

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>.

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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

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

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

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

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

## Standards cases

### In Breach

#### Breakfast Show

*Kerrang! Radio, 21 September 2013, 09:55*

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#### Introduction

Kerrang! Radio specialises in rock music. It broadcasts on the digital radio and digital terrestrial Freeview platforms across the UK. The licence for this service is held by Bauer Media (“Bauer” or “the Licensee”).

A complainant alerted Ofcom to offensive language in the broadcast of the track *Suck My Kiss* by the band Red Hot Chili Peppers during the above programme broadcast on a Saturday morning.

Ofcom noted the following lyrics were each broadcast twice:

*“...most motherfuckers don’t give a damn”.*

*“...most motherfuckers have a cold ass stare”.*

In total, the song contained four uses of the word “*motherfuckers*”.

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

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

and Rule 2.3 of the Code, which states:

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

We therefore sought comments from the Licensee as to how the material complied with these rules.

#### Response

The Licensee expressed disappointment that this content was broadcast, and explained that the unedited version of the song had been: “included in the Kerrang! database pre Bauer ownership”. Bauer added that it had “recently migrated systems from Birmingham to London when the station re-located”, and the unedited version of the track seemed to have been moved from a “trash” category into another category on its database. It said that this move had led to the unedited track being played out “as a result of a technical fault”. The Licensee said that the unedited version of the song had now been completely removed from its systems.

Bauer explained that, in this case, the presenter had pre-recorded the ‘links’ between songs, and therefore “would not have heard the track” and so was unable to broadcast an apology immediately after the unedited song was played in error.

However, the Licensee said that it had broadcast an apology: “the following Saturday as close to the time the track [originally] aired as possible”.

The Licensee outlined various steps it had taken since the incident in question to improve compliance. These included carrying out a “full (and on-going) review” of its music database to ensure that “there are no tracks in the system containing unsuitable lyrics”; enhancing its security software “to prevent tracks being overwritten with an unsuitable version of the same song” ensuring that versions of songs that are “unsuitable for broadcast” are no longer even stored on the system; and implementing a new system whereby any new tracks added to Kerrang’s music database are listened to by the Head of Music and another team member.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

### Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom research on offensive language<sup>1</sup> clearly notes that the word “motherfucker” and other variations of this word are considered by audiences to be among the most offensive language.

The Code states that the phrase “when children are particularly likely to be listening” particularly refers to “the school run and breakfast time, but might include other times”. Ofcom’s guidance on offensive language on radio<sup>2</sup> notes that:

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

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

In reaching our Decision, we took into account the Licensee’s various representations in this case. These included that the music track in this case was on the station’s database when Bauer had assumed editorial responsibility for Kerrang!, and that the presenter “would not have heard the track” being played. Broadcasters must have adequate systems in place to ensure that broadcast music tracks comply with the Code. As regards the failure to note the broadcast of the offensive language

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

<sup>2</sup> Ofcom Guidance, Offensive language on radio, December 2011, paragraph 13 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>).

at the time of transmission, broadcasters should note Ofcom's guidance on offensive language on radio<sup>3</sup>, which states:

"Ofcom expects broadcasters to monitor, as appropriate, all output as broadcast. In the event that offensive language is broadcast at a time when children are particularly likely to be listening, the broadcaster should apologise, as appropriate, at the earliest opportunity, to mitigate any offence...".

Given that this track which contained four instances of the word "*motherfuckers*" were broadcast at approximately 10:00 on a Saturday, it is clear that the most offensive language was broadcast at a time when children were particularly likely to be listening.

Ofcom took account of the various steps taken by the Licensee to improve compliance following this incident. However, broadcast of this material was a clear breach of Rule 1.14.

### Rule 2.3

Rule 2.3 states that broadcasters must ensure that material which may cause offence is justified by context.

Ofcom first considered if the repeated broadcast of the word "*motherfuckers*" was potentially offensive, and if so, secondly, whether this offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely expectation of the audience.

Ofcom research clearly indicates that the word "motherfucker" is an example of the most offensive language. The broadcast of this language clearly had the capacity to offend.

We then considered whether the broadcast of this language was justified by the context. Kerrang! Radio is predominantly a rock music station targeted at an audience of both adults and young people. In view of the station's broad range of listeners we concluded however that many in the audience would not have expected the broadcast of the most offensive language during this weekend breakfast show. We also took into account that no apology was broadcast immediately or soon afterwards. The broadcast of this language was therefore not justified by the context.

For these reasons, and despite the steps taken by Bauer to improve compliance in the wake of this incident, Ofcom concluded the Licensee did not apply generally accepted standards and there was therefore also a breach of Rule 2.3.

Ofcom notes the steps taken by Bauer to improve its compliance procedures following this programme. However, we were concerned that seemingly no member of staff had been monitoring the output as broadcast and that consequently no apology for the language in the song had been broadcast at the time. We also noted that this incident followed a similar breach of Rule 1.14 of the Code, recorded against

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<sup>3</sup> Ibid. Paragraph 21.



Kerrang! on 8 April 2013<sup>4</sup> which had resulted from the station playing out in error the wrong version of a song containing the most offensive language.

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

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

## In Breach

### Dave Bayliss Interview

*BBC Radio Cumbria, 14 September 2013, 17:00*

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#### Introduction

BBC Radio Cumbria is the BBC local radio service for Cumbria. It specialises in local news, sport, weather and travel news.

A complainant alerted Ofcom to offensive language in the live broadcast of an interview with Barrow Association Football Club (Barrow AFC) Manager Dave Bayliss during this programme broadcast on a Saturday afternoon.

Dave Bayliss was interviewed by sports presenter Andy Wood following a football match. During the course of the interview (which lasted about six minutes) Dave Bayliss made the following comments:

*"...but when they are calling me a fucking idiot..."*

*"...and they call me a fucking wanker and I'll react to that"*

We noted that, at the end of the interview, Andy Wood apologised ("*...apologies for some of the language...*") before the broadcast switched back to the studio presenter.

About 15 seconds later, the studio presenter made another apology:

*"...apologies once again for any language used there, obviously emotions running quite high..."*

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

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

#### Response

The BBC said that it had not experienced any previous issues with Dave Bayliss who it described as: "a very frequent contributor to Radio Cumbria". For this reason, the broadcaster said that the presenter did not immediately intervene following the use of the offensive language, as he was shocked by the "unexpected turn of events".

The BBC explained that following the programme, a member of its senior production staff had spoken to the presenter to underline the importance of timely intervention in cases of offensive language being broadcast. It also noted that, during his next appearance on BBC Radio Cumbria (on an edition of *Football Forum* on 24 September 2013 at 18:36), Dave Bayliss apologised to the listeners of that programme for the instance of offensive language broadcast during the programme in this case.

## Decision

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

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom’s research on offensive language<sup>1</sup> clearly notes that the word “fucking” is considered by audiences to be among the most offensive language.

Ofcom’s guidance on offensive language on radio<sup>2</sup> notes that:

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

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

In reaching our decision, we noted that two apologies were broadcast: by the sports presenter Andy Wood at the end of the interview; and, and also the studio presenter, about 15 seconds later. We also noted that the interviewee in this case, Dave Bayliss, himself apologised when he next appeared on the radio station, 10 days after the original broadcast. However it remains the case that, during the interview itself, when Dave Bayliss used the most offensive language twice, Andy Wood did not intervene to remind Dave Bayliss to refrain from using further offensive language or to apologise for its use.

Ofcom noted the broadcaster’s explanation that it had not encountered any previous compliance issues with Dave Bayliss’ contributions to BBC Radio Cumbria. However, Ofcom expects broadcasters to monitor all output and “to ensure that presenters and contributors are mindful of their language at all times...and should be adequately briefed on the requirements of the Code”<sup>3</sup>.

Furthermore, Ofcom’s guidance on offensive language on radio<sup>4</sup>, also states:

“In a live programme, when a contributor uses offensive language (including offensive discriminatory language) in live programming, it may be possible to mitigate and reduce any potential offence caused by the presenter promptly

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

<sup>2</sup> Ofcom Guidance, Offensive language on radio, December 2011, paragraph 13 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>).

<sup>3</sup> Ibid, paragraph 40

<sup>4</sup> Ibid, paragraph 41

apologising for and/or challenging the contributor about the use of the offensive language...”.

Therefore, given that the interview contained two instances of offensive language at approximately 17:00 on a Saturday, it is clear that the most offensive language was broadcast at a time when children were particularly likely to be listening.

The broadcast of this material was therefore a clear breach of Rule 1.14.

**Breach of Rule 1.14**

## Resolved

### Colin Murray

*Talksport, 9 September 2013, 10:00*

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#### Introduction

Talksport is a national radio station providing a 24-hour speech service that features primarily programming about sport and regular news bulletins. The licence for Talksport is held by Talksport Limited (“Talksport Ltd” or “the Licensee”).

The mid-morning weekday programme on Talksport is hosted by Colin Murray and features debate and interviews about the main sporting stories of the day.

A listener alerted Ofcom to an interview by Colin Murray, with the former track cyclist Victoria Pendleton, which ended with promotional references to the home improvement store, Wickes.

Ofcom assessed Colin Murray’s interview with Victoria Pendleton, which lasted approximately seven and three-quarter minutes and covered various topics, including her recent wedding, the dangers of velodrome racing, her new tattoo, adapting to retirement and her involvement in an ongoing fundraising event. Towards the end of the interview, Colin Murray asked Victoria Pendleton if she had *“been doing any DIY”*, to which she responded, *“I have always done DIY, actually”*. The presenter then asked her *“what sort of doors”* she had, to which she replied: *“Doors?...they’re just wooden doors”*. He then said:

*“It’s interesting, because at Wickes at the moment they’ve got a steal of a deal, Victoria, where you can get ‘Geneva’ moulded doors, and they’re only [price] each”.*

Talksport Ltd confirmed that this was a commercial reference, broadcast under a commercial arrangement with Wickes, which sponsors the Colin Murray programme.

Ofcom considered the broadcast raised issues warranting investigation under the following Code rule:

Rule 10.1: “Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners.”

We therefore asked the Licensee for its comments as to how the content complied with Rule 10.1.

#### Response

Talksport Ltd said it took its Code compliance responsibilities very seriously, adding that the “delivery of appropriate transparency [was] accordingly a key component of any on-air commercial activity”.

The Licensee also said listeners were familiar with “hearing commercial activity” on Talksport, “including sponsorships for various male-focused brands”, adding that Wickes had sponsored the mid-morning programme for several years. It noted that

its commercial arrangement with Wickes included, in addition to sponsorship credits, “commercial references in the form of two scripted ‘live reads’ per hour in each show and a sponsored feature, the Wickes Phone-In.”

Talksport Ltd added that it generally scheduled four sponsorship credits each hour, approximately every 15 minutes (before commercial breaks), with the result that a listener would therefore hear a sponsorship credit “an average of seven and a half minutes after first tuning in to the programme”. It noted that, in this instance, the commercial reference to Wickes’ doors occurred approximately 13 minutes after a sponsorship credit and two and a half minutes before the next one.

The Licensee stated that the commercial reference in this case had been “read out verbatim from an approved script provided in advance by Talksport’s sponsorship department.” It added that, “in keeping with the entertainment and light-hearted format of the programme, the live read was delivered in the form of a final question to [the] studio guest and former Olympian, Victoria Pendleton, at the conclusion of an interview and in the run up to the next break.”

Talksport Ltd said it had considered “that the scheduling of clear and suitably frequent sponsorship credits would ensure appropriate transparency for commercial references to sponsors within a sponsored programme”. However, the Licensee added that, having reflected on the matter, it recognised this “was not in line with Ofcom’s expectations”, for which it apologised, noting that Talksport’s “objective at all times is to ensure full compliance with all aspects of the Code”.

The Licensee said it had therefore taken the following steps to avoid recurrence:

- Talksport’s Programme Director had briefed both the presenter (who was new to commercial radio) and his production team, “to supplement previous briefings given when he joined the station”, emphasising that:
  - “whenever commercial references are made to sponsors, however brief, it should be clear to listeners that the brand in question is a sponsor”; and
  - “the presence of sponsor credits alone may not provide sufficient signalling in ensuring appropriate transparency for listeners”;
- A “written notice” had been provided to all production, programming and sponsorship staff, emphasising the above;
- Meetings had been held with key sponsorship and sales staff, to ensure they understood the importance of transparency in relation to all commercial activity in programming; and
- Talksport’s sponsorship and promotions department had “audited all live sponsor reads currently carried on the station, to ensure that all scripts given to presenters and production teams include wording identifying the material as a promotion for an on-air sponsor.”

Talksport Limited said the audit noted above had “identified that the live sponsored reads for Wickes were the only live sponsor reads carried on Talksport which did not already include wording identifying the relevant brand as a sponsor.”

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including “that generally accepted standards are applied to the contents of...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material.”

This is reflected in, among other rules, Rule 10.1 of the Code, which requires that programming subject to, or associated with, a commercial arrangement is appropriately signalled, so as to ensure the commercial arrangement is transparent to listeners. Ofcom’s associated guidance to Rule 10.1<sup>1</sup>, clarifies how this should generally be achieved:

“Whenever any programming is subject to a commercial arrangement (whether it is a commercial reference in a programme/feature or the entire programme/feature itself) Ofcom considers that, to comply with Rule 10.1, appropriate transparency of the arrangement generally requires signalling *at the outset of each instance*...

“In particular, when commercial references...take place in related programming (e.g. paid-for sponsor references within a sponsored breakfast show or the promotion of a product within a feature that opens with non-promotional material), transparency of any commercial arrangement should take place at the earliest opportunity – i.e. at or near the start of the programming concerned”.

In this case, Ofcom noted that the Colin Murray programme, which lasted three hours, contained sponsorship credits that referred to Wickes at approximately 15 minute intervals. We therefore considered regular listeners may have recognised that the reference to the sponsor’s products at the end of the interview with Victoria Pendleton were likely to have been subject to a commercial arrangement.

Nevertheless, Ofcom considers it essential that, to ensure adequate transparency, *all* listeners recognise when specific programming is subject to (or associated with) a commercial arrangement between the broadcaster and a third party. We do not generally consider it sufficient for such an arrangement to be revealed after the fact<sup>2</sup>.

In this instance, when Colin Murray asked Victoria Pendleton about DIY, the last reference to a commercial arrangement between Wickes and Talksport had been some 13 minutes earlier (in a sponsorship credit for the programme). As the presenter did not make clear at the outset of the commercial reference to Wickes’ ‘Geneva’ moulded doors that this had also been subject to the commercial arrangement – which could have been achieved by, for example, reference to “our sponsor, Wickes” – some listeners may not have been aware that they were listening to content that was subject to such an arrangement. The Licensee therefore failed to signal appropriately programming that was subject to a commercial arrangement.

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<sup>1</sup> See ‘Positioning’, under ‘Appropriate signalling’, in Ofcom’s guidance notes to Section Ten, at:  
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>.

<sup>2</sup> In the guidance highlighted under footnote 1, Ofcom notes the following exception to the guidance quoted in this Finding: “...it may be appropriate for the signalling of, for example, a short sponsored programming feature that contains no commercial reference to the sponsor within it (e.g. a typical weather bulletin), to be made at the end of such programming.”

However, Ofcom noted the Licensee's apology and took into account the range of steps it had taken to avoid recurrence. In particular, we noted the result of the audit undertaken in this instance, which suggested the matter under investigation was likely to have been an isolated incident. Ofcom therefore considered the matter to be resolved.

**Resolved**



## Advertising Scheduling Findings

### Resolved

#### Resolved findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Pop	28 August 2013, 07:00	<b>COSTA Rule 4</b>	<p>Ofcom received notification from the licence holder for Pop, CSC Media (“CSC Media”) that it had exceeded its permitted advertising allowance by three minutes.</p> <p>CSC Media said that a programme ran shorter than its scheduled time and the playout system subsequently froze. It said that further errors in the playout system caused an advertising break from a preceding clock hour to be transmitted erroneously.</p> <p>CSC Media said it is working with its playout providers to avoid future occurrences and had removed three minutes of advertising time from the same clock hour the week after for this error.</p> <p><b>Finding: Resolved</b></p>

## Fairness and Privacy cases

### Upheld

#### Complaint by Mr Abkar Singh Rai

*Let's Talk, Kismet Radio, 17 May 2013*

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#### Summary

Ofcom has upheld Mr Abkar Singh Rai's complaint of unjust or unfair treatment in the programme as broadcast.

Kismet Radio broadcast an edition of its phone-in programme, *Let's Talk*, which included an allegation that the complainant, Mr Rai, had been caught stealing from the Sri Guru Singh Sabha Southall Gurdwara ("the Gurdwara", the Sikh temple in Southall, west London).

Ofcom found that:

- the programme presented a significant allegation of theft against Mr Rai in a way that was likely to materially and adversely affect listeners' perceptions of Mr Rai unfairly. Ofcom considered that the broadcaster had not taken reasonable care to ensure material facts were not presented, disregarded or omitted in a way that portrayed Mr Rai unfairly.
- the comments made in the programme about Mr Rai amounted to a significant allegation of wrongdoing. Therefore, the broadcaster was required to offer him an appropriate and timely opportunity to respond prior to broadcast of the programme. Its failure to do so resulted in unfairness to Mr Rai.

Ofcom was concerned that the broadcaster had relied solely on a story published in one Asian newspaper as the basis for broadcasting the claim that Mr Rai had committed theft, and that Mr Rai was only offered an opportunity to respond a very considerable time (25 days) after the programme was broadcast.

#### Note to broadcasters:

A broadcaster has a responsibility to ensure that any significant allegation made about an individual or organisation in a programme is presented in a way which does not portray that individual unfairly. If a programme alleges wrongdoing or makes other significant allegations, the broadcaster should normally:

- give the individual or organisation concerned an appropriate and timely opportunity to respond; and
- reflect any response in an appropriate way on air; and/or
- at least reflect the fact that the broadcaster has sought comment from the individual or organisation concerned; and/or
- place the allegation in an appropriate context (by, for example, explaining it is based on one source or is unverified).

## Introduction and programme summary

Kismet Radio is a commercial radio station providing educational and informative programming to the UK Asian community in the Greater London area.

A transcript in English (translated from the original Punjabi) of the relevant part of the programme broadcast on 17 May 2013 was prepared by an independent translation company for Ofcom. Both parties to the complaint confirmed that the translated transcript fairly represented the content in the programme relevant to the complaint, and that they were satisfied for Ofcom to rely on the translated transcript in considering the complaint.

On 17 May 2013, Kismet Radio broadcast an edition of *Let's Talk* presented by Mr Sunny Landa. During the programme, the presenter read out a news item stating:

*"Omkar Singh [i.e. Mr Rai]<sup>1</sup>, who is the brother-in-law of the Chairperson of Sri Guru Singh Sabha Southall [i.e. the Gurdwara]...has been caught red-handed while stealing money from the collection pot".*

Following this comment, Mr Landa asked *"when such things happen in Hindu temples, Mosques and Gurdwaras; when those who work inside these places are thieves? How does it affect people?"* and invited listeners to phone in to give their opinions. The presenter said that the CCTV camera in the Gurdwara *"was not functioning at the location of the collection pot"* and acknowledged that *"those who work inside [the Gurdwara] say that there is no evidence [of the theft]"* before asking listeners how evidence could be obtained. He also said that the person who had reported the incident had received death threats. During the 40-minute discussion that followed, Mr Landa repeated the allegations of theft and referred to Mr Rai, either directly by name, or as the brother-in-law of the Chairperson of the Gurdwara, 12 times.

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

Mr Rai complained that he was treated unjustly or unfairly in the programme as broadcast because:

- a) The programme alleged, falsely, that Mr Rai had been caught stealing money from the collection pot at the Gurdwara in Southall where he works as a volunteer. Mr Rai said the programme makers did not contact the Gurdwara to ascertain if the allegations were true.

Mr Rai said that the allegations made in the programme were false and politically motivated. He added that he and his family have "a long history and deep connection to the Gurdwara" and the broadcast has caused him and his family distress and damaged their reputation.

Kismet Radio said that the allegation of theft at the Gurdwara was published by an Asian newspaper and it had decided to include this news story in the programme complained about as a subject for discussion. The broadcaster explained that the Gurdwara, in which the alleged theft took place, had a history of violence and intimidation because different parties wished to control its management because large sums of cash are donated to the Gurdwara by the

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<sup>1</sup> Mr Rai confirmed to Ofcom that there are several variations of how his first name can be pronounced, one variant being Omkar.

Sikh Community. Kismat Radio said that ordinarily it does not get involved in allegations made by one party against the other. It said that, in this particular case, the person who had made the allegation of theft against the complainant had been told by the Gurdwara's Management Committee that action would be taken over the alleged theft. However, it said that the event was covered up by the Committee and that this was bad for the Sikh community, the Gurdwara and the current Management Committee.

Kismat Radio provided Ofcom with recordings and transcripts of interviews which took place after the programme complained about was broadcast. It said that these recordings contained evidence that the Gurdwara's Management Committee was not as transparent in their management as they claimed to be and that Mr Rai was "a part of this" because he was the brother-in-law of the Chairperson of the Gurdwara. Kismat Radio added that the Gurdwara's Management Committee maintained that CCTV footage existed which showed that no theft took place, but that this evidence was not given to the police or made available to Kismat Radio.

- b) Mr Rai was not given an opportunity to respond to the serious allegations made about him in the programme.

Kismat Radio said that Mr Rai was offered a right to reply and that Mr Rai's son replied on his behalf stating that his father was not prepared to make any statement and he did not want the right to reply. Kismat Radio said that the allegation about Mr Rai was not denied and added that there were at least three other conversations which took place with Mr Rai's son regarding this matter.

## Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of it, both parties' written submissions and supporting material. Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was to uphold the complaint). Neither party made any representations on the Preliminary View.

When considering complaints of unjust or 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 first Mr Rai's complaint that he was treated unjustly or unfairly in the programme as broadcast because the programme alleged, falsely, that he

had been caught stealing money from the collection pot at the Gurdwara where he worked as a volunteer.

Ofcom took account of Practice 7.9 of the Code which provides 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 the individual or organisation.

The programme's presenter, Mr Landa, stated that Mr Rai "*had been caught...stealing from the collection pot [of the Gurdwara]*" and Mr Landa repeated this allegation of theft 12 times during the 40 minute discussion which followed. There is no doubt in Ofcom's view that this was a serious allegation of wrongdoing and it would have been clear to listeners that the programme stated, unequivocally, that Mr Rai had committed theft. This allegation questioned Mr Rai's honesty and integrity and suggested he was involved in criminal behaviour.

Kismat Radio said in its submissions that it included this story in the programme as a discussion point and that the allegation had previously appeared in an Asian newspaper.

In Ofcom's view whenever a programme alleges wrongdoing or makes other significant allegations against an individual or organisation, the broadcaster must take certain measures to ensure compliance with Section Seven (Fairness) of the Code to avoid unjust or unfair treatment. For instance, broadcasters should normally:

- give the individual or organisation concerned an appropriate and timely opportunity to respond; and
- reflect any response in an appropriate way on air; and/or
- at least reflect the fact that the broadcaster has sought comment from the individual or organisation concerned; and/or
- place the allegation in an appropriate context (by, for example, explaining it is based on one source or is unverified).

In the circumstances of this case, Ofcom considered that Kismat Radio took none of these steps. Mr Landa simply stated, as fact, that Mr Rai "*had been caught...stealing from the collection pot [of the Gurdwara]*". He did not attempt to place this statement in any form of context by explaining that, for example, it was based on a story in one Asian newspaper, or was an unproved allegation. Moreover, Mr Landa repeated the allegation on numerous occasions throughout the programme.

Ofcom noted Kismat Radio's submissions that Mr Landa was justified in broadcasting the allegation against Mr Rai because the person who complained about the alleged theft at the Gurdwara considered that the allegation had not been dealt with appropriately by the Gurdwara's Management Committee because Mr Rai was the brother-in-law of the Chairperson of the Gurdwara.

Ofcom underlines that the right to freedom of expression is crucial for broadcasters and their audience. Broadcasters must be able to investigate and report on matters of interest to their audience freely, but in doing so they must always comply with the Code. In particular, as already pointed out, broadcasters must not make (or repeat) significant allegations against individuals or organisations in a way that is unfair. In this case, Ofcom considered that Kismat

Radio could have avoided any unfairness to Mr Rai at the time of broadcast by taking some of the steps outlined in the bulleted points above.

As it was, however, in Ofcom's view the repeated allegation made by the presenter that Mr Rai had committed theft at the Gurdwara was clearly likely to materially and adversely affect listeners' perceptions of Mr Rai in a way that was unfair to him. The broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to the complainant and its failure to do so resulted in unfairness to Mr Rai.

- b) Mr Rai was not given an opportunity to respond to the serious allegations made about him in the programme.

In considering this aspect of the complaint, Ofcom took account of Practice 7.11 of the Code which states:

“If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.”

For the reasons already given in head a) above, Ofcom considered that the comments made in the programme (i.e. that Mr Rai had committed theft) amounted to an allegation of serious wrongdoing against Mr Rai. Normally, where a significant allegation is made about an individual or organisation in a programme, as it was in this particular case, the broadcaster should ensure that the individual or organisation concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

Ofcom noted Kismet Radio's submission that Mr Rai was given an opportunity to respond but that his son had refused on Mr Rai's behalf. However, Mr Rai said in his complaint that he was only offered a right to reply after the programme was broadcast. The broadcaster provided no evidence to Ofcom that Mr Rai (or, on his behalf, his son) was given an opportunity to respond to the allegation of theft prior to the broadcast. Given the serious nature of the allegation against Mr Rai, Ofcom considered that the broadcaster was required to offer Mr Rai an opportunity to respond to the allegation prior to the broadcast of the programme. It was not sufficient to attempt to avoid unfairness in this case for the broadcaster to offer an opportunity to respond after the broadcast of the programme. Therefore, Ofcom considered that Kismet Radio's failure to provide Mr Rai with an appropriate and timely opportunity to respond to the serious allegation of theft made in the programme resulted in unfairness to him in the programme as broadcast.

**Accordingly, Ofcom has upheld Mr Rai's complaint of unjust or unfair treatment in the programme as broadcast. Ofcom is directing the Licensee to broadcast a summary of its findings in this case.**

## Not Upheld

### Complaint by Johnsons Solicitors on behalf of the Burzynski Clinic

*Panorama, BBC1, 3 June 2013*

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#### Summary

Ofcom has not upheld this complaint made by Johnsons Solicitors on behalf of the Burzynski Clinic of unjust or unfair treatment in the programme as broadcast.

The programme complained of was an edition of the current affairs programme *Panorama*, entitled *Cancer: Hope for Sale?* This investigated the medical treatment for cancer offered by Dr Stanislaw Burzynski at his clinic, the Burzynski Clinic, in Houston, Texas. The programme's reporter interviewed former patients and their families about their experiences, as well as medical and science professionals about their views on Dr Burzynski's treatment.

Ofcom's decision is that the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to the Burzynski Clinic. In particular, the programme:

- Reflected the views of medical and science professionals in an accurate and balanced way and Dr Burzynski and the clinic's views were included as appropriate to give balance.
- Presented a variety of views of patients, their families, and medical and science professionals about the Burzynski Clinic. Although the medical professionals featured did not appear to be supportive of the Burzynski Clinic, in Ofcom's view this did not result in unfairness to the clinic.
- Did not present information about the costs involved in obtaining treatment from the Burzynski Clinic in such a way that resulted in unfairness.

#### Introduction and programme summary

On 3 June 2013, BBC1 broadcast an edition of *Panorama, Cancer: Hope for Sale?* This investigated the medical treatment for cancer offered by the Burzynski Clinic in Houston. The programme interviewed former patients and their families about their experiences of Dr Burzynski's treatment and his use of antineoplastons (the Burzynski Clinic's specialised cancer treatment). The programme focussed its investigation on UK patients who had been treated at the Burzynski Clinic, and, in particular, the experience of three patients and their families, namely Luna Petagine, Amelia Saunders and Ms Hannah Bradley.

A number of medical professionals were interviewed about their views on the treatment and an interview with Dr Burzynski himself was included in the programme. When asked by the reporter what he thought about the fact that "*People say that what you do is sell hope*", Dr Burzynski responded:

*"There are many foolish people and I tell you I am dealing with science and we have concrete evidence. Can you imagine the US government dealing with us for*

*so many years, they would allow me to be here if I just sold hope? Without any hard evidence?"*

The programme concluded by stating:

*"It's easy to understand the families who look for every last chance...But it's harder to understand how Dr Burzynski has been allowed to sell an experimental treatment to the desperate and vulnerable for the past thirty years".*

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

Johnsons Solicitors complained that the Burzynski Clinic was treated unjustly or unfairly in the programme as broadcast because a negative impression was given of the clinic which was designed to be detrimental to its reputation. In particular, Johnsons Solicitors complained that:

- a) The programme portrayed the clinic and its research facilities as being involved in "questionable" scientific and medical practices.

Johnsons Solicitors said that the BBC had clearly been determined to portray the clinic and its research institute as facilities involved in "questionable" scientific and medical practices. This was despite the fact that it said the research on antineoplastons had been supported in the past by the US National Cancer Institute ("the NCI"), reviewed by experts of the NCI and the US Food and Drug Administration (the "FDA"), and permitted to proceed to the final stage of the approval process – namely, Phase III clinical trials.

In response, the BBC stated that it considered the programme's portrayal of the scientific and medical practices of the Burzynski Clinic and its research facility to be fair and accurate. It explained that the purpose of the programme was to examine the available evidence to determine if the Burzynski Clinic's antineoplaston treatment was effective as a treatment for cancer. The BBC said that the programme concluded that the antineoplaston treatment was: "an experimental and unproven treatment which is not approved by the US Food and Drug Administration for the prevention or treatment of any disease". The BBC stated that the treatment and how it was supposed to work were unclear.

The BBC pointed out that, although Dr Burzynski claimed to have treated thousands of patients, the clinic's success rates were unknown. It said that the Burzynski Clinic had conducted numerous clinical trials and there was an unusually high number registered on the US government and US National Institutes of Health register. It said that patients could only be treated with the antineoplaston treatment if they were participating in a clinical trial. The high number of clinical trials had therefore allowed the Burzynski Clinic to treat a greater number of patients than would otherwise have been possible. It said that full results of clinical trials which demonstrated that the antineoplaston treatment was effective had never been published in a peer-reviewed journal. The BBC said that this was "questionable scientific practice".

The BBC explained that it had given the Burzynski Clinic the opportunity to respond to claims made in the programme. It had initially requested information about the number of patients the Burzynski Clinic had treated and their survival rates in a letter dated 31 January 2013 and repeated the request over the subsequent four months. It said that answers to its questions were never provided. It said that the Burzynski Clinic did however release "some limited



figures” concerning survival rates to a BBC radio station a day before the *Panorama* programme was due to be broadcast. These figures were therefore included in the programme, though they could not be verified because they had not been peer reviewed.

The programme makers interviewed Dr Burzynski, footage of which was included in the programme. He was given the opportunity in the interview to respond directly to questions about the scientific merit of his work and that he had not presented full results of the clinical trials of antineoplastons for peer review. Dr Burzynski stated that antineoplastons could cure cancer: “...*but not everybody, because this is a very complex disease*”. The BBC said that in advance of the interview Dr Burzynski was asked to produce verifiable and scientifically robust trial results to support his claims but he refused to do so and claimed that FDA regulations prevented him from doing so. The BBC disputed that the FDA had prevented Dr Burzynski from releasing the results of his clinical trials. It said that Dr Burzynski was disingenuous in referring to an official FDA warning issued to the Burzynski Clinic in September 2012 regarding the clinic’s promotion of antineoplastons on its website.

The BBC said that the programme makers had provided the Burzynski Clinic with a number of opportunities to respond to specific claims made in the programme, and to confirm or correct facts. It said that these responses were included in the programme.

Included in the programme was an interview with Mr Wayne Merritt and his wife, Mrs Lisa Merritt. The BBC said that Mr Merritt requested and received treatment from the Burzynski Clinic when he was diagnosed with pancreatic cancer, because he did not want to be treated with conventional chemotherapy. He was told that he was not eligible for the antineoplaston clinical trial, but could be treated with “targeted” therapy instead. This involved the patient taking a cocktail of cancer drugs tailored to their specific type of cancer. The BBC said that: “the potential side effects of these untested combinations are unknown”. Mr Merritt told the programme makers that he was not informed that his particular treatment included chemotherapy drugs and he was not given a breakdown of the treatment costs which, he said, escalated quickly. He stopped the treatment when his oncologist told him that she considered the treatment to be dangerous and informed him that it included chemotherapy drugs. The BBC said that the use of high-dosage chemotherapy and other drugs in untested combinations on patients suffering from cancer – outside an approved clinical trial – was, in its belief, “questionable scientific practice”.

The programme included an interview with Dr Jeanine Graf, the Medical Director of the Intensive Care Unit at Texas Children’s Hospital. The BBC stated that the hospital told the programme makers that it regularly treated children who were patients at the Burzynski Clinic and suffering serious side effects from the antineoplaston treatment. One side effect was high sodium levels which, in the case of the young girl, Luna Petagine, featured in the programme were almost fatal. The BBC said that the programme was careful to reflect accurately Dr Graf’s explanation that the reason the children coming to the hospital, after treatment by the Burzynski Clinic, were so ill was: “*probably caused by a combination of their cancer getting worse and the side effects of the Burzynski treatment*”. The BBC pointed out that Dr Graf firmly stated that she would not recommend treatment at the Burzynski Clinic to any of her patients. The BBC said that the programme makers had visited the research institute where antineoplaston treatment was produced. The reporter questioned whether

the treatment had any efficacy as a cancer drug. The BBC said that it did not consider this to be unreasonable.

The broadcaster stated that the claim that Dr Burzynski's research had been supported in the past by the NCI was misleading. This was not the case and the NCI had not endorsed Dr Burzynski's work. The BBC said that both the NCI and the American Cancer Society described antineoplastons as a "complementary/alternative" treatment, the side effects of which "can include serious neurologic toxicity".

The BBC said that the complaint also gave the impression that Dr Burzynski's trials were endorsed by the FDA. However it stated that FDA approval for clinical trials does not constitute an endorsement of the treatment being tested.

The BBC also highlighted the fact that the clinic had been investigated on a number of occasions by the Texas Medical Board.

In conclusion, the BBC said that it did not consider that the programme's presentation of the medical and scientific practices of the Burzynski Clinic was unfair. It said that a number of those practices were, in its view, "questionable" and that Dr Burzynski and the clinic, though provided with the opportunity to provide answers to questions addressing these concerns, failed to do so.

- b) The programme presented "a one-sided, negative viewpoint of doctors and patients and completely neglected the overwhelming positive evidence from other patients and medical experts".

In response, the BBC said that the programme looked objectively at the available evidence and presented a range of views about the treatment provided by the clinic. *Panorama* is a UK-based programme and as such the BBC said that the programme focussed its investigation on UK patients who had been treated at the Burzynski Clinic. The experience of three patients and their families was included: Amelia Saunders, Luna Petagine and Ms Hannah Bradley. The programme explained that Amelia Saunders and Luna Petagine had subsequently died. The BBC said that these were not unrepresentative cases, as Dr Burzynski's own figures suggested that survival rates of patients treated for brain tumours at the clinic were in the region of 15.5%. The BBC said that in the programme both families expressed reservations about the clinic and the treatment, but also made it clear that they did not regret going and would have taken any chance of recovery offered. The BBC said that neither family criticised Dr Burzynski directly, nor were known critics of the clinic.

The third UK patient presented in the programme, Ms Bradley, was at the time still undergoing antineoplaston treatment for a brain tumour. The BBC said that in the programme Ms Bradley was strongly supportive of Dr Burzynski's work, and credited the antineoplaston treatment with saving her life. It said that Ms Bradley and her partner had published online details of her treatment and their positive opinions of it, and that they had encouraged other UK cancer patients to consider Dr Burzynski's treatment. The BBC said that these three UK cases presented a fair and representative sample of the views of UK patients treated by Dr Burzynski.

The BBC said that the programme also drew upon a wide range of scientific and medical sources from both the UK and the USA including: Cancer Research UK; the Children's Brain Tumour Research Centre; Great Ormond Street Hospital;

reputable science blogs; editors of *The Lancet* medical journal; Dr Elloise Garside, research scientist; the US Food and Drug Administration; the Texas Medical Board; the National Cancer Institute; the American Cancer Society; former employees of the Burzynski Clinic; Memorial Sloan Kettering Hospital; the Mayo Clinic; Texas Children's Hospital; and a number of oncologists. The BBC said that none was prepared to endorse Dr Burzynski's treatment.

The programme looked at the material that Dr Burzynski had published and, in particular, it considered the list of publications provided by Dr Burzynski's representatives to the programme makers in a letter dated 20 March 2013. The publications were considered against three criteria: i) whether they represented the full results of a Phase II clinical trial; ii) whether the articles had been peer reviewed; and iii) whether they had appeared in a well-respected journal (the programme makers consulted the editor of *The Lancet* and Professor Peter Johnson at Cancer Research UK and took into account the publications' rankings on the recognised reference site *Google Scholar* in order to make this judgement). None of Dr Burzynski's publications met the first two criteria; and none was considered "eminent" by the above two sources consulted. The BBC said, with regard to *Google Scholar*, that the journals did not appear in either the top 20 Health and Medical Sciences publications or the top 100 academic journals.

The programme also considered material from groups such as the Burzynski Patient Group (former patients who supported Dr Burzynski) and from other supporters such as Dr Julian Whitaker and the actress, Ms Suzanne Somers. The BBC said that it also considered medical records available from UK patients who had been treated by Dr Burzynski.

The BBC explained that the programme included interviews about the scientific basis of Dr Burzynski's work from two of the foremost cancer experts in the world: Professor Richard Grundy, Nottingham Children's Hospital, and Professor Peter Johnson, Cancer Research UK. The BBC considered that these two experts were eminently qualified to provide an objective assessment of Dr Burzynski's work and said that both concluded that "it deviates from accepted scientific practice". The BBC stated that "their critical opinions of Dr Burzynski's work are not a minority view in the scientific community".

The complainant stated:

"The BBC presented a uniformly negative opinion from medical practitioners selected to appear on the programme notwithstanding the fact that positive opinions were readily available from British specialists who treated Hannah Bradley and Laura Hymas".

In response the BBC said that it did not consider that the programme neglected any "overwhelming positive evidence" and that it was not aware of any UK specialists involved in either Hannah Bradley's or Laura Hymas' case who were willing to provide "positive opinions" of any antineoplaston therapy. The BBC pointed out that, even if an individual doctor was to give a positive opinion about a single case, it would have "little scientific value" because proving that antineoplaston treatment worked could only be achieved through "proper scientific trials rather than anecdotal evidence".

The BBC pointed out that the programme considered the celebrity endorsement and media coverage that Dr Burzynski used to promote his work. It said that in

the absence of established peer-reviewed evidence, the clinic promoted itself using personal accounts from individual patients who consider they have been helped by antineoplaston treatment. Persuasive accounts from survivors were used by the clinic on its website and on YouTube. In addition, accounts from patients were used throughout *Burzynski: The Movie*, a film the clinic considered to be an independent documentary. The complainant stated that "...the BBC were aware of and would have viewed the documentary regarding Eric Merola [Producer and Director of *Burzynski: The Movie*] and the positive opinions expressed by medical experts". The BBC said that the programme makers had viewed *Burzynski: The Movie* and included excerpts from it in the programme. The BBC said that the film included interviews with known supporters of Dr Burzynski who offered their "positive opinion" of his work with no verifiable evidence. The BBC's view was that the film was a "...one-sided and a factually inaccurate PR tool with little scientific value", as the independent scientist Dr Elloise Garside explained in the programme.

The BBC said that there was no reliable data, published in peer-reviewed journals, to back up the personal accounts of survival in relation to antineoplaston treatment. Therefore, it said that the programme offered a representative selection of views about the Burzynski Clinic and accurately represented the range of views that actually existed.

- c) The programme wrongly implied that patients had been financially exploited. Johnsons Solicitors said that the programme makers had been told that patients did not pay for antineoplaston treatment medication and that the BBC should have compared the expenses at the Burzynski Clinic with the other cancer facilities in the same city, namely Houston, Texas.

In response, the BBC said that patients treated at the Burzynski Clinic with antineoplastons on clinical trials paid "tens of thousands of dollars to the clinic". It said that it was almost unheard of for patients taking part in other clinical trials to have to pay. It said that it was not the case (and the programme did not claim that it was) that patients had to pay for the experimental, unproven antineoplaston drug. However, patients did have to pay to receive antineoplaston treatment at the clinic. The BBC explained that this treatment included more than the provision of the antineoplaston drug, which Dr Burzynski was not allowed to charge for by law. By way of example, the BBC said that the treatment costs for Luna Petagine began at \$20,000 for the initial consultation and was followed by an additional \$60,000 within a few days. In total, her family paid about \$160,000 for the five months of treatment that she received.

The BBC acknowledged that other cancer treatment centres and medical practices in the USA also charged high prices for treatment. However it said that those treatments were not based on experimental, unproven drugs; nor did they appeal deliberately to "desperate overseas patients by offering scientifically unsubstantiated hopes of a cure".

The BBC stated that cancer treatment in the UK was among the best in the world and that it was free. It therefore said that comparisons of prices of other cancer facilities in Texas, where UK patients were unlikely to seek treatment, were not relevant. The BBC added that the programme did not use the phrase "financial exploitation" at any point in the programme.

## **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View in this case that Johnsons Solicitors' complaint on behalf of the Burzynski Clinic should not be upheld. Both parties were given the opportunity to comment on the Preliminary View. Ofcom has summarised the main points made by Johnsons Solicitors in its representations on the Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom. The BBC did not submit any representations.

In summary, Johnsons Solicitors said it did not agree that the programme reflected the views of medical and science professionals in an accurate and balanced way. It said that the BBC clearly had an agenda to portray the Burzynski Clinic in a "negative light". It also did not agree that the views of patients and families included in the programme did not result in unfairness to the Burzynski Clinic. It said that a fair portrayal would have included a higher selection of satisfied patients, in equal or greater measure to those with negative comments in relation to the Burzynski Clinic.

## **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and supporting documentation. Ofcom also took account of the representations made by Johnsons Solicitors in response to Ofcom's Preliminary View on this complaint (which was not to uphold). Ofcom concluded that Johnson's Solicitors had not raised any issues that altered Ofcom's decision not to uphold the complaint.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision. When considering each of the heads of complaint below, Ofcom took into consideration Practice 7.9 of the Code which states that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

In order to assess whether or not the programme complained of created unfairness to the Burzynski Clinic, Ofcom considered in turn each of the heads of the complaint as set out in the "Summary of the complaint and the broadcaster's response" section above, and then also the programme as a whole.

- a) Ofcom first considered the complaint that the programme portrayed the clinic and its research facilities as being involved in “questionable” scientific and medical practices.

It is important to note that it is not Ofcom’s role to decide whether claims made in a broadcast are factually correct or not. Rather it is to consider, for example, whether the inclusion of a statement and/or accompanying footage amounted to unjust or unfair treatment of an individual or organisation. Therefore, in the context of this particular case, Ofcom will not attempt to establish, for example: whether the Burzynski Clinic’s antineoplaston treatment is an effective treatment for cancer; what constitutes robust scientific evidence; or which scientific and medical bodies do or do not support the work of Dr Burzynski.

Ofcom considered that the purpose of the programme was to investigate the work of the Burzynski Clinic and to examine the available evidence to determine if the Burzynski Clinic’s antineoplaston treatment was an effective form of cancer treatment. The programme concluded that the antineoplaston treatment was an “*experimental treatment*” that was “...*not recognised by mainstream medicine*”. The programme did not claim that Dr Burzynski’s treatment did not work, but rather it explained throughout the programme that the reason Dr Burzynski’s treatment had not been accepted by “*mainstream medicine*” was because “*the results from Dr Burzynski’s clinic are not published in any form that’s acceptable to the scientific community...*”. The programme included the professional views and opinions of a variety of doctors and scientists. The programme’s reporter explained:

*“In science it all boils down to sharing your results so that other scientists can test your theory. Dr Burzynski has published many reports and articles – but they’re all weak on detail. He has never published full results in the way that can be used by other researchers”.*

Ofcom took account of the fact that the BBC had given the Burzynski Clinic the opportunity to respond to claims made in the programme regarding the antineoplaston treatment, and that it had initially refused to answer the BBC’s questions. The BBC said that the Burzynski Clinic released “some limited figures” concerning survival rates to a BBC radio station the day before the *Panorama* programme was broadcast and that these figures were included in the programme:

*“The clinic finally released some figures yesterday. They say 776 patients with brain tumours were treated in trials. And that 15.5% had survived more than five years, which compares favourably to other treatments”.*

However, the BBC pointed out in its response to Ofcom that these figures could not be verified because they had not been peer reviewed.

The programme makers also interviewed Dr Burzynski and the interview was included in the programme. An extract is reproduced below:

Reporter: “*Can antineoplastons cure cancer?*”

Dr Burzynski: *Definitely they can do it, but not everybody, because this is a very complex disease.*

Reporter: *Well, tell me then, how many people have you treated and how many people have survived?*

Dr Burzynski: *Clinical trials were completed only a few months ago. I cannot release this information to you at this moment because –.*

Reporter: *– the FDA say, just to be clear the FDA say, that's not true and you could tell me.*

Dr Burzynski: *No, no, you are not right, give me the letter from the FDA.*

...

Reporter: *People say that what you do is sell hope, that's what you do, you step in and you sell hope. What do you make of that?*

Dr Burzynski: *There are many foolish people and I tell you I am dealing with science and we have concrete evidence. Can you imagine the US government, dealing with us for so many years, they would allow me to be here if I just sold hope? Without any hard evidence?"*

Given the above, Ofcom's view was that the Burzynski Clinic was given appropriate opportunities to respond to specific claims made in the programme about the scientific and medical credibility of the treatment it offered.

Ofcom also considered that the views of Dr Burzynski and the clinic were sufficiently included in the programme so as to avoid unfairness. For example, the programme explained why Dr Burzynski considered his treatment was not accepted by the established scientific and medical community. The reporter stated:

*"Dr Burzynski says his drug has been rejected because treatment is controlled by the cancer industry".*

In Ofcom's opinion the programme makers had also been careful to reflect the views of scientists and doctors accurately and in a balanced manner. For example, the programme discussed the treatment Luna Petagine received from the Burzynski Clinic, and the fact that after treatment she had been admitted to the Texas Children's Hospital due to high sodium levels which proved almost fatal. The programme was careful to reflect accurately Dr Jeanine Graf's explanation that the reason children coming to the hospital, after treatment by the Burzynski Clinic, were so ill was: *"...probably caused by a combination of their cancer getting worse and the side effects of the Burzynski treatment"*. The programme also included the Burzynski Clinic's response to the admission of Luna Petagine to the Texas Children's Hospital, following her treatment. The reporter stated:

*"The Burzynski Clinic told us Luna suffered a reversible side effect and recovered fully and that only a very small percentage of their patients do end up at the Texas Children's Hospital".*

In summary, the programme did not claim that Dr Burzynski's treatment was not an effective treatment for cancer. Rather it explained that: *"...the results from Dr Burzynski's clinic are not published in any form that's acceptable to the scientific community..."*.

Given the above examples, and for the reasons stated, Ofcom concluded that the broadcaster had taken reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that portrayed the Burzynski Clinic or its research facilities unfairly in the programme as broadcast.

Ofcom's decision is therefore that there was no unjust or unfair treatment in this respect.

- b) The programme presented "a one-sided, negative viewpoint of doctors and patients and completely neglected the overwhelming positive evidence from other patients and medical experts".

The programme focussed its investigation on UK patients who had been treated at the Burzynski Clinic, and, in particular, the experience of three patients and their families, namely Luna Petagine, Amelia Saunders and Ms Hannah Bradley. In Ofcom's view the programme made it clear that many of the families of patients who had received treatment at the Burzynski Clinic, but still subsequently died of their illness, did not regret seeking help from the clinic. For example, the programme explained that Luna Petagine had been diagnosed with an aggressive brain tumour when she was 18 months old. After exhausting conventional medical treatment in the UK, Luna Petagine's parents took Luna to the Burzynski Clinic for treatment. Luna Petagine's mother explained that:

*"It was all about hope; it was all about hope. He said he hoped to cure my daughter; the plan was to try and cure Luna. That was his – that was his plan from day one".*

At the end of the programme, it was explained that: *"The Burzynski treatment didn't work for Luna [who died aged five years] – but her mum doesn't regret going".*

Luna Petagine's mother stated:

*"I think it gave us another year. I do. If I hadn't have gone I would be sat here without my daughter saying, God if only I'd tried it, and you can't put a price on hope, you can't, and if he is a fraud, then he's a really bad man, you know, if he is. But at the end of the day as a parent with a child who is dying and you're told this child is going to die, you will try anything, anything".*

Further, the programme explained that Amelia Saunders was also diagnosed with an aggressive brain tumour and that her family had sought the help of the Burzynski Clinic. The reporter said:

*"They [her family] say he told them he could save Amelia, that she had a 54% chance of survival on his treatment".*

Amelia Saunders' parents, Mr Richard Saunders and Mrs Chantal Saunders, spoke about the effects of the Burzynski Clinic treatment:

Mr Saunders: *"After we started the treatment for a period of time, it [the tumour] was stable for quite a long time, it was stable".*



Mrs Saunders: *“About four or five months it [the tumour], it remained stable, it didn’t grow at all. She [Amelia] became happier, she went back to school and joined in with most things”.*

Later, the programme stated that Mr and Mrs Saunders were told by doctors in the UK that their daughter’s tumour was growing, while they said that they were told by Dr Burzynski that her tumour was breaking up. Although Amelia Saunders died of her illness, again the programme made it clear that: *“The family say they don’t regret going to see Dr Burzynski”.* The programme also stated, however, that the family did have: *“...misgivings about the way they were treated – including that prediction Amelia had a 54% chance of survival”.*

The Burzynski Clinic’s view on this was included in the programme:

*“Dr Burzynski told Panorama he doesn’t remember saying a figure – but ‘at the time of their visit, his data indicated 56% survival for this group of patients over two years’. He also says that Amelia survived longer than doctors in the UK originally predicted. And that ‘the clinic has not told anyone that they offer a cure’”.*

The third UK patient featured in the programme was Ms Bradley, who was also diagnosed with a brain tumour. The reporter stated that: *“Hannah believes the Burzynski treatment is working for her – she says it’s reduced the size of the tumour”.* Ms Bradley was supportive of the Burzynski treatment and her views on it were included in the programme:

*“They’ve got no proof either way. There’s no proof that it works or that it doesn’t work...I think I would not be here if I wasn’t on this treatment. And that is the reality of the type of tumour I have”.*

Given the contributor details above, Ofcom considered that the programme had presented a range of views of patients and their families about the Burzynski Clinic and had also included the views of the Burzynski Clinic where appropriate. Ofcom therefore did not consider that the programme offered only negative viewpoints from patients.

With regards to the viewpoints of medical professionals presented in the programme, Ofcom noted that the programme included a variety of opinions from a wide range of scientific and medical sources from both the UK and the USA, including: Cancer Research UK; the Children’s Brain Tumour Research Centre; Great Ormond Street Hospital; Dr Elloise Garside, research scientist; the US Food and Drug Administration, the Texas Medical Board; the National Cancer Institute; the American Cancer Society; former employees of the Burzynski Clinic; Texas Children’s Hospital; and a number of oncologists. None were prepared to endorse Dr Burzynski’s treatment.

Although the medical and science professionals featured in the programme did not appear to Ofcom to support the Burzynski Clinic, they did not dismiss the treatment as entirely ineffective either. Ofcom noted that, generally, they pointed out that it could not be proven either way whether Dr Burzynski’s treatment was effective because: *“...the results from Dr Burzynski’s clinic are not published in any form that’s acceptable to the scientific community”.* In particular, Ofcom noted that the programme included a contribution from Professor Peter Johnson of Cancer Research UK, who stated that:

*“The fundamental point about science is that if I do an experiment, if I run a clinical trial, if I give somebody a treatment, I need to be absolutely open and transparent about what it is that I’ve done so that somebody else can go and see if they can do the same thing as well. And if you can’t reproduce the results then people have no means of knowing whether it’s true or not”.*

Ofcom noted that again, as above under head a), the opinions of the Burzynski Clinic were included in the programme where appropriate. For example, the programme explained why Dr Burzynski considered his treatment was not accepted by the established scientific and medical community. The reporter stated:

*“Dr Burzynski says his drug has been rejected because treatment is controlled by the cancer industry”.*

Ofcom was of the opinion that, although the medical professionals featured did not appear to be supportive of the Burzynski Clinic, this did not result in unfairness to it.

Taking all the factors above into account, Ofcom considered that 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 the Burzynski Clinic.

Ofcom’s decision is therefore that there was no unjust or unfair treatment in this respect.

- c) The programme wrongly implied that patients had been financially exploited. Johnsons Solicitors said that the programme makers had been told that patients did not pay for antineoplaston treatment medication and that the BBC should have compared the expenses at the Burzynski Clinic with the other cancer facilities in the same city, namely Houston, Texas.

Ofcom noted from the BBC’s response that patients treated at the Burzynski Clinic with antineoplastons on clinical trials paid “tens of thousands of dollars to the clinic”, whereas it was almost unheard of for patients taking part in other clinical trials to have to pay. Ofcom also noted that the programme did not claim that patients had to pay for the antineoplaston drug and that, as the BBC had pointed out, the Burzynski Clinic was not allowed to charge for it by law. It was, however, made clear in the programme that patients did have to pay to receive antineoplaston treatment at the clinic. The programme gave the example of the treatment costs for Amelia Saunders who had an aggressive brain tumour. The programme explained *“they [Amelia’s family] paid £60,000 and at first it seemed to work”* and *“...raising the money provided a focus for Amelia’s friends and family”*.

Ofcom acknowledged that other cancer treatment centres and medical practices in the USA also charged high prices for treatment. It also noted the point on this issue made by the BBC:

*“...those treatments are not based around experimental, unproven drugs; nor do they deliberately appeal to desperate overseas patients by offering scientifically unsubstantiated hopes of a cure”.*

Ofcom also took into account that cancer treatment in the UK is reputedly among the best in the world and it is free with the National Health Service. Ofcom

therefore considered that comparisons with the prices of other cancer treatments in Texas (where UK patients were unlikely to seek treatment) were not needed to help ensure there was no unfairness.

Johnsons Solicitors stated: “The programme emphasised ‘financial exploitation’ of patients...” Ofcom noted that the programme did not include the phrase “financial exploitation” at any point. The programme did refer to the costs of treatment at the Burzynski Clinic. The programme made it clear that the families who had sought help from the Burzynski Clinic had mixed views on the money they had spent on treatment. Wayne and Lisa Merritt (a couple from the USA and not the UK) for example expressed their disappointment at the treatment that Wayne Merritt had received from the Burzynski Clinic. Lisa Merritt stated:

*“We just felt like that money was, we, we could have just thrown it into the fire and burnt it and it would have been just as good”.*

On the other hand, although the treatment was ultimately unsuccessful for her daughter Luna, Ms Lucy Petagine explained:

*“I think it gave us another year. I do. If I hadn’t have gone I would be sat here without my daughter saying, God if only I’d tried it, and you can’t put a price on hope...”.*

Given the above, Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that portrayed the costs involved in obtaining treatment from the Burzynski Clinic in a way that resulted in unfairness to the clinic.

Ofcom’s decision is therefore that there was no unjust or unfair treatment in this respect.

Having assessed each of the heads of complaint separately, Ofcom also considered the programme as a whole. Having done so, Ofcom concluded that the programme as a whole avoided unfair or unjust treatment of the Burzynski Clinic.

**Accordingly, Ofcom has not upheld Johnsons Solicitors’ complaint on behalf of the Burzynski Clinic of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Ms Roxana Tesla

*Mary Queen of the High Street, Channel 4, 14 May 2013*

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#### Summary

Ofcom has not upheld Ms Roxana Tesla's complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

In this edition of *Mary Queen of the High Street*, retail consultant Ms Mary Portas assessed the town of Margate's attempts to improve its High Street and offered her help. One of the retailers featured in the programme was the complainant, Ms Tesla. She was at the time of filming the Deputy Chair of the Margate Town Team ("the MTT"), the body responsible for applying for and then spending government money granted to Margate to improve its High Street.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts unfairly with regard to the portrayal of Ms Tesla's interactions with Ms Portas.
- There was no unfairness to Ms Tesla in not giving her an opportunity to view the programme prior to its broadcast or to respond to it.
- Ms Tesla did not have a legitimate expectation of privacy in regard to the footage of her in the programme as broadcast and therefore her privacy was not infringed in this respect.

#### Introduction and programme summary

On 14 May 2013, Channel 4 broadcast an edition of *Mary Queen of the High Street* in which retail consultant, Ms Mary Portas (who had previously conducted a review of the decline of Britain's High Streets for the Government), visited three of the twelve towns selected by the Government to be the first "Portas Pilot Area"<sup>1</sup> in order to give them the benefit of her expertise and the publicity associated with the broadcast of programmes about these towns. One of the towns featured in this series was Margate in Kent.

During the programme, Ms Portas pursued several ideas for increasing the number of shoppers to Margate, including persuading visitors to the Turner Contemporary Art Gallery to come to the High Street, securing lower rents on empty shops and negotiating cut-price train fares for day-trippers from London. However, the programme indicated that some of Margate's retailers, including members of the MTT, did not welcome Ms Portas' visits and/or the camera crew she brought with her.

One of the retailers featured in the programme was the complainant, Ms Tesla, who was the Deputy Chair of the MTT. She was shown outside the former Woolworths store, which was being used as the headquarters of the MTT. She was standing

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<sup>1</sup> The Portas Pilot Areas each received a £100,000 grant from the Government to be spent on locally-generated schemes to improve their High Streets.

alongside Mr Robin Vaughan-Lyons (the Chairman of the MTT at the time) who was speaking to Ms Portas about why Ms Portas and the camera crew might not be able to attend a public meeting of the MTT which she had planned to address. The following exchanges were then shown:

Ms Portas: *“Robin [Vaughan-Lyons], I’ve been hearing that I’m not allowed in tonight to the meeting.*

Ms Tesla: *Who told you that?*

Ms Portas: *Well about three or four...*

Ms Tesla: *Can we turn these off whilst we’re doing it because this really isn’t fair on us?”* [While speaking Ms Tesla waved her hand towards the cameras.]

The programme then showed a continuation of this conversation, though Ms Tesla was no longer present.

Ms Portas: *“Why are you not letting me in with my cameras?*

Mr Vaughan-Lyons: *You are, you are allowed in, but what’s happened is the owners of Woolworths haven’t given permission.*

Ms Portas: *But why would you not? I’m documenting this.*

Mr Vaughan-Lyons: *The landlord is saying they don’t want cameras to come in.*

Ms Portas: *Why is this girl so angry? Why is she not speaking to me? The whole point is... Why is she not coming out now and talking to me if we can’t film in there?*

Mr Vaughan-Lyons: *If you want to come in with me without the cameras we can talk.*

Ms Portas: *But why? Why? Why do you not want the cameras? What is it you...?”*

Ms Tesla then came to the door of the former Woolworths store and said *“Robin, you have to stop this. If they’re filming then you’re not allowed to answer this clearly”*. After this, Ms Portas turned to her and asked *“Do you not want to work with me?”* to which Ms Tesla replied: *“Yeah we do want to work with you, we’ve made it very clear we want to work with you...I want you to turn the cameras off now please.”*

Ms Tesla was not named in the programme, and her face was deliberately obscured in the footage shown and her voice deliberately disguised by the broadcaster.

## Summary of the complaint and the broadcaster's response<sup>2</sup>

### Unjust or unfair treatment

- a) Ms Tesla complained that she was unfairly portrayed because the footage of her with Ms Portas was edited unfairly and shown out of context. In particular, Ms Tesla said that:
- i) She was shown and referred to as being angry when she was actually being put under pressure from Ms Portas and the camera crew while trying to make it clear that the landlord had not given permission for filming. Ms Tesla said the scene was shown out of context and the sequence of events was rearranged or "jumbled" by editing. Ms Tesla said that, prior to the filming of the footage, the camera crew had explained to the MTT that they would not be able to film without permission from the landlord.
  - ii) The steps taken by the programme makers to disguise Ms Tesla's identity (obscuring her face and altering her voice) made her appear sinister and very hostile.
  - iii) The scene in which she was shown was set up (or staged) by the programme makers to incite conflict which could then be filmed.

In response, Channel 4 said that, on the day of filming, Ms Portas and the camera crew became increasingly frustrated because it seemed that they would not be able to film a public meeting held by the MTT. In addition, Ms Portas and the camera crew had become aware that the programme was being undermined in a number of ways and that Ms Portas had been told by a number of shopkeepers that some individuals were against her and that she would not be allowed to film at the meeting.

Given this, Channel 4 said Ms Portas decided to speak to Mr Vaughan-Lyons, who was at the MTT headquarters ensuring that everything was ready for the meeting. Ms Portas approached him as he stood just outside the door, with the camera following her, and asked him if he knew why she had been told that she would not be allowed to attend the meeting with the camera crew to film it. At this point, Ms Tesla intervened. Channel 4 said that this exchange was an impromptu meeting and was entirely genuine. There was nothing made up or staged about it.

In response to the specific points complained of, Channel 4 said that:

- i) Ms Tesla's reaction to Ms Portas and her questions to Mr Vaughan-Lyons could fairly be described as angry. For example, she angrily asked that the cameras be turned off, even though the camera crew were filming a little way back on the public footpath and were there primarily to film Ms Portas' discussion with Mr Vaughan-Lyons. Channel 4 said that there was no credible evidence to support Ms Tesla's claim that she was bullied by Ms Portas and the camera crew and was put under severe pressure.

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<sup>2</sup> Ofcom has re-ordered (and merged two of) the original heads of this complaint as set out in the Entertainment Decision in this case dated 28 June 2013 to improve the clarity of its decision.

The broadcaster said that, having gone inside the building, Ms Tesla subsequently came back outside into the view of the camera to try to stop Mr Vaughan-Lyons continuing to talk to Ms Portas on camera. She told him that he was not allowed to speak to Ms Portas on camera, demanded that the cameras be switched off and said that it was unfair to them and that they were being bullied. The programme makers did not understand why Ms Tesla made these objections, given that the filming was not taking place inside the premises and the cameraman was on a public footpath. However, after a short while they did stop filming.

Channel 4 said the footage of this conversation in the programme fairly and accurately represented what happened that day. Ms Portas' question in the programme about why Ms Tesla (who was not named) was reacting angrily was a perfectly fair one given her reaction. It said that the scene was not taken out of context and the editing was not "jumbled" (as Ms Tesla claimed) so as to cause unfairness.

Channel 4 argued that, in light of the above and given that Ms Tesla's identity was heavily disguised, the programme as broadcast was not unfair to her.

Channel 4 said that, contrary to Ms Tesla's claim that the programme makers had told the MTT that they would not be able to film the meeting without the landlord's permission, the reverse was true – i.e. that the programme makers were given this information by a member of the MTT.

- ii) Channel 4 said that as a result of the efforts to disguise Ms Tesla in the programme she would not have been identifiable to the vast majority of viewers. Even if she was identifiable to a very small number of people who knew her well and knew of her involvement with the MTT (which Channel 4 did not admit) neither the blurring of her face nor the disguising of her voice made her appear sinister, or more hostile than she actually was. It argued that fair-minded viewers would have concluded that the reason for obscuring her identity was because she did not wish to be identified and had not given consent to appear.
  - iii) Both Channel 4 and the programme makers denied that the scene was set up or staged. Channel 4 added that Ms Tesla gave no proper particulars for the basis of this claim and provided no evidence to support it.
- b) Ms Tesla complained that she was treated unjustly or unfairly in the programme as broadcast because she was not given an opportunity to view the programme prior to the broadcast and she was not given a right of reply.

In response, Channel 4 said that there is no requirement that a programme contributor be given an opportunity to view a programme, or parts of a programme in which they appear, prior to broadcast. It said that Ms Tesla was not promised that she would be able to view either the programme or any scenes including her. It added that, in any case, Ms Tesla was given a detailed account in writing of her contribution to the programme and that the programme makers took Ms Tesla's concerns about the programme into account while editing the programme for broadcast.

Channel 4 also said that the programme did not make any significant allegations which would have required the programme makers to have sought a response

from Ms Tesla (even if she was identifiable – which again, it did not admit) to avoid unfairness to her in the programme as broadcast.

### Unwarranted infringement of privacy

- c) Ms Tesla complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was broadcast without permission and after repeated requests for it not to be included in the programme. Ms Tesla added that despite the steps taken to disguise her identity (i.e. obscuring her face and altering her voice) she was recognised by everyone she knew in Margate. She said that she had told Channel 4 that including this footage in the programme would discredit her and the work she did in Margate. Ms Tesla said that trying to obscure her identity was “ridiculous” as she was quite distinctive and would be recognised by everyone she knew in the town.

In response, Channel 4 said that the scene outside the MTT headquarters was crucial to the whole narrative of the programme and to Ms Portas’ experiences in Margate (notably the resistance she experienced from some individuals). The exchange was carried out in a public place with the camera crew standing on the public footpath filming events as they happened. Ms Tesla was not harassed or pressurised by the camera crew or Ms Portas, who wanted to speak with Mr Vaughan-Lyons, not Ms Tesla. Channel 4 said that Ms Tesla could easily have removed herself from the filming and did so shortly after Ms Portas appeared. However, she then chose to come back outside and into view of the camera.

Channel 4 said that Ms Portas was calm and polite throughout the exchange and that the camera crew complied with Ms Tesla’s request when she insisted that the cameras stop filming her and Mr Vaughan-Lyons. This was notwithstanding that the purpose of the filming was primarily to film Ms Portas’ conversation with Mr Vaughan-Lyons. Channel 4 said that Mr Vaughan-Lyons had not asked for filming to stop, they were in a public place and Ms Tesla had chosen to put herself in a position where she would be filmed.

Given all these factors, Channel 4 said that Ms Tesla did not have a legitimate expectation of privacy in relation to the filming and its broadcast. However, it said that, even if she did have a legitimate expectation of privacy, broadcasting the short sequence in which Ms Tesla was shown in the programme was warranted by Channel 4’s right to freedom of expression and the public interest in providing a faithful account of Ms Portas’ experiences in Margate, particularly given that Ms Tesla’s identity was so thoroughly obscured.

### **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.

Where there appears to have been unfairness in the making of a programme, this will only result in a finding of unfairness if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of



freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, both parties' written submissions, as well as the unedited footage of the conversation between Ms Portas, Mr Vaughan-Lyons and Ms Tesla. Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

### Unjust or unfair treatment

When considering complaints of unjust or 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 Ofcom's Broadcasting Code ("the Code"). Ofcom had particular regard to this Rule when reaching its decision.

Ofcom also took particular account of Practice 7.9 of the Code. This provides 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 the individual or organisation. Ofcom also had regard to Practice 7.6 of the Code which states that "when a programme is edited, contributions should be represented fairly".

- a) Ofcom considered Ms Tesla's complaint that she was portrayed unfairly. It looked at each element of this head of complaint in turn and then considered the programme overall.
  - i) Ofcom first assessed Ms Tesla's complaint that she was shown and referred to as being angry when she was actually being put under pressure from Ms Portas and the camera crew while trying to make it clear that the landlord had not given permission for filming.

Ofcom noted the footage of the incident as shown in the programme as broadcast (as set out in detail in the "Introduction and programme summary" section above) and compared this to the unedited footage of the same incident.

It considered that the footage depicted the incident as it happened and that its inclusion in the programme fairly reflected the incident. In particular, the programme showed Ms Tesla, who appeared to Ofcom to be upset by the fact that Ms Portas was being filmed asking Mr Vaughan-Lyons questions while standing outside the MTT headquarters. Ofcom's view, having watched the unedited footage, was that there was no evidence in it to support Ms Tesla's claim that she was put under pressure by Ms Portas or the camera crew and that the complainant had not provided any evidence to support this claim in her complaint.

Mr Vaughan-Lyons was shown in the programme explaining to Ms Portas that she was not allowed to film at the meeting because of the lack of the landlord's permission and he appeared willing to speak to her, but without the cameras. Immediately afterwards, the programme showed Ms Tesla making

comments which made it clear she believed that Mr Vaughan-Lyons was not allowed to answer questions on camera and that the MTT (and she as part of it) very much wanted to work with Ms Portas but also wanted the cameras switched off. Given the context in which Ms Tesla's comments were made, and particularly the inclusion of Mr Vaughan-Lyons' responses to Ms Portas' questions, Ofcom considered that viewers would have concluded that Ms Tesla was sincere in her belief that filming outside the MTT headquarters contravened the requirements set out by the landlord, but that she and the MTT wanted to work with Ms Portas in the absence of the cameras. Ofcom noted that the footage included in the programme showed that, after Ms Tesla had gone back inside the MTT headquarters, Ms Portas asked Mr Vaughan-Lyons: "*why is this girl [Ms Tesla] so angry?*" From the unedited footage of the exchange this question appeared to Ofcom to be a spontaneous response by Ms Portas to Ms Tesla's reaction to her questions to Mr Vaughan-Lyons about not being allowed to film the MTT meeting.

Ofcom also noted that the parties disagreed about whether the programme makers had told the MTT they would not be able to film the meeting without permission from the landlord or vice versa. In this regard, having looked at the unedited footage, Ofcom took the view that the show as broadcast fairly portrayed what was shown in the unedited footage to have been discussed between Mr Vaughan-Lyons and Ms Portas and that this showed Mr Vaughan-Lyons (rather than Ms Portas or any of the programme makers) saying that the owners of the building had not given permission. Ofcom saw no evidence in support of Ms Tesla's claim that the footage had been edited so as to unfairly represent the sequence of events.

In addition, Ofcom noted that Ms Tesla's face was obscured in the programme and her voice had been disguised. Ms Tesla claimed that she had been recognised by people in Margate to whom she was already well known, but Ofcom took the view that the vast majority of people watching the programme as broadcast would not have been able to identify her.

In light of the observations above, Ofcom considered that Ms Tesla's interaction with Ms Portas (and in particular her reaction to Ms Portas and the motivation behind her request to have the cameras switched off) was portrayed in a manner that did not result in unfairness to her.

- ii) Ofcom then turned to Ms Tesla's complaint that the steps taken to disguise her identity made her appear sinister and very hostile.

As noted above, Ofcom considered that Ms Tesla would not have been identifiable to the vast majority of people who watched the programme as broadcast.

It is common practice for programme makers to disguise the identity of certain contributors to and participants in television programmes and that there are many reasons for doing so, the most common being that the individual concerned does not want to be identified. Ofcom took the view that the steps taken to disguise Ms Tesla's identity in the programme (i.e. blurring her face and disguising her voice) were not unusual and that viewers would have been familiar with this way of concealing an individual's identity.

Therefore, in Ofcom's opinion the fact that Ms Tesla's identity was disguised in this way would not have affected viewers' opinion of her in any material,

adverse way (even if they were able to identify her) in a manner which was unfair to her.

- iii) Ofcom next considered Ms Tesla's complaint that the scene in which she was shown was staged by the programme makers in order to incite conflict.

Ofcom noted that Ms Tesla did not provide any evidence in her complaint as to how exactly the incident was staged and provided no details to substantiate this claim. Channel 4's statement in response to the complaint said that Ms Portas had learnt that she would not be allowed to film at the MTT meeting and that she had decided to find out why by visiting the MTT headquarters. It went on to state that Mr Vaughan-Lyons happened to be standing at the door when Ms Portas approached him to ask directly about not being allowed into the meeting and that Ms Tesla contributed to this conversation of her own accord. Ofcom considered that Channel 4's account of how the incident came about appeared to be credible and that it was plausible that Ms Portas would want to find out why there was resistance to her filming at the meeting.

In the absence of any evidence to the contrary, Ofcom took the view that the incident filmed had not been staged and was depicted in the programme as it happened.

Taking all the above factors into account, Ofcom concluded that the manner in which Ms Tesla's interaction with Ms Portas was portrayed in the programme was unlikely to have materially and adversely affected viewers' understanding of her in a way that was unfair. It therefore considered that the broadcaster had taken reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Ms Tesla.

- b) Ofcom then considered Ms Tesla's complaint that she was not given an opportunity to view the programme prior to the broadcast or a right of reply.

Practice 7.3 of the Code sets out several steps which should normally be taken in relation to people who have been invited to make a contribution to a programme (except where the subject matter is trivial or their participation is minor) and indicates that taking these steps is likely to result in the consent given by that person being 'informed consent'. One of these steps is that the contributor "be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it". However, there is no requirement to offer contributors an opportunity to preview a programme, nor to allow them, even if they are given such opportunity, to request changes to be made to it.

In any event, Ofcom noted that the footage of Ms Tesla in the programme was limited to the interjections she made to the conversation between Ms Portas and Mr Vaughan-Lyons outside the MTT headquarters. Therefore, Ofcom regarded Ms Tesla's participation to the programme to be minor.

Turning to the second part of this head of complaint, Practice 7.11 of the Code 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".

Having assessed the section of the programme in which Ms Tesla appeared, Ofcom did not consider that it included any significant allegation against Ms Tesla

(whether of wrongdoing, incompetence or otherwise). Given this, Ofcom does not consider that it was incumbent on the programme makers to have offered Ms Tesla an opportunity to respond to the programme.

Taking account of these factors, Ofcom concluded that there was no unfairness to Ms Tesla in not giving her an opportunity to view the programme prior to the broadcast or to respond to it.

Taking account of all the factors set out in heads a) and b) above, and having regard to the programme overall, Ofcom concluded that Ms Tesla was not treated unjustly or unfairly in the programme as broadcast.

#### Unwarranted infringement of privacy

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.

- c) Ofcom considered Ms Tesla's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included without her consent.

Practice 8.6 of the Code 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.

Ofcom first assessed the extent to which Ms Tesla had a legitimate expectation of privacy in respect of the material which was broadcast. As already pointed out, the programme included footage of Ms Tesla as she contributed to a conversation between Ms Portas and Mr Vaughan-Lyons immediately outside the MTT headquarters. This footage was filmed openly from the public footpath while Ms Tesla was standing either in or just outside the doorway of the building and when she would have been in view of any members of the public walking along the High Street. The comments Ms Tesla made in the programme clearly demonstrated that she was aware of the cameras. Ms Tesla was able to and actually did walk away from where the filming was taking place. However, she then chose to come back and into view of the camera.

The footage of Ms Tesla included in the programme did not show her undertaking any action or making any comment which could be considered to be private or personal to her as an individual, and no information of a personal or sensitive nature to Ms Tesla was included in the programme. Also Ms Tesla's identity was disguised in the programme so that only those to whom she and her activities with the MTT were already well known could have identified her.

Taking all the factors above into account, Ofcom did not consider that Ms Tesla had a legitimate expectation of privacy in relation to the broadcast of the footage

of her. Given this conclusion, it was not necessary for Ofcom to consider whether any infringement to Ms Tesla's privacy was warranted.

**Accordingly, Ofcom has not upheld Ms Tesla's complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Robin Vaughan-Lyons

*Mary Queen of the High Street, Channel 4, 14 May 2013*

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#### Summary

Ofcom has not upheld Mr Robin Vaughan-Lyons' complaint of unjust or unfair treatment in the programme as broadcast.

In this edition of *Mary Queen of the High Street*, retail consultant Ms Mary Portas assessed the town of Margate's attempts to improve its High Street and offered her help. One of the retailers featured in the programme was the complainant, Mr Vaughan-Lyons, who was at the time of filming the Chair of the Margate Town Team (the "MTT"), the body responsible for applying for and then spending government money granted to Margate to improve its High Street.

Ofcom found that the broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts unfairly with regard to the portrayal of Mr Vaughan-Lyons' relationship and interactions with Ms Portas.

#### Introduction and programme summary

On 14 May 2013, Channel 4 broadcast an edition of *Mary Queen of the High Street* in which retail consultant, Ms Mary Portas (who had previously conducted a review of the decline of Britain's High Streets for the Government), visited three of the twelve towns selected by Local Government Minister, Mr Grant Shapps MP, to be the first "Portas Pilot Area"<sup>1</sup> in order to give them the benefit of her expertise and the publicity associated with the broadcast of programmes about these towns. One of the towns featured in this series was Margate in Kent.

During the programme, Ms Portas pursued several ideas for increasing the number of shoppers to Margate, including persuading visitors to the Turner Contemporary Art Gallery to come to the High Street, securing lower rents on empty shops and negotiating cut-price train fares for day-trippers from London. However, the programme indicated that some of Margate's retailers, including members of the MTT, did not welcome Ms Portas' visits and/or the camera crew she brought with her.

One of the retailers featured in the programme was the complainant, Mr Vaughan-Lyons, who was the Chair of the MTT. He was shown standing outside the former Woolworths' store, which was being used as the headquarters of the MTT, speaking to Ms Portas about why she and the camera crew might not be able to attend a public meeting of the MTT which she had planned to address. Mr Vaughan-Lyons was shown standing alongside Ms Roxana Tesla, the deputy Chair of the MTT at the time, who also contributed to the conversation. The following exchanges were then shown:

Ms Portas: *"Robin [Vaughan-Lyons], I've been hearing that I'm not allowed in tonight to the meeting."*

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<sup>1</sup> The Portas Pilot Areas each received a £100,000 grant from the Government to be spent on locally-generated schemes to improve their High Streets.

Ms Tesla: *Who told you that?*

Ms Portas: *Well about three or four...*

Ms Tesla: *Can we turn these off whilst we're doing it because this really isn't fair on us?* [While speaking, Ms Tesla waved her hand towards the cameras].

The programme then showed a continuation of this conversation, though Ms Tesla was no longer present.

Ms Portas: *"Why are you not letting me in with my cameras?"*

Mr Vaughan-Lyons: *You are, you are allowed in, but what's happened is the owners of Woolworths haven't given permission.*

Ms Portas: *But why would you not? I'm documenting this.*

Mr Vaughan-Lyons: *The landlord is saying they don't want cameras to come in.*

Ms Portas: *Why is this girl so angry? Why is she not speaking to me? The whole point is... Why is she not coming out now and talking to me if we can't film in there?*

Mr Vaughan-Lyons: *If you want to come in with me without the cameras we can talk.*

Ms Portas: *But why? Why? Why do you not want the cameras? What is it you...?"*

Ms Tesla then came to the door and said *"Robin you have to stop this. If they're filming then you're not allowed to answer this clearly"*. After this, Ms Portas turned to her and asked *"Do you not want to work with me?"* to which Ms Tesla replied *"Yeah, we do want to work with you, we've made it very clear we want to work with you...I want you to turn the cameras off now please."*

Later in the programme, *"Billy"*, a retailer who favoured Ms Portas' approach, was shown speaking on the telephone to an unnamed member of the MTT about Ms Portas' attendance at the meeting. During this call, Billy stated that:

*"This woman [Ms Portas]'s about to leave here, we're going to miss the biggest opportunity this town's had for ten years for Christ's sake. Everybody wants to hear what she has to say, the meeting's in half an hour, she's about to walk out the place"*.

Subsequently, Ms Portas was shown addressing the MTT meeting.

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

Mr Vaughan-Lyons complained that he was unfairly portrayed in the programme as broadcast. In particular, Mr Vaughan-Lyons said he was shown having an altercation with Ms Portas, which he claimed was staged and that this scene made it look as if he and Ms Tesla were trying to keep Ms Portas away from the MTT meeting, which was not the case. Mr Vaughan-Lyons also said that the programme included another

staged scene in which Ms Portas threatened to leave the town. Mr Vaughan-Lyons said that these scenes have had a detrimental impact on his reputation in Margate.

In response to Mr Vaughan-Lyons' complaint, Channel 4 said that, on 12 June 2012, Ms Portas filmed in Margate and that this included filming Mr Vaughan-Lyons in his shop while he talked to Ms Portas about that evening's meeting and the general excitement in the town. It said that this footage (part of which was included in the programme) showed that the complainant was amiable and that he consented to being filmed. As the day progressed, Ms Portas and the camera crew became increasingly frustrated because it seemed as if they would not be able to film a public meeting held by the MTT and doing so was key to telling the story of Margate's attempts to improve its High Street. In addition, Channel 4 said that Ms Portas and the camera crew had become aware that the programme was being undermined in a number of ways and that complaints about the way the programme makers were working in Margate had been made. It said that Ms Portas had also been told by a number of shopkeepers that some individuals were against her and that she would not be allowed to film at the meeting.

Given this, Channel 4 said that Ms Portas decided to speak to Mr Vaughan-Lyons, who was at the MTT headquarters ensuring that everything was ready for the meeting, to try to find out what was going on. Mr Vaughan-Lyons happened to be standing in the doorway so she approached him, with the camera following her, and asked him about the rumours that she had heard. At this point, another MTT member, Ms Tesla intervened. Channel 4 said that this exchange was an impromptu meeting and was entirely genuine. There was nothing made up or staged about it.

Channel 4 said that following this exchange, Ms Portas proceeded to find Billy, a retailer who particularly supported her approach, and was subsequently introduced to Ms Iris Johnson, Margate's former mayoress and another MTT member, and they discussed the resistance which Ms Portas was facing. Channel 4 said that this discussion was again completely impromptu and was not in any way pre-planned or staged. It added that, during these discussions, Ms Portas was clear that if the programme was not going to be allowed to have the necessary access for filming, and if she and the camera crew were going to continue to come up against the sort of resistance they had experienced so far, they would not be able to make a programme about Margate. Therefore, Channel 4 said, Billy's fear that Ms Portas would leave town if the programme was not given the necessary access (which was shown in the programme through his mobile telephone conversation) was entirely genuine and that the suggestion that he was somehow complicit in it was entirely without foundation. Channel 4 also said that Mr Vaughan-Lyons had not provided any evidence to support his claim that either this scene or the one which took place outside the MTT's headquarters was staged.

With regard to the way in which Mr Vaughan-Lyons was portrayed in the programme, Channel 4 said that not only were the two scenes referred to in the complaint not staged, but also they did not make Mr Vaughan-Lyons appear as if he did not want Ms Portas to attend the meeting. It said that, during the exchange outside the MTT headquarters, Mr Vaughan-Lyons was given the opportunity to respond to Ms Portas' reasonable questions about why she was not being allowed to film at the meeting and his response was included in the programme. Specifically, Channel 4 said that he was shown telling Ms Portas *"you are...you are allowed in, but what's happened is, the owners of Woolworth's haven't given permission...the landlord is saying that they don't want the cameras to come in"*. In addition, he was also shown inviting Ms Portas to come inside by saying *"Well if you want to come in without the cameras, then we can talk"*.



Channel 4 said this exchange made it clear that Mr Vaughan-Lyons did not object to Ms Portas attending the meeting without the cameras, and that the problem with filming the meeting inside the premises was based on the absence of the landlord's consent to film there. It also said that there were other reasons why viewers would not have gained the impression that Mr Vaughan-Lyons was personally opposed to Ms Portas attending the meeting. For example, earlier in the programme Ms Portas specifically mentioned "a lovely, lovely quote [in the Isle of Thanet Gazette] from the Town Team chairman Robin saying: 'Mary will be here and it is up to us to show that Margate has the energy and goodwill to make this happen'" and soon afterwards Mr Vaughan-Lyons was shown having the following conversation with Ms Portas:

Mr Vaughan-Lyons: *"Tonight's our first public event that we're holding where we're letting everybody know officially what we're doing.*

Ms Portas: *Because I think, you know, it's really important that we work together to try and really harness the vision, and leverage as much as I can do for you guys.*

Mr Vaughan-Lyons: *Absolutely. We're really excited. You know, we've got some really public-spirited and, you know, community-minded people on our team, so yeah –*

Ms Portas: *Okay.*

Mr Vaughan-Lyons: *Whenever you want, we'll be there.*

Ms Portas: *Okay".*

Channel 4 said that, immediately following this sequence, Ms Portas' voice could be heard introducing the section of the programme about the resistance to her and the programme amongst parts of the community. She said: "**But** I start to find out how unhappy **some people** are about the arrival of me and my cameras [Channel 4's emphasis]."

Channel 4 said that the earlier, very positive, comment about Mr Vaughan-Lyons and the juxtaposition of this subsequent positive scene next to the more negative voiceover, starting with the word "but" and referring to "some people" being unhappy, would have given viewers the impression that it was individuals other than Mr Vaughan-Lyons who were resistant to Ms Portas and the cameras. It also said that the fact that Ms Portas approached Mr Vaughan-Lyons (outside the MTT headquarters) as someone who might be able to help would have given the impression that he was someone who was on her side.

## Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the

principles under which regulatory activities should be transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, both parties' written submissions as well as the unedited footage of the conversation between Ms Portas, Mr Vaughan-Lyons and Ms Tesla. Ofcom prepared a Preliminary View in this case that Mr Vaughan-Lyons' complaint of unjust or unfair treatment should not be upheld. In commenting on the Preliminary View, Mr Vaughan-Lyons said that he failed to see why Ofcom had not upheld his complaint and that the programme makers had "destroyed" the MTT purely for TV titillation. Channel 4 did not make any representations on the Preliminary View.

When considering complaints of unjust or 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 Ofcom's Broadcasting Code ("the Code"). Ofcom had particular regard to this Rule when reaching its decision. In assessing Mr Vaughan-Lyons' complaint, Ofcom also had regard to Practice 7.9 of the Code which provides 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 the individual or organisation.

Ofcom examined both incidents in the programme that Mr Vaughan-Lyons claimed were staged before reaching its decision on whether he was portrayed unfairly in the programme overall.

#### *Incident outside the MTT headquarters*

Ofcom first considered Mr Vaughan-Lyons' complaint that he was shown having an altercation with Ms Portas, which he claimed was staged and which made it look as if he and Ms Tesla were trying to stop Ms Portas and keep her away from the MTT meeting which was not the case.

Ofcom noted the footage of the incident as shown in the programme as broadcast (as set out in detail in the "Introduction and programme summary" section above) and compared this to the unedited footage of the same incident. Ofcom considered that the footage of the incident included in the programme had happened as it was shown and that this was verified by the content of the unedited material.

Ofcom noted that Mr Vaughan-Lyons has not provided any evidence in his complaint as to how or why exactly the incident was staged and provided no details to substantiate his claim. Channel 4's statement in response to the complaint said that Ms Portas had learnt that she would not be allowed to film at the MTT meeting and that she had decided to find out why by visiting the MTT headquarters. It went on to state that Mr Vaughan-Lyons happened to be standing at the door when she approached him to ask directly about them not being allowed into the meeting. Ofcom considered that Channel 4's account of how the incident came about appeared to be credible and that it was plausible that Ms Portas would want to find out why there was resistance to her filming at the meeting. In the absence of any evidence to the contrary, Ofcom took the view that the incident filmed was depicted in the programme as it happened.

Ofcom next considered whether the presentation of the incident in the programme portrayed Mr Vaughan-Lyons unfairly. Again, Ofcom noted the content broadcast in

the programme and compared it with the unedited footage. It considered that the footage depicted the incident as it happened and that its inclusion in the programme fairly reflected the incident. Further, Ofcom considered that Mr Vaughan-Lyons was shown explaining to Ms Portas that the reason she was not allowed to film at the meeting was related to the lack of the landlord's permission and that he appeared willing to speak to her, but without the cameras.

Ofcom noted that earlier in the programme Ms Portas had made positive comments about Mr Vaughan-Lyons and he was shown being cooperative towards her. Taking this and his openness to Ms Portas in offering her an explanation to the meeting, Ofcom considered that viewers were likely to have understood that Mr Vaughan-Lyons was very enthusiastic about the plan to improve Margate's High Street and had welcomed Ms Portas' involvement in that plan. In Ofcom's opinion, viewers would also have appreciated that there were some issues regarding the filming of the MTT meeting and that he was keen to overcome these by talking to Ms Portas without the cameras present. For these reasons, Ofcom came to the view that Mr Vaughan-Lyons had been portrayed fairly.

#### *Ms Portas threatening to leave town*

Ofcom then considered Mr Vaughan-Lyons' complaint that the programme included another staged scene in which Ms Portas threatened to leave the town.

Ofcom noted the comments made by Billy in the programme, which are quoted in the "Introduction and programme summary" section above, and considered that his comments clearly indicated that Ms Portas would leave Margate if she was not allowed to attend the MTT meeting with the camera crew. Ofcom also observed that within its response to this complaint Channel 4 said that during discussions with Billy and Ms Johnson, which took place just prior to this telephone conversation, Ms Portas made it clear that if the programme makers were not given the necessary access to film the meeting they would not be able to make a programme about Margate. Ofcom also noted that viewers would have understood Ms Portas' position on this matter because the programme included footage of her making specific reference to it when she addressed the MTT meeting later that day. Having explained that she had a camera crew with her so that other towns, which "*have not got me trying to help*", could benefit and because the publicity would draw people to Margate, Ms Portas was shown saying: "*So we either let the cameras in with me or I go back on the train and some other town gets it [the publicity], but I'd be very sad if it wasn't you Margate*".

Given this, Ofcom considered that the inclusion of this telephone conversation in the programme would have given viewers a fair and accurate understanding of Ms Portas' position that, if the camera crew was not allowed to film her attendance at the MTT meeting, she would have no choice but leave Margate, because she would be unable to make the programme without filming what she regarded as a key part of the process of improving its High Street. Although the voiceover following this conversation stated that Billy had been talking to the organisers of the meeting, the programme did not identify the specific individual to whom he had spoken and in no way implied that Mr Vaughan-Lyons had sought to stop Ms Portas from attending the meeting. Indeed, immediately following this conversation, the programme made it clear that the outcome of the telephone conversation and a follow-up discussion between Billy and the meeting organisers was that Ms Portas and her camera crew would be allowed to attend after all and, as noted above, she was shown speaking at it.

In relation to Mr Vaughan-Lyons' representations on the Preliminary View, Ofcom considered that he did not provide any further material that persuaded it to reconsider and alter its Preliminary View not to uphold his complaint.

Taking all the above factors into account, Ofcom concluded that the manner in which Mr Vaughan-Lyons' relationship to and interactions with Ms Portas were portrayed in the programme was unlikely to have materially and adversely affected viewers' understanding of him in a way that was unfair. It therefore considered that the broadcaster had taken reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Mr Vaughan-Lyons.

**Accordingly, Ofcom has not upheld Mr Vaughan-Lyons' complaint of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Dan Thompson

*Mary Queen of the High Street, Channel 4, 14 May 2013*

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#### Summary

Ofcom has not upheld Mr Dan Thompson's complaint of unjust or unfair treatment in the programme as broadcast.

In this edition of *Mary Queen of the High Street*, retail consultant Ms Mary Portas assessed the town of Margate's attempts to improve its High Street and offered her help. A comment made by Mr Thompson which appeared in an article in 'Retail Week' magazine was included in the programme.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that portrayed Mr Thompson unfairly.
- There was no unfairness to Mr Thompson in not giving him an opportunity to respond to the programme as broadcast.

#### Introduction and programme summary

On 14 May 2013, Channel 4 broadcast an edition of *Mary Queen of the High Street* in which retail consultant, Ms Mary Portas (who had previously conducted a review of the decline of Britain's High Streets for the Government), visited three of the twelve towns selected by the Government to be the first "Portas Pilot Area"<sup>1</sup> in order to give them the benefit of her expertise and the publicity associated with the broadcast of programmes about these towns. One of the towns featured in this series was Margate in Kent.

During the programme, Ms Portas pursued several ideas for increasing the number of shoppers to Margate, including persuading visitors to the Turner Contemporary Art Gallery to come to the High Street, securing lower rents on empty shops and negotiating cut-price train fares for day-trippers from London. However, the programme indicated that some of Margate's retailers, including members of the Margate Town Team, the body responsible for applying for and then spending government money granted to Margate to improve its High Street, did not welcome Ms Portas' visits and/or the camera crew she brought with her.

Soon after the start of the programme, Ms Portas was shown talking about some "bad press" linked to her arrival in Margate. Specifically, she said "Some locals are concerned about negative TV portrayal, restrictive filming contracts and there's confusion about whether or not I'm working for the Government – which I'm not". These comments were made alongside images of an article in 'Retail Week' (a trade magazine for the retail industry) with the headline "Retail disquiet over Portas TV

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<sup>1</sup> The Portas Pilot Areas each received a £100,000 grant from the Government to be spent on locally-generated schemes to improve their High Streets.

*show grows as 'gagging clause' imposed*". One of the images shown was of a section of the article which read:

*"Thompson said: 'What's become clear is that there's a real gap between what the Government is managing and what the TV company wants. The line is being blurred between a Government programme and a reality TV programme.'"*

The second sentence of this quotation was highlighted in red. The programme went on to show another section of the article which said that a debate about the tension between the desires of the "TV production company" and the needs of the community had been started on the Margate Town Team's Facebook page. The quotation said: *"The Margate Town Team has begun a debate on the issue on its Facebook page and says: 'We can't escape the inevitable conclusion that the desires of a TV production company are being placed above the needs of a community in transition.'"*

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

- a) Mr Thompson complained that he was unfairly portrayed in the programme because the combination of Ms Portas' comments with the image of the quotation from him in the 'Retail Week' article gave the inaccurate impression that he was a local resident who was involved in attempts to stop Ms Portas filming. Mr Thompson said that he was a professional working in the field of town centre regeneration and complained that the quotation in question was only a "simplified version" of his professional view.

In response, Channel 4 said that reasonable viewers would not have understood the short sequence on the 'Retail Week' article to suggest that Mr Thompson was a local resident involved in attempts to stop Ms Portas filming. At no point was Mr Thompson shown in the programme, nor was he named verbally. The only reference which might have identified him was the name "Thompson", which was very briefly visible when the 'Retail Week' article was shown. Even then, unlike the text that followed, the name was not highlighted in red. Given this, it was highly unlikely, Channel 4 said, that the vast majority of the programme's viewers would have identified the complainant and linked him to the quotation shown.

Channel 4 said that the only viewers likely to link the name "Thompson" in this context with the complainant would be those that knew him or knew of him; and anyone who knew the complainant would also be likely to know that he was not a local Margate resident and that he was commenting in the article in his role as a professional advisor working in town centre regeneration. It added that, even if some viewers were given the impression that the complainant was a local resident, that, in itself, would not cause unfairness to Mr Thompson. It also said that at the point in the programme when the quotation was shown there had been no suggestion that anyone was actively trying to stop Ms Portas and her camera crew from filming. Therefore, it was highly unlikely that viewers would have connected the later arguments over filming with this earlier and very fleeting reference to a comment quoted in 'Retail Week' by a person identified as "Thompson".

Channel 4 said that if anyone had identified the complainant as the person who made this comment quoted in 'Retail Week' they would have taken it at face value and understood that Mr Thompson was someone who had expressed concern in an industry magazine that the line was being blurred between the Government's initiative and the television series, and that he was one of a number of people expressing such concerns.

Channel 4 acknowledged that the quotation shown in the programme was an edited version of the comments made by Mr Thompson in the article (a copy of which was provided to Ofcom). However, it also said that Mr Thompson gave no proper explanation in his complaint as to how or why the “simplified version” of his professional view included in the programme caused him unfairness. Nor did he complain that he had been misquoted.

Channel 4 said that given that the quotation came from Mr Thompson it was, presumably, what he believed. It was not taken out of context and it fairly summarised his view and the remainder of his comments in the article.

- b) Mr Thompson complained that he was not given an opportunity to respond to the implication made about him in the programme.

Channel 4 said that, for the reasons given above, it was highly unlikely that viewers would have understood the programme to have suggested that Mr Thompson was involved in attempts to stop Ms Portas filming. It also said that the programme did not make any significant allegations which would have required the programme makers to have sought a response from Mr Thompson to avoid unfairness to him in the programme as broadcast.

## Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, and both parties’ written submissions. Ofcom provided the parties with the opportunity to make representations on Ofcom’s Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

When considering complaints of unjust or 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 Ofcom’s Broadcasting Code (“the Code”). Ofcom had particular regard to this Rule when reaching its decision.

- a) Ofcom first considered Mr Thompson’s complaint that he was unfairly portrayed because the combination of Ms Portas’ comments with the image of the quotation from him in the ‘Retail Week’ article gave the inaccurate impression that he was a local resident who was involved in attempts to stop Ms Portas filming.

Practice 7.9 of the Code provides 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 the individual or organisation.

Having assessed the relevant footage shown in the programme (set out in the “Introduction and programme summary” section above), Ofcom considered that it was possible that, because of the close juxtaposition of Ms Portas’ comment that *“Some locals are concerned about negative TV portrayal, restrictive filming contracts and there’s confusion about whether or not I’m working for the Government”* and the image of the quotation attributed to *“Thompson”*, some viewers may have understood the person who made this comment to ‘Retail Week’ to be one of these local residents. However, Ofcom did not consider that this would have resulted in unfairness to Mr Thompson, because it was highly unlikely that the majority of viewers would have been able to identify Mr Thompson as the source of the comment. The source of the comment was attributed to someone with the surname “Thompson”, which Ofcom considered was not an unusual name, and no other information was included in the programme. Even if a small number of individuals were able to correctly identify the complainant as the source of the comment, it was likely these individuals would already know Mr Thompson and be aware of his role within the field of town centre regeneration. Therefore, in Ofcom’s view, they would have been able to have placed his comment in the correct context, that is, of an expert in his field giving his view to a retail industry magazine about what he considered to be the blurring *“between a Government programme and a reality TV programme”* and not as a resident of Margate who was concerned about these matters.

At the stage in the programme in which the quotation appeared (i.e. just a few minutes after it started) the only material broadcast relating to anyone, local or otherwise, who could potentially have been understood to have been trying to stop Ms Portas and her camera crew from filming was in two short sections of footage included in the opening sequence of the programme. Given this, and how brief the image of Mr Thompson’s quotation was (no more than two seconds on screen), Ofcom considered it was unlikely that any viewers who were able to correctly identify the complainant would have linked him to the individuals whom the programme subsequently suggested might be trying to stop Ms Portas and the camera crew from filming.

In relation to Mr Thompson’s complaint that the quotation was only a “simplified version” of his professional view, Ofcom considered (having compared the entirety of the comments made by Mr Thompson in the article with the quotation included in the programme as broadcast) that the programme fairly reflected the key element of Mr Thompson’s view – namely that there was confusion between the Government initiative and the television programme.

Taking all the above factors into account, Ofcom concluded that the manner in which Mr Thompson’s comments quoted in ‘Retail Week’ were included in the programme was unlikely to have materially and adversely affected viewers’ understanding of him in a way that was unfair. It therefore considered that the broadcaster had taken reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Mr Thompson.

Ofcom therefore concluded that there was no unjust or unfair treatment to Mr Thompson in this regard.



- b) Ofcom next considered Mr Thompson's complaint that he was not given an opportunity to respond to the programme.

Practice 7.11 of the Code 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".

Having assessed the section of the programme containing the quotation from Mr Thompson, Ofcom did not consider that it included any significant allegation against Mr Thompson (whether of wrongdoing, incompetence or otherwise). Given this, Ofcom did not consider the programme makers and the broadcaster needed to offer Mr Thompson an opportunity to respond.

Therefore, Ofcom concluded that Mr Thompson was not treated unfairly in this respect.

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

## Other Programmes Not in Breach

Up to 18 November 2013

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Advertisements	ESPN	12/09/2013	Advertising minutage
Advertisements	True Entertainment	27/09/2013	Advertising minutage
Doctors	BBC 1	05/08/2013	Scheduling
Doctors	BBC 1	12/09/2013	Scheduling
Gracie's Choice	Channel 5	18/10/2013	Scheduling
Non-stop Music	Starz TV	08/10/2013	Generally accepted standards
The Agony of the Christ	Klear TV	21/07/2013	Scheduling

## Complaints Assessed, not Investigated

### Between 5 and 18 November 2013

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
7 Days that made the Fuhrer (trailer)	Channel 5	10/11/2013	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	29/10/2013	Religious/Beliefs discrimination/offence	1
999: What's Your Emergency?	4seven	05/11/2013	Generally accepted standards	1
999: What's Your Emergency?	Channel 4	04/11/2013	Information/warnings	8
999: What's Your Emergency?	Channel 4	04/11/2013	Privacy	1
999: What's Your Emergency?	Channel 4	11/11/2013	Generally accepted standards	1
A Mother's Son	ITV	04/11/2013	Religious/Beliefs discrimination/offence	1
Advertisements	BBC	Various	Outside of remit / other	1
Agatha Christie's Poirot	ITV	06/11/2013	Advertising scheduling	1
Agatha Christie's Poirot	ITV	13/11/2013	Scheduling	1
Air Crash Investigation	National Geographic +1	08/08/2013	Due accuracy	1
Alan Brazil Sports Breakfast	Talksport	04/11/2013	Generally accepted standards	1
Alan Brazil Sports Breakfast	Talksport	05/11/2013	Generally accepted standards	1
Alan Carr: Chatty Man	Channel 4	15/11/2013	Offensive language	1
Anthony Davis	LBC 97.3 FM	05/11/2013	Due impartiality/bias	1
BBC News	BBC 1	18/10/2013	Race discrimination/offence	1
BBC News	BBC 1	05/11/2013	Outside of remit / other	1
BBC News at Six	BBC 1	11/11/2013	Generally accepted standards	1
BBC Online News	BBC Online	n/a	Outside of remit / other	1
Big Boss 7	Colors	05/11/2013	Generally accepted standards	1
Bigfoot Files	Channel 4	03/11/2013	Scheduling	1
Breakfast/Drivetime Shows	BBC Radio Cambridgeshire	Various	Outside of remit / other	1
Britain on the Fiddle	BBC 1	06/11/2013	Religious/Beliefs discrimination/offence	1
Cagney and Lacey	BBC 2	28/10/2013	Offensive language	1
Cardinal Burns	Channel 4	04/11/2013	Generally accepted standards	1
Celebrity Juice	ITV2	07/11/2013	Generally accepted standards	1
Celebrity Juice	ITV2	07/11/2013	Offensive language	1
Celebrity Juice	ITV2	12/11/2013	Generally accepted standards	1

Channel 4 News	Channel 4	24/10/2013	Due accuracy	7
Channel 4 News	Channel 4	24/10/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	10/11/2013	Scheduling	1
Channel 4 News	Channel 4	12/11/2013	Generally accepted standards	1
Channel 4 News	Channel 4	14/11/2013	Due impartiality/bias	1
Channel 4 promotion	E4	02/11/2013	Scheduling	1
Channel 4 promotion	E4	06/11/2013	Disability discrimination/offence	1
Channel promotion	ITV2	Various	Violence and dangerous behaviour	1
Children in Need 2013	BBC 1	15/11/2013	Religious/Beliefs discrimination/offence	1
Christmas Wish	True Movies	12/11/2013	Competitions	1
Cinderella	True Movies 2	04/11/2013	Materially misleading	1
Citizen Khan	BBC 1	25/10/2013	Race discrimination/offence	1
Citizen Khan	BBC 1	25/10/2013	Religious/Beliefs discrimination/offence	1
Citizen Khan	BBC 1	01/11/2013	Religious/Beliefs discrimination/offence	2
Citizen Khan	BBC 1	08/11/2013	Race discrimination/offence	1
Competition	Magic 105.4 FM	14/11/2013	Competitions	1
Congo	Channel 4	17/11/2013	Offensive language	1
Coronation Street	ITV	04/10/2013	Offensive language	1
Coronation Street	ITV	13/10/2013	Generally accepted standards	1
Coronation Street	ITV	18/10/2013	Generally accepted standards	5
Coronation Street	ITV	21/10/2013	Suicide and self harm	1
Coronation Street	ITV	01/11/2013	Scheduling	1
Coronation Street	ITV	04/11/2013	Offensive language	1
Coronation Street	ITV	04/11/2013	Scheduling	3
Coronation Street	ITV	11/11/2013	Generally accepted standards	1
Countryfile	BBC 1	03/11/2013	Outside of remit / other	1
Cramp Twins	Boomerang	27/10/2013	Religious/Beliefs discrimination/offence	1
Crimewatch	BBC 1	14/10/2013	Outside of remit / other	19
Dark Arts Season promotion	Film4	27/10/2013	Scheduling	1
Daybreak	ITV	13/11/2013	Outside of remit / other	1
Deal or No Deal	Channel 4	04/11/2013	Outside of remit / other	1
Deal or No Deal	Channel 4	13/11/2013	Scheduling	1
Demand 5	Channel 5	n/a	Outside of remit / other	1
Devious Maids (trailer)	DMAX	01/11/2013	Sexual material	1
Dickinson's Real Deal	ITV3	06/11/2013	Competitions	1
Dinner Date	ITV2	14/11/2013	Generally accepted standards	1
Dispatches	Channel 4	28/10/2013	Due accuracy	1

Programming	Absolute Radio	22/10/2013	Scheduling	1
Doctors	BBC 1	29/10/2013	Scheduling	1
Drifters	E4	31/10/2013	Sexual material	2
EastEnders	BBC 1	05/10/2013	Outside of remit / other	1
EastEnders	BBC 1	01/11/2013	Scheduling	4
EastEnders	BBC 1	04/11/2013	Generally accepted standards	4
EMA Awards (trailer)	Comedy Central +1	08/11/2013	Generally accepted standards	1
Embarrassing Bodies	Channel 4	01/11/2013	Nudity	2
Embarrassing Bodies	Channel 4	01/11/2013	Scheduling	1
Embarrassing Bodies	Channel 4	05/11/2013	Disability discrimination/offence	1
Embarrassing Bodies: The Man with Half a Face (trailer)	Channel 4	02/11/2013	Generally accepted standards	1
Embarrassing Bodies: The Man with Half a Face (trailer)	Channel 4	05/11/2013	Scheduling	1
Emmerdale	ITV	07/11/2013	Generally accepted standards	1
Emmerdale	ITV	14/11/2013	Scheduling	1
Escape to the Country	BBC 1	15/10/2013	Flashing images/risk to viewers who have PSE	1
Exposure	ITV	23/10/2013	Materially misleading	5
Film 2013	BBC 1	13/11/2013	Outside of remit / other	1
Friends	Comedy Central	03/11/2013	Scheduling	1
Fun Radio	Fun Radio	25/10/2013	Generally accepted standards	1
FYI Daily	ITV2	10/11/2013	Scheduling	1
Gavin Harris Afternoon and Drivetime	Reading 107 FM	05/11/2013	Generally accepted standards	1
Gloucester FM Station ident	Gloucester FM	25/10/2013	Materially misleading	1
Gogglebox	Channel 4	06/11/2013	Generally accepted standards	3
Grease	Channel 4	03/11/2013	Scheduling	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	01/11/2013	Generally accepted standards	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	07/11/2013	Generally accepted standards	1
Halloween Special	Radio Pembrokeshire	03/11/2013	Disability discrimination/offence	1
Have I Got News for You	BBC 1	08/11/2013	Generally accepted standards	5
Have I Got News for You	BBC 1	08/11/2013	Offensive language	1
Heart Breakfast	Heart FM (Heart Wrexham & Cheshire)	07/11/2013	Generally accepted standards	1
Heart Breakfast with Matt and Michelle	Heart 102.9FM	14/11/2013	Scheduling	1
Holby City	BBC 1	29/10/2013	Materially misleading	2

Hollyoaks	Channel 4	06/11/2013	Scheduling	1
Hollyoaks	Channel 4	13/11/2013	Generally accepted standards	1
Hollyoaks	E4	13/11/2013	Generally accepted standards	1
Homeland	Channel 4	10/11/2013	Violence and dangerous behaviour	4
Hornblower	ITV4	26/10/2013	Advertising scheduling	1
I'm a Celebrity, Get Me Out of Here! (trailer)	ITV	06/11/2013	Scheduling	1
I'm a Celebrity...Get Me Out of Here	ITV	Various	Surreptitious advertising	1
Incredible Hulk	ITV2	n/a	Generally accepted standards	1
International Boxing: James Degale v Dyah Davis (Trailer)	Channel 5	14/11/2013	Generally accepted standards	1
ITV News	ITV	18/10/2013	Race discrimination/offence	1
ITV News and Weather	ITV	07/11/2013	Due accuracy	1
ITV News and Weather	ITV	07/11/2013	Generally accepted standards	2
ITV News and Weather	ITV	14/11/2013	Scheduling	1
ITV News at Ten and Weather	ITV	17/10/2013	Due impartiality/bias	3
ITV Player promotion	ITV	Various	Materially misleading	1
Jason Mohammad Show	BBC Radio Wales	16/10/2013	Offensive language	1
Jeremy Vine	BBC Radio 2	07/11/2013	Outside of remit / other	1
Jeremy Vine	BBC Radio 2	11/11/2013	Generally accepted standards	1
Joe Talbot	BBC Radio Sussex	08/11/2013	Outside of remit / other	1
Just Eat's sponsorship of programmes on Dave	Dave	03/11/2013	Generally accepted standards	1
Just Eat's sponsorship of programmes on Dave	Dave	10/11/2013	Generally accepted standards	1
Kick Off	Talksport	11/11/2013	Commercial communications on radio	1
Kindergarten Cop	ITV2	10/11/2013	Scheduling	1
Lee Mack: Going Out Live	Dave	01/11/2013	Disability discrimination/offence	1
Loose Women	ITV	01/11/2013	Generally accepted standards	2
Mandmdirect.com's sponsorship of The Simpsons	Channel 4	Various	Generally accepted standards	2
Masterchef Australia	Watch	11/11/2013	Outside of remit / other	1
Misfits	E4	23/10/2013	Generally accepted standards	1
Movies at 9pm: Halloween Takeover	5*	29/10/2013	Scheduling	1
My Parents Are Aliens	CITV	10/11/2013	Scheduling	1
Naked States	Sky Arts 1	13/11/2013	Nudity	1
Nazis at the Centre of	SyFy	n/a	Generally accepted	1

the Earth			standards	
Never Mind the Buzzcocks	BBC 2	14/11/2013	Generally accepted standards	1
Nicky Campbell	BBC Radio 5 Live	06/11/2013	Outside of remit / other	1
Night Owls	Metro Radio	13/11/2013	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	29/10/2013	Disability discrimination/offence	7
Obsessive Compulsive Cleaners	Channel 4	05/11/2013	Disability discrimination/offence	2
On the Run	ITV	29/10/2013	Due impartiality/bias	1
On the Run	ITV	29/10/2013	Outside of remit / other	2
Party political broadcast by the Labour Party	BBC 2	30/10/2013	Outside of remit / other	1
Pick or Treat Season promotion	Pick TV	26/10/2013	Scheduling	1
Press Preview	Sky News	05/11/2013	Generally accepted standards	1
Programme promotions	BBC	Various	Outside of remit / other	1
Programming	Channel 4	Various	Generally accepted standards	1
Programming	Jazz FM	11/11/2013	Generally accepted standards	1
Programming	Various	Various	Scheduling	1
Rangers v Stenhousemuir	BBC Alba	29/10/2013	Religious/Beliefs discrimination/offence	1
Release the Hounds	ITV2	31/10/2013	Animal welfare	1
Rugby League	BBC Radio 5 Live Extra	09/11/2013	Outside of remit / other	1
Russ Morris	Free Radio Coventry and Warwickshire	08/11/2013	Offensive language	1
Saints and Scroungers	BBC 1	06/11/2013	Generally accepted standards	1
Saturday Kitchen Live	BBC 1	02/11/2013	Outside of remit / other	1
Saving Britain's 70 Stone Man (Trailer)	Channel 5	22/10/2013	Scheduling	2
Seven Seas Multivitamin's sponsorship of ITV National Weather	ITV	04/11/2013	Advertising content	1
Sky News with Dermot Murnaghan	Sky News	11/11/2013	Generally accepted standards	1
Stand Up for the Week	Channel 4	01/11/2013	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	05/11/2013	Generally accepted standards	1
Stobart: Trucks, Trains and Planes	Channel 5	08/11/2013	Offensive language	2
Strictly Come Dancing	BBC 1	19/10/2013	Generally accepted standards	1
Strictly Come Dancing	BBC 1	19/10/2013	Voting	1
Sunday Brunch	Channel 4	10/11/2013	Outside of remit / other	2
Sunday Scoop	STV	10/11/2013	Fairness	1
Sunrise	Sky News	04/11/2013	Race	1

			discrimination/offence	
Supersized Season (trailer)	Channel 5	18/10/2013	Scheduling	1
Talksport	Talksport	01/10/2013	Gambling	1
The Alan Titchmarsh Show	ITV	14/11/2013	Materially misleading	1
The Choir: Sing While You Work	BBC 2	11/11/2013	Outside of remit / other	1
The Cruel Cut	Channel 4	06/11/2013	Generally accepted standards	2
The Day Kennedy Died	ITV	14/11/2013	Generally accepted standards	1
The Escape Artist	BBC 1	29/10/2013	Promotion of products/services	1
The Escape Artist	BBC 1	05/11/2013	Privacy	1
The Gadget Show	Channel 5	Various	Competitions	2
The Gobetweenies	BBC Radio 4	08/11/2013	Outside of remit / other	1
The Great British Year	BBC 1	16/10/2013	Flashing images/risk to viewers who have PSE	1
The Inbetweeners	E4	09/11/2013	Disability discrimination/offence	2
The Jeremy Kyle Show	ITV	24/10/2013	Generally accepted standards	1
The Jonathan Ross Show	ITV	19/10/2013	Generally accepted standards	1
The Martin Lewis Money Show	ITV	12/11/2013	Scheduling	1
The Mechanic	Film4	11/11/2013	Violence and dangerous behaviour	1
The Now Show	BBC Radio 4	02/11/2013	Outside of remit / other	1
The One Show	BBC 1	06/11/2013	Harm	1
The Only Way is Essex	ITV2	10/11/2013	Animal welfare	1
The Paul O'Grady Show	ITV	12/11/2013	Scheduling	1
The Paul O'Grady Show	ITV	13/11/2013	Scheduling	2
The Paul O'Grady Show	ITV	14/11/2013	Violence and dangerous behaviour	1
The Revolution Will be Televised	BBC 3	11/11/2013	Generally accepted standards	1
The Simpsons	Sky1	04/11/2013	Offensive language	1
The Sound of Musicals	Channel 4	12/11/2013	Offensive language	1
The Sound of Musicals (trailer)	Channel 4	09/11/2013	Nudity	1
The World at One	BBC Radio 4	07/11/2013	Generally accepted standards	1
The X Factor	ITV	02/11/2013	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV	02/11/2013	Generally accepted standards	1
The X Factor	ITV	02/11/2013	Race discrimination/offence	1
The X Factor	ITV	09/11/2013	Crime	1
The X Factor	ITV	09/11/2013	Generally accepted standards	2
The X Factor	ITV	09/11/2013	Outside of remit / other	4



The X Factor	ITV	16/11/2013	Offensive language	1
The X Factor	ITV	16/11/2013	Race discrimination/offence	9
The X Factor	ITV	Various	Materially misleading	1
The X Factor Results Show	ITV	03/11/2013	Generally accepted standards	1
The X Factor Results Show	ITV	10/11/2013	Generally accepted standards	2
The X Factor Results Show	ITV	10/11/2013	Scheduling	1
The X Factor Results Show	ITV	n/a	Outside of remit / other	1
The Xtra Factor	ITV2	17/11/2013	Offensive language	1
This Morning	ITV	05/11/2013	Offensive language	1
This Morning	ITV	07/11/2013	Animal welfare	1
This Morning	ITV	11/11/2013	Generally accepted standards	1
This Morning	ITV	12/11/2013	Race discrimination/offence	1
This Morning	ITV	12/11/2013	Religious/Beliefs discrimination/offence	4
This Morning	ITV	Various	Competitions	1
Too Fat to Fly	Channel 5	06/11/2013	Generally accepted standards	2
Truckers	BBC 1	31/10/2013	Sexual material	1
U105 Mornings with Frank Mitchell	U105	25/10/2013	Generally accepted standards	1
Unreported World	Channel 4	15/11/2013	Generally accepted standards	2
Waterloo Road	BBC 1	31/10/2013	Generally accepted standards	1
Waterloo Road	BBC 1	07/11/2013	Disability discrimination/offence	1
Who Wants To Be A Millionaire	Challenge TV	21/10/2013	Advertising/editorial distinction	1
XXXpanded TV	XXXpanded TV	18/10/2013	Participation TV - Misleadingness	1
Yonderland	Sky1	10/11/2013	Offensive language	1
Your Round	BBC Radio 4	29/10/2013	Generally accepted standards	1
You've Been Framed!	ITV	26/10/2013	Under 18s in programmes	1
You've Been Framed	ITV2	28/09/2013	Generally accepted standards	1
You've Been Framed!	ITV	16/11/2013	Animal welfare	1
You've Been Framed!	ITV2	07/11/2013	Religious/Beliefs discrimination/offence	2
You've Been Framed!	ITV2	11/11/2013	Generally accepted standards	1
You've Been Framed!	ITV2	12/11/2013	Generally accepted standards	1

## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 7 and 20 November 2013.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
BBC News	BBC 1	9 November 2013
BBC News at Six	BBC 1	7 November 2013
Cherry Healey: Old Before My Time	BBC 3	21 October 2013
City Vibe News Hour	Siren FM	8 November 2013
Get Lucky TV and Lucky Star	Get Lucky TV and Lucky Star	Various
Jack FM Ale promotion	Jack FM (Southampton)	13 November 2013
Watchdog	BBC 1	16 October 2013

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.**

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

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

For fairness and privacy complaints go to:

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