Ofcom Broadcast Bulletin

Issue number 279
18 May 2015

Contents

Introduction

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

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

a) Ofcom's Broadcasting Code ("the Code").

b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.

c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:

- the prohibition on 'political' advertising;
- sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
- 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising[3].

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

Troy

E4, 7 February 2015, 15:00

Introduction

Troy is an entertainment programme in which magician Troy performs illusions on unsuspecting members of the public.

Ofcom received a complaint that this programme broadcast on a Saturday afternoon on E4 included footage of shisha[1] smoking that the viewer claimed made it look "cool and harmless" and might "encourage young viewers to start smoking".

We noted a sequence lasting about three minutes in which Troy performed two illusions in a shisha bar. The first of these involved Troy cutting the hose of the hookah and passing the pipe to two women. The women were still able to smoke the shisha, despite the hose being separated from the base. The second illusion involved Troy blowing smoke from the shisha pipe onto an upturned glass, causing it to break.

During this segment of the programme, we noted the following statements:

Troy: *"On the weekend, I go to the shisha bar in town"*.

***

Troy: *"Can we get a shisha? Double apple? Is that good?"*

***

Troy: *"It's* [the shisha bar] *a great place to go with friends and to meet new people. And being anonymous means I can have a lot of fun"*.

***

Troy: *"Excuse me, what flavour have you guys got?"*

Unnamed Woman: *"Peppermint"*.

Troy: *"Peppermint. How is it? Good?"*

Unnamed Woman: *"It's really good*".

Troy: *"We've got the double apple, wanna try some?"*

***

[1] Shisha is flavoured tobacco. It is usually smoked using a hookah – a single or multi-stemmed instrument which passes the smoke from the shisha through a water basin before inhalation.

Troy: *"Double apple's the best"*.

***

Troy: *"As you've had some of mine* [shisha]*, is it alright to have some of yours? What did you have again?"*

Unnamed Woman: *"Peppermint"*.

Troy: *"Peppermint. Let's see how it tastes. Woah! It's strong"*.

The segment also included numerous shots, some in close-up, of Troy and members of the public smoking from shisha pipes.

We considered that the material raised issues warranting investigation under Rule 1.10 of the Code. This states:

> "The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:
>
> - must not be featured in programmes made primarily for children unless there is strong editorial justification.
>
> - must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio) unless there is editorial justification.
>
> - must not be condoned, encouraged or glamorised in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification".

We therefore asked Channel 4 Television Corporation ("Channel 4" or "the Licensee") how the material complied with this rule.

Response

Channel 4 said the programme *Troy* "was primarily commissioned as a post-watershed programme in recognition of the fact that there was likely to be material in the series which was unsuitable for a pre-watershed audience. However, pre-watershed versions were also made and legal advice was given as to the suitability of certain sequences and they were edited accordingly".

Channel 4 explained that although "this episode was one which was clearly marked as unsuitable to show pre-watershed, due to human error it was still broadcast at this time", and it apologised.

As a result of this incident, Channel 4 said it had removed all pre-watershed versions of *Troy* from the schedule and was "conducting a review of all these episodes to ensure that they are suitable to be shown pre-watershed". Channel 4 said in relation to the next series of *Troy* it had put further measures in place to ensure that all versions are compliant with the Code.

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 1.10 requires that: "smoking…must generally be avoided and in any case must not be condoned, encouraged or glamorised in…programmes broadcast before the watershed (in the case of television)…unless there is editorial justification…".

In applying Rule 1.10 in this case, Ofcom noted that the health risks associated with the smoking of shisha tobacco are comparable to those of cigarette smoking[2]. We also noted that the legal restrictions on the sale of shisha tobacco are the same as those for other tobacco products (i.e. it is illegal in the UK for under 18s to purchase any kind of tobacco product).

As detailed above, the programme included a sequence in which Troy performed illusions in a shisha bar. In this footage, Troy and the unsuspecting members of the public on which he performed his illusions made a number of positive references about the experience of visiting the shisha bar and smoking shisha pipes. For example, it was described variously as *"a lot of fun"*, *"a great place to go"* and *"good"*. The sequence also included numerous shots, some in close-up, of both Troy and members of the public smoking shisha pipes.

In Ofcom's view, the scenes of smoking in this programme combined with the various positive comments about the shisha bar and shisha smoking (as set out in the Introduction) had the potential to condone, glamorise and encourage smoking.

We therefore went on to consider whether the depiction of shisha smoking in this programme shown before the watershed was editorially justified.

Ofcom noted that the shots and descriptions of shisha smoking in the programme were included in a segment in which the act of shisha smoking and the apparatus associated with it were key elements of the magic tricks being performed.

However, the programme included a number of wholly positive references related to the experience of shisha smoking (e.g. *"good"* and *"a lot of fun"*) in addition to numerous shots of Troy and members of the public seemingly enjoying the experience of shisha smoking. In Ofcom's view it was not editorially necessary to include all these positive references and images for Troy to be shown successfully practising these illusions. Further, the programme did not show any negative effects from the act of shisha smoking, and neither Troy, nor the programme in some other way, indicated or warned at any point of the health risks associated with smoking shisha.

We also took into account that an entertainment and magic programme such as *Troy* may well appeal to younger viewers. In Ofcom's opinion the broadcast of this programme at 15:00 on a Saturday meant that some of the children who were available to view at this time would have been more likely to watch it.

[2] http://www.nhs.uk/Livewell/SouthAsianhealth/Pages/Smokingandpaan.aspx and http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

For all these reasons Ofcom did not consider there was sufficient editorial justification for the inclusion of the scenes of shisha smoking in this programme.

We noted that Channel 4 admitted that this programme had been broadcast before the watershed in error. Nonetheless this was a clear breach of Rule 1.10.

Breach of Rule 1.10

In Breach

TeamRock Breakfast

TeamRock Radio, 16 March 2015, 07:00

Introduction

TeamRock Radio specialises in rock, punk and metal music. It broadcasts nationally on digital radio. The licence for this service is held by Team Rock Limited ("Team Rock" or "the Licensee").

A complainant alerted Ofcom to offensive language in a song broadcast at approximately 07:52 on a Monday.

Ofcom noted that the track *Back Where I Belong* by the rock band Rancid featured the following lyrics:

> *"…and it's all the fucking same"*.

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 on how this material complied with this rule.

Response

Team Rock acknowledged that broadcast of the offensive language "was unacceptable" and "apologised unreservedly for the error". It said that "the song in question in this particular case evaded [its] strict checking regime".

Team Rock explained that "50% of the 2,100 songs on [its] regular playlist did not come with radio edits. [The] percentage is even higher in the 26,000 songs available to be scheduled in [its] feature and specialist categories". The Licensee said that songs are added to a category eligible for broadcast during the day only after the lyrics have been checked. The Licensee said that in this case however the offensive language was not edited out because of human error.

Decision

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

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom's research on offensive

language[1] clearly notes that the word "fuck" and related words are considered by audiences to be amongst the most offensive language.

The Code states that the phrase "when children[2] are particularly likely to be listening" particularly refers to: "the school run and breakfast time, but might include other times". Ofcom's guidance[3] on offensive language in radio notes that:

> "For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:
>
> - between 06:00 and 9:00 and 15:00 and 19:00 Monday to Friday during term-time; …".

The word *"fucking"* was broadcast during the school run at 07:52 on a Monday during term-time. The most offensive language was therefore broadcast at a time when children were particularly likely to be listening.

This was a clear breach of Rule 1.14.

Breach of Rule 1.14

[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] The Code says that "children" means: "people under the age of fifteen years".

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

In Breach

Alapcharita

ATN Bangla UK, 22 December 2014, 22:00

Introduction

ATN Bangla UK is a news and entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for ATN Bangla UK is held by ATN Bangla UK Limited ("ATN Bangla" or "the Licensee").

Alapcharita is a talk show transmitted on ATN Bangla UK. This special episode of *Alapcharita* was dedicated to Hillside Nights, a music event that took place on 25 December 2014 in London. As the programme was predominantly in Bengali with some English, we commissioned an independent translation of the material.

The programme featured the event's organiser, the director of Hillside Travels (a local travel agency), as well as a number of acts that were participating in the event. During the programme, viewers were encouraged to attend the event and details of the location, time and how to buy tickets were given repeatedly (e.g. *"Tickets are still available, we have a special discount for you. You must collect the ticket by calling after the programme or collect your ticket tomorrow morning from the Hillside Travels")*. Additionally, reference was made during the programme to Hillside Travels directly (e.g. *"This name* [Hillside Travels] *is not only established in the world of travel agencies in Britain, but is a symbol of trust. This institution has been working with the Bengali community for a long time with trust…"* and *"The way Hillside Travels has been serving people with trust and sincerity, with the same mind-set and commitment, the organiser will present you the Hillside Night"*).

Ofcom considered that the references to Hillside Nights and Hillside Travels in the programme raised issues under Section Nine of the Code (Commercial references in television programming). We therefore sought information from ATN Bangla about how the programme was produced and funded and also about any commercial arrangements in place between ATN Bangla and Hillside Travels (or any party connected to either). On the basis of the information provided, we sought ATN Bangla's comments on how the programme complied with the following Code rules:

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

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

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

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

Response

ATN Bangla stated that the programme concerned a local musical initiative sponsored by Hillside Travels and which "promoted the rich cultural heritage of Bengali music". Although the primary aim was to showcase the event, the Licensee believed it was necessary to identify the event sponsor.

The Licensee continued that it was aware of the need for, and strives to maintain, a separation between editorial content and the promotion of products and services. On this occasion, due to ATN Bangla being a primary sponsor of the music event, it had committed to providing a promotional programme to support the event. However, ATN Bangla accepted that, in identifying Hillside Travels as the sponsor and referring to the company's past history of working with and providing a service to the Bangladeshi community, the programme "unintentionally and inadvertently" appeared to suggest an endorsement of the company by ATN Bangla.

In view of the above, ATN Bangla said that it had begun a "robust training process so as to ensure that its staff are fully aware of the need to maintain strict impartiality" when producing such a programme to ensure that no endorsement or promotion of an event sponsor's products takes place during the programme.

In response to Ofcom's Preliminary View that the references to Hillside Nights (as well as those to Hillside Travels) were in breach of the Code, ATN Bangla said that the channel's objective in promoting the event in a prominent manner was to ensure that the Bangladeshi audience and the wider community was made aware of a culturally important event. It continued that a wider mission of ATN Bangla has always been to raise awareness of the Bengali culture and its rich heritage, and embed these root values and identity into the consciousness of second and third generation Bangladeshi diaspora. Therefore, the Licensee believed there was "an editorial justification in the content of the programme being devoted to promoting the event". It said that the programme was focused principally on the event itself and showcasing the culturally important folk singing traditions such as "Baul" which, it said, was becoming increasingly marginalised by the more popular mainstream entertainment in Bangladesh. As the event was closely aligned with the channel's mission, the Licensee said it was proud to promote it. ATN Bangla hoped the decision to give the event editorial importance would be considered by Ofcom within this context.

In respect of the references to Hillside Travels in the programme, ATN Bangla said that within the Bangladeshi community in the UK, the name of this travel agency was very well known. Even if the programme had not referred to the company, viewers would have been in no doubt about who organised the event. The Licensee said that it appreciated that the programme was devoted to promoting the event and indicating ticket sale outlets but stressed that there was "no ulterior agenda in respect of commercial gain either for ATN Bangla or Hillside Travels, or providing any advertising platform to Hillside Travels directly; only to raise awareness of the event". However, as previously stated, the Licensee conceded that there may have been inadvertent general reference to Hillside Travels' services but that this was not intended to promote or endorse the products or services of Hillside Travels, "but simply to engender audience enthusiasm and interest for this specific event".

ATN Bangla re-iterated that it would ensure that, going forward, its staff will undergo a robust training process to prevent similar breaches occurring in future.

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 specific standards objectives, including "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 requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;

- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and

- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

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

In this case, Ofcom accepted that a local Bengali music event, such as Hillside Nights, was likely to be of particular interest to viewers of ATN Bangla UK and, as such, there was editorial justification for the Licensee to cover the event in a programme. Ofcom therefore went on to consider whether the references to Hillside Nights were promotional and/or whether the manner in which these references were made was unduly prominent.

As noted, the premise of the programme was the music event. The entire programme was dedicated to the event, including the acts participating, and the overall tone of the programme portrayed the event in a positive light. In addition, there were numerous explicit invitations to viewers to purchase tickets and attend the event. For example in response to questions from callers to the programme, the presenter replied:

> *"Tickets are still available, we have a special discount for you. You must collect the ticket by calling after the programme or collect your ticket tomorrow morning from the Hillside Travels"*; and
>
> *"Tickets are available from Hillside Travels and brother Helal will tell more about it. I am telling it for the sake of the viewers that event will be held at 6pm in the evening, at* [address of venue given]*. The event will begin at 7pm, however, the door will be opened at 6pm. So, I request the viewers to reach there by 6pm. The*

organisers are emphasizing it time and again that the event will start at 7pm. We advise you to be present there in time...Hillside Night, organised by Hillside Travels will be very motivating".

The event organiser also encouraged viewers to attend the event:

"Tickets can be collected from Hillside Travels. The viewers will be able to purchase tickets over telephone using their cards from Hillside Travels as they usually buy air tickets from Hillside Travel without coming to the agency. Tickets will be ready for you in the counter. Tickets are also available from [business name] *and* [business name]*. So, I will say that, although the tickets will be available at the gate of the venue, but if the tickets are sold out before that, we will not be able to guarantee to make tickets available to you. It is better to purchase the tickets earlier. The people will be in a long queue to purchase tickets from the gate. Those who will buy tickets beforehand, they will be able to enter inside the venue directly avoiding the queue. Those who will enter first, will be able to sit in the front rows."*

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from "the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or the manner in which a product, service or trade mark appears or is referred to in programming".

In this case, ATN Bangla has submitted that its editorial objective was to make its Bangladeshi audience and the wider community "aware of a culturally important event" and that it was the channel's wider mission "to raise awareness of the Bengali culture and its rich heritage, and embed these root values and identity into the consciousness of second and third generation Bangladeshi". We note ATN Bangla's rationale for devoting an entire programme to the event. Rule 9.5 does not automatically prohibit an entire programme being dedicated to such an event – indeed there are many examples of such programmes. However, broadcasters must pay particular attention when transmitting such a programme to ensure that it stands alone editorially – i.e. its purpose is to entertain viewers – and does not directly serve a commercial purpose – i.e. to encourage viewers to attend a ticketed event. As previously stated, we accept that there was justification for ATN Bangla to present a programme about a local Bengali music event. However, the cultural significance of the event and the likely audience interest was insufficient to justify the manner in which the programme covered the event i.e. it was used as a platform to showcase the event with a view to encouraging viewers to attend. Ofcom therefore found the programme in breach of Rule 9.5. Further, Ofcom noted that viewers were explicitly invited to purchase tickets and attend the event, contrary to the requirements of Rule 9.4. Ofcom judged that, considered in its entirety, the programme effectively acted as an advertisement for the event, in breach of Rule 9.2.

Ofcom also considered whether the references to Hillside Travels during the programme were compliant with Section Nine of the Code. As the sponsor of the event, the Hillside name appears in the event title. We therefore accepted that appropriately limited references to the event name could be justified. However, we considered the references to the quality of service and reputation of Hillside Travels during the programme (including claims that it *"has been working with the Bengali community for a long time with trust…"* and "*The way Hillside Travels has been serving people with trust and sincerity, with the same mind-set and commitment, the organiser will present you the Hillside Night*") were promotional and could not be justified editorially.

Of particular concern to Ofcom in this case is that, while accepting that the references to Hillside Travels were problematic, the Licensee did not appear to recognise that using programme time to promote a music event was contrary to the Code's requirements.

We note that since June 2013, Ofcom has found ATN Bangla in breach of Section Nine of the Code on eight occasions. In its Finding published in issue 263 of Ofcom's Broadcast Bulletin[1], Ofcom noted its concerns about ATN Bangla's compliance with the requirements of Section Nine of the Code. At that time, we made it clear that we may consider further regulatory action if similar compliance issues arose.

Therefore in light of this latest case, we are putting the Licensee on notice that we will investigate the sufficiency of ATN Bangla's compliance arrangements under Condition 17(2) of its Television Licensable Content Service licence.

Breaches of Rules 9.2, 9.4 and 9.5

[1] Available to view at: http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb263/obb263.pdf

In Breach

Bangla Sur

CHSTV, 24 December 2014, 23:30

Introduction

CHSTV is a general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for CHSTV is held by CHS TV Limited ("CHS TV" or "the Licensee").

The *Bangla Sur* programme broadcast on 24 December 2014 was dedicated to Hillside Nights, a music event that took place the following evening in London. As the programme was predominantly in Bengali with some English, we commissioned an independent translation of the material.

The programme featured the event's organiser, the director of Hillside Travels (a local travel agency), as well as a number of acts that were participating in the event. During the programme viewers were encouraged to attend the event and details of the location, time and how to buy tickets were given repeatedly (e.g. *"We are going to organise tomorrow's event at* [venue name and address]*"*; *"The door will open at 6pm and we will start the songs exactly at 7pm*"; and *"I will tell you all that please don't hesitate. You don't need to book the ticket… Please come to the gate and you will directly get the tickets.")*. Additionally, reference was made during the programme to Hillside Travels directly (e.g. *"Hillside Travels is very known and trustworthy name in the travel arena of London, Dear viewers, we all travel by plane to Bangladesh at different times of the year... When the issue of purchasing that ticket arises, we think about one name. I think, like me the name that appears in your mind is Hillside Travels"* and *"I know the way his* [the director of] *Hillside Travels gained people's trust, he himself is the symbol of trust"*).

Ofcom considered that the references to Hillside Nights and Hillside Travels in the programme raised issues under Section Nine of the Code (Commercial references in television programming). We therefore sought information from CHS TV about how the programme was produced and funded and also about any commercial arrangements in place between CHS TV and Hillside Travels (or any party connected to either). On the basis of the information provided, we sought CHS TV's comments on the how programme complied with the following Code rules:

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

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

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

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

Response

CHS TV said that the programme was broadcast completely free of charge and there was no intention to promote or advertise Hillside Travels. It continued that the programme presenter "was guided before the programme with relevant code" but was relatively inexperienced in presenting live programming. In relation to the references to Hillside Travels in the programme, the Licensee said it had limited ability to "correct the statement on air".

CHS TV advised that it had arranged a further training session with presenters and would take extra care if it broadcast similar programmes in future.

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 specific standards objectives, including "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 requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;

- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and

- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

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

In this case, Ofcom accepted that a local Bengali music event, such as Hillside Nights, was likely to be of particular interest to viewers of CHSTV and, as such, there was editorial justification for the Licensee to cover the event in a programme. Ofcom therefore went on to consider whether the references to Hillside Nights were promotional and/or whether the manner in which these references were made was unduly prominent.

As noted, the premise of the programme was the music event. The entire programme was dedicated to the event, including the acts participating, and the overall tone of

the programme portrayed the event in a positive light. In addition, there were numerous explicit invitations to viewers to attend the event such as:

> *"you will get the tickets on the door as well. Please do come, you will be able to purchase the tickets from the gate. You will be able to collect from there. Please don't miss the programme tomorrow*";
>
> *"… it will be very interesting tomorrow. Lots of entertainment, awesome music and awesome dancing… So, please come, it will be a memorable night. So, please do come, you are going to miss it if you don't*"; and
>
> *"You don't need to book the ticket. You will get the tickets from the gate. Please come to the gate and you will directly get the tickets".*

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from "the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or the manner in which a product, service or trade mark appears or is referred to in programming". As stated, we accept that there was justification for CHS TV to present a programme about a local Bengali music event. However, the likely audience interest in the event did not justify the manner in which the programme covered the event i.e. it was used as a platform to showcase the event with a view to encouraging viewers to attend, in breach of Rule 9.5. Further, viewers were explicitly invited to purchase tickets and attend the event, contrary to the requirements of Rule 9.4. Ofcom judged that, considered in its entirety, the programme effectively acted as an advertisement for the event, in breach of Rule 9.2.

Ofcom also considered whether the references to Hillside Travels during the programme were compliant with Section Nine of the Code. As the sponsor of the event, the Hillside name appears in the event title. We therefore accepted that appropriately limited references to the event name could be justified. However, we considered the references to the quality of service and reputation of Hillside Travels during the programme (e.g. *"Hillside Travels is very known and trustworthy name*") were promotional and could not be justified editorially.

Of particular concern to Ofcom in this case is that, while accepting that the references to Hillside Travels were problematic, the Licensee did not appear to recognise that using programme time to promote a music event was contrary to the Code's requirements.

Taking account of all of the matters considered above, we concluded the programme was in breach of the Code.

Breaches of Rules 9.2, 9.4 and 9.5

In Breach

Hillside Nights

Channel i, 23 December 2014, 21:30

Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited ("Prime Bangla" or "the Licensee").

Hillside Nights was a programme dedicated to a music event of the same name that took place on 25 December 2014 in London. As the programme was predominantly in Bengali with some English, we commissioned an independent translation of the material.

The programme featured the event's organiser, the director of Hillside Travels (a local travel agency), as well as a number of acts that were participating in the event. During the programme, viewers were encouraged to attend the event and details of the location, time and how to buy tickets were given repeatedly (e.g. *"The event will be held on the 25th of December at 6pm in the evening at* [venue]. *I hope you all will come to the event"* and *"You can also purchase from Hillside Travels using debit or credit card…and you can collect tickets from* [business name]*… If all the tickets are not sold, although we can't guarantee, you will be able to collect them from* [the venue]. *However, I will ask you to purchase or secure the tickets earlier")*.

Ofcom considered that the references to Hillside Nights in the programme raised issues under Section Nine of the Code (Commercial references in television programming). We therefore sought information from Prime Bangla about how the programme was produced and funded and also about any commercial arrangements in place between it and Hillside Travels (or any party connected to either). On the basis of the information provided, we sought Prime Bangla's comments on how the programme complied with the following Code rules:

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

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

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

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

Response

Prime Bangla said it recognised Ofcom's concerns. It said that there had been an "editorial misjudgement" which would not be repeated and for which it apologised

sincerely. The Licensee informed Ofcom that it had taken disciplinary action against the programme producer. It had arranged a review meeting and staff retraining to help prevent such incidents happening again.

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 specific standards objectives, including "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 requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;

- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and

- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

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

In this case, Ofcom accepted that a local Bengali music event, such as Hillside Nights, was likely to be of particular interest to viewers of Channel i and, as such, there was editorial justification for the Licensee to cover the event in a programme. Ofcom therefore went on to consider whether the references to Hillside Nights were promotional and/or whether the manner in which these references were made was unduly prominent.

As noted, the premise of the programme was the music event. The entire programme was dedicated to the event, including the acts participating, and the overall tone of the programme portrayed the event in a positive light. In addition, there were numerous explicit invitations to viewers to purchase tickets and attend the event. For example, towards the end of the programme the presenter said:

> *"This programme was part of the invitation* [to the event] *and we hope that we have been able to invite the viewers of Channel i nicely. Those who will come, I hope, you will enjoy and feel nice. Those who will not come, I tell you, you will miss something. So please try to come. I hope you will be able to come and enjoy. You will come with that hope. I would like to inform you the address. Those who*

> *will come from far, they may not be able to remember the address. If you have pen and paper, you can write the address now* [address given and repeated] *…Those who are confused, you will be able to take the address by calling to our control room. You will be able to call the number on Hillside Night or the number shown on advertisements."*[1]
>
> *You can also contact* [the event organiser] *directly. You can also contact by visiting Hillside Travels in person. You will be able to purchase your tickets using cards. Please call to know in detail. We hope to meet you on the 25th and our best wishes to you.*"

The event organiser also encouraged viewers to attend the event:

> *"You can also purchase from Hillside Travels using debit or credit card … and you can collect tickets from* [business name]*. You can collect tickets from the office of the* [business name]*. We have also kept some tickets in the office of* [business name]*…You can purchase tickets from these four places. If all the tickets are not sold, although we can't guarantee, you will be able to collect them from* [the venue]*. However, I will ask you to purchase or secure the tickets earlier."*

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from "the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or the manner in which a product, service or trade mark appears or is referred to in programming". As stated, we accept that there was justification for Channel i to present a programme about a local Bengali music event. However, the likely audience interest in the event did not justify the manner in which the programme covered the event i.e. it was used as a platform to showcase the event with a view to encouraging viewers to attend, in breach of Rule 9.5. Further, viewers were explicitly invited to purchase tickets and attend the event, contrary to the requirements of Rule 9.4. Ofcom judged that, considered in its entirety, the programme effectively acted as an advertisement for the event, in breach of Rule 9.2.

In a Finding published in issue 273 of Ofcom's Broadcast Bulletin[2], we made clear that we expected the Licensee to take steps to improve its compliance in relation to Section Nine of the Code. In light of our concerns about the Licensee's compliance record, Prime Bangla attended a meeting with Ofcom to discuss its processes in early March 2015.

As the programme in this case was broadcast before Ofcom met Prime Bangla to discuss its compliance procedures, we do not propose to take further action at this time. We put Prime Bangla on notice, however, that Ofcom may consider further regulatory action if similar compliance issues arise.

Breaches of Rules 9.2, 9.4 and 9.5

[1] Advertisements for the Hillside Nights event were broadcast around the programme.

[2] http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb273/Issue273.pdf

In Breach

Holiday and Cruise Clinic

Holiday and Cruise Channel, 14 November 2014, 20:00

Next Stop

Holiday and Cruise Channel, 14 November 2014, 21:00

Inside Cruise

Holiday and Cruise Channel, 15 November 2014, 19:30

Introduction

Holiday and Cruise Channel broadcasts a variety of editorial and teleshopping content related to holidays. The licence for this channel is held by JAN Media Limited ("JAN Media" or "the Licensee").

As part of our assessment of a complaint from a viewer about the prominence of product placement in content on the Holiday and Cruise Channel, Ofcom decided to undertake some monitoring of selected content from the channel.

Holiday and Cruise Clinic, 14 November 2014, 20:00

The Holiday and Cruise Clinic is a programme produced by Holiday and Cruise Channel. In this edition, the regular presenter Jemma Gofton spoke to a guest, Steven Harris of MSC Cruises ("MSC"), about cruises and in particular the services offered by MSC. Throughout the programme, the set was decorated with: television screens showing footage of holidaymakers on board cruise ships; photographs of tourist destinations such as Sydney Opera House; and brochures for MSC.

Jemma Gofton noted MSC's *"rich Mediterranean heritage"* before asking Steven Harris a range of questions, both about cruising in general and MSC's services in particular. These included:

> *"What sets your company aside from everybody else?"*
>
> *"Well this is what I wanted to ask you: is there a cruise out there for absolutely everybody?"*
>
> *"And for people to enjoy it, what experiences are they having on board, what facilities are there for them?"*
>
> *"I mean what we've highlighted there is all-singing, all-dancing, but if you were on a more romantic break for example, do you have honeymooners, is there somewhere more quiet you can sit with a bottle of wine?"*

Steven Harris' answers sometimes focused on the experience of cruise holidays in general:

> *"I think cruising can be enjoyed from five months up to ninety-five, however old you are, it's a great way of holidaying".*
>
> *"Nowadays, cruise lines, you name it, cruise lines have got it on board"*.

"Whatever size ship you go on, there's always going to be quieter bars, quieter areas that you can enjoy".

He also made specific references to the facilities and attractions available on board ships operated by MSC, including *"Formula 1 simulators"*; *"4D cinemas"*; *"bowling alleys"*; *"theatre shows"*; and *"different styles of swimming pools"*, including *"infinity pools"*, *"glass sliding roofs*…[for] *all year round swimming"* and *"the world's longest water slide at sea"*.

Jemma Gofton asked him further questions about the different experiences available:

Jemma Gofton: *"And do you find you have a lot of repeat customers who try all the different experiences?*

Steven Harris: *Yeah, very much so, yeah. Again, you know, we have a high repeat customer base, which is excellent. A lot of customers are involved in our MSC Club, which is our loyalty scheme, which you only have to cruise with us once to be able to be a member in MSC Club. And that gives you priority, discounts, before booking, and on-board benefits as well, discounts, and even casino chips, discounts on laundry and things on board. So that's, you know, we have repeater basis, which is great to see.*

Jemma Gofton: *And tell me about MSC Orea and the Yacht Club Experience. I quite like the idea of a yacht club.*

Steven Harris: *Well like you mentioned earlier, again we've actually just introduced new experiences on board our ships, designed around customers' requirements, around customers' needs. And we don't just have the Orea and the Yacht Club, we have…Our leading affairs are called Bella, Bella Experience. So it's great value, great destinations, you know, at a great price. We then have Fantastica Experience, which offers customers all the benefits of the Bella, but also customers can choose superior cabins located on the ship, they can choose their dining time, preferred dining times, they have a lot more benefits included in the Bella. And then go on to what you mentioned, Orea and also the Yacht Club. Orea, Orea suite is very much with the mind of well-being, spas et cetera. Again all the Orea suites and cabins are located in the bow, usually the bow or the front of the ship, located near the spa areas, and they include spa packages, and well-being products included on board. You have priority boarding. Even with Orea Spa we include customers' drinks – non-alcoholic and alcoholic drinks, at main meal times, lunch and dinner – so they can choose various wines, beer, cocktails, for example, whatever they wish to drink with their main meals, that's all included as well. So nice experience and there's also reserved specific areas for customers who are staying in the Orea Spa, which is exclusive to them, and again they can enjoy spa treatments out in the sun et cetera, you know, very much well-being. Moving on from that you've got Yacht Club. Yacht Club is very much…We sell Yacht Club as an 'experience', as a ship within the ship, it's a small ship atmosphere on a large ship scale.*

Jemma Gofton: *I'm trying to picture it, did you see my eyes kind of go like this…*[she crosses her eyes]

Steven Harris: *I did. So Yacht Club, if you can picture it, it's on our larger ships, our Fantastica class of ships, we have it on four ships currently. And Yacht Club is literally an area right at the front of the ship, designated for Yacht Club customers only, you can only enjoy the facilities within the Yacht Club if you're staying in a Yacht Club suite. We have around 70, 71 suites on each ship. They're all designer, typical Italian designer suites,* [we] *really go to town on what the interior of our suites are like. And as I say, you have a private – again – embarkation area at our ports. It's butler service, from start to finish, you're met upon arrival at the port by a butler, they escort you onto the ship, they walk you through to the concierge area of the Yacht Club, where you can choose your pillow menus, your newspaper… What you decide to read on a daily basis is delivered to your cabin every morning with your breakfast. There's a private dining area, a restaurant. There's a private lounge as well. Again, all the facilities are available for Yacht Club customers. And there's a private deck area as well, again right at the very front of the ship, with a private pool, solarium, al fresco dining options, Jacuzzis et cetera. So again it's a real pamper…You know, nice service on board the ships. But again you can enjoy the rest of the facilities, if you want to visit the Formula 1 simulator, the 4D cinema, obviously the spa areas, and, you know, the aqua park, theatre at night time, you've got all that entertainment as well, but you've got the serenity of the Yacht Club you can go back to, and it's a real different experience on board.*

Jemma Gofton: *Well while we take all that opulence on board we can have a quick break, but it's definitely sold to me".*

Later in the programme, Steven Harris was asked from which locations MSC sailed. His response included the following statement:

> *"We're the market leaders in the Mediterranean, we have more ships in the Mediterranean than any other cruise line, offering more, you know, more itineraries and more ports of call than any other cruise line…Genoa is a big port for us out in Italy. Barcelona as well and Venice are our big ports over in Europe and the Mediterranean. This year we sail from the UK, we sail from Southampton. And we've got our MSC Opera ship cruising from Opera – sorry, from Southampton – from May through to September this year. And also in September and October this year, Opera will be joined by MSC Magnifica, one of our Musica Class ships, so it's a 90,000 tonne ship, so a bigger ship, offering four dates, two in September, two in October. Really good prices available on that at the moment".*

Steven Harris also emphasised the range of activities available on board MSC ships – *"We have a lot of activities available on board for customers, you know, obviously the normal things like yoga and dance et cetera, but then you'll have astronomy, and art, and cookery classes et cetera, music classes and lessons et cetera"* – before going on to discuss the advantages of the all-inclusive packages which his company offered:

"A great way to save money with ourselves specifically – I mean our drinks prices on board are some of the cheapest in the industry anyway, which is great…But the other way to save more money on board, and a great way to budget your holiday, is we offer an all-inclusive package as well, which we offer for our ex-UK cruises, our Mediterranean cruises, Middle Eastern and Canaries, and also we have a separate package available for Caribbean as well. But on our main Mediterranean, the ex-UK cruises, it's £20 a day. And that pays for your drinks, alcoholic and non-alcoholic drinks, speciality coffees, hot chocolates, ice-cream on board as well, so for £20 a day, it's unlimited amount of drinks, and it's a really good way of saving, you know, saving some money and budgeting for your holiday as well. And again if you've got families, up to the age of seventeen – I think it's two-to-seventeen-year-olds – it's £10 a day, so again you haven't got to be pestered the whole time, 'Can I have an ice-cream? Can I have a drink?', because again you can give some of your children the flexibility and the independence of going to get their own, you know, soft drink, ice-cream, et cetera, at the bars".

Jemma Gofton also asked Steven Harris whether there was *"a good time to book a cruise"*:

Steven Harris: *"Again, my personal recommendation is to book a cruise when cruises are first on sale. For example, we've just recently launched our winter season for '14 and '15. Our new summer 2015 itineraries go on sale on 2 April. And again by booking early you get the early booking discounts, you get the best choice of cabins, again if you go to one of our Fantastica Experience cabins, and obviously you have a lot of choice – more – of the cabins that you choose. And, yeah, especially if you're travelling with the family again, you've got the three- and the four-berth cabins that we offer as well, you can choose those in the school holidays. Yeah, I think it's best to book early as well, because, as I say, we offer really good value cruising if you book early.*

Jemma Gofton: *And you can also budget if you book earlier, you can put some money away, you know what you can pay for".*

At the end of the programme, Jemma Gofton gave out contact information for viewers to submit cruise-related questions or to request a free first-time guide to cruise holidays.

Next Stop, 14 November 2014, 21:00

Next Stop is a programme produced by Digital Studio, purchased through an intermediary by the Licensee. Presenter John Olson visits a different tourist destination each episode, in this case *"the theme park capital of the world"* Orlando, Florida.
The neutral universal logo for product placement was displayed on screen at the beginning and end of the programme and following the internal commercial break. The closing credits identified the following entities as *"sponsors"*:

- Alaska Airlines;
- Alaska Airlines Visa Signature Card;
- Latitudes; and
- London Influence.

The closing credits also stated that the following entities had paid a *"promotional fee"*:

- Alaska Airlines;
- Alaska Airlines Visa Signature Card;
- Lake Buena Vista Village and Spa; and
- Visit Orlando.

John Olson verbally acknowledged Lake Buena Vista Village and Spa and Visit Orlando as *"this show's sponsors"*. He also gave a *"special shout out"* to Florida Dolphin Tours and made the following statements to camera during the programme:

> *"Alaska Airlines invites you to explore more amazing places like Orlando, Florida, where you can fly non-stop from San Diego or Seattle. Take off with your travel information at your fingertips with their new travel app, where you can manage reservations, book a flight, even make a seat change. For more information on this useful app, go to* [company website given]*".*
>
> *"Orlando, Florida is one of the top domestic and international meeting and vacation destinations in the world. To help plan your dream vacation to Orlando, we recommend you check out* [company website given]*. This website is loaded with helpful information to help your family plan a vacation with memories to last a lifetime. From discounted theme park tickets to sample itineraries,* [company website given] *has got it all".*

On both occasions, the company's websites stated by John Olson also appeared on screen.

The programme consisted of sequences in which John Olson visited a range of attractions in Orlando, including that of one of the show's sponsors, Lake Buena Vista Village and Spa. This segment consisted of an interview with the general manager, Daryl, interspersed with footage of the resort. The website address for the complex was also shown on screen:

John Olson: *"Our Orlando home is the Lake Buena Vista Resort Village and Spa, and village is a very appropriate word for this place. It is a village. Now, Daryl, you were here from the beginning.*

Daryl: *Correct. We started with two buildings originally. The mall was next door.*

John Olson: *It must be amazing to see what it's become today for you.*

Daryl: *It is. It's a child that's grown so it's pretty impressive. Once again, I've been here from the beginning.*

John Olson: *And a lot of variety for families to stay in.*

Daryl: *Absolutely. We've two, three and four bedroom units, so it'll fit any size family.*

John Olson: *Now, it is a village, there's a lot going on here, but one of my favourite things is the pool.*

Daryl: *The pool is zero entry. It was built for families. The pirate ship is the biggest thing. That's our number one focus. Everyone sees: 'Oh!' Kids come in and they're just: 'Look at the ship, look at the ship'. So it's pretty impressive.*

John Olson: *The location's excellent. You're close to so many theme parks. You got a nice mall with designer brand shops right next door.*

Daryl: *Couple of weeks ago I had a gentleman who asked if I…I was walking the pool and he said, 'Hey, are you the manager?' I said, 'Absolutely, yeah.' You know, 'How can I help you?' He said, 'I just wanted to thank you'. I said, 'Absolutely.' You know, 'I'm glad you're enjoying this thing and everything.' He said, 'I want to thank you because when we came down we were gonna do all the parks.' He said, 'We did the parks the first day, and after that the kids got in the pool and said, "We don't wanna go to parks any more. We just wanna stay in the pool."' So hence he saved a lot from going to the parks all day.*

John Olson: *So he hung out at the poolside bar, the kids were in the pool, I'm guessing his wife was upstairs in the spa. Tell us about the spa. It's a really nice spa.*

Daryl: *Reflection Spa is 6,000 square feet. Full service offered, from hair, nail, manicure, pedicure, different styles of massage, so, it's very nice.*

John Olson: *We have frequented the place next door. You've got a very authentic Irish pub with excellent food.*

Daryl: *Frankie Farrell's is another key feature. It's our one main restaurant on property. Huge portions, great prices, and a really good atmosphere. It's got an authentic Irish, you know, feel in it.*

John Olson: *Excellent. You've also got a general store, you've got a fitness centre… This place really has it all.*

Daryl: *Yeah, as you've said, it's a village, so we try to incorporate everything that the guests would need, so that besides having to go to the parks they don't have to leave".*

Other segments in *Next Stop: Orlando* included visits to a range of attractions in Orlando, during which John Olson described the services offered. These attractions included:

- Gatorland, a theme park;
- Wallaby Ranch, a hang-gliding centre;
- Boggy Creek Airboat Rides, offering tours of the Everglades; and
- The Ravenous Pig/Orlando Brewing, a gastropub specialising in locally brewed alcoholic drinks.

In all of these sequences, contact details for the company featured were given. For example, in the segment on Gatorland, John Olson described the theme park as *"the alligator capital of the world, combing old Florida charm with new exciting exhibits and entertainment"*. As well as touring the park – during which he was shown holding

a python, a tarantula and a cockatoo; wrestling an alligator; and riding a zip wire – John Olson also interviewed the *"Dean of Gator Wrestling"*, Tim:

John Olson: *"So this is the oldest continuous theme park in the state of Florida."*

Tim: *"We've got thousands of alligators, crocodiles, a zip line, alligator breeding marshes, very natural, full of the natural wildlife and natural birds, so there's just something to see for everyone, if you're a nature lover, or you want some of that thrill side of it".*

Gatorland's website address was shown on screen during this exchange.

Inside Cruise, Holiday and Cruise Channel, 15 November 2014, 19.30

Inside Cruise is a programme produced by Holiday and Cruise Channel consisting of a range of items, presented by Neil Newton, as well as an in-depth look at one cruise ship.

The following items, and others like them, were accompanied by footage of the cruise ships referred to:

"If variety though is the spice of life, food must be the fuel of any cruise holiday. Details of Norwegian Cruise Line's hotly anticipated Norwegian Escape have been released and, well, if you're a foodie like me, out of this world treats await. There's a three-level atrium, outdoor dining, and the fleet's largest ever casino. You may be familiar with the concept known as 678 Ocean Place, as it debuted in fact on the Norwegian Breakaway and Norwegian Getaway. Restaurants include Le Bistro, Moderno Churrascaria, Cagneys, Teppanyaki, and of course O'Sheehans. Now, as we know, drink complements food, and vice versa. Also returning are three bars: the Prime Meridian, Mix, and the Bar at the Atrium, which will feature a self-service wine bar – sounds good. New to Escape though will be the private room at Taste, a private dining venue on deck five, just below Taste. The exclusive venue has its own entrance, lounge and dining area, and the private room can accommodate up to a hundred people".

"Now, next year is a milestone for American line Princess Cruises. Now, they're the company that brought us the original 1970s TV show The Love Boat*. So with all that heritage around it's not surprising that celebrations include a* Love Boat*-themed deck party. Dining will also include a retro, blast-from-the-past celebratory meal, and special balloon drops. There are keepsakes too though for those on board, as passengers will be given anniversary gifts to take home. Other highlights though include a seventies theme party, and video messages from the original* Love Boat *cast. The deck party will also include a Love Boat singalong and show with trivia prizes too. It's not all kitsch though. Chocolatier Norman Love has created two fiftieth anniversary desserts, which will be served on alternative sailings: the chocolate raspberry mousse with vanilla crème brûlée and crunchy shortbread, and the moist chocolate dome with raspberry crème brûlée and bittersweet chocolate mousse. The icing on the cake though is a golden balloon drop, offering a whole host of money-can't-buy prizes. Sounds great, doesn't it?"*

The programme's special report was on a ship called the Ruby Princess. The reporter's account was interspersed with footage of the ship:

"Welcome on board the Ruby Princess. What a big, beautiful boat this is. She's a fantastic ship, and she holds herself rather like a successful actress, if you know what I mean. One of the first places you'll come across as you board her is this, the piazza, which is a three-deck high, Art Deco atrium, and even here you get the sense that she has got a lot more to offer. And indeed she has, so shall we go and explore some of it? After the piazza's made a great first impression on you, the next thing you'll want to do is find your cabin. There are six main types of cabin on board the Ruby Princess, from interior doubles with en suite bathrooms – and all those little extras that always come in handy – to outside cabins, mini-suites, suites, and the largest of them all, the Grand Suite, A750. It's at the stern of the ship, it's got a queen-sized bed, a walk-in closet, two bathrooms, a lounge, a private balcony with a hot tub, but no butler! But of course there's always a cabin steward to look after you wherever you are on board the ship. Next, how about a drink in the piano bar Crooners to celebrate the start of your holiday? You can take your pick from the many bars dotted round the ship, including the Wheel House Bar, Adagios, or Skywalkers, the ship-wide glass disco bar. It was quiet when we filmed, but it's always busy in the evening. There's a pool bar too. Just one swimming pool on board the Ruby Princess, with a good promenade strolling deck that wraps around the front and aft of the ship. Three times round is a mile. You can take advantage of the hot tub, or watch the movies under the stars, and major sporting events, from the comfort of your sun lounger. For the big kids – or should that be the grown-ups – amongst us, here is the adult-only sanctuary. Now, here you can relax on one of the fabulous sunbeds, you can even have a treatment out here as well, or if you want to work off a little bit of the buffet, you can swim against an endless tide in the adult-only spa pool. The Lotus Spa is situated on the sun deck, and also features a sauna, a relaxation zone, saunas and a massive gym. There are some fitness classes which are free, and for others there's a small charge. You can get your hair or your nails done – it costs a little bit extra, but it's worth it to look your best for the evening. The Princess Theatre puts on some great shows, it spans two decks, and the team are all looked after by cruise director Martin Moss".

The reporter went on to discuss a range of the Ruby Princess's features, for example:

"Here in the internet café you can keep in touch with your loved ones at home, and send them really annoying photographs of what a fabulous time you're having. You can buy a package, or you can pay as you go. Now, should the romance of sailing on board the Ruby Princess get to you and you wish to tie the knot, then where better to do it than here, at the Hearts and Minds Chapel on Deck 17, which is also very popular for people who wish to renew their vows…Both kids and adults alike love the food on the Ruby Princess. The most popular eatery is the buffet. The 312-seater Horizon Court, with its inside/outside seating, is on lido deck. Also for casual dining, there's a hamburger grill and a pizza bar by the pool. You can even have your pizza made for you in front of your very eyes. And the International Café on deck five is perfect for a coffee or a cake. There are three formal dining restaurants, Da Vinci's, Botticelli's and Michelangelo's. If you don't care, then stuff yourself with decadent Princess Loveboat Dream, a creamy rich chocolate mousse, on top of a thin chocolate brownie in the shape of a lovely little heart. And there's Sabatini's perched high atop the back of the ship, beautifully decorated with Roman pillars and Tuscan-themed murals".

She concluded her report by stating: *"So if you'd like to experience her for yourself, then why not book yourself a cruise on the Ruby Princess?"*

* * *

Ofcom considered that these programmes raised potential issues warranting investigation under the Code. We requested information from the Licensee in order to establish whether the references to entities in these programmes were included as the result of a commercial arrangement. With regard to *Holiday and Cruise Clinic* and *Inside Cruise*, JAN Media confirmed that there were no commercial arrangements between the programme makers and any of the entities referred to. With regard to *Next Stop*, JAN Media was unable to provide sufficient information to confirm the nature of the relationships between the producers and the entities referred to in the programme.

We therefore asked the Licensee for comments on how the material complied with the following rules:

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

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

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

Response

JAN Media stated that it took its regulatory responsibilities seriously, and had worked to ensure that all of its content was compliant since starting the channel. The Licensee added: "We are a small company, working on very tight budgets to try and deliver the best quality television we can, which will enrich, inform and delight the viewer."

Holiday and Cruise Clinic, 14 November 2014, 20:00

The Licensee stated that this programme "aimed to be an informal insight into different kinds of holidays, from city breaks, beachside holidays and cruise holidays", featuring "spokespersons from different tourist boards, travel organisers, associations and travel companies". It also noted that the programme offered viewers a free first-time guide to cruise holidays published by the channel.

JAN Media added: "When we 'dress the set' for any programme we try to give a feel of what we are talking about, so will have brochures on display, and usually moving imagery 'setting the scene' on the video wall." It stated that, although brochures for MSC were on display in this episode: "[T]he one behind Mr Harris, there is no logo on, just a ship, as it has been placed so that the logo is out of shot." Finally, the Licensee argued that in its view "there was no more prominence of logos or trademarks in this programme than as in many other travel related programmes on TV", and cited a number of examples.

Next Stop, 14 November 2014, 21:00

As stated above in the Introduction, the Licensee confirmed that this programme was purchased from a third party, and emphasised: "Far from us having any income revenue from this programme, we have bought the rights." It also explained: "When we first purchased the programme we were shown a pilot episode, which had no more commercial references to attractions than you would expect in a travel programme." The Licensee said that it had chosen to display the neutral universal logo for product placement after reviewing further episodes of the programme.

JAN Media stated that in its view it would be "very hard to make a programme about Orlando, the largest tourist destination in the world, without making references to the attractions [that] are there, apart from the 'obvious' theme parks". Nevertheless, the Licensee said that it had "taken onboard [Ofcom's] concerns about this programme", and removed all episodes from its schedule to avoid giving that the impression that it was "pushing the boundaries".

Inside Cruise, Holiday and Cruise Channel, 15 November 2014, 19.30

The Licensee stated that this programme was written by the presenter Neil Newton, emphasising that he is a "qualified freelance journalist", who works for "other organisations including BBC Radio and independent radio". JAN Media explained that Neil Newton "gathers the information for the programme from [the] usual travel related news organisations, along with press releases from various cruise companies and organisations". It added that he was not subject to any "pressure or influence on him to carry any stories from anyone within the company".

In a separate submission, Neil Newton confirmed that he had "no affiliation to any cruise line or travel organisation", and stated that he had never been subject to any "pressure…to give prominence to any story about a cruise line covered in the programme from anyone within Jan Media Ltd or the Holiday & Cruise Channel". He also explain that he based his scripts for the programme on information sourced from "a variety of trusted outlets…[including] press releases sent direct from cruise lines, trade magazine[s] and websites, cruise chat forums and national newspapers".

The Licensee said that the footage accompanying the stories covered in the programme was obtained from third parties, because "we are obviously not a large company with deep resources".

Finally, JAN Media stated that the purpose of the visits to ships was to "show viewers what kind of facilities are available, and the difference between small and larger ships". It argued that this approach was not dissimilar from that taken by comparable programmes on other channels.

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 requirements that

television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising, and limiting the amount of advertising shown in any clock hour. The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code, including among others Rules 9.4 and 9.5.

Rule 9.4 states that products, services and trade marks must not be promoted in programming. Ofcom's published guidance[1] on Rule 9.4 states: "Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed."

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom's published guidance on Rule 9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons…or as a result of a commercial arrangement between the broadcaster or producer and a third party funder…there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears."

Holiday and Cruise Clinic, 14 November 2014, 20:00

Rule 9.4

Ofcom's published guidance on Rule 9.4 refers to "circumstances that justify a greater degree of information about products or services within programmes" than would ordinarily be acceptable. The examples of such circumstances given in the guidance include consumer advice programmes: "[S]uch programmes are likely to refer to the price, availability or attributes of specific products or services, often in a comparative context. A positive review or product recommendation in a consumer advice programme is unlikely to be treated as a promotional reference."

Holiday and Cruise Clinic was introduced as *"the programme that aims to make your next cruise or holiday as problem-free and relaxing as possible"*. However, the Licensee did not describe it as a consumer advice programme in its representations, merely stating that it "aimed to be an informal insight into different kinds of holidays". In addition, Ofcom noted that viewers were provided with contact details to enable them to submit *"a holiday, cruise or travel-related question"*, but that no such questions were explicitly addressed by the presenter or her guest. Further, *Holiday and Cruise Clinic* offered a free first-time guide to cruise holidays published by the channel, but its contents were not discussed in the programme itself.

In our view, *Holiday and Cruise Clinic* differed from a typical consumer advice programme in that its references to specific products and services did not occur in a comparative context, but instead focused exclusively on products and services offered by MSC. The fact that these references were made by a representative of the

[1] http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf

company concerned also meant that they could not be considered as positive reviews or product recommendations in the usual sense.

Steven Harris emphasised the range of facilities and attractions available on board ships operated by MSC: *"We have a lot of activities available on board for customers, you know, obviously the normal things like yoga and dance et cetera, but then you'll have astronomy, and art, and cookery classes et cetera, music classes and lessons et cetera."* He also referred to *"Formula 1 simulators"*; *"4D cinemas"*; *"bowling alleys"*; *"theatre shows"*; and *"different styles of swimming pools"*, including *"infinity pools"*, *"glass sliding roofs*…[for] *all year round swimming"* and *"the world's longest water slide at sea"*.

He highlighted the different locations which the company sails to, such as the Mediterranean (*"We're the market leaders in the Mediterranean*"), the Caribbean *("*[S]*omething a little bit different"*), the Middle East (*"Middle East…is a big area we're growing into"*), South America and South Africa (*"[A] great style of cruising experience, a different style of cruising experience"*). He also made a point about the number of excursions organised by MSC Cruises: *"[W]e offer 1,600 different excursions, and again tailored to everybody's individual needs, we have family-orientated excursions, excursions tailored to customers with walking difficulties, so all different grades of excursions."*

Ofcom considered that the cumulative effect of these references was promotional, in part because of their extensiveness, and in part because of their positive character. This was particularly marked in the detailed descriptions of the benefits of the various 'experiences' available, namely the *"Bella Experience"*, the *"Fantastica Experience"* and *"MSC Orea and the Yacht Club Experience"*:

> *"We then have Fantastica Experience, which offers customers all the benefits of the Bella, but also customers can choose superior cabins located on the ship, they can choose their dining time, preferred dining times, they have a lot more benefits included in the Bella".*
>
> *"You have priority boarding. Even with Orea Spa we include customers' drinks – non-alcoholic and alcoholic drinks, at main meal times, lunch and dinner – so they can choose various wines, beer, cocktails, for example, whatever they wish to drink with their main meals, that's all included as well. So nice experience and there's also reserved specific areas for customers who are staying in the Orea Spa, which is exclusive to them, and again they can enjoy spa treatments out in the sun et cetera, you know, very much well-being".*
>
> *"It's butler service, from start to finish, you're met upon arrival at the port by a butler, they escort you onto the ship, they walk you through to the concierge area of the Yacht Club, where you can choose your pillow menus, your newspaper…There's a private dining area, a restaurant. There's a private lounge as well…And there's a private deck area as well, again right at the very front of the ship, with a private pool, solarium, al fresco dining options, Jacuzzis et cetera".*

In addition, Steven Harris stressed the popularity of advantages accruing from membership of the loyalty scheme MSC Club:

"A lot of customers are involved in our MSC Club, which is our loyalty scheme, which you only have to cruise with us once to be able to be a member in MSC Club. And

that gives you priority, discounts, before booking, and on-board benefits as well, discounts, and even casino chips, discounts on laundry and things on board."

We noted a number of instances of favourable or superlative language:

"So it's great value, great destinations, you know, at a great price".

"You know, nice service on board the ships."

"They're all designer, typical Italian designer suites, [we] really go to town on what the interior of our suites are like."

"We even have a sushi restaurant on board, which won the award for the best sushi at sea."

We also noted points at which prices and availability were discussed:

"This year we sail from the UK, we sail from Southampton. And we've got our MSC Opera ship cruising from Opera – sorry, from Southampton – from May through to September this year. And also in September and October this year, Opera will be joined by MSC Magnifica, one of our Musica Class ships, so it's a 90,000 tonne ship, so a bigger ship, offering four dates, two in September, two in October. Really good prices available on that at the moment".

"A great way to save money with ourselves specifically – I mean our drinks prices on board are some of the cheapest in the industry anyway, which is great…But the other way to save more money on board, and a great way to budget your holiday, is we offer an all-inclusive package as well…[O]n our main Mediterranean, the ex-UK cruises, it's £20 a day. And that pays for your drinks, alcoholic and non-alcoholic drinks, speciality coffees, hot chocolates, ice-cream on board as well, so for £20 a day, it's unlimited amount of drinks, and it's a really good way of saving, you know, saving some money and budgeting for your holiday as well".

"And again if you've got families, up to the age of seventeen – I think it's two-to-seventeen-year-olds – it's £10 a day, so again you haven't got to be pestered the whole time, 'Can I have an ice-cream? Can I have a drink?', because again you can give some of your children the flexibility and the independence of going to get their own, you know, soft drink, ice-cream, et cetera, at the bars".

"[W]*e've just recently launched our winter season for '14 and '15. Our new summer 2015 itineraries go on sale on 2 April. And again by booking early you get the early booking discounts, you get the best choice of cabins, again if you go to one of our Fantastica Experience cabins, and obviously you have a lot of choice – more – of the cabins that you choose".*

Jemma Gofton did not seek to limit these promotional references to MSC. Her questions at times appeared to encourage such responses (*"What sets your company aside from everybody else?"*), and she herself used language that was promotional (*"Well while we take all that opulence on board we can have a quick break, but it's definitely sold to me"*).

Ofcom accepts that some references to the products and services offered by a cruise company could have been justified in the context of an interview with its representative that was designed to provide "an informal insight into different kinds of

holidays". However, in our view, the cumulative effect of the extensive references to these products and services, combined with the many instances of favourable and superlative language, and the information about prices and availability, was to make the content promotional. The programme was therefore in breach of Rule 9.4.

Rule 9.5

The decoration of the set for this programme included brochures for MSC, as well television screens showing footage of holidaymakers on board cruise ships, and photographs of tourist destinations such as Sydney Opera House. JAN Media explained that this was "to give a feel of what we are talking about". It added that the brochures for MSC were not displayed prominently, and that care had been taken to ensure that the company's logo was out of shot for most of the programme. Ofcom accepts that the visual references to MSC were appropriately limited and editorially justified.

Ofcom also noted that this programme contained some discussion which did not focus directly on the products and services offered by MSC. For example, Steven Harris spoke about his background in the travel industry and his favourite cruise destinations. He also made some statements about the experience of cruise holidays in general.

However, such instances were much less frequent and extensive than the verbal references to MSC's products and services, which – as described above – took up the majority of the programme. We concluded therefore that the content was in breach of Rule 9.5.

Next Stop, 14 November 2014, 21:00

Rule 9.4

In Ofcom's view, much of the content in this programme was clearly promotional, for example the references to Alaska Airlines and Visit Orlando:

> *"Alaska Airlines invites you to explore more amazing places like Orlando, Florida, where you can fly non-stop from San Diego or Seattle. Take off with your travel information at your fingertips with their new travel app, where you can manage reservations, book a flight, even make a seat change. For more information on this useful app, go to* [company website given]*".*
>
> *"Orlando, Florida is one of the top domestic and international meeting and vacation destinations in the world. To help plan your dream vacation to Orlando, we recommend you check out* [company website given]*. This website is loaded with helpful information to help your family plan a vacation with memories to last a lifetime. From discounted theme park tickets to sample itineraries,* [company website given] *has got it all".*

There were also a number of instances of favourable or superlative language used in the interview with Daryl, the General Manager of Lake Buena Vista Village and Spa:

> *"*[O]*ne of my favourite things is the pool".*
>
> *"The location's excellent".*
>
> *"It's a really nice spa".*

"You've got a very authentic Irish pub with excellent food".

"You've also got a general store, you've got a fitness centre…This place really has it all".

In the course of this interview, Daryl also referred to prices, saying *"The pool is zero entry"* and *"Huge portions, great prices, and a really good atmosphere".*

The other segments of the programme contained further examples of favourable or superlative language:

"This is a kind of Mecca for hang-gliders around the world. Everybody wants to come here".

"We've got thousands of alligators, crocodiles, a zip line, alligator breeding marshes, very natural, full of the natural wildlife and natural birds, so there's just something to see for everyone, if you're a nature lover, or you want some of that thrill side of it".

"What a wonderful experience".

These promotional references to products and services throughout the programme meant that it was in breach of Rule 9.4.

Rule 9.5

In its representations, the Licensee stated that it would be "very hard to make a programme about Orlando, the largest tourist destination in the world, without making references to the attractions [that] are there, apart from the 'obvious' theme parks". Ofcom considered that this argument was not applicable to the references to Alaska Airlines' travel app and the tourist website Visit Orlando, as these products are not themselves "attractions".

In addition, Ofcom noted that websites for different commercial entities were displayed on screen at points throughout the programme. In the case of Wallaby Ranch, John Olson wore a helmet with the website address written on it, and stood in front of a hang-glider displaying the same information. In the cases of Alaska Airlines, Visit Orlando and Wallaby Ranch, he explicitly directed viewers to visit the websites.

We also noted that signs bearing the names of attractions were displayed prominently, for example at the end of the segment on Wallaby Ranch and at the beginning of the segment on Gatorland.

In our view, these visual and verbal references to the entities were more prominent than was necessary for a travel programme. Further, the language used to refer to these entities was often promotional, as established above. For these reasons, the material was in breach of Rule 9.5.

Inside Cruise, Holiday and Cruise Channel, 15 November 2014, 19.30

Rule 9.4

The Licensee stated that material for the news items presented by Neil Newton was obtained from "travel related news organisations", but that he also relied on "press

releases from various cruise companies and organisations". There were a number of instances of favourable or superlative language in these items:

"Details of Norwegian Cruise Line's hotly anticipated Norwegian Escape have been released and, well, if you're a foodie like me, out of this world treats await".

"[T]*he Bar at the Atrium…will feature a self-service wine bar – sounds good".*

"Oasis of the Seas will boast 20 restaurants – wow".

"For technology lovers, Oasis will offer internet like never before".

"*The icing on the cake though is a golden balloon drop, offering a whole host of money-can't-buy prizes. Sounds great, doesn't it?"*

"Sounds great fun, and well, witnessing a piece of history to boot".

"If you've spent time over the years on a Cunard vessel, you'll know that they are very special indeed".

Neil Newton also commented on the availability of some cruises:

"*The new Cunard sailings are a seven-night transatlantic crossing on Queen Mary departing Southampton on the 5th of November, and sailing into New York a week later. Or how do you fancy some sunshine, maybe? Well, the 13-night winter sun holiday on Queen Mary II sails from New York to the very heart of the Caribbean, calling at St Thomas, St Martin, St Lucia, St Kitts and Nevis, Tortola and the Dominican Republic, before arriving back in New York for Thanksgiving. Well, there's also if you fancy it an eastbound transatlantic crossing on Queen Mary II. She departs New York on the 25th of November, arriving in Southampton eight days later. Book early though of course to avoid disappointment".*

"Now available, there are a variety of itineraries, ranging from seven to 18 days. So, how do you fancy some Mexican passion? The line's cruises to Mexico are on the Veendam and Statendam from now until March, sailing a round trip from San Diego. And the Veendam sails seven-day Mexican Riviera itineraries to Cabo San Lucas, Porta Vallarta and Mazatlán, with scenic cruising in Bahia Magdalena. The Statendam though offers a 12-day sea of Cortez adventure, which highlights six Mexican ports and an overnight at Porta Vallarta too. Five sailings to feature sea days and calls at five Hawaiian ports. A great way to beat those winter blues".

In the segment of the programme on board the Ruby Princess, the reporter also used favourable or superlative language to describe the ship: *"What a big, beautiful boat this is. She's a fantastic ship, and she holds herself rather like a successful actress, if you know what I mean."* She referred to the piazza making *"a great first impression"*; *"fabulous sunbeds"*; *"great shows"*; and a *"beautifully decorated"* restaurant. She also invited viewers to buy a holiday – *"So if you'd like to experience her for yourself, then why not book yourself a cruise on the Ruby Princess?"* – as well as referring to pricing options:

"*There are some fitness classes which are free, and for others there's a small charge".*

"You can get your hair or your nails done – it costs a little bit extra, but it's worth it to look your best for the evening".

"You can buy a package, or you can pay as you go".

In light of these considerations, Ofcom concluded that this material was promotional and was therefore in breach of Rule 9.4.

Rule 9.5

Although *Inside Cruise* contained some material that was less promotional in tone – a reference to the construction of a new cruise ship, for example – we considered that the vast majority of the content was focused on products and services offered by different cruise companies.

Ofcom noted that the Licensee argued that the purpose of the visits to ships was to "show viewers what kind of facilities are available, and the difference between small and larger ships". However, in Ofcom's view, given the presentation of the items was highly promotional in tone, as described above, the extended references to the facilities and attractions available on board the ships featured – particularly the extended feature on the Ruby Princess – could not be justified. For these reasons, the programme was in breach of Rule 9.5.

Conclusion

Ofcom was concerned that the material broadcast and the Licensee's comments in this case indicated that it had failed to understand its obligations in relation to Section Nine of Code. For example, although JAN Media stated that it had decided to add the neutral universal logo for product placement to episodes of *Next Stop*, it was unable to confirm the presence of product placement in the programme. Combined with the references to *"sponsors"* in the closing credits and within the programme itself, the signalling of product placement would have been likely to confuse viewers as to the status of the material they were watching. In addition, the fact that the Licensee had not taken steps to satisfy itself about the nature of the relationships between the programme makers and the entities referred to indicated that its approach to compliance was inadequate in this regard.

Further, the programmes produced by the channel itself also demonstrated insufficient understanding of the provisions of Section Nine of the Code. As Ofcom has previously made clear, the Code does not allow broadcasters to transmit material as editorial content which, as in this case, is effectively advertising[2].

In light of our concerns, we are requesting the Licensee to attend a meeting with Ofcom to ensure it understands its compliance obligations under the Code.

Breaches of Rules 9.4 and 9.5

[2] See: http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb26011/obb262.pdf

Resolved

Nick Conrad

BBC Radio Norfolk, 17 November 2014, 09:00

Introduction

On 17 November 2014 at 09:00 BBC Radio Norfolk broadcast its morning show, hosted by Nick Conrad. The first hour of this three hour programme was dedicated almost in its entirety to a discussion about the former Sheffield United footballer Ched Evans, and issues surrounding his possible return to the sport having served a prison sentence for rape. Ched Evans had been released from prison a month before, on 17 October 2014. The programme featured a number of listeners joining the discussion by telephone and an extended contribution from Sarah Green, representing the End Violence Against Women Coalition.

Ofcom received 46 complaints about comments made by the presenter, which complainants considered "offensive", "irresponsible", "misogynistic" and "unacceptable".

Nick Conrad made the following remarks approximately 30 minutes after the start of the programme:

> *"I think women need to be more aware of a man's sexual desire, that when you're in that position, that you are about to engage in sexual activity, there's a huge amount of energy in the male body, there's a huge amount of will and intent, and it's very difficult for many men to say no when they are whipped up into a bit of a storm. And it's the old adage about if you yank a dog's tail don't be surprised when it bites you. Or you can't keep snakes in your garden and think they'll only bite your neighbours. One wonders if women need to be a little bit more mindful of that and the feminists who have hijacked – hijacked maybe a bit of a strong word – jump on these arguments and appear to be quite anti-men. They neglect that very important part of the argument, even though it's a reduced part of the argument, and the onus has to be on the men, and the men must be condemned if a woman says no and they persist then that's absolutely abhorrent. But they then – in their fury against men and masculinity – they actually forget to stop and say if you tease, if you jump into bed naked with a man, if you give him all the signals and then he acts upon them, then you are partially responsible. And of course it is a grey area and there will be cases where you wanted to go a certain distance and not go any further and the man is absolutely wrong, but if you are – how do I say this? – I've got to be so careful what I say because I don't want this to be explosive, I'm trying to talk round it. But what I'm trying to say is that women also have to understand that when a man's given certain signals he'll wish to act upon them, and if you don't wish to give out the wrong signals it's best probably to keep your knickers on and not get into bed with him".*

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

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context…. Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age,

> disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

We therefore sought comments from the BBC as to how Nick Conrad's comments detailed above complied with this rule.

.

Response

The BBC said that over the course of the "wide-ranging" debate, Nick Conrad "made it very clear that he strongly believes rape to be an abhorrent and unacceptable act". The BBC also highlighted that Mr Conrad "was joined on air by Sarah Green from End Violence Against Women, who spoke at length with both Nick Conrad and callers to the programme".

However, the BBC acknowledged that Mr Conrad's comments (as quoted in the Introduction above) were "ill-judged" and the broadcaster said it had "been made clear to Nick Conrad by BBC management that they were inappropriate". The BBC said that he had accepted this "and he is very sorry for the offence caused".

The BBC also pointed to an apology made by Mr Conrad at the beginning of the 20 November 2014 edition of his programme. He said:

> *"You may have seen the news stories surrounding my programme on Monday morning. As part of a wide-ranging discussion where I invited you, my listeners, to talk openly and frankly about the Ched Evans case, I made it clear on several occasions that rape is an abhorrent and inexcusable crime, and that women are victims are* [sic] *in no way to blame. Some of my comments in one section of the discussion were ill-judged and offensive to some. I apologise to anybody who was offended by what I said"*.

In relation to this apology, the BBC said that 20 November was "the first opportunity for Mr Conrad to broadcast an apology after Radio Norfolk became aware that his remarks on 17 November had given rise to complaint". The BBC said that "no complaints were received on the day of their transmission (a Monday), or on the Tuesday. It was only after newspaper stories about the remarks on the Wednesday morning that Radio Norfolk began to receive complaints about them".

Finally, the BBC said that also on 20 November a statement of acknowledgement and apology was posted on the "responses to recent complaints" page of the BBC's website[1].

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, which includes providing adequate protection for members of the public from harmful and/or offensive material. This objective is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment, as contained in Article 10 of the European Convention on Human Rights. This provides for the broadcaster's and

[1] http://www.bbc.co.uk/complaints/complaint/nickconradradionorfolk201114/

audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression with the requirements of the Code. These include the application of generally accepted standards to broadcast content to provide adequate protection for members of the public from harmful and/or offensive material.

Ofcom recognised, given the high-profile nature of the news surrounding Ched Evans's recent release from prison and the continuing controversy surrounding his potential return to professional football, that the audience for a live phone-in discussion programme in November 2014 could expect it to address issues surrounding rape.

Ofcom also took into account that, when discussing highly sensitive issues such as rape (particularly in the format of a live phone-in discussion programme), there is a clear potential for remarks which are broadcast to cause offence. The Code places no prohibition on the broadcasting of offensive material – to do so would be an inappropriate restriction on a broadcaster's and the audience's freedom of expression. It is crucial that broadcasters are free to make programmes and allow discussions on air about sensitive issues like rape, and be able to include in these broadcasts views or remarks which may cause offence or may not be widely held. Broadcasters however must be mindful of how such views or comments are presented to ensure any offence is justified by the particular context.

Rule 2.3 of the Code states that the broadcast of potentially offensive material must be justified by the context. "Context" includes matters like the editorial content of the programme, the time of broadcast, and the degree of harm or offence likely to be caused by the material Ofcom is investigating.

In coming to a Decision in this case, we therefore assessed first whether the material in this programme was potentially offensive; and if so, whether the offence was justified by the context.

Ofcom considered that the comments made by the programme's presenter (and set out in the Introduction) were likely to have been reasonably understood by listeners as endorsing a viewpoint that in some circumstances, victims of rape were (in Nick Conrad's words) *"partially responsible"* for the crime committed against them. We considered that such views clearly had the potential to cause offence.

We went on to consider if the potential offence caused by these remarks was justified by the context.

We noted that immediately before making the comments quoted above Nick Conrad said:

"Can I make a point, and this is a point I feel quite strongly".

In Ofcom's view, the audience would have understood that the presenter was therefore going on to air his own personal beliefs. As the programme's presenter, Mr Conrad represented the authoritative voice of the programme. We considered that listeners were likely to have placed greater weight on the views expressed by him compared to those made by contributors (particularly those listeners joining the debate by telephone). Therefore, in Ofcom's view, the fact that the potentially

offensive remarks were made by the presenter increased further their capacity to generate offence.

Further, Ofcom considered that Mr Conrad's choice of language did not adequately reflect the sensitive nature of the overall issue or help contextualise his potentially offensive comments. For example:

> *"…And it's the old adage about if you yank a dog's tail don't be surprised when it bites you. Or you can't keep snakes in the garden and think they'll only bite your neighbours"*.

> *"But what I'm trying to say is that women also have to understand that when a man's given certain signals he'll wish to act upon them, and if you don't wish to give out the wrong signals it's best probably to keep your knickers on and not get into bed with him"*.

We considered that the audience may well have had an expectation that offensive viewpoints would be aired in the context of live phone-in discussion programme dealing with a sensitive issue like rape. However, in applying generally accepted standards and ensuring that offence is justified by the context, broadcasters need for example to ensure that offensive views are challenged as appropriate. In this case, we noted that when making his comments, Nick Conrad spoke uninterrupted for two minutes. We also noted that a phone-in contributor immediately endorsed the presenter's comments by saying *"I couldn't agree with you more"*.

Ofcom also noted the other contributions during the programme from listeners by telephone. The listeners spoke about a variety of subjects surrounding the issue of Ched Evans's potential return to football and expressed a range of views. However, no callers directly challenged the view that in certain circumstances, victims of rape could be "*partially responsible*" for the crime committed against them.

We noted a number of statements made by the presenter elsewhere during the programme in which he described the seriousness with which he considered crimes of rape. For example:

> *"The thought of raping somebody is absolutely abhorrent and utterly, utterly disgusting, and I feel very passionately about that crime that is just one of the most disgusting crimes that man can commit"*.

> *"I find rape the most heinous crime, I think it's the most despicable crime, I think it's disgusting and I've spoken to many people who have been the victims of rapes and the fallout, the devastation is phenomenal".*

We considered that Mr Conrad's repeated assertions that he viewed rape as a serious and grave crime did, to some extent, help to mitigate the offence caused by his other comments described above. However, given the potential of his other comments to cause a considerable level of offence, we did not consider such qualifications provided sufficient justification for such offence.

Finally, and importantly, we also took account of the significant contribution in the final third of the programme from Sarah Green, representing the End Violence Against Women Coalition. Ms Green spoke to Mr Conrad and to callers for about 15 minutes in total, starting about 40 minutes into the hour long programme. Ms Green not only discussed at length many of the issues surrounding Ched Evans's possible return to professional football, she also set out arguments countering the view that victims of rape could be in any way blamed for the crimes committed against them.

We also noted that Mr Conrad said that he *"personally invited her"* onto the programme as she had previously appeared on Mr Conrad's show but he considered she had not had enough time to air her views.

Ms Green dealt with the broader issues being discussed. For example, she said there is "*an unwillingness to believe that women who allege that they have been raped have been so, compared to other crimes*" and described the view that "*women who go out drinking* […] *are therefore asking for it*" as a "*really, really, problematic attitude*". At no point did Ms Green actively challenge the specific comments (noted above) made about 10 minutes earlier by Nick Conrad. However we did consider that she broadly addressed and rebutted views akin to those expressed by Mr Conrad. For example, Ms Green said:

> *"I'd say – that's what you started talking about with the last caller, wasn't it, about whether rape is a, whether there's a grey area around rape? Now obviously, working with womens' organisations who support victims of rape who live with it for the rest of their lives, I'm going to say no, it's not that grey actually, at all. And I think this is a really good area to unpick because, actually, attitudes to rape are at the heart of this case"*.

We considered that such remarks, and Ms Green's overall contribution to the programme, did help mitigate the level of offence caused by the presenter's original comments. Nonetheless, we did not consider her contribution overall provided sufficient justification for the offence created by Mr Conrad's earlier remarks.

For all these reasons we therefore considered, on balance, that the offence was not justified by the context in this case.

However, in reaching a Decision in this case, we did have regard to the fact that Mr Conrad apologised at the start of a subsequent programme and an apology was posted on the BBC website. While this apology was not broadcast until 20 November (three days after the original broadcast), we noted the BBC's comments that this represented "the first opportunity for Mr Conrad to broadcast an apology" because no complaints were received about Mr Conrad's comments until 19 November. While in Ofcom's opinion it would have been preferable for him to have broadcast this apology sooner, we considered that the BBC had acted swiftly and appropriately once it became aware of the complaints raised as a result of Mr Conrad's comments. Further, we also noted that BBC management made clear to Mr Conrad that his comments were "inappropriate".

In this case, Ofcom had to balance carefully the right to freedom of expression against our statutory duty to ensure generally accepted standards were applied by the broadcaster in this programme. As pointed out above, Ofcom believes it is essential that broadcasters feel free to make programmes and allow on air discussions about sensitive issues like rape which may cause offence. Mr Conrad's comments, which the BBC accepted were "ill-judged" and "inappropriate", clearly had the potential to cause offence. It was important however in Ofcom's view to take account of the fact they formed a small part of a lengthy and wide-ranging discussion, and that once complaints were received by the broadcaster, Nick Conrad issued a broadcast apology, and the BBC took measures to mitigate the offence and ensure that Mr Conrad would take care to avoid causing offence in a similar way in future.

In light of all these factors, we considered this matter resolved.

Resolved

Advertising Scheduling cases

In Breach

Advertising minutage

Brit Asia TV, 29 January to 15 March 2015, various times

Introduction

Brit Asia TV is an entertainment channel broadcast on digital satellite. The licence for Brit Asia TV is held by Britasia TV Limited ("BritAsia" or "the Licensee").

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

> "time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes".

During its routine monitoring of COSTA compliance, Ofcom identified 59 instances between 29 January and 15 March 2015 where the amount of advertising in a single clock hour exceeded the permitted allowance by between five and 141 seconds.

Ofcom considered this matter raised issues warranting investigation under Rule 4 of COSTA and therefore sought comments from the Licensee with regard to this rule.

Response

BritAsia said that it had recently signed up to an audience monitoring system, and in order to be able to report BritAsia TV's playout, had implemented changes to its playout systems, including a new scheduling system. The Licensee said these changes took place towards the end of January 2015 and that the overruns occurred within the "teething period".

BritAsia said it took these overruns very seriously and that improvements to its systems had been ongoing since January. The Licensee stated that since receiving communication from Ofcom about the overruns (on 6 March), it had "implemented a major change to [its] processes" in the week commencing 16 March to prevent recurrence, and was "fully confident these instances cannot occur again".

Decision

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

Articles 20 and 23 of the Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees' compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast by BritAsia TV was in breach of Rule 4 of COSTA on 30 occasions.

Ofcom will continue to monitor the Licensee's compliance with COSTA. Should similar compliance issues arise, Ofcom may consider further regulatory action.

Breaches of Rule 4 of COSTA

In Breach

Advertising minutage

BT Sport 2, 11 January 2015, 16:00

Introduction

BT Sport 2 is owned and operated by British Telecommunications Plc ("BT" or "the Licensee").

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

> "time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes".

BT contacted Ofcom on 12 January 2015 to notify us that on 11 January 2015, BT Sport 2 had exceeded the maximum permitted allowance for advertising in the 16:00 clock hour by 20 seconds because of a human error at the channel's external transmission and playout facility, provided by Red Bee Media ("Red Bee" or "the playout provider").

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

Response from BT

The Licensee said it "sincerely apologise[d]" for this incident as "this breach was due to human error" because "the Playout Director [at Red Bee] failed to react to the changes in the schedule".

BT explained that an advertising break which should have aired in its entirety in the 15:00 clock hour was broadcast later than scheduled and partially crossed into the 16:00 clock hour. In addition, the Licensee said an advert break which was scheduled for the 17:00 clock hour was broadcast within the 16:00 clock hour. BT said "the combination of these two shifting breaks and the lack of intervention to the live schedule resulted in a breach of Rule 4".

BT stated that following recent breaches, it has worked with Red Bee to develop a tool to ensure Playout Directors "have clear visibility of the amount of advertising airing in each clock hour". On this occasion the Playout Director "failed to follow agreed procedure due to a momentary lapse in concentration and took the offending break without checking the available tools".

The Licensee acknowledged "the recent issues [with its compliance with COSTA[1]] …and the fact that the Playout team have been reminded on numerous occasions about the importance of reacting to changes to the advertising schedule".

---

[1] BT breached Rule 4 of COSTA on two occasions in August 2014. See http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb273/Issue273.pdf, p61.

The Licensee said it is "confident that future breaches will not occur" as it is continuing to develop compliance software "to eradicate human error". It added that its third party playout provider Red Bee is developing software "that will transmit non-commercial material *if* the minutage limit is to be exceeded". In addition, the Licensee said the "BT Sport Compliance team has held training sessions with the Playout Directors at Red Bee to remind them of the agreed processes in place and, if there is any doubt that the maximum minutage could be exceeded, they should interrupt the output and revert to the BT Sport 'hold' logo".

Response from Red Bee

Ofcom's Procedures for investigating breaches of content standards for television and radio[2] permit Ofcom to seek representations from third parties "who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint(s) and who may have interests independent of the relevant broadcaster of that programme (e.g. presenters, producers and/or independent programme-makers)". In the circumstances of this case, Ofcom considered that Red Bee, as the provider of playout and transmission services for BT Sport 2, met these criteria and therefore gave it the opportunity to respond to BT's comments.

Red Bee said it conducted a formal investigation and found that the compliance software to "track commercial minutage was correctly deployed and functioning" but that "unfortunately, this error was due to a human failure to check and respond to the alerts within the display, in time to prevent the breach".

The playout provider also confirmed it is developing software which "would automatically prevent more than 12 minutes per hour to be played out in any clock hour".

Red Bee apologised for the breach and said it continues to "pursue all reasonable steps to mitigate the risk of any repeat".

Decision

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

Articles 20 and 23 of the Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring its licensees' compliance with COSTA.

In this case, the amount of advertising broadcast on BT Sport 2 exceeded the permitted allowance.

Ofcom noted BT's explanation that this incident occurred due to human error by its third party playout provider. We also noted the additional efforts outlined by the Licensee and the playout provider to improve its COSTA compliance in the future.

[2] See http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/

However, it is the sole responsibility of the Licensee to put robust procedures in place to ensure compliance with COSTA rules.

Ofcom is concerned that this is the second occasion over recent months where it has reported on COSTA compliance failures at BT[3], and where human error was cited as the reason for the breaches. Given the compliance measures BT has said will be introduced, Ofcom does not expect future breaches. If future breaches due occur, Ofcom may consider further regulatory action.

Breach of Rule 4 of COSTA

[3] See footnote 1.

Fairness and Privacy Adjudications

Upheld

Complaint by Venus TV

Welcome TV, MATV, 18 April 2014

Summary

Ofcom has upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Venus TV.

The programme, broadcast live, was presented by Pastor Nzubila and focussed on religious matters. Mr Songo Didier Aypone ("Pastor Salomon") was a guest on the programme and he encouraged viewers to call in and donate money to help fund the programme.

Ofcom found that the comments made in the programme relating to Venus TV were likely to materially and adversely affect viewers' perception of Venus TV in a way that was unfair. We considered that the comments were serious in nature and suggested that Venus TV had been involved in dishonest conduct in relation the money Pastor Salomon claimed he was owed by Venus TV. Consequently, Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts in relation to Venus TV were presented in the programme in a way that was fair to it.

Introduction and programme summary

Midlands Asian Television ("MATV") is a satellite television service that broadcasts principally Indian programming in Hindi, English, Gujarati and Punjabi. MATV has also broadcast some programming in Lingala[1], which was the case with this edition of the programme *Welcome TV*. An independent English translation of the programme was obtained by Ofcom and distributed to the complainant and broadcaster. Neither party objected to Ofcom using this translation for the purpose of investigating this complaint (However, see the "Summary of the complaint and the broadcaster's response" section below").

On 18 April 2014, MATV broadcast an edition of *Welcome TV*. The programme, broadcast live, was presented by Pastor Nzubila and focussed on religious matters. Pastor Salomon was a guest on the programme and he encouraged viewers to call in and donate money to help fund the programme. He said:

> *"So, today we are not talking much, but we are fundraising to support this space. We want you to honour your God by supporting this space with either £10 or £20 or whatever means you have"*.

Among other topics, Pastor Salomon spoke about another broadcaster, Venus TV. He said:

[1] Lingala is a Bantu language spoken throughout the north-western part of the Democratic Republic of the Congo and a large part of the Republic of the Congo.

"Yesterday, I went to Venus TV and the people there – the white owner and Brother Henry – ran away. We believed in Brother Henry, we trusted him with our money and until now I still haven't received my money back from him. Yesterday, the show did not happen because they knew I was about. These are all false brothers who have come into the Lord's fields".

Venus TV was not discussed again in the remainder of the programme.

Summary of the complaint and the broadcaster's response

Venus TV complained that it was treated unjustly or unfairly in the programme as broadcast because a guest on the programme, Pastor Salomon, alleged that the owner of Venus TV and one of its employees had taken money from him. It said that the allegation was "false" and "baseless" and had "no connection with Venus TV". Venus TV said that the aim of the comments was to: "…malign the reputation of our channel" and that they had: "…caused Venus TV a substantial loss to his [sic] reputation and business".

In response to the complaint, MATV stated that Pastor Salomon had previously presented programmes on Venus TV and that he had entered into a dispute with the owner of Venus TV regarding payments for air time. The broadcaster said that Pastor Salomon had given money to Mr Tahir Ali, the Chairman of Venus TV, but that he had not been permitted to present the programme as agreed. MATV said that the reason Pastor Salomon had visited Venus TV was to claim his money back. The broadcaster provided Ofcom with copies of receipts which it said was evidence that the money in question had been paid by Pastor Salomon to Venus TV.

MATV also stated it did not know who Pastor Salomon was referring to when he spoke of "*the white owner*" of Venus TV as it said that Mr Ali, was not a "white man". The broadcaster also added that Mr Ali was not the kind of person who would "run away" for £1,460 and that Venus TV was overreacting in making the complaint.

MATV did not raise any objections to the independent translation obtained by Ofcom when Ofcom provided it to the parties for their comments before a decision whether to investigate the complaint was made. However, in its statement in response, MATV argued that the word translated in the independent translation as "ran away" was not an accurate translation of the word used by Pastor Salomon. It said that the word meant, in reality, that when Pastor Salomon went to Venus TV's office to ask for his money, "they were not there".

Ofcom sought clarification on this point from the independent translator from whom the translation had been obtained. The translator confirmed that the translation provided to Ofcom was correct and that Pastor Salomon had stated that "…*the white owner and Brother Henry – ran away*". Ofcom was satisfied that independent translation was an accurate and fair reflection of what was said in the programme by Pastor Salomon and that it could be relied on for the purpose of investigating the complaint.

Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of it, and both parties' written submissions and supporting documentation. Both parties were given the opportunity to make representations on Ofcom's Preliminary Views. Neither party chose to do so.

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 considered the complaint that Venus TV was treated unjustly or unfairly in the programme as broadcast because a guest on the programme, Pastor Salomon, alleged that the owner of Venus TV and one of its employees had taken money from him.

In considering this complaint, we had particular regard to Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. It is important to clarify from the outset that Ofcom is unable to make findings of fact in relation to the allegations made about Venus TV. Rather, our role is to consider whether by broadcasting Pastor Salomon's comments the broadcaster treated Venus TV unfairly and, in particular, whether it took reasonable care not to present, disregard or omit material facts in a way that was unfair to Venus TV.

Having carefully viewed the programme and examined the translated transcript of it, we noted that Pastor Salomon alleged that the owner of Venus TV and one of its employees had taken money from him and that when he had gone to Venus TV's office, the owner and the employee had *"ran away".* Pastor Salomon went on to say that; "*We believed in Brother Henry, we trusted him with our money and until now I still haven't received my money back from him*". Ofcom considered that the language used by Pastor Salomon was accusatory in nature and would have left viewers in no doubt that Pastor Salomon considered that the owner of Venus TV and one of its employees had taken money from him and had not given it back to him. We considered that the use of the words "*ran away*" would have given viewers the clear impression that Venus TV had behaved dishonestly towards Pastor Salomon and had absconded with the money he claimed was owed to him. We noted too that Pastor Salomon presented this allegation strongly and as an unequivocal statement of fact. We considered that this allegation of wrongdoing was serious in nature in that it suggested dishonesty on the part of Venus TV and, as such, had the clear potential to materially and adversely affect viewers' opinions of Venus TV.

We then considered whether the inclusion of Pastor Salomon's comments in the programme as broadcast resulted in unfairness to the complainant. Ofcom acknowledged the broadcasters' right to freedom of expression and that they must be able to broadcast programmes of matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this

freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

We recognised that the programme was broadcast live and that, with such broadcasts, broadcasters need to take particular care. Given the nature of this type of programming, contributors can sometimes make unexpected comments which have the potential to cause unfairness to an individual or organisation. It is Ofcom's view therefore, that, for live broadcast, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount a significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals or organisations in a way that is unfair, without sufficient basis to do so. This may include briefing any studio guests about fairness requirements in advance of the programme, as well as ensuring that any allegations made during the programme are properly tested or challenged. This could be, for example, by pointing out any contradictory argument or evidence or by representing the viewpoint of the person or organisation that is the subject of the allegation.

Given this, Ofcom then assessed what steps, if any, MATV took to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Venus TV. We noted that MATV provided no evidence that it had taken any appropriate steps before the live broadcast in this regard, for example by advising Pastor Salomon to take care about any allegations he might make. More significantly, Ofcom noted that during the programme the presenter did not attempt to place Pastor Salomon's comments in any form of context by explaining, for example, that the information was unverified, or by challenging or querying its background or basis, or that his comments only reflected Pastor Salomon's personal views. Further, Ofcom was not provided with any evidence from the broadcaster to show that the programme makers had made any attempt to contact Venus TV before, during or after the broadcast to verify or seek his comments on whether or not there was any truth in the claims made.

We noted that MATV provided Ofcom with copies of receipts for what appeared to be a deposit of £1,460 signed by Mr Ali, the owner of Venus TV, and "Didier Songo" (Pastor Salomon) as evidence it said that Pastor Salomon had paid money to Venus TV and that he was therefore not making a false accusation about Venus TV. However, as noted above, Ofcom is not required for the purpose of reaching a decision, to express a view on whether the allegations made by Pastor Salomon were factually correct or not. In any case, we considered that evidence of Mr Salomon having paid Venus TV money did not demonstrate that Venus TV had been involved in dishonest conduct in relation to the money Pastor Salomon claimed was owed to him, which was the clear interpretation of Pastor Salomon's comments in the programme.

Given the above factors and the fact that nowhere else in the programme was anything said to balance or place into appropriate context the comments made by Pastor Salomon about Venus TV, we considered that Pastor Salomon's comments amounted to a significant allegation about Venus TV, which had the potential to materially and adversely affect viewers' opinions of Venus TV and which were presented in the programme in a way that was unfair to it.

Taking all of the above into account, Ofcom considered that, in the circumstances of this case, the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Venus TV.

Therefore, Ofcom has upheld Venus TV's complaint of unjust or unfair treatment in the programme as broadcast.

Upheld

Complaint by Mr Songo Didier Aypone

Welcome TV, MATV, 11 September 2014

Summary

Ofcom has upheld Mr Songo Didier Aypone's complaint of unjust or unfair treatment in the programme as broadcast.

The programme, broadcast live and presented by Pastor Bienvenu Messalin, founder of the UK House of Prayer Ministries, invited viewers to call in with their views and questions on religious matters. The focus of this edition of the programme was on the biblical story of David and Goliath.

Ofcom found that the comments made in the programme relating to the complainant were likely to materially and adversely affect viewers' perception of him in a way that was unfair. We considered that the comments alleged that Mr Didier Aypone had been involved in serious wrongdoing, such as blackmail, intimidation, and being a *"killer"*. Consequently, Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts in relation to the complainant were presented in the programme in a way that was fair to him.

Introduction and programme summary

Midlands Asian Television ("MATV") is a satellite television service that broadcasts principally Indian programming in Hindi, English, Gujarati and Punjabi. MATV has also broadcast some programming in Lingala[1], which was the case with this edition of the programme *Welcome TV*. An independent English translation of the programme was obtained by Ofcom and distributed to the complainant and broadcaster. Neither party objected to Ofcom using this translation for the purpose of investigating this complaint.

On 11 September 2014, MATV broadcast an edition of *Welcome TV.* The programme, broadcast live and presented by Pastor Messalin, the founder of the UK House of Prayer Ministries, invited viewers to call in with their views and questions on religious matters.

Pastor Messalin explained that the focus of the programme would be to: "*Wake up the David who sleeps in you*", referring to the biblical story of David and Goliath and said:

> *"There are Goliaths in this community who try to destroy the community because they would like to destroy the work that God has done…When David heard that this man defied God of Israel, he wants to destroy what belonged to Israel, he came to destroy, the Bible says David said this: Who is this uncircumcised? Hallelujah. David said this uncircumcised, where does he come from? Today the uncircumcised people I am talking about are Eugene Ekanga and Salomon* [the

[1] Lingala is a Bantu language spoken throughout the north-western part of the Democratic Republic of the Congo and a large part of the Republic of the Congo.

complainant][2]*, the two uncircumcised who destroy the Congolese community. Today I will start by placing them in Satan's hands.*

Brothers and sisters, I came here to preach the Gospel, but if I go for this it's because these people are doing things that are really serious. If I says it's serious, it's serious, listen to me very carefully. The two uncircumcised who are wreaking havoc in the Congolese community I repeat. As I came here today I have been sent. Pastors have sent me, journalists have sent me and hosts who present programmes".

Pastor Messalin spoke about Eugene Ekanga and then said of the complainant:

"There is a second person, Salomon. He is not one of us. He is not a pastor, he is a sorcerer, but he is the first person to accuse people of witchcraft.

Salomon blackmailed people. If he blackmails you and you're afraid he asks for money. He blackmailed Pastor [Max] *regarding Mukete* [a name]*. I asked why? He said speak and give me £5,000. I told the pastor: why am I doing this? I want to get the arrested in the end because God has placed something so that I will definitely stop these people so that they will stop.*

And they will stop forever. I went and told the pastor that I know. To maintain peace the man accepted to give him £5,000 so that he would stop insulting him. He saw that this was a lie which is why he gave £5,000. Pastor Max, that made him feel [cold]*. There in the office, there is a camera, and the Pastor said I am giving you £5,000, so that there will be peace. Pastor Max did this and I felt sad.*

I caught him. I told this brother that I know Salomon, that Pastor Max had money. If he didn't give him the money he would continue to insult him. Patriarch's wife calls him, God is my witness. He said if they want they can leave it, I will no longer insult them. Let them pay me for three months.

I am a Pastor who follows things up right to the end. The patriarch's wife called me to tell me papa, the things my husband did I haven't seen. I know what is going on, but he said to me if you want you can leave it and just give me the money for three months. I am not lying God is my witness. I spoke with her. If you give him the money for three months, he will stop insulting you. The woman said I have no money.

This is a man who holds the Bible and claims that he is a pastor. Wake up the David who sleeps in you. He says he is a pastor and see the things that he does. I told him rather, everything you do it is what people call witchcraft. All these things that you do. That is why I kicked him out. There were so many things, it's not worth it. I was seeing all these things, people just speak without thinking.

I hear everything. People said why don't you say anything on TV. I heard it all, I went to Manchester where I stayed, I went there, I found the studio where he was. I found the studio's landlord, I told him that the man who was on TV was a mad man recognised as such by Manchester Police, because I had his case. They said catching him was delicate due to mental problems.

[2] Mr Didier Aypone confirmed to Ofcom that he was known by the names "Salomon" and "Messager".

I went and informed the head of the channel. How can someone who has mental issues present a programme on TV? Look at what I have received by text today? Did you people read this, is this normal? They kicked him out with the people who were there; there is one sister there who witnessed it. They called them, that sister and his wife, they called them and made us get out.

Imagine I left my home in London, a Pastor to go to Birmingham, to his home in Manchester, so that he will not cause harm. The family was involved because people speak [to] *the family. I have something in me that drives me to stop these people. I did everything, Salomon will not appear on TV. I stopped him, he will no longer appear on TV. It's over. So what he does now is he gets involved in other aspects. So today, Salomon sends text messages to people, using dead people's identity.*

He does this in churches then people say the pastor is a sorcerer when it is actually him. He kills people by traumatising them. He sends text messages that affect people's hearts. I received one of his text messages and I showed it to a pastor; the pastor was reading and he jumped and threw a fit. So now where are these people who threw fits? [Inaudible]*. You don't see these things I am telling you what happens.*

Open your ears, wake up, you are sleeping. You need to hear how things are. David is sleeping in you. You need to know how things are. David didn't want to listen. David said this uncircumcised [man] *is going to harm us. This uncircumcised man wants to kill our community. This uncircumcised man has come to destroy Israel. It is the same uncircumcised Eugene and Salomon who have come to destroy our community.*

They talk about deceitful things. They say things that make people fear them. What they say makes people fear them. My beloved ones, I am telling you, these are serious matters. Hallelujah. These are serious matters – people die because of these two people".

Pastor Messalin spoke again about Eugene Ekanga and called for the Congolese community to *"Wake up the David who sleeps in you"* and pray to *"present Salomon and Ekanga to Satan*". Pastor Messalin then said: "*Eugene and Salomon defy the community and the Church and have been doing this for a while".* Pastor Messalin went on to say of the complainant:

"He calls pastors sorcerers. He is a sorcerer. He kills people in churches because of his text messages. So people stay. So my brothers and sisters, today I am telling you, raise your hands, we will send them over to Satan. Today Eugene and Salomon we will place them in the hands of Satan. In the Name of Jesus, Eugene and Salomon, we leave you in the hands of Satan, as well as all the mess you create in people's lives, the things you do in the dark, the things that people don't see".

Further into the programme, Pastor Messalin continued to explain the biblical story of David and Goliath and spoke with a couple of viewers who had called into the programme. One caller, referred to as *"Brother Edouard"*, said:

"*I heard what you said about Ekanga and Salomon. But Ekanga and Salomon are non-believers*".

Pastor Messalin disagreed with this statement and said:

> *"You say they are speaking the truth – this person, Messager* [the complainant]*, he said that I, when Pastor Ngombo will go to heaven, I will go with him. Is that the truth? Tell me, is that the truth? The Messager that you were talking about, he said I will go to heaven with Pastor Ngombo, is that the truth?"*

Pastor Messalin went on to encourage people not to support Eugene Ekanga and Salomon and stated that they had "*destroyed the community"*.

Later in the programme, Pastor Messalin continued:

> *"So I am giving a final message. To the uncircumcised Eugene and Salomon, one day if you feel you need to, with the people with whom you did bad things, and that some people would give you money for your work. You need to apologise. One day I would like to call my little brother Eugene. I called you on the phone and they told me no dad went to work. And you I called you, my little brother Salomon, Salomon went to work.*
>
> *If these things – I would be pleased. I will be the person who defends you, so that you will have to ask for forgiveness. I have handed you over to Satan now. If you don't do that it will be painful. Because I know, what you have done is serious, people died because of you. So this is the end, thanks to all of you. I am Pastor Bienvenu Messalin. I am the pastor of a church in Hounslow. God does great things, so I am very proud to be a pastor, if I weren't a pastor I don't know what I would be".*

The programme concluded at this point.

Summary of the complaint and the broadcaster's response

Mr Didier Aypone complained that he was treated unjustly or unfairly in the programme as broadcast because insulting accusations were made against him which he said had damaged his reputation. For instance, he said that the programme alleged that he: was a witch; was a thief who blackmailed people; was regarded by the Manchester police as a "mad man"; had intimidated people by sending them insulting text messages; was a danger to the community; and, a "killer".

In response to the complaint, MATV said that the complainant had not shown that the comments made in the programme were about him. MATV explained that Pastor Messalin had focussed on the biblical story of David and Goliath and that when he referred to "*Eugene Ekanga and Salomon, the two uncircumcised who destroy the Congolese community*", Pastor Messalin had not been referring to Mr Didier Aypone but to "Eugene Ekanga…a Conolese man living in London, and Salomon…another Congolese living in Rochdale in Manchester". It said that Mr Didier Aypone was not mentioned.

MATV said that when "*Salomon*" was referred to again in the programme, Pastor Messalin had made it clear that the man he was speaking about was not a pastor, whereas, it said, Mr Didier Aypone "claims that he is a pastor".

The broadcaster said that when Pastor Messalin had spoken about the "bad things" that Salomon had allegedly done to the community and that the community needed to react, no mention was made to Mr Didier Aypone.

MATV said that Mr Didier Aypone was not the person referred to in the programme and added that if Mr Didier Aypone had considered that he had been "abused" by Pastor Messalin's comments, then he would have made a complaint to the broadcaster in order to try and resolve the issue, but he had not done this.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and translated transcript, both parties' written submissions, and supporting documentation. Both parties were given the opportunity to make representations on Ofcom's Preliminary View. Neither party chose to do so.

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

Ofcom considered Mr Didier Aypone's complaint that he was treated unjustly or unfairly in the programme as broadcast because insulting accusations were made against him which he said had damaged his reputation. For instance, he said that the programme alleged that he: was a witch; was a thief who blackmailed people; was regarded by the Manchester police as a "mad man"; had intimidated people by sending them insulting text messages; was a danger to the community; and, a "killer".

In considering this complaint, we had particular regard to Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. It is important to clarify from the outset that Ofcom is unable to make findings of fact in relation to the allegations made about Mr Didier Aypone. Rather, our role is to consider whether by broadcasting these comments the broadcaster treated Mr Didier Aypone unfairly and, in particular, whether it took reasonable care not to present, disregard or omit material facts in a way that was unfair to him.

Before considering the substance of Mr Didier Aypone's complaint, it was necessary for Ofcom to assess whether or not he was identifiable from the references *"Salomon"* and *"Messager"* made by Pastor Messalin in the programme. We noted that the broadcaster disputed that Pastor Messalin was referring to the complainant in the programme, but had been talking about "another Congolese [man] living in Rochdale in Manchester", and that Mr Didier Aypone was not named in the programme. However, we also recognised that Mr Didier Aypone confirmed to Ofcom that he was also known as "Salomon" and "Messager".

While only Pastor Messalin can know for certain who he was referring to when he spoke about "*Salomon*" and *"Messager"*, Ofcom considered it unlikely that an individual would associate themselves with the comments set out in the "Summary of the complaint and the broadcaster's response" section above, for any other reason than a genuine belief that they were the subject of the comments made. Therefore, Ofcom considered that given the information provided to it by the complainant, and in the absence of any specific evidence to the contrary, it would not be an unreasonable conclusion to reach that Mr Didier Aypone was, at least, potentially identifiable as the individual referred to as *"Salomon"* and *"Messager"* by Pastor Messalin. It was in this context that we went on to consider whether or not the presentation of Pastor Messalin's comments could have resulted in any unfairness to Mr Didier Aypone.

Having carefully viewed the programme and examined the translated transcript of it, we noted that in relation to *"Salomon"* and *"Messager"* [the complainant] Pastor Messalin made a number of allegations about this particular individual. While the full extent of these allegations are set out in the "Introduction and programme summary" section above, we noted in particular that Pastor Messalin stated that *"Salomon"* was a "*sorcerer*" who had "*blackmailed*" people into giving him money. He also said that *"Salomon"* was a *"mad man and was recognised as such by Manchester Police"* and that the police had said that *"catching him* [Salomon] *was delicate due to mental problems".* Pastor Messalin also claimed that: *"Salomon sends text messages to people, using dead people's identity"* and that he *"kills people by traumatising them. He sends text messages that affect people's hearts".* Ofcom further noted that Pastor Messalin alleged that: *"Eugene and Salomon who have come to destroy our community"; "…people die because of these two people*"; and, "*He* [Salomon] *is a sorcerer. He kills people in churches because of his text messages".*

Ofcom considered that the language used by Pastor Messalin was accusatory in nature and would have left viewers in no doubt that he claimed that Mr Didier Aypone had been involved in serious wrongdoing, such as blackmail, intimidation, and being a *"*killer*"*. We noted too that Pastor Messalin presented these allegations strongly and as unequivocal statements of fact. Ofcom considered that the allegations made were very serious in nature and had the clear potential to materially and adversely affect viewers' opinions of Mr Didier Aypone.

We then considered whether the inclusion of Pastor Messalin's comments in the programme as broadcast resulted in unfairness to the complainant. Ofcom acknowledged the broadcasters' right to freedom of expression and that they must be able to broadcast programmes of matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

We recognised that the programme was broadcast live and that, with such broadcasts, broadcasters need to take particular care. Given the nature of this type of programming, contributors can sometimes make unexpected comments which have the potential to cause unfairness to an individual or organisation. It is Ofcom's view therefore, that, for live broadcast, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount a significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals or organisations in a way that is

unfair, without sufficient basis to do so. This may include briefing any studio guests about fairness requirements in advance of the programme, as well as ensuring that any allegations made during the programme are properly tested or challenged. This could be, for example, by pointing out any contradictory argument or evidence or by representing the viewpoint of the person or organisation that is the subject of the allegation.

Given this, Ofcom then assessed what steps, if any, the broadcaster took to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Didier Aypone. MATV provided no evidence that it had taken any reasonable steps before the live broadcast in this regard, for example, by advising Pastor Messalin to take care about any allegations he might make. More significantly, during the programme itself, Ofcom noted that Pastor Messalin did not attempt to place his comments in any form of context by explaining, for instance, that the information was unverified or his comments only reflected his personal views. Further, Ofcom was not provided with any evidence from the broadcaster to show that the programme makers had made any attempt to contact Mr Didier Aypone before, during or after the broadcast to verify or to seek his comments on whether or not there was any truth in the claims made.

Given the above factors, and the fact that nowhere else in the programme was anything said to balance or place into appropriate context the comments made by Pastor Messalin about Mr Didier Aypone, we considered that Pastor Messalin's comments amounted to significant allegations about Mr Didier Aypone's conduct, which had the potential to materially and adversely affect viewers' opinions of Mr Didier Aypone and which were presented in the programme in a way that was unfair to him.

Taking all of the above into account, Ofcom considered that, in the circumstances of this case, the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Didier Aypone.

Therefore, Ofcom has upheld Mr Didier Aypone's complaint of unjust and unfair treatment in the programme as broadcast.

Upheld in Part

Complaint by Mr Gary Cooper

Ken Bates, *Radio Yorkshire, 11 September 2014*

Summary

Ofcom has upheld in part Mr Gary Cooper's complaint of unjust or unfair treatment in the programme as broadcast. However, Ofcom has not upheld Mr Cooper's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme or in the programme as broadcast.

The radio programme included an interview with Mr Ken Bates, former Chairman and President of Leeds United Association Football Club ("Leeds United"), in which he expressed his views on a variety of topics. Mr Bates discussed the management of Leeds United and made various comments about Mr Gary Cooper, the former Chairman of the Leeds United Supporters Trust ("LUS Trust")[1].

Ofcom found that:

- The broadcaster did not take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Cooper, in respect of the comments referred to at head a) ii) (i.e. that he had allegedly orchestrated a campaign of harassment against Mr Bates).

- Given the significant nature of some of the allegations made in the programme (i.e. at head a) ii)), the broadcaster was required to offer Mr Cooper an appropriate and timely opportunity to respond, to avoid unfairness to Mr Cooper (as set out at head b)).

- With regards to Mr Cooper's complaint that his privacy had been infringed, Ofcom considered that Mr Cooper did not have an expectation of privacy in the circumstances of this particular case and concluded that Mr Cooper's privacy was not unwarrantably infringed either in connection with the obtaining of material included in the programme or in the programme as broadcast.

Introduction and programme summary

Radio Yorkshire is a local digital radio service for Yorkshire, focusing particularly on West Yorkshire, which broadcasts local news and sport, sports commentary, local information and music content. It has been broadcasting since December 2013.

On 11 September 2014, Radio Yorkshire broadcast an interview with Mr Ken Bates, former Chairman and President of Leeds United, in which he expressed his views on a variety of topics. One topic discussed by Mr Bates was the current ownership of Leeds United and some of those involved in the change of ownership of the club. Mr Bates said the following:

---

[1] According to its own website, the LUS Trust is "an independent, democratic, not-for-profit cooperative organisation, committed to providing a voice for Leeds United fans all over the world".

"And, on one last subject, a chap called Alan Clough sent an email following my interview about 29 August [2014] *and he asked me whether I was being a bit hard on Gary Cooper for blaming him, saying he may have been duped by GFH[2].*

But he wasn't duped by the GFH publicity campaign, he actually worked with Salem Pater to engineer the campaign to make myself … [inaudible]

It was Cooper and his cohorts who organised "Send Ken a Pen"[3] campaign to sign the contracts, even though I'd never received it.

They were concerted – the abuse, practices and phone calls, which of course didn't work for very long, 'cause I simply changed the numbers.

And so, he's complicit in the mess Leeds [Leeds United] *finds itself in today. He had meetings with Salem Patel and David Haigh while the negotiations were taking place. That's why he can always say that he understands that a source close to GFH that…*[inaudible]

So, the mess Leeds is in today, Mr Cooper must take his fair share of the blame, or for that matter, unfair share. And he admitted to me on the phone when I first spoke to him, in his first letter, he'd been to one Leeds United game in three seasons, what was it, against Hereford at home. So, so much for being a solid, great Leeds United supporter – he wasn't.

So, you can't be too hard on Gary Cooper. Hopefully, the mess he made [inaudible] *we'll sort the mess out GFH left it in".*

The subject then changed to matters unrelated to Leeds United and Mr Cooper was not mentioned again in the programme.

Background to the complaint

Ofcom Adjudication 2013

On 8 April 2013, Ofcom published in its Broadcast Bulletin Number 227[4] an Adjudication that upheld a complaint of unjust or unfair treatment and unwarranted infringement of privacy by Mr Cooper about programmes broadcast by Yorkshire Radio in 2012[5]. The programmes included interviews with Mr Bates, the then Chairman of Leeds United, who discussed, amongst other topics, criticism and demonstrations held by the LUS Trust about the running of the club by its

[2] In December 2012, GFH Capital Limited ("GHFC"), a subsidiary of Gulf Finance House ("GFH"), bought the majority shareholding in Leeds United from Mr Bates. Mr Patel and Mr Haigh were senior employees of GFH at the time of the takeover.

[3] "Pen 4 Ken" was a Twitter campaign by some Leeds United fans to encourage fans to post a pen to Mr Bates, the then owner and chairman of the club, to prompt him to sign the club over to a consortium looking to buy his majority share.

[4] http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf.

[5] Yorkshire Radio was a local digital radio station that broadcast live coverage of Leeds United first-team games, music, and predominantly sport-related programming. The station ceased broadcasting on 30 July 2013.

management. Mr Bates also commented on the LUS Trust's then Chairman, Mr Cooper, and referred to the number of times in the past year that Mr Cooper had actually attended a "home" game. Mr Bates said that he had gained this information from the club's database.

Ofcom found that:

- Mr Bates' comments about Mr Cooper were likely to have materially or adversely affected listeners' views of Mr Cooper and the LUS Trust in a way that was unfair to them.

- The broadcaster should have provided Mr Cooper with an appropriate and timely opportunity to respond to comments made by Mr Bates in the programme.

- Mr Cooper's privacy was unwarrantably infringed by Mr Bates obtaining information about him from the club's database and that subsequently broadcasting it was a disproportionate interference with Mr Cooper's expectation of privacy and it was not warranted.

Summary of the complaint and the broadcaster's response

Unjust or unfair treatment

a) In summary, Mr Cooper complained that he was treated unjustly or unfairly in the programme as broadcast because Mr Bates made a number of allegations about him that were false and therefore portrayed him unfairly. In particular, he highlighted the claims listed in sub-heads i) to iv) below.

   On behalf of Radio Yorkshire, Manleys Solicitors Limited ("Manleys") responded to the complaint saying that Mr Cooper had not provided any evidence to demonstrate that any of the facts in question were false. It said that the comments made in the programme were just: "…one episode in a robust and often very public dialogue between two parties who have had, over the years, obviously conflicting views on how Leeds Utd Football Club should be run".

   Manleys said that to suggest Mr Cooper was being treated unfairly would be to suggest that the debate to date has been entirely one-way. This, it argued, was not the case. It set out its response as follows:

   i) Mr Bates falsely claimed that Mr Cooper had attended only one Leeds United match in three seasons thereby seeking to convey to listeners the false impression that he never went to Leeds United matches in person and was, therefore, unaware of the issues surrounding the football club in general.

      Manleys said that the comment made regarding Mr Cooper only attending one Leeds United match in three seasons was true. It said that Mr Bates had asked Mr Cooper about his attendance in a telephone call on 22 June 2011 and that Mr Cooper had said that he had only been to one home game in three seasons. Manleys said that it was the content of this phone call to which Mr Bates referred to in the programme. It said that since the information was true, there could be no unfairness to Mr Cooper.

ii) Mr Bates falsely accused Mr Cooper of being behind a group called "Pen 4 Ken", and that Mr Cooper and his *"cohorts"* had orchestrated a campaign of making harassing telephone calls directly to Mr Bates.

In response, Manleys argued that Mr Cooper appeared to hold a "grudge" against Mr Bates and that he had used his position as Chairman of LUS Trust to incite others to feel the same. Manley's provided Ofcom with copies of tweets by Mr Cooper: "actively promoting 'Pen 4 Ken'". It said that the campaign had been mentioned in LUS Trust's blog of 26 August 2012, which had explained that the purpose of the campaign was to "force Mr Bates to sell the club as soon as possible".

Manleys said that, according to Mr Bates, Mr Cooper had been instrumental in encouraging others to take part in the controversial campaign, which was on any reasonable view, "a concerted effort to harass Mr Bates and hound him out of the club".

Manleys provided material which it said suggested that one of the key proponents behind a twitter campaign directed against Mr Bates was the twitter account '@LeedsFundraiser', which it said: "…professes to raise money for Leeds Ladies Football Club, of which the Complainant [Mr Cooper] is Chairman". It said that this was why Mr Bates was of the opinion that those behind '@LeedsFundraiser' were in league with Mr Cooper and that they were behind the "fax and phone harassment campaign" also referred to in the programme.

Manleys provided further supporting documentation which it said showed Mr Cooper's "obvious and unrelenting personal grudge against Mr Bates". This included, for example, reports of protests and plans for an end of season party, in which, Manleys pointed out:

> "…fans were encouraged to congregate on the upper tier of the east stand which overlooks the Directors' box, with the clear intention that they should direct personal abuse at Mr Bates from close range throughout the game".

Manley's said that given such public, repeated and strongly worded attacks on Mr Bates, it was undoubtedly a matter of considerable public interest to the listeners of Radio Yorkshire to hear what Mr Bates might have to say in reply.

iii) Mr Bates falsely claimed that Mr Cooper conspired with Mr Patel and Mr Haigh of GFHC to influence the sale of Leeds United. Mr Cooper said that these accusations were farcical, since Mr Bates was the only one in charge of whether or not he sold the football club. Mr Cooper said that Mr Bates provided no evidence to support these allegations.

In addressing this particular point, Manleys referred back to its response to head a) ii) above. It said that this response (including, for example, details of the 'Pen 4 Ken' campaign and 'end of season party') demonstrated the pressure placed upon Mr Bates to sell the club and Mr Cooper's: "…firm intention to do what he could to oust the Contributor [Mr Bates]".

In addition, Manleys also provided Ofcom with email correspondence between Mr Cooper and the owner of the company AdMatch[6] and Mr Cooper and Mr David Haigh[7]. It argued that the email exchange dated 15 August 2012 between the owner of Admatch and Mr Cooper illustrated that Mr Cooper had more than just a passing interest in the then potential new owners of the club and the sale process. In fact, it said that it showed that Mr Cooper was receiving apparently confidential emails about the sale and passing them on to his 'contact', who appeared to be an intermediary related to the buyer.

Manleys said that this email exchange demonstrated that Mr Cooper and the owner of Admatch had discussed ways to attempt to influence the direction of the sale and to add to the pressure on Mr Bates to sell Leeds United. It said that there was a desire to interfere with the sale process, certainly to Mr Bates' detriment and, in all likelihood, with the ultimate consequence that this would be to the detriment of the Club too.

Manley's also highlighted comments made in an email to Mr Haigh dated 31 August 2012, in which Mr Cooper stated:

> "I am sorry to be one of the many who will be bombarding you right now, however, my contact is a genuine offer from the Leeds United Supporters Trust and our membership now close to 8000 to help or assist by providing support from our members for the takeover or investment as Mr Bates like [sic] to put it in Leeds United. Our members have voiced their desire for change through our vision statement…and we look forward at long last to a Leeds United whose owners share the same ambition as the fans".

In addition, Manleys pointed out several articles on the LUS Trust blog which it said demonstrated that Mr Cooper had held numerous meetings with representatives of GFH. It said that the "open relationship" between Mr Cooper, LUS Trust and GFH was further evidenced by tweets sent by Mr Haigh to Mr Cooper.

Manleys said that Mr Bates had told Radio Yorkshire that he believed that the abuse and demonstrations directed at him by Mr Cooper, the LUS Trust, and those acting in concert with them, persuaded other suitable investors to withdraw their interest in the club, thus leaving Mr Bates with no option but to sell to GFH which, in the end, he did on or about 21 December 2012. It said that Mr Cooper and LUS Trust held a significant influence over the direction of the sale and that this was clearly a matter of "considerable" public interest.

iv) Mr Bates blamed Mr Cooper for the "current situation" that Leeds United found itself in, without providing details or any reasoning as to how Mr Cooper was responsible for the football club's current state. Mr Bates' comments

[6] AdMatch, is a company which was in business with Leeds United. When the business relationship ended, a long-running legal dispute between Admatch and Leeds United ensued. AdMatch was forced to pay damages to Leeds United for misappropriating season ticket funds.

[7] At the time of the email correspondence (i.e. August 2012) Mr Haigh was deputy CEO of GFH.

unfairly misled listeners that Mr Cooper's personal conduct, including conversations with Mr Patel and Mr Haigh, was somehow to blame for the current financial state and performance of Leeds United. Mr Cooper said that Mr Bates' remarks were false, extremely unfair and bizarre, given that Mr Cooper held no role within the club and has had no financial dealings with the club or dealings with any current, past, or present investors in the club.

In response, Manleys reiterated that it was Mr Bates' opinion that he was forced to sell Leeds United to GFH following a "concerted campaign of pressure" on him to sell (and after other potential investors had withdrawn) following the adverse publicity against Mr Bates, which Mr Cooper and LUS Trust had assisted with and contributed to. It said that it was Mr Bates' view that the sale of Leeds United to GFH was "not necessarily the optimum outcome for the club". It said that Mr Bates believed that Leeds United's "current situation" had come about following this sale and that it was his view that LUS Trust and Mr Cooper were partly responsible for the situation by campaigning and active participation in attempting to influence the direction of the sale and causing other potential investors to withdraw their interest.

Manleys said that Mr Bates did not allege that Mr Cooper had "financial dealings" with Leeds United, nor did Mr Bates claim that Mr Cooper had a "role within the football club". However, it said that Mr Cooper had "dealings and exchanges with intermediaries of GFH", and that it was therefore "disingenuous" of Mr Cooper to say that he had no financial dealings with the club, nor any financial dealings with any current, past, or present investors in the club. Manleys said that it was Mr Bates' honestly held view and he had not misled listeners by expressing his view of events. It also said that both the LUS Trust and Mr Cooper had been extremely active in attempting to influence the direction and future of the club and had succeeded in that by driving away potential investors/buyers. It said that it was in this respect that Mr Cooper had some responsibility for the state of the club.

b) Mr Cooper complained that he was not given an opportunity to respond to the allegations made about him by Mr Bates. He said that had he been able to respond on air he would have easily disproved the allegations. Mr Cooper said that it was the very gist of unfairness to accuse a person without evidence and then fail to allow the accused individual to respond.

In response, Manley's said that Mr Bates had discussed a number of topics during the programme and that the broadcaster was not aware that he would be raising the precise issues that he did regarding Mr Cooper. It said that the relevant part of the interview that referred to Mr Cooper was brief (approximately one and a half minutes in duration) and that it was a relatively succinct reply to the more extensive and widespread accusations that Mr Bates had faced from Mr Cooper and those he liaised with over a considerable period. Manleys said that the accusations made against Mr Bates had been made in a public manner and that it was therefore of public interest to hear Mr Bates' reply to the accusations made.

Manleys said that it was Mr Bates' aim only to address the accusations raised against him and to respond to the email from Mr Clough referred to at the beginning of the relevant part of the programme.

Manleys also said that it disagreed with Mr Cooper's assertion that had he been given the opportunity to respond to the allegations made, he would have been

able to disprove them. Manleys said that a number of the comments made were honestly held opinions of Mr Bates. It also said that in relation to any assertions of fact, they had not been disproved by any evidence from Mr Cooper. It said that accordingly, "in the context of a vitriolic and very public campaign by Mr Cooper (and others) against Mr Bates", there was a clear public interest in Mr Bates' reply.

Unwarranted infringement of privacy

c) In summary, Mr Cooper complained that his privacy was unwarrantably infringed in the obtaining of material included in the programme as broadcast because Mr Bates had obtained information from the Leeds United database about Mr Cooper's season ticket and match attendance status. Mr Cooper said that this violated his privacy rights.

By way of background, Mr Cooper said that Mr Bates claimed, incorrectly, that this information was obtained in a telephone call with him. However, Mr Bates had, in fact, obtained the material from the Leeds United database. Mr Cooper referred to the previous Ofcom Adjudication on this point[8].

In response, Manleys said that this was an attempt by Mr Cooper to "re-run" an earlier complaint he had made to Ofcom about programmes broadcast in February 2012. It pointed out that the finding of this investigation[9], including the information contained in it relating to Mr Cooper's attendance at Leeds United's football games, was a matter of public record.

Manleys explained that Mr Bates had asked Mr Cooper about his attendance at Leeds United's football games during a telephone call of 22 June 2011. It said that Mr Cooper had readily admitted to having only attended one home game during the relevant period, identifying that it was against Hereford United.

It said that Mr Bates had not mentioned the Leeds United database as he had done in previous programmes or revisited the database for the purpose of obtaining information about Mr Cooper's attendance at football games. It said that given Ofcom's Adjudication regarding the 2012 programmes, Mr Bates had chosen to rely solely on what Mr Cooper had told him over the telephone. Manleys said that the information about Mr Cooper's attendance at Leeds United football games was not private information as it had been disclosed by Mr Cooper to Mr Bates and was, in any event, a matter of public record. It said that the information had been published on Ofcom's website as part of its Adjudication regarding the 2012 programmes. It said that the Adjudication, including information about Mr Cooper's attendance at football games, had subsequently been reported elsewhere, for example, in an article published on the website Out-Law.com[10].

[8] See footnote 3 above.

[9] Ofcom previously found that Mr Cooper's privacy had been unwarrantably infringed with regards to programmes broadcast on Yorkshire Radio in 2012. This was because Mr Bates had obtained personal information about Mr Cooper and his attendance at Leeds United football games from a Leeds United computer database and subsequently broadcast it. See the "Background to the complaint" section and footnote 3 above.

[10] 'Out-Law' is an online legal news and guidance service provided by Pinset Masons LLP.

Further to this, Manleys said that given Mr Cooper's status as a high profile figure regarding Leeds United and a leading figure in the LUS Trust, who regularly gave interviews in the media, his match attendance was relevant and of public interest. It also said that the information could not in any event be reasonably considered as being particularly sensitive or private in nature.

d) Mr Cooper also complained that his privacy was unwarrantably infringed in the programme as broadcast in that Mr Bates disclosed private information relating to his season ticket and match attendance status.

In response, Manleys said that it reiterated the arguments made in head c) above. In summary, it said that the information was already in the public domain as at September 2014, and that, even if the information had not been in the public domain, it was not particularly sensitive or private in nature. Manleys also said that the attendance record of Mr Cooper was a matter of public interest as he was a public figure in relation to the affairs of Leeds United.

Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, and both parties' written submissions and supporting documentation. Both parties were given the opportunity to make representations on Ofcom's Preliminary View. Neither party chose to do so.

Unjust or unfair treatment

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

a) Ofcom first considered Mr Cooper's complaint that he was treated unjustly or unfairly in the programme as broadcast because Mr Bates made a number of allegations about him that were false and therefore portrayed him unfairly.

It is important to clarify from the outset that Ofcom is not able, nor is required, for the purpose of considering this complaint, to express a view on the truth or otherwise of the individual statements made in the programme by Mr Bates about Mr Cooper.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom recognises the broadcasters' right to freedom of expression and that they must be able to investigate and report on matters of interest to viewers freely, and be able to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

Ofcom first considered the nature of the programme and the context in which the comments in question were made.

Ofcom understood from the information made available to it that Mr Bates participated in a weekly interview on Radio Yorkshire and that it was a regular part of the programme. We considered that the format of Mr Bates' interview would have been known to those who regularly listened to the station and that it was likely that those listeners would have been familiar with Mr Bates, as the former Chairman and President of Leeds United, and his persona. We also considered that these listeners would have been likely to have understood that his comments were made in the context of a long running and public disagreement between Mr Bates and Mr Cooper about matters relating to the management of Leeds United.

It was in this context, therefore, that Ofcom next considered the following sub-heads of complaint as set out in the "Summary of the complaint and broadcaster's response" section above, in order to reach an overall decision as to whether the programme, taken as a whole, resulted in unfairness to Mr Cooper.

i) Mr Bates falsely claimed that Mr Cooper had attended only one Leeds United match in three seasons thereby seeking to convey to listeners the false impression that Mr Cooper never went to Leeds United matches in person and was, therefore, unaware of the issues surrounding the football club in general.

In considering this sub-head of complaint Ofcom noted what Mr Bates said in the programme:

> *"And he* [Mr Cooper] *admitted to me on the phone when I first spoke to him, in his first letter, he'd been to one Leeds United game in three seasons, what was it, against Hereford at home. So, so much for being a solid, great Leeds United supporter – he wasn't".*

As outlined above, it is not for Ofcom to investigate and adjudicate on whether a statement broadcast is factually correct or not, but rather to consider whether the inclusion of a statement amounted to unjust or unfair treatment of an individual and, or organisation. Therefore, in the context of this particular case, Ofcom will not attempt to establish whether the information about Mr Cooper's match attendance (or the source of this information) was correct or not. We will consider only whether the inclusion of the information about Mr Cooper's match attendance resulted in unfairness to him.

Ofcom acknowledged that the number of football games Mr Cooper may or may not have attended had the potential to materially and adversely affect listeners perceptions of Mr Cooper, given that he had been the Chairman of LUS Trust, and that this could potentially be unfair to him. However, we also noted that Mr Cooper was no longer the Chairman of LUS Trust and that the comments were made in relation to the 2011-2012 football season (at least two and a half years ago when he held that position). Given this, we considered that the comments amounted to a far less potentially unfair claim, with considerably less potential to materially or adversely affect listeners' opinions of Mr Cooper.

In Ofcom's view, Mr Bates' comments were clearly presented as his personal recollections of the subject matter of a telephone call and the content of a letter from a long time ago (i.e. around the 2011-2012 football season). We considered that in this context, listeners were unlikely to consider what was said as verified fact. Although the manner in which Mr Bates delivered his views about Mr Cooper was, in our opinion, robust and forthright, we also considered that listeners would have understood that the comments were made about someone who was well known for being openly critical of Mr Bates and his management of Leeds United in the past. Given the history to the relationship between Mr Cooper and Mr Bates, Ofcom considered that it would be reasonable to make the assumption that it was likely that listeners would have been aware of the differences of opinion between the two sides and that Mr Bates' comments, made in the context of responding to criticism, were his personal view on the matter.

In these circumstances, therefore, Ofcom did not consider that Mr Bates' comments about Mr Cooper's match attendance were likely to have materially or adversely affected listeners' views of Mr Cooper in a way that was unfair to him.

Ofcom therefore considered that the broadcaster had, in this particular regard, taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Cooper.

ii) Mr Bates falsely accused Mr Cooper of being behind a group called "Pen 4 Ken", and that Mr Cooper and his *"cohorts"* had orchestrated a campaign of making harassing telephone calls directly to Mr Bates.

Ofcom noted the specific comments made by Mr Bates in the programme:

> *"It was Cooper and his cohorts who organised "Send Ken a Pen" campaign to sign the contracts, even though I'd never received it.*
>
> *They were concerted – the abuse, practices and phone calls, which of course didn't work for very long, 'cause I simply changed the numbers".*

It was Ofcom's view that Mr Bates stated the above as fact and we considered that the comments amounted to a strong and unequivocal allegation that Mr Cooper and his "*cohorts*" had engaged in a campaign of deliberate harassment against Mr Bates. This was a serious claim which had the clear potential to materially and adversely affect viewers' opinion of Mr Cooper.

As outlined above, under Practice 7.9 broadcasters should take reasonable care before broadcasting a factual programme, including programmes examining past events, to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

In response to Mr Cooper's complaint, Manleys provided Ofcom with evidence that it considered demonstrated that Mr Cooper held a "grudge" against Mr Bates and that he had used his position as Chairman of the LUS Trust to "incite others to feel the same". However, whether a presenter/contributor to a programme considers what they are saying to be true, broadcasters need to take care, especially with live broadcasts, to ensure that comments made do not amount to unfairness to an individual or organisation. This may include briefing any studio guests about fairness requirements in advance of the programme, as well as ensuring that any allegations made during the programme are properly tested or challenged. This could be, for example, by pointing out any contradictory argument or evidence or by representing the viewpoint of the person who is the object of the significant allegation (this is further discussed in head b) below).

Therefore, having regard to Practice 7.9, Ofcom assessed what steps (if any) Radio Yorkshire took to satisfy itself that material facts were not presented, disregarded or omitted in a way that could be unfair to Mr Cooper. We noted that Manleys provided no supporting material to demonstrate that Radio Yorkshire had taken any appropriate steps before the live broadcast in this regard, for example by advising Mr Bates to take care about any allegations he might make about named individuals. We considered that this was especially concerning given Ofcom's previous Adjudication of 8 April 2013 (as detailed above in the "Background to the complaint" section). During the programme itself, Ofcom noted that at no time during the relevant part of Mr Bates' interview did the programme's presenter challenge or query Mr Bates' comments. Without any attempt by the presenter to counter the comments made by Mr Bates in the programme, it appeared to Ofcom that Mr Bates could and did say what he wished without any balance or challenge from the subject of his comments or from the presenter. We also noted that there was no attempt to contact Mr Cooper before, during or after the broadcast (see head b) of the decision) to ascertain whether or not there was any truth in Mr Bates' claims and that it was not made clear to listeners that Mr Cooper was not able to respond to Mr Bates' remarks.

Therefore, taking all of the above into account, Ofcom considered, in the particular circumstances of this case, that the broadcaster did not take reasonable care to satisfy itself that these material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Cooper.

iii) Mr Bates falsely claimed that Mr Cooper conspired with Mr Patel and Mr Haigh of GFHC to influence the sale of Leeds United. Mr Cooper said that these accusations were farcical, since Mr Bates was the only one in charge of whether or not he sold the football club. Mr Cooper said that Mr Bates provided no evidence to support these allegations.

Ofcom noted the specific comments made by Mr Bates in the programme. He said:

> *"And so, he's complicit in the mess Leeds* [Leeds United] *finds itself in today. He had meetings with Salem Patel and David Haigh while the negotiations were taking place. That's why he can always say that he understands that a source close to GFH that …*[inaudible]
>
> *So, the mess Leeds is in today, Mr Cooper must take his fair share of the blame, or for that matter, unfair share".*

It was Ofcom's view that the statement "*He* [Mr Cooper] *had meetings with Salem Patel and David Haigh while the negotiations were taking place"* was unlikely to be understood by reasonable listeners, whether or not they were aware of the background to the selling of Leeds United, in the way Mr Cooper implied in his complaint, i.e. that he had "conspired with Mr Patel and Mr Haigh of GFHC to influence the sale of Leeds United". We noted that Mr Bates did not explicitly raise the issue of the sale of the club, nor did he state that Mr Cooper had "conspired" to influence it in any way. Mr Bates simply stated in the programme that Mr Cooper had had meetings with particular people while "negotiations" were taking place.

However, Ofcom acknowledged that in the context of Mr Bates' comments that Mr Cooper was "*complicit in the mess*" Leeds United was in, a clearly critical remark, in our view, directed at Mr Cooper, it was possible that some listeners, who were aware of the background to the selling of Leeds United, may have understood Mr Bates' comments to mean that Mr Cooper had, in some way, contributed to the financial problems experienced by Leeds United by his attempts to influence the sale of the club. However, we considered that the comments made were vague and open to interpretation.

As set out at head a) i) above, while Ofcom acknowledged that the manner in which Mr Bates delivered his views about Mr Cooper was, in our opinion, robust and forthright, we also considered that listeners would have understood that the comments were made about someone who was well known for being openly critical of Mr Bates and his management of Leeds United in the past. Given the background history to the relationship between Mr Cooper and Mr Bates, Ofcom considered that it would be reasonable to make the assumption that listeners would have been aware of the differences of opinion between the two sides and that Mr Bates' comments, made in the context of responding to criticism, were his personal view on the matter.

In these circumstances, and taking into particular consideration the vague nature of the comments made, Ofcom did not consider that Mr Bates' comments about Mr Cooper's alleged influence on the sale of Leeds United were likely to have materially or adversely affected listeners' views of Mr Cooper in a way that was unfair to him.

Ofcom therefore considered that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Cooper.

iv) Mr Bates blamed Mr Cooper for the "current situation" that Leeds United found itself in, without providing details or any reasoning as to how Mr Cooper was responsible for the football club's current state. Mr Bates' comments

unfairly misled listeners that Mr Cooper's personal conduct, including conversations with Mr Patel and Mr Haigh, was somehow to blame for the current financial state and performance of Leeds United. Mr Cooper said that Mr Bates' remarks were false, extremely unfair and bizarre, given that Mr Cooper held no role within the club and has had no financial dealings with the club or dealings with any current, past, or present investors in the club.

Ofcom noted the specific comments made by Mr Bates in the programme. He said:

"And so, he's complicit in the mess Leeds [Leeds United] *finds itself in today."*

…

"So, the mess Leeds is in today, Mr Cooper must take his fair share of the blame, or for that matter, unfair share".

…

"So, you can't be too hard on Gary Cooper. Hopefully, the mess he made [inaudible] *we'll sort the mess out GFH left it in".*

As above, Ofcom considered Mr Bates' comments to be clearly critical of Mr Cooper and we appreciated that some listeners may have interpreted Mr Bates' claim that Mr Cooper was "*complicit in the mess*" to mean that Mr Cooper had in some way contributed to the financial problems experienced by Leeds United. However, we also considered that the comments made were vague and open to interpretation; Mr Bates did not elaborate on what he meant by "*mess*" nor explicitly state that Mr Cooper was responsible for the current financial situation of Leeds United.

As set out at head a) i) and a) iii) above, while Ofcom acknowledged that the manner in which Mr Bates delivered his views about Mr Cooper was, in our opinion, robust and forthright, we also considered that listeners would have understood that the comments were made about someone who was well known for being openly critical of Mr Bates and his management of Leeds United in the past. Given the background history to the relationship between Mr Cooper and Mr Bates, Ofcom considered that it would be reasonable to make the assumption that listeners would have been aware of the differences of opinion between the two sides and that Mr Bates' comments, made in the context of responding to criticism, were his personal view on the matter.

In these circumstances, and taking into particular consideration the vague nature of the comments, Ofcom did not consider that Mr Bates' comments about Mr Cooper being "responsible for the football club's current state" were likely to have materially or adversely affected listeners' views of Mr Cooper in a way that was unfair to him.

Ofcom therefore considered that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Cooper.

Overall, in the particular circumstances of this case, we considered that in respect of the comments referred to under head a) ii), Mr Cooper was treated unfairly in the context of the programme as a whole, and in particular that material facts

were presented, disregarded or omitted in a way that portrayed him unfairly in the programme as broadcast.

b) Mr Cooper complained that he was not given an opportunity to respond to the allegations made about him by Mr Bates. He said that had he been able to respond on air he would have easily disproved the allegations. Mr Cooper said that it was the very gist of unfairness to accuse a person without evidence and then to fail to allow the accused individual to respond.

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

For the reasons already given in head a) above, Ofcom considered that the comments made by Mr Bates in the programme noted at a) ii) above amounted to significant allegations against Mr Cooper. Normally, where a significant allegation is made about an individual or organisation in a programme, the broadcaster should ensure that the individual or organisation concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

In response to this particular complaint, Manleys argued that Mr Bates had discussed a number of topics during the programme and that the broadcaster: "…was not aware that he would be raising the precise issues that he did regarding the Complainant". It said that the relevant part of the interview that referred to Mr Cooper was brief and that it was a relatively short and succinct reply to the: "…far more extensive and widespread accusations that Mr Bates had faced from Mr Cooper (and others he was liaising with) over a considerable period and across a spectrum of media".

Ofcom appreciates that owing to the nature of this type of live programming, contributors can sometimes make unexpected comments which have the potential to cause unfairness to an individual/organisation. We also acknowledge that in certain formats of programming, such as news reporting or live events, and in particular, live interviews and studio discussions, it is not always possible for broadcasters to obtain responses from others prior to or during the broadcast of the programme. In this case we recognised that the programme was broadcast live and that, to some extent, the broadcaster therefore had little control over what Mr Bates said in relation to Mr Cooper. However, in such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and that it does not mislead listeners or create unfairness to individuals or organisations.

In this particular case, Ofcom recognised that it would have been difficult for the broadcaster to have given Mr Cooper an appropriate and timely opportunity to respond to Mr Bates' comments made in interview owing to the live format of the programme. Nevertheless, there remained an obligation on the broadcaster to ensure that it avoided unjust or unfair treatment of individuals and organisations in programmes. Ofcom noted, as at head a) ii) above, that at no time during the relevant part of Mr Bates' interview did the programme's presenter challenge or query Mr Bates' comments. Ofcom also noted that there was no attempt to contact Mr Cooper before, during or after the broadcast to ascertain whether or

not there was any truth in Mr Bates' claims and that it was not made clear to listeners that Mr Cooper was not able to respond to Mr Bates' remarks.

Taking all these factors above into account, Ofcom considered that it was not particularly practical (owing to the live broadcast format of the programme) for the broadcaster to provide Mr Cooper with an opportunity to respond to Mr Bates' comments in the programme itself. However, some of Mr Bates' comments (i.e. that he had allegedly orchestrated a campaign of harassment against Mr Bates) amounted to significant allegations about Mr Cooper and the broadcaster failed to take reasonable care to avoid unfairness to him by not making it clear to listeners that Mr Cooper was not able to respond.

Ofcom therefore considered that Mr Cooper had been treated unfairly in this respect in the programme as broadcast.

Unwarranted infringement of privacy

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

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

c) Mr Cooper complained that his privacy was unwarrantably infringed in the obtaining of material included in the programme as broadcast because Mr Bates had obtained information from the Leeds United database about his season ticket and match attendance status. Mr Cooper said that this violated his privacy rights.

By way of background, Mr Cooper said that Mr Bates claimed incorrectly that this information was obtained in a telephone call with Mr Cooper. However, Mr Bates had, in fact, obtained the material from the Leeds United database. Mr Cooper referred to the previous Ofcom Adjudication finding on this point[11].

In considering this head of complaint, Ofcom had regard to Practice 8.5 of the Code which states that any infringement in the making of a programme should be with the person's consent or otherwise be warranted. It also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

In the programme, Mr Bates stated:

> "*And he* [Mr Cooper] *admitted to me on the phone when I first spoke to him, in his first letter, he'd been to one Leeds United game in three seasons, what was it, against Hereford at home. So, so much for being a solid, great Leeds United supporter – he wasn't".*

[11] See footnote 3 above.

Ofcom noted the disparity between the information provided by the parties regarding the source of the information relating to Mr Cooper's match attendance. In his complaint to Ofcom, Mr Cooper said:

> "Mr Bates lied during the broadcast and claimed this information was obtained in a telephone call [of 22 June 2011]…a remark in direct conflict with the prior adjudication by Ofcom on this matter".

It is not for Ofcom to determine whether particular information disclosed in a programme is factually correct or not, but rather to consider in this case whether the inclusion of it amounted to an unwarranted infringement of Mr Cooper's privacy. This said, however, we noted that in Ofcom's previous Adjudication (published on 8 April 2013), there was no dispute between the parties that the information relating to Mr Cooper's match attendance had been obtained from a Leeds United's computer database, and that neither party raised any issue relating to a telephone call of 22 June 2011. Therefore, whether or not the information was also discussed in a telephone call or a letter, it was not disputed that the information was originally obtained from a Leeds United computer database.

In considering whether or not Mr Cooper's privacy was unwarrantably infringed in the obtaining of material included in this programme as broadcast (i.e. 11 September 2014), Ofcom first considered the extent to which he had a legitimate expectation of privacy, in that the information about his match attendance would not be obtained for use in the programme.

As outlined above in the "Background to the complaint" section, Ofcom had previously investigated a complaint made by Mr Cooper about information broadcast about him which had been obtained from the Leeds United's computer database. In particular, Ofcom found that while Mr Cooper's match attendance was not information that could be reasonably considered as being particularly sensitive or private in nature, it was not information that was readily available; it was personal information held on a database. Therefore, given the circumstances in which the information was obtained, Ofcom considered that Mr Cooper had a legitimate expectation of privacy regarding this information and that his privacy was unwarrantably infringed in the manner in which it was obtained.

However, as already noted above, Ofcom's previous Adjudication was published in its online Broadcast Bulletin on 8 April 2013. Therefore, information pertaining to Mr Cooper's match attendance during the 2011-2012 football season, and the circumstances in which it was obtained, was publicly available on Ofcom's website. Ofcom considered therefore that the information was now in the public domain. We also noted that in Manleys' response to the complaint, it highlighted the fact that Ofcom's previous decision and information in it had subsequently been reported elsewhere.

Taking the factors above into account, on balance, we concluded that Mr Cooper did not have a legitimate expectation of privacy concerning the comments made about his match attendance. Having decided on the particular facts of this case that Mr Cooper did not have a legitimate expectation of privacy, Ofcom did not need to go on to consider whether any infringement was warranted or not.

Ofcom's decision is therefore that Mr Cooper's privacy was not unwarrantably infringed in the obtaining of material included in the programme as broadcast.

d) Mr Cooper also complained that his privacy was unwarrantably infringed in the programme as broadcast in that Mr Bates disclosed private information relating to Mr Cooper's season ticket and match attendance status.

In assessing whether or not Mr Cooper's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he had a legitimate expectation of privacy in relation to the material broadcast. In doing so, Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcaster 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.

As outlined in detail above at head c), we considered that Mr Cooper did not have a legitimate expectation of privacy in relation to the information pertaining to Mr Cooper's match attendance during the 2011-2012 football season. Having decided on the particular facts of this case that Mr Cooper did not have a legitimate expectation of privacy in relation to this information because it was already in public domain, Ofcom considered that it was not necessary for it to consider whether the infringement was warranted or not.

Ofcom's decision is therefore that Mr Cooper's privacy was not unwarrantably infringed in the programme as broadcast.

Therefore, Ofcom has upheld in part Mr Cooper's complaint of unjust and unfair treatment in the programme as broadcast. However, Ofcom has not upheld Mr Cooper's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme or in the programme as broadcast.

Not Upheld

Complaint by Mr Robert Irving

Beware! Cowboy Builders Abroad, Channel 5, 17 April 2014

Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast made by Mr Robert Irving.

This programme investigated claims of sub-standard building work alleged to have been carried out Mr Irving, who lived and worked in Spain. Mr Irving's photograph was shown in the programme as was footage of him being approached by the programme's presenter to answer the claims made about him in the programme. Mr Irving was shown unobscured in the programme and identified by name.

Ofcom found that:

- Mr Irving did not have a legitimate expectation of privacy, either in connection with the fact that the programme makers showed a photograph of him to people in the area in which he lived, or in the obtaining of footage of him while he drove his van home. Therefore, it was not necessary for Ofcom to go on to consider whether his privacy was unwarrantably infringed in these respects.

- Mr Irving did have a legitimate expectation of privacy with regard to the obtaining of the footage of the attempt to interview him at his property. However, the programme makers only approached Mr Irving in this way after their earlier requests to interview him had failed, and any infringement of Mr Irving's privacy in this respect was warranted by the public interest in trying to obtain from him a substantive response to the claims which the programme intended to make.

- There was no unwarranted infringement of Mr Irving's privacy in the programme as broadcast. This was because Mr Irving did not have a legitimate expectation of privacy with regard to the inclusion in the programme of the photograph of himself. In addition, although Mr Irving had a legitimate expectation of privacy with regard to the inclusion in the programme of the footage taken at his property, any infringement of privacy in this respect was warranted by the public interest in illustrating to viewers the programme makers' attempt to get a substantive response from Mr Irving to the claims which were made in the programme.

Introduction and programme summary

On 17 April 2014, Channel 5 broadcast an episode of *Beware! Cowboy Builders*, a series in which claims of sub-standard building work are investigated by the presenter Mr Dominic Littlewood. This episode was filmed in Spain and was called *Beware! Cowboy Builders Abroad*. Mr Irving was the subject of the claims investigated in the programme.

Mr Littlewood introduced the episode as follows:

> *"I'm in the Alicante region of Spain on the trail of a British builder who's been up to no good. He's called Bob Irving. Irving runs a limited company that builds houses here, and I've come ahead to investigate".*

This was accompanied by a photograph of Mr Irving, which was shown a number of times throughout the programme. The photograph showed Mr Irving from the waist up, wearing a blue T-shirt and smiling at the camera.

The programme included contributions from three couples who had bought properties built by Mr Irving all of whom recounted their negative experiences of living in the said properties. The programme also featured Mr Littlewood attempting to track down Mr Irving in order to confront him with claims about the properties he had sold. Mr Littlewood showed a photograph of Mr Irving to people in local bars:

Mr Littlewood: *"Do you recognise that gentleman there? He's called Bob Irving.*

Barman: *"A little…To come here, to take a coffee.*

Mr Littlewood: *He drinks in here, yes?*

Barman: *It's possible, one day, or two days, it's possible.*

Mr Littlewood: *Do you know any projects he might be working on, or what he's up to at the moment?*

Customer: *I don't know what he's up to at the moment, I've seen him around, he's a builder. He's been involved in some projects around… There's a big one somewhere up in the hills he was involved in. He does local building. He's a developer.*

Mr Littlewood: *Yeah. Any idea what his reputation's like, as far as you know?*

Customer: *I've heard… You know, you hear mixed rumours and mixed stories, but, yeah".*

Mr Littlewood was later shown in a car following Mr Irving who was driving a van. However, he failed to intercept Mr Irving before he returned to his house. The sequence included images of the van, but not Mr Irving himself.

Later in the programme, Mr Littlewood was shown confronting Mr Irving on his property:

Mr Littlewood: *"So far, I've failed to catch up with him. If he's not coming to me, I'll go to him – to his house. But it's a gamble, as he could slam the door in my face.*

Mr Littlewood: *I think it's time to go in.*

[Mr Littlewood was shown walking towards the ungated driveway of the property.]

Mr Littlewood: *I know it's a long shot. I just hope if he sees me he'll want to give his victims answers.*

[Mr Littlewood then walked onto the driveway of Mr Irving's property and approached Mr Irving who raised his arm to gesture to the camera crew to leave.]

Mr Irving: *"Out!"*

[Mr Irving walked off at this point. Neither the presenter nor the camera crew pursued Mr Irving]

Mr Littlewood: *"Right, Mr Irving, Bob Irving, come on, it's Dominic Littlewood. Mr Irving, would you like to come and have a chat with me? Dominic Littlewood, from Cowboy Builders, Channel 5.*

[to camera] *Dammit. I knew it was a last resort confronting Irving on his own land in case he fled indoors, and I went round the wrong side of the van and missed my only chance.*

That was Bob Irving. It was a very short glimpse you had of him there, mainly the back of his head. He's obviously a man who doesn't want to face the music, doesn't want to answer any questions, he's quite happy for people to make up their own minds about what sort of person he is. There you have it. Bob Irving. Spineless".

Immediately afterwards Mr Littlewood said that Mr Irving contacted the programme to say *"he didn't want to talk to me because he didn't think we'd let the truth be spoken"*. Mr Littlewood also set out comments which Mr Irving made to the programme at this stage in response to some of the claims made about him and his work by the three couples who contributed to the programme. The footage of Mr Irving telling the camera crew to leave and then walking off was shown in slow-motion a number of times during this section of the programme.

Summary of the complaint and the broadcaster's response

a) Mr Irving complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because:

- The programme makers showed a photograph of him to people in the local area and asked for information about him.

  In response, Channel 5 stated that Mr Irving's privacy was not unwarrantably infringed by the programme makers either in obtaining the photograph of Mr Irving or in showing the photograph of him to people in the local area and asking for information. Channel 5 also stated that it was standard practice for programme makers to conduct research into the subject of a programme, which in this case included visiting the area where Mr Irving lived and worked in order to find out background information about him. The photograph of Mr Irving was used to identify the person about whom enquiries were being made.

  Channel 5 argued that the use of the photograph in this way was not intrusive, because it did not reveal any information about Mr Irving which could be considered private and that there was no legitimate expectation of privacy in relation to the mere disclosure of what a person looks like. It

emphasised that the photograph of Mr Irving did not disclose any information of a personal or sensitive nature, neither did it show him in an embarrassing situation. The photograph was not private and, therefore, Mr Irving did not have a legitimate expectation of privacy in relation to its use in connection with the obtaining of material included in the programme.

Channel 5 explained to Ofcom in an email dated 19 November 2014 that the photograph of Mr Irving was cropped from a larger photograph supplied to the programme makers by one of Mr Irving's customers who featured in the programme. The larger, uncropped, photograph had shown the customer with Mr Irving and another man.

The broadcaster said that in the event that Ofcom considered that Mr Irving did have a legitimate expectation of privacy, its use was warranted in the public interest. It added that it was important for the programme makers to thoroughly research their subject, and in particular for them to be satisfied that information provided to them related to Mr Irving. The photograph was used to ensure that there was no doubt about whom was being discussed when undertaking enquiries in the area where Mr Irving lived and worked. Finally, Channel 5 claimed that the use of photographs in this way is a standard tool of investigative journalism, and suggested that to interpret it as an unwarranted infringement of privacy would amount to a disproportionate interference with Channel 5's freedom of expression, with negative implications for investigative journalism more generally.

- He was pursued by a camera crew in a car, and filmed from the vehicle as he attempted to avoid them.

  In response, Channel 5 stated that in the ordinary course of the programme's production a letter dated 8 January 2014 was sent to Mr Irving in which the programme makers set out the claims that had been made about him and his work and invited him to an interview so that he could contribute to the programme by giving his version of events and explaining his actions. Mr Irving declined to be interviewed. Channel 5 said that the programme makers wrote again to Mr Irving on 5 March 2014 and put the substance of the claims that might be made in the programme to him. Mr Irving responded to the programme makers. However, Channel 5 said that his responses were not apposite. The broadcaster said that the programme makers were, therefore, unable properly to represent Mr Irving's position in the programme and that viewers would not have been able to judge Mr Irving's veracity for themselves. Given that Mr Irving had declined to be interviewed and had not addressed the claims either in writing or via the telephone, Channel 5 said that the only option left was to attempt to doorstep[1] Mr Irving in the hope of getting some answers to the claims that had been made about his work.

  Channel 5 said that the decision to attempt to doorstep Mr Irving was taken in accordance with its procedures and was considered at the appropriate editorial and legal levels within Channel 5. The programme makers and Channel 5 considered that the story was in the public interest, and that it was

[1] 'Doorstepping' is defined in the Code as "the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

important to represent the position of Mr Irving in the programme. The broadcaster said that the programme makers' procedures for doorstepping included attempting to conduct the interview away from the home of the interviewee and away from third parties in the first instance. To that end, on 10 February 2014, Mr Irving's property was placed under surveillance, while the film crew waited some distance away, and when Mr Irving left his property he was followed by them with the intention of conducting an interview at another location. However, the opportunity to do so did not arise. Channel 5 said that this short journey was the only period during which the film crew followed Mr Irving and there was always at least one car between the film crew and Mr Irving's vehicle. In addition, it said that only brief pieces of footage of Mr Irving's vehicle were filmed and from some distance, so it was not possible to see Mr Irving himself. The broadcaster said that it was wrong for Mr Irving to suggest that the programme maker chased him around the countryside for two days. Far from making attempts to avoid the film crew, Channel 5 said it would be surprised if Mr Irving was even aware of the presence of the film crew at the time.

Channel 5 also said that the filming of Mr Irving's vehicle on the public highway from a distance did not amount to an unwarranted infringement of Mr Irving's privacy and that individuals did not have a legitimate expectation of privacy when in a public place such as a public highway. However, in the event that Ofcom considered that Mr Irving did have a legitimate expectation of privacy in these circumstances, Channel 5 argued that the infringement of it was warranted because of the strong public interest in programmes of this nature. Channel 5 said that it would be unreasonable to expect programme makers to make finely balanced judgements weighing the right to privacy against the right to freedom of expression at the point of filming, and that to do so would in fact represent a disproportionate interference with broadcasters' rights to freedom of expression. Instead, it argued that the broadcaster should take steps to ensure that the broadcast of material obtained in such circumstances does not result in an unwarranted infringement of privacy in the programme as broadcast.

- The camera crew entered the grounds of his house without permission and filmed him and his property.

In response, Channel 5 explained that after the failed attempt to doorstep Mr Irving away from his property, the programme makers had tried unsuccessfully to contact him again by telephone, and ultimately decided to attempt to interview him at his home. The intention was to approach Mr Irving and ask politely if he would answer some questions, leaving immediately if requested to do so. In the event, Mr Irving ordered the film crew off his land immediately and they left. Channel 5 said that the whole incident was very brief and emphasised that doorstepping somebody at their home was a tactic only used by the programme makers as a last resort.

Channel 5 pointed out that Mr Irving's property was not gated and that, in its view, it was reasonable for the film crew to enter in the same way as somebody wishing to make a delivery would. It therefore maintained that Mr Irving did not have a legitimate expectation of privacy in these circumstances. However, Channel 5 said that if Ofcom considered that there was a legitimate expectation of privacy, then it argued that the visit to the property was in the public interest, and that the filming was therefore warranted. The broadcaster again argued that it would represent a disproportionate interference with

broadcasters' rights to freedom of expression to expect finely balanced judgements of this sort to be made at the point of filming.

b) Mr Irving complained that his privacy was unwarrantably infringed in the programme as broadcast because:

- A photograph of him was featured in the programme.

  In response, Channel 5 reiterated its position that there was no legitimate expectation of privacy in the disclosure of what a person looks like, and in circumstances where the inclusion of the image does not disclose any personal or sensitive information, or show the person in a sensitive situation. In the event that Ofcom considered that Mr Irving did have a legitimate expectation of privacy in relation to the inclusion of the photograph in the programme, Channel 5 said that the infringement of that expectation was warranted in the public interest. Specifically, Channel 5 maintained that it was important for viewers to know what Mr Irving looked like, so that he would not be confused with anyone with the same or a similar name. Further, given that Mr Irving was still in business, the programme makers considered that it was in the public interest for viewers to be able to recognise him and avoid dealing with him professionally if they so wished.

- Footage of him and his property was shown. He said that showing footage of his property had revealed the location of where he lived.

  By way of background to the complaint, Mr Irving said that the programme had caused him and his family a great deal of stress, and damaged his reputation in the community where he lived and worked.

  In response, Channel 5 stated that Mr Irving did not have a legitimate expectation of privacy, as both he and his property were visible from the public highway. In the event, however, that Ofcom considered that Mr Irving did have a legitimate expectation of privacy in relation to the inclusion of this footage in the programme as broadcast, Channel 5 again argued that the infringement of that expectation was warranted in the public interest. Further, Channel 5 argued that the footage included in the programme as broadcast did not reveal the location of Mr Irving's property. It said that Mr Irving lived in a very remote and rural part of Spain where the roads were pretty much indistinguishable from one another. Nevertheless, Channel 5 said that care was taken to ensure that the footage of Mr Littlewood's visit to Mr Irving's property included in the programme showed nothing which could reveal the location of Mr Irving's property.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that Mr Irving's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Channel 5 chose not to so, however, Mr Irving did and his comments are summarised below.

Mr Irving's representations

Mr Irving said that despite being referred to as a *"builder"* in the programme who *"runs"* a limited company, he was, in fact, a director of a Spanish limited company, Hamiltons of London Construction SL, but had never traded, or held a work licence,

under his own name in Spain. Mr Irving argued that a grave factual error had been made in not separating him from this legally registered company which was "a separate entity".

While noting Mr Irving's comments. Ofcom considered that they were not directly relevant to the complaint as entertained, i.e. that Mr Irving's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast. We therefore did not consider Mr Irving's representations further.

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 unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, unedited footage of the programme, both parties' written submissions and supporting material. Ofcom also noted the representations made by the complainant in response to Ofcom's Preliminary View on this complaint.

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 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

a) Mr Irving complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme. In reaching our decision on this head of complaint, we considered each example given by Mr Irving in his complaint separately.

   In considering each of the elements of this head of complaint, Ofcom had regard to Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with person's and/or organisation's consent or be otherwise warranted. We also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

   - The programme makers showed a photograph of Mr Irving to people in the local area and asked for information about him.

We first considered the extent to which Mr Irving may have had a legitimate expectation of privacy with regard to the programme makers' actions in showing a photograph of him to people in the area in which he lived and worked.

Ofcom observed from the footage included in the programme that Mr Littlewood showed a photograph of Mr Irving to a number of apparently randomly selected people in the area in which the programme makers understood Mr Irving lived and worked in order to get some information about him (see "Introduction and programme summary" section above). In the photograph, which was provided to the programme makers by one of the contributors to the programme, Mr Irving's face was clearly visible. However, it did not include any information about Mr Irving, or show him engaged in an activity or situation that was particularly private or sensitive in nature, or reveal any information about his private life that could reasonably be understood to afford him a legitimate expectation of privacy. Nor could the location in which it was taken (other than that fact that it was outside) be discerned from the photograph.

In addition, we noted Channel 5's argument that the programme makers used the photograph to identify Mr Irving and ensure that the information which they were gathering related to the correct person. In these circumstances, Ofcom considered that the use of the photograph in this manner was an appropriate and proportionate tool of investigative journalism.

Taking all the above factors into account, and considering the manner in which the photograph was used by the programme makers, Ofcom considered that Mr Irving did not have a legitimate expectation of privacy with regard to the fact that the programme makers showed a photograph of him to people in the local area. Having reached this conclusion, Ofcom considered that it was not necessary to assess whether or not any infringement into Mr Irving's privacy in this respect was warranted.

- Mr Irving was pursued by a camera crew in a car and filmed from the vehicle as he attempted to avoid them.

Ofcom first considered the extent to which Mr Irving may have had a legitimate expectation of privacy with respect to the programme makers' following him in a vehicle and filming him while he was driving along a public road and attempting to avoid them.

We observed that this material was filmed because the programme makers hoped to be able to interview Mr Irving in order to obtain a response from him to the claims that were to be made in the programme about his building work (see Decision in relation to filming at Mr Irving's property below for a detailed consideration of this issue). However, from the unedited footage provided by Channel 5, it was apparent that prior to filming this sequence the programme makers were positioned some distance away from Mr Irving while he stopped at a garage and that Mr Irving got into his van and drove away before they could attempt to interview him. It was also apparent that Mr Irving then drove straight home and the programme makers were again unable to even attempt to secure an interview with him.

Ofcom noted Channel 5's comments in relation to doorstepping with respect to this particular head of the complaint. However, given that the programme

makers did not in fact film an interview or an attempt to interview Mr Irving during the period in which he drove from the garage to his home, we do not consider that Practice 8.11 is relevant to our consideration of this specific element. We therefore considered whether or not Mr Irving had a legitimate expectation of privacy in regard to the obtaining of this footage taking into account Practices 8.5 and 8.9 of the Code alone.

We observed that the unedited footage showed that the programme makers followed the route Mr Irving took along the public highway; that they recorded footage of Mr Irving's van while it was on the public highway; and footage of the van was filmed only sporadically and from a distance. Other than the fact that it was white, no specific features of the van were discernible from this footage. In addition, this footage included no images of Mr Irving himself. We also observed that the vehicle in which the presenter (Mr Littlewood) and at least one camera operator were located was some way behind Mr Irving's van and did not appear to be travelling particularly fast or undertaking any action which could reasonably be regarded as being intrusive to Mr Irving. In our view, the manner in which this filming took place was consistent with the programme makers' desire to secure an interview with Mr Irving in order to get him to respond to the claims that would be made in the programme (again, see Decision in relation to filming at Mr Irving's property below for a detailed consideration of this issue).

We considered that this footage did not include any information about Mr Irving, or show him engaged in an activity or situation that was particularly private or sensitive in nature, or reveal any information about his private life that could reasonably be understood to afford him a legitimate expectation of privacy. Nor could the precise location in which the footage was recorded (other than that fact that it was on the public highway) be discerned from the footage.

Taking all the above factors into account, and considering the circumstances in which this material was filmed and the nature of the footage recorded, Ofcom considered that Mr Irving did not have a legitimate expectation of privacy in relation to the filming of this particular section of footage. Having reached this conclusion, Ofcom considered that it was not necessary to assess whether or not any infringement into Mr Irving's privacy in this respect was warranted.

- The camera crew entered the grounds of Mr Irving's house without permission and filmed him and his property.

In addition to Practices 8.5 and 8.9 (set out above), Ofcom also considered Practice 8.11 in relation to this head of Mr Irving's complaint. Practice 8.11 states that doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places".

Ofcom first examined whether Mr Irving had a legitimate expectation of privacy in relation to the obtaining of the relevant material – namely the filming of footage of him and his property.

Ofcom recognises that an individual may have a legitimate expectation of privacy in relation to filming on their private property. In this case, we noted that Channel 5 argued that Mr Irving's property was not gated and it was reasonable for the film crew to enter in the same way as somebody wishing to make a delivery would; and therefore, Mr Irving did not have a legitimate expectation of privacy in relation to the filming of him and his property.

However, from the unedited footage we noted that Mr Irving's property was located on a track, just off the public road and that although it was not gated it was surrounded by a wall which allowed for only a partial view of the first part of the driveway from the road. We also noted that the programme makers, including the camera operators, walked some way on to Mr Irving's driveway and the footage they recorded while on the driveway included images of buildings on Mr Irving's property, vehicles parked on his driveway, including his van, the registration plate of which was visible in the unedited footage, and of Mr Irving himself as he walked away from the programme makers. The footage included in the programme also showed that a second camera operator (i.e. not the one who filmed the unedited footage provided to Ofcom) filmed footage of Mr Irving in which his face was visible on this occasion.

We noted that when Mr Irving became aware that he was being filmed by the programme makers he told them to leave and the programme makers did so. However, in light of the footage which was recorded on this occasion and the fact that it was filmed while the programme makers were on Mr Irving's private property, we considered that Mr Irving had a legitimate expectation of privacy with regard to the filming of this footage of him and his property.

As the unedited footage showed, Mr Irving did not consent to the filming of this footage. Therefore, Ofcom went on to consider whether the filming of this footage was warranted. The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health or safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

We considered that the filming of the occasion described above constituted an incident of doorstepping (i.e. "the filming or recording of an interview or attempted interview with someone…without any prior warning"). Having regard to Practice 8.11 (as set out above), Ofcom considered that doorstepping can be justified by the broadcaster if a request for an interview has been declined or if it has not been possible to request one. From the pre-broadcast correspondence between the parties (provided to Ofcom by Channel 5), we noted that, before this attempt to interview Mr Irving without prior warning took place[2], the programme makers:

[2] From Channel 5's response to the complaint, Ofcom understands that the attempt to interview Mr Irving at his property was filmed on the morning of 11 February 2014 – i.e. the day after the programme makers filmed Mr Irving's van as he drove home.

- wrote to Mr Irving on 8 January 2014 to inform him of the claims which would be made against him and invited him to respond via an on-camera interview. Mr Irving subsequently (on 17 January 2014) spoke to the programme makers via telephone. He declined the offer of an interview but said he would provide a written response; and,

- a week later (on 24 January 2014), having not heard further from the complainant, wrote to Mr Irving to again offer him an on-camera interview.

In addition, Ofcom noted that on 10 February 2014 (after the programme makers filmed Mr Irving while he drove his van home) Mr Littlewood twice called Mr Irving on the telephone, but received no answer and that Mr Littlewood called Mr Irving and received no answer again immediately prior to attempting to interview him at his property the following day.

Only after the second offer of an interview was declined (in an email sent to the programme makers by Mr Irving on 29 January 2014); Mr Irving had failed to provide a substantive response to the claims which the programme planned to make about him; and the programme makers had not been able to contact Mr Irving by telephone, did they decide to attempt to interview Mr Irving at his property without prior warning.

In Ofcom's view, the claims raised by the programme makers in their correspondence with Mr Irving were serious: they concerned claims that he repeatedly built properties which were either not fit for habitation and/or in which the owners were not legally entitled to live or trade. The programme also claimed that, as a result, several people (notably two of the couples who contributed to the programme) had lost very considerable sums of money. We considered that investigating these claims was a matter of public interest and that given that Mr Irving had twice refused to be interviewed and had not answered the specific claims that were put to him, it was reasonable for the programme makers to assume that Mr Irving was unwilling to cooperate with them.

For this reason, Ofcom took the view that the decision to doorstep Mr Irving was warranted in the particular circumstances of this case. We also considered that the means of obtaining material, i.e. filming while the programme makers walked on to Mr Irving's property, attempted to speak to him about the claims the programme planned to make and left the property when requested, were proportionate in all the circumstances and in particular to the subject matter of the programme.

Therefore, taking all the factors set out above into account, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in recording this material so as to illustrate the programme-makers attempt to get a substantive response from Mr Irving to the claims made about him, outweighed the complainant's expectation of privacy in relation to the obtaining of this footage.

Ofcom therefore found that there was no unwarranted infringement of Mr Irving's privacy in connection with the obtaining of material included in the programme.

b) Ofcom considered Mr Irving's complaint that his privacy was unwarrantably infringed in the programme as broadcast. In reaching our Decision on this head

of complaint, we considered each example given by Mr Irving in his complaint separately.

In considering each of the elements of his head of complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless that infringement is warranted.

- A photograph of Mr Irving was featured in the programme.

  Ofcom first assessed the extent to which Mr Irving may have had a legitimate expectation of privacy in relation to the inclusion of this photograph in the programme as broadcast.

  We observed that the face of the man in the photograph (which was shown on a number of occasions) was clearly visible to viewers and that the programme said that the photograph was an image of Mr Irving.

  As stated above, in relation to head a) of the complaint, Ofcom concluded that Mr Irving did not have a legitimate expectation of privacy in connection with the programme makers' use of his photograph during the making of the programme. However, Ofcom recognises that a legitimate expectation of privacy may still arise where that photograph has been subsequently included in the programme as broadcast.

  We noted that, on the information available, it did not appear that the photograph (which was given to the programme makers by one of Mr Irving's former clients and contributor to the programme) had previously been published or otherwise put into the public domain. We noted too, that Mr Irving did not appear to have had a public profile prior to the broadcast of this programme. However, Ofcom also took note of the broadcaster's argument that there can be no legitimate expectation of privacy in the disclosure of what a person looks like.

  We observed that the broadcast of the photograph did not disclose any information about Mr Irving to viewers other than what he looked like. Nor did it show him engaged in an activity that could reasonably be regarded as private or sensitive in nature. In addition, neither the programme nor the photograph itself disclosed any information about the location or circumstances in which the photograph had been taken (other than that it had been taken outside).

  Taking into account these factors, we considered that Mr Irving did not have a legitimate expectation of privacy with regard to the broadcast of this photograph in the programme. Having reached this conclusion, Ofcom considered that it was not necessary to assess whether or not any infringement into Mr Irving's privacy in this respect was warranted.

- Footage of Mr Irving and his property was shown. He said that showing the footage of his property had revealed the location of where he lived.

  In considering this head of the complaint, Ofcom considered both Practices 8.6 and, as set out further below, Practice 8.2 insofar as Mr Irving states that the location of his home was disclosed in the programme as broadcast.

Ofcom first assessed the extent to which Mr Irving may have had a legitimate expectation of privacy in relation to the broadcast of footage of him and his property in the programme.

As set out under head a) above, footage of Mr Irving and his property was filmed because the programme makers had decided that, after several unsuccessful attempts to get a substantive response from Mr Irving, they would try to get an interview with him by doorstepping him. Ofcom took the view that Mr Irving had a legitimate expectation of privacy in connection with the obtaining of this footage. We now consider whether or not Mr Irving also had a legitimate expectation of privacy in this material as broadcast.

In making our assessment, we have taken into account both the circumstances in which the relevant footage was filmed and also the nature of the material included in the programme as broadcast. Towards the end of the programme, Mr Littlewood was shown: approaching Mr Irving's property; walking on to the driveway; passing some garages next to which Mr Irving had parked his van, speaking to Mr Irving (who then told the camera crew to leave before walking away towards his house), and then leaving the property. The footage included images of several vehicles parked on Mr Irving's driveway including his van. However, any registration plates included in this footage were obscured. The footage also showed Mr Irving ordering the programme makers to leave his property. During this section of the footage Mr Irving's face was visible. This section of the footage was shown for approximately four seconds on two occasions in quick succession and then again as a slowed-down and then still image for approximately seven seconds.

Ofcom took note of the broadcaster's argument that Mr Irving did not have a legitimate expectation of privacy with regard to the inclusion of the footage of himself and his property in the programme because both he and his property were visible from the public highway when it was filmed.

However, as before, we observed that although Mr Irving's property was not gated it was surrounded by a wall which allowed for only a partial view of the first part of the driveway from the road. In addition, as set out above, the footage shown was filmed at Mr Irving's home, in circumstances where Mr Irving might otherwise have expected his activities to be private. Mr Irving is clearly shown, asking the programme makers to stop filming and to leave his private property and is also seen trying to avoid the cameras by walking away.

Taking account of all the factors noted above, and in particular that the footage of Mr Irving and his property included in the programme was filmed while the programme makers were at the complainant's home, we concluded that Mr Irving had a legitimate expectation of privacy in regard to the broadcast of this material.

As noted above, the unedited footage showed that Mr Irving did not consent to the filming of this footage and, in its response to the complaint, Channel 5 did not indicate that the programme makers subsequently obtained consent from Mr Irving for the broadcast of this material. Therefore, we considered that Mr Irving had not consented to the broadcast of this footage and that his privacy was thereby infringed in this respect.

Ofcom next took a view as to whether broadcasting this footage was warranted. As noted above, an individual's privacy must be balanced against the competing rights of broadcasters to freedom of expression. Neither of these rights has precedence over the other and, where there is conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right.

Ofcom carefully balanced Mr Irving's legitimate expectation of privacy in relation to the broadcast of this footage of him and his property against both the broadcaster's right to freedom of expression and the audience's right to receive information in the public interest. Given the serious nature of the claims made about Mr Irving's work, and that he had repeatedly failed to provide a substantive response to those claims, we considered that there was a genuine public interest in broadcasting the footage of Mr Littlewood confronting Mr Irving to try to obtain a candid and meaningful response to these claims.

Therefore, on balance, and taking all the factors set out above into account, Ofcom considered that the broadcaster's right to freedom of expression, and the audience's right to receive this information, outweighed Mr Irving's legitimate expectation of privacy in circumstances where there was a public interest in broadcasting the footage of the programme makers' attempt to get a substantive response from Mr Irving to the serious claims that were being made about him.

Disclosure of the location of Mr Irving's Home

Practice 8.2 of the Code states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

As set out above, the programme included images of the entrance to Mr Irving's property, part of his driveway and some buildings located on his property. It also said that he lived in the Alicante region of Spain and that his property was *"in a remote place up a long road"*. No other information about the property or its location was included in the programme and in particular the programme did not include the house name or number or the name of the road on which it was located. We also noted that the footage of the area surrounding Mr Irving's property which was shown in the programme included no particularly distinguishing features.

For these reasons, we considered that it was unlikely that anyone to whom Mr Irving and his property was not already known would have discerned the location of Mr Irving's home from the programme as broadcast.

Given this conclusion, it was not necessary for Ofcom to consider this element of the complaint further.

Taking into account all the factors above, Ofcom therefore found that there was no unwarranted infringement of Mr Irving's privacy in the programme as broadcast.

Therefore, Ofcom has not upheld Mr Irving's complaint of unwarranted infringement of privacy in connection with the obtaining of material in the programme, and in the programme as broadcast.

Not Upheld

Complaint by Mr Mohammed Islam

Can't Pay? We'll Take it Away, Channel 5, 15 October 2014

Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programme as broadcast made by Mr Mohammed Islam.

The programme included footage of Mr Islam speaking on his mobile telephone and to High Court Enforcement Officers ("HCEOs") in attempting to negotiate a settlement for debt repayment on behalf of a friend. Mr Islam was not named in the programme; however, his face was shown unobscured and his voice was audible.

Ofcom considered that, in the particular circumstances of this case, Mr Islam had a legitimate expectation of privacy with regard to the inclusion of the footage of him in the programme as broadcast. However, we considered that, on balance, and given all the factors set out above, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in broadcasting the material in order to demonstrate the work and situations encountered by the HCEOs, outweighed Mr Islam's expectation of privacy. Ofcom concluded therefore that there was no unwarranted infringement of Mr Islam's privacy in the programme as broadcast.

Introduction and programme summary

On 15 October 2014, Channel 5 broadcast an episode of *Can't Pay? We'll Take It Away*, a series which followed a team of HCEOs as they attempted to resolve debt disputes through negotiated settlements and asset seizures.

This edition included a visit by two HCEOs to an Indian restaurant in Brightlingsea, Essex, to collect payment of £40,000 owed to a wholesaler. The programme showed one of the officers, Mr Paul Bohill, speaking to a member of the restaurant's staff as the owner was on holiday. Mr Bohill asked the staff member to pay either the full amount of £40,000, or make part-payment of £10,000, by 12:30, otherwise assets would be seized.

A friend of the restaurant owner (the complainant, Mr Islam) was then shown talking on his mobile telephone. Mr Islam was filmed from both the front and rear, with a *"Pizza Bros"* company logo clearly visible on the front of his bright green polo shirt (as it was in other shots in which Mr Islam appeared). Mr Bohill was then shown saying:

> *"It's always the same old story isn't it, friends of friends of friends, nobody's actually – you know, the man himself is on holiday so everybody's rallying round and trying to dig him out the shit"*.

The programme then showed the restaurant staff member opening the restaurant for the HCEOs and removals men entering the building, with Mr Islam visible in the background. The programme showed Mr Bohill instructing the removals men to clear the tables which led to a discussion between Mr Bohill and the staff member.

The programme then showed Mr Islam as he became aware that Mr Bohill had instructed the removal of items from the restaurant. Mr Islam was shown in close up as he said:

> *"One second, one second, what's happened now? Just give him 15 more minutes"*.

Mr Bohill was shown in the background as he replied:

> *"No, it was 15 minutes the last time, then it was an hour then it was four hours and the money's not been transferred"*.

The programme showed Mr Islam as he told Mr Bohill that he was speaking to the restaurant owner on his mobile telephone. Mr Islam said that the owner was willing to pay £5,000, to which Mr Bohill replied "*I won't move for less than ten* [thousand pounds]".

The programme showed the removals men clearing chairs from the restaurant as the programme's narrator explained that a payment plan could be negotiated for the debt if part of it was paid now. Mr Bohill then said to the camera that he had conferred with solicitors who had agreed that £5,000 was a sufficient initial payment. As Mr Bohill spoke, Mr Islam was shown and heard in the background talking to the restaurant owner on his mobile telephone.

Following this, Mr Islam was shown outside the restaurant negotiating, on behalf of the restaurant owner, with Mr Bohill. After a short discussion, Mr Bohill was shown agreeing to accept a payment of £5,000 provided that Mr Islam could ensure the restaurant owner paid within ten minutes. Mr Bohill then spoke to the camera and noted that the value of the expected payment exceeded the value of the assets in the restaurant. Following his comments, Mr Islam was shown from a distance, talking on his mobile telephone.

The programme showed the restaurant staff member attempting to prevent the removal of tables from the restaurant. Mr Islam was shown facing the camera. The programme then used a combination of close and mid-range camera angles to show Mr Bohill telling the staff member to "*back off*", with Mr Islam visible throughout.

Immediately following this, the narrator said that the restaurant owner's friend (Mr Islam) had paid £5,000 on the owner's behalf. Mr Islam was shown holding up his mobile telephone to show Mr Bohill that he had received the money from the owner. Mr Islam was shown as he confirmed the payment transfer to the account specified by Mr Bohill. Following this, Mr Islam was shown walking down the road with Mr Bohill.

Mr Islam was not named and was not shown or heard any further in the programme.

Summary of the complaint and the broadcaster's response

Mr Islam complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme as broadcast without his consent.

Mr Islam said that he had informed the programme producer that he had served time in prison, and that the producer had offered to obscure his face and the name of his company, "Pizza Bros". Mr Islam said that the producer had asked him to sign a

consent form, but he had refused. After the broadcast of the programme, Mr Islam said that he received threatening telephone calls at his workplace and that he had installed a panic alarm on police advice at his place of work.

In response, Channel 5 said that the sequence in the programme which featured Mr Islam concerned the activities of HCEOs executing a warrant for the repossession of property. Channel 5 said that the activities of HCEOs, the manner in which the law is utilised or ignored, the kind of difficulties faced by HCEOs when executing their duties and the impact of these activities on those affected are all matters of public interest. For those reasons, the broadcaster took the view that it was appropriate and reasonable to include footage of persons interacting with the HCEOs in the programme, taking into account the need to balance rights under Article 8 of the European Convention on Human Rights, which relate to the right to respect for private and family life, with those under Article 10 which relate to freedom of expression.

Channel 5 said that Mr Islam was not a bystander to the actions of the HCEOs, but imposed himself upon them by declaring that he represented the interests of the absent owner and was empowered to negotiate a settlement on the owner's behalf. The broadcaster said it was clear that Mr Islam was not caught off-guard by the presence of the HCEOs.

Channel 5 said that: as Mr Islam had co-operated with the filming process and the HCEOs; was not shown engaged in a private activity; no information that was private to him was disclosed; and there was no reason to suspect that he was the subject of any particular vulnerability, his identity was not obscured when the programme was broadcast.

Channel 5 confirmed that Mr Islam had not signed a consent form and that, *"the complainant indicated he did not want to appear in the programme"*, but added that no undertaking was given that he would not appear. Channel 5 said that although the programme makers discussed privacy with Mr Islam, they did not consider they were made aware of any particular vulnerability that would cause them to conclude it was necessary to obscure his identity. The broadcaster said that on subsequently learning of the nature of Mr Islam's concerns, it had voluntarily taken steps not to rebroadcast the sequence featuring him.

Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions. We also examined the unedited footage of Mr Islam talking to the HCEOs and the programme makers. Both Mr Islam

and Channel 5 were given the opportunity to make representations on Ofcom's Preliminary View. Neither party chose to make representations to Ofcom.

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 Mr Islam's complaint that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without his consent.

In assessing this complaint, we had particular regard to Practice 8.4 of the Code which 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. We also had particular regard to Practice 8.6 which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

We first considered the extent to which Mr Islam had a legitimate expectation of privacy in in relation to the footage of him included in the programme as broadcast.

As set out in the "Introduction and programme summary" section above, Ofcom noted that Mr Islam was shown in the programme negotiating with the HCEOs about an outstanding debt owed by his friend, a restaurant owner. Mr Islam was shown both inside and outside the restaurant and in the street speaking on his mobile telephone as he relayed offers and counter-offers of payment between the HCEOs and the restaurant owner. Mr Islam's face and company logo were shown unobscured in the programme, and his voice was audible. Mr Islam appeared on screen for approximately 1 minute 50 seconds.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom will therefore continue to approach each case on its facts.

In our view, whether or not someone who has been filmed in the circumstances in which Mr Islam found himself in has a legitimate expectation of privacy in the subsequent broadcast of that footage will depend on all the relevant circumstances. These may include:

- whether the filming occurred in a public place;
- whether the individual was aware of the filming;
- whether the individual was identifiable from either the information and/or footage included in the programme;

- whether the footage depicted the individual doing something, or disclosed information about that individual, which was confidential, private and/or sensitive; and
- what discussions, if any, took place between the programme makers and the individual about the filming and subsequent broadcast of the footage, in particular, any discussions about that individual's consent for the footage to be used in any subsequent broadcast.

In the specific circumstances of Mr Islam's case, Ofcom noted from the programme as broadcast and the unedited material that he was filmed negotiating with the HCEOs and speaking to the restaurant owner via mobile telephone inside a restaurant which was not open for business at that time and where the public could not have overheard him. Mr Islam was also shown speaking to one of the HCEOs, Mr Bohill, on the threshold of the restaurant about the payment to be delivered by the restaurant owner.

We also considered that Mr Islam was shown while engaged in negotiating a sensitive financial matter on behalf of a friend, the restaurant owner. While we recognised that Mr Islam was not discussing his own financial affairs, we considered he was, nonetheless, shown engaging the HCEOs on a topic that could reasonably be considered as private and sensitive. We rejected Channel 5's suggestion that Mr Islam imposed himself on the officer. We considered that, while not a bystander, Mr Islam was filmed and broadcast while acting as an intermediary between the restaurant owner and HCEOs regarding this financial matter. We acknowledge that the HCEOs were not seeking to recover assets from him but his friend. However, the material broadcast showed Mr Islam conducting pressurised financial negotiations on behalf of that friend. Ofcom concluded, therefore, that Mr Islam had a legitimate expectation of privacy in the particular circumstances of this case.

We then went on to consider whether Mr Islam's legitimate expectation of privacy was infringed in the circumstances.

Ofcom recognised that, as set out in the "Summary of the complaint and the broadcaster's response" above, Mr Islam's recollection of precisely what he told the programme makers in explaining his reasons for not giving his consent to appear in the programme, differed to that of the programme makers, as described in Channel 5's statement in response to the complaint. Channel 5 confirmed that the programme makers did not have Mr Islam's consent to be included in the broadcast, and included footage of him on the basis that it did not consider his consent to be required in the circumstances. We noted Channel 5's submission that the programme makers were not aware of the detail of Mr Islam's concern. Having reviewed non-broadcast material, we accept that Channel 5 were not at the time aware of some of the matters later raised by Mr Islam as to why he did not wish to be shown and, on becoming aware, Channel 5 voluntarily chose not to rebroadcast the footage. Nevertheless, it is common ground that Channel 5 did not obtain Mr Islam's consent prior to broadcast.

Ofcom then considered whether the intrusion into Mr Islam's expectation of privacy was warranted. In determining whether or not the infringement of Mr Islam's privacy was warranted in the circumstances, we balanced the broadcaster's right to freedom of expression and the viewers' right to receive information and ideas without unnecessary interference, having regard to the meaning of "warranted" within the Code.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be

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

We therefore carefully balanced Mr Islam's right to privacy in the broadcast of the footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference.

Ofcom considered that there was a genuine public interest in broadcasting programmes of this nature and which showed HCEOs as they executed their official duties with the aim of conveying to viewers an understanding of the work they do in recovering outstanding debts and, the often lengthy negotiations between the HCEOs and those they come into contact with. In our view, the footage of Mr Islam negotiating on behalf of his friend with the HCEOs was important in enabling the broadcaster to illustrate this work and the difficulties experienced by individuals and the HCEOs. On this basis, therefore, and notwithstanding that Mr Islam did not give his consent, Ofcom concluded that the infringement of his legitimate expectation of privacy was warranted in the circumstances.

Therefore, on balance, and given all the factors set out above, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in broadcasting the material in order to demonstrate the work and situations encountered by the HCEOs, outweighed Mr Islam's expectation of privacy in the particular circumstances of the case. Ofcom concluded therefore that there was no unwarranted infringement of Mr Islam's privacy in the programme as broadcast.

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

Not Upheld

Complaint by Mrs Katherine Edwards

Confessions of a Copper, Channel 4, 19 November 2014

Summary

Ofcom has not upheld this complaint by Mrs Katherine Edwards of unwarranted infringement of privacy in the programme as broadcast.

The programme was part of a series that explored how professional jobs in the United Kingdom have changed over the past 50 years. This particular episode examined police practices since the 1960s and the changes encountered by the police over that time. Towards the end of the programme, footage of Mrs Edwards was shown with her face unobscured.

Ofcom found that, in the particular circumstances of this case, Mrs Edwards did not have a legitimate expectation of privacy with regard to the inclusion of the footage of her in the programme as broadcast. Therefore, Mrs Edwards' privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 19 November 2014, Channel 4 broadcast an edition of *Confessions of…*, a series of programmes which examined how professional jobs in the United Kingdom had changed over the past 50 years.

This particular edition, entitled *Confessions of a Copper*, covered a chronology of the police force from the 1960s onwards, focusing on key topics as well as individual incidents that were presented as *"turning points"* in the development of modern policing. Seven former police officers were shown in interview in the programme discussing their experiences as police officers *"before paperwork ran riot*". The topics covered in the programme included:

- the planting of false evidence by police officers;
- violence against suspects and protesters;
- institutional sexism and sexual harassment (including examples of personal incidents by two female former police officers), and the impact of the Sex Discrimination Act 1975;
- institutional racism, the impact of the "sus law"[1] on police relations with ethnic minorities, and the inquiries into the murder of Stephen Lawrence and subsequent diversity training; and,
- increased regulation of the police force from the introduction of the Police and Criminal Evidence Act 1984 ("PACE") onwards, and the subsequent expansion of administrative work.

[1] The "sus'" or "suspected persons" law was the term applied to Section 4 of the Vagrancy Act 1824, which gave police officers the power to stop and search anyone whom they suspected may commit an offence.

The section of the programme examining the growth in administrative work after the introduction of PACE in 1984 showed former police officer, Mr Alfie Moore, speaking about bureaucracy within the police force. He said:

> "*The changes, the wind of change has come in a lot in the last 10 years…created a lot of bureaucracy in many cases*".

The programme showed a montage of clips, including two police officers with children from an ethnic minority background, a police officer entering data on a computer screen, and shelves filled with forms. Mr Moore said:

> "*Good cops never needed any of that. Good cops were, were good cops, they did the right thing*".

Archive black and white footage was then shown of a police officer on a bicycle, waving to pedestrians. The programme's narrator said: "*Our coppers* [i.e. those who were interviewed for the programme] *had joined the force in a time when they had power, and respect*". Images of the these former police officers were then shown, followed by footage of a police officer using physical violence to restrain a struggling man. The narrator said:

> *"But, within a generation, their hands had been tied, by paperwork and protocol. And they found themselves in a world they no longer recognised*".

The programme showed footage of a police officer sitting behind a desk with boxes and stacks of files on it, a police officer entering data on a computer, and a line of police staff working at their computers.

This was followed by footage panning across shelves of papers which included an image of a Stop and Search form. A police officer (the complainant, Mrs Edwards) was then shown holding a Stop and Search form and a report in her hand. The footage was slowed down as she looked towards the camera with her lips pursed. There was no further footage of Mrs Edwards in the programme.

While Mrs Edwards face was shown unobscured, she was not named in the programme nor was her voice heard.

Summary of the complaint and the broadcaster's response

Mrs Edwards complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her working as a police officer was shown without her consent. Mrs Edwards said that she now worked as a teacher in an area where many families held negative views of the police. Mrs Edwards said that she did not tell people about her time as a police officer because she did not want to incur a negative reaction from the parents of the children in her class.

By way of background, Mrs Edwards said the footage of her was from a *Channel 4 News* report which she had taken part in while working for Essex Police and that she believed that she only gave permission for this footage to be included in this news report.

In response to the complaint, Channel 4 said that it considered that Mrs Edwards had consented to the use of the footage in programmes other than its original broadcast.

Channel 4 noted a discrepancy in Mrs Edwards' recollection of events in relation to the permission she had given about the footage of her. It said that in Mrs Edwards' initial complaint to Ofcom she said "I do not know what permissions I gave at the time", but that in her complaint form she told Ofcom that she was "under the impression I only ever gave permission for a news report" and that "I gave permission for this to be on television at the time, however I did not give any permission for it to be used for any other production or in the future at all". As a consequence, Channel 4 said that they did not accept that Mrs Edwards did not agree for the footage to be reused in any other programme. The broadcaster added that it was also possible that Mrs Edwards may have explicitly consented to the material being reused in other programmes and licensed to third parties and that they assumed that she had done so. In any event, Channel 4 said that even if Mrs Edwards had not provided her explicit consent, it was still unnecessary for them to have obtained her consent for use of the footage in the programme.

Channel 4 explained that the footage included in the programme of Mrs Edwards was properly licensed to the producers by a reputable licensor, ITN Source, by way of a Licence Agreement. Channel 4 stated that the agreement gave the producers a "non-exclusive, non-transferable licence to incorporate material in the production in accordance with the terms of the agreement". The broadcaster added that the footage of Mrs Edwards formed part of four ITN Source clips featuring her and which were available on ITN Source's website. Further, Channel 4 provided a website link to the footage and said that it was available to view by the public and was licensable for broadcast. The broadcaster stated that part of the footage featuring Mrs Edwards (but not the precise footage used in the programme complained about) formed part of a Channel 4 News item dated 7 February 2008 and that it was also publically available for licensing from ITN Source (Channel 4 also provided the website link to this material).

Channel 4 said that the footage was therefore available on the internet for members of the public to search for and view on the ITN Source website and that it was described as "ready to buy" and "available for world all media licensing". Channel 4 also understood that the footage had previously been licensed for use by other production companies. Therefore, the broadcaster said that the footage was already in the public domain and continued to be available on the internet. Channel 4 said that this footage (i.e. that owned by ITN Source) included Mrs Edwards' image and information about her working as a police officer.

In relation to the reuse of the footage of Mrs Edwards in the programme, Channel 4 said that the original footage of Mrs Edwards showed her at Basildon police station in Essex in 2008 carrying out her work as a police officer, i.e. speaking on the telephone, working at her desk, liaising with colleagues and describing how she filled out "stop and search" forms.

Channel 4 said that the description of the publically available news item was as follows:

> "C4N: CRIME: Chief Inspector of Constabulary calls for police reform. Sir Ronnie Flanagan, the Home Office's policing advisor and Chief Inspector of Constabulary, has warned that current officer numbers in England and Wales are "unsustainable" and will have to fall. He argues that many tasks could instead be done by support staff. He has also called for big changes in the number of forms that have to be filled in during investigations".

The broadcaster said that Mrs Edwards was filmed and communicated openly with the interviewer. Further, Channel 4 stated that at the time it was clear that Mrs Edwards had consented to being filmed in this way. Channel 4 pointed out that Mrs Edwards had also acknowledged in her complaint form that she gave permission for the material to be on television at the time.

Channel 4 also stated that the footage illustrated a point that was very similar to the original context of the news item, i.e. administrative burdens on the police, and had not been used in a defamatory or derogatory context. Channel 4 said that the footage was slowed down to portray the administrative difficulties encountered by the police in an empathetic light and was "clearly delineated" from the more controversial matters raised earlier in the programme, i.e. sexism, racism and police brutality. Channel 4 said that the footage was not inherently private in nature, sensitive or embarrassing. Further, Mrs Edwards' name (current or former) was not used and her voice was not heard. The broadcaster said that Mrs Edwards was simply shown working in her capacity as a police officer, carrying out duties in that role and being filmed in a context that cannot reasonably be described as private or sensitive.

Channel 4 stated that in the footage included in the programme, Mrs Edwards was shown briefly (for no more than four seconds). It also said that the footage of her was used as an illustrative device to show the increase in bureaucracy and administrative work undertaken by police officers following the implementation of PACE and did not cast any aspersions on the integrity or honesty of Mrs Edwards.

Channel 4 stated that the fact that Mrs Edwards was, but is no longer, a police officer did not create an unwarranted infringement of her privacy with regard to the recent broadcast of footage of and information about her. Channel 4 said that there is nothing inherently private or sensitive about the fact of being a police officer, which is a public facing and publicly funded position, nor is there any stigma attached to being a police officer. The broadcaster added that Mrs Edwards would have spent some of her time interacting with the public in her capacity as a police officer. Channel 4 stated that the fact that Mrs Edwards was a police officer in Essex is a matter that is already, and remains, in the public domain as a result of the original news item that featured her and was previously broadcast with her consent. The fact that Mrs Edwards was no longer a police officer did not give rise to an expectation of privacy.

Channel 4 did not accept that it was incumbent on it and the programme makers to check whether Mrs Edwards' circumstances might have changed given that the footage itself contained nothing inherently private or sensitive and the use of the footage did not materially differ from its original use. Channel 4 said that to place such an obligation on broadcasters would be a disproportionate burden on its right to free expression under Article 10 of the European Convention on Human Rights.

Channel 4 also considered that Mrs Edwards had provided no evidence to support her claim that the programme as broadcast could cause reprisals towards her. For example, Mrs Edwards had not provided any detail about the extent to which she had sought to keep her former career as a police officer a secret or provided the evidence upon which to analyse whether or not her fear of a negative reaction for being known as a police officer in the locality was a reasonable one

In any event, Channel 4 stated that if Ofcom did conclude that Mrs Edwards had a limited legitimate expectation of privacy and that there had been an infringement of that expectation of privacy (neither of which Channel 4 said it accepted), it considered that it was warranted to include the footage of her in the circumstances.

Channel 4 stated that the programme examined matters of public interest, namely the role of the police over the last 50 years, to what extent it had changed and whether the changes were a good thing. Channel 4 stated that the footage of Mrs Edwards was used to illustrate a particular point relating to the increasing administrative burden on police and was done in a "responsible, proportionate and fair manner".

Channel 4 said that there was a public interest in free expression itself and the media's ability to express itself freely. The broadcaster stated that the ability of archive owners, such as ITN, to license footage which it has properly obtained to third parties is a "legitimate and proper endeavour" of the media and its right to freely express itself. Further, the ability of Channel 4 and others to reuse material broadcast where consent has been obtained from the relevant contributors is "a standard, necessary and important part of the media's operations (both commercially and creatively) and its free expression rights".

Channel 4 concluded by stating that the use and reuse of archive footage is a means by which broadcasters receive and impart information as they are entitled to do pursuant to Article 10 of the ECHR which relates to freedom of expression. Channel 4 argued that upholding Mrs Edwards' complaint would "amount to an obligation to require broadcasters to seek consent from all those appearing in properly licenced archive footage, whatever the circumstances". Channel 4 considered this would place an "unnecessary, significant and disproportionate burden on broadcasters who are already obliged, pursuant to the Ofcom Code, to properly (as Channel 4 has done in this case) consider issues that may arise from the re-use of archive footage (pursuant to Practice 8.10)" and that this would have a significant chilling effect on the use of archive and archive production/licensing as a whole which would ultimately restrain free expression.

Decision

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

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

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

In Ofcom's 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 considering Mrs Edwards' complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her working as a police officer was shown without her consent, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. We also had regard to Practice 8.10 which states that broadcasters should ensure that the re-use of material (i.e. use of material originally filmed or recorded for one purpose or used in a later or different programme) does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

In assessing whether or not Mrs Edward's privacy was unwarrantably infringed in the programme as broadcast, we first considered the circumstances in which the original footage of Mrs Edwards was filmed and broadcast and the circumstances of its rebroadcast in *Confessions of a Copper.*

Ofcom noted that the footage of Mrs Edwards was originally filmed for a *Channel 4 News* report. Channel 4 did not provide Ofcom with a copy of the full *Channel 4 News* report broadcast on 7 February 2008 or the unedited material. However, it did provide Ofcom with the ITN Source website link to the footage of Mrs Edwards.

Ofcom viewed all of the footage of Mrs Edwards available on the ITN Source website and noted that the unedited footage showed Mrs Edwards and another police officer working in a police station. In this footage, Mrs Edwards was shown in police uniform writing at a desk; talking on the telephone about a criminal complaint; and, explaining to the cameraman the length of time it took to fill in a "Stop and Search" form. We were not able to view the full *Channel 4 News* report, because it had not been made available to Ofcom. However, part of the report was available on the ITN Source website and it included footage of Mrs Edwards in police uniform writing at her desk. We understood from Channel 4's response to the complaint that the footage of Mrs Edwards included in *Confessions of a Copper* i.e. Mrs Edwards holding a "Stop and Search" form, had not been broadcast in the original *Channel 4 News* report.

We then assessed the context in which the original footage was filmed and subsequently used in the *Channel 4 News* report. From the unedited footage, we noted that it appeared that Mrs Edwards and her colleague were filmed while carrying out their daily duties as police officers at Basildon Police Station, which included completing paperwork, and that neither Mrs Edwards nor the other police officer objected to the filming. As noted above, the full *Channel 4 News* report was not available on the ITN Source website. However, during the introduction to the report, in which footage of Mrs Edwards and her colleague was briefly shown (but not the footage which was subsequently used in the programme *Confessions of a Copper*), the newsreader said:

> *"*[Current officer numbers] *in England and Wales are unsustainable and will have to fall. Sir Ronnie Flanagan* [the then Chief Inspector of Constabulary] *argues that many tasks could instead be done by support staff. He's also called for big*

changes in the number of forms that have to be filled in during investigations and says that demands for more police need to stop".

Given our observations about the content of the *Channel 4 News* report, set out above, we considered that the footage of Mrs Edwards in this report was used as an illustrative device to accompany Sir Ronnie Flanagan's comments about the need for changes to the police force – including a reduction in the number of forms police officers need to complete during investigations. Further, we noted that it did not appear from Mrs Edwards' complaint that she had ever objected to being filmed and the footage of her being included in the *Channel 4 News* report in this context.

We then considered the circumstances in which the footage of Mrs Edwards was used in the programme *Confessions of a Copper.* As noted in the "Introduction and programme summary" section, the programme considered changes undergone by the police force from the 1960s to the present day and explored several key topics, for example, institutional sexism and racism. In particular, we noted that the footage of Mrs Edwards was shown in the context of discussions about the increased regulation of and administrative burden on the police following the introduction of PACE.

Therefore, we considered that although the footage of Mrs Edwards had originally been filmed for a different type of programme i.e. a news programme and that the recently used footage of Mrs Edwards had not been used in the *Channel 4 News* report, the footage of Mrs Edwards was used for a similar purpose i.e. to illustrate the administrative burden on police officers particularly in relation to the amount of paperwork which needs to be completed during investigations, and disclosed the same information i.e. that the person shown was or had been a police officer.

Ofcom next considered whether Mrs Edwards had a legitimate expectation of privacy in relation to the inclusion of the footage in the programme *Confessions of a Copper*. In this particular case, we took into account the fact that Mrs Edwards had been filmed openly and had said that she had originally consented to the filming of the footage of her for the purposes of the *Channel 4 News report*. We also noted that information about Mrs Edwards being a police officer had already been placed in the public domain by way of the broadcast of similar footage of Mrs Edwards in the *Channel 4 News* report. We also took into account the fact that the footage of Mrs Edwards was publically available on the ITN Source website for individuals to view and purchase, albeit, in a limited forum, i.e. only people who may be looking for archive footage would be likely to visit this website. We further noted the time which had elapsed between the filming of Mrs Edwards for the *Channel 4 News* report in 2008 and the broadcast of the footage in the programme *Confessions of a Copper* in 2014, i.e. some six years. We noted that Mrs Edwards had previously worked as a police officer, but that now she worked as a teacher.

We had regard to the fact that the footage of Mrs Edwards broadcast in the programme was very brief and that she did not appear to be engaged in any activities which were private or sensitive in nature, nor did the programme reveal any obviously private or sensitive information about Mrs Edwards. We noted that the footage showed Mrs Edwards dressed in a police uniform holding up a "Stop and Search" form while at her former workplace and that it would have been understood from the footage that she was (or had been) a police officer. We also took the view that Mrs Edwards, when employed as a police officer, was a public servant undertaking a public-facing role.

We also had regard to the fact that Mrs Edwards said that she had kept information about her previous employment as a police officer private, because she worked in an area where many families hold negative views of the police and that she did not want to incur a negative reaction from her pupils or their parents. However, we noted that Mrs Edwards had not provided any evidence indicating that she had incurred any negative reprisals as a consequence of the broadcast of the programme or any specific evidence regarding why her students or their parents would react negatively if they discovered she was a police officer.

We next assessed whether Mrs Edwards was identifiable in the programme as broadcast. Mrs Edwards' face was shown unobscured, although she was not named nor referred to specifically in the programme. We considered that Mrs Edwards was identifiable from the footage included in the programme.

Overall, the information in the programme disclosed that Mrs Edwards had previously worked as a police officer and we considered that it would be possible for people who may not have known that she was previously a police officer, to have identified her from the footage. Nevertheless, it was our view that the footage itself did not show Mrs Edwards doing anything obviously private or sensitive and simply showed her carrying out her previous role as a police officer. Therefore, taking all the above factors into consideration, it was our view that while Mrs Edwards may have preferred information about her previous employment as a police officer to remain private, we did not consider that she had a legitimate expectation in relation to the broadcast of the unobscured footage of her working as a police officer in the circumstances of this case.

As a result, it was not necessary for Ofcom to go on to consider whether any infringement into Mrs Edwards' privacy was warranted.

Therefore, Ofcom has not upheld Mrs Edwards' 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 21 April and 5 May 2015 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
Advertisements	Bonanza Bonanza	12/02/2015	Advertising minutage
UKIP: The First 100 Days	Channel 4	16/02/2015	Due impartiality / Generally accepted standards / Materially misleading

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 21 April and 5 May 2015 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
Turn Up the Weekend Easter Special	4Music	03/04/2015	Scheduling	1
Can't Pay? We'll Take it Away!	5*	15/03/2015	Offensive language	1
News	Arise News	31/03/2015	Due accuracy	1
BBC Election Debate 2015	BBC 1	16/04/2015	Outside of remit / other	3
BBC News	BBC 1	25/04/2015	Outside of remit / other	1
BBC News	BBC 1	26/04/2015	Generally accepted standards	1
BBC News	BBC 1	Various	Outside of remit / other	1
BBC News at Six	BBC 1	22/04/2015	Race discrimination/offence	1
BBC News at Six	BBC 1	23/04/2015	Outside of remit / other	1
BBC News at Ten	BBC 1	08/01/2015	Religious/Beliefs discrimination/offence	1
BBC News at Ten	BBC 1	16/04/2015	Religious/Beliefs discrimination/offence	1
Breakfast	BBC 1	20/04/2015	Race discrimination/offence	1
EastEnders	BBC 1	10/04/2015	Violence and dangerous behaviour	1
EastEnders	BBC 1	14/04/2015	Race discrimination/offence	1
EastEnders	BBC 1	17/04/2015	Generally accepted standards	1
EastEnders	BBC 1	28/04/2015	Offensive language	1
Election 2015	BBC 1	29/04/2015	Outside of remit / other	1
Election 2015	BBC 1	30/04/2015	Outside of remit / other	1
Formula One	BBC 1	14/03/2015	Offensive language	1
Have I Got News for You	BBC 1	10/04/2015	Generally accepted standards	1
Have I Got News for You	BBC 1	24/04/2015	Generally accepted standards	1
Look East	BBC 1	20/11/2014	Generally accepted standards	1
Michael McIntyre's Easter	BBC 1	05/04/2015	Religious/Beliefs	1

Night at the Coliseum			discrimination/offence	
Operation Black Vote advertisement	BBC 1	15/04/2015	Race discrimination/offence	1
Ordinary Lies	BBC 1	07/04/2015	Generally accepted standards	9
Party Election Broadcast by the UK Independence Party	BBC 1	30/04/2015	Generally accepted standards	1
Pointless	BBC 1	14/04/2015	Generally accepted standards	1
Question Time Election Leaders Special	BBC 1	30/04/2015	Outside of remit / other	6
Regional News and Weather	BBC 1	16/04/2015	Generally accepted standards	3
Regional News and Weather	BBC 1	21/04/2015	Outside of remit / other	1
Saturday Kitchen Live	BBC 1	11/04/2015	Gender discrimination/offence	1
Subtitling	BBC 1	Various	Television Access Services	1
The Ark	BBC 1	30/03/2015	Sexual material	2
The Leader Interviews	BBC 1	20/04/2015	Outside of remit / other	2
The Leader Interviews	BBC 1	22/04/2015	Outside of remit / other	71
The Leader Interviews	BBC 1	27/04/2015	Outside of remit / other	1
The Dog Factory	BBC 1 Scotland	15/04/2015	Generally accepted standards	1
Back in Time for Dinner	BBC 2	05/04/2015	Race discrimination/offence	1
Collectaholics	BBC 2	13/04/2015	Offensive language	1
Daily Politics	BBC 2	17/04/2015	Outside of remit / other	1
Inside Harley Street	BBC 2	13/04/2015	Generally accepted standards	1
Meet the Ukippers	BBC 2	22/02/2015	Race discrimination/offence	1
Meet the Ukippers	BBC 2	22/02/2015	Due impartiality/bias	9
Newsnight	BBC 2	27/03/2015	Disability discrimination/offence	1
Newsnight	BBC 2	22/04/2015	Outside of remit / other	5
Party Election Broadcast by the Liberal Democrats	BBC 2	23/04/2015	Violence and dangerous behaviour	1
The Daily Politics	BBC 2	04/03/2015	Generally accepted standards	1
The Daily Politics	BBC 2	23/04/2015	Outside of remit / other	1
The World At War	BBC 2	25/03/2015	Suicide and self harm	1
How Scotland Works	BBC 2 Scotland	28/04/2015	Outside of remit / other	1
A Nation Divided? The Charlie Hebdo Aftermath	BBC 3	30/03/2015	Outside of remit / other	1
Don't Tell the Bride	BBC 3	10/03/2015	Scheduling	1
Don't Tell the Bride	BBC 3	15/04/2015	Scheduling	1
Killer Magic	BBC 3	25/03/2015	Outside of remit / other	1
Stacey Dooley Investigates	BBC 3	22/04/2015	Outside of remit / other	1
Marc Riley	BBC 6 Music	16/04/2015	Offensive language	1
BBC News	BBC News Channel	27/03/2015	Disability discrimination/offence	1

BBC News	BBC News Channel	26/04/2015	Outside of remit / other	1
Sports News	BBC News Channel	20/04/2015	Outside of remit / other	1
The Film Review	BBC News Channel	10/04/2015	Gender discrimination/offence	1
Victoria Derbyshire	BBC News Channel	29/04/2015	Outside of remit / other	1
Newsbeat: Ask The Leaders	BBC Radio 1	22/04/2015	Outside of remit / other	1
BBC News	BBC Radio 4	23/04/2015	Outside of remit / other	1
The Norman Conquests	BBC Radio 4	28/03/2015	Violence and dangerous behaviour	1
The Today Programme	BBC Radio 4	27/04/2015	Outside of remit / other	1
Kaye Adams	BBC Radio Scotland	28/04/2015	Outside of remit / other	1
Iain Lee	BBC Three Counties Radio	16/04/2015	Scheduling	1
Iain Lee	BBC Three Counties Radio	27/04/2015	Outside of remit / other	1
FA Cup Football	BT Sport 1	19/04/2015	Outside of remit / other	1
Clarence	Cartoon Network (Central Eastern Europe)	27/03/2015	Scheduling	1
Programming	CBS Action	19/04/2015	Outside of remit / other	1
Decision Time (trailer)	Challenge	28/04/2014	Elections/Referendums	1
All4.com (trailer)	Channel 4	11/04/2015	Religious/Beliefs discrimination/offence	1
All4.com (trailer)	Channel 4	11/04/2015	Generally accepted standards	2
All4.com (trailer)	Channel 4	12/04/2015	Religious/Beliefs discrimination/offence	1
All4.com (trailer)	Channel 4	17/04/2015	Scheduling	1
All4.com (trailer)	Channel 4	22/04/2015	Generally accepted standards	1
All4.com (trailer)	Channel 4	22/04/2015	Religious/Beliefs discrimination/offence	1
All4.com (trailer)	Channel 4	23/04/2015	Generally accepted standards	1
All4.com (trailer)	Channel 4	24/04/2015	Generally accepted standards	1
All4.com (trailer)	Channel 4	Various	Generally accepted standards	1
Ballot Monkeys	Channel 4	21/04/2015	Elections/Referendums	1
Ballot Monkeys	Channel 4	21/04/2015	Generally accepted standards	2
Channel 4 News	Channel 4	18/03/2015	Materially misleading	1
Channel 4 News	Channel 4	20/03/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	20/04/2015	Elections/Referendums	2
Channel 4 News	Channel 4	22/04/2015	Generally accepted standards	4
Channel 4 News	Channel 4	24/04/2015	Elections/Referendums	1

Channel promotion	Channel 4	16/04/2015	Materially misleading	1
Channel promotion	Channel 4	23/04/2015	Materially misleading	2
Channel promotion	Channel 4	Various	Materially misleading	1
Come Dine with Me	Channel 4	25/04/2015	Animal welfare	1
Gogglebox	Channel 4	17/04/2015	Race discrimination/offence	2
Hollyoaks	Channel 4	03/04/2015	Disability discrimination/offence	1
Hollyoaks	Channel 4	13/04/2015	Sexual material	1
Location, Location, Location	Channel 4	19/04/2015	Gender discrimination/offence	1
One Born Every Minute	Channel 4	14/04/2015	Race discrimination/offence	1
The Island with Bear Grylls	Channel 4	15/04/2015	Offensive language	1
The Island with Bear Grylls	Channel 4	15/04/2015	Animal welfare	9
The Island with Bear Grylls	Channel 4	22/04/2015	Generally accepted standards	1
The Last Leg	Channel 4	23/04/2015	Elections/Referendums	1
The Morning Line	Channel 4	Various	Materially misleading	1
Things We Won't Say About Race That are True	Channel 4	19/03/2015	Materially misleading	1
Three in a Bed	Channel 4	27/04/2015	Offensive language	1
Travel Man: 48 Hours in Iceland	Channel 4	13/04/2015	Race discrimination/offence	1
UKIP: The First 100 Days (pre-tx)	Channel 4	16/02/2015	Outside of remit / other	45
Weekend Brunch - From the Grand National	Channel 4	11/04/2015	Gender discrimination/offence	1
Benefits and Bypasses: Billion Pound Patients	Channel 5	08/04/2015	Materially misleading	1
Benefits Britain: Life on the Dole	Channel 5	23/02/2015	Materially misleading	1
Benefits Britain: Life on the Dole	Channel 5	23/02/2015	Generally accepted standards	5
Benefits Britain: Life on the Dole	Channel 5	09/03/2015	Generally accepted standards	1
Benefits Britain: Life on the Dole	Channel 5	09/03/2015	Materially misleading	1
Benefits Britain: Life on the Dole	Channel 5	11/03/2015	Generally accepted standards	1
Benefits Britain: Life on the Dole	Channel 5	Various	Generally accepted standards	1
Can't Pay? We'll Take it Away!	Channel 5	17/09/2014	Materially misleading	1
Farage Fans and UKIP Lovers	Channel 5	04/03/2015	Race discrimination/offence	1
Farage Fans and UKIP Lovers	Channel 5	04/03/2015	Due impartiality/bias	43
Glasgow's Killing Streets	Channel 5	02/04/2015	Materially misleading	2
Grand Theft Auto: UK	Channel 5	01/04/2015	Crime	1
Mysteries of the Bible	Channel 5	27/03/2015	Religious/Beliefs discrimination/offence	1
Nanna Love: 50 Shades of Granny	Channel 5	31/03/2015	Sexual material	2
NCIS	Channel 5	14/03/2015	Advertising minutage	1

Neighbours	Channel 5	27/04/2015	Television Access Services	1
OAPs Behaving Badly	Channel 5	01/04/2015	Sexual material	1
Pip Ahoy!	Channel 5	07/04/2015	Disability discrimination/offence	1
Russell Howard's Stand Up Central (trailer)	Channel 5	21/04/2015	Generally accepted standards	1
The Nightmare Neighbour Next Door	Channel 5	22/04/2015	Generally accepted standards	1
Dej Loaf 'Try Me' Music Video	Channel AKA	21/03/2015	Violence and dangerous behaviour	1
Advertisement	Comedy Central	21/04/2015	Outside of remit / other	1
Epic Meal Empire	Comedy Central	Various	Generally accepted standards	1
Yukon Men	DMAX	15/04/2015	Animal welfare	1
All4.com (trailer)	E4	16/04/2015	Religious/Beliefs discrimination/offence	1
All4.com (trailer)	E4	17/04/2015	Generally accepted standards	1
Hollyoaks Omnibus	E4	29/03/2015	Materially misleading	1
Jane the Virgin (trailer)	E4	25/04/2015	Scheduling	1
Programming	E4	21/04/2015	Advertising minutage	1
Advertisement	ITV	20/04/2015	Outside of remit / other	2
Advertisement	ITV	22/04/2015	Outside of remit / other	2
Advertisement	ITV	25/04/2015	Outside of remit / other	22
Advertisement	ITV	27/04/2015	Outside of remit / other	1
Ant and Dec's Saturday Night Takeaway	ITV	21/03/2015	Crime	1
Ant and Dec's Saturday Night Takeaway	ITV	21/03/2015	Scheduling	2
Ant and Dec's Saturday Night Takeaway	ITV	21/03/2015	Generally accepted standards	3
Bear Grylls: Mission Survive	ITV	03/04/2015	Animal welfare	1
Britain's Got Talent	ITV	11/04/2015	Animal welfare	3
Britain's Got Talent	ITV	18/04/2015	Race discrimination/offence	1
Britain's Got Talent	ITV	18/04/2015	Under 18s in programmes	3
Coronation Street	ITV	01/04/2015	Materially misleading	2
Coronation Street	ITV	03/04/2015	Promotion of products/services	1
Coronation Street	ITV	03/04/2015	Scheduling	1
Coronation Street	ITV	06/04/2015	Materially misleading	1
Coronation Street	ITV	20/04/2015	Generally accepted standards	1
Coronation Street	ITV	20/04/2015	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	20/04/2015	Scheduling	4
Crizal UV Protective Lenses' sponsorship of ITV Weather	ITV	14/04/2015	Materially misleading	1
Daybreak	ITV	27/03/2015	Disability discrimination/offence	1

Emmerdale	ITV	08/04/2015	Offensive language	1
Emmerdale	ITV	16/04/2015	Violence and dangerous behaviour	1
Emmerdale	ITV	17/04/2015	Generally accepted standards	1
Emmerdale	ITV	20/04/2015	Race discrimination/offence	1
Give a Pet a Home	ITV	15/04/2015	Generally accepted standards	1
Give a Pet a Home	ITV	15/04/2015	Outside of remit / other	1
Good Morning Britain	ITV	14/04/2015	Drugs, smoking, solvents or alcohol	1
Good Morning Britain	ITV	14/04/2015	Generally accepted standards	1
Good Morning Britain	ITV	14/04/2015	Sexual material	1
Good Morning Britain	ITV	16/04/2015	Elections/Referendums	1
Good Morning Britain	ITV	Various	Generally accepted standards	1
ITV News and Weather	ITV	13/04/2015	Violence and dangerous behaviour	1
ITV News at Ten and Weather	ITV	30/03/2015	Generally accepted standards	1
ITV News at Ten and Weather	ITV	23/04/2015	Generally accepted standards	1
Loose Women	ITV	26/03/2015	Suicide and self harm	1
Loose Women	ITV	16/04/2015	Disability discrimination/offence	1
Morrisons' sponsorship of Britain's Got Talent	ITV	18/04/2015	Disability discrimination/offence	1
Nationwide's sponsorship of ITV documentaries	ITV	16/04/2015	Generally accepted standards	1
Nationwide's sponsorship of ITV documentaries	ITV	16/04/2015	Sponsorship credits	1
Newzoids	ITV	22/04/2015	Elections/Referendums	1
Newzoids (trailer)	ITV	13/04/2015	Generally accepted standards	1
Newzoids (trailer)	ITV	14/04/2015	Generally accepted standards	1
Ninja Warrior UK	ITV	18/04/2015	Generally accepted standards	1
O'Brien	ITV	03/04/2015	Scheduling	1
O'Brien	ITV	07/04/2015	Due impartiality/bias	1
O'Brien	ITV	09/04/2015	Scheduling	1
Play to the Whistle	ITV	11/04/2015	Violence and dangerous behaviour	1
Play to the Whistle	ITV	11/04/2015	Gender discrimination/offence	2
Safe House	ITV	20/04/2015	Outside of remit / other	1
Safe House	ITV	20/04/2015	Violence and dangerous behaviour	1
Skoda's sponsorship of mystery drama on ITV	ITV	04/03/2015	Generally accepted standards	1
The Jeremy Kyle Show	ITV	19/03/2015	Scheduling	1
The Jeremy Kyle Show	ITV	16/04/2015	Generally accepted standards	1

The Jeremy Kyle Show	ITV	21/04/2015	Materially misleading	1
The Jeremy Kyle Show	ITV	27/04/2015	Generally accepted standards	1
This Morning	ITV	08/12/2014	Competitions	1
This Morning	ITV	20/02/2015	Scheduling	1
This Morning	ITV	26/03/2015	Scheduling	1
This Morning	ITV	01/04/2015	Religious/Beliefs discrimination/offence	2
This Morning	ITV	17/04/2015	Generally accepted standards	1
This Morning	ITV	17/04/2015	Materially misleading	1
This Morning	ITV	17/04/2015	Race discrimination/offence	1
This Morning	ITV	22/04/2015	Elections/Referendums	4
This Morning	ITV	29/04/2015	Elections/Referendums	1
Tonight: The Food We Eat	ITV	19/03/2015	Materially misleading	1
You've Been Framed!	ITV	14/03/2015	Disability discrimination/offence	1
ITV News Granada Reports	ITV Granada	26/03/2015	Due accuracy	1
ITV News Granada Reports	ITV Granada	15/04/2015	Elections/Referendums	1
Advertisement	ITV2	24/04/2015	Outside of remit / other	1
Advertisement	ITV2	29/04/2015	Political advertising	1
Britain's Got More Talent	ITV2	25/04/2015	Scheduling	1
Celebrity Juice	ITV2	16/04/2015	Generally accepted standards	1
Celebrity Juice	ITV2	20/04/2015	Generally accepted standards	1
Reality Bites	ITV2	08/03/2015	Under 18s in programmes	1
Reality Bites	ITV2	12/03/2015	Generally accepted standards	1
118 118's sponsorship of ITV Movies	ITV4	26/04/2015	Scheduling	1
MSA British Touring Car Championship	ITV4	19/04/2015	Advertising scheduling	1
The Only Way is Essex	ITVBe	22/03/2015	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	08/04/2015	Elections/Referendums	1
10 Years Younger	London Live	10/04/2015	Materially misleading	1
All4.com (trailer)	More4	26/04/2015	Generally accepted standards	1
Geordie Shore	MTV	07/04/2015	Generally accepted standards	1
Super Base Beats: Jason Deruolo "Want to Want Me"	MTV Base	15/04/2015	Scheduling	1
The Thundermans	Nickelodeon	29/03/2015	Scheduling	1
How I Came to Islam	Peace TV	12/04/2015	Generally accepted standards	1
Advertisement	QVC	21/04/2015	Outside of remit / other	1
In the Now	RT	10/03/2015	Due impartiality/bias	1
Programming	Samaa	09/02/2015	Scheduling	1
Advertisements	SET MAX	Various	Outside of remit / other	1

Game of Thrones	Sky Atlantic	19/04/2015	Generally accepted standards	1
Elementary	Sky Living	31/03/2015	Generally accepted standards	1
Murnaghan	Sky News	12/04/2015	Elections/Referendums	1
Programming	Sky News	Various	Elections/Referendums	1
Sky News	Sky News	27/03/2015	Due impartiality/bias	1
Sky News	Sky News	15/04/2015	Violence and dangerous behaviour	1
Sky News at Ten	Sky News	30/04/2015	Elections/Referendums	1
Sky News with Andrew Wilson	Sky News	25/04/2015	Elections/Referendums	1
Sky News with Colin Brazier	Sky News	29/04/2015	Elections/Referendums	1
Sky News with Dermot Murnaghan	Sky News	21/04/2015	Elections/Referendums	1
Sky News with Martin Stanford	Sky News	28/03/2015	Due impartiality/bias	1
Sunrise	Sky News	17/04/2015	Elections/Referendums	1
Sunrise	Sky News	22/04/2015	Elections/Referendums	1
Sunrise	Sky News	23/04/2015	Elections/Referendums	1
Off Their Rockers	STV	12/04/2015	Race discrimination/offence	1
Scotland Tonight	STV	30/03/2015	Elections/Referendums	1
Weekend Sports Breakfast	TalkSport	08/03/2015	Race discrimination/offence	1
Prisjägarna	TV3 (Sweden)	02/04/2015	Generally accepted standards	5
Behno-ki-Nehfil	Unity FM (Birmingham)	13/10/2014	Religious/Beliefs discrimination/offence	1
Programming	Unity FM (Birmingham)	Various	Generally accepted standards	1
Advertisement	Various	Various	Outside of remit / other	1
Advertisements	Various	Various	Outside of remit / other	1
News	Various	28/04/2015	Elections/Referendums	1
News	Various	Various	Elections/Referendums	1
Programming	Various	Various	Television Access Services	2

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	Licensed Service	Categories
Tamworth Radio Broadcasting CIC	TCR FM	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 23 April and 6 May 2015.

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

Programme	Broadcaster	Transmission date
Programme trailers	Comedy Central	Various
Good Morning Britain	ITV	1 May 2015
The Paul O'Grady Show	ITV	20 April 2015
Editors - Parliament Hill	London Live	5 April 2015
Programming	Metro Radio 2	6 March 2015
The Mustard Show	Mustard TV	18 March 2015
Advertising minutage	PTV Global	23 April 2015
Sophie & Co	RT	27 March 2015
Family Guy	TV6 (Sweden)	3 April 2015

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

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

Licensee	Licensed Service
North Manchester FM Community Interest Company	North Manchester FM
Penistone Community Radio Limited	Penistone FM

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