had also taken into account recent Ofcom Guidance on pre-watershed material and relevant recent Ofcom published findings.

ITV said that: “Lorna Bliss will be familiar to many ITV viewers as she appeared last year on *Britain’s Got Talent*, a programme similarly scheduled in family viewing time, with a somewhat similar genre format...and with similar audience expectations.” ITV added that: “Lorna’s uninhibited performance on [Britain’s Got Talent], in which she performed as a Britney Spears impersonator, was also quite similar, in its ‘provocative’ dance moves and direct interaction with the judges, to the performance she gave on *The X Factor*. But that was carried out in a transparent costume modelled on that of Britney Spears “Toxic” music video, so much so that it was considered necessary on that occasion to cover her nipples with graphic stars.” ITV added that it is not aware that Ofcom considered the performance on Britain’s Got Talent “gave rise to any Code issues at the time, and certainly Ofcom did not find [that] programme to be in breach”. ITV said that it also took into account that “previous series of this programme and other similar talent show programming...have featured acts with similarly provocative clothing without breaches of the Ofcom Code”.

ITV said that: “By comparison, the outfit Lorna chose to wear on *The X Factor* consisted of an entirely opaque bra and thong, covered by a body stocking which was good deal less revealing than her Britney-style “Toxic” costume.” ITV added that: “[T]he performance was carefully edited, with a preponderance of wide shots whilst she was on stage, clambering over the judge’s table or running around the arena and diving into the audience. Close ups on her whilst she was receiving the judge’s

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

(universally hostile) comments after the performance were focused on her face and her reactions to these comments.”

ITV said that: “The image of Lorna bending over to warm up prior to going on stage was included specifically to reflect Lorna’s character as a performer. She was clearly being flirtatious with the production crew prior to going on stage and deliberately playing up to the camera by turning around and bending over in this way, but the shot was relatively brief and not in close up, and thus revealed no intimate detail of her anatomy, with her buttocks covered by her body stocking.” The Licensee said that during her act Lorna did climb onto the judges’ table and briefly grabbed Louis Walsh, “who was clearly not responsive to this overture”, but this was a “clumsy gambit for attention’s sake that was comical rather than erotic in tone”. ITV added that: “[T]he single pan shot up her body whilst she stood on stage did not in our view render the sequence as a whole inappropriate, given her costume still sufficiently covered her body. We therefore considered her audition throughout to be ‘saucy’ rather than being overtly erotic or sexualised.”

ITV said it acknowledges “that not all parents will have considered Lorna’s act to be appropriate for prime time 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 for this long-established programme, 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 under-eighteens, 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 with the requirement in the Code to protect under-eighteens.

As Ofcom noted in its 2011 Guidance on observing the watershed on television, family viewing programmes raised particular concerns amongst the parents and carers surveyed in Ofcom’s 2011 research<sup>2</sup>. The Guidance states that: “While 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

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<sup>2</sup> See Footnote 1.

include the sexualised clothing and dance routines of performers and/or guest artistes.”

We considered first whether the material broadcast on 9 September was unsuitable for children. Ofcom noted that this programme began at 20:00 and the performance in question occurred at 20:50. The programme was repeated three times on ITV2 on two different dates during the following week, however only one broadcast was prior to the 21:00 watershed.

Ofcom noted that Lorna Bliss’ performance had some flirtatious overtones and included images of Lorna Bliss adopting some mildly provocative positions at the start of her performance and throughout. The most noticeable examples were: firstly, prior to her performance when she was warming up backstage, she bent over to touch her toes and her buttocks (covered by a fishnet body stocking) were briefly visible in a mid-shot; secondly, when she was sitting astride the judge Louis Walsh; and thirdly, once her act had finished and she was back on stage, the camera moved up her body, putting a focus on her outfit which was a bikini and a fishnet body stocking.

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, where there were close-up images, these focused on her face only, particularly to show her facial expressions when she received feedback from the judges, which was wholly negative. During Lorna’s performance the camera shots changed quickly and the images were intercut with reactions from the judges and members of the audience, resulting in her actions and shots of the performance being very brief. Further, we noted that Lorna was not clearly visible as she moved through the audience, due to the poor lighting in that part of the auditorium.

As noted above, 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).” As highlighted above there was a brief, mid-shot image of the performer’s partially obscured buttocks as she bent over to camera before her audition began. Ofcom noted ITV’s argument that this shot was included to “reflect Lorna’s character as a performer”. However, we considered this was potentially problematic in a pre-watershed family entertainment programme.

Further, Ofcom Guidance states that “broadcasters should ensure that the content is suitable for family viewing *throughout the duration* of the programme”. We considered that despite Lorna’s performance being broadcast at 20:50, the images of Lorna straddling the judge, Louis Walsh, and the single shot moving up Lorna’s body, were potentially problematic given this was a pre-watershed programme.

However, we noted that these potentially problematic shots were very limited in terms of detail and duration. We considered, on balance, that the performance, taken as a whole, was presented in a style which sought to derive humour from the participant’s conduct and interaction with the judges and the audience, and did not convey an overtly sexualised theme. Ofcom is nevertheless taking the opportunity to remind ITV to ensure that careful consideration is given to the use of such images in the broadcast of programmes scheduled before the 21:00 watershed.

We took into account that the programme is part of a long running series on ITV1 that includes a variety of acts that appeal to a wide range of viewers including children and adults. We noted that the programme was repeated three times on ITV2 after its

original broadcast at various times of the day during the following two day period, although only one of these broadcasts was before the 21:00 watershed. 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 performance by Lorna Bliss, would therefore not have exceeded the likely expectations of the vast majority of the ITV1 or ITV2 audience – either when originally broadcast or when repeated.

We also took into consideration that *The X Factor* is a programme made for a family audience, rather than a programme directed at children, although it does attract a reasonable number of child viewers. Audience figures for this programme demonstrate that for the original broadcast on ITV1 on Sunday 9 September 2012 and ITV2 on Monday 10 September 2012 at 20:00 there were 784,000 and 48,000 child viewers (aged between 4 and 15 years) respectively. These figures represented 10.5% and 8.9% of the total viewers respectively. Taking into account the reasonably high number of children in the audience, we considered that ITV had taken adequate steps to limit the images of Lorna's outfit and provocative dancing and ensure the material was suitable for broadcast before the watershed.

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

### **Not in Breach of Rule 1.3**

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

## Broadcast Licence Condition cases

### In Breach

#### Breach of licence conditions

*Voice of Africa Radio*

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##### Introduction

Voice of Africa Radio (VOAR) is a community radio station licensed by Ofcom which serves the African community in Newham, East London.

On 20 August 2012 Ofcom issued an invoice for immediate payment to the Licensee in respect of its annual licence fees. A reminder was sent to the Licensee on 5 September, with a further reminder sent on 24 September. A final reminder to make payment in full was issued on 4 October 2012. No payment was received.

On 16 November Ofcom wrote to the Licensee with regard to the non-payment of its licence fees, under conditions 3 (1) and (2) in Part 2 of the Schedule to the Licence.

Condition 3(1) in Part 2 of the Schedule to the Licence states that:

“The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 87 (3) of the 1990 Act as Ofcom shall from time to time publish in such manner as it considers appropriate.”

Condition 3(2) in Part 2 of the Schedule to the Licence states:

“Payment of the fees referred to in Condition 3 (1) above shall be made in such manner and at such times as Ofcom shall specify.”

Ofcom considered that the Licensee may be in breach of its licence due to non payment of fees and invited the Licensee to make representations to us about this matter.

##### Response

Ofcom did not receive a response from the Licensee. Nor did Ofcom receive payment of the fees at this time.

##### Decision

Ofcom is partly funded by the licence fees it charges television and radio licensees. It is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom’s functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles<sup>1</sup>. The detailed fees and charges which are payable by

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

broadcasting licensees are set out in Ofcom's Tariff Tables<sup>2</sup>. The payment of a fee is a licence requirement<sup>3</sup>. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence.

Voice of Africa Radio failed to pay its annual licence fees, despite repeated requests to do so and did not supply any representations on this matter by the required deadline. The licensee was therefore found in breach of its licence. As a consequence of this serious and continuing licence breach, Ofcom put the licensee on notice that the contravention was being considered for the imposition of a statutory sanction, which could include licence revocation.

This Finding was first published on our website on 13 December. Since then the Licensee has paid its licence fees in full and therefore the imposition of a statutory sanction is no longer being considered.

**Breach of Licence Conditions 3(1) and 3(2) in Part 2 of the Schedule to the community radio licence held by Voice of Africa Radio (licence number CR070).**

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<sup>2</sup> [http://stakeholders.ofcom.org.uk/binaries/research/Tariff\\_Tables\\_2001112.pdf](http://stakeholders.ofcom.org.uk/binaries/research/Tariff_Tables_2001112.pdf).

<sup>3</sup> For example, Broadcasting Act Licence Schedule Part 2, Condition 3.

## In Breach/Resolved

### Breach of licence conditions

*Erewash Sound, Felixstowe Radio, The Super Station Orkney, Seaside FM, Ambur Radio, Phoenix FM*

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#### Breach findings

*Community radio station compliance reports, January-December 2011: '50% funding rule'*

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

There are statutory restrictions on the funding of community radio stations (Section 105(6) of the Broadcasting Act 1990, as modified by the Community Radio Order 2004). Specifically, no community radio station is allowed to generate more than 50% of its annual income from the sale of on-air advertising and sponsorship (the "50% funding rule").

This 50% funding rule is in the legislation for two reasons: to reduce the degree of competition for such income between community and commercial radio services, and to ensure that community radio stations have a number of different funding sources and are therefore less likely to be driven by the need to maximise audiences to satisfy advertisers, which may conflict with the requirement for community radio services to deliver social gain.

It is of fundamental importance that Ofcom is able to verify that a licensee is complying with its Licence requirements relating to funding. In this respect, we require licensees to submit an annual financial report setting out how they have met their Licence obligations.

On 31 January 2012 Ofcom wrote to each community radio licensee that was eligible to report (i.e. those that had been operating under a community radio licence for the period 1 January-31 December 2011), requesting that it complete and return a financial report for the year ending 31 December 2011. The deadline for submission of the report was 31 March 2012, and Ofcom received a total of 176 financial reports. Following scrutiny of these, on 2 July 2012 Ofcom wrote to six community radio licensees asking for their comments with regard to licence condition 6 (5) and (6) which states that:

(5) The Licensee shall ensure that no more than 50 per cent of the relevant income for the Licensee is attributable to either one of, or a combination of, the following:

- (a) the inclusion in the Licensed Service of remunerated advertisements; or
- (b) the sponsorship of programmes included in the Licensed Service.

(6) The Licensee must ensure that, in calculating its relevant income for the purposes of condition 6(5):

(a) at least 25 per cent of the relevant income is attributable to sources of funding other than: remunerated advertisements; the sponsorship of programmes included in the Licensed Service; and volunteer contributions; and

(b) the Licensee has regard to guidelines published by Ofcom.

Subsequently three licensees have been found in breach of condition 6 (5) and (6), and in the case of a further three licensees we consider the matter resolved. See the table below for further information:

Station	Code and rule / licence condition	Summary finding
Erewash Sound, Ilkeston, Derbyshire	Community Radio licence condition 6 (5) and (6)	Erewash Sound contravened the requirement to obtain no more than 50% of its income from on-air advertising and sponsorship, and no more than 25% from volunteer in-kind support. Finding: <b>In breach</b>
Felixstowe Radio, Felixstowe, Suffolk	Community Radio licence condition 6 (5) and (6)	Felixstowe Radio contravened the requirement to obtain no more than 50% of its income from on-air advertising and sponsorship, and no more than 25% from volunteer in-kind support. Finding: <b>In breach</b>
The Super Station Orkney, Orkney	Community Radio licence condition 6 (5) and (6)	The Super Station contravened the requirement to obtain no more than 50% of its income from on-air advertising and sponsorship, and no more than 25% from volunteer in-kind support. Finding: <b>In breach</b> (see below for further information).
Seaside FM, Withernsea, East Yorkshire	Community Radio licence condition 6 (5) and (6)	Seaside FM demonstrated in representations that it did not contravene the requirement to obtain no more than 50% of its income from on-air advertising and sponsorship. Finding: <b>Resolved</b>
Ambur Radio, Walsall, West Midlands	Community Radio licence condition 6 (5) and (6)	Ambur Radio demonstrated in representations that it did not contravene the requirement to obtain no more than 50% of its income from on-air advertising and sponsorship. Finding: <b>Resolved</b>
Phoenix FM, Brentwood, Essex	Community Radio licence condition 6 (5) and (6)	Phoenix FM demonstrated in representations that it did not contravene the requirement to obtain no more than 50% of its income from on-air advertising and sponsorship. Finding: <b>Resolved</b>

We have been in correspondence with all the stations listed above and, with one exception, are satisfied with the explanations they have given and that the situation should not recur. In the case of The Super Station Orkney, however, we have broader concerns which are outlined below.

### **The Super Station Orkney**

The Super Station Orkney CIC (“The Super Station Orkney” or “the Licensee”) submitted its annual financial report to Ofcom on 30 March 2012. It showed that the Licensee had obtained more than 50% of its income for the year January-December 2011 from the sale of on-air advertising. Ofcom wrote to the Licensee and over the course of making representations, The Super Station Orkney provided a number of different, and in some cases directly contradictory, figures to explain the amount of on-air advertising income it had received over the reporting period. As a result Ofcom was unable to properly determine the true situation, and concluded that the information provided was insufficiently reliable to support the Licensee’s claim that it was not in breach of its licence.

The Super Station Orkney’s representations have given Ofcom a number of concerns over the management of the station and its finances, particularly because despite repeated opportunities, the station has been unable to provide sufficient verifiable information regarding its finances to explain the figures in its annual report. As a result Ofcom has concluded, as set out above, that the Licensee is in breach of licence condition 6 (5) and (6) of its licence.

Ofcom does not consider it appropriate, on this occasion, to take further regulatory action. However, Ofcom is putting The Super Station Orkney on notice of its concerns about the Licensee’s ability to ensure that it complies with this particular requirement of its licence. To this end, Ofcom will be requiring quarterly financial updates from the Licensee in addition to the annual report, to check that the Licensee is keeping proper records of its finances to report accurately to Ofcom.

### **Guidance on licence conditions regarding advertising and sponsorship income**

#### The ‘50% rule’ and the value of volunteer contributions

The rule restricting income from the sale of on-air advertising and sponsorship is a legislative requirement with which community radio stations must abide. (There are some exceptions: services which are overlapped by a commercial radio service with fewer than 150,000 adults in their measured coverage area are not permitted to take any income from the sale of on-air advertising or sponsorship.)

For stations that are permitted to generate income from on-air paid-for advertising and programme and station sponsorship combined, the maximum amount they may obtain from such sources in any one year is generally 50% of their relevant income. All community radio stations have volunteers, and Ofcom allows each station to use the value of volunteer time as part of its income if they wish. However there is a limit on how much, if they also have income from advertising and sponsorship. A minimum of 25% of annual operational income must come from sources other than on-air advertising and sponsorship and the value of volunteer inputs. Put another way, stations claiming a value for volunteer inputs and generating income from on-air commercial sources must always generate at least 25% of their income from other sources (see below).

For example: if Station A has £20,000 income from on-air advertising and sponsorship, it must also get at least £10,000 from other sources, not including the value of volunteer inputs. It may have £20,000 worth of volunteer inputs, but in this example only the first £10,000 will be counted when determining whether the station has stayed within the funding rules. In this example, on-air commercial income will make up 50% of the total, the other income will make up 25% and volunteer inputs will make up the remaining 25%.

However, if Station A decides not to include the value of volunteer inputs in its annual finance report then it must obtain at least £20,000 from other income.

### Other income

This may include a wide variety of other funding sources. Some of the main cash sources include: grants, service level agreements (SLAs), donations, off-air commercial income (such as advertising on the station's website), membership schemes and merchandising. However, stations can also include the value of in-kind support/income in the calculation of other income. This can include free or reduced cost use of premises, council tax reductions (some councils charge less for not-for-profit bodies), or the value of professional services rendered for free (such as legal advice or IT services), for example.

Ofcom recognises that in the current financial climate, in-kind support may be easier for some stations to secure and can be worth a significant amount in some cases. Ofcom is happy to allow stations to include the value of this kind of support in their annual reports if they are in receipt of it.

Ofcom has published some Guidance on how these rules work and are applied to community radio stations, which is available here:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/volunteerinput.pdf>.

Information on sector income is included in the radio and audio section of Ofcom's Communications Market Report 2012 here:

[http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/CMR\\_UK\\_2012.pdf](http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/CMR_UK_2012.pdf).

## Fairness and Privacy cases

### Upheld

#### Complaint by the Central Electoral Commission of Latvia

*Russian language referendum item<sup>1</sup>, REN TV Baltic & Mir Baltic, November 2011, various dates and times*

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#### Summary

Ofcom has upheld this complaint of unjust or unfair treatment in the programme as broadcast made by the Central Electoral Commission of Latvia (“the CVK”)<sup>2</sup>.

During November 2011, REN TV Baltic and Mir Baltic broadcast a 20 second item shown in commercial breaks. The item urged viewers to sign a petition to trigger a referendum on voting for an amendment to the Latvian constitution, which would make Russian an official language of Latvia alongside Latvian (or Lettish). The item, which was broadcast on numerous occasions, included the logo of the CVK, its website address and images of the CVK’s website and website pages.

The CVK complained to Ofcom that it was treated unjustly or unfairly in that the item was presented in a way that misled viewers into believing, wrongly, that the CVK had “placed” the item or endorsed its message.

Ofcom found that the item was clearly misleading as to the role of the CVK and that its use of both visual and audible references to the CVK (including its logo and website images), in Ofcom’s view, left no doubt that the item was intended to make viewers believe that it had been produced by, or on behalf of, the CVK. Nothing in the item sought to reveal the true source and nature of the item or to make clear to viewers that the item was made wholly independently of the CVK and without its endorsement. Ofcom considered that the misleading nature of the item was likely to materially and adversely affect viewers’ perceptions and understanding of the CVK, a neutral organisation of the Latvian state, and its role. For these reasons, Ofcom concluded that the item as broadcast was misleading and resulted in an unfair portrayal of the CVK.

#### Introduction

REN TV Baltic and Mir Baltic are Russian language channels broadcasting to Latvia and are licensed by Ofcom to Baltic Media Alliance Limited (“BMA”). As the channels are operated under UK licences they are subject to Ofcom’s codes.

Latvia operates a constitutional mechanism under which a referendum on constitutional amendment may be triggered by the collection of more than 150,000 signatures on an official petition. In 2011, a petition was raised calling for an amendment to the Latvian constitution to make Russian an official language of the

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<sup>1</sup> This item also raised issues warranting investigation under other sections of the Code. Ofcom’s Decision on these matters was published in Broadcast Bulletin 214, 24 September 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb214/obb214.pdf>.

<sup>2</sup> Centrālā Vēlēšanu Komisija.

Republic of Latvia, alongside Latvian (or Lettish). The petition was operated by the CVK, a neutral organisation of the Latvian state.

During November 2011, REN TV and Mir Baltic broadcast a 20 second item shown in commercial breaks that urged viewers to sign the petition. The 20 second item opened with a blue screen with a graphic of raised hands at the bottom of the screen. The logo of the CVK appeared in the centre of the screen and the CVK's website address was shown at the bottom. The picture changed to an image of the CVK's website. Various web pages on the site were displayed and a cursor was shown moving around to demonstrate how to navigate to particular pages. The blue screen and raised hands graphic returned and the item ended with the CVK's logo at the centre of the screen. The CVK's website address remained on screen throughout.

The voiceover accompanying the item was in Russian. Translated into English by Ofcom it said:

*"Visit [www.cvk.lv](http://www.cvk.lv), to find the nearest place to you where you can sign a petition in support of Russian as the second Official Language, and add your vote. You think you're saving time – but you're losing your right to speak in your native language. Deadline: 30 November!"*

The broadcaster, who was given the opportunity to comment on Ofcom's translation, believed that the following translation reflected more accurately the accompanying voiceover:

*"On CVK website, [www.cvk.lv](http://www.cvk.lv), find the nearest place where the signatures for Russian language as a second official language are being collected, and give your vote. By saving time, you will lose the right to speak your native language. 'Till November 30 only."*

A text message was displayed throughout the duration of the item at the bottom of the picture that repeated the message that voting (i.e. signing) locations could be found at the website address given (i.e. the CVK's website) and that the deadline was "30 November" 2011.

Following the broadcast of the programme, the CVK complained to Ofcom that it had been treated unjustly or unfairly in the programme as broadcast.

### **Summary of the complaint and the broadcaster's response**

The CVK complained that it was treated unjustly or unfairly in the programme as broadcast. In particular, it said that the broadcaster did not avoid unjust or unfair treatment of the CVK in its programming as the item was presented in a way that misled viewers into believing, wrongly, that the CVK had "placed" the item or endorsed its message.

In response to the complaint, BMA said that the item merely presented, accurately, the CVK as the only source to get information about the collection of signatures. BMA said that it had no intention of presenting the CVK as a party that supported the collection of signatures. To claim the opposite, it said, would be a prejudicial interpretation of the content broadcast.

BMA said that it had no intention of deliberately misleading the audience or any other party and that no wrong or false information was given in the item as broadcast. BMA said that the item was broadcast during a relatively short period and assumed that

the CVK had its own reasons to think its reputation had been affected by the broadcasts.

## Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the item as broadcast as well as both parties' written submissions. Ofcom considered there to be no material difference between the two English translations of the voiceover accompanying the item (as set out in the "Introduction" above) that affected Ofcom's ability to consider and adjudicate on this complaint. Both the CVK and BMA were provided with the opportunity to make representations on Ofcom's Preliminary View, which was to uphold the complaint. Neither party to the complaint submitted any representations on Ofcom's Preliminary View.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. Ofcom had regard to this rule when reaching its decision on the complaint.

In considering the CVK's complaint that it was unjustly or unfairly treated in that the item was presented in a way that misled viewers into believing, wrongly, that the CVK had "placed" the item or had endorsed its message, Ofcom also had regard to Practice 7.9 of the Code which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

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

In the particular circumstances of this case, Ofcom recognised that the fact that the item was produced and broadcast by BMA was not disputed by the parties to this complaint. It noted BMA's submission that the item had merely presented the CVK as the only source of information about the collection of signatures and that it had no intention of presenting the CVK as a party that supported the collection of signatures.

However, having carefully examined the item as it appeared onscreen along with the accompanying voiceover and onscreen caption (the details of which are set out in the Introduction above), Ofcom considered that the manner in which the CVK's logo and website page information were presented was likely to have resulted in viewers understanding it to have been made, commissioned or endorsed by the CVK. Ofcom

also considered that the language used by the voiceover encouraged viewers to sign the petition, which, in the context of being made in an item presented as being made or endorsed by the CVK, clearly suggested that the CVK was in favour of the referendum to decide whether Russian should become an official language in Latvia.

Ofcom understood that the subject of the official recognition of the Russian language was a highly sensitive and disputed issue within Latvia. Ofcom considered that the item, presented as a message of encouragement from the CVK, had the potential to impact on the democratic process in Latvia by affecting the actions of voters in respect of the petition for the referendum. Any perceived endorsement of this by the CVK had, in Ofcom's view, the potential to be particularly damaging to the CVK, a neutral organisation of the Latvian state, by compromising its neutrality and misleading viewers as to its role.

Given the factors set out above, Ofcom considered that the item was clearly misleading as to the role of the CVK and that its use of both visual and audible references to the CVK (including its logo and website images), in Ofcom's view, left no doubt that the item was intended to make viewers believe that it had been made by, or on behalf of, the CVK. Ofcom considered that nothing in the item sought to reveal the true source and nature of the item or to make clear to viewers that the item was made wholly independently of the CVK and without its endorsement. Ofcom considered that the misleading nature of the item was likely to materially and adversely affect viewers' perceptions and understanding of the CVK, a neutral organisation of the Latvian state, and its role. For these reasons, Ofcom concluded that the item as broadcast was misleading and resulted in an unfair portrayal of the CVK.

**Accordingly, Ofcom has upheld the CVK's complaint of unjust or unfair treatment in the programme as broadcast.**

## Upheld

### Complaint by Dr Usama Hasan

*Islam Channel News, The Islam Channel, 8 June 2012*

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#### Summary

Ofcom has upheld this complaint of unjust or unfair treatment made by Dr Usama Hasan.

*Islam Channel News* broadcast a report regarding an investigation by the Charity Commission into the Al-Tawhid Mosque in Leyton, East London. The report stated that the Charity Commission was investigating “*potential links to a terrorist and extremist group*” and that the investigation had been instigated following a letter to the Charity Commission from Dr Usama Hasan, a former Imam at the Mosque. The report also stated that Dr Hasan had “*left the Mosque following past disputes*” and included a statement from Mr Talat Sultan, described in the report as a trustee of the Mosque, in which he claimed that the referral to the Charity Commission was “*clearly a smear campaign*”. The report also stated that “*members of the Mosque*” believed that Dr Hasan was “*attempting to fulfil a vendetta against the Mosque via his claims of extremist links*”.

Dr Hasan complained to Ofcom that he was unjustly or unfairly treated in the programme as broadcast.

Ofcom found that the news report contained significant allegations against Dr Hasan and that the broadcaster had not taken reasonable care to give him an appropriate and timely opportunity to respond to the significant allegations made about him. This resulted in Dr Hasan being treated unjustly or unfairly in the programme as broadcast.

#### 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. Its output ranges from religious instruction programmes to current affairs and documentary programmes. The licence for the Islam Channel is held by Islam Channel Limited (“Islam Channel” or “the Licensee”).

On 8 June 2012, the Islam Channel broadcast an edition of its evening news programme, *Islam Channel News*, which contained a report about a Charity Commission investigation into the Al-Tawhid Mosque in Leyton, east London.

The pre-recorded news report about the Charity Commission investigation did not have a studio introduction and was voiced by a female reporter. She began by stating that the Charity Commission had begun a “*statutory inquiry into masjid Al-Tawhid in Leyton*”. She went on to state that:

*“The action was instigated by a letter from Imam Usama Hasan who left the mosque following past disputes. But members of the Mosque say there were long-standing issues and disputes with Hasan who they accuse of attempting to fulfil a vendetta against the Mosque via his claims of extremist links.”*

This section of the report was illustrated with a photograph of the Al-Tawhid Mosque followed by a photograph of Dr Hasan.

The reporter then continued:

*“The Mosque in fact points out that his [Dr Hasan’s] complaints date back to the Mosque’s previous management and that his claims of possible links to terrorists are completely unfounded. The Mosque’s current chairman Mehmud Patel said he was shocked to hear the accusations and that Hasan had at no point raised the complaints with the Mosque.”*

A male voice then read out the following statement from Mr Talat Sultan, who was described in the report as a trustee of the Mosque:

*“This is clearly a smear campaign and an attempt to undermine the current arbitration process. We are seeking legal advice on the course of action we should take. In consultation with our lawyer we are currently preparing a press release, which will be made public later this week Inshallah.”*

Mr Sultan’s statement was also displayed on screen as these words were read.

Following the broadcast of the programme, Dr Usama Hasan complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

### **Summary of the complaint and broadcaster’s response**

Dr Hasan cited the following parts of the programme in support of his complaint:

- a) The programme featured “unfounded and defamatory accusations” against Dr Hasan, specifically that he had “a personal vendetta against the Mosque”.

In summary and in response, the Islam Channel said that it vehemently denied that the report defamed Dr Hasan in any way. It said that Dr Hasan did not go into detail as to exactly why the statements were defamatory.

- b) The broadcaster did not give Dr Hasan an opportunity to reply to the accusation that Dr Hasan had a “*personal vendetta against the Mosque*”.

Dr Hasan stated that Mr Talat Sultan was a producer at the Islam Channel and complained that the inclusion of Mr Sultan’s statement in the programme was “a case of corruption, a clear conflict of interest and an abuse of power”.

In response, the Islam Channel said that prior to the broadcast of the report, Dr Hasan was telephoned for his comments on numerous occasions. It said that the programme’s producer had invited Dr Hasan to comment on the report and that during the conversation the telephone line was suddenly cut and the conversation ended. Subsequently, many attempts were made to make contact again but without success.

The Islam Channel explained that the producer had also attempted to contact Dr Hasan through his father and that following the broadcast of the report, the producer had received a text message from Dr Hasan. The broadcaster said that the producer and Dr Hasan had spoken the next day by telephone and made arrangements for Dr Hasan to appear on another Islam Channel programme, *Politics and Media*, on 11 June 2012.

The broadcaster supplied Ofcom with a record of telephone calls and text messages from the producer to Dr Hasan's mobile telephone on 8 and 9 June 2012. The Islam Channel also stated that, given the fact that the audience of the channel consisted mainly of Muslims, its audience would expect the channel to report on such a crucial news item. It also said that it was important that this news item was broadcast as it was a major piece of news. The Islam Channel explained that it had been informed that this was the first investigation carried out by the Charity Commission with regards to a link with terrorism on the part of a Mosque.

The Islam Channel said that broadcasting the report was in the public interest and referred to the fact that the BBC had broadcast a news piece the previous day on this matter. It said that the BBC broadcast only appeared to include Dr Hasan's comments (not those of the Mosque) and that it believed it necessary to address the balance by not only inviting Dr Hasan for comments, but also seeking comments from the Al-Tawhid Mosque.

The Islam Channel stated that in reporting on a story which involved two opposing sides, it was permitted to go ahead with the broadcast if they were unable to contact one party so long as it complied with Ofcom's rules, which, the Islam Channel said, it did. Dr Hasan was given time to respond and he was aware what the news item was about.

The broadcaster confirmed that Mr Sultan was an employee of the Islam Channel and argued that the fact that his statement was included in the report did not mean there was a conflict of interest or an abuse of power. It said that Mr Sultan had no involvement in the production of the report, nor did he have editorial control in that he did not write or approve the script, nor was his voice used to read the statement. The Islam Channel explained that Mr Sultan worked in the religious programming department and the report was produced by the current affairs department.

The Islam Channel said that the producer of the report had been in contact with Mr Mehmud Patel, the Chairman of the Mosque, and that the Mosque had supplied the statement used in the report. The statement was supplied to various media organisations and it was a mere coincidence that the report involved Mr Sultan, a trustee of the Mosque. The Islam Channel said that the report was broadcast not because Mr Sultan was an employee of the broadcaster, but because it was in the public interest to do so.

### **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View in this case that Dr Hasan's complaint should be upheld. In commenting on that Preliminary View, Dr Hasan's main points and the Islam Channel's responses (directly relevant to the complaint responded to by the broadcaster and considered by Ofcom) were, in summary, as follows:

Dr Hasan said that, as a former presenter at the Islam Channel, he did not accept the broadcaster's assertion that Mr Sultan worked in a different department. Dr Hasan said that as the Islam Channel operated from very small offices the departments, in practice, overlapped. Dr Hasan also disputed whether Mr Patel was the Chairman of the Mosque at the time of the broadcast, as was stated in the report.

Dr Hasan provided further detail about the conversations he had with the producer of the *Islam Channel News* prior to the broadcast of the item. Dr Hasan stated that he

had received one short telephone call and one voice message from the producer, but that he had not been informed of the “serious allegation” that the report contained.

In summary, the Islam Channel made the following representations on Ofcom’s Preliminary View and Dr Hasan’s comments. It said the broadcast operation at the channel had grown considerably since the time that Dr Hasan was a presenter and that the current affairs and religious departments were distinct.

In relation to contacting Dr Hasan before the programme, the Islam Channel stated that Dr Hasan was contacted on a number of occasions prior to the broadcast of the programme and it had therefore complied with Practice 7.11 of the Code. It further stated that a “seven minute period” (i.e. the time when Islam Channel placed five phone calls to Dr Hasan) was enough time to speak about the programme and its contents. The Islam Channel also reiterated its view that it had not breached the Code by broadcasting the report and that they had a right to broadcast the news.

## **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties’ written submissions, including supporting material. Ofcom also took careful account of the representations made by Dr Hasan and the broadcaster in response to being given the opportunity to comment on Ofcom’s Preliminary View on this complaint (which was to uphold). While Ofcom has had attentive regard to all of Dr Hasan’s and the broadcaster’s comments in finalising this decision, it concluded that the further points raised by the parties did not materially affect the outcome of this complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals or organisations, as set out in Rule 7.1 of the Code. Ofcom had regard to this Rule when reaching its decision on the complaint.

- a) Ofcom first considered the complaint that the programme featured “unfounded and defamatory accusations” against Dr Hasan, specifically that he had “a personal vendetta against the Mosque”.

It is not Ofcom’s role to judge if an allegation is defamatory or not, but to apply Section Seven of the Code to decide whether the broadcaster has avoided unjust or unfair treatment of individuals or organisations in programmes.

Ofcom recognised that the broadcast item complained about was part of a news bulletin. The news item itself reported comments clearly attributable to the

Mosque about a new investigation by the Charity Commission and the motives of the person (Dr Hasan) whom the report stated had instigated that investigation. We recognised too the broadcaster's right to freedom of expression and the right of members of the Muslim community to receive and impart views in news programmes on topics of genuine public interest. Ofcom acknowledged that the subject of the report was itself such a topic. However, with this right comes the responsibility for the broadcaster to ensure that material facts are not presented, omitted or disregarded in a way that creates unfairness to an individual or organisation (as set out in Practice 7.9 of the Code).

Ofcom carefully studied the programme as broadcast and the transcript provided by the broadcaster. It noted that the report stated that "*members of the Mosque*" accused Dr Hasan of "*attempting to fulfil a vendetta against the Mosque via his claims of extremist links*".

Ofcom noted that Dr Hasan had previously been an Imam of the Mosque and therefore had an involvement in the institution he was accused of having a "*vendetta*" against. Ofcom considered that the word "*vendetta*" was emotive and its use was likely to lead viewers reasonably to perceive that Dr Hasan's actions were motivated by revenge. Ofcom considered that the use of the word "*vendetta*", along with the other comments made in the report about Dr Hasan, amounted to significant allegations that questioned his good faith and motives for writing to the Charity Commission about the Mosque.

Ofcom took into account that the allegations in the report were attributed to "*members of the Mosque*" and Mr Patel, whom the report stated was the Chairman of the Mosque, or were read out as part of the statement attributed to Mr Sultan. However, the script read by the reporter at no point during the report or afterwards: made clear to viewers that the programme had attempted to obtain Dr Hasan's comments in response to the allegations but with no success; or gave Dr Hasan's viewpoint (this was publicly available on 8 June 2012 on the Licensee's own admission because his comments had been included in a BBC news report broadcast the day before).

Ofcom assessed if the fact Mr Sultan was an employee of the Islam Channel had any impact on the alleged potential unfairness to Dr Hasan. Ofcom noted that Mr Sultan worked in a different department at the channel and the broadcaster stated that he had had no involvement in the production of this report.

Ofcom noted the comments made by the parties regarding whether the Current Affairs and Religious Departments at the Islam Channel overlap. Dr Hasan did not provide Ofcom with any further evidence to suggest that Mr Sultan was directly involved in the production of the report and Ofcom did not consider it a matter that would materially affect its decision in this case. Ofcom therefore found that in this case, no unfairness (beyond that which is outlined above) or additional unfairness was created by the fact Mr Sultan worked for the Islam Channel.

Ofcom also considered Dr Hasan's assertion that Mr Patel was not the Chairman of the Mosque at the time of the broadcast. Ofcom did not consider this was material to whether Dr Hasan had been treated fairly in the programme as broadcast; it was also not a matter which Dr Hasan raised in his original complaint form to Ofcom.

Having had regard to all of the above, Ofcom took the view that the programme made significant allegations about Dr Hasan on the basis of the comments

attributed to the “*members of the Mosque*” and Mr Sultan that Dr Hasan’s motivation for writing to the Charity Commission about the Mosque had been revenge. These allegations were unchallenged in the report and no possible alternative reasons for his actions were given. Viewers were not informed that the programme had sought Dr Hasan’s comments on the matter, but had been unable to obtain a response from him; and nor were Dr Hasan’s already public comments on the matter referred to. In Ofcom’s view, the presentation of the allegations in the programme was likely to materially and adversely affect viewers’ perceptions of Dr Hasan in a way that was unfair to him. Consequently, Ofcom concluded that the broadcaster did not take reasonable care to satisfy itself that material facts in relation to Dr Hasan’s actions were presented in the programme in a way that was unfair to him.

Ofcom therefore found that this failure resulted in Dr Hasan being portrayed unfairly in the programme as broadcast.

- b) Ofcom considered the complaint that the broadcaster did not give Dr Hasan an opportunity to respond to the accusation by Mr Sultan that Dr Hasan had a “*personal vendetta against the Mosque*”. Dr Hasan stated that Mr Sultan was a producer at the Islam Channel and the inclusion of his statement in the programme was “a case of corruption, a clear conflict of interest and an abuse of power”.

Ofcom considered the complaint that Dr Hasan was unjustly or unfairly treated in the programme as broadcast in that he was not given an appropriate and timely opportunity to respond to significant allegations about him. When considering the complaint Ofcom took into consideration Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

For the reasons already given at head a) above, Ofcom considered that the comments made by Mr Sultan and the “*members of the Mosque*” reported in the programme amounted to significant allegations against Dr Hasan (namely, that his actions in writing to the Charity Commission had been motivated by a “*vendetta*” against the Mosque).

Normally, where significant allegations are made about an individual in a programme, as they were in this particular case, then that individual should be given an appropriate and timely opportunity to respond to them. However, Ofcom recognised that in certain formats of programming, such as news reporting or live events coverage, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster to ensure that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals in a way that is unfair.

In the particular circumstances of this case, Ofcom noted that the broadcaster had attempted to contact Dr Hasan on the day of the broadcast of the programme. We took note of a number of telephone bills provided by the broadcaster that appeared to show that the producer of the report had called Dr Hasan five times between 16:33 and 16:40 hours on 8 June 2012. The telephone bills seemed to show that these calls had lasted between three seconds to 31

seconds in duration, suggesting, in Ofcom's view, that a short conversation could have taken place. Ofcom also noted that the broadcaster said that during this short conversation, Dr Hasan was invited to comment on the report, but that the line was cut off. The Islam Channel stated in its submission that it continued to try and contact Dr Hasan later, including via a telephone call to his father.

Ofcom noted that the last call to Dr Hasan was at 16:40 hours, and that the call to his father was at 16:46 hours. The report was broadcast over four hours later at 21:00 hours. The Islam Channel argued in its submission that this gave Dr Hasan time to respond.

Ofcom noted the comments made by the parties in their representations about this series of telephone calls. Ofcom considered that the evidence supplied by the broadcaster did not show that a seven minute conversation had taken place, but did indicate that a number of phone calls were made to Dr Hasan over a seven minute period. Dr Hasan's complaint was that the allegation regarding whether he had acted out of a "vendetta" towards the Mosque was not put to him during this exchange.

Ofcom takes the view that although there were five phone calls made in total to Dr Hasan, these were within a relatively short, seven minute period. It also took account of the fact that no further attempts to contact Dr Hasan were made by the programme makers after this seven minute period and before the broadcast of the report some four hours later.

Ofcom was careful to consider the public interest in broadcasting the story, and the broadcaster's further representations regarding their right to freedom of expression in broadcasting the story.

As already mentioned in head a) above, Ofcom considered the story of genuine public interest and that viewers would expect a story of such importance to be covered by the *Islam Channel News*. While it was important that the Licensee should have been able to broadcast a report on this subject, Ofcom considered that because the report described Dr Hasan's actions as being motivated by a "vendetta", the broadcaster should have ensured that Dr Hasan's comments were reflected in the report, or reported that after attempting to contact Dr Hasan the broadcaster had not been able to establish Dr Hasan's views. Ofcom considered that the broadcaster should have ensured that the fact Dr Hasan had chosen not to comment was fairly reflected in the programme or should not have broadcast any material and adverse comments about the motivations of Dr Hasan.

As under head a) above, Ofcom assessed if the fact Mr Sultan was an employee of the Islam Channel had any impact on the alleged potential unfairness to Dr Hasan. For the same reasons as under head a), Ofcom found that in this case, no unfairness (beyond that which is outlined above) or additional unfairness was created by the fact Mr Sultan worked for the Islam Channel.

Ofcom concluded that, in the circumstances detailed above, the broadcaster had not given Dr Hasan an appropriate and timely opportunity to respond to the significant allegations made about him in the report. In these circumstances, Ofcom considered that Dr Hasan was treated in a way that was unjust or unfair to him.

**Accordingly, Ofcom has upheld Dr Hasan's complaint of unjust and unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Dr Usama Hasan

*Politics and Media, The Islam Channel, 11 June 2012*

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#### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment made by Dr Usama Hasan.

*Politics and Media* is a studio-based discussion programme. In this edition, the news that the Charity Commission had begun an investigation into the Al-Tawhid Mosque in East London to examine potential links to terrorism and extremism was discussed. The programme began with a short news report which set out the background to the story. This was followed by a half-hour studio discussion in which each of the contributors commented on the Charity Commission investigation and gave their views on it, and on the wider issue of whether extremism was prevalent in British Mosques. The complainant, Dr Usama Hasan, was one of four guests, three of whom were in the studio and one of whom contributed to the debate over the telephone.

Dr Hasan complained to Ofcom that he was unjustly or unfairly treated in the programme as broadcast.

Ofcom found that the broadcaster had taken reasonable care to give Dr Hasan a timely opportunity to respond to the significant allegations made about him in the programme and had informed Dr Hasan of other likely contributions. Therefore, there was no unjust or unfair treatment to Dr Hasan in the programme as broadcast.

#### 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. Its output ranges from religious instruction programmes to current affairs and documentary programmes. The licence for the Islam Channel is held by Islam Channel Limited (“Islam Channel” or “the Licensee”).

On 11 June 2012, the Islam Channel broadcast an edition of its studio-based discussion show *Politics and Media*.

At the start of the programme, the presenter Mr John Rees explained that the discussion would focus on the news that the Charity Commission had opened a formal investigation into “*allegations that a major Mosque in East London is promoting terrorism and extremism*”.

The programme then showed an *Islam Channel News* report (originally broadcast on 8 June 2012) about the recently launched Charity Commission investigation which was around one minute and 13 seconds in duration. The reporter stated that the investigation had been instigated following a letter sent to the Charity Commission by Dr Hasan, a former Imam at the Al-Tawhid Mosque. This was illustrated with images of the Mosque and with a picture of Dr Hasan.

The female reporter said that Dr Hasan had left the Mosque following “*past disputes*” and that:

*“[M]embers of the Mosque say there were long-standing issues and disputes with Hasan, who they accuse of attempting to fulfil a vendetta against the Mosque via his claims of extremist links.”*

The report concluded with a male voice reading out the following statement about Dr Hasan’s complaint to the Charity Commission from Mr Talat Sultan, who was described in the report as a trustee of the Mosque:

*“This is clearly a smear campaign and an attempt to undermine the current arbitration process. We are seeking legal advice on the course of action we should take. In consultation with our lawyer we are currently preparing a press release, which will be made public later this week Inshallah.”*

The words of Mr Sultan’s statement were also displayed on screen as these words were read.

A number of guests were invited to discuss this news story in the studio. These were Mr Mehmud Patel, who was introduced as *“the current Chair of the Tawhid Mosque board of trustees”*; Mr Saghir Hussain, who was described as *“a human rights barrister”*; and Dr Usama Hasan who was introduced as *“a former Chairman of the Al-Tawhid Mosque”*. A fourth guest was Judge Khurshid Drabu, who was introduced as the *“Chair of the Mosques and Imams advisory board”*. Judge Drabu was not in the studio, but contributed to the discussion by telephone.

The presenter first asked Mr Patel about the allegations against the Mosque. Mr Patel said:

*“It appears that as erratic<sup>1</sup> as Usama Hasan is, and he loves the media, he loves the media publicity, this is clearly in my opinion...to derail the arbitration process and to scare the people, the general public and the authorities.”*

The presenter then addressed Dr Hasan and asked:

*“These have been long-standing allegations the previous set of which seems to me to have been discredited. Why do you think it is important that these are brought forward now?”*

Dr Hasan replied:

*“Well, there are a number of inaccuracies in what has been said so far...[I]t is absolutely frankly ridiculous to accuse them [me] of a personal vendetta against the Mosque. I’ve been part of the Mosque for thirty years, I’ve led the prayers for over twenty-five years, I’ve organised numerous activities there.”*

*“I am sorry to say that clip [the news report] tried to blame everything on me, as Mehmud Patel has also tried to make this ridiculous accusation against me...[W]hat we have seen is actually a personal vendetta against me, actually. Which began last year and it’s very sad that I am being accused of the reverse.”*

The debate continued and each of the guests expressed their opinions on the issue of the Charity Commission investigation. Later in the programme, Mr Patel stated:

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<sup>1</sup> In their representation to Ofcom’s Preliminary View the parties disputed whether the word used here was “erratic” or “heretic”. Ofcom addresses this matter later in this Decision.

*“What I am astonished about is he [Dr Hasan] is the one who instigated this allegation [the Charity Commission investigation]...Frankly I cannot understand how he could have linked these allegations now which happened so long ago when he was personally in charge of the [Mosque] operation at the time.”*

In response to this, Dr Hasan replied:

*“[I]t’s not just an individual allegation, there have been many, many people who have complained to the Charity Commission over what has happened over the last year or so.”*

During the course of the programme, the studio guests put forward their differing views on the specific issue of the Charity Commission investigation as well as more general issues about whether extremism was prevalent in British Mosques.

Following the broadcast of the programme, Dr Hasan complained to Ofcom that he had been unjustly or unfairly treated in the programme as broadcast.

### **Summary of the complaint and broadcaster’s response**

Dr Hasan cited the following parts in the programme in support of the complaint:

- a) The news report at the beginning of the programme was “heavily biased” against Dr Hasan, who complained that it “contained a specific personal allegation” that he had “a personal vendetta against the Mosque”. Dr Hasan found the allegation “ridiculous and seriously defamatory” given that he had in the past served as Imam and Vice Chairman at the Al-Tawhid Mosque.

In response and in summary, the Islam Channel said that it vehemently denied that the programme defamed Dr Hasan in anyway. It said that it noted that Dr Hasan did not go into detail as to exactly why the statements were defamatory.

Dr Hasan said that Mr Sultan, whose statement was read out as part of the news report at the beginning of the programme, was a producer at the Islam Channel and that the inclusion of Mr Sultan’s statement in the programme was “a case of corruption, a clear conflict of interest and an abuse of power”. In relation to Mr Sultan, the broadcaster confirmed that Mr Sultan was an employee of the Islam Channel but said the inclusion of the statement did not mean it had “acted unprofessionally and unethically”. The Islam Channel said that the news item was broadcast as it was in the public interest to do so and Mr Sultan had no editorial involvement in the programme. The broadcaster explained that Mr Sultan works in the religious programming department of the channel and the programme was produced by the current affairs department.

- b) Dr Hasan had not been informed in advance that the news report at the beginning of the programme contained the allegations set out above, and as such he was unprepared to respond.

In response, the broadcaster supplied Ofcom with a record of telephone calls and text messages from the report’s producer to Dr Hasan’s mobile telephone on 8 and 9 June 2012. The Islam Channel said that Dr Hasan was telephoned for comments “on numerous occasions”. It said that that the programme’s producer had invited Dr Hasan to comment on the report and that during the conversation

the telephone line was suddenly cut and the conversation ended. Subsequently, many attempts were made to make contact again but without success.

The Islam Channel said that it had informed Dr Hasan about the news report before the first broadcast of the item (on 8 June 2012) and that it therefore found it “hard to believe” that Dr Hasan had not seen the news report in advance of the 11 June 2012 recording of the *Politics and Media* programme. It also said that as the community was “a close knit one”, it was highly likely that Dr Hasan would have “heard about this [the Mosque’s] statement”.

Following the transmission of the report in the evening news on 8 June 2012, the producer of the report spoke to Dr Hasan on the morning of 9 June 2012 and arrangements were made for Dr Hasan to appear on the *Politics and Media* show on 11 June 2012. The broadcaster said that prior to the recording the producer discussed in detail the context and structure of the *Politics and Media* programme and the other guests with Dr Hasan.

The Islam Channel stated that during the course of the programme Dr Hasan vigorously defended himself against the allegations, articulately put his point across and spoke without hesitation for a few minutes in his defence. It pointed to the fact that Dr Hasan rebuffed the allegations against him directly, stating in the programme that it was “absolutely ridiculous” to accuse him of a personal vendetta against the Mosque.

The broadcaster also quoted the following section of the programme to show that Dr Hasan had the opportunity to respond to the allegations that were made against him:

*“I am sorry to say that clip [the news report] tried to blame everything on me, as Mehmud Patel has also tried to make this ridiculous accusation against me...[W]hat we have seen is actually a personal vendetta against me, actually. Which began last year and it’s very sad that I am being accused of the reverse.”*

The broadcaster added that Dr Hasan was given a longer period of time during the discussion to defend himself than Mr Patel.

c) The panel of contributors was unfairly biased against Dr Hasan.

In response, the Islam Channel said that the producer ran through the exact details of the proposed guests with Dr Hasan and asked if he had “an issue” with any of them. The broadcaster said that Dr Hasan knew hours before the recording that the lawyer acting for the trustees of the Al-Tawhid Mosque was appearing on the programme and therefore had the opportunity to withdraw his informed consent. The Islam Channel argued that during the programme Dr Hasan was forthright in his opinions and was not “bullied” in any way. It added that Mr Hussain and Judge Drabu were not interested in personalising the issue and were more interested in discussing the basis of the Charity Commission investigation. The broadcaster argued that during the course of the programme Mr Hussain had praised Dr Hasan’s previous work at the Mosque.

The broadcaster said that Mr Rees was a presenter with many years experience and had acted in a neutral manner during the programme. It denied Mr Rees was partisan and said he understood the importance of obtaining a balanced

discussion in relation to sensitive subjects, such as the one discussed in the programme.

### **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View in this case that Dr Hasan's complaint should not be upheld. In commenting on that Preliminary View, Dr Hasan's main points and the Islam Channel's responses (directly relevant to the complaint responded to by the broadcaster and considered by Ofcom) were, in summary, as follows:

Dr Hasan stated that Mr Patel, who was introduced in the programme as the Chairman of the Mosque, did not hold this position at the time. Dr Hasan stated that he had to spend time correcting this and this statement showed a bias on the part of the programme.

Dr Hasan reiterated his argument that during the debate, the presenter, Mr Rees, was partisan in the manner in which he challenged his views, but not those of the other guests.

Dr Hasan also stated that he believed that during one exchange in the programme, Mr Patel referred to Dr Hasan as a "heretic"; he argued that Mr Rees' failure to challenge this showed he agreed with this statement.

In summary, the Islam Channel made the following representations on Ofcom's Preliminary View and Dr Hasan's comments. It stated that Mr Rees was an experienced presenter and did not act in a partisan way during the debate; it said that as a presenter he had a right to comment on the guest's statements in order to steer the debate.

The Islam Channel refuted the suggestion that Mr Patel had called Dr Hasan a "heretic" and that the word used by Mr Patel was "erratic"; it questioned why Dr Hasan had not addressed this matter during the course of the debate if he believed this.

The Islam Channel also reiterated its belief that Dr Hasan had given his informed consent to the programme and that it had explained the nature of the programme to Dr Hasan prior to the recording.

### **Decision**

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

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

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

Ofcom also took careful consideration of the representations made by Dr Hasan and the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint (which was not to uphold). While Ofcom has attentive regard to all of Dr Hasan's and the broadcaster's comments in finalising this decision, it concluded that the further points raised by the parties did not materially affect the outcome of this complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals or organisation, as set out in Rule 7.1 of the Code. Ofcom had regard to this rule when reaching its decision on the complaint.

In reaching its decision, Ofcom considered the following heads of complaint in order to reach an overall decision as to whether Dr Hasan was portrayed unfairly in the programme as broadcast:

- a) Ofcom considered first the complaint that the news report at the beginning of the programme was "heavily biased" against Dr Hasan, who complained that it "contained a specific personal allegation" that he had "a personal vendetta against the Mosque". Dr Hasan found the allegation "ridiculous and seriously defamatory" given that he had in the past served as Imam and Vice Chairman at the Al-Tawhid Mosque. Dr Hasan also stated that Mr Sultan is a producer at the Islam Channel and the inclusion of his statement in the programme was "a case of corruption, a clear conflict of interest and an abuse of power".

It is not Ofcom's role to judge if an allegation is defamatory or not, but to apply Section Seven of the Code to decide whether the broadcaster has avoided unjust or unfair treatment of individuals or organisations in programmes.

Ofcom recognised that the programme was a current affairs discussion programme and that the news item that preceded the discussion clearly attributed the comments in it about the investigation by the Charity Commission (and the manner in which it had been instigated) to representatives of the Mosque. Ofcom recognised too the broadcaster's right to freedom of expression and the right of members of the Muslim community to receive and impart views in news and current affairs programmes on topics of genuine public interest. Ofcom acknowledged that the subject of the discussion was itself such a topic. However, with this right comes the responsibility for the broadcaster to ensure that material facts are not presented, omitted or disregarded in a way that creates unfairness to an individual or organisation (as set out in Practice 7.9 of the Code).

Ofcom carefully studied the programme as broadcast and the transcript provided by the broadcaster. It noted that in the news report the reporter stated that "*members of the Mosque*" accused Dr Hasan of "*attempting to fulfil a vendetta against the Mosque via his claims of extremist links*".

Ofcom noted that Dr Hasan had previously been an Imam of the Mosque and therefore had an involvement in the institution he was accused of having a "*vendetta*" against. Ofcom considered that the word "*vendetta*", was emotive and its use was likely to lead viewers reasonably to perceive that Dr Hasan's actions were motivated by revenge. Ofcom considered that the use of the word "*vendetta*", along with the other comments made in the report about Dr Hasan, amounted to significant allegations that questioned his good faith and motives for writing to the Charity Commission about the Mosque.

Ofcom took into account that the allegations in the report were attributed to “*members of the Mosque*” and Mr Patel, who the report stated was the Chairman of the Mosque, or were read out as part of the statement attributed to Mr Sultan.

Ofcom’s role in relation to Dr Hasan’s complaint is to consider if the inclusion of Mr Sultan’s statement was unfair to Dr Hasan. It noted that the accusation about Dr Hasan having a “*vendetta*” against the Mosque did not form a part of the statement attributed to Mr Sultan. However, this statement did contain the accusation that in reporting the Mosque to the Charity Commission, Dr Hasan’s actions were “*clearly a smear campaign*”. Ofcom believes this statement again questioned Dr Hasan’s motives: it had the potential to leave viewers with the perception that Dr Hasan’s actions were motivated by revenge and this was therefore potentially unfair to him.

Ofcom assessed if the fact Mr Sultan was an employee of the Islam Channel had any impact on the alleged potential unfairness to Dr Hasan. Ofcom noted that Mr Sultan worked in a different department at the channel and the broadcaster stated that he had had no involvement in the production of this report. Ofcom therefore found that in this case, no unfairness (beyond that which is outlined above) or additional unfairness was created by the fact Mr Sultan worked for the Islam Channel.

Having had regard to all of the above, Ofcom took the view that the programme made significant allegations about Dr Hasan on the basis of the comments made by Mr Sultan and the representatives of the Mosque that Dr Hasan’s motivation for writing to the Charity Commission about the Mosque had been revenge. Ofcom then considered whether the inclusion of these significant allegations in the programme resulted in unfairness to Dr Hasan. It considered this issue against Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. This is dealt with at head b) below.

- b) Ofcom considered the complaint that Dr Hasan had not been informed in advance that the news report played at the start of the programme contained the allegations set out above, and as such he was unprepared to respond.

When considering the complaint Ofcom took into consideration Practice 7.11 of the Code (as set out above).

For the reasons already given at head a) above, Ofcom considered that the comments made by Mr Sultan and the “*members of the Mosque*” reported in the programme amounted to significant allegations against Dr Hasan (namely that his actions in writing to the Charity Commission had been motivated by a “*vendetta*” against the Mosque) and that an “appropriate and timely” opportunity to respond should have been given to him. Normally, where significant allegations are made about an individual in a programme, as they were in this particular case, then that individual should be given an appropriate and timely opportunity to respond to them. However, Ofcom recognised that in certain formats of programming, such as news reporting or live events coverage, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster to ensure that the broadcast material is consistent

with the requirements of the Code and that it does not mislead viewers or portray individuals in a way that is unfair.

Ofcom noted a number of telephone bills provided by the broadcaster that appear to show that the producer of the news report contacted Dr Hasan prior to the first broadcast of the report on 8 June 2012 to inform him about the report.

In its response to the complaint, Ofcom noted that the Islam Channel did not address the issue of whether Dr Hasan had been informed either prior to the first broadcast on 8 June 2012 or prior to the recording of the *Politics and Media* programme that the report contained the specific allegation that Dr Hasan had a personal vendetta against the Mosque. The Islam Channel did, however, say that the producer had spoken in detail to Dr Hasan in advance about the context and structure of the *Politics and Media* programme. The Islam Channel stated, in its representations on Ofcom's Preliminary View, that it had explained the nature of the programme to Dr Hasan prior to the recording.

In any event, Ofcom considered that it was the responsibility of the broadcaster to inform the contributor that a significant allegation would be made about him in the introduction to the debate. Ofcom's Guidance on this issue states that:

"An individual or organisation needs to be given sufficient information concerning the arguments and evidence to be included in the programme to enable them to respond properly."

Ofcom took the view that it would have been preferable in avoiding unfairness for the broadcaster to have explicitly informed Dr Hasan of the specific allegation contained in the report (i.e. that he had a "vendetta" against the Mosque) during the discussion about the nature of the programme that took place in advance. It was Ofcom's opinion that it was not necessary for Dr Hasan to have seen the news report in advance, but Ofcom did consider that he should have been aware of the significant allegation it contained. Ofcom did not consider the broadcaster's argument that Dr Hasan would have been likely to have found out through the "close knit community" about the allegation contained in the report either relevant or sufficient: the responsibility for informing Dr Hasan about these allegations rested solely with the broadcaster.

Ofcom then went on to consider if Dr Hasan was able to respond within the programme to the specific allegation.

Ofcom noted that shortly after the report was shown, the presenter invited Dr Hasan to comment on it. Dr Hasan replied:

*"Well, there are a number of inaccuracies in what has been said so far...[I]t is absolutely frankly ridiculous to accuse them [me] of a personal vendetta against the Mosque. I've been part of the Mosque for thirty years, I've led the prayers for over twenty-five years, I've organised numerous activities there."*

*"I am sorry to say that clip [the news report] tried to blame everything on me, as Mehmud Patel has also tried to make this ridiculous accusation against me...[W]hat we have seen is actually a personal vendetta against me, actually. Which began last year and it's very sad that I am being accused of the reverse."*

Ofcom noted that Dr Hasan was able to express his views uninterrupted and was given over two minutes to talk specifically about the allegation and the background to the Charity Commission investigation. Ofcom assessed Dr Hasan's representation on its Preliminary View that he had to spend a period of this time to correct, as he saw it, the inaccuracy that Mr Patel was the Chairman of the Mosque. However, Ofcom considered that Dr Hasan was able to address the specific allegation that he had acted out of a "*vendetta*" fully during his time on the programme, as is set out above.

In addition, Ofcom considered that the allegation that he had a "*vendetta*" against the Mosque was in this particular case an allegation that Dr Hasan was able to respond to without prior consideration or consultation: it did not require reference to specific facts or information that would not have been available to him in the studio.

Taking these factors into account, Ofcom considered that Dr Hasan should have been informed prior to the recording of the programme that the news report would feature the specific allegation that he had a "*vendetta*" against the Mosque, and therefore Dr Hasan did not receive sufficient information about the allegation prior to the recording of the programme. However, in the particular circumstances as set out above, Dr Hasan was given an appropriate opportunity to respond during the course of the programme and he was, in this particular case, able to respond to the allegations satisfactorily without prior information. Given this, Ofcom took the view that on balance this programme was not likely to alter viewers' perceptions of Dr Hasan in a way that was unfair to him.

- c) Ofcom next considered if the panel of contributors was unfairly biased against Dr Hasan.

Ofcom considered the complaint that Dr Hasan was unjustly or unfairly treated in the programme as broadcast in that he was not informed of other likely contributions.

When considering this complaint Ofcom took into consideration Practice 7.3 of the Code which states that when a person is making a contribution to the programme they should normally be informed at an appropriate stage, wherever possible, of other likely contributions.

Ofcom took account of the broadcaster's representations that Dr Hasan was aware prior to the recording of the programme who the other guests would be, and that he could have withdrawn his informed consent prior to the recording, a point reiterated in its representations on Ofcom's Preliminary View.

Ofcom noted that on his complaint form Dr Hasan stated that on the morning of 11 June, hours before the recording, that he had been informed of two of the other guests, i.e. Mr Patel and Mr Hussain. Dr Hasan did not state whether he was aware if Judge Khurshid Drabu would also be a guest over the telephone.

It is very important to note that the Code does not require a broadcaster to present a parity of views across a studio discussion in order for a contributor to have been treated fairly. However, it is incumbent on broadcasters to ensure that informed consent is obtained by contributors to programmes. For instance, this may include being informed about, wherever possible, the nature of other likely contributions. Dr Hasan stated in his complaint form that he was aware that Mr Patel and his lawyer Mr Hussain were appearing on the programme and given

that he described them on his complaint form as “his opponent” and “his lawyer” it would seem likely that Dr Hasan would have expected them to express views that would have differed from his own. Dr Hasan chose to appear on the programme knowing who the other guests were and what their opinions were generally likely to be.

Ofcom therefore considered that, in light of the above, Dr Hasan had given his informed consent and that the broadcaster was fair in its dealings with Dr Hasan in this respect.

Ofcom also considered if Mr Rees conducted the discussion in a way that was fair to Dr Hasan. Ofcom carefully watched the programme and noted the following exchanges:

In one section of the programme Judge Drabu explained that he did not know the details of the Charity Commission investigation and was basing his opinions on press reports he had seen. Judge Drabu stated that there:

*“[D]oes not appear to be any real evidence as is disclosed in the letter written by the Charity Commission to Mr Imam Usama or any other communication that has appeared in the press which suggest that the Mosque is involved in recent times on any matter related to extremism or terrorism...And when, Usama, I heard him say that this is a problem that Muslims have throughout the country, I beg to differ. I think there are problems, there have been problems, but those problems have not necessarily been associated with Mosques.”*

Mr Patel stated that the terrorist link the Charity Commission were investigating was:

*“[M]ore than a decade old...[and goes] back to 2002/2003 when Usama himself was in charge.”*

The presenter then allowed Dr Hasan to respond, asking:

*“[C]an you understand why it is that they [the Charity Commission] are acting on events that are now, as I say, nearly a decade in the past?”*

Dr Hasan replied:

*“Well I think people are perhaps not as well informed as they could be, so firstly contrary to what the Judge said it’s not just an individual allegation, there have been many, many people that have complained to the Charity Commission over what has happened over the last year or so. And in fact, I can say this much is that during the dispute last year extremists from outside the Mosque certainly got involved, and were promoting all kind of ideas around the Mosque on their websites and through various other means and I believe the Charity Commission are aware of that. And I beg to differ from the Judge that we don’t have a problem of extremism in the Mosques.”*

Later in the programme, the following debate took place between Mr Patel and Dr Hasan:

Mr Patel: *“The problem with Usama is that whenever you disagree with Usama you become extremist, if you oppose him you become*

*terrorist.*

Dr Hasan: *That is not true.*

Mr Patel: *That is the way you always have operated.*

Dr Hasan: *That's not true I defended the Mosque against the Policy Exchange report, I was on Newsnight."*

During another exchange in the programme, Mr Hussain stated that:

*"[W]e cannot allow it [the Mosque] to be denigrated, be demonised simply because something happened ten years ago or something, so we need the Charity Commission to act very urgently."*

Dr Hasan then replied:

*"I have to come back on that, it was not just ten years ago, as I said last year there were some very serious things happen[ing]. Extremists from outside the Mosque came and distributed leaflets in the Mosque saying I should be killed for my views."*

The presenter later questioned Dr Hasan on this point, he asked:

Presenter: *"You say that people were distributing extremist literature outside the Mosque.*

Dr Hasan: *Inside the Mosque.*

Presenter: *And inside the Mosque. That can't necessarily be held to be the fault of the authorities in the Mosque."*

The exchange continued and at the end Dr Hasan stated:

Dr Hasan: *"That's a fair point but I don't want to go into the history in too much detail, but, the people distributing those leaflets clearly had strong links with some of the people inside the Mosque."*

Ofcom considered Dr Hasan's representations on its Preliminary View that Mr Rees acted in a partisan way in that he challenged Dr Hasan's views but not of the other guests; this was disputed by the broadcaster. Ofcom's assessment was that the debate was presented in an appropriate way that was fair to the contributors involved and Mr Rees' questions did not show any bias to any particular point of view.

Ofcom also listened carefully to the exchange in which Dr Hasan stated that Mr Patel referred to him as a "heretic" and considered the broadcaster's arguments on this issue. Ofcom agreed with the broadcaster that the word that was used was "erratic"; in any case if Dr Hasan had believed the word used was "heretic" he had adequate opportunity to challenge this in the course of the debate.

Ofcom considered each of these exchanges and the totality of the programme carefully and concluded that on each occasion a criticism of Dr Hasan was made, he was given an adequate chance to reply setting out his views and contradicting

any inaccuracies as he saw them. Ofcom therefore considered the broadcaster was fair in its dealings with Dr Hasan in this respect.

Having considered each of the specific heads of the complaint made by Dr Hasan that the programme portrayed him unfairly, Ofcom concluded that, overall, the broadcaster had taken reasonable care to give Dr Hasan a timely opportunity to respond to the significant allegations made about him in the programme and informed Dr Hasan of other likely contributions.

**Accordingly, Ofcom has not upheld Dr Hasan's complaint of unjust and unfair treatment in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 26 November 2012

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Adventure Time	Cartoon Network	30/09/2012	Violence and dangerous behaviour
Emmerdale	ITV1	17/10/2012	Scheduling
Heart Breakfast	Heart FM	01/10/2012	Disability discrimination/offence
My Babysitter's a Vampire	Disney Channel	27/09/2012	Exorcism, the occult and the paranormal
STV News at Six	STV	13/08/2012	Due impartiality/bias
The X Factor	ITV1	01/09/2012	Under 18s in programmes
Tim Shaw's The Wrong Show	Radio Aire	23/09/2012	Generally accepted standards

## Complaints Assessed, not Investigated

### Between 13 and 26 November 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
5 Live Sport	BBC Radio 5 Live	21/11/2012	Race discrimination/offence	1
8 Out of 10 Cats	Channel 4	05/11/2012	Generally accepted standards	3
999: What's Your Emergency?	Channel 4	12/11/2012	Generally accepted standards	1
Absolute Radio 80s	Absolute Radio 80s	15/11/2012	Generally accepted standards	1
Adult Channel	Adult Channel	05/11/2012	Sexual material	1
Advertisements	Various	n/a	Advertising minutage	2
Advertisements	Various	n/a	Advertising scheduling	1
Afternoon Drama: Selfless	BBC Radio 4	21/11/2012	Offensive language	1
Al Murray's One Night Stand	Dave	14/11/2012	Generally accepted standards	1
Alan Brazil Sports Breakfast	Talksport	09/11/2012	Race discrimination/offence	1
America Decides 2012	ITV1	06/11/2012	Generally accepted standards	1
Ax Men	History	11/11/2012	Offensive language	1
Ax Men	History	22/11/2012	Offensive language	1
BBC Digital promotion	BBC 1	19/11/2012	Outside of remit / other	1
BBC News	BBC 1	20/09/2012	Outside of remit / other	1
BBC News	BBC 1	09/11/2012	Generally accepted standards	2
BBC News	BBC 1	12/11/2012	Generally accepted standards	1
BBC News	BBC 1	17/11/2012	Outside of remit / other	1
BBC News	BBC 1	18/11/2012	Outside of remit / other	1
BBC News	BBC Channels	28/10/2012	Outside of remit / other	1
BBC News	BBC News Channel	14/11/2012	Outside of remit / other	6
BBC News	BBC News Channel	15/11/2012	Outside of remit / other	2
BBC News	BBC News Channel	17/11/2012	Outside of remit / other	1
BBC News	BBC News Channel	18/11/2012	Outside of remit / other	1
BBC News	BBC Radio 2	24/11/2012	Gender discrimination/offence	1
BBC News	BBC Radio 4	15/11/2012	Race discrimination/offence	1
BBC News	BBC Radio 4	16/11/2012	Outside of remit / other	1
BBC News	BBC Radio Cymru	15/11/2012	Outside of remit / other	1
BBC News 24	BBC News	n/a	Due impartiality/bias	1
BBC News at One	BBC 1	21/11/2012	Due accuracy	1

BBC News at Six	BBC 1	09/11/2012	Generally accepted standards	1
BBC News at Six	BBC 1	14/11/2012	Outside of remit / other	1
BBC News at Six	BBC 1	23/11/2012	Animal welfare	2
BBC News at Six	BBC 1	23/11/2012	Animal welfare	1
BBC News at Ten	BBC 1	15/11/2012	Outside of remit / other	1
BBC News at Ten	BBC 1	19/11/2012	Outside of remit / other	1
BBC News at Ten	BBC 1	21/11/2012	Outside of remit / other	1
BBC News at Ten	BBC 1 Wales	05/11/2012	Race discrimination/offence	1
Bet365bingo.com 's sponsorship of Emmerdale	ITV1	20/11/2012	Sponsorship	1
Bombardier's sponsorship of Dave	Dave	21/11/2012	Race discrimination/offence	1
Bombardier's sponsorship of Dave	Dave	22/11/2012	Animal welfare	1
Breakfast	BBC 1	20/11/2012	Animal welfare	1
Breakfast	Jack FM 106.5	19/11/2012	Offensive language	1
Breakfast Show	BBC Radio Jersey	09/11/2012	Due impartiality/bias	1
British Connection (trailer)	Film4	11/11/2012	Scheduling	1
Caroline Martin	BBC WM	12/11/2012	Generally accepted standards	1
Casualty	BBC 1	17/11/2012	Disability discrimination/offence	2
Casualty	BBC 1	17/11/2012	Harm	1
CBS News	Sky News	10/11/2012	Violence and dangerous behaviour	1
Celebrity Juice	ITV2	06/11/2012	Generally accepted standards	1
Celebrity Juice	ITV2	08/11/2012	Generally accepted standards	1
Channel 4 News	Channel 4	24/10/2012	Generally accepted standards	1
Channel 4 News	Channel 4	26/10/2012	Due impartiality/bias	20
Channel 4 News	Channel 4	07/11/2012	Due accuracy	1
Channel 4 News	Channel 4	12/11/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	14/11/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	16/11/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	18/11/2012	Due impartiality/bias	3
Channel 4 News	Channel 4	19/11/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	19/11/2012	Generally accepted standards	2
Channel 4's Comedy Gala	Channel 4	20/05/2012	Generally accepted standards	1
Channel promotion	ITV2	15/11/2012	Generally accepted standards	1
Channel promotion	ITV2	15/11/2012	Harm	1
Chat Girl TV	Adult Channel	17/11/2012	Sexual material	1
Chat Girl TV	Adult Channel	20/11/2012	Sexual material	2
Chat Girl TV X	GirlGirl	06/11/2012	Sexual material	13

Chat Girl TV X	GirlGirl	15/11/2012	Sexual material	1
Chat Girl TV X	GirlGirl	17/11/2012	Sexual material	3
Chat Girl TV X	GirlGirl	18/11/2012	Sexual material	1
Chat Girl TV X	GirlGirl	19/11/2012	Sexual material	1
Chat Girl TV X	GirlGirl	20/11/2012	Sexual material	1
Chat Girl TV X	GirlGirl	21/11/2012	Sexual material	2
ChatGirl TV	GirlGirl	04/11/2012	Participation TV - Offence	1
Children in Need	BBC 1	16/11/2012	Generally accepted standards	3
Children in Need	BBC 1	16/11/2012	Religious/Beliefs discrimination/offence	2
Chris Evans Breakfast Show	BBC Radio 2	16/11/2012	Generally accepted standards	1
Citizen Khan	BBC 1	27/08/2012	Religious/Beliefs discrimination/offence	168
Citizen Khan	BBC 1	03/09/2012	Religious/Beliefs discrimination/offence	34
Citizen Khan	BBC 1	10/09/2012	Religious/Beliefs discrimination/offence	16
Citizen Khan	BBC 1	17/09/2012	Religious/Beliefs discrimination/offence	22
Citizen Khan	BBC 1	24/09/2012	Religious/Beliefs discrimination/offence	7
Citizen Khan	BBC 1	01/10/2012	Religious/Beliefs discrimination/offence	7
Come Dine with Me	Channel 4	10/11/2012	Nudity	1
Come Dine with Me	Channel 4	14/11/2012	Scheduling	1
Come Dine with Me	Channel 4	21/11/2012	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV1	29/10/2012	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	09/11/2012	Sexual orientation discrimination/offence	1
Coronation Street	ITV1	12/11/2012	Generally accepted standards	1
Coronation Street	ITV1	12/11/2012	Sexual orientation discrimination/offence / Violence and dangerous behaviour	8
Coronation Street	ITV1	16/11/2012	Outside of remit / other	1
Coronation Street	ITV1	19/11/2012	Outside of remit / other	1
Coronation Street	ITV1	n/a	Gender discrimination/offence	1
Cowboy Builders	Channel 5	16/11/2012	Outside of remit / other	1
Crime Stories	ITV1	13/11/2012	Generally accepted standards	1
Crimewatch	BBC 1	21/11/2012	Generally accepted standards	1
Customs UK	Pick TV	04/11/2012	Materially misleading	1
Dara O Briain's Science Club	BBC 2	13/11/2012	Due impartiality/bias	1
Daybreak	ITV1	12/11/2012	Due impartiality/bias	1
Daybreak	ITV1	13/11/2012	Generally accepted standards	1

Daybreak	ITV1	19/11/2012	Due impartiality/bias	1
Deal or No Deal	Channel 4	12/11/2012	Sexual material	1
Debate Night	Ummah Channel	26/09/2012	Harm	1
Derren Brown: Apocalypse	Channel 4	26/10/2012	Crime	1
Derren Brown: Fear & Faith	Channel 4	09/11/2012	Disability discrimination/offence	1
Derren Brown: Fear & Faith	Channel 4	16/11/2012	Generally accepted standards	2
Derren Brown: Fear & Faith	Channel 4	16/11/2012	Materially misleading	1
Dickinson's Real Deal	ITV1	21/11/2012	Competitions	1
Dispatches: MPs: Are They Still At It?	Channel 4	19/11/2012	Generally accepted standards	1
Drivetime	Talksport	16/11/2012	Race discrimination/offence	1
EastEnders	BBC 1	22/11/2012	Race discrimination/offence	1
Emmerdale	ITV1	15/11/2012	Offensive language	1
Everyday	Channel 4	15/11/2012	Under 18s in programmes	1
Exposure	ITV1	17/10/2012	Materially misleading	1
Exposure (trailer)	ITV1	21/11/2012	Generally accepted standards	1
Exposure Update: The Jimmy Savile Investigation	ITV1	n/a	Outside of remit / other	1
Exposure Update: The Jimmy Savile Investigation	ITV1	21/11/2012	Outside of remit / other	1
Football coverage	ITV1	n/a	Undue prominence	1
Four Born Every Second	BBC 1	19/11/2012	Generally accepted standards	1
Fox News	Fox News	07/11/2012	Outside of remit / other	1
Foxy and Giuliano	Free Radio Birmingham	14/11/2012	Generally accepted standards	1
Geoff Lloyd's Hometown Show	Absolute Radio	12/11/2012	Age discrimination/offence	1
Get Well Soon	CBeebies	09/11/2012	Generally accepted standards	1
Girls	Sky Atlantic	22/10/2012	Generally accepted standards	1
Granada Reports	ITV1 Granada	02/11/2012	Scheduling	1
Great British Menu	BBC 2	07/05/2012	Animal welfare	1
Great Movie Mistakes	BBC 3	13/11/2012	Age discrimination/offence	1
Harry and Paul	BBC 2	28/10/2012	Sexual orientation discrimination/offence	1
Harry and Paul	BBC 2	11/11/2012	Generally accepted standards	1
Harry and Paul	BBC 2	11/11/2012	Race discrimination/offence	1
Heston's Fantastical Food	Channel 4	13/11/2012	Violence and dangerous behaviour	1
Hey Baby	Zee Cinema	11/11/2012	Outside of remit / other	1

Hollyoaks	Channel 4	14/11/2012	Materially misleading	1
Hollyoaks	Channel 4	15/11/2012	Violence and dangerous behaviour	1
How I Met Your Mother	E4	09/11/2012	Outside of remit / other	1
Hush	Film4	17/11/2012	Generally accepted standards	1
Ice Road Truckers	History	23/11/2012	Generally accepted standards	1
Iceland's sponsorship of I'm a Celebrity, Get Me Out of Here!	ITV1	n/a	Materially misleading	1
I'm a Celebrity Get Me Out of Here (Pre-TX)	ITV1	11/11/2012	Animal welfare	1
I'm a Celebrity, Get Me Out of Here Now!	ITV2	18/11/2012	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	13/11/2012	Disability discrimination/offence	1
I'm a Celebrity, Get Me Out of Here!	ITV1	13/11/2012	Drugs, smoking, solvents or alcohol	1
I'm a Celebrity, Get Me Out of Here!	ITV1	13/11/2012	Generally accepted standards	2
I'm a Celebrity, Get Me Out of Here!	ITV1	13/11/2012	Religious/Beliefs discrimination/offence	1
I'm a Celebrity, Get Me Out of Here!	ITV1	15/11/2012	Animal welfare	9
I'm a Celebrity, Get Me Out of Here!	ITV1	15/11/2012	Competitions	1
I'm a Celebrity, Get Me Out of Here!	ITV1	17/11/2012	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	17/11/2012	Voting	1
I'm a Celebrity, Get Me Out of Here!	ITV1	18/11/2012	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	18/11/2012	Generally accepted standards	8
I'm a Celebrity, Get Me Out of Here!	ITV1	18/11/2012	Outside of remit / other	1
I'm a Celebrity, Get Me Out of Here!	ITV1	19/11/2012	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV1	21/11/2012	Religious/Beliefs discrimination/offence	2
I'm a Celebrity, Get Me Out of Here!	ITV1	22/11/2012	Animal welfare	2
I'm a Celebrity, Get Me Out of Here!	ITV1	24/11/2012	Animal welfare	3
I'm a Celebrity, Get Me Out of Here! (trailers)	ITV1	n/a	Generally accepted standards	1
Is Islam Be a Solution for Humanity?	Peace TV	25/11/2012	Crime	1
ITV News and Weather	ITV1	18/11/2012	Due impartiality/bias	1
ITV News and Weather	ITV1	18/11/2012	Generally accepted standards	2
ITV News and Weather	ITV1	20/11/2012	Due impartiality/bias	1
ITV News at Ten and Weather	ITV1	20/11/2012	Due impartiality/bias	1
ITV News at Ten and Weather	ITV1	22/11/2012	Race discrimination/offence	1

ITV Yorkshire Weather sponsor credit	ITV1	n/a	Sponsorship credits	1
Jeff Randall Live	Sky News	22/10/2012	Violence and dangerous behaviour	1
Jeremy Vine	BBC Radio 2	22/10/2012	Scheduling	1
Johnny English	ITV1	04/11/2012	Religious/Beliefs discrimination/offence	1
Keeping Up Appearances	Gold	12/11/2012	Race discrimination/offence	1
KittyBingo.com's sponsorship of The Chase	ITV1	22/11/2012	Outside of remit / other	1
Last Tango in Halifax	BBC 1	20/11/2012	Religious/Beliefs discrimination/offence	1
Line of Duty	BBC 2	03/07/2012	Violence and dangerous behaviour	1
Line of Duty	BBC 2	10/07/2012	Generally accepted standards	1
Line of Duty	BBC 2	17/07/2012	Disability discrimination/offence	1
Line of Duty	BBC 2	17/07/2012	Violence and dangerous behaviour	1
London Tonight	ITV1 London	06/11/2012	Due impartiality/bias	1
Look North	BBC 1 North	20/11/2012	Generally accepted standards	1
Lorraine	ITV1	15/11/2012	Due impartiality/bias	1
Lorraine	ITV1	20/11/2012	Competitions	1
Lynx's sponsorship of Fresh Meat	Channel 4	06/11/2012	Generally accepted standards	1
Misfits	E4	12/11/2012	Race discrimination/offence	1
Mock The Week	Dave	18/11/2012	Generally accepted standards	1
MTV	MTV	24/10/2012	Offensive language	1
My Tattoo Addiction	Channel 4	18/10/2012	Materially misleading	1
Neighbourhood Blues	BBC 1	13/11/2012	Animal welfare	1
Neighbourhood Blues	BBC 1	14/11/2012	Materially misleading	2
News	BBC Radio 4	13/11/2012	Due impartiality/bias	1
News, Sport, Weather	Sky News	14/11/2012	Due impartiality/bias	1
Newsround	BBC 1	20/11/2012	Generally accepted standards	1
Newsround	CBeebies	16/11/2012	Outside of remit / other	1
Nickleby	BBC 1	05/11/2012	Generally accepted standards	1
Night Cops	Pick TV	10/11/2012	Disability discrimination/offence	1
Nybyggarna	Kanal 5	28/09/2012	Under 18s in programmes	1
P&O's sponsorship of ITV Drama	ITV1	04/11/2012	Sponsorship credits	1
Panorama	BBC 1	12/11/2012	Animal welfare	13
Paul Gambaccini - History of Music Radio	BBC Radio 2	20/11/2012	Outside of remit / other	1
Penis Envy	Pick TV	05/11/2012	Gender discrimination/offence	1

Phones 4U's sponsorship of Films on 4	Channel 4	11/11/2012	Generally accepted standards	13
Phones 4U's sponsorship of Films on 17	Channel 4	17/11/2012	Generally accepted standards	2
PM	BBC Radio 4	21/11/2012	Religious/Beliefs discrimination/offence	1
PM	BBC Radio 4	22/11/2012	Generally accepted standards	1
Police Commissioner advertisement	Comedy Central	18/10/2012	Political advertising	1
Police Commissioner advertisement	Dave	13/10/2012	Political advertising	1
Police Commissioner advertisement	ITV2	10/10/2012	Political advertising	1
Post Cymtaf	BBC Radio Cymru	15/11/2012	Outside of remit / other	1
Premier League Football	Sky Sports 1	11/11/2012	Disability discrimination/offence	1
Programming	BBC channels	n/a	Outside of remit / other	1
Question Time	BBC 1	08/11/2012	Outside of remit / other	1
Question Time	BBC 1	15/11/2012	Outside of remit / other	1
Radio Galaxy	Radio Galaxy	08/11/2012	Generally accepted standards	1
Random Acts	Channel 4	12/11/2012	Generally accepted standards	1
River City	BBC 1 Scotland	13/11/2012	Offensive language	1
Robbie Williams Live: Take the Crown	Sky1	25/11/2012	Materially misleading	1
Programming	Magic	10/11/2012	Violence and dangerous behaviour	1
Rude Tube	E4	15/11/2012	Generally accepted standards	1
Russell Howard's Good News	BBC 3	15/11/2012	Generally accepted standards	1
Russell Howard's Good News Extra	BBC 3	16/11/2012	Generally accepted standards	1
Saregamapa 2012	Zee TV	08/11/2012	Outside of remit / other	1
Secret State	Channel 4	21/11/2012	Religious/Beliefs discrimination/offence	1
Sky	Sky	n/a	Outside of remit / other	1
Sky News	Sky	n/a	Outside of remit / other	1
Sky News	Sky News	14/11/2012	Generally accepted standards	1
Sky News	Sky News	23/11/2012	Generally accepted standards	1
Sky News at 6 with Jeremy Thompson	Sky News	14/11/2012	Due impartiality/bias	1
Sky News at Ten	Sky News	14/11/2012	Due impartiality/bias	1
Sky Sports Super Sunday	Sky Sports 1	04/11/2012	Generally accepted standards	1
Some Girls	BBC 3	23/11/2012	Religious/Beliefs discrimination/offence	1
South East Today	BBC 1 South East	16/11/2012	Generally accepted standards	1

Spotlight	BBC 1	08/11/2012 09/11/2012	Fairness & Privacy	1
Stand Up To Cancer	Channel 4	18/10/2012	Outside of remit / other	1
Stand Up To Cancer	Channel 4	19/10/2012	Outside of remit / other	1
Programming	Starz TV	21/11/2012	Generally accepted standards	1
Storage Hunters	Dave	12/11/2012	Offensive language	1
Storm Late Night	Storm	01/11/2012	Sexual material	1
Storm Late Night	Storm	04/11/2012	Participation TV - Offence	1
Strictly Come Dancing	BBC 1	18/11/2012	Generally accepted standards	1
Strictly Come Dancing	BBC 1	18/11/2012	Scheduling	1
Strictly Come Dancing	BBC 1 Scotland	17/11/2012	Outside of remit / other	1
Strictly Come Dancing: It Takes Two	BBC 2	09/11/2012	Generally accepted standards	2
Suburgatory	Channel 4	17/11/2012	Sexual material	1
Sunday Brunch	Channel 4	18/11/2012	Generally accepted standards	1
Sunday Politics	BBC 1	11/11/2012	Generally accepted standards	2
Sunrise	Sky News	08/11/2012	Due impartiality/bias	1
Talk Talk's sponsorship of The X Factor	ITV1	n/a	Sponsorship credits	1
The All New Gadget Show	Channel 5	12/11/2012	Premium rate services	1
The All New Gadget Show	Channel 5	25/11/2012	Competitions	1
The Big Questions	BBC 1	25/11/2012	Religious/Beliefs discrimination/offence	1
The Chase	ITV1	13/11/2012	Outside of remit / other	1
The Chase	ITV1	14/11/2012	Generally accepted standards	1
The Departed	Film4	22/11/2012	Scheduling	1
The Division (trailer)	CBS Action	08/11/2012	Offensive language	1
The Graham Norton Show	BBC 1	02/11/2012	Offensive language	1
The Hour	BBC 2	21/11/2012	Religious/Beliefs discrimination/offence	1
The Inbetweeners	E4	13/11/2012	Animal welfare	1
The Jeremy Kyle Show	ITV1	12/11/2012	Violence and dangerous behaviour	1
The Jeremy Kyle Show	ITV1	15/11/2012	Religious/Beliefs discrimination/offence	1
The Jeremy Kyle Show	ITV1	15/11/2012	Scheduling	1
The Jeremy Kyle Show	ITV1	16/11/2012	Disability discrimination/offence	1
The Jeremy Kyle Show	ITV1	23/11/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	12/11/2012	Materially misleading	1
The Jeremy Kyle Show	STV	12/11/2012	Under 18s in programmes	1
The Non League Football Show	BBC Radio 5 Live	11/11/2012	Materially misleading	1

The Now Show	BBC Radio 4	09/11/2012	Generally accepted standards	1
The One Show	BBC 1	19/11/2012	Generally accepted standards	1
The Only Way is Essex	ITV	n/a	Materially misleading	1
The Paul Franks Show	BBC WM	13/11/2012	Due impartiality/bias	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	19/11/2012	Generally accepted standards	1
The Real Housewives of New York City	ITV2	20/11/2012	Scheduling	1
The Sex Education Show	More4	19/11/2012	Gender discrimination/offence	1
The Simpsons	Channel 4	12/11/2012	Outside of remit / other	1
The Simpsons	Channel 4	12/11/2012	Race discrimination/offence	1
The Simpsons	Channel 4	20/11/2012	Race discrimination/offence	1
The Simpsons	Sky1	14/11/2012	Offensive language	1
The Store	ITV1	18/11/2012	Outside of remit / other	1
The Thick of It	BBC 2	29/09/2012	Religious/Beliefs discrimination/offence	1
The Today Programme	BBC Radio 4	21/11/2012	Outside of remit / other	1
The Work Experience	E4	14/11/2012	Religious/Beliefs discrimination/offence	3
The Work Experience	E4	16/11/2012	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	07/11/2012	Due impartiality/bias	1
The Wright Stuff	Channel 5	12/11/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	20/11/2012	Sexual orientation discrimination/offence	1
The X Factor	ITV1	10/11/2012	Offensive language	2
The X Factor	ITV1	10/11/2012	Scheduling	12
The X Factor	ITV1	17/11/2012	Flashing images/risk to viewers who have PSE	1
The X Factor	ITV1	17/11/2012	Generally accepted standards	1
The X Factor	ITV1	17/11/2012	Scheduling	1
The X Factor	ITV1	17/11/2012	Voting	1
The X Factor	ITV1	24/11/2012	Generally accepted standards	32
The X Factor	ITV1	24/11/2012	Voting	1
The X Factor (Trailer)	ITV1	23/11/2012	Due accuracy	1
The X Factor Results Show	ITV1	07/10/2012	Offensive language	1
The X Factor Results Show	ITV1	11/11/2012	Generally accepted standards	3
The X Factor Results Show	ITV1	11/11/2012	Materially misleading	2
The X Factor Results Show	ITV1	18/11/2012	Advertising/editorial distinction	1
The X Factor Results Show	ITV1	18/11/2012	Voting	19

The X Factor Results Show	ITV1	25/11/2012	Sexual material	1
The X Factor Results Show	ITV1	25/11/2012	Violence and dangerous behaviour	1
The X Factor Results Show	ITV2	19/11/2012	Offensive language	1
This Morning	ITV1	02/11/2012	Crime	1
This Morning	ITV1	07/11/2012	Materially misleading	1
This Morning	ITV1	16/11/2012	Due impartiality/bias	23
This Morning	ITV1	16/11/2012	Generally accepted standards	1
This Morning	ITV1	22/11/2012	Generally accepted standards	2
This Morning	ITV1	23/11/2012	Generally accepted standards	13
Thought for the Day	BBC Radio 4	16/11/2012	Generally accepted standards	1
Titanic	Film4	13/10/2012	Nudity	1
Tool Academy (trailer)	E4	22/11/2012	Offensive language	1
Transsexual Teen, Beauty Queen	BBC 3	20/11/2012	Generally accepted standards	1
GirlGirl	GirlGirl	05/11/2012	Sexual material	1
GirlGirl	GirlGirl	05/11/2012	Sexual material	1
Vegas Stripped	Travel Channel	07/11/2012	Scheduling	1
Virgin Holidays' sponsorship of London Weekday Weather	ITV1	19/11/2012	Generally accepted standards	1
Virgin Holidays' sponsorship of London Weekday Weather	ITV1	20/11/2012	Race discrimination/offence	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	20/11/2012	Sponsorship	1
You've Been Framed!	ITV1	10/11/2012	Religious/Beliefs discrimination/offence	2
You've Been Framed!	ITV1	17/11/2012	Animal welfare	1
You've Been Framed!	ITV2	14/11/2012	Disability discrimination/offence	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 22 November and 5 December 2012.

Programme	Broadcaster	Transmission Date
Advertising minutage	ARY News	Various
Advertising minutage	S4C	10/11/2012
Advertising minutage	Trace Sports	25/09/2012
Advertising scheduling	Bloomberg TV	17/10/2012
Ax Men	History	02/11/2012
Deadly Deals	Vox Africa	10/11/2012
Discussion Show	Sikh Channel	04/11/2012
Download Festival 2012	Sky Arts 1	24/11/2012
I'm a Celebrity, Get Me Out of Here!	ITV1	27/11/2012
Jackpot247	ITV1	22/11/2012
Panorama: What Next For Craig?	BBC1	12/11/2007
Programming	Sikh Channel	18/10/2012
Rude Tube	E4	28/11/2012
Russ Williams	Absolute Classic Rock	28/11/2012
Sikh Channel Report	Sikh Channel	18/10/2012
Star Parivaar Live (trailer)	Star Plus	24/11/2012
The Charity Show	Ramadan TV	03/08/2012
The X Factor Results Show	ITV1	18/11/2012
World Wrestling Entertainment Superstars	Sky1	10/11/2012

**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/>.