

Ofcom Broadcast Bulletin

**Issue number 268
1 December 2014**

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act².

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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

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

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

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

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

Standards cases

In Breach

Items for Friends of Al Aqsa

EAVA FM, 22 June to 31 July 2014, various times

Introduction

EAVA FM is a community radio station serving “inner-city Leicester’s new migrant and refugee communities, particularly those from East Africa and related areas”. The licence for EAVA FM is held by St Mathews Community Solution Centre Ltd (“SMCSC” or “the Licensee”).

During routine monitoring Ofcom noted what appeared to be three advertisements for Friends of Al Aqsa (see below). Each item was broadcast only in commercial breaks, lasted 30 seconds and was as set out below:

National demonstration (broadcast 120 times during the five days, 13 to 17 July 2014)

“Dear listeners, as the bombardment continues in Gaza¹, where innocent civilians are being killed, and seriously injured daily, we have to stand up against this injustice. Friends of Al Aqsa have organised a national demonstration, in London, this Saturday, 19th of July. Coaches are leaving from the Friends of Al Aqsa office at [address]. Book your place by emailing [email address] or visit the Friends of Al Aqsa offices at [address]”.

‘I check the label’ campaign (broadcast 476 times during the 40 days, 22 June to 31 July 2014)

“This Ramadhan, check the label. During Ramadhan, Israel increases its supply of dates around the world. These dates may be grown on illegal Israeli settlements, built on stolen Palestinian land. Every Israeli date we buy helps them to continue their oppression. This Ramadhan, make sure you don’t buy Israeli dates grown on stolen land. Thousands of people are boycotting Israeli dates. Will you join them? I check the label. Do you? ‘I check the label’ is a Friends of Al Aqsa campaign”.

Pledge day (broadcast 233 times during the 28 days, 22 June to 19 July 2014)

“As’salaam walekum. Since last Ramadhan, Masjid Al Aqsa² has slipped further away from us all. For the first time, on June the 4th, Israel closed off Masjid Al Aqsa to all Muslims and, instead, allowed Israeli settlers to enter. Join Friends of Al Aqsa. Help us to achieve a solution to this conflict. Support the Friends of Al Aqsa pledge day on Sunday the 20th of July and follow us on Facebook, Twitter and the website, [web address]. Join Friends of Al Aqsa, to help Masjid Al Aqsa this Ramadhan”.

¹ Ofcom understands this to be a reference to the then ongoing conflict in the Gaza strip involving Israeli armed forces in July and August 2014.

² Masjid Al Aqsa is a mosque located in the Old City of Jerusalem.

Friends of Al Aqsa describes itself as “a UK based non-profit making NGO concerned with defending the human rights of Palestinians and protecting the sacred al-Aqsa Sanctuary in Jerusalem”. Its aims include, “putting pressure on the British government to make Israel respect International Law and human rights”, and “mobilising international condemnation for Israel’s apartheid policies to be manifested through the boycott of Israel”. Visitors to Friends of Al Aqsa’s website are invited to join the organisation “in opposing this brutal occupation and working to achieve a Free Palestine by getting involved with your local branch”.

We sought the Licensee’s confirmation of the terms under which the above items had been included in EAVA FM’s schedule. The Licensee informed us that it had broadcast none of the material in return for payment or other valuable consideration. As a result, Ofcom concluded that each item must be regarded as programme material, as opposed to advertising or a “commercial reference” in radio programming³, and was therefore subject to the Code.

As each item consisted solely of a message from an organisation with political aims and for reasons explained below, we considered it raised issues warranting investigation under Rule 5.13 of the Code, which states:

“Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service (listed above) taken as a whole”.

Further, as each item was only broadcast during breaks featuring one or more advertisements, Ofcom considered the material warranted investigation under Rule 10.2 of the Code, which states:

“Spot advertisements must be clearly separated from programming...”.

We therefore sought SM CSC’s views as to how the items complied with Rule 5.13 of the Code and how the spot advertisements that accompanied those items in commercial breaks complied with Rule 10.2 of the Code.

Response

SM CSC told us that it had an agreement with a third party for that organisation to broadcast programmes on EAVA FM in Ramadhan. The Licensee said it “did not give [the third party] permission to broadcast these adverts or run campaigns during Ramadhan”. SM CSC added that it “had no awareness of any such content being promoted by an additional party”, adding that it “operated on a TRUST basis” (its emphasis). The Licensee said the agreement with the third party had been “just [to] stick with in the Code of Practice and Ramadhan celebration programs”. SM CSC apologised, adding that it had trusted in ignorance an organisation that it had considered professional and more experienced in Ramadhan broadcasting than itself.

³ This is defined in Section Ten of the Code as “a reference in programming to a brand, trade mark, product and/or service that: is subject to a commercial arrangement; or promotes the station/broadcaster’s own products or services”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. Under Section 320 of the Act, community radio services are required to prevent “the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters”. This standard is reflected in Section Five of the Code.

Ofcom also has a statutory duty to ensure “that the inclusion of advertising which may be misleading, harmful or offensive in ... radio services is prevented”. This objective is reflected in a number of ways, including through Section Ten of the Code. This includes, among other rules, Rule 10.2, requiring spot advertisements to be kept separate from programming.

Ofcom therefore considered the Licensee’s compliance with Rules 5.13 and 10.2 of the Code⁴.

However, its representations appeared to suggest that, throughout Ramadhan, the Licensee may have ceded its compliance responsibilities, and possibly its editorial responsibilities, to a third party. This is being considered by Ofcom separately.

Rule 5.13

This rule states:

“Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service ... taken as a whole”.

It is not Ofcom’s role to question or investigate the validity of the political views expressed in a case like the current one, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing any particular controversial subject or including any particular point of view in a programme. To do so would be an unacceptable restriction on a broadcaster’s freedom of expression.

Ofcom recognises that Section Five of the Code, which sets out the requirement to ensure that no undue prominence is given to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy, acts to limit freedom of expression. This is because its application necessarily requires non-national radio broadcasters to ensure that there is not a “significant imbalance of views within coverage of matters of political or industrial controversy and matters relating to current public policy”⁵. Therefore, although any Ofcom licensee has the freedom to discuss any controversial subject or

⁴ The Licensee’s representations appeared to suggest that, throughout Ramadhan, it may have ceded its editorial control to a third party. This is being investigated by Ofcom separately.

⁵ This is the Code’s definition of “undue prominence of views and opinions”.

include particular points of view in its programming, broadcasters must, in doing so, always comply with the Code.

In this case, Ofcom firstly had to ascertain whether the requirements of Section Five of the Code should be applied: that is, whether the content in this case was dealing with matters of political or industrial controversy and/or matters relating to current public policy. We noted that the items were brief statements that alerted EAVA FM's listeners to the existence of a boycott campaign, a forthcoming demonstration and fundraising campaign organised by Friends of Al Aqsa – a body with clear political objectives (for the reasons set out in the Introduction section above). Just because editorial content refers to such organisations does not necessarily mean that the rules in Section Five are applicable. Furthermore, in judging the applicability of Section Five in any case, Ofcom will take into account the manner in which political issues are dealt with, and how they are presented within programming.

In Ofcom's view, the items broadcast, although brief, clearly touched on matters of political controversy and public policy in the UK and the Middle East. One item promoted Friends of Al Aqsa's national demonstration against Israeli bombing of Gaza, *"to stand up against this injustice"*. A second item sought support for the Friends of Al Aqsa's 'I check the label' campaign to boycott Israeli dates, which *"may be grown on illegal Israeli settlements, built on stolen Palestinian land"*. A third item alerted listeners to a *"pledge day"* on behalf of Friends of Al Aqsa, to *"help [it] to achieve a solution to this conflict"* in which *"Israel closed off Masjid Al Aqsa to all Muslims and, instead, allowed Israeli settlers to enter"*.

We considered that these items clearly imparted particular viewpoints on controversial issue – i.e. Israeli Government policy towards the Palestinian community, including the actions of the Israeli armed forces in Gaza in July and August 2014 and settlement-building in the Palestinian Territories. As a result, Ofcom considered that the items dealt with matters of political controversy and matters relating to current public policy. Section Five was therefore applicable.

Unlike most other licensees, which are required to demonstrate due impartiality in their coverage of controversial matters either within a programme or over a series of programmes⁶, community services like EAVA FM and other non-national radio stations are afforded greater flexibility under Rule 5.13. The Code and relevant Guidance⁷ makes clear that, for Rule 5.13 to be breached, Ofcom must be satisfied that:

- there has been a *significant* imbalance of views and opinions on a matter of political or industrial controversy and/or a matter relating to current public policy;
- the relevant views and opinions given prominence in this way are those of particular persons or bodies; and
- the relevant timeframe for a service to show compliance with Rule 5.13 is "all programming on a service dealing with the same or related issues within an appropriate period".

⁶ For example, Rule 5.5 states that "due impartiality on matters of political and industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole".

⁷ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

We therefore went on to consider whether undue prominence to the views and opinions of Friends of Al Aqsa had been permitted by the Licensee. As the Code and the Guidance makes clear “undue prominence” does not mean that, across all programming, an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The undue prominence of views on matters of major political or industrial controversy and major matters relating to current public may be avoided in a number of ways and it is an editorial decision for the broadcaster as to how it prevents the views and opinions of particular organisations from becoming unduly prominent. The context in which programme material appears, including the particular characteristics of the programmes in which opinions are expressed, are important to judgements of what may appear unduly prominent.

Ofcom considered that the items broadcast on EAVA FM were self-standing expressions of the specific viewpoint of Friends of Al Aqsa on particular matters of political controversy and matters relating to current public policy. The items did not contain any alternative views, which could be reasonably and adequately classed as critical or counter to those of Friends of Al Aqsa. We noted that the Licensee had not said in its responses that it had carried items containing opposing viewpoints.

Secondly, we noted that the Friends of Al Aqsa items contained calls to action – to demonstrate, boycott and provide financial support – rather than merely offer discussion of any particular points of view. Consequently, it was our view that any such items could only be viewed as self-standing, and therefore prominent pieces intended to promote a particular political interest. By their very nature, such items therefore presented no opportunity for matters of political controversy to be anything other than unduly prominent, particularly when broadcast, in total, 829 times – which amounted to almost seven hours of editorial – during Ramadhan.

Ofcom recognises that broadcasters serving particular communities will want to provide content that presents issues of topical interest to their target audience. In Ofcom’s view, however, this cannot justify the repeated inclusion of inherently partial items concerning matters of political controversy or matters relating to public policy.

Given the above, Ofcom concluded that the items breached Rule 5.13 of the Code.

Rule 10.2

This rule states:

“Spot advertisements must be clearly separated from programming”.

Each item was a self-standing message – of short duration and containing a call to action – that appeared to have been produced by or on behalf of Friends of Al Aqsa. No conventional programme elements were present – i.e. a presenter, a studio, programme titles etc. As such, each item strongly resembled a spot advertisement and was, in Ofcom’s view, very much more likely to be perceived by listeners as a spot advertisement than as a programme, especially as every broadcast of each item was scheduled in a commercial break that contained other material – i.e. spot advertisements.

In light of the above, and because each item was broadcast within commercial breaks, Ofcom concluded that the accompanying advertisements in those breaks were not clearly separated from programming, in breach of Rule 10.2 of the Code.

The right to broadcast comes with responsibilities. It is important that community radio broadcaster does not use its licensed service as a platform to give undue prominence in its programmes, taken as a whole, to the views and opinions of particular persons or bodies on matters of major political controversy and major matters relating to current public policy.

Ofcom puts SMCS on notice that if similar compliance issues arise we may take further regulatory action, including consideration of the imposition of a statutory sanction.

Breaches of Rules 5.13 and 10.2

In Breach

Wills, Trusts & Estate Planning Show

Sangat TV, 9 January 2014, 18:00

Introduction

Sangat TV broadcasts a religious and general entertainment service in English and Punjabi, which is primarily directed towards the Sikh community in the UK. The licence for Sangat TV is held by Regis 1 Limited (“Regis 1” or “the Licensee”).

Wills, Trusts & Estate Planning Show was a programme lasting approximately an hour, broadcast in English and Punjabi. Ofcom commissioned an independent translation of the material broadcast in Punjabi.

During routine monitoring, Ofcom noted that the programme featured two regular presenters who discussed a range of issues relating to asset protection – e.g. why one should have a will, things to consider when making a will and how to provide protection against inheritance tax. Viewers were also invited to participate in the programmes by phone and the presenters responded to the questions they received.

Ofcom noted the two presenters not only appeared in the programme but also featured in an advertisement broadcast in commercial breaks during and around it. The advertisement was for Legacy Trusts and Estate Planning Limited (“Legacy”), which viewers were told “specialises in wills, trusts, and estate planning” and claimed to have “a highly qualified team of solicitors and tax accountants”. The two presenters of *Wills, Trusts & Estate Planning Show* featured in the advertisement, in which they appeared to be offering advice to the advertiser’s clients. The advertisement was broadcast immediately before and after each half of the programme, the central commercial break containing three advertisements, of which Legacy’s was the first and then repeated as the third.

Regis 1 confirmed that one of the presenters of *Wills, Trusts & Estate Planning Show* – Mr Dev Randhawa – was a director of the advertiser, Legacy, and the other presenter – Mr Michael Smith – was “a qualified Solicitor and a Partner in a Law Firm”.

Ofcom considered *Wills, Trusts & Estate Planning Show* raised issues warranting investigation under Rule 9.2 of the Code, which states:

“Broadcasters must ensure that editorial content is distinct from advertising”.

We therefore asked the Licensee for its comments, and those of Legacy, as to how the programme complied with Rule 9.2 of the Code.

Response

The Licensee said it did not consider it had breached the Code.

In relation to material broadcast in commercial breaks (which included during and around *Wills, Trusts & Estate Planning Show*), Regis 1 said “there [was] a generic “strap” of advertising which [went] out all day long” and “Legacy [had] an advert which [went] out several times a week in this generic strap”.

The Licensee added that, “during the programme, there [was] no mention of ‘Legacy’ company and generic issues were being discussed by two experts in [the] field of law”. Regis 1 stated that, if only an advertisement for Legacy had been broadcast, “there could [have been] a blurring of editorial-programme content and advertising”. However, it considered that, “as the advert was part of a bundle ... there [was] a clear distinction and ... no deliberate positioning of the advert to influence the viewers”.

Nevertheless, the Licensee said that, in response to Ofcom’s concern, “and to ensure that there is no perception of any ‘blurring’ of editorial and advertising content”, it had instructed its play-out operators “to ensure that no adverts containing any personal [sic] on shows is played before, during or after such show, even if part of a bundle”.

Regis 1 provided no specific comment from Legacy.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including a requirement that television advertising is kept visually and/or audibly distinct from programming.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code, including Rule 9.2, which requires that editorial content must be distinct from advertising.

Ofcom’s Guidance Notes concerning Rule 9.2 state that its purpose “...is to prevent editorial content being distorted for advertising purposes, so ensuring that editorial control is reserved to the licensee and that programming is understood by viewers as not being subject to the control of advertisers”.

Rule 9.2 seeks to ensure that viewers are easily able to differentiate between editorial material and advertising.

Ofcom noted Regis 1’s views. However, in this instance, we also noted that:

- The programme, *Wills, Trusts & Estate Planning Show*, concerned expert advisors’ provision of asset protection, which was also the business of the advertiser, Legacy;
- An advertisement for Legacy was broadcast in commercial breaks during and around *Wills, Trusts & Estate Planning Show*, immediately before and after each half of the programme; and
- *Wills, Trusts & Estate Planning Show* featured predominantly two expert advisors in asset protection, who featured in Legacy’s advertisement in the same capacity.

Wills, Trusts & Estate Planning Show therefore provided the presenters, as expert advisors in asset protection, a platform on which to discuss matters central to Legacy's business. They were also instantly recognisable to viewers as experts performing the same function for that company in advertisements scheduled to run around each half of the programme.

Ofcom therefore considered that *Wills, Trusts & Estate Planning Show* blurred the distinction between editorial and advertising, and, as a result, Sangat TV's viewers would have been unlikely to be able to distinguish the programme content from Legacy's advertisement.

In Ofcom's view, the distinction between editorial and advertising content is unlikely to be maintained in circumstances where people feature as experts in advertisements for a promoted business and also appear in the same capacity in adjacent programming.

Although Ofcom noted Regis 1's comments that the advertising shown around *Wills, Trusts & Estate Planning Show* was part of a "generic strap" broadcast "all day long", we could not see how this served to maintain the distinction between the programme and the advertising material that surrounded it.

In this instance, and for the reasons noted above, Ofcom concluded that Sangat TV had failed to ensure *Wills, Trusts & Estate Planning Show* was distinct from advertising, in breach of Rule 9.2 of the Code. We therefore noted the action taken by Regis 1 to ensure no recurrence.

Television licensees should consider the possible implications of the content and scheduling of advertisements, where they feature individuals who appear in a similar capacity within programmes.

Breach of Rule 9.2 of the Code

Resolved

Saturday Breakfast Show

Metro Radio, 13 September 2014, 11:39

Introduction

Metro Radio is a local commercial radio station covering the Tyne and Wear area. The licence for Metro Radio is held by Metro Radio Limited (“or the Licensee”).

Ofcom was alerted to an instance of offensive language broadcast at 11:40 during the Saturday breakfast show.

The two presenters, Stu and Kelly, discussed Stu’s voice being featured in a promotional clip for *The X Factor* auditions, which were then taking place in Newcastle. Kelly berated Stu for repeatedly playing the clip of his voice:

Kelly: *“I am sick of you playing it over and over again. It’s the end now. It’s done. It’s absolutely done.”*

Stu: *You, seriously...*

Kelly: *I seriously have deleted it.*

Stu: *You fucking better not have...*

Kelly: *Oh dear...*

Stu: *Hang on. I’ve got it, I’ve got it, I’ve got it!”*

At 11:54, a third voice interrupted the music being broadcast, and said:

“Hi. Afternoon. A few moments ago a certain word went out on air that should not have done, that was a genuine mistake. We would just like to offer our sincere apologies for any offence that might have been caused during that error on our part just a few moments ago. We will be back immediately after this break with the Celebrity Take Over and our sincere apologies once again”.

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

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

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

Response

The Licensee explained that the material was broadcast by mistake. The show was pre-recorded and the material, featuring the offensive language, was a rehearsal link which should not have been included in the final broadcast version. As soon as the radio station realised that this rehearsal link had been broadcast, senior management

was informed and steps were taken to draft an apology. This was read on-air at the first available opportunity at 11:54.

The Licensee explained that the station and presenter were “mortified” that this error occurred. The Content Director and the team at Metro Radio apologised “unreservedly” for the incident and expressed regret that the station’s “usual high standards” had not been met.

The Licensee said that since the incident stringent controls have now been put in place to prevent a similar incident happening again. All presenters have been reminded not to use inappropriate language in the studio so such errors do not recur and technical staff members have been reminded that they should double check for errors prior to broadcast.

Decision

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

Rule 1.14 of the Code states that “the most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)”. Ofcom research on offensive language¹ notes that the word “fuck” and other variations of this word are considered by audiences to be amongst the most offensive language. Ofcom guidance on offensive language makes clear that for the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all the relevant information but that “broadcasters should have particular regard to broadcasting content...between 06:00 and 19:00 at weekends all year around...”².

In this case, the most offensive language was broadcast on a Saturday morning when children were particularly likely to be listening. Therefore this was a clear breach of Rule 1.14 of the Code.

However, Ofcom noted the action taken by the Licensee to broadcast an apology once it became aware that the pre-recorded rehearsal link containing an example of the most offensive language was broadcast in error. We also took account of the improved compliance procedures the Licensee said it had put in place. We therefore considered the matter resolved.

Resolved

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

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

Advertising Scheduling cases

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Travel Channel	4 August 2014, 17:00 and 19:00	COSTA Rule 4	Ofcom noted, during monitoring, that Travel Channel exceeded the permitted advertising allowance on this date by 120 and 30 seconds respectively. Finding: Breach

Television Access Services cases

Resolved

Under provision of audio description

Channel 5, January to December 2013

Introduction

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

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

Under Rule 9 of the Television Access Services Code Channel 5 was required to provide audio description on 10% of its content during 2013. Ofcom informed Channel 5 of this requirement in June 2012. Subsequently, on 27 June 2012 Ofcom published its report *Television Channels Required to Provide Access Services in 2013*³ which also set out that Channel 5 had an obligation in 2013 to provide audio description in line with the Television Access Services Code.

In February 2014 Channel 5 reported to Ofcom that against the 10% target it had provided audio description on 9.6% of its content in 2013, therefore falling short of the target by 0.4%. Ofcom considered that this shortfall raised a potential issue under Rule 9 of the Television Access Services Code. We therefore asked Channel 5 how it had complied with this rule.

¹ <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2013/>

² The relevant date is the later of the date the channel commenced broadcasting, or the date of introduction of the Communications Act 2003.

³ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/access-services-13.pdf>

Response

Channel 5 explained that the shortfall was due to its inadvertent use of programme slot time rather than programme running time in calculating the necessary amount of audio description to comply with the target. As a result, Channel 5 had inadvertently underestimated the hours of audio described programming needed. It stated that in future it would be calculating the necessary levels of access services required based on programme running time. Channel 5 accepted it needed to make up the 0.4% shortfall over 2014 by audio describing more than 10% of its content over the year ahead, and intended this to help mitigate the under provision the previous year.

Decision

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

Under Rule 9 of the Television Access Service Code Channel 5 was required to audio describe 10% of its output in 2013. It in fact audio described 9.6% that year. Channel 5 therefore clearly breached Rule 9 of the Television Access Services Code.

Ofcom noted that Channel 5's use of programme slot time to plan its audio description provision for 2013 resulted in this 0.4% shortfall. Importantly we also took account of Channel 5's commitment to provide audio description on at least an additional 0.4% of its content over 2014, aiming for this to go some way to making up the under provision in 2013 to sensory impaired consumers.

In light of these factors and on condition that Channel 5 fulfils its commitment to exceed its 10% audio description target for 2014 by at least 0.4%, Ofcom considered this matter resolved.

Ofcom reminds broadcasters subject to access services obligations that, while the quotas set under the Television Access Services Code are expressed as a percentage of the services, certain types of content are excluded, such as advertisements. Broadcasters must ensure that they understand their obligations under the Television Access Services Code and that the correct amounts of access services are calculated against the relevant hours of content. A misunderstanding of the requirements is never a justification for under provision.

Resolved

Resolved

Under provision of audio description

S4C, January to December 2013

Introduction

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

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

Under Rule 9 of the Television Access Services Code S4C was required to provide audio description on 10% of its content during 2013. Ofcom informed S4C of this requirement in June 2012. Subsequently, on 27 June 2012 Ofcom published its report *Television Channels Required to Provide Access Services in 2013*³ which also set out that S4C had an obligation in 2013 to provide audio description in line with the Television Access Services Code.

In February 2014, S4C reported to Ofcom that against the 10% target, it had provided audio description on 9.2% of its content in 2013, therefore falling short of the target by 0.8%. Ofcom considered that this shortfall raised a potential issue under Rule 9 of the Television Access Services Code. We therefore asked S4C how it had complied with this rule.

¹ <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2013/>

² The relevant date is the latter of date the channel commenced broadcasting or the introduction of the Communication Act 2003.

³ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/access-services-13.pdf>

Response

In response to Ofcom's request for comments, S4C noted that "a shortage of programmes which were deemed suitable for audio description" was in part responsible for the under provision of audio description over 2013. It also noted that the programmes within a particular series, which due to its nature were scheduled for broadcast shortly after production, were "delivered too close to transmission" to enable audio description to be arranged.

S4C also stated: "we are committed to achieving this year's [2014's] target of 10% as well as making up the shortfall of 0.8% from 2013. We are monitoring the situation on a regular basis and are confident that this can be achieved".

Decision

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

Under Rule 9 of the Television Access Services Code S4C was required to audio describe 10% of its output in 2013. It in fact audio described 9.2% that year. S4C therefore clearly breached Rule 9 of the Television Access Services Code.

Ofcom acknowledges that certain content does not lend itself to the provision of audio description and accordingly it may be exempted under the Television Access Services Code⁴. We accept that production companies will often need to deliver content close to the point of transmission and that this is especially true when programmes are relevant to recent events. Importantly, Ofcom also took account of S4C's commitment to making up the short fall over 2014, aiming for this to go some way to making up the under provision in 2013 to sensory impaired consumers.

In light of these factors and on the condition that S4C fulfils its commitment to exceed its 10% audio description target for 2014 by at least 0.8%, Ofcom considered this matter resolved.

Ofcom reminds broadcasters to take account of the likelihood of content being delivered late in their planning of access services and that this may result in the required audio description not being provided. To do so may mean broadcasters planning additional audio description above their annual quota to ensure their overall provision does not drop below the required amount.

Resolved

⁴ See paragraph 21 of the Television Access Services Code.

Resolved

Under provision of audio description

Nickelodeon, January to December 2013

Introduction

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

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

The Ofcom licence for Nickelodeon is held by Nickelodeon U.K. Limited ("Nickelodeon UK" or "the Licensee"). Under Rule 9 of the Television Access Services Code Nickelodeon UK was required to provide audio description on 10% of Nickelodeon's content over 2013. Ofcom informed Nickelodeon UK of this requirement in June 2012. Subsequently, on 27 June 2012 Ofcom published its report *Television Channels Required to Provide Access Services in 2013*³ which also set out that the Licensee had an obligation in 2013 to provide audio description in line with the Television Access Services Code.

In February 2014 Nickelodeon UK reported to Ofcom that against the 10% target it had provided audio description on 9.5% of its content in 2013 on Nickelodeon, therefore falling short of the target by 0.5%. Ofcom considered that this shortfall raised a potential issue under Rule 9 of the Television Access Services Code. We therefore asked Nickelodeon UK how it had complied with this rule.

¹ <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2013/>

² The relevant date is the latter of date the channel commenced broadcasting or the introduction of the Communication Act 2003.

³ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/access-services-13.pdf>

Response

The Licensee explained that the shortfall was due to a “combination of a late schedule change that moved some previously-described programming out of the schedule, and a knock-on effect of some time-consuming technical problems with subtitling, which impacted our ability to produce some previously-planned additional AD [audio description] soundtracks”.

Nickelodeon UK confirmed that it: “fully expects to make up the shortfall across 2014”.

Decision

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

Under Rule 9 of the Television Access Service Code Nickelodeon UK was required to audio describe 10% of Nickelodeon’s output in 2013. It in fact audio described 9.5% that year. The Licensee therefore clearly breached Rule 9 of the Television Access Services Code.

Ofcom acknowledged that Nickelodeon UK said it was required to make last minute changes to its schedule and that this resulted in some access services not being broadcast. Importantly, Ofcom also took account of the Licensee’s commitment to making up the short fall of 0.5% over 2014, aiming for this to go some way to making up the under provision in 2013 to sensory impaired consumers.

In light of these factors, and on the condition that the Licensee fulfils its commitment to exceed its 10% audio description target for 2014 by at least 0.5%, Ofcom considered this matter resolved.

Ofcom reminds broadcasters to take account of the likelihood of late scheduling changes in their planning of access services and that such changes may result in the required audio description not being provided. To do so may mean broadcasters planning additional audio description above their annual quota to ensure their overall provision does not drop below the required amount.

Resolved

Broadcast Licence Conditions cases

In Breach

Retention and production of recordings

Radio Ramadan (Huddersfield), 22 July 2014, 17:00

Introduction

Radio Ramadan was a radio service broadcast in Huddersfield from 28 June to 28 July 2014, provided under a Restricted Service Licence. The service was dedicated to covering the religious festival of Ramadan.

A listener alerted Ofcom to a broadcast between 17:00 and 20:00 on 22 July 2014, alleging that particular comments that were likely to cause religious offence were made by presenters concerning a forthcoming community radio service in the area.

Ofcom wrote to the Licensee to request a recording of the relevant content. The Licensee did not provide the recording by the deadline specified, and so we reminded it that the recording was outstanding.

Subsequently, the Licensee acknowledged the recording request and said that it would provide the material by a specified date. However, it did not do so.

Ofcom considered that this raised issues warranting investigation under Conditions 8(2)(a) and (b) of Radio Ramadan's licence, which require the Licensee to:

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

Ofcom therefore asked the Licensee for its formal comments on how it had complied with these Licence Conditions.

Response

The Licensee did not provide any comments.

Decision

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

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

It is a condition of all radio licences that the licensee adopts procedures for the retention of recordings and produces recordings to Ofcom forthwith on request.

In this case, Radio Ramadan failed to provide evidence to demonstrate that it had made a recording of the relevant content, and failed to produce the recording, in breach of Conditions 8(2)(a) and (b) of its licence.

These breaches are significant because they resulted in Ofcom being unable to fulfil its statutory duty properly to assess and regulate broadcast content in this case.

This failure will be held on record and taken into account should the Licensee make any future licence applications.

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

Fairness and Privacy cases

Not Upheld

Complaint by Mr Barrie Barker

The Nightmare Neighbour Next Door, Channel 5, 15 April 2014

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment and of unwarranted infringement of privacy in the programme as broadcast made by Mr Barrie Barker. The programme considered disputes between neighbours. One of the disputes featured was that between Mr Barker and his neighbours, Mr Barry Roddis and Mrs Phyllis Roddis. The programme included Mr and Mrs Roddis' recollections of Mr Barker's behaviour towards them over a ten-year period as well as images of and information about Mr Barker.

Ofcom found that:

- Mr Barker was not treated unfairly in the programme as broadcast. This was because the broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts with regard to Mr Barker in a way that resulted in unfairness to him. Also, Mr Barker was given an appropriate and timely opportunity to respond to the claims made about him in the programme.
- There was no unwarranted infringement of Mr Barker's privacy in the programme or in the programme as broadcast. This was because Mr Barker did not have a legitimate expectation of privacy with regard to the broadcast of the relevant images, footage and information in the programme.

Introduction and programme summary

On 15 April 2014, Channel 5 broadcast an edition of *The Nightmare Neighbour Next Door*, a series of programmes that featured a number of stories of neighbour disputes told largely by the protagonists themselves. One such dispute was between the complainant, Mr Barker, and his neighbours, Mr Barry Roddis and Mrs Phyllis Roddis. Mr and Mrs Roddis were shown relaying their recollection of the dispute in the programme. Mr Barker's recollection of events was not included.

The programme included a number of claims about Mr Barker's behaviour towards Mr and Mrs Roddis. For example, the programme said that Mr Barker had: "*turned his driveway into a junkyard*"; displayed "*graphic messages*" aimed at Mr and Mrs Roddis on car number plates; and played loud music at anti-social hours. It also said that despite receiving ASBOs as a result of his behaviour towards Mr and Mrs Roddis, Mr Barker "*continued to harass them*" initially by staring over his fence and then by setting up a CCTV camera directed towards their property to intimidate them.

These claims were based at least in part on the testimony of Mr and Mrs Roddis who had experienced these events first-hand. Claims were also included about Mr Barker's behaviour based on one a number of ASBOs and convictions for breaching the ASBO's in relation to his behaviour towards his neighbours.

One incident dealt with in the programme related to an altercation about some work on a boundary wall between the two properties. Mr Roddis recounted the incident and said that he received verbal abuse from Mr Barker who then hit him with a spade before walking away. Mrs Roddis said that there was blood all up Mr Roddis' arm. Mr Roddis then said of Mr Barker that: *"He's a total coward, he'll hide behind things. He's evil, absolutely evil"*. The narrator said that the police were called and that Mr Barker said in his witness statement that he had struck his neighbour by accident and that Mr Roddis had grabbed his hair. The programme also stated that Mr Roddis did not press charges against Mr Barker on this occasion.

The programme claimed the behaviour of Mr Barker had affected Mr Roddis' health and gave details of the arrest and conviction of Mr Barker for five breaches of the terms of his ASBO, including harassment, intimidation, damage to Mr and Mrs Roddis' fence, and taking pictures of them. The programme stated that Mr Barker was sent to prison for 12 months.

The item concluded with Mr and Mrs Roddis saying that they hoped to get a new neighbour and the programme's narrator stated: *"Mr Barker declined to tell his side of the story. His house is now up for sale"*. Mrs Roddis ended this part of the programme by stating: *"we got him in the end"*.

Summary of the complaint and the broadcaster's response

Unjust or unfair treatment

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

- a) It contained "lies" and was biased in favour of Mr and Mrs Roddis. Mr Barker said that no research had been done into the programme and it was all "so called" allegations from the other party [i.e. Mr and Mrs Roddis]. In particular, Mr Barker cited the incident in which he hit Mr Roddis with a spade. Mr Barker said that Mr Roddis had grabbed hold of his hair and would not let go. Mr Barker said that he had telephoned the police about this incident, but was told that no further action would be taken. He said that he was portrayed as a "bully, picking on an old aged pensioner" when, in fact, Mr Roddis had assaulted him.

In response, Channel 5 said that in his complaint Mr Barker accepted that he had hit Mr Roddis with a spade but claimed that this resulted from Mr Roddis provoking him by grabbing hold of his hair over the fence. Channel 5 said that the script (the relevant section of which was set out in its response) showed that Mr Barker's side of the story was included in the programme. It argued that in these circumstances and given the absence of any pre-broadcast response from Mr Barker to this claim, which was included in a letter to him from the programme makers (see response to heads b) and c) below for details), the programme took reasonable care to ensure that material facts with regard to this matter were not presented, disregarded or omitted in a way that was unfair to Mr Barker.

With regard to the other claims made about Mr Barker during the programme, Channel 5 said that there was a documented history of anti-social behaviour by Mr Barker towards Mr and Mrs Roddis over a ten year period. The broadcaster provided details of various court proceedings against Mr Barker as a result of his behaviour towards Mr and Mrs Roddis. Each of these proceedings resulted in either the imposition of an ASBO on Mr Barker, or concerned his contravention of an ASBO. In April 2007, Mr Barker was given a five-month prison sentence,

suspended for 12 months, and a 12 month probation order as result of his behaviour towards Mr and Mrs Roddis and his repeated breaches of the ASBO imposed on him. In March 2010 he was given a four month prison sentence. On 13 December 2011, a new ASBO was placed upon Mr Barker and in May 2013 he was given a 12 month prison sentence.

Channel 5 said most of these other claims related to matters which were proved for the purposes of the imposition of the ASBOs or related to convictions for breaches of the ASBOs. The broadcaster said that although Mr Barker appeared to be protesting his innocence in relation to such matters, the convictions stood and were not subject to any appeal by Mr Barker. Channel 5 also said that it was not open to Mr Barker to seek to circumvent the judgments made by the court by asking Ofcom to determine that those convictions against him were incorrect, and that it was entitled to rely upon those court convictions.

The broadcaster further stated that, to the extent that Mr Barker had suggested that "lies" were included in the programme which related to matters not already determined by a court, Mr Barker did not bring those matters to the programme makers attention prior to the broadcast, in response to the programme maker's correspondence. The broadcaster also said that Mr Barker had not specified what these "lies" were within his complaint, so enabling Channel 5 to respond to them.

Channel 5 also argued that, in any case, given Mr Barker's behaviour towards Mr and Mrs Roddis over the preceding decade, even if there was a minor inaccuracy in the programme in relation to a claim about his behaviour (which it denied was the case), it would be unlikely to have affected viewers' understanding of Mr Barker in a way that was unfair to him.

- b) The programme unfairly stated that he had refused to comment, however, this was untrue as he knew nothing of the programme. Mr Barker said that because the programme had stated that he had refused to comment, people had told him that "well it must be true what Mr and Mrs Roddis have said".
- c) He was not notified about the programme in which he featured. Mr Barker said that had he known that the programme was being made he would have provided evidence that the story told by Mr and Mrs Roddis in the programme was a "lie".

By way of background to his complaint, Mr Barker said he was experiencing difficulty in selling his house and that he had received threats as a result of the programme which he said had "made my life hell".

Channel 5 responded to heads b) and c) of this complaint together.

It said that Mr Barker was made aware of the programme and the claims that were likely to be included in it about him, and was given an appropriate and timely opportunity to respond. Mr Barker did not take up the opportunity to respond. Channel 5 then set out the details of the programme makers' attempts to give Mr Barker an opportunity to respond to the claims which the programme intended to make about him.

It said that the programme makers first contacted Mr Barker about the programme via Facebook on 9 December 2013. Mr Barker sent a brief response but then blocked his profile. On 7 January 2014, the programme makers wrote to Mr Barker. The letter set out the claims that had been made to the programme makers about Mr Barker and indicated that the claims may be included in a

programme provisionally entitled Neighbour Disputes which was being made for Channel 5 and was due for broadcast in 2014. The letter offered Mr Barker an opportunity to respond to the allegations either by way of a filmed interview or in writing (a copy of this letter was provided to Ofcom). On the same day (7 January 2014) the programme makers tried to send the letter to Mr Barker via Facebook. However, the message was blocked. The programme maker sent the letter by special delivery to Mr Barker at his home address. The letter was signed for on 8 January 2014 by a person called "Ward". On 9 January 2014, the programme maker also sent a letter to Mr Barker via the firm of solicitors which had represented him in 2013 requesting it to forward the letter to Mr Barker.

Given that the programme makers had not heard from Mr Barker in response to the letters of 7 and 9 January 2014, they telephoned the Barnsley branch of "Your Move" estate agents, which was listed on the "For Sale" sign outside Mr Barker's property, to ask if it could provide an address for Mr Barker. The estate agents said that could not do so for Data Protection reasons but offered to pass a copy of the letter on to Mr Barker directly. On 14 January 2014, the programme makers sent a copy of the letter by special delivery to the estate agents. The letter to the estate agent was signed for on 15 January 2014.

In addition, on 14 January 2014, the programme makers called two telephone numbers (one mobile number and one landline) listed on a private "For Sale" sign outside Mr Barker's property. A man, whom the programme makers believed was Mr Barker, answered the mobile number. He asked: "is this to do with that TV programme? I don't want anything to do with it". He then hung up the phone.

A woman, who did not give her name or connection to Mr Barker, answered the landline. She confirmed that: the mobile number was Mr Barker's; he had received the programme makers' letters, and, that he was not interested in being involved in the programme and did not want to respond to any of the claims. She said he needed to move on with his life. She said that although Mr Barker was living in a caravan rather than his home address, the latter was still the best address to which to send correspondence. She also advised the programme maker to call Mr Barker on his mobile number. (A transcript of this conversation – which was recorded – was provided to Ofcom).

On 19 January 2014, the programme makers received a telephone call from a woman who said that she was Mr Barker's daughter. She said that they wanted all the letters and all the contact about the programme to stop. She said that: Mr Barker did not wish to comment on the claims; he did not want the programme makers to contact him or his family; and, that neither she nor Mr Barker wanted anything to do with the programme. (A transcript of this conversation – which was recorded – was provided to Ofcom).

Channel 5 denied Mr Barker's claim that the programme said that he had "refused to comment" and quoted the following comments made by the narrator during the programme to support its position:

"Barrie Barker declined to comment about this"

and

"Mr Barker declined to tell his side of the story".

Channel 5 said that, contrary to what Mr Barker said in his complaint to Ofcom, he did receive copies of the programme makers' letter and that his daughter had complained to the programme makers that they were trying too hard to contact Mr Barker - adding that she and Mr Barker wanted the efforts to stop and that Mr Barker did not wish to comment on the claims.

The broadcaster also said that, in light of the fact that Mr Barker clearly had received correspondence from the programme makers and that the programme did not receive a response from Mr Barker to this correspondence, the inclusion of the above comments did not misrepresent the position.

Unwarranted infringement of privacy

- d) Mr Barker also complained that his privacy was unwarrantably infringed in the programme as broadcast because photographs of him, as well as footage of his house and cars, were shown without his permission. He also said that his full name was disclosed in the programme.

Channel 5 argued that Mr Barker did not have a legitimate expectation of privacy in relation to the broadcast of his photograph, or of his name in connection with his dispute with Mr and Mrs Roddis.

This was because over the course of Mr Barker's public court appearances in relation to his dispute with Mr and Mrs Roddis, both his name and photographs of him had appeared in numerous media reports. It provided links to seven newspaper articles about Mr Barker and his convictions for harassing Mr and Mrs Roddis. Channel 5 said that this dispute and Mr Barker's documented and public court appearances could not be said to be an aspect of Mr Barker's private life. Given the media coverage of Mr Barker's behaviour (including an article in the Mail Online in which Mr Barker appeared happy to pose with the "rude number plates") Mr Barker's name and photographs of him in connection with this dispute were already in the public domain before the broadcast of this programme.

Channel 5 also argued that Mr Barker did not have a legitimate expectation of privacy in relation to the broadcast of footage of Mr Barker's house and the cars in the driveway at the time the footage was filmed.

The broadcaster accepted that a person can have a legitimate expectation of privacy in relation to their home. However, it said that given that Mr Barker had not lived at the house in Lundwood, Barnsley for two years (as set out in his complaint to Ofcom) the property could not be said to be Mr Barker's home and Mr Barker would not have had a legitimate expectation of privacy in relation to it.

It added that, in any case, all filming undertaken by the programme maker of Mr Barker's house and any cars that were in his driveway at the time, took place from the public highway or from Mr and Mrs Roddis' property. Care was taken to ensure that neither the house number nor the registration plates of the cars at the property were legible and none of the footage broadcast disclosed anything of a private or sensitive nature or anything that was not readily apparent to anyone walking or driving past.

Channel 5 said that if Ofcom considered that there was some limited expectation of privacy in relation to Mr Barker's name, photograph, property or the vehicles

at the property, this was outweighed in this case by the public interest in reporting this matter and Channel 5's right to freedom of expression.

Channel 5 added that case law recognises that courts must give some latitude to the view of the publisher/broadcaster about what is appropriate to be published or broadcast. Channel 5 said that such latitude should be afforded to broadcasters who disseminate information to the public about crime and the prevention and consequences of crime.

Decision

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

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

In reaching this Decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions – including pre-broadcast communication between the broadcaster and the complainant and other people linked to him, and copies of documents relating to ASBOs against Mr Barker and subsequent convictions as a result of breaches of these ASBOs. Neither Mr Barker nor Channel 5 chose to make any representations in response to Ofcom's Preliminary View on this complaint.

Unjust or unfair treatment

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 took this Rule into account when reaching its Decision on the individual heads of Mr Barker's fairness complaint detailed below.

- a) Ofcom first considered Mr Barker's complaint that he was treated unjustly or unfairly because the programme contained "lies", was biased in favour of Mr and Mrs Roddis and that no research had been done. Mr Barker refers specifically to an incident in which he hit Mr Roddis with a spade. The further detail of this part of Mr Barker's complaint is set out above under "Summary of complaint".

Ofcom 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.

Mr Barker complained that the programme makers failed to carry out any research to substantiate the claims made about him in the programme. However, from Channel 5's response to this complaint, it is clear that the programme makers not only interviewed Mr and Mrs Roddis but found and assessed a wide

range of material regarding the civil and criminal proceedings against Mr Barker in relation to his treatment of Mr and Mrs Roddis over a long period. This material included: a Noise Nuisance Abatement Notice, two ASBOs, and the relevant court cases relating to the breach of those ASBOs and Mr Barker's resulting terms of imprisonment. In addition, we observed that in his complaint Mr Barker did not challenge the accuracy of any of the statements made about these proceedings in the programme.

The programme included a section in which Mr Roddis claimed that after asking Mr Barker to ensure that he did not damage the boundary wall between their properties (which Mr Barker was working on), Mr Barker had abused him verbally and then hit him (Mr Roddis) with a spade before walking away.

As detailed in Channel 5's response and the transcript submitted to Ofcom, the relevant section of the programme was as follows:

Narrator: *"As the spokesperson who helped get the illegal scrap business shut down, Barry [Roddis] felt he was the focus of Mr Barker's anger. From then on things took a turn for the worse when Barry discovered his neighbour doing some work on a boundary wall.*

Mr Roddis: *I said, 'Make sure that you don't damage the wall, it's our boundary wall,' and I got quite a lot of verbal abuse. I wasn't looking at him then. He'd got a-, a spade and lifted it high, and the next minute I knew it had hit me on-, on the arm. And he just walked away.*

Mrs Roddis: *And he was coming up the drive here with blood all over his arm and it was dripping onto the drive here, and I said to him, 'What on earth's happened?' and he said, 'Mr Barker has hit me with a spade' I-, I just-, I just couldn't believe that someone would do that to someone else, hit them with a spade.*

Mr Roddis: *He is a total coward, he'll hide behind things, and he's evil, absolutely evil.*

Narrator: *The police were called. In his witness statement Mr Barker claimed that he struck his neighbour by accident and that Barry had grabbed his hair.*

Mrs Roddis: *Which is an impossibility because we've got a metal ornamental fence on top of our wall with spikes, and if he'd have leaned over he would've got a spike in his stomach.*

Narrator: *Despite the attack Barry Roddis chose not to press charges.*

Mrs Roddis: *He says, 'I've got to live here, just, you know, let it go. Might be a one-off thing'".*

From this section of the programme it was clear that Mr Roddis claimed that Mr Barker had hit him on the arm with a spade and that Mrs Roddis said that as a result her husband had blood all over his arm.

Ofcom noted that prior to the broadcast the programme makers wrote to Mr Barker setting out the claims about him which the programme intended to make and that this was one of the claims included in that letter. We also noted that Mr

Barker did not respond to this letter. (Please see the Decision at heads b) and c) below for more details).

Notwithstanding the fact that Mr Barker did not give the programme makers a response to this claim, the programme set out Mr Barker's position on this matter. Specifically, the programme said that when talking to the police about this incident Mr Barker did not deny hitting Mr Roddis with a spade but said that he had "*struck*" Mr Roddis "*by accident*" after he (Mr Roddis) had "*grabbed his* [Mr Barker's] *hair*". The programme also made it clear that Mrs Roddis disputed Mr Barker's claim that her husband had grabbed Mr Barker's hair.

Given this information in the programme, we considered that viewers would have understood both the nature of this incident and that there was some disagreement between the parties with regard to precisely what occurred.

For all the reasons above, we concluded that the manner in which this incident was represented in the programme would not have resulted in unfairness to the complainant.

The programme also included a number of other claims about Mr Barker's behaviour towards Mr and Mrs Roddis. For example, the programme said that Mr Barker had: "*turned his driveway into a junkyard*"; displayed "*graphic messages*" aimed at Mr and Mrs Roddis on car number plates; and played loud music at anti-social hours. It also said that despite receiving ASBOs as a result of his behaviour towards Mr and Mrs Roddis, Mr Barker "*continued to harass them*" initially by staring over his fence and then by setting up a CCTV camera directed towards their property to intimidate them. We observed that, as with the 'spade incident', these claims were based at least in part on the first-hand testimony of Mr and Mrs Roddis. We also noted that, over the decade prior to the broadcast of this programme, Mr Barker was given two ASBOs, and found guilty on at least two occasions of breaching those ASBOs as a result of his continuing anti-social behaviour towards Mr and Mrs Roddis. On the information available to Ofcom, it appears that many of the claims about Mr Barker's behaviour included in the programme were based on one of Mr Barker's ASBOs, or a subsequent conviction for breaching one of them, as discovered by the programme makers when carrying out their research (as set out above).

Ofcom also carefully assessed all the parts of the programme relating specifically to Mr Barker as a whole, to reach a view as to whether the programme in its entirety resulted in unfairness to him because of alleged "lies" about him. We noted in particular that, although the complainant said that the programme contained various "lies" about him, he did not (with the exception of the 'spade incident') set out any specific claim which allegedly resulted in unfairness to him. Nor did Mr Barker provide Ofcom with evidence indicating that any of the claims made about him, including those relating to the 'spade incident', was false or unfairly represented.

For all the reasons set out above, it is Ofcom's view that the broadcaster took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Barker. Therefore, Ofcom found that the portrayal of Mr Barker did not result in unfairness to him under head a) of his complaint.

b) & c)

As Mr Barker's complaints of unfair treatment at heads b) and c) are closely linked, Ofcom considered it appropriate to deal with these together.

We first considered Mr Barker's complaint that he was not notified about the programme in which he featured. Mr Barker said that had he known that the programme was being made he would have provided evidence that the story told by Mr and Mrs Roddis in the programme was a "lie".

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

As noted above at head a) the programme included several allegations about the way in which Mr Barker behaved towards Mr and Mrs Roddis. We considered that, given their serious nature, the programme makers needed to offer Mr Barker an appropriate opportunity to respond to these claims.

It is clear from the submissions of the parties to this complaint that they disagree over whether or not the programme gave Mr Barker an appropriate and timely opportunity to respond.

Ofcom assessed the available evidence to reach a view on this point, namely the correspondence from the programme makers to Mr Barker provided to Ofcom by Channel 5, and the broadcaster's account of the circumstances surrounding this correspondence.

We noted that the programme makers made numerous attempts to contact Mr Barker. In particular, as set out in Channel 5's response to these heads of complaint, between 7 January and 14 January 2014, the programme makers sent copies of a letter to Mr Barker through different media and to several different addresses in order to try to reach him. The letter set out the nature of the programme, listed the claims which the programme intended to make about Mr Barker and invited him to respond to these claims either through a filmed interview or in writing. The programme makers also made several attempts to contact Mr Barker by telephone.

In his complaint Mr Barker said that he was not notified about the programme. However, on the information available, we consider that the programme makers made significant efforts to contact Mr Barker to tell him about the programme and give him an appropriate and timely opportunity to respond to the claims which it planned to make about him. Given all the circumstances (see Channel 5's response to these heads of complaint above for details), it was reasonable in Ofcom's view for the broadcaster to have concluded that Mr Barker knew about the programme and did not want to respond to the claims which it planned to make about him.

We then turned to Mr Barker's complaint that the programme unfairly stated that he had refused to comment.

Here we took account of both Practice 7.9 (as set out above) and Practice 7.12. This latter Practice states that where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast,

the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.

As noted above, we considered that it was reasonable for the broadcaster to have concluded that Mr Barker knew about the programme and did not want to respond to the claims which it planned to make about him. We therefore assessed the way in which this was presented in the programme.

The programme said that "*Barrie Barker declined to comment about*" Mrs Roddis' claim that Mr Barker "*painted some of the panels*" in his greenhouse to make "*spy holes so he could look through [them to spy on Mr and Mrs Roddis] and not be seen by the camera [i.e. the Roddis' CCTV camera]*". Mrs Roddis added that this was another way for Mr Barker to intimidate them.

Later the programme said: "*Mr Barker declined to tell his side of the story*". Given both the wording of this comment and its position at the end of the last section of the programme looking at the Roddis' dispute with Mr Barker, we considered that viewers would have understood this comment to have related to all the claims made about Mr Barker in the programme.

Taking into account all of the factors set out above, Ofcom concluded that Mr Barker was given an appropriate and timely opportunity to respond to the claims made about him in the programme. We also concluded that programme made it clear that Mr Barker had chosen neither to appear in the programme nor to respond to the claims which the programme made about him and that the broadcaster took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Barker in this regard.

Therefore, Ofcom concluded that Mr Barker was not treated unjustly or unfairly in these respects.

Unwarranted infringement of privacy

- d) We then considered Mr Barker's complaint that his privacy was unwarrantably infringed in the programme as broadcast because photographs of him, as well as footage of his house and cars, were shown without his permission. He also said that his full name was disclosed in the programme.

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

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

Ofcom considered the complaint that Mr Barker's privacy was unwarrantably infringed in the programme as broadcast because footage of him was included without his consent. In doing so, Ofcom had particular regard to Practice 8.6 of the Code. This states that, if the broadcast of a programme would infringe the

privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

We first assessed the extent to which the complainant had a legitimate expectation of privacy in respect of the material which was broadcast.

The programme included two photographs of Mr Barker, and footage of the outside of his house (including images of the front of the house, and of a car in the driveway). It also included still images of cars which Mr Barker had previously owned and CCTV footage of a person standing on part of the boundary wall between Mr Barker's property and Mr and Mrs Roddis'. Viewers were informed that this person was Mr Barker and that the footage, which had been recorded by Mr and Mrs Roddis, showed him staring at their property in order to intimidate them.

Mr Barker's face was clearly visible in both photographs and the programme identified him as "*Barrie Barker*". We observed that at least one of these photographs had previously been included in an article in a national newspaper about Mr Barker. The photograph in which Mr Barker was shown holding number plates with graphic messages on them was included in an article about Mr Barker's most recent conviction for breaching one of his ASBOs, published in *The Daily Mail* on 24 May 2013. This article, as well as several others published either around this time or at the time of Mr Barker's previous convictions, also included Mr Barker's full name, the nature of the relevant conviction and details about the location of Mr Barker's property, including the name of the road on which it is located.

With regard to the footage of Mr Barker's property, from our own observation (confirmed by Channel 5's submissions), it appeared that the majority of this footage was filmed from the public highway. We noted that neither the house number, nor the registration plate of the car at the property at the time the relevant footage was filmed, was shown in the programme, and that the programme did not include the name of the road on which Mr Barker's property was located. In our view this footage did not include anything of a sensitive or private nature to Mr Barker.

We considered the images of cars which Mr Barker had previously owned (notably those which were partially disassembled on Mr Barker's driveway) and the CCTV footage of Mr Barker standing on the boundary wall which was recorded by Mr and Mrs Roddis. In our view, there was nothing sensitive or private to Mr Barker about the images of cars in his driveway. In particular, the number plates were not discernible and these cars would have been visible to people on the street who walked past Mr Barker's property.

We then assessed the CCTV footage of Mr Barker which was shown in the programme. We observed that the two clips showed Mr Barker indistinctly and from a considerable distance only. Although the programme identified the person in this footage as Mr Barker, he was not identifiable from the visual footage alone. In the first clip Mr Barker was shown looking over a boundary fence, and in the second he was shown next to a boundary fence lifting up and dropping an item. We noted that in the programme Mrs Roddis said that Mr Barker had "*ripped apart*" the old fence between their properties and the programme clearly indicated that the second clip showed Mr Barker in the process of doing so. However, in our view, it was unclear precisely what action Mr Barker was taking in this footage.

In our opinion, the broadcast of footage of an individual in their back garden recorded by CCTV camera could potentially attract a legitimate expectation of privacy. However, we observed that the footage in question had been filmed from a low vantage point and was principally of Mr and Mrs Roddis' boundary fence. To the extent that the footage showed Mr Barker's activities, it was because they took place when he had climbed up and was either looking over the boundary fence towards Mr and Mrs Roddis' property or was standing in such close proximity to it that his head and shoulders were visible above it from his neighbour's property.

The footage itself did not appear to convey any information of a private or sensitive nature to Mr Barker. However, the programme did indicate that it showed Mr Barker engaged in activities (i.e. watching Mr and Mrs Roddis' property and damaging their fence) which resulted in Mr Barker being found guilty of "*five breaches of his ASBO*" and being "*sent back to prison for 12 months*".

We noted that Mr Barker did not dispute the programme's claim about the content of this footage. We also noted that in its response to the complaint Channel 5 observed that in March 2010, during proceedings that resulted in three breaches of Mr Barker's ASBO, Sheffield Magistrates Court heard that Mr Barker "had stood at the top of Mr and Mrs Roddis' wall and shouted abuse". It also said that in May 2013 "Mr Barker was convicted of further breaches of his ASBO including that he smashed [their] garden fence...[and that he] was given a 12-month prison sentence".

Taking into account of all of factors set out above, in the circumstances of this case, we concluded that, on balance, Mr Barker did not have a legitimate expectation of privacy with regard to the inclusion of any of the relevant material in the programme as broadcast. It was therefore not necessary for Ofcom to go on to consider whether any infringement of Mr Barker's privacy in regard to the broadcast of this material was warranted.

Ofcom concluded that Mr Barker's privacy was not unwarrantably infringed in the programme as broadcast.

Therefore, Ofcom has not upheld Mr Barker's complaint of unfair treatment, and of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Mr Oliver Smith

Police Interceptors, Channel 5, 10 March 2014

Summary

Ofcom has not upheld Mr Oliver Smith's complaint of unwarranted infringement of privacy in the programme as broadcast.

The programme was part of a series that followed the work of police officers carrying out their public duties. The programme included footage of Mr Smith being stopped by police officers for speeding. His face and car registration plate were shown unobscured in the programme, he was named in the programme and his voice was heard. The programme also stated that Mr Smith was fined £300 and his driving licence was endorsed with six penalty points for speeding.

Ofcom found that, in the particular circumstances of this case, Mr Smith did not have a legitimate expectation of privacy with regard to the broadcast of unobscured footage of him and his car registration plate in the programme as broadcast. Therefore, Mr Smith's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 10 March 2014, Channel 5 broadcast an edition of its reality documentary series *Police Interceptors* which examines the work of police officers as they attempt to intercept and arrest criminals.

Footage of Mr Smith was first shown in the 'coming up next teaser' after the first commercial break. The police officer and Mr Smith were shown and the police officer was heard saying: *"there are times Oliver, where you're doing 110mph"*.

Longer footage of Mr Smith was shown later in the programme. The narrator introduced Sergeant Jason Baxter, a police officer who was shown driving in Lincolnshire while: *"in hot pursuit of a car he suspects is speeding"*. The police officer said:

"Right, that's the car in front, it's the Audi A3, it's been slowed down by the car ahead. We're with him now, we're in national speed limit. We'll see how he chooses to drive".

The car being followed by the police belonged to the complainant, Mr Smith, who was driving. Mr Smith's car registration number plate was shown unobscured throughout the relevant part of the programme and was readable.

The police officer commented that if Mr Smith's car overtook the tractor in front of it, the driver would have a clear stretch of road ahead, and said that he would see whether the driver then drove in excess of the speed limit. The police officer acknowledged at this point that the driver was driving safely while behind the tractor.

The programme showed footage of the Mr Smith's car overtaking the tractor. The narrator added:

“The endless straight proved too much, and the driver has floored it”.

The police officer stated that the driver’s speed was up to 90mph, and the narrator commented that the roads in Lincolnshire were deceptively bumpy which was: *“just one of the factors that sees the county’s roads top national road death statistics”*. The police officer then commented that the speed of the complainant’s car was up to 110mph, and said that he would work out the driver’s average speed. The narrator explained that using an on-board speed gun the police officer could calculate the average speed of the car, and that it was this figure which determined how serious the offence was. The police officer said:

“Averaging 96mph, I think we need to have a word with this chap”.

The police officer put his car sirens on and Mr Smith’s car was shown immediately pulling over to the side of the road. The police officer asked the driver (Mr Smith) to step out of his car and get into the police car. Mr Smith was shown getting out of his car and walking towards the camera, before getting into the police car. The police officer then stated:

“I need to speak to you in relation to your speed, you overtook that tractor, and then you kind of went for it on that clear section of road, alright? And what I’m gonna do, I’ll just show you the video”.

Footage was shown from the police car’s on-board camera, which showed the complainant’s driving. The police officer said to Mr Smith: *“that’s you overtaking the tractor, OK? There are times where you’ll see on here that you’re doing 110mph, and I’m trying to keep pace with you...”*. Accompanying this, the complainant was shown through the window in the back of the car where he was sitting. The narrator then stated that: *“Jason’s words seem to be hitting home”*.

The complainant was again shown through the window of the police car. The following exchange took place.

Police officer: *“That is a lovely car, and I appreciate the speeds it’s capable of – you don’t need a lecture”.*

Mr Smith: *“I’m...hands up, you know, that’s silly, big time”.*

The police officer was then shown letting the complainant out of the police car and wished him a safe journey home. The complainant was shown driving away in his car.

The section involving the complainant ended with the narrator stating that: *“the driver of the Audi pleaded guilty and was given six points on his licence and a £300 fine”*. Slowed down footage was then shown of the complainant with his head in his hands, shaking his head in the back of the police car.

His face was shown unobscured and his voice was heard.

Summary of the complaint and the broadcaster’s response

Mr Smith complained that his privacy was unwarrantably infringed in the programme as broadcast because unobscured footage of him and his car registration number plate were included in the programme without his consent.

In response, Channel 5 said that the programme sought to demonstrate the work the police perform for the public and showed, in a vivid and distinctive way, how community policing is effective and what obstacles, difficulties and dangers police officers face as they go about their duties. It also focussed on the human cost to the persons who commit crimes, whether they are convicted or cautioned or released without further action. Channel 5 said that this was done to educate the public about the risks they take when they transgress the law and that the programme was underpinned by the clearest public interest, namely, seeing the consequences of stupid or reckless decisions (such as drinking and driving, or driving too fast) and the many ways in which such conduct may impact adversely on society, including the police officers and those making those decisions.

Channel 5 submitted that: “The commission of a crime or engagement in anti-social activity in a public place, and any aftermath which also occurs in a public place, is not an aspect of a person’s life encompassed in the phrase “private and family life” and nor is it capable of attracting a reasonable expectation of privacy. Such occasions are simply not covered by the ambit of Article 8”. In support of its position, Channel 5 referred to the decision in the European Court of Human Rights (“ECHR”) *Axel Springer* case¹, the Supreme Court judgment in *Kinloch v HM Advocate* [2012] UKSC 62² and the Northern Ireland Queen’s Bench judgment in *JR 38 for Judicial Review* [2013] NIQB 44³.

With regard to the complaint itself, the broadcaster said that in Mr Smith’s case, he was shown speeding on an open highway and being pursued by the police. He was eventually stopped, questioned, charged and released. It said that Mr Smith’s actions were not carried out in private and did not attract any reasonable expectation of privacy. Therefore, it was open for Channel 5 to identify him.

Channel 5 said that by driving in the open and breaking the law whilst doing so, Mr Smith was not engaged in a public activity which would include any aspect of his private or family life.

Channel 5 stated that Mr Smith was not a vulnerable person or a person in need of particular care and that anyone who was on or near the road where Mr Smith was speeding could have seen him and observed his conduct and arrest. No reasonable

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

² Channel 5 in particular emphasised the following statement of Lord Hope in respect of whether a person subject to police surveillance in a public street had a legitimate expectation of privacy: “The criminal nature of what he was doing, if that was what it was found to be, was not an aspect of his private life that he was entitled to keep private”.

³ Channel 5 in particular referred to the following statements by Lord Justice Higgins: “In this case the applicant placed himself in public view among a crowd of other persons engaged, allegedly, in public disorder. He was open to public view by anyone who happened to be watching be they police or civilians... In my view a criminal act is far removed from the values which Article 8 was designed to protect, rather the contrary”.

person of ordinary sensibilities, Channel 5 said, would expect that the commission of a crime was likely to attract an expectation of privacy.

Channel 5 said that the circumstances warranted the filming and broadcast of the footage without Mr Smith's consent. It said that the filming and broadcast of the footage was undertaken with a view to demonstrate to the public the everyday activities of a police force charged with keeping the law and ensuring that communities were safe. The broadcaster said that the benefit to the public of seeing the work of the police as it happens outweighed the embarrassment Mr Smith may have suffered as a result of his crime and punishment being filmed and broadcast.

The broadcaster said that for these reasons given in its response, Mr Smith did not have a reasonable expectation of privacy in relation to his conduct in speeding on a public highway and his subsequent arrest and punishment. Channel 5 said that if it was wrong about this, given the clear public interest, its right to freely inform the public about matters of public interest outweighed any private interest found to be held by Mr Smith.

Channel 5 concluded that Mr Smith did not have a legitimate expectation of privacy under Ofcom's Broadcasting Code ("the Code") and that the circumstances of this case were not those where he could "reasonably expect privacy...in a public place". It added that the inclusion and identification of Mr Smith in the programme was wholly warranted as it was in the public interest to reveal these matters (i.e. criminal activity) and to show the work of the police dealing with drivers who speed on public highways.

Ofcom's initial Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld. We provisionally concluded that Mr Smith did not have a legitimate expectation of privacy in relation to the inclusion of this number plate and the detail of his speeding conviction. However, we did provisionally consider that Mr Smith had a legitimate expectation of privacy, although limited, in relation to his police interview conducted in the back of the police car, but that this expectation of privacy was outweighed by the significant public interest. The public interest was in showing the work of the police dealing with individuals whose conduct on the road was dangerous (i.e. speeding, averaging 96 mph, on a road with a 60 mph speed limit) to them and other road users, and the consequences of that conduct.

Both parties' representations are summarised below.

Mr Smith's representations

Mr Smith said that "he never argued that [his] speeding offence shouldn't have been broadcast" and agreed that it was in the public interest that this type of programme is broadcast on television. Mr Smith also said that he agreed that "there was no problem whatsoever with me being filmed". However, he said that he did not understand how there was any extra benefit to the public interest in identifying the individuals in the programme.

Mr Smith added that if he had been asked by Channel 5 to consent to the inclusion of the unobscured footage of him, he would have said no. However, he would have been content for the programme to include all of the footage of him, including the audio in the police car, if his face and car number plate had been obscured. Mr Smith

observed that numerous individuals included in the programme did have their faces obscured in the programme.

Mr Smith argued that the inclusion of the unobscured footage of him included in the programme did unwarrantably infringe his privacy.

Channel 5's representations

Channel 5 submitted that Ofcom had not responded satisfactorily in the Preliminary View to Channel 5's various legal arguments that Mr Smith did not have a legitimate expectation of privacy. The broadcaster submitted that, other than *Axel Springer*, Ofcom had ignored the case law cited by Channel 5 in its previous submissions. It argued that Ofcom provided no authority for its assertion that: "It is not correct that Article 8 rights can never be engaged in relation to the circumstances of a person's unlawful activity".

Channel 5 also said that for example Ofcom had provided no authority for its opinion set out in the Preliminary View that privacy rights can be "limited". Channel 5 argued that Ofcom should properly explain its reasoning. The broadcaster added that a refusal of Ofcom to provide its reasoning on the matter could create a "chilling effect" on the broadcaster's right to exercise its freedom of expression.

Channel 5 said that, in its opinion, Ofcom appeared to hold views about the law on privacy which suggested that Ofcom believed that individuals have a "right to be forgotten". Channel 5 said that Ofcom's approach suggests that Ofcom believes that as time elapsed Article 10 rights may or will dwindle, making it impermissible for material to be broadcast in relation to which a person has a limited right to privacy. Channel 5 made reference to comments by a House of Lords Select Committee (with which Channel 5 said it agreed) on the position of the European Commission on the 'right to be forgotten' in a data protection context relating to data on the web accessible through search engines⁴, and submitted that such a "right to be forgotten" is "misguided in principle and unworkable in practice".

The broadcaster said that Ofcom had provided no authority to support its opinion in the Preliminary View that it was reasonable to regard being questioned by a police officer about a speeding offence as a "sensitive situation". The broadcaster added that Ofcom had not explained "why something being sensitive equates with a right recognised as protected under Article 8". Channel 5 said there was no authority to support this.

The question which needs to be considered, Channel 5 said, is "not whether a particular individual regards themselves as in a sensitive situation or an embarrassing predicament" but "whether a reasonable person would think that a person questioned by police after being caught speeding would consider that exchange to attract privacy rights". Channel 5 stated that discussions with police officers in relation to the commission of crimes are "inherently not private". Channel 5 further said that, given these other considerations, the fact that the interaction with the police officer in the back of the police car was not likely to be in the public domain should not have been determinative.

⁴ Channel 5 in particular quoted from paragraphs 47-48, 52-53 and 61-62 of the following report <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f-/news/right-to-be-forgotten-report/>

Revised Preliminary View

Having carefully assessed the representations of both parties on the initial Preliminary View, Ofcom considered, in light of the further points raised, that we should review our initial Preliminary View. In particular, we reassessed our reasoning in finding that the complainant had a legitimate expectation of privacy, albeit limited, in relation to the broadcast of the footage of Mr Smith's interview with the police officer in the back of the police car that was in the programme. This was reflected in the revised Preliminary View.

We provisionally concluded in the revised Preliminary View that Mr Smith did not have a legitimate expectation of privacy in relation to the inclusion of his car registration plate, the detail of his speeding conviction and the unobscured footage of him broadcast without his consent of him being stopped by the police and questioned about a possible criminal offence in the back of the police car.

Both parties were given the opportunity to make representations on the revised Preliminary View. In summary, Mr Smith said that he was disappointed with Ofcom's decision not to uphold his complaint, but said that it would not have "a deep seated and lasting effect" on his life. Mr Smith did not make any further substantive comments that affected the outcome of the revised Preliminary View. Channel 5 did not make any representations on the revised Preliminary View.

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

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

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

The individual's right to privacy has to be balanced against the competing rights 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 programme, must be warranted.

In assessing Mr Smith's complaint that his privacy was unwarrantably infringed in the broadcast of the programme because unobscured footage of him was shown without his consent, Ofcom had regard to Practice 8.4 of the Code. This states that

broadcasters should ensure that actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual concerned, unless broadcasting without their consent is warranted. Ofcom also had regard to Practice 8.6 of the Code. This states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr Smith's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in relation to the unobscured footage of him as broadcast.

As already set out in the "Introduction and programme summary" section above, we noted where in the programme Mr Smith appeared and the context in which he was shown, i.e. being stopped by a police officer for speeding.

Ofcom also considered Channel 5's submissions in relation to Mr Smith's complaint. As noted in earlier fairness and privacy decisions⁵, Ofcom does not agree with Channel 5's interpretation of the *Axel Springer* case. It is not correct that Article 8 rights can never be engaged in relation to the circumstances of a person's unlawful activity in a public place, nor that discussions with police officers about the commission of crimes are "inherently" not private. Ofcom does not consider that the case law which Channel 5 relies upon (including *Weller*, *Kinloch* and *Re JR38* as mentioned above) supports such an inflexible approach to the determination of whether an individual has a legitimate expectation of privacy in the broadcast of footage relating to such circumstances.

Channel 5 said that, in its opinion, Ofcom appeared to hold views about the law on privacy which suggested that Ofcom believed individuals have a "right to be forgotten". Channel 5 considered that such a "right to be forgotten" is "misguided in principle and unworkable in practice" (in line with comments by a House of Lords Select Committee referred to above). In Ofcom's view, those comments are not relevant to the present situation which concerns an individual's rights to privacy under Article 8 of the European Convention on Human Rights in a broadcasting context, and not the application of the Data Protection Directive in the context of online searches (which was the context in which the comments of the House of Lords Select Committee were made). Channel 5 also appears to have misunderstood Ofcom's position on this issue – Ofcom is not suggesting that Article 8 means that individuals have a 'right to be forgotten' in this context.

The test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself⁶. Ofcom's view regarding the fact sensitive

⁵ See Complaint by Miss C, Criminals: Caught on Camera, Channel 5, 18 October 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb252/obb252.pdf>; Complaint by Miss Jodie Musgrave, *Police Interceptors*, Channel 5, 23 September 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>; and Complaint by Mr D, *Police Interceptors*, Channel 5, 17 February 2014 <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2641/obb265.pdf>

⁶ See for example, Anthony Clarke MR in *Murray v Big Pictures* [2009] Ch 481, paragraph 36: "the question whether there is a reasonable expectation of privacy is a broad one, which

nature of this assessment is consistent with the interpretation of the *Axel Springer* case in a recent judgment of the High Court, *Hannon v News Group Newspapers Ltd* [2014] EWHC 1580 (Ch)⁷. Ofcom will therefore continue to approach each case on its facts.

In our view, whether or not someone who has been filmed while being questioned by the police after being stopped in relation to suspected speeding offences has a legitimate expectation of privacy in the subsequent broadcast of that footage depends on all the relevant circumstances. These may include:

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

In relation to the specific circumstances of Mr Smith's case, Ofcom noted from the programme as broadcast that it appeared that he had been filmed openly. Although it

takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came in the hands of the publisher". This approach was cited recently in *Weller v Associated Newspapers* at paragraph 37.

⁷ In *Hannon* Mr Justice Mann noted that *Axel Springer* "does not support an absolute right of the press to have, and to publish, the fact of an arrest, and its circumstances. At most it supports a submission that, if the facts justify it, that right exists and the countervailing privacy rights do not. As with a large number of disputes under Convention rights **that is a question of fact and degree, and is highly fact sensitive**" (paragraph 96, emphasis added). (Ofcom noted that Channel 5 had argued that this case was not authority for the above position because the argument was not made in that case and Mr Justice Mann was not making a final ruling on the facts. However, Ofcom considers that the issues considered in that case (whether there is a reasonable expectation of privacy in relation to an arrest and reasons for it) are analogous to the issues in the present cases and the fact that there was no final ruling on this point on the facts is not material to the principal point, namely whether, as a matter of established legal precedent, there can be no reasonable expectation of privacy in relation to the circumstances of a person's unlawful activity in a public place).

Ofcom's view is also consistent with the leading judgment in *Re JR38* (mentioned above) on which Channel 5 seeks to rely. See the judgment of Morgan LCJ at paragraph 28 at which he notes: "I accept that the determination of whether the retention and use of photographs constitutes an interference with Article 8 **requires a fact specific consideration in every case**". Morgan LCJ found at paragraph 30 that this was a case in which the claimant's Art. 8 rights are engaged in connection with the publication of a photograph of a child by the police indicating he was wanted for interview in connection with involvement in potential criminal activity.

was not clear from the footage that Mr Smith had been aware that he was being filmed by a television camera, he was aware that he had been filmed speeding by the police officer. We had regard to the fact that the programme makers had obtained permission from the police to follow the work of the interceptor unit in carrying out all their public duties. Ofcom also noted that Mr Smith subsequently pleaded guilty to speeding and was, as a result of his conduct, fined £300 and received six penalty points on his driving licence. This would have been information which was already a matter of public record.

Ofcom then considered whether Mr Smith was identifiable in the programme as broadcast. Mr Smith was referred to by his first name "Oliver" in the "coming up next section" of the programme, his face was shown unobscured and his voice was heard. Also, we noted that the car registration number of the vehicle he was driving at the time was also shown unobscured. We therefore considered that Mr Smith was identifiable from the footage included in the programme.

We noted that Mr Smith said in his representations on the initial Preliminary View that he agreed that there was a public interest in showing programmes of this nature and that he agreed "that there was no problem whatsoever" in him being filmed. We noted too that Mr Smith said that he would not have objected to the broadcast of the footage of him if his face and car number plate had been obscured. Mr Smith said that he had specifically complained about the inclusion of unobscured footage of him and his car registration number plate being broadcast without his consent. Having been provided with this further explanation as to the precise nature of Mr Smith's complaint, Ofcom therefore considered first whether Mr Smith had a legitimate expectation of privacy in the broadcast of unobscured material showing him speeding in his car and his car registration number plate.

We did not consider that the broadcast of the unobscured footage of Mr Smith's car driving in excess of the speed limit on a public road could reasonably be regarded as disclosing anything which was private, personal or confidential to Mr Smith. We noted that Mr Smith's car registration number was shown unobscured. However, we considered from viewing the footage shown in the programme that the programme makers had not particularly focused on the registration number. In our view, it was reasonable to expect that the car and its number plate would be filmed given that it was being pursued by the police officer for speeding and, although it was unobscured, the footage did not focus or linger, in particular, on it.

Similarly we did not consider that the broadcast of the fact of Mr Smith's conviction for speeding offences, which was a matter of public record, in itself was information in relation to which Mr Smith had a legitimate expectation of privacy in the circumstances.

Ofcom then went on to assess whether or not Mr Smith had a legitimate expectation of privacy in relation to the unobscured footage of Mr Smith being stopped by the police and questioned in the back of the police car. We took into account that here he was not shown engaged in any conduct or action that could reasonably be regarded as particularly private, sensitive or confidential in nature, other than being stopped by the police and questioned by a police officer in the back of a police car at the road side after being stopped for speeding. Further, we recognised that he did not seem to be in a particularly vulnerable state, for example, he did not appear to be distressed or visibly upset.

Ofcom recognises that appearing in a programme being questioned by the police in relation to a criminal offence (in this case a speeding offence), may reasonably be

regarded as being sensitive and may, depending on the particular circumstances present, give rise to an expectation of privacy. In Mr Smith's case, we noted that Channel 5 appeared to suggest in its representations on the initial Preliminary View that Ofcom had not explained why the fact that this situation may be "sensitive" would mean that the complainant's Article 8 rights were engaged in these circumstances and that the question was not whether the particular individual regards himself as being in a sensitive situation or an embarrassing predicament, but rather whether a reasonable person would think that the relevant situation attracted privacy rights. Ofcom considered that being questioned by the police may reasonably be regarded as a sensitive situation to some extent because when a member of the public is being questioned by the police on possible suspicion of having committed, or being involved with, a criminal offence, that individual will often be feeling under pressure.

Further, we also took into account that the circumstances of Mr Smith's interaction with the police officer in the back of the police car were unlikely to have been in the public domain prior to the broadcast of the footage filmed of him in this situation.

However, we had particular regard to the comments made by Mr Smith in his representations on the initial Preliminary View, and it appeared to Ofcom that Mr Smith would not have objected to the programme broadcasting obscured footage of his encounter with the police, including footage of him being questioned by the police in the back of the police car. Further, we also noted the representations made by Mr Smith on the revised Preliminary View, that the broadcast of the footage would not have "a deep seated and lasting effect" on his life. Ofcom considered that these representations suggested that Mr Smith did not consider that his interview with the police officer in the back of the police car was a particularly sensitive situation for him to be in or that this footage had disclosed anything about him of a particularly private or sensitive nature. Mr Smith only appeared to object to the fact that he was identifiable in the footage of him broadcast in the programme. Ofcom took the view that, while the inclusion of an unobscured image of Mr Smith being questioned by the police identified him as having committed a speeding offence, as noted above, we did not consider that he had a legitimate expectation of privacy in relation to the broadcast of this fact in the circumstances of this case.

Ofcom also noted that Mr Smith had commented that other individuals in the programme had their faces obscured. Ofcom recognises that television is a visual medium and broadcasters have editorial discretion when selecting and editing material, including whether or not to broadcast obscured or unobscured footage of individuals, as long as this complies with the Code and other relevant legal requirements. Ofcom noted that footage of other individuals included in the programme may have been obscured for reasons other than due to privacy concerns, for example because the individuals may have had upcoming court cases and it could have been contempt of court to identify them.

Therefore, taking all the above factors into consideration, we considered that, in the particular circumstances, Mr Smith did not have a legitimate expectation of privacy in relation to the broadcast without his consent of unobscured footage of him being stopped by the police and questioned about a possible criminal offence in the back of the police car. As a result, it was not necessary for Ofcom to go on to consider whether any infringement into Mr Smith's privacy was warranted.

Therefore, Ofcom has not upheld Mr Smith's complaint of unwarranted infringement of privacy in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 4 and 17 November 2014 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Newsbeat	BBC Radio 1	03/09/2014	Violence and dangerous behaviour
Child Genius	Channel 4	Various	Under 18s in programmes
Programming	Fadak TV	01/03/2014	Religious programmes
Radio Clyde News	Radio Clyde	11/08/2014	Elections/Referendums
Dynamo	Watch	26/09/2014	Offensive language

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

Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 4 and 17 November 2014 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Bam Bam at Breakfast	106 Jack FM (South Coast)	04/11/2014	Disability discrimination/offence	1
Derren Brown: Trick of the Mind	4Music	29/10/2014	Disability discrimination/offence	1
Iggy Azalea's Hottest Club Joints! Top 20	4Music	18/10/2014	Scheduling	1
The 10 Breakthrough Stars of 2014!	4Music	14/10/2014	Scheduling	1
Four in a Bed	4seven	03/10/2014	Race discrimination/offence	1
Movies at 9 (trailer)	5*	03/11/2014	Scheduling	2
Movies at 9 (trailer)	5*	04/11/2014	Scheduling	1
Morning Show	95.6 BRFM	17/10/2014	Offensive language	1
Advertisements	Aaj Tak	04/11/2014	Advertising/editorial distinction	1
BBC News	BBC	Various	Due impartiality/bias	1
Programming	BBC	Various	Advertising/editorial distinction	1
Subtitling	BBC / ITV	Various	Television Access Services	1
BBC News	BBC 1	08/11/2014	Outside of remit/other	1
BBC News	BBC 1	n/a	Due impartiality/bias	1
BBC News at One	BBC 1	04/11/2014	Violence and dangerous behaviour	1
BBC News at One	BBC 1	06/11/2014	Generally accepted standards	1
BBC News at One	BBC 1	07/11/2014	Offensive language	1
BBC News at One	BBC 1	14/11/2014	Scheduling	1
BBC News at Six	BBC 1	20/08/2014	Generally accepted standards	1
BBC News at Six	BBC 1	05/11/2014	Due impartiality/bias	1
Breakfast	BBC 1	03/11/2014	Crime	1
Breakfast	BBC 1	03/11/2014	Violence and dangerous behaviour	2
Breakfast	BBC 1	07/11/2014	Charity appeals	1

Breakfast	BBC 1	13/11/2014	Outside of remit/other	1
Call the Council	BBC 1	14/11/2014	Materially misleading	1
Children in Need 2014	BBC 1	14/11/2014	Generally accepted standards	4
Citizen Khan	BBC 1	30/10/2014	Race discrimination/offence	1
Doctor Who	BBC 1	01/11/2014	Generally accepted standards	18
Doctor Who	BBC 1	01/11/2014	Outside of remit/other	1
Holby City	BBC 1	04/11/2014	Violence and dangerous behaviour	1
Panorama	BBC 1	14/07/2014	Violence and dangerous behaviour	6
Regional News and Weather	BBC 1	23/10/2014	Under 18s in programmes	1
Strictly Come Dancing	BBC 1	01/11/2014	Animal welfare	4
Strictly Come Dancing	BBC 1	01/11/2014	Scheduling	1
Strictly Come Dancing	BBC 1	08/11/2014	Generally accepted standards	2
Strictly Come Dancing	BBC 1	15/11/2014	Offensive language	2
Sunday Morning Live	BBC 1	24/08/2014	Generally accepted standards	4
The Apprentice	BBC 1	29/10/2014	Disability discrimination/offence	1
The Missing (trailer)	BBC 1	11/11/2014	Scheduling	1
The One Show	BBC 1	03/11/2014	Gambling	1
The Passing Bells	BBC 1	04/11/2014	Scheduling	1
The Passing Bells	BBC 1	05/11/2014	Offensive language	1
Watchdog	BBC 1	30/10/2014	Materially misleading	1
Watchdog	BBC 1	06/11/2014	Fairness & Privacy	1
Waterloo Road	BBC 1	05/11/2014	Generally accepted standards	1
A Taste of Britain	BBC 2	04/11/2014	Gender discrimination/offence	1
BBC News	BBC 2	11/11/2014	Generally accepted standards	1
Exploring China: A Culinary Adventure	BBC 2	08/11/2014	Scheduling	1
Newsnight	BBC 2	20/06/2014	Crime	1
Newsnight	BBC 2	24/10/2014	Generally accepted standards	1
Newsnight	BBC 2	11/11/2014	Generally accepted standards	1
Russell Howard's Good News	BBC 2	30/10/2014	Generally accepted standards	1
The Daily Politics	BBC 2	05/11/2014	Due impartiality/bias	1
Bad Education	BBC 3	07/11/2014	Generally accepted standards	1
Comedy Fest Live	BBC 3	27/10/2014	Generally accepted standards	1
Don't Tell the Bride	BBC 3	28/10/2014	Race discrimination/offence	1

Great TV Mistakes	BBC 3	16/11/2014	Scheduling	1
Life is Toff	BBC 3	04/11/2014	Animal welfare	2
The Revolution Will be Televised	BBC 3	04/11/2014	Religious/Beliefs discrimination/offence	1
World's Craziest Fools	BBC 3	16/11/2014	Race discrimination/offence	1
BBC News	BBC News Channel	06/11/2014	Generally accepted standards	1
BBC News	BBC News Channel	13/11/2014	Due impartiality/bias	1
BBC News: The Papers	BBC News Channel	20/08/2014	Generally accepted standards	1
News	BBC News Channel / Sky News	14/09/2014	Generally accepted standards	1
Any Questions	BBC Radio 4	07/11/2014	Due impartiality/bias	1
BBC News	BBC Radio 4	20/06/2014	Crime	1
Kerry's List	BBC Radio 4	13/10/2014	Offensive language	1
Saturday Live	BBC Radio 4	01/11/2014	Race discrimination/offence	1
Down the Line	BBC Radio 4 Extra	29/10/2014	Generally accepted standards	1
BBC World News	BBC World News	24/10/2014	Generally accepted standards	1
Advertising	Capital Radio	06/11/2014	Advertising content	1
Adventure Time	Cartoon Network (Bulgaria)	30/07/2014	Scheduling	1
How To Be Epic At Everything	CBBC	06/11/2014	Animal welfare	1
Operation Ouch	CBBC	19/10/2014	Scheduling	1
Bing	CBeebies	30/01/2014	Generally accepted standards	1
Something Special	CBeebies	04/11/2014	Generally accepted standards	1
Halloween Week (trailer)	Challenge	23/10/2014	Scheduling	1
Stalker (trailer)	Challenge	04/11/2014	Scheduling	1
Advertising	Channel 103 (Jersey)	11/11/2014	Advertising content	1
Alan Carr: Chatty Man	Channel 4	31/10/2014	Generally accepted standards	1
Alan Carr: Chatty Man	Channel 4	07/11/2014	Disability discrimination/offence	2
Alan Carr: Chatty Man	Channel 4	07/11/2014	Harm	1
American Football Live at Wembley	Channel 4	09/11/2014	Outside of remit/other	1
Channel 4 News	Channel 4	21/10/2014	Under 18s in programmes	1
Channel 4 News	Channel 4	04/11/2014	Outside of remit/other	1
Continuity Announcement	Channel 4	16/10/2014	Generally accepted standards	1
Derren Brown and Martin Freeman for Su2c	Channel 4	17/10/2014	Gender discrimination/offence	1

Gogglebox	Channel 4	24/10/2014	Disability discrimination/offence	1
Gogglebox	Channel 4	24/10/2014	Generally accepted standards	1
Gogglebox	Channel 4	07/11/2014	Race discrimination/offence	1
Hollyoaks	Channel 4	05/11/2014	Animal welfare	1
Hollyoaks	Channel 4	07/11/2014	Violence and dangerous behaviour	1
Make Leicester British	Channel 4	03/11/2014	Generally accepted standards	1
Make Leicester British	Channel 4	03/11/2014	Materially misleading	5
Make Leicester British	Channel 4	03/11/2014	Race discrimination/offence	2
Micky Flanagan: Back in the Game	Channel 4	16/11/2014	Generally accepted standards	1
Mitsubishi's sponsorship of documentaries on Channel 4	Channel 4	n/a	Generally accepted standards	1
Posh Pawn	Channel 4	12/11/2014	Offensive language	3
Shame	Channel 4	02/11/2014	Sexual material	1
Speed with Guy Martin	Channel 4	02/11/2014	Materially misleading	1
Stand Up To Cancer	Channel 4	17/10/2014	Generally accepted standards	2
Will Ferrell for SU2C	Channel 4	17/10/2014	Generally accepted standards	1
You Can't Get the Staff	Channel 4	11/11/2014	Race discrimination/offence	1
Advertising	Channel 5	09/11/2014	Advertising content	1
Advertising	Channel 5	10/11/2014	Advertising content	1
Advertising	Channel 5	11/11/2014	Advertising content	1
Benefit Brits by the Sea	Channel 5	09/10/2014	Offensive language	1
Can't Pay? We'll Take it Away!	Channel 5	29/10/2014	Crime	1
Can't Pay? We'll Take it Away!	Channel 5	12/11/2014	Violence and dangerous behaviour	3
Getting Even with Dad	Channel 5	09/11/2014	Offensive language	2
Home and Away	Channel 5	11/11/2014	Generally accepted standards	1
NCIS	Channel 5	11/11/2014	Generally accepted standards	1
Neighbours	Channel 5	03/11/2014	Generally accepted standards	1
The Gadget Show	Channel 5	13/11/2014	Offensive language	1
The Wright Stuff	Channel 5	26/08/2014	Due impartiality/bias	1
The Wright Stuff	Channel 5	04/11/2014	Generally accepted standards	1
Time of Death	Channel 5	14/10/2014	Violence and dangerous behaviour	1
Can't Pay? We'll Take it Away!	Channel 5 +24	06/11/2014	Generally accepted standards	1

Super Scoreboard	Clyde 1	27/10/2014	Generally accepted standards	1
Advertising	Cool FM	n/a	Advertising content	1
Mclean Bookmakers' sponsorship of sport on Cool FM	Cool FM	14/10/2014	Commercial communications on radio	1
Advertising	Dave	02/11/2014	Advertising content	1
Just Eat's sponsorship of programmes on Dave	Dave	08/11/2014	Harm	1
Spooksville (trailer)	Disney Channel	23/10/2014	Scheduling	1
The Bill	Drama	20/10/2014	Offensive language	1
George Gently	Drama	Various	Television Access Services	1
Snooker	Eurosport2	26/10/2014	Advertising minutage	1
Burn Notice	Fox	05/11/2014	Offensive language	1
Leverage	Fox	13/11/2014	Offensive language	1
Matt Wilkinson	Heart FM	04/11/2014	Offensive language	1
Programming	Heart FM	Various	Materially misleading	1
Advertising	ITV	29/10/2014	Advertising content	1
Advertising	ITV	07/11/2014	Advertising content	1
Advertising	ITV	12/11/2014	Advertising content	1
Advertising	ITV	12/11/2014	Advertising content	1
Advertising	ITV	13/11/2014	Advertising content	1
Advertising	ITV	13/11/2014	Advertising content	1
Advertising	ITV	15/11/2014	Advertising content	1
Advertising	ITV	15/11/2014	Advertising content	1
Advertising	ITV	15/11/2014	Advertising content	1
Advertising	ITV	Various	Advertising content	1
Broadmoor	ITV	05/11/2014	Generally accepted standards	1
Coronation Street	ITV	31/10/2014	Generally accepted standards	1
Coronation Street	ITV	03/11/2014	Disability discrimination/offence	2
Coronation Street	ITV	07/11/2014	Race discrimination/offence	3
Coronation Street	ITV	10/11/2014	Race discrimination/offence	1
Downton Abbey	ITV	09/11/2014	Offensive language	1
Emmerdale	ITV	06/11/2014	Offensive language	1
Good Morning Britain	ITV	07/07/2014	Crime	2
Good Morning Britain	ITV	04/11/2014	Due accuracy	1
Good Morning Britain	ITV	06/11/2014	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here! (trailer)	ITV	16/11/2014	Generally accepted standards	1

ITV News	ITV	11/11/2014	Generally accepted standards	2
ITV News at Ten and Weather	ITV	20/08/2014	Generally accepted standards	1
Loose Women	ITV	03/11/2014	Generally accepted standards	1
Loose Women	ITV	04/11/2014	Disability discrimination/offence	2
Loose Women	ITV	04/11/2014	Generally accepted standards	1
Loose Women	ITV	06/11/2014	Undue prominence	2
Lorraine	ITV	16/10/2014	Generally accepted standards	1
Lorraine	ITV	05/11/2014	Due impartiality/bias	1
Programme trailers	ITV	01/11/2014	Outside of remit/other/other	1
Scott and Bailey	ITV	29/10/2014	Violence and dangerous behaviour	1
The Chase	ITV	24/10/2014	Sexual orientation discrimination/offence	1
The Chase	ITV	28/10/2014	Outside of remit/other	1
The Chase	ITV	05/11/2014	Generally accepted standards	1
The Chase	ITV	05/11/2014	Outside of remit/other	1
The Chase	ITV	07/11/2014	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV	30/10/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	14/11/2014	Generally accepted standards	1
The Jonathan Ross Show	ITV	08/11/2014	Generally accepted standards	1
The X Factor	ITV	11/10/2014	Generally accepted standards	2
The X Factor	ITV	11/10/2014	Offensive language	1
This Morning	ITV	11/11/2014	Crime	1
This Morning	ITV	13/11/2014	Offensive language	1
This Morning (trailer)	ITV	06/11/2014	Scheduling	1
Advertising	ITV / Sky Channels	11/11/2014	Advertising content	1
ITV London News	ITV London	06/11/2014	Outside of remit/other	1
Advertisements	ITV Player	07/11/2014	Advertising minutage	1
Celebrity Juice	ITV2	23/10/2014	Generally accepted standards	1
Celebrity Juice	ITV2	30/10/2014	Race discrimination/offence	1
Celebrity Juice	ITV2	15/11/2014	Offensive language	1
Kellogg's Squares' sponsorship of Celebrity Juice	ITV2	30/10/2014	Generally accepted standards	1
The Best of You've Been Framed	ITV2	18/10/2014	Religious/Beliefs discrimination/offence	1
You've Been Framed!	ITV2	03/11/2014	Generally accepted standards	1

Millionaire Matchmaker	ITVBe	30/10/2014	Gender discrimination/offence	1
The Only Way is Essex	ITVBe	25/10/2014	Generally accepted standards	1
TOWIE: All Back to Essex	ITVBe	13/10/2014	Offensive language	1
Hostel: Part II	Kanal 11	25/10/2014	Generally accepted standards	1
The Box+ and 4Music Fashion Voucher competition	Kerrang!	23/10/2014	Offensive language	1
Steve Allen	LBC 97.3FM	26/10/2014	Sexual orientation discrimination/offence	1
Posh Pawn	More4	20/10/2014	Gender discrimination/offence	1
Sanjay and Craig	Nicktoons	25/10/2014	Scheduling	1
Cars That Rock with Brian Johnson	Quest	05/11/2014	Offensive language	1
Advertising	QVC	12/11/2014	Advertising content	1
Ken Bates	Radio Yorkshire	16/10/2014	Race discrimination/offence	2
Advertising	Rocks and Co	17/10/2014	Advertising content	1
Sky HD promotions	Sky	n/a	Outside of remit/other	1
Cathouse	Sky Livingit	08/11/2014	Sexual material	1
Sky News	Sky News	06/11/2014	Generally accepted standards	1
Sky News at Six with Andrew Wilson	Sky News	12/10/2014	Crime	1
Sky News Tonight with Adam Boulton	Sky News	29/10/2014	Generally accepted standards	1
Sky News Tonight with Adam Boulton &	Sky News	01/09/2014	Crime	1
Sky News with Anna Jones	Sky News	13/11/2014	Offensive language	1
Sky News with Colin Brazier	Sky News	21/06/2014	Crime	1
Sky News with Colin Brazier	Sky News	07/11/2014	Due impartiality/bias	1
Sky News with Kay Burley	Sky News	09/07/2014	Due impartiality/bias	1
Sky World News	Sky News	20/06/2014	Crime	1
Sunrise	Sky News	20/10/2014	Generally accepted standards	1
Ford Super Sunday	Sky Sports 1	19/10/2014	Violence and dangerous behaviour	1
Live Spanish Football	Sky Sports 5	25/10/2014	Materially misleading	1
Soccer A.M.	Sky1	08/11/2014	Scheduling	1
Programming	Supreme FM	18/10/2014	Outside of remit/other	1
Alan Brazil Sports Breakfast	Talksport	24/10/2014	Generally accepted standards	1
Drivetime	Talksport	11/11/2014	Generally accepted standards	1
Johnny Vaughan	Talksport	05/11/2014	Race discrimination/offence	1

The Warm-Up with Johnny Vaughan	Talksport	25/10/2014	Scheduling	1
Conan (trailers)	truTV	07/11/2014	Hypnotic and other techniques	1
Ink Master	truTV	18/10/2014	Race discrimination/offence	1
The Job Lot	UTV	24/10/2014	Generally accepted standards	1
UTV Player promotion	UTV	n/a	Violence and dangerous behaviour	1

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

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

Licensee	Categories
Sunny Govan Community Media Group	Key Commitments

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 6 and 19 November 2014.

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

Programme	Broadcaster	Transmission date
Advertising minutage	Aaj Tak	4 November 2014
Advertising minutage	The Travel Channel	11 October 2014
BBC News at Six	BBC 1	6 November 2014
Clubaholic.tv (trailer)	Made In Leeds	Various
How to Pull a Lady	Made In Leeds	Various
Latest Homes Live	Latest TV	27 October 2014
Michael and Andrea	Kiss FM	2 November 2014
My Sister's Keeper	Film 4	27 October 2014
Nick Conrad	BBC Radio Norfolk	17 November 2014
Teenage Mutant Ninja Turtles	Channel 5	8 November 2014
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	6 November 2014
This Morning	ITV	6 November 2014
This Morning	ITV	14 October 2014

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

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

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

Licensee	Licensed Service
Corby FM Limited	Corby Radio
Mahomed Jussab	Ramadhan Radio (Leicester)
Sunrise Radio (London) Ltd	Sunrise Radio

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