

Ofcom Broadcast Bulletin

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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 objectives¹. 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 Act².

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 advertising³.
- 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

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

² The relevant legislation can be found at Part 4A of the Act.

³ 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.

Standards cases

In Breach

The Jeremy Kyle Show

ITV, 23 September 2013, 09:25

Introduction

The Jeremy Kyle Show is a popular daytime talk show broadcast on ITV, hosted by Jeremy Kyle, in which members of the public discuss relationship problems in a frank and often confrontational manner in front of a studio audience.

This episode featured two sisters: the older sister (“the older sister”), who was heavily pregnant, appeared on the show to ask her younger sister (“the 17 year old participant”, “younger sibling” or “younger sister”) and her partner to admit that they had stolen a camera and other items which had considerable personal value from their mother’s house. The programme, which regularly uses a lie detector test to indicate if participants have lied, tested the younger sister and her partner before the show to establish if they were responsible for the theft. The results (which were positive and were presented as showing that both were lying when they said they were not responsible for the theft) were announced during the programme.

Ofcom received a complaint from a viewer who was concerned about the reliability of the lie detector test results given the distress they appeared to cause the participants.

We reviewed the programme and noted that the younger sister was 17 years old, appeared to be very distressed at several points in the programme and, given her age and personal circumstances, seemed to be in a potentially vulnerable situation. Ofcom noted that for example:

- As she waited backstage listening to her older sister’s accusations she was seen shaking her head and wiping tears away from her eyes.
- On stepping out onto the studio stage for the first time, she immediately walked up to her older sister to defend herself from the accusations of theft and was sobbing as she spoke. Her older sister told her to wipe her face and not to embarrass her on national TV.
- Throughout the majority of a number of angry interchanges between the sisters during the programme both were standing up, pacing the stage and were frequently restrained from getting too close to each other by security staff.
- As Jeremy Kyle started to read out a statement from the mother of the two sisters, the older sister pointed to a photograph of their mother and said to her younger sister: *“You look at this picture and you look good because it’s going to be the last time you see it – you look good. Look good...”*. Jeremy Kyle continued reading out the statement from their mother, which read: *“...I have strong suspicions my daughter [the younger sister]... is involved in this [the theft] and if she fails the lie detector test our relationship is seriously finished for good...”*. The younger sister was shown pacing the floor, wringing her hands,

breathing heavily and then screamed at her older sister in a highly emotional way: *"You have always been mum's favourite...I have always felt pushed out"*.

- When the older sister asked her sibling if she was taking the drug crack cocaine and why she was in *"crack dens"*, the younger sister responded in a similar highly emotive way shouting back at her sister as she paced the floor breathing heavily.
- As the younger sister's partner walked out on to the stage, the younger sister continued to pace the stage with her hands on her head breathing heavily. After a stand up interchange with her sister's partner, the older sister addressed her younger sibling, who was standing behind her partner and separated from her older sister by security staff: *"If you are going to do something, do it. Don't just stand there flinching like a silly anorexic slapper"*.
- When the older sister's foster sister came out on stage she immediately approached the younger sister and said: *"You, you are so full of [bleep]. Look at you..."*. In response the younger sister shouted back in anger, breathing heavily with a quivering voice, at both the older sister and her foster sister: *"Really? When was the last time you saw me? I haven't seen you for half of my life yeah...do you think I care about what she [her older sister] has been going around saying? Even my own mum has been saying it because of her."* The foster sister responded by shouting *"crackhead"* at the younger sister.
- Jeremy Kyle said: *"You told my team she [the younger sister] has a reputation. She is 17 and you lot reckon she has slept with 33 men"* to which the younger sister shouted the response: *"Really?"* Her older sister explained that the comment was made by a friend because she had *"cussed"* her mother. Her younger sister shouted back loudly and angrily: *"What do you expect when I am being accused of this?"*
- After Jeremy Kyle raised the issue of the 17 year old's reputation (detailed above), her older sister said: *"She's got a bag in her bedroom with over 200 condoms in there – that's good for a 17 year-old"* to which her younger sister replied: *"So what? At least I am being protected."* Then the foster sister said to the younger sister: *"What about your miscarriage last week. Did that happen?"* The younger sister replied *"What miscarriage?"* to which the foster sister said: *"Well that's what you were running around telling"*.
- Before the lie detector test results were announced, the older sister said to her younger sibling: *"You cry, you cry because when you get home [sound dipped]."* The younger sister shouted back in a distraught way: *"Why am I going to take off my own mum?"* She was shown in her seat sobbing and breathing heavily.
- Jeremy Kyle stated at this time (about two thirds into the segment featuring the two sisters) that if the older sister continued to make threats to her younger sibling he would not read out the lie detector results. In response the foster sister said: *"She [the younger sister] will have no family left when she gets home."* There followed more shouting between the sisters.
- When the lie detector results for the partner of the younger sister were announced (which were presented as suggesting that he had been involved in the theft) Jeremy Kyle asked the 17 year-old: *"Why are you holding the hand of a man who would steal off your own mother?"* She shouted back incoherently.

- After the younger sister's lie detector results were also presented as indicating that she had lied, she walked off stage with her partner and the dispute between the sisters continued backstage. Jeremy Kyle approached the 17 year-old with his finger pointing at her and said: *"I want the truth out of you now. Admit the truth. You are a liar"*.
- There followed another heated interchange between the sisters who were separated by security staff with the younger sister screaming that she had not: *"nicked nothing from my mum."* Jeremy Kyle addressed the younger sibling and stated: *"When you finally admit it you will realise you have made the biggest mistake of your life"*.
- Jeremy Kyle later went back to the younger sister who was seated with her partner to ask her to admit she had taken the items. She was shown sobbing and again denied her involvement. Jeremy Kyle stated: *"Of course you nicked the jewellery, everybody knows..."*.
- A further heated interchange followed as the older sister approached her younger sibling to remind her she had *"a little nephew"* who loved her. Her younger sibling stood up and continued to cry and shout in a distraught manner.
- At the end of the segment, Jeremy Kyle and the show's counsellor, Graham Stanier, took the older sister and her foster sister into a side room and said that Graham would work with *"these people"* and *"we will help your mother"*. During this conversation, images of the younger sister and her partner walking around backstage on their own, and then waiting by a lift with a member of the production crew, were featured. The younger sister was shown sobbing and being comforted by her partner.

Ofcom considered this material warranted investigation under the following rules of the Code:

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

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

Rule 2.3: "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."

We requested comments from ITV as to how the material complied with these rules. In particular, Ofcom asked ITV to set out the steps it took to ensure due care was taken of the younger sister's emotional welfare and dignity, as a 17-year old participant in the programme, and to limit any distress to her generated by her involvement in the programme. Ofcom also sought comments on how ITV had informed viewers of these steps, or any other relevant information, so as to protect them appropriately from any offence arising from this programme.

Response

The Licensee explained that the younger sister herself had approached the programme seeking to resolve the issue of the theft from her mother's house. Both the younger sister and her partner wanted to take the lie detector test to support their claims of innocence.

ITV emphasised that the whole production team was "aware of the importance of the welfare of participants and the ongoing assessment of welfare issues, particularly in relation to under-eighteens". It said that this risk assessment "continues throughout the process of recording and scheduling of the programme for broadcast".

Rule 1.28

The Licensee went on to set out the steps taken at each stage of the production process to highlight the due care provided to the 17 year old sister and that she herself had "no complaint" about the way she was treated during the programme.

Pre-production

- Before the programme was recorded a detailed research discussion was carried out with the younger sister.
- A counsellor also contacted her to ensure she was aware of "the possible outcomes of appearing on the programme, positive and negative, and that her consent to take part was fully informed".
- The programme makers assessed her personal circumstances and concluded that, although she was living apart from her family, she was not considered to be in a particularly vulnerable or possibly dangerous situation and she would be able to cope with her appearance on the programme.

During production

- Participants were advised before production that counsellors were on standby and available before, during and after filming
- The participants were monitored throughout the recording of the show. The younger sister was shown on-screen sitting with a counsellor before she walked on stage and she was also advised that she could leave the stage at any time. Towards the end of the first part of the programme, when the participants had moved backstage to continue their dispute, ITV highlighted that a counsellor was seen on camera with the 17 year old "throughout", as was Graham Stanier, the programme's Director of Aftercare, who regularly features in the programme.
- The participants had been briefed that they were able to seek support from the aftercare team at any point during the recording. The structure of the recording ensured there were "several points" at which both sisters were able, and indeed, urged by Jeremy Kyle to calm down. For example, towards the end of Part One the presenter said: "*we're gonna take a chill here*" and urged the sisters to "*just chill*" until the recording started again after the break. ITV stated that this pause in the recording allowed the younger sister to compose herself and at the start of Part Two she was breathing heavily but was controlling her emotion. Similarly, ITV stated the presenter "called another break" after the revelation of the partner's lie detector result and before the younger sister's result "to let the participants compose themselves."

- With regard to any particular steps taken during the programme regarding the accusation made by the older sister, and broadcast several times during the programme, that her younger sibling was taking an illegal substance (crack cocaine), ITV said the younger sister had strongly denied this accusation during the programme. ITV added that pre-recording discussions with her indicated she did not use drugs and “none of her relatives who were spoken to about her in background checks raised this as an issue.” Therefore, ITV concluded: “It was not considered that these unsubstantiated claims [of drug abuse] would adversely affect her welfare, nor should they preclude her from appearing in the broadcast”.
- With regard to the use of the lie detector in this programme and the concern that its uncertain results may have added to the younger sister’s distress, ITV advised that all participants are told that the lie detector test is not 100% accurate and this is regularly reinforced during discussions with the programme makers and participants. In addition, participants are asked to sign a formal consent form to confirm they understand the meaning of the lie detector questions.
- In response to concerns that during production the dispute between the sisters became very heated with the older sister making repeated threats to her younger sibling about losing her family if the lie detector results showed she was lying, and the possible impact this had upon her emotionally, ITV said: presenter Jeremy Kyle “explicitly” warned the older sister that he would not reveal the results if she made threats. Jeremy Kyle said: *“If you make threats we are done”* and later he said *“I’m not doing this”* and *“I’m not doing this unless you listen”*. ITV added that at no time did the younger sibling appear “threatened as a result of [her older sister’s] aggressive behaviour” and that she had made it clear in the pre-recording session that “she was willing and able to stand up to her sister” and “she was not intimidated by her physically or emotionally”. The producers therefore did not consider that additional measures were required to control the situation in light of the younger sister’s age, other than “the standard deployment of security guards and the usual control over the proceedings exercised by the presenter”.
- In response to concerns that the presenter did not respond sufficiently to the younger sister’s distress during the recording of the programme, ITV stated that the purpose of the programme was to “air disputes and seek to allow participants to address their differences, even when this is emotionally difficult.” ITV added that the presenter did seek to moderate pressure being placed on the younger sister by her older sister “by seeking to curb her outbursts throughout the recording.” For example, when Jeremy Kyle read a statement from the sister’s mother he remonstrated with the older sibling and urged her to stop shouting. In Part Two of the programme, he also took “a strong line” with the older sister warning her that she cannot make threats. ITV therefore did “not agree that the presenter failed to manage the confrontation”.
- In response to the concern that Jeremy Kyle introduced potentially distressing comments about the 17 year old sister’s lifestyle during the programme, in particular that she had “*a reputation*” and that she “*had slept with 33 men*”, ITV stated the younger sister herself had confirmed this was the case. It added: “Given that [the younger sister] appears to accept the allegation, and made no mention to the production team or aftercare team of any concern

about it after the recording, it was not considered that the broadcast of the allegation was likely to have any serious adverse effect on her welfare". ITV submitted that the producers would not have included these comments in the edited programme should the younger sister have expressed any concerns in this regard. Neither did ITV consider that viewers would have been unduly concerned for the 17 year old's welfare because her older sister referred to her as "*a skinny anorexic slapper*" or that her welfare would in fact be impaired by such an insult.

Post-production

In terms of the care provided to the younger sister after production, ITV said:

- Jeremy Kyle "explicitly" stated on air "*we will work with these people*" and this "clearly" included the younger sibling. Therefore, ITV said: "It was evident to the audience that help would be provided to the whole family." ITV stated that although Graham Stanier was the most obvious face of the counselling team, regular viewers of the programme would be familiar with other members of the team who also appear on camera with guests. In this case, a member of the aftercare team was "clearly visible" beside the younger sister backstage at the outset of the show and again later in the programme. ITV said that it was also evident to the audience that Graham was waiting for her and ready to speak to her when she initially walked off stage after the lie detector results were announced.
- In the post-show discussion with the counsellor, the 17 year old sister was emotionally under control and the aftercare team had no immediate concerns regarding her emotional and physical welfare. ITV said that, following the recording, the production team maintained contact with her and "she had no complaint about how she had been treated during the show". She was contacted again after the transmission of the episode, and although she again declined to take part in counselling she was reminded that she could contact the aftercare team at any time for this to be arranged for her.

In conclusion ITV said that the production team took appropriate steps before, during and after recording to support the 17 year old younger sister in relation to her physical and emotional welfare and dignity. In ITV's opinion it had therefore fully assessed that she was able to cope with the emotional impact of taking part in the programme. The producers were satisfied that she "understood what the recording would involve, that she wanted to take part in order to have a chance to rebut the allegation that she and her partner had stolen from her mother, and that she would be able to cope emotionally should the outcome of the lie detector test suggest that she was lying about not having committed the theft".

ITV also stated that she was "aware" that if the results showed she was responsible for the theft she would be excluded by her family "for good". The younger sister also "knew perfectly well" that her older sister was likely to be emotive and aggressive and that the presenter Jeremy Kyle would have been "forthright" towards her in his attitude to the lie detector test, if it showed she was responsible for the theft.

Rule 1.29

In response to Ofcom's concerns as set out in its Preliminary View about the 17 year old appearing to be distressed during the programme, ITV did not dispute that she "did at times appear distressed." However, at other times in the programme she was

“visibly in control emotionally or at least appeared to be controlling her emotions.” Further, ITV did not consider that the degree of distress “sometimes” displayed by her was sufficient to conclude that unnecessary distress or anxiety was caused to her by her involvement in the programme.

ITV stated that Ofcom had “failed to distinguish sufficiently between issues of the perception of [the younger sister’s] distress to viewers (which ITV acknowledges) and the actual degree of distress she experienced during the recording”. ITV stated that: “whilst we do not deny that she exhibited distress during the programme, we do emphasise that she was a willing and informed participant and that a degree of emotion and upset was to be expected given the circumstances...”

It added that the concept of “unnecessary” distress or anxiety had to be considered in relation to the editorial content of the programme. ITV explained that all participants take part in the programme “in the full knowledge and consent that the discussion of the family problem concerned may well be distressing and emotional.” In this episode, ITV argued that the discussion: “did not exceed the expectations of the participants or of the viewers, notwithstanding [the younger sister’s] age.”

In conclusion, ITV argued that Ofcom: “should place great weight, in consideration of Rules 1.28 and 1.29, in relation to participants like the young person in this case (17 years old and living independently) on their own account and perception of the experience. With particular regard to Rule 1.29, the younger sister herself did not consider that she had suffered unnecessary distress or anxiety and was satisfied with how the presenter had treated her throughout”. Her emotional display was “largely directed throughout at her sister rather than the presenter.”

Rule 2.3

ITV accepted that with hindsight it might have been helpful to indicate to viewers “more explicitly” that support for the 17 year-old participant was “ongoing, both during the recording from support team members close by throughout, as well as being made available to her after the show.”

However, ITV stated that whilst this information about support was not explicit, even less regular viewers could not have mistaken that there were production team members with [the younger sister] backstage who were available to support her, “even if they might not have been as readily identifiable as Graham as being a counsellor.”

ITV stated that Jeremy Kyle’s attitude towards the 17 year old would have been understood by viewers because the results of the lie detector test, which suggested that she lied, indicated that her older sister was “the wronged party”. Therefore ITV was of the view that Jeremy Kyle’s “declarations of sympathy” for the older sister would not have exceeded viewers’ expectations and were unlikely to offend. With regard to whether Jeremy Kyle took sufficient steps to counter threats made by the older sister regarding the family ending their relationship with her younger sister, ITV stated this was a case of her older sister expressing her and her mother’s feelings at the time and “not something that the presenter was obliged to challenge in the circumstances.” Finally with regard to whether Jeremy Kyle could have sought to qualify the older sister’s accusations about her younger sister taking drugs, ITV did not consider the presenter was obliged to seek to qualify these statements given that her sister and her partner were able to deny the accusations for themselves.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears to it best calculated to secure the standards objectives: that people under the age of eighteen are protected (including young people under the age of eighteen who take part in programmes); and that “generally accepted standards” are applied to the content of television programmes so as to provide adequate protection from the inclusion of offensive or harmful material. In applying these generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. These objectives are reflected in Section One (Protecting the Under-Eighteens) and Section Two (Harm and Offence) of the Code.

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

Rule 1.28

Ofcom first assessed whether the programme breached Rule 1.28. This rule requires that due care is taken over the physical and emotional welfare and dignity of people under the age of eighteen who take part in programmes. The phrase “physical and emotional welfare and the dignity of people under eighteen” indicates the broad potential impact that participating in a programme might have on this age group. As Ofcom’s published guidance makes clear, expert opinion indicates that vulnerability could vary significantly, depending on factors such as age, maturity and personal circumstances.

Central to Rule 1.28 is the concept of “due care”. Ofcom’s published guidance on the rule makes clear that the level of care must be “appropriate to the particular circumstances”. It is for the broadcaster to decide what measures are appropriate in the context of individual programmes, genres and formats. Relevant factors may include a participant’s age, maturity and capacity to make judgements about participation and its likely consequences.

We noted that, in this case, a 17 year-old took part in a highly emotive, at times aggressive, and potentially upsetting argument with her sister in front of a studio and television audience. However, significantly, we also noted from ITV’s representations that: it was the 17 year old sister who approached ITV to ask to be included in the programme; ITV took measures to assess and ensure the young person’s welfare before, during and after the programme was recorded and also after the transmission of the episode; and, she had confirmed to ITV, after recording and after transmission, that she had no concerns about her treatment on the programme.

Having assessed ITV’s representations, as set out in detail above, Ofcom was satisfied that, on balance, due care was taken particularly *before* and *after* production of the programme to support the 17 year old. In reaching this view Ofcom took account of all of the relevant circumstances, including her age (17) and the fact that she was already living independently from her family at the time of the production of the episode, which, on the facts of this particular case, meant that the informed consent of her parents or carers was not required.

However, Ofcom had some concerns with regard to the due care provided to the 17 year old *during* the production of this episode. Ofcom noted ITV's submission that members of the programme's aftercare team were made known to the young person and were on "standby" throughout the production to support her if required. ITV indicated that one of the team's counsellors was seated next to her before she came on stage and a member of the aftercare team was seated close to her when the dispute continued backstage. Ofcom also noted that ITV said the younger person had been advised before the recording took place that she could "leave the stage at any time" and during the first break "a member of staff checked that [she] was happy to continue."

However, despite the fact that this support was, according to ITV, available to the 17 year old during the production, Ofcom questioned the level of care given to her while the programme was being recorded. For example:

- at no time during the recording of the programme, as shown to viewers, did the presenter Jeremy Kyle suggest directly to the younger sister that she could leave the stage and seek the support of one of the aftercare team or go backstage (even temporarily) to be away from the immediate conflict and tension;
- Jeremy Kyle only gave warnings to the older sister to limit her threats to her younger sister in relation to the announcement of the lie detector results, which took place some two thirds into the segment featuring the sisters. Up until that point Jeremy Kyle did not seek to limit the older sister's threats; and
- Jeremy Kyle, not the older sister or the foster sister, introduced the issue of the younger sister's "reputation", and made known the information personal to her that she had allegedly "*slept with 33 men*". This information had been provided by the older sister to the research team but had not been made known to viewers by her. It was the presenter, Jeremy Kyle, who brought this information into the debate.

Ofcom's guidance to Rule 1.28 specifically states that during production careful consideration of the programme format and its likely impact on the participant is recommended. This would apply particularly to a programme such as *The Jeremy Kyle Show* which, as shown in this case, frequently presents conflict or highly emotional situations which can cause distress to contributors.

We noted however from ITV's representations that the 17 year old sister herself had approached the programme makers seeking to take part in this programme, that she was fully aware that support was available to her throughout the production and producers were "satisfied that she understood what the recording would involve" before production. We also noted ITV's comments that, while there were occasions when the younger sister appeared distressed, there were also moments when she was able to control her emotions. The structure of the recording offered the opportunity for breaks in which the younger sister could seek the support of the counselling team if required.

Further, we noted that the programme makers had maintained contact with the 17 year old participant both immediately after the recording and after transmission and at no time had she herself expressed concern about her treatment on the programme and, specifically the issues about her lifestyle raised by the presenter during the recording. Ofcom also noted most significantly that, while she was 17 years old, she was living independently from her parents and accepted ITV's argument that greater

weight should therefore be placed upon her “own account and perception of the experience”.

Ofcom therefore concluded, on balance, that ITV took due care over the welfare and dignity of the 17 year old participant and there was no breach of Rule 1.28.

Rule 1.29

The Code makes clear that the children under eighteen must not be caused “unnecessary distress or anxiety by their involvement in programmes”. This places a responsibility on the broadcaster to ensure that when young people are featured in programmes particular care must be taken.

Ofcom’s guidance, as detailed above, recognises that some genres and formats of television focus on conflict and crisis in personal relationships and that these can often feature experiences that have caused, or may cause, distress and anxiety. Therefore, broadcasters need to make very careful decisions when involving under-eighteens in such programmes.

In this case, Ofcom was concerned that the 17 year old participant may have been caused unnecessary distress and anxiety through her participation in the programme. We noted from the start of the programme, the young person featured was clearly in a state of anxiety. She was shown backstage wiping tears from her eyes and shaking her head in response to her older sister’s introductory comments to Jeremy Kyle. This emotional state was heightened after she stepped out on stage to face her agitated and angry sister. She repeatedly cried and shouted in response to the allegations of theft and drug abuse and she was visibly upset at references to her family’s response to her alleged behaviour and the threats that her mother and sister wanted nothing more to do with her. We noted that ITV accepted that the 17 year old did “at times appear distressed”.

As set out above, at times, her distress appeared to render her unable to defend herself and respond to these threats and accusations. At the end of the segment, Jeremy Kyle and the show’s counsellor, Graham Stanier, took the older sister and her foster sister into a side room. No reference was made to any assistance being offered specifically to the younger sister and, during this conversation, images of her and her partner walking around backstage on their own, and then waiting by a lift with a member of the production crew, were featured. She was shown sobbing and being comforted by her partner and again no specific support appeared to be offered to her to limit her clear distress.

In addition, as set out above, during the programme as broadcast to viewers, Jeremy Kyle was not shown to seek to limit the 17 year old sister’s distress in any meaningful way, for example by: offering her the opportunity to seek the support available to her backstage; controlling the discussion to limit the level of threats to her or her humiliation from the start of the programme (not just when the lie detector results were announced); or by placing in context and mitigating the personal comments made about her lifestyle which had the potential to damage her reputation and humiliate her.

However, Ofcom was also of the view that the editorial approach of *The Jeremy Kyle Show* is, by its nature, highly confrontational and, given that it is a well established series, Ofcom considered that those who participate in the programme are likely to be aware that it may involve some personal distress. We also noted that in this case the younger sister herself had approached the programme with the intention of

proving to her older sister and family that she had not stolen the items, she understood what the production would involve and she notified ITV after transmission that she herself had no concerns about her treatment on the programme. Therefore we accepted ITV's view that she was a "willing and informed participant". We also acknowledged that she was 17 years old and living independently from her parents.

As noted above, Ofcom considered that ITV took sufficient steps to ensure the due care of the 17 year old sister before, during and after production, and therefore did not set out deliberately to cause distress to her. Further we accepted ITV's view that, dependent on the circumstances in each case, weight must be placed on the personal circumstances of the young person and their own account and perception of their experience. Broadcasters should note, however, that Rule 1.29 does nevertheless limit the level of conflict and distress someone aged under-18 can experience as a result of their participation in a programme. In this case, the way in which the on-screen confrontation was managed and the younger sister's distress that arose from it was, in Ofcom's view, at the limits of acceptability even where the participant was willing and informed. Ofcom therefore considered that, on balance, this material was not in breach of Rule 1.29.

Rule 2.3

Rule 2.3 of the Code requires that:

"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 could assist in avoiding or minimising offence."

Rule 2.3 notes that material which causes offence may include, but is not limited to, "...humiliation, distress, [and] violation of human dignity...". The issues for Ofcom were: first, to establish whether the material in question was capable of causing offence; and, if so, second, to determine whether ITV had ensured that it had applied generally accepted standards by justifying that potential offence by the context.

In this programme we noted that a 17 year old woman (who viewers were informed was living apart from her family with a man known to be a former drug addict and who was, herself, also accused of abusing drugs) was presented, through means of a lie detector test, as having lied about stealing a camera, and other items of great personal value, from her mother's house. The results of the test were revealed on air. The 17 year old sister appeared on-screen with her heavily pregnant older sister, who was extremely agitated and angry. The older sister made repeated references to her younger sister about her alleged use of drugs (calling her a "*crackhead*"), her lifestyle (referring to her as a "*slapper*") and how she and her family wanted nothing to do with her because of what she had allegedly done. Given her advanced stage of pregnancy the older sister was repeatedly physically restrained from confronting her younger sibling by security guards and, for the majority of the segment featuring the two sisters, the younger sister was visibly distressed, shouting, crying and breathing heavily.

Ofcom considered that the scenes in this segment of the programme featuring the sisters' story, as summarised in the Introduction, showed the younger sister, at times, as clearly distressed and humiliated. In our view this was potentially offensive to viewers. A young person who was likely to have appeared vulnerable to the audience because of her age and background was publicly vilified for the alleged theft of various items belonging to her family, repeatedly threatened by her older sister that her family no longer wanted anything to do with her, and personal information about

her was broadcast that clearly had the potential to distress her and damage her reputation. This potential offence was heightened by the fact that, despite the public airing of this young person's personal problems, it may have appeared to viewers that (apart from limited shots of one of the programme's unidentified counselling team sitting close to the 17 year old) no individual support was being offered to her and, at the end of the segment, she appeared to be abandoned at a time when she particularly needed the support of those around her.

Ofcom went on to examine whether the potential offence, arising from the distress and humiliation of the 17 year old sister that viewers may have experienced by watching this programme, was justified by the context.

Under Rule 2.3, broadcasters must ensure that any potentially offensive content is justified by contextual factors, such as: the editorial content of the programme; the degree of offence likely to be caused by the material; the likely expectations of the audience; and any warnings given to the audience.

The Jeremy Kyle Show is a well established long-running programme. Its confrontational style of presentation and the highly emotive behaviour demonstrated by the participants is a regular feature, particularly given the personal nature of the subjects under discussion. Ofcom therefore considered that a real life, tense and highly charged scenario, in which personal details are exposed, and where there is some distress and confrontation (as in this programme) is frequently consistent with the expectations of viewers. Also, given that participants often request to take part in the programme (as was the case here), the audience takes into account that the guests have freely chosen to participate in the full knowledge of what they might encounter on the programme.

However, Ofcom had concerns that at several points the 17 year old appeared visibly distressed, particularly in response to the allegations of theft and drug abuse and to the threats that her family were "*finished with her*". In our view, the degree of humiliation and distress demonstrated by this 17 year old participant exceeded the more typical editorial content of this programme. Consequently, in our opinion this programme was likely to have exceeded the expectations of the audience, unless sufficient context had been provided to minimise or avoid this offence.

Rule 2.3 states that "appropriate information should...be broadcast where it would assist in avoiding or minimising offence". Ofcom acknowledges that, when broadcasting programmes involving young and potentially vulnerable people, broadcasters are not required to set out in detail each and every measure put in place to reduce offence and so help ensure compliance with Rule 2.3. Broadcasters must have the editorial freedom to decide when and how it is most appropriate to provide information to mitigate offence in particular situations. Appropriate information about the safeguards in place however can assist to adequately protect viewers by mitigating the risk of offence being caused.

Ofcom therefore took into account any information provided to viewers about steps taken to protect the 17 year old participant during her participation in this programme.

ITV accepted that with hindsight "it might have been helpful to indicate to viewers more explicitly in the programme that support for the 17 year old was ongoing, both during the recording from support team members close by throughout as well as being made available to [her] after the show." However, ITV also stated that it would have been "evident" to the audience that care was provided to her throughout the programme and that guests were "monitored" throughout the recording. ITV

explained that “regular viewers of the programme” would have been familiar with members of the counselling team who support the programme, and that such a member of the aftercare team was “clearly visible” beside the 17 year old backstage at the outset of the show and again later backstage. Further, after the lie detector results were announced and the young participant walked off stage, ITV argued it was “evident to the audience that Graham [the programme’s Director of Aftercare] was waiting for her in the green room...and [was] ready to speak to her.” Finally, at the end of the segment of the programme featuring the sisters, Jeremy Kyle stated “explicitly” *“We will work with these people”* (which ITV said “clearly” included the younger sister), and that *“We will do our best to calm that situation down”* and therefore: “it was evident to the audience that help would be provided to the whole family”.

ITV also said that the participants were advised before production that counsellors were on standby and available before, during and after filming. It also said that this was supported by the one to one chats all guests have with the production team before filming. However, significantly we noted that none of this pre-production support was referred to in the broadcast.

Regular viewers may have been familiar with the lesser known members of the counselling team working on *The Jeremy Kyle Show*. Less regular viewers however may not have identified the individual seated with the 17 year old participant backstage as a counsellor. Indeed, at the start of the programme, Ofcom noted that the woman later identified by ITV in its representations as a counsellor and seated with the 17 year old, was largely out of shot and did not interact with or speak to her, despite the fact she appeared upset before she even went on stage. Also, when the dispute continued backstage, the woman later identified by ITV in its representations as the counsellor was seated away from the 17 year old and shown in shot only fleetingly. Further, when she and her partner walked off stage, it was not in our opinion clear that Graham was “waiting” backstage to talk to her because he was only seen briefly in shot before the dispute between the sisters continued. Ofcom also noted that at no point during this segment of the show did the presenter advise viewers of the purpose of the counselling team, or offer the 17 year old sister the opportunity to retreat from the set and seek support from the counsellors despite her evident distress.

Ofcom also considered whether viewers would have understood that the statements made at the end of the programme by Jeremy Kyle demonstrated to viewers that appropriate assistance would be made available to the younger participant given, for example, the drug accusations levelled at her. We noted that it was only in the closing minutes of the segment featuring the sisters, over 30 minutes into the programme, that Jeremy Kyle said directly to the older sibling, not the younger sister (who was out of the room): *“We will help your mother”, “We will work with these people”* and *“I’m going to leave you with Graham”*. While this conversation between Jeremy Kyle and the older sister was taking place, shots of the younger sister’s partner comforting the sobbing sibling backstage were also shown. Immediately after, when Jeremy Kyle returned to the stage before the next segment, he added *“We will do our best to calm that situation down”* and *“The most important thing for [the older sister] is to go home, calm down, she is going to have a baby and deal with the truth”*. It was Ofcom’s view that, in the context of the preceding heated exchange in which Jeremy Kyle appeared to side with the older sister as the wronged party, viewers would reasonably have understood that Jeremy Kyle’s offer of support was specifically targeted at her and her mother and that the programme would seek to resolve the dispute between the family, but it was not specifically aimed at the younger 17 year old sister. Even if viewers had recognised that the older sister was

the “wronged party” and therefore would “not have been offended by the presenter’s declarations of sympathy for [her]”, as ITV had argued, Ofcom considered that viewers would have expected some explicit on-screen reference to the ongoing support available to the younger sister.

It is Ofcom’s view therefore that the level of care provided to the 17 year old participant in this case, by the Licensee, before, during and after production was not evident to viewers, who were not provided with adequate information to reassure them regarding her welfare and to minimise the offence caused by her humiliation and distress.

Ofcom also considered whether other editorial content of the programme, in particular the way in which Jeremy Kyle managed the discussions, provided context to justify any offence caused in this case.

ITV stated in its representations that the older pregnant sister was extremely angry and agitated for much of the programme but Jeremy Kyle “explicitly” warned her that if she continued to make threats to her younger sibling he would not read out the lie detector results. ITV appeared to make this submission to demonstrate that these warnings by Jeremy Kyle were examples of his comments on air helping to reduce the 17 year old’s distress. Also, where guests are participating in order to undergo lie detector tests, ITV said they are informed before production that the results will not be given out on stage unless the guests are prepared “to receive them in the appropriate fashion”.

As set out previously Jeremy Kyle did clearly state to the older sister on air that he would not reveal the lie detector test results if she continued to make threats to her younger sibling. However, this warning only concerned the threats made around the time of the announcement of the lie detector results and was made approximately two thirds into the sisters’ story. In fact, the older sister had made a number of threats about her and her mother ending their relationship with the younger sister before this and, despite the distress that her younger sibling had displayed in response to these comments, the presenter did not challenge these threats. This is illustrated by the following extracts from the programme:

[Before the younger sister appeared on stage]

Jeremy Kyle: *“What if they [the younger sister and her partner] are thieves?”*

Older sister: *“They are out, they are finished, they need to go their own way and leave my mum...”*

Jeremy Kyle: *“Even though she [the younger sister] is your sister.”*

Older sister: *“...even though she’s my sister...”*

Jeremy Kyle: *“What if you are wrong...and you made an accusation...?”*

Older sister: *“If I am wrong then I say sorry but I’m still finished [with the younger sister] because I can’t forget what she has done to my mum.”*

[Later, while her younger sister appears on stage, her older sister points to a picture of their mother:]

Older sister: *“You look at this picture and you look good because it’s going to be the last time you see it – you look good. Look good...”*

[Jeremy Kyle reads out a statement from the sisters’ mother:]

Jeremy Kyle: *“...I have strong suspicions my daughter [the younger sister] is involved in this (the theft) and if she fails the lie detector test our relationship is seriously finished for good’...”*

[Shortly afterwards Jeremy Kyle asks the older sister again: *“What happens if they are thieves?”*]

Older sister: *“Then we [the two sisters] are finished...if I see you [the younger sister] on the street I would walk past...”*

Jeremy Kyle: *“...and what happens if your judgement of him and your judgement of her, is based, whether the motives are good, are based on what you have been through?”*

Older sister: *“We are finished anyway...too much has happened”*.

Ofcom also assessed how the repeated allegations of substance abuse made by the older sister, which clearly added to her younger sister’s distress, were managed by the presenter.

ITV stated that the allegations of drug abuse had been checked before production and were, apparently, known to be without foundation. However, this information was not made known to viewers during the programme (either through comments by the presenter or otherwise) and ITV explained that this was because the allegations were “firmly denied” by the 17 year old sister and her partner.

It is Ofcom’s view that because the 17 year old and her partner were presented on the programme as having failed a lie detector test and her partner had already admitted to a history of drug abuse, viewers may have reasonably concluded that both individuals were potentially unreliable in disclosing the truth, including in relation to the drug abuse allegations. Ofcom considered whether the presenter questioned these allegations of drug abuse to establish whether they were without foundation in order to minimise the offence caused by the 17 year old participant’s distress. Ofcom noted that at no time did Jeremy Kyle intervene to challenge the various allegations of drug abuse made on air against her and, given that viewers may have concluded that she was abusing drugs, it was notable that no information relating to drug counselling was offered by Jeremy Kyle to her while on air, even though ITV confirmed such an offer was made after production.

Finally, Ofcom considered whether Jeremy Kyle took any other steps to limit the 17 year old participant’s distress and thereby provide context to justify the offence created by the 17 year old participant’s humiliation and distress.

As already noted, the 17 year old participant appeared very distressed at times. She cried and shouted in response to the allegations of theft and drug abuse, was visibly upset at references to her family’s response to her alleged behaviour, and at times appeared unable to defend herself and respond to her older sister’s threats and allegations. However, at no time did the presenter appear to respond to her distress. Indeed throughout the programme the presenter’s focus appeared to be on the safety of the heavily pregnant older sister, as she was extremely agitated, and viewers to

some extent were therefore left with the impression that the younger sister's distress had not been addressed.

Further, Jeremy Kyle made comments which clearly reinforced a negative view of the 17 year old which at times, rather than limiting her distress, added to it, in Ofcom's opinion. For example, Jeremy Kyle stated: "*You [the older sister and her foster sister] told my team she [the younger sister] has a reputation. She is 17 and you lot reckon she has slept with 33 men*". ITV argued that it was not considered that the broadcast of this allegation was likely to have any serious adverse effect on the younger sister's welfare because she appeared "to accept the allegation, and made no mention to the production team or aftercare team of any concern about it after the recording". However it is Ofcom's view that such personal information, in addition to the allegations of drug abuse and theft, did contribute to the 17 year old participant's humiliation and distress to some extent, and had the potential to increase the level of offence caused to viewers by her participation in this programme.

For all these reasons, the offence caused to viewers by the humiliation and distress of the 17 year old was not justified by the context. The Licensee therefore did not apply generally accepted standards in this instance and Rule 2.3 was breached.

In reaching our Decision in this case, Ofcom took account of the fact that it was not ITV's intention to mislead viewers regarding the safety, welfare and dignity of this 17 year old participant in the programme nor was it ITV's intention to cause deliberate distress to her. Further, in Ofcom's opinion, adequate steps were taken before, during and after production to provide due care to the 17 year old participant, and she was not, on balance, caused unnecessary distress by her involvement in the programme.

We also took into account however that ITV did not make any explicit reference to the support available specifically to the 17 year old participant during production and afterwards. As a result viewers were not provided with sufficient information – and so context – regarding the steps that the Licensee had taken and had in place to ensure due care was taken over her emotional welfare and dignity, and to limit her distress. Ofcom has previously provided guidance to ITV about *The Jeremy Kyle Show*, advising the Licensee to ensure viewers are not left with the impression that the welfare of the participants was compromised by allowing them to be treated inappropriately, especially when they may have been unable to defend themselves adequately, as was the case with the 17 year old participant who was likely to have appeared to viewers as vulnerable. Ofcom reminds broadcasters of the need to take particular care when including young people in programmes which include conflict and confrontation, to ensure that adequate information about how their welfare has been protected is provided to viewers so as to protect the audience from any offence that may arise from that young person's participation.

Breach of Rule 2.3
Not in Breach of Rules 1.28 and 1.29

In Breach

Face to Face

CHSTV, 7 November 2013, 14 November 2013 and 21 November 2013,
20:00

Introduction

CHSTV is a free-to-air satellite general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for CHSTV is held by CHS TV Limited (“CHSTV” or “the Licensee”).

A complainant alerted Ofcom to the series *Face to Face* on CHSTV, which featured interviews, in three successive weekly programmes, with Lutfur Rahman, the Executive Mayor of Tower Hamlets in London¹. The complainant considered that these programmes amounted to “sycophantic” interviews with Lutfur Rahman where he was given “favourable questioning”.

Ofcom noted that the programme broadcast on 7 November 2013 was of 60 minutes duration, while the other two programmes were both 45 minutes long. We commissioned a transcript of these three programmes, translated from the original Bangla into English by an independent translator. These programmes featured Mr Rahman being asked questions about his record as Mayor of Tower Hamlets by an interviewer in a studio. Questions were asked on a range of topics, including crime, employment, housing and education.

During the programmes broadcast on 14 November 2013 and 21 November 2013 there were short pre-recorded films included in each programme. These featured a reporter presenting an analysis of one policy area being discussed in the interviews with Lutfur Rahman in more detail, and included various brief statements from members of the public on the issues being discussed. In the 14 November 2013 programme there was: a six minute film focusing on housing in Tower Hamlets; and a four minute film focusing on education in Tower Hamlets. In the 21 November 2013 programme, there was a seven minute film focusing on crime and youth matters in Tower Hamlets. The film broadcast in the 21 November 2013 programme included brief statements from: John Biggs, the Labour Party candidate for the 22 May 2014 election for the Mayor of Tower Hamlets; and Sirajul Islam, the Leader of the Labour Party Group on Tower Hamlets Council. There was no similar brief film in the 7 November 2013 programme.

We noted that during the interviews, Mr Rahman made a range of statements relating to his policies and record, as follows (with wording taken directly from the translation commissioned by Ofcom):

“Before I became the mayor, I had pledged some issues in my manifesto. One of them was housing. Housing is a problem in Tower Hamlets. There is a huge waiting list, and the houses are over-crowded. 1,000 new houses I will create per year. In three years, we have delivered more than three thousand houses”.

¹ Lutfur Rahman is the first directly elected Executive Mayor of Tower Hamlets, who was elected to office on 21 October 2010. The next election for this position will take place on 22 May 2014.

“No borough in this country help people who are over 16 and in education. We are helping them”.

“We have created 2,700 new jobs since I have been elected in 2010. We have delivered almost 1,000 apprenticeships, in councils, in partnership with other stakeholders. They will train for two years and we give London living allowances. We give £18,000 to £20,000 salary. We will train them to get better jobs”.

“We want to take this community forward with everybody. Through our mainstream grant, we have distributed £8 million [to] over 400 organizations”.

“We have a contract with the police that they need to arrest a [drug] dealer every day. In the last three years, we have arrested 1,200 [drug] dealers. We have a team to tackle gangs and how to address this issue so that there are no gang wars in the community”.

“You have touched [on] the issue of housing crisis. That is true that for the last 15/20 years, we have had a housing crisis in Tower Hamlets, due to many reasons. There is a large number of people on waiting lists. Many people are living in overcrowded houses, which affect health of people and education of children. My mothers and sisters are passing hard times. We had a pledge that if we would get elected in 2010, we would deliver 1,000 houses per year. 1,000 people would be moved to new houses from their overcrowded living conditions. What I can say to you is this; we have been working from day one. Housing has been...my top priority. I did this when I was... leader [of the council] and I have continued since I have become the mayor. And for the last three years, we have worked in partnership and we have delivered 3,375 houses precisely. We have delivered 3,375 new affordable houses. However, a housing crisis is still there in Tower Hamlets”.

“After becoming the mayor, I have taken up a project of £168 million for three years. It is a refurbishment programme. Government has given £94 million and we have given the rest from the council. It’s a £168 million plan, where we will provide double glazing, new kitchen and bathroom to every council house. Our mothers and sisters, whether they are Bangladeshi or white, they will at least live in a decent home although it may be over-crowded”.

“We provide new fitted kitchen. We provide completely new bathroom, new sink and new tiles. And we provide double glazing. If you go to Ocean Estate, the work has already been finished. It has been a £220 million programme. Landscape has been created. We have provided double glazing, new kitchens

and new bathrooms. You will see, it is a beautiful programme we have delivered here”.

“Out of £380 million, we are working with 20-25 schools for expansion. We are building new schools. We are increasing seats for kids. We are assessing every single school whether we could increase some seats. We are trying to build new schools”.

“Not all parents have the ability to provide good food to their children, especially the lower-income parents. That is why we have made a policy, that whoever earns less than £21,000, their kids will get free school meals in Year 1 and in the Reception. About 4,000 children are benefitting from it”.

“Before becoming the mayor I had said that crime would be one of my priorities. And we have taken care of crime. The evidence is we have employed 3,500 police officers from council money. We have provided a supplement to the police force. We have bought 40 police officers, trained them and employed them in the community. There has been £5 million investment in the community to fight crime”.

“We have invested £10 million to the youth services which provide after school activities. We have built some new centre[s], some are being built now. Education is also our priority. We want our children to study and to be away from crime”.

“As a council we invested a large amount of money in the last budget. We have employed two domestic violence workers. We work with the victim support in partnership. We support abused women regardless of their ethnic origin”.

“If you look at other boroughs in London, they are mostly spending £3 or £4 million. We are the only borough who spends £10 million a year for our youths. Young people matter to us. We want them to have good facilities and opportunity and provision”.

In light of these examples and as discussed in more detail below, it was Ofcom’s view that this programme was dealing with a matter of political controversy and a matter relating to current public policy i.e. the political debate surrounding the policies and actions of the Mayor of Tower Hamlets, Mr Rahman. We therefore considered this content raised issues warranting investigation under the following rule of the Code:

Rule 5.5: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of

any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”.

We therefore asked the Licensee for its comments on how the content complied with this rule.

Response

In its initial representations in this case, CHSTV said that due to “the ample number of requests” from its viewers “resident in Tower Hamlets”, it had formulated plans for a series of seven programmes concerning Lutfur Rahman. The first five programmes were to be “one to one” interviews with Lutfur Rahman “covering different topics”; and the last two programmes were to be ‘live’ audience participation programmes with a studio audience, and “all viewers [would be able to] participate through telephone calls”. The Licensee said that all programmes in the series were to be “clearly linked by the presenter”. It added that after the first three programmes in the series had been broadcast, and on being contacted by Ofcom concerning the complaint mentioned in the Introduction, it had postponed the broadcast of the other four programmes in the planned series.

In relation to the *Face to Face* series, CHSTV outlined various measures that production staff took to ensure the programmes complied with the Code:

- “no political statement” was to be made in the broadcasts, as the latter were “not classified as a political programme”;
- the views of general public were to be included in the programme “so that the people in Tower Hamlets can give their views”; and
- the view of the opposition Labour Party was to be included in the programmes “on the issues” about which they had criticised Lutfur Rahman.

In addition, the Licensee expressed surprise that Ofcom had raised the possibility that Rule 5.5 might apply in this case, adding that: “Just because an editorial content refers to a politician does not necessarily mean that the rules in Section Five are applicable”. In this case, CHSTV said that Lutfur Rahman who is “directly accountable to the people of Tower Hamlets” was invited to participate in these programmes “to provide information requested by the people in Tower Hamlets”. The Licensee added that this was analogous to the “BBC invit[ing] Mayor Boris Johnson in many interviews”.

However, in its representations on Ofcom’s Preliminary View that there had been a breach of the Code in this case, CHSTV said that it accepted Ofcom’s Preliminary View. It added that it had put in place “thorough compliance procedures” to prevent further breaches of the Code “especially leading up to the local election[s]” taking place on 22 May 2014.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster's and audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy.

Section Five of the Code acts to limit, to some extent, freedom of expression because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee has the freedom to discuss any controversial subject or include particular points of view in its programming, broadcasters must always comply with the Code.

In reaching decisions concerning due impartiality, Ofcom underlines that the broadcasting of comments either criticising or supporting the policies and actions of any political organisation or elected politician is not, in itself, a breach of due impartiality. Any broadcaster may do this provided it complies with the Code.

Rule 5.5 of the Code requires that: "Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole".

Depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way to ensure that Rule 5.5 is complied with. In addition, in judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term "due" means adequate or appropriate to the subject matter. Therefore "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Ofcom first considered whether the requirements of Section Five of the Code applied in this case: that is, whether this programmes concerned matters of political or industrial controversy or matters relating to current public policy. These three programmes collectively lasted two and a half hours and featured Mr Rahman being given the opportunity to speak at length about his policies and actions since becoming the elected Mayor of Tower Hamlets in October 2010, as detailed in the Introduction. During the programmes, Mr Rahman was asked by the interviewer what he and his administration had achieved since he had been elected, on a range of policy areas. In our view, this programme clearly dealt with matters relating to current public policy, namely, the political debate surrounding the policies, actions and record of the Mayor of Tower Hamlets, Mr Rahman. In reaching this view, we took into account the Licensee's arguments that Section Five was not engaged in this case.

CHSTV argued that: “Just because an editorial content refers to a politician does not necessarily mean that the rules in Section Five are applicable”. Similarly, the Licensee said that the programmes in this case were “not classified as political programme[s]”. As mentioned above, the application of the due impartiality rules will depend on the specific circumstances of any particular case. Therefore, depending on the specific content, and the manner in which a politician is featured in a programme, such programming may, in particular circumstances, not engage the rules in Section Five. However, this was not the case in relation to the three editions of *Face to Face* under consideration in this case. As mentioned above, these three programmes were wholly devoted to a detailed consideration of the policies and record of Lutfur Rahman in his three years as elected Mayor of Tower Hamlets. They featured Mr Rahman, in some detail, explaining in response to the interviewer’s questions what he and his mayoral administration had done and achieved in relation to various policy areas. Furthermore, various members of the public featured in the pre-recorded films inserted in this programmes expressing positive viewpoints about Mr Rahman’s policies and record, for example:

“I had been waiting for 13 years. I had no offers. I was living in a 2 bedroom house with my 6 children. Now Lutfur Rahman has been building some big houses, and we have got one of them. Now I have got a 5 bedroom house, and my kids are very happy. They are getting good education and I am very happy”.

“I knew [Lutfur Rahman] when he was the leader of the council. When he became the mayor he made lots of promises and I am very glad to say that he has kept those promises”.

“I feel privileged to be working in a borough like Tower Hamlets with a mayor like Mr. Rahman who has a clear priority in his hand”.

The Licensee said that Lutfur Rahman who is “directly accountable to the people of Tower Hamlets” was invited to participate in these programmes “to provide information requested by the people in Tower Hamlets”. CHSTV added that this was analogous to the “BBC invit[ing] Mayor Boris Johnson in many interviews”. Ofcom understands and welcomes broadcasters who target their programmes at particular communities wanting to provide information to their audiences about elected politicians serving those communities. However, Ofcom would expect that if such programming dealt with the policies and record of such politicians, as in this present case, the broadcaster should as appropriate reflect alternative viewpoints to that of the elected politician and/or any political party of which they might be a member. In addition, we considered that the Licensee’s representation that the “BBC invit[es] Mayor Boris Johnson in many interviews” did not provide any reasonable argument against the application of Section Five of the Code in this case.

We therefore considered that the rules in Section Five were engaged. Ofcom went on to assess whether the programme preserved due impartiality by, for example, containing sufficient alternative viewpoints.

In our view, these programmes presented a very one-sided treatment of the policies and record of Mr Rahman in his role as Mayor of Tower Hamlets. This was due to a combination of factors. Firstly, questions from the interviewer were generally couched in terms that could be characterised as supportive of, or did not seek to challenge, Mr

Rahman. For example, we noted the following as typical of the type and style of question posed to Lutfur Rahman by the interviewer during the programmes:

“Have you done anything for the disabled people in Tower Hamlets?”

“Drugs are a huge problem. What did you do about this problem?”

“Do you think you have fulfilled your commitment and your pledge to people that you had made before you became the mayor?”

“May be we are forgetting about one sector. Many families have special need children. Is there any improvement on their facilities?”

“In the next four years, what do you want to do about education?”

“Okay, you have spent £10 million for youth services, tell us about that. You did it to reduce crime rate. Tell us what this money will do?”

We considered that the large majority of the questions posed by the interviewer to Mr Rahman could not reasonably be described as challenging Mr Rahman, or posing alternative viewpoints, on his policies and record. They simply provided him in our opinion with an opportunity to explain and promote his policies and record.

We noted that during the programmes, the interviewer did pose some questions, which could be characterised as being more critical of Mr Rahman and his policies, such as the following:

“There is a controversy about you that people think of you as an extremist. The word ‘extremist’ is not always bad, whoever is in the top, he can be called extremist. So tell me and the viewers, how much benefit your faith grants would bring for the community? It is not only for Muslims, explain it to me in detail. I am not satisfied that my viewers have understood what you are trying to say”.

“Let me go back a little. Many people don’t know that when you became mayor for the first time, you are lowest-paid mayor in England. You get £60,000, right?...So tell us about your expenses. Even after all those budget cuts, you kept the services. If you were greedy for money, then you would have done something else. You work for 15 hours, then (on top of that) you do social work. You can’t give enough time to your kids; you need to tell about these things in detail”.

“Are you going to forget about parking in the middle of these issues? If we build lots of buildings but there is no parking...look at Docklands. How would you minimise these problems? Do you think people in Docklands will only ride bikes and people in Whitechapel drive cars?”

“You have achieved a lot in education and housing sectors but if I say you haven’t [been] as successful regarding crime, are you going to disagree?”

“Domestic abuse, child abuse and violence have increased. Stealing, breaking in happen almost every day. People go out for a moment, and there can be a break-in. Are you taking any steps to prevent these things?”

“Two Bangladeshis were murdered during your mayorship. Let’s talk about it as it is a Bangladeshi channel. Although 40 Bangladeshis have been killed since they came to this country...few of them happened in Tower Hamlets. Population goes and crime rate goes up. Do you have taken any steps, let us discuss that?”

Although these questions were, to some extent, couched in a more critical tone, we did not consider they could be characterised as challenging Lutfur Rahman on the policy issues under discussion.

Second, Mr Rahman was given numerous opportunities, as set out in the Introduction, to set out his position, at length and uninterrupted and unchallenged, on his policies and record. In effect the three programmes gave him a platform to promote himself as a local politician in Tower Hamlets. At times Mr Rahman acknowledged the practical difficulties he had faced in implementing his policies. For example, he used phrases such as:

“I know we have poverty; I am not going to deny that”.

“I cannot say the problem has been completely eliminated, but we are trying to tackle the problem”.

“It is not possible to eliminate crime totally”.

In our view, however, these few statements were insufficient to balance the large number of detailed statements made by Mr Rahman in which he described, in positive terms, his achievements whilst in office.

Third, we also considered what viewpoints were included in the three brief pre-recorded films included in the programmes, that could be described as being in opposition to the viewpoints being expressed in favour of Lutfur Rahman. We noted the Licensee’s representation that production staff had taken account of the need to include in the programmes: the views of the general public “so that the people in

Tower Hamlets can give their views”; and the view of the opposition Labour Party “on the issues” about which they had criticised Lutfur Rahman.

We noted that no pre-recorded film was included in the initial 60 minute 7 November programme. In summary, we considered that although to a very limited extent some alternative viewpoints were included within each pre-recorded film shown on 14 and 21 November, the overwhelming amount and number of viewpoints included within each of the films could be described as being supportive of Lutfur Rahman and his policies, as follows:

First film (included in the 14 November 2013 programme)

This film focused on housing in Tower Hamlets. We noted that this film did contain some viewpoints that could be characterised as being critical of Lutfur Rahman’s housing policy to some degree:

Reporter:

“The Labour Party has said that the mayor has given priority to the areas of his own councillors or his favourite councillor in regards to the refurbishment programme...a plan to build 149 new houses in [Bow] has been cancelled and the Labour Party has protested against the decision. The next mayoral candidate from the Labour Party, John Biggs, Labour Party leader Sirajul Islam and others joined the protest. They criticised the mayor and said that: ‘While so many people are waiting for a house, this kind of plan is very disappointing’. Moreover, Labour complained that cancellation of this regeneration programme will waste £300,000 of public money”.

Member of the public:

“I have been bidding for [a house] for a long time, but I am not getting a house. I have heard that the mayor of Tower Hamlets has been building new houses, we are hopeful”.

Member of the public:

“I know many people who are not getting enough number of bedrooms they deserve”.

However, we considered that the vast majority of this film consisted of viewpoints that were supportive of Mr Rahman’s housing policy, for example, as follows:

Reporter:

“The mayor claims that he is meeting his commitment of rehousing 1,000 people per year. He said that he has pledged 1,000 rented houses per year and 4,000 houses in total. Since he was elected in 2010, more than 3,000 houses have been built”.

Member of the public:

"I had been waiting for 13 years. I had no offers. I was living in a 2 bedroom house with my 6 children. Now Lutfur Rahman has been building some big houses, and we have got one of them. Now I have got a 5 bedroom house, and my kids are very happy. They are getting good education and I am very happy".

Member of the public:

"I knew [Lutfur Rahman] when he was the leader of the council. When he became the mayor he made lots of promises and I am very glad to say that he has kept those promises".

Member of the public:

"I feel privileged to be working in a borough like Tower Hamlets with a mayor like Mr. Rahman...".

Second film (included in the 14 November 2013 programme)

This film focused on education in Tower Hamlets. We noted that this film did contain some viewpoints that could be characterised as being critical of Lutfur Rahman's education policy to some degree, with the reporter in the film saying:

"To get your chosen place at the primary school is problematic. Many people are sending their kids to school far away from where they are living and that is very hard for them".

However, we considered that the vast majority of this film consisted of viewpoints that were supportive of Mr Rahman's education policy, for example, as follows:

Reporter:

"Lutfur Rahman has expressed his happiness that he played his role as a mayor for three years, and as a leader for two years and before that as an education lead member... Tower Hamlets is the only borough where sixth form or college students get £400 per year. At the same time, children from low income families are getting free school meals at Reception and Year 1 ... 380 million are spent in building new schools and refurbishing old schools".

School student:

"School meals in our school are very good. It should carry on".

Lutfur Rahman:

“Children who gets good nutrition, later on in their lives they are healthy, they are mentally sound and they do well in education. In this tough time, an exception is the mayor’s university grant project. It is not available in any other council in Britain”.

University student:

“This award will help me to get books and other stuff and also help me with my travel cost. I wouldn’t have to worry about money and having to work part time and I would be able to focus on my studies”.

Headteacher:

“I am one of the luckiest headteachers in Tower Hamlets. We’ve got the best site, we’ve got the best opportunity to expand here”.

Third film (included in the 21 November 2013 programme)

This film focused on focusing on crime and youth matters in Tower Hamlets. We noted that this film did contain some viewpoints that could be characterised as being critical of Lutfur Rahman’s policy on crime and youth matters to some degree, for example:

Reporter:

“At this critical moment, the decision of decreasing the number of police made by the mayor has been criticized...However [Labour Party] Mayoral candidate Mr. Biggs and Labour leader Sirajul Islam said that the crime rate has gone up in Tower Hamlets compared to other boroughs. They are leading the Labour Party’s Crime and Community safety campaign. They think that executive mayor is not concentrating enough on fighting the crime yet...”.

John Biggs²:

“[The Labour Party] will work in the local neighbourhoods and we will deal with anti-social behaviour with landlords. We will work very hard to make sure that people feel safe in our borough. Without feeling safe, people cannot get on with their business”.

Sirajul Islam³:

“The crime rate has gone down by two percent in London, but in Tower Hamlets it has gone up by nine percent. The reason behind this is that the executive mayor

² The Labour Party candidate for the 22 May 2014 election for the Mayor of Tower Hamlets.

³ Leader of the Labour Party Group on Tower Hamlets Council.

is not giving it much importance. He is more into those walk-about projects with police, which does not make any impact. That is why crime rate has gone up”.

However, we considered that the vast majority of this film consisted of viewpoints that were supportive of Mr Rahman’s policy crime and youth matters, for example, as follows

Reporter:

“The executive mayor Lutfur Rahman has been providing funds more than the allocated budget towards police department since he assumed the office. He has been spending £2.2 million for 35 extra police members...Tower Hamlets is spending more money on youth services than any other borough. The yearly budget is £10 million”.

Lutfur Rahman:

“In partnership we can go out in the community and fight crime and the evils of crime. What I can assure you is, drugs continue to be our top priority. And I, and the borough commander have made fighting drugs and evils of drugs our top priority. We want to send a message to those people who are involved in that activity that Tower Hamlets is an area of zero-tolerance. We will not tolerate anyone dealing or supplying drugs”.

Deputy Mayor:

“According to the statistics in September, the crime rate has gone down. We are committed to bring the crime rate down. We have bought 40 police officers with our own resources. We have 20 TEOs⁴ so that the crime rate goes down”.

We considered that all three of these films were one-sided presentations on different policy areas related to Lutfur Rahman’s time in office as Mayor of Tower Hamlets favouring his policies and record.

The limited alternative viewpoints contained within the films were not sufficient to balance in an appropriate way the content of the three editions of *Face to Face* in which Lutfur Rahman was able to set out his position, at length and uninterrupted and unchallenged, on his policies and record.

In reaching our Decision, we took into account the Licensee’s representation that the three programmes were intended to be part of a seven programme series “clearly linked by the presenter”, the last two of which were planned to be ‘live’ audience participation programmes in which “all viewers [would be able to] participate through telephone calls”. During the three editions of *Face to Face* that were broadcast, the interviewer made various references to the fact that each programme was part of a series of programmes interviewing Lutfur Rahman and considering various policy matters. Therefore, we considered that the audience would have been likely to have viewed the three programmes as editorially linked and therefore a series of

⁴ Tower Hamlets Enforcement Officers.

programmes taken as a whole. Neither the second or third programme in the series however as already pointed out gave an adequate platform to political opponents or critics of Mr Rahman to express their alternative viewpoints.

As already discussed above, we considered that taken as a whole, these three programmes did not provide sufficient alternative viewpoints on the issue of Mr Rahman's policies and record in office.

We also took into account CHSTV's further representations that it accepted Ofcom's Preliminary View that there had been a breach of the Code in this case. In this regard, we noted Licensee's statement that it had put in place "thorough compliance procedures" to prevent further breaches of the Code "especially leading up to the local election[s]" taking place on 22 May 2014.

In conclusion, for all the reasons above, Ofcom concluded that CHSTV failed to preserve due impartiality as required by Section Five of the Code. These programmes therefore breached Rule 5.5 of the Code.

Breach of Rule 5.5

In Breach

How Not to Get Old

Channel 4, 14 August 2013, 20:00

Introduction

How Not to Get Old was a six-part series on Channel 4 that examined the ageing process and methods for preserving appearance. Each programme in the series featured a different surgical, therapeutic or cosmetic technique and discussed various approaches to maintaining a youthful appearance.

This programme, the second in the series, included an item in which Louise Redknapp examined three anti-ageing gadgets: a skin cleansing system, a 'dermaroller' and a Philips RéAura 'fractionated home use laser'. Expert comment on each of the products was given by a dermatologist, Dr Samantha Bunting.

A viewer, who noted that Dr Bunting was a 'brand ambassador' for the Philips RéAura product, complained that this role was not mentioned during the programme.

The sequence began with Louise Redknapp ("LR") speaking to camera in a London street:

LR: *"Anti-ageing gadgets are becoming more and more popular. And they kind of fill the gap between procedure and product. I've personally never really been much of a fan, but I'm on my way to meet dermatologist Dr Sam Bunting to see if she can change my mind and prove to me they're worth the money."*

The scene moved to the interior of a cosmetics shop. The opening of the discussion between Louise Redknapp and Dr Samantha Bunting ("SB") was:

LR: *"So Doctor Sam I am slightly bamboozled about all these different anti-ageing gadgets that you can take home."*

SB: *"You're absolutely right there are lots, and it's such a growing trend because people want convenience of devices that they might otherwise have to go into a doctor's office for, and they want it in a more economic way."*

LR: *"But with all the creams out there, why should I bother?"*

SB: *"We can spend quite a lot of money on creams, without necessarily getting anything very tangible from them."*

In respect of the RéAura device, the following conversation took place:

SB: *"This is the Philips RéAura, now this is actually a fractionated home use laser."*

LR: *"That sounds very technical."*

SB: *"It is quite technical but I think this is pretty much a one-stop shop when it comes to tackling the first signs of ageing, so fine lines, dark spots, and loss of elasticity."*

- LR: *“So is this painful, because whenever I think of laser, I always worry that maybe it’s gonna burn, or it’s gonna make things worse...”*
- SB: *“There are certain types of skin that probably shouldn’t use a laser so if you’ve got active inflammation, if you’ve got raging acne or rosacea. These are conditions where I wouldn’t recommend that you would use this device.”*
- LR: [voice over] *“Unfortunately that includes me as I have a pigmentation condition called melasma on my face – but I still want to see what it feels like.”*
- LR: *“Can I try a bit on my hand?”*
- SB: *“Just going to use the laser gel – you ready?”*
- LR: *“Yep.”*
- SB: *“So, when it’s in contact with the skin it glows red, and then, you move it. So the idea is you kinda mow the lawn. How’s that feel?”*
- LR: *“Yeah it’s kinda on a level with the roller.”*
- SB: *“Yeah. I think so too. I’ve got some before and after photos so you can get an idea of exactly what can be achieved.”*

At this point, split screen before-and-after close up pictures of a woman’s face were displayed, with prominent text stating *“corporate images”*.

- SB: *“I actually think that that’s, that’s quite impressive.”*
- LR: *“Price-wise, is this extremely expensive?”*
- SB: *“So it’s 799.”*
- LR: *“Pretty expensive yeah. It’s...I mean it is expensive I think there’d be a lot of people that would maybe be scared of the price, they’d want to understand it more...”*
- SB: *“As long as you do your research, assure yourself that you believe that this can deliver great results, and I’m confident of that, um, then I think it makes sense.”*
- LR: *“Yeah.”*

The programme did not disclose the fact that Dr Bunting is paid by Philips to act as an ‘ambassador’ for the Philips RéAura product.

Ofcom considered the discussion of the RéAura product in the programme, given that the relationship between Dr Bunting and Philips was not disclosed to viewers, warranted investigation under Rule 9.4 of the Code which states:

Rule 9.4: *“Products, services and trade marks must not be promoted in programming”*.

We therefore sought comments from Channel 4 (or “the Licensee”) as to how it considered the programme complied with this rule.

Response

Channel 4 told us that Dr Bunting had been considered by the production company – Twenty Twenty – as a presenter of a programme ‘strand’ that would examine a range of beauty gadgets each week. However, the editorial direction of the series developed so that beauty gadgets became the subject of just one part of one programme in the series and Dr Bunting’s role was limited accordingly.

On the choice of Dr Bunting as a contributor, Channel 4 said that:

- Dr Bunting had been first contacted by Twenty Twenty on 12 February 2013;
- Dr Bunting was a well respected cosmetic dermatologist who has worked within the NHS for eight years and who was regularly asked to give her expert view on cosmetic products for television and press articles; and that
- Dr Bunting was “chosen to participate in this item based on her skills as a cosmetic dermatologist, and supported by her professional obligations and reputation as a doctor, we were assured that any comment that she provided would be unbiased, based on the results of any actual tests undertaken and would highlight the downsides of the products as well as any benefits”.

On the selection of the Philips RéAura device, the Licensee said that:

- Dr Bunting had had no role in choosing the products to be reviewed and that Twenty Twenty had selected the devices featured in the item in consultation with the Licensee’s Commissioning Editor, without Dr Bunting’s involvement or advice;
- the RéAura device was chosen because it was the first ‘use at home laser’ in Europe, and lasers are a “big story” in the anti-ageing industry. The product has also received good reviews. Because the RéAura was the only fractionated laser readily available in the UK, no other similar product was referred to during the programme;
- Twenty Twenty did not speak directly to Philips but instead, in March 2013, contacted a public relations agency working on the manufacturer’s behalf in order to obtain a RéAura device;
- it was suggested to Twenty Twenty at that time by Philips’ public relations agency that Dr Bunting was a person who could explain the product. It was made clear to the PR agency by Twenty Twenty that the production team was already in contact with Dr Bunting and that she would be discussing a range of products during the programme; and that
- the nature or existence of any commercial relationship was not discussed with Philips or with Dr Bunting, and no conditions of any kind were agreed or stipulated in relation to the supply of the product by Philips. No payment or other valuable consideration was offered by the manufacturer or received by the production company or the Licensee.

On Dr Bunting’s role as a brand ambassador for Philips RéAura, the Licensee said that:

- Dr Bunting only “works with” brands on which she has done due diligence and that have had an independent, scientific study carried out on them to support any claims;
- Twenty Twenty had been assured by Dr Bunting that she had independently tested the RéAura product before lending her support to it “using due diligence to assess whether it had credence or not”. Dr Bunting had chosen to research the RéAura product because it was the first of its sort for home use. This research

- had included Dr Bunting travelling to France (at her own personal cost and without commercial support) to research and review the product; and that
- the contract between Twenty Twenty and Dr Bunting included an explicit contractual warranty that Dr Bunting's opinions were her own and were genuinely and truly held by her.

In respect of the discussion of the Philips RéAura product in the programme, the Licensee said:

"...Dr Bunting was not reviewing the products per se – Louise Redknapp as presenter of the strand was actually testing and considering the products (including their downsides); Dr Bunting was asked to provide a contextual introduction to the products (for Louise's consideration) and offer her medical opinion on the result/outcome of Louise's treatment."

In respect of the before-and-after pictures featured in the programme, the Licensee said, because Louise Redknapp had been unable to test the RéAura device:

"It was decided by the producers, in consultation with the Channel 4 Commissioning Editor, that as the other products had been tested and results from the treatment included in the programme, it would not be fair to Philips if the results of testing the product were not included. It was also considered editorially important for viewers to see the claimed results of this unique product. Twenty Twenty asked Philips to send photographs showing before and after the treatment. It was decided by Twenty Twenty in consultation with Channel 4 that the stills should be labelled 'corporate images' to make it clear that they had been provided by the brand and were not taken following our independent trial."

In respect of when Channel 4 became aware of the commercial relationship between Philips and Dr Bunting, the Licensee said that:

- it had had no direct contact with Philips or with Dr Bunting in relation to the programme and that Twenty Twenty's contact with Philips had been limited to a public relations company working on the manufacturer's behalf in order to obtain a device;
- one of its legal team, as part of a pre-broadcast legal and compliance review of this episode on 27 June 2013, had asked Twenty Twenty to confirm that Dr Bunting did not have 'any commercial interest in any of the products' discussed in the programme; and that
- although Dr Bunting had confirmed that she was a paid 'brand consultant', Channel 4 had not been informed about this and consequently had not been aware of a commercial relationship between Philips and Dr Bunting before being contacted by Ofcom.

In respect of Rule 9.4, Channel 4 said it was satisfied that the item did not 'promote' the RéAura device. The Licensee told us that the product was featured in an entirely editorially justified item which examined two other leading, innovative cosmetic gadgets from different manufacturers. The Licensee argued that Dr Bunting gave her own professional view of the product's features when introducing it to Louise Redknapp in the programme and reiterated that Dr Bunting had independently investigated the RéAura product. As to the detail of the review, the Licensee said:

"This view was then challenged by Louise who highlighted the limits on those who could safely use it (she could not), the potential for limited pain, and in

particular highlighting the high price for the product. It is important to note that the images that were used in the programme were flagged clearly as ‘corporate images’ and were only used because Louise could not undertake the testing of this innovative new product herself and the visual information was relevant to viewers (albeit with the commercial nature of the images flagged up). Importantly Louise Redknapp makes it clear that, for the price, potential users would want to ‘understand it more’ and Dr Bunting goes on to say that viewers should “...do your research, assure yourself that you believe that this can deliver great results...”.

The Licensee emphasised that it took its obligations under the Code extremely seriously. In this respect it said that:

“At the conception of the series and as it developed meetings were held between the commissioning editor, production team and programme lawyer to ensure that all potential issues with respect to the Code were considered and appropriately addressed. In particular special consideration was given to any commercial references to products and services contained within the programme to ensure that every single one was editorially justified and compliant with the provisions of the Code.”

The Licensee said that robust steps had been taken to ensure that the producers and Channel 4 maintained full and independent editorial control over editorially justified content and that it would not have wanted anyone to gain a contrary impression. Therefore, the Licensee said, it may have been helpful for the programme to have additionally mentioned Dr Bunting’s connection to Philips. However, Channel 4 said that it considered the fact that the connection was not mentioned did not in itself point to a breach of the Code.

The Licensee told us that it believed it to be worth noting that had the relationship been “pointed up” the item would also likely have included reference to Dr Bunting’s own independent due diligence into the product in demonstrating that she believed it effective.

Third party representations

Ofcom considered it appropriate to seek representations from Twenty Twenty, Dr Bunting and Philips via Channel 4 on our Preliminary View in this case. A further set of representations were received via Channel 4 from Twenty Twenty, Dr. Bunting and Philips after a revised draft Decision was sent by Ofcom to the Licensee.

Twenty Twenty

Twenty Twenty stated that it had been informed that Dr Bunting’s knowledge of the product derived from her own independent research of the product and that her views on it were her genuine opinion. The production company said that it had been told before filming that Dr Bunting had “independently looked into and researched this product as a result of her attending a conference at which the Philips RéAura was discussed.” Twenty Twenty also stressed that the terms of its contract with Dr Bunting included confirmation by Dr Bunting that her opinions were her own and were genuinely and truly held by her.

In further representations, Twenty Twenty explained that on 11 March 2013 when the production company had sought a device to use in the programme from Philips’ PR firm, that firm had sent a press release to it which stated “[the device] is endorsed by leading Harley Street cosmetic dermatologist Dr Sam Bunting”. That press release

“was received”, according to Twenty Twenty, “by a junior member of [its] production team...”. Twenty Twenty explained that the junior member of staff concerned had “mistakenly understood” the term “endorse” to mean merely that “Dr Bunting had ‘stated her public approval of’ the [RéAura] device rather than was benefiting from a commercial association with it.” Unfortunately, Twenty Twenty told us, as its staff member had not understood the nature of Dr Bunting’s relationship with Philips, this press release was not referred on to senior producers or staff at Twenty Twenty or passed on to Channel 4.

Twenty Twenty said it was satisfied that in not alerting more senior staff to the press release, its staff member had acted in accordance with a “genuinely held belief”, noting also that there had been “no express mention in the press release of a *commercial* endorsement or relationship” (emphasis in the original). Twenty Twenty acknowledged, however, that Philips considered that “this wording clearly infers a commercial relationship between the parties.”

Subsequently, a Producer/Director from Twenty Twenty had emailed Dr Bunting on 15 July 2013 [i.e. a month before transmission] to ask about the nature of her relationship with Philips. In response, Dr Bunting had confirmed that she was being paid by Philips as a brand ambassador. Twenty Twenty told Ofcom that “Regrettably... this information was not relayed to the Series Producer, either of the Executive Producers or [Twenty Twenty’s] legal team despite them expressly seeking a response to this question”.

Twenty Twenty stressed that Dr Bunting had reassured Twenty Twenty about the independent research she puts into a product before accepting payment to endorse it. The company said that given this fact and those of her qualifications, experience and highly respected reputation, and that they had chosen the Philips product independently, they were satisfied that the item was not compromised by including both the product and Dr Bunting in the programme without reference to the commercial relationship between them.

Dr Bunting

Dr Bunting stated that before she agreed to work with Philips she had “attended the World Anti-Ageing Congress in Monaco to meet with...a world-renowned dermatologist with a specialist interest in lasers...[who] presented the clinical data from trials performed on RéAura...”. Dr Bunting said that she “spoke to him at length subsequently one-to-one.” This due diligence was, Dr Bunting said, “the basis for progressing with my relationship with Philips.”

As to the matter of when the relationship between her and Philips was disclosed, Dr Bunting said:

“I am keen to emphasise that I declared my role as a brand ambassador for Philips ReAura from the outset, well in advance of any filming for the Channel 4 programme 'How Not To Get Old'. When I was informed of the choice of home-use devices which had been chosen for filming my section, I explicitly stated that I was a brand ambassador relationship for Philips RéAura as this was one of the devices that had been chosen. I was also aware that Philips PR representatives [...], whom I have previously worked closely with, had also separately mentioned my role during conversations regarding featuring the device in the show. After filming, I was contacted by phone by 20/20's producer/director [...] who asked whether I was remunerated by Philips in my role as a brand ambassador, as this had been flagged up by their legal team. I stated clearly that I was. I was then

contacted again some months later by [the programme's executive producer] who informed me of the complaint to Ofcom and she shared with me that unfortunately the nature of my relationship with Philips had not been conveyed to Channel 4 by 20/20, due to an internal failure in communication."

Philips

Philips did not make any additional points, save to emphasise that in its press release sent to Twenty Twenty on 11 March 2013 it was clearly stated that Dr Bunting endorsed the Philips RéAura and that in its view this made clear the commercial relationship between the manufacturer and Dr Bunting.

Both Philips and Dr Bunting emphasised to Ofcom that neither had concealed the existence of the commercial relationship between them.

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 specific 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".

Article 19 of the Audiovisual Media Services Directive ("the AVMS Directive") requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are reflected in Section Nine of the Code. The rules in Section Nine are intended primarily to protect consumers by ensuring that a distinction between editorial content and advertising is maintained. Given the clear limitations set out in the AVMS Directive on the extent to which products, services and trade marks may be referred to in programming, it is particularly important that any commercial arrangements which may have an impact on a viewer's perception of a product, service or trade mark are transparent.

Rule 9.4 prohibits products, services and trade marks being promoted in programming, regardless of whether their appearance is as a result of a commercial arrangement between the broadcaster or producer and a third party funder or not. Ofcom's guidance to Section Nine makes clear that:

"where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears".

Ofcom's guidance to Rule 9.4 goes on to explain that the acceptability of references in a programme to certain general features of a product's appearance will again be dependent on context:

"In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed. However there may be circumstances that justify a greater degree of information about products or services within a programme. For example: consumer advice

programmes – such programmes are likely to refer to the price, availability or attributes of a specific products or services, often in a comparative context. A positive review or product recommendation in a consumer advice programme is unlikely to be treated as a promotional reference...”.

In this case, Ofcom first considered whether the programme, and in particular the item described above, constituted “consumer advice”. Ofcom noted that the series was a magazine-style factual entertainment programme featuring a number of different items on the methods available to viewers to preserve their appearance. We noted also that Channel 4’s website description of the programme stated that “Anna Richardson and Louise Redknapp present the ultimate consumer guide on how to keep looking younger for longer”¹.

We also noted that the item under consideration was introduced in the programme by Louise Redknapp as follows:

“Anti-ageing gadgets are becoming more and more popular. And they kind of fill the gap between procedure and product. I’ve personally never really been much of a fan, but I’m on my way to meet dermatologist Dr Sam Bunting to see if she can change my mind and prove to me they’re worth the money”.

Ofcom considered that the item had been presented as an assessment of anti-ageing devices by an appropriately qualified expert, with the aim of providing advice on the efficacy of the products. As such, we concluded that the item could be described as amounting to consumer advice.

We then considered whether the material was “promotional” within the terms of Rule 9.4 of the Code. In reaching our decision, the following statements made by Dr Bunting during the item were especially relevant:

“It is quite technical but I think this is pretty much a one-stop shop when it comes to tackling the first signs of ageing, so fine lines, dark spots, and loss of elasticity.”

“Yeah. I think so too. I’ve got some before and after photos so you can get an idea of exactly what can be achieved.”

[of the before-and-after pictures] *“I actually think that that’s, that’s quite impressive.”*

“As long as you do your research, assure yourself that you believe that this can deliver great results, and I’m confident of that, um, then I think it makes sense.”

“There are certain types of skin that probably shouldn’t use a laser so if you’ve got active inflammation, if you’ve got raging acne or rosacea. These are conditions where I wouldn’t recommend that you would use this device.”

As noted in Ofcom’s Guidance to Section Nine of the Code,² a positive review in a consumer advice programme is unlikely in itself to be treated as a promotional reference. However, as also noted in that guidance, where the reference is included for editorial reasons, this will be judged in the context in which it appears.

¹ See <http://www.channel4.com/programmes/how-not-to-get-old>.

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

Ofcom considered that, within the context of a consumer advice programme item looking at various treatments offered by the beauty industry, the inclusion of a particular product is a matter of editorial judgement. In this case, discussing the RéAura product appeared editorially justified and appropriate.

The issue is whether the context in which the reference to the particular product was made was such that the reference should be considered “promotional”. In this case, the context was of a dermatologist, Dr Bunting, commenting on a product (as she was qualified to do) but without any mention in the programme as broadcast that she also had a commercial relationship with the product manufacturer, Philips.

Ofcom noted that the subject of the series, i.e. the methods available to consumers to preserve their appearance, was one of significant interest to many viewers, and accounted for the purchase of billions of pounds of products each year in the UK. Within this general context, the point of this part of this programme was to examine various products offered in the marketplace with some scientific rigour. Accordingly, the presence of a dermatologist, introduced as such and referred to using her professional title, to comment upon a range of products added influence and persuasive authority to this part of the programme.

In our view, *How Not to Get Old* sought to present its tests and the accompanying discussion as reliable, independent and informative. Indeed the Licensee’s justification for the use of the before-and-after images supplied by Philips, and labelled as ‘corporate images’, was that their tester, Louise Redknapp, could not use the RéAura device for medical reasons and that the inclusion of other performance evidence was therefore necessary.

Ofcom acknowledges that there may be situations in which a guest appears in a programme where they will be expected to talk about their commercial interests, either as an expert on a product to be discussed, for example, by demonstrating a technological advance, or an author on a chat show discussing their latest novel. In these circumstances references to commercial interests may be justified editorially. However, the acceptability of such references is in part dependent on the fact that audiences are aware of an individual’s involvement or arrangement with a commercial product or service, and that the commentary is provided by a person best placed to give it. Making clear a guest’s interest in the subject being discussed (where it is not otherwise obvious) can therefore serve to justify their role editorially by both explaining the purpose of their appearance and by reducing the promotional effect of what is otherwise likely to be perceived as independent comment.

In this case, without an awareness of Dr Bunting’s position as a paid ‘brand ambassador’, the ability of the audience to assess her views of the product’s efficacy, and to distinguish between information and possible promotion, was substantially impaired. We took into account the Licensee’s submission that, before endorsing the brand, Dr Bunting had employed her own “due diligence to assess whether it [the RéAura product] had credence or not”. In this respect we gave full consideration to Dr Bunting’s own representations and those of Twenty Twenty, both as set out in the “Response” section above, that Dr Bunting had researched the RéAura product.

It is important to stress that Ofcom had no reason to doubt that Dr Bunting’s comments represented her genuine views as to the product’s efficacy. For this reason, Ofcom did not consider that the contractual provisions to which the Licensee and Twenty Twenty drew attention assisted in determining the programme’s compliance with Rule 9.4 of the Code.

Regardless of Dr Bunting's research and the genuine nature of her views on the RéAura product, we noted that no reference to Dr Bunting's role as a paid 'ambassador' for Philips was provided to viewers. Again, this is ultimately the responsibility of the Licensee and we have no reason to doubt that Dr Bunting herself gave accurate information to Twenty Twenty on the nature of her commercial relationship. In our view, by failing to disclose her commercial relationship with the product's manufacturer, the Licensee did not provide a sufficient contextual basis for the positive statements made by Dr Bunting about the RéAura product. Consequently, in view of that commercial relationship, we judged that these comments served to promote the product.

Dr Bunting's evaluation, which included a statement that she was "*confident*" about the potential for the product to deliver "*great results*", was broadly very favourable. Ofcom noted that, alongside Dr Bunting's positive comments on the efficacy of the device, she made some cautionary comments, which were referred to by Channel 4. Ofcom noted that the cautionary comment in relation to users with a medical condition did not qualify the positive comments about the product's likely benefit to any person not excluded from using the device because of a physiological condition. We also noted that Dr Bunting said: "*...As long as you do your research, assure yourself that you believe that this can deliver great results...*". However, immediately after this, she went on to say: "*...and I'm confident of that, um, then I think it makes sense*". Consequently, we do not consider this altered the fact that, on balance, a very favourable assessment of the product was given. In any event, none of this has a bearing on the exclusion of important contextual information on Dr Bunting's status as a 'brand ambassador'.

For all the reasons set out above, Ofcom concluded that the programme breached Rule 9.4.

Ofcom acknowledged that Channel 4 had sought to make appropriate checks in advance of the programme's transmission and, unlike the programme's producers, had no reason to be aware of the relationship between Dr Bunting and Philips until it was contacted by us following the complaint.

However, it is clear from the correspondence supplied to Ofcom by Channel 4, Twenty Twenty and Dr Bunting during the course of our investigation that:

- the material received by Twenty Twenty in March 2013 from Philips' PR agency not only referred to Dr Bunting's endorsement of the RéAura product, but also stated that Philips could organise a "personal consultation with Dr Bunting..." if the programme presenter wanted "to trial the product". In our view, this suggested that Dr Bunting was in a relationship with Philips that went beyond merely lending unpaid support to the product; and
- Dr Bunting supplied written confirmation in July 2013 of her commercial relationship with Philips to a Producer/Director at Twenty Twenty, following a direct request by Channel 4 for information on this point.

Ofcom is therefore concerned that, although staff at Twenty Twenty had been informed by Dr Bunting about her commercial relationship with Philips on at least two occasions prior to transmission, no steps were in place to ensure this information was disseminated to appropriate Twenty Twenty staff or to Channel 4.

We strongly advise the Licensee, and all other broadcasters, to review their requirements for the provision by independent production companies of information about programme contributors' commercial arrangements.

Breach of Rule 9.4

In Breach

Studio 66 TV Days

Studio 66 TV 1 (Channel 912), 25 December 2013, 06:30 to 07:30

Studio 66 TV Days

Studio 66 TV 1 (Channel 912), 26 December 2013, 06:30 to 07:30

Studio 66 TV Days

Studio 66 TV1 (Channel 912), 4 January 2014, 14:15 to 15:15

Introduction

Studio 66 TV Days are segments of interactive ‘adult chat’ and ‘daytime chat’ advertising content broadcast on the service Studio 66 TV 1 (Channel 912). The service is freely available without mandatory restricted access and is situated in the ‘adult’ section of the Sky electronic programme guide (“Sky EPG”). Viewers are invited to contact on-screen presenters via premium rate telephony services (“PRS”). During ‘daytime chat’, all dress and behaviour should be non-sexual in tone and apparent intent.

The licence for Studio 66 TV 1 is owned and operated by 914 TV Limited (“914 TV” or “the Licensee”).

Following complaints regarding the content of these ‘daytime chat’ channels, Ofcom reviewed the material and noted the following:

25 December 2013, 06:30 to 07:30

The female presenter was wearing a light pink, tight-fitting short dress which was considerably cut-away across her front, revealing the majority of her breasts. Only thin strips of material covered her nipples and the remainder of her breasts appeared oiled. For the majority of the broadcast the presenter lay on her side to camera. While lying in this position, the presenter also repeatedly pulled up her dress over her buttocks to reveal a skimpy thong, and rubbed and stroked her hips, bottom and thighs and touched her breasts. She also briefly touched her crotch area. At one point, she took a drink from a glass and licked the straw up and down. Several times throughout the broadcast, the presenter licked her lips and stuck out her tongue to reveal her tongue piercing.

26 December 2013, 06:30 to 07:30

The same female presenter was wearing a low-cut loose cropped top with thin straps which revealed a significant amount of cleavage with the majority of her breasts clearly visible. On her bottom half, the presenter was wearing skimpy denim knickers which revealed a significant amount of her buttocks. During the broadcast the presenter lay on her side and repeatedly exposed one of her nipples due to her movements and the looseness of her clothing. She also thrust her breasts towards the camera. At regular intervals, the presenter massaged and stroked her legs, thighs and bottom. When the presenter lay on her front, she gyrated and slowly thrust and rocked her bottom from side to side and up and down.

4 January 2014, 14:15 to 15:15

The same female presenter was featured wearing a red PVC dress with a zip-up front. The dress was partially unzipped, revealing the majority of her breasts which appeared to be oiled. Throughout the advertising content the presenter touched and stroked her breasts and rubbed and massaged her buttocks and thighs. During the broadcast she lay on her front and opened her legs, albeit away from the camera. Her dress repeatedly rode up over her hips to reveal her thong, which was visible for the majority of the advertising content. The presenter also rocked backwards and forwards on her front, her back and on all fours in a sexualised manner throughout the broadcast.

Ofcom considered the material listed above raised issues warranting investigation under BCAP Code Rule 32.3, which states:

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

We therefore requested comments from the Licensee as to how this advertising content complied with this rule.

Response

914 TV stated in its response that it had assessed the content, and agreed that the material complained of did not meet the standards set out in its internal guidelines, or Ofcom’s Guidance on advertising of telecommunications-based sexual entertainment services (July 2013). The Licensee apologised for this. It added that in all three circumstances, the content “fell short” of the standards that the Licensee aimed to achieve in its advertising content.

However, 914 TV stated that it did not consider that the content: “was of a level that would, or could, cause harm or distress to children of particular ages” watching, which, in its view, the Licensee described as being the “the overriding intention” of Rule 32.3. 914 TV added that it “accept[ed] that the channel’s labelling and positioning [was not] sufficient to ensure that children of particular ages watching television unsupervised [did] not access unsuitable content”. However, the Licensee suggested that: “there is (or ought to be) at least some parental responsibility to supervise what their children are watching”.

The Licensee explained that since being alerted by Ofcom to this issue, the content had been reviewed by all production staff in order to “highlight the potential issues and offer our guidance to ensure that the required adjustments were made moving forwards”.

Additionally, the Licensee stated that it had circulated updated guidance, and reminded staff of their “responsibility to ensure that programming is scheduled appropriately” and that “regardless of [its] labelling and positioning, there was always the possibility that a child could inadvertently find themselves watching the content between 05.30 and 21:00”.

914 TV also stated that it had discussed with the presenter, who featured in all three programmes, how further compliance issues such as these could be avoided. Steps had also been taken to ensure that she would wear more appropriate clothing in future.

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

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’ and ‘daytime 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.

Rule 32.3 of the BCAP Code states: “Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.”

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the ‘adult’ section); any warnings; and mandatory restricted access. Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in ‘daytime chat’ and ‘adult chat’ advertising content that is available without mandatory restricted access.

Ofcom published its revised Guidance on advertising of telecommunications-based sexual entertainment services in July 2013 (the “Chat Service Guidance”)¹. The Chat Service Guidance clearly sets out what Ofcom considers to be acceptable for broadcast on ‘daytime chat’ services pre-watershed. For example, the guidance explicitly states that ‘daytime chat’ broadcasters should:

- “ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks”; and
- “not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses”.

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

Ofcom has also made clear to the Licensee in previous published decisions what sort of material is unsuitable to be broadcast in 'daytime chat' advertising content².

We considered each of the pieces of content against BCAP Code Rule 32.3.

Suitability for children

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the broadcast material was unsuitable for children.

25 December 2013, 06:30 to 07:30

Ofcom noted that the female presenter was wearing clothing that did not adequately cover her breasts and buttocks, in particular: a tight fitted top with a significant cut-away area, exposing a large amount of her breasts and cleavage, and a dress that rode up on several occasions, revealing the presenter's underwear. While wearing this outfit, the presenter acted in a sexualised manner. Prominence was given to her breasts and she also rubbed her bottom and thighs throughout the advertising content. Her body was therefore not adequately covered and the cumulative effect of her outfit and movement was to create a sexualised tone. Given the time of broadcast, Ofcom concluded that this material was unsuitable for children.

26 December 2013, 06:30 to 07:30

The presenter was wearing clothing that did not adequately cover her body, in particular: a low-cut, thin strapped crop top with skimpy denim knickers. The presenter pulled the string of her g-string above the waist of her shorts multiple times, as well as touching her breasts at various points throughout the advertising content. She moved around whilst lying on her side, causing one of her nipples to be exposed on a number of occasions. Her body was therefore not adequately covered and her actions, combined with her clothing, created a sexualised tone. For these reasons, again given the time of broadcast, Ofcom found this material to be unsuitable for children.

4 January 2014, 14:15 to 15:15

The presenter (the same presenter featured in the broadcasts of 25 December and 26 December detailed above) wore a red PVC dress with a zip-down front. The zip was undone to reveal a significant amount of her breasts and as the dress rode up over her hips for much of the advertising content so that her buttocks were not adequately covered. As the presenter opened her legs away from the camera and rubbed her thighs, and rocked backwards and forwards on multiple occasions in a sexualised manner, Ofcom considered that the behaviour of this presenter and the fact that her body was not adequately covered resulted in this content being unsuitable for children.

Scheduling

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to these broadcasts. Ofcom took account of the fact that the channel is in the 'adult' section of the Sky EPG. However, this material was

² For example most recently: Studio 66 TV, various times and dates, in issue 235 of Ofcom's Broadcast Bulletin, 5 August 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>

broadcast on a channel without mandatory restricted access at various times during the day, both in the early morning and afternoon, when children were available to view at a time and when some were potentially unaccompanied by an adult.

Ofcom also had regard to the likely expectations of the audience for advertising content broadcast at these times of day on a channel in the 'adult' section of the Sky EPG without mandatory restricted access. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast and available to view at these times of day, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. The broadcast of such sexualised content was inappropriate to advertise 'adult chat' during the day and before the watershed. As a result, Ofcom did not believe that the fact that this advertising content was in the 'adult' section of the Sky EPG was sufficient to ensure this material which was unsuitable for children was appropriately scheduled.

Previous guidance

In reaching our Decision, we took into account the fact that this content was broadcast after Ofcom had published its revised Chat Service Guidance on 15 July 2013³. When we published the revised Guidance, we also published a Note to Broadcasters in issue 223 of Ofcom's Broadcast Bulletin⁴ in which, amongst other things, we required 'daytime chat' and 'adult chat' broadcasters to take careful note of the following in the revised Chat Service Guidance:

"Presenters' clothing on daytime chat services

During daytime chat content, all dress and behaviour should be non-sexual in tone and apparent intent. Therefore presenters should wear clothing that **adequately covers their bodies** (in particular their breasts, genital areas and buttocks)...".

Ofcom is concerned that, despite the revised Chat Service Guidance, this material was broadcast on 25 and 26 December 2013, and on 4 January 2014.

In addition, in reaching our decision on this case, we also took into account the representations made by the Licensee. We noted that the Licensee had acknowledged that the advertising content in this case did not comply with its own internal guidance or the Chat Service Guidance. Further, we noted the measures taken by the Licensee to improve compliance by its staff and presenters to limit the possibility of this type of content being broadcast in the future.

Conclusion

These broadcasts were therefore in breach of BCAP Code Rule 32.3.

The Licensee for Studio 66 TV 1, 914 TV, and the Ofcom licensee 965 TV Limited ("965 TV", which controls the services Studio 66 TV 2, Studio 66 TV 3 and Studio 66 TV 4) both share the same shareholder and director. According to Ofcom's records, all four channels also have the same individual responsible for compliance. 914 TV and 965 TV both recently had breaches of BCAP Rule 32.3 recorded against them in issue 235 of Ofcom's Broadcast Bulletin in August 2013 for material broadcast on

³ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

⁴ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

Studio 66 TV 1, Studio 66 TV 2 and Studio 66 TV 3⁵. At that time Ofcom required the individual responsible for compliance for 914 TV and 965 TV to attend a meeting at Ofcom to discuss compliance arrangements. Despite the assurances given to Ofcom at that time, Ofcom is extremely concerned that the Licensee has breached BCAP Rule 32.3 again. Ofcom acknowledged the reassurances offered by the Licensee to improve its compliance.

Nonetheless, Ofcom will consider further regulatory action should similar advertising content be broadcast on this service again. (Also see the new breaches recorded against 965 TV on page 52 of this issue of Ofcom's Broadcast Bulletin).

Decision:

Studio 66 TV Days, Studio 66 TV 1, 25 December 2013, 06:30 to 07:30 – Breach of BCAP Rule 32.3

Studio 66 TV Days, Studio 66 TV 1, 26 December 2013, 06:30 to 07:30 – Breach of BCAP Rule 32.3

Studio 66 TV Days, Studio 66 TV 1, 4 January 2014, 13:45 to 15:15 – Breach of BCAP Rule 32.3

⁵ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>

In Breach

Studio 66 TV Days

Studio 66 TV2 (Channel 938), 1 January 2014, 05:30 to 05:38

Studio 66 TV Days are segments of interactive ‘adult chat’ and ‘daytime chat’ advertising content broadcast on the service Studio 66 TV2 (Sky Channel 938). The service is freely available without mandatory restricted access and is situated in the ‘adult’ section of the Sky electronic programme guide (“Sky EPG”). Viewers are invited to contact on-screen presenters via premium rate telephony services (“PRS”). During ‘daytime chat’, all dress and behaviour should be non-sexual in tone and apparent intent.

The licence for Studio 66 TV 2 is owned and operated by 965 TV Limited (“965 TV” or “the Licensee”).

Following complaints regarding the content of this ‘daytime chat’ channel, Ofcom reviewed the material and noted the following:

1 January 2014, 05:30 to 05:38

At 05:30, Ofcom noted that the presenter, who was on-air previously in the ‘adult chat’ segment of the advertising content, remained on-screen. The presenter was naked except for a thin black thong. Between 05:30 and 05:38 there were several close up shots of the presenter’s breasts, which she squeezed together repeatedly and she also rubbed her nipples. The presenter also adopted various sexual positions. While positioned on all fours she rocked from side to side and up and down, miming sexual intercourse, and there were full screen close up images of her buttocks. While lying on her back with her legs open to camera, there were a number of close up and intrusive shots of her genital area. In this position the presenter touched and rubbed her genital area repeatedly.

In addition, a variety of on-screen messages were displayed in the upper right corner of the screen. These images included pictures and short video clips encouraging viewers to text or call in and interact with the presenter and other girls off screen, and download videos to their mobiles. The small screen video clips at the top of the screen showed a variety of close up images including women rubbing their breasts and buttocks, and clips of women miming sexual intercourse. These videos were accompanied variously with the following on-screen messages and others which were similar: “*HARD XXX CHAT WITH FILTHY BABES*”; “*EVER HAD TXT SEX? WE’RE IN BED AND UP 4 IT*”; “*SWAP PICS AND VIDS WITH HORNY TEEN BABES*”; “*GET THE FILTHIEST VIDS ON YOUR MOBILE*” and “*SIT BACK SHUT UP AND LET ME WORK U*”.

At 05:38 a new segment of advertising content called *Breakfast Club* began.

Ofcom considered the material listed above raised issues warranting investigation under BCAP Code Rule 32.3, which states:

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

We therefore requested comments from the Licensee as to how this advertising content complied with this rule.

Response

965 TV acknowledged that the material broadcast did not comply with the BCAP Code, the Licensee's own internal guidelines, Ofcom's Guidance on advertising of telecommunications-based sexual entertainment services (July 2013) or the individual Ofcom guidance sent to the Licensee in February 2013 regarding daytime chat content. The Licensee apologised and explained that the reason why the incident occurred was due to the fact that the "Head Producer had left early due to illness". Although unsuccessful attempts were made to find another senior producer to deputise for the Head Producer, 965 TV said that: "the result was that the assistant producer failed to switch over shows at 5.30am as usual and the adult chat show over-ran by 8 minutes". The Licensee said that this incident was therefore the result of: "human error".

965 TV also commented that as the channel was situated in the 'adult' section of the Sky EPG, and given the time of broadcast of the content, the probability of a child watching and being affected by an eight minute overrun of adult content would in its view be minimal.

The Licensee outlined steps it had taken since this incident: "to try to ensure this issue does not recur in the future". It stated that it had "clarified and updated" its internal guidelines, to include revised guidance on the transition from adult to daytime chat. The guidance now stated that: the transition from adult to daytime chat must not be too abrupt; that presenters "are required to be non-topless after 5am and adopt less 'sexual' positions"; and, producers must not use lingering or intrusive shots after 05:00.

965 TV also stated that it had introduced an audible alarm in its studio and control room to alert the production team to "important transitional points throughout the day and night". It added that assistant producers were being trained to a higher level, so that in future, if a similar situation arose, they would be better equipped to deal with it.

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 'daytime chat' and 'adult chat' services to be advertised within specifically allocated times and on free-to-air channels that are licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both 'daytime chat' and 'adult chat' services.

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' and 'daytime 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.

Rule 32.3 of the BCAP Code states: “Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them”.

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the ‘adult’ section); any warnings; and mandatory restricted access. Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in ‘daytime chat’ and ‘adult chat’ advertising content that is available without mandatory restricted access.

Ofcom published its revised Guidance on advertising of telecommunications-based sexual entertainment services in July 2013 (the “Chat Service Guidance”)¹. The Chat Service Guidance clearly sets out what Ofcom considers to be acceptable for broadcast on ‘daytime chat’ services pre-watershed. For example, the guidance explicitly states that ‘daytime chat’ broadcasters should:

- “ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks”; and
- “not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses”.

The Guidance also states that ‘adult chat’ broadcasters should:

- “ensure that the transition **to** more adult material at 9pm and **from** adult chat to daytime chat at 5:30am, is not unduly abrupt”.

Ofcom has also made clear to the Licensees in published decisions what sort of material is unsuitable to be broadcast in ‘daytime chat’ advertising content².

We considered the content against BCAP Code Rule 32.3.

Suitability for children

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the broadcast material was unsuitable for children.

The broadcast included a shot of the presenter, lying on her back with her breasts exposed and her legs spread apart, touching and rubbing her genital area over the black thong she was wearing. She also positioned herself on all fours with her buttocks facing the camera and there were close up images as she gyrated and

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

² For example most recently: Studio 66, various times and dates, in issue 235 of Ofcom’s Broadcast Bulletin, 5 August 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>.

mimed sexual intercourse. It was evident therefore that her body was not adequately covered and some of her actions were clearly sexualised. Given the time of broadcast, Ofcom concluded that this material was manifestly unsuitable for children.

Scheduling

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to this broadcast. Ofcom took account of the fact that the channel is in the 'adult' section of the Sky EPG. However, this material was broadcast on a channel without mandatory restricted access during the early morning, when children were available to view at a time when some were potentially unaccompanied by an adult.

We noted that this content was broadcast immediately after 05:30. After this time material unsuitable for children should not in general be shown³. Viewers therefore would not have expected advertising content containing sexual material aimed at adults to be broadcast at this time. As mentioned above, the Chat Service Guidance clearly states that the transition to and from more adult content at the beginning and end of the watershed should not be too abrupt. Ofcom expects licensees to ensure that there is a smooth transition from the more sexualised 'adult chat' content to 'daytime chat' services *before* 05:30. In this case there was no such transition and the 'adult chat' service continued for eight minutes past the scheduled time for the start of the 'daytime chat' service, which should have been non-sexual in tone and intent.

Ofcom also had regard to the likely expectations of the audience for advertising content broadcast at this time of day on a channel in the 'adult' section of the Sky EPG without mandatory restricted access. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast and available to view at this time of day, particularly given that material broadcast on such services after 05:30 should be non-sexual in tone and apparent intent. The broadcast of such sexualised content was inappropriate to advertise 'adult chat' during the day and after 05:30. As a result, Ofcom did not believe that the fact that this advertising content was in the 'adult' section of the Sky EPG was sufficient to ensure this material which was unsuitable for children was appropriately scheduled.

Previous guidance

In reaching our decision, we took into account the fact that this content was broadcast after Ofcom had published its revised Chat Service Guidance on 15 July 2013⁴. When we published the revised Guidance, we also published a Note to Broadcasters in issue 223 of Ofcom's Broadcast Bulletin⁵ in which, amongst other things, we required 'daytime chat' and 'adult chat' broadcasters to take careful note of the following in the revised Chat Service Guidance:

"Presenters' clothing on daytime chat services

During daytime chat content, all dress and behaviour should be non-sexual in tone and apparent intent. Therefore presenters should wear clothing that

³ See Broadcasting Code, Section One, Rule 1.4, meaning of "the watershed".

⁴ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

⁵ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>.

adequately covers their bodies (in particular their breasts, genital areas and buttocks)...”.

We also took account of the fact that on 21 February 2013, we gave directly to the Licensee some unpublished, written guidance to remind 965 TV that the following content is prohibited in ‘daytime chat’ advertising content: buttocks being inadequately covered; and, presenters gyrating and rocking their hips.

Ofcom is concerned that, despite both the revised Chat Service Guidance and the specific guidance given direct to the Licensee in February 2013, this material was broadcast on 1 January 2014.

In addition, in reaching our decision on this case, we also took into account the representations made by the Licensee. We noted that this incident had arisen as a result of staff illness and “human error” and that the Licensee acknowledged that the advertising content in this case did not comply with its own internal guidance or the Chat Service Guidance. Further, we noted the measures taken by the Licensee to improve compliance by its staff and presenters to limit the possibility of this type of content being broadcast in the future.

Conclusion

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

The licensee for Studio 66 TV 2 (as well as Studio 66 TV 3 and Studio 66 TV 4), 965 TV, and the Ofcom licensee 914 TV Limited (“914 TV”, which controls the service Studio 66 TV 1) have the same shareholder and director. According to Ofcom’s records, the channels also share the same individual responsible for compliance. Issue 235 of Ofcom’s Broadcast Bulletin, published in August 2013, recorded breaches of BCAP Rule 32.2 against both 965 TV and 914 TV for material broadcast on Studio 66 TV 1, Studio 66 TV 2 and Studio 66 TV 3⁶. Ofcom subsequently required the individual responsible for compliance for 965 TV and 914 TV to attend a meeting at Ofcom to discuss their compliance arrangements. Despite the assurances given to Ofcom at that time, and the further reassurances offered by the Licensee in this case, Ofcom remains concerned that 965 TV has again broadcast material that has breached Rule 32.3 of the BCAP Code (also see the new breaches recorded against 914 TV Limited on page 46 of this issue of Ofcom’s Broadcast Bulletin). Ofcom will consider taking further regulatory action should there be further similar breaches of the BCAP Code.

Breach of BCAP Rule 32.3

⁶ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>.

In Breach

Provision of recordings

96.2 *The Revolution*

Introduction

96.2 The Revolution (“The Revolution”) is a local commercial FM radio station covering Oldham. The licence for this service is held by Oldham FM Ltd (or “the Licensee”).

On 7 January 2014 Ofcom was informed of a change of ownership of the licence-holding company, due to take place the next day. We determined that this change represented a ‘change of control’ at Oldham FM Ltd.

When a commercial radio licence undergoes a change of control, Ofcom is required, under section 355 of the Communications Act 2003, to undertake a review of the programme output provided under the licence.

Specifically, Ofcom will assess the output being delivered by the Licensee during the three months prior to the change of control to determine whether the change of control would prejudice:

- the quality and range of programmes included in the service;
- the character of the service; and
- the extent to which local material and locally-made programmes are included in the service.

Ofcom therefore requested recordings of three days of The Revolution’s output, taken from any time in the three months prior to the change of control.

The outgoing representative of the licence-holding company directed the request to the new owner, as he no longer had access to the audio required following the completion of the acquisition. The new owner of the licence-holding company explained that due to equipment failure there were no logs of output in the three month period prior to the acquisition.

Ofcom considered that this raised issues warranting investigation under Condition 8, Part 2 of Oldham FM Ltd’s licence, which states:

“8(2) In particular the Licensee shall:

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

Ofcom therefore asked the Licensee for its comments under this Licence Condition.

Response

The Licensee explained that the technical management of the logging system for the period prior to the acquisition was the responsibility of the previous owners of the licence-holding company (Oldham FM Ltd). The Licensee said it understood that there had been an intermittent fault with logging equipment “for some time” during this period, but the previous owners had not notified the new owners of Oldham FM Ltd of the equipment failure or failure to log output.

The Licensee confirmed this situation had since been rectified under the station’s new ownership, with output having been logged since 17 January 2014.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

In this case, Ofcom recognised that the Licensee’s failure to provide Ofcom with the recordings was due to a technical problem under the previous owner of the licence-holding company, which had since been rectified by the new owner. However, the Licensee is nevertheless obliged under the terms of its licence to ensure that recordings of its output are retained for 42 days.

The failure to provide Ofcom with the recordings requested is a significant breach of Oldham FM Ltd’s licence, which, in this particular case, significantly affects Ofcom’s ability to assess the potential impact of the change of control on The Revolution’s programming.

We will monitor the Licensee’s new arrangements to retain and provide recordings to Ofcom in due course.

Breaches of Licence Conditions 8(2)(a) and (b)

In Breach

Provision of recordings

Ummah Channel, 1 November 2013, 20:00 to 24:00

Introduction

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

Ofcom received two complaints about a charity appeal broadcast on 1 November 2013. The complainants alleged that its presenter encouraged viewers to vote for a particular local election candidate at various times during the programme.

Ofcom requested a recording of the programme from the Licensee. The Licensee contacted Ofcom to explain that a third party was responsible for the recording of Ummah Channel’s output and was on annual leave, and therefore it required more time to supply a recording.

Following a reminder by Ofcom, the Licensee subsequently provided a recording of the material. After careful assessment, Ofcom concluded that the material itself did not raise issues warranting investigation. However, a considerable period of time had elapsed between Ofcom’s initial request and our receipt of the recording.

Licence Conditions 11(1) and (2)(b) of Ummah Channel’s Television Licensable Content Service (“TLCS”) Licence state that:

“(1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint...

(2) ...the Licensee shall:

...(b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...”.

Ofcom considered that the time taken by the Licensee to provide a recording warranted investigation under Condition 11(2)(b) of Ummah Channel’s TLCS. It therefore asked the Licensee for its comments with regard to this matter.

Response

The Licensee explained that it retains its recordings of Ummah Channel’s programmes for a period of 60 days and has always previously been able to provide them to Ofcom when requested to do so. It said that it is normally very good and timely at providing recordings to Ofcom but on this occasion there was a delay due to annual leave by its third party supplier and the Christmas period. The Licensee considered these to be exceptional circumstances and said that it had kept Ofcom informed of the situation.

However, it apologised for sending the recording “much later than requested” and explained that it has put measures in place (including recording programmes in house) to ensure it does not happen again. The Licensee added that its third party supplier now had other staff in place who are responsible for arranging for recordings to be sent.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. TLCS licences enshrine these obligations in Licence Condition 11.

Licence Condition 11(2)(b) requires licensees to produce such recordings to Ofcom forthwith upon request.

Breaches of Licence Condition 11(2)(b) are serious because they impede Ofcom’s ability to assess in a timely way whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom’s ability to carry out its statutory duties in regulating broadcast content.

In this case, a considerable amount of time had elapsed between Ofcom first requesting a recording and it being provided. The Licensee clearly did not therefore provide the recording “forthwith” and Ofcom’s Preliminary View is that it accordingly breached Licence Condition 11(2)(b).

We noted the various points made by the Licensee explaining the delay. None was acceptable in Ofcom’s view. If a third party supplier provides recordings to a licensee, the licensee must ensure the supplier can provide recordings “forthwith”. Further, although the Licensee made some contact with Ofcom, we did not agree with the Licensee that it had kept Ofcom appropriately informed about the delay, or that either annual leave or the Christmas holiday period constituted “exceptional circumstances”.

Ofcom expects its licensees to have measures in place to ensure that recordings are provided and compliance staff respond to Ofcom in a timely manner.

Breach of TLCS Licence Condition 11(2)(b)

In Breach

Harbour Radio

Harbour Radio, 18 January 2014, 10:55

Introduction

Harbour Radio is a voluntary radio project for the community of Great Yarmouth and the surrounding area. A Short Term Restricted Licence (S-RSL) was held by Harbour Radio (“the Licensee”) to broadcast on air for a trial period from 7 January to 9 February 2014.

A complainant alerted Ofcom to offensive language broadcast in a song in January 2014.

On assessing the material Ofcom noted that the track *Who Are You?* by The Who was broadcast in the late morning of Saturday 18 January 2014 and featured the following lyrics:

“Oh, who the fuck are you?”

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

“The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)”.

We therefore asked the Licensee how the material complied with this rule.

Response

Harbour Radio apologised for any offence that may have been caused through the broadcast of this song, which had been played by mistake from a personal CD rather than from music in the station’s digital library. As a result of this complaint, the Licensee said it has reviewed its training and station policies to allow only music owned and censored by the station to be broadcast. Harbour Radio admitted being on an “extremely steep learning curve” since first going to air in January 2014, and assured Ofcom that it has “taken this incident as a very serious reminder of our obligations”.

Decision

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

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom’s research on offensive

language¹ clearly notes that the word “fuck” and other variations of this word are considered by audiences to be among the most offensive language.

The Code states that the phrase “when children are particularly likely to be listening” particularly refers to “the school run and breakfast time, but might include other times”. Ofcom’s guidance on offensive language on radio² notes that:

“For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:...

- between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays.”

Ofcom recognised that Harbour Radio was relatively new to air on the date of this incident and noted the steps since taken by the station to improve its compliance procedures. Nonetheless, in this case, the broadcast on 18 January 2014 clearly included the most offensive language and took place late morning on a Saturday. This, as stated in the guidance, is a time which Ofcom would normally regard as “when children are particularly likely to be listening”. We have therefore recorded a breach of Rule 1.14.

Breach of Rule 1.14

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

² Ofcom Guidance, *Offensive language on radio*, December 2011, <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>.

Resolved

Nothing To Declare – Australia

Sky Living, 20 January 2014, 19:30

Introduction

Sky Living is owned and operated by British Sky Broadcasting (“Sky” or “the Licensee”).

Nothing to Declare – Australia is a documentary series which follows the work of various customs and immigration officials at Sydney and Melbourne airports. A complainant alerted Ofcom to the use of the word “fuck” included in the programme’s subtitles.

Ofcom reviewed the material and noted that on two occasions (broadcast within 45 seconds of one another) the subtitles included the words “*fuck you*”.

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

“The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)”.

We therefore asked the Licensee how the material complied with this rule.

Response

Sky apologised for the incident and told Ofcom that the programme had been correctly assessed as being suitable for transmission at all times. However, the subtitle operator for the programme had twice misheard the remark “*it’s up to you*” as “*fuck you*” and used these words in the subtitles.

The Licensee said that this was “a very regrettable case of human error” and immediate action had been taken to ensure that this episode could not be broadcast again until the subtitles have been amended to remove the offensive language.

Sky added that its compliance team had completed a series of training presentations around the business, including the subtitling department, giving advice on the broadcaster’s language policy. The Licensee said that this training will eradicate the chance of a similar incident involving any new programmes. In relation to this specific case, Sky said that the programme had been complied and subtitled before this training took place.

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

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed. Ofcom research¹ on offensive language clearly notes that the word “fuck” and variations of this word are considered by audiences to be among the most offensive language.

While this is a clear case of the most offensive language being broadcast before the watershed, we acknowledged that this appeared to be an isolated incident and accepted the Licensee’s assurance that new processes and training will ensure that the circumstances of this case will not be repeated. We therefore consider the matter resolved.

Resolved

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

Advertising Scheduling Findings

In Breach

Advertising minutage

Aaj Tak, 1 January to 15 February 2014, various times

Introduction

Aaj Tak is a 24 hour news channel broadcast in Hindi on the digital satellite platform. The licence for Aaj Tak is held by TV Today Network Ltd (“TVTN” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified 26 instances between 1 and 26 January 2014 when the Licensee had broadcast more than the permitted advertising allowance in a clock hour.

Ofcom therefore sought comments from the Licensee under Rule 4 of COSTA.

Response

TVTN apologised for the error. It said the overruns were due to coverage of live breaking news stories resulting in commercials intended for one clock hour being pushed to the next clock hour. The Licensee also informed Ofcom about three additional similar overruns due to this coverage, on 26 January, and 6 and 15 February 2014.

TVTN said clear instructions had now been given to its staff to ensure compliance with COSTA. In addition, to avoid breaks being pushed into subsequent clock hours, the last break in a clock hour would take place at least five minutes before the next clock hour starts.

Decision

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

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

Ofcom noted the Licensee’s self-notification of three additional breaches, and its assurance of measures to improve compliance. Nonetheless, on this occasion, the amount of advertising in 29 clock hours between 1 January and 15 February 2014 clearly exceeded the permitted allowance and therefore breached Rule 4 of COSTA.

This compliance failure follows two recent breaches recorded by Ofcom covering a series of minutage overruns on Aaj Tak¹. In the most recent case, published in issue 240 of Ofcom's Broadcast Bulletin, TVTN had provided assurances to Ofcom that procedures had been implemented to avoid further breaches of COSTA.

Ofcom is particularly concerned that despite assurances by the Licensee that it had improved its compliance procedures, the improvements have not proved sufficiently robust to prevent further breaches of Rule 4 of COSTA. Ofcom will proceed to consider further regulatory action in the event of future incidents of this nature.

Breach of Rule 4 of COSTA

¹ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb236/obb236.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb240/obb240.pdf>

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
Channel 5	14 January 2014, 12:00	COSTA Rule 4	Ofcom noted, during monitoring, that Channel 5 exceeded the permitted advertising allowance by one minute and 39 seconds. Finding: Breach
News18 India	21 January 2014, 09:00	COSTA Rule 4	Ofcom noted, during monitoring, that News18 India exceeded the permitted advertising allowance by a total of 90 seconds across one clock hour. Finding: Breach

Fairness and Privacy cases

Not Upheld

Complaint by Miss C

Criminals: Caught on Camera, Channel 5, 18 October 2013

Summary

Ofcom has not upheld the complaint made by Miss C of unwarranted infringement of privacy in the programme as broadcast.

The programme was part of a series which examined the use of CCTV cameras to monitor crime across the country and how the police used this resource to catch people who broke the law. This episode included footage of Miss C as she was arrested for being drunk and disorderly, and the events immediately leading up to her arrest.

Ofcom found that Miss C had a limited legitimate expectation of privacy. However, in this case, the public interest in broadcasting footage showing the work of the CCTV control room operators and the police outweighed Miss C's expectation of privacy. Therefore, Miss C's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 18 October 2013, Channel 5 broadcast an episode of its reality documentary series *Criminals: Caught on Camera*. The series examined the use of CCTV cameras to monitor crime across the country.

The programme featured footage of Miss C, both in the "coming up teaser" before the advertisement break, and in the programme itself. The section of the programme featuring Miss C was approximately two minutes and 30 seconds in duration. The programme showed CCTV footage of Miss C and clips of the CCTV operator discussing Miss C's walk home.

In the "coming up teaser", Miss C was featured walking along a street in Chester at night time. She was shown swaying and then falling against the side of a shop, accompanied with the following commentary:

"It's the end of a raucous night in Chester, when a lone figure causes concern".

After the advertisement break and in the programme itself, the footage of Miss C was introduced by the programme's narrator:

Narrator: *"Paul's [the CCTV operator] watching the last revellers stumbling home through the city centre. He spots one woman looking rather unsteady on her feet.*

Paul: *She does appear a bit worse for wear so I'll just see where she goes".*

Miss C was shown walking around a corner before swaying and falling against the side of a shop. Miss C then attempted to cross a road at a pedestrian crossing

accompanied by Paul's commentary stating: *"she is drunk, although she's making good progress. She's stopped at the lights, so she's aware of cars and the like"*.

As Miss C made her way across the road, she swayed and fell into a traffic barrier. The programme's narrator stated *"it's becoming clear that she's too drunk to get home alone"* and Miss C was shown falling over again. The programme then showed two passers-by attempting to help her.

At this point of the programme, Paul was shown to radio the Chester "street pastors", a Christian volunteer group that, amongst other things, assist people in difficulty after a night out. CCTV footage showed Miss C surrounded by three street pastors and the two passers-by who had tried to help her. She appeared agitated and repeatedly turned her head from side to side thus allowing her face, which was unobscured, to be seen by the CCTV camera. Miss C was then shown to fall down into a doorway. The programme's narrator stated: *"there's worrying news from the street pastors, the woman's proving difficult to deal with"*.

A conversation over the radio between Paul and the street pastors was shown taking place and one of the street pastors could be heard saying: *"she's quite agitated and quite aggressive"*. At this point, the CCTV operator radioed for police assistance, stating *"camera control to E51, there's an extremely drunken female stumbling in the road, the street pastors are with her, they're just asking for a bit of assistance, over"*.

Footage of Miss C was then shown in which she vomited on the ground and on the feet of one of the street pastors, at which point Paul remarked: *"she's just been sick all over the street pastor"*. Two police officers then arrived and escorted Miss C away. The narrator commented that: *"the police arrive just in time. With the woman still uncooperative, they decide enough is enough"*.

This part of the programme concluded with the following statement from Paul:

"After everybody tried to help her, she was arrested for her own sake, because she was a danger to herself and that was because, you know, she's gone out and she's had too much to drink. We don't want to get people locked up for being drunk, we really don't, and unfortunately, I think sometimes alcohol does release the beast in us".

Summary of the complaint and the broadcaster's response

Miss C complained that her privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her was included in the programme without her consent. By way of background, Miss C said that her friends and family had identified her from the broadcast footage and contacted her regarding her appearance in the programme. She also stated that she had been advised by the police the day after the incident took place that the matter was confidential.

In response, Channel 5 focussed its comments around Article 8(1) of the European Convention on Human Rights, which states that "everyone has the right to respect for his private and family life, his home and his correspondence". Channel 5 argued in its response that, based on its interpretation of the case law, Article 8 "does not afford protection to a person's public activities – activities which either occur in public spaces...or which occur in a way which makes it impossible to regard them as inherently private. Importantly, there is no authority for the proposition that Article 8 affords protection to a person's criminal activities and their consequences..."

Channel 5 submitted that because Miss C was committing a crime in a public place, she did not have the protection of Article 8 and Ofcom should dismiss her complaint.

Channel 5 also said that it believed that Miss C had misunderstood the police officers who she claimed had advised her that the matter was confidential. Channel 5 said that, having investigated this point further, it understood that the police had in fact assured Miss C that details of her arrest would not be divulged to her employer as a matter of routine, not that the arrest was confidential. The broadcaster stated that there was nothing confidential about the fact of an arrest, or of a penalty being imposed, or that a person had been imprisoned (whether for his/her own safety or otherwise).

Channel 5 said that *Criminals: Caught on Camera* aimed to show the effective use of CCTV in identifying criminals and the difficulties criminals face in their commission of crimes. The purpose of the series was to demonstrate the usefulness of the CCTV cameras and “the skills, diligence and dedication police officers and CCTV control room staff bring to the tasks they perform for the public”. Channel 5 said that the programme looks to educate the public about the consequences of breaking the law and the adverse effects these activities can cause. It stated that there was clear public interest in broadcasting the programme, showing the repercussions of criminal behaviour and its effect on society.

It said that none of the circumstances around Miss C’s arrest could be considered private, because they were “not carried out in private and did not attract any reasonable expectation of privacy”. It added that Miss C’s “lack of sobriety and anti-social behaviour” was a consequence of her own actions and that it was open to Channel 5 to identify her in relation to these matters. The broadcaster informed Ofcom that following her arrest Miss C was found guilty of being drunk and disorderly and fined £90 (although these facts were not included in the programme as broadcast).

Channel 5 said that the sequence involving Miss C did not feature any close-ups of her. It added that for much of the feature she was unidentifiable, due to the fact that the sequence was filmed by CCTV cameras which were focused on the street.

It stated that any possible expectation of privacy that Miss C might have had in the broadcasting of the footage in the programme would have been very limited and was outweighed by the public interest and Channel 5’s right to freedom of expression.

Ofcom’s Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld. We provisionally concluded that Miss C did have an expectation of privacy, although limited, but that this expectation of privacy was outweighed by the significant public interest of showing the work that the emergency services do, and how this can be helped by the use of CCTV cameras.

Miss C made the following relevant representations on Ofcom’s Preliminary View, which are summarised below.

Miss C’s representations

Miss C disputed Channel 5’s claim that she had misunderstood the police officer on the day after the incident took place in relation to the arrest being confidential. She

stated that the issue of confidentiality had arisen twice during her time with the officer – first when Miss C had been asked if she wished her friend to be present, because it was a confidential matter; and secondly, when the police officer reassured her that she had learned her lesson, that she could move on, and that nobody ever had to know about the incident.

The complainant also stated that throughout the programme, the faces of many criminals were blurred, but that hers was left unobscured. Miss C stated that she did not understand why her face could not have also been blurred.

Channel 5 also made representations on Ofcom's Preliminary View, the relevant ones which are summarised below.

Channel 5's representations

Channel 5 submitted that Ofcom's Preliminary View was contrary to the prevailing law in England and Wales. Channel 5 stated that: "*a person engaged in activities contrary to the law whilst in public places is not a person to whom the protection of Article 8 extends*". It said that "*there is no authority for the proposition that filming or photographing a person engaged in criminal activities in public places and the direct consequences of that activity engages Article 8 at all. The decision in Axel Springer¹ explains why that is so*". Channel 5 argued that Ofcom's Preliminary View was wrong in reaching the view that Miss C had a limited expectation of privacy in the material broadcast.

In response to Miss C's comment that she was advised by the police officer she spoke to that her arrest would remain confidential, Channel 5 stated that it could not comment further regarding this, as it had already stated to Ofcom in its original response what the officers had told Channel 5 when enquiries were made. It stated that regardless of this, a conversation between Miss C and a police officer would not affect whether or not Miss C's privacy was protected by Article 8.

With regards to Miss C's complaint that other criminals' faces were blurred during the programme, Channel 5 stated that their faces would have been blurred for a variety of reasons. The main reason however was that their criminal court cases were on-going, and Channel 5 did not want to risk a contempt of court.

Ofcom's 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

¹Channel 5 referred to the following paragraph in the ECHR judgment: *Axel Springer AG v Germany* (application no 39954/08; 7/02/2012): "In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life. (See *A v Norway*). The Court has held, moreover, that Article 8 cannot be relied on in order to complain of loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence (see *Sidabras and Dziaustus v Lithuania*)."

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, consistent and targeted only at cases in which action is needed.

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

While Miss C made a number of representations on the Preliminary View, Ofcom took the view after careful consideration that her comments were either not directly relevant to the complaint as entertained or raised new aspects to her complaint which could not be considered at this stage. We concluded that Miss C had not raised any issues that altered Ofcom's decision not to uphold the complaint.

Regarding Miss C's disagreement with Channel 5 that she was assured by the police that her arrest was confidential, Ofcom is not in a position to know whether it is Miss C or Channel 5 who is correct. There is a conflict of evidence on this point between the parties and Ofcom's role in adjudicating on privacy complaints is not normally to investigate and make findings of fact. In Ofcom's view however nothing Miss C said in her representations amounted to sufficiently convincing evidence on this point that we should change our Preliminary View and uphold her complaint.

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

In assessing Miss C's complaint that her privacy was unwarrantably infringed in the programme as broadcast because the programme included footage of her without her consent, we had particular regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Miss C's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the footage of her broadcast.

As already set out in the "Introduction and programme summary" section above, Miss C, who was clearly intoxicated, was shown walking along a road receiving assistance from two members of the public and the street pastors (on the feet of one of whom she vomited). Miss C appeared to be uncooperative with those trying to help her and she was eventually arrested by the police and led away.

We carefully considered the representations made by Channel 5 in relation to the complaint and following Ofcom's Preliminary View. However, we do not agree with Channel 5 that our approach is contrary to prevailing law in England and Wales. It is not correct that an individual acting unlawfully in a public place can never engage any Article 8 rights.

In particular, we do not agree with Channel 5's interpretation of the *Axel Springer* case. The paragraph which Channel 5 rely upon (set out in footnote 1) is made in the specific context of a discussion about the extent to which Article 8 can be invoked to remedy loss of reputation.

The test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.²

In our view, whether or not someone who has been filmed in the time leading up to arrest and while being arrested by the police has a legitimate expectation of privacy in the broadcast of that footage will depend on all the relevant circumstances. These include:

- whether the filming took place in a public place;
- whether the individual was vulnerable in any way (e.g. through the consumption of alcohol or drugs or because of an illness or disability);
- whether the person concerned was a minor;
- whether the footage depicted the individual doing something, or disclosed information about that individual, which was confidential, sensitive or personal;
- the time that had elapsed between the events depicted in the footage and its broadcast; and
- any change in factual circumstances between the events depicted and its broadcast which may affect the extent to which the material could be considered to be private or confidential (for example, whether since the incident was filmed the individual concerned was charged and/or found guilty of any offences).

It is important to note that our assessment of legitimate expectation of privacy will always be fact specific. For example, Ofcom can foresee situations where if an individual is filmed committing a serious criminal offence (such as throwing a petrol bomb in a riot) it would be unlikely that that individual would be able to rely upon any Article 8 rights. However, that is not the situation we are considering here. The footage filmed and broadcast of Miss C was not of her committing a serious criminal offence.

Ofcom noted from the footage included in the programme that Miss C was filmed by CCTV cameras in a public place. It was apparent to Ofcom from Miss C's behaviour and the commentary from both the CCTV operator and the programme's narrator that she was "*drunk*". In Ofcom's view, Miss C could reasonably be regarded as being in a vulnerable state because she was intoxicated. Ofcom noted that Miss C was, as a result of her conduct, fined £90 for being drunk and disorderly. We also took into account that she was not shown doing anything particularly confidential or personal. In the programme, she was shown walking drunkenly, stumbling and falling over before being filmed talking to the street pastors and then being arrested and led away by police officers. In our view, Miss C was shown in a vulnerable state. Taking all these factors into account, Ofcom considered that Miss C had a legitimate expectation of privacy in relation to the broadcast of the footage of her in the

² See for example, Anthony Clarke MR in *Murray v Big Pictures (2009)*: "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came in the hands of the publisher".

programme. However, her legitimate expectation of privacy was limited because the filming had been conducted in a public place.

Having reached the decision that Miss C had a limited legitimate expectation of privacy in the footage included in the programme, we then assessed whether or not Miss C was identifiable in the programme as broadcast. Although Miss C was not referred to by name in the programme, her face was shown unobscured. In these circumstances, Ofcom considered that Miss C was identifiable from the footage included in the programme.

Ofcom then assessed whether her consent had been secured before the footage was broadcast in accordance with Practice 8.6. It was not disputed that the broadcaster had not sought Miss C's consent for footage to be included in the programme.

Given that Miss C had, in our view, a limited expectation of privacy in relation to the footage of her broadcast in the programme, we assessed the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. In particular, we considered whether there was sufficient public interest to justify the intrusion of Miss C's privacy in broadcasting the footage of her. Ofcom considered that there is a genuine public interest in broadcasting programmes of this nature, specifically those which examine the work of the CCTV control room operators, their relationship with the emergency services and the role CCTV plays in providing a valuable resource to the police and other emergency services, in helping to reduce and solve crime, and to respond in a timely way to serious and difficult incidents. In our view, showing such material in programmes helps to develop the public's understanding of the way CCTV cameras are used to assist the police and the emergency services and the consequences of criminal and antisocial behaviour for the emergency services and the individuals concerned. In this particular case, it was clear to Ofcom that the programme as broadcast provided an insight into the challenges that are faced when individuals are under the influence of alcohol.

Therefore, on balance, Ofcom considered that, in the circumstances of this case, the broadcaster's right to freedom of expression and the public interest outweighed Miss C's limited expectation of privacy in relation to the broadcast of footage of her in the programme.

Ofcom's decision is therefore that there was no unwarranted infringement of Miss C's privacy in the programme as broadcast.

Accordingly, Ofcom's decision is that Miss C's complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld.

Other Programmes Not in Breach

Up to 31 March 2014

Programme	Broadcaster	Transmission date	Categories
Sixth Sense	PICK TV	28/01/2014	Generally accepted standards

Complaints Assessed, not Investigated

Between 18 and 31 March 2014

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
Breakfast Show	107.6 East Coast FM	14/03/2014	Generally accepted standards	1
Programming	4Music	13/03/2014	Scheduling	1
Advertisement for Tower Hamlets Housing Association	ATN Bangla	Various	Political advertising	1
BBC News	BBC	27/02/2014	Outside of remit / other	1
BBC News	BBC 1	23/03/2014	Outside of remit / other	1
BBC News at One	BBC 1	28/03/2014	Outside of remit / other	1
BBC News at Six	BBC 1	21/03/2014	Outside of remit / other	1
BBC News at Six	BBC 1	24/03/2014	Outside of remit / other	1
BBC News at Ten	BBC 1	20/03/2014	Drugs, smoking, solvents or alcohol	1
BBC News at Ten	BBC 1	24/03/2014	Generally accepted standards	1
BBC News at Ten	BBC 1	28/03/2014	Outside of remit / other	1
Breakfast	BBC 1	14/03/2014	Generally accepted standards	1
Casualty	BBC 1	22/03/2014	Materially misleading	1
EastEnders	BBC 1	18/03/2014	Race discrimination/offence	1
EastEnders	BBC 1	20/03/2014	Outside of remit / other	1
Eastenders	BBC 1	Various	Product placement	1
Match of the Day	BBC 1	22/03/2014	Outside of remit / other	1
Regional News and Weather	BBC 1	05/03/2014	Generally accepted standards	2
Sport Relief 2014	BBC 1	21/03/2014	Offensive language	1
The Andrew Marr Show	BBC 1	16/03/2014	Outside of remit / other	3
The Voice UK	BBC 1	22/03/2014	Outside of remit / other	1
The Voice UK	BBC 1	29/03/2014	Outside of remit / other	1
Party Political Broadcast by the Scottish National Party	BBC 1 Scotland	27/03/2014	Outside of remit / other	1
BBC News	BBC 2	19/03/2014	Outside of remit / other	1
Panorama	BBC 2	28/03/2014	Fairness & Privacy	1

Top Gear	BBC 2	09/03/2014	Offensive language	1
Is Amanda Knox Guilty?	BBC 3	17/02/2014	Outside of remit / other	1
Greg James	BBC Radio 1	20/03/2014	Race discrimination/offence	1
Jeremy Vine	BBC Radio 2	26/03/2014	Outside of remit / other	1
The News Quiz	BBC Radio 4	23/03/2014	Generally accepted standards	1
Today Programme	BBC Radio 4	24/03/2014	Privacy	1
Shaun Keaveny Breakfast Show	BBC Radio 6 Music	25/03/2014	Generally accepted standards	1
Blacks Only	BBC World Service	22/03/2014	Outside of remit / other	1
Being Mary Jane (trailer)	BET: BlackEntTv	05/02/2014	Scheduling	1
Kevin Satchell v Isaac Quaye	Box Nation	08/03/2014	Race discrimination/offence	1
Shang a Lang with DJ Dizzy	Buchan Community Radio	Various	Outside of remit / other	1
Ben 10	Cartoon Network (Central Eastern Europe)	09/03/2014	Violence and dangerous behaviour	1
The Goonies	Cartoon Network (Central Eastern Europe)	15/02/2014	Drugs, smoking, solvents or alcohol	1
The Grim Adventures of Billy & Mandy	Cartoon Network (Central Eastern Europe)	27/02/2014	Offensive language	1
All Over the Place	CBBC	10/03/2014	Scheduling	1
Dog and Beth: On the Hunt	CBS Reality +1	22/03/2014	Scheduling	1
Killer Karaoke	Challenge TV	24/03/2014	Animal welfare	1
8 Out of 10 Cats	Channel 4	24/03/2014	Generally accepted standards	1
Channel 4 News	Channel 4	18/02/2014	Due impartiality/bias	3
Come Dine with Me	Channel 4	22/03/2014	Race discrimination/offence	2
Deal or No Deal	Channel 4	20/03/2014	Competitions	1
Dispatches: Plebs, Lies and Videotape	Channel 4	04/02/2013	Due impartiality/bias	1
First Dates	Channel 4	19/03/2014	Gender discrimination/offence	1
Gogglebox	Channel 4	21/03/2014	Generally accepted standards	1
Hollyoaks	Channel 4	20/03/2014	Scheduling	1
Strippers	Channel 4	11/03/2014	Gender discrimination/offence	1
American Idol and Helix	Channel 5	Various	Outside of remit / other	1
Beetlejuice	Channel 5	02/03/2014	Scheduling	4
Can't Pay? We'll Take it Away!	Channel 5	17/03/2014	Materially misleading	1
It Takes a Thief to Catch a Thief	Channel 5	13/03/2014	Crime	1
It Takes a Thief to Catch a Thief	Channel 5	20/03/2014	Offensive language	4

Police 5	Channel 5	18/03/2014	Materially misleading	1
The Big 'Can't Pay' Debt Debate: Live	Channel 5	17/03/2014	Generally accepted standards	1
The Plane That Vanished: Live	Channel 5	14/03/2014	Generally accepted standards	1
The Wright Stuff	Channel 5	14/03/2014	Offensive language	1
The Wright Stuff	Channel 5	17/03/2014	Due impartiality/bias	1
Advertisement for Tower Hamlets Housing Association	Channel i	Various	Political advertising	1
Advertisement for Tower Hamlets Housing Association	Channel Nine UK	Various	Political advertising	1
Freddie Flintoff Goes Wild	Discovery HD	23/03/2014	Offensive language	1
Bear Grylls: Born Survivor	DMAX	23/03/2014	Animal welfare	1
Hollyoaks	E4	20/03/2014	Sexual orientation discrimination/offence	1
Rude Tube	E4	21/03/2014	Generally accepted standards	1
Carry on Behind	Film4	22/03/2014	Nudity	1
Joop Homme's sponsorship of drama on FX	FX	Various	Generally accepted standards	1
Programming	Gay Network	19/02/2014	Generally accepted standards	1
Programming	Gay Network	26/02/2014	Offensive language	1
One Foot in the Grave	Gold	23/03/2014	Scheduling	1
Matt and Caroline at Breakfast	Heart FM	04/03/2014	Violence and dangerous behaviour	1
Ant and Dec's Saturday Night Takeaway	ITV	29/03/2014	Scheduling	1
Aunt Bessie's sponsorship of The Chase	ITV	Various	Gender discrimination/offence	1
Britain's Got Talent (trailer)	ITV	26/03/2014	Generally accepted standards	1
Coronation Street	ITV	19/03/2014	Scheduling	9
Coronation Street	ITV	21/03/2014	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	21/03/2014	Scheduling	5
Coronation Street	ITV	24/03/2014	Outside of remit / other	1
Dangerous Dogs	ITV	20/03/2014	Animal welfare	33
Daybreak	ITV	06/03/2014	Materially misleading	2
Daybreak	ITV	14/03/2014	Materially misleading	1
Daybreak	ITV	21/03/2014	Competitions	1
Daybreak	ITV	27/03/2014	Outside of remit / other	1
Emmerdale	ITV	25/03/2014	Generally accepted standards	1
Emmerdale	ITV	27/03/2014	Materially misleading	1
Endeavour	ITV	30/03/2014	Product placement	1

ITV News and Weather	ITV	26/03/2014	Due impartiality/bias	1
Law and Order: UK	ITV	19/03/2014	Generally accepted standards	1
Law and Order: UK	ITV	29/03/2014	Outside of remit / other	1
The Cube	ITV	22/03/2014	Competitions	2
The Jeremy Kyle Show	ITV	17/03/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	20/03/2014	Generally accepted standards	1
The Widower	ITV	24/03/2014	Generally accepted standards	1
The Widower	ITV	24/03/2014	Outside of remit / other	1
This Morning	ITV	28/03/2014	Exorcism, the occult and the paranormal	1
The Jeremy Kyle Show	ITV2	21/03/2014	Generally accepted standards	1
The Only Way is Essex	ITV2	12/03/2014	Generally accepted standards	1
FA Cup: Fulham v Sheffield United	ITV4	02/02/2014	Materially misleading	1
I Want That Car	ITV4	25/03/2014	Violence and dangerous behaviour	1
The Car Chasers	ITV4	19/03/2014	Offensive language	1
James O'Brien	LBC 97.3 FM	20/03/2014	Crime	1
Programming	LBC 97.3FM	Various	Due impartiality/bias	1
Nashville	More4	27/02/2014	Advertising minutage	1
Somebody Killed Her Husband	Movie Mix	12/03/2014	Scheduling	1
Flashback Top 10	MTV Dance	15/03/2013	Generally accepted standards	1
Advertisement for Tower Hamlets Housing Association	NTV	Various	Political advertising	1
Programming	Peace FM	14/03/2014	Generally accepted standards	1
The Jerry Springer Show	Pick TV	04/03/2014	Scheduling	1
The Jerry Springer Show	Pick TV	05/03/2014	Scheduling	1
Competition	Radio 2	n/a	Competitions	1
News	RT	19/03/2014	Due impartiality/bias	1
Tell Me You Love Me	Sky Atlantic	14/03/2014	Generally accepted standards	1
Criminal Minds	Sky Living	10/03/2014	Scheduling	1
Press Preview	Sky News	24/03/2014	Generally accepted standards	1
Sky News	Sky News	19/03/2014	Generally accepted standards	1
Sky News	Sky News	24/03/2014	Generally accepted standards	2
Premier League Football: Tottenham Hotspur v Arsenal	Sky Sports 1	16/03/2014	Race discrimination/offence	1
World Twenty20 Cricket	Sky Sports 2	18/03/2014	Generally accepted standards	1

Ginger Tony - Jump Start Your Weekend (trailer)	Solar Radio	Various	Animal welfare	1
Scotland Tonight	STV	10/03/2014	Due impartiality/bias	1
Sex Sent Me to the ER (trailer)	TLC	20/03/2014	Scheduling	1
The Breakfast Show	Town 102 FM	17/03/2014	Drugs, smoking, solvents or alcohol	1
Programming	Various	Various	Outside of remit / other	1
My Monkey Baby	Watch	19/03/2014	Animal welfare	1

Investigations List

If Ofcom considers that a broadcaster may have breached its codes, a condition of its licence or other regulatory requirements, it will start an investigation.

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 licence or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 20 March and 2 April 2014.

Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
90s at 9	Preston FM	19 March 2014
Advertising minutage	ABP News	Various
Advertising minutage	Channel 5 +24	9 March 2014
Advertising minutage	NDTV 24x7	22 February 2014
Bowie at Breakfast	Clyde 1	14 March 2014
Sharpe's Challenge	Drama	9 March 2014
Sponsorship credits	Channel Nine UK	19 February 2014
Various programmes	Islam Channel	Various

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

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

Investigations launched under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed Service
ATN Bangla UK	ATN Bangla UK Limited

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

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