

# **Ofcom Broadcast Bulletin**

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## Introduction

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

- a) Ofcom's Broadcasting Code ("the Code"), the most recent version of which took effect on 28 February 2011 and covers all programmes broadcast on or after 28 February 2011. The Broadcasting Code can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 28 February 2011 are covered by the version of the Code that was in force at the date of broadcast.

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.

- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
- the prohibition on 'political' advertising;
  - sponsorship (see Rules 9.16 and 9.17 of the Code for television broadcasters);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>1</sup>; and
  - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found at:

[www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

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

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

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

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<sup>1</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted.

## Standards cases

### In Breach

#### **Frankie Boyle's Tramadol Nights (comments about Harvey Price)<sup>1</sup>** *Channel 4, 7 December 2010, 22:00*

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##### **Introduction**

*Tramadol Nights* was a six-part comedy series which was written by and featured the controversial, alternative comedian Frankie Boyle. The series featured the comedian in various stand-up and comedy sketches which covered topics such as AIDS, cancer, religion, racism, sex, paedophilia, rape, incest, war and disability.

In the second episode of the series Frankie Boyle made various comments about the former glamour model and reality TV personality, Katie Price (formerly known as Jordan), and her eight year-old son, Harvey, who is known to have a medical condition and learning difficulties.

Frankie Boyle said:

*"Apparently Jordan and Peter Andre [Katie Price's ex-husband] are fighting each other over custody of Harvey. Well eventually one of them will have to lose and have to keep him.*

*I have a theory that Jordan married a cage fighter [Alex Reid, Katie Price's second husband] because she needed someone strong enough to stop Harvey from fucking her."*

Solicitors acting on behalf of Katie and Harvey Price complained to Ofcom that the comments were discriminatory, offensive, demeaning and humiliating. The solicitors informed Ofcom that Harvey has a condition called septo-optic dysplasia, and is also on the autistic spectrum. The solicitors stated that "Harvey has very restricted sight, needs constant medication and has learning difficulties. Harvey, as a result of his condition and medication is large and strong for his age".

Ofcom also received approximately 500 complaints about the comments, including, from the learning disability charity Mencap and from the Royal London Society for the Blind. In summary, the complainants stated that it was highly offensive, discriminatory and abusive to broadcast these comments about an eight year-old disabled child. The complainants were also offended that the comments named a child as engaging in rape and incest.

While many of the complainants accepted that Frankie Boyle is well known for broadcasting challenging comedy, they considered that because these comments were targeted specifically at a known child with a disability, Channel 4 had been irresponsible in broadcasting this material.

In light of the complaints made about these specific comments in this episode and our own analysis of the material, Ofcom asked Channel 4 to provide comments on how this broadcast complied with the following rules of the Code:

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<sup>1</sup> This issue of the Bulletin includes another finding on *Frankie Boyle's Tramadol Nights* (mental health sketch and other issues). See page 37.

- Rule 2.1 “Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.”
- Rule 2.3 “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

## Response

Channel 4 stated that the material complied with Rules 2.1 and 2.3 of the Code and was “wholly justified in the context”.

### Channel's 4 remit

The broadcaster said that it has a public service remit to provide a broad range of high quality and diverse programming which, in particular: demonstrates innovation, experiment and creativity; appeals to the tastes and interest of a culturally diverse society; and exhibits distinctive character. It continued that it “takes its statutory remit seriously and we pride ourselves on giving artists creative freedom to express themselves on a channel whose viewers have an expectation that we will push boundaries and take risks”. It added that it is “Channel 4’s job and remit to champion pioneering and distinctive voices in British comedy and bring them to a wider audience”.

### The series as a whole

Channel 4 said that *Tramadol Nights* “is a series which reflects Frankie Boyle’s misanthropic brand of humour, in which he is both self-mocking and outwardly scabrous about the world at large”. It added that “in the series, no one is spared Frankie Boyle’s mock-fury as everyone and everything comes under scrutiny in his attack” and “nothing he says is intended as a slur on any particular community – everyone is fair game in Frankie’s eyes”. Channel 4 added that this series was “not for the faint hearted or easily offended, as was clearly and unambiguously communicated to the audience in advance”. It stated that “the understanding and interpretation of comedy is unavoidably a subjective exercise, and one which will always lead to different views being expressed”.

Channel 4 then explained the measures it took in broadcasting this material to ensure it complied with the Code and the reasons why it considered it had complied with its obligation to provide ‘adequate protection’ for members of the public from the inclusion of offensive material and that the material in question was justified by the context.

Channel 4 said that “given the undeniably difficult concepts this series contains, each of the six programmes received the most comprehensive editorial, legal and compliance scrutiny at the highest level in accordance with Channel 4’s editorial referral-up procedures”. It stated that “input was provided at appropriate stages from the Head of Comedy, Channel 4’s Disability Adviser, Director of Creative Diversity, Controller of Legal & Compliance and Channel 4’s Editor-in-Chief”.

It said that “the series was carefully scheduled and clearly labelled to alert viewers to the fact that its content would offend some viewers”. The broadcaster pointed out that “the series was scheduled to start an hour after the watershed in a 22:00 hours slot which formed part of Channel 4’s new Tuesday night comedy, along with the new series of *The Morgana Show*”. Channel 4 added that it considered 22:00 hours to be an “appropriate transmission time for content of this type, weighing up the nature and satirical content of the programme, the established reputation of Frankie Boyle, and the fact that audiences expect to see more challenging material on Channel 4”.

The broadcaster said that the series was also heavily publicised and extensively promoted on posters, in newspapers, magazines and through on-air trails in the weeks leading up to the broadcast of the series. It continued that “Frankie Boyle’s style is undoubtedly challenging and bound to cause offence to some viewers but the series was scheduled with this fact in mind, and carried strong warnings, to afford audiences the requisite protection from such content”. Each episode in the series was preceded by the following announcement:

*“Prepare to enter the dark and twisted world of Frankie Boyle’s Tramadol Nights. This programme contains very strong language and uncompromising adult content which some viewers will find offensive”.*

Channel 4 said that Frankie Boyle is “a comedian and best-selling writer well known for his provocative and controversial dark humour”. It added that he was a regular panellist on *Mock the Week*, and has appeared on programmes such as *Have I Got News For You*, *8 Out of 10 Cats*, *Would I Lie To You?*, *You Have Been Watching* and *Never Mind the Buzzcocks*. Channel 4 also highlighted that the comedian has a regular column in the *Sun* newspaper, had a best-selling autobiography in 2010 and a recent sell out live tour.

#### Katie and Harvey Price

In terms of the editorial focus of the comments made about Katie and Harvey Price, Channel 4 said that it “rejects in the strongest terms that this is a joke about Harvey Price’s disability, or about rape or incest – it is simply absurdist satire”.

Channel 4 further explained the context of the comments, stating that Katie Price “has had complaints about her behaviour in the reality show [*Katie and Peter: The Next Chapter* and *What Katie Did Next*, both broadcast on ITV2] being too sexually explicit in front of her kids, and has sparked a media storm over her two year old daughter’s make-over, raising concerns about Price’s perceived sexualisation of her children”. It added that Harvey Price was already well known in the media and “in the week prior to transmission there were already over 500,000 links to web content about Harvey via the search engine Google, and a further 250,000 web images featuring the child, most involving staged or mediated events in his mother’s career”. Channel 4 also said that “on the 7 April 2010, eight months prior to transmission [of *Tramadol Nights*], Katie Price’s new husband, the cage-fighter Alex Reid, made a series of public jokes about Harvey resembling the fictional character, ‘The Incredible Hulk’”.

Channel 4 said that “it was these specific remarks and the general high profile of the child, that Frankie Boyle’s joke is predicated upon”. It stated that the comment “takes this to an absurd extreme by suggesting that Jordan needed a cage fighter to protect her son from having sex with her”. It continued that “the joke plays on a classic Oedipus complex in modern day form, with Jordan as the target of the joke” and “it’s well documented that within her own TV series, Ms Price is very physical with her

children, especially with Harvey, and the notion of Harvey attacking her is an absurd extreme of that". It added that therefore "Frankie Boyle's comedy, in his trademark satirical and brutal way, plays in part on Price's perceived sexualisation and exploitation of her children, who have been raised under the glare of the camera lens".

Channel 4 summarised that "in this particular case the joke was not directed at Harvey, or his disability: the first part of the joke was aimed clearly at Katie Price and Peter Andre, painting them as cynically exploiting a child in custody proceedings in the media. The second part satirised Reid's very public, televised comments about Harvey's size".

Channel 4 stated that it is "renowned for its innovative disability programming schedule and has a great tradition of including disability in its comedy output, from *Brass Eye* through *Phoenix Nights*, *Max and Paddy*, *I'm Spazticus* to *Cast Offs*".

It concluded that "for the reasons outlined above, Channel 4 submits that Frankie Boyle's comments in *Tramadol Nights* complied with rules 2.1 and 2.3 and were wholly justified in the context". It also stated that it "should not be deterred from taking editorial risks... and to inhibit C4 from working with such challenging talent and content would undermine C4's ability and freedom to take editorial and content risks in the future".

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material<sup>2</sup>.

Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material<sup>3</sup>. These standards are contained in the Code. Broadcasters are required under Rule 2.1 of the Code to apply those generally accepted standards, and under Rule 2.3, they must ensure that, in doing so, material which may cause offence is justified by the context.

In performing its duties, Ofcom must have regard to the need for standards to be applied "in the manner that best guarantees an appropriate level of freedom of expression"<sup>4</sup>. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view

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<sup>2</sup> Section 3(2)(d) of the Act

<sup>3</sup> Section 319(2)(f) of the Act

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



and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom also had regard to the fact that Channel 4 is a public service broadcaster with a unique statutory remit to broadcast a range of high quality and diverse programming. This programming should in particular demonstrate innovation, experiment and creativity in the form and content of programmes; appeal to the tastes and interests of a culturally diverse society; make a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and exhibit a distinctive character<sup>5</sup>.

Further, Ofcom also took into account that there is a long history on British television and radio of broadcast comedy tackling difficult issues and deliberately pushing at boundaries of contemporary taste, particularly when broadcast well after the watershed. In accordance with the fundamental right to freedom of expression, the Code does not prohibit broadcast content from referring to any particular topic, subject or group of people.

However the Code does require that potentially offensive material is justified by its context. As such, there is significant room for innovation, creativity and challenging material within comedy programming, but it does not have *unlimited* licence in terms of offensive material. There may be circumstances in which relevant contextual factors (such as: a programme's genre; scheduling; audience expectations; and pre-transmission warnings given to the audience) are not sufficient to justify the broadcast of extremely offensive material.

Therefore the questions for Ofcom in reaching a decision in this case were: first, to establish whether the material in question was offensive (and the degree of any offensiveness) and, if so, secondly, to determine whether Channel 4 had ensured that it had applied generally accepted standards by justifying the inclusion of that material by the context of the programme.

Ofcom notes the points made by Channel 4 in its response that Frankie Boyle's comments were absurdist satire and were not a joke about Harvey Price's disability, or about rape or incest. According to Channel 4 Harvey Price and his disability were "entirely incidental" to the comedy, and he was not the target of the comments. Channel 4 argued that the comments were intended to be about Katie Price and Peter Andre, with the first comment satirising the extent to which both Katie Price and Peter Andre exploit their children in the media. Further, Channel 4 submitted that the second comment was intended to be about Alex Reid, by satirising comments he had made in public about Harvey's size.

Ofcom acknowledged that, generally, audience interpretation of comedy is subjective and can vary widely. However, having assessed the material in question carefully, and recognising that it did not involve statements or allegations of fact, Ofcom did not accept Channel 4's arguments about the targets of Frankie Boyle's comments. The comments did not appear to Ofcom to hinge on satire about Katie Price, Peter Andre or Alex Reid. Any such intended satire in the two comments was, in Ofcom's view, obscured by their straightforward focus on Harvey Price and his disability.

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<sup>5</sup> Section 265(3) of the Act

In the first comment (*“Apparently Jordan and Peter Andre are fighting each other over custody of Harvey. Well eventually one of them will have to lose and have to keep him”*), the intended joke appeared to centre on the notion that the parent acquiring custody of Harvey would “lose” in the custody battle. Ofcom concluded that Frankie Boyle’s inference was that Harvey’s disability would be a burden to the parent in question.

In the second comment, (*“I have a theory that Jordan married a cage fighter because she needed someone strong enough to stop Harvey from fucking her”*), the intended joke appeared to focus on Harvey’s size, which is known to be linked to his mental and physical disability. Ofcom concluded that the inference here was that Harvey’s disability also involved a threat to his mother’s safety, namely resulting from a tendency towards rape, incest, and sexual violence.

The broadcaster argued that the second comment about Harvey was not “a joke about Harvey Price’s disability, or about rape or incest – it is simply absurdist satire”. Channel 4 also said that “...we do not believe that any viewer would have taken this particular joke literally.” As noted earlier, Ofcom recognises that the comment was unlikely to be taken literally by few, if any, viewers. However, simply because humour is absurd or surreal does not, in itself, lessen its potential to offend.

Further, Ofcom noted Channel 4’s argument that Frankie Boyle’s comments were in part based on the “general high profile” of Harvey Price, and in particular some public remarks by Alex Reid suggesting that when Harvey grew up he would resemble “The Incredible Hulk”. The broadcaster argued that: “...This is comedy about Ms Price’s exploitation of her children for publicity purposes, and is satire aimed at her behaviour as a mother and her cavalier attitude towards relationships...It is satire that takes the public profile she has actively created for both her children and her partner to a shockingly absurd level.”

Ofcom accepted that Katie Price, Alex Reid and Peter Andre have consciously exposed their and their children’s lives to the media. Celebrities who do this must bear the consequences and can expect to be targets of humour and criticism. Harvey Price, however, is only known in the media because of his mother, rather than through his own choice. In Ofcom’s view, the fact that a public figure chooses to expose some aspects of his or her child’s life in the media does not provide broadcasters with unlimited licence to broadcast comedy that targets humour at such a child’s expense. This position applies even more firmly in a case in which the child is as young as eight years old, and has a number of disabilities which are specifically focussed on as the target of that intended humour.

In considering this material, we took into account Ofcom’s 2010 research<sup>6</sup> into offensive language (which also considered discriminatory treatment). This identified that most participants thought that potentially offensive or discriminatory language or treatment of disability was particularly unacceptable when targetted towards a group or a known individual with a disability, even in the context of comedy programming.

Taking into account all of the above factors, Ofcom was of the view that the material in question appeared to directly target and mock the mental and physical disabilities of a known eight year-old child who had not himself chosen to be in the public eye.

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<sup>6</sup> Audience attitudes towards offensive language:  
<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

As such, Ofcom found that the comments had considerable potential to be highly offensive to the audience.

It is important to note that the Code does not prohibit the broadcast of offensive or potentially offensive material, but requires that it is justified by the context. Therefore, Ofcom then turned to consider whether, in applying generally accepted standards so as to provide adequate protection to viewers, Channel 4 had ensured that this potentially highly offensive material had been justified by its context. Given the particularly high level of offence that Ofcom considered Frankie Boyle's comments had the potential to cause, Ofcom was of the view that a very high level of contextualisation would be required for the material to comply with Rule 2.3 of the Code.

Channel 4 argued that the comments were "wholly justified in the context" because it gave careful consideration to the broadcast of the series in advance and applied a number of measures to ensure its content complied with the Code. As the Code makes clear, the meaning of "context" is assessed by Ofcom according to a series of non-exhaustive factors, such as the editorial content of the programme, the time of broadcast and the degree of offence. As the Code also makes clear, the provision of appropriate information by the broadcaster may also assist in avoiding or minimising offence.

As noted above, the Channel 4 service has a remit to produce innovative and distinctive programmes, and we took into account that the channel is known for broadcasting challenging and provocative programmes. However, it should be noted that while the channel's remit clearly requires it to produce such programming, it does not negate the fact that the channel must nevertheless work within certain boundaries: Channel 4's programmes must comply with the Code, and Channel 4 must apply generally accepted standards to the content of its programmes.

We noted that Frankie Boyle is an established comedian, who has appeared on a number of comedy television programmes. He is also well known for his controversial and provocative humour, which often plays on his negative views of society and celebrities. We took into consideration that many viewers would have expected the series to contain challenging – and at times uncomfortable – humour, as well as material likely to offend. The expectations of the audience would also have been influenced by the fact that *Tramadol Nights* was heavily publicised in the weeks leading up to its broadcast to help inform potential viewers of the nature of the content; and formed a part of Channel 4's Tuesday comedy night, being followed by a new series of *The Morgana Show*.

Further, we noted from Channel 4's statement that the programme was carefully considered by senior editorial staff and edited in advance of broadcast. We also noted that the programme had been scheduled to begin at 22:00 to lessen the risk of offence and was preceded by a clear warning to the audience about the very strong language and "uncompromising adult content which some viewers will find offensive."

Ofcom considered very carefully the nature and context of Frankie Boyle's comments about Harvey Price, and the nature and context of the programme and series as a whole. We also took into account our statutory duty under the Act to ensure that adequate protection from offensive material is provided to members of the public. We weighed this duty very carefully against the right to freedom of expression, namely to receive and impart information and ideas without interference by public authority.

As stated above, Ofcom concluded that the material in question had a considerable potential to cause significant offence. Ofcom also considered that the potential offensiveness of the material exceeded other content in the series<sup>7</sup>. In particular, this distinction was notable when Ofcom considered other material in the series which, while nevertheless controversial and challenging, either targeted adults who have knowingly chosen to feature in, or expose their lives to the media, or used satire and controversy to make a joke at the expense of society as a whole, or its attitudes. By comparison, in this case, Frankie Boyle's comments appeared to derive humour by demeaning the physical and mental disabilities of a known eight year-old child.

As a result, Ofcom considered that, even taking into account contextual factors such as the nature of the series as a whole, its scheduling, publicity and the clear pre-transmission warning, these comments went beyond what would have been expected by the majority of viewers of a late night comedy show broadcast on Channel 4.

Therefore, in view of the particular circumstances of this case, Ofcom concluded that on balance, the context of this programme was not sufficient to justify the broadcast of this material.

In broadcasting these comments, Channel 4 did not apply generally accepted standards so as to provide adequate protection for members of the public from this offensive material.

However, in view of the careful consideration Channel 4 took in the broadcast of the series overall, Ofcom concluded that the broadcaster was clearly aware of its responsibilities under the Code and had attempted to comply with the Code's requirements. Taking into account the challenging and provocative nature of the content of the *Tramadol Nights* series overall, Ofcom did not consider that these breaches demonstrated a fundamental failure of Channel 4's compliance procedures. Rather, in Ofcom's view, this case involved an erroneous decision on a matter of editorial judgement on the broadcaster's part.

### **Breaches of Rules 2.1 and 2.3**

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<sup>7</sup> For example, see the finding on page 37 of this Bulletin on other material in *Tramadol Nights*.

## In Breach

### Elite Days

*Elite TV (Channel 965), 30 November 2010, 12:00 to 13:15*

*Elite TV (Channel 965), 1 December 2010, 13:00 to 14:00*

*Elite TV 2 (Channel 914), 8 December 2010, 10.00 to 11:30*

### Elite Nights

*Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35*

*Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25*

*Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45*

*Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20*

*Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30*

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## Introduction

*Elite Days* is televised daytime interactive chat advertisement programming broadcast on the services Elite TV and Elite TV 2 (Sky channel numbers 965 and 911 respectively). These services are available freely without mandatory restricted access and are situated in the 'adult' section of the Sky electronic programme guide ("EPG"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The presenters generally dress and behave in a flirtatious manner.

*Elite Nights* is televised interactive adult sex chat advertisement programming broadcast from 21:00 on the same two services and Sky channels. This service is also available freely without mandatory restricted access and is situated in the 'adult' section of the Sky EPG. Viewers are invited to contact onscreen female presenters via PRS. The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

The service Elite TV is owned and operated by Primetime TV (UK) Limited ("Primetime TV"); and Elite TV 2 is owned and operated by Over 18 TV Limited<sup>8</sup> ("Over 18 TV") (referred to collectively as "the Licensees").

## Pre-watershed broadcasts

Ofcom received complaints about the above broadcasts of *Elite Days*. In summary the complainants were concerned that these broadcasts showed sexual content that was too strong to transmit before the watershed. In particular, the complainants were concerned that the broadcasts were transmitted at a time when children could have been watching.

*Elite Days, Elite TV (Channel 965), 30 November 2010, 12:00 to 13:15*

The female presenter was wearing a black lace body with her black bra and thong visible underneath, and thigh high boots. During the broadcast the presenter sat facing towards camera with her legs wide open for long periods of time. She also: lay on her side with her legs open; positioned her buttocks to camera; repeatedly gyrated her buttocks; and repeatedly stroked her buttocks, inner thigh and breasts. There were also shots panning up and down the presenter's body.

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<sup>8</sup> Over 18 TV is a wholly owned subsidiary of Primetime TV.

*Elite Days, Elite TV (Channel 965), 1 December 2010, 13:00 to 14:00*

The female presenter was wearing a high cut, leopard print thong body. During the broadcast she: lay on her side with her legs open; positioned herself on all fours; positioned her buttocks to camera; repeatedly rocked and gyrated her pelvis and buttocks; repeatedly touched her breasts; and repeatedly stroked her buttocks and inner thighs. The broadcast also included shots of the camera panning up and down the presenter's legs.

*Elite Days, Elite TV 2 (Channel 914), 8 December 2010, 10:00 to 11:30*

The female presenter was wearing a low cut yellow and orange strapless dress with a thong underneath. During the broadcast the presenter's dress moved down a number of times to reveal her nipples. She was shown rubbing, touching and jiggling her breasts, and repeatedly rocking her body and thrusting her buttocks. During the broadcast the presenter also lay on her front and pulled her dress up over her buttocks to reveal her thong. She then raised her buttocks in the air and positioned them to camera. She was also shown lying on her back with her legs open (away from camera). There were also shots panning up and down the presenter's legs.

Post-watershed broadcasts

*Elite Nights, Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35*

Ofcom noted that between 22:30 and 23:00 the female presenter was wearing a revealing black thong which revealed her outer genital area. She was not wearing a top. During the broadcast the presenter was shown, for prolonged periods of time: lying on her back with her legs wide open to camera; lying on her front with her legs apart facing the camera; and kneeling on all fours with her buttocks positioned to camera. While in these positions the presenter forcefully thrust her buttocks for prolonged periods of time towards camera; repeatedly touched around her genital and anal area; and licked her breasts. The broadcast included close up shots of the presenter's genital area.

Between 23:00 and 00:00 the same presenter removed her thong and was completely naked. During the broadcast she lay on her back with her legs wide open for prolonged periods of time. While in this position the presenter placed her hand on her genitals in order to cover them up. During the broadcast the presenter licked her fingers on a number of occasions and was shown touching around her genital area (pushing her hand underneath her other hand that was placed over her genitals). She was also shown touching and massaging her breasts.

*Elite Nights, Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25*

The female presenter was wearing a revealing black and pink thong and a pink bra. From 21:00 the presenter was shown in various positions for prolonged periods of time, including: on all fours with her buttocks towards camera and her legs wide open; lying on her back with her legs open (both towards the camera and directed away from the camera); and lying on her back, facing the camera, with her legs wide open and pulled back. While in these positions the presenter's genital area was shown in close up for prolonged periods of time. She also forcefully thrust her buttocks and pelvis towards camera and repeatedly touched around her genital and anal area, and her breasts. She was also shown spanking herself on her buttocks.

*Elite Nights, Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45*

The female presenter was wearing revealing purple thong and a purple bra. From 21:00 the presenter was shown in various positions for prolonged periods of time, including: on all fours with her buttocks towards camera and her legs wide open; lying on her back with her legs open (away from the camera); and lying on her back, facing the camera, with her legs wide open. While in these positions, the presenter's genital and anal area were shown in close up and for prolonged periods of time. She also: forcefully thrust her buttocks and pelvis, repeatedly touched around her genital and anal area; licked and touched her breasts, briefly put her hands around her throat, and spanked herself on her buttocks.

*Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20*

The female presenter was wearing a thong which she removed at 00:50 so that she was naked. During the broadcast she was shown in various positions for prolonged periods of time, including: lying on her front with her legs open (away from camera); and lying on her back with her legs crossed. While in these positions the presenter repeatedly touched her breasts, forcefully thrust her buttocks, and was shown spitting on and licking her fingers. The naked presenter also adopted various positions where she was facing towards camera with her legs open. While doing so she placed her hand between her legs to cover her genital and anal area. While in these positions the presenter forcefully thrust her body and her pelvis area, and her genital area was shown at close range. Due to the amount of movement by the presenter there were times when her genital area was not fully covered by her hand, and there was clear contact between her hand, and her genital and anal area, and as a result pressure was applied to this area.

*Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30*

The female presenter was wearing a pink and black bra, and a revealing pink and black thong. From 22:00 the presenter was shown in various positions for prolonged periods of time, including: on all fours with her buttocks towards camera and her legs wide open; and lying on her back with her legs wide open to camera. While in these positions the presenter repeatedly touched and rubbed her genital area, forcefully thrust her pelvis, and repeatedly sucked and licked her fingers. Shortly after 22:00 the camera zoomed in extremely close up to the presenter's nipples, and she was shown licking and touching them. At various times during the broadcast the camera zoomed in towards the presenter's genital area so that it was shown at extremely close range. The presenter continued to lie on her back with her legs wide open and touched and stroked her genital area throughout the rest of the broadcast.

The rules governing broadcast advertising are set by the Broadcast Committee of Advertising Practice ("BCAP") with the approval of Ofcom. BCAP performs its function by setting, monitoring and amending the UK Code of Broadcast Advertising ("the BCAP Code"), with Ofcom retaining back-stop enforcement powers. The investigation of complaints relating to daytime chat and adult sex chat broadcast services - which are types of broadcast advertising - remain a matter for Ofcom. (Please see Ofcom's statement published on 3 June 2010<sup>9</sup> for further details).

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<sup>9</sup> See: <http://stakeholders.ofcom.org.uk/consultations/participationtv3/statement/>

### Request for comments

Ofcom requested formal comments from the Licensees under various and different BCAP Code Rules depending on the nature of the broadcast.

BCAP Code Rule 4.2: “Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

BCAP Code Rule 30.3: “Television only – Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”

BCAP Code Rule 30.3.2: “Television only – Advertisements permitted under rules 30.3... must not feature material that comes within the recognised character of pornography before 10.00pm or after 5.30am”.

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

Ofcom specifically asked the Licensees under BCAP Rules 4.2 and 32.3 in relation to the following broadcasts:

### Pre-watershed broadcasts

- Elite Days, Elite TV (Channel 965), 30 November 2010, 12:00 to 13:15
- Elite Days, Elite TV (Channel 965), 1 December 2010, 13:00 to 14:00
- Elite Days, Elite TV 2 (Channel 914), 8 December 2010, 10.00 to 11.30

### Post-watershed broadcasts

- Elite Nights, Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25
- Elite Nights, Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45

Ofcom requested formal comments under BCAP Code Rule 4.2 from Primetime TV in relation to the following broadcast:

- Elite Nights, Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35

Ofcom requested formal comments under BCAP Code Rules 4.2 and 30.3 from Primetime TV in relation to the following broadcasts:

- Elite Nights, Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20
- Elite Nights, Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30



## Response

### Pre-watershed broadcasts

*Elite Days, Elite TV (Channel 965), 30 November 2010, 12:00 to 13:15*  
*Elite Days, Elite TV (Channel 965), 1 December 2010, 13:00 to 14:00*  
*Elite Days, Elite TV 2 (Channel 914), 8 December 2010, 10.00 to 11.30*

The Licensees said that with regard to BCAP Code Rule 4.2 the above material was not in breach of the BCAP Code. It said that it considered “it hard to accept that the material could cause widespread offence against generally accepted moral, social or cultural standards”. It continued that this was “especially in light of its location within the clearly labelled adult section of the Sky EPG [electronic programme guide] ... and the risk of harm to minors on these dates would seem minimal given the time of broadcast ... and the fact that this content is likely to be ‘incomprehensible to pre-school children’”.

With regard to BCAP Code Rule 32.3, the Licensees said “although we felt that the content was extremely unlikely to cause harm or distress, we do agree that the content was on the outside edge of what could be considered to be suitable for a child to observe in the highly unlikely event that they stumble across it unawares”. They added that while they did not consider the material to be “wholly unsuitable for the time of day” the Licensees did agree that elements of the material raised some concerns.

The Licensees stated that in response they have taken a number of steps to ensure their daytime content no longer raises issues under the BCAP Code. They include no longer allowing pre-watershed presenters to wear swimwear, lingerie or anything that could be considered fetish wear, and limiting presenters’ movements to avoid sexualised positions. It added that it will “also be ensuring that all of our pre-watershed presenters and production staff have read and understood [Ofcom’s] recently published guidance<sup>10</sup>”.

### Post-watershed broadcasts

*Elite Nights, Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25*  
*Elite Nights, Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45*

With regard to the above broadcasts and BCAP Code Rule 4.2, the Licensees said that “the likelihood of harm and offence is minimal and it would be disproportionate for Ofcom to find us in breach”. They added that “we find it hard to agree that the material could cause widespread offence against generally accepted moral, social or cultural standards”. It said that “in all cases, the material was transmitted on channels located within the adult section of the Sky EPG (which we consider the safest platform for adult content) and was fully in line with viewer expectations”.

With regard to the above broadcasts and BCAP Code Rule 32.3, the Licensees said “we accept that [the broadcasts] were inappropriately scheduled”. They added that since Ofcom conducted a meeting with all licensees of adult chat and daytime chat in December 2010 “we have implemented significant changes to ensure that the transition between pre and post-watershed is handled more effectively”. It said that

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<sup>10</sup> On 28 January 2011 Ofcom published guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services.

“all post-watershed staff have been instructed to ensure that the content between 21:00 and 22:00 is more akin to pre-watershed standards”.

With regard to the 16 December 2010 broadcast, the Licensees explained that this was broadcast on the night of its staff Christmas party, and “we left an insufficiently experienced production team in charge” which led to “compliance failing on our part”. It therefore expressed “its sincere apologies” and assured Ofcom that this would not happen again.

*Elite Nights, Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35*

With regard to the above broadcast and BCAP Code Rule 4.2, Primetime TV repeated the comments the Licensees made immediately above about the broadcasts on Elite TV 2 on 6 December 2010 at 21:00 and Elite TV on 16 December at 21:00.

*Elite Nights, Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20*  
*Elite Nights, Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30*

With regard to the above broadcasts and BCAP Code Rule 4.2, Primetime TV repeated the arguments set out above regarding the the broadcasts on Elite TV 2 on 6 December 2010 at 21:00 and Elite TV on 16 December at 21:00.

With regard to the above broadcasts and BCAP Code Rule 30.3, Primetime TV said that “we do not accept that [the broadcasts] could be deemed as ‘coming within the recognised character of pornography’”. It stated that the material “does not contain the explicit type of content which is normally viewed as pornography”. However, it stated that “in light of the recently published [Ofcom] guidance and our own internal monitoring/compliance standards we do accept that the material was inappropriate for a free to air channel”. Primetime TV has since taken steps to ensure that material of this nature is not allowed to be broadcast on its channels in the future. It added that these steps include “re-training of our post-watershed presenters and production teams” and a meeting with the female presenter who featured in the broadcasts in question to highlight any necessary changes.

In summary, the Licensees stated that “we accept that the referenced cases raise significant concerns under the BCAP Code. We have however made considerable practical changes to our production process to ensure that moving forward the concerns are alleviated...and that these failings are not repeated in the future”. It added that “we do hope that Ofcom chooses to accept our apology for the failings”.

### **Decision**

Since 1 September 2010 all PRS-based daytime and ‘adult chat’ television services have no longer been regulated as editorial content but as long-form advertising i.e. teleshopping. As stated above, from that date the relevant standards code for such services became the BCAP Code rather than the Broadcasting Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, broadcasters

should note that the advertising content of 'adult chat' services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code is substantially equivalent to Rule 2.1 of the Broadcasting Code, which provides that:

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

Rule 30.3 of the BCAP Code is substantially equivalent to Rules 1.17 and 1.18 of the Broadcasting Code, which provide that:

“Material equivalent to the British Board of Film Classification ("BBFC") R18-rating must not be broadcast at any time”; and

“‘Adult sex material’ - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access” (respectively).

Rules 30.3 and 30.3.2 make clear that advertising for products that are considered to be pornography are permitted behind mandatory restricted access on adult entertainment channels only, between 22:00 and 05:30.

In judging whether material is “within the recognised character of pornography”, and therefore is subject to this rule, broadcasters should be guided by the definitions used by the BBFC when referring to “sex-works at ‘18’”. This guidance has been supplemented by various decisions of Ofcom through a series of published findings, and published decisions of the Content Sanctions Committee or Broadcasting Sanctions Committee that relate to ‘adult-sex material’ and ‘material equivalent to the BBFC R18’. By these means, Ofcom has made clear what constitutes ‘adult sex material’ and R18 material, and therefore “the recognised character of pornography”<sup>11</sup>.

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<sup>11</sup> For example:

Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008,  
[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf);

Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008,  
[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf);

Sanctions decision against Playboy TV UK/Benelux Limited concerning its channel Playboy One, dated 2 April 2009, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/playboytv.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/playboytv.pdf);

Sanctions decision against Bang Channels Limited concerning its services Tease Me, Tease Me 2 and Tease Me 3, dated 29 July 2010,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/bangchannels.pdf>;

Rule 32.3 of the BCAP Code is substantially equivalent to Rule 1.3 of the Broadcasting Code which provides:

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

BCAP Code Rule 32.3 makes clear that children should be protected by relevant timing (and so appropriate scheduling) restrictions from material which is unsuitable for them. Appropriate timing and scheduling restrictions are judged according to factors such as: the likely number of children in the audience; the likely age of those children; and whether the advertisement was broadcast during school time or during school holidays. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Before the dates when the Licensees broadcast the programmes which are the subject of the present finding, Ofcom had made clear in published decisions what type of material it considers would be unsuitable to be included in daytime interactive chat advertisement programming without mandatory restricted access. These decisions were summarised, for example, in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters (including the Licensees) in August 2009 and were clarified by subsequent findings<sup>12</sup>. In the context of daytime interactive chat

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Breach Finding on Bang Babes, Broadcast Bulletin 152,  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb152/>

Breach Finding on Bang Babes, Broadcast Bulletin 153,  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb153/>;

Breach Finding on Bang Babes, Broadcast Bulletin 157,  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb157/>;

Breach Finding on Bang Babes, Broadcast Bulletin 163,  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb163/>;

Breach Finding on Bang Babes, Broadcast Bulletin 164,  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>; and

Breach Finding on Elite TV and Elite TV 2, Broadcast Bulletin 169,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

12 For example:

40nNaughty, Red Light Lounge, October/November 2010, Broadcast Bulletin 174 at  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>;

The Pad, Tease Me TV 2, 19 October 2010, 17:00 to 18:00, Broadcast Bulletin 172 at  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb172/>;

Early Bird, Various broadcasts on Tease Me/TMTN1 (-1-) and Tease Me TV (Freeview), between 9 and 15 November 2010 and The Pad, Tease Me 3/TMTN2 (-2-), 10 November 2010 at 16:00 and 16 November 2010 at 12:30: published 26 November 2010 at  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obbb-26-november-2010/>;

Early Bird, Tease Me TV (Freeview) cases, Broadcast Bulletin 169 at  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb169/>;

advertisements where the female presenters generally dress and behave in a provocative and/or flirtatious manner for extended periods in order to solicit PRS calls, Ofcom underlined that the presenters should not, for example, appear to mimic or simulate sexual acts or behave in an overtly sexual manner and clothing should be appropriate for the time of broadcast.

On 28 January 2011 Ofcom published detailed guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services<sup>13</sup>. This clearly sets out to all relevant licensees what Ofcom considers to be acceptable to broadcast on these services, both pre- and post-watershed. This guidance was however published after the dates when the Licensees broadcast the programmes which are the subject of the present finding.

#### Pre-watershed broadcasts

*Elite Days, Elite TV (Channel 965), 30 November 2010, 12:00 to 13:15*

*Elite Days, Elite TV (Channel 965), 1 December 2010, 13:00 to 14:00*

*Elite Days, Elite TV 2 (Channel 914), 8 December 2010, 10.00 to 11.30*

The above daytime broadcasts all contained material which raised similar issues under BCAP Code Rule 32.3 (timing and scheduling restrictions). All of the broadcasts featured female presenters wearing skimpy and revealing clothing. For example, in all cases the female presenters wore thongs that provided minimal coverage of their buttocks. The presenters were all shown acting in a sexualised manner by repeatedly adopting various sexual positions, such as: kneeling on all fours and positioning their buttocks to camera; sitting and facing the camera with their legs wide open; and lying on their side and back with their legs wide open (away from camera). In some cases the presenters were in these positions for prolonged periods of time. While in these positions, all of the presenters repeatedly: rocked and/or gyrated their buttocks and pelvis as though miming sexual intercourse; touched or shook their breasts; and touched their bodies (including their buttocks and inner thighs) in a sexually provocative manner. In addition, in all cases the broadcasts included shots of the camera panning up and down the presenters' bodies.

In Ofcom's view, the revealing clothing and repeated actions and sexual positions of the presenters were intended to be sexually provocative in nature and the broadcast of such strong sexualised content was inappropriate to advertise daytime chat. In light of this behaviour and imagery, Ofcom concluded that under BCAP Code Rule 32.3 the material included in these daytime broadcasts was clearly unsuitable for children.

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Elite Days, Elite TV 2, 6 August 2010, 12:24 and Early Bird, Tease Me TV (Freeview), 27 July 2010, 07:30 to 07:50, Broadcast Bulletin 168 at

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb168/>;

Early Bird, Tease Me TV (Freeview) 25 July 2010, 07:25 to 07:45, Broadcast Bulletin 165 at

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb165/>; and

Earlybird, Tease Me TV, 3 June 2010, 05:45 and 08:00, Broadcast Bulletin 164 at

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>.

<sup>13</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

Ofcom then considered under BCAP Code Rule 32.3 whether relevant timing or scheduling restrictions were applied to these broadcasts by the Licensees. Ofcom noted that the services Elite TV and Elite TV 2 are situated in the 'adult' section of the EPG. However, all the broadcasts were transmitted without mandatory access restrictions at various times during the day when children may have been watching television, some unaccompanied by an adult. Taking into account the factors above, Ofcom has concluded that relevant timing and scheduling restrictions were not applied to the broadcasts so as to offer adequate protection to children.

Ofcom also concluded under BCAP Code Rule 4.2 (generally accepted standards) that, given the strong nature of the material as described above and inappropriate scheduling of the material during the daytime, it would cause serious or widespread offence against generally accepted moral, social or cultural standards.

Therefore Ofcom concluded that this material breached Rules 4.2 and 32.3 of the BCAP Code.

#### Post-watershed broadcasts

*Elite Nights, Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20*

*Elite Nights, Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30*

The above broadcasts featured the same female presenter. Ofcom considered these broadcasts in respect of BCAP Code Rules 4.2 and 30.3.

In relation to BCAP Rule 30.3 (pornography only permitted with mandatory restricted access on adult entertainment channels), Ofcom examined the content of the broadcasts and considered that they all contained material of a very strong sexual nature and on occasions contained graphic and intrusive images of genital detail. For example, during these broadcasts the female presenter was shown apparently performing masturbation on herself by repeatedly touching her genital and anal area (either on or around her thong or directly onto her genital area), and vigorously rubbing her hands and fingers against her genitals and anal area. In Ofcom's opinion, in these particular cases, a viewer could reasonably have perceived the sexual acts as real. In addition, during the two broadcasts the presenter was also shown licking and spitting on her fingers, and touching and playing with her nipples. The broadcast dated 4 January 2011 showed these particular images extremely close up and in intrusive detail.

Ofcom took account of the fact that the sequences mentioned above were, in some cases, relatively prolonged and repeated. In Ofcom's view, the primary purpose of broadcasting this material was clearly sexual arousal. Given the above, the material was, in Ofcom's view, of a very strong sexual nature and would have been considered by viewers to be "within the recognised character of pornography". The broadcast of this advertising programming, without mandatory restricted access, was therefore in breach of BCAP Code Rule 30.3.

Ofcom then went on to consider whether the broadcasts were also in breach of BCAP Code Rule 4.2. In light of Ofcom's view that the advertisements contained material "within the recognised character of pornography" and were therefore unsuitable for broadcast without mandatory restricted access, the broadcasts were clearly capable of causing serious or widespread offence against generally accepted moral, social or cultural standards. Under Rule 4.2 Ofcom therefore considered the context in which this particular advertising programming was broadcast, in order to determine whether suitable scheduling restrictions were applied to this content by the

Primetime TV. Ofcom noted that both advertisements were broadcast after 22:00 and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed, within context. Ofcom also took account of the fact that Elite TV and Elite TV 2 are channels positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in these cases, given the content included prolonged and frequent scenes of a sexual nature (provided for the purpose of sexual arousal), the location of the channels in the 'adult' section of the EPG was not sufficient to justify the broadcast of the material at 00:50 or 22:00. The content shown at these times in these two broadcasts would in Ofcom's view have exceeded the likely expectation of the vast majority of the audience for adult sex chat advertising channels of this nature and location. In the case of the 4 January 2011 broadcast, Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares, given the broadcast started at 22:00.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material did not cause widespread offence against generally accepted moral, social or cultural standards. Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

*Elite Nights, Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25*  
*Elite Nights, Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45*

The above broadcasts featured the same female presenter. Ofcom considered both these broadcasts in respect of BCAP Code Rules 4.2 and 32.3.

In Ofcom's view, the sexual images included in this broadcast were strong and capable of causing offence. During both broadcasts, the presenter was wearing a very revealing outfit consisting of a skimpy thong and a bra. On both occasions the presenter's genital area was shown in close up and as a consequence the broadcast included some very intrusive images. In particular, the 16 December 2010 broadcast included images of both genital and anal detail. During both broadcasts, the presenter repeatedly thrust and/or gyrated her buttocks and pelvis for prolonged periods of time, as though miming sexual intercourse. During both broadcasts, the presenter also appeared to mime masturbation at various points, by touching around her genital and anal areas. She also repeatedly licked and touched her breasts, and spanked herself.

Under BCAP Code Rule 4.2 Ofcom took into account the context in which these particular advertisements were broadcast, in order to determine whether suitable scheduling restrictions were applied to this content by the Licensees. Ofcom noted that this content was broadcast on both occasions from 21:00 and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed, within context. Ofcom also took account of the fact that Elite TV and Elite TV 2 are channels positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in these cases, given the content included prolonged and frequent scenes of a sexual nature (provided for the purpose of sexual arousal), the location of the channel in the 'adult' section of the EPG was not sufficient to justify the broadcast of the material between 21:00 and 21:25. The content shown at this time would in Ofcom's view have exceeded the likely expectation of the vast majority of the

audience for adult sex chat advertising channels of this nature and location. Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares, given the broadcast started directly after the 21:00 watershed.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material did not cause widespread offence against generally accepted moral, social or cultural standards. Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

As stated above, Rule 32.3 makes clear that children should be protected by relevant timing (and so appropriate scheduling) restrictions from material which is unsuitable for them. Ofcom had also made clear in decisions published before December 2010 that the strongest material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the watershed of 21:00<sup>14</sup>. Ofcom was therefore particularly concerned that the sexualised images described above were shown directly after the watershed from 21:00. In our view these images were clearly unsuitable for children and were transmitted without mandatory access restrictions at times when older children may still have been watching television. Ofcom therefore concluded that relevant timing and scheduling restrictions were not applied to the broadcasts so as to offer adequate protection to children, and the broadcasts also breached Rule 32.3 of the BCAP Code.

*Elite Nights, Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35*

Ofcom considered this broadcast in respect of BCAP Code Rule 4.2 only.

In Ofcom's view the sexual images included in this broadcast were strong and capable of causing offence. At the beginning of the broadcast the presenter was wearing a very revealing thong. The presenter's genital area was shown in close up and as a consequence the broadcast included some very intrusive images. During the first half of the broadcast the presenter repeatedly thrust and/or gyrated her buttocks and pelvis for prolonged periods of time, as though miming sexual intercourse. She also appeared to mime masturbation at various points during the broadcast by touching around her genital area, and she was shown licking and massaging her naked breasts.

Under BCAP Code Rule 4.2 Ofcom took into account the context in which this particular advertisement was broadcast, in order to determine whether suitable scheduling restrictions were applied to this content by Primetime TV. Ofcom noted that this content was broadcast well after the watershed at 22:30 and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed, within context. Ofcom also took account of the fact that the Elite TV channel is positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

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<sup>14</sup> Freeblue 1, Babeworld.tv, 9 July 2010, 21:00 to 21:30:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb168/issue168.pdf>; and

Sport XXX Babes, 16 May 2010, 21:00 to 21:30:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>



However, in this case, given the content included prolonged and frequent scenes of a sexual nature (provided for the purpose of sexual arousal), the location of the channel in the adult section of the EPG was not sufficient to justify the broadcast of the material from 22:30. The content shown at this time would in Ofcom's view have exceeded the likely expectation of the vast majority of the audience for an adult sex chat advertising channel of this nature and location. Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material did not cause widespread offence against generally accepted moral, social or cultural standards. Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

Ofcom notes that the Licensees apologised for these various compliance failings and that they have taken a number of measures to ensure that its content is compliant with the BCAP Code in the future. However, we are concerned about the strength of the material broadcast on these occasions, both pre- and post-watershed. This is particularly the case given that all of the above broadcasts were transmitted on dates after Ofcom had published various breach findings regarding content also broadcast on Elite TV and Elite TV 2<sup>15</sup>. The Licensees also stated that they had since the dates of these broadcasts "taken sufficient measures" to ensure that their content was compliant with the relevant codes.

Ofcom notes that these contraventions of the BCAP Code by the Licensees occurred after various published Ofcom decisions, but before Ofcom issued on 28 January 2011 new and detailed guidance to daytime and adult sex chat advertising broadcasters about compliance with the BCAP Code (see footnote 6 above). In light of our serious concerns, Ofcom has already held a meeting with the Licensees to discuss their compliance arrangements. Ofcom puts Primetime TV and Over 18 TV on formal notice that it must take all necessary and appropriate measures to ensure its channels comply with the BCAP Code in the future. If further breaches of the BCAP Code occur, Ofcom will consider further regulatory action.

### **Pre-watershed broadcasts**

**Elite Days, Elite TV (Channel 965), 30 November 2010, 12:00 to 13:15: Breach of BCAP Code Rules 4.2 and 32.3**

**Elite Days, Elite TV (Channel 965), 1 December 2010, 13:00 to 14:00: Breach of BCAP Code Rules 4.2 and 32.3**

**Elite Days, Elite TV 2 (Channel 914), 8 December 2010, 10:00 to 11:30: Breach of BCAP Code Rules 4.2 and 32.3**

### **Post-watershed broadcast**

**Elite Nights, Elite TV (Channel 965), 30 November 2010, 22:30 to 23:35: Breach of BCAP Code Rule 4.2**

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<sup>15</sup> Broadcast Bulletin 169, published on 8 November 2010, Elite Nights , Elite TV, 8 August 2010, 00:00 to 00:30 and Elite TV & Elite TV 2, 14 August 2010 22:00 to 22:14 (simulcast) <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

**Elite Nights, Elite TV 2 (Channel 914), 6 December 2010, 21:00 to 21:25: Breach of BCAP Code Rules 4.2 and 32.3**

**Elite Nights, Elite TV (Channel 965), 16 December 2010, 21:00 to 21:45: Breach of BCAP Code Rules 4.2 and 32.3**

**Elite Nights, Elite TV (Channel 965), 22 December 2010, 00:50 to 01:20: Breach of BCAP Code Rules 4.2 and 30.3**

**Elite Nights: Elite TV (Channel 965), 4 January 2011, 22:00 to 22:30: Breach of BCAP Code Rules 4.2 and 30.3**

## In Breach

### Page 3

Zing, 8 January 2011, 13:00

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#### Introduction

Zing is an Asian general entertainment channel which broadcasts on the Sky satellite platform. The channel shows 'Bollywood' related content such as films and celebrity gossip. On the above date, the channel broadcast the film *Page 3*, which had a storyline that revolved around a female entertainment journalist. During the film, the journalist uncovered secrets about celebrities, including sexual offences against children and the use of illegal drugs.

Ofcom received a complaint that the film was inappropriate to be shown at this time, as it portrayed people successfully avoiding prosecution for sexual offences against children. On viewing the film, Ofcom also noticed there were various scenes of drug taking, including smoking marijuana and snorting cocaine.

We therefore asked Asia TV Ltd., the licence holder for the service Zing, to comment on how the film complied with the following Code rules:

Rule 1.3: "Children must ... be protected by appropriate scheduling from material that is unsuitable for them."; and

Rule 1.10: "The use of illegal drugs, the abuse of drugs ... must generally be avoided and in any case not condoned, encouraged or glamorised in ... programmes broadcast before the watershed ... unless there is editorial justification..."

#### Response

Asia TV Ltd. said that because *Page 3* is a popular film it was scheduled for an early afternoon transmission. The broadcaster said that challenging content is checked in advance and edited if necessary and placed in the schedule accordingly. In this case, Asia TV Ltd. said it had two versions of this film for transmission: a post-watershed and an edited pre-watershed version. Due to an error with labelling on the tapes, the wrong version (i.e. the post-watershed version) was broadcast at 13:00.

Asia TV Ltd. added that since this incident, precautions have been taken to ensure that tapes are labelled properly to prevent such errors happening in the future, and material will also be "double checked" before transmission.

#### Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected".

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that people under eighteen are protected.

Programmes which are aimed at an older audience and intended for broadcast after the 21:00 watershed should not be broadcast during the day unless all necessary edits are made to ensure they are appropriate for a daytime audience, which may include children.

We assessed the nature of the content against the requirements of Rules 1.3 and 1.10 of the Code.

### Rule 1.3

The themes explored in the film included child abuse. This was uncovered in the film by the central character when, accompanying the police on a raid, she found high society men abusing children. This sequence showed the abusers draped in towels alongside semi-naked children, dressed only in shorts. Given the complex and adult themes explored and portrayed in the film, this material was unsuitable for children and should not have been scheduled at lunchtime on a Saturday. This was breach of Rule 1.3.

### Rule 1.10

We noted that the film contained several close-up shots of people snorting cocaine at a party and smoking marijuana. A number of these were at parties where celebrities were present. The film did not show any negative results from this use of illegal drugs. Ofcom also took account of the fact that the BBFC had given the film a '15' certificate because of the incidents of drug use. It is clear that in this film illegal drugs were being used. Further the various close-up shots of drug-taking, especially in the setting of a party, and the lack of any negative effects led, in Ofcom's view, to the use of the drugs being glamorised. The use of the drugs had some editorial justification in the context of the plot, but this justification was insufficient for showing this material during the daytime. There was therefore a breach of Rule 1.10.

By way of background Ofcom noted that *Page 3* has been given a '15' certificate by the British Board of Film Classification ("BBFC") because of various references to violence, drug use and child abuse.

We noted in this case Asia TV Ltd.'s assurances this was a mistake relating to the mis-labelling of broadcast tapes and that they have taken steps to prevent further failures of this nature. However, Ofcom considers the broadcast of this film at lunchtime on a Saturday to be a serious compliance failure. We expect comprehensive compliance measures to be in place to avoid a repeat of this incident. Asia TV Ltd. is put on notice that, in the event of similar compliance issues arising in the future, Ofcom is likely to consider taking further regulatory action.

### **Breaches of Rules 1.3 and 1.10**

## In Breach

### Deewar: Men of Power

*Star India Gold, 11 January 2011, 18:00*

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#### Introduction

Star India Gold is an Asian channel specialising in films in the Hindi language. The licence for this channel is held by Asian Broadcasting FZ-LLC. On 11 January 2011, the channel broadcast the action-based film *Deewar: Men of Power* before the watershed.

This film contained several fight sequences. The earlier ones depicted characters being repeatedly kicked and punched, and occasionally included the use of knives and guns. The final fight scene lasted almost four minutes and portrayed a bloody showdown between two gangs. This scene featured characters being headbutted, stabbed in the head and stomach, and several gun shots, many of which featured the impact of the bullet on its victim. Some of these shots were shown close up.

Ofcom received one complaint from a viewer who considered the violent nature of the film meant that it was not suitable for a pre-watershed broadcast. It therefore sought comments from the Licensee under the following Code rules:

- Rule 1.3: “Children must ... be protected by appropriate scheduling from material that is unsuitable for them.”; and
- Rule 1.11: “Violence, its after-effects and descriptions of violence ... must be appropriately limited in programmes broadcast before the watershed ...”

#### Response

Asian Broadcasting FZ-LLC acknowledged that this material should not have been broadcast at 18:00 and explained that the film “was scheduled in the wrong slot” by a “new inexperienced operator”. It added that unfortunately the mistake was not spotted before the film was transmitted. The broadcaster apologised for this “human error” and said that to avoid any recurrence of this problem it has set up refresher training on compliance issues for its scheduling, editing and transmission staff.

The Licensee assured Ofcom that it had no intention of offending its UK audience and highlighted its good compliance record to demonstrate that it takes Ofcom rules “extremely seriously”.

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that people under eighteen are protected.

Programmes which are aimed at an older audience and intended for broadcast after the 21:00 watershed should not be broadcast during the day unless all necessary edits are made to ensure they are appropriate for a daytime audience, which may include children.

We assessed the nature of the content against the requirements of Rules 1.3 and 1.11 of the Code.

#### Rules 1.3 and 1.11

This film contained several fight sequences containing violence which – taken together – made this film unsuitable for children in the form in which it was broadcast on this channel at 18:00. The final fight scene featured relatively prolonged and explicit violence which caused Ofcom particular concern. In view of the amount, strength and explicitness of the violence in this film, and the fact it was shown at 18:00, this film was not scheduled appropriately for a pre-watershed audience.

Ofcom noted the Licensee's acknowledgement of the error and its retraining programme for relevant members of staff to minimise the likelihood of recurrence of this compliance problem. Nonetheless, Ofcom considers the broadcast of this film at 18:00 to be a serious compliance failure in breach of Rules 1.3 and 1.11 of the Code. We expect comprehensive compliance measures to be in place to avoid a repeat of this incident. Asian Broadcasting FZ-LLC is put on notice that, in the event of similar compliance issues arising in the future, Ofcom is likely to consider taking further regulatory action.

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

## In Breach

### Bridezilla

*Wedding TV, 11 and 12 January 2011, 18:00*

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#### Introduction

Wedding TV is a specialist channel that broadcasts on the Sky and Freesat platforms. *Bridezilla* is a fly-on-the-wall style documentary produced in the US featuring several women in the weeks before and on their wedding day. The programme chronicles the reactions of the women – some of them outspoken – to various incidents as they prepare for their weddings.

Ofcom received one complaint about offensive language featured in the episode broadcast at 18:00 on 11 January 2011, and a further four complaints about offensive language in the episode broadcast at the same time the following day. Amongst other examples of offensive language, the complainants identified several uses of the word “fuck” and, in the programme broadcast on 12 January, “cunt”.

Ofcom sought comments from the broadcaster under the following Code rules.

- Rule 1.14: “The most offensive language must not be broadcast before the watershed ...”;
- Rule 1.16: “Offensive language must not be broadcast before the watershed ... unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.”; and
- Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”

#### Response

Wedding TV explained that as a result of an issue with its playout system, “the censored versions of these episodes were not uploaded correctly, but unfortunately, due to staff changes” it was “unable to find out why the error occurred.” It stated that, to prevent a recurrence of this problem, both the programming manager and operations manager have been assigned the responsibility of complying material ready for broadcast.

Wedding TV acknowledged that the offensive language used in the programme was inappropriate for broadcast and offered its apologies for the error. The broadcaster added that it has since “double checked every episode of this particular US series for any offensive language and...removed post-watershed versions [from its playout system] as a precaution.”

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that people under eighteen are protected. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

Ofcom assessed the language included the programme in relation to Rules 1.14, 1.16 and 2.3 of the Code.

#### Rules 1.14 and 1.16

Ofcom’s research indicates that the words “cunt” and “fuck” and their derivatives are examples of the most offensive language. Rule 1.14 states that the most offensive language should not be broadcast before the watershed.

Ofcom noted that the episode of this programme broadcast on 12 January 2011 contained 92 instances of the word “fuck” (or a derivative) and 3 uses of the word “cunt” alone. The episode shown the previous day also contained several - but fewer - instances of the word “fuck”. Ofcom therefore concluded that both episodes breached Rule 1.14 of the Code. Furthermore, frequent milder examples of offensive language were prevalent throughout both episodes, in breach of Rule 1.16.

#### Rule 2.3

The frequency with which the most offensive language was broadcast in the episodes was capable of causing considerable offence to the audience. Given that there was little or no contextual justification for broadcasting such strong language at 1800, the programme’s content was not in keeping with the generally accepted standards. Consequently, the material was also in breach of Rule 2.3 of the Code.

Ofcom acknowledged the broadcaster’s recognition of the error and the measures put in place to reduce the likelihood of a recurrence. However, Ofcom considered the broadcast of this material before the watershed was unacceptable and was concerned that the compliance error made on 11 January 2011 was not detected before the subsequent episode was shown the following day.

In Broadcast Bulletin 164<sup>1</sup>, Ofcom recorded a breach of the Code in relation to another area of compliance for content broadcast on Wedding TV. In view of that contravention and the breach of the Code recorded in this Bulletin, Ofcom is requesting Wedding TV to attend a meeting to discuss its compliance arrangements.

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

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164>



## Resolved

### Dancing On Ice

ITV1, 23 January 2011, 18:10

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#### Introduction

The sixth series of *Dancing on Ice* started on 9 January 2011 on ITV1. This series was hosted by Phillip Schofield and Holly Willoughby, and the judges are Robin Cousins, Emma Bunton and Jason Gardiner. Celebrities are paired with professional ice skaters and perform live routines each week. Their performances are marked out of ten and added to a leader board which, combined with a public vote, results in the celebrities with the lowest scores being eliminated from the series. The judges give criticism and advice to the contestants following their performances. The contestants are mentored by Karen Barber, the Head Coach, and ex-Olympic ice skaters, Jane Torvill and Christopher Dean.

On 23 January 2011, following a performance by the celebrity Jeff Brazier and his professional partner Isabelle Gauthier, the following exchange took place:

Jeff Brazier: *"I just want to say JG [Jason Gardiner], before he rains on my parade here; the boys are in the audience just over there. They are experts in group insemination, I mean, group interrogation, ok, so watch out JG, yeah?"*

Jason Gardiner: *"Yeah, I'll take that on board."*

Phillip Schofield: *"Be careful how you chose your words mate."*

Holly Willoughby: *"Ok Jason, your right to reply."*

Jason Gardiner: *"Well all I can say is leave the children at home if you don't want to hear the truth."*

[Audience booing]

[Holly Willoughby: *"I can hear Essex calling."*

Jason Gardiner: *"The Jackson 5 are very tight and you aren't. You're choreography, especially in your arms, is still very, very sloppy and messy and it almost looks like you're weak and there's moments especially in your facial expressions as well with everything, it's almost like you're missing a couple of chromosomes."*

Ofcom received 242 complaints about Jason Gardiner's reference to "*missing a couple of chromosome*", which complainants considered was "highly offensive, particularly to those with chromosomal disorders", "discriminatory" and "completely inappropriate".

Ofcom asked ITV Broadcasting Limited ("ITV" or "the Licensee"), who complied the programme on behalf of the ITV Network for ITV1, for its comments on the broadcast in respect of Rule 2.3 of the Code:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

Context includes (but is not limited to): the time of broadcast; the editorial content of the programme or series; the service on which the material was broadcast; the degree of harm likely to be caused by the inclusion of any particular material; and the effect of viewers who come across it unawares.

## Response

The Licensee said it “recognizes that some viewers were offended by Jason’s ‘chromosome’ comment, particularly parents of children with chromosomal disorders”. ITV explained that “the comment was made in a pressurised, live environment, and was unscripted. Jason [Gardiner] did not intend to offend, or to be understood to be referring to people with actual chromosomal conditions. He later made clear in a public statement on Twitter that his comment about Jeff [Brazier] ‘was meant to describe his strange facial expressions like those of a chimpanzee’. He also made clear that he understood why parents of children with chromosomal conditions may have been offended, and that was why he was keen to clarify his comment”.

The Licensee added that it takes “full responsibility for what is broadcast in our programming, and we accept that offence can be caused without any intent to do so”. It added that “ITV is also a founder-member of the Broadcast and Creative Industries Disability Network, and we take our commitment to representation of disability across all our output very seriously”.

ITV stated “the producers of the programme have spoken to Jason about the reaction of some viewers, including those represented by the Rare Chromosome Disorder Support Group. He now fully appreciates these concerns, and will take them on board in future and ensure such comments will not be repeated”.

The Licensee acknowledges “Jason Gardner used some unusual language to describe Jeff Brazier’s appearance, the intention of which was to suggest that he looked like a chimpanzee, but which was taken to mean something very different by some viewers”. It added “however, we would submit that Jason’s well established position as the ‘baddie’ on the judge’s panel places his comment in a context where most viewers would not have been offended by his remark, or have understood him to have been speaking literally, or to have been referring to or disparaging people with chromosomal disorders. The comment was a fleeting, off-the-cuff reference to his [Jason Brazier’s] facial expressions during his performance, which for Jason are part and parcel of the overall dancing performance, and a reflection of Jason’s opinion of the poor standard of the performance”.

ITV added that Karen Barber “immediately strongly criticised his comments and the manner in which Jason had delivered his criticism, and she and the other panel judges gave contrasting views on Jeff’s performance”.

The Licensee added “arising as it did in the context of a value judgement about a performance by a judge in a talent competition, whose role is to provide critical judgements, we consider that although the choice of words was unfortunate, this comment would have been recognised as part of the 'cut and thrust' of the programme by the majority of the audience familiar with this format. After five series the audience of this programme will have come to expect negative comments being expressed by the judges on occasion, particularly by Jason Gardiner”.

In light of the factors above, ITV stated “although we do accept this particular comment was potentially offensive to some of the audience, we consider it would not have caused widespread offence, and was not in breach of Rule 2.3”.

The Licensee concluded, that “in a live programme environment judges and contestants can occasionally make unscripted remarks that may cause unintended offence”. ITV explained it has made clear to the individual in this instance that his comments caused offence and he has undertaken to take more care in future and has offered public apologies for offending some viewers. The Licensee stated: “ITV has also apologized to those viewers who complained to us about Jason Gardiner’s comment. In the circumstances we hope that Ofcom will consider the programme not to have breached Rule 2.3, and/or that the complaints it has received have been appropriately resolved by these actions”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material<sup>1</sup>.

Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material<sup>2</sup>. These standards are contained in the Code. Broadcasters are required under Rule 2.3 of the Code to ensure that, in applying generally accepted standards, they must ensure that the inclusion of material which may cause offence is justified by the context.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”<sup>3</sup>. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

Therefore the questions for Ofcom in reaching a decision in this case were: first, to establish whether the material in question was offensive (and the degree of any offensiveness) and, if so, secondly, to determine whether the Licensee had ensured that it had applied generally accepted standards by justifying the inclusion of that material by the context of the programme.

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<sup>1</sup> Section 3(2)(d) of the Act

<sup>2</sup> Section 319(2)(f) of the Act

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

Ofcom first examined the language used in this case to assess the potential it had for causing offence. It is important to note that the Code does not prohibit the use of offensive or discriminatory language of this nature. However, we recognised that language of this nature can be profoundly offensive to some viewers as it may be interpreted as demeaning and discriminating against people with a particular mental or physical health condition,

Ofcom noted the Licensee's explanation that when referring to Jeff Brazier "*missing a couple of chromosomes*", Jason Gardiner had, in fact, intended to reflect his opinion that Jeff Brazier's facial expressions resembled that of a chimpanzee.

In Ofcom's opinion, it was more likely that viewers would have interpreted Jason Gardiner's comment to be a derogatory remark associating Jeff Brazier's facial expression with a human chromosomal disorder, and therefore demeaning people with such human disorders. We therefore concluded that the material was capable of being highly offensive to some viewers.

Ofcom then examined what contextual factors which might have limited the potential for offence.

Ofcom noted that Jason Gardiner is well known for being the most critical judge on *Dancing on Ice*, is often acerbic in his comments and wishes to reinforce that image within the well established format of the show. We noted that the studio audience often reacts in a negative manner (by booing, for example) to his remarks and his comments are often countered by the other judges.

We also noted that following the exchange between Jeff Brazier and Jason Gardiner, the programme presenter Holly Willoughby asked the head coach, Karen Barber, for her view and she strongly criticised Jason's comments and the manner in which Jason had delivered his criticism:

Karen Barber: "*Well, I think it, um, it doesn't have to be personal Jason. Your criticism can be about what's on the ice. You get very offensive, you don't need to do that ... it doesn't have to be so hurtful, your comments*".

We considered that this was a live broadcast in which Jason Gardiner's comment was unscripted, and the audience was likely to have expected his comments to be acerbic and negative. In Ofcom's view, Karen Barber's comments, to some extent, mitigated the remarks made by Jason Gardiner. However, we did not consider that these contextual factors were sufficient to justify the inclusion of the comment, given its potential to be highly offensive.

However, Ofcom also noted the measures taken after the broadcast by Jason Gardiner, who made clear in a public statement that it had not been his intention to offend, or indeed for the comments to have had the meaning that some viewers took from them. We also took into account the measures ITV had taken, discussing the matter with Jason Gardiner to ensure he understood viewers' concerns and that the matter would not be repeated. Ofcom also notes ITV's public apology, and apologies given to complaints it received directly from viewers. In view of the steps taken by both the licensee and Jason Gardiner, Ofcom therefore considers the matter resolved.

**Resolved**

## Not in Breach

### Frankie Boyle's Tramadol Nights (mental health sketch and other issues)<sup>1</sup>

Channel 4, 30 November 2010 to 29 December 2010, 22:00

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#### Introduction

*Tramadol Nights* was a six-part comedy series which was written by and featured the controversial, alternative comedian Frankie Boyle. The series featured the comedian in various stand-up and comedy sketches which covered topics such as AIDS, cancer, religion, racism, sex, paedophilia, rape, incest, war and disability.

The second episode of the series was broadcast on 7 December 2010 at 22:00. It included a sketch which showed a man calmly talking to camera, in what appears to be his kitchen. He said the following:

*"I have mental health problems. There's a lot of stigma attached to mental health, a lot of people are unfairly stigmatised when their conditions allow them to lead perfectly normal lives".*

The camera then pulls out to reveal the man holding a knife and images of his dead wife and three dead children covered in blood on the floor. He then says:

*"who the fuck am I talking to?"*

Ofcom received eight complaints about the broadcast of this sketch, including a complaint from the mental health charity, Rethink. The complaints raised concerns that the sketch inferred that people with mental illness are violent; promoted discrimination against people with mental illness; mocked people with mental illness; and was misleading.

In light of the complaints made about this particular sketch and our own analysis of the programme, Ofcom asked Channel 4 to provide comments on how this broadcast complied with the following rules of the Code:

Rule 2.1 Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.

Rule 2.3 In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information

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<sup>1</sup> This issue of the Bulletin includes another finding on *Frankie Boyle's Tramadol Nights* (comments about Harvey Price). See page 5.

should also be broadcast where it would assist in avoiding or minimising offence.

## Response

Channel 4 stated that the material included in this sketch complied with Rules 2.1 and 2.3 of the Code.

### Channel 4's remit

The broadcaster said that it has a public service remit to provide a broad range of high quality and diverse programming which, in particular: demonstrates innovation, experiment and creativity; appeals to the tastes and interest of a culturally diverse society; and exhibits distinctive character. It continued that it "takes its statutory remit seriously and we pride ourselves on giving artists creative freedom to express themselves on a channel whose viewers have an expectation that we will push boundaries and take risks". It added that it is "Channel 4's job and remit to champion pioneering and distinctive voices in British comedy and bring them to a wider audience".

### The series as a whole

Channel 4 said that "Frankie Boyle has an established reputation for his dark, twisted and disconcerting look at society" and *Tramadol Nights* "is a series which reflects Frankie Boyle's misanthropic brand of humour, in which he is both self-mocking and outwardly scabrous about the world at large". It added that "in the series, no one is spared Frankie Boyle's mock-fury as everyone and everything comes under scrutiny in his attack" and "nothing he says is intended as a slur on any particular community – everyone is fair game in Frankie's eyes". Channel 4 added that this series was "not for the faint hearted or easily offended, as was clearly and unambiguously communicated to the audience in advance". It stated that "the understanding and interpretation of comedy is unavoidably a subjective exercise, and one which will always lead to different views being expressed".

Channel 4 then explained the measures it took in broadcasting this material to ensure it complied with the Code and the reasons why it considered the material to be justified by context.

It said that "the series was carefully scheduled and clearly labelled to alert viewers to the fact that its content would offend some viewers". The broadcaster pointed out that "the series was scheduled to start an hour after the watershed in a 22.00 hours slot which formed part of Channel 4's new Tuesday night comedy, along with the new series of *The Morgana Show*". Channel 4 added that it considered 22.00 hours to be an "appropriate transmission time for content of this type, weighing up the nature and satirical content of the programme, the established reputation of Frankie Boyle, and the fact that audiences expect to see more challenging material on Channel 4".

Channel 4 also said that it "ensured that viewers were forewarned about the nature and content of the series" and referred to the following announcement which preceded each programme:

*"Prepare to enter the dark and twisted world of Frankie Boyle's Tramadol Nights. This programme contains very strong language and uncompromising adult content which some viewers will find offensive".*

The broadcaster said that the series was also heavily publicised and extensively promoted on posters, in newspapers/magazines and through on-air trails in the

weeks leading up to the broadcast of the series. It added that “viewers would also have been well aware from the extensive press coverage that followed episode one about the controversial and provocative nature of the series and they would have been in little doubt about the darkly acerbic nature of the comedy”.

Channel 4 said that Frankie Boyle is “a comedian and best-selling writer well known for his provocative and controversial dark humour”. It added they he was a regular panellist on *Mock the Week*, and has appeared on programmes such as *Have I Got News For You*, *8 Out of 10 Cats*, *Would I Lie To You?*, *You Have Been Watching* and *Never Mind the Buzzcocks*. Channel 4 also highlighted that the comedian has a regular column in the *Sun* newspaper, had a best-selling autobiography in 2010 and a recent sell out live tour.

#### The sketch

With regard to this particular sketch, Channel 4 said that “as with all the material featured in the series, it has been carefully scrutinised and reviewed at the most senior editorial and compliance level to ensure that such material was editorially justified in context”.

It added that “Frankie Boyle spent nine months working with mental health patients long before he was a comic and he has some first hand experience of the difficulties faced by such patients. His experiences have therefore informed his comedic work and the issue of mental health has become one of his signature themes in his comedy”.

In terms of the editorial context of the sketch, Channel 4 said that it “was a parody of the ‘Time to Change’ anti-stigma project run by Rethink and Mind which has been shown in cinemas and online” and which “sought to tackle the stereotype which wrongly associates violence with mental illness and to challenge the image of the ‘violent schizophrenic’ commonly depicted in the media”. Channel 4 said that this particular sketch “set out to satirise, albeit in an exaggerated form, the continuing media hysteria and misreporting about crimes committed by those that suffer from mental health illnesses”.

It added that “the sketch’s unexpected revelation [that the man in the sketch was a murderer] was intended to highlight that despite the best efforts to educate the public the stereotype that equates mental health with extreme violence is one which we still recognise and is unfortunately still prevalent in our society”. Channel 4 stated that the sketch “was not in any way directed at those that suffer from such conditions nor was it intended to mock or ridicule such individuals or their condition”. It added that the sketch “is intentionally provocative but this is not intended to be gratuitous but was designed to confront the audience and to challenge not only the hypocrisy of stereotypes but also to challenge the audiences about their own prejudices about mental health”. It said that it “rejects any suggestion that this sketch promotes discrimination against people with mental illness; mocks people with mental illness or disability or was misleading”.

Channel 4 said that it has “a long tradition of dark satire, which has tackled issues of mental health, which include *Chris Morris’s Brass Eye*, *Jam* and *Cast Offs*” and “in the context of an established late night Channel 4 comedy programme featuring a comic well known for his controversial and provocative humour, viewers would have understood the darkly satirical nature of the programme’s content”.

The broadcaster added that it “is renowned for its innovative mental health and disability programming schedule”. It said that “Channel 4’s commissioning teams and

production partners are nurturing and promoting mental health issues across a broad range of genres” and referred to programmes such as *Shameless*, *Big Brother*, *Cast Offs*, *Embarrassing Bodies Series 3* and *Dispatches: Battle Scarred*.

Channel 4 said that for the reasons outlined above it considered that this episode of Frankie Boyle’s *Tramadol Nights* complied with Rules 2.1 and 2.3 of the Code.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material<sup>2</sup>.

Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material<sup>3</sup>. These standards are contained in the Code. Broadcasters are required under Rule 2.1 of the Code to apply those generally accepted standards, and under Rule 2.3, they must ensure that, in doing so, material which may cause offence is justified by the context.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”<sup>4</sup>. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

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

Ofcom also had regard to the fact that Channel 4 is a public service broadcaster with a unique statutory remit to broadcast a range of high quality and diverse programming. This programming should in particular demonstrate innovation, experiment and creativity in the form and content of programmes; appeal to the tastes and interests of a culturally diverse society; make a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and exhibit a distinctive character<sup>5</sup>.

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<sup>2</sup> Section 3(2)(d) of the Act

<sup>3</sup> Section 319(2)(f) of the Act

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

<sup>5</sup> Section 265(3) of the Act



Further, Ofcom also took into account that there is a long history on British television and radio of broadcast comedy tackling difficult issues and deliberately pushing at boundaries of contemporary taste, particularly when broadcast well after the watershed. In accordance with the fundamental right to freedom of expression, the Code does not prohibit broadcast content from referring to any particular topic, subject or group of people.

However the Code does require that potentially offensive material is justified by its context. As such, there is significant room for innovation, creativity and challenging material within comedy programming, but it does not have *unlimited* licence in terms of offensive material. There may be circumstances in which relevant contextual factors (such as: a programme's genre; scheduling; audience expectations; and pre-transmission warnings given to the audience) are not sufficient to justify the broadcast of extremely offensive material.

Therefore the questions for Ofcom in reaching a decision in this case were: first, to establish whether the material in question was offensive (and the degree of any offensiveness) and, if so, secondly, to determine whether Channel 4 had ensured that it had applied generally accepted standards by justifying the inclusion of that material by the context of the programme.

Ofcom acknowledged that, generally, audience interpretation of comedy is subjective and can vary widely. We recognised that comedy about mental health has the potential to be very offensive to some viewers, as it might be interpreted as singling out groups of people, or individuals, with particular mental health issues in a derogatory, discriminatory or demeaning way.

In this case, the sketch depicted a man talking to the camera who explained: "*I have mental health problems*". He then talked about how many people with mental health problems are "*unfairly stigmatised*" by others when, in fact, "*...their conditions allow them to lead perfectly normal lives*". The sketch ends as the camera reveals that the man is in fact a violent murderer.

Ofcom considered that some viewers may have understood the sketch, on its face, to have been mocking people with mental health problems by inferring that they are likely to have violent tendencies. Taken in this sense, Ofcom accepted that the sketch had the potential to cause offence in that it appeared to seek to derive humour from ridiculing people with mental health issues and reinforcing stereotypes about them.

However, Ofcom noted Channel 4's submission that intention of this particular sketch was in fact to satirise an established public campaign 'Time to Change', which aimed to stop discrimination against people with mental health problems. Further, Channel 4 argued that the sketch set out to reverse the concept of the original campaign, which attempted to challenge the stereotype that those with mental health conditions are violent.

Ofcom was of the view that the 'Time to Change' campaign itself was unlikely to be widely enough known to the audience for the sketch's particular intention to be clear to viewers. However, Ofcom considered that, whilst the material had the potential to cause offence, most viewers would have been likely to understand the nature of the sketch, and importantly, that its intention was not to ridicule those who have mental health problems, but to target public information campaigns of this nature, and society's unease about dealing frankly with the subject of mental health.

Having concluded that the sketch had the potential to offend some viewers, particularly those who may not have been familiar with Frankie Boyle's provocative and satirical style, Ofcom then turned to consider whether, in applying generally accepted standards so as to provide adequate protection to viewers, Channel 4 had ensured that this potentially offensive sketch had been justified by its context.

As noted above, the Channel 4 service has a remit to produce innovative and distinctive programmes, and we took into account that the channel is known for broadcasting challenging and provocative programmes. However, it should be noted that while the channel's remit clearly requires it to produce such programming, it does not negate the fact that the channel must nevertheless work within certain boundaries: Channel 4's programmes must comply with the Code, and Channel 4 must apply generally accepted standards to the content of its programmes.

We noted that Frankie Boyle is an established comedian, who has appeared on a number of comedy television programmes. He is also well known for his controversial and provocative humour, which often plays on his negative views of society and celebrities. We took into consideration that many viewers would have expected the series to contain challenging – and at times uncomfortable – humour, as well as material likely to offend. The expectations of the audience would also have been influenced by the fact that *Tramadol Nights* was heavily publicised in the weeks leading up to its broadcast to help inform potential viewers of the nature of the content; and formed a part of Channel 4's Tuesday comedy night, being followed by a new series of *The Morgana Show*. Further, as Channel 4 pointed out, the programme was carefully considered by senior editorial staff and edited in advance of broadcast. It was scheduled to begin at 22:00 to lessen the risk of offence and was preceded by a clear warning to the audience about the very strong language and "uncompromising adult content which some viewers will find offensive."

In light of the above factors, Ofcom considered that the intention of this sketch – to use satire and controversy to make a joke about society's attitudes to mental health – would have been well understood by the majority of the audience. Ofcom also considered that the sketch would not have gone beyond what would normally be expected in a programme of this type, particularly taking into account the nature of other material in the series which also frequently used satire and controversy to derive humour from society as a whole, or its attitudes to particular issues.

On balance, we therefore concluded that the broadcast of the material was justified by the context, and the sketch was therefore not in breach of Rule 2.3.

Further, we found that Channel 4 had applied generally accepted standards so as to provide adequate protection for members of the public from this material, which was therefore not in breach of Rule 2.1.

#### **Other issues raised about the series**

Ofcom also received complaints from viewers which raised a number of other issues about the content of the series. In summary, the complainants were offended by certain content, which included: references to AIDS and cancer; references to Jesus and religious dress; comments about rape and paedophiles; sketches about a quadriplegic stuntman; and the involvement of children in a sketch which included swearing, sexual abuse and violence.

Ofcom assessed these complaints and the relevant content of the series. In view of the nature of this late night comedy series, and the other relevant contextual factors about the series as a whole (as set out above), Ofcom concluded that the material did not raise any issues under the Code.

Ofcom also received approximately 70 complaints from viewers who were offended by the inclusion of what they considered to be racist language in the series. Complainants referred, in particular, to the broadcast of language such as “paki”, “nigger” and “black pussy”.

Ofcom viewed the relevant content of the series and noted that in all cases when language of this nature was used it was clearly positioned as observational comedy, which targeted the views and attitudes of society rather than particular black and minority ethnic communities. The language was always presented as a reflection on a character he was playing. For example, when talking about Britain’s involvement in war he said:

*“What gets me is our callousness as a society when we read out our dead on the news first, because our lives are more important, other peoples lives are not worth as much”.*

He then adopted the voice of a stereotypical news reader and said:

*“a bomb went off in Kandahar today, killing two British servicemen, three UN relief workers and a whole bunch of pakis.”*

Given the way this potentially discriminatory language was presented as a statement about how society views other racial groups (and was not targeted at the racial group itself), and taking into account the editorial nature of the series as a whole, Ofcom concluded that the material was clearly editorially justified and in keeping with audience expectations for this late night comedy programme. The content was therefore justified by its context, and Channel 4 applied generally accepted standards in its broadcast. The material therefore did not breach Rules 2.1 or 2.3.

**Not in breach of Rules 2.1 or 2.3**

## Not In Breach

### Top Gear

BBC2, 30 January 2011, 20:00

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#### Introduction

*Top Gear* is a long-running light entertainment series presented by Jeremy Clarkson, based on a motoring magazine format. Jeremy Clarkson and his co-presenters, James May and Richard Hammond, provide information and commentary about cars and interact with the audience and special guests. Programmes are light-hearted in tone, and typically include quirky and humorous banter between the presenters.

A section of this particular programme was devoted to car news, with the three presenters discussing new cars unveiled that week. One of the presenters, James May, introduced a new sports car from Mexico, saying that it was called “*the Tortilla*” (a name he then admitted he had made up). Richard Hammond then said:

*“Why would you want a Mexican car? Cos cars reflect national characteristics, don’t they? So German cars are very well built and ruthlessly efficient, Italian cars are a bit flamboyant and quick – Mexican cars are just going to be a lazy, feckless, flatulent oaf with a moustache, leaning against a fence, asleep, looking at a cactus, with a blanket with a hole in the middle on as a coat.”*

James May responded by describing Mexican food as “*like sick with cheese on it*”, which Richard Hammond corrected to “*re-fried sick*”. When the discussion turned to the car’s price and specifications - both of which were disparaged - Richard Hammond returned to the subject and sparked the following conversation:

Richard Hammond: *“I’m sorry but just imagine waking up and remembering you’re Mexican. ‘Oh no ...’”*

Jeremy Clarkson: *“It’d be brilliant, it’d be brilliant because you could just go straight back to sleep again. ‘Aaah, I’m a Mexican ...’”*

Richard Hammond: *“... that’s all I’m going to do all day ...”*

Jeremy Clarkson: *“That’s why we’re not going to get any complaints about this – cos the Mexican Embassy, the Ambassador’s going to be sitting there with a remote control like this [slumps in seat and snores]. They won’t complain. It’s fine.”*

Ofcom received 157 complaints from viewers. The complainants were offended by these comments, which they considered, in summary: to be derogatory, racial stereotypes and as such cruel, xenophobic, discriminatory and racist.

Ofcom considered these complaints under Rule 2.3 of the Code, which states:

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

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material<sup>6</sup>.

Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material<sup>7</sup>. These standards are contained in the Code. Broadcasters are required under Rule 2.3 of the Code to ensure that, in applying generally accepted standards, they must ensure that the inclusion of material which may cause offence is justified by the context.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”<sup>8</sup>. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

Therefore the questions for Ofcom in reaching a decision in this case were: first, to establish whether the material in question was offensive (and the degree of any offensiveness) and, if so, secondly, to determine whether the BBC had ensured that it had applied generally accepted standards by justifying the inclusion of that material by the context of the programme.

Ofcom first examined the language used in this case to assess the potential it had for causing offence. It is important to note that the Code places no restrictions on the subjects covered by broadcasters, or the manner in which such subjects are treated, so long as offensive material that is broadcast is justified by the context.

In this instance, we recognised that the comments made about Mexican people were based on negative national stereotypes and had the potential to be very offensive both to Mexican people specifically, as well as to viewers more generally.

Ofcom therefore considered whether the broadcast of these offensive comments had been justified by the context. The Code sets out a range of examples of the type of factors Ofcom takes into account when examining the context of a broadcast. For instance, Ofcom would be likely to consider factors including (but not limited to): the editorial content of the programme; the likely expectation of the audience; and the degree of harm or offence likely to be caused by the inclusion of the material.

In this case, Ofcom took into account that *Top Gear* is well known for its irreverent style and sometimes outspoken humour, as well as the regular format of the studio banter between the three presenters. We considered that viewers of *Top Gear* were likely to be aware that the programme frequently uses national stereotypes as a comedic trope and that there were few, if any, nationalities that had not at some point

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<sup>6</sup> Section 3(2)(d) of the Act

<sup>7</sup> Section 319(2)(f) of the Act

<sup>8</sup> Section 3(4)(g) of the Act

been the subject of the presenters' mockery throughout the history of this long running programme. For example, this same episode featured a competition between the UK's *Top Gear* presenters and their Australian counterparts, throughout which the Australians were ridiculed for various national traits.

In this instance, therefore, Ofcom considered that the majority of the audience would be familiar with the presenters' approach to mocking, playground-style humour, and would have considered that applying that approach to national stereotypes was in keeping with the programme's usual content, and the presenters' typical style. Ofcom was of the view that the majority of the audience would therefore be likely to have understood that the comments were being made for comic effect.

However, Ofcom notes that taste in comedy can vary widely, and that these comments would not have been to everyone's taste. Ofcom is not an arbiter of good taste, but rather it must judge whether a broadcaster has applied generally accepted standards by ensuring that members of the public were given adequate protection from offensive material. Humour can frequently cause offence. However, Ofcom considers that to restrict humour only to material which does not cause offence would be an unnecessary restriction of freedom of expression.

Given the comedic intent and the context of this programme, Ofcom concluded that the broadcast of this material was justified by the context. The programme was therefore not in breach of Rule 2.3.

### **Not in Breach of Rule 2.3**

## Advertising Scheduling Cases

### In Breach

#### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

[On non-PSB channels] “time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Chart Show TV	18 February 2011, 14:00 and 15:00	COSTA Rule 4b	Chart Show TV transmitted one minute 19 seconds and 30 seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>
Sunrise TV	04 February 2011, 16:00	COSTA Rule 4b	Sunrise TV transmitted one minute 50 seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>
Comedy Central Extra	15 January 2011, 20:00 and 25:00	COSTA Rule 4b	Comedy Central Extra transmitted nine seconds and 33 seconds more advertising respectively than permitted in a single hour.  <b>Finding: Breach</b>
CBS Reality	21 December 2010, 18:00	COSTA Rule 4b	CBS Reality transmitted 22 seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>
Kiss	16 December 2010, 23:00	COSTA Rule 4b	Kiss transmitted nine seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>

Table continued overleaf.

<b>Channel</b>	<b>Transmission date and time</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
Comedy Central	12 January 2011, 25:00	COSTA Rule 4b	Comedy Central transmitted seven seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>
Men & Movies	07 January 2011, 20:00	COSTA Rule 4b	Men & Movies transmitted seven seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>



## Resolved

### Resolved findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

[On non-PSB channels] “time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
MTVHD	24 February 2011, 12:00	COSTA Rule 4b	<p>MTVHD informed Ofcom they had exceeded the permitted advertising allowance by 25 seconds in a single hour.</p> <p>Ofcom recognises that this is the first issue of this type on MTVHD, and notes steps the licensee says it has taken to address the failure.</p> <p><b>Finding: Resolved</b></p>
Discovery Home & Health	29 January 2011, 12:00	COSTA Rule 4b	<p>Discovery Home &amp; Health transmitted 42 seconds more advertising than permitted in a single hour.</p> <p>Ofcom recognises that this is the first issue of this type on Discovery Home and Health, and notes steps the licensee says it has taken to address the failure.</p> <p><b>Finding: Resolved</b></p>

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr Zac Goldsmith MP

*Channel 4 News, Channel 4, 15 and 16 July 2010*

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**Summary:** Ofcom has not upheld Mr Goldsmith's complaint of unfair treatment in either of the programmes as broadcast.

On 15 July 2010 Channel 4's evening news programme, *Channel 4 News*, included an item about an investigation into parliamentary candidates' campaign expenses during the 2010 General Election. The item focused on Mr Zac Goldsmith's successful campaign for the Richmond Park and North Kingston constituency.

On 16 July 2010, Mr Goldsmith appeared on *Channel 4 News* and was interviewed by Jon Snow.

Mr Goldsmith complained to Ofcom that he was treated unfairly in both programmes as broadcast.

In summary, Ofcom found that:

- Mr Goldsmith was given an appropriate and timely opportunity to respond to the allegations set out in the 15 July programme. Further, as the programme included Mr Goldsmith's agent's response and a response from the Conservative party, as well as his own interview with Sky News, the broadcast fairly presented his response to the allegations.
- Material facts relating to his opportunity to respond to the programme were presented fairly in the 15 July programme. The programme did not imply that Mr Goldsmith had chosen not to be interviewed by Channel 4.
- Material facts relating to his opportunity to respond to the programme were presented fairly in the 16 July programme. Given that Mr Goldsmith was able to put forward his response to all of the assertions relating to his offer to contribute to the 15 July programme made by Jon Snow, the programme as broadcast was fair.

#### Introduction

On 15 July 2010, Channel 4 ("Channel 4" or "the Broadcaster") broadcast an edition of *Channel 4 News*, its evening news programme. It included, at approximately 19:30, an item produced in association with the Bureau of Investigative Journalism ("BIJ") about an investigation into parliamentary candidates' campaign expenses during the 2010 General Election. The item focused on Mr Zac Goldsmith's successful campaign for the Richmond Park and North Kingston constituency. The presenter, Jon Snow, introduced the item by saying:

*"Zac Goldsmith has questions to answer in relation to rules on his election campaign spending. This programme has scrutinised his expenses and how the company managed to keep, as it claims below the legal spending limit [£11,003]. Exceeding by as little as one pound can be a criminal offence with serious*

*consequences including being expelled from Parliament. So did Mr Goldsmith's expenses abide by the spirit and the letter of the law?"*

The programme stated that Mr Goldsmith had submitted campaign expenses of £10,783 (i.e. £219.72 under the legal limit). The programme then examined Mr Goldsmith's expense claims for campaign signs, jackets, leaflets and posters. It said that, in each case, the figure submitted by Mr Goldsmith was less than the amount he had actually paid for the relevant items, as a result of Mr Goldsmith apportioning some of the cost of the signs to the local election campaign account; not including the costs of the actual jackets in the expense claim; and not including the cost of leaflets that he claimed had not been used. It said that, had Mr Goldsmith submitted the amounts actually paid, his campaign expenses would have exceeded the limit on spending.

Channel 4 included a response from Mr Goldsmith's election agent, who said, "We were scrupulous in ensuring that all our election expenses complied with both the letter and the spirit of electoral commission rules." Channel 4 also included a response from the Conservative party, saying, "A party spokesperson said candidates were justified in only accounting for items used, as material can become out of date during a campaign. She added that examples we'd raised could be seen in the returns of other MPs."

After the item Jon Snow said that during the broadcast, Mr Goldsmith had recorded an interview with Sky News. It then showed the interview with Sky News, in which Mr Goldsmith said:

*"The returns that my agent submitted to the electoral commission are scrupulous, every single detail of them is correct."*

Jon Snow then said that Mr Goldsmith was "very welcome to appear here live on Channel 4 News tomorrow night" (i.e. 16 July).

On 16 July 2010, Mr Goldsmith appeared on *Channel 4 News* and was interviewed by Jon Snow live on the programme. Mr Goldsmith began the interview by saying that he first wanted to discuss why he did not appear on *Channel 4 News* on 15 July. The majority of the interview was taken up by a heated discussion of this issue.

In particular, Mr Goldsmith said that at 17:30 on 15 July he had asked to do a live interview with *Channel 4 News* but that the programme makers would not allow him. Jon Snow said that that was a "complete travesty of the truth" and said that Mr Goldsmith had wanted to do an interview with Cathy Newman, who was working on another story.

Mr Goldsmith said that Channel 4 had wrongfully implied on the 15 July programme that he had "bottled out of talking about these issues live" to which Jon Snow responded, "I didn't just imply it, you have bottled out of them."

The last few minutes of the interview addressed the substantive allegations about Mr Goldsmith's election spending. Mr Goldsmith refuted any allegations of wrongdoing.

Mr Goldsmith complained to Ofcom that he was treated unfairly in both programmes as broadcast.

## The Complaint

### 15 July 2010

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

- a) It failed to give Mr Goldsmith an appropriate and timely opportunity to respond to the serious allegations made in the programme.

By way of background, Mr Goldsmith said that he only became aware that the item was to focus on his campaign at 16.45 on 15 July 2010 after being informed by Conservative Party Press Office (“CPPO”). At 17.30 he offered to do a live interview for the programme, but was told that he was too late. Instead he was asked to provide a written statement which would replace the line “ZG declined to comment”. At 17.50 a written response was submitted to Channel 4, and this was acknowledged by them at 18.01. At 18.30 Mr Goldsmith decided to be interviewed by Sky and BBC. At 18.35 Channel 4 offered him an interview via his adviser which was by then logistically impossible.

- b) Material facts concerning Mr Goldsmith’s offers to contribute to the programme had not been presented fairly. In particular, Jon Snow implied that Mr Goldsmith had chosen not to be interviewed, this was not true.

### 16 July 2010

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

- c) Material facts concerning Mr Goldsmith’s offers to contribute to the 15 July programme had not been presented fairly. In particular, Jon Snow repeatedly denied the sequence of events set out in head a).

Mr Goldsmith also raised a complaint of breaches of sections 5.1, 5.7, 5.11 and 5.12 of the Broadcasting Code. These sections do not relate to fairness or privacy so are not addressed in this provisional decision. However, in accordance with paragraph 14 of the Procedures for the Handling of Fairness and Privacy Complaints, this aspect of Mr Goldsmith’s complaint has been referred to the appropriate section of Ofcom for assessment,

## Chronology

Channel 4 submitted copies of the relevant email correspondence, and a detailed log of the communications between the parties. We have reviewed copies of the written correspondence. In relation to telephone communications, we rely on the parties’ account of the relevant conversations, and quotes are taken directly from their submissions. We note where there are material discrepancies between the submissions of Channel 4 and Mr Goldsmith.

1. **9 July 2010 at 19:20 – Email from Iain Overton (BIJ) to Zac Goldsmith and his agent, David Newman<sup>1</sup>, cc Anthony Barnett (Channel 4).** This email states

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<sup>1</sup> The copy of the email submitted by Channel 4 does not appear to show David Newman as a copy recipient. However, Mr Newman is referred to in the text of the email as being a copy recipient. We do not consider this discrepancy to be material to our decision.

that BIJ is “*producing a report for Channel 4 News, which examines the election expenses of a number of MPs in the recent General Election*”.

The email sets out the detail of the specific allegations against Mr Goldsmith and asks specific questions about these allegations, stating “*Clearly this raises serious issues and we are, therefore, seeking your response on the following matters, upon which we intend to report*”. It states that “*The report will be broadcast...on Thursday 15<sup>th</sup> July*”.

It then states that “*We are writing to you and your agent David Newman (who is cc'd) for your responses. We appreciate that you may decide it is appropriate to respond jointly*”. It further states “*If you would like to respond to the above matters in an on-camera interview, please let us know by return (no later than 5pm Monday) and we will make the necessary arrangements. If you choose to respond in writing, we request your written response, which will be fairly edited in the report, by no later than noon Wednesday 14 July.*”<sup>2</sup>

The email provides telephone and email contact details for Iain Overton and Anthony Barnett.

2. **9 July 2010 at approximately 19:30 – Call from Iain Overton to Zac Goldsmith’s office.** Receipt of the email detailed at paragraph 1 was confirmed.
3. **12 July 2010 at approximately 10.00 – Call from Iain Overton to Conservative Party Press Office (“CPPO”).** Mr Overton explained that 20 MPs (across all parties) had been looked at, and that the three MPs with the most significant questions to answer at that stage were Mr Goldsmith and two other MPs. CPPO said it would be the point of contact for the three MPs. Mr Overton explained that they were focusing on tightly fought and key marginal seats.
4. **13 July 2010 at 09:44 – Email from David Newman to Iain Overton.** Mr Newman states “*We were scrupulous in ensuring that all our election expenses complied with both the letter and the spirit of Electoral Commission rules. Any reporting of the inaccurate figures and false assumptions you have drawn from them will result in legal action.*”
5. **13 July 2010<sup>3</sup> at 12.37 – Email from CPPO to Iain Overton.** The email refers to a telephone conversation “*the other day*”. The email states that “*I am just getting back to you on the questions that you have sent to our MPs, having looked into the situation we are entirely confident that everything complies to the spirit and letter of election law*”. The email responds to the accounting practices questioned by the substantive allegations, concluding “*I hope this answers any queries that you had, I believe I have addressed all your questions.*”
6. **13 July 2010 at 15:36 – Email from Iain Overton to David Newman.** Mr Overton responds to Mr Newman’s email at paragraph 2 above, asking “*Is this response your personal response or intended to be a response on behalf of both yourself and Zac Goldsmith MP?*” It asks Mr Newman to “*confirm whether or not you personally intend to provide any further response...*”, and asks “*when can we*

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<sup>2</sup> The original email specified a response deadline of 14 June, but this was corrected in a subsequent email.

<sup>3</sup> This email was undated; the date and time is taken from Channel 4’s submissions.

*expect Mr Goldsmith's substantive responses to the issues raised, bearing in mind our deadline of noon tomorrow?"*

7. **13 July 2010 at 16:17 – Email from David Newman to Iain Overton.** Mr Newman responds to Mr Overton's email at paragraph 4 above, stating that *"CCHQ Press Office is dealing with your inquiries [sic] and I understand you have been issued with a response."* He states that any further queries should be addressed to CPPO.
8. **13 July 2010 at 17:22 – Email from CPPO to Iain Overton.** The email asks whether Mr Overton has any further questions requiring a response by noon on 14 July. It states *"As I said on the phone I am fairly confident that when looked at closely that these 3 MPs have no case to answer"*.
9. **13 July 2010 at 18:00 – Call from Iain Overton to CPPO.** According to Channel 4, Iain Overton "stressed that this was not a partisan investigation and Channel 4 News wanted Mr Goldsmith to give a personal right of reply". He also stated that it looked "increasingly likely that we were not going to include [the other two MPs] in the Thursday report as it was felt that Mr Goldsmith had the most significant case to answer".
10. **14 July 2010 at 10:01 – Email from Iain Overton to CPPO, cc Antony Barnett.** Mr Overton states that *"we are of the view that there are indeed a number of serious issues which you have not addressed."* He states that it will accept a response from CCHQ or from the individual MPs or agents themselves.

The email reiterates that *"Our deadline [for responses] remains noon today"*. The email sets out in detail specific allegations and questions in relation to three MPs, including Mr Goldsmith, and refers back to the letter of 9 July.

It states *"In summary, we invite your responses to each and every issue we have raised in relation to each individual candidate. In order for us to fairly include any response we need to be confident of your individual answer on each and every issue."*

11. **14 July 2010 at 10:02 – Email from Iain Overton to Zac Goldsmith and David Newman.** Mr Overton states that he was in direct correspondence with CPPO about the matter. He reiterated that *"...if you do wish to supply any further comment personally...please let us have your response by noon today."*
12. **14 July 2010 at 12:22 – Email from CPPO to Iain Overton.** CPPO replies to Mr Overton's email at paragraph 7 above, setting out a substantive response refuting the allegations raised, although does not refer to the three MPs specified in Mr Overton's email. The email asks Mr Overton to *"let me know if you will be continuing with this story in light of the explanations and guidance I have offered you."*
13. **14 July 2010 at 14:53 – Email from Ian Monk (Press Advisor to Zac Goldsmith) to Antony Barnett.** Mr Monk asks Mr Barnett to telephone him regarding the Channel 4 news item about Mr Goldsmith. He states *"I've been referred to you at C4 on Zac's behalf."*
14. **14 July 2010 at 15:05 – Email from Iain Overton to CPPO, cc Antony Barnett.** Mr Overton states that *"...the report will definitely be going ahead tomorrow and we feel that serious questions have not been properly answered"*.

He states that he has *“written to all the relevant MPs and their agents to seek specific responses to the issues raised. We have extended our deadline to 6pm today”*.

Mr Overton states that *“Should we not receive any further responses, we shall simply have to represent MP’s positions from the correspondence we have received to date, although questions remain unanswered. We will also be forced to report that MPs/agents failed to provide specific answers to the questions/issues raised.”*

15. **14 July 2010 at 16:45 – Call from Antony Barnett to Ian Monk.** According to Channel 4, Mr Monk again refuted the allegations. Mr Barnett said that *Channel 4 News* wanted Zac Goldsmith to answer detailed questions in an interview. Mr Monk said that Mr Goldsmith would not be interviewed and that “it was highly unlikely he would provide anything other than his agent’s statement”.
16. **14 July 2010 at 17:14 – Email from CPPO to Iain Overton.** This email refutes the allegations again, and states *“I am surprised that you continue to repeat the same questions when you verbally indicated yesterday that at least [the two other MPs] would no longer be part of the programme.”*
17. **15 July 2010 at 11.00 – Call from Iain Overton to CPPO.**<sup>4</sup> According to Channel 4, Mr Overton told CPPO that Mr Goldsmith would definitely be the only MP included in the report.
18. **15 July 2010 at 13:25 – Email from Ian Monk to Antony Barnett.** Mr Monk states that he has spoken to Mr Goldsmith and Mr Newman and that Mr Goldsmith *“feels that the figures put to him are so skewed as not to merit any discussion beyond the statement issued earlier this week by David Newman.”* Mr Monk also states *“Grateful if you could let me know if anything is running tonight”*.
19. **15 July 2010 at 17:12 – Email from Anthony Barnett to Ian Monk.** Mr Barnett confirms that *“we are running a story this evening about Zac Goldsmith in line with our previous discussion”*. He states that *“The item will be very fair; will set out the facts that we have uncovered and say that these raise a number of questions which ought to be looked at more closely. We have incorporated the responses of David Newman and the Conservative party on behalf of Zac Goldsmith in our report.”*
20. **15 July 2010 at approximately 17:30 (according to Channel 4) or 17:20 (according to Mr Goldsmith) – Call from Ian Monk to the Channel 4 Newsdesk.** According to Channel 4, Mr Monk asked to speak to Cathy Newman, and left a message with an assistant that Ms Newman *“was trying to get an interview with Zac Goldsmith and if she called back fairly quickly, he may be able to help out”*. According to Channel 4, given that Ms Newman was not working on the story, the message was passed to the team who were working on it.
21. **15 July 2010 at 17:32 – Email from Ian Monk to Antony Barnett.** Mr Monk states *“Can you give me a quick call? Zac MAY do a short interview.”*

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<sup>4</sup> This telephone call was first mentioned by Channel 4 in their second set of submissions so has not been commented on by Mr Goldsmith. However, we do not consider it to be determinative in this provisional decision.

22. **15 July 2010 after 17.32 – Call from Antony Barnett to Ian Monk.** According to Channel 4, Mr Barnett called Mr Monk to explain that *“As the final show was being put together Channel 4 News did not at the time think they would have sufficient time to include a last minute live interview. With just over an hour to transmission, Mr Monk was told that Channel 4 News could not do a live interview with Mr Goldsmith but it would consider broadcasting a written response on the allegations from Mr Goldsmith. It was close to broadcast and the content of that night’s show was in the final stages of being settled.”* According to Channel 4, Mr Barnett also *“went through the response from Mr Goldsmith that was to be broadcast (at that stage)”*.
23. **15 July 2010 at 18:02<sup>5</sup> – Email from Ian Monk to Antony Barnett.** Mr Monk writes with an official statement to *“replace the line in our item tonight which says Zac Goldsmith declined to comment”*. The statement is headed with a timing of 17:50 and reads *“I offered at 5.30 today to do a live interview addressing the issues raised in this item but was told by Channel Four that this was not possible.”* Mr Monk states that *“Zac has now commented and thus a ZG declined to comment is no longer applicable or appropriate for the broadcast.”*
24. **15 July 2010 at 18:01 – Email from Antony Barnett to Ian Monk.** Mr Barnett responds to Mr Monk’s email at paragraph 16 above as follows: *“Thanks. Will amend accordingly.”*
25. **15 July 2010 at around 18:00 (according to Channel 4) or 18:15 (according to Mr Goldsmith) – Calls from Mike Radford (Channel 4) to Ian Monk.** According to Channel 4, Mr Radford spoke to Mr Monk on *“3, maybe 4 occasions once the decision was taken to offer a live interview”*.
- “On the first occasion, Ian Monk said Zac Goldsmith was “on his way to Kew to give a speech” and remarked that the offer of a live interview wasn’t there at 5.30. Mr Radford made clear the offer of a live interview was now there and Channel 4 News would make the necessary arrangements...Mr Monk said he would call back.”*
- “After failing to receive a call back from Mr Monk, Mr Radford telephoned again a second and third time. On each occasion, Mr Monk said he couldn’t get hold of Mr Goldsmith. On each occasion, the offer of an interview was reiterated.”*
- “On the 3rd occasion, Mr Radford said to Mr Monk, “we’ve heard he is at the Sky studios at Millbank, so he can come straight to us”. He ended the conversation stressing the offer was still on the table.”*
26. **15 July 2010 at around 19:00 – Face to face meeting between Channel 4 journalist and Mr Goldsmith.** According to Channel 4, *“Mr Goldsmith was located by a Channel 4 journalist on the first floor stairwell at Millbank doing a filmed interview with another broadcaster about the allegations...After the interview was over, the Channel 4 news journalist spoke to Mr Goldsmith in person and asked if he would be prepared to appear live on Channel 4 News that night...Mr Goldsmith said to the Channel 4 News journalist he was not prepared to appear on Channel 4 News now. He said he was available at 5.30 and had been turned down.”* According to Mr Goldsmith, *“I was pursued by an individual to the revolving doors as I was leaving the Millbank building who tried to get me to*

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<sup>5</sup> Mr Goldsmith asserted that this email was sent at 17:50. However, the hard copy of the email provided by Channel 4 shows the time of the email as received at 18:02.



*join the broadcast in midstream. My response to him was at that juncture understandably brusque and I left the building.”*

## **Channel 4’s Response**

### **15 July 2010**

- a) In response to the complaint that the programme failed to give Mr Goldsmith an appropriate and timely opportunity to respond to the serious allegations made in the programme, Channel 4 made the following points:

Channel 4 said that Mr Goldsmith was told of the allegations well in advance and was given more than a fair opportunity to respond. Channel 4 said that throughout the days leading up to broadcast the *Channel 4 News* team working on the report were actively in communication with Mr Goldsmith’s team. It said that Mr Goldsmith knew the allegations against him, and was offered an opportunity to give an interview. Throughout the week, there was no sign that Mr Goldsmith was going to give an interview. The Conservative party, on Mr Goldsmith’s behalf, only responded with broad denials.

Channel 4 said that the form in which a response is given in a programme is a matter of editorial control, and that the subject of allegations will, in many cases, make a written statement, and will sometimes be invited onto a programme to answer the allegations live. However, the subject of the allegations is *“not entitled to dictate to programme-makers that they must be given live air-time.”*

Channel 4 said that Mr Goldsmith was offered a live interview, in the time immediately preceding the broadcast. Channel 4 said that they initially refused Mr Goldsmith’s request as they did not believe they would be able to accommodate a live interview at that late stage. However, after further consideration of the programme structure, a live interview was offered shortly after, which was turned down by Mr Goldsmith, even though he was located by the Channel 4 team at Millbank. Channel 4 said that the story was being trailed on other channels, including Sky News. Given that the story was gaining coverage across news outlets, it was considered that there were exceptional circumstances warranting a change to the programme to make way for a live interview.

Channel 4 said that Mr Goldsmith’s behaviour warranted scrutiny because:

1. The Goldsmith team had been dealing with the relevant Channel 4 team all week, but when they decided to give an interview contacted a reporter (Cathy Newman) who had nothing to do with the report.
2. Mr Goldsmith spoke to both Sky News and the BBC about the allegations, even though the relevant reporters “knew nothing about the specific evidence and allegations and were not in a position to put the specifics or to probe any of his answers, because they had no knowledge of the story.”
3. Mr Goldsmith’s representative told the *Channel 4 News* executive that Mr Goldsmith was on his way to Kew, but Mr Goldsmith was at Millbank shortly after that comment was made.
4. Mr Goldsmith turned down Channel 4’s last minute offer of a live interview even though he was giving interviews to other broadcasters on the same matter.

Channel 4 said that the report broadcast a summary of the statements from Mr Goldsmith’s representatives, and broadcast part of the interview Mr Goldsmith

had given to Sky News, which was a hostile interview given to a rival broadcaster, and which Channel 4 had no obligation to broadcast. Channel 4 refuted Mr Goldsmith's claim that he only became aware that the report would focus on him at 16:45 on 15 July, given that the Conservative Party press office, who were authorised to act on Mr Goldsmith's behalf, were already aware of this.

Channel 4 said that Mr Goldsmith was given a full opportunity to answer the allegations when he was interviewed live on 16 July.

- b) In response to the complaint that material facts concerning Mr Goldsmith's offers to contribute to the programme had not been presented fairly, in particular that Jon Snow wrongly implied that Mr Goldsmith had chosen not to be interviewed, Channel 4 said that it was not unfair for the programme not to report that he had at 17:30 that day offered a live interview. It said that this fact was not germane to the substantive issues raised in the report. Channel 4 said that at no point in the programme was it said that Mr Goldsmith had turned down an interview. The presenter said:

*"Zac Goldsmith speaking to Sky News. Of course, he would be very welcome to appear here live on Channel 4 News tomorrow night."*

Channel 4 said that it did not accept that this implied that Mr Goldsmith had turned down an interview. It said that the vast majority of viewers would have understood this in its natural and ordinary meaning that is simply an invitation to appear on the next day's programme.

Channel 4 said that, in any event, it was a correct reflection of the facts. It said that Mr Goldsmith from the outset had been offered an interview, but this offer was not taken up. Channel 4 said that, instead, there was a series of communications that failed to answer the questions, and at no point was a substantive answer to the allegations offered prior to broadcast. It said that a live interview was offered at the last minute which was initially turned down. Channel 4 said that circumstances changed thereafter and Mr Goldsmith was offered a live interview later that evening, both by telephone and in person when he was at Millbank. It said that a live interview could have gone ahead and *Channel 4 News* was prepared to do it, but it was Mr Goldsmith who refused.

### **16 July 2010**

- c) In response to the complaint that material facts concerning Mr Goldsmith's offers to contribute to the 15 July programme had not been presented fairly, Channel 4 said that it was fair to say that the exchange between the presenter and Mr Goldsmith was a heated discussion. Channel 4 said that Mr Goldsmith refused to answer the specifics being put to him until he had received an apology from Jon Snow over the issue of whether or not he had been offered a fair opportunity to respond.

Channel 4 said that, in Mr Goldsmith's exchange with Jon Snow, Mr Goldsmith endeavoured to give the impression he had been willing at all times to provide answers to the questions. Channel 4 said that Mr Goldsmith was offered an on-camera interview, or to supply comments in writing and finally, after his initial request (late on the day of transmission) for a live interview had been initially turned down, he was offered a live interview but he refused to take up the offer.

Channel 4 said that Mr Goldsmith's central point that he was prepared to give a response but was turned down is incorrect. It said that the presenter was entirely fair in rebutting Mr Goldsmith's suggestion that proper journalistic practices had not been followed.

It said that in the 16 July interview, Mr Goldsmith appeared not to accept that *Channel 4 News* had been repeatedly asking him to respond since the preceding Friday and had in fact offered him a pre-recorded interview. Mr Goldsmith accused the presenter of implying in the earlier programme that he had "*bottled out*" of answering the issues. Channel 4 said that it did not accept this.

Channel 4 said that Jon Snow's response, "*I just didn't imply...you have bottled out of them...you...we have asked since last Friday...do you deny that we have asked you since last Friday*" was justified given the way Mr Goldsmith was choosing to conduct the interview. Channel 4 said that the comments made by Jon Snow were 'fair comment' based on the facts and Mr Goldsmith was present to rebut what he disagreed with and gave his version of events.

## **Mr Goldsmith's comments**

### **15 July 2010**

Mr Goldsmith said that until 17:12, July 15 his understanding was that the item would focus on claims made by a number of candidates from all political parties. Mr Goldsmith said that this is illustrated by the email at paragraph 14 of the chronology above, in which Mr Overton stated:

*"we have written one final time to all the relevant MPs and their agents to seek specific responses to the issues raised"... "Should we not receive any further responses, we shall simply have to represent MP's positions from the correspondence we have received to date, although questions remain unanswered. We will also be forced to report that MPs/agents failed to provide specific answers to the questions/issues raised."*

Mr Goldsmith said it was clear at that stage that the story was not focused on him.

Mr Goldsmith said Channel 4 incorrectly stated that he caused a level of confusion by asking for Cathy Newman. He said that asking for Cathy Newman is irrelevant as the adviser stated that he was calling in connection with the story and offered an interview with Mr Goldsmith. He said that this conversation was followed by the email at paragraph 21 of the chronology, which confirmed this. Mr Goldsmith said that *Channel 4 News* responded to say that it was too late to cut a live interview into the package, but agreed to broadcast a short statement from himself which would replace the then proposed comment by Channel 4 stating that he had declined to comment.

Mr Goldsmith said that the reason given by Channel 4 for not interviewing him on the programme that it was "too late for inclusion" proved to be without foundation because of its subsequent belated attempts to get him on the show once it had become aware that he was appearing on rival channels. Mr Goldsmith also claims that Channel 4's reason for offering an interview was because he was speaking to rival broadcasters.

In relation to the call from Mike Radford (see paragraph 25 of the chronology), Mr Goldsmith said that Channel 4 was told that it was unlikely that Mr Goldsmith would

be able to do an interview but that his team would call him back. Channel 4 were also told that Mr Goldsmith was now in other TV studios having been turned down by Channel 4 and was still hoping to attend an important 'Hacan'<sup>6</sup> meeting where he was the advertised speaker. Mr Goldsmith said that Ian Monk was unable to get hold of him because he was at Millbank studios being interviewed by Sky News and BBC News.

Mr Goldsmith said that his agreed statement was not read out as he had been led to believe, and that Channel 4 had provided no valid reasons for this.

In response to the point made by Channel 4 that a subject of allegations is not entitled to dictate that programme-makers give them a live interview, Mr Goldsmith said that he did not believe that he was entitled to dictate to Channel 4, but reiterated that he had granted Channel 4 an immediate interview when he found out that the story focused on his election expenses.

Mr Goldsmith said that Channel 4 has claimed that the broadcast of his interview with Sky News provides a defence to the complaint that he has made. Mr Goldsmith said that he did try and co-operate with Channel 4, once it became apparent that the story was exclusively about him, but that Channel 4 had denied him the opportunity. He said that this left in viewers' minds the impression that he had chosen not to co-operate with Channel 4. He also said that if Channel 4 felt that his interview to Sky News was important enough to include in the broadcast, this raised a question as to why they refused to grant an interview when it was offered by Mr Goldsmith 90 minutes before broadcast.

### **16 July 2010**

Mr Goldsmith said that Channel 4 could not rely on the interview of 16 July to demonstrate fairness because the focus of the interview was on Jon Snow's refusal to apologise for the way Mr Goldsmith had been treated.

Mr Goldsmith said that Jon Snow made a series of errors in his broadcast. For example in response to Mr Goldsmith stating *"At 5:30 I was told by this programme that you would not have me on to discuss this live"*, Jon Snow responded *"No that is not true at all, that is..."* to which Mr Goldsmith responded *"I have an email here"*. Jon Snow said *"that is a complete travesty of the truth."*

Mr Goldsmith said that he initially refused to give an interview when he thought the story would be about the election expenses of many Parliamentary candidates, on the basis that this would only add unnecessary weight to the particular part of the news item relating to him. When he found out that the programme would be about only him, he immediately offered Channel 4 an interview and was told it was too late for inclusion.

### **Channel 4 comments in response**

### **15 July 2010**

Channel 4 said that Mr Goldsmith's advisors were aware that there was a possibility that Mr Goldsmith might be the only MP featured from as early as 18:00 on 13 July when Channel 4 spoke with CPPO (see paragraph 9 of the chronology).

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<sup>6</sup> Hacan is a voluntary organisation that seeks to campaign on behalf of those who suffer because of aircraft flight paths.

Furthermore, Channel 4 spoke again with CPPO at 11:00 on the day of transmission (see paragraph 17 of the chronology) confirming that Mr Goldsmith would be the only MP included in that night's report. Channel 4 said that whether Mr Goldsmith personally knew about this has no bearing on this complaint. It said that throughout the process the producers were liaising with CPPO, and Mr Goldsmith's Press Adviser (Mr Monk), both of whom purported to be acting on his behalf and were made fully aware of the detailed allegations that were being made and most importantly Mr Goldsmith was given "an appropriate and timely opportunity to respond" to any significant allegations being made against him. Channel 4 also pointed out that they broadcast further reports in which the expenses of other MPs were scrutinized.

Channel 4 said that the indisputable fact is that on Friday 9 July, Mr Goldsmith was made fully aware of all the allegations to be made against him, the date the report was to be broadcast, the deadline for any interview and the alternative deadline for providing a written statement. It said that the nature of the report did not materially change – all the allegations included in the report had been put to Mr Goldsmith six days before transmission. Channel 4 said that the later decision to focus solely on Mr Goldsmith within the report was entirely within its editorial judgement and control, but most importantly did not alter the nature of the allegations nor did it cause any material unfairness to Mr Goldsmith. Channel 4 said that Mr Goldsmith's ability to respond to the allegations put to him on 9 July up to the night of transmission (15 July) did not change.

Channel 4 said that the exact timing of the call from Ian Monk to Channel 4 (see paragraph 20 of the chronology) is immaterial. It said that either way this was approximately only an hour and a half before broadcast, and was six days after Mr Goldsmith became aware of the allegations.

Channel 4 said that it was justified in turning down Mr Goldsmith's offer of a live interview at around 17:30. It said that it was justifiably felt that there was not sufficient time in the programme to do a live interview and any further comments that Mr Goldsmith wanted to make about the allegations at this very late stage should be provided in writing for consideration. Following that, it said, circumstances changed. Channel 4 said that a discussion took place in the newsroom and at around 18:00 it was noted that the story was being trailed on Sky News and other channels. It said that these were considered to be exceptional circumstances and an editorial decision was taken that the programme could be significantly re-organised in time to make way for a live interview.

Channel 4 said that the statement Mr Goldsmith provided at around 18:00 was not included in the broadcast because it did not address any of the specific allegations being made about his expenses, and added nothing to responses Channel 4 had already received. Channel 4 also considered that it would have been misleading to include the statement.

Channel 4 said that what probably prompted other broadcasters to report on the story was that the Electoral Commission had just announced they were launching an investigation into the matter.

Channel 4 said that it was not disputed that Mr Goldsmith's decision to speak to other broadcasters was a factor which led to it reviewing the matter and deciding to change the programme at the last minute to accommodate a live interview. It said that this was a matter of editorial control and discretion. In terms of publicising the story online and in new media formats, Channel 4 said it makes no apologies for endeavouring to

encourage the public to watch the news programme by trailing what is being reported.

### **16 July 2010**

In relation to Jon Snow's comments during the 16 July programme, Channel 4 said that it was fair comment to say that Mr Goldsmith had "*bottled out*" of answering the questions given the facts and how Mr Goldsmith chose to conduct the interview. Jon Snow was justified in refusing to accept Mr Goldsmith's version of events.

### **Decision**

Ofcom's statutory duties include the consideration and adjudication on complaints in relation to unjust or unfair treatment in programmes included in licensed services, and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes included in such services.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programmes as broadcast, transcripts, both parties' written submissions and their supporting materials.

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

Section 7 of the Code also sets out certain "Practices to be followed" at paragraphs 7.2 to 7.14. The foreword to section 7 states that "*Following these practices will not necessarily avoid a breach of this section of the code (Rule 7.1). However, failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.*"

### **15 July 2010**

- a) It failed to give Mr Goldsmith an appropriate and timely opportunity to respond to the serious allegations made in the programme.

In considering this head of complaint, Ofcom had regard to Practice 7.11 of the Code which states that "*If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.*"

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<sup>7</sup> Section 110 Broadcasting Act 1996

<sup>8</sup> Section 3(4)(g) Communications Act 2003

<sup>9</sup> Section 3(3) Communications Act 2003

Ofcom also had regard to Practice 7.2 of the Code which states that *“Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally it is justified to do otherwise.”*

Ofcom also had regard to Practice 7.3 of the Code which states that *“Where a person is invited to make a contribution to a programme (except where the subject matter is trivial or their participation minor) they should normally, at an appropriate stage (amongst other things):*

- *Be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;*
- *Be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited etc.;*
- *Be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;*
- *Be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness.*
- *[...]*

*Taking these measures is likely to result in the consent that is given being ‘informed consent’. It may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of this section of the Code.”*

#### Practice 7.11

Ofcom first examined whether the programme made an allegation of wrongdoing or incompetence for the purposes of Practice 7.11. In doing so, Ofcom first noted Jon Snow’s introduction to the report:

*“He is one of David Cameron’s A list. A star among the new intake of Conservative members of parliament but tonight Zac Goldsmith has questions to answer in relation to the rules on his election campaign spending. This programme has scrutinised his expenses, how the campaign managed as he claims below the legal spending limit. Exceeding it by as little as £1 could be a criminal offence with serious consequences including being expelled from Parliament. So did Mr Goldsmith’s expenses abide by the spirit and the letter of the law?”*

It also noted in particular, the following excerpts from the report:

*“It’s important that MPs keep their spending under strict legal limits, because if they don’t there can be serious consequences. An MP can lose their seat triggering a by election and in some cases could even face a prison sentence.”*

*“If Zac Goldsmith had wrongly shifted a portion of the costs of his signs then he could well have breached his legal spending limit and exceeding the limit by even one pound could amount to an offence.”*

*“So if Goldsmith was wrong to leave the cost of the jackets out of his declaration, he’d once again have breached his legal limit.”*

*“So to summarise: Goldsmith’s campaign was legally allowed to spend £11,003. He declared to the authorities that he only spent £10,783. If he wrongly accounted for his signs, his jackets and his other campaign materials, he would almost certainly have broken his legal limit. Given the serious consequences that could follow, Channel 4 News asked Goldsmith a series of detailed questions about his campaign spending.”*

Ofcom took the view that the programme was making an allegation that Mr Goldsmith had improperly accounted for his election expenses, which had the potential to amount to a criminal offence, and that this clearly constituted an allegation of wrongdoing.

Ofcom therefore went on to examine whether Mr Goldsmith was given an appropriate and timely opportunity to respond to this allegation as required by Practice 7.11.

Ofcom noted that Mr Goldsmith was first contacted by the programme makers directly by email on 9 July 2010, 6 days before transmission (See paragraph 1 of the chronology). The email informed Mr Goldsmith that *Channel 4 News* was producing a report which would examine the election expenses of 'a number of MPs' in the recent General Election. It then detailed the specific issues that the programme makers were examining, namely the cost of the campaign signs, jackets, leaflets and posters, and set out at some length the substantive allegations specific to Mr Goldsmith. The email notified Mr Goldsmith of the intended transmission date, 15 July. It also asked Mr Goldsmith and/or Mr Newman to provide their response(s) either in writing or in an on-camera interview, and specified clear deadlines for each type of response.

Ofcom took the view that this email was provided to Mr Goldsmith in good time before the intended transmission date, and was therefore a 'timely' opportunity to respond within the meaning of Practice 7.11.

With regard to whether the opportunity to respond was 'appropriate' within the meaning of Practice 7.11, Ofcom took account of the relevant guidance notes for Rule 7, which state that *“An individual...needs to be given sufficient information concerning the arguments and evidence to be included in the programme to enable them to respond properly.”*

Ofcom considered that the allegations to be raised by Channel 4 were set out in the letter of 9 July in considerable detail, and that this clearly constituted 'sufficient information concerning the arguments and evidence' to enable Mr Goldsmith to respond properly.

Ofcom also considered the relevance of the fact that Channel 4 refused Mr Goldsmith a live interview when he requested one at around 17:30 on the day of broadcast. Ofcom noted that this was close to the start of the programme, and noted Channel 4's submissions that it did not consider it possible to modify the structure of the programme at that late stage. Moreover, Ofcom noted that the refusal of a live interview did not leave Mr Goldsmith with no opportunity to respond, as Channel 4 still offered the opportunity for a further written statement to be submitted. Ofcom also noted that Channel 4 decided soon thereafter that it would in fact be able to accommodate a live interview, and attempted to contact Mr Goldsmith and his advisors by telephone and in person to arrange this at a late stage.

Ofcom did not consider that Channel 4's temporary refusal to grant an interview between approximately 17:30 and approximately 18:00 on the day of broadcast amounted to unfairness, given that at all other times in the week before the



broadcast, Channel 4 appears to have made substantial efforts to obtain such an interview.

Furthermore, it notes that Mr Goldsmith's interview with Sky News was shown on Channel 4 along with the written responses from his representatives. Consequently, Ofcom considers that Channel 4 did not fail to give Mr Goldsmith an appropriate and timely opportunity to respond within the meaning of Practice 7.11.

### Practice 7.3

Ofcom considered that Mr Goldsmith was clearly a 'person invited to make a contribution' and that Practice 7.3 of the Code was relevant.

Ofcom again noted the extent of the detail set out in the email of 9 July, and considered that this was clearly adequate to satisfy the first three specified requirements of Practice 7.3 as set out above.

In relation to the fourth requirement of Practice 7.3, Ofcom noted that Mr Goldsmith raised the issue as to when he became aware that the report was to focus solely on his campaign expenses, rather than the campaign expenses of three or more MPs. On this point, Ofcom considered whether this was a '*significant change to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness*'.

Ofcom noted that the original email from Mr Overton on 9 July (see paragraph 1 of the chronology) implied that the programme would deal with the expenses of a number of parliamentary candidates. Ofcom also noted Mr Goldsmith's submission that he originally declined to be interviewed on the basis that he was under the impression that it was a general investigation into the expenses of many Parliamentary candidates. As a result Ofcom considered that this may have been a significant change to the programme which might reasonably have affected Mr Goldsmith's original consent to participate.

However, Ofcom noted that CCPO was made aware that the report may focus solely on Mr Goldsmith on 13 July 2010, as the email from CPPO on 14 July refers to a telephone conversation about this on 13 July (see paragraphs 9 and 16 of the chronology), and that this was a full two days before the broadcast. Ofcom noted that the programme makers spoke again with CPPO at 11:00 on the day of transmission confirming that Mr Goldsmith would be the focus of that night's report. Ofcom also noted that the programme makers were told by CPPO on Monday 12 July that it was to be the point of contact and would answer questions in relation to the allegations set out on 9 July. Ofcom therefore considered that it was reasonable for the broadcaster to communicate with them regarding possible editorial changes.

Ofcom therefore took the view that this change in the focus of the report was notified to Mr Goldsmith's representatives in such a way that it did not cause material unfairness. Ofcom considered that Mr Goldsmith had ample opportunity from the time that CCPO first became aware of the change in nature of the programme to take up Channel 4's offers of an on-screen interview had he so wished.

Ofcom therefore found no unfairness in this regard.

### Practice 7.2

Ofcom also considered whether Channel 4 was fair in its dealings with Mr Goldsmith.

Ofcom took account of the factors considered above in relation to Practice 7.3 and 7.11 of the Code. In particular, Ofcom noted that Mr Goldsmith was notified of the allegations against him in some detail on 9 July 2010, approximately one week before the programme was broadcast, and was given the opportunity to make a written response or to give an on-camera interview. Ofcom also noted that Channel 4 asked Mr Goldsmith and his representatives for their responses on several occasions during the week.

Ofcom noted that Channel 4 temporarily refused Mr Goldsmith a live interview when it was offered by Mr Goldsmith at 17:30 on 15 July, but in view of Channel 4's full explanation of why this decision was taken on editorial grounds, and in the light of the effort made by Channel 4 to give Mr Goldsmith the opportunity to respond to the allegations during the week preceding the broadcast and from approximately 18.00 on the day of broadcast, Ofcom did not consider that this amounted to unfairness by Channel 4 in its dealings with Mr Goldsmith.

Ofcom also noted that Channel 4 broadcast the written response from Mr Newman and part of the response from CPPO, as well as an extract from the interview given by Mr Goldsmith to Sky News.

As a result, Ofcom found that Channel 4 was fair in its dealings with Mr Goldsmith, and therefore found no unfairness in this regard.

b) Ofcom then considered whether material facts relating to his opportunity to respond were presented fairly.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code which states that *"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."*

Ofcom also had regard to Practice 7.12 of the Code which states that *"Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so."*

In considering Practice 7.9 of the Code, Ofcom first examined what facts regarding Mr Goldsmith's opportunity to respond were presented or omitted in the programme.

Ofcom noted that before Mr Goldsmith's Sky News interview was shown in the programme, Jon Snow said:

*"[...] whilst we've been on air Mr Goldsmith has given his response to our report in an interview with Sky News."*

And after the Sky News interview was shown, Jon Snow said:

*"Zac Goldsmith speaking to Sky News. Of course, he would be very welcome to appear here live on Channel 4 News tomorrow night."*

Ofcom also noted that the statement provided to Channel 4 by Mr Goldsmith was omitted from the programme.

Ofcom noted Mr Goldsmith's complaint that the two statements made by Jon Snow implied that he had chosen not to be interviewed by *Channel 4 News*.

Ofcom considered that the first statement was a factual statement made as an introduction to the broadcast of the Sky News interview by Channel 4. Ofcom considered that the second statement was an invitation to Mr Goldsmith to appear on the programme the following evening. Ofcom considered that the vast majority of viewers giving these statements their natural and ordinary meaning, would not have inferred that Mr Goldsmith had turned down an invitation to appear on Channel 4.

Ofcom therefore took the view that the statements did not imply that Mr Goldsmith had chosen not to be interviewed by Channel 4, despite it being obvious that Mr Goldsmith had chosen to be interviewed by Sky News. Therefore, in so far as this was a material fact, Ofcom did not consider it to have been presented in a way that was unfair to Mr Goldsmith.

In relation to the omission of the written statement submitted to Channel 4 by Mr Goldsmith regarding his non-appearance, Ofcom noted that the response from Mr Barnett to Mr Monk's email containing the written statement (see paragraph 24 of the chronology) may have given the impression that the written statement would be included in the programme. However, Ofcom noted that the written statement did not relate directly to the substantive allegations being made by Channel 4. In the absence of any explicit statement or any implication in the programme that Mr Goldsmith had refused to give an interview, Ofcom did not consider that the content of the written statement was relevant to the programme as a whole, and was not therefore a material fact omitted by the broadcaster. Moreover, Channel 4 had included content from two written statements provided by Mr Newman and CCPO, and had also included an extract from Mr Goldsmith's interview with Sky News. In view of the lengths to which Channel 4 went to include Mr Goldsmith's response to the substantive allegations, Ofcom did not consider that there was any unfairness to Mr Goldsmith.

In relation to Practice 7.12, Ofcom noted that the statement from Mr Goldsmith at approximately 18.00 (see paragraph 23 of the chronology) may have constituted Mr Goldsmith's 'explanation' for refusing to appear for the purpose of this practice. However, Ofcom also noted that Channel 4's omission of this written statement from the broadcast does not necessarily mean that Channel 4 were in breach of Practice 7.12 if it did not result in unfairness to Mr Goldsmith. As set out above, Channel 4 went to some lengths to ensure that Mr Goldsmith's substantive responses to the allegations were included in the programme, by including the statement from Mr Newman and the statement from CCPO, as well as an extract from Mr Goldsmith's interview with Sky News. Overall, Ofcom did not consider that the omission of Mr Goldsmith's 18.00 statement was unfair to Mr Goldsmith.

Ofcom therefore found no unfairness in this regard.

### **16 July 2010**

- c) Material facts concerning Mr Goldsmith's offers to contribute to the 15 July programme had not been presented fairly.

In considering this part of the complaint, Ofcom again had regard to Practice 7.9 of the Code, which is set out in relation to head (b) above.

Set out below is the relevant part of the transcript of the 16 July programme:

*Zac Goldsmith: "I want to set one thing straight and I think this is very important. At the end of your report last night you stood and faced the cameras and you lamented the fact that I'd spoken to Sky TV not Channel 4, and you said that of course we'd be delighted to have channel 4...er...have him appear on Channel 4 at any time. You then repeated, I think, twice on Twitter last night to your followers at 11 o'clock and later, you said, and I'm going to quote: "he decided to go to Sky instead, we'd been asking for a response for a number of days but until today he refused to comment". Now, you know that's not true..."*

*Jon Snow: Well, what we know is true, what we know is true...*

*ZG: One second...you've had your 12 minutes of fun. Let me explain this very quickly. You knew that wasn't true at the time and you know it's not true now. At 5.30 yesterday, when I heard for the first time that you were actually going to be showing this programme and that I was the only MP to appear in it, before that it was a whole suite of MPs but they mysteriously disappeared. So I contacted Channel 4 and said I'd like to come and do a live interview to address these issues on air, head to head, now you clearly are trying to create the impression that I was unwilling to do so.*

*JS: Now...*

*ZG: Well, well...*

*JS: You've talked about this and people can read your site. We did ask for you last Friday...*

*ZG: Excuse me, excuse me....*

*JS: Last Friday...*

*ZG: Well I can explain that...I'll explain that...*

*JS: A week ago, less than a week ago, we've had no answer till now but well you're here now, let's...*

*ZG: No, we're not going to brush this aside, this whole programme is meant to be about integrity, about transparency.*

*JS: Let the viewer decide, they can look at your blog as I can look now, but we requested you to answer questions last Friday you remained effectively silent.*

*ZG: That's not true...Jon, I'm going to have my say on this issue. I won't talk about the specifics until I make this point across, ok, at 5.30 I was told by this programme that you would not have me on to discuss this live.*

*JS: No, that is not true at all, that is...*

*ZG: I have an email here...*

*JS: That is a complete travesty of the truth.*

*ZG: I have an email here.*

*JS: You requested to do an interview with our reporter Cathy Newman who was working on another story.*

*ZG: That is not true.*

*JS: Yes you did.*

*ZG: I have got the emails here now. Right, at 5.30 I asked to do a live interview...*

*JS: OK, I'm sorry, well I'm now...*

*ZG: Now, right, at 5.30 I asked to do a live interview...*

*JS: I'm now going to put these points to you, if you choose...*

*ZG: I will not address, I will not...*

*JS: If you choose not to answer them that's your affair...*

*ZG: I will not address these points...*

*JS: I want to ask you how it is that you were able to put out these posters which had your name, your face...and then charge them to local election expenses? How was that?*

*ZG: When I was told that I couldn't do a live interview, I was told instead to submit a written statement. So I sent this statement: "I offered at 5.30 today to do a live interview addressing the issues raised in..."*

*JS: I'm afraid Mr Goldsmith...*

*ZG: ...and was told by Channel 4 that this was not possible...*

*JS: You know perfectly well we've been asking for a week, one week...*

*ZG: One second, I didn't know the programme...*

*JS: One whole week, and you completely refused to...*

*ZG: I didn't know the programme...*

*JS: ...engage with any of our questions.*

*ZG: It was only yesterday, only yesterday that you confirmed the programme was going to happen. Until then we had no idea the...*

*JS: This is just a delaying tactic, you just, you are not answering the questions.*

*ZG: Extend the debate I'll talk as long as you...*

*JS: I've asked you a spe...*

*ZG: Until you acknowledge that when you stood and looked at the cameras last night and implied that I had bottled out of talking about these issues live on Channel 4, until you apologise for that...*

*JS: I didn't just imply, you have bottled out of them, you...we have asked you since last Friday. Do you deny that we have asked you since last Friday?*

*ZG: For a written statement, yes...*

*JS: To answer these specific questions and...*

*ZG: Absolutely.*

*JS: And you haven't touched any of them until yesterday.*

*ZG: Absolutely right.*

*JS: And if you had you might have spared yourself all this trouble.*

*ZG: No.*

*JS: I am now going to ask you about the trouble...*

*ZG: I'll explain that, you've asked me a question...*

*JS: And you are in trouble, so let's just have a look at this.*

*ZG: You have asked me a question...*

*JS: I've asked you most specifically...*

*ZG: You have asked me a question, and I'm going to answer it. Right, your question is why did I not reply to you last Friday.*

*JS: No, my question is...*

*ZG: The reason is...no, I'm going to deal with this issue....*

*JS: The question is about these posters.*

*ZG: ...with this issue, because I believe your report was dishonest....*

*JS: No viewer is going to be interested in why you did or did not turn up to...*

*ZG: I disagree...I think your viewers will be very interested to know that you misled them deliberately...*

*JS: This is a complete red herring designed to avoid answering the...*

*ZG: Let me deal with it.*

*JS: ...the questions the Electoral Commission wants...*

*ZG: It will take me thirty seconds to talk about it. You're using delaying tactics because you don't want to have to apologise for lying to your viewers last night, which you did. I issued that statement, I sent that to Channel 4, it was acknowledged, no one wrote back saying "hang on a minute the statement's*

*unfair, we'd love to have you on". I got a straightforward, from the presenter of your programme, from Antony...*

*JS: At 6 o'clock, Mr Goldsmith, you know perfectly well, we asked you to come on live...*

*ZG: At 6.02, I got a response...*

*JS: You were unavailable 'til 6.30.*

*ZG: ...an acknowledgement to my statement, which by the way, you didn't even include, what a surprise. Even though you'd asked for one, even though you'd asked for it..."*

Ofcom noted that Mr Goldsmith's complaint was predominantly that Jon Snow had "repeatedly denied the sequence of events set out [in Mr Goldsmith's submissions]". Mr Goldsmith specifically identified Jon Snow's statement that Mr Goldsmith's account was "*a complete travesty of the truth*" and Jon Snow's statement that "*I didn't just imply, you have bottled out of them...*".

Ofcom also noted Channel 4's submission that Jon Snow was fair in rebutting Mr Goldsmith's suggestion that proper journalistic practices had not been followed, and challenging Mr Goldsmith's version of events.

In relation to the first of the specific statements made by Jon Snow, that Mr Goldsmith's account was "*a complete travesty of the truth*", Ofcom noted that the point made by Mr Goldsmith immediately before Jon Snow made the statement, that Mr Goldsmith had offered Channel 4 an interview at 17.30, was factually correct. However, Ofcom considered that, taken in the context of a heated interview with both parties interrupting and talking across each other, it was not appropriate to adopt such a narrow interpretation of Jon Snow's comment. Ofcom considered it more appropriate to view Jon Snow's statement as a general comment about Mr Goldsmith's version of events taken as a whole. Ofcom also considered that Jon Snow's statement may have been intended to imply that Mr Goldsmith's version of events was not the whole truth. In this regard, Ofcom considered that it was legitimate for Mr. Snow to put forward an opposing view to that of Mr Goldsmith.

In relation to the second specific statement, that Mr Goldsmith had "*bottled out*", Ofcom noted Channel 4's submissions that this was "fair comment given the facts and how Mr Goldsmith was choosing to conduct the interview". Ofcom considered that Jon Snow's statement amounted to an expression of his interpretation of events rather than a factual statement, and was not, as such, a 'material fact' for the purposes of Practice 7.9.

In relation to both statements, Ofcom took into account that this was a live interview in which Mr Goldsmith was able to put forward his side of events. Ofcom also noted that Mr Goldsmith is an elected MP who would be expected to be able to handle a robust exchange with an interviewer. The interview lasted a total of approximately ten minutes, and at least six minutes of this dealt almost exclusively with the issue of Mr Goldsmith's non-appearance on the 15 July programme. During this time, Mr Goldsmith was able to put forward his version of the events running up to the 15 July broadcast. Mr Goldsmith was also able to assert that Jon Snow's version of events was untrue.

Ofcom noted that Mr Goldsmith was therefore able to put forward clear and robust assertions that challenged Jon Snow's statements. As a result of Mr Goldsmith's responses, viewers were made aware of his stance on the issue and were therefore able to form their own view as to the reasons for Mr Goldsmith not appearing on the 15 July programme.

As a result, Ofcom concluded that the material facts were not presented in a way that was unfair.

Ofcom therefore found no unfairness in this regard.

**Accordingly, Ofcom has not upheld the complaints made by Mr Goldsmith of unfair treatment in either of the programmes as broadcast.**



## Other Programmes Not in Breach

Up to 14 March 2011

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
10 O'Clock Live	17/02/2011	Channel 4	Religious/Beliefs discrimination/offence	1
10 O'Clock Live	19/02/2011	Channel 4	Generally accepted standards	1
10 O'Clock Live	24/02/2011	Channel 4	Generally accepted standards	1
118 118's sponsorship of ITV Movies	01/03/2011	ITV2	Disability discrimination/offence	1
118 118's sponsorship of ITV Movies	n/a	ITV2	Generally accepted standards	1
118 118's sponsorship of The Simpsons	15/02/2011	Channel 4	Disability discrimination/offence	1
7 Day Sunday	06/02/2011	BBC Radio 5 Live	Generally accepted standards	1
A Farmer's Life for Me	15/02/2011	BBC 2	Animal welfare	1
A Right Royal Romance! Top 20	14/02/2011	4Music	Generally accepted standards	1
A Right Royal Romance! Top 50	14/02/2011	Magic	Generally accepted standards	1
Alan Carr: Chatty Man	14/02/2011	Channel 4	Generally accepted standards	1
American Dad	27/02/2011	BBC 3	Violence and dangerous behaviour	1
Ant and Dec's Push the Button	05/03/2011	ITV1	Generally accepted standards	15
Baby TV	11/02/2011	Baby TV	Under 18s in programmes	1
Baronessen flytter ind	13/02/2011	Kanal 4 Denmark	Sexual material	1
BBC News at Six	15/02/2011	BBC 1	Generally accepted standards	1
BBC News at Six	25/02/2011	BBC 1	Offensive language	1
BBC News at Six	03/03/2011	BBC 1	Generally accepted standards	1
Being Human	20/02/2011	BBC 3	Disability discrimination/offence	1
Being Human	27/02/2011	BBC 3	Race discrimination/offence	1
Benidorm	08/03/2011	ITV2	Disability discrimination/offence	1
Breakfast	09/02/2011	BBC Radio Nottingham	Generally accepted standards	1
Breakfast with Lucio	28/02/2011	Planet Rock	Generally accepted standards	1
Capital Breakfast With Johnny and Lisa	09/03/2011	Capital Radio	Generally accepted standards	1
Cartoon Network	01/03/2011	Cartoon Network	Generally accepted standards	1
Casualty	12/02/2011	BBC 1	Gender discrimination/offence	1
Celebrity Juice	10/02/2011	ITV2	Generally accepted standards	1
Celebrity Juice	03/03/2011	ITV2	Generally accepted	1

			standards	
Celebrity Juice	10/03/2011	ITV2	Animal welfare	1
Celebrity Juice	12/03/2011	ITV2	Animal welfare	1
Channel 4 Racing	12/02/2011	Channel 4	Generally accepted standards	2
Channel Report	17/02/2011	Channel Television	Due impartiality/bias	1
Channel S News	29/09/2010	Channel S	Due impartiality/bias	1
Christian O'Connell Breakfast Show	24/02/2011	Absolute Radio	Race discrimination/offence	1
Civilization: Is the West History?	06/03/2011	Channel 4	Generally accepted standards	1
Civilization: Is the West History?	06/03/2011	Channel 4	Race discrimination/offence	1
Come Dine with Me	28/02/2011	Channel 4	Race discrimination/offence	9
Comedy Rocks with Jason Manford	18/02/2011	ITV1	Generally accepted standards	2
Contnuity	01/01/2011	BBC 3	Disability discrimination/offence	1
Cool Stuff Collective	20/02/2011	ITV1	Advertising/editorial separation	1
Coronation Street	11/02/2011	ITV1	Religious/Beliefs discrimination/offence	1
Coronation Street	17/02/2011	ITV1	Violence and dangerous behaviour	1
Coronation Street	04/03/2011	ITV1	Generally accepted standards	1
Coronation Street	04/03/2011	ITV1	Materially misleading	1
Coronation Street	07/03/2011	ITV1	Drugs, smoking, solvents or alcohol	1
Coronation Street	10/03/2011	ITV1	Product placement	2
Coronation Street	04/03/2011	ITV1	Race discrimination/offence	1
Coronation Street (trailer)	n/a	ITV1	Sexual orientation discrimination/offence	1
Countdown	02/03/2011	Channel 4	Generally accepted standards	1
Criminal Minds	04/03/2011	Sky Living	Under 18s in programmes	1
Dancing on Ice	30/01/2011	ITV1	Generally accepted standards	1
Dancing on Ice	06/02/2011	ITV1	Generally accepted standards	783 <sup>1</sup>
Dancing on Ice	20/02/2011	ITV1	Voting	1
Dancing on Ice	27/02/2011	ITV1	Generally accepted standards	5
Dancing on Ice	27/02/2011	ITV1	Voting	1
Dancing on Ice	27/02/2011	ITV1	Nudity	1
Dancing on Ice	27/02/2011	ITV1	Sexual material	1
Dancing on Ice	06/03/2011	ITV1	Voting	3
Dancing on Ice	06/03/2011	ITV1	Generally accepted standards	18
Dancing on Ice	13/03/2011	ITV1	Generally accepted	1

<sup>1</sup> These complaints relate to Jason Gardiner's comments about contestant Johnson Beharry's performance and head coach Karen Barber. This did not raise issues under the Code.

			standards	
Dancing on Ice	13/03/2011	ITV1	Voting	1
Danielle Perry	16/02/2011	Q Radio	Offensive language	1
Daybreak	15/02/2011	ITV1	Promotion of products/services	1
Daybreak	01/03/2011	ITV1	Product placement	1
Daybreak	02/03/2011	ITV1	Generally accepted standards	1
Daybreak	04/03/2011	ITV1	Generally accepted standards	1
Deadly 60 Bite Size	02/03/2011	BBC 1	Offensive language	1
DFS Crufts 2011	10/03/2011	More 4	Animal welfare	1
Dirty Talk	08/12/2010	Dirty Talk	Participation TV - Harm	1
Dirty Talk	11/12/2010	Dirty Talk	Participation TV - Harm	1
Dispatches	07/03/2011	Channel 4	Generally accepted standards	1
Dispatches (trailer)	11/02/2011	Channel 4	Religious/Beliefs discrimination/offence	1
DM News Review	05/01/2011	DM Digital	Religious/Beliefs discrimination/offence	1
EastEnders	25/02/2011	BBC 1	Race discrimination/offence	5
Emmerdale	17/02/2011	ITV1	Violence and dangerous behaviour	2
Emmerdale	24/02/2011	ITV1	Race discrimination/offence	1
Emmerdale	07/03/2011	ITV1	Offensive language	1
European Golf	18/02/2011	Sky Sports 1	Generally accepted standards	1
Family Guy	01/03/2011	BBC 3	Animal welfare	1
Fearne Cotton	08/02/2011	BBC Radio 1	Sexual material	1
Five News	25/02/2011	Channel 5	Due accuracy	1
Fone Girls	11/12/2010	Dirty Talk	Participation TV - Harm	1
Football Focus	05/03/2011	BBC 1	Violence and dangerous behaviour	1
Föräldrafritt	29/12/2010	Kanal 5	Under 18s in programmes	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	24/02/2011	ITV1	Sexual material	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	22/02/2011	ITV1	Gambling	3
Frankie Boyle Live	23/11/2010	Channel 4	Offensive language	1
Frankie Boyle Live	23/11/2010	Channel 4	Disability discrimination/offence	2
Freddie Flintoff Versus the World	08/02/2011	ITV4	Generally accepted standards	3
Freshly Squeezed	11/03/2011	Channel 4	Race discrimination/offence	1
Friday Night Dinner	04/03/2011	Channel 4	Religious/Beliefs discrimination/offence	1
Friday Night Dinner (trailer)	21/02/2011	Channel 4	Religious/Beliefs discrimination/offence	1
Friday Plus	08/10/2010	Bangla TV	Religious/Beliefs discrimination/offence	1
Friday Plus	15/10/2010	Bangla TV	Elections/Referendums	3
Geert Wilders: Europe's Most Dangerous Man?	14/02/2011	BBC 2	Race discrimination/offence	1

Gok's Clothes Roadshow	01/03/2011	Channel 4	Generally accepted standards	1
Grand Designs	07/03/2011	More4	Offensive language	1
Great British Hairdresser	07/03/2011	E4	Disability discrimination/offence	1
Green Day "Boulevard of Broken Dreams"	27/02/2011	Planet Rock	Offensive language	1
Hana's Helpline	03/03/2011	Channel 5	Offensive language	1
Hardy's sponsorship of Come Dine with Me	14/02/2011	Channel 4	Materially misleading	1
Harry Hill's TV Burp	27/02/2011	ITV1	Religious/Beliefs discrimination/offence	4
Harry Hill's TV Burp	05/03/2011	ITV1	Age discrimination/offence	1
Harry Hill's TV Burp	05/03/2011	ITV1	Sexual material	1
Helplink's sponsorship of ITV Yorkshire Regional Weather	n/a	ITV1 Yorkshire	Nudity	1
Heston's Mission Impossible	01/03/2011	Channel 4	Sexual material	2
Heston's Mission Impossible	22/02/2011	Channel 4	Harm	1
Holby City	14/02/2011	BBC 1	Generally accepted standards	1
Holby City	15/02/2011	BBC 1	Gender discrimination/offence	1
Home Run	28/02/2011	Radio LaB (Luton)	Offensive language	1
Honey Days	15/12/2010	Filth	Participation TV - Harm	1
How to Live with Women	09/03/2011	BBC 3	Offensive language	1
Hum Aap Aur Sitary	26/12/2010	DM Digital	Use of Premium Rate Numbers	1
Human Planet	03/03/2011	BBC 1	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here Now!	22/14/2010	ITV2	Disability discrimination/offence	1
iCarly	01/03/2011	Nickelodeon	Harm	1
ICC Cricket World	24/02/2011	Sky Sports 2	Race discrimination/offence	1
ITV News	01/03/2011	ITV1	Due impartiality/bias	1
ITV News	16/02/2011	ITV1	Due impartiality/bias	1
ITV News	01/03/2011	ITV1	Race discrimination/offence	1
ITV News	23/02/2011	ITV1	Due impartiality/bias	1
James O'Brien	04/03/2011	LBC 97.3FM	Religious/Beliefs discrimination/offence	15
Jamie's Dream School	02/03/2011	Channel 4	Generally accepted standards	3
Jamie's Dream School	09/03/2011	Channel 4	Materially misleading	1
Jamie's Dream School	02/03/2011	Channel 4	Materially misleading	1
Kitaabut Tawheed	09/03/2011	Peace TV	Religious/Beliefs discrimination/offence	1
Let's Dance for Comic Relief	05/03/2011	BBC 1	Generally accepted standards	5
Let's Dance for Comic Relief	05/03/2011	BBC 1	Offensive language	1
Let's Dance for Comic Relief	05/03/2011	BBC 1	Sexual material	1
Let's Talk	11/01/2011	Channel S	Materially misleading	1
London Mayoral Election	n/a	various	Elections/Referendums	1

2010				
Look North	n/a	BBC 1	Generally accepted standards	1
Loose Women	25/02/2011	ITV1	Sexual material	1
Loose Women	07/03/2011	ITV1	Sexual orientation discrimination/offence	1
Lorraine	03/03/2011	ITV1	Generally accepted standards	2
Love Thy Neighbour	03/03/2011	Channel 4	Race discrimination/offence	3
Love Thy Neighbour	03/03/2011	Channel 4	Violence and dangerous behaviour	1
Mad Dogs (trailer)	06/02/2011	Sky 1	Violence and dangerous behaviour	1
Man vs Wild	01/03/2011	Discovery	Animal welfare	1
Marchlands (trailer)	13/02/2011	ITV1	Generally accepted standards	1
Marchlands (trailer)	26/02/2011	ITV1	Generally accepted standards	1
McCain sponsorship	14/02/2011	Film 4	Sponsorship	1
Midsomer Murders	03/03/2011	ITV1	Violence and dangerous behaviour	1
Midsomer Murders	04/03/2011	ITV1	Offensive language	5
Modern Family (trailer)	04/03/2011	Sky 1	Sexual material	1
Monsters Inside Me (trailer)	13/02/2011	Discovery	Generally accepted standards	1
Monsters Inside Me (trailer)	28/02/2011	Discovery	Generally accepted standards	1
Monsters Inside Me (trailer)	n/a	Discovery	Generally accepted standards	3
New You've Been Framed!	26/02/2011	ITV1	Nudity	1
New You've Been Framed!	05/03/2011	ITV1	Generally accepted standards	2
News	30/09/2010	Bangla TV	Elections/Referendums	1
News	14/02/2011	Gem 106	Due accuracy	1
News	15/02/2011	Press TV	Due accuracy	1
Newsbeat	01/03/2011	BBC Radio 1	Gender discrimination/offence	1
Night Owls	24/02/2011	Metro Radio	Under 18s in programmes	2
Nihal	01/02/2011	BBC Asian Network	Religious/Beliefs discrimination/offence	38
Nivea's sponsorship of This Morning	03/03/2011	ITV1	Harm	1
North East Tonight	22/02/2011	ITV1 Tyne Tees	Generally accepted standards	1
OMG! With Peaches Geldof (trailer)	04/03/2011	ITV2	Religious/Beliefs discrimination/offence	1
One Born Every Minute	28/02/2011	Channel 4	Generally accepted standards	1
One Born Every Minute	07/03/2011	Channel 4	Generally accepted standards	1
Onnopath by Polash	15/10/2010	ATN Bangla	Elections/Referendums	2
Onnopath by Polash	17/10/2010	ATN Bangla	Elections/Referendums	1
Panorama British Schools Islamic Rules	22/11/2010	BBC 1	Harm	6

Press Preview	02/03/2011	Sky News	Race discrimination/offence	1
Press Preview	09/03/2011	Sky News	Generally accepted standards	1
QI	26/02/2011	Dave	Offensive language	1
Quitwithhelp.co.uk's sponsorship of The Chase	24/02/2011	ITV1	Materially misleading	1
Rastamouse	n/a	CBeebies	Race discrimination/offence	1
Reality with Mahee	30/09/2010	Channel S	Elections/Referendums	2
Reality With Mahee	28/10/2010	Channel S	Generally accepted standards	2
Reality wth Mahee	14/10/2010	Channel S	Elections/Referendums	1
Red Light Central	03/01/2011	RedLightZone1	Participation TV - Harm	1
Red Light Ladies	17/12/2010	Extreme	Participation TV - Harm	1
Regional News and Weather	02/03/2011	BBC 1	Nudity	1
Road Wars	02/03/2011	Pick TV	Generally accepted standards	1
Royal Navy: Caribbean Patrol	14/02/2011	Five	Gender discrimination/offence	1
Secret Diary of a Call Girl	22/02/2011	ITV2	Competitions	1
Secret Diary of a Call Girl (trailer)	07/02/2011	ITV2	Generally accepted standards	1
Secret Diary of a Call Girl (trailer)	n/a	ITV2	Generally accepted standards	1
Skins (trailer)	03/03/2011	E4	Sexual material	1
Sky News	14/02/2011	Sky News	Due impartiality/bias	1
Sky News	21/02/2011	Sky News	Due impartiality/bias	1
Sky News	04/03/2011	Sky News	Due accuracy	1
Sky News	06/03/2011	Sky News	Due accuracy	1
Sky News	07/03/2011	Sky News	Violence and dangerous behaviour	1
Sky News	03/03/2011	Sky News	Due accuracy	1
Sky News	03/03/2011	Sky News	Due impartiality/bias	1
Sky News	17/02/2011	Sky News	Generally accepted standards	3
Sky Sports News	21/02/2011	Sky Sports News	Generally accepted standards	1
South Riding	20/02/2011	BBC 1	Drugs, smoking, solvents or alcohol	1
South Riding	27/02/2011	BBC 1	Under 18s in programmes	1
Spaced (trailer)	12/02/2011	More 4	Offensive language	1
St Mirren v Rangers	06/03/2011	Sky Sports 4	Offensive language	2
Station ident	20/02/2011	Jack FM Oxfordshire	Generally accepted standards	1
Sunday Exclusive	06/03/2011	Talksport	Materially misleading	1
Super Casino	07/03/2011	Channel 5	Sexual orientation discrimination/offence	1
T4	05/03/2011	Channel 4	Sexual material	1
Tarbiyat-e-Aowlad	11/02/2011	Hidayat TV	Product placement	1
Tetley Bitter's sponsorship of Real Men's TV strand	17/02/2011	ITV4	Drugs, smoking, solvents or alcohol	1
That Sunday Night Show	27/02/2011	ITV1	Offensive language	2

The Alan Titchmarsh Show	07/03/2011	ITV1	Race discrimination/offence	1
The Big Drive Home	02/03/2011	Wave 105	Animal welfare	1
The Biggest Loser	10/01/2011	ITV1	Product placement	1
The BRIT Awards 2011	15/02/2011	ITV1	Sexual material	1
The Chase	02/03/2011	ITV1	Competitions	1
The Chase	09/03/2011	ITV1	Competitions	1
The Chris Evans Breakfast Show	02/03/2011	BBC Radio 2	Religious/Beliefs discrimination/offence	1
The Elephant: Life After Death (trailer)	14/02/2011	Channel 4	Generally accepted standards	1
The Extra Big One	21/02/2011	KMFM Extra	Harm	1
The Graham Norton Show	04/03/2011	BBC 1	Sexual material	1
The Hairy Bikers: Mums Know Best	17/02/2011	BBC 2	Gender discrimination/offence	1
The Human Centipede	02/03/2011	SyFy	Generally accepted standards	2
The Human Centipede	05/03/2011	Syfy	Generally accepted standards	1
The Human Centipede	07/03/2011	SyFy	Generally accepted standards	3
The Human Centipede	03/03/2011	SyFy	Generally accepted standards	1
The Jeremy Kyle Show	n/a	ITV1	Generally accepted standards	
The Jeremy Kyle Show	03/03/2011	ITV1	Race discrimination/offence	2
The Jeremy Kyle Show	10/03/2011	ITV1	Generally accepted standards	1
The Jeremy Kyle Show	01/03/2011	ITV2	Generally accepted standards	1
The One Show	21/02/2011	BBC 1	Generally accepted standards	1
The Political Slot	12/02/2011	Channel 4	Due accuracy	1
The Ricky Gervais Show (trailer)	07/03/2011	E4	Generally accepted standards	1
The Sparticle Mystery	14/02/2011	CBBC	Violence and dangerous behaviour	1
The Spin Crowd	24/02/2011	4Music	Generally accepted standards	1
The Steve Wikos Show	28/02/2011	Living +1	Generally accepted standards	1
The Sunday Supplement	27/02/2011	Sky Sports 1	Generally accepted standards	1
The Weakest Link	17/02/2011	BBC 1	Sexual orientation discrimination/offence	1
The Weakest Link	07/03/2011	BBC 1	Disability discrimination/offence	1
The Well	02/03/2011	Film 4	Offensive language	1
The Windsor Triathlon	09/11/2010	The Active Channel	Sponsorship	1
The Wright Stuff	15/02/2011	Channel 5	Generally accepted standards	1
The Wright Stuff	22/02/2011	Channel 5	Religious/Beliefs discrimination/offence	1
The Wright Stuff	22/02/2011	Channel 5	Generally accepted standards	1

The Wright Stuff	02/03/2011	Channel 5	Crime	2
The Wright Stuff	07/03/2011	Channel 5	Offensive language	1
The Wright Stuff	07/02/2011	Five	Disability discrimination/offence	4
This Morning	14/02/2011	ITV1	Generally accepted standards	1
This Morning	28/02/2011	ITV1	Sexual material	6
This Morning	02/03/2011	ITV1	Materially misleading	1
This Morning	18/02/2011	ITV1	Generally accepted standards	1
Top Gear	10/02/2011	BBC 3	Violence and dangerous behaviour	1
Top Gear	03/03/2011	BBC 3	Generally accepted standards	1
Top Gear	27/02/2011	BBC 2	Religious/Beliefs discrimination/offence	2
Total Wipeout	05/03/2011	BBC 1	Generally accepted standards	1
Waterloo Road	23/02/2011	BBC 1	Generally accepted standards	3
Waterloo Road	02/03/2011	BBC 1	Generally accepted standards	1
Waterloo Road	09/03/2011	BBC 1	Generally accepted standards	4
Xplicit	03/01/2011	Tease Me TV2	Participation TV - Harm	1