

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, 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.

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

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

³ BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

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

Note to Broadcasters

BBC online material

Under the BBC's Charter and Agreement, Ofcom has a new responsibility to consider, and give an opinion on, whether the BBC has observed relevant editorial guidelines in its online material¹. This came into effect with the Digital Economy Act on 27 April 2017.

On 18 May, Ofcom published its arrangements and procedures for handling complaints about BBC online material.

Online material means content on the BBC website and apps. This includes written text, images, video and sound content. It does not extend to social media, Bitesize, BBC material on third party websites and World Service content, among other things.

Complaints about BBC online material must follow the 'BBC First' approach, where they are made to the BBC in the first instance. If a complainant is not satisfied with the BBC's final response to a complaint about its online standards, they may refer the complaint to Ofcom for its opinion.

Unlike our role regulating the standards of BBC broadcasting and on demand programme services (such as the BBC iPlayer), Ofcom has no enforcement powers for BBC online material.

Our procedures for handling complaints about BBC online material are here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/101893/bbc-online-procedures.pdf

¹ This does not include content on BBC on demand programme services, which must comply with relevant rules in the Broadcasting Code.

Broadcast Standards cases

In Breach

Highway Thru Hell

National Geographic, 26 March 2017, 11:00

Introduction

National Geographic is a television channel that broadcasts reality and factual programmes. The licence is held by NGC Europe Limited ("NGC" or "the Licensee").

Highway Thru Hell is a factual programme that follows a group of tow truck drivers in Canada.

We received a complaint that one of the truck drivers shown in the programme shouted "fuck".

Ofcom considered this material raised issues under the following rule of the Code:

Rule 1.14: "The most offensive language must not be broadcast before the watershed".

We therefore asked NGC how the content complied with this rule.

Response

The Licensee apologised and acknowledged that the inclusion of the word "fuck" in this programme did not comply with Rule 1.14.

The Licensee said that *Highway Thru Hell* is one of its programmes that is revoiced with a UK voiceover to replace the original narration. The Licensee explained that although the use of offensive language had been identified by its compliance staff, it was not removed by the audio engineer as intended when the new voiceover was recorded.

The Licensee said it had since adopted a new compliance procedure for similar programmes to ensure better oversight by compliance staff.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed.

Ofcom's 2016 research² on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language.

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

We acknowledged that this incident had occurred as a result of human error and that the Licensee had apologised. We also took into account that NGC said it had taken steps to prevent a recurrence of this issue. However, the use of the word “fuck” was a clear case of the most offensive language being broadcast before the watershed. Our decision is that this material was in breach of Rule 1.14.

Breach of Rule 1.14

In Breach

Botched

Kanal 5, 17 February 2017, 12:50

Introduction

Kanal 5 is a Swedish language general entertainment channel broadcasting to Sweden from the UK. The licence for Kanal 5 is held by Discovery Corporate Services Limited ("DCSL" or "the Licensee").

Botched is a US reality TV series, broadcast in English, about two plastic surgeons who perform surgery on patients seeking to correct previous cosmetic surgery operations that have gone wrong.

We received a complaint that the programme was inappropriately scheduled at a time when children might be viewing.

One of the stories in this programme concerned Katella, a trans woman who wanted to undergo cosmetic surgery to make her look like "*a blow-up sex doll*". The segments of the programme devoted to Katella lasted approximately 11 minutes in duration and included the following:

- references to, and footage of, inflatable sex dolls. For example, Katella said to the plastic surgeons: "*I'm going for the exaggerated fake blow-up sex doll look*" and "*What is the ultimate femininity? A plastic blow-up doll*". She also held up a sex doll, and indicating the doll's genital area, said: "*You see how her vajayjay is pink? I want my vajayjay to be that pink*";
- footage of Katella topless as her previous breast surgery was discussed; and
- Katella engaging in provocative and sexually suggestive behaviour. For example, she was shown touching her breasts and pouting suggestively towards one of the plastic surgeons.

Ofcom considered the programme's content raised potential issues under Rule 1.3 of the Code, which states:

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

We therefore sought comments from the Licensee on how the programme complied with this rule.

Response

DCSL said: "We would like to apologise to the complainant for any offence caused and reassure them that our data indicated that no children were watching". It said that the Kanal 5 compliance team had initially assessed the series as "not necessarily unsuitable" for a daytime audience. The Licensee added that the series "never seeks to glamorise cosmetic

surgery", "the doctors' first priority is always the health of the patient", and they are "never seen to conduct unnecessary or dangerous surgery or to normalise extreme surgery".

The Licensee also said that the warning caption, "*Viewers discretion is advised - as this programme may not be suitable for all audiences*" appeared before this episode, "since certain scenes contain surgical images which may not be to some viewers taste".

However, although this programme featured a "typical storyline about someone who had had an extreme amount of plastic surgery", DC SL said that the episode in question "contained a more adult theme" than is usual for this series and that some scenes "of a more adult nature" were not suitable for pre-watershed transmission.

The Licensee said that as soon as Ofcom made it aware of this issue, it removed the episode from daytime transmission and reassessed the full series to ensure suitability for the timeslot.

Decision

Reflecting Ofcom's duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of broadcast; and likely audience expectations.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Ofcom first considered whether this broadcast material was unsuitable for children. In our view, the references to inflatable sex dolls and footage of a woman behaving in a sexually suggestive way were, as the Licensee agreed, "of a more adult nature" and therefore unsuitable for children.

We then considered whether this material was appropriately scheduled. This programme was broadcast at 12:50 on a Friday afternoon. The Licensee stated that the series has been scheduled for daytime transmission when children were unlikely to be in the audience. However, 17 February 2017 was during the half-term holidays for some Swedish schools, so this increased the likelihood of more children being in the audience than on a weekday during term time. We agreed with the Licensee that this episode was "not suitable for pre-watershed transmission" and was inappropriately scheduled.

Ofcom took into account: the Licensee's apology; that it had immediately removed the programme from daytime transmission; and that it had reassessed the full series in order to ensure the suitability of further episodes for this timeslot.

However, in Ofcom's view, Rule 1.3 was breached.

Breach of Rule 1.3

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

In Breach

Today

NTV Mir Baltic, 12 November 2016, 09:05

Introduction

NTV Mir Baltic is a television channel broadcasting to the Russian-speaking community in Latvia. *Today* is a morning news programme, covering the main political, cultural and economic events of the day in Russia and abroad. The licence for NTV Mir Baltic is held by Baltic Media Alliance Limited (“BMAL” or “the Licensee”).

A complainant alerted Ofcom to a news item included in the above programme, which the complainant considered contained inaccurate and partial statements about an annual torch procession held in Latvia on 11 November 2016.

Ofcom obtained an independent translation of the full programme from the original Russian to English. We gave the Licensee an opportunity to comment on the accuracy or otherwise of the translation. BMAL raised no objection to the accuracy of the translation, and we therefore relied on this translation for the purposes of the investigation.

The news item was about three minutes 30 seconds in duration and focused on a torch procession that took place in Riga, Latvia on “Lāčplēsis Day” on 11 November 2016. Lāčplēsis Day commemorates the Latvian Freedom Fighters’ victory in 1919 over the Russian and German forces led by Pavel Bermont-Avalov, which had taken up arms against the Republic of Latvia¹.

The presenter in the studio introduced the report:

“Poland’s Independence Day in Warsaw was marked by a huge demonstration, involving the burning of the Ukrainian flag, during a march with about 100 thousand people. Nationalists threw the yellow and blue flag to the ground, trampled it and set it alight. This act, which Kiev has called a disgraceful act of vandalism, was accompanied by insults directed at the Ukrainian Insurgent Army. In two years of the Second World War, within the area of Volyn, they massacred some ten thousand Poles. This year the Polish Parliament recognised the Volyn tragedy as an act of genocide. A demonstration in neighbouring Latvia was not so populous but was no less scandalous, where people gathered to mark the equivalent of the country’s Defenders of the Fatherland Day. Only in Riga they honoured those from whom the Baltics had to be liberated during the war. Andrey Khramtsov continues the story”.

The report then included footage of a torch procession of men and women at night in the streets of Riga. A caption read:

¹ The Victory over the forces of Bermont-Avalov marked the conclusion of the Latvian War of Liberation (1918-1920) and allowed to begin the creation of the new state. See <http://www.mfa.gov.lv/en/about-the-ministry/state-protocol/latvia-s-national-holidays-and-remembrance-days>

"Torch processions – Meeting of nationalists held in Riga with the slogan 'Latvia for the Latvians'".

A reporter at the scene then said:

"Thousands marching in the centre of Riga coinciding with the local army day. The Latvian equivalent of Defenders of the Fatherland Day that we mark on 23 February. In just a few years, torch processions in Latvia and across the Baltics have become incredibly popular. During the torch procession some of the participants chanted 'Latvia for Latvians'. But in the European Union where there is internationalism and tolerance, mandatory components of democracy, such slogans are simply impossible. It is hard to imagine that anyone would demand that, say France should be only for the French or Germany only for the Germans".

The news item then cut to a clip of Vladimir Linderman (described as a "Human rights activist") saying:

"In the main this a national bloc that is using a public holiday to mobilise its supporters, to increase their numbers, to attract young people. Public holidays in Latvia have become manifestations of radical nationalism".

There was then footage of a separate torch-lit procession taking place in a village, Lestene, 100 km from Riga. A caption said:

"Torch processions – In Lestene nationalists honoured legionnaires from the Waffen SS".

Footage of the procession was shown and the reporter said:

"On the eve a torch procession marched through the small town of Lestene, about 100km from Riga. Next to the national flag of Latvia, the black and red flag of the Right Sector, banned in Russia, was clearly visible. All those involved, honoured the memory of several hundred legionnaires of the Waffen SS; they are buried in the local cemetery".

There was then footage of a man on a stage holding a torch and speaking into a microphone saying:

"People are buried here who, during the Second World War, fought against our neighbour in the East [i.e. Russia].

The reporter then said in the voiceover:

"Riga resident Elena Georgievna Gribun was a young inmate at the Salaspils concentration camp. She says that these are the times we live in. Values are easily changed. You won't find the truth. Those who saved her from destruction in 1944 have suddenly become occupying invaders. Those who fought on Hitler's side are fighters for Latvia's independence. Local politicians celebrate this day but never recall the children who died at Salaspils".

This was followed by footage of Elena Georgievna Gribun, speaking in what appeared to be her house, saying:

"They do not acknowledge seven, eighty children, but six hundred when they uncovered there, they were children. Well, my dear, there were more children who died there than soldiers. Just children".

The news item then changed to footage of Riga, with the reporter saying in voiceover:

"Human rights activist Alexander Gaponenko says he tried to write to the Duma in Riga, but without a result. For Russians living in Riga the torch processions evoke direct associations with Nazi Germany. But the Mayor of Riga Nils Ušakovs is unable to ban these dubious events. The go-ahead for these marches is given from the very top".

This was followed by footage of Alexander Gaponenko (described as a "Human rights activist") who said:

"I would like to draw your attention to the fact that this event is financed, according to my information, from the state budget. That means the government has accepted this deference to fire, the torch procession and the cries of 'Latvia for Latvians' as a state religion".

The news item then ended with the reporter saying:

"In a week Latvia will mark 98 years of the establishment of independence. Local radical nationalists promise to gather not thousands but tens of thousands of people for a new torch procession. This is Andrey Khramtsov and Dmitry Fedotov, especially for NTV. Riga, Latvia".

In this news item, there were various statements that referred critically, either directly or indirectly, to the policies and actions of the Latvian Government's position on processions taking place to mark Lāčplēsis Day. Ofcom considered the programme raised issues under the following Code rule:

Rule 5.1: "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

We requested comments from the Licensee on how the programme complied with this rule.

Response

The Licensee argued that "an in-depth awareness of the current context in Latvia has led BMAL to treat the material in this news story as...duly impartial in terms of its references to the current public policy of the government". It added that it had given "weight to significant public/political context" to ensure compliance of the material" with Section Five of the Code.

BMAL argued that "it is a known fact" that the torch procession that took place in Riga on 11 November 2016 was organised by the National Alliance party, which it said had been established in 2011 following "a merger of far-right nationalist party 'All For Latvia' ('visu Latvijai!') and another right wing party, 'For Fatherland and Freedom/LNNK'". It added that "[t]he current ideology of the National Alliance taps into Latvian nationalism and right-wing populism while the party's political position extends to radical right".

The Licensee also provided arguments as to why it had included various statements in the news items:

- BMAL argued that the comment by a human rights activist, Mr Linderman² “was made in the sense that nationalist forces co-opt and capitalise on state holidays and feeling of patriotism for the purpose of manifestation and advancement of their party ideology” BMAL argued that therefore the comment was “directed at procession organisers, and not at the holiday, the government or the people of Latvia as such”. The Licensee concluded that, since Mr Linderman’s statement was not “criticism of the government of Latvia or of its official policy, BMAL considered that due impartiality was ensured and did not see it necessary, or appropriate therefore, to include any opinion by Latvian’s officials”;
- In relation to the statement made by the reporter³, the Licensee argued that “audiences in Latvia...are well aware that the torch procession...had in fact been approved by the Executive Directorate of the mayor of Riga”. It added that the Latvian law provides that the Executive Directorate must obtain a statement from the State Security Police of Latvia confirming that “the stated aims of the event” are aligned to “democratic principles and the interests of the state” and that “[t]he State Security Police is supervised directly by the Ministry of Interior Affairs and the Parliamentary Committee for National Security...”. It further added that “[i]f the statement is affirmative, the Executive Directorate cannot have any basis of its own for prohibiting an event”. BMAL said that it was “obvious” that the torch procession would not have taken place without “an overriding affirmative resolution from the state Security Police”. The Licensee argued that, “[t]herefore, the very fact that the event occurred directly represents the opinion of Latvia’s officials”. In BMAL’s view, therefore “[t]his fact informs us that it had been approved at ‘the very top’ and points to the impartiality of this statement in the broadcast” to justify that it was unnecessary to obtain any alternative opinion;
- BMAL argued that Mr Gaponenko’s statement⁴ on the financing of the procession was Mr Gaponenko’s “own opinion” and that “the story does not provide a categorical statement about direct financing of the event from the state budget. Neither the state budget nor the Latvian government was being criticized for providing this aid”. BMAL therefore argued therefore that “due impartiality had been ensured and that no other alternative view was necessary with regard to the funding of the event”. The Licensee further stated that the Latvian law provides that “political parties represented in the Parliament receive subsidies from the state budget to carry out their political activities” In this regard, it said that National Alliance “holds 17 of the 100 seats in Parliament and therefore partly financed by the state”. BMAL said that it was in the public domain that the National Alliance receives EUR 107,000 per year from the state budget.

²*“In the main this a national bloc that is using a public holiday to mobilise its supporters, to increase their numbers, to attract young people. Public holidays in Latvia have become manifestations of radical nationalism”.*

³ *“The go ahead for these marches is given from the very top”.*

⁴ *“... this event [the torch procession in Riga] is financed, according to my information, from the state budget. That means the government has accepted this deference to fire, the torch procession and the cries of ‘Latvia for Latvians’ as a state religion”.*

Decision

Reflecting our duties under the Communications Act 2003⁵, Section Five of the Code requires news included in television and radio services to be presented with due impartiality and the special impartiality requirements to be met.

Under Rule 5.1, news must be reported with due accuracy and presented with due impartiality.

The obligation to preserve due impartiality in news applies potentially to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy.

The Code makes clear that the term “due” means adequate or appropriate to the subject matter. “Due impartiality” does not therefore mean an equal division of time has to be given to every view, or that every argument has to be represented. Due impartiality can be preserved in a number of ways, and it is an editorial decision for the broadcaster as to how it ensures this. Depending on the specific circumstances, it may be necessary to reflect alternative viewpoints in an appropriate way. The context in which programme material appears, including the particular characteristics of the programme, is important to judgments of what is duly impartial.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcasters' freedom to discuss any controversial subject or point of view in their programming, and compliance with Section Five.

It is an editorial matter for the Licensee, if it wishes, as the provider of a Russian-speaking channel in Latvia, to make and broadcast a programme which examines and explores the activities of extreme right wing, nationalist movements in Latvia, and the perceptions of the Russian-speaking minority to those movements. Further, the Code does not prevent broadcasters from criticising the policies and actions of particular nation states. However, in doing so, the Licensee was obliged to comply with Rule 5.1 of the Code.

The news content in this case featured an annual torch procession that took place in Riga, Latvia on 11 November 2016⁶, and also another torch procession that took place in Lestene, Latvia on the previous day. The content included various statements, as outlined in the Introduction, which put forward the view that these marches could be seen as a manifestation of extreme right-wing Latvian nationalism, which had caused concern amongst Latvia's Russian-speaking minority. For example, it was stated *“during the torch procession some of the participants chanted “Latvia for Latvians”; “Public holidays in Latvia have become manifestations of radical nationalism”; “On the eve of a torch procession marched through the small town of Lestene about 100 km of Riga... All those involved, honoured the memory of several hundred legionnaires of the Waffen SS”; and “For Russians living in Riga, the torch processions evoke direct associations with Nazi Germany”.*

⁵ <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

⁶ See footnote 1.

However, as well as linking the torch processions to extreme right-wing Latvian nationalism, the news item also included several statements which pointed to the marches' direct or indirect endorsement by the Latvian Government. For example, it was stated that: *"The go-ahead for these marches is given from the very top"*; and *"this event is financed, according to my information, from the state budget. That means the government has accepted this deference to fire, the torch procession and the cries of 'Latvia for Latvians' as a state religion"*.

Given that the news item also described the marches as *"scandalous"* and *"dubious events"*, we considered that it was being critical of the policies of the Latvian Government, and included statements on which the Latvian authorities were likely to have had a view. For example, the allegations that the Latvian Government had authorised and financed torch processions in Latvia which were characterised as: *"manifestations of radicalism"*; honouring *"the memory of several hundred legionnaires of the Waffen SS"*; and during which protesters were chanting *"Latvia for Latvians"*. In our view, the discussion about these matters required the viewpoint of the Latvian Government to be reflected appropriately, or sufficient context provided to ensure due impartiality was maintained.

We could not identify any viewpoints being reflected in this news content which could be described as reflecting the viewpoint of the Latvian Government or otherwise countering or challenging the various critical statements made about the Latvian Government. For example, viewpoints that defended or explained the policies of the Latvian Government on the financing of nationalistic torch processions on 11 November 2016 in Riga, and the day before, in Lestene. By failing to provide such viewpoints, the criticisms of the Latvian Government's policies and actions remained unchallenged.

BMAL said in its representations that the statements made by the Human rights activist Alexander Gaponenko that *"this event is financed, according to my information, from the state budget"* was the expression of "his opinion" and that the story did not "provide a categorical statement about direct financing of the event from the state budget". We considered that the audience would have understood Mr Gaponenko's opinion, taken together with the rest of his statement *"the government has accepted this deference to fire, the torch procession and the cries of 'Latvia for Latvians' as a state religion"* and in the context of the news item as a whole, as being highly critical of the official position of the Latvian Government. As such, this was a statement on which the Latvian authorities were likely to have had a view, but this view was not reflected in the news item.

The Licensee also argued that when Mr Gaponenko made his statement on the financing of the procession, it was not a criticism of the Latvian Government or its use of the state budget. In this context, it stated that the Latvian law provides that "political parties represented in the Parliament receive subsidies from the state budget to carry out their political activities". We considered that the statement *"this event is financed, according to my information, from the state budget"* would have been viewed by the audience as implying that the Latvian Government was giving financial support and endorsing controversial radical right-wing events.

The Licensee also argued that, "the very fact that the event occurred directly represents the opinion of Latvia's officials" and that therefore impartiality was preserved. To support its position, BMAL said that it was "obvious" that the torch procession in Riga would not have taken place without "an overriding affirmative resolution from the state Security Police" which is directly supervised "by the Ministry of Interior Affairs and the Parliamentary

Committee for National Security...". We did not consider that an administrative authorisation to hold the torch processions was sufficient evidence of the official position of the Latvian Government on the allegations.

In any event, we considered that the inclusion of Mr Gaponenko's "opinion" and the other statements made in the programme by the correspondent, and by Mr Linderman was consistent with the overall narrative of this news item, i.e. criticising the Latvian Government for having a policy and taking actions amounting to financing and condoning far right torch processions taking place on or around a public holiday in Latvia.

BMAL argued that it had given "weight to significant public/political context" when complying the material with Section Five of the Code. In reaching our Decision, Ofcom took into account the approach, tone and content of the news item as a whole, as summarised in the Introduction. In our view the theme of the brief news item was to imply that the Latvian Government had adopted the ideology of extreme right-wing groups in Latvia. The news item also stated that these groups were hostile towards the Russian-speaking minority in Latvia⁷. This was illustrated by the correspondent as follows "*I would like to draw your attention to the fact that this event is financed, according to my information, from the state budget. That means the government has accepted this deference to fire, the torch procession and the cries 'Latvia for Latvians' as a state religion*".

The Licensee argued that due impartiality on the financing of the torch processions was maintained by "well-known and publicly verifiable" facts and that therefore no alternative view was necessary. These facts included that: the torch procession that took place in Riga on 11 November 2016 was organised by the National Alliance Party; the National Alliance Party's political position extends to the "radical right"; and under Latvian law, political parties represented in the Latvian Parliament receive state subsidies from the state budget to carry out their political activities.

However, the preservation of due impartiality does not only depend on the accuracy or verifiability of statements presented in the programme. Rather, it depended in this case on whether sufficient alternative viewpoints were presented on the policies of the Latvian Government. This did not happen here. Certain statements may have been reported accurately, but they were highly critical of the policies and actions of the Latvian Government.

In our view, the contextual factors given by the Licensee in its representations to Ofcom were not relevant to whether the viewpoints of the Latvian Government had been adequately represented, or whether the critical statements made about the Latvian Government's policies and actions were adequately challenged or sufficient other context provided.

In conclusion, the Licensee was free to broadcast a news item that criticised the Latvian Government's policies and actions. However, the critical statements made about those policies and actions within the programme were not adequately challenged and/or sufficient other context provided to preserve due impartiality. Furthermore, when analysed in light of the content of the news item as a whole, we considered that the overall approach, tone and

⁷ For example, as stated in the programme by the journalist who referred to: "*the black and red flag of the Right Sector, banned in Russia*" which "*was clearly visible*" in the footage of the torch procession filmed in Lestene; and later, "*for Russians living in Riga the torch processions evoke direct associations with Nazi Germany*"

content of the material were factors that underpinned our Decision that BMAL did not preserve due impartiality in this case.

Ofcom's Decision is therefore that the news item was in breach of Rule 5.1 of the Code.

Breach of Rule 5.1

In Breach

Yog-Hindi Rishi Swami Ramdevji **Aastha TV, 9 June 2016, 19:00**

Introduction

Aastha TV is a general entertainment channel, aimed at an Indian audience in the UK, and broadcast on the digital satellite platform. The licence for the service is held by Vedic Broadcasting Network (UK) Limited ("Vedic" or "the Licensee").

During routine monitoring, Ofcom identified *Yog-Hindi Rishi Swami Ramdevji*, which was a programme consisting of a lecture delivered to a live audience by a practitioner of yoga¹ and ayurvedic medicine², Swami Ramdevji. The programme was in Hindi, with some Sanskrit. We commissioned a full independent translation of the content and gave the Licensee an opportunity to comment on the accuracy of the translation. The Licensee suggested some changes to this translation, which we reviewed and accepted.

At the start and end of the programme, scrolling text written in English appeared under the heading "*Disclaimer*". This disclaimer included the following statements:

"The images, conducts and/or views and statements expressed by the contributors, speakers, participants on the channel are those of the contributors, speakers, participants and not those of the company, channel or its employees unless specifically stated".

"The company/channel does not accept any responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any part of the program nor provides any warranties or guarantees as to the appropriateness, accuracy, reliability, completeness or sufficiency of the views expressed in the program".

"Viewers' discretion is strongly advised".

During the programme, Swami Ramdevji made claims about the impact of yoga on a range of illnesses and ailments, for example:

"Yoga could also lead to the discontinuation of intake of medicines. There are many brothers and sisters amongst you whose medicines for thyroid, blood pressure, sugar, arthritis, depression, insomnia, cholesterol, gas and acidity and hundreds of such other diseases have been discontinued. There are also millions of such examples".

"Firstly, yoga gives immediate relief. Secondly, yoga helps you to discontinue medicines. Eye operations for millions of people were not required due to yoga. Cataract and glaucoma were also treated. Millions were saved from eye operations".

"People who no longer required medication like pain killers or for blood pressure or sugar after regular practice of yoga please raise your hands. The numbers are in the hundreds.

¹ A set of practices to improve mental and physical health which originated in the Indian subcontinent.

² A system of complementary or alternative medicine which originated in the Indian subcontinent.

People never believed discontinuation of medications was possible. In allopathic medicine³, it was believed that as long as there is life, the medicines have to continue”.

“This is the truth. This is not a scam. This is not bad or superstition. This is a big science beyond the medical science. Regular practice of yoga has helped people to not require any medication for diseases like blood pressure, sugar, thyroid, etc. Many people were saved from undergoing operations of knees, eyes, liver and kidneys, etc. Doctors normally would suggest an operation for removal for any kind of lumps in the body. How many of you have been saved from operations? Raise your hands. There are many here”.

Swami Ramdevji made similar claims about a breathing exercise, kapalbhati:

“Kapalbhati has a direct effect. We have saved millions of sisters, mothers and daughters from uterus operations. It provides benefits within one to three months. Uterus fibroids, ovary cysts and even polycystic get better. We have saved millions of men from an operation of the prostate. So, there is immediate benefit, and medicines get discontinued”.

He also recommended herbal remedies, such as giloy:

“Let me tell you the name of two or three herbs that if you grow these, you will be free of 99% of health problems in your family. In case, if any big disease happens you can take some assistance. People in every house should drink giloy daily. Households that will drink giloy will not get malaria, dengue, swine flu, chikanguniya or any kind of fever. They will not even get the common cold and cough”.

“Nothing is better than giloy to treat the immunity system and increase platelets. Giloy is also helpful in treating obesity, sugar problems and skin diseases. Consumption of giloy is the best and hence it is like nectar. Drink giloy, eat tulsi”.

“Please listen, I will tell you a very important thing. This [giloy] treats not only cold and fever but also cough and indigestion. And brothers and sisters who are suffering from chronic arthritis, I have also used this as well. This can be found through experiments and not in written books. None of the arthritis medicines, pain killers or steroids were effective. These patients drank giloy in the morning, afternoon and evening after soaking it. They used to soak it in the night, drink in the morning; soak it in the morning, drink in the afternoon; soak it in the afternoon and drink it in the evening. There was no sign of arthritis”.

“For glaucoma, an eye drop, which is a combination of one tablespoon of lemon juice, one tablespoon of white onion juice, one tablespoon of ginger juice and three tablespoons of honey. We asked people to make this at home because we did not have machines and other facilities those days. We got this made at home, administered it as an eye drop along with Amal ki Rasayan 200 gm, Sapta-Amrit-Loh 20 gm, Mukta Sukti Bhasm 10 gm. Consume the powder mixture on a regular basis and, within three months there was no trace of glaucoma”.

At one point, Swami Ramdevji said the following about mainstream medication:

³ A term sometimes used to refer to mainstream medicine.

"The side effects are very bad. When you take cholesterol medicine, the liver can be damaged. It can cause liver cirrhosis. I am not trying to scare you. I am telling you the truth".

Finally, he suggested that practitioners of mainstream medicine had benefitted from attending his yoga camps, before making further claims about ayurvedic medicine's ability to treat blood pressure and diabetes:

"So many senior doctors had blood pressure, they also did pranayam⁴ – consumed bottle gourd⁵ and blood pressure was cured. Many principals of allopathy medical colleges participated and talked about this in camps. One day, a head teacher from an allopathic MBBS [Bachelor of Medicine and Bachelor of Science] college visited our camp because he had high blood pressure for the previous 10 to 15 years. He said, 'Babaji, my wife said that once you try anulom-vilom, bhamari, udgeet⁶ and other pranayam what Babaji says and also try bottle gourd juice, it treats and it is okay.' And he got treated. We have cured doctors' blood pressure. Diabetic patients became non-diabetic by doing pranayam and by consuming madhunashini⁷, juice of cucumbers, bitter gourd and tomatoes, and consumption [of] giloy. The people who used to take 50-100 units of insulin got rid of it. Now, I will arrange the next camp for diabetes, then for blood pressure, as it is easier to have a similar practice. Like for obesity I make them practice hard. But if these similar practices are done for heart patients, high BP [blood pressure] or high sugar patients, then they may faint and fall. So we will have separate camps for different ailments. In the next residential camp I will prove that 99% of people will be able to get rid of BP medicines within a week".

We considered this material raised potential issues under Rule 2.1 of the Code, which states:

"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".

We requested the Licensee's comments on how the content complied with this rule.

Response

The Licensee said that it was "alarmed and distressed" at any suggestion that this programme could have caused harm to viewers, stressing that it was "a company of the highest principles", which had broadcast the programme as "a benefit to the community" and "a service to assist viewers to enjoy optimum health".

Vedic argued that the content had to be seen in context, with reference to the demographic profile and likely expectations of its audience: "This programme is aimed at Hindi-speaking viewers in India, who are highly likely to be followers of Swami Ramdevji, a well-known populariser of yoga through his mass yoga camps. The broadcast was provided in the UK for

⁴ A breathing exercise connected to yogic practice.

⁵ A vine that is sometimes used as a herbal remedy.

⁶ These are all types of breathing exercise or pranayam.

⁷ An ayurvedic medicine.

the spiritual benefit of Swami Ramdevji's followers who are unable to attend the yoga camp in India...[T]he programme is conducted in the Hindi language and we consider that the viewers had the expectation that the programme, being a lecture at a yoga camp given by Swami Ramdevji, would consist of his well-known views on the health benefits of yoga and herbal remedies." In the Licensee's view, Hindi-speaking viewers would have been "well versed in Indian culture and the generally accepted practices in the Indian community", even if they were not followers of Swami Ramdevji. They were therefore highly likely to be familiar with yoga and herbal remedies, understanding that these are "complementary to [i.e. rather than a substitute for] mainstream medicine for serious conditions", and that yoga in particular is "a spiritual discipline rooted in Hindu philosophy, not a fitness technique or a way to heal medical ailments". Vedic emphasised that this programme was "not a lecture directed to unconverted viewers", but rather "a documentary window" on a yoga camp attended by followers of Swami Ramdevji. The Licensee added: "However, we are aware that we must take into consideration any viewer of the broadcast rather than the targeted audience when considering the risk of potential harm".

Pointing out that, as far as it was aware, the programme had not had a direct causal effect on viewers resulting in actual harm, Vedic said that the intention of the programme had been to communicate the benefits of yoga and not to "call for sufferers to ignore conventional medicine or act to their detriment". It argued that rather than directly exhorting viewers to stop taking mainstream medication, Swami Ramdevji merely claimed that yoga and ayurvedic medicine could have the effect that viewers' "constitution will be improved to the extent that they will be able to reduce their medication", or that they will "feel better spiritually and physically", to the extent that they might "be able to discontinue taking [their] medication". The broadcaster acknowledged that Swami Ramdevji's views in favour of yoga and ayurvedic medicine were sometimes "forthrightly expressed", and that he was "critical of the potential side effects of mainstream medicine", but said that this did not mean that he was "dogmatic that his followers must give up their medication". Vedic also argued that the references in the programme to people discontinuing their medication generally concerned members of the audience at the yoga camp, instead of engaging the audience watching at home. In the Licensee's view, Ofcom had misconstrued statements made during the programme by taking them out of context, and paying insufficient attention to the language actually used by Swami Ramdevji.

The Licensee made the following statement about the references in the programme to arthritis, depression, blood pressure and ovarian cysts: "The programme does not say that yoga or herbal medicine cure serious medical conditions as a standalone procedure. Swami Ramdevji says that where people have tried conventional medicine and it has failed them or they do not wish to have surgery, after they have turned to yoga or herbal remedies they have found relief from their symptoms and benefitted from treatment rather than obtained a "cure".

Vedic also maintained that, rather than claiming malaria could be cured by yoga or herbal remedies, Swami Ramdevji merely suggested that giloy could improve the immune system, to prevent people catching malaria and other viruses. It acknowledged that Swami Ramdevji said that yoga, breathing exercises and herbal remedies could "cure" and "get rid of" high blood pressure. However, it argued that: "The words used in this context...refer to the reduction of symptoms rather than a complete cessation of disease".

The Licensee stated that Swami Ramdevji's advice on treating high blood pressure, glaucoma and diabetes was consistent with mainstream medical advice. It also acknowledged that he

had said that dengue and swine flu could be treated with giloy, but argued that they were not serious conditions.

In general, Vedic stressed the benefits of yoga and ayurvedic medicine, which it said were "well documented", and could be substantiated with reference to a number of research studies, as well as advice on the website of Cancer Research UK. In a number of instances, the Licensee pointed to papers published in academic journals, and to advice given on the NHS Choices website, which it said supported Swami Ramdevji's claims about the specific illnesses and ailments referred to in the programme.

In summary, the Licensee stated: "It is not Swami Ramdevji's philosophy that people should use yoga or ayurvedic medicine as a replacement for conventional treatment. In line with the official advice we have quoted, he does not ever advocate avoiding medication entirely or advise people to avoid seeking conventional treatment for serious cases. He points out that outcomes for many people can be unsatisfactory because of side effects or a failure of the individual to respond. He enthusiastically advocates yoga and ayurvedic medicine as a complement to their way of life and philosophy as both preventative and complementary practice." Vedic emphasised the place of yoga and ayurvedic medicine within Indian society, where it forms part of an "holistic approach to health [which] does not exclude modern methods", and expressed disappointment that "Ofcom has misinterpreted the message in the broadcast to suggest otherwise".

Vedic stressed that Swami Ramdevji did not attempt to promote products or request donations for a cause, which in its view differentiated this programme from relevant precedent cases. It also maintained that, in contrast to other programmes previously found in breach by Ofcom, *Yog-Hindi Rishi Swami Ramdevji* was not "alarmist" or "inflammatory", and did not target "vulnerable viewers". It said that it had not received any complaints about this programme (or similar programmes broadcast on Aastha TV), and neither had Ofcom: "In our view Ofcom has failed to take into account that there were no complaints made about this broadcast when they were assessing the likelihood of harm."

In addition, the Licensee pointed to Swami Ramdevji's statement "*In case, if any big disease happens you can take some assistance*", which it believed was an example of advice that in cases where "a condition is severe" and "requiring immediate treatment", the person concerned should seek "allopathic or mainstream remedies". Vedic underlined this point: "[F]or the avoidance of doubt, [this statement] was categorically intended to mean take medical advice for serious conditions in line with Swami Ramdevji's habitual advice in this matter."

Vedic also asked for the disclaimer broadcast at the start and end of the programme to be taken into account. It highlighted the following passages as evidence that it had attempted to contextualise the programme for viewers, thereby providing them with adequate protection:

"The images, conducts and/or views and statements expressed by the contributors, speakers, participants on the channel are those of the contributors, speakers, participants and not those of the company, channel or its employees unless specifically stated".

"The company/channel does not accept any responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any part of the program nor provides any

warranties or guarantees as to the appropriateness, accuracy, reliability, completeness as sufficiency of the views expressed in the program”.

“Viewers’ discretion is strongly advised”.

The Licensee pointed to its record of compliance with the Code. It maintained that it already had a number of practices in place which provided protection for viewers, including running the above disclaimer many times throughout the day. It continued that it also does not subtitle or dub into English programmes featuring Indian cultural events, to avoid misunderstandings on the part of viewers without knowledge of Indian culture. Finally, Vedic said that it has a policy to “only broadcast highly regarded speakers”, who follow “generally accepted practices”, in relation to medical advice, and other sensitive areas such as financial advice.

In conclusion, the Licensee stated that it did not believe that the programme was in breach of the Code: “[T]he risk of a viewer suffering harm as a result of watching this programme was remote. We consider that any important health decisions taken by a viewer would be based on a far broader consideration of Swami Ramdevji’s spiritual way of life rather than the comments made in this broadcast...It is our view that Ofcom makes a conceptual leap (which we believe is based on the emphasis given to Swami Ramdevji’s comments taken out of context rather than an impartial and objective assessment of the evidence) to speculate that a viewer, understanding Hindi but unaware of the holistic lifestyle generally practiced by the Hindi community, would watch the brief section relating to diabetes, believe that this constituted sufficient information regarding management of their condition and consider that they had no need to further consult their doctor and could give up their insulin. We have found no evidence to support this supposition[.]”

However, Vedic accepted that a few of the statements made by Swami Ramdevji, if they were “taken in isolation”, could be seen as “deviating from generally accepted standards”. It had therefore responded to Ofcom’s investigation by drafting an additional disclaimer to be broadcast in Hindi and English around relevant programmes: *“Any references to medical claims should be considered in context of the programme content. Viewers suffering from medical illnesses are advised to seek qualified medical advice”*. The Licensee added that if a viewer with a serious medical condition had consulted a yoga or ayurvedic practitioner in the UK, then the established practice would be for that practitioner to refer the viewer to a mainstream specialist. Vedic also committed to review all its output in future, to assess whether there was any risk posed to vulnerable viewers by claims made in programmes, and to broadcast the disclaimer “a proportionate number of occasions”, including, where necessary, “on a scroll bar throughout the programme”. The broadcaster underlined that it was willing to take any action required by Ofcom to ensure compliance with the Code.

Decision

Reflecting our duties under the Communications Act 2003⁸, Section Two of the Code requires that “generally accepted standards” are applied to the contents of television and radio services.

Rule 2.1 states that generally accepted standards must be applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

⁸ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Programmes that provide lifestyle and health advice about potentially serious medical conditions can be broadcast, provided that adequate protection is provided for members of the public.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression as set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from potentially harmful material and the right to freedom of expression.

We first considered whether the material broadcast was potentially harmful.

We acknowledged that yoga and ayurvedic medicine are established forms of complementary or alternative medicine, widely practised and accepted in the Indian sub-continent in particular. However, our role is not to judge the merits of different systems of medicine, but to ensure that viewers are protected from potential harm in programmes.

Ofcom considers that the broadcast of advice which could lead to viewers with potentially serious health conditions either not seeking mainstream medical advice, or discontinuing existing treatment, constitutes potential harm. The broadcaster's right to freedom of expression allows it to discuss the perceived benefits of complementary or alternative medicine, and also to criticise mainstream medicine. However, when doing so it must take the necessary steps to comply with the Code.

In this case, Swami Ramdevji claimed on several occasions that the practice of yoga and/or ayurvedic medicine (including specific treatments) could lead to someone no longer needing mainstream medical treatment and avoiding operations. In addition, Swami Ramdevji suggested that they could cure, effectively treat, or increase immunity against a range of conditions.

The Licensee argued that all these statements needed to be seen in the context of the programme as a whole, which was broadcast predominantly in Hindi, and was aimed at an Indian audience likely to be familiar with Swami Ramdevji. Ofcom considered that these contextual factors were relevant to an extent. We recognised that Swami Ramdevji is well known in India, and among Indian communities more widely, for his promotion of yoga and ayurvedic medicine, and for many viewers his statements were likely to have been in line with their expectations. It is also possible that some viewers would have understood these practices to be complementary to mainstream medicine, as part of a holistic approach to health. However, in our view, this did not mean that all viewers would necessarily have interpreted Swami Ramdevji's statements in this light, and there was little in the programme to encourage this position. Indeed, Swami Ramdevji made a series of criticisms of mainstream medicine.

In Ofcom's view, these criticisms, taken together with Swami Ramdevji's positive statements about yoga and ayurvedic medicine, were more likely to encourage a perception of these practices as a replacement for mainstream medicine.

Vedic maintained that Swami Ramdevji had not suggested that viewers not seek mainstream medical advice or cease taking an existing course of treatment. It argued that he had merely suggested that yoga and ayurvedic medicine could improve a person's constitution, and that this might allow them to reduce their medication. We did not accept this. Swami Ramdevji's

claims about yoga and ayurvedic medicine, expressed with a high degree of certainty, referred to the discontinuation of medication, rather than a reduction in it, on a number of occasions. He also stated that in many cases operations had been avoided, when they would usually have been recommended by mainstream medical practitioners. Finally, he suggested that herbal remedies could guarantee immunity against a range of diseases, which implicitly suggested that these methods were sufficient, independently of mainstream medical treatments.

The Licensee argued that some of Swami Ramdevji's advice related to conditions which are not serious. It is important, however, to emphasise that viewers may have different levels of vulnerability (for example, due to their age or individual medical history), and that this will affect how potentially serious a condition is for them. Similarly, different medical conditions may have specific features which need to be taken into account; for example, Swami Ramdevji gave advice on treating diabetes without making clear whether he was referring to type 1 or type 2 diabetes, when the treatments recommended by mainstream medicine for these conditions are different. It is advisable to take extra care when discussing such subjects in programmes.

The Licensee put forward a range of evidence to support its position on specific illnesses and conditions referred to in the programme. It is not Ofcom's role to judge the accuracy of individual health claims in programmes, or how they compare to official sources of medical advice, such as that available on the NHS Choices website. Rather, Ofcom must judge whether viewers were likely to have acted on such advice in a programme in a way that could have resulted in harm to their health, for example because the claims would have led them to believe they would not need to consult a qualified medical doctor, or would be able to discontinue existing medical treatment.

Ofcom carefully reviewed the programme as a whole, and has selected quotations from it for illustrative purposes. It is our view that, as a result of watching the programme, some viewers with potentially serious health issues and conditions – especially more vulnerable individuals – might use yoga and/or ayurvedic medicine to treat these conditions without seeking mainstream medical advice, with potentially harmful effects. There was also a risk that some viewers might stop an existing course of medical treatment, as a result of the promotion of yoga and/or ayurvedic medicine, taken together with the criticism of mainstream medicine in the programme. Finally, viewers who had taken the herbal remedies recommended in the programme might believe they were effectively protected against viruses and other diseases, without considering mainstream medical treatments. In Ofcom's view, all of these outcomes were potentially harmful, though we were particularly concerned about the advice relating to the most serious conditions. The fact that there were no complaints about this programme, alleging that actual harm had resulted from it, does not mean that there was no risk of harm.

Ofcom then considered whether the Licensee had taken appropriate steps to provide adequate protection for viewers from this potentially harmful content.

Vedic argued that Swami Ramdevji did not attempt to promote specific products or request donations for a cause, in contrast to some previous breaches of the Code. However, in itself, the absence of such promotion or appeals did not provide protection to viewers from the potentially harmful content.

The Licensee also highlighted Swami Ramdevji saying, *"In case, if any big disease happens you can take some assistance"*, which it argued constituted advice to viewers to seek mainstream medical advice in serious cases. In the context of the programme as a whole, Ofcom did not consider this single example of a direction to seek "assistance" – which was brief and incidental – was sufficient to mitigate effectively the risk posed by other aspects of the content.

Ofcom took into account the Licensee's intention to protect viewers from harm by broadcasting the disclaimer at the beginning and end of the programme. This on-screen message included statements in which the broadcaster: made clear that any views expressed by contributors to the programme were his own; denied the responsibility of the channel for those views; and advised viewer discretion. It is important to emphasise that, regardless of these statements, the Licensee remains responsible for all content broadcast on its service. Further, Ofcom did not consider that merely advising discretion on the part of viewers provided them with adequate protection given the nature and extent of the claims made.

Ofcom's Decision is that the Licensee did not take appropriate steps to provide viewers with adequate protection from potential harm that could arise from this programme, in breach of Rule 2.1 of the Code.

Given our concerns in this case, Ofcom is requesting that the Licensee attends a meeting to discuss its compliance in this area.

Breach of Rule 2.1

In Breach

Community Platform

Ummah Channel, 8 February 2017, 03:30

Introduction

Ummah Channel is a satellite television service aimed primarily at a Muslim audience. The licence for Ummah Channel is held by Ummah Channel Limited ("UCL" or "the Licensee").

Community Platform is a regular weekly TV programme featuring studio discussions on current affairs matters affecting the Muslim community.

During routine monitoring, we assessed an edition of *Community Platform* entitled *The Tragedy that was Trojan Horse*, which discussed the controversy surrounding the decision by the Department of Education to investigate several schools in Birmingham in 2014 for evidence of radicalisation by extremists. This has generally become known as the "Trojan Horse Inquiry"¹. The programme also discussed the Prevent Strategy², which is part of the Government's counter-extremism policy, and the reasons for its implementation.

The following comments were made during the programme by the two studio guests and the programme presenter:

Guest 1: *"We all know now that Prevent is a completely discredited, academically it is discredited. Even people within Parliament, MPs are questioning whether Prevent should be implemented. Even David Anderson³ is questioning whether it should be scrapped or modified..."*

Guest 1: *"There is an undercurrent of Islamophobia, anti-Islamic feeling that runs all the way to the government unfortunately and some of it is ignorance some of it is malice, some of it is that they don't like the 'other', which happen to be Muslims. The result is that when they see people with alternative views or conservative practices which may not fit with the current fashions and tastes*

¹ The 'Trojan Horse' Inquiry headed by Peter Clarke was set up by the Department for Education following an anonymous letter that was sent to Birmingham City Council in November 2013, which alleged that there had been a strategy {"Operation Trojan Horse") to take over a number of schools in Birmingham and run them on strict Islamic principles. In July 2014, the *Report into allegations concerning Birmingham schools arising from the 'Trojan horse' letter* was published (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/340526/HC_576_accessible_-_pdf).

² The Prevent Strategy, published in 2011, aims to "reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism" (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance_England_Wales_V2-Interactive.pdf).

³ David Anderson QC was the UK Government's Independent Reviewer of Terrorism Legislation from 2011 to February 2017.

within current society at the moment its then that you know that they come in quite hard”.

Guest 2: *“On the Trojan Horse fiasco and the fabrications surrounding that, hype surrounding that. What has happened is that unfortunately the Government has used this hype and the Trojan Horse fiasco to justify so much legislation. So, the statute-isation of Prevent for instance happened after Trojan Horse. Changes to Ofsted criteria were made to promote certain aspects that would include the Prevent agenda in the Ofsted agenda as well and a lot of changes have happened because of that. But more widely the vilification of the Muslim community broadly has deterred people from being involved. I mean who would want to be a [school] Governor, then your career may be destroyed if you express certain views...there’s a raft of legal changes that have been made behind the scenes which a lot of people are not familiar with. On the back of Trojan Horse basically which actually targets Muslim Governors, Muslim teachers, Muslim children and Muslim parents as suspects if you like, or those who need to be vetted or those who need to be monitored”.*

Guest 2: *“So the Prevent Strategy, if you like, in this sense, is the leading edge, and Peter Clark has referred to this very clearly. And what he’s talking about there, to be honest with you, and why these teachers are being banned and what the Department of Education are trying to prove in these cases is actually something taken directly from Prevent. Which is they’re trying to establish a mindset that these people have, [that] they have conspired – they don’t want to use the word ‘conspired’ because there’s no evidence for a conspiracy. No hard evidence of conspiracy of any description – because there wasn’t a conspiracy...Unless in the mindset of the people writing the report, who are making the accusations, who launched these offensives against our schools in their mind we basically are not full citizens, maybe third grade citizens only then can justify that this is some form of infiltration so the entire Trojan Horse offensive actually is quite perverse”.*

Presenter: *“Love live Prevent, that’s all I can say! [To camera] And you, my friends, thank you for watching, for allowing us to come into your homes, uninvited as always. But I think it’s extremely important that we do stand up and speak up...Our country gives us that right. If we believe we live in a democracy then it’s our democratic right to challenge those policies that are impacting our communities: Prevent is one of them”.*

Ofcom considered that this programme was dealing with matters of political controversy and matters relating to current public policy, namely, the UK Government’s counter-extremism policy, the Prevent programme, and the government’s Trojan Horse Inquiry.

We considered this raised potential issues under the following rule of the Code:

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

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

Response

UCL stated that upon reviewing the programme, it was of the view that the presenter "did not act in an independent manner nor was impartial". It added that after it had discussed the incident with the presenter, and she had:

- "apologised and accepted that she did not show impartiality" but added that "this has occurred for the first time in 8 years of hosting this weekly discussion programme"; and
- indicated that she had invited "a couple of colleagues from Blackburn with Darwen Council to take part which would have given a more balanced view but they did not materialise as they cancelled on last minute".

The Licensee said that it was considering other measures to address what had occurred.

In addition, UCL stated that before, during and at the end of the programme it had shown "a 10 second disclaimer"⁴ which suggested "that Ummah Channel does not always have the same views of various hosts and guests taking part in certain shows". Finally, the Licensee said that: "We pride ourselves in taking a balanced view on our shows and are sorry that we [were] well under standard on this one".

Decision

Reflecting our duties under the Communications Act 2003⁵, Section Five of the Code requires that the special impartiality requirements are met.

Rule 5.5 requires that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

The Code makes clear that the term "due" means adequate or appropriate to the subject matter. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways, and it is an editorial decision for the broadcaster as to how it ensures this. Depending on the specific circumstances, it may be necessary to reflect alternative viewpoints in an appropriate way. The context in which programme material appears, including the characteristics of the programme, is important to judgments of what is duly impartial.

⁴ The disclaimer said: "*The contents of this programme may not necessarily represent the views of Ummah channel*".

⁵ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcasters' freedom to discuss any controversial subject or point of view in their programming, and compliance with Section Five.

In this case, the programme discussed the outcome of the government's Trojan Horse Inquiry and its implications for the Muslim community. The programme contained a number of critical statements concerning the UK Government's counter-extremism policy, and in particular, the Prevent Strategy and its application in schools. In summary, the discussion put forward a view that the Trojan Horse Inquiry had led to the UK Government implementing "*so much legislation*", including the Prevent Strategy, that schools in the Muslim community had been negatively affected.

Ofcom considered that the discussion about the Prevent Strategy was clearly a matter of political controversy and matter relating to public policy. Rule 5.5 was therefore engaged.

Ofcom recognised that the Licensee would wish to focus on issues affecting the Muslim community in the UK, including the outcome of the Trojan Horse Inquiry and the UK Government's Prevent Strategy, and any effects it might have on schools. However, it was incumbent upon the Licensee to ensure due impartiality was maintained by ensuring that alternate viewpoints were reflected in the programme. We therefore went on to assess whether this programme reflected alternative viewpoints, as appropriate.

The programme contained a number of statements that were critical and gave a one-sided view of the UK Government's Prevent Strategy. For example, it was described as "*completely discredited*" and that both MPs and the UK Government's Independent Reviewer of Terrorism Legislation had questioned whether it should be "*implemented*", "*scrapped or modified*" and a policy that had to be challenged because it was "*impacting [Muslim] communities*".

We did not identify any statements or other content which could reasonably be considered to reflect the viewpoint of the UK Government or offered any alternative opinion to counter the range of criticism levelled at the Prevent Strategy. Therefore, in our view, this programme gave a one-sided view on a matter of political controversy and matter relating to current public policy. Further, the Licensee did not provide any evidence as to how it had presented alternative viewpoints on the matters in question in a series of programmes taken as a whole – i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience.

The Licensee explained that attempts had been made by the presenter to invite guests who "would have given a more balanced view" but they cancelled at the last minute. It is an editorial matter for the broadcaster as to how it maintains due impartiality but if a broadcaster cannot obtain an alternative viewpoint, then it must find other ways of ensuring that due impartiality is maintained. These might include: interviewers reflecting alternative viewpoints through questions to the interviewee; alternative viewpoints being summarised, with due objectivity and in context, within a programme; if alternative viewpoints cannot be obtained from, governments or individuals, broadcasters referring to public statements by such institutions, governments or individuals or such viewpoints being expressed, for example, through presenters' questions to interviewees.

UCL argued that before, during and at the end of the programme it had shown the following disclaimer:

"The contents of this programme may not necessarily represent the views of Ummah channel".

However, such a disclaimer did not release the Licensee, who had editorial responsibility for this programme, from its obligation to provide alternative viewpoints, as appropriate, in this case.

Ofcom took into account: the fact that both the Licensee and presenter had apologised for this incident; UCL's statement that the Presenter "did not act in an independent manner nor was impartial".

Ofcom underlines that the broadcasting of comments either criticising or supporting the policies and actions of any government is not, in itself, a breach of due impartiality rules. However, a broadcaster must maintain an adequate and appropriate level of impartiality in its presentation of matters of political controversy and matters relating to current public policy.

In this case, Ofcom's decision is that the programme breached Rule 5.5 of the Code.

Breach of Rule 5.5

In Breach

ATN Bangla Shongbad

ATN Bangla UK, 30 January 2017, 21:30

Introduction

ATN Bangla UK is a news and general entertainment channel aimed at the Bangladeshi community in the UK. The licence for ATN Bangla UK is held by ATN Bangla UK Ltd ("the Licensee").

Ofcom received a complaint about an item in *ATN Bangla Shongbad*, a news programme, which featured references to a fish shop in Birmingham called Bangla Fish Bazaar.

As the programme was in Bengali, Ofcom commissioned an independent translation of the material and gave the Licensee an opportunity to comment on the accuracy of the translation. ATN Bangla UK said that the translation appeared accurate so we used this translation for the purposes of the investigation.

During the item, the reporter made several comments about the Bangla Fish Bazaar, while footage of the shop was shown, including:

"The renowned Bangladeshi business institution Bangla Fish Bazaar at Coventry Road, Small Heath, Birmingham, has started special offers on fish at the Fish Festival on the occasion of their 2nd anniversary from Monday 30 January".

"Considering the high number of customers since the beginning of this offer, we can be certain that the Birmingham Fish Bazaar sells quality fish at affordable prices".

The item also featured interviews with customers who commented on the services of Bangla Fish Bazaar, for example:

"I can see here many different types of fish such as Rohu, Catla, Hilsha".

"The services of Bangla Fish Bazaar are very good. For whatever I want to buy, the price is cheap".

There was also an interview with the Director of Bangla Fish Bazaar, who said:

"It is a 7-day fish sale on the occasion of the 2nd anniversary of the Bangla Fish Bazaar and it is proving quite popular with people from the Midlands. I would like all of you to come and join us".

We requested information from the Licensee about any commercial arrangements associated with the references to the fish shop. Based on the information provided, Ofcom considered that the material raised issues under the following Code rules:

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

Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming”.

Ofcom asked the Licensee for its comments on how *ATN Bangla Shongbad* complied with Rules 9.4 and 9.5.

Response

The Licensee explained that the news item was to cover the “Macher Utsav” fish festival, rather than Bangla Fish Bazaar specifically. They explained that Bangla Fish Bazaar was the event organiser so the shop was mentioned.

The Licensee stated that the programme was not intended to promote or give undue prominence to a product, service or trademark and it considered the coverage complied with Rules 9.4 and 9.5.

Decision

Reflecting our duties under the Communications Act 2003¹, Section Nine of the Code limits the extent to which commercial references can feature within television programming. This ensures there is a distinction between advertising and programming, and prevents broadcasters exceeding the limits on the amount of time they are allowed to use for advertising.

Section Nine does not proscribe all references to products and services in programmes. However, it does require all such references to be justified by the editorial requirements of a programme and not to be promotional or unduly prominent.

Rule 9.4 requires that products, services and trade marks must not be promoted in programming. Ofcom's published guidance² on Rule 9.4 states: “Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed”.

Under Rule 9.5, no undue prominence may be given in programming to a product, service or trade mark. Rule 9.5 makes clear that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom's published Guidance³ on Rule

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>.

² https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf.

9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears".

In this case, we took into account the Licensee's representations that the news coverage was not intended to be about Bangla Fish Bazaar, it was to cover a fish festival. Ofcom accepted there may be editorial grounds to report on such events in the news. However, in our view, there was insufficient editorial justification for the frequency and prominence of the references to Bangla Fish Bazaar in this report.

The extensive references to products and services offered by the business featured, combined with the favourable and superlative language used (including references to the price and quality of products), and the comments by the Director of Bangla Fish Bazaar, resulted in content that was clearly promotional in tone. Ofcom's decision is that the programme was in breach of Rule 9.4 of the Code.

We also considered that there was insufficient editorial justification for the frequency and prominence of the references to the shop and its products in this report. Our decision is therefore that the programme was in breach of Rule 9.5.

Breaches of Rules 9.4 and 9.5

In Breach

Taste of Asia Competition SAB TV, 18 February 2017, 21:41

Introduction

SAB TV is a general entertainment service which broadcasts a range of programmes originally shown in India to an international audience. The licence for SAB TV is held by MSM Asia Limited ("MSM" or "the Licensee").

We received a complaint about a competition linked to the cookery programme *Taste of Asia*. The competition was scheduled in a break during SAB TV's coverage of a film award ceremony. It began with text and accompanying voice over stating:

"Win £1000 with a cooking experience for two plus a chance to win a Kohinoor¹ hamper every week".

The text and voice over were accompanied by the Kohinoor brand logo and the name of the programme. The screen then changed to text stating "courtesy of" with Kohinoor and NaturZ² logos displayed underneath. This was followed by the display of the competition question accompanied with the voice over:

"Which type of Kohinoor rice does the chef use in the episodes of Taste of Asia?"

- A. *Extra Long Basmati Rice*
- B. *Extra Flavour Basmati Rice*
- C. *Extra Fine Basmati Rice".*

The Kohinoor and NaturZ logos appeared again when the competition entry details and terms and conditions were shown.

A picture of three types of Kohinoor products was then shown with the logos of the brand also displayed at the bottom of the screen. This was followed by a picture of three types of NaturZ products with the brand logo displayed on the top of the screen. The brand's website address was also displayed at the bottom. The third picture displayed the contact details of Sukhdev, a catering and event company. As the pictures of the products and services were displayed, the voice over said: *"Presented by Kohinoor [Indian language] in association with NaturZ, 'the taste matters', and Sukhdev's catering and events limited".*

Ofcom considered that the material raised issues under the following Code rule:

Rule 9.2: "Broadcasters must ensure that editorial content is distinct from advertising".

Ofcom asked the Licensee for its comments on how the material complied with Rule 9.2.

¹ Kohinoor is a brand of basmati rice.

² NaturZ is a brand of pulses, lentils, spices and rice.

Response

SAB TV explained that *Taste of Asia* is a cookery show “sponsored by a number of clients”. The Licensee said that “a separate competition relating to the show was run on the channel” and that it “was created and the prizes were provided by the sponsors of the show”. It added that “[t]he competition was scheduled as a promo within a promo break” and that commercials “were clearly separated by the channel optical”. The Licensee confirmed the competition was broadcast as editorial content.

The Licensee said that the sponsorship credits for Kohinoor, NaturZ and Sukhdev “ran during the show and promos throughout the schedule”. It explained that a scheduling error led to the transmission of the credits at the end of the competition: the Licensee acknowledged that the credits “should not have aired” at this time.

In response to Ofcom's Preliminary View, the Licensee accepted that “the advertiser logos were prominently displayed throughout as well as mentioned in the voice over”. It said that “there ha[d] been a planning error on this occasion and sincerely apologise[d] for th[e] incident”. The Licensee added that it had put measures in place and taken a number of steps “to ensure these incidents are avoided and do not occur again”.

Decision

Reflecting our duties under the Communications Act 2003³, Section Nine of the Code limits the extent to which commercial references can feature within television programming. The rules in this Section help ensure there is a distinction between advertising and programming. They also prevent broadcasters from using editorial airtime for advertising purposes.

Ofcom's Code on the scheduling of television advertising limits the amount of advertising that a broadcaster can transmit. Where a commercial reference (such as a reference to a product or service) is featured in programming, broadcasters must take care to ensure that the content serves an editorial rather than advertising purpose to prevent exceeding this limit.

The Code provides scope for competitions to be transmitted in editorial airtime. However, such competitions should not be used as a platform to promote products, services and trade marks. In this case, the Kohinoor and NaturZ logos were displayed prominently several times during the competition and the competition question was about a Kohinoor product. The voice over also mentioned the brands several times. The competition ended with credits for all three programme sponsors.

Ofcom considered that the focus of this competition was the products, brands and services and, as a result, the material was akin to advertising rather than programming. The Licensee acknowledged that the advertiser logos were prominently displayed throughout as well included in the voice over. We took into account that: the Licensee had apologised in its representations to Ofcom; explained that the incident was the result of a “planning error”; and, taken steps to ensure a similar incident would not recur.

³ <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>.

Nevertheless, Ofcom's Decision was that the competition was not distinct from advertising and therefore in breach of Rule 9.2.

Breach of Rule 9.2

Resolved

ITV London News **ITV, 16 March 2017, 18.30**

Introduction

ITV London News is the regional news programme for Greater London broadcast on ITV. The programme is compiled by ITN on behalf of the ITV Network ("ITV").

During the programme, artist Tim King was interviewed live in the studio about the challenge he had set himself of drawing a sketch for each day of 2016. The presenter, Charlene White, invited viewers to go to the ITV News website to view the artwork of a specific date and then highlighted the sketch drawn by Tim King on her birthday in 2016. The picture, about the Brexit referendum, was shown for 14 seconds and included the following handwritten text:

"So who's voting in? Great because I'm calling it CUNTAGEDDON. I'm scared that the idiots could take over".

Ofcom received three complaints about the use of the term "cuntageddon" which was considered offensive. We considered the use of the word "cunt", included as a play on the word armageddon, raised potential issues under the following Code rule:

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

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

Response

ITV explained that the offensive term had not been identified prior to the image being broadcast. The artwork had been selected for broadcast from an online "thumbnail" and the full-scale image was not seen until after the broadcast. It was not noticed while it remained on air as this was towards the end of the item and the gallery team were focused on the next item. When the word was identified a few minutes later, the image was removed from the ITV+1 service and the following apology posted on social media:

"We would like to apologise to any viewers who were offended by a word accidentally broadcast on a painting shown on the programme earlier".

ITV accepted that this word should not have been included in the broadcast and apologised for any offence caused. It has advised Ofcom that its procedures have now been reviewed to ensure that all images are carefully checked prior to broadcast.

Decision

Reflecting our duties under the Communications Act 2003, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research¹ on offensive language clearly states that the word "cunt" is considered by audiences to be among the most offensive language.

Ofcom took into account that ITV: took immediate action to remove the image from the ITV+1 service; issued an apology on social media; and, had taken appropriate steps to ensure ongoing compliance with the Code. Our Decision therefore was that the matter was resolved.

Resolved

¹ Attitudes to potentially offensive language and gestures on TV and radio, September 2016. See page 6 of the Quick Reference Guide:

https://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf

See also the main report:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with 'Key Commitments' *West Hull Community Radio, 8 to 10 December 2016*

Introduction

West Hull Community Radio is a community radio station licensed to provide a service for "the West Hull communities of Riverside, West and Wyke areas. It represents the views of the West Hull community and develops media and radio skills through training". The licence is held by West Hull Community Radio Limited ("WHCR" or "the Licensee").

Like other community radio stations, WHCR is required to deliver 'Key Commitments', which form part of its licence¹. These set out how the station will serve its target community and include a description of the programme service.

Ofcom received a complaint that WHCR was often broadcasting continuous music and that many of the programmes that were being aired were repeats.

We requested recordings of three days of WHCR's output, covering Thursday 8 December 2016, Friday 9 December 2016 and Saturday 10 December 2016.

We calculated that WHCR had delivered the following hours of original output²:

- Thursday 8 December – 2 hours
- Friday 9 December – 6.6 hours
- Saturday 10 December – 4 hours

On two of the three days, this amount of original output was significantly below the minimum seven hours per day which is required by the station's Key Commitments.

Ofcom considered this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to WHCR's licence. These state, respectively:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period" (Section 106(2) of the Broadcasting Act 1990); and

¹ WHCR's Key Commitments are contained in an annex to its licence and can be found at: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000056.pdf>.

² Original output is defined by Ofcom as output that is first produced for and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or 'voice-tracked'. Repeat broadcasts of original output do not count towards the minimum requirement, and neither does continuous music.

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period” (Section 106(1) of the Broadcasting Act 1990).

We requested comments from WHCR on how it was complying with these conditions, with specific reference to the Key Commitment to provide a minimum of seven hours per day of original output.

Response

WHCR understood and accepted that, during the period in question, it had not delivered the hours of original output required by its Key Commitments, and apologised for its failure to do so.

It stated that the previous station manager had retired, and three “key” volunteer presenters also left the station at this time. This meant that “the station was in a state of flux and a new schedule had to be put into place to cover four missing presenters”. The Licensee explained that the extra hours were taken up by other volunteers, “until two very dedicated members became ill which greatly affected the Original Output to the station causing us to fall short on the station’s Key Commitments to Ofcom and listeners, which WHCR deeply regrets”.

The Licensee explained that priority has been given to sourcing new presenters and increasing the quality and quantity of local output. This includes community-based outside broadcasts, specialist music shows and new spoken word shows. It was confident that it was now fully compliant with its Key Commitments.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licences require the provision of the specified licensed service. This is the fundamental purpose for which a community radio licence is granted.

The Licensee admitted that it had not been delivering the amount of original output required by its Key Commitments. It said this was due to a shortage of trained volunteers, following the departure of the station manager and a number of volunteers.

It was clear that, during our monitoring period, WHCR had failed to deliver the hours of original output required by its Key Commitments. While we appreciated the circumstances in which this occurred, and welcomed the Licensee’s plans to improve the quantity and quality of its original output going forward, we were concerned that the Licensee did not take any steps at the time to inform Ofcom of the difficulties it was experiencing.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by West Hull Community Radio Limited (licence number CR000056BA).

On Demand cases

Resolved

Rule 1: Notification of intention to provide an On Demand Programme Service

P110 Limited (www.youtube.com/user/P110HD)

Introduction

www.youtube.com/user/P110HD ("P110 YouTube") is a YouTube channel which describes itself as offering users "a range of platforms within the channel, including freestyles, live performances, documentaries [and] high quality music videos". The service is freely available on the internet and appears to be operated by P110 Limited ("P110").

A complaint alerted Ofcom to the service and we considered that it warranted further assessment under the rules applying to On Demand Programme Services ("ODPS").

Background

The Communications Act 2003 ("the Act") sets out the statutory framework for the regulation of ODPS. A service will be an ODPS, and therefore subject to the regulatory framework, if and only if it meets all the following criteria set out in the Act¹:

- (a) its principal purpose is the provision of programmes, the form and content of which is comparable to the form and content of programmes normally included in television programme services (we refer to this as provision of "TV-like" programmes below);
- (b) access to it is on demand;
- (c) there is a person who has editorial responsibility for it;
- (d) it is made available by that person for use by members of the public; and
- (e) that person is under the jurisdiction of the UK for the purposes of the Audiovisual Media Services Directive (the "Directive")².

After completing an initial assessment of P110 YouTube, Ofcom considered that it potentially raised an issue because it appeared to meet the statutory criteria for an ODPS but was not notified to Ofcom, as the appropriate regulatory authority, as also required by the Act³. This requirement is reflected in Rule 1 of the rules applying to ODPS⁴ which states that:

¹ Section 368A.

² <https://ec.europa.eu/digital-single-market/en/audiovisual-media-services-directive-avmsd>

³ Section 368BA.

⁴ These are set out in Ofcom's published *Rules and Guidance: statutory rules and non-binding guidance for providers of on-demand programme services (ODPS)* -

“A person must not provide an ODPS unless, before beginning to provide it, that person has given a notification to Ofcom of the person's intention to provide that service. A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require”.

Ofcom wrote to P110 explaining the statutory obligation to notify provision of an ODPS, and setting out the statutory criteria which define an ODPS. We asked the service provider to consider Ofcom's published guidance⁵ and, seeking legal advice if appropriate, assess its existing services to check whether notification is required. This correspondence also requested that, having completed an assessment and considered the criteria, P110 either submit a notification form or confirmation that it would not be notifying.

Response

P110 contacted Ofcom seeking clarity on the above correspondence however, following this did not provide any further response.

In response to Ofcom's Preliminary View P110 said that it agreed that the service P110 YouTube is an ODPS, and subsequently notified this service to Ofcom.

Decision

Having applied the statutory criteria referred to above, Ofcom's Decision is that the service meets all five of the statutory criteria. We have considered the purpose of the legislation as set out in the Directive, including the extent to which the nature and means of access to the service would lead users to reasonably expect regulatory protection⁶. The description below applies to the Service as it appeared at 24 February 2017.

We assess each of the five statutory criteria below:

Is there a service with the principal purpose of providing “TV-like” content?

The Act provides for a composite definition to be applied in light of the Directive, to determine whether a service is within the scope of regulation⁷. There must be a service whose principal purpose is the provision of programmes, the form and content of which are comparable to the form and content of programmes normally included in television programme services. All parts of that test must be considered and met. This approach is in

http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules_and_guidance.pdf

⁵ *Who needs to notify: guidance notes on who needs to notify and on-demand programme service to Ofcom* - http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/Guidance_on_who_needs_to_notify.pdf

⁶ Recital 24.

⁷ Section 368A(1)(a)

line with the approach set out in our "Sun Video" Decision⁸, as followed and confirmed in subsequent appeal decisions.

Accordingly, we look first at the site as a whole to determine whether there is a service with audiovisual material as its principal purpose. If so, we also take a step back and, having regard to the Directive, consider whether the material is likely to compete for the same audience as (linear) television broadcasts (i.e. whether the audiovisual material is "TV-like") and whether the nature of the material and means of access to it, would lead users to reasonably expect regulatory protection within the scope of the Directive.

Principal Purpose

For the reasons set out below, it is Ofcom's view that the principal purpose of P110 YouTube is the provision of audiovisual material. Overall P110 YouTube appears to present a significant video offering; YouTube estimates there are 2,286 total videos on the channel.

The site organises audiovisual content using the YouTube playlist function, grouping music videos into categories such as chart style compilations (e.g. "Best of P110: 2012" and "#HoodsHottest"). Once a preferred music video, or playlist has been selected by the user, this video is shown and subsequent music videos will play unless stopped (interspersed with short advertisement "breaks").

P110 YouTube incorporates certain 'stock' features which are part of the standard YouTube channel layout. These include links to other YouTube channels under "Features" and "Related Channels" headings on the landing page. The listing of such links appears to be an ancillary element of the service provided by the site, rather than its principal purpose and we do not consider material accessible through links to other YouTube channels to be part of this service (see section on editorial control below).

Another stock feature of the standard YouTube channel layout is the "Discussion" tab, which allows users to comment on the channel's output and communicate with the service provider. Many of the posts by users are directly related to content available on P110 YouTube, and this section of the channel appears to enable further interaction with the audiovisual material, rather than constituting a separate and distinct consumer offering.

Taking the above into consideration, it is Ofcom's view that P110 YouTube is, in itself, a service with the principal purpose of providing audiovisual material, and this is consistent with the audience expectations of a YouTube channel.

Comparability with television programming

Ofcom's view is that programmes made available on P110 YouTube are generally comparable in form and content to those normally included in television programme services for the following reasons.

The output predominantly consists of music videos from urban and grime artists. As with music videos generally, these are of mixed duration, however most appear to last between three and four minutes. The music videos include many of the established features typically

⁸ *Ofcom Decision in the Appeal by Sun Video* - <http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/broadcasting/on-demand/atvod-archives/scope-appeals/sun-video-decision-appendices/>

seen in television programmes in the same or similar genre, for example; “P110 – Skepta – Straight Up Remix”⁹ and “P110 – Jaykae – No (Prod. Bowzer Boss)”¹⁰. In Ofcom’s view, video content appears generally to be of broadcast quality in terms of audio and visuals. A range of production techniques have also been used, creating a more TV-like viewing experience. In particular, the use of sets, on-location filming, lighting, graphics and a range of camera angles gives the content a professional look and feel.

Recital 24 of the AVMS Directive refers to a characteristic of TV-like services being “that they compete for the same audience as television broadcasts” and states that “the concept of ‘programme’ should be interpreted in a dynamic way taking into account developments in television broadcasting”. There are a range of television programme services which provide rolling promotional music videos comparable in form and content with those featured on P110 YouTube. These are an established genre on linear television programme services. This is consistent with Ofcom’s decision¹¹ in the appeal by “Viva TV Music”, in which Ofcom stated that such linear services do not typically treat individual music videos as “programmes” in their own right, but instead provide videos on a rolling basis, sometimes linked by a theme or genre.

P110 YouTube does feature some audiovisual content which is less TV-like; for example, a number of short form trailers and promotional videos, and some videos with variable sound and picture quality, lacking features such as title sequences and credits. Other pieces of content are less comparable in form, such as: “P110 – BDL Tour Birmingham Live (Straight Up Remix | German Whip)”¹² and “P110 – SP Merchandise [Promo Video]”¹³.

In Ofcom’s view, the emphasis of the audiovisual offering is on TV-like content. For example, while the consumer could view a full playlist of “Documentaries and Promos” containing less TV-like material, this is comparatively limited including just 66 videos – many of which are complete music videos. The less TV-like content in large part appears to be promotional material for the complete music videos.

Ofcom considered that the nature and means of access to P110 YouTube would lead audiences to reasonably expect regulatory protection under the Directive. The site as a whole offers chart style compilations and other collections of music videos, made available via YouTube – an established platform for audiovisual content accessible both online and through a range of devices with access to the internet.

⁹ Please see: <https://www.youtube.com/watch?v=dS415rcakEI>

¹⁰ Please see: <https://www.youtube.com/watch?v=CrrLaz5P8bc>

¹¹ Please see:

http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/MTV_Viva_TV_Decision_Annexes.pdf

¹² Please see: <https://www.youtube.com/watch?v=pHCpT2kb6qA>

¹³ Please see: <https://www.youtube.com/watch?v=HHRpJXTO-uw>

Is access to the service on demand?

Ofcom's view is that access to the service is clearly on demand. Taking account of the characteristics of an "on demand" service¹⁴, it appears to us that the user can select and view programmes, at a time chosen by them on the service, and that these are received by means of an electronic communications network.

Is there a person who has editorial responsibility for it?

Editorial responsibility is defined¹⁵ as whether a person has general control over programmes included in the range of content offered to users, and over the manner in which programmes are organised in that range.

In this case, available material is selected and curated by P110, who has confirmed it has editorial responsibility for the service. While the landing page includes links to several other YouTube channels, these lists are based on other channels P110 YouTube has subscribed to, 'favourited' or chosen to feature, and YouTube's general collation of related content. These channels are distinct from the P110 YouTube offering and as such we have no reason to believe that content accessible via these links to be under P110's editorial control.

Is the service made available by that person for use by members of the public?

As set out in our published guidance, we consider a service would not satisfy this criterion if it simply involved distribution of material to a closed group such as a number of enrolled students sharing a recording of lectures. However, this does not serve to exclude material simply because it may be of niche interest. Also, there may be more than one person involved in making a service available for use by members of the public. In this sense a service will usually be 'made available' by the person with editorial responsibility if they intend for the service to be available to members of the public.

In this case the service is made available freely on the internet without restriction and, while it may be of more limited interest to those who do not listen to grime and urban music, our view is that this criterion is met.

Is that person under the jurisdiction the UK for the purposes of the Directive?

The Directive sets out when a service will fall under the jurisdiction of a member state, by reference to where the head office is located, where editorial and other decisions are taken, the location of the workforce and other factors¹⁶. This issue is considered in more detail in our published guidance.

In this case the complainant provided details for the provider of the service, which Ofcom has been able to verify using Companies House and with the provider directly. The provider of P110 YouTube is P110 Limited whose registered office address is at 96 High Street, Henley-in-Arden, England, B95 5BY. P110 Limited has confirmed that editorial decisions are taken in the UK, which would place it in UK jurisdiction.

¹⁴ As set out in section 368A(2) of the Act

¹⁵ As set out in section 368A(4) of the Act

¹⁶ Article 2.

Ofcom notes the swift action taken by P110 following Ofcom's Preliminary View that the service is an ODPS which had not been notified to Ofcom. Given the steps taken by P110 to notify the service P110 YouTube to Ofcom, we are satisfied that the matter is resolved.

Resolved

Fairness and Privacy Adjudications

Upheld

Complaint by Mrs Carly Hatley

Say Yes to the Dress, TLC, 16 September 2016

Summary

Ofcom has upheld Mrs Carly Hatley's complaint of unwarranted infringement of privacy in the programme.

The programme, filmed in a wedding boutique, included footage of Mrs Hatley wearing her wedding dress and was broadcast prior to her wedding day.

Ofcom found that Mrs Hatley had a legitimate expectation of privacy in relation to the footage of her that was broadcast without her consent. We considered that her legitimate expectation of privacy was not outweighed by the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference. Nor was it warranted in the public interest. Ofcom considered therefore that Mrs Hatley's privacy was unwarrantably infringed in the programme as broadcast.

Programme summary

On 16 September 2016, the TLC channel broadcast an edition of *Say Yes to the Dress*, a factual entertainment programme set in a bridal boutique in which three women were shown choosing between a variety of wedding dresses with their friends and family.

One of the three women, "Jane", was shown in the main area of the boutique wearing a wedding dress. While Jane and her friends and family discussed the dress, another bride (the complainant, Mrs Hatley) was visible in the background for approximately three seconds. Mrs Hatley was shown in a wedding dress which was visible from the back and front in full length. Mrs Hatley was not heard to speak in the programme and her face was unobscured.

Summary of the complaint and the broadcaster's response

Mrs Hatley complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her in her wedding dress was included in the programme without her consent.

Mrs Hatley said that she was filmed without her knowledge, but was contacted twice by the programme makers before the programme was broadcast. She said that on both occasions she informed them that she did not want the footage of her to be included in the programme. Mrs Hatley said that the programme was broadcast a week before her wedding and that she had been watching it with her fiancé.

Discovery Corporate Services Ltd (DCSL), the Licensee for the TLC channel, responded by stating that it did not accept that the programme as broadcast unwarrantably infringed Mrs Hatley's privacy.

The broadcaster said that given the importance all couples attach to their wedding day, the programme makers went to great lengths to ensure that nothing it did during the filming of the series caused any unnecessary distress. It said it ensured that those participating in the programme gave their consent and had a full understanding of what the programme was about. In most cases, it said, the main participants were fully aware of the programme, since *Say Yes to the Dress* had been around for ten years as a US based show, although the UK version only started late in 2016. It explained that the programme makers followed a strict set of release procedures which it provided to Ofcom. This included information that the "featured" brides and their party were asked to sign a release form and that background brides and other shoppers were "released by the crowd release" at the entrance to the store.

It said that after a thorough investigation it was clear that Mrs Hatley would have been fully aware that filming was taking place. DCSL said that in line with standard industry practice, there were general disclosure notices for members of the public entering the shop where filming was taking place. It added that the fact filming was taking place was extremely obvious, in that cameras and crew were very visible. The broadcaster therefore considered that Mrs Hatley's consent had been given.

The broadcaster added that Mrs Hatley was incidental to the picture, but accepted that she was, albeit fleetingly, identifiable. It said that Mrs Hatley was filmed in a semi-public place and not in what would generally be considered a sensitive situation. The broadcaster said that although "there is folklore that bad luck comes from a groom seeing the bride in her gown before the ceremony", it argued that such a superstition could not in itself make the situation particularly sensitive. Nevertheless, DCSL said it understood that most 'brides-to-be' would not wish to be seen prior to their wedding day in their wedding dress.

DCSL explained that the programme was filmed in a high street bridal boutique and it was therefore possible that members of the public, or other future brides, would be in view at times. It said that the programme makers therefore ensured that anyone trying on dresses or simply wandering into the shot would be fully aware that filming was taking place. The broadcaster said that in common with standard industry practice when filming in semi-public places, the programme makers provided appropriate information about both the filming and consent. It added that given the presence of a full film crew, the broadcaster believed that no one could have been in any doubt that filming was taking place. The broadcaster said that anyone entering the shop would have been greeted with a full poster-sized notice at eye-level on an easel which stated:

"CROWD NOTICE-RELEASE

Please be aware that by entering the premises, you consent to your voice and likeness being videotaped and used without compensation for exploitation on television and in any and all media now known or hereafter devised, and you release [the programme makers], its successors, assigns and licensees from any liability on account of such usage. If you do not wish to be on camera, please inform a member of the production team".

It said it was therefore unambiguous to anyone entering the premises that filming was taking place and that it was evident that the programme makers were willing to exclude anyone from being on film – if requested.

The broadcaster provided Ofcom with a floorplan of the shop which showed: the placement of the crowd release notice; the position of the camera crew (which comprised of four

cameras); and the position of Mrs Hatley in relation to them. The broadcaster said that the crowd release notice was clearly visible to any member of the public entering the shop and the cameras and crew were very prominent in the store.

DCSL said that at no stage before, during or after the filming did Mrs Hatley raise any objection to being filmed in the background with either the programme makers or the boutique. DCSL said that the footage of Mrs Hatley was extremely incidental to the programme and that there would have been no benefit or reason for not ceding to any request (had one been made) not to use that particular footage, or to blur her image, as it had done in the past with those who did not want to appear in the programme.

DCSL said it was not possible that Mrs Hatley was filmed without her knowledge and that she must have been aware that filming was taking place. DCSL also provided Ofcom with an email from Mrs Hatley to the boutique in which she referred to the cameras being present.

The broadcaster added that, in her complaint, Mrs Hatley claimed she was contacted four times by the production team and she told the programme makers that she "did not want to be on the show". It said that the programme makers had not been in contact with Mrs Hatley about the use of her image in the background. DCSL said that it understood there was a conflict of evidence in this case where differing accounts existed. However, it asked Ofcom to consider that:

- There was a general release notice in the boutique; and
- Mrs Hatley appeared for only three seconds, formed no part of the narrative and was purely incidental to the programme.

It said that it was, therefore, extremely unlikely that the programme makers would either need or wish to gain further consent for the use of her image and there would have been no reason to contact her. DCSL said that with the crowd release notice in place for members of the public, the programme makers did not make contact after filming with anyone in the show other than the cast brides and their party.

DCSL acknowledged the disagreement over facts, but said that it was clear that Mrs Hatley had given consent to feature in the background of the programme and no one would have, or did, contact her to seek permission to use her image in the programme. The broadcaster concluded that Mrs Hatley did not therefore, at any point, withdraw her consent and consequently, there had been no unwarranted infringement of privacy in the transmission of this programme.

Supplementary material

Given the factual dispute in this case, Ofcom requested that Mrs Hatley provide it with the telephone records she referred to in her complaint. Mrs Hatley provided Ofcom with a screen grab from her mobile phone screen which showed a series of calls between her and another mobile phone ("Mobile B") on 13 July, 16 July and 8 August 2016. These comprised:

- Two missed calls from Mobile B to Mrs Hatley's mobile phone on 13 and 16 July 2016;
- Two calls from Mrs Hatley to Mobile B on 16 July 2016 lasting 8 and 29 seconds;
- A call from Mobile B to Mrs Hatley on 16 July 2016 lasting 46 seconds; and
- A call from Mobile B to Mrs Hatley on 8 August 2016 lasting 59 seconds.

Mrs Hatley said that during the short conversations, the programme makers introduced themselves and asked her if she wanted to appear in the programme and that she had declined and stated she "didn't want to be on TV". In at least one of those conversations, Mrs Hatley was able to name the specific person she had spoken to. In addition, Mrs Hatley said that although she had seen the film crew in the shop she was not aware when they were filming and she had not seen the crowd release notice on the day she was filmed.

Ofcom provided this information to the broadcaster and asked it to respond. In a second statement, the broadcaster said it had conducted further investigations with the programme makers. It said that the telephone number on the screen grabs provided by Mrs Hatley was a pay as you go mobile phone which had belonged to the programme makers. The broadcaster explained that the mobile phone was a company phone and was passed between work colleagues. It said there was no record as to who had held the mobile phone and when, and as the device (and the associated number) was no longer in use it was not possible to interrogate further. Nevertheless, the broadcaster said that it appeared from the screen grabs that some very short conversations took place with Mrs Hatley on 16 July and 8 August 2016. It said it was possible, given the brevity of some of these calls, they were answer machine messages. DCSL said that no employee of the programme makers had any memory of contacting Mrs Hatley. However, the broadcaster confirmed that a person with the same name as that identified by Mrs Hatley had worked for the programme makers intermittently during the period over which the above telephone calls were made.

DCSL said that given this new information, while it was extremely difficult to reach definitive conclusions, it now accepted that some form of conversation between an employee of the programme makers and Mrs Hatley took place.

The broadcaster said that, due to the unambiguous disclosure notice at the entrance to the boutique and the prominence of the camera crew there are no circumstances in which the programme makers would need to contact people who appear in background of the programme as they would have given their informed consent. DCSL said it had unqualified confirmation from the programme makers that they never contact, post filming, someone who appears in the background. It added that it would simply not be practical to contact every person who appeared in the background after filming (and that the programme makers did not have these contact numbers). It said they therefore did not believe that Mrs Hatley was contacted to request permission to use her image in the background shot.

DCSL said that it "could only assume" that Mrs Hatley was contacted to see if she wanted to be one of the "featured brides" in a *future* programme. At this point the programme makers would have been unaware that she had already been captured in a background shot on a previous occasion. The broadcaster said that confusion may have arisen where the programme makers would have understood that Mrs Hatley did not want to be a featured bride in a future episode of the programme, whereas Mrs Hatley may have believed that she had made it clear to the programme makers that she did not want to appear in the episode currently at issue.

The broadcaster said that the programme makers had therefore sought informed consent from Mrs Hatley to be a featured bride, which she refused and so did not appear as such in a future programme. However, DCSL maintained that no consent was needed for her to appear in the background of the programme at issue because of the general release notice

and the general presence of the cameras which would have alerted Mrs Hatley to the fact that filming was taking place.

The broadcaster acknowledged that there remained some conflicting evidence in the case. DCSL said that while it considered that no unwarranted infringement of privacy had taken place, it had instructed the programme makers that its systems and procedures needed to be tightened up. It added that it considered that better record keeping by the programme makers could have potentially avoided the confusion that had been created by this case.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that the complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View. DCSL made representations which are summarised below. The complainant did not submit any representations.

DCSL's representations

DCSL said that Ofcom's Preliminary View appeared to "have been based on supposition and not the facts of the case." While the broadcaster accepted that some form of telephone communication took place between Mrs Hatley and the programme makers, it was impossible for Ofcom to deduce whether an actual conversation had taken place, or whether the phone records provided by Mrs Hatley comprised a series of answer-machine messages. To the extent that an actual conversation had taken place, the broadcaster did not consider it possible, based on the evidence, for Ofcom to deduce that Mrs Hatley had withdrawn her consent from appearing in the programme. DCSL noted that there were no "related notes or evidence of a long conversation between the two parties" and that, in the absence of such evidence, Ofcom did not have sufficient grounds to conclude that Mrs Hatley's legitimate expectation of privacy had been infringed.

DCSL reiterated its position that the programme makers had provided more than adequate information to customers in the shop that they may be filmed and that, in the absence of a specific request from Mrs Hatley that her image not be shown, she had provided informed consent. The broadcaster stated that the programme maker's method for acquiring consent reflected common industry practice. It expressed the concern that Ofcom's Preliminary View could have a significant impact on the current process for filming, and make it "incredibly difficult for film makers to produce such programmes" if people who "happened to appear in the background of a shot could simply claim that they were not aware of a prominent disclaimer and clear evidence of a programme being filmed".

DCSL also said that the Preliminary View did not address other inconsistencies in Mrs Hatley's evidence, such as the fact that the employee at the production company with whom she said she had spoken did not work on the days that the calls had been made or received.

Decision

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

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

We carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of it, and both parties' written submissions and supporting material including the screen grab of Mrs Hatley's mobile phone records. We also took account of the supplemental material provided to us by the broadcaster. Ofcom also took careful account of the representations made by the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View. After careful consideration of DC SL's representations, we concluded that the points raised by it did not alter our decision to uphold Mrs Hatley's complaint.

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

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

In addition to this Rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

In assessing Mrs Hatley's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her in her wedding dress was included in the programme without her consent, we had particular regard to Practice 8.6 of the Code which states that:

"If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted".

We first considered the extent to which Mrs Hatley had a legitimate expectation of privacy in relation to the broadcast of footage of her.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself in. Ofcom therefore approaches each case on its facts. As stated in the Code, there may be circumstances where people can reasonably expect privacy even in a public place. Some activities may be of such a private

nature that filming or recording, even in a public place, could involve an infringement of privacy.

As set out in the "Programme summary" section above, the programme included footage of Mrs Hatley at a bridal boutique in her wedding dress. Although Mrs Hatley was shown incidentally in the background for approximately three seconds, she was identifiable in that her face was fully visible. Also, Mrs Hatley's dress could be seen in reasonable detail, in that it was shown in full length from both the front, and the back and it was possible to establish the cut, colour and some detail to the garment.

Mrs Hatley was filmed in the public facing area of the boutique which was accessible to the general public and she could have expected other members of the public to have seen her dress as she walked around in that area. Mrs Hatley did not dispute that she was aware that the cameras were filming when she was in the boutique, but her concern was that she did not know that she specifically had been filmed and would appear in the programme.

In considering whether the footage which was broadcast revealed anything that was private or sensitive to Mrs Hatley, we noted the broadcaster's submission, that the revealing of a wedding dress prior to the wedding day might be the subject of "folklore" and "superstition" with regard to bringing "bad luck", but that this was not sufficient by itself to render a situation sensitive. In Ofcom's view, however, there is a widely held cultural tradition that a bride expects her wedding dress to be kept private until her wedding day and the detail of that dress, such as the design, colour and style is a matter which is private and sensitive to many brides. While Mrs Hatley may have been willing for other people within the boutique to see her in her dress prior to her wedding day, she may have reasonably expected that her future husband and those who she had invited to the wedding would not see it beforehand without her consent. We considered that the detail of her chosen wedding dress attracted a specific element of privacy for Mrs Hatley, which was sensitive to her and was the expression of a widely held cultural tradition.

Taking all these particular factors into account, we considered that Mrs Hatley had a legitimate expectation of privacy in relation to the broadcast of footage of her in her wedding dress prior to her wedding day.

Ofcom next considered whether Mrs Hatley had consented to the footage appearing in the programme. It is for programme makers to put in place systems that ensure participants in programmes are given clear information regarding their consent, if it is needed. Whether someone has given their consent to being included in a broadcast depends on all the relevant circumstances of the case.

The broadcaster stated that on the day of filming there was a crowd release notice positioned at the entrance to the shop. It provided Ofcom with a picture of the notice which stated: "by entering the premises, you consent to your voice and likeness being videotaped and used...on television... If you do not wish to be on camera, please inform a member of the production team". The broadcaster also emphasised that the camera crew would have been evident to anyone who walked into the shop and, that Mrs Hatley had not approached the programme makers to ask them to be excluded from the programme. It is on this basis that, in the broadcaster's view, Mrs Hatley had given her consent to appear in the background of the programme.

We noted DCSL's representations on the Preliminary View that the steps followed by the programme makers were widely used across the industry. We recognised that crowd release forms were one of a variety of methods commonly used by programme makers to obtain informed consent. We also noted the broadcaster's concerns that, moving forward, Ofcom's decision in this case could create difficulties for the industry if programme makers are not able to rely upon crowd release forms as a way of securing the informed consent of individuals who are ancillary to, or appear in the background of, broadcast programmes.

Ofcom also took into account Mrs Hatley's comments that although she was aware of the presence of the camera crew, she did not know she had been filmed. She also said she did not see the crowd release notice on the day she was filmed.

In Ofcom's view, the parties' submissions give rise to a factual discrepancy as to whether or not Mrs Hatley had consented to being included in the programme on the date the footage was filmed. Given the specific events which took place subsequently, however, namely the exchange of telephone calls between the programme makers and Mrs Hatley, it has not been necessary for Ofcom to determine this issue in this particular case.

As set out above, there is no dispute between the parties that some form of telephone conversation took place between them, by way of a series of relatively short calls during the period 13 July to 8 August 2016. Further, it appears to be common ground that the first call was initiated by an employee of the programme makers. By initiating a telephone discussion with Mrs Hatley after the filming had taken place, it appeared to Ofcom that the programme makers had provided her with an opportunity to clarify whether she had given her consent and, potentially, to withdraw that consent.

Mrs Hatley states that, at some point during those telephone calls, she stated that she "didn't want to be on TV". We also took account of the broadcaster's comments, that this statement may have been in response to a request for Mrs Hatley to appear as a featured bride in a future programme, rather than for her to appear in the background of the programme currently at issue. However, the 'Release Procedure' document provided to Ofcom by the broadcaster stated that Mrs Hatley "was never on that list" of brides, provided to the programme makers by the wedding boutique to approach as featured brides.

Whether or not there was a misunderstanding during those telephone calls as to which programme was being discussed (ie. either the current programme, or a future one), it is not clear to Ofcom that this made any material difference. In our view, Mrs Hatley's general statement that she "didn't want to be on TV" was applicable, irrespective of the particular scenario.

Ofcom also took into account DCSL's further representations on the Preliminary View, that it is impossible to deduce whether or not the phone calls which took place between Mrs Hatley and the programme makers were simply answer machine messages, or whether they were actual conversations. Ofcom also notes that DCSL has not provided to Ofcom any documentary records, file notes or other evidence which might contradict Mrs Hatley's recollection of the nature and purpose of the telephone conversations.

We also noted DCSL's comments that there were inconsistencies in Mrs Hatley's evidence with respect to the days on which she says that she made or received calls, and the days on which her named contact was actually working for the programme maker. These discrepancies were not, in Ofcom's view, material. On the basis of the evidence submitted

by both parties, it appears that calls were made or received on at least one of the days that the named contact was working for the programme makers. Further, the relevant mobile telephone number was at all times registered to the programme maker.

In all the circumstances, given the details provided by Mrs Hatley (including the fact that she was able to name the person working at the production company who had contacted her) it can, in our view, reasonably be inferred that Mrs Hatley's version of events was correct, and that she had, at some point between the filming of the footage and its broadcast, made clear to the production company that she did not want to appear in the programme.

Therefore, regardless of whether Mrs Hatley may have provided her consent while in the boutique, it appeared to Ofcom reasonable to conclude that, on the basis of the specific facts in this case, any such consent had likely been withdrawn prior to the broadcast of the programme (at latest, by 8 August 2016). Ofcom's view was based on the telephone records provided by Mrs Hatley (outlined above) and her recollection of the statements she made during those calls.

We therefore considered that Mrs Hatley did not give her consent for the footage of her in her wedding dress to be included in the programme. We went on to consider whether the infringement of Mrs Hatley's legitimate expectation of privacy was warranted.

The Code states that "warranted" has a particular meaning. This is that, where broadcasters wish to justify an infringement of privacy, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

DCSL did not put forward a public interest justification for the infringement of Mrs Hatley's privacy by including footage of her in the programme. Ofcom also considered more broadly the broadcaster's right to freedom of expression in broadcasting the programme. We took into account the broadcaster's statement that the footage of Mrs Hatley was "extremely incidental" to the overall programme. However, in the particular circumstances of this case, we did not consider it warranted to include the footage of Mrs Hatley without her consent.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression in broadcasting the footage of Mr Hatley and the audience's right to receive information and ideas without interference did not outweigh her legitimate expectation of privacy. Therefore, we considered that Mrs Hatley's privacy was unwarrantably infringed by the inclusion of the footage in the programme as broadcast.

Ofcom has upheld Mrs Hatley's complaint of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Mrs Emma Fisher on her own behalf and on behalf of Mr Steven Fisher

Undercover: Nailing the Fraudsters, Channel 5, 28 September 2016

Summary

Ofcom has not upheld Mrs Emma Fisher's complaint of unwarranted infringement of privacy, made on her own behalf and on behalf of her husband, Mr Steven Fisher.

The programme, which stated that it would "...expose some of the most outrageous fraudsters in Britain", included a segment which featured the complainant who had been, at the time of broadcast, convicted and sentenced for fraud offences. Mr and Mrs Fisher were filmed in their home as it was being searched by the police, and footage of this, and footage of Mrs Fisher being arrested for fraud, was subsequently broadcast in the programme.

Ofcom found that Mr and Mrs Fisher had a legitimate expectation of privacy both in connection with the obtaining of material included in the programme and in the programme as broadcast. However, on balance, and in the particular circumstances of this case, the public interest in filming and broadcasting the material, which showed the work of the police investigating crime, outweighed the complainants' right to privacy.

Programme summary

On 28 September 2016, Channel 5 broadcast an episode of the documentary series *Undercover* entitled *Nailing the Fraudsters*. The presenter introduced the programme:

"Fraud is the fastest growing crime in the UK and it's costing us over £50 billion a year. We expose some of the most outrageous fraudsters in Britain [Mrs Fisher was shown getting into a police car] ...and we'll go undercover to catch them red handed...This time I'll be investigating the scammers who tried to steal millions in insurance by faking illness, or even their own death...and the crooks so intent on cashing in, they stoop to unbelievable depths".

The segment featuring Mr and Mrs Fisher, which lasted approximately four minutes, began with the presenter explaining that fraudulent insurance claims in the UK "...push up all of our premiums by about £50 per person". He said that insurance fraud was on the rise and that because of this in 2012, "...insurance companies decided to take assertive action" and funded the establishment of a specialist department of the City of London Police, the Insurance Fraud Enforcement Department ("IFED"), led by Detective Chief Inspector Oliver Little, to investigate and prosecute insurance fraud offences.

A full-screen, close-up photograph of Mrs Fisher's face was shown and was subsequently shown several times throughout the segment featuring her case. The presenter provided commentary on the case and footage of DCI Little discussing the investigation was included:

DCI Little: *"The ways that people will try and exploit systems to earn money are always surprising to me.*

Presenter: *Much like a case in 2013¹. IFED was alerted to a fraudster who'd pulled off the highest number of dodgy claims they had ever seen.*

DCI Little: *This case was unusual in the persistence they showed and just how low they'd stoop.*

Presenter: *Emma Fisher had made a staggering 22 false claims to different insurers over a number of years and had faked some pretty serious illnesses to dupe insurers out of money.*

DCI Little: *She claimed to have cancer, to have suffered a miscarriage, and all sorts of other misfortunes, none of which was true, all of which was manufactured just to try and manipulate some money from people.*

Presenter: *She had received pay outs totalling almost £10,000 and was even moved into a specially adapted home to help her cope with a non-existent disability.*

DCI Little: *She was a menace to the insurance industry.*

Presenter: *And the lengths Fisher would go to secure a pay-out appeared endless. ... [S]he even called one of her insurance companies and impersonated a police officer in a bid to convince them to pay out".*

A reconstruction of this call was then included. An actor's voice was used for Mrs Fisher in which she stated:

"I don't know if you know the circumstances? She's actually terminally ill. She's classed as disabled at the moment unfortunately".

The presenter explained that in 2013², IFED had gone to Mrs Fisher's house to arrest her. Footage was shown of police officers outside of Mrs Fisher's house. They were shown knocking on the door and entering the premises.

DCI Little said:

"When we knock on the door, people are often very surprised to see us. I don't think many people think when they start off putting in some false details on a claim form, it's going to end up with police officers arriving at their house, searching their house and taking them to a police cell".

Detective Constable Alex Coon was then shown inside Mrs Fisher's house cautioning her. He said:

"I'm going to arrest you for a whole number of fake insurance claims. I'm also arresting you for impersonating a police officer, okay, which is a separate offence".

The presenter explained:

¹ Channel 5 has since explained to Ofcom that the footage of Mrs Fisher's arrest was filmed in 2012 and not 2013 as stated in error in the programme.

² Channel 5 has since explained that Mrs Fisher's arrest was filmed in 2012.

"With Fisher arrested, the IFED team then needed to find evidence that linked her to the many bogus insurance claims she'd made".

DC Coon asked Mrs Fisher if she could show him anything that would *"quicken our search"*.

The police officers were then shown going through paperwork on the floor.

The presenter stated:

"And, during the search, the lengths that Fisher would go to quickly became apparent".

Mr Fisher was shown sitting in the living room with his face turned away from the camera. He was not named and only the side of his head was visible and he was wearing a cap. His face was also blurred. A caption stated *"Emma Fisher's boyfriend"* (they have since married).

DC Coon: *"Who's Leah Bailey?"*

Mr Fisher: *"That's the Missus"*.

The presenter then said:

"Yes, Emma Fisher was also using aliases to make false claims and fake illnesses".

Mrs Fisher was then shown getting into the police car outside her house.

DCI Little stated:

"Altogether, that adds up to quite a significant amount of money, many thousands of pounds and I think all of that was taken into consideration, with a pretty heavy sentence for her".

The close-up still of Mrs Fisher's face was then shown again, and the presenter stated:

"In January of 2014, Emma Fisher pleaded guilty to 22 counts of fraud by false representation at Wolverhampton Crown Court and was jailed for 22 months. The court was asked to take into consideration another 43 counts of fraud".

The segment featuring the complainant ended. At the end of the programme, the presenter stated:

"Over the course of this investigation, I've been amazed at the lengths seemingly normal people will go to [footage of Mrs Fisher getting into the police car was shown again] to get their hands on an insurance pay-out that they're simply not entitled to".

Summary of the complaint and the broadcaster's response

- a) Mrs Fisher complained that Mr Fisher's and her own privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because neither of them gave consent to be filmed.

- b) Mrs Fisher complained that her privacy was unwarrantably infringed in the programme as broadcast because:
- i) Footage of her being arrested for fraud was included in the programme without her consent. Mrs Fisher said that she wanted to “put my life right” but was being prevented from doing this by the repeated broadcast of this footage. She said that she was “still being penalised for a crime that happened 4 years ago”.
 - ii) Footage of the inside of her home and her belongings, including, for example, pictures on the wall, and “personal paperwork”, was included in the programme without her consent.
- c) Mrs Fisher also complained that Mr Fisher's privacy was unwarrantably infringed in the programme as broadcast because footage of him in his home on the day his wife was arrested was included in the programme without his consent.

The broadcaster's response

Background

Channel 5 said that UK law does not provide that people have a right not to be on television, nor does the law prevent footage or photographs of people being taken and then broadcast without their consent.

The broadcaster said that what mattered in every case was whether or not rights were infringed, and, if they were, whether there was good reason for those rights to be infringed. It said that this required the balancing of the rights of privacy (Article 8 of the European Convention of Human Rights (“ECHR”)) against the right to freely broadcast matters of public interest (Article 10 of the ECHR).

Channel 5 argued that there could be no doubt that the investigation and resolution of criminal charges; the manner in which the law was enforced; and the kinds of difficulties investigating officers faced when executing their duties were all matters also of “acute public interest”.

Channel 5 said that, for all of these reasons, it considered that, generally speaking, it was appropriate and reasonable to include footage of people charged of crimes in programmes. However, the broadcaster acknowledged that each case would turn on its own facts, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in a programme.

Channel 5 explained that the original raid involving Mr and Mrs Fisher was shot by the production company in July 2012 as part of a BBC television series, *Claimed and Shamed* (a copy of which was not provided to Ofcom). It said that Mr and Mrs Fisher appeared in an episode of *Claimed and Shamed*, first broadcast on 19 October 2012. It said that this footage was more extensive than that used in *Undercover: Nailing the Fraudsters* and included the full search of the home and more sequences of the police officers talking to Mrs Fisher. The broadcaster said, however, that as Mrs Fisher had not been convicted at the time of initial broadcast, her face was blurred in the *Claimed and Shamed* programme. Channel 5 said that it was not aware of either Mr or Mrs Fisher having made any complaint about the footage included in *Claimed and Shamed*.

Response to the complaint

- a) Channel 5 said that it was true that Mr and Mrs Fisher did not give consent to the filming which occurred in their then home. However, it said that such consent was not required.

It said that the production company had been filming an active fraud investigation and that there was clear public interest in seeing the way that a fraud investigation played out and the issues that the investigating officers faced. The broadcaster pointed out that Mrs Fisher was subsequently convicted and imprisoned for fraud offences.

Channel 5 further said that to the extent that any privacy rights of either Mrs or Mr Fisher were engaged, they were outweighed by the public's rights under Article 10 of the European Convention on Human Rights (the "ECHR") to receive information and the right of Channel 5 to communicate that information.

- b) Channel 5 said that it was true that footage of Mrs Fisher was included in the programme without her consent. However, it said that the inclusion of such footage was entirely in the public interest and so Mrs Fisher's consent was not required.

Channel 5 said that Mrs Fisher was convicted of 22 counts of fraud in January 2014, had pleaded guilty to the charges and was sentenced to 22 months imprisonment. A further 43 counts of fraud were taken into consideration by the judge when sentencing her.

The broadcaster said that whether or not it was true that the crime "happened four years ago", Mrs Fisher was convicted less than three years ago and had she served her entire sentence, she would only have been released from prison last year. It said that her conviction would not be considered spent for some years to come.

Channel 5 said that Mrs Fisher's conviction was still very much in the public domain along with her image and provided Ofcom with examples of online news articles relating to Mrs Fisher.

Channel 5 also said that any personal photographs or personal paperwork shown in the programme were blurred and viewers could not have identified anything from the images which were broadcast.

The broadcaster further stated that the footage in question had been broadcast previously on the BBC (although Mrs Fisher's face was pixelated in the BBC programme) and was therefore no longer inherently private, if it ever was. It also said that there was clear and undoubted public interest in providing the public with details of matters which have been the subject of concluded criminal proceedings; and explaining the process involved in bringing to account those who engage in criminal fraud.

Channel 5 concluded that if any rights to privacy existed, the public interest in the case was sufficiently strong to outweigh those rights and permit broadcast.

- c) Channel 5 said that it was also true that Mr Fisher did not consent to being included in the broadcast. However, it said that Mr Fisher's face was blurred in the broadcast and although he may have been linked to Mrs Fisher, no person who did not know him

would have been able to identify him as a result of the broadcast. Given his interaction with the investigating officers, the public interest was served in showing those exchanges, given that steps were taken to protect his identity.

Channel 5 further stated that there was clear and undoubted public interest in: providing the public with details of matters which have been the subject of concluded criminal proceedings; and explaining the process involved in bringing to account those who engage in criminal fraud.

Channel 5 concluded that if any rights to privacy existed, the public interest in the case was sufficiently strong to outweigh those rights and permit broadcast.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mrs Fisher's complaint, made on her own behalf, and on behalf of her husband, Mr Fisher, should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant made representations which are summarised below (as relevant to the complaint). The broadcaster did not submit any representations.

Mrs Fisher's representations

Mrs Fisher said that the broadcast of the programme had humiliated her and caused harm to her family including her children as a result of the public recognition she had had because of the broadcast. She said that it was irrelevant to Ofcom's investigation when she had been released from prison and it was unfair that she should continue to be punished for her past. She said that the programme was preventing her from moving on with her life. She also did not agree that there was a public interest in the broadcast, which she considered was motivated by financial gain.

Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, the unedited footage filmed of the complainants, both parties' written submissions and supporting documentation. Ofcom also took careful account of the representations made by the complainant in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of Mrs Fisher's representations, we considered the points raised in our reasoning and concluded that they did not materially affect the outcome of Ofcom's decision not to uphold the complaint.

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

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

In addition to this Rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

- a) Ofcom considered Mrs Fisher's complaint that her and Mr Fisher's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because neither of them gave consent to be filmed.

In considering this head of Mrs Fisher's complaint, we had particular regard to Practices 8.5, 8.7 and 8.9 of the Code. Practice 8.5 states:

"Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted".

Practice 8.7 states:

"If an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue".

Practice 8.9 states:

"The means of obtaining material must be proportionate in all circumstances and in particular to the subject matter of the programme".

Mrs Fisher

In considering whether Mrs Fisher's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the extent to which she had a legitimate expectation of privacy with regard to the circumstances in which footage of her was filmed and was then re-used in the programme. The footage was originally filmed for another programme, but then re-used in this programme³. The Code's statement on the meaning of "legitimate expectation of

³ Ofcom understands that the arrest of Mrs Fisher and the police search of her and Mr Fisher's house was originally filmed by a production company in July 2012 for the BBC television series *Claimed and*

privacy” makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...”.

We assessed the nature of the material obtained and included in the programme. Mrs Fisher was filmed in her home being questioned and arrested by the police for fraud and for impersonating a police officer (as detailed above in the “Programme summary”). Her property, i.e. personal paperwork, was also filmed being searched.

Ofcom considered that a person filmed being arrested by police could reasonably be regarded as being filmed in a sensitive situation. However, whether or not someone has a legitimate expectation of privacy with regards to the filming of footage of them for broadcast while being questioned and/or arrested by the police depends on all the relevant circumstances. In relation to the specific circumstances in Mrs Fisher’s case, other than being questioned and arrested by the police on suspicion of committing serious fraud, Mrs Fisher was not filmed engaged in any conduct or action that could reasonably be regarded as being particularly private or confidential in nature. However, she was filmed inside her home and the interior of her home and personal belongings were also filmed. It is our view that, ordinarily, the filming of a person in their home could reasonably be regarded as attracting a legitimate expectation of privacy.

Therefore we considered that Mrs Fisher had a legitimate expectation of privacy in connection with the obtaining of the material included in the programme.

Ofcom next assessed whether the programme makers had secured Mrs Fisher’s consent for the footage of her to be filmed. It was not disputed between the parties that consent had not been obtained. We also saw in the unedited footage filmed and re-used in the programme that Mrs Fisher had asked not to be filmed. While being arrested by the police, Mrs Fisher said to the programme makers “Can you turn that [the camera] away please?” The arresting officer replied: “Yeah, okay, sorry guys can we just er..., not you, but so, you’ll be blurred, they wouldn’t, you wouldn’t be on camera, just in case you’re worried about that...”. While the programme makers moved out of the living room where Mrs Fisher was being arrested, they continued to film through the door, though focusing on the police officers and not Mrs Fisher. However, they later continued to film Mrs Fisher as she was being instructed to get ready to accompany the police officers to the police station. Further footage of Mrs Fisher was filmed as her house was being searched by the police and she said: “Would you mind please just chucking them out please, if you don’t mind”. The arresting officer asked: “Who’s that?” Mrs Fisher replied: “The whole film crew”. One of the programme makers responded: “I’m not filming you, I’m just filming, I’m just filming the police officers. And, if you are in shot, you won’t, you’ll be completely blurred...”. However, the programme makers continued to film Mrs Fisher.

Given that no consent was obtained, Ofcom went on to consider whether it was warranted to infringe Mrs Fisher’s legitimate expectation of privacy.

Shamed. The episode featuring Mr and Mrs Fisher was first broadcast on 19 October 2012. The same production company later made *Undercover* for Channel 5 using this same raw footage.

The Code states that “warranted” has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Ofcom considers that there is a genuine public interest in the making and broadcasting of programmes such as this, which show the work of the police and the challenges that they face. In particular, in this case, we considered that there was a public interest in a programme which explored the rise of fraud related crime, the cost it has on the UK economy, and the fact that a specialist police department, the IFED, had been established in an attempt to combat it. In this context, we considered that the filming of Mrs Fisher, who was subsequently convicted of a significant number of counts of fraud, was important. The obtaining of footage of Mrs Fisher in her house being arrested and questioned as part of the IFED officers’ investigation into the allegations of fraud made against her, enabled the broadcaster to illustrate, by way of a real example, the work of the police.

Ofcom also considered whether, in accordance with Practice 8.7, it was warranted for the broadcaster to continue to film Mrs Fisher in circumstances where she asked the filming to be stopped, and whether, in accordance with Practice 8.9, the footage filmed of Mrs Fisher had been obtained proportionately in all the circumstances. The footage was filmed while the programme makers accompanied the IFED police officers in carrying out their duties in combatting fraud by carrying out the arrest. We also considered that the filming was relevant to the subject matter of this section of the programme, which was exploring the work of the IFED in combatting fraud. The police arrived unannounced at Mrs Fisher’s house, and she let the police and the cameramen inside. The programme makers continued to film Mrs Fisher despite her asking that the filming be stopped, however, the filming appeared to be open and unobtrusive. Given these circumstances, and taking into account the public interest in obtaining the material, Ofcom considered that the means of obtaining it had been proportionate.

Taking all the above factors into account, Ofcom considered that, on balance, the broadcaster’s right to freedom of expression and the public interest in obtaining the footage of Mrs Fisher’s arrest and the police search of her and Mr Fisher’s house outweighed her right to privacy in the circumstances of this case.

Therefore, Ofcom’s decision is that Mrs Fisher’s privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme.

Mr Fisher

In considering whether Mr Fisher’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the extent to which he had a legitimate expectation of privacy (as defined above) with regard to the circumstances in which footage of him was filmed and then re-used in the programme.

We assessed the nature of the material obtained and included in the programme. Mr Fisher was filmed in his home while Mrs Fisher was being questioned by the police and arrested for fraud and for impersonating a police officer (as detailed above in the "Programme summary") and specifically the police were also filmed asking Mr Fisher to identify a name on some paperwork – an alias used by Mrs Fisher. We considered that being filmed at the time a partner was being arrested by police on suspicion of committing fraud and during a search of their shared house could reasonably be regarded as filming that person in a sensitive situation. It was also our view that, ordinarily, the filming of an individual in their home could reasonably be regarded as attracting a legitimate expectation of privacy.

Taking into account the above factors, we considered that Mr Fisher had a legitimate expectation of privacy in connection with the obtaining of the filmed material included in the programme.

Ofcom next assessed whether the programme makers had secured Mr Fisher's consent for the footage of him to be filmed. It was not disputed between the parties that consent had not been obtained. We also saw in the unedited footage filmed for the programme, that, in addition to Mrs Fisher asking several times that the filming be stopped, Mr Fisher also made it clear that he did not want to be filmed. On observing that Mr Fisher had realised that he was being filmed, one of the programme makers said: "I'm not filming you mate. I'm just filming the police officers". Mr Fisher responded: "I don't want to be on camera". However, the programme makers continued to film Mr Fisher.

Having reached the view that Mr Fisher had a legitimate expectation of privacy in relation to his being filmed, and given that the footage was obtained without his consent, Ofcom went on to consider whether it was warranted to infringe his legitimate expectation of privacy. As outlined above, the Code states that "warranted" has a particular meaning.

As also outlined above, Ofcom considered that there was a genuine public interest in the filming of this programme which showed the work of the police and explored the increase of fraud related crime. In this respect, we also considered that there was a public interest in filming Mr Fisher, who was present at the time his and Mrs Fisher's home was being searched, and who it seemed was willing to assist the police with their queries, and confirm that Mrs Fisher had used an alias.

Ofcom also considered whether, in accordance with Practice 8.7, it was warranted for the broadcaster to continue to film Mr Fisher in circumstances where he asked the filming to be stopped, and whether, in accordance with Practice 8.9, the footage filmed of Mr Fisher had been obtained proportionately in all the circumstances. The footage was filmed while the programme makers accompanied the police officers in carrying out their duties. Although the programme makers continued to film Mr Fisher despite him making it clear to them that he did not want to be filmed, the filming appeared to be open and unobtrusive. Given these circumstances, and taking into account the public interest in obtaining the material, Ofcom considered that the means of obtaining it had been proportionate.

Taking all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the

footage of Mrs Fisher's arrest and the police search of hers and Mr Fisher's house outweighed Mr Fisher's privacy in the circumstances of this case.

Therefore, Ofcom's decision is that Mr Fisher's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme.

- b) Ofcom considered Mrs Fisher's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her and her home was included in the programme without her consent.

We had particular regard to Practices 8.6 and 8.10 of the Code. Practice 8.6 states:

"If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted".

Practice 8.10 states:

"Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to the material obtained from others and the broadcaster's own material".

In considering whether Mrs Fisher's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the broadcast of the footage of her and her home included in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be considered in light of the circumstances in which the individual finds him or herself.

As set out in detail above at head a) and the "Programme summary" section, footage of Mrs Fisher in her home being questioned and arrested by the police for fraud and for impersonating a police officer was included in the programme. Mrs Fisher's face was shown clearly and she was identified in the programme by her full name.

The broadcast of the fact of a person's arrest and subsequent conviction, which is a matter of public record, may not be information about which that person has a legitimate expectation of privacy in the circumstances. However, it does not then follow that there can be no legitimate expectation of privacy in respect of the broadcast of the footage of that person being arrested and his/her interactions with police officers during those events.

We took into account that Mrs Fisher had said that she felt she was being "penalised for a crime that happened 4 years ago". We noted Mrs Fisher's concerns that she had been humiliated by the programme and that it had caused harm to her and her family as a result of the public recognition it had led to. While we acknowledge that the broadcast was capable of bringing her conviction for fraud to the attention of a wider group of people than those who would otherwise have been likely to have known about it, we did not consider that Mrs Fisher had a legitimate expectation of privacy in connection with the broadcast of the fact of her arrest or conviction in the circumstances. Mrs Fisher was

arrested in 2012⁴ and was convicted of fraud in January 2014, having pleaded guilty to the charges. She was sentenced to a term of imprisonment for 22 months. Under the Rehabilitation of Offenders Act 1974, her conviction will be spent 48 months after the last day of her sentence (i.e. the day of her release). Therefore, on the assumption that she served half of her sentence, we estimated that her conviction will not be spent until approximately January 2019. The footage was originally broadcast in the BBC *Claimed and Shamed* programme in 2012 (but with her face blurred) and the programme in question had been broadcast in 2016. In these circumstances, we did not consider that the fact of her arrest and conviction for the fraud offences could be seen to have receded into the past and become a part of the complainant's private life.

We next considered whether Mrs Fisher had a legitimate expectation of privacy in connection with the inclusion of the footage of her, and of the interior of her house and belongings, in the programme. We took into account the fact that footage of her being arrested in her home was previously included in the BBC programme, *Claimed and Shamed*, first broadcast in October 2012 (with her face blurred). The footage included in the programme of the interior of her home and her belongings within it did not reveal any particularly private or sensitive information about her. While the police officers were shown searching through Mrs Fisher's paperwork, no specific personal information pertaining to Mrs Fisher was discernible. However, in this particular case, it was Ofcom's view that, for the same reasons as set out above at head a), Mrs Fisher had a legitimate expectation of privacy with regards to the inclusion of the footage of her, and, also of the interior of her house and her belongings within it, in the programme. In particular, the footage showed her in a sensitive situation, being arrested and questioned by the police inside her own home.

Having come to the view Mrs Fisher had a legitimate expectation of privacy in relation to the inclusion of footage of her and her home and belongings in the programme, and given that this footage was included in the programme without her consent, we therefore went on to consider whether the broadcast of the material was "warranted" (as explained above under head a)).

As already set out above, the individual's right to privacy has to be balanced against the competing rights of the broadcaster's to freedom of expression. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights.

We carefully balanced Mrs Fisher's right to privacy in the broadcast of the footage of her and of her home and belongings in the programme, with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. For the same reasons as outlined in detail above at head a), Ofcom considered that there was a genuine public interest in the broadcasting of this programme which showed the work of the police and, in particular, explored the increase of fraud related crime, the cost it was having on the UK economy, and the fact that a specialist police department, the IFED, had been established in an attempt to combat it. It was in this context that Ofcom considered that there was a public interest in broadcasting the footage of Mrs Fisher's house being searched and her being arrested in relation to the IFED officers' investigation into the allegations of fraud made against

⁴ We acknowledged that the programme stated in error that Mrs Fisher had been arrested in 2013 (as outlined above at footnote 1). However, this inaccuracy did not materially affect our decision that this complaint of unwarranted infringement of privacy made by Mrs Fisher should not be upheld.

her. The footage enabled the broadcaster to illustrate, by way of a real example, the work of the police.

However, while Ofcom recognises that there is a genuine public interest in broadcasting programmes of this nature, whether an infringement of an individual's privacy is warranted in a particular case depends on all the relevant circumstances, including the time that had elapsed between the events depicted in the footage and its broadcast (or re-broadcast) and any material change in factual circumstances between the events depicted and the broadcast, and broadcasters should periodically review repeat broadcasts of programmes such as *Undercover* in this light. Similarly, broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme (as was the case here), does not create an unwarranted infringement of privacy, as outlined in Practice 8.10 of the Code. For instance, where, at the time of the original filming and broadcast or broadcasts, the public interest in revealing the identity, conviction and sentencing of an individual may have outweighed the individual's expectation of privacy, the balancing exercise may produce a different result when undertaken sometime later taking into account all the relevant circumstances when particular footage is re-used or a programme is repeated.

Taking all the above factors into account, we considered that, on balance, the public interest in broadcasting this particular footage at the particular time outweighed the complainant's expectation of privacy.

Therefore, Ofcom's decision is that Mrs Fisher's privacy was not unwarrantably infringed in the broadcast of the material in the circumstances.

- c) Ofcom considered Mrs Fisher's complaint that Mr Fisher's privacy was unwarrantably infringed in the programme as broadcast because footage of him in his home on the day of Mrs Fisher's arrest was included in the programme without his consent.

In considering this head of Mrs Fisher's complaint, we also had particular regard to Practices 8.6 and 8.10 of the Code, as outlined above.

In considering whether Mr Fisher's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in relation to the broadcast of the footage of him included in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in detail above at head a) and the "Programme summary" section, footage of Mrs Fisher in her home being questioned and arrested by the police for fraud and for impersonating a police officer was included in the programme. This included footage of Mr Fisher sitting in the living room with his back to the camera. Mr Fisher was not named in the programme and only the side of his head, which was blurred, was shown and he was wearing a cap. He was described by a caption as being "*Emma Fisher's boyfriend*" and his voice was heard as he responded to a question from a police officer. In these circumstances, we considered that, although Mr Fisher's face was not shown, he would likely have been identifiable to those who knew him and/or Mrs Fisher.

For the same reasons set out at head a), we considered that Mr Fisher had a legitimate expectation of privacy with regards to the inclusion of the footage of him in the programme. However, we considered that the intrusion on his privacy was limited by the fact that the footage included of him in the programme was very brief, his face was blurred, and the footage included in the programme did not reveal any particularly private or sensitive information about him.

Having come to the view Mr Fisher had a legitimate expectation of privacy, albeit limited, in relation to the inclusion of footage of him in the programme, and given that this footage was included in the programme without his consent, we therefore went on to consider whether the broadcast of the material was "warranted" (as explained above under head a)).

As also already set out above, the individual's right to privacy has to be balanced against the competing rights of the broadcaster's to freedom of expression. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights.

We carefully balanced Mr Fisher's right to privacy in the broadcast of the filmed footage of him in the programme, with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. For the same reasons as outlined in detail above at head a), Ofcom considered that there was a genuine public interest in the broadcasting of this programme which showed the work of the police and, in particular, explored the increase of fraud related crime. In this respect, we also considered that there was a public interest in broadcasting footage of Mr Fisher, who was present at the time his and Mrs Fisher's home was being searched, and who was shown assisting the police with their queries, including affirming that Mrs Fisher had used a false name. The footage enabled the broadcaster to illustrate, by way of a real example, the work of the police.

Taking all the above factors into account, we considered that, on balance, the public interest in broadcasting the particular footage at the particular time outweighed Mr Fisher's limited expectation of privacy.

Therefore, Ofcom's decision is that Mr Fisher's privacy was not unwarrantably infringed in the broadcast of the material in the circumstances.

Ofcom has not upheld Mrs Fisher's complaint, made on her own behalf and on behalf of her husband, Mr Fisher, of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Not Upheld

Complaint by Abort 67, made on its behalf by Tuckers Solicitors LLP *Dispatches Undercover: Britain's Abortion Extremists, Channel 4, 5 October 2016*

Summary

Ofcom has not upheld Abort 67's¹ complaint, made on its behalf by Tuckers Solicitors LLP ("Tuckers Solicitors") of unjust or unfair treatment in the programme, *Dispatches Undercover: Britain's Abortion Extremists*, as broadcast.

The programme investigated "...the anti-abortion protest groups importing shock tactics from America..." and featured Abort 67. Tuckers Solicitors said that Abort 67 was treated unfairly in the programme because: the programme was edited unfairly; Abort 67 was falsely accused of filming women using abortion clinics; and, Abort 67 was not provided with an appropriate opportunity to respond to claims made about it.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Abort 67.
- Abort 67 was provided with an appropriate and timely opportunity to respond to claims made about it in the programme, and its response was fairly reflected in the programme.

Programme summary

On 5 October 2016, Channel 4 broadcast an edition of its investigative programme *Dispatches Undercover*, entitled *Britain's Abortion Extremists*. The programme was introduced:

"Tonight on Dispatches, we've infiltrated the anti-abortion protest groups importing shock tactics from America... We find the NHS referring women to organisations telling lies about abortion and cancer... We're undercover on the clinic doorsteps where women are pursued [footage was included of an Abort 67 representative outside a clinic asking an undercover reporter whether she was considering an abortion]".

Footage of an Abort 67 conference was shown. Mr Gregg Cunningham stated:

"Is abortion child sacrifice? Well from a secular perspective, abortion is genocide, but from a scriptural perspective, it's child sacrifice. Somebody who used to work in the abortion industry who was a, is a former member of the Universal Church of Satan – there is such a thing. He claims that a substantial percentage of the people who work in abortion clinics are witches or Satanists or both".

The programme's presenter explained:

¹ According to its website, Abort 67 is a UK pro-life group advocating against abortion.

"The man speaking is Gregg Cunningham, a former Republican party politician, and now the Executive Director of the Centre for Bio-Ethical Reform ("CBR") in America. He's pioneered the use of graphic images to try and stop abortion. He runs the 'Genocide Awareness Project' – which claims abortion is the same as the Holocaust. Seven years ago, he helped set up a new group – Abort 67 – here in the UK. He says their aim should be to target and deliberately upset women at abortion clinics".

Mr Cunningham stated:

"Post abortive women are the women most at risk of aborting, they're the women we most want to upset. Because the problem is they weren't upset enough after their first abortion and they go and do it again".

The presenter then stated:

"Abort 67 is part of a new wave of activists importing the tactics and rhetoric of American anti-abortion extremists to clinic doorsteps across the UK. They wear cameras and display huge lurid banners with photos provided by their American colleagues".

While the presenter was speaking, footage of various anti-abortion banners was shown. The presenter stated:

"We've been gathering testimony from abortion clinics up and down the country, where women say they feel harassed and threatened. One woman, filmed by Abort 67 as she went in to a clinic, has written: 'I feel intimidated by being filmed. I was raped and have post-traumatic stress disorder. I felt calm coming here and now I can't breathe and feel panicky and judged. Last thing I needed'".

The presenter explained that other groups had also "...adopted the same intrusive tactics pioneered in the United States" and introduced "Ellie" as an example of "...one of the many women who've had to run the gauntlet". Ellie then gave details of her experience with such groups:

"On my way out of the clinic another woman was standing in my way and she physically blocked me from leaving, took hold of my arm and said something along the lines of you know 'we can save you' or 'we can help you'".

The presenter later stated:

"So how worried should we be about these American tactics being imported here?...In America, abortion is a violently contested issue...It has provoked some of the most controversial rows of the presidential campaign...Since 1993, 11 people have been murdered by anti-abortion extremists. Including three last November shot by a gunman in Colorado. He'd allegedly been inspired by a series of videos promoted by Gregg Cunningham's Centre for Biological Reform".

The presenter's comments were intercut with archive footage from the USA. This included MSNBC reporter, Ms Rachel Maddow, explaining:

"Somebody really does have to go around the country training abortion doctors and abortion clinic staff on how to spot bombs".

A representative from the National Abortion Federation also said:

"We didn't start in the United States with murders, we started in the United States with people peacefully protesting, and when that didn't stop abortion, they escalated their tactics".

The presenter then stated:

"This is a video by Abort 67, the UK offshoot of the Centre for Bio-Ethical Reform. It uses graphic images of aborted fetuses, too disturbing to show, to reveal what they say is the reality of abortion".

As the presenter was speaking, text from the video was shown:

"Warning – graphic abortion video to begin in two seconds. When abortion is hidden, abortion is tolerated – Don't hate the messenger – hate the injustice. Now that you have seen the reality of abortion, it's time to act. Don't let the message stop with you. Your gifts will help us expose more people to the injustice of abortion. Please donate today".

The presenter continued:

"Our reporter joins them. Ruth Rawlins, who runs their London team, starts the first day with a training video. It compares abortion to the Holocaust".

Part of the training video was shown, the trainer said:

"Let's take, for example, the Holocaust. What did they do first to the Jews? Well firstly, they dehumanised them in their language. They called the Jews pigs, they called them rats, so that it would be easier to kill them. What do we do nowadays in our society? Well we dehumanise the pre-born child".

The presenter then stated:

"Every week Abort 67 set up their huge banner with a picture of an aborted foetus opposite the entrance to this London clinic. They wear cameras, often pointed directly at the door, and there's always a protestor standing right by the entrance. They might not shout, but gruesome images in your face tactics are deliberately upsetting".

Footage of Abort 67 representatives was shown. A man was shown telling the representative that what they were doing was "traumatic" for him and his wife who had had an abortion. One of the representatives called after him:

"Yeah, but it's quite strange, you were allowed to be born and they aren't".

Footage of another Abort 67 training session was shown. The presenter stated:

"At an Abort 67 training session, the protestors are told upsetting people is exactly what they're there for. This is Pauline, a self-styled, post-abortive, counsellor".

Pauline explained:

"People who are talking to me, they often move around as they talk to me so they can't see the pictures. I step back and I encourage them to look and say 'have you seen these pictures?'"

The presenter stated:

"Pauline says this tactic caused one woman to collapse on the floor in tears".

Pauline said:

"I didn't give in to my instinct to comfort her. What real comfort could I give her? I said, 'yes, how awful, to think that that is what happened to your baby'".

The presenter then stated that:

"Another member of our team approaches the clinic posing as a patient".

Footage of an undercover reporter walking towards an abortion clinic was shown. The following exchange between the reporter and two Abort 67 representatives took place:

Representative: *"Excuse me, can I speak to you for a moment?"*

Reporter: *Sorry, about what?"*

Representative: *It's about abortion.*

Reporter: *I'm going to see the doctor.*

Representative: *About one?"*

Reporter: *I'd rather not say really.*

Representative: *I think the child is, is fully human.*

Reporter: *Yeah.*

Representative: *And there's plenty of other options available.*

Reporter: *Well, I'm just going to go see my doctor.*

Representative: *Can I introduce you to my friend Liz?"*

Reporter: *I need to go see my doctor.*

Representative: *Can I just introduce you to Liz, just before you go in?"*

Liz: *Are you considering an abortion?"*

Reporter: *I'd rather not say, to be honest".*

The presenter stated:

"Abort 67 approach women on their way out as well as their way in. It's a tactic that seems designed to upset".

As the undercover reporter was shown leaving the clinic, Liz said:

"It might be a legal law to abort, but it's not a moral law. It certainly doesn't go with God's law".

The presenter explained that *"One in three women in the UK will make the difficult decision to terminate a pregnancy"*. A 21-year-old woman, "Kitty", was interviewed about her experience and how she felt about being approached by a group of representatives from 40 Days for Life outside the clinic she had attended.

The programme then included further information about the group, 40 Days for Life and included footage of a 40 Days for Life conference. The presenter stated: *"...the talk quickly turns to genocide and mass murder"*. The President of the organisation stated:

"Because, right now we are living, not just in a genocide, but we are globally living in the genocide of all genocides, which is abortion".

Another speaker stated:

"The two most despicable ideologies of the 20th century – Communism and Nazism – and that's the origin of legalised abortion. Not women's rights, not pro-woman, not human rights".

The presenter stated:

"These American-inspired groups are causing considerable distress – but are their tactics legal? We show our evidence to public law expert Louise Whitfield".

Ms Whitfield said:

"There's legislation creating a criminal offence of harassment and there's also legislation creating a criminal offence of using threatening words or behaviour. And, from what I've seen, there's a very strong argument that what they're doing falls into either of those categories".

The presenter then said:

"We also take what we've filmed to the MP, Keir Starmer, former Director of Public Prosecutions for the Crown Prosecution Service".

Sir Keir Starmer was shown watching footage on a laptop of an undercover reporter interacting with Abort 67 representatives outside a clinic. He said:

"It's very troubling. This is an intended and gross invasion of privacy and dignity for women accessing healthcare".

The presenter said:

"But, he says, because of the difficulties of mounting a criminal case, changes to the law are needed urgently".

Sir Keir Starmer said:

"We've got laws that protect people from things that cause them great anxiety and distress. The problem with those laws, in a sense, is that it requires the individual to come forward, and I doubt that many women who were subjected to this conduct, that we've seen, would want to go through that process".

The presenter stated:

"Now Keir Starmer is planning to organise a cross-party group of MPs to design and push forward new legislation. That might include buffer zones around clinics".

Sir Keir Starmer said:

"I think for years we've thought that physical violence is the touchstone of all that is wrong, but we've learnt that mental anguish and causing people real distress and anxiety can be every bit as harmful as physical acts".

The presenter then said:

"Gregg Cunningham of Abort 67 told us:

- *The use of shock tactics does not come from America, but the fight against the slave trade in Britain.*
- *Abort 67 is going to wage war on abortion as long as abortion wages war on unborn children.*
- *The abortion industry hysterically disputes any study which exposes the dangerous side effects of abortion.*
- *Dispatches has failed to find any evidence of criminal misconduct, and it is false to claim that your reporter was harassed on her way to the clinic.*

On the use of graphic images, he said:

- *Abortion is child sacrifice and it represents depravity so unimaginable that it cannot be fathomed until seen".*

A response from 40 Days for Life was also included.

The presenter then said:

"But these groups aren't just importing intrusive American-style tactics to stop women having abortions. Some activists are setting up so-called 'crisis pregnancy centres' – another US import – to try and stop women, by lying to them".

Footage of a 40 Days for Life conference was shown. One of the speakers was Ms Clare McCullough, who the presenter explained was the "...founder of the Good Counsel Network, a British group affiliated to 40 Days for Life. She runs a crisis pregnancy centre".

The presenter showed secretly filmed footage of an undercover reporter posing as a patient in a consultation with Ms McCullough to consultant gynaecologist Dr Kate Guthrie. In the footage, Ms McCullough informed the undercover reporter that abortion increased the risk of breast cancer. On viewing the footage, Dr Guthrie stated that "...there is no evidence that links abortions with an increase in breast cancer..." and that the advice was "very damaging".

The presenter also said that the programme makers had obtained evidence of the Good Counsel Network advising some women that their doctors might have given them the incorrect medical advice, that by continuing their pregnancies, they might be putting their lives at risk.

A formal response from the Good Counsel Network was included in the programme.

Further footage of Sir Keir Starmer was shown. He said:

"On the face of it, there is nothing wrong with groups in America and groups in the United Kingdom, talking about protest and how they do it. But it is the tactics of it, and these are carefully constructed tactics that are intended to absolutely cause anxiety and concern. In America, this has gone even further than we've seen in this country and I think because of that link, we have to work on the basis that will, that this conduct will escalate here".

The presenter ended the programme:

"Arguments continue about the balance between freedom of speech and a woman's right to access legal healthcare without fear of intimidation. But for now, many women continue to feel harassed and intimidated, as the daily protests on the clinic doorsteps continue".

Summary of the complaint and the broadcaster's response

Tuckers Solicitors complained, on behalf of Abort 67, that Abort 67 was treated unjustly or unfairly in the programme as broadcast because:

- a) Footage included in the programme was edited to give the misleading impression that Abort 67 was "...encouraging obstreperous, uncompassionate, gratuitous misbehaviour such as following and/or harassing women" and that its representatives' actions were "tantamount to criminal conduct".

For example, the presenter stated "We're undercover on the clinic doorsteps where women are pursued" and footage was included of an Abort 67 representative outside a clinic asking an undercover reporter whether she was considering an abortion. The reporter said that she did not want to say. Tuckers Solicitors said that this footage was deceptively edited to make it appear that the representative was following the

undercover reporter "against her will". It said that Abort 67's own footage of the same encounter showed that the undercover reporter repeatedly made herself available for conversation. It said that despite the programme's false claim that the undercover reporter said that she did not want to talk, at no time did she say "don't talk to me, go away or leave me alone" to the Abort 67 representative.

Tuckers Solicitors also said that Abort 67 had its own footage of a second undercover reporter, "Mary", who was acting undercover as an Abort 67 representative, agreeing that she had not seen Abort 67 harass anyone.

- b) The programme falsely accused Abort 67 of deliberately filming women using abortion services.

For example, the programme stated that Abort 67 representatives wore cameras "*often pointed directly at the door*" and that "*One woman, filmed by Abort 67 as she went in to a clinic, has written: I feel intimidated by being filmed. I was raped and had post-traumatic stress disorder. I felt calm coming here and now I can't breathe, I feel panicky and judged – last thing I needed*". Tuckers Solicitors said that Abort 67 did not film women going into abortion clinics and that there was no evidence of it broadcasting footage of pregnant women either entering or leaving abortion clinics.

Tuckers Solicitors clarified that Abort 67 did use body cameras, but that these were "...to protect our staff from false allegations of the sort *Dispatches* maliciously levels at us..." in the same way body cameras were used by the police.

- c) Abort 67 was not given an appropriate opportunity to respond to claims made about it in the programme.

It said that Abort 67 had requested that it be given the opportunity to "respond on film", but that this was refused by the programme makers, with the explanation that they would "only permit a written response that they would then edit". It said that had Abort 67 been given a "fair chance" to respond to the claims made in the programme, it would have "provided substantial evidence to the contrary".

The broadcaster's response

Channel 4 said that the programme as broadcast was a fair and accurate reflection of the behaviour and statements made by Abort 67 representatives. It said that there was:

"...nothing to suggest – either in the Complaint or in the Programme as broadcast – that any of the comments made by Abort 67 and broadcast in the Programme were made other than of Abort 67 representatives' own free will, anything other than their genuinely and strongly held opinions, and nothing either to suggest that they were improperly solicited or support the allegation that they were taken out of context".

Addressing each of the heads of complaint:

- a) Channel 4 said that it rejected any suggestions that the broadcast incident of an undercover reporter being approached by an Abort 67 representative outside a clinic on 22 April 2016 was edited unfairly or deceptively.

It said that the footage in question showed the representative asking the undercover reporter whether she was considering an abortion, and the reporter responding that she did not want to say. The broadcaster provided a copy of an unedited transcript which it said set out the full conversation between the undercover reporter and the two Abort 67 representatives of 22 April 2016.

Channel 4 set out the details of the conversation that took place. It said that when the reporter arrived at the street corner where the clinic was located, the male Abort 67 representative, who was in a wheelchair and wearing a body camera, asked if he could speak to her.

The male Abort 67 representative followed the undercover reporter as she walked the full length of the street leading up to the clinic, continuing to question her after she had made it clear she did not want to discuss what she was doing there. Before entering the clinic, they were joined by a second female representative at the entrance to the clinic who the male representative introduced as "Liz", and who also asked the reporter whether she was considering an abortion. In response to persistent questioning from the male representative and his colleague, Channel 4 said that the undercover reporter stated three times that she did not want to tell them her reasons for going to the surgery, and stated repeatedly that she wanted to go into the clinic and speak to her doctor.

Tuckers Solicitors claimed that the undercover reporter made herself available for conversation, by slowing down and failing to say "words which indicate that she does not wish to engage in any conversation," and that the programme was therefore deceptively edited to make it appear that the Abort 67 representative was following the undercover reporter "against her will". The undercover reporter did not explicitly say to the two Abort 67 representatives "don't talk to me, go away or leave me alone" – and nowhere in the programme was it stated that she did specifically ask the representatives not to speak to her at all. However, Channel 4 said that the reporter's demeanour, and her responses made it plain to the Abort 67 representatives that she did not want to talk or answer their questions as she was entering the clinic. Channel 4 said that, as a result, the impression given in the programme was in no way misleading.

Channel 4 further said that the impression that the undercover reporter was being harassed by the Abort 67 representative was not rendered misleading simply because she could easily have outrun the representative in a wheelchair had she wished to get away, as Tuckers Solicitors suggested. It was reasonable to expect that after a woman entering a medical clinic has responded "*I am going to see my doctor*" and "*I would rather not say*" to questions about whether she was considering an abortion, those questions should be interpreted as unwelcome. It said that it would not be unexpected for a woman entering an abortion clinic to remain polite to a stranger, despite clearly wishing to be left alone; the onus should not be on her to run away. Rather than respecting the woman's clear wishes and ceasing questioning her, the man continued to follow the undercover reporter, pressing her on whether she was considering an abortion and requesting that she speak to his colleague. Channel 4 said that the incident as broadcast accurately reflected what took place as the undercover reporter was entering the clinic. It said therefore, that Tuckers Solicitors' allegation of misleading, or deceptive editing was unfounded.

Channel 4 also said that it rejected the allegation by Tuckers Solicitors that the programme was edited to give the misleading impression that Abort 67 representatives'

actions were “tantamount to criminal conduct”. The broadcaster said that its own procedures and guidelines were adhered to rigorously from the very start of the investigation all the way through to its broadcast. There was extensive editorial and legal scrutiny of the investigation and the programme at every stage, with scrupulous attention being paid to fairness and accuracy at all times, including during the editing process.

Channel 4 said that extensive research was undertaken for over a year, and expert advice and comment was sought from two lawyers, Ms Louise Whitfield and Sir Keir Starmer MP. They reviewed the evidence gathered by the programme makers, including:

- activities of Abort 67 representatives shown in undercover footage and training videos;
- a detailed report by Aston University analysing comments and complaints by British Pregnancy Advisory Service (“BPAS”) users that specifically referenced the activities of Abort 67;
- evidence gathered from clinic staff, women and family of patients who had been approached outside clinics by Abort 67 representatives;
- complaint forms shown to the programme makers by the BPAS; and,
- news reports.

Channel 4 said that, as they explained in the broadcast programme, Ms Whitfield and Sir Keir Starmer formed the view that Abort 67 demonstrated behaviour that could form the basis for a criminal complaint.

The broadcaster said that evidence gathered by the programme makers indicated that Abort 67 were fully aware of the way in which their behaviour made women feel. For example, it said that the programme makers obtained both public and “unpublished” footage of BPAS staff confronting Abort 67 about their activities and the feeling of harassment and intimidation it was causing women entering and leaving the clinic. In addition, Channel 4 said that complaints had been raised with the group on several occasions that they responded to in camera interviews, as well as in video footage or via social media.

Channel 4 next addressed Tuckers Solicitors’ concerns raised about the undercover reporter “Mary”, who posed as an Abort 67 representative. Channel 4 said that, as Tuckers Solicitors correctly observed, “Mary” was undercover when she commented to other Abort 67 representatives that she had not seen them harass anyone. Channel 4 said that the statements were, therefore, made with a view to maintaining her cover, and not because she had not seen any misbehaviour or evidence of harassment by other Abort 67 representatives.

Channel 4 said that the programme featured a subject matter of serious public interest, and based on research, including testimony from staff and patients, there was a strong basis for believing that Abort 67’s activities were deliberately intended to cause distress, upset and harassment to women considering an abortion. It said that it would have been highly unlikely that Abort 67 would permit a film crew to film openly within the organisation without wishing to monitor and control the access. Channel 4 said that it

was satisfied that infiltrating Abort 67 undercover was the only means of obtaining information on the organisation's tactics directly from Abort 67 representatives, and substantiating the serious allegations of misbehaviour and harassment. The broadcaster said that for this reason, the level of subterfuge was entirely justified in the circumstances.

Channel 4 said that in light of the above, it strongly disagreed with Tuckers Solicitors' contention that the undercover footage involving Abort 67 representatives was edited to create a misleading impression of Abort 67 activities. It said that the excerpts broadcast in the programme were a fair and accurate reflection of the unedited footage.

- b) Channel 4 noted that the programme stated that Abort 67 representatives "*wear cameras often pointed directly at the door.*" It said that Tuckers Solicitors expressly admit that Abort 67 use body cameras, but claim that Abort 67 does not film women going into abortion clinics.

Channel 4 said that this claim by Tuckers Solicitors was "undeniably false". The broadcaster said that whether Abort 67 intend to capture footage of women or not, the undercover recording broadcast in the programme demonstrated that Abort 67 had filmed people entering and leaving the clinic when protesting outside the Blackfriars Medical Practice. It said that on every occasion the reporter had filmed undercover with Abort 67 at the protest at Blackfriars Medical Practice, at least one, and sometimes two, of the Abort 67 representatives wore body (Go Pro) cameras. It said that one person wearing a camera was nearly always positioned next to the banner opposite the clinic entrance, and so, even if they did not intend to, they would have had the camera pointed towards the clinic entrance and would have filmed women entering and exiting the clinic.

Tuckers Solicitors further objected to the programme on the grounds that there was no evidence of Abort 67 broadcasting footage of pregnant women either entering or leaving abortion clinics. Tuckers Solicitors said that "No evidence exists, because [Abort 67] simply do not do this". However, Channel 4 said that the programme did not allege that Abort 67 broadcast footage of women entering or leaving abortion clinics. Rather, it said the allegation in the programme was that Abort 67 film in such a way that women entering and leaving clinics may be captured and identifiable on camera – and that they do so with the knowledge that it causes women distress.

Channel 4 further said that the programme explained that the use of cameras is one of the "*in your face tactics*" that are "*deliberately upsetting*" to those women. That is, it said, because the act of wearing cameras and filming is something women find intimidating and distressing. Channel 4 said that testimony and information from clinic staff and women attending the Blackfriars Medical Practice, and others across the country targeted by Abort 67, provides extensive evidence that women have been filmed entering and leaving clinics that provide abortion services, and that this has caused them considerable upset and distress. For example, it said that one woman provided the following written testimony to BPAS after being filmed by Abort 67 at a clinic in Brighton:

"I feel intimidated by being filmed. I was raped and have post-traumatic stress disorder. I felt calm coming here and now I can't breathe and feel panicky and judged. Last thing I needed".

The broadcaster said that in another (non-broadcast) interview with a news publication, one clinic staff member said:

“They have a camera set up on a tripod, which gives the impression they are filming or photographing those entering and leaving the building. We don't know what images have been recorded and what they are used for but the end result is the women seeking our help often feeling scared and intimidated”.

It said that this was further substantiated in a detailed report published by Aston University, which examines comments and complaints by BPAS users, and which the broadcaster said specifically references the activities of Abort 67. Channel 4 said that the report found that women feel angry, harassed, intimidated and upset by the activities of anti-abortion representatives, including Abort 67 and their use of cameras. The broadcaster highlighted examples of testimony from women on the use of filming.

Channel 4 said that in analysing this material, Sir Keir Starmer told the programme makers that *“the use of cameras highlights that this is an intended and gross invasion of privacy and dignity for women accessing healthcare”*. The broadcaster said that the allegation in the programme that Abort 67 use cameras knowing that it causes distress was further evidenced in undercover footage and press reports:

- Undercover un-broadcast footage, recorded by the programme makers on 14 January 2016, showing a representative from Abort 67 who went by the name “Nicky” telling the undercover reporter that Abort 67 are aware that people do not like the cameras: “Most people don't notice, but yes. They don't like to be filmed. And one can understand that. But, we've got to. Because we can be accused, and we are accused, of lots of things.”
- Archive footage obtained outside a London clinic by journalist Sunny Hundal and uploaded online in December 2014, recording staff from the BPAS verbally requesting that Abort 67 representatives refrain from filming because it was making women entering and leaving the clinic feel harassed and intimidated. The incident was widely reported in the press.
- According to press reports, Abort 67 has also been approached by women who have told it directly that the filming is upsetting to them, and others.

Channel 4 said that even if Abort 67 uses the footage obtained from the body cameras for its own protection, as argued by Tuckers Solicitors, this did not render the allegations in the programme misleading. The broadcaster said that the allegations that Abort 67 film women entering and exiting clinics, and that it continues to use cameras with the knowledge that it makes women and staff at the clinic feel upset and intimidated, was fully supported in both the broadcast programme and the unpublished materials referenced in its response to Ofcom.

- c) Channel 4 said that in the interests of fairness and to give Abort 67 an opportunity to respond to the programme makers' findings, a right to reply letter was sent by the programme makers to Abort 67 on 23 September 2016. This letter set out in full the allegations and supporting evidence that it was intended would be included in the programme. Those findings included the following:

- Undercover footage obtained by “Mary” who attended meetings at the Abort 67 Clarkson Academy on 2 and 3 October 2015 and protests outside the Blackfriars Medical Practice between 14 January and 18 March 2016. The letter set out in detail the footage of Mr Gregg Cunningham and the allegations against him that would be included in the programme, as well as specific examples of intimidation by Abort 67 representatives recorded on camera during the protests outside Blackfriars Medical Clinic.
- Undercover footage obtained by a second reporter “Laila” when posing as a patient at the Blackfriars Medical Practice, specifically describing the allegation of the undercover reporter being followed by an Abort 67 representative.
- Testimony from women who have encountered Abort 67 representatives at clinic entrances who said they felt intimidated, harassed and threatened.
- Specific examples of the areas in which Abort 67 activities constitute potential breaches of the law (including the use of cameras), to be discussed in the programme, based on evidence the programme makers gathered from their undercover reporters, as well as from the evidence of women and clinic staff. The letter included direct quotes from the public law experts interviewed for the programme.
- Comparisons between the anti-abortion movement in America and the tactics being used by anti-abortion groups such as Abort 67 in the United Kingdom.

Channel 4 said that there was no question that the right to reply letter was sufficiently detailed for Abort 67 to provide a considered response. It said that Abort 67 was given five working days in which to respond, in compliance with the requirement under the Code and Channel 4's own guidelines to provide a reasonable time to respond to requests for right to reply. The response was requested to be in writing.

The broadcaster explained that on 26 September 2016, Abort 67 sent an email to the programme makers asking if Abort 67 could respond on camera to the questions and points by way of an interview with Mr Cunningham. The programme makers responded by email the following day, 27 September 2016, explaining that Mr Cunningham and Abort 67's views would be represented within the programme, and repeated the request for a written statement by 5pm on 29 September 2016.

Channel 4 said that on 27 September 2016, Abort 67 again responded in an email requesting a filmed interview with an Abort 67 representative and Mr Cunningham, stating that “[i]t seems that Gregg Cunningham's quotes have been taken out of context, and we want to provide that context in person on camera in the same way you have interviewed our critics”. However, the broadcaster said that Abort 67 provided no substantiation or explanation for these assertions and requested a copy of “...the footage and audio of the alleged “following” incident to allow us to investigate and provide an informed response.”

On 28 September 2016, the programme makers responded to Abort 67, explaining that “In accordance with standard industry practice, it is our policy not to provide any footage filmed during our investigation to third parties prior to broadcast. Nor do we provide previews of Programmes in these circumstances, and we are not obliged by the Ofcom

code to do so". Channel 4 said that the programme makers responded saying they were confident that the views of Mr Cunningham as broadcast in the programme were placed fairly in context, and reiterated their request for a written response by the following day.

Channel 4 said that Abort 67 sent a brief reply on 28 September 2016 asking if the alleged "following" incident involved a man in a wheelchair. On 29 September 2016, the programme makers then received a 39-page letter from Mr Cunningham in response to their request for his reply. The programme makers also received an email from Tuckers Solicitors indicating that they had been instructed by Abort 67, they were in the process of taking instructions, and they were drafting a response which would be sent later that evening or the following morning.

On the morning of 30 September 2016, the programme makers received an email from Tuckers Solicitors stating that they understood that their client had formally responded and "there is no need for us to comment further at this stage". On 5 October 2016, Mr Andrew Stephenson from Abort 67 sent the programme makers an email attaching a copy of a 'press release' which was a version of the response sent to the programme makers on 29 September 2016.

Channel 4 said that Tuckers Solicitors claims that Abort 67 was "not given an appropriate opportunity to respond to claims made about it in the Programme", on the basis that Abort 67 was "only permit[ted] a written response that [the programme makers] would then edit." Tuckers Solicitors further claims that had Abort 67 been given a "fair chance" to respond to the claims made in the programme, it would have "provided substantial evidence to the contrary".

However, Channel 4 said under the Code, there is no prescribed format that a right of reply should take and no requirement to permit a response on-camera. It said that the format for a right of reply must simply provide "an appropriate and timely opportunity to respond," and the programme makers and Channel 4 are entirely free to edit any response, provided that editing is "fair". The broadcaster said that at no time following receipt of the 23 September letter and prior to broadcast did Abort 67 or Tuckers Solicitors, or any representative of either, suggest that they did not have sufficient time to respond. It said that despite the suggestion by Abort 67 that it was not given a "fair chance" to respond, the "very lengthy written statement provided by Abort 67 indeed suggests that they had ample time and opportunity to provide a detailed response". Channel 4 said that, finally, there was not the time or space in the programme to lay out the 39 pages of response provided by Abort 67, and nor would it have been reasonable or fair to do so. However, it said that the edited response by Abort 67 as broadcast in the programme provided a fair and accurate summary of its position.

For these reasons, Channel 4 said it strongly disagreed with Tuckers Solicitors' contention that Abort 67 was not given a fair and appropriate opportunity to respond.

Conclusion

Channel 4 said that there was no unfair treatment of Abort 67. It said that the comments and behaviour of Abort 67's activities recorded in undercover footage and broadcast in the programme, were made freely and without prompting and were fairly and accurately edited. The broadcaster said that the allegation that Abort 67 deliberately films women using abortion services was widely supported in the broadcasted footage, testimony from clinic

users and workers, statements by Abort 67 representatives, press reports, a published study, and expert interviews. Finally, Channel 4 said that it was not required under the Code to provide an opportunity to respond on-camera or refrain from editing any response, provided that the format and editing of the response was fair. It said that Abort 67 was given sufficient time to respond in detail, and its position was fairly and accurately summarised in the programme. It said that Tuckers Solicitors had, therefore, failed to identify any basis for claiming that Abort 67 was not given a fair opportunity to respond.

Channel 4 said that nothing in the making or the broadcast of the programme amounted to unfair or unjust treatment of Abort 67 or its representatives.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Abort 67's complaint, made on its behalf by Tuckers Solicitors, should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant made representations which are summarised below. The broadcaster did not submit any representations.

Abort 67's representations

Background

The complainant, through Tuckers Solicitors, said that:

- It maintained its position that Abort 67 had been treated unfairly in the programme as broadcast. In particular, Tuckers Solicitors stated that the programme had deliberately mischaracterised Abort 67's work. Further, "baseless assertions in the aggregate created a wildly inaccurate and therefore unfair report"; such assertions included the name of the programme itself (i.e. *Undercover - Britain's abortion extremists*), and the connections made in the programme between Abort 67 and violent activities carried out by individuals in the U.S which, in Tuckers Solicitors' view, created the impression that Abort 67 was "guilty by association".
- BPAS and its supporters had attempted to have Abort 67 shut down and provided information which it considered supported this. It said that the nature of allegations being made against Abort 67 by such groups without supporting evidence was behind its decision to use cameras to record its representatives' activities.
- Abort 67 considered that its right to freedom of speech was being threatened and that Ofcom had a responsibility to stop any such attempts.

Head a)

The complainant, through Tuckers Solicitors, said that:

- It disagreed with Ofcom's view that the incident involving the undercover reporter outside the abortion clinic had not been edited unfairly. It said that: "A marginally shorter video can completely transform the viewers' opinion". It said that viewers were not privy to the full transcript of the incident and the footage was edited in such a way as to not include the undercover reporter's body language, which it said the Abort 67's representative had fairly interpreted as the reporter "...not being closed to discussion". It

said that the unedited footage showed the reporter constantly stopping and turning to face the male Abort 67 representative.

- The impression that Abort 67 was preventing access to women attending abortion clinics, by following them down the street, was untrue and it provided information which it said was evidence that its "opponents" admitted that: "we [Abort 67 representative] are polite, not rude and allow people to walk on by if they do not wish to engage".
- It maintained its position that the programme was edited to give the misleading impression that the actions of its representatives were "tantamount to criminal conduct".
- With regard to the footage filmed of the undercover reporter "Mary", if anyone had been harassed as to cause the police or BPAS to contact Abort 67, then this footage would have been captured, given that Mary was present and filming at the time. Tuckers Solicitors further stated that given "...no footage of harassment was produced by...[the programme makers] (either within the programme or in response to [Abort 67's] complaint) strongly suggests that: a) Nothing of note occurred preceding the BPAS spokesperson approaching [Abort 67], which warranted their complaint and; b) Mary's replied truthfully and not for the purpose of maintaining her cover".

Head b)

The complainant, through Tuckers Solicitors, said that:

- To state that Abort 67 representatives "cameras are 'often pointed directly at the door' is inherently misleading and deceptive". In Tuckers Solicitors' view, "[i]t could equally be reported that the cameras are often pointed at the banner, or up the road, or at fellow volunteers".
- With regard to the research undertaken by the programme makers in ascertaining whether Abort 67 was using cameras to film women attending clinics, and to understand the responses of those women who had been filmed, the sources relied on by the programme makers were "inherently biased and flawed".
- The programme failed to explain that the reason Abort 67's representatives stood opposite clinics was because they had been asked by the police not to stand directly outside clinics. It also said that Abort 67's use of body cameras had increased because of advice given to it by the police about not using tripod cameras. Tuckers Solicitors therefore said that Abort 67 had complied with requests from the police, which it said showed a willingness to co-operate and not a desire to film women entering or leaving abortion clinics.
- Abort 67's representatives' reasons for wearing the body cameras was not made clear in the programme. It reiterated that Abort 67 representatives did not intentionally film women entering and leaving abortion clinics, but wore body cameras to protect themselves from "...the very clear and real threat of violence and following a history of false accusations".

Head c)

The complainant, through Tuckers Solicitors, said that:

- Abort 67 was not provided with “an effective opportunity” to respond to the claims made about it in the programme.

It said that Abort 67 received a letter from the programme makers at 11.18am on 23 September 2016, requesting that Abort 67 provide a response to claims made by 5pm on 28 September 2016. It therefore said that Abort 67 was not given five working days in which to provide its response, but only three and a half. Tuckers Solicitors said that Abort 67 had not asked for an extension because the programme was due for broadcast on 5 October 2016, and it was its understanding that it would proceed with or without a reply.

It also said that Abort 67 was further restricted in its ability to effectively respond to the claims made about it by the fact that the programme makers would only accept a response in writing.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, footage filmed by Abort 67 representatives, both parties' written submissions and supporting documentation. Ofcom also took careful account of the representations made by the complainant in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of Abort 67's representations, we considered their points in our reasoning and concluded that the points raised did not materially affect the outcome of Ofcom's decision not to uphold the complaint.

When considering and deciding complaints of unjust and unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

- a) Ofcom considered Abort 67's complaint, made on its behalf by Tuckers Solicitors, that footage included in the programme was edited to give the misleading impression that Abort 67 was “...encouraging obstreperous, uncompassionate, gratuitous misbehaviour such as following and/or harassing women” and that its representatives' actions were “tantamount to criminal conduct”.

For example, the presenter stated “*We're undercover on the clinic doorsteps where women are pursued*” and footage was included of an Abort 67 representative outside a

clinic asking an undercover reporter whether she was considering an abortion. The reporter said that she did not want to say. Tuckers Solicitors said that this footage was deceptively edited to make it appear that the Abort 67 representative was following the undercover reporter "against her will". It said that Abort 67's own footage of the same encounter showed that the undercover reporter repeatedly made herself available for conversation. It said that despite the programme's false claim that the undercover reporter said that she did not want to talk, at no time did she say "don't talk to me, go away or leave me alone" to the representative.

Tuckers Solicitors also said that Abort 67 had its own footage of a second undercover reporter, "Mary", who was acting undercover as an Abort 67 representative, agreeing that she had not seen Abort 67 harass anyone.

In considering this aspect of the complaint, we had particular regard to Practice 7.9 of the Code. This 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.

We also took into account Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

We first considered Tuckers Solicitors' example that the footage included in the programme of the undercover reporter speaking with the Abort 67 representatives outside a clinic was "deceptively edited".

Footage of an undercover reporter walking towards an abortion clinic was shown. The following exchange between the reporter and two Abort 67 representatives was included in the programme:

Representative: *"Excuse me, can I speak to you for a moment?"*

Reporter: *Sorry, about what?*

Representative: *It's about abortion.*

Reporter: *I'm going to see the doctor.*

Representative: *About one?*

Reporter: *I'd rather not say really.*

Representative: *I think the child is, is fully human.*

Reporter: *Yeah.*

Representative: *And there's plenty of other options available.*

Reporter: *Well, I'm just going to go see my doctor.*

Representative: *Can I introduce you to my friend Liz?*

Reporter: *I need to go see my doctor.*

Representative: *Can I just introduce you to Liz, just before you go in?*

Liz: *Are you considering an abortion?*

Reporter: *I'd rather not say, to be honest".*

We compared the footage included in the programme with Abort 67's own footage along with the broadcaster's transcript of the unedited footage of the same encounter. We considered that the footage included in the programme reflected an accurate account of the encounter between the Abort 67 representatives and the undercover reporter, including the undercover reporter's body language during the exchange (i.e. she was shown to initially stop and face the male representative and then later stop and face the female representative). The footage included in the programme was only marginally shorter than Abort 67's recording and omitted repetition, including the undercover reporter insisting that "I just need to go and see the doctor" and "I'd really rather not say what I'm going in there for". We considered that viewers would understand the particular footage included in the programme in the context of simply one example of one woman's encounter with Abort 67 representatives outside an abortion clinic. We considered that viewers could come to their own views as to whether they considered the behaviour of the Abort 67 representatives was appropriate, i.e. whether they considered the undercover reporter was "*pursued*".

We next considered Tuckers Solicitors contention that Abort 67 had its own footage of a second undercover reporter, "Mary", who was acting undercover as an Abort 67 representative, agreeing that she had not seen Abort 67 harass anyone. In the footage, an Abort 67 representative asked Mary: "I mean have you ever seen us harass anyone?" Mary responded: "I haven't seen anything, not to my recollection, no". Ofcom noted, however, that Tuckers solicitors correctly observed that Mary was undercover when she commented to the other Abort 67 representatives that she had not seen them harass anyone. We therefore considered that while Mary's comments may have been truthful, they may also reasonably have been made with a view to maintaining her cover and therefore could not be taken to reflect her actual opinion.

Given the above, we did not consider that Tuckers Solicitors had made out a sustainable case that the programme had been edited unfairly to give a misleading impression of Abort 67 and its representatives' activities and behaviour.

In addition, the broadcaster included a statement from Mr Cunningham in response to the allegations made against Abort 67 in the programme. In relation to the footage that was shown of the Abort 67 representative approaching the undercover reporter as she approached the clinic, the presenter stated that:

"Gregg Cunningham of Abort 67 told us...Dispatches has failed to find any evidence of criminal misconduct, and it is false to claim that your reporter was harassed on her way to the clinic".

In Ofcom's view, the response from Mr Cunningham included in the programme made it clear to viewers that Abort 67 disputed the claims made about its representatives'

behaviour in the programme. We considered that viewers were free to reach their own view about Abort 67 and its representatives' behaviour.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Abort 67.

- b) The programme falsely accused Abort 67 of deliberately filming women using abortion services.

For example, the programme stated that Abort 67 representatives wore cameras "*often pointed directly at the door*" and that "*One woman, filmed by Abort 67 as she went in to a clinic, has written: I feel intimidated by being filmed. I was raped and had post-traumatic stress disorder. I felt calm coming here and now I can't breathe, I feel panicky and judged – last thing I needed*". Tuckers Solicitors said that Abort 67 did not film women going into abortion clinics and that there was no evidence of it broadcasting footage of pregnant women either entering or leaving abortion clinics. Further, in relation to the particular written testimony from the woman who was said to have been filmed by Abort 67, Tuckers Solicitors said that this was an "unsubstantiated claim".

Tuckers Solicitors clarified that Abort 67 did use body cameras but that these were "...to protect our staff from false allegations of the sort Dispatches maliciously levels at us..." in the same way body cameras were used by the police.

As above, in considering this aspect of the complaint, we had particular regard to Practice 7.9 of the Code.

On the basis of the footage filmed by Abort 67 and provided to Ofcom in support of its complaint raised at head a), it was apparent to Ofcom that Abort 67 had filmed women going into abortion clinics. Whether or not it was Abort 67's intention to "protect [its] staff from false allegations", it is Ofcom's view that, by using the body cameras in the way that the Abort 67 representatives did (particularly where those cameras were, at least some of the time, pointed at the door of the clinic), Abort 67 knew, or ought to have known, that they would be capturing footage of women who were attending those premises. Therefore, we did not consider it was misleading for the programme to have referred to Abort 67 representatives having deliberately filmed women entering abortion clinics. In this context, we also did not consider that it was incumbent on the broadcaster to have included Abort 67's reasons for its representatives' use of body cameras to avoid unfairness to Abort 67.

In relation to the specific written testimony which Tuckers Solicitors said was an "unsubstantiated claim", Ofcom considered that viewers would have understood that this was one woman's personal recollection of her experience of being confronted by Abort 67 representatives outside an abortion clinic, and how this had made her feel. We did not consider that viewers would have received the information presented as unequivocal fact, but that they would have come to their own view as to that particular woman's experience.

Ofcom also took into account the fact that the programme makers appeared to have undertaken a considerable amount of research in ascertaining whether Abort 67 was using cameras to film women attending clinics, and to understand the responses of those

women who had been filmed. This research included speaking to clinic staff and to individual women who were attending the Blackfriars Medical Practice, obtaining testimony from BPAS, and considering the findings of a detailed report published by Aston University. Through these various sources, the broadcaster appears to have found that a material number of women expressed feelings of anger, harassment, intimidation and upset by the activities of Abort 67. In Ofcom's view, it appeared that the broadcaster had taken appropriate steps to ensure that the claims being made in the programme were not unreasonable or unfair to Abort 67.

We acknowledged Abort 67's contention that the sources relied on by the programme makers were "inherently biased and flawed". However, we also took into account that the programme makers sent Abort 67 a letter, dated 23 September 2016, in which the programme makers put to Abort 67 details of the allegations and supporting evidence that they intended to include in the programme, and provided it with the opportunity to respond to the claims made (as addressed in detail at head c) below).

While Tuckers Solicitors also complained that there was no evidence of it broadcasting footage of pregnant women either entering or leaving abortion clinics, the programme did not claim that Abort 67 had broadcast footage of women entering or leaving abortion clinics.

Taking the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Abort 67.

- c) Tuckers Solicitors said that Abort 67 was not given an appropriate opportunity to respond to claims made about it in the programme.

It said that Abort 67 had requested that it be given the opportunity to "respond on film", but that this was refused by the programme makers, with the explanation that they would "only permit a written response that they would then edit". It said that had Abort 67 been given a "fair chance" to respond to the claims made in the programme, it would have "provided substantial evidence to the contrary".

In assessing this head of complaint, Ofcom had particular regard to Practice 7.11 of the Code, as defined above at head a). In doing so, we took into consideration copies of the correspondence between the programme makers and Abort 67, provided to Ofcom by Channel 4.

We took into account that the programme makers sent Abort 67 a letter, dated 23 September 2016, in which the programme makers put to Abort 67 details of the allegations and supporting evidence that they intended to include in the programme. The letter outlined the following:

- Undercover footage obtained by "Mary" who attended meetings at the Abort 67 Clarkson Academy on 2 and 3 October 2015 and protests outside the Blackfriars Medical Practice between 14 January and 18 March 2016. The letter set out in detail the footage of Mr Gregg Cunningham and the allegations against him that would be included in the programme, as well as specific examples of alleged intimidation by Abort 67 representatives recorded on camera during the protests outside Blackfriars Medical Clinic.

- Undercover footage obtained by a second undercover reporter when posing as a patient at the Blackfriars Medical Practice, specifically describing the allegation of the undercover reporter being allegedly followed by an Abort 67 representative.
- Testimony from women who had encountered Abort 67 representatives at clinic entrances who said they felt intimidated, harassed and threatened.
- Specific examples of the areas in which the programme makers considered Abort 67 activities constituted potential breaches of the law (including the use of cameras), to be discussed in the programme, based on evidence the programme makers gathered from their undercover reporters, as well as from the evidence of women and clinic staff. The letter included direct quotes from the public law experts interviewed for the programme.
- Comparisons between the anti-abortion movement in America and the tactics being used by anti-abortion groups such as Abort 67 in the United Kingdom.

In response, Abort 67 requested that it be able to respond on camera by way of an interview with Mr Cunningham, "to ensure balanced coverage" and to provide "context in person on camera in the same way you have interviewed our critics". The programme makers explained that Mr Cunningham and Abort 67's views would be represented "fairly in context" within the programme, and repeated the request for a written statement. On 29 September 2016, the programme makers received a 39-page written response from Mr Cunningham, a summary of which was included in the programme. The presenter stated:

"Gregg Cunningham of Abort 67 told us:

- *The use of shock tactics does not come from America, but the fight against the slave trade in Britain.*
- *Abort 67 is going to wage war on abortion as long as abortion wages war on unborn children.*
- *The abortion industry hysterically disputes any study which exposes the dangerous side effects of abortion.*
- *Dispatches has failed to find any evidence of criminal misconduct, and it is false to claim that your reporter was harassed on her way to the clinic.*

On the use of graphic images, he said:

- *Abortion is child sacrifice and it represents depravity so unimaginable that it cannot be fathomed until seen".*

We noted Tuckers Solicitors objection that, contrary to Ofcom's Preliminary View, Abort 67 was not given five working days in which to provide its response. Further, we noted that Abort 67 did not request an extension to this deadline, on the basis that "the programme was already scheduled for the 5th of October and would proceed with or without a reply".

From the correspondence provided to Ofcom, it appears that the programme makers sent their letter outlining the claims to be included in the programme by email on 23 September 2016 and requested a response by 29 September 2016, (not 28 September as Tuckers Solicitors say) which was almost five complete working days inclusive. However, in any case, the Code does not specify a particular number of days that must be given in order to ensure that “an appropriate and timely opportunity” is provided. In this particular case, we considered that the programme makers had provided Abort 67 with an appropriate and timely opportunity to respond (as outlined above). This is reflected by the fact that Abort 67 appears to have had sufficient time to compile a 39-page written response. Ofcom further notes that, if Abort 67 did not feel it had sufficient time to respond, it did not make this known to the programme makers at the time, regardless of when the programme was scheduled to be broadcast.

Given the above, Ofcom considered that Abort 67 had been provided with an appropriate and timely opportunity to respond to claims made about it in the programme, pursuant to Practice 7.11 and that its response had been reflected fairly in the programme. There is no obligation on broadcasters to provide people or organisations with the opportunity to respond to allegations made against them in programmes in a filmed interview. Nor are broadcasters required to include the full response to a right of reply letter; it is a matter of editorial discretion as to what material is or is not included in programmes, subject to the requirement on broadcasters to ensure that they comply with the Code. In Ofcom's view, the response from Mr Cunningham included in the programme made it clear to viewers that Abort 67 disputed the claims made about it and the tactics it used in its campaign against abortion included in the programme. We considered that viewers were free to reach their own view about Abort 67 and its representatives' behaviour.

Ofcom considered that there was no unfairness to Abort 67 in this regard.

Ofcom has not upheld Abort 67's complaint, made on its behalf by Tuckers Solicitors, of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr Jason John, made on his behalf by Mrs Loretta Davies *X Ray, BBC 1 Wales, 7 November 2016*

Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mrs Loretta Davies on behalf of Mr Jason John.

This consumer affairs programme featured an investigation into Mr John's business, C & N Automotive Trade Limited ("C & N"). Mrs Davies complained that footage of Mr John in a 'doorstep' interview at his business premises and surreptitiously filmed footage of him speaking with a customer was obtained and included in the programme without his consent.

Ofcom found that:

- Mr John had a limited legitimate expectation of privacy in relation to the obtaining and broadcast of the surreptitiously filmed footage of him. However, we considered, in the circumstances of this case, that the infringement was warranted due to the overriding public interest in showing Mr John's business practices.
- Mr John did not have a legitimate expectation of privacy either in relation to the obtaining of the footage of him being interviewed, or in its broadcast. Therefore, it was unnecessary for Ofcom to consider whether any potential infringement of Mr John's privacy was warranted.

Programme summary

On 7 November 2016, BBC 1 Wales broadcast an edition of *X Ray*, its consumer affairs series. The introduction to the programme explained that this edition would feature a story about a *"...lying car salesman, selling write offs on his forecourt"*. It showed footage of a reporter who confronted the complainant, Mr John, as he walked away from her.

The reporter then explained that an edition of the programme broadcast earlier in 2016 had reported the experiences of a number of C & N customers following *"more than a dozen complaints from customers whose cars went wrong soon after they bought them"*. The testimony of these customers was shown in a series of interviews.

First to be featured was *"Jay"* who had previously purchased a BMW car from Mr John. Jay explained that C & N had said they would fix a few faults, including an oil leak. However, following an MOT, Jay discovered this had not been done. The reporter explained:

"This seems to happen a lot with C & N's cars. People buy them with the promise that any problem will be fixed except that doesn't really happen, and the cars rapidly break down".

Jay said that, due to the oil leak, the car's engine had seized and it had subsequently needed to be replaced. The reporter explained that Jay had demanded his money back, but that *"Jason John refused"*. A photograph of Mr John was shown.

The programme then featured "Martin" who explained he had bought a car from Mr John for almost £1,800; money which he said had been left to him by his brother who had recently passed away. The reporter said that when Martin bought the car there was a warning light "*which C & N promised to fix, then didn't. And the problems just got worse*". Martin explained he had been driving the car on the motorway at 60 miles per hour and that:

"...all of a sudden I was losing power, I couldn't get more than 5 mile an hour out of the car. My fiancée was petrified that we were going to lose our lives..."

The reporter explained that Martin:

"...demanded his money back. And this is where C & N could stand for something else – court needed. Because Martin and Jay found they had no option but to take legal action".

The programme's narrator said that Martin had "*won his case*" and High Court Sheriffs had recovered the money. The reporter stated that Jay had also won his court case, but that C & N "*had ignored the court deadline*" to pay.

A photograph of Mr John was shown and the narrator explained "*we wanted to see Jason John's smooth sales patter for ourselves*". Footage of a car with damaged body work was shown. It was captioned "*Secret Filming*" and Mr John was heard to say "*I'm not saying it hasn't had a few battle scars in its lifetime!*".

Later, the reporter stated that "*C & N might as well stand for customer nightmare*". She was shown in a car, attached to a tow truck and said: "*this [the tow truck] is where too many of the cars they sell really end up*".

The reporter introduced "Shelly" who she said had paid C & N £1,300 for a car in August and "*spotted problems within hours of driving away*". Shelly explained that: the back doors on either side of the car did not open; the windows did not wind down fully; and a warning light had come on and that the heaters did not work. The reporter said that "*Jason John has refused to give her a refund*".

The reporter explained that they had asked "*X-Ray's expert vehicle examiner, Gareth Rees*" to inspect the car. Mr Rees checked various aspects of the car and explained that the fact that the doors in the back did not open was a "*MOT failure*" and posed a danger, because if there was a fire in the car it would not be possible to get a child out. Mr Rees said:

"The seller of this vehicle has got an obligation to make sure that this vehicle is firstly safe, satisfactory quality and fit for the purpose. In its present condition, I can safely say it is not...it is a danger to both her [Shelly] and other road users".

The reporter explained that the programme's researchers had gone to C & N's premises and posed as customers. Footage was shown of Mr John at the C & N car showroom and was captioned "*Secret Filming*". The reporter explained that the undercover footage had been viewed and assessed by consumer law expert, Professor Margaret Griffiths. Professor Griffiths was shown watching the footage in a separate room while a programme researcher walked around the car showroom with Mr John.

The reporter explained that the two cars that they had identified on C & N's website had "*much higher prices on the forecourt than on the online adverts*". The researcher walked

around the car showroom with what appeared to be the printed details of one of the cars. The print out showed that the car was advertised as £689 online, but in the car showroom it was advertised as £989. Mr John explained it had *"been reduced"*. The reporter asked Professor Griffiths whether this was *"sharp practice"*, she replied:

"Yes, really. Because he is working on the basis that he can get the best price he possibly can...hoping people will wander into his showroom who haven't seen the advert".

The reporter said the programme makers had asked about a car, which they had ascertained was:

"...a Category C insurance write off after an accident. As a trader Jason John must check this and tell us, but there is no mention of it on C & N's website".

Footage from the undercover filming showed the researcher examine some visible damage to the car. She asked Mr John whether it had been in an accident. Mr John replied it was:

"HPI clear¹. It will tell you that on there [he pointed at the print out of the car's details] it would come up as Category C or Category D². I'm not saying it hasn't had a few battle scars in its lifetime!".

Professor Griffiths commented that:

"He is saying in words of one syllable, this car has not been a write off when it has been. And, to withhold a crucial piece of information like that is contrary to the law".

The researcher discussed another car with Mr John, which, the reporter explained had been a *"less serious Category D write off"*. Mr John said to the researcher that the car would *"have a brand new MOT on it"*. The researcher again asked if the car had been in an accident and Mr John replied *"Yes, that's HPI clear. Yes"*.

Professor Griffiths commented:

"...he is misleading the consumer by withholding a really crucial piece of information".

The reporter then explained that:

"We have learnt that several C & N customers were sold non-existent warranties. They paid for this extended cover but Jason John never passed their money on to the warranty firm. Meaning their policies were worthless".

Professor Griffiths commented Mr John was:

"...making a false statement as he is not providing the service he says he will provide".

The reporter reiterated that C & N was:

¹ An HPI Check is a vehicle check provided by HPI Ltd that scrutinises the history of any motorised vehicle registered in the UK.

² The Association of British Insurers defined categories relating "repairable total-loss vehicles" and whether repair exceeds (Category D) or does not exceed (Category C) a vehicle's pre-accident value.

"...a complete customer nightmare. Dodgy cars, non-existent warranties and insurance write offs that they may decide not to tell you about".

She added that Mr John had recently set up a new company "C & N Auto Garage Limited and appears to be switching his business to that new firm". The reporter speculated that this may be because "his old company...has racked up seven unpaid court judgments in recent months. Totalling almost £15,000". A computer screen showed a document which listed the Country Court Judgments (CCJs) against C & N.

The reporter explained that the programme makers had written to Mr John, but "the response didn't answer most of our questions. No explanation about the warranties or not telling us that cars were insurance write offs".

The reporter was then shown approaching Mr John on the car showroom's forecourt. She said:

"Jason John, the cars that leave your forecourt have to be safe. Why wasn't Shelly Martin's Fiat safe when it left your forecourt?"

Mr John walked away from the camera and the reporter asked:

"Why are you walking away? You are prepared to go out on that forecourt and tell lies to your customers, but you are not prepared to answer these questions".

Mr John replied: "My solicitor has actually answered that for you, thank you". The reporter responded:

"She has not answered the questions. You have hardly answered any of those questions. Why did a car leave your forecourt [The reporter followed Mr John into the car's showroom and Mr John interrupted her as she was speaking]".

Mr John asked: "Can you please leave my premises please?". The reporter walked back outside to the forecourt and continued to question Mr John. She asked:

"Why did a car leave your forecourt that was unsafe? Why have you been lying to customers about the accident history?".

Mr John closed the garage door and the reporter continued:

"Why have you been lying to customers about the accident history of your cars?".

The reporter then stated:

"I think we have found a new meaning for C & N – coward with nothing to say for himself".

This segment of the programme finished and a different presenter said that Mr John had sent a statement "...apologising to customers who had received a less than satisfactory experience". The presenter said that in a second statement, Mr John said he would:

"...never knowingly sell an unsafe car and Shelly's car had been passed by an independent MOT tester".

The reporter continued:

"He admits selling a few warranties that were not then activated with the warranty firm but claims C & N would have honoured them themselves. He says he made what he says was a genuine mistake in telling us the two cars hadn't had accidents which he would have corrected before selling them. Lastly, he says that his old company ran into financial difficulties and that is why he set up the new one".

The presenter said that Mr John:

"...admits that in many cases C & N standards have fallen short. He says he now has new systems in place and he has signed up to a national 'Dealer Promise' scheme to ensure that all vehicles sold in future have passed numerous tests".

The presenter then interviewed Mr Rees who gave general advice about buying second hand cars and the programme ended.

Summary of the complaint and the broadcaster's response

Complaint

- a) Mrs Davies complained that Mr John's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the programme makers:
- secretly filmed Mr John without his consent; and
 - entered Mr John's private property with cameras filming.
- b) Mrs Davies also complained that Mr John's privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme which had been:
- secretly filmed without his consent; and
 - filmed on private property.

The broadcaster's response

Background

The BBC said that, as an investigative consumer affairs programme, *X Ray* investigated many consumer complaints about car dealers. It said that C & N, however, had attracted many more complaints than any other car dealership of a similar size investigated by the programme. The BBC said that *X Ray* had broadcast two earlier investigative reports about the company in March 2016 and that customers had told the programme they had been sold cars which quickly developed faults, and often had to go to court to get their money back.

The broadcaster said that following these two reports, the programme was contacted by more customers who had experienced similar problems. One of the customers, who appeared in the second March 2016 report, also told the programme that following the broadcast he had obtained a court judgment against the company which had not been paid by the court deadline. The BBC said that by the time of the broadcast complained of, Mr John had seven unpaid CCJs from 2016 to the value of nearly £15,000.

The BBC said that new evidence also revealed more serious allegations: that the company was selling insurance write offs without disclosing to customers that the vehicle had been written off. It said this was a clear breach of consumer legislation. The broadcaster added that when C & N's cars were advertised on the 'Autotrader' website, the advert disclosed whether the car was a Category C or D insurance "write off". However, the BBC said that the programme found seven instances where that information was not provided when the cars were advertised on the company's own website.

To further investigate these particular allegations, the broadcaster said that it secretly filmed Mr John telling a programme researcher posing as a prospective buyer that two cars he was selling had not been in accidents and were "HPI clear". The BBC argued that in both cases this was untrue. It added that a consumer law expert told the programme that, under the Consumer Protection from Unfair Trading Regulations, if a seller knows a vehicle has been in an accident and does not tell the customer before they purchase, it is a criminal offence by omission. As a professional motor trader, the BBC said that Mr John would have known whether the car was an insurance write off, and he should have disclosed this.

The broadcaster said that these allegations were put to Mr John in writing and he was invited to provide a response for the programme. The programme makers received a letter from his solicitors which, while accepting that his company had "fallen short" in some respects, did not address many of the particular points which had been put to him for response. The BBC said that the programme makers contacted him again, asking him to respond to those points but received no reply. It was at this point that the broadcaster said it decided to approach Mr John, on camera, at his place of business and put some of those points to him directly.

Response to the complaint

The BBC then addressed the complaint about obtaining the material and the complaint about broadcasting the material together on the basis that similar reasoning applied to both.

The broadcaster said that it believed that Mr John enjoyed only a minimal expectation of privacy at a place of business which is the company's interface with the public and which the public is encouraged to enter to view vehicles. However, it added that, if Ofcom considered that Mr John did enjoy some residual expectation of privacy even in this situation, any potential infringement of his privacy was warranted by the significant public interest in conducting consumer investigations such as this. It said that this was particularly the case where, as with some of the complaints made against Mr John, the vehicles he was selling were unroadworthy and unsafe. The BBC said that there was a considerable public interest in warning members of the public of the risks of buying vehicles from Mr John's company. It said that it believed that the public interest was further served by demonstrating Mr John's dishonest sales methods, using secret filming.

The BBC also said that there was a clear public interest in ensuring that the allegations were put to Mr John for a response which might assist potential customers to form a view of Mr

John's business standards. It said that the interview without prior consent was only conducted when it became clear that Mr John had no intention of responding to the particular allegations that had been made against him. Again, the broadcaster said that it was conducted at Mr John's place of business to which the public would normally have access, but that the reporter complied immediately when requested by Mr John to step outside the car showroom and remain on the forecourt.

Overall, therefore, the broadcaster argued that Mr John's expectation of privacy in these circumstances was nugatory, and any breach of his privacy was warranted by the considerable public interest in gathering evidence of wrongdoing and putting serious allegations to him.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Both parties made representations which are summarised below.

Mrs Davies' representations

Mrs Davies argued that Mr John had an expectation of privacy. She also questioned the argument that his expectation of privacy was outweighed by public interest considerations, given that the proportion of all C & N customers who had complained to the programme makers was in the minority.

Mrs Davies also questioned whether the use of "doorstep" interviews was an effective way of resolving the complaints made by customers. She said that the use of doorstepping "bullied" those being filmed. She argued that the programme makers had used the doorstep interview to "create a name for themselves" and that they were "looking for conflict". She said that this approach encouraged "violence" and that Mr John had received death threats because of the programme.

In relation to the surreptitious filming, Mrs Davies said that as no car was sold C & N were not given the chance to provide the full history of any vehicle. She argued that the programme assumed that "all the products sold are write off[s] and cheap and nasty", and questioned the basis for this assumption. She added that "this isn't against the law".

The BBC's representations

The BBC responded to one specific point in Ofcom's Preliminary View which related to Ofcom's reasoning as to whether Mr John had an expectation of privacy, in light of the fact that he was filmed discussing potential financial transactions in a business environment. The BBC said that in such circumstances, it would be the potential customer who might have an expectation of privacy in relation to the content of a business conversation, not the vendor.

The BBC added that, more generally, Mr John would enjoy only a minimal expectation of privacy at a place of business which is the company's interface with the public and which the public is encouraged to enter to view vehicles, rather than the apparently unqualified right to privacy which it said was implied by Ofcom's reasoning.

Decision

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

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

We carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, written submissions from both the complainant and the broadcaster, and supporting documentation. Ofcom also took careful account of the representations made by the broadcaster and the complainant in response to being given the opportunity to comment on Ofcom's Preliminary View. After careful consideration of these representations, we concluded that the points raised did not alter our decision not to uphold Mr John's complaint.

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

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

In addition to this rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

- a) Ofcom first considered Mr John's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the programme makers secretly filmed him without his consent and entered his private property with cameras filming.

We had particular regard to Practices 8.5, 8.9, 8.11 and 8.13 of the Code. Practice 8.5 states:

"Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted".

Practice 8.9 states:

"The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme."

Practice 8.11 states:

"Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep..."

"Doorstepping" is:

"...the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning".

Practice 8.13 states:

"Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest;
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme".

Surreptitious filming

Ofcom considered whether Mr John's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme which had been filmed surreptitiously, namely the footage of him interacting with potential customers in his showroom.

We first assessed whether it was warranted for the programme makers to film Mr John in line with Practice 8.13.

We took into account the circumstances which preceded the broadcaster's decision to surreptitiously film Mr John speaking with potential customers as well as the broadcaster's representations. These stated that: it had previously broadcast two earlier investigative reports about the company and had received an unprecedented number of complaints from former customers of Mr John's for a car dealership of his size; the programme makers had gathered new evidence which suggested that Mr John's company was selling insurance write off vehicles without disclosing this information to customers, thereby potentially acting contrary to consumer legislation; and, the programme makers had found seven instances on the company's website where this information was not provided. Ofcom noted the comments made on behalf of the complainant regarding the proportion of all C & N customers who had complained to the programme makers. However, Ofcom considered that it is legitimate for programme

makers to further investigate a company based on complaints from a sample of its customers. We also noted this was not the only information on which the broadcaster based its decision to surreptitiously film.

Ofcom considered that the claims the broadcaster set out to investigate through surreptitious filming were serious as they raised concerns about a business potentially misleading the public.

We also considered that the information gathered by the programme makers before the surreptitious filming took place amounted to *prima facie* evidence of a story in the public interest. In Ofcom's view, given the additional evidence of alleged wrong doing collected by the BBC (as set out in detail above), on the evidence available to it, the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming. Further, it would have been unlikely that the programme makers could have captured the footage of Mr John speaking openly to his customers about the vehicles for sale in his business and acting in his typical manner without using this technique. Lastly, Ofcom considered the surreptitious filming was necessary to the credibility and authenticity of the programme, because without the footage the programme makers would have had to rely on second-hand accounts of Mr John's sales practices, which would be less credible than direct evidence of such practices. It was our view therefore that the programme makers' decision to surreptitiously film Mr John speaking with his customers was warranted.

Ofcom next assessed the extent to which Mr John had a legitimate expectation of privacy with regards to the footage of him filmed surreptitiously.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts, since legitimate expectations of privacy will vary according to the place and nature of the activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. In particular, as stated in the Code, there may be circumstances where people may have a reasonable expectation of privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

From the footage shown in the programme, we observed that Mr John was filmed while at his place of work (a car sales yard), as he interacted with potential customers who asked him questions about cars in his showroom. We recognise that an individual may have an expectation of privacy in relation to activities they are carrying out at their place of business or in the course of their employment.

In this case, Mr John was filmed engaged in sales conversations with potential customers. We also considered the nature of the discussion, i.e. that it focused on a business matter involving a potential financial transaction. We took account of the broadcaster's representations in this case that while the customer in such a transaction might have an expectation of privacy the vendor would not. We did not agree that a legitimate expectation of privacy in relation to a business discussion could never arise for the vendor in this context. Whether a legitimate expectation of privacy will arise in connection with a discussion between two individuals about business matters is fact-

specific, depending on all the relevant circumstances of the case. Ofcom took the view that the parties to a business conversation about a potential transaction such as the one filmed in this case, which takes place in a place of business, would normally expect to be able to speak openly and freely to each other without the details of their conversation being made known to the wider public. We also noted that Mr John was likely to have considered that he was having a one-to-one conversation with the person he believed to be a potential customer, and took into account that the footage of Mr John was filmed surreptitiously, and as such, he would not have been aware at the time that he was being filmed.

We also noted that Mr John was filmed in a publicly accessible area of his business premises, and the complainant did not make any specific complaint that footage of areas inaccessible to the public, for example, Mr John's office, was filmed, which may have contained, for example, documents confidential or sensitive to Mr John and/or his business. Given the public location of the filming, we considered that it was reasonable to expect that Mr John would have been aware that any conversation had the potential to be overheard by any member of the public.

Taking all the above factors into account and the fact that the footage was obtained without his consent, it was Ofcom's view that in the particular circumstances of this case, Mr John had a legitimate expectation of privacy with regard to the obtaining of the material. However, we considered that Mr John's expectation of privacy was limited in the circumstances. This is because the conversation which was surreptitiously filmed was not of a particularly personal or sensitive nature (being a business conversation); and because the conversation took place in a publicly accessible area of Mr John's business premises.

Having reached this view, Ofcom went on to consider whether the infringement into Mr John's limited legitimate expectation of privacy was warranted.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting the public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Ofcom took the view that there was a genuine public interest in obtaining this material for the purposes of including it in the programme as it allowed the broadcaster to demonstrate concerns it had about Mr John's business practices. For example, the programme included footage of Mr John making potentially misleading sales claims that two vehicles were "HPI clear" when the programme makers had found they were insurance write offs. Ofcom noted the complainant's representations on the Preliminary View that the selling of "write off and cheap and nasty" vehicles was not illegal. We also noted the comments that the conversations were enquiries and did not progress to full sales when further information may have been given.

However, the commentary of the consumer law expert, which featured in the programme, underlined the seriousness of the concerns raised by the footage. We noted

she had told the programme makers that Mr John's actions captured in the surreptitiously filmed footage of the sales conversations in themselves were, in her opinion, "*contrary to the law*". The footage also demonstrated a potential discrepancy in pricing between C & N's website and the cars in the showroom. More broadly, the footage formed part of an investigation which highlighted the potential health and safety risks of driving un-roadworthy cars; that Mr John had persisted in misleading business practices despite previous investigations by the programme makers; and, that the programme could act as a deterrent for other salespeople who may be engaged in similar practices.

Ofcom also considered whether the means of obtaining the surreptitiously filmed material was proportionate. The investigation formed part of a consumer affairs programme and specifically highlighted concerns which related to public safety and the misleading of the public to the potential financial detriment of consumers (as set out in detail above). We also took account of the broadcaster's representations which emphasised the relative scale of complaints it had received about Mr John's business. Taking these factors into account, we considered that it was proportionate for the programme makers to surreptitiously film Mr John during the course of his business.

Therefore, on balance, and given all the factors set out above, we considered the infringement into Mr John's limited legitimate expectation of privacy in the circumstances of this case was warranted.

Doorstep footage

Ofcom considered whether Mr John's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme relating to the interview which the reporter attempted to obtain with him in the forecourt.

We considered that this constituted doorstepping in that Mr John was filmed during an attempted interview at his place of business and, in its representations, the broadcaster confirmed that prior consent had not been given. Ofcom first considered whether it was warranted for the programme makers to decide to doorstep Mr John in line with Practice 8.11.

Ofcom took into account, from the BBC's statement, the research undertaken and evidence gathered by the programme makers which preceded their decision to doorstep Mr John. During its investigation, the BBC had gathered evidence that raised concerns about a number of C & N's business practices, specifically: the alleged mis-selling of warranties; non-payment of CCJs; the sale of cars which had been independently assessed as unsafe and un-roadworthy; and the potential for customers to be misled about cars that had been written off.

We also examined the pre-broadcast exchanges between the programme makers and Mr John. We had particular regard to a letter sent to Mr John by the broadcaster on 25 October 2016. It included detailed information about each of the consumer complaints that the programme makers intended to feature in the programme and raised a number of serious concerns which the programme makers asked Mr John to respond to. In particular, the programme makers asked Mr John:

- why C & N's website did not highlight cars that are insurance write offs;

- why he had sold a non-existent warranty;
- why he had not paid outstanding CCJs; and
- why he had sold a vehicle which the expert Mr Rees had said was dangerous and not safe to be on the road.

This letter offered Mr John the opportunity to respond by giving an interview to the programme makers or by providing a statement for inclusion in the programme.

Mr John responded to this letter (through his solicitor) on 31 October 2016. However, the response did not specifically address all the concerns raised.

The programme makers wrote back to Mr John on the same day:

- explaining that they considered Mr John's response failed to answer some of the significant points made in their letter;
- requesting a more specific response to the concerns raised and saying that they would need an additional response by noon the following day (1 November 2016); and
- explaining that they intended to broadcast the programme on 7 November 2016.

The BBC told Ofcom that the programme makers received no response to this second request and that it was at this stage they proceeded with the doorstep interview at Mr John's business premises. We also noted that Mr John more fully addressed the substance of the concerns raised by the programme makers in an email of 2 November 2016 which was sent after the doorstepping had taken place.

Given that Mr John had not responded to the substance of the broadcaster's allegations (in the 31 October response or to their subsequent email), and that the allegations raised serious concerns about potentially misleading business practices, we considered that the attempted interviewing of Mr John was a key part of the investigation and that there was a genuine public interest in the programme's investigation of Mr John's business. Given these factors, it was Ofcom's view that the programme makers were warranted in their decision to conduct a doorstep interview of Mr John.

Having reached this view, Ofcom next assessed the extent to which Mr John had a legitimate expectation of privacy in relation to the footage obtained of him by the programme makers.

Mr John was filmed walking through the outdoor sales yard and into the show room, where he then pulled down the door, shutting the programme makers out. As above, we recognise that an individual may have a legitimate expectation of privacy in relation to activities that they are carrying out at their place of business or in the course of their employment. However, in this case we observed that Mr John was filmed openly and was aware of the fact that he was being filmed. He was filmed in a publicly accessible area of his business premises and the complainant did not make any specific complaint that footage of areas inaccessible to the public, for example, Mr John's office, was

filmed, which may have contained, for example, documents confidential or sensitive to Mr John and/or his business.

Mr John was filmed being interviewed by the reporter, and the following exchange was included in the programme:

Reporter: *"Jason John, the cars that leave your forecourt have to be safe. Why wasn't Shelly Martin's Fiat safe when it left your forecourt? [Mr John was shown walking away from the reporter.] Why are you walking away? Why are you walking away? You are prepared to go out on that forecourt and tell lies to your customers, but you are not prepared to answer these questions".*

Mr John: *"My solicitor has actually answered that for you, thank you".*

Reporter: *"She has not answered the questions. You have hardly answered any of those questions. Why did a car leave your forecourt? [The reporter then followed Mr John into the car showroom.]"*

Mr John: *"Can you please leave my premises please?"*

Reporter: *"We'll go out here. We can go out on to this area. [The reporter was shown stepping out of the car showroom on to the forecourt.] Why did a car leave your forecourt that was unsafe? Why have you been lying to customers about the accident history? [Mr John closed the garage door.] Why have you been lying to customers about the accident history of your cars?"*

In our view, Mr John was not filmed engaging in any conduct or action that could reasonably be regarded as being particularly private. We also considered that the above exchange filmed for broadcast did not capture any information about Mr John which could reasonably be regarded as being private or sensitive to him. We also considered the points raised by the complainant in relation to the use of the 'doorstep' interview. We did not consider that the reporter had "bullied" Mr John by approaching him on the forecourt, or conducted the 'doorstep' in order to create drama. Ofcom considers that the use of doorstep interviews is a legitimate means of investigative journalism, provided that it does not result in an unwarranted infringement of an individual's privacy, and notes that the broadcaster complied with Practice 8.11 in this case.

Given the above factors, we considered that Mr John did not have a legitimate expectation of privacy with regards to the filming of the interview with him for inclusion in the programme.

Having come to this view, it was therefore unnecessary for Ofcom to consider whether any infringement of Mr John's privacy was warranted.

Therefore, we considered that there was no unwarranted infringement of Mr John's privacy in connection with the obtaining of this material included in the programme.

- b) We next considered whether Mr John's privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme which had been: secretly filmed without his consent; and filmed on private property.

In assessing this part of the complaint, Ofcom had regard to Practices 8.6 and 8.14. Practice 8.6 states that:

“If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted”.

Practice 8.14 states that:

“Material gained by surreptitious filming and recording should only be broadcast when it is warranted.”

Ofcom also took into consideration Practices 8.11 and 8.13 (see head a) above).

Surreptitious filming

Before assessing whether Mr John's privacy was unwarrantably infringed in the programme as broadcast we again considered whether it was warranted to film surreptitiously in accordance with Practice 8.13. For the reasons set out in detail in head a) above, Ofcom considered that the use of surreptitious filming was warranted in the circumstances.

We first considered the extent to which Mr John may have had a legitimate expectation of privacy in relation to the broadcast of the surreptitiously filmed footage of him. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in the 'Programme Summary' section above, and in head a), the programme included footage of Mr John engaged in sales conversations with potential customers. Mr John was identifiable from the footage in that his face was shown, his voice was heard, and he was named in the programme.

It was Ofcom's view that, for the same reasons as outlined above at head a), Mr John had a limited legitimate expectation of privacy with regards to the broadcast of this surreptitiously filmed footage of him in the programme. The footage of Mr John included in the programme was filmed without his knowledge and the footage broadcast showed him at his place of business engaged in sales conversations with potential customers. In our view, such conversations would often attract a legitimate expectation of privacy. The parties to such business discussions would not typically expect that the details of their conversations would be made known to the wider public.

Having reached this view, and given that he did not give consent for it to be broadcast, Ofcom went on to consider whether the infringement of Mr John's limited legitimate expectation of privacy was “warranted”, within the meaning set out in the Code (see above under head a)).

As also already set out above, the individual's right to privacy has to be balanced against the competing rights of the broadcaster's to freedom of expression. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right.

We carefully balanced Mr John's right to privacy in relation to the broadcast footage obtained through the surreptitious filming and weighed it against the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. As set out in detail in head a) above we considered that the broadcast footage raised serious concerns about the potential misleading of the public and therefore there was a significant public interest in the broadcast of this material.

Therefore, taking all the factors set out above into account, given the significant public interest in the broadcast of this material, Ofcom considered that the broadcaster's right to freedom of expression, and the audience's right to receive the information broadcast, outweighed Mr John's limited legitimate expectation of privacy in relation to the broadcast of the footage.

Doorstep footage

As set out in head a) above we considered that this encounter constituted doorstepping and that this was warranted under Practice 8.11.

We first considered the extent to which Mr John may have had a legitimate expectation of privacy in relation to the broadcast of the footage of him being interviewed by the reporter. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in the 'Programme Summary' section above and in head a), in this respect, the programme included footage of Mr John at his work place being interviewed. Mr John was identifiable from the footage in that his face was shown, his voice was heard, and he was named in the programme.

It was Ofcom's view that for the same reasons, as outlined above at head a), Mr John did not have a legitimate expectation of privacy with regards to the broadcast of the footage of him being interviewed in the programme. The footage of Mr John included in the programme was filmed in a publicly accessible area of his business and in our view he was not shown engaged in any conduct or action that could reasonably be regarded as being particularly private. We also considered that the footage of the exchange included in the programme between Mr John and the reporter did not reveal any information about Mr John which could reasonably be regarded as being private or sensitive to him.

For these reasons, it was Ofcom's view that Mr John did not have a legitimate expectation of privacy with regards to the broadcast of the doorstep footage of him in the programme.

Having come to this view, it was unnecessary for Ofcom to consider whether any infringement of Mr John's privacy was warranted.

Therefore, we considered that there was no unwarranted infringement of Mr John's privacy in relation to the broadcast of the material in these circumstances.

Ofcom has not upheld Mr John's complaint, made on his behalf by Mrs Davies, of unwarranted infringement of privacy in connection with the obtaining of the material in the programme, and in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 15 and 29 May 2017 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

| Programme | Broadcaster | Transmission date | Categories |
|------------------|--------------------|--------------------------|------------------------------|
| Scott Mills | BBC Radio 1 | 15 March 2017 | Generally accepted standards |
| Jon Holmes | Talk Radio | 15 February 2017 | Competitions |

For more information about how Ofcom conducts investigations about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 15 and 29 May 2017 because they did not raise issues warranting investigation.

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

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---------------------------|----------------|-------------------|---|----------------------|
| News | Absolute Radio | 01/01/2017 | Due impartiality/bias | 1 |
| Programming | Absolute Radio | 09/05/2017 | Offensive language | 1 |
| General Election coverage | Various | Various | Elections/Referendums | 1 |
| No Filter Boxing | BT Sport 1 | 12/05/2017 | Animal welfare | 1 |
| Europa League Final | BT Sport 2 | 24/05/2017 | Generally accepted standards | 2 |
| Twin Peaks (trailer) | Challenge | 30/04/2017 | Violence | 1 |
| Big House, Little House | Channel 4 | 20/05/2017 | Disability discrimination/offence | 1 |
| Channel 4 News | Channel 4 | 08/04/2017 | Due impartiality/bias | 1 |
| Channel 4 News | Channel 4 | 12/05/2017 | Elections/Referendums | 2 |
| Channel 4 News | Channel 4 | 16/05/2017 | Elections/Referendums | 1 |
| Channel 4 News | Channel 4 | 17/05/2017 | Crime and disorder | 1 |
| Channel 4 News | Channel 4 | 17/05/2017 | Elections/Referendums | 1 |
| Channel 4 News | Channel 4 | 18/05/2017 | Elections/Referendums | 1 |
| Channel 4 News | Channel 4 | 24/05/2017 | Elections/Referendums | 4 |
| Channel 4 News | Channel 4 | 24/05/2017 | Generally accepted standards | 1 |
| Couples Come Dine With Me | Channel 4 | 24/05/2017 | Offensive language | 1 |
| Extreme Cake Makers | Channel 4 | 12/05/2017 | Race discrimination/offence | 1 |
| First Dates | Channel 4 | 02/05/2017 | Sexual orientation discrimination/offence | 1 |
| First Dates | Channel 4 | 23/05/2017 | Fairness | 1 |
| Gogglebox | Channel 4 | 12/05/2017 | Religious/Beliefs discrimination/offence | 1 |
| Gogglebox | Channel 4 | 12/06/2017 | Elections/Referendums | 1 |
| Hollyoaks | Channel 4 | 15/05/2017 | Generally accepted standards | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-------------|-------------------|--|----------------------|
| Hollyoaks | Channel 4 | 17/05/2017 | Generally accepted standards | 1 |
| Loaded | Channel 4 | 22/05/2017 | Generally accepted standards | 1 |
| Naked Attraction | Channel 4 | 24/03/2017 | Nudity | 1 |
| Programming | Channel 4 | 17/05/2017 | Other | 1 |
| The Fake News Show | Channel 4 | 22/05/2017 | Elections/Referendums | 1 |
| The Island with Bear Grylls | Channel 4 | 08/05/2017 | Gender discrimination/offence | 1 |
| The Island with Bear Grylls | Channel 4 | 14/05/2017 | Animal welfare | 1 |
| The Last Leg | Channel 4 | 19/05/2017 | Elections/Referendums | 1 |
| The Last Leg | Channel 4 | 19/05/2017 | Offensive language | 1 |
| The Trial: a Murder in the Family | Channel 4 | 25/05/2017 | Materially misleading | 1 |
| Trump, The Doctor and the Vaccine Scandal | Channel 4 | 08/05/2017 | Due impartiality/bias | 11 |
| Walks With My Dog | Channel 4 | 20/05/2017 | Sexual material | 1 |
| Bellator Fight Night: London (trailer) | Channel 5 | 17/05/2017 | Scheduling | 1 |
| Can't Pay? We'll Take It Away! | Channel 5 | 24/02/2014 | Other | 1 |
| Can't Pay? We'll Take It Away! | Channel 5 | 10/05/2017 | Materially misleading | 2 |
| Can't Pay? We'll Take It Away! | Channel 5 | 13/05/2017 | Materially misleading | 1 |
| Chris Tarrant: Extreme Railways | Channel 5 | 17/05/2017 | Generally accepted standards | 2 |
| Ian Brady: the Moors Murderer | Channel 5 | 16/05/2017 | Generally accepted standards | 4 |
| Inside the Gang: Young Blood | Channel 5 | 08/05/2017 | Crime and disorder | 2 |
| Inside the Gang: Young Blood | Channel 5 | 08/05/2017 | Generally accepted standards | 4 |
| Inside the Gang: Young Blood | Channel 5 | 08/05/2017 | Race discrimination/offence | 24 |
| Inside the Gang: Young Blood | Channel 5 | 11/05/2017 | Generally accepted standards | 1 |
| Mind the Age Gap | Channel 5 | 08/05/2017 | Generally accepted standards | 1 |
| Mind the Age Gap | Channel 5 | 09/05/2017 | Religious/Beliefs discrimination/offence | 1 |
| Mind the Age Gap | Channel 5 | 11/05/2017 | Age discrimination/offence | 1 |
| Neighbours | Channel 5 | 12/05/2017 | Nudity | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-----------------|-------------------|--|----------------------|
| Police Interceptors | Channel 5 | 08/05/2017 | Offensive language | 1 |
| Secrets of Great British Castle | Channel 5 | 25/05/2017 | Offensive language | 1 |
| Spectacular Spain with Alex Polizzi | Channel 5 | 21/04/2017 | Animal welfare | 1 |
| The Gadget Show | Channel 5 | 19/05/2017 | Promotion of products/services | 1 |
| The Last Days of Christ | Channel 5 | 14/04/2017 | Religious/Beliefs discrimination/offence | 1 |
| The Wright Stuff | Channel 5 | 24/04/2017 | Due impartiality/bias | 2 |
| The Wright Stuff | Channel 5 | 26/04/2017 | Due impartiality/bias | 3 |
| The Wright Stuff | Channel 5 | 28/04/2017 | Materially misleading | 1 |
| The Wright Stuff | Channel 5 | 08/05/2017 | Elections/Referendums | 1 |
| The Wright Stuff | Channel 5 | 08/05/2017 | Generally accepted standards | 1 |
| The Wright Stuff | Channel 5 | 10/05/2017 | Elections/Referendums | 1 |
| The Wright Stuff | Channel 5 | 11/05/2017 | Elections/Referendums | 1 |
| The Wright Stuff | Channel 5 | 19/05/2017 | Elections/Referendums | 3 |
| The Wright Stuff | Channel 5 | 25/05/2017 | Elections/Referendums | 2 |
| The Yorkshire Vet | Channel 5 | 16/05/2017 | Offensive language | 2 |
| Tony Robinson: Coast to Coast | Channel 5 | 21/04/2017 | Animal welfare | 1 |
| Viceland (trailer) | Channel 5 | 24/05/2017 | Sexual material | 1 |
| Walks Across the North of England | Channel 5 | 11/05/2017 | Materially misleading | 1 |
| News | Classic FM | 11/05/2017 | Elections/Referendums | 1 |
| Live MMA World Title Fight | Dave | 12/05/2017 | Harm | 1 |
| Advertising minutage | Diva (Slovenia) | 13/12/2016 | Advertising minutage | 1 |
| Advertisements | Drama | 13/05/2017 | Political advertising | 1 |
| Bailey's sponsorship of Made in Chelsea | E4 | 08/05/2017 | Sponsorship | 1 |
| Made in Chelsea | E4 | 01/05/2017 | Offensive language | 1 |
| The 100 / Supernatural (trailer) | E4 | 28/04/2017 | Offensive language | 1 |
| Jamie's Great Escape | Food Network | 26/04/2017 | Offensive language | 1 |
| Money in the Music competition | Heart Radio | 13/04/2017 | Competitions | 1 |
| Ask a Question | Hidayat TV | 29/03/2017 | Religious/Beliefs discrimination/offence | 1 |
| Ask A Question | Hidayat TV | 19/04/2017 | Religious/Beliefs discrimination/offence | 1 |
| Ask a Question | Hidayat TV | 26/04/2017 | Due impartiality/bias | 1 |
| Ask A Question | Hidayat TV | 03/05/2017 | Materially misleading | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---------------------------|-------------|-------------------|---|----------------------|
| Babushka | ITV | 03/05/2017 | Gender discrimination/offence | 1 |
| Babushka | ITV | 16/05/2017 | Materially misleading | 1 |
| Babushka | ITV | 18/05/2017 | Materially misleading | 1 |
| Benidorm | ITV | 03/05/2017 | Disability discrimination/offence | 7 |
| Botched (trailer) | ITV | 13/05/2017 | Scheduling | 1 |
| Britain's Got More Talent | ITV | 13/05/2017 | Sexual material | 2 |
| Britain's Got More Talent | ITV | 13/05/2017 | Race discrimination/offence | 1 |
| Britain's Got More Talent | ITV | 20/05/2017 | Sexual material | 1 |
| Britain's Got Talent | ITV | 13/05/2017 | Scheduling | 1 |
| Britain's Got Talent | ITV | 13/05/2017 | Violence | 1 |
| Britain's Got Talent | ITV | 20/05/2017 | Violence | 12 |
| Coast v Country | ITV | 23/05/2017 | Materially misleading | 1 |
| Coronation Street | ITV | 15/05/2017 | Generally accepted standards | 1 |
| Coronation Street | ITV | 17/05/2017 | Materially misleading | 1 |
| Coronation Street | ITV | 19/05/2017 | Scheduling | 3 |
| Coronation Street | ITV | 19/05/2017 | Sexual material | 1 |
| Coronation Street | ITV | 22/05/2017 | Materially misleading | 1 |
| Coronation Street | ITV | 22/05/2017 | Sexual material | 6 |
| Dickinson's Real Deal | ITV | 12/05/2017 | Generally accepted standards | 1 |
| Emmerdale | ITV | 02/05/2017 | Crime and disorder | 1 |
| Emmerdale | ITV | 12/05/2017 | Generally accepted standards | 1 |
| Emmerdale | ITV | 17/05/2017 | Generally accepted standards | 2 |
| Emmerdale | ITV | 17/05/2017 | Suicide and self harm | 1 |
| Emmerdale | ITV | 17/05/2017 | Violence | 1 |
| Emmerdale | ITV | 18/05/2017 | Materially misleading | 2 |
| Emmerdale | ITV | 25/05/2017 | Sexual material | 1 |
| Emmerdale | ITV | 25/05/2017 | Suicide and self harm | 1 |
| Emmerdale | ITV | 26/05/2017 | Sexual material | 1 |
| Good Morning Britain | ITV | 02/05/2017 | Due impartiality/bias | 4 |
| Good Morning Britain | ITV | 08/05/2017 | Sexual orientation discrimination/offence | 1 |
| Good Morning Britain | ITV | 09/05/2017 | Sexual orientation discrimination/offence | 1 |
| Good Morning Britain | ITV | 10/05/2017 | Disability discrimination/offence | 5 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-------------|-------------------|--|----------------------|
| Good Morning Britain | ITV | 12/05/2017 | Religious/Beliefs discrimination/offence | 1 |
| Good Morning Britain | ITV | 16/05/2017 | Transgender discrimination/offence | 9 |
| Good Morning Britain | ITV | 17/05/2017 | Elections/Referendums | 1 |
| Good Morning Britain | ITV | 17/05/2017 | Transgender discrimination/offence | 93 |
| Good Morning Britain | ITV | 22/05/2017 | Age discrimination/offence | 1 |
| Good Morning Britain | ITV | 22/05/2017 | Elections/Referendums | 1 |
| Good Morning Britain | ITV | 16/06/2017 | Sexual material | 1 |
| Grantchester | ITV | 30/04/2017 | Sexual material | 1 |
| Grantchester | ITV | 14/05/2017 | Materially misleading | 1 |
| HSL's sponsorship of Dickinson's Real Deal | ITV | 08/05/2017 | Sponsorship credits | 1 |
| ITV Central News | ITV | 12/05/2017 | Due impartiality/bias | 1 |
| ITV News | ITV | 24/04/2017 | Due impartiality/bias | 1 |
| ITV News | ITV | 02/05/2017 | Due impartiality/bias | 1 |
| ITV News | ITV | 08/05/2017 | Elections/Referendums | 1 |
| ITV News | ITV | 09/05/2017 | Elections/Referendums | 1 |
| ITV News | ITV | 12/05/2017 | Elections/Referendums | 1 |
| ITV News | ITV | 15/05/2017 | Generally accepted standards | 1 |
| ITV News | ITV | 16/05/2017 | Elections/Referendums | 1 |
| ITV News | ITV | 17/05/2017 | Due accuracy | 1 |
| ITV News | ITV | 17/05/2017 | Due impartiality/bias | 1 |
| ITV News | ITV | 18/05/2017 | Elections/Referendums | 2 |
| ITV News | ITV | 19/05/2017 | Elections/Referendums | 1 |
| ITV News at Ten | ITV | 23/05/2017 | Generally accepted standards | 1 |
| Live and Let Die | ITV | 14/05/2017 | Race discrimination/offence | 1 |
| Loose Women | ITV | 04/05/2017 | Generally accepted standards | 1 |
| Loose Women | ITV | 11/05/2017 | Generally accepted standards | 1 |
| Loose Women | ITV | 12/05/2017 | Scheduling | 1 |
| Love Island (trailer) | ITV | 20/05/2017 | Sexual material | 1 |
| Love Island and Botched (trailers) | ITV | 13/05/2017 | Scheduling | 1 |
| Party Election Broadcast by the Green Party | ITV | 12/05/2017 | Elections/Referendums | 3 |
| Peston On Sunday | ITV | 21/05/2017 | Elections/Referendums | 1 |
| River Monsters | ITV | 19/05/2017 | Animal welfare | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-------------|-------------------|-----------------------------------|----------------------|
| Sainsbury's sponsorship of ITV Showcase Drama | ITV | 30/04/2017 | Sponsorship credits | 1 |
| Save Money: Good Food | ITV | 09/05/2017 | Materially misleading | 1 |
| Slingo Boom's sponsorship of The Jeremy Kyle Show | ITV | 09/05/2017 | Scheduling | 1 |
| The Durrells | ITV | 30/04/2017 | Offensive language | 1 |
| The Jeremy Kyle Show | ITV | 26/04/2017 | Disability discrimination/offence | 1 |
| The Secret | ITV | 29/04/2016 | Fairness | 3 |
| The Secret | ITV | 06/05/2016 | Fairness | 2 |
| The Secret | ITV | 13/05/2016 | Fairness | 1 |
| Tipping Point | ITV | 04/05/2017 | Competitions | 1 |
| Britain's Got More Talent | ITV2 | 06/05/2017 | Disability discrimination/offence | 1 |
| Britain's Got More Talent | ITV2 | 07/05/2017 | Sexual material | 1 |
| Britain's Got More Talent | ITV2 | 13/05/2017 | Sexual material | 1 |
| Britain's Got More Talent | ITV2 | 20/05/2017 | Sexual material | 1 |
| Celebrity Juice | ITV2 | 11/05/2017 | Generally accepted standards | 2 |
| Celebrity Juice | ITV2 | 11/05/2017 | Race discrimination/offence | 2 |
| The Ellen DeGeneres Show | ITV2 | 12/05/2017 | Nudity | 1 |
| The Jeremy Kyle Show | ITV2 +1 | 18/05/2017 | Sexual material | 1 |
| Aviva's sponsorship | ITV3 | 11/05/2017 | Sponsorship credits | 1 |
| Specsavers audiologists' sponsorship of ITV3 Mornings | ITV3 | Various | Sponsorship credits | 1 |
| Dinner Date | ITVBe | 25/05/2017 | Sexual material | 1 |
| Embarrassing Bodies | Kanal 11 | 15/05/2017 | Gender discrimination/offence | 1 |
| Embarrassing Bodies | Kanal 11 | 17/05/2017 | Gender discrimination/offence | 1 |
| Våra Pinsamma Kroppar (Embarrassing Bodies) | Kanal 11 | 06/03/2017 | Gender discrimination/offence | 1 |
| American Pie: Beta House | Kanal 6 | 21/05/2017 | Gender discrimination/offence | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---|-------------------------|-------------------|---|----------------------|
| Kiss FM Breakfast | Kiss FM | 18/05/2017 | Sexual orientation discrimination/offence | 1 |
| Programming | Kiss FM | 09/05/2017 | Disability discrimination/offence | 1 |
| James O'Brien | LBC 97.3 FM | 05/05/2017 | Elections/Referendums | 1 |
| James O'Brien | LBC 97.3 FM | 10/05/2017 | Race discrimination/offence | 1 |
| James O'Brien | LBC 97.3 FM | 22/05/2017 | Elections/Referendums | 1 |
| News | LBC 97.3 FM | 12/05/2017 | Elections/Referendums | 1 |
| Nick Ferrari | LBC 97.3 FM | 22/05/2017 | Elections/Referendums | 1 |
| Programming | LBC 97.3 FM | Various | Due impartiality/bias | 1 |
| James O'Brien | LBC Radio | 05/05/2017 | Elections/Referendums | 1 |
| Programming | Lincs FM 102.2 | 23/05/2017 | Generally accepted standards | 1 |
| Magic Radio | Magic Radio | 17/05/2017 | Scheduling | 1 |
| Come Dine With Me | More 4 | 14/05/2017 | Race discrimination/offence | 1 |
| Greg Davies: The Back of My Mum's Head | More 4 | 21/05/2017 | Religious/Beliefs discrimination/offence | 1 |
| The Official Audio streaming Chart Top 20 | MTV Music | 17/05/2017 | Violence | 1 |
| News | Various | Various | Generally accepted standards | 1 |
| Programming | Various | 21/05/2017 | Generally accepted standards | 1 |
| SpongeBob SquarePants | Nicktoons | 11/05/2017 | Suicide and self harm | 1 |
| Animal Saints and Sinners | Pick | 21/05/2017 | Animal welfare | 1 |
| Inspirational Breakfast | Premier Christian Radio | 20/04/2017 | Due impartiality/bias | 1 |
| Breakfast | Signal 1 | 05/05/2017 | Race discrimination/offence | 1 |
| Silicon Valley | Sky Atlantic | 08/05/2017 | Religious/Beliefs discrimination/offence | 1 |
| Press Preview | Sky News | 08/05/2017 | Generally accepted standards | 1 |
| Sky News | Sky News | 01/05/2017 | Due impartiality/bias | 1 |
| Sky News | Sky News | 02/05/2017 | Due impartiality/bias | 1 |
| Sky News | Sky News | 03/05/2017 | Disability discrimination/offence | 1 |
| Sky News | Sky News | 08/05/2017 | Due impartiality/bias | 1 |
| Sky News | Sky News | 21/05/2017 | Elections/Referendums | 1 |
| Sky News | Sky News | 22/05/2017 | Elections/Referendums | 2 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|--|-----------------|-------------------|---|----------------------|
| Sky News | Sky News | 23/05/2017 | Generally accepted standards | 1 |
| Sky News | Sky News | 24/05/2017 | Generally accepted standards | 1 |
| Sophy Ridge On Sunday | Sky News | 21/05/2017 | Elections/Referendums | 2 |
| Sunrise | Sky News | 12/05/2017 | Elections/Referendums | 1 |
| The Papers | Sky News | 20/05/2017 | Elections/Referendums | 1 |
| Sausage Party | Sky Premiere | 30/04/2017 | Scheduling | 2 |
| Sausage Party | Sky Premiere | 01/05/2017 | Sexual material | 1 |
| Premier League Football: Tottenham Hotspur v Manchester United | Sky Sports 1 | 14/05/2017 | Generally accepted standards | 1 |
| Soccer AM | Sky Sports 1 | 20/05/2017 | Religious/Beliefs discrimination/offence | 1 |
| Sky Sports News | Sky Sports News | 13/05/2017 | Generally accepted standards | 1 |
| Carters Get Rich | Sky1 | 07/04/2017 | Sexual orientation discrimination/offence | 1 |
| Animal Fight Club | Spike | 24/05/2017 | Violence | 1 |
| Inside King's Cross: The Railway | Spike | 17/05/2017 | Advertising/editorial distinction | 1 |
| Scottish Leaders Debate 2017 | STV | 24/05/2017 | Elections/Referendums | 1 |
| Jon Holmes | Talk Radio | 23/05/2017 | Elections/Referendums | 1 |
| News | Talksport | 11/05/2017 | Elections/Referendums | 1 |
| News | Talksport | 17/05/2017 | Elections/Referendums | 1 |
| The Alan Brazil Sports Breakfast | Talksport | 11/05/2017 | Sexual orientation discrimination/offence | 1 |
| The Sports Bar | Talksport | 22/05/2017 | Generally accepted standards | 1 |
| American Pie | TV6 Sweden | 14/05/2017 | Gender discrimination/offence | 1 |
| Bullet to the Head | TV6 Sweden | 26/04/2017 | Nudity | 1 |
| Programming | Various | 02/05/2017 | Generally accepted standards | 1 |
| Programming | Various | Various | Generally accepted standards | 1 |
| Stoned | Viceland | 19/04/2017 | Drugs, smoking, solvents or alcohol | 1 |
| Understanding Islam | Voice of Islam | 07/05/2017 | Crime and disorder | 1 |
| Programming | Yesterday | 23/05/2017 | Generally accepted standards | 1 |

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|------------------|--------------------|--------------------------|------------------------------|-----------------------------|
| Julie Donaldson | Zetland FM | 03/04/2017 | Generally accepted standards | 1 |

Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/how-ofcom-deals-with-bbc-complaints>

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|------------------|--------------------|--------------------------|-----------------------|-----------------------------|
| Film 2017 | BBC 1 | 30/01/2017 | Materially misleading | 1 |
| Today | BBC Radio 4 | 22/02/2017 | Due accuracy | 1 |

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service does not fall within the scope of regulation.

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about television and radio programmes, go to:

https://www.ofcom.org.uk_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

| Programme | Broadcaster | Transmission Date | Categories | Number of complaints |
|---------------------------------------|----------------|-------------------|-----------------------|----------------------|
| Wrigley's Extra sponsorship | Alibi | 19/05/2017 | Advertising content | 1 |
| Advertisement | Channel 4 | 23/05/2017 | Advertising content | 1 |
| News | Channel 4 | 08/05/2017 | Elections/Referendums | 1 |
| Inside the Gang: Young Blood (pre-tx) | Channel 5 | 11/05/2017 | Outside of remit | 1 |
| Advertisements | CITV | 21/05/2017 | Advertising content | 1 |
| Advertisement | E4+1 | 18/05/2017 | Advertising content | 1 |
| Advertisement | Front Runner | 23/05/2017 | Advertising content | 1 |
| Advertisement | Horror Channel | 14/05/2017 | Advertising content | 1 |
| Advertisement | ITV | 12/05/2017 | Advertising content | 1 |
| Advertisement | ITV | 13/05/2017 | Advertising content | 12 |
| Advertisement | ITV | 14/05/2017 | Advertising content | 2 |
| Good Morning Britain | ITV | 23/05/2017 | Outside of remit | 1 |
| Theresa May Facebook Live | ITV | Various | Outside of remit | 1 |
| Advertisements | ITV2 +1 | 21/05/2017 | Advertising content | 1 |
| Advertisement | ITV3 | 22/05/2017 | Advertising content | 1 |
| Advertisement | Sky 1 | 15/05/2017 | Advertising content | 1 |
| Advertisement | Sky Living | 12/05/2017 | Advertising content | 1 |
| Advertisement | Sky Living | 15/05/2017 | Advertising content | 1 |
| Advertisement | STV | 16/05/2017 | Advertising content | 1 |
| Advertisements | STV | 17/05/2017 | Advertising content | 1 |
| Programming | STV | Various | Outside of remit | 1 |
| Advertisement | Talksport | 15/05/2017 | Advertising content | 1 |
| Programming | Various | 19/05/2017 | Outside of remit | 1 |

Complaints about the BBC, not assessed

A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the new independent regulator of the BBC.

Here are alphabetical lists of complaints about the BBC that Ofcom was unable to assess. This is because Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision. The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

Complaints about BBC television, radio or on demand programmes

| Programme | Service | Transmission or Accessed Date | Categories | Number of Complaints |
|-----------------------------|---------|-------------------------------|------------------------------|----------------------|
| All Round to Mrs Brown's | BBC 1 | 29/04/2017 | Offensive language | 1 |
| BBC Breakfast | BBC 1 | 19/05/2017 | Elections/Referendums | 1 |
| BBC Election Coverage | BBC 1 | 08/05/2017 | Elections/Referendums | 1 |
| BBC London News | BBC 1 | 16/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC 1 | 25/03/2017 | Due accuracy | 1 |
| BBC News | BBC 1 | 25/03/2017 | Due impartiality/bias | 1 |
| BBC News | BBC 1 | 02/05/2017 | Due impartiality/bias | 1 |
| BBC News | BBC 1 | 05/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC 1 | 05/05/2017 | Violence | 1 |
| BBC News | BBC 1 | 08/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC 1 | 09/05/2017 | Elections/Referendums | 2 |
| BBC News | BBC 1 | 16/05/2017 | Elections/Referendums | 31 |
| BBC News | BBC 1 | 17/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC 1 | 17/05/2017 | Due impartiality/bias | 1 |
| BBC News | BBC 1 | 19/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC 1 | 21/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC 1 | 22/05/2017 | Elections/Referendums | 2 |
| BBC News | BBC 1 | 23/05/2017 | Under 18s in programmes | 1 |
| BBC News | BBC 1 | 23/05/2017 | Generally accepted standards | 1 |
| BBC News | BBC 1 | 24/05/2017 | Due impartiality/bias | 1 |
| BBC News | BBC 1 | 25/05/2017 | Elections/Referendums | 1 |
| Breakfast | BBC 1 | 10/05/2017 | Due impartiality/bias | 1 |
| Breakfast | BBC 1 | 11/05/2017 | Elections/Referendums | 2 |
| Daily Politics and BBC News | BBC 1 | 12/05/2017 | Elections/Referendums | 1 |
| Doctor Who | BBC 1 | 20/05/2017 | Violence | 1 |
| Doctor Who | BBC 1 | 20/05/2017 | Offensive language | 1 |
| Have I Got News For You | BBC 1 | 19/05/2017 | Race discrimination/offence | 1 |

| Programme | Service | Transmission or Accessed Date | Categories | Number of Complaints |
|---|-----------------------|-------------------------------|------------------------------|----------------------|
| Holby City | BBC 1 | 23/05/2017 | Materially misleading | 1 |
| Party Election Broadcast by the Liberal Democrats | BBC 1 | 25/05/2017 | Elections/Referendums | 1 |
| Points West | BBC 1 | 08/05/2017 | Elections/Referendums | 1 |
| Question Time | BBC 1 | 11/05/2017 | Elections/Referendums | 14 |
| Question Time | BBC 1 | 11/05/2017 | Generally accepted standards | 1 |
| Question Time | BBC 1 | 18/05/2017 | Elections/Referendums | 1 |
| Question Time | BBC 1 | 25/05/2017 | Elections/Referendums | 1 |
| The Andrew Marr Show | BBC 1 | 14/05/2017 | Offensive language | 3 |
| The One Show | BBC 1 | 28/04/2017 | Due impartiality/bias | 1 |
| Three Girls | BBC 1 | 16/05/2017 | Generally accepted standards | 2 |
| Victoria Derbyshire Show | BBC 1 | 10/05/2017 | Elections/Referendums | 1 |
| Programming | BBC 1 and BBC Radio 4 | 13/05/2017 | Elections/Referendums | 1 |
| The One Show and BBC News | BBC 1 and BBC Radio 4 | 13/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC 1 | 12/05/2017 | Elections/Referendums | 1 |
| Live Debate Scotland | BBC 1 Scotland | 21/05/2017 | Elections/Referendums | 5 |
| BBC South Today | BBC 1 South | 11/05/2017 | Elections/Referendums | 1 |
| Daily Politics | BBC 2 | 09/05/2017 | Elections/Referendums | 1 |
| Daily Politics | BBC 2 | 10/05/2017 | Elections/Referendums | 1 |
| Eurovision Song Contest 2017 | BBC 2 | 13/05/2017 | Outside of remit | 1 |
| Newsnight | BBC 2 | 09/05/2017 | Elections/Referendums | 1 |
| Newsnight | BBC 2 | 11/05/2017 | Elections/Referendums | 1 |
| Newsnight | BBC 2 | 15/05/2017 | Elections/Referendums | 1 |
| Newsnight | BBC 2 | 16/05/2017 | Elections/Referendums | 1 |
| Britain in Focus: a Photographic History | BBC 4 | 13/03/2017 | Materially misleading | 1 |
| BBC News | BBC channels | 07/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC channels | n/a | Elections/Referendums | 1 |
| BBC News | BBC channels | 08/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC iPlayer | 16/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC iPlayer | 16/05/2017 | Elections/Referendums | 1 |
| My Big Gay Jewish Conversion | BBC iPlayer | | Generally accepted standards | 1 |
| Sunday Politics Scotland | BBC iPlayer | 30/04/2017 | Elections/Referendums | 1 |
| Trust Me, I'm A Vet | BBC iPlayer | 11/05/2017 | Due impartiality/bias | 1 |
| BBC Election Coverage | BBC News Channel | 16/05/2017 | Elections/Referendums | 1 |
| BBC Newsroom Live | BBC News Channel | 17/05/2017 | Elections/Referendums | 1 |

| Programme | Service | Transmission or Accessed Date | Categories | Number of Complaints |
|----------------------------|------------------|-------------------------------|-------------------------------|----------------------|
| BBC News | BBC News Channel | 16/05/2017 | Gender discrimination/offence | 1 |
| BBC News | BBC News Channel | 16/05/2017 | Elections/Referendums | 1 |
| BBC News | BBC News Channel | 23/05/2017 | Generally accepted standards | 1 |
| BBC News | BBC News Channel | 24/05/2017 | Generally accepted standards | 1 |
| BBC Travel Show | BBC News Channel | 19/05/2017 | Due accuracy | 1 |
| Dateline London | BBC News Channel | 13/05/2017 | Elections/Referendums | 1 |
| Nick's Election Takeaways | BBC News Channel | 21/05/2017 | Elections/Referendums | 1 |
| Scott Mills | BBC Radio 1 | 10/04/2017 | Sexual material | 1 |
| Today | BBC Radio 4 | 29/03/2017 | Due impartiality/bias | 1 |
| Today | BBC Radio 4 | 27/04/2017 | Due impartiality/bias | 1 |
| Today | BBC Radio 4 | 12/05/2017 | Elections/Referendums | 2 |
| Today | BBC Radio 4 | 15/05/2017 | Elections/Referendums | 1 |
| Today | BBC Radio 4 | 16/05/2017 | Elections/Referendums | 2 |
| Drive | BBC Radio 5 Live | 02/05/2017 | Elections/Referendums | 1 |
| Our Man in the Middle East | BBC Radio 5 Live | 15/05/2017 | Due impartiality/bias | 1 |
| Thursday Politics | BBC Radio 5 Live | 25/05/2017 | Generally accepted standards | 1 |
| Nathan Turvey | BBC Radio Leeds | 21/05/2017 | Generally accepted standards | 1 |
| The Nolan Show | BBC Radio Ulster | 24/05/2017 | Elections/Referendums | 1 |

For more information about how Ofcom deals with BBC television, radio and on demand complaints, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/how-ofcom-deals-with-bbc-complaints>

Investigations List

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

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 15 and 29 May 2017.

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

| Programme | Broadcaster | Transmission date |
|--------------------------------|--------------------------|-------------------|
| Programming | Brit Asia TV | 24/02/2017 |
| Tomorrow's World | CBS Reality | 19/03/2017 |
| The World Right Now | CNN International | 09/05/2017 |
| The Jeremy Kyle Show | ITV | 22/05/2017 |
| Bumper2Bumper Drive Time | Kemet Radio (Nottingham) | 12/04/2017 |
| £1000 Friday competition | KMFM | 28/04/2017 |
| Advertisements | NTV | 26/02/2017 |
| Brunch with Hughie Parr | Ribble FM 106.7 | 22/05/2017 |
| The Reporter | Tameside Radio | 04/05/2017 |
| Videokolik | TGRT EU | 20/02/2017 |
| Peter Lee Show | TMCR FM | 16/05/2017 |
| Community Platform | Ummah Channel | 08/02/2017 |
| Sa Re Ga Ma Pa Lil Champs 2017 | Zee TV | 16/04/2017 |

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

| Programme | Broadcaster | Transmission date |
|-----------------------------------|--------------------|--------------------------|
| The Nightmare Neighbour Next Door | Channel 5 | 2 March 2017 |

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

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

| Licensee | Licensed Service |
|---------------------------|-------------------------|
| Awaaz Radio Limited | Awaaz Radio |
| Axn Europe Limited | AXN (Hungary) |
| Demon FM Limited | Demon FM |
| Gravity FM CIC | Gravity FM |
| Poole Community Radio Ltd | Hot Radio 102.8 |

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf