

Ofcom Broadcast Bulletin

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Contents

| | |
|----------------------|---|
| Introduction | 4 |
| Note to Broadcasters | 6 |

Standards cases

In Breach

| | |
|---|----|
| The Happy Garden <i>The Cat, 1 May 2015, 15:00</i> | 7 |
| Sheffield Live News <i>Sheffield Live TV, 6 April to 10 April 2014, 18:30</i> | 9 |
| Breakfast <i>Metro Radio 2, 6 March 2015, 06:00</i> | 24 |

Resolved

| | |
|--|----|
| Dermot Dances for Comic Relief <i>BBC One Red Button, 13 March 2015, 13:30</i> | 26 |
|--|----|

Television Access Services cases

In Breach

| | |
|--|----|
| Under provision of subtitling <i>AXN (Italy) and AXN Sci-fi, January to December 2014</i> | 28 |
| Under provision of audio description <i>TV3 (Denmark), TV3 Puls (Denmark), TV3 (Sweden), TV6 (Sweden) and TV8 (Sweden), January to December 2014</i> | 31 |

In Breach/Resolved

| | |
|--|----|
| Under provision of subtitling <i>AXN Polska, AXN Black and AXN White, January to December 2014</i> | 34 |
|--|----|

Advertising Scheduling cases

In Breach

| | |
|--|----|
| NBC Nightly News <i>CNBC, 24 February 2015</i> | 37 |
| Breach findings table <i>Code on the Scheduling of Television Advertising compliance reports</i> | 41 |

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with 'Key Commitments'
North Manchester FM Community Interest Company 42

Broadcasting licensees' late and non- payment of licence fees 43

Fairness and Privacy cases

Upheld

Complaint by JS Bank Ltd ("JS Bank") Mr Jahangir Siddiqui
Khara Sach, ARY News, 19 February 2014 44

Not Upheld

Complaint by Ms O
Left for Dead: By the Yorkshire Ripper, Channel 5, 5 March 2014 58

Investigations Not in Breach 75

Complaints Assessed, Not Investigated 76

Complaints Outside of Remit 86

Investigations List 88

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.

Note to Broadcasters

Code on the Scheduling of Television Advertising

Ofcom's Code on the Scheduling of Television Advertising (COSTA) contains rules on the amount of television advertising that broadcasters can transmit and where such advertising can be scheduled. These rules are intended to protect viewers and, in some cases, are based on requirements stipulated in European law.

On 9 July 2015, Ofcom published a statement setting out the approach it will take to the enforcement of rules that limit advertising interruptions in programmes on the basis of a programme's 'scheduled duration'. The Statement also includes changes to COSTA designed to make this Code clearer and easier to follow.

Broadcasters should note that the revised COSTA will come into force on **1 November 2015**.

The Statement, including the revised COSTA, can be found at:

http://stakeholders.ofcom.org.uk/consultations/scheduling-adverts/statement/?utm_source=updates&utm_medium=email&utm_campaign=costa-statement

Standards cases

In Breach

The Happy Garden

The Cat, 1 May 2015, 15:00

Introduction

The Cat is a community radio station that broadcasts to Crewe, Nantwich and surrounding rural areas. The licence for this service is held by The Cat Community Radio Ltd (“The Cat” or “the Licensee”).

On 1 May 2015 at 15:00, the station broadcast the gardening programme *The Happy Garden*. The programme was therefore broadcast in the period immediately preceding the UK General Election and various English local elections that took place on 7 May 2015.

Ofcom received a complaint from a listener that *The Happy Garden* was presented by Roy Cartlidge. According to the complainant, Mr Cartlidge was standing as a candidate in the General Election.

Ofcom assessed a recording of *The Happy Garden* and confirmed that it was presented by Mr Cartlidge. We also noted that while Mr Cartlidge was not standing as a parliamentary candidate, he was a candidate for the Cheshire East Town Council elections being held on 7 May 2015 in the Crewe St Barnabas electoral area.

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.2 to 6.13 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the ‘election period’¹. Section Six of the Code under the heading ‘Meaning of “election”’ makes clear that for the purposes of this section “elections include...a local government election...”.

Ofcom considered the material raised issues warranting investigation under Rule 6.6 of the Code, which states:

“Candidates in UK elections, and representatives of permitted participants in UK referendums must not act as news presenters, interviewers or presenters of any type of programme during the election period”.

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

Response

The Licensee said that “in the run up to the elections, [its] head of programming issued strict guidelines to each member of [its] team.” In relation to *The Happy Garden*, the Licensee said that the programme “was made up of a series of pre-recorded gardening segments”. The Cat also said that the programme was “then

¹ In the case of the English Town Council Elections, the ‘election period’ ran from the last date for the publication of the notice of elections on 30 March 2015 to the close of polling on 7 May 2015.

checked for content and compiled” by the head of programming. The Licensee also stated that “every single segment/link” in the programme was pre-recorded. The Cat also told Ofcom that it was “committed to continuing improvement and development” of its presenters and output. The Licensee said it was also “carrying out in-house training sessions over the next few months which will include reinforcing the Broadcasting Code”.

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, one of which is 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. Section Six of the Code sets out the particular rules that apply at the time of elections.

Rule 6.6 of the Code states that: “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period”.

As Ofcom’s Guidance to Section Six of the Code makes clear, Rule 6.6 is concerned not just with preventing electoral issues from being reported in a partial manner. The rule is designed to help secure the integrity of the democratic process, and the public’s trust in that integrity, by preventing any unfair electoral advantage being afforded to a particular candidate through their appearance on licensed services.

In this case, we noted that the presenter of *The Happy Garden* was a candidate standing in the English Town Council Elections taking place on 7 May 2015. As Rule 6.6 applies to presenters in “any type of programme”, it applied irrespective of the fact that the programme was a pre-recorded gardening programme and that Mr Cartlidge made no reference to his candidacy in the programme.

While we noted that the Licensee said that it was carrying out training sessions on compliance with the Code, this programme represented a clear breach of Rule 6.6.

Breach of Rule 6.6

In Breach

Sheffield Live News

Sheffield Live TV, 6 April to 10 April 2014, 18:30

Introduction

Sheffield Live TV is the local television service for Sheffield. The licence for Sheffield Live TV is held by Sheffield Local Television Limited (“SLTV” or “the Licensee”).

A complainant alerted Ofcom to an edition of *Sheffield Live News* broadcast on 9 April 2015 in which a candidate for the Sheffield Central constituency in the 2015 General Election was interviewed. The complainant objected to there being no other candidates from the Sheffield Central constituency being featured in the programme

The Licensee informed Ofcom that it had broadcast a series of “linked” interviews with five different candidates which had been conducted in a Sheffield city centre location. The five candidate interviews were broadcast over successive days between 6 April 2015 and 10 April 2015. Ofcom noted that five news programmes broadcast during this period featured interviews with candidates standing in the 2015 General Election. Each programme featured a single interview as follows:

- 6 April 2015: Louise Haigh, the Labour Party candidate for the Sheffield Heeley constituency;
- 7 April 2015: Howard Denby, the UK Independence Party (“UKIP”) candidate for the Sheffield Heeley constituency;
- 8 April 2015: Joe Otten, the Liberal Democrat candidate for the Sheffield Central constituency;
- 9 April 2015: Jillian Creasy, the Green Party candidate for the Sheffield Central constituency; and
- 10 April 2015: Ian Walker, the Conservative Party candidate for the Sheffield Hallam constituency.

In summary, the five programmes featured candidates from three different Parliamentary constituencies in Sheffield.

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.2 to 6.13 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the ‘election period’. Section Six of the Code under the heading ‘Meaning of ‘election’ makes clear that for the purpose of this section: “elections include a parliamentary general election”.

In the case of the General Election which took place on 7 May 2015, the ‘election period’ ran from the dissolution of Parliament on 30 March 2015 to the close of polling on 7 May 2015.

Ofcom noted that in each of the five news programmes, the newsreader introduced a pre-recorded item which made clear that the candidate being interviewed within the

item had been speaking at a “*hustings event organised by Sheffield’s 50 Plus Group*”. We then noted the content of each of the news items as follows:

6 April 2015 programme

The newsreader introduced the news item by saying: “*The Labour candidate, Louise Haigh, told me why she came along to the event and what she was standing for*”.

There was then a pre-recorded item with Louise Haigh during which the following on-screen caption was displayed several times: “*Louise Haigh, Labour Candidate, Sheffield Heeley*”.

During the interview, Louise Haigh said the following:

“I stood for selection to be Labour’s candidate because I believe the economy is fundamentally unfair for working people, for the poor, the vulnerable, the sick and the disabled. I’ve worked for many years in finance. I’ve also been a trade union rep for the last 10 years representing, you know, workers really at the sharp end of things: call centre workers; low-paid cleaners; shift workers. I’ve seen how hard it is for them to put food on their table. And the only way we can change, that is to change our economy, change the way we invest in industries, create the decent skilled jobs we need in Sheffield, and that’s what we’ve been talking about today. It’s been a really lively discussion. I’ve really enjoyed it”.

On being asked why she had attended the Sheffield 50 Plus Group event, Louise Haigh said the following:

“It’s the same issues that are on everybody’s minds: it’s the economy; it’s the NHS; it’s how we can ensure that we’ve got a bright future for young people in Sheffield and across the country. And those are true for whether you’re 50 plus or 15. And so I wanted to come and talk to it exactly about what Labour are offering, and exactly what I will fight for if I’m elected the MP for Sheffield Heeley. For that fundamental economic change that is going to get people into work, and make sure we’ve got a fully funded pension system as well”.

She then went on to give her views on other issues such as funding of the NHS and pensions. At the end of the news item the newsreader read out the names and parties of other candidates standing in the Sheffield Heeley constituency representing the Conservative Party, the Liberal Democrats, UKIP, and the Green Party. She concluded this item by saying:

“And you can hear from the other speakers at the 50 Plus event throughout the week right here on Sheffield Live”.

7 April 2015 programme

The newsreader introduced this news item by saying: “*UKIP candidate Howard Denby told Sheffield Live’s Catherine Smiles why he’s standing in the General Election*”.

The pre-recorded item with Howard Denby was then broadcast, during which the following on-screen caption was displayed several times: “*Howard Denby, UKIP Candidate in Sheffield Heeley Constituency*”.

Howard Denby said:

“Well, I am standing because I’m tired of politicians promising the world and delivering absolutely nothing. We need to go just back to basic common sense and stop making promises, stop making insults, stop relying on statistics, and start consulting people and running the country for the benefit of the people and not for the Establishment...The main thing I’ll bring to the role is that I will fight for the important things: people, the person, as I said in the meeting. It’s about the person who holds your hand. Money at the end of the day, we need it to exist, but it is simply an IOU document, it’s not the end of the world. Losing that person you love: that is the end of the world”.

He then went on to give his views on other issues such as social care and pensions.

At the end of the news item the newsreader read out the names and parties of other candidates standing in the Sheffield Heeley constituency representing the Conservative Party, the Labour Party, the Liberal Democrats, and the Green Party. He then concluded this item by saying:

“And you can hear from the other speakers at the 50 Plus event throughout the week right here on Sheffield Live”.

8 April 2015 programme

The newsreader introduced this item by saying: *“Joe Otten, The Lib Dem candidate for Sheffield Central told me why he’s standing”*. A pre-recorded item with Joe Otten followed, during which the following on-screen caption was displayed several times: *“Joe Otten, Liberal Democrat Candidate for Sheffield Central”*.

Joe Otten stated:

“We’re what the country needs in terms of keeping the country, keeping the Government on the centre ground, not lurching off to the right with the Conservatives, UKIP, or lurching off to the left with Labour and the SNP tearing the country apart, or whatever combination we might get. The election is wide open so, you know, any kind of combination is possible after the election. Parties will have to grow up and work together and obviously we’re trying to score points, we’re trying to have our voice heard and we’re trying to win votes. But after the election, you know, parties will have to be grown up and work together, that don’t expect to and aren’t used to doing it, and that will be difficult...Well: I live in Sheffield; I’m an ordinary guy in Sheffield; my kids go to local schools; I work here; I have a family; you find me at the school gates; I ran a business for a while making software, selling products all over the world. I think I understand enough of how the private sector works. But as a councillor I’ve also got some understanding of how the public sector works. And I talk to lots of local people all the time, and I’m understanding of those needs. And they’re a million miles away from the Westminster bubble, if you like”.

He went on to give his views on other issues such as pensions and the NHS. Joe Otten then said:

“I spoke to an old woman who was 85 years old, and I said, ‘The Conservatives are not likely to win here, and, you know, you don’t want Ed Miliband to be Prime Minister, do you?’ ‘Oh no’, she said, ‘I think I will vote for you for the first time. I’ve always voted Conservative!’...In Sheffield Central, there’s an interesting challenge coming from the Greens. I will admit that the Greens have been performing strongly in local elections, so in a sense Labour is the centre party in

this and they're being squeezed in the middle. Because the Greens represent a kind of hard left – hard left is perhaps the wrong way of putting it – but they're offering to spend lots of money on everything and every answer, we heard today, they're going to spend lots more money on that. Where's it really all going to come from? I have my doubts. And we represent fairness, yes, but fairness that we can afford. So fairness within the constraints of the money that's actually there and the need to balance the budget. And Labour, I think, are kind of, they can't decide quite which way to go on that. They're dithering on that particular score. So, really, a clear choice in Sheffield Central, a clear choice between us and the Greens. Labour don't know what to stand for".

At the end of the news item the newsreader said:

"And you can hear from the other speakers at the 50 Plus event in tomorrow's and Friday's programmes".

9 April 2015 programme

During this programme, the newsreader introduced a pre-recorded news item by saying: "*Jillian Creasy, the Green candidate for Sheffield Central told our reporter Catherine Smiles why she's standing*". The item with Jillian Creasy followed, during which this on-screen caption was displayed several times: "*Jillian Creasy, Green Party Candidate, Sheffield Central*".

Jillian Creasy said:

"Well, I'm standing for the Green Party and obviously I'm standing for the Green Party because I think it's got the best policies. The thing that we're really, really pushing this election is the fact that the Green Party is the only Westminster Party which is committed to reversing austerity. So we want to tax the wealthy, and we want to spend that money on public services and infrastructure, which we think will actually make the economy work better...I've been a councillor here in Town Hall behind us for 11 years, so I'm a very experienced politician. I know Sheffield Central, the centre of Sheffield very well – the Central ward. So obviously, as I've been in the Central ward I've got to know the wards round it...I think I've got a really good feeling for how Sheffield works. The other thing I bring is that in my previous life I was a GP, and I'm still doing some GP locums. But that's a very small part of my life now. And I think that gives me a very good insight into people's lives, and a very good insight into one of the top issues in the election this year which is the NHS".

On being asked what it felt like "*to be standing in a constituency where a high proportion of the voters will be students*", Jillian Creasy said:

"I mean, it's obviously very exciting for us because the Green Party is the party of, is interesting to young people, to students in particular, because of our policies on student fees. We would scrap tuition fees altogether. But, I think it's more than that. It's that the Greens have a vision for the future around jobs, around climate change, better public transport and so on and so on".

On being asked "*how difficult it is to get an older person's vote*", Jillian Creasy said:

"Not hard at all. Obviously in Central ward there's a big mix of people. Quite a lot of the people living on council estates are older... As a councillor I pick up case-work from the whole of people, you know, from every background, from every

age. And then when we're doing door-knocking, we're talking to people of all backgrounds and ages as well".

She then went on to give her views on the issue of media coverage of the Green Party.

At the end of the news item the newsreader read out the names and parties of other candidates standing in the Sheffield Central constituency representing the Conservative Party, the Labour Party, the Liberal Democrats, and UKIP.

10 April 2015 programme

The newsreader said: *"Ian Walker, the Conservative candidate for Sheffield Hallam told our reporter Catherine Smiles why he's standing"*. There was then a pre-recorded item with Ian Walker, during which the following on-screen caption was displayed several times: *"Ian Walker, Conservative Candidate in Sheffield Hallam Constituency"*.

Ian Walker stated:

"Well, because I think it's time for change in Hallam. Hallam has traditionally been a Conservative seat since the First World War until '97, when frankly we took our eye off the ball in '97, and we lost it. And it's now time to bring it back. And I think it's time to have a local presence, someone who's going to fight for Sheffield. I was born and bred in Hallam, and I think we need somebody not parachuted in from outside, but somebody, a local person, who can stand up for Sheffield and make sure we get our share of the funding that we are due in the north".

On being asked how it felt to *"to be standing in Nick Clegg's constituency"*, Ian Walker said:

"Well, I don't mind whose constituency it is. I'm fighting on the basis that we have integrity and authenticity back in Hallam and an MP who's local and somebody who can be trusted by the local population. Maybe someone who's not a career politician, that brings an outside dynamic...I've always given back to society. I was a chairman of [inaudible] Council, I'm currently trustee of four charities, three local charities, two of which I chair. I think it's something I've always wanted, I've always been interested in politics. And I feel now is the time, having had a career in business and I understand how the frustrations of businesses work and how we can create more wealth for Sheffield so that we can be a thriving city that we need to be again...The Conservatives have only just selected me fairly recently, so we've got a bit of ground to catch up, which we're doing. I'm engaging rapidly now with the community – the boards are going up and the leaflets are going out. So, we're coming from a standing start. But, I think that's the thing, the message to get across that actually we care about Sheffield. The values, the Conservative values that we have, chime and recognise that we're the people in Sheffield Hallam, and that's something that we want to get across...It's a three-way race now. The Survation poll which came out a little while ago put us neck and neck with the Lib Dems. And I think this should not be a choice of fear. People should be choosing positively for the party they believe in, and that's what I hope we do. It's a three-way race, and Sheffield [Hallam] has traditionally been a Conservative constituency, ever since the First World War until '97, and it's time to win it back, and I think that we can do that now".

At the end of the news item the newsreader read out the names and parties of other candidates standing in the Sheffield Hallam constituency representing the Labour Party, the Liberal Democrats, UKIP, the English Democrats, and an independent candidate.

Paragraph 1.39 of Ofcom's Guidance to Section Six (Elections and Referendums) of the Code ("the Guidance")¹ states:

"...the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rules 6.9 and 6.10) have an opportunity to take part as appropriate...a useful test for broadcasters is to ask whether a report could be seen as promotional for a candidate within his/her constituency/electoral area. If it is, then it requires input from, at least, the other main parties and potentially others depending on the constituency/electoral area".

For the reasons explained in this Decision, Ofcom considered that the programme was an electoral area report and discussion relating to the Parliamentary constituencies of Sheffield Central, Sheffield Hallam and Sheffield Heeley. Rules 6.8 to 6.13 of the Code were therefore engaged. In particular, we considered the material raised issues warranting investigation under the following rules of the Code:

Rule 6.8: "Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion".

Rule 6.9: "If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)"

We therefore sought the Licensee's comments as to how this material complied with these rules.

Given that nominations for candidates closed at 16:00 on 9 April 2015, we considered that the programmes broadcast on 9 and 10 April 2015 also raised issues warranting investigation under Rule 6.11 of the Code:

"Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision..."

We also sought SLTV's comments how these two programmes complied with this rule.

Response

The Licensee said that during the week of Monday 6 April 2015 to Friday 10 April 2015 inclusive it had broadcast in its news output "a series of linked items which

¹ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

consisted of interviews with parliamentary candidates from the four major parties² and the Green Party”. These interviews were carried out “in one location in one evening at a city centre location” where these five candidates had been speaking, namely a “city-wide event” held in Sheffield. According to SLTV: “There was nothing in the location [where the interviews had taken place] that implied a constituency report”. It added that: “The focus of the event was not on any particular consistency but rather on the party political positions with respect to issues of particular interest to the over 50s in Sheffield...The event was clearly a city-wide event in its content, with each of the political parties invited to send a single representative to appear on a panel. Our coverage was based on interviews with the organisers and the speakers at the event and was clearly presented as being in this context”. The Licensee said it had “considered the event to be a matter of public interest and that our coverage of it was also an opportunity to raise elections awareness and to highlight the positions of the major political parties plus the Green Party with particular regard to the interests of the over 50s”. SLTV further said that the various interviews with candidates “taken as a series, were balanced in representing the views of the four major political parties and the Green Party”.

Rules 6.8, 6.9, 6.10 or 6.11

The Licensee said that at the time of production and broadcast it had not considered that the interviews with the various candidates, as outlined in the Introduction “might amount to a constituency report or discussion” within the meaning of the Code. Rather, it said its coverage of the Sheffield Over 50s event “clearly indicated the context as a Sheffield-wide event and that the speakers were invited as representatives of their respective political parties”. For example before each news item that featured a candidate interview, the newsreader “explained that the event featured five speakers who each appeared on behalf of their political party”. In addition, SLTV said that it had “included caption graphics with each interview stating the name of the speakers and their title” to ensure “transparency and was not meant to imply that the interview consisted of a constituency report or discussion”.

However, the Licensee acknowledged that “in retrospect, the series of items could be interpreted as constituency reports or discussions” although it added that “[t]his was not our intention”. SLTV argued that the five interviews with candidates “were a series of editorially linked programmes in the context of compliance with Rule 6.2 and...taken as a whole, the programme series was not a constituency report”. The Licensee added that “if the context is taken into account we believe most viewers would have understood that this was a series of items which taken together consisted of a Sheffield area report which did not predominantly focus on constituency matters and provided balanced party political coverage”.

SLTV also argued that it “was not possible to make a report that could comply with” the Ofcom constituency reporting rules because the Sheffield Over 50s event “itself was not a constituency level event...As far as we are aware no other Sheffield General Election candidates were present at the event and therefore none were available to interview in the context of the event”. Therefore, in the Licensee’s opinion: “To have interviewed them separately as a constituency report or discussion would have amounted to a different report”.

² The major parties for any given election are listed in the Ofcom list of major parties (see: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/major-parties.pdf>). For the 2015 General Election in England the major parties were: the Conservative Party; the Labour Party; the Liberal Democrats; and UKIP.

SLTV said that during the election period it had “responded in this case by providing additional elections coverage to ensure no candidate should have cause for complaint”. It therefore had “organised and broadcast³ constituency reports and discussions for Sheffield Hallam, Sheffield Central and Sheffield Heeley to which all of the major parties and the Green Party candidates were invited consistent with” Rules 6.8, 6.9, 6.10 and 6.11 of the Code. The Licensee stated its belief that “the effort we made to organise these constituency reports and discussions should be considered as mitigating any shortcomings in the election reports carried from 6-10 April 2015”.

SLTV’s comments on Ofcom’s Preliminary View

The Licensee made a number of other points in response to Ofcom’s Preliminary View⁴ in this case. Firstly, it said that it had “limited journalistic resources” and had endeavoured to promote “awareness and debate among the local population”. SLTV added that it had not received “a single direct complaint from any candidate nor from any member of the public” about its election coverage.

Second, the Licensee argued that the quotations from the programmes included by Ofcom in the Introduction gave “the impression that a high proportion of the interview content concerned constituency matters”. Similarly, SLTV disputed Ofcom’s view that in each interview, the candidates were able to talk about their campaign in relation to the constituency they were contesting in the General Election. Rather, the Licensee argued that “less than 20% of the interview content touched on constituency matters...[The] major part focussed on the party political positions on matters of particular interest to over 50s – health, transport etc – and the interviewer largely avoided asking questions specific to a constituency” and “the interviews were conducted in the context of and in relation to the 50+ Sheffield area debate”. SLTV added that: “The selection of quotes provided by Ofcom [were] illustrative of certain parts of the interviews that mentioned the constituency of the candidate but they [were] not representative of the content of the interviews as a whole”.

Third, the Licensee also contested Ofcom’s view that captions in the interviews, which stated the name of the interviewee, and the political party and constituency for which they were a candidate helped to emphasise the fact that various candidates were discussing constituency matters. SLTV stated its belief that it was not fair “to assess whether a report is an election area report or not on the basis of a caption graphic which is simply a factual description of the current status of the person interviewed and which we maintain is required for transparency”. Finally, the Licensee said that following the election period it had reviewed its election coverage to “enable us to improve in the future”. However, it expressed its concern that “in the context of local TV, the presence of a constituency candidate in a wider area news report could too easily lead to that being considered a constituency

³ These were as follows:

- an edition of *Sheffield Live News* broadcast on 5 May 2015, which SLTV said contained “a constituency report special on Sheffield Central”;
- an edition of *Sheffield Live News* broadcast on 6 May 2015, which the Licensee said contained “a constituency report special on Sheffield Heeley”; and
- an *Election Special*, also broadcast on 6 May 2015, which SLTV said contained “a constituency debate on Sheffield Hallam”.

⁴ Our Preliminary View was that the programmes were in breach of Rules 6.8 and 6.9, and the programmes broadcast on 9 and 10 April 2015 were in breach of Rule 6.11.

report from a regulatory perspective with a consequence that local TV journalists may become fearful of covering wider political matters of public interest”.

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, one of which is 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 follow the rules in Section Five of the Code to ensure that the due impartiality requirements of the Act are complied with. In addition, Section Six of the Code reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended) (“the RPA”).

When applying the requirement to preserve due impartiality, Ofcom recognises the importance to the right to freedom of expression, as contained in 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. However, UK legislation requires broadcasters to preserve due impartiality on major matters of political controversy. This requirement is considered to be particularly important at the time of elections. Broadcasters in covering election issues must ensure that, during the election period, they preserve due impartiality and due weight is given to all the major parties⁵ (and other parties where appropriate).

Ofcom’s Guidance states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover election campaigns, they must comply with the rules set out in Section Six of the Code, and in particular the constituency and electoral area reporting requirements laid out in Rules 6.8 to 6.13 of the Code. These specific rules apply to the broadcast of a particular constituency and electoral area report or discussion during an election period.

Rule 6.8 states that: “Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion”.

Rule 6.9 states that: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”. The major parties for any given election are listed in the Ofcom list of major parties. For the 2014 English local elections, the major parties were: the Conservative Party; the Labour Party; and the Liberal Democrats.

Rule 6.11 states that: “Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision...”.

⁵ See footnote 2.

Electoral area report or discussion

To determine whether the electoral area reporting rules (Rules 6.8 to 6.13) applied in this case, we first had to determine whether the programmes contained an electoral area report or discussion. Paragraph 1.39 of the Guidance states: "...the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rules 6.9 and 6.10) have an opportunity to take part as appropriate".

In this case we noted that each of the five programmes featured a pre-recorded item featuring a candidate standing in one of three different Sheffield constituencies in the 2015 General Election. We noted that each of the five candidates featured in the programmes had been speaking at a single event which the Licensee described as a "city-wide" event in Sheffield focusing on the "party political positions with respect to issues of particular interest to the over 50s in Sheffield". We noted SLTV's intention "to highlight the positions of the major political parties plus the Green Party with particular regard to the interests of the over 50s".

Ofcom underlines that during an election period, a broadcaster can include comments from a candidate about wider political or policy matters (not directly connected with his/her constituency), for example as in this case of issues affecting those aged over 50 in Sheffield. However, broadcasters should take care that whenever a candidate is featured in programming, by virtue of that candidate's contribution the content does not unintentionally become an electoral area report or discussion.

We noted the Licensee's various arguments about the nature of the interviews in this case, which the Licensee said supported its view that they were not contained in a constituency report, such as that: the interviews were carried out "in one location"; "[t]here was nothing in the location [where the interviews had taken place] that implied a constituency report"; and the event at which the interviews had been obtained was "clearly city-wide event in its content, with each of the political parties invited to send a single representative to appear on a panel". However, despite the fact that the interviews were obtained at an event which encompassed the whole of the city of Sheffield and individual candidates were drawn from various political parties, we considered that each of the interviews engaged the constituency reporting rules. This was because in each of the five programmes a different candidate was able to talk at length about their campaign in relation to the constituency they were contesting in the General Election. For example, we noted the candidates made various statements, of which the following are illustrative:

- in the programme broadcast on 6 April 2015, Louise Haigh, the Labour Party candidate in Sheffield Heeley, said:

"I stood for selection to be Labour's candidate because I believe the economy is fundamentally unfair for working people, for the poor, the vulnerable, the sick and the disabled... And so I wanted to come and talk to it exactly about what Labour are offering, and exactly what I will fight for if I'm elected the MP for Sheffield Heeley. For that fundamental economic change that is going to get people into work, and make sure we've got a fully funded pension system as well";

- on 7 April 2015, Howard Denby, the UKIP candidate in Sheffield Heeley, stated:

“Well, I am standing because I’m tired of politicians promising the world and delivering absolutely nothing...The main thing I’ll bring to the role is that I will fight for the important things: people, the person, as I said in the meeting”;

- on 8 April 2015, Joe Otten, the Liberal Democrat candidate in Sheffield Central, said:

“Well: I live in Sheffield; I’m an ordinary guy in Sheffield; my kids go to local schools; I work here; I have a family; you find me at the school gates; I ran a business...In Sheffield Central, there’s an interesting challenge coming from the Greens...So, really, a clear choice in Sheffield Central, a clear choice between us and the Greens. Labour don’t know what to stand for”;

- on 9 April 2015, Jillian Creasy, the Green Party candidate in Sheffield Central, commented:

“Well, I’m standing for the Green Party and obviously I’m standing for the Green Party because I think it’s got the best policies...I know Sheffield Central, the centre of Sheffield very well...I think I’ve got a really good feeling for how Sheffield works”; and

- in the programme broadcast on 10 April 2015, Ian Walker, the Conservative Party candidate in Sheffield Hallam, said:

“Hallam has traditionally been a Conservative seat since the First World War until ’97, when frankly we took our eye off the ball in ’97, and we lost it. And it’s now time to bring it back. And I think it’s time to have a local presence, someone who’s going to fight for Sheffield. I was born and bred in Hallam”.

We noted SLTV argued that “less than 20% of the interview content touched on constituency matters [whilst the] major part focussed on the party political positions on matters of particular interest to over 50s – health, transport etc – and the interviewer largely avoided asking questions specific to a constituency”. It also argued that the quotes listed in the Introduction were “illustrative of certain parts of the interviews that mentioned the constituency of the candidate but they [were] not representative of the content of the interviews as a whole”. Similarly, the Licensee argued that “if the context is taken into account we believe most viewers would have understood that this was a series of items which taken together consisted of a Sheffield area report which did not predominantly focus on constituency matters and provided balanced party political coverage”. We disagreed with these various arguments. While a proportion of each of the five interviews did touch on matters unrelated to the constituencies of the various candidates being interviewed, in our view there were also numerous statements made by the candidates that did relate to the campaign they were conducting in their constituencies to a material degree. Viewers would have been aware that the candidates had been interviewed at a Sheffield city-wide event and talked about general policy matters effecting the over 50s. However they would also, in our view, have been exposed to each candidate making a number of detailed points specific to the individual campaigns they were fighting in their individual constituencies.

We noted that, during each of the candidate interviews, a caption was displayed naming the candidate and the constituency they were contesting. We noted the Licensee’s representation that these captions were intended to ensure “transparency and was not meant to imply that the interview consisted of a constituency report or

discussion”. However we considered that in fact the presence of these captions did help to emphasise the fact that the various candidates were discussing matters relating to their constituencies. In this context, we noted SLTV’s argument that it was not fair “to assess whether a report is an election area report or not on the basis of a caption graphic which is simply a factual description of the current status of the person interviewed and which we maintain is required for transparency”. In response, we considered the presence of a caption was not in itself determinative of the constituency rules applying in this case. Rather, given the large number of statements being made by each candidate about their constituencies, in our view, the captions would have been likely to reinforce in viewers’ minds the fact that each candidate was talking at length about the constituency they were contesting.

We noted the Licensee’s acknowledgement that “in retrospect, the series of items could be interpreted as constituency reports or discussions”, although it said it had not intended to broadcast a series of such items and it argued that the series of interviews were not constituency reports and discussions. However, taking all the above into account we considered the series of candidate interviews in the five programmes were constituency reports or discussions. Rules 6.8 to 6.13 therefore applied.

Rule 6.8

We considered that in this case in each individual programme the viewpoints of only one party candidate were featured. At no point during these items were the viewpoints reflected of major party⁶ candidates, competing with the candidates being interviewed, featured in the programmes.

We noted however SLTV’s argument that the five interviews were to be seen as a “series of editorially linked programmes in the context of compliance with Rule 6.2”. It argued that the various interviews with candidates “taken as a series, were balanced in representing the views of the four major political parties and the Green Party”. However, the rationale of Rule 6.8 is to ensure that the viewpoints of actual candidates rather than the parties they represent are appropriately represented in a constituency report and discussion. In this context, paragraph 1.37 of the Ofcom Guidance to Section Six states that: “There is a range of editorial techniques by which broadcasters can comply with Rule 6.8, but broadcasters should ensure that they reflect the viewpoints of candidates...”. This is to ensure that when interviewing candidates in reports that either raise issues about their constituency or raise the profile of the candidate in connection with their constituency, other candidates in the constituency should have an opportunity to take part as appropriate.

In this case we noted that some of the interviews featured candidates contesting the same constituency. In this context, paragraph 1.47 of the Guidance states:

“Broadcasters may structure a constituency/electoral area report or discussion over a series of broadcasts, for example in the form of a series of candidate interviews in different programmes. However, in line with Rule 5.6⁷, the broadcaster should ensure that the fact that a constituency/electoral area report

⁶ See footnote 2.

⁷ Rule 5.6 states: “The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air”.

or discussion is being split over several programmes is clearly signalled to the audience...”.

Therefore, we noted that the interviews broadcast on 6 and 7 April 2015 featured two⁸ of the candidates standing in the Sheffield Heeley constituency, and at the end of the interview broadcast on 6 April 2015 the newsreader alerted⁹ the audience to the following evening’s interview. The interviews broadcast on 8 and 9 April 2015 featured two¹⁰ of the candidates standing the Sheffield constituency, and at the end of the interview broadcast on 8 April 2015 the newsreader alerted¹¹ the audience to the following evening’s interview. However, even if the interviews broadcast on 6 and 7 April 2015 were considered to be part of a linked constituency report and discussion about the Sheffield Heeley constituency, at no point during these two interviews were the viewpoints of the Conservative Party and Liberal Democrat candidates standing in Sheffield Heeley featured. Similarly, even if the interviews broadcast on 8 and 9 April 2015 were considered to be part of a linked constituency report and discussion about the Sheffield Central constituency, at no point during these two interviews were the viewpoints of the Conservative Party, Labour Party and UKIP candidates standing in Sheffield Central featured. In addition, at no point during the interview broadcast on 10 April 2015, were the viewpoints of the Labour Party, Liberal Democrats and UKIP candidates featured.

Given all the above, we therefore concluded that due impartiality in these electoral area report or discussions was not strictly maintained, and considered the programmes breached Rule 6.8 of the Code.

Rule 6.9

To comply with Rule 6.9 of the Code, the Code makes clear that if a candidate is given an opportunity to discuss matters relating to their electoral area then broadcasters must ensure that other candidates from the major parties should also be offered an opportunity to take part. In this case this meant that in relation to:

- the Sheffield Heeley constituency which was being discussed by two candidates (from the Labour Party and UKIP) from that constituency in the programmes broadcast on 6 and 7 April 2015, the Licensee was required to offer candidates from the Conservative Party and Liberal Democrats the opportunity to take part in these programmes;
- the Sheffield Central constituency which was being discussed by two candidates (from the Liberal Democrats and the Green Party) from that constituency in the programmes broadcast on 8 and 9 April 2015, the Licensee was obliged to offer candidates from the Conservative Party, the Labour Party and UKIP, the opportunity to take part in these programmes; and

⁸ The Labour Party candidate and the UKIP candidate.

⁹ The newsreader said: *“And you can hear from the other speakers at the 50 Plus event throughout the week right here on Sheffield Live”*.

¹⁰ The Liberal Democrat candidate and the Green party candidate.

¹¹ The newsreader said: *“And you can hear from the other speakers at the 50 Plus event in tomorrow’s and Friday’s programmes”*.

- the Sheffield Hallam constituency which was being discussed by the Conservative Party candidate from that constituency in the programme broadcast on 10 April 2015, the Licensee was required to offer candidates from the Labour Party, the Liberal Democrats and UKIP, the opportunity to take part in that programme.

We took account of SLTV's representation that it "was not possible to make a report that could comply with" the constituency reporting rules. This was because, the Licensee said, the Sheffield Over 50s event "itself was not a constituency level event...As far as we are aware no other Sheffield General Election candidates were present at the event and therefore none were available to interview in the context of the event". Therefore, in the Licensee's opinion: "To have interviewed them separately as a constituency report or discussion would have amounted to a different report". We recognise the challenges posed by complying with the constituency and electoral area reporting rules in Rules 6.8 to 6.13. However, the rationale of these rules is clear, namely, to ensure that no election candidate receives an undue advantage in their constituency by virtue of their appearance in a broadcast item. In this case, the Licensee had provided no evidence, nor were any statements made within the programme suggesting, that SLTV had invited any of the named candidates above to participate in this programme. Therefore, we considered the programmes breached Rule 6.9 of the Code.

Rule 6.11

Two of the five programmes were broadcast after the close of nominations for candidates¹². On 9 April 2015, there was an interview with Jillian Creasy, the Green Party candidate in the Sheffield Central constituency. At the end of the news item the newsreader read out the names and parties of other candidates standing in the Sheffield Central constituency representing the Conservative Party, the Labour Party, the Liberal Democrats, and UKIP. However, the Licensee did not provide in sound and/or vision a list of all candidates¹³ standing in the Sheffield Central constituency. In addition, on 10 April 2015, there was an interview with Ian Walker, the Conservative Party candidate in the Sheffield Hallam constituency. At the end of this news item the newsreader read out the names and parties of other candidates standing in the Sheffield Hallam constituency representing the Labour Party, the Liberal Democrats, and UKIP. However, the Licensee did not provide in sound and/or vision a list of all candidates¹⁴ standing in the Sheffield Hallam constituency.

We therefore also considered that the programmes broadcast on 9 and 10 April 2015 breached Rule 6.11 of the Code.

In reaching our Decision in this case, we also took into account the various other arguments put forward by SLTV. Firstly, that it had: "limited journalistic resources"; endeavoured to promote "awareness and debate among the local population"; and not received "a single direct complaint from any candidate nor from any member of the public" about its election coverage. We acknowledge that local television

¹² The close of nominations in this case was 16:00 on 9 April 2015.

¹³ In respect of the Sheffield Central constituency, SLTV did not provide in sound and/or vision a list of candidates from: the Communist Party; the English Democrats; the Above and Beyond Party; the Workers' Revolutionary Party; and the Pirate Party.

¹⁴ In respect of the Sheffield Hallam constituency, SLTV did not provide in sound and/or vision a list of candidates from: the English Democrats; the Green Party; and two independent candidates.

licensees have limited resources. However, it is a fundamental requirement of their Ofcom licence that they comply with the Code. Similarly, we recognised the editorial intention behind the programme in this case, but this did not mitigate the breaches of the Code that occurred. Further, the fact that the Licensee received no direct complaints about the various programmes in this case did not affect the fact that the Code had been breached on this occasion.

Second, we noted that the Licensee said that it had “responded in this case by providing additional elections coverage to ensure no candidate should have cause for complaint”. Therefore, during the election period it had broadcast three other programmes relating to the constituencies of Sheffield Hallam, Sheffield Central and Sheffield Heeley respectively, and “all of the major parties and the Green Party candidates were invited consistent” with Rules 6.8, 6.9, 6.10 and 6.11 of the Code. Therefore, the Licensee stated its belief that “the effort we made to organise these constituency reports and discussions should be considered as mitigating any shortcomings in the election reports carried from 6-10 April 2015”. We disagreed. A key rationale of the constituency reporting rules is to ensure that no candidate is afforded an unfair advantage by being able to make statements about their constituency when appearing in broadcast items. This requirement applies at all times. As such, we did not consider that the broadcast of unlinked separate constituency reports and discussions over three weeks after the programmes in the present case could mitigate the Licensee’s failure to comply with the constituency reporting rules in this case.

Finally, the Licensee said that following the election period it had reviewed its election coverage to “enable us to improve in the future”. However, it expressed its concern that “in the context of local TV, the presence of a constituency candidate in a wider area news report could too easily lead to that being considered a constituency report from a regulatory perspective with a consequence that local TV journalists may become fearful of covering wider political matters of public interest”. Ofcom acknowledges the challenges posed for broadcasters in complying with the constituency reporting rules. However, these rules reflect an important statutory duty¹⁵ placed upon Ofcom, namely, to put in place a code of practice with respect to the participation of candidates at various elections and applies at all times. As such, we consider it a fundamental requirement upon Ofcom licensees that they should comply with Rules 6.8 to 6.13, if featuring candidates in broadcast items during elections. We appreciate the challenges faced by local broadcasters seeking to provide elections coverage. However, Ofcom notes that these rules have applied to other forms of local broadcasting, such as in radio, for a number of years and these broadcasters have been able to comply with the requirements.

For all the reasons outlined above, we considered that the series of programmes considered in this case had breached Rules 6.8 and 6.9 of the Code (and Rule 6.11 in respect of the programmes broadcast on 9 and 10 April 2015).

Breaches of Rules 6.8 and 6.9 (and Rule 6.11 in respect of the programmes broadcast on 9 and 10 April 2015).

¹⁵ By section 93 of the RPA.

In Breach

Breakfast

Metro Radio 2, 6 March 2015, 06:00

Introduction

Metro Radio 2 is a local commercial radio station providing a music-based service for adults aged 45 and over in Tyne and Wear. The licence for the service is held by Metro Radio Limited (“Metro” or “the Licensee”).

A complainant was concerned that the presenter asked listeners to interact with the programme using a shortcode text service – charged at a premium rate – without stating the associated costs.

Ofcom reviewed the programme and noted that, during *Breakfast*, which was four hours in duration, the presenter solicited such interaction twice without referring to the costs.

Ofcom therefore considered the material raised issues warranting investigation under Rule 10.10 of the March 2013 Code¹, which stated:

“The cost to listeners for using premium rate telephony services, or other services based on similar revenue-sharing arrangements, must be made clear to them and broadcast as appropriate”.

Ofcom sought comments from the Licensee as to how it had complied with this rule.

Response

The Licensee said that listeners using the shortcode for general interaction with the programme had been charged 25p, plus their standard network rate, per text. Metro, admitted that, in error, an accompanying pre-recorded message referring listeners to the station’s website “*for a full list of terms and conditions*”, which included detailed price information, had not been broadcast.

Metro added that, although its presenters generally “highlighted the cost of texting the studio for general interaction” a ‘live read’ had not been broadcast on this occasion.

The Licensee said it had subsequently reduced to zero the premium rate charge for listeners’ general interaction with the studio and texts were now charged only at their standard network rate.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives,

¹ Rules 10.9, 10.10 and 9.26 to 9.30, together with associated guidance, were amended on 1 July 2015, as detailed in Ofcom’s statement concerning “clearer phone costs for viewers and listeners”, available at:

<http://stakeholders.ofcom.org.uk/binaries/consultations/ngn-broadcasting/statement/Statement.pdf>.

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

This objective is reflected in, among other rules, Rule 10.10 of the March 2013 Code, which required that “the cost to listeners of using premium rate telephony...must be made clear to them and broadcast as appropriate”. Further, Ofcom’s Guidance² states that “under no circumstances would the absence of any aired pricing information comply with Rule 10.10”.

In this instance, we noted that listeners were invited twice to interact with the studio by shortcode text service, but at no time within the four hour broadcast were they told how much it would cost them to do this. As the Licensee invited listeners to interact with the studio by a shortcode text service, but failed to make any reference to, or detail, the cost of doing so during the four hour programme, Ofcom concluded that the cost of using the premium rate telephony service in this case had neither been made clear to listeners nor appropriately broadcast, in breach of Rule 10.10 of the March 2013 Code.

Ofcom also noted the Licensee’s comments stating that it had intended to broadcast a message referring listeners to “*a full list of terms and conditions*” but had not done so as the result of an error. We wish to make clear to Metro that such a message, which neither included full pricing information nor even referred to it, would have been insufficient in this case and expect Metro to take greater care when inviting listener interaction in future.

Breach of Rule 10.10 of the March 2013 Code

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section10.pdf>

Resolved

Dermot Dances for Comic Relief

BBC One Red Button, 13 March 2015, 13:30

Introduction

The BBC Red Button provides viewers with the opportunity to interact or view enhanced services related to the content on the main BBC services by pressing the red button on the remote control. Ofcom was alerted to an instance of offensive language used by Dermot O’Leary, broadcast on the BBC Red Button service, during the presenter’s 24 hour danceathon for Comic Relief.

Ofcom noted that the presenter, who was being broadcast live and shown dancing outside of New Broadcasting House in London, walked over to greet a friend who had made a surprise visit to him and said: “...*how fucking fantastic to see you.*” About 40 seconds later, Dermot O’Leary said: “*I’m so sorry if I swore – I swear, I didn’t swear?*” Shortly afterwards the BBC broadcast a caption stating: “*we apologise for the use of strong language*”.

We considered the use of the word “fucking” raised issues warranting investigation under Rule 1.14 of the Code:

“The most offensive language must not be broadcast before the watershed (in the case of television)...”

We therefore requested comments from the BBC as to how this material complied with this rule.

Response

The BBC explained that all guests had been briefed about offensive language and were reminded that they would be live on television. In addition, notices were placed out of camera shot reminding participants about language issues. The BBC added that Dermot O’Leary was an experienced broadcaster, well versed in the constraints of live television, that he was aware he was wearing a live microphone and that the event was being broadcast live (via the BBC Red Button).

However, given the event had begun at 19:00 the previous evening and by the time of the incident at 13:30 the next day the BBC said Dermot O’Leary was very tired having been dancing for over 18 hours and throughout the night. Initially, according to the BBC, he did not even realise he had used offensive language when surprised by the appearance of a friend. When the producer confirmed to him that he had done so, he immediately broadcast an apology. Following this the BBC broadcast a caption apologising for the use of strong language.

The broadcaster added that in this instance the offensive language was directed at a friend and therefore said in a tone which was amicable rather than aggressive and that it took all reasonable steps in a timely manner to mitigate any offence caused.

Decision

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

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language¹ clearly notes that the word “fuck” and other variations of this word are considered by audiences to be among the most offensive language.

The broadcast of the word “fucking” on the BBC’s Red Button service around 13:30 was therefore a clear example of the most offensive language being broadcast before the watershed, and was a breach of Rule 1.14.

However, in this case Ofcom took into consideration this was a live broadcast and that: the broadcaster had taken measures before the programme to minimise the risk of offensive language being broadcast by briefing the presenter and guests; the use of the word “fucking” was not scripted; although initially unaware that he had used offensive language, after the incident was brought to his attention Dermot O’Leary broadcast an apology immediately; and, the BBC broadcast a caption apologising for the use of strong language around 45 seconds later.

In light of these factors Ofcom considered the matter resolved.

Resolved

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

Television Access Services

In Breach

Under provision of Subtitling

AXN and AXN Sci-fi (Italy), January to December 2014

Introduction

Ofcom's Code on Television Access Services ("the Television Access Services Code"¹) requires television broadcasters to provide access services (subtitling, signing and audio description) on a proportion of their programming. Specifically Rule 9 of the Television Access Services Code states that "broadcasters are required to meet the targets set out below".

| Anniversary of relevant date ² | Subtitling | Signing | Audio Description |
|---|------------|---------|-------------------|
| First | 10% | 1% | 2% |
| Second | 10% | 1% | 4% |
| Third | 35% | 2% | 6% |
| Fourth | 35% | 2% | 8% |
| Fifth | 60% | 3% | 10% |
| Sixth | 60% | 3% | 10% |
| Seventh | 70% | 4% | 10% |
| Eighth | 70% | 4% | 10% |
| Ninth | 70% | 4% | 10% |
| Tenth | 80% | 5% | 10% |

Under Rule 9 of the Television Access Services Code two channels broadcasting to Italy, AXN and AXN Sci-fi ("the Channels"), were required to provide subtitles on 15%³ of their content during 2014. The licences for the Channels are held by Axn Southern Europe Limited ("Axn Ltd" or "the Licensee").

Ofcom had informed Axn Ltd of this requirement in December 2012. On 18 December 2012 Ofcom had published its report *Non-domestic television channels required to provide television access services in 2014*⁴ which had set out that the Channels had an obligation in 2014 to provide subtitling in line with the Television Access Services Code.

¹ <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

² For non-domestic broadcasters, the relevant date is the latter of either the date the channel commenced broadcasting or 1 January 2013.

³ In 2014, television licensees serving European countries other than the UK were permitted to subtitle an additional 5% of content in lieu of the signing obligations as set out in the Television Access Services Code.

⁴ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/Non-dom-channels-2014.pdf>

In April 2015 Axn Ltd reported to Ofcom the following levels of subtitling provision on the Channels in 2014:

| Channel | Quota | Achieved |
|------------|-------|----------|
| AXN | 15% | 6.2% |
| AXN Sci-fi | 15% | 2.3% |

Ofcom considered that these shortfalls raised potential issues under Rule 9 of the Television Access Services Code. We therefore asked Axn Ltd how it had complied with this rule.

Response

Axn Ltd said that despite its “efforts and significant budget investment [it] encountered longer than anticipated delay to launch of the services due to technical issues which [were] alerted to Ofcom at the time”. Axn Ltd said it “subsequently suffered an unprecedented global cyber-attack across all Sony Pictures networks⁵ which had the effect of wiping many of [its] technical and delivery systems as of November 2014 consequently severely hampering [its] ability to deliver and transmit files” with subtitles.

The Licensee said that following correspondence with Ofcom in summer 2014 and following consultation with the Italian Deaf Association, “subtitling commenced as soon as technically possible”. The Licensee said at this point it began “executing a plan at significant cost to over-deliver subtitling in volume for the remaining months of the year that would meet the annual 15% requirements”. However, Axn Ltd said “the cyberattack in November wiped access to the relevant databases and content delivery systems which made execution of this plan impossible notwithstanding high volumes of work and best intentions”.

Axn Ltd said that it takes “access services obligations seriously” and the benefits of the financial investments it made in 2014 “while delayed are now seen in significant increases in the early months of the 2015 year”.

The Licensee proposed that it would make up the shortfall on both the Channels but said it may not be able to achieve this by the end of 2015. However, the Licensee did commit to making up at least one third of the shortfall by this date, with any remainder of the shortfall to be fully made up by 30 June 2016.

Decision

Ofcom’s and television broadcasters’ responsibilities in relation to the accessibility of broadcast content are set out in sections 303 to 305 of the Communications Act 2003. These sections make specific mention of subtitling and set statutory targets for broadcasters for its provision. The obligations are reflected in the rules set out in the Television Access Services Code.

Under Rule 9 of the Television Access Services Code Axn Ltd was required to subtitle 15% of each of the Channels’ output in 2014. However, only 6.2% of AXN Italy’s output and 2.3% of AXN Sci-fi’s output was subtitled. The under provision of subtitling on these channels represented clear breaches of Rule 9 of the Code on Television Access Services.

⁵ Axn Ltd is ultimately owned and controlled by Sony Pictures Entertainment.

We noted that the Licensee said that the cyber-attack it suffered had made execution of its plan to meet the 15% annual requirements on these two services “impossible”. However, Ofcom also noted that this cyber-attack occurred a little over a month before the end of 2014 and the level of under provision with respect to both services was already significant by the time the cyber-attack happened. Therefore, it appeared to Ofcom unlikely that the cyber-attack was an important factor in the Licensee’s failure to meet its subtitling requirements on the Channels in 2014.

We also took into account that the Licensee stated that it intended to make up the shortfall in relation to AXN and AXN Sci-fi by delivering extra subtitling on these channels, although it said it may not be able to make up the shortfall by the end of 2015.

Ofcom recognised that 2014 was the first year in which non-domestic broadcasters were required to provide access services and that a number of licensees, including Axn Ltd, experienced some technical and practical difficulties in bringing these services to air for the first time. Additionally, we considered that the cyber-attack the Licensee suffered did, to some extent, contribute to 2014’s under provision. For these reasons, exceptionally, Ofcom is prepared to allow the Licensee until 30 June 2016 to make up 2014’s under provision – although we noted that the Licensee has committed to make up at least one third of the shortfall by the end of 2015.

Ofcom considered that the significant under provision of subtitles on the Channels in these cases represented serious breaches of the Code. However, on the condition that the Licensee meets its commitments to make up this under provision (as set out above), Ofcom does not propose to consider these breaches of subtitling requirements for the imposition of a statutory sanction.

Breaches of Rule 9 of the Code on Television Access Services

In Breach

Under provision of audio description

TV3 (Denmark), TV3 Plus (Denmark), TV3 (Sweden), TV6 (Sweden) and TV8 (Sweden), January to December 2014

Introduction

Ofcom's Code on Television Access Services ("the Television Access Services Code"¹) requires television broadcasters to provide access services (subtitling, signing and audio description) on a proportion of their programming. Specifically Rule 9 of the Television Access Services Code states that "broadcasters are required to meet the targets set out below".

| Anniversary of relevant date ² | Subtitling | Signing | Audio Description |
|---|------------|---------|-------------------|
| First | 10% | 1% | 2% |
| Second | 10% | 1% | 4% |
| Third | 35% | 2% | 6% |
| Fourth | 35% | 2% | 8% |
| Fifth | 60% | 3% | 10% |
| Sixth | 60% | 3% | 10% |
| Seventh | 70% | 4% | 10% |
| Eighth | 70% | 4% | 10% |
| Ninth | 70% | 4% | 10% |
| Tenth | 80% | 5% | 10% |

Under Rule 9 of the Television Access Services Code TV3 (Denmark), TV3 Puls (Denmark), TV3 (Sweden), TV6 (Sweden) and TV8 (Sweden) ("the Channels") were required to provide audio description on 2% of their content during 2014. The Licences for the Channels are held by Modern Times Group MTG Limited ("MTG Ltd" or "the Licensee"). Ofcom informed MTG Ltd of this requirement in December 2012.

On 18 December 2012 Ofcom had published its report *Non-domestic television channels required to provide television access services in 2014*³ which had set out that the Channels had an obligation in 2014 to provide audio description in line with the Television Access Services Code.

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2015.pdf>

² For non-domestic broadcasters (channels operating in EU Member States other than the UK), the relevant date is the latter of either the date the channel commenced broadcasting or 1 January 2013.

³ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/Non-dom-channels-2014.pdf>

In January 2015 MTG Ltd reported to Ofcom that against the 2% target in 2014 it had not provided any audio description of the Channels' content. Ofcom considered that this shortfall raised a potential issue under Rule 9 of the Television Access Services Code. We therefore asked MTG Ltd how it had complied with this rule.

Response

MTG Ltd said that it took "its responsibility in relation to meeting the targets set out in Rule 9 of the Television Access Services Code very seriously".

The Licensee explained that "as notified to Ofcom through emails, telephone conversations and in letters dated 31st May 2013 and 19th December 2013 [...] MTG was unable to commence broadcasting audio description on the Channels in January 2014 due to technical issues relating to the building of [its] new transmission facility". MTG said that in correspondence in June and December 2013 Ofcom "agreed to a postponement of the audio description obligation on the Channels until the last quarter of 2014".

MTG Ltd said that the requirement for audio description "was a priority throughout planning and implementation" of its move to new playout facilities. The Licensee also said it "ensured an open and transparent dialogue with Ofcom relating to the issues with providing audio description on the Channels and [its] intention to make up any shortfall in [its] access services targets at the earliest opportunity."

MTG Ltd told Ofcom that when it became apparent that its new transmission facility would not be ready to broadcast the Channels with audio description by the last quarter of 2014, it met with Ofcom (on 11 August 2014) to explain the reason for the delay. The Licensee said there was an exchange of emails between MTG Ltd and Ofcom in December 2014 and March 2015 "updating Ofcom on an estimated commencement date for audio description on the Channels as well as an explanation as to how MTG intended to make up for the lack of audio description provision during 2014".

As regards making up the 2014 shortfall, MTG said it "intend[ed] to broadcast 6% of all content across the Channels with audio description, accounting for 2014's target of 2% of content and 2015's of 4%". MTG also explained that "a back catalogue of audio described material has been ordered and is in place" and as of 26 March 2015 it had begun transmission of audio description. MTG concluded that "although it is regrettable" it had not provided any audio description in 2014 it believed it had "taken all possible steps to ensure our obligations under the Television Access Services Code have been met".

Decision

Ofcom's and television broadcasters' responsibilities' in relation to the accessibility of broadcast content are set out in sections 303 to 305 of the Communications Act 2003. These sections make specific mention of audio description and set statutory targets for broadcasters for its provision. The obligations are reflected in the rules set out in the Television Access Services Code.

Under Rule 9 of the Television Access Services Code MTG Ltd was required to audio describe 2% of the Channels' output in 2014. The Licensee was informed of this requirement in December 2012.

Ofcom noted that in May 2013 the Licensee informed Ofcom that the migration of its playout facility to new premises would present difficulties in respect of the provision of audio description. It also informed Ofcom that it expected this migration would be completed by “late summer/autumn 2014”. In light of this, Ofcom allowed MTG Ltd, exceptionally, to delay the start of its audio description provision on the Channels until autumn 2014, provided the whole year targets for audio description (2% across the year) were met in the final quarter of that year.

Subsequently, MTG Ltd informed Ofcom by letter in December 2013 that it was “confident” it was “on track to open the new playout next Autumn [2014]. MTG Ltd also confirmed that it “should be able to meet Ofcom’s requirements [...] in the last quarter of 2014”.

Despite this assurance, a further delay in the migration of the Licensee’s playout facilities occurred, resulting in no audio description being provided on the Channels in 2014. This lack of audio description provision was a clear breach of Rule 9 of the Code on Television Access Services.

However, on 26 March 2015 MTG Ltd started transmitting audio description on the Channels. Subsequently the Licensee informed Ofcom that in 2015 it intends to broadcast “6% of all content across the Channels with audio description, accounting for 2014’s target of 2% of content and 2015’s of 4%”.

In conclusion, Ofcom considered that the Licensee’s failure to broadcast any audio description on the Channels against a target of 2% in 2014 constituted a serious breach of the Access Services Code. We were concerned by this breach because blind and partially sighted consumers were denied access to any audio described programming on the Channels during 2014. However, on the condition that MTG fulfils its commitment to meet a 6% audio description target by the end of 2015, Ofcom does not propose to consider this breach of audio description requirements for the imposition of a statutory sanction.

Breaches of Rule 9 of the Code on Television Access Services

In Breach/Resolved

Under provision of Subtitling

AXN Polska, AXN Black and AXN White, January to December 2014

Introduction

Ofcom's Code on Television Access Services ("the Television Access Services Code"¹) requires television broadcasters to provide access services (subtitling, signing and audio description) on a proportion of their programming. Specifically Rule 9 of the Television Access Services Code states that "broadcasters are required to meet the targets set out below".

| Anniversary of relevant date ² | Subtitling | Signing | Audio Description |
|---|------------|---------|-------------------|
| First | 10% | 1% | 2% |
| Second | 10% | 1% | 4% |
| Third | 35% | 2% | 6% |
| Fourth | 35% | 2% | 8% |
| Fifth | 60% | 3% | 10% |
| Sixth | 60% | 3% | 10% |
| Seventh | 70% | 4% | 10% |
| Eighth | 70% | 4% | 10% |
| Ninth | 70% | 4% | 10% |
| Tenth | 80% | 5% | 10% |

Under Rule 9 of the Television Access Services Code, three channels broadcasting to Poland, AXN Polska, AXN Black and AXN White ("the Channels") were required to provide subtitles on 15%³ of their content during 2014. The Licences for the Channels are held by Axn Europe Limited ("Axn Ltd" or "the Licensee").

Ofcom had informed AXN Ltd of this requirement in December 2012. On 18 December 2012 Ofcom had published its report *Non-domestic television channels required to provide television access services in 2014*⁴ which had set out that the Channels had an obligation in 2014 to provide subtitling in line with the Television Access Services Code.

¹ <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

² For non-domestic broadcasters (channels operating in EU Member States other than the UK), the relevant date is the latter of either the date the channel commenced broadcasting or 1 January 2013.

³ In 2014, non-domestic broadcasters were permitted to subtitle an additional 5% of content in lieu of the signing obligations as set out in the Code.

⁴ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/Non-dom-channels-2014.pdf>

In February 2015 AXN Ltd reported to Ofcom the following levels of subtitling provision on the Channels in 2014:

| Channel | Quota | Achieved |
|------------|-------|----------|
| AXN Polska | 15% | 14.4% |
| AXN Black | 15% | 5.0% |
| AXN White | 15% | 5.0% |

Ofcom considered that these shortfalls raised a potential issue under Rule 9 of the Television Access Services Code. We therefore asked Axn Ltd how it had complied with this rule.

Response

Axn Ltd said that despite its “efforts and significant budget investment [it] encountered longer than anticipated delay to launch of the service due to technical issues which [were] alerted to Ofcom at the time”. Axn Ltd also said it “subsequently suffered an unprecedented global cyber-attack across all Sony Pictures networks⁵ which had the effect of wiping many of [its] technical and delivery systems as of November 2014 consequently severely hampering [its] ability to deliver and transmit files” with subtitles.

The Licensee said that “given the technical difficulties, the delivery of subtitles was prioritised for the significantly larger AXN Poland Channel⁶” given that it received “a viewer share eight to ten times larger than the AXN Black and White channels” and the subtitled programming “could be repeated [...] on the AXN Black and White channels”. Axn Ltd also told Ofcom that “[e]xcepting the cyber-attack, [it] had every expectation of exceeding the 15% target for AXN Poland which despite the unprecedented circumstances [it] almost delivered at 14.4%.”

Axn Ltd said that it takes “access services obligations seriously” and the benefits of the financial investments it made in 2014 “while delayed are now seen in significant increases in the early months of the 2015 year”.

Axn Ltd also made proposals as to how it intended to make up the shortfalls for 2014 on the three services. On AXN Polska (which fell short of its 2014 subtitling target by 0.6%), the Licensee said it would increase its 2015 subtitling target by 0.6%. With regard to AXN Black and AXN White, the Licensee noted that these services are not required to provide access services in 2015. Nonetheless, the Licensee proposed a commitment to provide 10% subtitling on both of these channels in 2015 to make up the 10% shortfall in 2014.

Decision

Ofcom’s and television broadcasters’ responsibilities in relation to the accessibility of broadcast content are set out in sections 303 to 305 of the Communications Act 2003. These sections make specific mention of subtitles and set statutory targets for broadcasters for its provision. The obligations are reflected in the rules set out in the Television Access Services Code.

⁵ Axn Ltd is ultimately owned and controlled by Sony Pictures Entertainment.

⁶ Axn Ltd stated that AXN Polska “receives a viewer share eight to ten times larger than the AXN Black and White channels”.

Under Rule 9 of the Television Access Services Code Axn Ltd was required to subtitle 15% of the Channels output in 2014. However, only 14.4% of AXN Polska's output and 5% of AXN Black and AXN White's output was subtitled. The under provision of subtitling on these channels represented clear breaches of Rule 9 of the Code on Television Access Services.

With respect to AXN Polska, Ofcom noted the Licensee's submission that a significant cyber-attack "severely hamper[ed]" the delivery of subtitles in December 2014 and that the level of under provision was relatively small (0.6%). In these circumstances, and on the condition that Axn Ltd exceeds its 2015 target by 0.6% on this service, Ofcom considered this matter resolved.

With respect to AXN Black and AXN White, Ofcom considered that the under provision of subtitling by 10%, against a target of 15%, in 2014 constituted serious breaches of the Television Access Services Code. However, on the condition that Axn Ltd fulfils its commitment to meet a 10% subtitling target on both these channels in 2015, Ofcom does not propose to consider these breaches of subtitling requirements for the imposition of a statutory sanction.

AXN Black and AXN White – Breaches of Rule 9 of the Code on Television Access Services

AXN Polska – Resolved

Advertising Scheduling cases

In Breach

NBC Nightly News

CNBC, 24 February 2015, 23:55

Introduction

CNBC is a 24-hour business and financial news channel which broadcasts across Europe, the Middle East and Africa on cable and satellite platforms. The licence for the channel is held by CNBC (UK) Limited (“CNBC (UK)” or “the Licensee”).

During a broadcast of *NBC Nightly News*, Ofcom noted the following announcement, which came immediately after a short clip looking ahead to a news story later in the programme, and immediately before a commercial break:

“NBC Nightly News is brought to you by Pacific Life – for insurance, annuities and investments”.

This voice-over was accompanied by a graphic of the name and logo of the company. The graphic filled the screen but was superimposed on footage of the studio, which was empty and lower lit than usual. The programme’s title, “*Nightly News*”, was clearly visible on a television screen on the side of a desk at the start of the sequence, and to a lesser extent on a number of other television screens throughout.

As it appeared that this material was a sponsorship credit, we considered that it raised issues under Rule 9.15 of the Code, which states:

“News and current affairs programmes must not be sponsored.”

CNBC (UK) informed Ofcom that the announcement was a ‘break bumper’, which it defined as “a caption board that appears before and at the end of commercial breaks”. The Licensee provided Ofcom with information about the commercial arrangement between Pacific Life and NBC in the US which had resulted in this material being included in the broadcast. It argued that the ‘break bumper’ did not meet the Code’s definition of sponsored programming, because the material was in fact part of an on-air advertising arrangement in the US. It therefore said that Rule 9.15 did not apply.

Following an assessment of the Licensee’s arguments, Ofcom considered that the advertising material raised issues warranting investigation under Rule 11 of the Code on the Scheduling of Television Advertising (“COSTA”), which states that:

“Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used as well.”

We therefore sought further representations from the Licensee.

Response

CNBC (UK) explained that *NBC Nightly News*, which is produced by NBC News, an affiliate company of the Licensee, is broadcast on NBC in the US, and simultaneously re-transmitted on CNBC in the UK. The Licensee said that the advertising and 'break bumpers' carried with the original US broadcast of the *NBC Nightly News* are ordinarily removed before retransmission. In this case, the Licensee stated that a 'break bumper' for Pacific Life had inadvertently been broadcast on CNBC due to "unfortunate human error".

CNBC (UK) set out that its UK transmission team had real-time access to: an audio feed of the production team directing the programme in the US, including its count-downs to advertising breaks; and a video feed of the programme allowing the UK transmission team to monitor the content. The Licensee stated that in future, in addition to these measures, the UK transmission team would be provided with a 'rundown' for each programme with a greater level of detail, allowing it to more accurately identify when the live feed required editing.

The Licensee also emphasised that it was "fully aware that it is responsible for ensuring that the material it broadcasts on services licensed by Ofcom complies with Ofcom codes, including the Broadcasting Code and COSTA...We take very seriously our responsibilities as a provider of business and finance news and we strive to adhere to the highest internal standards." CNBC (UK) added that it provides training to relevant staff on its regulatory obligations.

In addition, the Licensee argued that the timing of the 'break bumper' within the broadcast, and its aural and visual characteristics, were such that viewers would have been clear that this was not editorial content.

Regarding the timing of the 'break bumper', CNBC (UK) pointed out that it was broadcast approximately 30 minutes into the programme, after the commercial break had been signalled by the presenter saying, "*When we come back, a treasure hunt in the most unlikely of places...*". There was a brief description of the upcoming news story, accompanied by a short clip and the on-screen text "*Nightly News – COMING UP*" before the 'break bumper' was shown. According to the Licensee: "[This made] it clear to viewers that the highlighted story would be broadcast after the commercial break."

The Licensee argued: "Viewers of news programmes on commercial channels are familiar with the format of the programme breaking to commercial breaks. They would recognise when the anchor signed off thirty minutes into the programme, providing viewers with a brief five-second summary of the story that would be featured "*when we come back*", that the editorial content was pausing to allow for a commercial break."

Regarding the aural and visual characteristics of the 'break bumper', CNBC (UK) noted that it was broadcast "over a panning shot of an empty and darkened *Nightly News* studio", in which "an unmanned camera and an empty *Nightly News* anchor desk" could be seen, as well as "various television screens which [were] either off or [were] featuring the *Nightly News* logo". The Licensee argued that the fact that the studio was empty and darkened would have communicated to viewers that they were not watching editorial content, and that the programme had been paused for a commercial break.

CNBC (UK) also stated that the words of the voice-over made clear that the 'break bumper' was a commercial message: "*NBC Nightly News is brought to you by Pacific Life – for insurance, annuities and investments*". It added that the graphic of the name and logo of the company dominated the picture, and that the panning shot of the empty and darkened studio "was visually very different to the shots of the studio that featured in the Programme Transmission".

The Licensee stated that, in its view, these factors, taken together, meant that the material in question was distinguishable from editorial content. CNBC (UK) maintained that the material would have been readily recognisable as advertising for the same reasons, further emphasising that the focus of the 'break bumper' was the advertiser and not the programme. According to the Licensee: "In summary our view is that any limited association between the break bumper and the programme would not have prevented audiences from understanding the content to be advertising."

Decision

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

The Audiovisual Media Services (AVMS) Directive explicitly prohibits the sponsorship of news and current affairs programmes. Rule 9.15 of the Code reflects that prohibition. The AVMS Directive also requires that advertising is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. Rule 11 of COSTA reflects that requirement.

As noted in the Introduction above, Ofcom first considered that the voice-over and graphic indicated that *NBC Nightly News* had a sponsorship arrangement with Pacific Life. We therefore assessed whether Rule 9.15 of the Code, which states that news and current affairs content must not be sponsored, applied in this case.

We noted CNBC (UK) argued that the 'break bumper' on behalf of Pacific Life had been provided by NBC in the US as part of an advertising airtime deal. Having considered the information provided by the Licensee on this arrangement, we concluded the material was advertising rather than programming. As a result, Rule 9.15 did not apply.

We therefore considered the content under Rule 11 of COSTA, which states that advertising must be readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service.

We noted that, in its comments, the Licensee had pointed both to the timing of the 'break bumper', and to its aural and visual characteristics. Specifically, it argued that the start of a commercial break had been signalled by the presenter and by the preview of an upcoming news story, and claimed that viewers familiar with the format of news programmes on commercial channels would have understood that this meant the editorial content had been temporarily interrupted. It also argued that the words of the announcement made clear that it was a commercial message, and that the size of the graphic, coupled with it being set against the background of an empty and darkened studio, reinforced the impression that the material was advertising.

Ofcom noted the timing of the 'break bumper' within the broadcast, which came immediately after the preview of the upcoming news story, and immediately before the start of commercial break. In Ofcom's view, however, the material was not shown as part of the commercial break, having been differentiated from conventional 'spot' advertising by being embedded within the programme. We further noted that the graphic was superimposed on footage of the studio, which was identifiable despite being lower lit than usual, and also identified by the text, "*Nightly News*", on television screens in the studio. In our view, the association between the 'break bumper' and the programme was further strengthened by the words of the announcement: "*NBC Nightly News is brought to you by Pacific Life – for insurance, annuities and investments*". The Licensee argued that the focus of the 'break bumper' was the advertiser and not the programme, but we considered that this voiceover emphasised the link between the advertiser and the programme.

Rule 11 of COSTA requires that advertising is readily recognisable, and kept distinct from other parts of the programme service, as well being distinguishable from editorial content. However, and having taken all of the factors into account, Ofcom considered that the material closely resembled a sponsorship credit, as the focus was the link between the programme and the company. The timing of the 'break bumper' within the broadcast, in addition to its other characteristics, in our view would have contributed to the likely impression that this content was a sponsorship credit. As sponsorship credits are part of programming rather than advertising, Ofcom's view was that the 'break bumper' was not readily recognisable as advertising. We further considered that the material was not kept distinct from other parts of the programme service, because: the 'break bumper' was broadcast before the start of the commercial break and seemingly during the programme; the graphic was superimposed on an image of the programme's studio, which contained set references to *NBC Nightly News*; and the voice-over made reference to *NBC Nightly News*.

Ofcom recognised that this content was broadcast in error. We also welcomed the Licensee's proposals to improve its procedures for ensuring that programmes originally broadcast in the US are compliant with the relevant codes for re-transmission in the UK. However, it is of paramount importance that news and current affairs programmes on Ofcom-licensed television services are not, and do not appear to be, subject to commercial influence. The prohibition on the sponsorship of such programmes reflects that concern, and although in this case the material in question did not meet the definition of 'sponsored programming', it was nevertheless unfortunate that viewers may have been given the impression that the content was sponsored. Ofcom also requires that advertising must be readily recognisable and kept distinct from other parts of the programme service, so that viewers are not confused about what they are watching. On this occasion, the Licensee failed to ensure compliance with this requirement, and the material was in breach of Rule 11 of COSTA.

Breach of Rule 11 of COSTA

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

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

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

| Channel | Transmission date and time | Code and rule / licence condition | Summary finding |
|---------|----------------------------|-----------------------------------|---|
| Aaj Tak | 18 April 2015, 12:00 | Rule 4 of COSTA | Ofcom noted, during monitoring, that Aaj Tak exceeded the permitted advertising allowance on this date by two minutes and 27 seconds. Finding: Breach |

Broadcast Licence conditions cases

In Breach

Providing a service in accordance with ‘Key Commitments’

North Manchester FM Community Interest Company

| Licensee (Service name) | Decision |
|---|--|
| <p>North Manchester FM Community Interest Company (North Manchester FM)</p> | <p>Licence Condition 2(4) in Part 2 of the Schedule to North Manchester FM CIC’s licence states that:</p> <p>“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).”</p> <p>Ofcom received a complaint that North Manchester FM CIC was failing to hold regular volunteer meetings, as required by the Key Commitments contained in its licence. North Manchester FM CIC stated that:</p> <ul style="list-style-type: none"> • due to internal problems, the station’s Volunteer Steering Group (“VSG”) had not met properly for approximately one year; • it had now re-established the VSG and put plans in place for it to meet every six to eight weeks from May 2015 onwards. <p>While we acknowledged that North Manchester FM CIC has now recruited a new VSG, the previous VSG had not met for around a year. North Manchester FM CIC failed to notify Ofcom that it was experiencing difficulties in meeting this Key Commitment.</p> <p>Breach of Licence Condition 2(4)</p> |

In Breach

Broadcasting licensees' late and non- payment of licence fees

Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles¹. Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables².

The payment of a licence fee is a requirement of a broadcasting licence³. Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

In Breach

The following licensees failed to pay their annual licence fees in accordance with the required payment date. These licensees have therefore been found **in breach** of their broadcast licences. The outstanding fees have now been paid.

| Licensee | Licence Number | Service Name |
|-------------------------|----------------|---------------|
| Amazing Media Group Ltd | DN000018BA | Amazing Radio |
| Amazing Media Group Ltd | DP000167BA | Amazing Radio |
| Kennington Oval Limited | ADSRSL000007BA | Cricket Ball |

¹

http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

² http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff_Tables_2015_16.pdf

³ As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

Fairness and Privacy cases

Upheld

Complaint by JS Bank Limited and Mr Jahangir Siddiqui

Khara Sach, ARY News, 19 February 2014

Summary

Ofcom has upheld this complaint made by Joseph Hage Aaronson LLP (“JHA”) on behalf of JS Bank Limited¹ (“JS Bank”) and Mr Jahangir Siddiqui, the Chairman of JS Bank, of unjust or unfair treatment in the programme as broadcast.

The programme complained of was an edition of *Khara Sach*, a talk show programme presented by Mr Mubashir Luqman. Mr Luqman spoke about, amongst other topics, foreign financial investment in Pakistan and made reference to alleged corruption of the Pakistani government. He stated that the government was “robbing” and “ransacking” Pakistan’s national wealth and claimed that Mr Siddiqui was involved. His studio guest, Mr Aqeel Karim Dhedhi, stated that Mr Siddiqui and JS Bank had committed “fraud” amounting to “100 billion [rupees]”.

Ofcom found that given the significant nature of the allegations made in the programme, the broadcaster was required to offer Mr Siddiqui and JS Bank an appropriate and timely opportunity to respond, or if that opportunity was offered but refused (as ARY News said that it was), this should have been made clear in the programme, to avoid unfairness to Mr Siddiqui and JS Bank.

Introduction and programme summary

ARY News is a television station providing news coverage and information programming to the Pakistani community in the UK.

The complainant provided Ofcom with a recording of the programme which the broadcaster confirmed was the programme broadcast on 19 February 2014. A transcript of the programme in English (translated from the original Urdu) was also provided to Ofcom by the complainant. Ofcom asked the broadcaster to confirm that the translation was fair and accurate and that it had no objection to Ofcom relying on it in considering whether or not the complaint should be investigated. The broadcaster responded confirming its acceptance of the translation.

However, in proceeding with its investigation into this complaint, Ofcom decided that it was necessary to commission an independent translation company to provide it with a separate translation of the programme and obtained both parties’ confirmation that they were content for Ofcom to use this translation for the purpose of investigating the complaint. Both parties confirmed that they were content for Ofcom to use the translation. Ofcom has therefore used the agreed translation to come to this decision.

¹ According to its website (www.jsbl.com), JS Bank Limited was formed after the merger and amalgamation of Jahangir Siddiqui Investment Bank Limited and the commercial banking operations of American Express Bank Ltd Pakistan in 2006.

The programme

On the 19 February 2014, ARY News broadcast an edition of *Khara Sach* (translated from Urdu into English as “the Plain Truth”), a talk show programme presented by Mr Mubashir Luqman. Mr Luqman was joined by a studio guest, Mr Aqeel Karim Dhedhi, the Chairman of the AKD Group² (who was interviewed live but from a remote studio).

During this edition of *Khara Sach*, Mr Luqman spoke about, amongst other topics, foreign financial investment in Pakistan and referred to alleged corruption of the Pakistani government, led at the time of the broadcast by Prime Minister Nawaz Sharif.

Mr Luqman speculated that the government of Mr Sharif might not continue much longer and stated:

“One reason is the Americans, or you can say that the American government, has said that we would not invest in the local economy, we have no faith in the government, they are robbing the country with both hands, robbing, ransacking, institutions are being sabotaged, sold off and benefits are ripped. There are a few personalities behind all of this, among these pious names, which I have mentioned, there is Mr Samdhi³, Jahangir Siddiqui [the complainant], Mian Mansha⁴ and there are other pious individuals (this is said sarcastically) like this, there are big speculations being made about these people”.

Later in the programme, Mr Luqman mentioned a revised report of an investigation by the National Accountability Bureau (“NAB”) in Pakistan into the company, Sprint Energy, allegedly obtaining 14 “bogus licences”⁵ from the Pakistani Oil and Gas Regulatory Authority (“OGRA”). While Mr Luqman was talking, part of this report was shown scrolling down the screen. Mr Luqman stated that a couple of directors of Sprint Energy had been investigated for their involvement in the obtaining of the licences, but that:

“Jahangir Siddiqui and Baba Ji [Mr Shakil ur Rehman Mir], their name was not included in the ECL [Exit Control List]⁶, no inquiry was initiated against them. I

² The AKD Group is a business enterprise in Pakistani which, according to its website (<http://www.akdsecurities.net/>) operates “in key sectors of Pakistan’s economy, including financial services, telecom, infrastructure, manufacturing and natural resources”.

³ Ofcom understood this to refer to Mr Shakil ur Rehman Mir, the Chief Executive of Geo TV and the owner of Jang Group of Newspapers in Pakistan. Ofcom also understood the word “Samdhi” to mean related by marriage to a person, i.e. an in-law. Mr Jahangir Siddiqui’s son, Ali, is married to the daughter of Mr Mir.

⁴ Ofcom understood that Mian Muhammad Mansha a prominent Pakistani industrialist and entrepreneur.

⁵ Although both the programme and the complainant refer to the OGRA licences being “bogus” and “fake”, Ofcom understood that the OGRA licences themselves were authentic, but that it was alleged that they were potentially obtained fraudulently.

⁶ The Exit Control List is a system of border control in Pakistan.

have on me copies of different FIRs [First Information Report]⁷. But Jahangir Siddiqui and Baba Ji, their name was not included in the ECL List, no enquiry was initiated against them and never will be initiated, because this government wants the media on its side, they don't want their negatives exposed by them, so that their activities are kept secret and nothing is mentioned".

Parts of other documents were also shown scrolling down the screen.

Mr Luqman then stated:

"There was such a big NAB report presented to the court, how come there was no action taken? Is it that anyone who robs or commits theft, anyone who is running dubious activities, would never be punished?"

Mr Dhedhi responded:

"Listen, I will tell you the reason for this, this happened in 2010. And in 2010 this company [Sprint Energy] was in the ownership of Jahangir Siddiqui. And in 2010 Jahangir Siddiqui had four company directors responsible for this company. I have their Form 29, this included Muhammad Sajjid, Syed Hassan Akbar Kazmi, Mr Suleman Lallani and Jahangir Siddiqui sons and Aisha Qadri. These people were directors as well as partners and it has been proven against them that they have been involved in illegal business. I don't understand that although there is a case against Sprint Energy, the people responsible for this company, there is no case against them. Yes, can you hear me, if you have all of this proof, then think to yourself that the NAB, do they not understand that in Form 29 who were the directors of the company, who was their sponsor, how could there be a case logged against the company without (directors) others being involved, and why are these people not included in the case?"

Mr Dhedhi continued, giving his opinions on the Pakistani government and its connections with the media:

"I think this is because Mir Shakil [Mr Mir], nicknamed Mir Jaffar, they were his colleagues, that's the reason, there cannot be any other reason. And this is basically because there was no case registered against them. And one of their employees, Fahad, who is sitting in the Prime Minister's house, he has taken two years holiday and joined the Jahangir Siddiqui group. Today he is fulfilling his allegiance with them. The Chairman who is sitting in NAB, I think he is there because of his friends".

After a short diversion, he continued:

"There is evidence against Samdhi [Mr Siddiqui], he has committed fraud worth around 100 billion [rupees], if a court calls me and I am not able to prove this, whatever sentence is handed over, I would happily accept that. There is overwhelming evidence against them, JS Investment, JS Bank, ICI Pakistan, Mahvash Foundation (also known as the Mahvash and Jahangir Siddiqui Foundation (MJSF)), this is all on record, this is all with the Security Exchange

⁷ A First Information Report (FIR) is a written document prepared by police in Pakistan when they receive information about a "cognizable offence" (i.e. an offence for which the police may arrest a person without a warrant. The police do not require any orders from the court to start an investigation into this type of offence).

Commission⁸. Mir Shakil [Mr Mir], nicknamed Mir Jaffar has Alif Noon, which is protecting its interests in the Security Commission, all of this evidence is available in the Security Commission. I think that the government should check and balance on these issues before it's too late, because they are robbing the country and no one is mentioning them, this is a very alarming situation...".

Mr Dhedhi and Mr Luqman continued to discuss in further detail the alleged Sprint Energy "scandal" and the alleged corruption of the government in Pakistan. Mr Luqman held up a copy of a news report from the Pakistan newspaper, the 'Express Tribune', dated 28 September 2013. This article was entitled "Huge scandal: CNG [compressed natural gas] stations scam unearthed" stated: "Company owned by Jahangir Siddiqui submitted fake NOCs [no-objections certificates] of SNGP [Sui Northern Gas Pipelines Limited]" and "The Federal Investigation Agency (FIA) has registered over a dozen cases against Sprint Energy, a company owned by JS Group of Jahangir Siddiqui". Mr Luqman stated:

"I have these news articles from the Tribune. They say that the FIA Director Zafar Iqbal said that: 'Sprint Energy had submitted fake No Objection Certificates in November 2009 to acquire approval from Oil and Gas Regulatory Authority for relocating its CNG filling stations'. When this is all happening there is an FIA report, they have FIRs logged against them, there is a NAB report, everything has happened, how is it that this person is honourable? Why is this person not being investigated?"

Mr Luqman and Mr Dhedhi went on to further discuss the "large scale corruption" in Pakistan. Mr Luqman stated:

"...I had a message from Captain Umair, he is a friend and he was saying that he saw a 10 year old boy, who was being taken away by police in handcuffs, and when I asked what he had done, and I was told that he was breaking the law and flying a kite. A 10 year old boy flying a kite, Mian Shahbaz Sharif's [a Pakistani politician] police takes him to the police station and has him handcuffed, but they are not paying any attention around them to what is happening. Nor Mian Nawaz Sharif [Prime Minister of Pakistan] and neither is Mian Shahbaz Sharif interested. Where I had visited today, from where their candidate had won, people were on their knees begging Allah to save them from these corrupt people, people were cursing them...One of the reasons for this is because of Baba Ji [Mr Mir], Jahangir Siddiqui and Mian Mansha annexation. Aqeel Karim Dhedhi, can you please tell me, is it not a fact that a 10 year old boy is handcuffed and someone who has got away with 100 billion [rupees], no one is after him?"

Summary of the complaint and the broadcaster's response

JHA complained that JS Bank and Mr Siddiqui were treated unjustly and unfairly in the programme as broadcast because:

- a) The programme included a number of "inaccurate and defamatory assertions" by Mr Luqman and Mr Dhedhi about JS Bank and Mr Siddiqui that were false, misleading and not supported by any evidence. In particular:

⁸ Security and Exchange Commission of Pakistan is, according to its website, a financial and corporate services regulator.

- i) Mr Dhedhi asserted, falsely, that Mr Siddiqui and JS Bank had committed “frauds” amounting to “100 billion rupees”⁹.

In response, ARY News said that Mr Dhedhi had claimed that he had solid evidence in support of this allegation and that he had filed a case against Mr Siddiqui relating to this fraud in the High Court in Pakistan.

- ii) Mr Luqman discussed an investigation undertaken by the Pakistan National Accountability Bureau (“NAB”) into Sprint Energy, a company owned by the JS Group,¹⁰ regarding the alleged obtaining of “fake” OGRA licences to relocate compressed natural gas filling stations. Mr Luqman alleged that Mr Siddiqui had neither been duly investigated, nor had been placed on the ECL because the Pakistani government wanted to safeguard its relationship with the media. JHA said that had Mr Luqman been acting fairly and justly, he would not have asserted that, and would have stated that the investigation had practically cleared Sprint Energy of any wrongdoing.

In response, ARY News said that Mr Siddiqui fraudulently obtained several OGRA licences “...to run the spurious oil and gas trade in the country”. It said that it had evidence to support this.

It also said that it had evidence in support of the fact that Mr Siddiqui “...got away with it”. It said that Mr Shakil ur Rehman Mir¹¹, who was related through marriage to Mr Siddiqui and a “powerful media baron”, had enabled him to do this. ARY News said that:

“Due to Mr Shakil [Mr Mir], Mr Siddiqui slipped through the accountability net and despite several cases against him in the Pakistani courts, he is still at large. His oil and gas company, Sprint Energy, is blatantly involved in massive frauds in Pakistan”.

- iii) The programme asserted throughout that Mr Siddiqui had contributed to the “looting” and “plundering” of Pakistan’s national wealth.

In response, ARY News said that Mr Siddiqui “...has been involved in colossal looting and plundering of poor people of Pakistan who rely upon foreign aid from UK’s DfID (Department for International Development) and USAID”. It said that it had evidence in support of this.

- b) JS Bank and Mr Siddiqui were not given an appropriate or timely opportunity to respond to the allegations made in the programme. JHA said that no attempt was made by the broadcaster to obtain a response from Mr Siddiqui or the bank.

⁹ The translation for the programme used for the Entertainment Decision was provided by the complainant. As explained above, however, in proceeding with its investigation into this complaint, Ofcom commissioned a separate translation of the programme which has been accepted by both parties. As a result, the quotes from the translation used for the Entertainment Decision, as quoted in the heads of complaint, may be different to the wording in the new translation included in the “Introduction and Programme Summary” section above.

¹⁰ Ofcom understood that JS Group was a financial services group in Pakistan, founded in 1971 by Mr Siddiqui. JS Group consists of a number of organisations, such as, JS Industrial, JS Property, and JS Financial (which operates JS Bank).

¹¹ Mr Shakil ur Rehman Mir is the Chief Executive of Geo TV and the owner of Jang Group of Newspapers in Pakistan. See footnote 3 above.

In response, ARY News said that Mr Siddiqui and Mr Mir were invited to appear on the programme to clarify their position. It said that at the start of every programme related to them the presenter, Mr Luqman “always invites them to appear in the studios”.

ARY News said that, although Mr Mir and Mr Siddiqui were living in Dubai, Mr Luqman had encouraged them to join him in the ARY studios on a number of occasions. It said that they had been offered plane tickets to appear on the programme.

ARY News said therefore it was untrue that Mr Siddiqui and Mr Mir had not been offered the opportunity to be heard.

Representations on Ofcom’s Initial Preliminary View

Ofcom’s initial Preliminary View in this case was that JHA’s complaint made on behalf of Mr Siddiqui and JS Bank of unjust or unfair treatment in the programme as broadcast should be upheld. In summary, Ofcom provisionally concluded that:

- With regards to heads a) i) and a) iii) of the complaint (as set out in the “Summary of the complaint and the broadcaster’s response” section above), the broadcaster did not take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Siddiqui and JS Bank.
- However, with regards to head a) ii) of the complaint (as set out in the “Summary of the complaint and the broadcaster’s response” section above), it was Ofcom’s view that Mr Luqman clearly implied in the programme that he considered that Mr Siddiqui had not been duly investigated with regards to Sprint Energy’s alleged fraudulent obtaining of OGRA licences. We considered that this was a serious claim which had the clear potential to materially and adversely affect viewers’ opinions of JS Bank and Mr Siddiqui.

This said, we noted JHA’s specific complaint, i.e. that Mr Luqman’s comments were unfair because he had omitted to make clear that: “...the investigation had practically cleared Sprint Energy of any wrongdoing”. We interpreted this statement to mean that Sprint Energy was not completely cleared of all wrongdoing. Overall, in the context of Mr Luqman’s comments about the investigation into Sprint Energy we did not consider that omitting to make clear that the investigation had “practically” cleared Sprint Energy of any wrongdoing was likely to materially and adversely affect viewers’ opinions of JS Bank and Mr Siddiqui.

Therefore, it was our view that, in context, these particular comments made by Mr Luqman and alleged omission of information relating to the outcome of the investigation highlighted by JHA would not have materially and adversely affected viewers’ opinions of JS Bank or Mr Siddiqui in a way that was unfair to them.

- Given the significant nature of the allegations made in the programme, the broadcaster was required to offer Mr Siddiqui and JS Bank an appropriate and timely opportunity to respond, or if that opportunity was offered but refused (as ARY News said that it was), this should have been made clear in the programme, to avoid unfairness to Mr Siddiqui and JS Bank.

Both parties were given the opportunity to make representations on the initial Preliminary View which are summarised below (in so far as they were relevant to the complaint entertained by Ofcom).

JHA's representations

In summary, JHA said that it agreed with Ofcom's Preliminary View that the programme taken as a whole had resulted in unfairness to JS Bank and Mr Siddiqui and it reiterated its assertion that to the best of its knowledge neither JS Bank nor Mr Siddiqui had at any time been invited to appear on the programme.

With regards to head a) ii) of the Preliminary View, the complainant considered that ARY News had acted unfairly. It said that ARY News had not produced any evidence to substantiate the claims made in relation to Sprint Energy and that it was not made clear in the programme that the information provided in the programme and relied upon by the presenter was unverified. JHA said that the various documents referred to in the programme were presented in an "inaccurate, incomplete and misleading way".

JHA said that Mr Luqman's allegations that Mr Siddiqui had not been properly investigated or placed on the ECL resulted in unfairness to Mr Siddiqui. It argued that even to the extent that viewers may have interpreted Mr Luqman's comments to be his personal view, his presentation of the underlying facts would not have been interpreted as such. It said that the comments made by Mr Luqman regarding Mr Siddiqui not being investigated properly and having not been put on the ECL were serious claims that had the potential to materially and adversely affect viewers' opinions of Mr Siddiqui.

It said that Mr Siddiqui had never been a director of Sprint Energy and to his knowledge had never been personally the subject of any investigation into Sprint Energy. It said that it was unfair to suggest that Mr Siddiqui had personally behaved wrongly with regards to Sprint Energy.

ARY News' representations

ARY News said that it had "extensive documentation to support the statements referenced in the show" and it provided Ofcom with various newspaper articles which it said showed "JS Bank's wrongdoing and shares manipulation" and demonstrated that the comments in question made in the programme related to information already in the public domain. It also provided Ofcom with a section of a report by the Security Exchange Commission into "Jahangir Siddiqui Bank formally Jahangir Siddiqui Investment Bank (JSBL)" and a section of a report by the Federal Board of Revenue ("FBR") into the "allegation of involvement of Mahvash and Jehangir Siddique Foundation in share trading including future and Badla¹² transaction in violation of its own Articles of Association". It said that it considered that the documentation provided to Ofcom "...taken together, provides the factual bases for the statements made in the show".

With regards to head b), ARY News reiterated that the programme makers had called and left messages for JS Bank and Mr Siddiqui in advance of the programme inviting them to participate in the programme and had also invited them to participate in the programme during the broadcast. However, it said that it had now revised its

¹² Ofcom understood "Badla" to be a prohibited form of trading involving buying stocks with borrowed money.

procedures with regards to offering relevant parties the chance to reply to claims made and that programme makers were now expected to keep phone logs of calls and to obtain “read receipts” where offers to participate were made via email.

Having carefully considered both parties’ representations and the further information provided, Ofcom considered it appropriate to reconsider its Preliminary View in respect of each of the separate subheads of complaint under head a). Ofcom’s revised reasoning is reflected in the decision below.

Revised Preliminary View

Ofcom prepared a revised Preliminary View on this case that the complaint should be upheld. Both parties were given the opportunity to make representations on the revised Preliminary View, but neither party had any further relevant comments to add. Our decision is set out below.

Decision

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

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

Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment, as contained in 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. However, the broadcaster’s right to freedom of expression is not absolute and, in carrying out its duties, Ofcom must balance the right to freedom of expression with the requirements of the Code, including Section Seven (Fairness).

Rule 7.1 of the Code states that: “Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes”. In addition to this Rule, Section Seven (Fairness) contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes. Following these practices will not necessarily avoid a breach of Rule 7.1, but failure to follow these practices will constitute a breach of Rule 7.1 where it results in unfairness to an individual or organisation in the programme.

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and translated transcript, agreed by both parties, of the *Khara Sach* programme as broadcast, both parties’ written submissions, and supporting documentation. We also considered the representations made by the parties on the initial Preliminary View.

In assessing this case it was not Ofcom’s role to make a determination about the truth or otherwise of the allegations made in the programme. Our concern in this

case was solely whether the programme had complied with Section Seven (Fairness) of the Code. In carrying out its assessment, Ofcom took into consideration the nature of the allegations against Mr Siddiqui and JS Bank and the questions they raised about the relationship of Mr Siddiqui and JS Bank with the Pakistani government and the integrity of the government itself. Against this background, and in line with the right to freedom of expression, we considered it legitimate for a broadcaster to make and broadcast a programme examining allegations of corruption implicating prominent business interests and state institutions in Pakistan. Nevertheless, we considered that, in making and broadcasting such a programme, a broadcaster must ensure that it avoids unjust or unfair treatment of organisations or individuals in the programme pursuant to Section Seven (Fairness) of the Code.

We considered in turn each of the heads of the complaint as set out in the “Summary of the complaint and the broadcaster’s response” section above.

- a) Ofcom first considered whether material facts about or related to JS Bank and Mr Siddiqui were presented, disregarded or omitted in a manner which gave viewers an unfair impression of them through the inclusion of the following comments referred to under head a) of JHA’s complaint as “inaccurate and defamatory assertions” that were “false, misleading and not supported by any evidence”:
 - i) Mr Dhedhi asserted, falsely, that Mr Siddiqui and JS Bank had committed “*frauds*” amounting to “*100 billion rupees*”;
 - ii) the allegation by Mr Luqman that Mr Siddiqui had neither been duly investigated regarding the alleged obtaining of “fake” OGRA licences, nor had been placed on the ECL because the Pakistani government wanted to safeguard its relationship with the media; and
 - iii) the assertions throughout the programme that Mr Siddiqui had contributed to the “looting” and “plundering” of Pakistan’s national wealth.

In considering whether material facts about or related to Mr Siddiqui and JS Bank were presented, disregarded or omitted in a manner which gave viewers an unfair impression of them through the inclusion of the above comments, Ofcom had regard to Practice 7.9 of the Code which states:

“Before broadcasting a factual programme [...] broadcasters should take reasonable care to satisfy themselves that: material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation [...]”.

Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

We began by considering the seriousness of the allegations and whether they had the potential to materially and adversely affect viewers’ opinion of Mr Siddiqui and JS Bank in a way that was unfair. We then went on to consider whether, if they did have this potential, the manner in which the allegations were presented in the programme resulted in unfairness.

Seriousness of the allegations

- i) Mr Dhedhi asserted, falsely, that Mr Siddiqui and JS Bank had committed “frauds” amounting to “100 billion rupees”.

In the programme, we noted that Mr Dhedhi stated:

“There is evidence against Samdhi [Mr Siddiqui], he has committed fraud worth around 100 billion [rupees], if a court calls me and I am not able to prove this, whatever sentence is handed over, I would happily accept that. There is overwhelming evidence against them, JS Investment, JS Bank, ICI Pakistan, Mahvash Foundation (also known as the Mahvash and Jahangir Siddiqui Foundation (MJSF)), this is all on record, this is all with the Security Exchange Commission. Mir Shakil [Mr Mir], nicknamed Mir Jaffar has Alif Noon, which is protecting its interests in the Security Commission, all of this evidence is available in the Security Commission. I think that the government should check and balance on these issues before it's too late, because they are robbing the country and no one is mentioning them, this is a very alarming situation...”

We considered that this assertion that there was evidence that Mr Siddiqui and JS Bank had committed “*fraud worth around 100 billion [rupees]*” amounted to a strong and unequivocal allegation that Mr Siddiqui and JS Bank had engaged in fraudulent behaviour. We considered, therefore, that this was a serious claim which had the clear potential to materially and adversely affect viewers’ opinion of them both.

- ii) Mr Luqman discussed an investigation undertaken by the National Accountability Bureau into Sprint Energy, a company owned by the JS Group, regarding the alleged obtaining of “fake” OGRA licences to relocate compressed natural gas filling stations. Mr Luqman alleged that Mr Siddiqui had neither been duly investigated, nor had been placed on the ECL because the Pakistani government wanted to safeguard its relationship with the media. JHA said that had Mr Luqman been acting fairly and justly, he would not have asserted that, and would have stated that the investigation had practically cleared Sprint Energy of any wrongdoing.

In assessing this sub-head of complaint, Ofcom restricted its consideration to the allegation made by Mr Luqman that Mr Siddiqui had not been duly investigated or placed on the ECL because of his relationship with the Pakistani government and whether or not this resulted in unfairness to him in the programme as broadcast. Given that Sprint Energy was not a party to this complaint, it was not necessary for Ofcom to consider any alleged unfairness to this company.

Ofcom noted the comments made by Mr Luqman during the programme in relation to the investigation by the National Accountability Bureau and Mr Siddiqui:

“Jahangir Siddiqui and Baba Ji [Mr Mir], their name was not included in the ECL [Exit Control List], no inquiry was initiated against them. I have on me copies of different FIRs [First Information Reports]. But Jahangir Siddiqui and Baba Ji, their name was not included in the ECL List, no enquiry was initiated against them and never will be initiated, because this government wants the media on its side, they don't want their negatives

exposed by them, so that their activities are kept secret and nothing is mentioned”.

...

“And in 2010, Janhangir Siddiqui had four company directors responsible for this company [Sprint Energy]. I have their Form 29, this included Muhammad Sajjid, Syed Hassan Akbar Kazmi, Mr Suleman Lallani and Jahangir Siddiqui sons and Aisha Qadri. These people were directors as well as partners and it had been proven against them that they have been involved in illegal business. I don’t understand that although there is a case against Sprint Energy, the people responsible for this company, there is no case against them”.

Ofcom considered that the language used by Mr Luqman was accusatory in nature and clearly implied that Mr Siddiqui himself had not been duly investigated by the NAB in relation to its investigation into Sprint Energy’s alleged fraudulent obtaining of OGRA licences. It was clear to us from watching the programme along with reading the translated transcript that Mr Luqman held what he referred to as FIRs, the implication being that these FIRs related to Mr Siddiqui and Mr Mir in connection with the Sprint Energy investigation. In Ofcom’s opinion, Mr Luqman presented this allegation strongly and as an unequivocal fact supported by evidence (i.e. the copies of the FIRs). In these circumstances, we considered that Mr Luqman’s comments amounted to a serious allegation that Mr Siddiqui had been involved in wrongdoing and that he had avoided investigation because of his connections with the Pakistani government. Ofcom considered that the allegation was serious in nature and had the clear potential to materially and adversely affect viewers’ opinions of Mr Siddiqui.

- iii) The programme asserted throughout that Mr Siddiqui had contributed to the “looting” and “plundering” of Pakistan’s national wealth.

For example, Mr Luqman speculated that Mr Sharif’s government’s days may be numbered and stated:

“One reason is the Americans, or you can say that the American government, has said that we would not invest in the local economy, we have no faith in the government, they are robbing the country with both hands, robbing, ransacking, institutions are being sabotaged, sold off and benefits are ripped. There are a few personalities behind all of this, among these pious names, which I have mentioned, there is Mr Samdhi, Jahangir Siddiqui [the complainant], Mian Mansha and there are other pious individuals (this is said sarcastically) like this, there are big speculations being made about these people”.

Mr Dhedhi also said:

“There is evidence against Samdhi [Mr Siddiqui], he has committed fraud worth around 100 billion [rupees], if a court calls me and I am not able to prove this, whatever sentence is handed over, I would happily accept that. There is overwhelming evidence against them, JS Investment, JS Bank, ICI Pakistan, Mahvash Foundation (also known as the Mahvash and Jahangir Siddiqui Foundation (MJSF)), this is all on record, this is all with the Security Exchange Commission. Mir Shakil [Mr Mir], nicknamed Mir Jaffar has Alif Noon, which is protecting its interests in the Security

Commission, all of this evidence is available in the Security Commission. I think that the government should check and balance on these issues before it's too late, because they are robbing the country and no one is mentioning them, this is a very alarming situation..."

And further in the programme Mr Luqman stated:

"...A 10 year old boy flying a kite, Mian Shahbaz Sharif's [a Pakistani politician] police takes him to the police station and has him handcuffed, but they are not paying any attention around them to what is happening. Nor Mian Nawaz Sharif [Prime Minister of Pakistan] and neither is Mian Shahbaz Sharif interested. Where I had visited today, from where their candidate had won, people were on their knees begging Allah to save them from these corrupt people, people were cursing them...One of the reasons for this is because of Baba Ji [Mr Mir], Jahangir Siddiqui and Mian Mansha annexation. Aqeel Karim Dhedhi, can you please tell me, is it not a fact that a 10 year old boy is handcuffed and someone who has got away with 100 billion [rupees], no one is after him?"

We acknowledged that the words "looting" and "plundering" as used in the complaint and the Entertainment Decision, do not appear in the independent translation used by Ofcom in considering this complaint (see footnote 9). Instead, the independent translation included the words "*robbed*" and "*ransacked*". While recognising the difference in the words used, Ofcom considered, taking the natural and ordinary meaning of the words, that viewers were likely to have understood Mr Luqman's comments to be allegations that Mr Siddiqui had been criminally dishonest in relation to acquiring money from Pakistan's national wealth.

It was Ofcom's view that Mr Luqman stated, as fact, that Mr Siddiqui had been involved in "*robbing*" and "*ransacking*" Pakistan's national wealth. Similar comments were repeated throughout the programme by both Mr Luqman and Mr Dhedhi, as demonstrated in the above examples. It was our view that the inclusion of references to Mr Siddiqui allegedly "*robbing*" and "*ransacking*" Pakistan's national wealth and being involved in fraud amounting to "*100 billion [rupees]*" as an illustration of this had the potential to be damaging to Mr Siddiqui's reputation. To broadcast comments that an individual has been involved in "*robbing the country*" (i.e. to accuse him of being dishonest, involved with corruption and stealing on a large scale) is a serious matter. We considered that this was especially true due to the context in which the remarks were made, that is, alongside various accusations of Mr Siddiqui committing fraud. We therefore considered that the remarks had the potential to materially and adversely affect viewers' opinion of Mr Siddiqui in a way that was unfair.

Presentation of allegations

From the information provided to Ofcom by both parties (including the broadcaster's representations on the initial Preliminary Review and its "extensive documentation to support the statements referenced in the show") it was clear that the allegations related to matters of ongoing discussion within Pakistan and were the subject of ongoing dispute between the parties. As such, it was neither possible nor appropriate for Ofcom to make a determination about the accuracy or otherwise of what was said in the programme or the information contained in

the various documents that each party had submitted to Ofcom in support of their position.

It was, however, clear to Ofcom that the viewpoints of Mr Siddiqui and JS Bank on the allegations were not included in the programme. For the reasons set out above Ofcom considered that the allegations were serious and had the clear potential to materially and adversely affect viewers' opinion of them both. It was incumbent, therefore, on the broadcaster to give Mr Siddiqui and JS Bank an appropriate and timely opportunity to respond, or if that opportunity was offered but refused, this should have been made clear in the programme. We consider this in detail below against Practice 7.11 under head b) of the complaint, where we set out our reasons for reaching the view that the broadcaster failed to take these steps. However, in relation to head a) of the complaint we also considered that this resulted in the broadcaster failing to take reasonable steps in accordance with Practice 7.9 to satisfy itself that material facts about Mr Siddiqui and JS Bank had not been presented, disregarded or omitted in a way that was unfair to them. We therefore considered that the way in which the allegations were presented in the programme resulted in unfairness to Mr Siddiqui and JS Bank.

- b) JS Bank and Mr Siddiqui were not given an appropriate or timely opportunity to respond to the allegations made in the programme. JHA said that no attempt was made by the broadcaster to obtain a response from Mr Siddiqui or the bank. JHA also pointed out that no reason was given for the absence of a contribution from either Mr Siddiqui or JS Bank.

In assessing this head of complaint Ofcom took into account Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

For the reasons already given in head a) above, Ofcom considered that some of the comments made in the programme (as detailed above) amounted to significant allegations against Mr Siddiqui and JS Bank. Normally, where a significant allegation is made about an individual or organisation in a programme, the broadcaster should ensure that the individual or organisation concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

Due to the nature of this type of live programming, guests and callers can sometimes make unexpected comments which have the potential to cause unfairness to an individual/organisation. Nevertheless, the broadcaster must ensure that the Code is adhered to by taking measures to avoid unfairness. In this case, Ofcom noted that Mr Dhedhi had been invited on to the programme in advance and considered that it was likely that both the presenter and the programme makers would have had a relatively clear idea when they invited him to participate what the likely subject matter and nature of the conversation would be with regards to Mr Siddiqui and JS Bank. Taking this into account, the programme makers should have ensured that Mr Siddiqui and JS Bank were also invited to participate in the programme or that they were given an appropriate opportunity to respond to any serious allegations made in the programme about them.

Having regard to Practice 7.11, Ofcom noted that ARY News told Ofcom in response to the complaint that Mr Siddiqui and Mr Mir were invited to appear on

the programme to clarify their position, as the presenter, Mr Luqman, “always invites them to appear in the studios” at the start of every programme related to them. Ofcom read the agreed transcript through carefully. We noted that it contained no reference to Mr Luqman issuing an invitation to Mr Siddiqui, Mr Mir or a representative from JS Bank to contribute to this particular edition of *Khara Sach*. Moreover, the broadcaster provided no evidence (such as email correspondence) that it had sought any comment from Mr Siddiqui or a representative from JS Bank at any stage during preparations for the programme.

In any event, although the broadcaster claimed it had attempted to contact Mr Siddiqui, it did not make clear in the programme that it had sought a response in any form in advance of the programme going on air from Mr Siddiqui or JS Bank or whether one had been provided.

Ofcom considered that given the serious nature of the allegations made against Mr Siddiqui and JS Bank (i.e. that they had committed “*fraud*” amounting to “*100 billion [rupees]*” and that Mr Siddiqui had contributed to the “*robbing*” and “*ransacking*” of Pakistan’s national wealth and had avoided investigation because of his connections with the Pakistani government), the broadcaster was required to offer Mr Siddiqui and JS Bank an appropriate opportunity to respond to the allegations made.

Taking all of this into account, and for the reasons given above, Ofcom considered that Mr Siddiqui and JS Bank had been treated unfairly in this respect in the programme as broadcast.

Ofcom noted the comments made by ARY News in its representations on the initial Preliminary View with regards to head b) of the complaint but considered that it had taken account of all the relevant factors concerning this issue in the initial Preliminary View, and was not persuaded by ARY News’ representations.

Therefore, Ofcom has upheld JHA’s complaint made on behalf of Mr Siddiqui and JS Bank of unfair treatment in the programme as broadcast. Ofcom is directing ARY News to broadcast a summary of its findings in this case.

Not Upheld

Complaint by Ms O

Left for Dead: By the Yorkshire Ripper, Channel 5, 5 March 2014

Summary

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

The programme included accounts of the experiences of the surviving victims of the serial killer, Mr Peter Sutcliffe, known as the Yorkshire Ripper. The complainant, Ms O (the daughter of Ms Wilma McCann, one of Mr Sutcliffe's victims), did not appear in the programme. However, her brother, Mr Richard McCann, did appear and he explained the effect the murder of their mother had had on him and his family. A photograph featuring Mr McCann, Ms O and their two other siblings as children was shown twice during the programme. Their faces were not obscured.

Ofcom found that:

- Ms O had a limited legitimate expectation of privacy with regard to the broadcast of the photograph of her as a child with her siblings. However, in the particular circumstances of this case, it was our view that the infringement of Ms O's privacy was warranted.
- The broadcaster should, as a matter of best practice, have taken steps to inform Ms O about its plan to make and broadcast the programme, in order to try to reduce any potential suffering and distress to her. Given that Ms O's privacy was not unwarrantably infringed by the broadcast of the photograph, the fact that the broadcaster did not take such steps did not, however, constitute an unwarranted infringement of Ms O's privacy.

Introduction and programme summary

On 3 March 2014, Channel 5 broadcast *Left for Dead by the Yorkshire Ripper*, a documentary programme about the surviving victims of the serial killer, Mr Peter Sutcliffe, known as the Yorkshire Ripper, who were meeting each other for the first time. The programme included interviews with four individuals who were attacked by Mr Sutcliffe and survived, a retired police detective who had been involved in the murder investigations, and Mr Richard McCann (the complainant's brother), whose mother, Ms Wilma McCann (also the complainant's mother) had been murdered by Mr Sutcliffe. The programme also explored how Mr Sutcliffe had managed to evade arrest for over five years.

Headshot photographs of Mr Sutcliffe's victims were shown throughout the programme, including a black and white photograph of Ms Wilma McCann.

The part of the programme which featured the murder of Ms Wilma McCann began with Mr McCann visiting the graves of his mother and of another sister, Ms Sonia Newlands. The programme's narrator said:

"It's not just the people who were attacked by the Yorkshire Ripper whose lives were profoundly changed".

The same headshot photograph of Ms Wilma McCann shown earlier in the programme was broadcast again, and then a black and white photograph of the complainant (Ms O) with her three other siblings as children was shown. This photograph showed three girls and one boy, all who appeared under the age of ten. In the photograph, the children were holding toys and it appeared that the photograph had been taken inside a house. Their faces were not obscured. The narrator explained:

“Richard McCann and his three siblings will never forget the night their mum Wilma went missing after a night in the red light district”.

This photograph was shown for approximately five seconds.

A photograph of Mr McCann and his late sister, Ms Newlands, as children was then shown. Mr McCann described the events which led to him and his siblings discovering that their mother had been murdered:

“Sonia woke me about 5.30 to tell me that Mum hadn’t come home and we were to go look for her. We left the house, the two of us, leaving the other two in bed and we walked to the local bus stop. We sat and waited for the first bus to arrive; hoping that mum would be on it, expecting her to be on it in fact. Of course she wasn’t. A number of buses came and went and we started to get more worried. With no sign of her, we went home. We actually went home hoping that she might have arrived home whilst we were at the bus stop, in a taxi maybe. And we quickly realised by looking around the house she wasn’t there so we got the two youngest out of bed and tried to kill some time...And then there was a commotion on the street, there was police everywhere”.

The narrator stated that:

“Wilma’s body had been found in a playing field just a few yards from her home”.

A photograph of Ms Wilma McCann’s body lying on the playing field where she was found was shown, along with the same headshot photograph of her shown earlier in the programme. The narrator explained that:

“She’d been hit with a hammer then stabbed to death. Like the other survivors, life for Richard and his sisters would never be the same again”.

The same photograph of Ms O with her siblings as children was shown again (this time for approximately 12 seconds).

Mr McCann explained:

“Well the thing that I’ll never forget is the police officer breaking the news to us that he was sorry - that mum had been taken to heaven is what I recall him saying, that we weren’t going to see her again and I didn’t believe him. At that age you don’t understand...so I convinced myself that if I prayed hard enough she would be brought back [the same headshot photograph of Ms Wilma McCann was shown] and I think as time went on I realised that she wasn’t coming back”.

The narrator said that following the murder of their mother, Mr McCann and his siblings were sent to live with their father. Mr McCann said:

"I missed her all the time, it was just a constant thing at the back of your mind that mum's not here. I felt that I was unsafe because I thought that whoever killed mum knew who I was and was going to kill me".

Later in the programme, the narrator stated that whatever the motivation for Mr Sutcliffe's attacks: *"all his victims have suffered from the profound emotional fallout"*. Some of the victims briefly explained in the programme the emotional impact the attacks had had on their lives.

The programme discussed how both Mr McCann and his late sister, Ms Newlands, had turned to *"drink, drugs and crime"* following the murder of their mother. Mr McCann explained that after his release from prison in 1997, he had: *"decided life was not worth living and I rang up my sister Sonia and...she knew I was going to take my life and she agreed that she would come with me"*. The narrator explained that: *"Richard came to his senses and decided he wanted to live. Sonia, however, had made her mind up. Ten years later she carried out her plan"*. Mr McCann explained that he got a phone call from his sister *"Angela"* who informed him that their sister, Ms Newlands, had committed suicide.

The final part of the programme gave the details of Mr Sutcliffe's arrest. Mr McCann said:

"Even when he was arrested, I don't remember feeling joy. The elation that you would expect somebody to feel – I mean yes of course I was glad. It was great that he was arrested, but it didn't bring my mum back".

Footage of Mr McCann at the grave of his mother and sister laying flowers followed. He continued:

"Once he was arrested, and we had this name, we had this face, this bearded face. It looked like a monster. I hated seeing his face".

The other victims explained how they felt when Mr Sutcliffe was arrested. Footage of the four surviving victims' first meeting together was shown and a brief discussion about the impact the attacks had had on their lives was included.

Further footage of Mr McCann at the grave of his mother and sister was broadcast. Footage which focused on the grave itself was also shown. He explained that:

"My feelings towards Peter Sutcliffe have changed throughout my life. You know in the early years wanting him dead and being very angry about what he'd done, hating his picture. I've always known you can never bring mum and Sonia back, but if I could forgive him that could possibly change how I felt about mum's death, and it did".

He concluded:

"It's incredible to have a family, to have children, who have reached the age I was when mum died. That man is not going to ruin my life. I'm not allowing him to ruin my life".

Summary of the complaint and the broadcaster's response

Ms O complained that her privacy was unwarrantably infringed in the programme as broadcast because:

- a) A photograph of her as a young child was shown in the programme without her consent. Ms O said that she had no wish to share the photograph with the public and so its inclusion in the programme was an intrusion into her private life.

By way of background, Ms O said that the photograph was taken on the day that she and her siblings were placed in protective custody by social services following the murder of their mother. Ms O said that people had recognised her from the photograph shown in the programme and she felt she was “reliving the horror” of the day her mother was murdered.

In response, Channel 5 said that Mr McCann had provided the programme makers with the photograph of himself and his siblings when they were children. Channel 5 provided Ofcom with copies of Mr McCann's explicit written consent for the programme to use the photograph and his consent form covering his contribution to the programme. The broadcaster said the programme makers were not aware that Mr McCann had not been in contact with Ms O about the programme and that their understanding was that Mr McCann represented the entire family and that the detail of the programme had been shared with them.

The broadcaster said that following the broadcast of the programme, Ms O contacted Channel 5 directly about the inclusion of the photograph of her as a young child with her siblings. It said that it had immediately taken steps to edit the programme so that the photograph of Ms O was blurred for any repeat of the programme. The broadcaster added that if they had known that Ms O did not want the photograph to be shown, it would not have formed part of the programme. However, Channel 5 argued that the inclusion of the photograph of Ms O with her siblings in the programme did not amount to an unwarranted infringement of her privacy because of the widespread publication of similar photographs which appeared to have been taken on the same occasion and which were already in the public domain (a copy of one such photograph was provided to Ofcom by Channel 5). The various sources where the similar photograph was included were:

- a book published in 1981 entitled *Deliver us from evil* by David Yallop;
- a search of “Wilma McCann” in Google images;
- a newspaper article from 1981 included in a BBC1 documentary entitled *The Ripper Murdered My Mum* broadcast on 10 May 2005;
- a Daily Mail newspaper article about Mr McCann's book *Just a Boy* (published in paperback form in 2005);
- a video available on Mr McCann's website; and,
- a website which gave details about the victims of the Yorkshire Ripper.

Therefore, the broadcaster said that the image or its content could not reasonably be regarded as private, or as disclosing any information of a private nature. It also said that it did not agree that a stranger would recognise Ms O today based solely on a photograph taken of her when she was three years old. It said that without other information, identification of Ms O from the photograph seemed unlikely.

Channel 5 concluded that, even if Ms O suggested she had a legitimate expectation of privacy in connection with being identified as the daughter of a victim of the Yorkshire Ripper, then she had effectively waived any such right because a full page interview, including a large photograph of Ms O as an adult,

was published in the Yorkshire Evening Post on 14 July 2004 (a copy of which was provided to Ofcom by Channel 5). The broadcaster said that Ms O would be more readily identifiable from this article than from the photograph included in the programme of her at age three.

- b) Ms O said that she was not informed in advance by the broadcaster of its intention to broadcast the programme.

By way of background, Ms O said that the programme included photographs of her mother's murdered body and of Ms O as a young child, which, she said, intruded into her personal grief and suffering and had caused her distress.

Channel 5 apologised that, on this occasion, the production company had failed to contact Ms O. As noted above, the programme makers were not aware that Mr McCann was not in contact with Ms O. It was their understanding that Mr McCann represented the entire family and that he had informed Ms O of the content and timing of the programme.

The broadcaster said that when its programmes examined past events that involved trauma to particular individuals, its policy was that the relevant production company must, where practicable, contact those individuals or immediate family of the plans for the programme and its intended broadcast to help try and reduce potential distress. However, the broadcaster added that the purpose of Practice 8.19, as set out in the Ofcom Broadcasting Code ("the Code"), was to help "reduce the potential distress to victims" who may come across programmes unaware. It said that although Ms O had not been informed directly about the programme, it was clear from Ms O's complaint that she was aware of the intended broadcast and date of transmission of the programme and that she had made a conscious decision to watch the programme. As a result, Channel 5 said that Ms O was in exactly the same position she would have been had the production company notified her of the upcoming broadcast.

Channel 5 relied on the Foreword to Section Eight (Privacy) of the Code to argue that a failure to notify victims or their families of the intended broadcast of a programme in accordance with Practice 8.19 can only constitute a breach of the Code where that lack of notification results in an unwarranted infringement of privacy. Channel 5 accepted that the programme was likely to have been upsetting for Ms O, but that the failure to notify her of the intended broadcast of the programme did not result in an unwarranted infringement of privacy. This was because Ms O had otherwise been alerted to the fact of the broadcast by a friend. The broadcaster added that 8.19 is a Practice and not a Rule and in the absence of any actual infringement of Ms O's privacy resulting from a lack of advance notification, a failure to follow Practice 8.19 could not result in a breach of the Code.

Ofcom's initial Preliminary View

Ofcom prepared its initial Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should be upheld in part.

In relation to head a) of the complaint, Ofcom provisionally concluded that Ms O had a legitimate expectation of privacy in the photograph of her as a child with her siblings. In our view, however, this expectation was limited by the fact that: two very similar photographs were already in the public domain; the photograph itself did not

show anything of a particularly private or sensitive nature; and the photograph had been taken almost thirty years previously, making it unlikely that Ms O would have been identified by anyone who did not otherwise know her. We assessed Ms O's legitimate expectation of privacy in relation to Practice 8.6 of the Code where, unless otherwise warranted not to do so, broadcasters should first obtain the consent of individuals before broadcasting information that would infringe their privacy. Although Channel 5 did not have Ms O's consent to broadcast the photograph of her as a child, Ofcom's Preliminary View was that the broadcast of this information was warranted in this case on the basis of the broadcaster's interests in making a factual documentary and the audience's right to receive this material.

In relation to head b), Ofcom provisionally found that Ms O had a legitimate expectation of privacy with regard to the material broadcast in the programme about the murder of her mother. In our view, however, this expectation was limited by the fact that many of the details of Ms Wilma McCann's murder and the effect it had on Ms O and her family were, to some extent, already in the public domain. We assessed Ms O's legitimate expectation of privacy in relation to Practice 8.19 where, unless otherwise warranted not to do so, broadcasters should try to reduce potential distress to particular individuals when making or broadcasting certain programmes by, so far as reasonably practicable, informing those individuals of the plans for the programme and its intended broadcast. Ofcom's initial Preliminary View was that the broadcaster had not sought to contact Ms O in the manner contemplated under Practice 8.19 and, as a result, Channel 5 had unwarrantably infringed her privacy.

Both parties made representations on the initial Preliminary View. Channel 5 initially submitted representations on head b) of the initial Preliminary View, however following the opportunity provided by Ofcom to comment on Ms O's representations, Channel 5 submitted further representations to address her comments. The following relevant representations on the initial Preliminary View from both parties are summarised below.

Ms O's representations

In summary, Ms O said that the photograph of her with her siblings was taken when she was five years old when she was unable to prevent the photograph from being taken and published. Ms O considered that the broadcast of the photograph of her was "immoral and unnecessary".

Ms O said that she understood that the public had a right to receive information about the story of her mother's murder, but she did not agree that in doing so it was "necessary to exploit me as a traumatised child". She added that she did not understand why the murder of her mother should result in a photograph of her as a child being broadcast.

Channel 5's representations

In summary and in relation to head a) of the complaint, Channel 5 stated that given the widespread publication of photographs that were virtually identical to that which was included in the programme, it did not consider that Ms O could have a legitimate expectation of privacy in relation to the photograph as broadcast. Channel 5 considered that once something had been widely published, any expectation of privacy a person may have had would have "*gone for all purposes*".¹

¹ Channel 5 referenced this quote to the judgment of Eady J in *CTB v News Group Newspapers Ltd* [2011] EWHC 1232 (QB).

Channel 5 said that although Ms O asserted that the photograph was taken on the day her and her siblings were taken into protective custody, this information was not included in the programme as broadcast. Channel 5 therefore considered that Ofcom was incorrect to conclude that the photograph was private to Ms O because of the sensitive nature of the day on which the photograph was taken. In support of this, Channel 5 referred to the case of *Campbell v MGN*². The broadcaster said that in this judgment there was nothing objectionable about the content of the photograph, but that the problem was the combination of the photograph and accompanying text which made clear the circumstances in which the photograph had been taken. Channel 5 said that nothing in the programme revealed the circumstances in which the photograph of Ms O may have been taken and that this should not have been a consideration or determining factor for Ofcom to conclude that broadcast of the photograph infringed Ms O's privacy.

Channel 5 added that Ofcom had misunderstood the purpose of its reference to the interview and photograph of Ms O that had been published in the Yorkshire Post. Channel 5 said that reference to this article was made in response to Ms O's claim that "people have recognised her from the photograph shown in the programme". Channel 5 said that its argument was that Ms O had permitted a more up to date photograph of herself in connection with the Yorkshire Ripper case and that this was more likely to have led to her being recognised than the photograph included in the programme of her as a very young child. Therefore, Channel 5 clarified its point that Ms O had waived a right to being identified in connection with the Yorkshire Ripper, rather than any privacy in relation to the photograph itself.

Turning to head b) of the complaint, Channel 5 stated that Ofcom had incorrectly concluded that by failing to comply with the provisions of Practice 8.19, Channel 5 had unwarrantably infringed the privacy of Ms O.

Channel 5 said that Ofcom had misdirected itself in assessing Ms O's complaint under Practice 8.19, on the basis that the application of this Practice "has nothing to do with the assessment of whether any infringement of privacy is warranted". In Channel 5's view, an unwarranted infringement of privacy, either in the making of the programme or in a programme as broadcast, would not be saved by the broadcaster providing prior notification of the impending broadcast of the programme to that person. Equally, a programme that did not unwarrantably infringe a person's privacy could not infringe that person's privacy merely because that person did not receive prior notification of the broadcast of the programme. Channel 5 argued that this approach was consistent with the Foreword to Section Eight (Privacy) of the Code and the general law of privacy. It said that the Foreword to Section Eight made it clear that "Practice 8.19 does not purport to, and could not, create privacy rights where they are unknown in the general law".

Channel 5 said that Ofcom's reasoning in its Preliminary View had overlooked the fact that Section Eight could only apply "where there was information in respect of which a privacy right existed independently prior to the broadcast or making of a programme". Channel 5 said that "unless a person already enjoys a right to privacy in relation to a matter, the inclusion of that matter in a broadcast will not create a right of privacy". The broadcaster said that Practice 8.19 was aimed at minimising distress by requiring that broadcasters, where practicable, advise victims and/or relatives if a programme is being made or broadcast which might reasonably be expected to cause them potential distress. However, Channel 5 reiterated its point above that

² [2004] UKHL 22.

Practice 8.19 did not, and could not, create a right to privacy where these rights did not exist at law.

Further, Channel 5 stated that the Foreword to Section Eight of the Code “makes it explicit that failure to follow any of the practices does not in itself constitute a breach of Rule 8.1” and that this Rule will “*only* be breached where a failure to follow a practice *results* in an unwarranted infringement of privacy” (Channel 5’s emphasis). Channel 5 said that a programme either complies with Rule 8.1 or does not and that any prior notification or failure to provide prior notification would not affect that. Channel 5 stated that whilst it agrees with Practice 8.19 and always endeavours to reduce potential distress to the individuals envisaged by this Practice, the broadcaster did not consider that there were any circumstances in which a failure to follow the Practice would result in an unwarranted infringement of privacy.

Channel 5 also stated that if Ofcom considered that Practice 8.19 created a “right to be forgotten” then this view would be incorrect. The broadcaster made reference to comments by a House of Lords Select Committee on the ‘right to be forgotten’, as has arisen recently in the context of data protection rules with respect to online search-engine results³. Channel 5 highlighted comments made by the Committee that such a “right to be forgotten” is “misguided in principle and unworkable in practice”, stating that this sentiment also applied in relation to issues concerning the broadcast of programmes about information that is lawfully in the public domain.

In support of the above views, Channel 5 made reference to the case of CTB v News Group Newspapers Ltd⁴ and Eady J’s consideration as to when information may truly be in the public domain, where this is likely to determine whether or not a court should attempt to prevent its publication or discussion. The broadcaster stated that in relation to private information that had been published in the national media, Eady J would likely consider that “any expectation of privacy had “gone for all purposes” and would not be capable of being reinstated over time”.

The broadcaster disagreed with Ofcom’s Preliminary View that Ms O had a legitimate expectation of privacy in relation to the information included in the programme, specifically related to Ms Wilma McCann’s murder and the effect it had on her and her immediate family.

³ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f/news/right-to-be-forgotten-report/>

⁴ [2011] EWHC 1232 (QB) In particular, Channel 5 quoted a paragraph in the judgment which stated that : “There may well be, in any given case, room for argument as to what truly is or is not in the public domain; but the principle is clear, namely that the court will not attempt to prevent publication or discussion of material that is genuinely in the public domain since, where that is so, there will no longer be any confidentiality or privacy to protect.” Channel 5 said that in addressing the issue, Eady J referred to the judgment in Attorney General v Guardian Newspapers (No 2) [1990] 1 AC 109 where it was stated that “It is more difficult to establish that confidentiality or a reasonable expectation of privacy has gone for all purposes, in the context of personal information, by reason of its having come to the attention of only certain categories of readers.” Channel 5 then referred to the following statement by Eady J: “It is not a black and white distinction between public and private in such circumstances, but rather a matter of looking at the particular facts and deciding whether, notwithstanding some publication, there remains a reasonable expectation of some privacy. It is regarded as a question of degree: a distinction has sometimes been drawn, for example, in respect of private information between that which has been published in the national media and that which is only available on a more limited scale... Each case has to be assessed on its own facts”.

With regards to information in connection with Ms Wilma McCann's murder, the broadcaster said that the details of the Yorkshire Ripper's victims were in the public domain such that, (by reference to the *CTB v News Group Newspapers Ltd* decision) this material would fall into "the category of information where "a reasonable expectation of privacy has gone for all purposes."

With regards to the information about the effects the murder had on Ms O's siblings, Channel 5 said that Ms O could have no legitimate expectation of privacy in this information. Channel 5 stated that the effect the murder had on Mr McCann was private to him and not to Ms O. Channel 5 added that Mr McCann had chosen to waive his right to privacy by participating in the programme and through his writing and public speaking on the subject. Similarly, the effect the murder had on Ms O's late sister, Ms Newlands, would have been private to her and not to Ms O. Channel 5 said that there were numerous news articles about Ms Newland's death and public inquest and Channel 5 provided Ofcom with copies of two newspaper articles to illustrate this. As a result, Channel 5 said that the death of Ms Newlands and the contributing factors to it were in the public domain and therefore must fall into the category of information where a "reasonable expectation of privacy had gone for all purposes".

In relation to the effect of the murder on Ms O herself, Channel 5 accepted that unless the information was already in the public domain about the effect of Ms Wilma McCann's murder on Ms O then it could potentially have been private to her. However, Channel 5 said that it was clear from the programme as broadcast, that no information about the effect the murder had on Ms O was included in the programme and that she was not even referred to by name in the programme as broadcast⁵. Channel 5 said that in the programme, the comments made by Mr McCann in relation to his own private life made no reference to Ms O by name and were included in the programme in such a way as to protect her privacy and allow him to exercise his right to freedom of expression. Channel 5 added that even if the information included in the programme was private to Ms O, it was all information which was in the public domain because Mr McCann has written extensively about that period of his life with reference to his siblings. Therefore, Channel 5 said that there was no material difference between including the photograph of Ms O and the information Mr McCann disclosed about his experience on the day of the murder. In both of these cases, Ms O had "no relevant right to privacy".

Channel 5 said that its view was that Ms O Did not have a legitimate expectation of privacy in relation to the information included in the programme and that nothing private about Ms O was disclosed in the programme. However, if Ofcom did consider that this was not the case, then Channel 5 said that the information was already in the public domain and that, in this case, it did not attract a reasonable expectation of privacy.

⁵ Channel 5 said that if Ms O did have a legitimate expectation of privacy then this paragraph in the judgment of *McKennitt v Ash* [2006] EWCA Civ 1714 would apply: "The question is to what extent it is legitimate to protect one person's privacy when another connected person has a right of privacy and also, correspondingly, a right to waive it in the exercise of freedom of expression: see e.g. *Re Angela Roddy (A Minor)* [2004] 2 FLR 949 at [35]-[38] and [46]-[60], per Munby J. This is why it is so important for me to have in mind the recent pronouncements in *Von Hannover v Germany* to the effect that protection of privacy will extend to relations with other persons and embrace a social dimension. It must follow, in broad terms, that if a person wishes to reveal publicly [sic] information about aspects of his or her relations with other people, which would attract the prima facie protection of privacy rights, any such revelation should be crafted, so far as possible, to protect the other person's privacy".

Channel 5 argued that Ms O could not have a legitimate expectation of privacy in relation to the information included in the programme, therefore, it could not have amounted to an unwarranted infringement of privacy regardless of whether Practice 8.19 was followed or not. However, it said that if Ofcom considered that Ms O did have an expectation of privacy in relation to the programme, then Channel 5 considered that this infringement of privacy was warranted in the circumstances and in accordance with Channel 5's right to freedom of expression. Channel 5 said that any restrictions on its freedom of expression "must be rational, fair and not arbitrary".

In relation to Ofcom's assessment of Ms O's complaint at head b), Channel 5 said that Ofcom had not "paid heed" to the Foreword to Section Eight of the Code.

Channel 5 said that it appeared that Ofcom had proceeded on the basis that causing distress equated to an unwarranted infringement of privacy which, as made clear by Lord Nicholls in the case Campbell v MGN, is not correct. Channel 5 added that while the House of Lords in that case found that there had been an infringement of the applicant's privacy, this was not on the basis that she had suffered distress. Rather, the test as set out by Baroness Hale was "... what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity". Channel 5 said that there were many things which were published and broadcast which individuals would likely prefer were not published but that this did not mean that those individuals had a legitimate expectation of privacy or any right to prevent such publication or broadcast.

Ofcom's initial Adjudication

Following receipt of the parties' submissions on the initial Preliminary View, Ofcom prepared an initial Adjudication on this case which found that Ms O's complaint should be Upheld in Part. The initial Adjudication found that:

- Ms O had a limited legitimate expectation of privacy with regard to the broadcast of the photograph of her as a child with her siblings. However, in the particular circumstances of this case, it was our view that the infringement of Ms O's privacy was warranted.
- Ms O had a limited legitimate expectation of privacy with regard to the material broadcast in the programme about the murder of her mother. Channel 5 should, to the extent it was reasonably practicable, have informed Ms O of its plans for the intended broadcast of this programme about the murder of her mother to try to reduce any potential suffering and distress to Ms O. By not doing so, Channel 5 unwarrantably infringed Ms O's privacy.

However, after receiving a copy of this Adjudication, Channel 5 responded to state that Ofcom had failed to address part of its response to the initial Preliminary View in the Adjudication in relation to head b). Channel 5 reiterated its response to the initial Preliminary View that:

"Ofcom has wrongly concluded that by failing to comply with the provisions of Practice 8.19, Channel 5 has unwarrantably infringed the privacy of Ms O.

Rule 8.1 of the Code states that:

"Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted".

Section Eight of the Code also contains a number of Practices and the Foreword to Section Eight explains the status of the Practices as follows:

“Following these practices will not necessarily avoid a breach of this section of the Code (Rule 8.1). However, failure to follow these practices **will only constitute a breach where it results in an unwarranted infringement of privacy** [emphasis added by Channel 5]”.

Channel 5 also said that “if there was a failure to follow Practice 8.19 here, it had *only one result* (emphasis added by Channel 5) – that Ms O saw the programme without being warned about its contents directly by the production company or Channel 5. The only possible effect of not complying with Practice 8.19 is that distress might be caused by a person seeing a broadcast for which she/he is unprepared.

Unintentional infliction of emotional distress is not the equivalent of an unwarranted infringement of privacy and nor can it, on its own, amount to such an infringement”. Channel 5 said that it “does not quibble” with Ofcom’s view that the programme had the potential to cause distress to Ms O but that “the possibility of distress arising is not equivalent of an unwarranted invasion of privacy”. Channel 5 added that “self-evidently, the use of the photograph in the broadcast, which Ofcom has found was *not* (emphasis added by Channel 5) an unwarranted infringement of Ms O’s privacy, was capable of causing Ms O distress. Distress is not the relevant consideration”.

Channel 5 said that in Ofcom’s initial Adjudication we found “that the broadcast *did not unwarrantably* (emphasis added by Channel 5) breach Ms O’s privacy”.

Therefore, Channel 5 said that “If the broadcast itself could not constitute an unwarrantable breach of Ms O’s privacy, no failure to follow Practice 8.19 could”.

Channel 5 said that Ofcom’s reasoning in relation to Practice 8.19 in the initial Adjudication was contrary to the words published in the Code. The broadcaster said that in the initial Adjudication, “Ofcom proceeds on the basis that a failure to follow Practice 8.19 where a complainant has an expectation of privacy in relation to certain matters is the correct inquiry. However, as the Foreword to Section Eight states, a failure to follow Practice 8.19 *will only constitute a breach where it results in an unwarranted infringement of privacy* (emphasis added by Channel 5). Channel 5 added that “The Foreword is *explicit* (emphasis added by Channel 5) and Broadcasters should be entitled to rely upon the published version of the Ofcom Broadcasting Code. Where there is an explicit statement about the effect of a Practice, there is no room for any ‘implicit’ reading of its consequences which is contrary to that explicit statement”.

Having given careful consideration to these representations, we considered that in light of the matters Channel 5 had raised, particularly in relation to the application of Practice 8.19, that it would be appropriate to withdraw the initial Adjudication and to reconsider the case and prepare a revised Preliminary View.

Revised Preliminary View

Having reconsidered the case in light of the representation made by Channel 5 on the initial Adjudication (see above) Ofcom issued a revised Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the revised Preliminary View, but neither party made any further comments in relation to our view not to uphold the complaint. Our decision is set out below.

Decision

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

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

In reaching our Decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions. We also took careful account of the representations made by both parties in response to the initial Preliminary View and also the representations made by the broadcaster in response to Ofcom's initial Adjudication.

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

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

- a) We first considered the complaint that Ms O's privacy was unwarrantably infringed in the programme as broadcast because a photograph of her as a young child was shown in the programme without her consent.

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

Ofcom began by assessing the extent to which Ms O had a legitimate expectation of privacy in relation to the inclusion in the programme of the photograph of her as a young child with her three siblings.

The photograph complained about was shown twice (for approximately five seconds and 12 seconds respectively) in the programme. The first time was during the section of the programme which explained the events surrounding the murder of Ms Wilma McCann, and the second time during the part of the programme that looked at the affect the murder had on Ms Wilma McCann's family.

Ms O was not named in the programme, nor was she identified in any other way. It was clear from the photograph, however, that she was a young child. In our view, the possibility of a viewer identifying Ms O, with no prior knowledge of her

or her history, based only on a photograph taken of her over 30 years earlier when she was a young child, was remote. However, Ms O complained that she was identifiable in the photograph and that some people had indeed recognised her from it. Further, Ms O's mother (Ms Wilma McCann), her brother, Mr Richard McCann, and their two other siblings, Ms Newlands and "Angela" were all identified in the programme. From this, Ofcom concluded that while Ms O may have been identifiable from the photograph it was likely that only a limited number of individuals would have been able to identify her and that these individuals were likely to have already been acquainted with her and her background.

In Ofcom's view, however, the extent to which Ms O may have been identifiable in the photograph is somewhat secondary (although relevant) to whether or not she had a legitimate expectation of privacy in the photograph of herself and her siblings and in the broadcast of that photograph.

The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation:

"will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...People under investigation or in the public eye, and their immediate family and friends, retain a right to a private life, although private behaviour can raise issues of legitimate public interest".

We do not agree with Channel 5's view that because very similar photographs to that included in the programme may have already been widely disseminated, this would automatically deprive Ms O of any legitimate expectation of privacy that she might have in the photograph as broadcast. In Ofcom's view, the Code makes clear that people are not necessarily deprived of their right to privacy under Section Eight of the Code if information in respect of which they claim that right has been put into the public domain in the past. Each case must be considered on its own merits.

In considering this case, we noted that much of the information about the circumstances surrounding the murder of Ms Wilma McCann was already in the public domain. Specifically, we took account of the fact that at least two very similar photographs of Ms O with her three siblings, taken on the day she had been taken into protective custody, have been publicly available for a number of years. The photographs had been included in various newspaper articles, a book about the Yorkshire Ripper, an earlier television programme, and were available on the internet. We also took into account that, in our view, the photograph of Ms O featured in the programme did not show anything which could be regarded as being of a particularly private or sensitive nature. Nor did it show anything materially different to the photographs which were already in the public domain.

However, while very similar photographs existed in the public domain and the photograph did not show anything of a particularly private or sensitive nature, we considered that the photograph included in the programme was private to the complainant. This was because it depicted an image of her and her siblings, taken on a particularly sensitive day i.e. when Ms O and her siblings were placed into protective custody immediately following the murder of their mother. We did not agree with Channel 5's response to the Preliminary View that the circumstances in which the photograph was taken had no bearing on whether or

not Ms O's privacy was infringed. Even though the information surrounding the circumstances in which the photograph was taken had not been disclosed in the programme, we considered that it was a relevant factor in our consideration of whether or not Ms O would have a legitimate expectation of privacy in the photograph of her and her siblings included in the programme. Further, on the basis of the information submitted to Ofcom, there was no suggestion that Ms O was responsible for placing the photograph or similar photographs of her as a child into the public domain on the previous occasions set out above.

We next reviewed the Yorkshire Post newspaper article which had been published in July 2004 featuring a photograph of Ms O. This article had been referred to in the broadcaster's initial statement. We had regard to Channel 5's response to the Preliminary View in which it said that Ofcom had misunderstood the reasons for it having provided the article to us. Channel 5 said that it considered that the press interview supported its view that Ms O had 'waived' any expectation of privacy she might have with being connected to the Yorkshire Ripper rather than, as Ofcom had understood, that Ms O had 'waived' any expectation of privacy she might have had in the photograph as broadcast.

Notwithstanding Channel 5's comment above, however, Ofcom still considered it important to examine whether Ms O's participation in the newspaper article was sufficient to waive her expectation of privacy with regards to the use of the photograph of her as a young child in the programme. We noted that the article: did not contain the photograph which is now the subject of this complaint; was published approximately ten years before the broadcast of the programme; and did not appear to have been published in any other national or regional newspaper (thereby limiting potentially the extent to which Ms O had placed herself in the public domain). Further, the subject of the article was that Ms O believed that she has a right to privacy regarding the murder of her mother and was upset that her brother, Mr McCann, had infringed her privacy by publishing a book about his childhood following the murder of their mother. In Ofcom's view, the article gave a clear indication that Ms O was concerned about protecting her private information, especially that relating to her childhood and the murder of her mother. Therefore, we were of the view that Ms O's participation in a newspaper article relating to her wanting to protect her private life was not sufficient to waive her expectation of privacy with regard to the use of the photograph of her as a young child.

Taking all the above factors into account, we considered that Ms O had a legitimate expectation of privacy in relation to the inclusion in the programme of the photograph of herself with her siblings. However, this expectation was limited because at least two very similar photographs were already available in the public domain, and the photograph featured in the programme did not show anything of a particularly private or sensitive nature relating to Ms O. We also had regard to the fact that the photograph had been taken over thirty years before, and that, while the complainant shared the same surname as her mother, the likelihood of Ms O being identified by viewers not already aware of her and her background from this photograph alone, was remote.

We then assessed whether Ms O's consent had been secured before the photograph of her was included in the programme as broadcast in accordance with Practice 8.6.

It was not disputed that the broadcaster had not contacted Ms O for her consent to use the photograph in the programme. Instead, the programme makers said

they had relied on consent provided by Mr McCann. In particular, the broadcaster has stated that “the production company understood that there were no issues with the use of the photograph because it had been provided by [Ms O’s] brother, Richard,” and that “[i]n all the dealings the production company had with Mr McCann they were not made aware that he was not in contact with Ms O about the programme. They understood that he spoke for the entire family.” The broadcaster also provided Ofcom with copies of agreements that had been signed by Mr McCann, consenting to the use of the photographs in the programme. We understand that the broadcaster has since apologised to Ms O for including the photo in the programme without her express consent.

In Ofcom’s view, although the broadcaster had clearly obtained Mr McCann’s consent in relation to the use of this photograph, we did not consider on the facts of this particular case that it was reasonable for the programme makers to conclude that they had secured consent from Ms O. In particular, it is not clear whether the programme makers actually asked the question of Mr McCann as to whether or not he had the consent of his siblings to use the photograph, or whether this was simply assumed. Similarly, it is not clear whether it was explained to Mr McCann that the agreements he was signing, providing his consent to the inclusion of the photograph in the programme, were premised on the basis that he had the necessary consents from his family members and that he was properly authorised to represent them. Such steps may have been particularly appropriate in this case, given the sensitivities of the individuals involved and the fact that (as indicated by the article in the Yorkshire Post to which the broadcaster makes reference), the interests of those individuals may have been different.

Ofcom next assessed whether the programme makers were warranted to include the photograph in the programme without Ms O’s consent. To decide this, we carefully balanced the complainant’s right to privacy (set out above) against the broadcaster’s and audience’s right to freedom of expression.

In particular, we took into account the need to have careful regard to the editorial freedom of the broadcaster and the proper exercise of the right to freedom of expression, as well as the audience’s right to receive the information that was broadcast. The broadcaster’s interests in this case were its ability to make a factual documentary about the impact of a notorious serial murderer on the lives of his victims, including Mr McCann. In these circumstances, the photograph acted as an aid for the audience to help illustrate Mr McCann’s story about his mother’s murder and the effect it had on his family life. Further, we considered the rights of the audience to receive the information imparted in the programme, and the genuine public interest in the accounts of the surviving victims of one of the UK’s most notorious serial murderers.

Given our view that Ms O’s legitimate expectation of privacy in relation to this head of the complaint was limited, and having focused intensely on balancing this expectation with the interests of the broadcaster set out above, Ofcom found that Channel 5’s inclusion of the photograph in the programme was warranted.

- b) Ofcom next considered Ms O’s complaint that she was not informed in advance by the broadcaster of its intention to broadcast the programme.

In considering whether or not Ms O’s privacy was unwarrantably infringed in the programme as broadcast, we first considered whether, and if so to what extent,

Ms O had a legitimate expectation of privacy under the Code in respect of the particular material broadcast regarding the murder of her mother.

Ofcom noted that the programme broadcast accounts from the surviving victims of Mr Sutcliffe's attacks, and the effect these had on their lives. The programme included, in particular: as set out above under head a) of the complaint, a photograph of Ms O, taken when she was a child; a detailed recollection by Mr McCann of the day his mother was murdered and the subsequent effect the murder had on him and his siblings; footage of Mr McCann laying flowers at the grave of Ms Newlands and Ms Wilma McCann and close up footage of the gravestone; a detailed description of how Ms Wilma McCann was murdered; and, an archive photograph of Ms Wilma McCann's body on the playing field where she had been found.

As noted earlier, the Code makes clear that persons are not necessarily deprived of privacy under the Code if information in respect of which they claim a right to privacy has been put into the public domain in the past.

For the reasons set out above, it is Ofcom's Preliminary View that Ms O had a legitimate expectation of privacy in relation to the broadcast of the photograph of her, taken as a child. Under head b) of her complaint we then gave careful consideration to the extent to which she may have a legitimate expectation of privacy in any of the *other* material comprised in the programme. We recognised the notoriety that surrounded "the Yorkshire Ripper" case and the fact that, as a consequence, much of the information in relation to Mr Sutcliffe and his victims was in the public domain, such that little of what was included appeared to remain inherently private to the individuals concerned. We also noted that, while the material included in the programme may have been understandably distressing to Ms O, much of it related to Mr McCann's specific experience and account of events. On that basis, to the extent that such information was capable of giving rise to a legitimate expectation of privacy, it was likely to be with respect to Mr McCann, rather than to the complainant. Taking all these factors into account, we considered that Ms O had a legitimate expectation of privacy, but only insofar as the broadcast of her photograph is concerned.

Given that Ms O had a legitimate expectation of privacy in relation to the broadcast of her photograph, we next considered the steps that Channel 5 took in order to comply with Practice 8.19 of the Code. Practice 8.19 requires that: "Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals...unless it is warranted to do otherwise". The Practice then goes on to provide what steps are contemplated in this respect, and states that:

"In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past".

It is clear that Practice 8.19 does not (by contrast with Practice 8.6) require broadcasters to obtain (prior) consent or permission from relevant surviving victims and/or immediate relatives to broadcast material: it simply contemplates broadcasters seeking to reduce potential distress to victims and/or relatives by, "so far as is reasonably practicable", informing them of the "plans for the

programme and its intended broadcast”. This Practice is expressed to apply “even if the events or material to be broadcast have been in the public domain in the past”, which was the case in the circumstances of this complaint.

We noted that the programme makers did not take any steps before the broadcast of the programme to inform Ms O about their plans to make, and of the intended broadcast of, the programme. Channel 5 did not deny that Practice 8.19 applied in this case and agreed that Ms O should have been informed in advance about the making and broadcast of the programme.

Channel 5’s justification as to why steps were not taken to inform Ms O in advance was that the programme makers believed that Mr McCann had informed her about the programme. Further, Channel 5 stated that Ms O was made aware by a friend in advance that the programme was being broadcast. In view of this, the broadcaster argued that she was in exactly the same position had the programme makers contacted her about the programme, and that her privacy had therefore not been infringed. On that basis, Channel 5 said that its failure to follow Practice 8.19 did not constitute a breach of Rule 8.1.

Ofcom did not accept Channel 5’s submissions regarding the requirements of Practice 8.19.

First, it is not clear why the programme makers took the view that Mr McCann had informed the complainant about the making or broadcast of the programme, or whether reasonably practicable steps were taken to verify this (for example, by seeking written confirmation from Mr McCann that he had informed his immediate family about the making and broadcast of the programme).

Secondly, whether or not Ms O happened to be made aware of the intended broadcast of the programme through means other than the broadcaster is, in our view, immaterial to the requirements placed on the broadcaster under Practice 8.19. Here, the broadcaster was required to take reasonably practicable steps to inform Ms O in advance that it was making the programme and that it intended to broadcast it.

Ofcom acknowledges the apology offered by Channel 5 for not contacting Ms O on this occasion and the reasons set out above. We also note that the broadcaster had not followed ‘best practice’, as recommended under Practice 8.19. However, having already found that the broadcast of the photograph of Ms O as a child was warranted, Ofcom does not consider that a failure to follow Practice 8.19 could, by itself, constitute a breach of Rule 8.1 of the Code. A failure to follow Practice 8.19 will only constitute a breach of Rule 8.1 where it results in an unwarranted infringement of privacy. Broadcasters are encouraged to follow best practice and comply with Practice 8.19 at all relevant times.

Therefore, Ofcom has not upheld Ms O’s complaint of unwarranted infringement of privacy in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 20 June and 3 July and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

| Programme | Broadcaster | Transmission date | Categories |
|----------------------|-----------------------|-------------------|--|
| East Midlands Today | BBC 1 (East Midlands) | 15/04/2015 | Under 18s in programmes |
| Advertising minutage | SAMAA | 22/04/2015 | Advertising minutage |
| Seal of the Prophets | Ummah Channel | various | Religious/Beliefs discrimination/offence |

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 20 June and 3 July because they did not raise issues warranting investigation.

Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

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

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

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-----------------------|-------------------|-----------------------------------|----------------------|
| Dementiaville (trailer) | 4Seven | 03/06/2015 | Disability discrimination/offence | 1 |
| Obsessive Compulsive Cleaners | 4Seven | 28/06/2015 | Disability discrimination/offence | 1 |
| Obsessive Compulsive Cleaners: Country House Rescue (trailer) | 4Seven | 29/06/2015 | Generally accepted standards | 1 |
| Big Brother | 5* | 15/06/2015 | Scheduling | 1 |
| Big Brother | 5* | 29/06/2015 | Scheduling | 1 |
| Blinging Up Baby: You Won't Believe it! | 5* | 08/06/2015 | Under 18s in programmes | 1 |
| Home and Away (trailer) | 5* | 13/06/2015 | Scheduling | 1 |
| Chicago PD (trailer) | 5USA | Various | Violence and dangerous behaviour | 1 |
| Classic Rock Hits | Absolute Classic Rock | 19/06/2015 | Generally accepted standards | 1 |
| Programming | ARY News | 30/03/2015 | Generally accepted standards | 1 |
| Cine Song | ATN Bangla | 03/05/2015 | Product placement | 1 |
| A Question of Sport | BBC 1 | 12/06/2015 | Scheduling | 1 |
| BBC News | BBC 1 | 14/06/2015 | Information/warnings | 1 |
| BBC News | BBC 1 | 01/07/2015 | Outside of remit / other | 1 |
| BBC News at Six | BBC 1 | 15/06/2015 | Crime | 1 |
| BBC News at Ten | BBC 1 | 23/06/2015 | Generally accepted standards | 3 |
| BBC News at Ten | BBC 1 | 25/06/2015 | Generally accepted standards | 1 |
| Breakfast | BBC 1 | 14/06/2015 | Promotion of products/services | 1 |
| Breakfast | BBC 1 | 26/06/2015 | Generally accepted standards | 1 |
| Claimed and Shamed | BBC 1 | 16/06/2015 | Crime | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|--|------------------------|-------------------|--|----------------------|
| EastEnders | BBC 1 | 18/06/2015 | Generally accepted standards | 2 |
| EastEnders | BBC 1 | 19/06/2015 | Sexual material | 1 |
| EastEnders | BBC 1 | 25/06/2015 | Information/warnings | 1 |
| EastEnders | BBC 1 | 25/06/2015 | Religious/Beliefs discrimination/offence | 6 |
| EastEnders | BBC 1 | 25/06/2015 | Scheduling | 1 |
| EastEnders | BBC 1 | 26/06/2015 | Race discrimination/offence | 2 |
| F1: Grand Prix Qualifying | BBC 1 | 20/06/2015 | Outside of remit / other | 1 |
| Sunday Morning Live | BBC 1 | 21/06/2015 | Religious/Beliefs discrimination/offence | 2 |
| Tennis | BBC 1 | 20/06/2015 | Outside of remit / other | 1 |
| Tennis | BBC 1 | 30/06/2015 | Generally accepted standards | 1 |
| The Andrew Marr Show | BBC 1 | 07/06/2015 | Scheduling | 1 |
| The Graham Norton Show | BBC 1 | 12/06/2015 | Generally accepted standards | 1 |
| The John Bishop Show | BBC 1 | 13/06/2015 | Generally accepted standards | 1 |
| The John Bishop Show | BBC 1 | 20/06/2015 | Race discrimination/offence | 1 |
| The Met: Policing London | BBC 1 | 29/06/2015 | Outside of remit / other | 1 |
| The One Show | BBC 1 | 12/06/2015 | Scheduling | 1 |
| The Vicar of Dibley | BBC 1 | 12/06/2015 | Offensive language | 1 |
| Watchdog | BBC 1 | 11/06/2015 | Generally accepted standards | 1 |
| BBC Newsline | BBC 1 Northern Ireland | 04/06/2015 | Generally accepted standards | 1 |
| Regional News and Weather | BBC 1 South East | 15/06/2015 | Crime | 1 |
| Glastonbury 2015 | BBC 2 | 27/06/2015 | Race discrimination/offence | 48 |
| Mock the Week | BBC 2 | 25/06/2015 | Offensive language | 1 |
| Modern Times | BBC 2 | 06/06/2015 | Race discrimination/offence | 1 |
| Springwatch Unsprung | BBC 2 | 10/06/2015 | Generally accepted standards | 1 |
| Tennis | BBC 2 | 26/06/2015 | Race discrimination/offence | 1 |
| Tennis | BBC 2 | 30/06/2015 | Outside of remit / other | 1 |
| Tennis | BBC 2 | 02/07/2015 | Outside of remit / other | 1 |
| The RHS Hampton Court Palace Flower Show | BBC 2 | 01/07/2015 | Generally accepted standards | 1 |
| Top Gear | BBC 2 | 28/06/2015 | Offensive language | 2 |
| Top Gear | BBC 2 | 28/06/2015 | Outside of remit / other | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|--------------------|-------------------|--|----------------------|
| Top Gear | BBC 2 | 28/06/2015 | Scheduling | 2 |
| Top Gear | BBC 2 | 28/06/2015 | Violence and dangerous behaviour | 1 |
| Top Gear | BBC 2 | 29/06/2015 | Offensive language | 1 |
| Wimbledon 2day | BBC 2 | 30/06/2015 | Outside of remit / other | 1 |
| 60 Second News | BBC 3 | 26/06/2015 | Generally accepted standards | 1 |
| Don't Tell the Bride | BBC 3 | 19/06/2015 | Offensive language | 1 |
| Great TV Mistakes | BBC 3 | 21/06/2015 | Offensive language | 1 |
| Russell Howard's Good News | BBC 3 | 28/06/2015 | Generally accepted standards | 1 |
| Cordon | BBC 4 | 27/06/2015 | Religious/Beliefs discrimination/offence | 1 |
| Clara Amfo | BBC Radio 1 | 12/06/2015 | Scheduling | 1 |
| The Radio 1 Breakfast Show with Nick Grimshaw | BBC Radio 1 | 18/06/2015 | Scheduling | 1 |
| Chris Evans | BBC Radio 2 | 19/06/2015 | Outside of remit / other | 1 |
| The Chris Evans Breakfast Show | BBC Radio 2 | 18/06/2015 | Disability discrimination/offence | 1 |
| It's a Fair Cop | BBC Radio 4 | 25/06/2015 | Generally accepted standards | 1 |
| It's a Fair Cop | BBC Radio 4 | 02/07/2015 | Generally accepted standards | 1 |
| The News Quiz | BBC Radio 4 | 19/06/2015 | Generally accepted standards | 1 |
| Kaye Adams | BBC Radio Scotland | 04/05/2015 | Generally accepted standards | 1 |
| Programming | CBBC | 26/06/2015 | Scheduling | 1 |
| 999: What's Your Emergency? | Channel 4 | 11/06/2015 | Generally accepted standards | 1 |
| 999: What's Your Emergency? | Channel 4 | 11/06/2015 | Materially misleading | 2 |
| 999: What's Your Emergency? | Channel 4 | 23/06/2015 | Disability discrimination/offence | 1 |
| Benefits Street | Channel 4 | 02/06/2015 | Generally accepted standards | 1 |
| Born Naughty? | Channel 4 | 28/05/2015 | Under 18s in programmes | 1 |
| Bums, Boobs and Botox | Channel 4 | 17/06/2015 | Promotion of products/services | 1 |
| Channel 4 News | Channel 4 | 01/06/2015 | Due impartiality/bias | 1 |
| Channel 4 News | Channel 4 | 13/06/2015 | Due impartiality/bias | 1 |
| Channel 4 News | Channel 4 | 16/06/2015 | Race discrimination/offence | 1 |
| Channel 4's Comedy Gala 2015 | Channel 4 | 07/06/2015 | Generally accepted standards | 1 |
| Channel 4's Comedy Gala 2015 | Channel 4 | 07/06/2015 | Religious/Beliefs discrimination/offence | 1 |
| Dogging Tales | Channel 4 | 25/06/2015 | Generally accepted standards | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-------------|-------------------|---|----------------------|
| Humans | Channel 4 | 14/06/2015 | Generally accepted standards | 1 |
| Humans | Channel 4 | 14/06/2015 | Sexual material | 2 |
| Kevin Mccloud's Escape to the Wild | Channel 4 | 15/06/2015 | Animal welfare | 1 |
| Kevin Mccloud's Escape to the Wild | Channel 4 | 22/06/2015 | Animal welfare | 3 |
| My Self Harm Nightmare | Channel 4 | 18/03/2015 | Suicide and self harm | 12 |
| No Offence | Channel 4 | 09/06/2015 | Sexual orientation discrimination/offence | 1 |
| Not Safe for Work | Channel 4 | 30/06/2015 | Generally accepted standards | 1 |
| Not Safe for Work | Channel 4 | 30/06/2015 | Offensive language | 1 |
| Obsessive Compulsive Cleaners: Country House Rescue (trailer) | Channel 4 | 24/06/2015 | Generally accepted standards | 1 |
| Obsessive Compulsive Cleaners: Country House Rescue (trailer) | Channel 4 | 28/06/2015 | Generally accepted standards | 2 |
| Obsessive Compulsive Cleaners: Country House Rescue (trailer) | Channel 4 | 29/06/2015 | Generally accepted standards | 2 |
| Running the Shop | Channel 4 | 16/06/2015 | Offensive language | 1 |
| Running the Shop | Channel 4 | 16/06/2015 | Product placement | 1 |
| Sunday Brunch | Channel 4 | 31/05/2015 | Materially misleading | 1 |
| The Auction House | Channel 4 | 10/06/2015 | Religious/Beliefs discrimination/offence | 1 |
| The Tribe | Channel 4 | 11/06/2015 | Nudity | 1 |
| The Tribe | Channel 4 | 11/06/2015 | Race discrimination/offence | 1 |
| The Tribe | Channel 4 | 25/06/2015 | Nudity | 1 |
| Beetlejuice | Channel 5 | 28/06/2015 | Scheduling | 2 |
| Benefits Britain: Life on the Dole | Channel 5 | 20/06/2015 | Generally accepted standards | 1 |
| Big Brother | Channel 5 | 09/06/2015 | Due impartiality/bias | 1 |
| Big Brother | Channel 5 | 14/06/2015 | Generally accepted standards | 14 |
| Big Brother | Channel 5 | 17/06/2015 | Generally accepted standards | 1 |
| Big Brother | Channel 5 | 17/06/2015 | Sexual orientation discrimination/offence | 1 |
| Big Brother | Channel 5 | 20/06/2015 | Generally accepted standards | 9 |
| Big Brother | Channel 5 | 22/06/2015 | Generally accepted standards | 1 |
| Big Brother | Channel 5 | 23/06/2015 | Outside of remit / other | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|--------------------------------------|-------------|-------------------|---|----------------------|
| Big Brother | Channel 5 | 23/06/2015 | Race discrimination/offence | 1 |
| Big Brother | Channel 5 | 24/06/2015 | Generally accepted standards | 2,024 |
| Big Brother | Channel 5 | 25/06/2015 | Gender discrimination/offence | 29 |
| Big Brother | Channel 5 | 25/06/2015 | Outside of remit / other | 1 |
| Big Brother | Channel 5 | 25/06/2015 | Race discrimination/offence | 5 |
| Big Brother | Channel 5 | 25/06/2015 | Sexual orientation discrimination/offence | 1 |
| Big Brother | Channel 5 | 26/06/2015 | Generally accepted standards | 1 |
| Big Brother | Channel 5 | 26/06/2015 | Race discrimination/offence | 1 |
| Big Brother | Channel 5 | 27/06/2015 | Generally accepted standards | 1 |
| Big Brother | Channel 5 | 27/06/2015 | Race discrimination/offence | 1 |
| Big Brother | Channel 5 | 27/06/2015 | Violence and dangerous behaviour | 90 |
| Big Brother | Channel 5 | 28/06/2015 | Generally accepted standards | 1 |
| Big Brother | Channel 5 | 28/06/2015 | Outside of remit / other | 1 |
| Big Brother | Channel 5 | 29/06/2015 | Race discrimination/offence | 1 |
| Big Brother | Channel 5 | 30/06/2015 | Generally accepted standards | 30 |
| Big Brother | Channel 5 | 30/06/2015 | Offensive language | 5 |
| Big Brother | Channel 5 | 01/07/2015 | Generally accepted standards | 96 |
| Big Brother (trailer) | Channel 5 | 01/06/2015 | Offensive language | 3 |
| Big Brother (trailer) | Channel 5 | 04/06/2015 | Scheduling | 6 |
| Big Brother: Live Eviction | Channel 5 | 12/06/2015 | Generally accepted standards | 14 |
| Big Brother: Live Eviction | Channel 5 | 19/06/2015 | Generally accepted standards | 31 |
| Big Brother: Live Eviction | Channel 5 | 19/06/2015 | Outside of remit / other | 6 |
| Big Brother: Live Eviction | Channel 5 | 19/06/2015 | Violence and dangerous behaviour | 2 |
| Big Brother: Live Eviction | Channel 5 | 26/06/2015 | Due impartiality/bias | 13 |
| Big Brother's Bigger Bit on the Side | Channel 5 | 29/06/2015 | Generally accepted standards | 1 |
| Big Brother's Bigger Bit on the Side | Channel 5 | 30/06/2015 | Generally accepted standards | 1 |
| Big Brother's Bit on the Side | Channel 5 | 10/06/2015 | Gender discrimination/offence | 1 |
| Big Brother's Bit on the Side | Channel 5 | 19/06/2015 | Disability discrimination/offence | 1 |
| Big Brother's Bit on the Side | Channel 5 | 24/06/2015 | Disability discrimination/offence | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|------------------------|-------------------|-----------------------------------|----------------------|
| Blinging Up Baby: You Won't Believe it! | Channel 5 | 19/05/2015 | Under 18s in programmes | 1 |
| Blinging Up Baby: You Won't Believe it! | Channel 5 | 24/05/2015 | Under 18s in programmes | 1 |
| Blinging Up Baby: You Won't Believe it! | Channel 5 | 02/06/2015 | Under 18s in programmes | 3 |
| Conspiracy | Channel 5 | 12/06/2015 | Scheduling | 1 |
| Furious and Funny: Caught on Camera | Channel 5 | 01/06/2015 | Violence and dangerous behaviour | 1 |
| Neighbours | Channel 5 | 08/06/2015 | Scheduling | 1 |
| Psycho Pussies: When Cats Attack | Channel 5 | 24/06/2015 | Animal welfare | 1 |
| The Dog Rescuers with Alan Davies | Channel 5 | 16/06/2015 | Generally accepted standards | 1 |
| The Wright Stuff | Channel 5 | 08/06/2015 | Violence and dangerous behaviour | 1 |
| The Wright Stuff | Channel 5 | 22/06/2015 | Materially misleading | 1 |
| Islamic Fundraising | CHSTV | 29/06/2015 | Generally accepted standards | 1 |
| The Heartbreak Kid (trailer) | Comedy Central | 02/06/2015 | Scheduling | 1 |
| Programming | CVFM Middlesbrough | 22/06/2015 | Crime | 1 |
| Halfords' sponsorship of Happy Motoring on Dave | Dave | 18/06/2015 | Disability discrimination/offence | 1 |
| Undercover | Dave | 16/06/2015 | Race discrimination/offence | 1 |
| Bear Grylls: Breaking Point | Discovery | 27/06/2015 | Offensive language | 1 |
| Birds of a Feather | Drama | 21/06/2015 | Television Access Services | 1 |
| Rock and Chips | Drama | 17/03/2015 | Offensive language | 1 |
| Three Up, Two Down (trailer) | Drama | 23/06/2015 | Violence and dangerous behaviour | 1 |
| Hollyoaks | E4 | 08/06/2015 | Scheduling | 1 |
| Channel ident | E4+1 | 26/06/2015 | Generally accepted standards | 1 |
| Bullrun - Cops, Cars and Superstars | Extreme Sports Channel | 19/06/2015 | Nudity | 1 |
| Cuban Fury | Film4 | 08/06/2015 | Offensive language | 1 |
| Heart Breakfast with Tom, Nicola & Jack | Heart FM (Sussex) | 15/06/2015 | Generally accepted standards | 1 |
| Anadin's sponsorship of The Chase | ITV | Various | Sponsorship credits | 6 |
| Black Work (Trailer) | ITV | Various | Outside of remit / other | 1 |
| Clint Eastwood Season (trailer) | ITV | 28/06/2015 | Scheduling | 1 |
| Coronation Street | ITV | 08/06/2015 | Product placement | 1 |
| Coronation Street | ITV | 15/06/2015 | Violence and dangerous behaviour | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-------------|-------------------|-----------------------------------|----------------------|
| Coronation Street | ITV | 22/06/2015 | Materially misleading | 1 |
| Emmerdale | ITV | 22/05/2015 | Offensive language | 1 |
| Emmerdale | ITV | 04/06/2015 | Offensive language | 1 |
| Emmerdale | ITV | 12/06/2015 | Television Access Services | 1 |
| Emmerdale | ITV | 24/06/2015 | Disability discrimination/offence | 1 |
| Emmerdale | ITV | 30/06/2015 | Materially misleading | 1 |
| Euro 2016 Qualifier Highlights | ITV | 14/06/2015 | Generally accepted standards | 2 |
| Exposure: Charities Behaving Badly | ITV | 18/02/2015 | Due impartiality/bias | 1 |
| Exposure: Jihad - A British Story | ITV | 15/06/2015 | Due impartiality/bias | 3 |
| Good Morning Britain | ITV | 11/06/2015 | Gender discrimination/offence | 1 |
| Good Morning Britain | ITV | 19/06/2015 | Gender discrimination/offence | 2 |
| Good Morning Britain | ITV | 25/06/2015 | Generally accepted standards | 1 |
| Good Morning Britain | ITV | 26/06/2015 | Generally accepted standards | 1 |
| ITV News and Weather | ITV | 11/06/2015 | Scheduling | 1 |
| ITV News and Weather | ITV | 15/06/2015 | Generally accepted standards | 1 |
| ITV News and Weather | ITV | 22/06/2015 | Animal welfare | 1 |
| ITV News at Ten and Weather | ITV | 01/06/2015 | Under 18s in programmes | 1 |
| ITV News at Ten and Weather | ITV | 24/06/2015 | Generally accepted standards | 1 |
| Jeremy Kyle's Emergency Room | ITV | 15/06/2015 | Generally accepted standards | 3 |
| Jeremy Kyle's Emergency Room | ITV | 15/06/2015 | Scheduling | 4 |
| Jeremy Kyle's Emergency Room | ITV | 16/06/2015 | Materially misleading | 1 |
| Jeremy Kyle's Emergency Room | ITV | 17/06/2015 | Scheduling | 1 |
| Jeremy Kyle's Emergency Room | ITV | 18/06/2015 | Materially misleading | 1 |
| Loose Women | ITV | 04/06/2015 | Nudity | 1 |
| Loose Women | ITV | 05/06/2015 | Generally accepted standards | 1 |
| Loose Women | ITV | 08/06/2015 | Nudity | 1 |
| Loose Women | ITV | 11/06/2015 | Generally accepted standards | 1 |
| Loose Women | ITV | 23/06/2015 | Gender discrimination/offence | 1 |
| Me and My Guide Dog | ITV | 09/06/2015 | Generally accepted standards | 1 |
| Nationwide's sponsorship of ITV documentaries | ITV | 04/06/2015 | Generally accepted standards | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|--|---------------------|-------------------|-----------------------------------|----------------------|
| Nationwide's sponsorship of ITV documentaries | ITV | 26/06/2015 | Generally accepted standards | 1 |
| Off Their Rockers | ITV | 08/06/2015 | Disability discrimination/offence | 2 |
| Play to the Whistle – Extra Time | ITV | 06/06/2015 | Generally accepted standards | 1 |
| Royal London's sponsorship of London Weekday Weather | ITV London | 30/06/2015 | Generally accepted standards | 1 |
| Royal London's sponsorship of London Weekday Weather | ITV London | Various | Generally accepted standards | 1 |
| The Chase | ITV | 26/06/2015 | Outside of remit / other | 6 |
| The Hobbit: An Unexpected Journey | ITV | 13/06/2015 | Scheduling | 1 |
| The Jeremy Kyle Show | ITV | 22/06/2015 | Race discrimination/offence | 1 |
| The Paul O'Grady Show | ITV | 25/05/2015 | Materially misleading | 1 |
| This Morning | ITV | 11/06/2015 | Generally accepted standards | 1 |
| This Morning | ITV | 22/06/2015 | Generally accepted standards | 4 |
| This Morning | ITV | 24/06/2015 | Gender discrimination/offence | 1 |
| This Morning | ITV | 29/06/2015 | Under 18s in programmes | 1 |
| You've Been Framed! | ITV | 27/06/2015 | Generally accepted standards | 1 |
| Tonight | ITV | 18/06/2015 | Due impartiality/bias | 1 |
| Love Island | ITV2 | 16/06/2015 | Sexual material | 1 |
| You've Been Framed! | ITV2 | 26/06/2015 | Violence and dangerous behaviour | 1 |
| Neev | Kiss FM | 12/06/2015 | Disability discrimination/offence | 1 |
| James O'Brien | LBC 97.3 FM | 16/06/2015 | Due impartiality/bias | 1 |
| Babestation Daytime | Lucky Star | 04/06/2015 | Participation TV - Harm | 1 |
| Sex on Wheels | More 4 | 05/06/2015 | Gender discrimination/offence | 1 |
| Humans (trailer) | More4 | 16/06/2015 | Scheduling | 1 |
| Programming | National Geographic | Various | Television Access Services | 1 |
| Most Haunted | Really | 04/06/2015 | Generally accepted standards | 1 |
| Red Light Central | Red Light 1 | 29/05/2015 | Participation TV - Offence | 1 |
| Programming | Sam FM | 19/06/2015 | Generally accepted standards | 1 |
| Legal Advice | Sangat TV | 14/05/2015 | Advertising/editorial distinction | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|----------------------|-------------------|---|----------------------|
| Game of Thrones | Sky Atlantic | 08/06/2015 | Generally accepted standards | 10 |
| Penny Dreadful | Sky Atlantic | 02/06/2015 | Sexual material | 1 |
| Press Preview | Sky News | 10/05/2015 | Crime | 1 |
| Qatar Airways' sponsorship of Sky Weather | Sky News | 25/06/2015 | Sponsorship | 1 |
| Sky Midnight News | Sky News | 24/06/2015 | Disability discrimination/offence | 1 |
| Sky News | Sky News | 16/06/2015 | Generally accepted standards | 1 |
| Sky News | Sky News | 22/06/2015 | Scheduling | 1 |
| Sky News | Sky News | 24/06/2015 | Generally accepted standards | 1 |
| Sky News | Sky News | 25/06/2015 | Generally accepted standards | 1 |
| Sky News | Sky News | 02/07/2015 | Due accuracy | 1 |
| Sky News at Ten | Sky News | 29/06/2015 | Offensive language | 1 |
| Sky News with Colin Brazier | Sky News | 15/06/2015 | Generally accepted standards | 1 |
| Sky News with Kay Burley | Sky News | 05/06/2015 | Generally accepted standards | 4 |
| Sky News with Kay Burley | Sky News | 16/06/2015 | Product placement | 2 |
| Sunrise | Sky News | 22/06/2015 | Due impartiality/bias | 1 |
| Sunrise | Sky News | 28/06/2015 | Generally accepted standards | 1 |
| Week in Review | Sky News | 26/06/2015 | Generally accepted standards | 1 |
| Ali & Anand Show | Spice FM | 20/04/2015 | Race discrimination/offence | 1 |
| Me and My Guide Dog | STV | 09/06/2015 | Generally accepted standards | 1 |
| The Alan Brazil Sports Breakfast | Talksport | 03/06/2015 | Commercial communications on radio | 2 |
| The Alan Brazil Sports Breakfast | Talksport | 04/06/2015 | Commercial communications on radio | 1 |
| Acquire The Fire with Ron Luce | TBN UK | 20/06/2015 | Sexual orientation discrimination/offence | 1 |
| No Repeat Guarantee competition | TFM Radio | 21/05/2015 | Competitions | 1 |
| The 'Bridge | The 'Bridge | n/a | Outside of remit / other | 1 |
| Muqabla | UMP Movies | 16/05/2015 | Violence and dangerous behaviour | 1 |
| News | UTV | 24/06/2015 | Religious/Beliefs discrimination/offence | 1 |
| Programming | Various | Various | Generally accepted standards | 1 |
| Wimbledon | Various BBC channels | Various | Outside of remit / other | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|------------------------------------|--------------------|--------------------------|-------------------|-----------------------------|
| XFM Breakfast Show with Jon Holmes | XFM London | 22/06/2015 | Animal welfare | 1 |

Complaints assessed under the General Procedures for investigating breaches of broadcast licences

For more information about how Ofcom conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.

| Licensed service | Licensee | Categories |
|-------------------------|------------------------|-------------------|
| Absolute Classic Rock | Absolute Radio Limited | Format |

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television and radio adverts, or accuracy in BBC programmes.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

Complaints about television or radio programmes

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

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

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|------------------|-------------------|------------------------------|----------------------|
| BBC News | BBC 1 | 18/06/2015 | Due accuracy | 1 |
| BBC News | BBC 1 | 20/06/2015 | Due impartiality/bias | 1 |
| The Andrew Marr Show | BBC 1 | 28/06/2015 | Due impartiality/bias | 1 |
| Women's World Cup | BBC 1 | 01/07/2015 | Due impartiality/bias | 1 |
| British Muslim Comedy – Sadia Azmat: Things I have been asked as a British Muslim | BBC iPlayer | 18/06/2015 | Race discrimination/offence | 1 |
| Chuggington | BBC iPlayer | Various | Crime | 1 |
| My Jihad | BBC iPlayer | 28/06/2015 | Generally accepted standards | 1 |
| Jeremy Vine | BBC Radio 2 | 01/07/2015 | Due impartiality/bias | 1 |
| Any Questions | BBC Radio 4 | 27/06/2015 | Due impartiality/bias | 1 |
| Sunday Sequence | BBC Radio Ulster | 19/04/2015 | Due impartiality/bias | 1 |
| Advertisements | CBS Drama | 23/06/2015 | Advertising content | 1 |
| Advertisements | Channel 4 | 24/06/2015 | Advertising content | 2 |
| Advertisements | Channel 4 | 25/06/2015 | Advertising content | 3 |
| Advertisements | Channel 5 | 21/06/2015 | Advertising content | 1 |
| Advertisements | Channel 5 | 22/06/2015 | Advertising content | 1 |
| Advertisements | Film4 | 26/06/2015 | Advertising content | 1 |
| Advertisements | Fox | 27/06/2015 | Advertising content | 1 |
| Advertisements | ITV | 22/06/2015 | Advertising content | 2 |
| Advertisements | ITV | 23/06/2015 | Advertising content | 1 |
| Advertisements | ITV | 25/06/2015 | Advertising content | 1 |
| Advertisements | ITV | 26/06/2015 | Advertising content | 1 |
| Advertisements | ITV | 29/06/2015 | Advertising content | 1 |
| Advertisements | ITV | 03/07/2015 | Advertising content | 1 |
| Advertisements | ITV4 | 20/06/2015 | Advertising content | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|------------------|--------------------|--------------------------|-----------------------|-----------------------------|
| Advertisements | ITV4 | Various | Advertising content | 1 |
| Advertisements | London Live | 27/06/2015 | Advertising content | 1 |
| Advertisements | QVC Extra | 05/06/2015 | Teleshopping | 1 |
| Advertisements | Various | Various | Advertising content | 1 |
| Advertisements | Various | Various | Advertising content | 1 |
| BBC News | Various | Various | Due impartiality/bias | 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 June and 3 July 2015.

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

| Programme | Broadcaster | Transmission date |
|---|-------------------------------|-------------------|
| Advertising minutage | Africa Channel | 14 May 2015 |
| Live broadcast | ARY News | 30 March 2015 |
| The Voice UK | BBC 1 | 4 April 2015 |
| Capital Breakfast with Adam, Danny & JoJo | Capital FM (Yorkshire) | 12 June 2015 |
| News | Geo News | 4 May 2015 |
| Subh e Pakistan | Geo TV | 29 April 2015 |
| News | Various Global Radio stations | 8 June 2015 |
| Adam Cattrell Drive Time | Key 103 | 30 April 2015 |
| Steve Allen | LBC 97.3 FM | 15 June 2015 |
| Advertising minutage | UMP Movies | 14 June 2015 |

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 Procedures for the consideration and adjudication of Fairness and Privacy complaints

| Programme | Broadcaster | Transmission date |
|------------------|----------------------|--------------------------|
| Akaal Uncensored | Akaal Channel | 21 November 2014 |
| Today | NTV Mir Lithuania | 15 March 2015 |

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:

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

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

| Licensee | Licensed Service |
|----------------------------|-------------------------|
| Preston Community Radio 23 | City Beat Preston |

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/>.