

# **Ofcom Broadcast Bulletin**

**Issue number 225  
4 March 2013**

# Contents

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

## Notice of Sanction

<b>Miss Arab London 2011</b> <i>Al-Alamia TV, 7, 14, 21 and 29 October 2011</i>	6
------------------------------------------------------------------------------------	---

## Standards cases

### In Breach

<b>Northern Birds, Essex Babes, Sportxxx Girls, and Livexxx Babes</b> <i>Northern Birds (Channel 935), Essex Babes (Channel 936), Sportxxx Girls (Channel 940) and Livexxx Babes (Channel 942), 24 September to 8 February 2013, various times throughout the day</i>	8
<b>Sikh Channel Report</b> <i>Sikh Channel, 18 October 2012, 21:40</i>	15
<b>WWE Superstars</b> <i>Sky 1, 10 November 2012, 09:00</i>	23
<b>Ice Road Truckers</b> <i>History, 23 November 2012, 20:00</i>	27
<b>Russ Williams</b> <i>Absolute Classic Rock, 28 November 2012, 16:12</i>	31
<b>Viewer competition</b> <i>True Movies, True Movies 2, True Entertainment, 20 to 22 October 2012</i>	34
<b>Shastho Protidin</b> <i>NTV, 3 November 2012, 16:00 to 17:00</i>	38

## Advertising Scheduling cases

### In Breach

<b>Advertising minutage</b> <i>ARY QTV, 5 October 2012, 01:00</i>	42
<b>Advertising minutage</b> <i>RT, 2 October to 7 December 2012, various times</i>	45
<b>Breach findings table</b> <i>Code on the Scheduling of Television Advertising compliance reports</i>	47

## Fairness and Privacy cases

### Not Upheld

**Complaint by Miss Zoe Alexander**  
*The X Factor, ITV1, 18 August 2012* 48

**Complaint by Mr Glenn Smith**  
*The X Factor, ITV1, 18 August 2012* 59

**Complaint by Mr Shaun Tudor**  
*East Midlands Today, BBC1 East Midlands, 7 September 2012* 65

**Other Programmes Not in Breach** 70

**Complaints Assessed, Not Investigated** 71

**Investigations List** 80

## Introduction

Under the Communications Act 2003 (“the Act”), 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. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by ATVOD and the ASA on the basis of their rules and guidance for ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the 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.
- 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>3</sup>.
- 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 can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters and ODPS, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

---

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

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

<sup>3</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.

licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

**It is Ofcom's policy to describe fully the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.**

## Notice of Sanction

### Miss Arab London 2011

*Al-Alamia TV, 7, 14, 21 and 29 October 2011*

---

#### Introduction

Al-Alamia TV is a London-based Arab culture and entertainment channel which broadcasts<sup>1</sup> in Arabic and English. The licence for Al-Alamia TV is held by Biditis Limited (“the Licensee”).

In October 2011, Al-Alamia TV held a beauty pageant called *Miss Arab London 2011*. The accompanying television series comprised three pre-recorded episodes broadcast on 7, 14 and 21 October 2011 and a final broadcast live on 29 October 2011. The programmes invited viewers to vote for their favourite contestant via a premium rate text message. The programmes also contained segments about a number of businesses which the contestants had visited.

#### Summary of Decision

Ofcom’s Finding published on 9 July 2012 in issue 207 of the Broadcast Bulletin<sup>2</sup> found the programmes in breach of the following Code rules:

- Rule 2.13: “Broadcast competitions and voting must be conducted fairly.”
- Rule 2.14: “Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.”
- Rule 9.4: “Products, services and trade marks must not be promoted in programming.”
- Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
  - the manner in which a product, service or trade mark appears or is referred to in programming.”
- Rule 9.8: “Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster.”

---

<sup>1</sup> Between October 2010 and 7 July 2012 the channel was broadcasting via the Nilesat satellite to parts of southern Europe and the Middle East. Between October 2010 and December 2011 the channel was also broadcasting to Europe via the Hotbird satellite. The channel is not currently broadcasting via satellite. A live stream was also available on Al-Alamia TV’s website, however, on 7 July 2012 the live stream was replaced by a two hour acquired documentary repeating on a loop.

<sup>2</sup> Issue 207 of Ofcom’s Broadcast Bulletin, 9 July 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb209/obb209.pdf>.

- Rule 9.9: “References to placed products, services and trade marks must not be promotional.”
- Rule 9.10: “References to placed products, services and trade marks must not be unduly prominent.”
- Rule 9.14: “Product placement must be signalled clearly, by means of a universal neutral logo, as follows:
- a) at the beginning of the programme in which placement appears;
  - b) when the programme recommences after commercial breaks; and
  - c) at the end of the programme.”

In addition, the Licensee admitted to Ofcom that it had not had any third party verification arrangements in place for its use of premium rate telephony services (“PRS”) in this series. Ofcom therefore found the Licensee in breach of Licence Condition 6(A)(3)(b) (third party verification for PRS in voting) which states:

“Where the Licensee uses a Controlled Premium Rate Service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures include a system of verification by an appropriate independent third party...”

Ofcom decided that the Code and licence condition breaches were so serious that a financial penalty should be imposed in accordance with Ofcom’s Procedures for the consideration of statutory sanctions.

In accordance with Ofcom’s Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£30,000** on Biditis Limited in respect of the Code and licence condition breaches (payable to HM Paymaster General).

The full adjudication is available at:

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

## Standards cases

### In Breach

#### **Northern Birds, Essex Babes, Sportxxx Girls, and Livexxx Babes**

*Northern Birds (Channel 935), Essex Babes (Channel 936), Sportxxx Girls (Channel 940), and Livexxx Babes (Channel 942), 24 September to 8 February 2013, various times throughout the day*

---

#### **Introduction**

The services Northern Birds (Sky channel 935), Essex Babes (Sky channel 936), Sportxxx Girls (Sky channel 940) and Livexxx Babes (Sky channel 942) all transmit interactive daytime chat and ‘adult chat’ advertising content. These services are freely available without mandatory restricted access and are situated in the ‘adult’ section of the electronic programme guide of the Sky digital satellite platform (“Sky EPG”). Viewers are invited to contact on-screen presenters via premium-rate telephony services (“PRS”). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers. The licences for Northern Birds, Sportxxx Girls, Essex Babes and Livexxx Babes (together the “SEL licensed services”) are all held by Satellite Entertainment Limited (“SEL” or “the Licensee”).

Ofcom received a complaint that, throughout the day and across all these channels, on-screen references were made to the website ‘bluebird.tv’ by means of a graphic giving the URL of the website positioned in the bottom left-hand corner of the screen. The complainant said that on accessing the website there were no access restrictions, and that users were directed to “freely accessible R18 equivalent content” by clicking on “any number of links”.

Ofcom noted that, across the four SEL licensed services and throughout the day, an on-screen text graphic providing contact information for the Bluebird service was positioned centrally at the base of the screen. The left-hand side of this graphic showed the bluebird.tv website URL above the chat service’s phone number, and to the right was the Bluebird TV logo. Also visible on screen, at all times and across all channels, were the contact telephone numbers for text services (to the right-hand side of the graphic), and a photograph of the female model currently presenting the broadcast. From Ofcom’s examination of the broadcast material, it appeared that no verbal references to the website URL were made by the presenters.

After receipt of the complaint Ofcom researched the bluebird.tv website and noted and retained records, including screenshots, of the following.

The bluebird.tv website consisted of a homepage containing a number of tab-style links to Bluebird branded content. There were no access restrictions – other than responding “OK” to a pop-up box on first visiting the site to confirm that the user was over 18 years of age. The “Bluebird HQ” tab, positioned at the top right-hand side of the screen, took the user to the “Bluebird Films” landing page, at the URL bluebirdfilms.com. This page contained a user “agreement”, with two corresponding buttons for the user to accept the “agreement” (“I Agree: ENTER”, and so proceed to the “Bluebird Films” homepage) or to not accept the agreement (“I Disagree: EXIT”, and so not proceed to the “Bluebird Films” homepage).

Ofcom observed that this website contained explicit pornographic material (equivalent to the British Board of Film Classification (“BBFC”) R18-rated content<sup>1</sup>). Registration and age verification by means of using a credit card (holders must be over 18 years of age) was only required if the user wished to become a member of the premium Bluebird service.

Two types of explicit pornographic material could be accessed and viewed from the “Bluebird Films” homepage.

The first type, on initially accessing the “Bluebird Films” website, consisted of an embedded video player positioned in the centre of the screen, which automatically played a video clip. The player showed a 50-second video clip, the first 30 seconds of which featured edited ‘glamour’ shots of scantily clad or naked women, kissing, touching and posing in an erotic way. The final 20 seconds of the clip, however, featured explicit sexual material involving shots of oral sex, vaginal penetration, and the use of sex toys for sexual stimulation or penetration – some of which were in close-up.

The second type of pornographic material was accessible at the bottom of the page (beneath the player containing the video material described immediately above) and consisted of 17 photographic hyperlinks under the heading “Bluebird Films Hot Movies”. These links promoted pornographic films that could be viewed in full by purchasing premium Bluebird membership or by purchasing the associated DVD product (from the “Buy DVD’s [sic]” tab positioned at the top of the page). Clicking on these photographic hyperlinks led the user through to “teaser” videos, each between about one and two minutes in length, promoting the full film to which the photographic hyperlink corresponded. These teaser videos featured explicit sexual material including vaginal penetration, oral sex, and masturbation – some of which was again in close-up.

Since 1 September 2010, all PRS-based daytime and adult chat television services have been regulated by Ofcom as long-form advertising, i.e. teleshopping. From 1 September 2010 the relevant standards code for such services has been the UK Code of Broadcast Advertising (“the BCAP Code”).

Ofcom was concerned that these promotional references to the bluebird.tv website were broadcast throughout the day across the four services. Ofcom considered this raised issues warranting investigation under BCAP Code Rule 30.3, which states:

“Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”<sup>2</sup>

## Response

Ofcom did not consider it necessary to seek formal comments from the Licensee prior to reaching its Preliminary View in this case. Ofcom provided its Preliminary

---

<sup>1</sup> The ‘R18’ category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. ‘R18’ videos may not be supplied by mail order.

<sup>2</sup> “Behind mandatory restricted access on adult entertainment channels” is interpreted with reference to Rule 1.18 of the Ofcom Broadcasting Code.

View to the Licensee on 7 December 2012.

In its response to the Preliminary View, SEL denied any breach. The Licensee said that “the bluebird TV website broadcasts only content that that it simultaneously airs on the above Satellite TV Ltd owned channels that fall under your jurisdiction” and that it was “at a loss as to understand the basis of the allegations” by Ofcom that the Licensee had breached BCAP Code Rule 30.3 in this case. The Licensee said that “[t]here are no links to, or promotions of sexually explicit content on this site [Bluebird TV]” but that “there are however topless images of our models that conform to established newspaper publishing standards”.

In addition, referring specifically to the material accessed via the Bluebird HQ tab located on the Bluebird TV website, the Licensee stated that “this as the language indicates [is] a page designed to deliver information about the world behind the scenes in a broadcast facility” and “in the event of...seeking to promote R18 strength content it is very unlikely we would secure any sales from such a tab”.

## 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 “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both daytime and ‘adult chat’ services.

In particular Rule 30.3 states that:

“Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention on Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

On 27 July 2011 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the “Chat Service Guidance”)<sup>3</sup>. The Chat Service Guidance clearly sets out

---

<sup>3</sup> The latest version of the Chat Service Guidance (4 February 2013) is available at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>. Ofcom has considered this decision by reference to the version of the Chat Service Guidance applicable at the relevant time, namely the version published on 27 July 2011.

what Ofcom considers to be acceptable to broadcast on these services pre- and post-watershed. In particular, the Chat Service Guidance states under the heading “Website references” and under Rule 30.3 of the BCAP Code that:

“Ofcom licensed services that are broadcast without mandatory restricted access must not promote websites that contain material within the recognised character of pornography.”

Ofcom has also made clear in previous sanctions decisions and published findings under the Code that, in no circumstances, should websites containing unprotected R18 material be promoted on a licensed service<sup>4</sup>.

#### Promotion of a website

Ofcom’s examination of material across the SEL licensed services – both pre-watershed (in this case, 15:00 to 15:30) and immediately post-watershed (in this case, 21:00 to 21:30) – showed the bluebird.tv website URL was present on screen as described above throughout the broadcasts at these times. In Ofcom’s view, the continued on-screen references to the bluebird.tv website URL for at least the period 24 September 2012 to 8 February 2013 both during daytime and the period after the 21:00 watershed clearly amounted to promotions of the bluebird.tv website, its related video content material, and associated products as detailed below – including, but not exclusively, membership of the Bluebird premium service and the sale of related DVDs. The on-screen references to the bluebird.tv website were therefore advertising these products.

In Ofcom’s view, SEL promoted the bluebird.tv website within its licensed television services as a means for viewers to purchase membership of the Bluebird premium service, available from the Bluebird Films website (accessible through the “Bluebird HQ” tab), which offers access to both its exclusive adult film content and live webcams, and to purchase adult DVDs.

The on-air promotional references to the website were clearly broadcast advertising content.

#### Containing material within the recognised character of pornography

Ofcom considered next whether the on-screen promotion of the bluebird.tv website URL was an advertisement for a product “within the recognised character of pornography”.

On reviewing the website following receipt of the complaint, Ofcom found that access to the bluebird.tv site was possible without age verification, and led to a homepage which streamed one of the Bluebird TV linear channels. It prominently displayed five tabs, which each took a user directly to five Bluebird-branded web services. One of these, as indicated by the name on the tab, was Bluebird HQ. Bluebird HQ shares common branding with Bluebird TV and the tab linked through to Bluebird Films, which offered premium film membership services, R18 equivalent pornographic trailers and DVD sales. Ofcom noted that the “Bluebird Films” homepage contained video content that featured, among other things, but not exclusively, video images of vaginal penetration and oral sex – some of which was shown in close-up. Two types

---

<sup>4</sup> For example, see the £25,000 fine imposed on RHF Productions Limited on 18 May 2009: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/rhfportland.pdf>.

of explicit sexual material could be accessed and viewed from the “Bluebird Films” homepage, as summarised already in the introduction to this finding.

The first type, on initially accessing the “Bluebird Films” website, automatically played from an embedded player positioned in the centre of the homepage. The player showed a 50-second video clip, the final 20 seconds of which featured explicit sexual material involving shots of oral sex, vaginal penetration, and the use of sex toys for sexual stimulation or penetration – some of which were in close-up.

The second type of material could be accessed from the “Bluebird Films” homepage. At the bottom of the page, beneath the player containing the video material described immediately above, were 17 photographic hyperlinks. These were under the heading “Bluebird Films Hot Movies”, and promoted pornographic films that could be viewed in full by purchasing premium Bluebird membership or by purchasing the associated DVD product (from the “Buy DVD’s [sic]” tab positioned at the top of the page). Clicking on these photographic hyperlinks led the user through to teaser videos, each between about one and two minutes in length, promoting the full film to which the photographic hyperlink corresponded. These teaser videos featured explicit sexual material including actual vaginal penetration, oral sex, and masturbation – some of which was again in close-up.

From the “Bluebird Films” homepage, it was also possible for users to click on tabs to watch video profiles of female models, click through to ‘live chat’ services, or to purchase related DVDs.

In Ofcom’s view, the on-screen references to the bluebird.tv website were therefore advertising for products which were evidently “within the recognised character of pornography”. Ofcom therefore found that the Licensee’s contention that the only content on the Bluebird TV website was that which simultaneously aired on the SEL licensed services was incorrect.

Ofcom also noted that users visiting bluebird.tv and clicking on the “Bluebird HQ” tab (through to the “Bluebird Films” website) were warned before access that they should be 18 years of age or over if visiting the sites. However, at no point during the user journey from bluebird.tv’s URL to the pornographic material observed by Ofcom at “Bluebird Films” (clicking through from the Bluebird HQ tab) was there an adequate age verification system that would prevent those under 18 from accessing the material described above.

Ofcom noted SEL’s argument that “in the event of...seeking to promote R18 strength content it is very unlikely we would secure any sales from such a tab”.

However, Ofcom disagreed with this view. As noted above, the description of the Bluebird HQ tab contained in the Licensee’s response to the Preliminary View does not accord with the evidence collected by Ofcom. The fact that the “Bluebird HQ” tab linked to the “Bluebird Films” website was a clear promotion of the “Bluebird Films” brand and the content it offered, some of which was equivalent to R18 in strength. The ability for users to purchase premium Bluebird membership, or to purchase related DVDs, through clicking on tabs on the Bluebird Films homepage, provided a commercial opportunity to achieve sales of these products.

#### Mandatory restricted access

Under Rule 30.3 advertisements for products within the recognised character of pornography are permitted behind mandatory restricted access on adult

entertainment channels only. Section 30 of the BCAP Code states that:

““Behind mandatory restricted access on adult entertainment channels” is interpreted with reference to Rule 1.18 of the Ofcom Broadcasting Code.”

Rule 1.18 of the Code carefully restricts the broadcast of “adult sex material” to channels operating with mandatory restricted access and underlines that for this access to be appropriate “measures must be in place to ensure that the subscriber is an adult”. Rule 1.18 makes clear in giving the meaning of “mandatory restricted access” that this must consist of “a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view”.

Although the four SEL licensed services in this case are within the ‘adult’ section of the Sky EPG, they are broadcast unencrypted and without mandatory restricted access. Ofcom therefore considered that these advertisements for products within the recognised character of pornography were shown on the SEL licensed services without mandatory restricted access as required by Rule 30.3 of the BCAP Code.

#### Changes to the bluebird.tv website following Ofcom’s Preliminary View

Following receipt of SEL’s comments on Ofcom’s Preliminary View in this case, Ofcom noted that each of the SEL licensed services continued to promote the Bluebird.tv website in the manner described above. Ofcom further researched the bluebird.tv website in December 2012 and January 2013. Ofcom noted several changes to the website. The bluebird.tv homepage featured the “Bluebird HQ” tab as before but a significant change was that, when the user clicked on the “Bluebird HQ” tab, the tab linked to a new page marked “Bluebird HQ”, and a new URL, bluebirdhq.com (instead of linking through directly to the “Bluebird Films” homepage as previously). This “Bluebird HQ” landing page was blank except for five tabs marked “Intro”, “The Network”, “The Jobs”, “The Show” and “The Forum”, and the tagline, “We bring the show...and this is how we do it!”

If the user clicked on the tab marked “The Forum”, the tab linked to a new page, “babeshows.com”, which had the functionality and appearance of an online message board. At the top of the page, above the message board text, were seven tabs (“Bluebird Films”, “Glambirds”, “PC PORN”, “Babe Channel Babes”, “Bluebird Live”, “Bluebird TV”, and “Bluebird Movies”). Clicking on the “Bluebird Films” tab took the user to the “Bluebird Films” website, which – as discussed above – allowed users to view without access restrictions the two forms of explicit pornographic material already described: the first autoplayed on the Bluebird Films homepage, and secondly the short “teaser” films which promoted content that could be accessed through premium membership or DVD purchase.

Therefore – despite the changes detailed above to the “Bluebird HQ” tab on the bluebird.tv website – the explicit sexual material referred to in this finding on the Bluebird Films URL could still be viewed without access restrictions from the “Bluebird HQ” tab on the bluebird.tv website. Each of the SEL licensed services continued to promote the bluebird.tv website during this period. As of 8 February 2013, the bluebird.tv website continued to be promoted on each of the SEL licensed services.

## Conclusion

For the reasons set out above, the continued and repeated broadcast of promotional references to the bluebird.tv website on Northern Birds, Essex Babes, Sportxxx Girls and Livexxx Babes from at least 24 September 2012 to 8 February 2013 breached Rule 30.3 of the BCAP Code.

Ofcom notes the changes, as outlined above, that have taken place on the bluebird.tv website, and in particular the changes made to the “Bluebird HQ” tab since 7 December 2012, when we sent the Licensee our Preliminary View on this case. Despite the changes, the R18 equivalent material on the Bluebird Films website – which a user can view by selecting the “Bluebird HQ” tab on the bluebird.tv homepage, visiting “The Forum” tab, and then selecting the “Bluebird Films” tab – remains easily accessible without restricted access. Ofcom therefore considered that the breach of Rule 30.3 of the BCAP Code was ongoing.

The broadcast of an advertisement, on channels without mandatory restricted access, for a website containing pornographic material, is a serious breach of the BCAP Code. Ofcom is particularly concerned that the Licensee in these instances broadcast, for extended periods both during daytime and immediately after the watershed when children were available to view (some unaccompanied), on-screen references to a website which led to R18 equivalent material without any access restrictions.

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

## **Breaches of BCAP Code Rule 30.3**

## In Breach

### Sikh Channel Report

*Sikh Channel, 18 October 2012, 21:40*

---

#### Introduction

The Sikh Channel is in the religious section of the Sky Electronic Programme Guide (EPG), and the channel is aimed at the Sikh community in the UK. The licence for the Sikh Channel is held by TV Legal Limited (“TV Legal” or “the Licensee”). This programme was a live transmission, broadcast in Punjabi, and consisted mainly of the performance of commemorative songs broadcast from a Gurdwara<sup>1</sup> located in Coventry.

A complainant alerted Ofcom to a lecture which was also included in the programme. According to the complainant, a speaker appeared in front of a poster which had the words “*Babbar Khalsa International*” (“BKI”) written on it, and “talked effusively” about the Sikh militant Talwinder Singh Babbar (or Talwinder Singh Parmar<sup>2</sup>), the founder of the BKI, which is a proscribed terrorist organisation in the UK<sup>3</sup>. (Talwinder Singh Parmar was born in 1944 and was the overall chief of the BKI. The official Canadian Commission of Inquiry into the bombing of Air India flight 182 in 1985 – in which 329 people were killed – concluded in 2010 that: “Talwinder Singh Parmar was the leader of the Babbar Khalsa, a pro-Khalistan organisation at the heart of radical extremism, and it is now believed that he was the leader of the conspiracy to bomb Air India flights.”<sup>4</sup> Talwinder Singh Parmar was killed in an encounter with police in India in 1992. Details of this encounter are disputed.)

Ofcom commissioned a transcript of the programmes, translated into English by an independent translator. Having carefully considered the transcript, we noted that this programme consisted predominantly of commemorative songs, sung in classical Gurumukhi<sup>5</sup> and Sanskrit, in front of a congregation in a Gurdwara. During the programme, we noted a young male speaker wearing a Sikh turban deliver a 20-minute lecture in Punjabi and English, while standing in a pulpit in front of a poster, bearing the slogan “*Babbar Khalsa International*”. Although the whole poster was not included in shot, the television audience would have seen on the poster behind the

---

<sup>1</sup> A Gurdwara is a Sikh place of worship.

<sup>2</sup> Ofcom noted that the programme used the words “*Talwinder Singh Babbar*”, whereas the Licensee used the term Talwinder Singh Parmar. In this Finding, we use both versions of the name.

<sup>3</sup> Babbar Khalsa International is also known as Babbar Khalsa. The Home Office List of Proscribed Organisations, 23 November 2012, includes Babbar Khalsa and states that: “BK [Babbar Khalsa] is a Sikh movement that aims to establish an independent Khalistan [or Sikh homeland] within the Punjab region of India.” See: <http://www.homeoffice.gov.uk/publications/counter-terrorism/proscribed-terror-groups/terror-groups-proscribed?view=Binary>.

<sup>4</sup> *Air India Flight 182: A Canadian Tragedy*, Report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, 17 June 2010, [http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/air\\_india/2010-07-23/www.majorcomm.ca/en/reports/finalreport/readers-guide.pdf](http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/air_india/2010-07-23/www.majorcomm.ca/en/reports/finalreport/readers-guide.pdf).

<sup>5</sup> Classical Gurumukhi is a form of Punjabi.

speaker the bottom half of a photograph of an individual armed with what appeared to some form of machine gun. At one point during the lecture, the speaker referred to this photograph as being of Talwinder Singh Babbar.

The speaker introduced his lecture as follows:

*"This programme has been arranged in the memory of the martyrs and what they did, and in particular I want to tell you about the martyr Brother Talwinder Singh Babbar."*

During the lecture the speaker recounted moments from Talwinder Singh Babbar's life<sup>6</sup>. For example, we noted that the speaker made the following statements:

*"Going back to what I was saying, Brother Talwinder Singh Babbar was seeking martyrdom and what he did... Those who joined him, he would tell them that those Sikhs who joined the Amrit [eternal] Sikhs were not allowed to err; some of these made mistakes and he used to beat them up saying, "Why did you make mistake? Will you do it again? If you will, you will be beaten up and only then you will be allowed to remain a member of the Amrit Sikhs." He was devoted to such an extent."*

\*\*\*\*

*"The Sikhs who lived with [Talwinder Singh Babbar] tell that if you told him that there were 32 policemen with AK-47 rifles outside waiting to arrest him, the respected Brother [Talwinder Singh Babbar] was the sort of person who would go out to meet them; he wouldn't stop and sit there but say, "Let's go and fight with them." He had so much courage! You can see when you look at his face that his forehead reflects glory. His face reflects divine illumination. These are pure martyr devoted Sikhs. They have the Sikh spiritual narration inside them and a trust in this spirit."*

\*\*\*\*

*"Some Singhs [devoted Sikhs] said [to Talwinder Singh Babbar] in the nineties, "Don't come back to India because it is a bit hot at the moment"; a lot of Babbar Akalis were being killed, er, being martyred at that time but the respected Brother [Talwinder Singh Babbar] didn't heed that request and he said, "What's the point of stepping back? I will fight in the frontline." And respected Brother [Talwinder Singh Babbar] went to India for the last time and we know what respected Brother was saying all that time. They [the militants] were hung upside down; they were caught and they were shot."*

\*\*\*\*

*"Brother Talwinder Singh Babbar, it is his martyrdom day tomorrow, they were walking and talking Khalistanis and that is what we need to be like."*

Ofcom considered that the material raised issues warranting investigation under Rule 2.3 of the Code. This was in summary because the speaker made comments warmly praising a former leader of a proscribed terrorist organisation, which might be regarded as offensive. Rule 2.3 states:

---

<sup>6</sup> Talwinder Singh Babbar (also known as Talwinder Singh Parmar) died in 1992.

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

Ofcom therefore requested comments from the Licensee on how the material complied with this rule.

## Response

TV Legal said that this programme was broadcast from a Gurdwara in Coventry and showed a “barsi (special commemoration) of the Shaheedi Vivas (Martyrdom Day) of Harjinder Singh Jinda and Sukhdev Singh Sukha”. TV Legal added that Harjinder Singh Jinda and Sukhdev Singh Sukha were hanged for the assassination of General Arun Shridhar Vaidya, who was the “architect of Operation Bluestar”<sup>7</sup>.

The Licensee said that given the “strong feeling” associated with Operation Bluestar amongst the Sikh community “the assassins of General Vaidya have been held by many as heroes and their subsequent hanging perceived [as] martyrdom”. Furthermore, the anniversary of their death (9 October) “is celebrated on an annual basis in Gurdwaras worldwide”. Therefore, TV Legal said it considered it appropriate to “provide limited coverage of what has become a key date in the Sikh calendar”. In this context, the Licensee said that: the “subject of martyrdom represents an important element in the Sikh faith”; daily Sikh prayers pay “reverence to the Sikhs who have become martyrs for the Sikh faith”; and “the annual Sikh calendar is dotted daily with Martyrdom days for the Sikh Gurus and countless Sikhs killed on account of their faith since the outset of the religion”.

However, TV Legal said that: “Unbeknown to Sikh Channel, the event in Coventry also covered the martyrdom of Talwinder Singh Parmar, a “popular Canadian Sikh preacher who was alleged (although never convicted) to have been one of the masterminds” of an attack on Air India flight 182 in 1985. The Licensee also referred to allegations that Talwinder Singh Parmar was “killed in [Indian] police custody” in 1992. Therefore, TV Legal added that: “Given that Mr. Parmar was widely deemed as a zealous preacher of the Sikh faith and in light of the revelations of the apparent murder, Tawinder Singh Parmar has subsequently been deemed as a Martyr in some sections of the Sikh community, who continue to celebrate his death anniversary annually.”

The Licensee said that although Talwinder Singh Parmar “is acknowledged in some quarters as the founder of [the BKI], this is not a universally accepted fact and remains an issue of controversy”. TV Legal went on to say that the founding and leadership of the BKI “has been attributed to several individuals and therefore remains a moot point”. Furthermore, the Licensee said that Talwinder Singh Parmar’s involvement in the bombing of Air India flight 182 in 1985 “although widely publicised is also an issue currently based on speculation and not substantiated by formal convictions”. TV Legal added that it accepted that: “Mr. Parmar’s association with the [BKI] and allegations of his involvement in the 1985 Air India bombings in the context

---

<sup>7</sup> Operation Bluestar was the Indian Army’s controversial military operation against the Golden Temple at Amritsar in June 1984. The Golden Temple is highly revered as a sacred site by the Sikh community, and Operation Bluestar was aimed at removing a number of Sikhs, who were arguing for an independent Sikh homeland, and who were occupying the Golden Temple at that time.

of the lecture could be construed as offensive in some quarters". However, it asked Ofcom to "bear in mind that both of these points are subject to speculation".

By way of mitigation in relation to Rule 2.3, the Licensee said that it "did not organise, script or formulate the show", and that "[t]he views expressed were purely those of the speaker and not supported or endorsed by" TV Legal. In addition, the Licensee said that it "in no way seeks to glorify or advocate violence in any shape or form".

In its response, TV Legal also made a number of points in relation to the concept of martyrdom within the Sikh faith. Firstly, the Licensee said that: "Many principles upon which the Sikh faith has been built have stemmed from acts of violence being perpetrated upon the Sikh community". Therefore, TV Legal said that it "will always tread a fine line when covering or commemorating martyrdom occasions".

Second, the Licensee commented on the fact that the speaker in this case gave his lecture standing in a pulpit in front of a poster, bearing the slogan "*Babbar Khalsa International*". TV Legal said that in the Gurdwara in which the programme was filmed "as with many throughout the United Kingdom and beyond, the prayer hall...is surrounded by...images of martyrs from the sixteenth century up to the modern day". Therefore, in the Licensee's view: "such images...are common place and a sight the vast majority of the Sikh community recognises...accordingly"; and "Sikh Channel viewers are likely to be more than familiar with and acceptive of [these images]". According to TV Legal, the cameraman in this case "did attempt to reduce the visibility of the [BKI] poster by increasing the camera aperture and camera angle however given the proximity of the pulpit to the poster, coverage was unavoidable".

Third, the Licensee said that: "Martyrdom represents an important element of the Sikh faith with many festivals centering on the martyrdom of the Sikh Gurus and adherents to the Sikh faith." TV Legal added that: "Concerns have developed where programming centering around such occasions can often involve religious hymns, recitals and documentaries which could potentially be perceived as "problematic" under the Code." In such circumstances, the Licensee said that: "Whereas we may be able to contextualise such issues in discussion shows, often hymns and recitals referring to martyrdom are sourced from religious scripture."

In this case, TV Legal said: "As this show was coverage of an outside event, we were unable to provide alternative viewpoints but always endeavour to incorporate different viewpoints in all broadcasts of such a nature." The Licensee added that: "If this cannot be done in the same program, we have strict procedures for all producers to provide alternative viewpoints in subsequent programming."

In conclusion, the Licensee said it "continues to implement strict procedures to ensure compliance with" the Code. In particular, TV Legal said that it is "clear on the importance of contextualising any references to violence within...programmes and have adopted clear and strict procedures to control such programming to addition to emergency provisions to be utilised when deemed necessary during live programming".

## 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 "generally accepted standards are applied...so as to provide adequate protection for members of the public from the inclusion...of harmful and/or offensive material". This objective is reflected in Section Two of the Code.

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

We recognise that several of the world's established religions revere sacred figures who may have been killed in violent circumstances. Furthermore, we also recognise that the concept of 'martyrdom', whereby an individual undergoes death or suffering for any great cause, is a theme common to many religions. In this respect, we noted TV Legal's submissions that: the "subject of martyrdom represents an important element in the Sikh faith"; daily Sikh prayers pay "reverence to the Sikhs who have become martyrs for the Sikh faith"; and "the annual Sikh calendar is dotted daily with Martyrdom days for the Sikh Gurus and countless Sikhs killed on account of their faith since the outset of the religion". Furthermore, the Licensee also said that: "Given that Mr. Parmar was widely deemed as a zealous preacher of the Sikh faith and in light of the revelations of the apparent murder [of Tavinder Singh Babbar], Tavinder Singh Parmar has subsequently been deemed as a Martyr in some sections of the Sikh community, who continue to celebrate his death anniversary annually." Under the Code, broadcasters are free to refer to martyrs and discuss the concept of martyrdom, as long as in doing so any potential offence caused by such references is justified by the context.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context.

Ofcom considered first whether this material had the potential to cause offence.

Ofcom noted that this programme included a lecture in which a speaker commemorated the death of Talwinder Singh Babbar (or Parmar), who has been widely reported to have been the founder of the BKL. During this lecture, the speaker spoke positively about Talwinder Singh Babbar and his life, and referred positively to violent episodes in his life. For example, the speaker said that Talwinder Singh Babbar "*was seeking martyrdom*" and said he would "*fight in the frontline*". In Ofcom's opinion, a lecture commemorating, and containing various positive references to, the alleged founder of a proscribed terrorist organisation (the BKL) would have had the potential to cause offence. This potential for offence was heightened by the facts that: as partly acknowledged by the Licensee, it is widely suspected that Talwinder Singh Parmar was the leader of the conspiracy to bomb Air India flight 182 in which 329 people were killed; and, throughout the lecture, the speaker was shown standing in front of a poster which bore the slogan "*Babbar Khalsa International*", and a photograph of an individual armed with some form of machine gun, which was partially visible to the television audience, and which the speaker referred to as being a photograph of Talwinder Singh Babbar. In our view, this imagery would have helped to emphasise the violent acts committed by Talwinder Singh and the BKL in the minds of viewers.

In its representations, the Licensee stated its view that: it is a “moot point” as to whether Talwinder Singh Parmar was the founder of the BKL; and Talwinder Singh Parmar’s involvement in the bombing of Air India flight 182 in 1985 “is an issue currently based on speculation and not substantiated by formal convictions”. We noted these points. However, it is Ofcom’s understanding that Talwinder Singh Parmar was a leading member of the BKL, and he is widely suspected (if not proved in a court of law) of having had a key role in the bombing of Air India flight 182. In this regard, we are aware that the official Canadian Government’s Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 concluded that Talwinder Singh Parmar was: “An extremist among Canadian Sikhs who advocated violence to promote the establishment of an independent Sikh state [and] the most prominent of the suspects in the Air India bombing”<sup>8</sup>. Furthermore, we noted that TV Legal did not dispute that Talwinder Singh Parmar was a leading member of the BKL.

Given the above, therefore, we considered that this lecture commemorating and containing various positive references to Talwinder Singh Parmar had the potential to be highly offensive, and we noted that the Licensee accepted that “Mr. Parmar’s association with the [BKL] and allegations of his involvement in the 1985 Air India bombings in the context of the lecture could be construed as offensive in some quarters”.

Ofcom went on to consider whether the material was justified by the context.

Ofcom recognises that the Sikh religion reveres a number of sacred figures who are regarded as martyrs by followers of the Sikh religion, and that martyrdom represents an important element in this faith: Sikh festivals mostly centre on the lives of the Gurus and Sikh martyrs. Therefore, consistent with the likely audience expectations of this service, it is unsurprising that since it is aimed at the Sikh community, the Sikh Channel would include programmes about Sikh martyrs. Some Sikh martyrs are widely and universally accepted as martyrs by Sikhs, beginning in the seventeenth century. It appears to Ofcom that there is less consensus in the Sikh community about the status of certain Sikhs who died in violent circumstances much more recently. In this case, the programme included various commemorative songs<sup>9</sup> that marked the anniversary of the deaths of two individuals, Harjinder Singh Jinda and Sukhdev Singh Sukha, who were executed in 1992 for their assassination of a senior Indian army officer. It appears that a number of Sikhs regard these two men as martyrs. There seems to be less agreement in the Sikh community about Talwinder Singh Parmar. As the Licensee itself noted: “Tavinder Singh Parmar has subsequently been deemed as a Martyr in some sections of the Sikh community.”

As mentioned above, consistent with both the broadcaster’s right to freedom of expression and right to freedom of thought, conscience and religion, the Code does not prevent broadcasters from referring to such individuals, whom followers of a particular religion may consider to have died for their religion. Similarly, we recognise that broadcasters may wish to refer to terrorist organisations or their activities. However, in doing so, broadcasters must ensure that any references to ‘martyrs’ or terrorist organisations are sufficiently contextualised to ensure compliance with the Code.

---

<sup>8</sup> See footnote 4.

<sup>9</sup> Ofcom did not consider that any of the commemorative songs presented issues under the Code.

In this case, we noted that a programme contributor gave a lecture in which he made a number of statements that could be interpreted as being strongly positive, or being otherwise supportive of actions taken by, the leader of a terrorist organisation (the BKL), which is proscribed in the UK. Ofcom considered that these statements were not sufficiently contextualised to justify the potential offence caused by positive references to the leader of a proscribed terrorist organisation. The man who delivered the lecture spoke directly to camera and to the audience in the Gurdwara. Also, the lecture was delivered in front of a poster referring to the BKL and depicting the armed founder of that proscribed terrorist organisation. In Ofcom's opinion, these factors increased the impact of his words and so the potential for offence. At no point was the lecturer challenged to justify his unqualified praise for Tavinder Singh Parmar, by referring for example to the acts of terrorism with which he is alleged to have been involved. Also neither the Licensee nor the lecturer himself attempted to place his positive statements in praise of Tavinder Singh Parmar in some form of context by acknowledging, for example, the deaths for which Tavinder Singh Parmar is widely held responsible. For these reasons, Ofcom's view is that the offence caused by the lecturer's comments was not justified by the context.

In reaching our decision in this case, we took careful account of the Licensee's representations. Firstly, TV Legal said that: "Unbeknown to Sikh Channel, the event in Coventry also covered the martyrdom of Talwinder Singh Parmar"; and that it "did not organise, script or formulate the show" and "[t]he views expressed were purely those of the speaker and not supported or endorsed by" the Licensee. In response, Ofcom underlines that it is a fundamental feature of the Code that licensees retain editorial responsibility for all material broadcast on their service, irrespective of whether a licensee, for example, organises or provides a script for a programme. Ofcom is concerned that the Licensee provided no evidence to Ofcom to show that it had any appropriate procedures or systems in place for monitoring live content to ensure compliance with the Code or to take appropriate and timely action when required.

Second, we took into account the various points that TV Legal made with regard to the concept of martyrdom within the Sikh faith. For example, the Licensee said that: "Many principles upon which the Sikh faith has been built have stemmed from acts of violence being perpetrated upon the Sikh community". It added that: "Martyrdom represents an important element of the Sikh faith with many festivals centering on the martyrdom of the Sikh Gurus and adherents to the Sikh faith". Therefore, the Licensee said that it "will always tread a fine line when covering or commemorating martyrdom occasions". It also said that Gurdwara in which the programme was filmed "as with many throughout the United Kingdom and beyond, the prayer hall...is surrounded by...images of martyrs from the sixteenth century up to the modern day". Therefore, in TV Legal's view: "such images...are common place and a sight the vast majority of the Sikh community recognises...accordingly"; and "Sikh Channel viewers are likely to be more than familiar with and acceptive of [such images]". As already mentioned above, we recognise that several of the world's established religions revere sacred figures that may have been killed in violent circumstances, and that broadcasters serving particular religious communities will want to refer to these figures in their programming. Furthermore, we acknowledge that the likely audience expectations for the Sikh Channel's output would expect some references to be made to Sikh martyrs. However, we would reiterate that if broadcasters refer to 'martyred' individuals, they must do so in a way that ensures that any potential offence caused by such references is justified by the context.

On a related point, the Licensee stated its view that: "Concerns have developed where programming centering around such occasions can often involve religious

hymns, recitals and documentaries which could potentially be perceived as “problematic” under the Code.” TV Legal added that whilst it “may be able to contextualise [references to martyrdom] in discussion shows, often hymns and recitals referring to martyrdom are sourced from religious scripture”. In response, consistent with the right to freedom of thought, conscience and religion, and the right to freedom of expression, the Code does not in any way prohibit the broadcast of hymns and sacred texts that might refer to martyrdom. However, the Code does require that such references are sufficiently contextualised. Ofcom points to the fact that the offence in this case did not arise from references to “hymns, recitals...sourced from religious scripture”. Rather, the offence resulted from the programme including a lecture commemorating and containing various positive references to the alleged founder of a proscribed terrorist organisation (the BKL), who is widely suspected of being the leader of the conspiracy to bomb Air India flight 182.

Third, the Licensee said: “As this show was coverage of an outside event, we were unable to provide alternative viewpoints but always endeavour to incorporate different viewpoints in all broadcasts of such a nature.” The Licensee added that: “If this cannot be done in the same program, we have strict procedures for all producers to provide alternative viewpoints in subsequent programming”. In response, Ofcom points out that broadcast coverage of any outside event must comply with the Code and a licensee must have appropriate compliance arrangements in place to ensure it does so. As regards the need for “alternative viewpoints”, Ofcom recognises that the rules relating to due impartiality, contained in Section Five of the Code, do envisage the possibility of due impartiality being maintained over a series of programmes taken as a whole. However, in relation to Rule 2.3 the situation is different. A broadcaster may seek to mitigate the offence caused by particular content by ensuring, for example, that statements are broadcast within the same programme or as soon as possible afterwards that challenge, rebut, apologise for, or otherwise soften the potential offence caused. However, in relation to Rule 2.3, in this case, it was not appropriate merely to include material providing context in “subsequent programming” as a means of seeking to mitigate the potential offence of broadcasting a speech praising the founder of a proscribed terrorist organisation, without sufficient context, in this particular programme. Further, Ofcom noted that TV Legal did not refer to any content broadcast in specific “subsequent programming” which might have mitigated the offence in this case.

In reaching this decision we took into account the Licensee’s representations that: it “in no way seeks to glorify or advocate violence in any shape or form”; it “continues to implement strict procedures to ensure compliance with” the Code; it is “clear on the importance of contextualising any references to violence within...programmes and [has] adopted clear and strict procedures to control such programming in addition to emergency provisions to be utilised when deemed necessary during live programming”; and that according to the Licensee, the cameraman in this case “did attempt to reduce the visibility of the poster [behind the speaker in this case] by increasing the camera aperture and camera angle”. However, we considered that the programme included potentially offensive content that was not justified by the context. We have therefore recorded a breach of Rule 2.3.

**Ofcom is putting TV Legal on notice that any future similar breaches are likely to result in Ofcom taking further regulatory action.**

### **Breach of Rule 2.3**

## In Breach

### WWE Superstars

Sky 1, 10 November 2012, 09:00

---

#### Introduction

Worldwide Wrestling Entertainment (“WWE”) matches are broadcast on Sky 1 during the morning at weekends.

A complainant alerted Ofcom to the violent content in a pre-recorded sequence featuring WWE contestant Wade Barratt broadcast at the beginning of the second segment of the programme at around 09:20 on a Saturday.

The sequence, lasting approximately one and a half minutes, depicted Wade Barratt in several underground wrestling and bare-knuckle fights surrounded by a group of men who appeared to be betting money on the outcome. It featured several close-up punches and kicks to the head and chest in slow motion with dramatic sound effects to underline the impact and, on one occasion, a bloody bruise on the chest of a competitor. The scene was set to a track of rock music and was accompanied by the following voiceover:

*“Where I come from the grim realities of life smack you in the face at every turn. An onslaught of fury is the only way to survive. I am Wade Barratt and my barrage has just begun. It doesn’t matter if I’m fighting on the street or if I’m fighting in the ring. If I’m fighting I might as well make as much money as I possibly can. I decided I’d had enough of not getting my own way. I came here with one goal only. That was to become a world champion. One way or another I’m going to get to the top. I’m relentless. I am remorseless. I am Wade Barratt and my barrage cannot be stopped.”*

Ofcom considered 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 1.11          “Violence, its after affects and the descriptions of violence, whether verbal or physical, must be appropriately limited in programmes before the watershed...and must also be justified by the context.”

We therefore asked British Sky Broadcasting Limited (“Sky” or “the Licensee”) for its comments as to how the material complied with these rules.

#### Response

Sky explained that WWE has broadcast on Sky 1 since 1999 and is widely known for its outrageous storylines and pantomime characters. It said the fights themselves are only one element of the show as it also focuses on the backstories and feuds between wrestlers, and that the sequence involving Wade Barratt was intended to portray him as a dark and dangerous character.

The Licensee said that the fights in the arena are highly dramatic and pantomime, and that most of the violence shown is not graphic. It added, however, that due to the family nature of the audience, it carefully edits WWE for daytime transmissions on Sky 1. Sky said repeated kicks or punches and explicit shots are removed along with scenes including weapons and violence that occurs outside the arena. Scenes that involve blood are shot in black and white to minimise detail.

Sky said that WWE is aware of the large number of child viewers it attracts and that WWE places a warning to “not try this at home” in every episode. It said the warning in this particular episode was given by one of the wrestlers approximately 10 minutes after the Wade Barratt sequence.

The Licensee said the sequence that was the subject of this complaint was dark in tone, dramatic, staged and stylised, and not akin to the usual wrestling scenes in the arena. However, it argued that punches and kicks are a regular feature in the wrestling ring and, apart from one shot of a bruise caused by a punch to the stomach in the sequence, no blood or wounds were shown. Sky said as a general comment that a number of headbutts and instances of mild language are removed in the editing process for broadcasts of WWE fights but it did not make edits to the sequence involving Wade Barratt.

On reviewing this sequence, however, Sky said that while it was not particularly more violent than the action in the ring in general, it could be perceived by some viewers as stronger given that it was outside of the ring and made to appear as street fighting. It also recognised that the depiction of “real” fighting and the slow motion of the punches and kicks could be outside the usual expectations of the channel’s audience. Therefore, although it considered the scene assisted in providing some background to the storyline of the contestant, it accepted that the material may not have been suitable for a Saturday morning audience.

Sky apologised for any distress caused to viewers and said that it intends to conduct a review of the guidelines it uses to ensure the compliance of WWE material broadcast on Sky 1. It stated that all fighting outside the ring will be minimised and dramatised sequences such as this will not be broadcast in future. Sky added that WWE’s warning to “not try this at home” will also feature at the beginning of the programme and that, to further minimise the possibility of a recurrence of this problem, it has informed the makers of WWE of the issue and advised them to avoid producing scenes that feature fighting which is portrayed as “real”.

## **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**

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 on 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 that is unsuitable for children. However, broadcasters are required to ensure that children are protected from unsuitable material by appropriate scheduling.

Ofcom first assessed whether the material contained material unsuitable for children.

Ofcom noted that the scene in question depicted bare-knuckle fighting in an underground setting, clearly distinguishing it from staged competitive wrestling that takes place in a ring with a referee. The dark, aggressive and realistic nature of this scene combined with close-up slow-motion punches and kicks to the head and chest with powerful sound effects to underscore the impacts to make the material, in Ofcom's view, clearly unsuitable for children.

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.

Ofcom noted that *WWE Superstars* is broadcast from 09:00 on Saturday mornings on one of Sky's mainstream general entertainment channels. Both these factors, in Ofcom's opinion, made it likely that children – some of them unaccompanied – would view this material. Further, as Sky pointed out, WWE has a significant appeal to children. This was demonstrated by viewing figures which indicated that over 50% of the audience were under 16: a very high proportion of the audience. In Ofcom's opinion, the combination of images of what was made to appear to be real fighting (a number of which showed violent impact in close up and slow motion) cumulatively underlined and tended to glamorise the violence of this dramatic sequence – which was also heightened by the voiceover, for example: "An onslaught of fury is the only way to survive. I am Wade Barratt and my barrage has just begun." Ofcom's view is that these factors led to the sequence exceeding the likely expectations of the audience, and in particular parents, for this channel at this time. For these reasons the material was not appropriately scheduled and therefore its broadcast breached Rule 1.3.

#### Rule 1.11

Rule 1.11 requires violence to be appropriately limited in programmes broadcast before the watershed and also to be justified by the context.

Ofcom noted that this sequence, broadcast pre-watershed, included kicks and punches to the head and chest in slow motion accompanied by dramatic sound effects. Many of these were close-up shots which lingered and so emphasised the impact, and in one instance included bruising. Ofcom considered this content went beyond viewers' (and especially parents') likely expectations of a mainstream general entertainment channel on a Saturday morning, particularly given the significant number of children that were watching. Consequently, Ofcom did not judge the violence in this sequence to be appropriately limited.

Nor did we conclude that the material was justified by the context. Ofcom assessed the context taking account broadly of the same factors as when deciding whether the content was appropriately scheduled (see above). We took account in particular of the high likelihood of children watching this channel early on a Saturday morning, the strength and brooding nature of the images exemplified by the slow-motion shots of

impact, and the fact that in Ofcom's opinion this content exceeded the likely expectations of the audience.

The broadcast of this material therefore breached Rule 1.11.

Ofcom noted Sky's acceptance that the material may not have been suitable for a Saturday morning audience, and its decision to review its compliance guidelines for all future WWE broadcasts. However, in this case, particularly given the violent content of this sequence and the very high proportion of child viewers, Ofcom decided that the material breached Rules 1.3 and 1.11.

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

## In Breach

### Ice Road Truckers

*History, 23 November 2012, 20:00*

---

#### Introduction

History is a channel specialising in factual content, broadcast on the Sky platform. The licence is held by Arts and Entertainment Television Network UK (“AETN UK” or “the Licensee”). *Ice Road Truckers* is a documentary series focusing on drivers who operate seasonal routes across frozen bodies of water in remote regions of Alaska and Canada. The truckers compete among themselves to haul the greatest number of loads before the ice melts in the spring.

Ofcom received a complaint about unbleeped offensive language in an episode of this programme broadcast between 20:00 and 21:00 on 23 November 2012. We reviewed the content in question and noted 22 instances of the word “shit” and 27 instances of the word “fuck” and its derivatives.

We considered the material raised potential issues warranting investigation under Rules 1.14, 1.16 and 2.3 of the Code, which state:

- 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. In any event, frequent use of such language must be avoided before the watershed.”
- 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...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

#### Response

AETN UK admitted that it had breached the Code and apologised for the broadcast of the programme at this time, which it said had been transmitted in error: “We agree and would never try to argue editorial justification for the inclusion of 27 instances of the most offensive language [“fuck” and its derivatives], unmasked before the watershed. Similarly we agree that there is not sufficient context to argue for the inclusion of 22 instances of offensive language, in this case “shit”, with no warning before the watershed.”

The Licensee said that it had undertaken an internal investigation into the incident and established that its compliance team had correctly classified this version of the programme as being for post-watershed broadcast only, accompanied by a warning signalling the presence of offensive language. However, AETN UK explained that the wrong version of the programme had then been inadvertently included in a pre-watershed slot in the schedule, and that subsequent manual checks had failed to pick up this error.

The Licensee emphasised that the broadcast was “due to a manual assigning error rather than a compliance error, or indeed any belief on the part of the compliance team that this version was suitable to air at 20:00”. AETN UK added: “We...hope Ofcom recognises that whilst this...is clearly a compliance breach, it did not result due to a lack of knowledge or understanding of the regulations within the compliance team, but due to human error and a sizeable oversight in peripheral but nonetheless extremely key teams.”

AETN UK listed a number of measures it said it will be implementing to ensure that the error does not recur. These include: introducing a new manual and process for correctly assigning programme versions in the schedule and additional checks to assigned versions before broadcast. The individual who failed to properly conduct the final check on the content prior to its transmission has been subject to disciplinary action and is no longer employed by AETN UK.

## 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, which include ensuring “that persons under the age of eighteen are protected” and “that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material”. These objectives are reflected in Sections One and Two of the Code.

### Rule 1.14

Rule 1.14 states that “the most offensive language must not be broadcast before the watershed”. Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language. The watershed begins at 21:00. The first instance of the word “fuck” in this programme occurred at 20:09. The last such instance occurred at 20:57. The 27 instances of the word “fuck” and its derivatives over the course of this hour-long programme were therefore a clear breach of Rule 1.14.

### Rule 1.16

Rule 1.16 states that “[o]ffensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context” and that “[i]n any event, frequent use of such language must be avoided before the watershed”. Ofcom research on offensive language<sup>2</sup> notes that the word “shit” is considered by audiences to be a mildly offensive term. Ofcom first had to consider whether the use of offensive language before the watershed in this programme was justified by the context; and second whether its use was too frequent before the watershed.

In a previous Decision on *Ice Road Truckers*, Ofcom suggested that the limited use of the word “shit”, broadcast before the watershed on History+1 at 16:00 on 30 June 2011, could be justified in the context of a documentary series about lorry drivers

---

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

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

working in stressful conditions, aimed at an adult audience, and shown on a channel attracting few child viewers<sup>3</sup>. We nevertheless concluded that four instances of unbleeped offensive language, in combination with approximately 30 instances of bleeped offensive language, constituted frequent use. Therefore, 22 instances of the word “shit” in one hour, as in the programme broadcast on 23 November 2012, in our opinion constituted frequent use. The content was therefore in breach of Rule 1.16.

### Rule 2.3

Rule 2.3 states that “broadcasters must ensure that material which may cause offence is justified by the context” and that “[s]uch material may include, but is not limited to, offensive language”. As noted above, Ofcom research on offensive language identifies the word “shit” as a mildly offensive term and the word “fuck” and its derivatives as amongst the most offensive language. In our opinion, 22 instances of the word “shit” and 27 instances of the word “fuck” and its derivatives over the course of an hour-long programme was capable of causing offence to viewers. We therefore had to consider whether this potentially offensive material was justified by the context.

The meaning of context includes: the editorial content of the programme; the service on which the material was broadcast; the time of broadcast; and the likely size, composition and expectation of the potential audience.

*Ice Road Truckers* is a documentary series about lorry drivers working in stressful conditions, in which viewers might expect some instances of offensive language, as part of a faithful depiction of the subject matter. However, Ofcom believes that the frequency of such instances in this programme was in excess of what could be justified by reference to its editorial content. Rule 2.3 states that “[a]ppropriate information should...be broadcast where it would assist in avoiding or minimising offence”. We noted that no warning preceded the broadcast, which might have mitigated the potential for offence, by better preparing viewers.

We accept that the programme is aimed largely at an adult audience, and was broadcast on a channel attracting few child viewers, but are concerned about the time at which it was transmitted. Although the watershed is designed primarily to protect children from material that is unsuitable for them, it also shapes the expectations of adult viewers as to the level and type of offensive material they would expect on a channel before 21:00. In Ofcom’s opinion, viewers in general of this programme would not have expected to see broadcast before the watershed repeated unbleeped examples of the most offensive language, and so many instances of offensive language.

Overall therefore we did not consider that the broadcast of this offensive content was justified by the context. The broadcaster did not apply generally accepted standards and the content was in breach of Rule 2.3.

As noted above, AETN UK has previously, and relatively recently, been found to have broadcast offensive language before the watershed, in episodes of *Ice Road Truckers* on 29 and 30 June 2011<sup>4</sup>. Ofcom is concerned that this problem has

---

<sup>3</sup> Issue 190 of Ofcom’s Broadcast Bulletin, 26 September 2011: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb190/obb190.pdf>.

<sup>4</sup> See footnote 3.

recurred in the same programme, on the same channel, despite assurances about improved measures to ensure compliance given at the time to Ofcom by the Licensee.

AETN UK has reiterated those assurances, arguing that despite superficial similarities between the cases the problems which gave rise to them were in fact distinct. As regards the June 2011 breaches, the Licensee said the compliance team had failed to spot an instance of the most offensive language which was left unmasked and made an error of judgement about what was acceptable with regard to the amount of bleeped language. Concerning the November 2012 breaches, the Licensee identified the problem as being with the process of assigning and checking programmes for playing out, rather than with taking the correct decision about when to schedule a programme. We welcome the latest measures to improve compliance. However, the fact that material unsuitable for broadcast before the watershed has once again been transmitted on this channel despite specific assurances having been given to Ofcom remains a cause for concern.

### **Breaches of Rules 1.14, 1.16 and 2.3**

## In Breach

### Russ Williams

*Absolute Classic Rock, 28 November 2012, 16:12*

---

#### Introduction

Absolute Classic Rock is a commercial radio service available on DAB radio and via cable and satellite platforms targeting the 35-54 age range. The licence holder for this service is TIML Radio Limited (“TIML” or “the Licensee”).

Two listeners and the Licensee itself alerted Ofcom to offensive language broadcast on Absolute Classic Rock at 16:12 during the above programme. What appeared to be links between music tracks were broadcast unedited and included a comment from the presenter:

*“This is a fucking shit studio.”*

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

Rule 1.14 “The most offensive language must not be broadcast...when children are particularly likely to be listening.”

Rule 2.3 “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.”

We therefore sought comments from the Licensee on how the broadcast complied with these rules.

#### Response

The Licensee explained that this episode of the Russ Williams programme was pre-recorded, including the presenter’s links. TIML said however that on this occasion there was an editing mistake and the broadcast therefore accidentally contained the offensive language, which was an off-mic comment made by the presenter.

The Licensee said that it would never intentionally broadcast offensive content at a time when children could potentially be listening with parents. Following the error, TIML explained that it took a number of measures to mitigate any offence caused by the incident and to ensure the mistake was not repeated. These included making apologies both on air and on its social networking pages within an hour of the broadcast; issuing reminders to staff about studio etiquette and the importance of double-checking all pre-recorded programmes; implementing a new process for recording and inserting audio links for pre-recorded programmes; and taking disciplinary action against the individuals involved.

TIML pointed out that Absolute Classic Rock does not target a young audience at any time as the genre does not generally appeal to children. It provided Ofcom with audience figures for the Russ Williams programme which showed that the number of child listeners was too low to record a measurement. Nonetheless, TIML accepted

that this incident was the result of an error of judgement on the part of the presenter, exacerbated by a member of staff's error in this case.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it 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 objectives are reflected in Sections One and Two of the Code.

### Rule 1.14

Rule 1.14 of the Code states that “the most offensive language must not be broadcast...when children are likely to be listening”. Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language.

Ofcom recognises that Absolute Classic Rock is not a radio station aimed at children. In discussing the meaning of “when children are particularly likely to be listening”, Rule 1.5 of the Code states that the phrase particularly refers to the school run and breakfast time “but might include other times”. In turn, in giving further advice to broadcasters on the same phrase, Ofcom’s guidance on offensive language on radio published on 20 December 2011<sup>2</sup> says that “broadcasters should have particular regard to broadcasting content...between 15:00 and 19:00 Monday to Friday during term-time”. This material was broadcast at 16:12 on Wednesday 28 November, clearly within these times. Notwithstanding the station’s target audience, Ofcom concluded that this material was broadcast at a time when children were particularly likely to have been listening. The material was therefore in breach of Rule 1.14.

### Rule 2.3

Ofcom first considered whether the material was capable of causing offence. As stated above, Ofcom’s research indicates that the word “fuck” and its derivatives are examples of the most offensive language. In Ofcom’s view, the broadcast of such language in this programme clearly had the potential to offend.

Ofcom went on to consider whether the potential offence was justified by the context. In particular we took into account the editorial content of the programme and the composition and expectations of the audience. Ofcom noted that Absolute Classic Rock is aimed at an adult audience aged between 35 and 54.

We also noted that: the material was broadcast as a result of human error and many listeners would have understood this; and the Licensee took proactive measures to apologise to audiences both on air and via social networking sites, and to notify Ofcom of the matter and implement procedures to improve compliance.

---

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

<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>.

However, in our view, given that the broadcast included the most offensive language, it was likely to have gone beyond the expectations of both the regular audience for this DJ-led weekday afternoon programme and especially of any listeners who may have come across the programme unawares. Consequently, Ofcom did not consider the potential offence to be justified by the context and concluded that the Licensee breached Rule 2.3.

### **Breaches of Rules 1.14 and 2.3**

## In Breach

### Viewer competition

*True Movies, True Movies 2, True Entertainment, 20 to 22 October 2012*

---

#### Introduction

True Movies, True Movies 2 and True Entertainment are general entertainment channels owned and operated by CSC Media Group Limited (“CSC Media” or “the Licensee”).

Between 20 and 22 October 2012, these channels promoted a viewer competition (“Competition A”). Viewers were invited to participate by answering a multiple choice question for a chance to win a holiday to the Caribbean Islands, an e-reader and \$1,000 spending money. Entrants had to submit their answer – 1, 2 or 3 – by calling a premium rate (“PRS”) telephone number or including the keyword “ANSWER” followed by their answer in a text message (“SMS”).

Calls lasted two minutes and were charged at £1.53 per minute from a BT landline. Each SMS answer was charged as two text messages at £1.50 plus the user’s standard network rate for each message. The cost of entry was therefore £3.06 by telephone, and £3 by SMS (plus the standard network rate).

CSC Media alerted Ofcom to an error in the competition’s on-air promotion regarding the SMS entry route. The Licensee said that on 22 October 2012 it became aware that the keyword “ANSWER” which viewers were being prompted to submit on SMS entries was in fact already in use on the same SMS number for another competition (“Competition B”) that was also running at the time. Therefore viewers attempting to enter Competition A by SMS were in fact participating unintentionally in Competition B.

Ofcom considered the matter raised issues warranting investigation under Rule 2.14 of the Code.

Rule 2.14      “Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition.”

We therefore sought comments from CSC Media as to how the material complied with this rule.

#### Response

CSC Media explained that it had recently started using a new piece of software to set up the SMS element of competitions. It said that, despite undergoing training and running test competitions, a “learning error” led to the competition’s on-air promotion containing a keyword that was already in use in another competition. It confirmed that telephone entries were unaffected by this error.

The Licensee provided Ofcom with information which indicated that Competition A’s promotion containing the incorrect keyword was broadcast 111 times across the three channels. It said that the competition was removed from broadcast within an hour of the error being identified. It explained that it then set about correcting the set-up of the competition and contacting people who were affected.

CSC Media said it had identified 1,399 viewers who it believed intended to enter Competition A instead of Competition B. All these entrants were sent a non-chargeable SMS asking them to confirm which competition they wished to enter. Alternatively, it gave them the option of obtaining a full refund via cheque by calling CSC Media's 0844 helpline number. As CSC Media were unable to establish the desired competition for those that did not respond to this text message, these entrants were excluded from both Competition A and B.

The Licensee said that it was unsure which of the two competitions a further 62 viewers had intended to enter. It added that it "took the unprecedented step, in order to resolve this issue, of personally calling these entrants" for confirmation of the competition they wished to enter or to offer a refund. The Licensee later adopted this practice for all entrants that did not respond to its initial SMS. It added that at least five attempts were made to contact these entrants.

Out of the 1,461 entrants affected in total, CSC Media said that 364 had requested a refund and 604 had confirmed which competition they had intended to enter. It said it had decided to donate any remaining revenue generated by these entries to charity.

CSC Media stressed that its PRS provider had confirmed that the process of sending a non-chargeable SMS to entrants to direct callers to its helpline conformed to the PRS regulator Phonepay Plus guidelines and that calling everyone affected went beyond these requirements. CSC Media also stated that its auditors had "passed as appropriate" the helpline.

The Licensee said it could clearly identify where in the set-up process the error had occurred and had already implemented an extra check in this procedure to ensure this did not happen again.

CSC Media said it hoped that Ofcom recognised that this was its first compliance issue regarding the use of PRS since 28 July 2010<sup>1</sup>. It pointed out that since meeting Ofcom in February 2011 to demonstrate the steps it had taken to improve compliance, it had broadcast over 150 PRS competitions without any issue. It also said that it acted immediately and proactively by notifying Ofcom of this matter.

## **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 generally accepted standards are applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of ... harmful material".

This objective is reflected in Section Two of the Code. Rule 2.14 requires broadcasters to ensure that viewers and listeners are not materially misled about any broadcast competition.

In this case, Ofcom noted that the promotion broadcast for Competition A incorrectly advised viewers that the keyword for SMS entries was "ANSWER". This was in fact

---

<sup>1</sup> Ofcom found a viewer competition broadcast on True Movies 2 in breach of Rule 2.13 of the Code. Issue 169 of Ofcom's Broadcast Bulletin, 28 July 2010, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>.

the correct keyword for Competition B. Therefore, viewers who paid to enter Competition A by SMS would have been entered into Competition B instead.

Ofcom was concerned that the incorrect version of Competition A's promotion was broadcast 111 times over a period of three days before it was withdrawn. This did not, in Ofcom's view, demonstrate that the transmission was being adequately monitored during this period.

While Ofcom recognised CSC Media's intention to mitigate the financial detriment to entrants of Competition A, it was concerned that the methods used to achieve this involved a further cost to entrants. Entrants were required to respond to the text message sent by CSC Media seeking confirmation of the competition they had wished to enter. This would have cost a standard network rate message (approximately 10-12p if the user had no SMS allowance) and brought the total entry cost to a maximum of £3.36. Entrants calling the 0844 helpline number would have been charged between 5p and 40p per minute depending on their network.

Ofcom accepts that the Licensee's submission that the process of sending a non-chargeable SMS to notify entrants of the issue complied with Phonepay Plus' requirements. However, entrants who responded would have incurred a further charge irrespective of whether they had requested a refund or provided confirmation of which competition they had intended to enter. In Ofcom's view, CSC Media's decision to provide affected entrants with chargeable methods of responding exacerbated the problem.

Furthermore, the 393 entrants who did not respond have not been refunded yet and were excluded from both competitions. Therefore, Ofcom did not consider the actions taken by the Licensee sufficiently mitigated the material harm caused.

Ofcom noted the considerable effort made by the Licensee to contact all affected entrants and the additional measures it had undertaken in the set-up procedures for SMS competitions to avoid a recurrence. We also accepted that the incident was the result of a human error and that CSC Media did not seek to mislead viewers as to which competition they were being invited to participate in.

However, the difficulties experienced by the Licensee when attempting to resolve the issue clearly demonstrate the importance of exercising particular caution when conducting PRS competitions. This is especially the case when entry costs are significantly higher than normal, as in this case. Ofcom concluded that the Licensee failed to ensure that viewers were not materially misled and is therefore recording a breach of Rule 2.14.

As CSC Media indicated, it attended a meeting with Ofcom following breaches of the Code's rules relating to PRS competitions in 2008<sup>2</sup> and 2010<sup>3</sup>. We acknowledge the improvement in CSC Media's compliance in this area. However, we are concerned that a further breach of this nature has now occurred.

Should similar compliance issues arise, Ofcom will consider taking further regulatory action.

---

<sup>2</sup> Issue 116 of Ofcom's Broadcast Bulletin, 1 September 2008, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb116/issue116.pdf>.

<sup>3</sup> See footnote 1.

We note the Licensee had highlighted its proactivity in notifying Ofcom of this matter. Ofcom reminds CSC Media that Condition 6(A)(3)(b) of its licences for the services True Movies 1, True Movies 2 and True Entertainment requires it to notify Ofcom about “significant irregularities or any other problems” regarding its operation of PRS in broadcast competitions and votes.

**Breach of Rule 2.14**

## In Breach

### Shastho Protidin

NTV, 3 November 2012, 16:00 to 17:00

---

#### Introduction

NTV is a news and general entertainment channel that is broadcast in Bengali and serves the Bangladeshi community in the UK and Europe. The licence for NTV is held by International Television Channel Europe Limited (“the Licensee”).

The channel broadcasts a delayed feed of content originally broadcast on NTV in Bangladesh.

*Shastho Protidin* was a studio-based programme in which the presenter Dr Tahmina Akter Muniya and a guest discussed various health issues.

The opening and closing programme credits contained a logo for Pran Milk, a brand of milk made by a Bangladeshi company. There was no on-screen text or voiceover to indicate to viewers that the programme was sponsored by the company.

In the studio in which the programme was filmed, three logos for Pran Milk were displayed: one large logo between the presenter and the guest; one smaller logo behind the presenter; and the same sized logo behind the guest. Throughout the programme, most shots clearly displayed Pran Milk’s logo.

On four occasions during the programme, when the presenter’s name appeared in an on-screen caption, Pran Milk’s logo appeared next to her name for a few seconds. On one other occasion the same logo appeared next to the on-screen caption of the guest’s name.

When the programme returned after an advertising break, the Pran Milk logo appeared with the on-screen text, *“You’re watching Pran Milk Shastho Protidin”*.

Near the end of the programme, the presenter said: *“You may send any comments to this address: Pran Milk, Shashto Protidin, [NTV’s address in Bangladesh, fax number, the programme’s email address].”* The contact details appeared in on-screen text accompanied by Pran Milk’s logo.

This logo also appeared just before the end credits rolled, when clips of the items coming up in the next episode of the programme were previewed.

A viewer was concerned that the Pran Milk logo appeared during the programme and that it was not clear if Pran Milk was the programme sponsor.

The Licensee confirmed to Ofcom that neither it, nor any connected person<sup>1</sup>, had received any payment or other valuable consideration for the inclusion of the references to Pran Milk during the programme, and therefore the references had not been subject to any product placement arrangement in the UK.

---

<sup>1</sup> “Connected person” is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

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

- Rule 9.19 “Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:
- a) the identity of the sponsor by reference to its name or trade mark; and
  - b) the association between the sponsor and the sponsored content.”

- Rule 9.22 “Sponsorship credits must be distinct from advertising. In particular:...
- b) Sponsorship credits broadcast **during programmes** must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied only by a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks.”

In addition, throughout the programme *Shastho Protidin* and throughout the NTV news during the 16:00 to 17:00 clock hour, a small box appeared in the bottom right-hand corner, above the scroll bar, for a total of 27 minutes and 40 seconds. The following text appeared in this box: “*Discuss advertising your business with NTV. Md. Aktaruzzaman Italy Tel: [number] [email address] Shahin Ahmed France Tel: [number] [email address] Masud Reza German Tel: [number].*”

Ofcom considered this statement to be advertising counting towards advertising minutage.

Ofcom noted that during the commercial breaks between 16:00 and 17:00, there were approximately seven minutes and 25 seconds of advertising.

Therefore, the amount of advertising broadcast between 16:00 and 17:00 was 34 minutes and five seconds.

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states: “[T]ime devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

We therefore asked the Licensee for its comments as to how the content complied with Rules 9.19 and 9.22(b) of the Code and Rule 4 of COSTA.

## Response

### Rules 9.19 and 9.22(b)

The Licensee stated that *Shastho Protidin* is made for the Bangladesh market by producers based in Bangladesh. NTV said that it constantly monitors its programming output to ensure it complies with the Code. It submitted that it “can only assume that this [the appearance of the logo in the programme] was an oversight”.

The Licensee said that it takes Ofcom's rules seriously and regrets this error. It said it is conducting an investigation into how this situation occurred and will train its staff regarding Ofcom's rules relating to product placement to ensure that there is no recurrence. Further, it will no longer broadcast this series.

#### Rule 4 of COSTA

With regards to the box that appeared in the bottom right-hand corner, above the scroll bar, the Licensee said that it was used only to promote NTV, not to promote any third party. However, since Ofcom had contacted it about the issue, the Licensee had amended the text to read: *"For community news, please contact..."*

#### **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 "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". The rules in COSTA and Section Nine of the Code, among others, reflect this objective.

#### Rule 9.19

The EU Audiovisual Media Services Directive ("AVMS Directive") requires that viewers be clearly informed of sponsorship arrangements. Rule 9.19 of the Code therefore requires that sponsorship is clearly identified by means of sponsorship credits, which must make clear the identity of the sponsor and the association between the sponsor and the sponsored content.

In this case, the opening credits of the programme contained the logo for Pran Milk, but no visual or verbal reference to the company being the sponsor of the programme. Ofcom considered that Pran Milk was a sponsor of the programme. As the sponsorship arrangement was not clearly identified in the opening sponsorship credit, the credit was in breach of Rule 9.19.

#### Rule 9.22(b)

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is distinguishable from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22 of the Code therefore requires that sponsorship credits must be distinct from advertising. Further, Rule 9.22(b) of the Code requires that sponsorship credits broadcast during programmes must not be unduly prominent. The rule also requires that such credits consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement, accompanied by only a static graphic of the name, logo, or any other distinctive symbol of the sponsor. In addition, sponsorship credits during programmes must not contain advertising messages or calls to action, or any other information about the sponsor or its products.

In this case, Ofcom judged that the frequency and duration of the number of sponsor logos which appeared both in the studio and in the on-screen graphic provided the

sponsor with greater prominence than was necessary. Further, the frequent sponsor logos throughout the programme were not accompanied by a statement identifying the sponsorship arrangement. Ofcom therefore found the references to the programme sponsor during the programme in breach of Rule 9.22(b).

We were concerned that this programme was broadcast four days after Ofcom had sent the Licensee its Preliminary View on another of its programmes, *Borkotmoy Sehri*, which raised similar issues<sup>2</sup>. The Licensee would therefore have been aware that Ofcom considered that such material was not compliant with Rules 9.19 and 9.22(b).

In that case, the Licensee had explained that the member of staff who was responsible for ensuring the compliance of the content believed that as the company whose name appeared on the programme was a Bangladeshi company with no business or other commercial interests in the UK, any form of promotion would not be beneficial to them and would therefore not be an issue under the Code. The Licensee explained that it had taken internal disciplinary action against the staff member and had provided further training to all staff to ensure no similar breaches occur in future. Ofcom was therefore concerned that a similar issue had occurred so soon after the Licensee provided this assurance.

#### Rule 4 of COSTA

Articles 20 and 23 of the AVMS Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Rule 4 of COSTA requires that television advertising in each clock hour does not exceed 12 minutes.

The AVMS defines “television advertising” as “any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment”.

In this case, Ofcom considered that the text “*Discuss advertising your business with NTV. Md. Aktaruzzaman Italy Tel: [number] [email address] Shahin Ahmed France Tel: [number] [email address] Masud Reza German Tel: [number]*” met the definition of advertising because: (i) it was broadcast by the Licensee for self-promotional purposes, i.e. to promote the sale of advertising space on NTV; and (ii) it promoted the sale of advertising space to third parties in return for payment to the Licensee.

Between 16:00 and 17:00, the appearance on screen of the box promoting NTV’s advertising space amounted to 27 minutes and 40 seconds of advertising. Further, the Licensee also broadcast seven minutes and 25 seconds of advertising within the commercial breaks during this clock hour. Therefore the amount of advertising broadcast between 16:00 and 17:00 was 34 minutes and five seconds, a clear breach of Rule 4 of COSTA.

#### **Breaches of Rules 9.19 and 9.22(b) of the Code, and Rule 4 of COSTA**

---

<sup>2</sup> Ofcom’s Decision regarding *Borkotmoy Sehri* was published in issue 213 of Ofcom’s Broadcast Bulletin, 3 December 2012:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb219/obb219.pdf>.

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

ARY QTV, 5 October 2012, 01:00

---

#### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states: “[T]ime devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

Ofcom received a complaint about advertising scrolling in Urdu across the bottom of the image seen on screen during this broadcast on ARY QTV. Such advertising is permitted in television programmes provided it is kept distinct from editorial content. Scrolling advertising is subject to COSTA and must not exceed the 12 minute allowance in a single clock hour.

Ofcom commissioned an independent translation of the scrolling text. This indicated that the messages contained information about several properties for sale in Pakistan and relevant contact details. It also contained invitations for viewers to advertise their own properties on the channel:

*“To book advertisements of properties on ARY QTV contact [telephone number] Email: [email address].”*

Taking the scrolling messages into account, Ofcom noted that ARY QTV broadcast 40 minutes and 59 seconds of advertising in the clock hour from 01:00 to 02:00.

During the course of its investigation, Ofcom identified an online document which appeared to be produced by ARY QTV and included its logo. This offered “property classified scroll ads” for 15,000 rupees (£171) per month for 20 words or 30,000 rupees (£342) per month for 40 words. The document also said that the scrolling message “will be displayed 24 hours except Azan Times and Documentary Ads and Commercial Ads”.

Ofcom considered the case raised issues warranting investigation in respect of Rule 4 of COSTA and therefore sought comments from ARY Network Limited (“ARY” or “the Licensee”) about how this material complied with this rule. We also provided a copy of the online document to the Licensee for its comments.

#### Response

The Licensee explained that ARY QTV is a “single beam broadcasting from the play out centre in Pakistan” and that in the UK it obscures the scrolling text with a permanent band. The Licensee added that its technical staff did its best to overlap the scrolling text but unfortunately due a system malfunction the overlapping band was removed on this particular occasion. Following the incident, the Licensee said it had decided to remove the scrolling text entirely to avoid a recurrence.

ARY maintained that the scrolling text was a “public service” by ARY QTV Pakistan and had no commercial value. It stated that no payment was received by ARY QTV or ARY Network Limited for the broadcast of the material.

ARY said neither it nor its parent company was aware of any online document that offered payment for property advertisements.

## **Decision**

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

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

COSTA defines “television advertising” as “any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment”.

In this case, Ofcom noted that the scrolling messages comprised details of available properties and relevant contact details, and invitations for viewers to promote their own property in the message.

Ofcom also noted that the Licensee said that neither ARY QTV nor ARY Network Limited made any financial gain from the broadcast of the scrolling message which it described as a “public service”. The Licensee did not make clear to Ofcom why it considered on-screen messages advertising the availability of properties to purchase could be described as a “public service”. In Ofcom’s view, the purpose of the scrolling messages was clearly to promote the availability and sale of property.

We also noted that ARY denied any knowledge of the online document Ofcom had found. This document appeared to seek payment for including property advertisements in the scrolling message on the ARY QTV service. The document, which contained ARY QTV’s logo and made specific reference to the scrolling property message on ARY QTV and its cost to viewers, appeared to directly contradict the Licensee’s claim that the scrolling message had no commercial value. Furthermore, Ofcom noted that the Licensee had failed to provide any explanation for the existence of this document, which was easily accessible online.

Ofcom was therefore particularly concerned that it appeared the Licensee had provided incorrect information with regard to the commercial value of the scrolling message.

On the basis of information available to Ofcom, we considered the scrolling messages to fall within the definition of advertising in COSTA. Therefore, the advertising allowance in this clock hour was exceeded by 28 minutes and 59 seconds and Rule 4 of COSTA was breached.

Ofcom considered this to be a significant breach of Rule 4 of COSTA.

In issues 199<sup>1</sup> and 215<sup>2</sup> of Ofcom's Broadcast Bulletin, Ofcom recorded breaches of Rule 4 of COSTA for the broadcast of scrolling messages on ARY QTV, which resulted in over 52 minutes and 45 minutes respectively of advertising content being broadcast in single clock hours. Ofcom is particularly concerned that a further breach of Rule 4 has occurred owing to the same error and therefore is requiring the Licensee to attend a meeting to discuss compliance in this area.

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

---

<sup>1</sup> Issue 199 of Ofcom's Broadcast Bulletin, 6 February 2012,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb199/obb199.pdf>.

<sup>2</sup> Issue 215 of Ofcom's Broadcast Bulletin, 8 October 2012,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb215/obb215.pdf>.

## In Breach

### Advertising minutage

*RT, 2 October to 7 December 2012, various times*

---

#### Introduction

RT is a news and current affairs channel produced in Russia, and funded by the Russian Government<sup>1</sup>. It has a dedicated UK service and broadcasts on the Sky digital satellite platform. The licence for RT is held by Autonomous Non-profit Organisation TV Novosti (“TV Novosti” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified eight clock hours on RT between 18 and 28 October 2012 which contained more than the permitted 12 minutes of advertising. The Licensee later informed Ofcom of a further 21 occasions dating between 2 October and 7 December 2012 on which this had happened. The amount of excess advertising in these 29 hours ranged from two seconds to 58 seconds.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee explained that RT launched a UK-specific service on 20 September 2012 and carried advertising for the first time with a view to gauging audience reaction rather than commercial gain. It added that it was well aware of COSTA rules and had no intention of breaching them.

TV Novosti said that upon receiving Ofcom’s request for comments, it immediately began an investigation into how the clock hours in question could have contained more than the permitted allowance. The Licensee discovered that the automation software had not been correctly configured to flag potential minutage breaches; it attributed this oversight to the Moscow-based engineers who had no previous experience of managing commercial limits.

The Licensee said that upon recognition of the problem, it applied a number of corrective measures: a series of manual checks were introduced before schedules were submitted to the automation software and the software itself was correctly set up to alert so that potential breaches would be identified. It also took the decision that no clock hour would contain more than seven minutes of advertising.

---

<sup>1</sup> The Licensee has informed Ofcom that: “[Russia Today,] while receiving a fixed annual subsidy from the Russian state budget, is neither state-owned, nor state-oriented in its editorial policy. As an autonomous non-profit organisation, quite unique for a medium in Russia, it doesn’t have any state representatives among its Board members or editorial staff, similar to the BBC’s model in the UK.”

The Licensee said it took compliance extremely seriously and apologised for these incidents.

### **Decision**

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

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

Ofcom noted the measures taken by the Licensee to improve compliance in this area and its proactivity in informing Ofcom of further incidents. However, Ofcom noted that the Licensee exceeded the permitted 12 minutes of advertising per clock hour on 29 occasions. Ofcom considers this to be a significant number of instances. Therefore, the Licensee breached Rule 4 of COSTA in each case. We will continue to monitor the Licensee’s compliance with COSTA.

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

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

---

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Sahara One	9 November 2012, 14:00	COSTA Rule 4	Ofcom noted, during monitoring, that Sahara One exceeded the permitted advertising allowance on this date by 71 seconds  <b>Finding: Breach</b>

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Miss Zoe Alexander

*The X Factor, ITV1, 18 August 2012*

---

##### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment made by Miss Zoe Alexander.

This edition of *The X Factor* included an audition by Miss Zoe Alexander, a Pink tribute artist. She performed a song by the American singer-songwriter Pink, having told the judges that she wished to move away from performing her tribute act. The judges expressed surprise that she had performed this song and allowed her to perform a second song. She did so, but the judges did not put her through to the next round. She responded angrily to this decision.

Ofcom found that:

- The programme makers were not unfair in their dealings with Miss Alexander, particularly given that she was given an opportunity to perform a second song.
- The footage of Miss Alexander was not unfairly edited.
- Miss Alexander was not unfairly portrayed in the programme.

##### Introduction

On 18 August 2012, ITV1 broadcast an edition of *The X Factor*, a series in which members of the public compete to be the next “X Factor” winner by singing in front of a panel of celebrity judges and a live audience. The contestants are either selected to go through to the next round or rejected according to the judges’ opinions of their performances. Miss Zoe Alexander was one of the contestants featured in this edition of the programme. Before going on stage Miss Alexander said:

*“I am a Pink [the American singer-songwriter] tribute artist. I call myself “Zoe Alexander as Pink”, but we want to get away from the “as Pink”, we just want to be Zoe Alexander.”*

On stage, when asked by one of the judges, Mr Louis Walsh, what she wanted from performing on *The X Factor*, Miss Alexander said she was hoping to get her own identity. She then said she was going to sing “So What” by Pink. Another judge, Mr Gary Barlow, stopped her during the course of her performance and the judges expressed surprise that she had performed a Pink song, having said she wanted her own identity. She was invited to sing another song that was not by Pink, which she did. Three of the judges then rejected her, telling her that she had a “*pretty good voice*”, but needed to find herself as an artist. Miss Alexander responded:

*“You told me to sing a Pink song, I didn’t want to sing a Pink song. You guys told me to sing a Pink song.”*

The judges denied this. Miss Alexander was then seen throwing her microphone as she left the stage, visibly shocked and angry. Her father, who had been waiting backstage, was shown accompanying Miss Alexander back onto the stage, where she shouted and, it appeared, swore at the judges. Miss Alexander was then shown leaving the stage, swearing and pushing people and stage equipment as she went.

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

Miss Alexander complained that she was treated unjustly or unfairly in the programme as broadcast in that:

- a) The programme makers were not fair in their dealings with Miss Alexander.

Before responding to the specific heads of complaint made by Miss Alexander, ITV said that *The X Factor* was a talent show in its ninth series and that, given the very well-established format and style of the series, all potential participants were well aware that their auditions may be the subject of negative as well as positive comments from the judges. They were also aware that their performances at the auditions were pre-recorded and would be edited for the purposes of broadcast. ITV said that it was inevitable that some unsuccessful contestants may feel that they should not have been rejected in the judging process and may have a different recollection of the audition and the filming process than the actual recorded events.

- i) Miss Alexander complained that she was denied fair entry into the competition as the programme makers forced her to sing a Pink song, despite being aware that she wanted to break away from her image as a Pink tribute artist. Miss Alexander's contact at *The X Factor* had ignored her track choices, changed her song list and dictated her outfit and hair style, insisting on her appearing in her Pink persona.

ITV responded that discussions took place with all contestants about their song choices prior to the judges' auditions and that Miss Alexander had a telephone discussion and an email exchange with a programme researcher. ITV said that each contestant was asked to supply their own backing track for each of their chosen songs. As Miss Alexander worked as a Pink tribute artist and, as her audition application featured her singing a Pink song, she was advised that she should consider including a Pink song as one of her five song choices. This was because the experience of the production team was that many tribute artists who applied to audition were well versed in singing songs they regularly performed, but may not be so proficient when singing a song with which they were less familiar. The judges may therefore wish to see the contestant sing a song that they already performed as a tribute artist, to judge their vocal abilities at their best. However, ITV said Miss Alexander's own song choices were not ignored.

ITV said that it was therefore Miss Alexander's own decision to include a Pink song in her list of songs and it was her own decision on the day which of those five songs she would sing for the judges. ITV said that a contestant's outfit and hairstyle at their audition were also matters for them to decide and that in the untransmitted footage Miss Alexander commented: "I can't change the hair because of the gigs."

ITV said that when Mr Walsh asked Miss Alexander when she was on stage which song she was going to sing, she was entitled to state whichever track

she wished to perform, as all five backing tracks were lined up and available for her to select for the audition. Miss Alexander chose the Pink song for her first song and when she was asked to sing another song she selected an Emeli Sandé song. ITV said that neither the judges nor the production team had ever instructed Miss Alexander that she must sing a Pink song. After singing the Pink song, Miss Alexander was given the opportunity by the judges to perform another song to demonstrate her wish to display her own identity, an opportunity not offered to all contestants. The judges clearly indicated that they wanted to give Miss Alexander a second chance, with Mr Walsh repeatedly saying “*be you*”, meaning that she should not sing in her Pink persona. She then chose and performed an Emeli Sandé song, following which the judges made a variety of comments. These were by no means all negative, but none of the judges felt that the audition was strong enough and they believed that she needed, in Gary Barlow’s words, “*to go away and really find your own lane and find what sounds right for your voice*”. The judges therefore declined to put her through to the next stage based on their judgement of her performances.

- ii) Miss Alexander’s actual performance was sabotaged, as the on-stage sound monitors were turned off so she could not hear her own backing track. The backing track used was not the one Miss Alexander had supplied, but an inferior version.

In response, ITV said that, as with all contestants, Miss Alexander provided her own backing tracks to the production team. All contestants’ backing tracks were loaded onto a hard drive and then provided to the sound team located at the side of the stage. Once the contestant has told the judges which track they intend to perform, it is the version already loaded up onto the hard drive that is used. The sound team would ensure that a sound mix was then played out so that every act could hear their own vocal and their track when they are on stage, via floor monitors on the stage and side ‘fills’ in the wings, which are directed towards the performers on stage. ITV said that these monitors were not turned off when Miss Alexander performed and the tracks used were those she had provided to the programme makers.

- iii) When Miss Alexander realised the extent to which she had been set up by the programme makers, she broke down on stage and every moment of her subsequent emotional breakdown was filmed. (She swore at the programme makers, left the stage, threw away her microphone, fell down the stage stairs, saying that she wanted to kill herself, and then ran off down the corridor and out of the building, not really aware of what she was doing.)

In response, ITV said that all participants were well aware that they were being filmed at every stage of the audition process throughout the day. This could include arriving at the audition, waiting in the “holding room” before going on stage, and after the audition on exiting the stage, including the walk through the corridor to exit the building. As participants would be well aware from previous series of *The X Factor*, the emotional reaction of the contestant after the audition, whether successful or not, was an important editorial element of every audition show.

ITV said that the untransmitted footage confirmed that, having not been put through to the next round by the judges, Miss Alexander walked off stage, throwing down the microphone. She then came back on stage with her father to remonstrate with the judges, before storming off again, swearing

repeatedly and physically attacking the cameraman. As was standard practice, filming continued in the side stage area, but given Miss Alexander's extreme agitation and her continuing to strike out at the camera, the series producer instructed the cameraman to stop filming. Therefore, Miss Alexander was not filmed leaving the building via the corridor as contestants generally were. The programme psychologist and the series producer then walked the family out of the building. This was also not filmed. At this point, ITV said that Miss Alexander continued her aggressive behaviour, kicking equipment as she went and, eventually, slapped the series producer in the face. ITV said that at no time immediately after the audition was Miss Alexander recorded saying she wanted to kill herself, although she did threaten that she was "going to kill someone".

ITV accepted that Miss Alexander was extremely agitated and very angry after the audition, no doubt arising in part from her belief that she had been unfairly treated. However, it said that the judges' comments were balanced and that Miss Alexander's violent reaction after the audition was unacceptable by any standards, whatever her perceived grievance. In these circumstances, it was not unfair for the programme to include some footage of her actions or to include the judges' shocked reaction, having been called "fucking cunts", or for judge Ms Nicole Scherzinger to refer to Miss Alexander throwing down the microphone as "inappropriate".

- b) Footage of Miss Alexander was unfairly edited to create an unfair impression of her and her behaviour.

By way of background, Miss Alexander said there was clear evidence of computer generated imagery ("CGI") being used. For example, there was "contradictory lighting of figures in the same camera shots"; there was footage of "incomplete figures and unattached body parts"; use of plasma fractals resulted in "partial face masks/security staff were deleted"; "physically impossible scenes" of Miss Alexander and her father were included; "unequally pixellated figures in same shot"; Miss Alexander's voice was "auto-tuned out of recognition".

In response, ITV said that this complaint was largely founded on a mistaken recollection of events influenced, no doubt, by the emotion Miss Alexander displayed following the rejection of her performances by the judges and a misunderstanding of the process of television editing. ITV said that all auditions were edited and did not unfold within the programme in real time. It said that there was nothing unfair about this process, which sought to tell the story of the audition in the most engaging and entertaining manner, whilst seeking to represent fairly the audition and the judge's reactions.

- i) Miss Alexander said that she was made to appear as if she acted in concert with her father to intimidate and threaten the judges, but in fact they did not stand on stage together holding hands, acting in an intimidating manner.

ITV said Miss Alexander and her father were not portrayed as intimidating or threatening. The footage in the programme was a fair portrayal of the incident where Miss Alexander's father decided to come up on stage with her to remonstrate with the judges. The judges told them to stay on the stage during this exchange, which they did. Miss Alexander and her father behaved in the manner shown in the programme and their behaviour had not been distorted or heightened by the editing of that footage.

- ii) Miss Alexander said that the judges' comments were "doctored", so that many of their more biting and sneering comments were omitted and kinder comments were created and inserted into the programme. For example, Ms Scherzinger did not stand up or say, "*No. No baby no. Stay on the stage.*" This made Miss Alexander's reaction and that of her father seem even more unreasonable.

ITV said that the entire process of the audition, including the judges' comments, was edited for broadcast purposes. In Miss Alexander's case, the editing and selection of the judge's comments was relatively limited, as demonstrated by a comparison of the broadcast programme and the untransmitted footage. Most of the judges' comments made at the time were included in the broadcast and no comments were recorded afterwards and then included in the sequence in the broadcast programme. The untransmitted footage demonstrated that Miss Scherzinger did say, "*No baby no.*" Miss Alexander's reaction and that of her father were not made to seem more unreasonable by the editing of the sequence.

- iii) Miss Alexander said that the programme makers used footage that was manipulated to show her in a false light and to fit with the false scenario created. For example, Miss Alexander said that she did not push over stage equipment and she and her father did not stand together at the front of the stage. However the impression was given that they were about to go down the centre steps to attack the judges.

ITV said that the footage included in the broadcast was an edited but fair summary of the events that did occur, despite Miss Alexander's recollection otherwise. For example, Miss Alexander could be seen clearly in the untransmitted footage pushing over a large piece of stage equipment and she and her father did indeed stand at the front of the stage berating the judges. No unfair impression was given through the editing that they were about to attack the judges. ITV said that Miss Alexander's submissions to Ofcom included numerous fanciful allegations of CGI editing being used and of her voice being "auto-tuned out of recognition". ITV said that CGI effects and auto-tuning were not used in the editing of the programme and that none of the allegations of "manipulation" of the images and sound recorded during the audition and its aftermath had any basis in reality.

- c) Miss Alexander complained that she was unfairly portrayed as a "mixed up idiot and a laughing stock" when she went on stage and sang a Pink song, having (as previously instructed by the programme makers) talked backstage about her career as a Pink tribute artist. The programme makers unfairly juxtaposed this with her true ambition to be a performer in her own right. The judges made denigrating remarks about Miss Alexander's work as a Pink tribute artist lacking originality, mocked her as a confused, deluded individual, and made comments to her personal and professional detriment.

ITV responded that it was evident from the untransmitted footage that Miss Alexander was happy to discuss her work as a Pink tribute artist and her hopes to develop her career further. The use of this pre-audition material in the programme represented her stated ambitions fairly.

ITV said that Miss Alexander was given an opportunity to sing a second song to demonstrate her ability, however the judges did not feel it was a sufficiently impressive vocal performance to merit her continuing in the competition. ITV said

that this was the overriding reason why Miss Alexander was not put through to the next stage. ITV acknowledged that the judges referred to Miss Alexander's comments immediately before she commenced singing, namely that she wanted to get away from her Pink tribute act and contrasted those with her image and her decision to perform a Pink song. They were entitled to offer those opinions and they did not denigrate or mock her. On the contrary, ITV said that the judges made some very positive and encouraging comments.

## 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 of the programme as broadcast and a transcript, both parties' written submissions, and recordings and transcripts of untransmitted footage. The parties chose not to make any representations on Ofcom's Preliminary View.

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

- a) Ofcom first considered the complaint that the programme makers were not fair in their dealings with Miss Alexander.

In considering this part of the complaint, Ofcom had regard to Practice 7.2 of its Code, which states that broadcaster and programme makers should normally be fair in their dealings with potential contributors to programme unless, exceptionally, it is justified to do otherwise.

Ofcom then considered the specific issues raised under this head of complaint.

- i) Miss Alexander was denied fair entry into the competition as the programme makers forced her to sing a Pink song, despite being aware that she wanted to break away from her image as a Pink tribute artist. Miss Alexander's contact at *The X Factor* had ignored her track choices, changed her song list and dictated her outfit and hair style, insisting on her appearing in her Pink persona.

Ofcom noted that Miss Alexander's position was that the programme makers had forced her to perform a Pink song, whereas ITV stated that it was for Miss Alexander to choose which of her nominated songs to perform and that she had chosen to sing a Pink song. Where there is a conflict of recollection

between the parties to a complaint, it is not Ofcom's role to adjudicate on that conflict, but rather to determine whether there was any unfairness to the complainant in the programme as broadcast. Ofcom noted that in email correspondence with the programme makers before her audition, Miss Alexander had initially sent a list of five songs, none of which was by Pink. A second list, sent when Miss Alexander was advised that tracks could not have backing vocals, also had no songs by Pink. Miss Alexander then sent her final list, which included "So What" by Pink, and she stated in her covering email that the programme researcher with whom she had been dealing had asked her to send the track. In Ofcom's view, this chain of correspondence supported Miss Alexander's assertion that her preference from the outset was not to perform as Pink. Ofcom also considered that Miss Alexander's surprised and shocked reaction on stage and that of her parents backstage suggested that they had felt that she had been expected by the programme makers to sing a Pink song. Ofcom also noted ITV's position that a contestant who was a tribute artist was often likely to give a stronger performance of a song by the artist they performed as, and that when she went on stage and was asked by the judges what she was going to sing, she chose a Pink song.

As set out above, it is not Ofcom's role to resolve the conflict between the parties on this point. It appeared to Ofcom that Miss Alexander had preferred not to perform as Pink, but had been advised strongly by the programme researcher to include a Pink song in her choices, and had felt that she was expected to perform a Pink song in her audition. However, when Miss Alexander auditioned, she was given an opportunity to perform a second song and encouraged to move away from Pink and perform as herself. It was on the basis of both performances that the judges decided not to put her through to the next round of auditions. In these circumstances, Ofcom found that the programme makers' dealings with Miss Alexander regarding her song choices did not result in unfairness to her in the programme as broadcast.

- ii) Miss Alexander's actual performance was sabotaged, as the on-stage sound monitors were turned off so she could not hear her own backing track. The backing track used was not the one Miss Alexander had supplied, but an inferior version.

Ofcom noted that, as with head a) i) above, there was a conflict of evidence between the parties on this point and that it was not Ofcom's role to adjudicate on that conflict but to determine whether there was any unfairness to the complainant in the programme as broadcast.

Ofcom took the view that it was clear from the correspondence provided that Miss Alexander did provide her own backing tracks as requested and that she provided further tracks because some of her original choices had backing vocals that were not permitted for the auditions. ITV's position was that the sound monitors on the stage and in the wings were not turned off when Miss Alexander performed and that the tracks used were those Miss Alexander had provided. While it was not possible for Ofcom to resolve this conflict, Ofcom noted that the recordings of the untransmitted footage and the footage broadcast did not clarify the position.

However, having watched both the untransmitted footage and that broadcast, Ofcom noted that the judges stopped Miss Alexander's first song, not because of the quality of her singing, but because they were surprised that she was singing a Pink song, having expressed a desire to perform as

herself. She was then given a chance to sing a second song by an artist other than Pink, which she did. When the judges gave their views on her performance, they made positive comments. For example, Ms Scherzinger said:

*"I really like your energy up there, I think you have a pretty good voice..."*

Mr Barlow said:

*"I thought the second song was much better."*

When the judges voted not to put Miss Alexander through to the next round, they all suggested that they felt she had promise. In these circumstances, Ofcom took the view that the judges all thought Miss Alexander sang well, but did not feel her performance was sufficiently strong for her to go through to the next round of auditions. In these circumstances, Ofcom considered that it was unlikely that the decision not to put Miss Alexander through to the next round was due to the quality of her backing track, but because the judges felt her performance, although good, was not good enough to warrant putting her through to the next stage of the contest.

- iii) When Miss Alexander realised the extent to which she had been set up by the programme makers, she broke down on stage and every moment of her subsequent emotional breakdown was filmed. (She swore at the programme makers, left the stage, threw away her microphone, fell down the stage stairs, saying that she wanted to kill herself, and then ran off down the corridor and out of the building, not really aware of what she was doing.)

Ofcom considered that, given that this was the ninth series of *The X Factor*, it was highly probable that Miss Alexander would have been aware that contestants were filmed throughout the audition process, with footage of interviews before and after auditions being included in the broadcast programme as well as the audition performances themselves. It was also very likely that Miss Alexander would have been aware that contestants' reactions to the judges' decisions were filmed and included in the programme.

Ofcom noted that it was clear from the untransmitted footage and the programme itself that Miss Alexander was shocked at being criticised for performing as Pink and that she felt that this was what she had been told to do, although she acknowledged in the untransmitted footage that when she said this she was referring to the programme makers rather than the judges themselves. It was apparent from the untransmitted footage and the programme as broadcast that Miss Alexander had an extremely emotional reaction to the judges' decision, storming off the stage, returning with her father, leaving the stage again and responding very emotionally backstage. It was also clear from the untransmitted footage that her reactions were filmed for some time after she left the stage, while she shouted and objected to her treatment. In Ofcom's view, while Miss Alexander may have preferred her reactions not to be filmed, it should have been within her expectations that this would happen and it was not unreasonable for the programme makers to continue with filming and for some of that footage to be included in the programme as broadcast. Ofcom noted that the programme makers stopped filming Miss Alexander at an earlier stage than when they would ordinarily stop, due to her emotional state.

Taking all the above factors into account, Ofcom did not consider that the programme makers were unfair in their dealings with Miss Alexander. Ofcom therefore found that there was no unfairness to Miss Alexander in this respect.

- b) Footage of Miss Alexander was unfairly edited to create an unfair impression of her and her behaviour.

In considering this part of the complaint, Ofcom had regard to Practice 7.6 of its Code, which states that when a programme is edited, contributions should be represented fairly.

Ofcom then considered the specific issues raised under this head of complaint.

- i) Miss Alexander was made to appear as if she acted in concert with her father to intimidate and threaten the judges, but in fact they did not stand on stage together holding hands, acting in an intimidating manner.

In considering this part of the complaint, Ofcom viewed the untransmitted footage and the programme as broadcast. Ofcom noted that the untransmitted footage showed that, following Miss Alexander's shocked reaction to the judges' decision and her stating on stage that she had been told to sing a Pink song, she stormed off stage, throwing her microphone on the stage floor. Her father was shown backstage, also apparently shocked. He said, under his breath, "*Oh just leave it Zoe, come on.*" He then went up to the stage and escorted Miss Alexander back on to the stage. Both the untransmitted footage and the programme itself showed this incident, although Ofcom noted that the programme as broadcast did not include the full incident, but a slightly edited version of it. It was clear to Ofcom from the untransmitted footage that Miss Alexander and her father did go on to the stage and speak to the judges. The footage did not suggest that they approached the judges at their desk or that they intended to do so. The footage did show that Miss Alexander shouted and swore at the judges and that the judges were taken aback by this.

Ofcom noted that the untransmitted footage showed that after Miss Alexander had left the stage, a member of the production team approached the judges to talk about what had happened. Mr Barlow appeared to say, "We needed one of those", to which the member of the production team replied, "We got one". This exchange suggested to Ofcom that it was possible that some of those involved with the production may have thought it was useful to the narrative and drama of the programme to have an incident of this nature. However, in Ofcom's view the programme showed a slightly edited, but accurate, version of what happened.

- ii) The judges' comments were "doctored", so that many of their more biting and sneering comments were omitted and kinder comments were created and inserted into the programme. For example, Miss Scherzinger did not stand up or say, "*No. No baby no. Stay on the stage.*" This made Miss Alexander's reaction and that of her father seem even more unreasonable.

Ofcom considers that the question of which material to include in a programme is an editorial matter for the programme makers and the broadcaster to make, provided that the editing does not result in unfair treatment. Ofcom noted that the untransmitted footage showed that not all

comments by Miss Alexander and the judges were included in the programme as broadcast. However, Ofcom considered that the programme conveyed accurately what happened, namely that Miss Alexander explained that she wanted to move away from being a Pink tribute artist, sang a Pink song, was given an opportunity to sing another song, did so, was told she was not going through to the next round, and reacted badly to that decision. Ofcom noted that very little of what the judges said in response to Miss Alexander's singing was omitted and that the sense of what they said was included, namely that she sang well but that should take "time out to find herself" as a singer and move away from her tribute act. As regards the untransmitted footage of Miss Alexander returning to the stage, Ofcom noted that this showed that Ms Scherzinger did stand up and say "*No baby no*" and that another judge, Ms Tulisa Contostavlos, told Miss Alexander and her father to stay on the stage. In Ofcom's view, the programme accurately conveyed Miss Alexander's audition and the judges' responses to it.

- iii) The programme makers used footage that was manipulated to show Miss Alexander in a false light and to fit with the false scenario created. For example, Miss Alexander did not push over a stage equipment and she and her father did not ever stand together at the front of the stage, but the impression was given that they were about to go down the centre steps to attack the judges.

As set out under heads b) i) and ii) above, Ofcom considered that the programme as broadcast accurately reflected Miss Alexander's audition, as demonstrated by the untransmitted footage.

As regards Miss Alexander's position that there was clear evidence of CGI and auto-tuning being used to her disadvantage, Ofcom noted that Miss Alexander had submitted pictures along with her complaint which she felt suggested that this was the case. Ofcom also noted ITV's position that editing of this nature had not taken place. As already set out above, it is not Ofcom's role to adjudicate on that conflict of evidence, but rather to determine whether there was any unfairness to the complainant in the programme as broadcast.

Based on its viewing of the untransmitted footage and the programme as broadcast, Ofcom did not consider that the programme had been edited in the way suggested by Miss Alexander. As set out under heads b) i) and ii) above, Ofcom considered that the programme as broadcast accurately conveyed Miss Alexander's audition.

Taking these factors into account, Ofcom did not consider that the programme was edited unfairly.

Ofcom therefore found that there was no unfairness to Miss Alexander in this respect.

- c) Miss Alexander was unfairly portrayed as a "mixed up idiot and a laughing stock" when she went on stage and sang a Pink song, having (as previously instructed by the programme makers) talked backstage about her career as a Pink tribute artist. The programme makers unfairly juxtaposed this with her true ambition to be a performer in her own right. The judges made denigrating remarks about Miss Alexander's work as a Pink tribute artist lacking originality, mocked her as a confused, deluded individual, and made comments to her personal and professional detriment.

When considering this complaint, Ofcom had regard to whether reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in a way which was unfair to Miss Alexander (as outlined in Practice 7.9 of the Code).

Ofcom noted that the untransmitted footage of Miss Alexander's interviews prior to the audition demonstrated that she repeatedly explained that, much as she enjoyed it, she wished to move away from her Pink tribute act and perform as herself. She also acknowledged, both in the interviews and at the audition, that she continued to perform as Pink as she made a living from the act.

Ofcom noted that, in the programme as broadcast, when Miss Alexander came on stage for her audition, she explained that she was a Pink tribute artist but that her ambition was to perform as herself. She then went on to sing "So What", a Pink song. The judges expressed surprise that she sang a Pink song having said she wanted to move away from her tribute act and perform as herself. The judges then offered her the opportunity to perform a second song. She took up this offer and sang a song by Emeli Sandé. The judges commented on her performances and did not vote her through to the next round of auditions, advising her to take time to find her own voice and persona.

Ofcom acknowledged that Miss Alexander may have appeared a little confused as to what she was trying to achieve. However, Ofcom did not consider that she was portrayed as a "laughing stock", but rather as someone who was working as a tribute artist, but aspired to making a success of performing in her own right. Ofcom also noted that the judges made positive comments about Miss Alexander's rendition of the second song. Ms Scherzinger said she thought Miss Alexander had *"a pretty good voice"* and Mr Walsh said *"I think with time you could be fantastic"*. It was clear therefore that the judges felt that Miss Alexander had promise and encouraged her to find her own identity, as she stated she wanted to.

In these circumstances, Ofcom found that Miss Alexander was not portrayed unfairly in the programme as broadcast.

**Accordingly, Ofcom has not upheld Miss Alexander's complaint of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Glenn Smith

*The X Factor, ITV1, 18 August 2012*

---

#### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment made by Mr Glenn Smith.

This edition of *The X Factor* included an audition by Miss Zoe Alexander, a Pink tribute artist. She performed a song by the American singer-songwriter Pink, having told the judges that she wished to move away from performing her tribute act. The judges expressed surprise that she had performed this song and allowed her to perform a second song. She did so, but the judges did not put her through to the next round. She responded angrily to this decision and was then joined by her father, Mr Glenn Smith, on stage.

Ofcom found that:

- The footage of Mr Smith was not unfairly edited.
- Mr Smith was not unfairly portrayed in the programme.

#### Introduction

On 18 August 2012, ITV1 broadcast an edition of *The X Factor*, a series in which members of the public compete to be the next *X Factor* winner by singing in front of a panel of celebrity judges and a live audience. The contestants are either selected to go through to the next round or rejected according to the judges' opinions of their performances. Miss Zoe Alexander was one of the contestants featured in this edition of *The X Factor*. Before going on stage Miss Alexander explained that she was a Pink (the American singer-songwriter) tribute artist, but wanted to get away from that role and be herself. She went on stage and performed a song by Pink. One of the judges, Mr Gary Barlow, expressed surprise that she had performed a Pink song, having said she wanted her own identity. She was invited to sing another song that was not by Pink, which she did. Three of the judges then rejected her, telling her that she had a "*pretty good voice*", but needed to find herself as an artist. Miss Alexander said she had been told to sing a Pink song, which the judges denied. Miss Alexander was seen throwing her microphone as she left the stage, visibly shocked and angry. Her father, Mr Glenn Smith, who had been waiting in the wings, was shown accompanying Miss Alexander back on stage, where he spoke to the judges.

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

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

- a) Footage of Mr Smith with his daughter was unfairly edited to create an unfair impression of him and his behaviour.

By way of background, Mr Smith said there was clear evidence of computer generated imagery ("CGI") being used. For example, there was "contradictory

lighting of figures in the same camera shots”; there was footage of “incomplete figures and unattached body parts”; use of plasma fractals resulted in “partial face masks/security staff were deleted”; “physically impossible scenes” of Miss Alexander and her father were included; “unequally pixellated figures in same shot”; and Miss Alexander’s voice was “auto-tuned out of recognition”.

Before responding to the specific complaints, ITV said that *The X Factor* was a talent show in its ninth series and that, given the very well-established format and style of the series, all potential participants were well aware that their auditions may be the subject of negative as well as positive comments from the judges. They were also aware that their performances at the auditions were pre-recorded and would be edited for the purposes of broadcast. ITV said that it was inevitable that some unsuccessful contestants may feel that they should not have been rejected in the judging process and may have a different recollection of the audition and the filming process than the actual recorded events.

ITV said that Mr Smith was not a contestant on the programme, but was attending to support his daughter as she auditioned. He was aware that he would be filmed backstage with Miss Alexander before her audition, watching in the wings and discussing her audition with the presenter as it progressed. He had consented to this. When Miss Alexander’s audition was deemed unsuccessful by the judges, Mr Smith went onto the stage with his daughter to remonstrate with the judges about what he perceived to be unfair treatment of her by the programme producers. When Miss Alexander then left the stage again in a highly emotional state, swearing repeatedly and assaulting production staff members, Mr Smith accompanied her out of the building.

ITV said that this complaint was largely founded in a mistaken recollection of events and a misunderstanding of the process of television editing. All auditions were edited and did not unfold within the programme in real time. There was nothing unfair about this process, which sought to tell the story of the audition in the most engaging and entertaining manner, whilst seeking to represent fairly the audition and the judges’ reactions.

- i) Mr Smith was made to appear as if he acted in concert with his daughter to intimidate and threaten the judges. In fact they did not stand on stage together holding hands, as if they were acting in an intimidating manner.

ITV said that the programme did not portray Mr Smith or Miss Alexander as intimidating or threatening and that the footage as edited in the programme was a fair portrayal of the incident in which Mr Smith and Miss Alexander came up on stage to remonstrate with the judges. The judges told them to stay on the stage during this exchange, which they did. ITV said that Mr Smith’s behaviour and that of Miss Alexander as depicted in the programme was the behaviour they displayed at the time and had not been distorted or heightened by the editing of that footage.

- ii) The judges’ comments were “doctored”. Many of their more biting and sneering comments were omitted and kinder comments were created and inserted into the programme. For example, Miss Nicole Scherzinger, one of the judges, did not stand up or say, “*No. No baby no. Stay on the stage.*” This made Mr Smith’s reaction and that of his daughter seem even more unreasonable.

ITV said that the entire process of the audition, including the judges’

comments, was edited for broadcast purposes. In this case, the editing and selection of the judge's comments was relatively limited, as demonstrated by a comparison of the broadcast programme and the untransmitted footage. Most of the judges' comments made at the time were included in the broadcast and no comments were recorded afterwards and then included in the sequence in the broadcast programme. The untransmitted footage demonstrated that Miss Scherzinger did say, "*No baby no*". Miss Alexander's reaction and that of her father were not made to seem more unreasonable by the editing of the sequence.

- iii) The programme makers manipulated footage to show Mr Smith in a false light and to fit with the false impression they wanted to create. For example, Mr Smith and his daughter did not ever stand together at the front of the stage, but the impression was given that they were about to go down the centre steps to attack the judges.

ITV said that the footage included in the broadcast was an edited but fair summary of the events that did occur, despite Mr Smith's recollection otherwise. For example, Mr Smith and Miss Alexander did indeed stand at the front of the stage berating the judges. No unfair impression was given through the editing that they were about to attack the judges. ITV said that Mr Smith's submissions to Ofcom included numerous fanciful allegations of CGI editing being used and of Miss Alexander's voice being "auto-tuned out of recognition". ITV said that CGI effects and auto-tuning were not used in the editing of the programme and that none of the allegations of "manipulation" of the images and sound recorded during the audition and its aftermath had any basis in reality. For example, the bizarre suggestion that Mr Smith's finger was altered to resemble a penis is without foundation.

- b) Mr Smith was unfairly portrayed as an intimidating aggressor, standing centre stage hand in hand with Miss Alexander, swearing and using threatening behaviour towards the judges. Mr Smith said that he went on stage alone and that he did not swear or threaten anyone, but pointed out that it was a fix and then left the stage in a reasonable manner.

ITV said that, as set out under head a) i) above, comparison of the broadcast programme and the untransmitted footage showed that the footage included in the programme was an edited but fair representation of what occurred. The programme did not include footage edited in an attempt to show Mr Smith in a false light.

## 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 of the programme as broadcast and transcript, both parties' written submissions and recordings and transcripts of untransmitted footage. The parties chose not to make any representations on Ofcom's Preliminary View.

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

- a) Ofcom first considered the complaint that footage of Mr Smith with his daughter was unfairly edited to create an unfair impression of him and his behaviour.

In considering this part of the complaint, Ofcom had regard to Practices 7.6 and 7.9 of the Code. Practice 7.6 states that when a programme is edited, contributions should be represented fairly. Practice 7.9 states that when broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom then considered the specific points raised under this head of complaint.

- i) Mr Smith was made to appear as if he acted in concert with his daughter to intimidate and threaten the judges. In fact they did not stand on stage together holding hands, as if they were acting in an intimidating manner.

In considering this part of the complaint, Ofcom viewed the untransmitted footage and the programme as broadcast. Ofcom noted that the untransmitted footage showed that, following Miss Alexander's shocked reaction to the judges' decision and her stating on stage that she had been told to sing a Pink song, she stormed off stage, throwing her microphone on the stage floor. Her father was shown backstage, also apparently shocked. He said under his breath "*Oh just leave it Zoe, come on*". He then went up the stairs to the stage and escorted Miss Alexander back on to the stage. Both the untransmitted footage and the programme itself showed this incident, although Ofcom noted that the programme as broadcast did not include the full incident, but a slightly edited version of it. It was clear to Ofcom from the untransmitted footage that Miss Alexander and her father did go on to the stage and speak to the judges. The footage did not suggest that they approached the judges at their desk or that they intended to do so. The footage did show that Miss Alexander shouted and swore at the judges and that the judges were taken aback by this. It was not possible to hear what Mr Smith said, but it was apparent that he spoke to the judges.

Ofcom noted that the untransmitted footage showed that, after Miss Alexander had left the stage, a member of the production team approached the judges to talk about what had happened. Mr Barlow appeared to say, "We needed one of those", to which the member of the production team replied, "We got one". This exchange suggested to Ofcom that it was possible that some of those involved with the production may have thought it was useful to the narrative and drama of the programme to have an incident of this nature. However, in Ofcom's view the programme showed a slightly edited, but accurate, version of what happened.

- ii) The judges' comments were "doctored". Many of their more biting and sneering comments were omitted and kinder comments were created and inserted into the programme. For example, Miss Nicole Scherzinger, one of the judges, did not stand up or say, "*No. No baby no. Stay on the stage.*" This made Mr Smith's reaction and that of his daughter seem even more unreasonable.

Ofcom considers that the question of which material to include in a programme is an editorial matter for the programme makers and the broadcaster to make, provided that the editing does not result in unfair treatment. Ofcom noted that the untransmitted footage showed that not all comments by Miss Alexander and the judges were included in the programme as broadcast. However, Ofcom considered that the programme conveyed accurately what happened, namely that Miss Alexander explained that she wanted to move away from being a Pink tribute artist, sang a Pink song, was given an opportunity to sing another song, did so, was told she was not going through to the next round, and reacted badly to that decision. Ofcom noted that very little of what the judges said in response to Miss Alexander's singing was omitted and that the sense of what they said was included, namely that she sang well but that should take "time out to find herself" as a singer and move away from her tribute act. As regards the untransmitted footage of Mr Smith accompanying Miss Alexander back on to the stage, Ofcom noted that this showed that Ms Scherzinger did stand up and say, "*No. No baby no*", and that another judge, Ms Tulisa Contostavlos, told Miss Alexander and her father to stay on the stage. In Ofcom's view, the programme accurately conveyed Miss Alexander's audition, the judges' responses to it and Mr Smith's reaction and that of his daughter when they went on to the stage to speak to the judges.

- iii) The programme makers manipulated footage to show Mr Smith in a false light and to fit with the false impression they wanted to create. For example, Mr Smith and his daughter did not ever stand together at the front of the stage, but the impression was given that they were about to go down the centre steps to attack the judges.

As regards Mr Smith's position that there was clear evidence of CGI and auto-tuning being used to his disadvantage and that of his daughter, Ofcom noted that Mr Smith had submitted pictures along with his complaint which he felt suggested that this was the case. Ofcom also noted ITV's position that editing of this nature had not taken place. As already set out above, it is not Ofcom's role to adjudicate on that conflict of evidence, but rather to determine whether there was any unfairness to the complainant in the programme as broadcast.

Based on its viewing of the untransmitted footage and the programme as broadcast, Ofcom did not consider that the programme had been edited in the way suggested by Mr Smith. As set out under heads a) i) and ii) above, Ofcom considered that the programme as broadcast accurately conveyed Miss Alexander's audition and Mr Smith's role in it.

Taking these factors into account, Ofcom did not consider that the programme was edited unfairly.

Ofcom therefore found no unfairness to Mr Smith in this respect.

- b) Mr Smith was unfairly portrayed as an intimidating aggressor, standing centre stage hand in hand with Miss Alexander, swearing and using threatening behaviour towards the judges. Mr Smith said that he went on stage alone and that he did not swear or threaten anyone, but pointed out that it was a fix and then left the stage in a reasonable manner.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, as set out under head a) above.

As set out under head a) above, Ofcom considered that the footage of Mr Smith was not unfairly edited. Ofcom considered that the programme accurately conveyed the fact that Miss Alexander was shocked and angry at the judges' decision not to put her through to the next round. It was also clear that she felt she had been put under pressure to perform a Pink song. Following Miss Alexander's emotional reaction to the judges' decision and her departure from the stage, Mr Smith accompanied her back on to the stage, where they both spoke to the judges.

It was clear from the untransmitted footage and the programme as broadcast that Miss Alexander swore repeatedly at the judges. It was also apparent that Mr Smith spoke to the judges. From the material available to Ofcom it was not possible to ascertain what Mr Smith said to the judges, but his demeanour did not suggest that he was shouting or intending to leave the stage and approach the judges. In these circumstances, Ofcom considered that, while Mr Smith was clearly upset, he was not portrayed as intimidating or aggressive.

Ofcom therefore found no unfairness to Mr Smith in this respect.

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

## Not Upheld

### Complaint by Mr Shaun Tudor

*East Midlands Today, BBC1 East Midlands, 7 September 2012*

---

#### Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programmes as broadcast made by Mr Shaun Tudor.

BBC1 East Midlands broadcast a number of editions of its regional news bulletin service, *East Midlands Today*, which included a report on the escape of two patients from St Andrew's Health Care Unit ("the Unit"), a secure mental health Unit. The reports stated that local Members of Parliament had called for the Unit to be closed while an investigation was carried out into the escape. All the bulletins referred to a previous incident at the Unit in July 2011 which involved the complainant, Mr Shaun Tudor, who had attempted to rape a ten-year old boy after being let out of the Unit on leave without an escort.

Mr Tudor complained that his privacy was unwarrantably infringed in the programmes as broadcast in that his name was referred to and a photograph of him was shown. He also complained that details of his crime were also disclosed.

Ofcom considered that Mr Tudor did not have a legitimate expectation of privacy in relation to the broadcast of the news reports in which he was named and his photograph was shown because this information was already in the public domain. It also considered that Mr Tudor did not have a legitimate expectation of privacy in relation to the disclosure of details of his crime which had already been disclosed in open court and therefore were also in the public domain. Ofcom therefore concluded that Mr Tudor's privacy was not unwarrantably infringed in the programmes as broadcast.

#### Introduction

On 7 September 2012, BBC1 East Midlands broadcast a number of editions of its regional news bulletin service, *East Midlands Today*. Each edition included a report on the escape of two patients from St Andrew's Health Care Unit, a secure mental health Unit in Rainworth, Nottinghamshire ("the Unit"). The reports stated that local Members of Parliament had called for the Unit to be closed while an investigation was carried out into the escape. All the bulletins referred to a previous incident at the Unit in July 2010 which involved the complainant, Mr Shaun Tudor.

The first edition of the bulletin was broadcast at approximately 06:27 hours (and subsequently at half hour intervals until 09:04 hours) during the *East Midlands Today* regional news slots in the early morning programme *BBC Breakfast*. In this version of the item, the presenter in the studio stated:

*"An MP is calling for a secure mental health Unit to be closed after two patients escaped from the site at Rainworth in Nottinghamshire. Last year, the St Andrew's Unit was heavily criticised after the paedophile, Shaun Taylor [sic], attempted to rape a ten year-old whilst on authorised release. Managers say they're investigating how the men escaped last week. The call for closure has*

*come from the Mansfield MP Alan Meale who says the safety of the community must be guaranteed.”*

A photograph of Mr Tudor (referred to in this report incorrectly as “Shaun Taylor”) was shown along with archive footage of a cordoned off area of woodland. Six bulletins were broadcast in total between 06:27 and 09:04 hours and were largely identical in content with only minor grammatical variations between them. In the final bulletin, Mr Tudor’s name was corrected.

The story of the calls for the closure of the Unit was reported at greater length in the lunchtime edition *East Midlands Today*. Introducing the news report, the presenter in the studio referred to the latest incident involving the Unit and stated:

*“It’s the same Unit in Rainworth where a known sex offender was allowed out last year. He then attempted to rape a ten year-old boy. Local MPs say they are deeply concerned about lapses in security.”*

The item then featured a more detailed report in which the reporter stated over images of the Unit that:

*“Last July, Shaun Tudor was granted unescorted leave and attempted to rape a ten year-old boy in nearby woodland. The attack led to an outcry and a comprehensive review. But, at the end of last month, two low security patients went missing. They were absent for two hours late at night before being found by the police close to the Unit.”*

Mr Tudor’s photograph was also shown in the lunchtime bulletin along with archive footage of police officers walking through a cordoned off area of woodland.

In the early evening edition of *East Midlands Today*, the presenter in the studio introduced the story by saying that a “*dangerous paedophile was allowed out, now two patients go missing*”. Another presenter stated:

*“Last year, a sex offender was allowed out on leave from the Unit and attempted to rape a boy. Now it’s been revealed that two patients went missing for two hours.”*

A detailed report of the story followed including interviews with the two local Members of Parliament who were calling for the Unit’s closure and a senior police officer. The reference to the incident involving Mr Tudor was identical to that broadcast in the lunchtime edition and Mr Tudor’s photograph was again shown.

Mr Tudor (who is serving an indeterminate prison sentence) complained to Ofcom that his privacy had been unwarrantably infringed in the programmes as broadcast.

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

Mr Tudor complained that his privacy was unwarrantably infringed in the programmes as broadcast in that news reports that were about the escape of two patients from the Unit featured a description of him and his crime. Mr Tudor said that he had no connection with the two patients (who were not identified in the reports) and that he felt that the description of his crime and inclusion of his name and photograph in the programmes infringed his privacy. By way of background to his complaint, Mr Tudor said that he was shocked to see himself in the news again, especially in reports that

were not about him. He said that the broadcast of the reports have had a negative effect on him in prison and that he feared being attacked by other inmates.

In response to the complaint, the BBC said the broadcast of a number of editions of *East Midlands Today* reported calls by local Members of Parliament for the closure of the St Andrew's Health Care Unit on grounds of public safety. The reason for these calls was the recent escape, for a short period of time, of two patients. However, their escape had come after a previous security lapse which had allowed Mr Tudor to leave the Unit unescorted and to attempt to rape a ten year-old boy in woodland near the Unit. The BBC said that it was this sequence of lapses, rather than merely the more recent escape of two patients, which had prompted concerns for public safety and for the Unit to be closed.

The BBC said that the mention of Mr Tudor's release and its consequences was, therefore, an integral element of the reports and provided essential background information and context. It said that the calls for the Unit's closure would not have been accurately reported without reference to the previous incident involving Mr Tudor.

The BBC said that Mr Tudor was, in fact, wrongly named as "*Shaun Taylor*" in most of the morning bulletins, but given that his photograph was shown, it did not dispute that he would have been readily identifiable to anyone who knew him or was familiar with his offending. However, the BBC said that Mr Tudor's conviction for the attack on the ten year-old boy was matter of public record and was widely reported in the press at the time. In the circumstances, the BBC said that it did not believe that Mr Tudor had any reasonable expectation of privacy in respect of his conviction, but if Ofcom takes the view that he might enjoy some residual expectation of privacy, it said that this was heavily outweighed by the public interest in reporting the series of security lapses which prompted the calls for the closure of the Unit.

## 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 of the programmes as broadcast, including transcripts, and both parties' written submissions.

Ofcom considered Mr Tudor's complaint that his privacy was unwarrantably infringed in the programmes as broadcast in that the news featured a description of him, i.e. his name and his photograph, and his crime.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two it is

necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code, which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement is warranted.

In considering whether or not Mr Tudor's privacy had been unwarrantably infringed in the programmes as broadcast, Ofcom first considered the extent to which Mr Tudor could have a legitimate expectation of privacy in that a photograph of his face, his name and details of the offence he committed would not be disclosed in the programmes without his consent.

Ofcom noted that the news reports (as set out in the Introduction section above) reported on the calls by two local Members of Parliament for the Unit to be closed on public safety concerns. Those concerns stemmed largely from the fact that two patients had very recently "*escaped*" from the Unit just over a year since Mr Tudor had been released on unescorted leave from the Unit for two hours, during which time he attempted to rape a young boy. Ofcom considered that the reference to the incident involving Mr Tudor provided a significant example of another lapse in security at the Unit that had occurred only a year previously and illustrated the potential danger that such lapses posed for the local community. In Ofcom's view therefore the incident involving Mr Tudor was highly significant and pertinent to the story.

Ofcom noted that each news report included the same, single photograph of Mr Tudor's face. The photograph appeared to be in a similar format to a "passport" photograph and therefore did not reveal anything about Mr Tudor other than his facial features. Mr Tudor's full name was referred to in each news report, although it was incorrectly given as "*Shaun Taylor*" in some of the early morning reports. In Ofcom's view, the inclusion of Mr Tudor's photograph along with the reference to his name clearly identified Mr Tudor and connected him with the offence he committed while on unescorted leave from the Unit in 2011. Ofcom was also aware that at the time when Mr Tudor committed the offence, the incident was widely reported by the media both locally and nationally and his photograph, name and details of his crime were therefore already in the public domain. In relation to Mr Tudor's complaint that the detail of his crime was disclosed without his permission, Ofcom considered that information relating to a criminal conviction (and any subsequent sentence) is not a private matter. Court proceedings are a matter of public record and the public nature of the operation of the courts is an integral part of the principle of open justice (unless formal reporting restrictions are in place).

Given the circumstances in which Mr Tudor's photograph, name and details of the offence for which he was convicted (and for which he was serving an indeterminate prison sentence) was disclosed in the programmes and the context in which the information was used, Ofcom considered that Mr Tudor did not have a legitimate expectation of privacy in relation to the disclosure of this information in the programmes as broadcast and his prior consent was not required.

Therefore, taking all the factors above into account, Ofcom did not consider that Mr Tudor had a legitimate expectation of privacy in relation to the broadcast of the

programmes in which his name and photograph were disclosed along with a brief description of the offence for which he was subsequently convicted. Given this conclusion, it was not necessary for Ofcom to consider whether any infringement in to Mr Tudor's privacy was warranted.

**Accordingly, Ofcom has not upheld Mr Tudor's complaint of unwarranted infringement of privacy in the programmes as broadcast.**

## Other Programmes Not in Breach

Up to 18 February 2013

Programme	Broadcaster	Transmission Date	Categories
Ax Men	History	02/11/2012	Offensive language
Dances with Wolves	BBC 2	01/01/2013	Scheduling

## Complaints Assessed, not Investigated

Between 29 January and 11 February 2013

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
2 Broke Girls	E4	25/01/2013	Scheduling	1
2 Point 4 Children	Gold	21/01/2013	Animal welfare	1
4thought.tv	Channel 4	04/02/2013	Due accuracy	1
5 Live Breakfast	BBC Radio 5 Live	11/02/2013	Generally accepted standards	1
5 Live Breakfast: Your Call	BBC Radio 5 Live	01/02/2013	Race discrimination/offence	1
5 News at 5	Channel 5	24/01/2013	Violence and dangerous behaviour	1
8 Out of 10 Cats	Channel 4	25/01/2013	Race discrimination/offence	1
8 Out of 10 Cats	Channel 4	01/02/2013	Gender discrimination/offence	1
Aap Kay Masail Ka Hal	ARY QTV	02/01/2013	Generally accepted standards	1
Adult Channels	Freeview	n/a	Sexual material	1
Advertisements	ITV3 / Channel 4	29/01/2013	Advertising scheduling	1
Alan Carr: Chatty Man	4 Music	08/02/2013	Generally accepted standards	1
All Star Family Fortunes	ITV	10/02/2013	Materially misleading	1
American History X	ITV4	30/01/2013	Generally accepted standards	1
American Idol	5*	17/01/2013	Religious/Beliefs discrimination/offence	1
Anger Management (trailer)	Comedy Central	n/a	Generally accepted standards	1
BBC News	BBC	n/a	Outside of remit / other	2
BBC News	BBC 2	24/01/2013	Outside of remit / other	1
BBC News	BBC News Channel	29/01/2013	Outside of remit / other	1
BBC News	BBC Radio 4	05/02/2013	Due impartiality/bias	1
BBC News at One	BBC 1	30/01/2013	Outside of remit / other	1
BBC News at Six	BBC 1	31/01/2013	Disability discrimination/offence	1
BBC News at Ten	BBC 1	15/01/2013	Religious/Beliefs discrimination/offence	1
Big Fat Quiz of the Year 2012	Channel 4	30/12/2012	Generally accepted standards	1
Black Mirror (trailer)	Channel 4	03/02/2013	Scheduling	1
Botched Up Bodies (Trailer)	Channel 5	07/01/2013	Scheduling	3
Brainiac: Science Abuse	Challenge	02/02/2013	Scheduling	1
Breakfast Show	Heart FM	07/02/2013	Competitions	1
Breakfast Show	XFM London	31/01/2013	Sexual orientation discrimination/offence	1

Britain's Brightest	BBC 1	02/02/2013	Outside of remit / other	1
Britain's Brightest	BBC 1	09/02/2013	Generally accepted standards	1
Call the Midwife	BBC 1	20/01/2013	Scheduling	1
Call the Midwife	BBC 1	27/01/2013	Scheduling	1
Call the Midwife	BBC 1	03/02/2013	Generally accepted standards	1
Capital Radio Top 40	Capital Radio	03/02/2013	Offensive language	1
Casualty	BBC Scotland	17/11/2012	Materially misleading	1
Celebrity Big Brother	Channel 5	16/01/2013	Voting	1
Celebrity Big Brother	Channel 5	21/01/2013	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	10/01/2013	Disability discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	10/01/2013	Disability discrimination/offence	1
Championship Football: Derby v Nottingham Forest	BBC Radio 5 Live	19/01/2013	Generally accepted standards	1
Channel 4	Channel 4	n/a	Outside of remit / other	1
Channel 4 News	Channel 4	04/12/2012	Race discrimination/offence	1
Channel 4 News	Channel 4	27/01/2013	Violence and dangerous behaviour	2
Channel 4 News	Channel 4	28/01/2013	Race discrimination/offence	1
Channel 4 News	Channel 4	29/01/2013	Outside of remit / other	1
Channel 4 News	Channel 4	05/02/2013	Generally accepted standards	1
Channel 4 News	Channel 4	06/02/2013	Sexual orientation discrimination/offence	1
Channel Promotion	Comedy Central	29/01/2013	Hypnotic and other techniques	1
Charley Boorman's South African Adventure	Channel 5	23/01/2013	Religious/Beliefs discrimination/offence	1
Charlie Brooker's Weekly Wipe	BBC 2	31/01/2013	Generally accepted standards	1
Cheaters	Really	14/01/2013	Scheduling	1
Come Dine with Me	Channel 4	27/01/2013	Generally accepted standards	2
Come Dine with Me	Channel 4	02/02/2013	Offensive language	1
Come Dine with Me	Channel 4	07/02/2013	Race discrimination/offence	1
Competition	Mansfield 103.2FM	n/a	Competitions	1
Competition	Rock FM 97.4	25/01/2013	Competitions	1
Coronation Street	ITV	21/01/2013	Outside of remit / other	1
Coronation Street	ITV	23/01/2013	Materially misleading	1
Coronation Street	ITV	28/01/2013	Crime	1
Coronation Street	ITV	30/01/2013	Undue prominence	1
Coronation Street	ITV	04/02/2013	Materially misleading	1
Coronation Street	ITV	06/02/2013	Drugs, smoking, solvents or alcohol	1

Coronation Street Omnibus	ITV2	26/01/2013	Generally accepted standards	1
Countdown	Channel 4	01/02/2013	Scheduling	1
Criminal Minds	Sky Living HD	29/01/2013	Violence and dangerous behaviour	1
D.A.R.Y.L.	Movie Mix	20/01/2013	Information/warnings	1
Dancing on Ice	ITV	27/01/2013	Advertising scheduling	1
Dancing on Ice	ITV	27/01/2013	Disability discrimination/offence	29
Dancing on Ice	ITV	27/01/2013	Generally accepted standards	2
Dancing on Ice	ITV	27/01/2013	Outside of remit / other	1
Dancing on Ice	ITV	03/02/2013	Disability discrimination/offence	1
Dancing on Ice	ITV	03/02/2013	Voting	4
Daybreak	ITV	30/01/2013	Violence and dangerous behaviour	1
Death in Paradise	BBC 1	15/01/2013	Television Access Services	1
Derek	Channel 4	30/01/2013	Disability discrimination/offence	3
Derek	Channel 4	06/02/2013	Disability discrimination/offence	1
Derek (trailer)	Channel 4	n/a	Disability discrimination/offence	1
Dickinson's Real Deal	ITV	25/01/2013	Generally accepted standards	1
Dickinson's Real Deal	ITV	29/01/2013	Competitions	1
Digital on-screen graphics	ITV1	n/a	Outside of remit / other	1
Dispatches	Channel 4	28/01/2013	Due impartiality/bias	11
Dispatches	Channel 4	30/01/2013	Race discrimination/offence	1
Don't Tell the Bride	BBC 3	30/01/2013	Scheduling	1
Don't Tell the Bride	BBC 3	04/02/2013	Offensive language	1
Drivetime	Talksport	08/02/2013	Offensive language	1
EastEnders	BBC 1	15/01/2013	Product placement	1
EastEnders	BBC 1	01/02/2013	Generally accepted standards	3
EastEnders	BBC 1	04/02/2013	Outside of remit / other	1
EastEnders	BBC 1	n/a	Undue prominence	1
Emergency With Angela Griffin	Pick TV	18/01/2013	Materially misleading	1
Emmerdale	ITV	29/01/2013	Offensive language	1
Emmerdale	ITV	29/01/2013	Scheduling	2
Emmerdale	ITV	01/02/2013	Violence and dangerous behaviour	3
Emmerdale	ITV	04/02/2013	Disability discrimination/offence	1
Emmerdale	ITV	05/02/2013	Religious/Beliefs discrimination/offence	1
FA Cup Football: Leeds v Tottenham	ESPN	27/01/2013	Offensive language	1
Face the Clock	Channel 4	30/01/2013	Outside of remit / other	1

Family Guy	BBC 3	02/02/2013	Generally accepted standards	1
Fear Factor USA	TV6	26/01/2013	Generally accepted standards	1
First Time Farmers	Channel 4	01/02/2013	Offensive language	1
Football Special	Sky Sports	15/12/2012	Drugs, smoking, solvents or alcohol	1
Fox News	Fox News	30/01/2013	Hypnotic and other techniques	1
Foxy Bingo's sponsorship of Dickinson's Real Deal	ITV1	n/a	Generally accepted standards	1
Glee	Sky1	27/01/2013	Religious/Beliefs discrimination/offence	1
Got to Dance	Sky1	27/01/2013	Under 18s in programmes	1
Great Houses with Julian Fellowes	ITV	29/01/2013	Race discrimination/offence	1
Great Night Out	ITV	08/02/2013	Scheduling	1
Great Night Out	ITV	08/02/2013	Violence and dangerous behaviour	1
Greg James	BBC Radio 1	05/02/2013	Generally accepted standards	1
Greg James	BBC Radio 1	05/02/2013	Race discrimination/offence	1
Greg James	BBC Radio 1	06/02/2013	Offensive language	1
Heart Breakfast	Heart FM (London)	31/01/2013	Generally accepted standards	1
Hide and Seek	TV3	13/01/2013	Advertising scheduling	1
Hirsty's Daily Dose	Capital Yorkshire	16/01/2013	Scheduling	1
Hirsty's Daily Dose	Capital Yorkshire	04/02/2013	Generally accepted standards	1
Holiday Home Sweet Home	ITV1	27/10/2012	Advertising/editorial distinction	1
Hollyoaks	Channel 4	18/01/2013	Offensive language	1
Hollyoaks	Channel 4	30/01/2013	Scheduling	1
Hulk	ITV1	12/01/2013	Scheduling	1
Inside Death Row with Trevor McDonald	ITV	24/01/2013	Animal welfare	1
Inside Out	BBC 1	28/01/2013	Outside of remit / other	1
Inside Out	BBC 1	04/02/2013	Outside of remit / other	1
ITV News	ITV	26/01/2013	Crime	1
ITV News and Weather	ITV	04/02/2013	Disability discrimination/offence	1
ITV News and Weather	ITV	04/02/2013	Due impartiality/bias	1
ITV News and Weather	ITV	07/02/2013	Sexual orientation discrimination/offence	1
ITV News at Ten and Weather	ITV	23/01/2013	Television Access Services	1
ITV News at Ten and Weather	ITV	30/01/2013	Generally accepted standards	1
ITV Sport (trailer)	ITV1	30/01/2013	Materially misleading	1
Jeremy Vine	BBC Radio 2	08/02/2013	Generally accepted standards	1
Jez & Amanda on Kiss	Kiss FM	07/02/2013	Offensive language	1

John Bishop's Only Joking (Trailer)	Sky2	31/01/2013	Generally accepted standards	1
Julia Hartley-Brewer	LBC 97.3 FM	24/01/2013	Due impartiality/bias	1
Kung Fu Panda (trailer)	Nickelodeon	25/01/2013	Scheduling	1
Kung Fu Panda (trailer)	Nickelodeon	02/02/2013	Scheduling	1
Ladbrokes' sponsorship of Africa Cup of Nations Live	ITV4	n/a	Gambling	1
Lewis	ITV1	14/01/2013	Television Access Services	1
Make it or Break it	E4	02/02/2013	Scheduling	1
Make Me a Muslim	BBC 3	30/01/2013	Crime	1
Make Me a Muslim	BBC 3	30/01/2013	Outside of remit / other	1
Match of the Day	BBC 1	30/01/2013	Generally accepted standards	1
Match of the Day	BBC 1	02/02/2013	Outside of remit / other	1
Melvyn in the Morning	BBC Radio Lincolnshire	24/01/2013	Materially misleading	1
Mr Selfridge (trailer)	ITV	09/02/2013	Scheduling	1
Mrs. Brown's Boys	BBC 1	29/12/2012	Religious/Beliefs discrimination/offence	1
Mrs. Brown's Boys	BBC 1	26/01/2013	Offensive language	1
My Mad Fat Diary	E4	28/01/2013	Materially misleading	1
My Mad Fat Diary	E4	04/02/2013	Disability discrimination/offence	1
News	NTV	31/01/2013	Violence and dangerous behaviour	1
Newsround	CBBC	01/02/2013	Religious/Beliefs discrimination/offence	1
Obsessive Compulsive Cleaners (trailer)	Channel 4	05/02/2013	Generally accepted standards	1
Outback Truckers	Quest	02/02/2013	Harm	1
Panorama	BBC 1	28/01/2013	Offensive language	1
Panorama	BBC 1	04/02/2013	Violence and dangerous behaviour	2
Party Election Broadcast by the Conservative Party	Channel 4	23/01/2013	Outside of remit / other	1
Party Political Broadcast by the Conservative Party	BBC 1	23/01/2013	Outside of remit / other	2
Party Political Broadcast by the Conservative Party	ITV	23/01/2013	Outside of remit / other	3
Party Political Broadcast by the Labour Party	BBC 1 / ITV	30/01/2013	Outside of remit / other	1
People Like Us	BBC 3	06/02/2013	Animal welfare	1
People Like Us	BBC 3	06/02/2013	Outside of remit / other	1
Phones 4U's sponsorship of Films on 4	Channel 4	27/01/2013	Generally accepted standards	1
Playboy TV Chat	Playboy TV Chat (902)	19/01/2013	Sexual material	1
Pointless	BBC 1	29/01/2013	Outside of remit / other	1
Pramface	BBC 3	27/01/2013	Generally accepted standards	1
Press Preview	Sky News	03/02/2013	Age discrimination/offence	1

Programming	BBC	n/a	Outside of remit / other	1
Programming	BBC channels	n/a	Outside of remit / other	1
Question Time	BBC 1	31/01/2013	Race discrimination/offence	3
R&B Singles Chart	Dance Nation TV	31/01/2013	Violence and dangerous behaviour	1
Regional News and Weather	BBC 1	28/01/2013	Outside of remit / other	2
Richard Hammond's Miracles of Nature	BBC 1	19/11/2012	Television Access Services	1
Richard III: The King in the Car Park	Channel 4	04/02/2013	Disability discrimination/offence	2
Richard Key	TMCR 95.3FM	04/01/2013	Offensive language	1
Ricky Gervais: Science	E4	07/02/2013	Disability discrimination/offence	1
Right Guard Total Defence 5 sponsors Frasier / Everybody Loves Raymond	Channel 4	06/02/2013	Outside of remit / other	1
Russia Today	Russia Today	01/01/2013	Due impartiality/bias	1
Scrubs	E4	24/01/2013	Scheduling	1
Scrubs	E4	24/01/2013	Sexual orientation discrimination/offence	1
Silent Witness	BBC 1	25/01/2013	Violence and dangerous behaviour	3
Ski Sunday	BBC 2	10/02/2013	Outside of remit / other	1
Sky Business News	Sky business News	30/01/2013	Violence and dangerous behaviour	1
Sky News	Sky News	18/01/2013	Due impartiality/bias	1
Sky News	Sky News website	06/01/2013	Outside of remit / other	1
Sky News at 5 with Jeremy Thompson	Sky News	04/02/2013	Outside of remit / other	1
Sky Sports News	Sky Sports News	28/01/2013	Materially misleading	1
Soccer AM	Sky Sports 1	26/01/2013	Religious/Beliefs discrimination/offence	1
Sons of Anarchy	5USA	06/02/2013	Television Access Services	1
Spark Mornings	Spark FM	08/01/2013	Scheduling	2
Sport Tonight	Sky Sports News	23/01/2013	Generally accepted standards	2
Spotlight	BBC 1 Northern Ireland	05/02/2013	Outside of remit / other	1
Stella (trailer)	Sky Livingit	16/01/2013	Scheduling	1
Stella (trailer)	Sky1	30/01/2013	Scheduling	1
Stella (trailer)	Sky1	n/a	Scheduling	1
Stephen King's Bag of Bones	Channel 5	29/12/2012	Television Access Services	1
Steve Allen	LBC 97.3FM	15/01/2013	Generally accepted standards	1
Studio 66	Studio 66 TV	n/a	Outside of remit / other	1

Studio 66 Days	Studio 66 TV 2	28/01/2013	Participation TV	1
Subtitles	Various	n/a	Television Access Services	2
Sunday Supplement	Sky Sports 1	03/02/2013	Race discrimination/offence	3
Sunrise	Sky News	19/01/2013	Race discrimination/offence	3
Sunrise	Sky News	06/02/2013	Generally accepted standards	3
Take Me Out	ITV	19/01/2013	Disability discrimination/offence	1
The Alan Titchmarsh Show	ITV	24/01/2013	Animal welfare	5
The Alan Titchmarsh Show	ITV	28/01/2013	Violence and dangerous behaviour	1
The Alan Titchmarsh Show	ITV	30/01/2013	Harm	1
The Alan Titchmarsh Show	ITV	30/01/2013	Religious programmes	3
The Alan Titchmarsh Show	ITV	01/02/2013	Scheduling	1
The Alan Titchmarsh Show	ITV	05/02/2013	Scheduling	2
The Big Reunion	ITV2	31/01/2013	Offensive language	1
The Big Reunion	ITV2	31/01/2013	Outside of remit / other	1
The Breakfast Show	Key 103	30/01/2013	Disability discrimination/offence	1
The British Academy Film Awards	BBC 1	10/02/2013	Generally accepted standards	2
The British Academy Film Awards	BBC 1	10/02/2013	Outside of remit / other	1
The Chase	ITV	01/02/2013	Materially misleading	1
The Daily Politics	BBC 2	08/02/2013	Outside of remit / other	1
The Difference	Channel 4	n/a	Outside of remit / other	1
The Dumping Ground	CBBC	04/01/2013	Generally accepted standards	1
The Dumping Ground	CBBC	25/01/2013	Generally accepted standards	1
The Following	Sky Atlantic	29/01/2013	Violence and dangerous behaviour	1
The Horse Hoarder	Channel 4	07/01/2013	Materially misleading	2
The Hotel	Channel 4	20/01/2013	Offensive language	1
The Hotel	Channel 4	27/01/2013	Race discrimination/offence	1
The Inbetweeners	E4	29/01/2013	Sexual orientation discrimination/offence	1
The Last Leg (trailer)	Channel 4	31/01/2013	Religious/Beliefs discrimination/offence	1
The Last Leg (trailer)	E4	30/01/2013	Disability discrimination/offence	1
The New Normal	E4	24/01/2013	Generally accepted standards	1
The Nolan Show	BBC 1 Northern Ireland	16/01/2013	Religious/Beliefs discrimination/offence	39
The Official UK Top 20	MTV Hits	06/02/2013	Violence and dangerous behaviour	1
The One Show	BBC 1	07/02/2013	Outside of remit / other	4

The One Show	BBC 1	n/a	Outside of remit / other	1
The Princess Bride	Channel 5	27/01/2013	Scheduling	1
The Simpsons	Channel 4	29/01/2013	Scheduling	1
The Simpsons	Sky1	07/02/2013	Offensive language	1
The Store	ITV	11/02/2013	Outside of remit / other	1
The Tonight Show with Jimmy Fallon (trailer)	CNBC	06/02/2013	Violence and dangerous behaviour	1
The Undateables	Channel 4	03/04/2012	Disability discrimination/offence	1
The Undateables	Channel 4	22/01/2013	Disability discrimination/offence	1
The Undateables	Channel 4	29/01/2013	Disability discrimination/offence	1
The Undateables	Channel 4	29/01/2013	Generally accepted standards	1
The Wave 102 FM (Dundee)	The Wave 102 FM (Dundee)	01/02/2013	Outside of remit / other	1
The Wright Stuff	Channel 5	29/01/2013	Generally accepted standards	1
The Wright Stuff	Channel 5	29/01/2013	Generally accepted standards	1
The Xfm Breakfast Show with Jon Holmes	XFM	10/01/2013	Generally accepted standards	1
This Morning	ITV	17/01/2013	Due impartiality/bias	1
This Morning	ITV	22/01/2013	Materially misleading	1
This Morning	ITV	04/02/2013	Materially misleading	1
This Morning	ITV	04/02/2013	Religious/Beliefs discrimination/offence	1
This Morning	ITV	07/02/2013	Competitions	1
This Morning	ITV	07/02/2013	Generally accepted standards	1
Top 20	4 Music	09/01/2013	Scheduling	1
Top Gear	BBC 2	27/01/2013	Offensive language	8
Top Gear	BBC 2	27/01/2013	Violence and dangerous behaviour	3
Top Gear	BBC 2	02/02/2013	Offensive language	1
Top Gear	BBC 2	03/02/2013	Offensive language	1
Top Gear	BBC 2	03/02/2013	Offensive language	1
Top Gear	BBC 2	09/02/2013	Scheduling	1
Trisha	Channel 5	29/01/2013	Offensive language	1
True Stories: Gypsy Blood	Channel 4	10/01/2013	Generally accepted standards	1
Tweenies	CBeebies	20/01/2013	Generally accepted standards	21
UK Hot 40	The Box	30/01/2013	Violence and dangerous behaviour	1
Venus Live	Venus TV	12/01/2013	Religious/Beliefs discrimination/offence	2
Wanderlust	Sky Movies Premiere	19/01/2013	Nudity	1
Watching Ourselves	BBC 1 Scotland	25/01/2013	Race discrimination/offence	1

Way to Go	BBC 3	17/01/2013	Generally accepted standards	11
Way to Go	BBC 3	23/01/2013	Suicide and self harm	1
Way to Go	BBC 3	24/01/2013	Generally accepted standards	2
Weekend Mirpuri	BBC Asian Network	02/11/2012	Outside of remit / other	4
Weekend Mirpuri	BBC Asian Network	n/a	Outside of remit / other	6
You've Been Framed!	ITV	02/02/2013	Animal welfare	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 7 and 20 February 2013.

Programme	Broadcaster	Transmission Date
Advertisement for Coventry Awami League	Channel Nine UK	2 February 2013
Advertisements	RT	n/a
Competitions	Channel 5	n/a
East Midland's Today	BBC 1 East Midlands	16 November 2012
Fightbox	Fightbox	n/a
Fox Extra	Fox News	5 February 2013
Interview with Bright Learning Academy	Radio XL (1296AM)	23 January 2013
John Mahon	Kerrang	3 February 2013
Retention and production of recordings	My Channel	24 February 2013
Retention and production of recordings	My Channel	n/a
Rip Off Britain	BBC 1	10 January 2013

**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/>.