

Ofcom Broadcast Bulletin

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Introduction

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

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

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

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

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

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

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

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

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

Standards cases

In Breach

Today

NTV Mir Lithuania, 28 and 30 January 2015, 18:00

Introduction

NTV Mir Lithuania is a television channel broadcasting to the Russian-speaking community in Lithuania. *Today* is a daily news programme of approximately 45 minutes in duration. The licence for NTV Mir Lithuania is held by Baltic Media Alliance Limited (“BMAL” or “the Licensee”).

A complainant alerted Ofcom to programmes broadcast on 28 and 30 January 2015, which the complainant considered were not duly impartial in relation to discussion of various news stories dealing with Ukraine.

Ofcom obtained independent translations of the programmes from the original Russian to English. We noted that these news programmes were each approximately 40 minutes long and reported on various news stories from around the world, but in particular focused on Russia and the situation in Ukraine. After assessment, Ofcom had concerns about two news items relating to Ukraine, one in the programme broadcast on 28 January 2015 and the other in the programme broadcast on 30 January 2015.

28 January 2015

This news item reported on the Ukrainian Government’s policy on conscription to the Ukrainian armed forces. The reporter focused on allegations that the Ukrainian Parliament had legislated to give “*additional powers to Commanders to use special means and even weapons against those who would not obey orders*”. This was followed by the Deputy Defence Minister of the Donetsk People’s Republic¹, Eduard Basurin, alleging that the Ukrainian army had used “*anti-retreat troops*” against its own forces.

Reporter: *“Today, the internet had spread the [Ukrainian Government] order, which prohibits disclosure of data on the real losses in the Ukrainian army during its operations. This document was published by a hacker group called ‘CiberBerkut’. According to the hackers themselves, this order was obtained from the computer of the Chief Military Prosecutor of the Ukraine, as well as the list of the deserters who had left the locations of their military units and a secret telegram addressed to the Military Commander of the National Guard in relation to criminal acts committed by the military. Apparently, taking into account this data, the Verhovna Rada [the Ukrainian Parliament] had already registered a bill under number 1762 giving additional powers to Commanders to use special means and even weapons against those who would not obey orders. For example, the day before, representatives of the*

¹ The Donetsk People’s Republic (or “DPR”) is the self-proclaimed political entity seeking to wrest control of the region of Donetsk in south-eastern Ukraine from Ukrainian Government control.

Military headquarters of the DPR stated that they had already heard about the use of barrier troops by the Ukrainian army”.

Eduard Basurin: *“An injured military officer from the 128 special infantry brigade had surrendered to our units. During an interview he told us about the facts regarding the use of anti-retreat troops from the battalions of the Territorial defence against the Ukrainian military servicemen. As the result of the shooting opened directly on the Ukrainian military servicemen from the positions of the National Guard, more than 20 people died instantly and several dozens were injured”.*

The reporter also said the following:

“Here is the Order of the Military Commissar for Belgorod-Dnestrovskiy of the Odessa region. According to the Order, all military reservists who had not received notifications are prohibited from leaving the region. Apart from this, local businesses are obliged to give all their working equipment to the disposal of the Military Enlistment Office. The order was in effect for 11 days. However, it was subsequently annulled due to the local public outcry...The best method to avoid conscription, in the opinion of those who refuse, is to leave the country and go abroad”.

30 January 2015

This programme featured a report about shelling of the city of Donetsk by Ukrainian military forces. In introducing this item, the two newsreaders said:

Newsreader 1: *“Fifteen peaceful civilians died as the result of today’s shelling of Donetsk. The shells exploded outside a trolleybus stop and the House of Culture when humanitarian aid was being distributed. Dozens of people were injured”.*

Newsreader 2: *“There is a tense situation today in the area of Debaltsevo, where heavy fighting between insurgents and the Ukrainian military has sparked new action. Mikhail Fedotov is joining us from Donetsk. Misha, is the city still under fire?”*

The report itself first featured the correspondent in Donetsk reporting on the situation in the city, followed by a statement from a resident of Donetsk:

Reporter: *“Colleagues, yes. They are still firing and I would like to demonstrate the extent of those atrocities – and I won’t hesitate to use this word – the atrocities, which are being committed by the Ukrainian military. We are now at the place where one of the mines had landed. Here, stood several cars completely obliterated. Right here – and I am now asking my cameraman to show it – lay the bodies of five people who have died here as a result of the Ukrainian fire. They were still lying here during the day. We understand that the attack was intentional, and on peaceful civilians because this square is constantly crowded by people receiving humanitarian aid. We saw the relatives of the dead who came here to cry over their loved ones”.*

Woman: *“Let this war be cursed for ever! Hated murderers! It was my husband! We got married only recently – about two years ago. What was it for? Who will...? I can’t”.*

Reporter: *“Five more people died as the result of a shell hitting a trolleybus in another area of Donetsk. It appears to be the result of sabotage groups working in this area... the situation in Debaltsevo is still tense. The Ukrainian military want to get out of the cauldron, in which the insurgents surrounded them... Well, I should say that this undeclared war touched, without exception, all the citizens of Donbass², including children, many of whom became orphans”.*

There was then the following caption:

“Shelling of Donetsk. Peaceful civilians became victims of artillery fire”.

The reporter said soon afterwards:

“The family did not live far from the airport. Back in summer when the Ukrainian security forces started to bomb villages near the airport, they refused to leave their home. They thought that the war wouldn’t reach them, but it did in the end. When his parents and Seriozha were returning home from a shop, a shell exploded near them. The tragedy happened on this street. The parents together with the child were on their way home when all of a sudden a shell exploded next to their house fired by the Ukrainian military. The couple were badly injured and unfortunately died... The number of wrecked lives in Donbass is impossible to measure. The Teplovs, a retired couple, had worked all their lives to make Ukraine flourish, were now left without a roof above their heads. A shell shattered their house. The former miner Alexei Kirillovitch, who is now paralysed, had to live wherever he could find until he and his wife were provided with a place in the hospital...”.

Shortly afterwards the reporter referred to two women who blamed the “Ukrainian military” for ruining their homes:

Reporter: *“Both these pensioners and the relatives of Seriozha [another civilian injured by the fighting] do not understand what they had done to deserve this life. They, as they said themselves, would very much want to look into the eyes of those Ukrainian military men who had constantly ruined their houses”.*

Woman 1: *“They are monsters not people. Maybe they are not people at all. They say that they are called ‘cyborgs’...”.*

Woman 2: *“How can one shoot at houses and the airports and villages where peaceful civilians live without the coordinates for firing? So, there are no coordinates, right?”*

Ofcom considered that as news programming, the above content raised issues warranting investigation under Rule 5.1 of the Code:

² The Donbass is the area of south-eastern Ukraine made up of the two regions of Donetsk (see footnote 1) and Lugansk.

“News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

Ofcom asked the Licensee to provide comments on how it ensured the news about the situation in south-eastern Ukraine in the items above was presented with due impartiality.

Response

The Licensee stated its belief that the programmes had complied with Rule 5.1. It set out various reasons as to why it considered this was the case.

BMAL acknowledged that the situation in Ukraine is of “significant international importance because of its implications not only for Ukraine but also for relations between Russia and the West”. However, the Licensee said that “not every event that takes place against this general backdrop is of equal importance”. BMAL argued that the “level of significance” of a matter being discussed “is determined by the audience size that the matter relates to directly or indirectly”. It added that in this context, the nature of its audience “provided sufficient grounds for the broadcaster to choose and to schedule the Programmes [i.e. the news programmes Ofcom had asked the Licensee to comment on] with this specific level” of impartiality in mind. It based this view taking into account “the origin of the programmes and their language” and the fact the news items concerned Ukraine. Therefore, according to the Licensee the news items “may refer directly to citizens of Ukraine and/or Russia in Russia and, indirectly...to Ukrainian/Russian citizens in Lithuania or, more generally, to non-Lithuanian viewers residing in Lithuania”. However, it said that “the official data³ shows that those few Russian and Ukrainian citizens residing in Lithuania as well as non-native Lithuanian citizens are very indifferent to politics and overlook” the matters relating to Ukraine. Therefore, BMAL said that this “disinterest” amongst its audience as regards news items concerning Ukraine justified the Licensee’s approach to due impartiality in this case.

The Licensee made two points with regard to what it described as the “unique nature” of NTV Mir Lithuania as the only television service in Lithuania “where news broadcasts present facts and opinions that differ from the official opinion of the Lithuanian Government”. Firstly, it said that “sometimes our programmes present not the alternative opinion as such in full, but the source that contains it (television channel, webpages, profile in a social network etc)”. In determining “the proportions in which we give contrary opinions, we rely on the degree of significance of the programme matter and contextual peculiarities, including the nature of our audience and our position on the TV landscape in Lithuania”. Second, the Licensee said that it maintained its editorial independence “from the current political environment in Lithuania and its dawning censorship”. It added that other broadcasters within Lithuania “have no other recourse but to fill the news only with such opinions sometimes false or inaccurate that are favourable to the official authorities in Vilnius or [Kiev]”.

In determining the application of Section Five, the Licensee said that: “As the definition of ‘due’ impartiality implies, the necessary degree of...impartiality is determined by contextual factors of broadcasting”. It therefore cited various contextual factors that demonstrated in its opinion that due impartiality had been preserved in this case:

³ The Licensee referred to “Data received through [the] Consulates of Ukraine and Russia in Vilnius, and [the] Lithuanian Election Committee”.

- The editorial content of the programme, programmes or series: BMAL said the general content of NTV Mir Lithuania is built around “documentary and feature material: detectives, historical, conspiracy etc”. The programmes in this case were “typical daily programmes” of the channel “as to format, general themes and their degree of accuracy”.
- The service on which the material is broadcast: According to the Licensee, NTV Mir Lithuania is a television service broadcast in Russian for Russian-speaking residents of Lithuania in the context that “there is nearly no Russian-language media left in Lithuania”. It added that: “It is common knowledge that Russian-speaking residents of Lithuania have opinions that differ from the official public view on a great deal of domestic and foreign issues”.
- The time of broadcast: BMAL said that the programme *Today* was broadcast at 18:00 on weekday evenings and “[d]espite the prime-time positioning”, the programme’s audience amounted to “only 2.0%” of viewers”. In addition, 84% of the programme audience were “non-Lithuanian ethnics”.
- The degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description: The Licensee said that the programmes “would do no harm or offence to our regular audience across the territory of the broadcast”. The news items in question provided “besides the official opinions of Ukraine authorities points of view of separatists, civilians suffering in the territories of the armed conflict, and sometimes, their interpretation of events”. BMAL added that this approach “is practically non-existent in pro-government media that fully prevail in Lithuania”. The programmes “reflected actual yet unknown actions and latest changes in the law of Ukraine and suggested looking at these events from different perspectives”. The Licensee said that it is encouraged in taking such an approach “by the audience of NTV Mir Lithuania, which is largely drawn from the ethnic Russophone community within Lithuania, traditionally distrustful of Lithuanian domestic media.”
- The likely size and composition of the potential audience and likely expectation of the audience: BMAL said that the majority of NTV Mir Lithuania’s audience is Russian-speaking, who make up 8% of the Lithuanian population. It added that: “The distribution between natives and non-natives [in the audience] can be important in the context of what interpretations of the portrayed events are better received by one or another [ethnic] group. Hence it indicates the preparedness of our audience to certain issues discussed in programmes”. In addition, the Licensee said a “noticeable part of Lithuanians desire alternative sources of information besides pro-official and mainstream media” and will watch NTV Mir Lithuania. In BMAL’s view, the audience data showed that the programme “had a very qualified and devoted audience, and...both the channel and the Programme had insignificant effect on the general audience”. It therefore argued that “neither the channel as a whole nor the Programme[s] in particular prompted...the audience to expect bigger impartiality of the Programme[s] than [they] contained, and the audience perceived [their] content as duly impartial”.
- The effect of the material on viewers or listeners who may come across it unawares: BMAL said that: “The probability that a viewer may have come across the Programme unawares was minimised by announcements of the Programme during the day” by means of showing trailers which “contained all the major topics

of the Programme” and which were “sufficient to enable people to make an informed choice about whether to watch the Programme”. The Licensee added that “on the basis of our excellent knowledge of the audience profile for NTV Mir Lithuania, we were sure that expectations of our audience fully conform to the eventually controversial/partial content of the Programme and its trailers”.

BMAL stressed the importance of freedom of expression, and expressed the view that “taking note of specific circumstances in which the Programme was broadcast...there were sufficient contextual factors to justify the potential partiality even in the case if such partiality had been detected in the Programme.”

Having set out various contextual factors which BMAL argued meant that these news items were presented with due impartiality, the Licensee went on to advance other arguments supporting its contention that due impartiality “was, in fact, preserved”. BMAL said that during the programme there were “clear references⁴ to the alternative opinions of pro-official Ukrainian characters and other opinion-makers on the [matters being discussed] by both inclusion of a direct speech and narration of their opinions...On many occasions, like in the scenes at hospitals, shelters, in ruins of houses, scenes of mass protests on the streets etc., alternative opinions are not required as these are reporting of actual scenes without expressing neither viewpoints of the Programme authors, nor criticism towards any of the warring parties in Donbass”. In addition, it said that: “On many occasions, presentations made by the Programme authors prove to be impartial once underlying facts are checked, for instance, by approaching the media resource mentioned in the Programme (the official webpages of Ukrainian Rada (Parliament), Kiyv Post, Bilhorod-Dnistrovsky idistrict, Ministry of Armed Forces of Ukraine, various Facebook profiles etc)”.

In particular, the Licensee argued that balance had been achieved in relation to the news item included in the programme on 28 January 2015, which discussed the issue of Ukrainian military commanders being given power “*to use special means and even weapons against those who would not obey orders*”. BMAL said that the viewpoint of the Ukrainian Government had been reflected by making a “clear reference⁵ to the adopted Ukrainian law – Bill No. 1752...without any estimations or advancement of opinions”. It suggested that the programme was “making a clear reference to the fact” that the Kiev Government had introduced and implemented a new policy. The Licensee added that in the programme of 30 January 2015, there was a statement⁶ by Sergei Melnichuk, an acting senator of the Ukrainian Parliament and formerly with the Ukrainian armed forces, which referred to the topic discussed in the news item in the 28 January 2015 programme. Therefore, in BMAL’s view, “clearly there [was] a balance of opinions: the interviewee⁷ representing the Donetsk

⁴ For example, in support of this point it referred to the viewpoint of Oleksandr Turchynov, acting Secretary of the National Defence Council of Ukraine, being featured in the 30 January 2015 programme.

⁵ BMAL cited the following statement: “*Apparently, taking into account this data, the Verhovna Rada [the Ukrainian Parliament] had already registered a bill under number 1762 giving additional powers to Commanders to use special means and even weapons against those who would not obey orders*”.

⁶ “Nobody will leave the frontline and their positions. Even if they are stormed by their own people and such people are already there. I was told today that they had been firing upon from our side. Our own people fired upon our positions”.

⁷ Eduard Basurin, who said: “*An injured military officer from the 128 special infantry brigade had surrendered to our units. During an interview he told us about the facts regarding the use*

People's Republic versus a reference to the Ukrainian Bill 1762 and an opinion of the acting top-rank militant of Ukrainian armed forces".

The Licensee commented on the various statements made in the two programmes identified by Ofcom and set out in the Introduction. BMAL said that these statements were "impartially represented facts" or comments. It added that "being critical of some matter in a news programme means embracing a certain view or countering some other view. It needs no explanation that in a news programme it is difficult (if possible at all) to be critical and maintain impartiality at the same time".

BMAL also argued that: "The production context cannot be ignored when considering the issue of impartiality", pointed to what it said were the "particular problems of producing programmes in relation to Ukraine...[t]he current government of Ukraine builds the information wall in the country. Its primary purpose is to stand in the way of Russian propaganda; however its reverse effect is complete isolation of Russian mass media from an opportunity to get information in Ukraine." The Licensee said that "it is now practically impossible for a Russian journalist/producer/media to obtain authentic alternative viewpoints...of the individuals or parties being criticised or involved in the Ukrainian events or, more specifically, in [relation to the Ukrainian-related matters in the programmes]". By way of example, BMAL said that Ukrainian officials have banned the broadcast of various Russian television channels in Ukraine, and, refused entry to Ukraine to Russian television journalists, such as from NTV Mir Lithuania. The Licensee added that journalists within Ukraine are subject to "persecution, coercion, detention by Ukrainian law-enforcement authorities or expulsion from the country"⁸.

BMAL's comments on Ofcom's Preliminary View

The Licensee made a number of specific comments on Ofcom's Preliminary View in this case (which was to record breaches of Rule 5.1). Firstly, BMAL considered that in relation to the programme broadcast on 28 January 2015, Ofcom had deliberately distorted a statement in the programme (the Ukrainian Government "*giving additional powers to Commanders to use special means and even weapons against those who would not obey orders*") by stating this was equivalent to "certain parts of its forces deliberately shooting at and killing other Ukrainian troops to stop the latter from retreat".

Second, the Licensee referred to statements made in the programme broadcast on 30 January 2015, relating to the effects of shelling on Debaltsevo and Donetsk which BMAL said were "controlled by separatists; therefore, it is obvious that only an opposing party – that is the Ukrainian armed forces – could strike against it". Therefore, the Licensee argued that the shelling by the Ukrainian armed forces "coupled by the definition of violent death as atrocity, definitely leads to the appropriateness of the reporter's⁹ text in the Programme and its impartiality". The

of anti-retreat troops from the battalions of the Territorial defence against the Ukrainian military servicemen. As the result of the shooting opened directly on the Ukrainian military servicemen from the positions of the National Guard, more than 20 people died instantly and several dozens were injured".

⁸ In its representations, the Licensee cited, for example, an OSCE Report 'Media Freedom under Siege in Ukraine' that detailed an "assault on journalists" and "denial of entry [into Ukraine] for Russian journalists" (see www.osce.org/fom/118990?download=true).

⁹ The reporter in this programme said: "*They are still firing and I would like to demonstrate the extent of those atrocities – and I won't hesitate to use this word – the atrocities, which are*

Licensee also said that in relation to this news item: “Alternative opinions of the Ukrainian military so demanded by Ofcom would have little practical use. As common sense would suggest those will surely deny the fault of the Ukrainian armed forces in causing these casualties, those will deny the obvious. Therefore, a requirement for their mandatory presence in the Programme would be a demand for creating the simulacrum of impartiality and not impartiality itself.”

Third, BMAL argued that Ofcom had “unjustifiably downgraded extensive contextual factors provided”. It said that the Code and related Guidance “give opportunities to a broadcaster to justify potential partiality in programmes” by reference to context. But the Licensee argued that, in its view, Ofcom in its published decisions “almost never takes into account the contextual factors provided, rather preferring to ground its opinion merely on the presence or absence of a weighty alternative viewpoint, verging on an arithmetical approach to determine whether such viewpoints are sufficient”.

Decision

Background

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, including that news included in television and radio services is presented with due impartiality. This objective is reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without 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 on one hand against the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy.

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include

being committed by the Ukrainian military. We are now at the place where one of the mines had landed. Here, stood several cars completely obliterated. Right here – and I am now asking my cameraman to show it – lay the bodies of five people who have died here as a result of the Ukrainian fire. They were still lying here during the day. We understand that the attack was intentional, and on peaceful civilians because this square is constantly crowded by people receiving humanitarian aid. We saw the relatives of the dead who came here to cry over their loved ones”.

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

In addition, in judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. “Due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Importantly, it is not part of Ofcom’s remit to question or investigate the validity of the views expressed in a case like the current one, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing or reporting on any controversial subject, or including any particular point of view in a news programme. To do so would be an unacceptable restriction on a broadcaster’s freedom of expression. Therefore, the broadcasting of critical comments concerning the policies and actions of any government, multi-national institution or nation-state is not, in itself, a breach of due impartiality rules. The Code does not prohibit broadcasters from, for example, criticising particular nation-states, governments or one side in a particular conflict or dispute, such as that currently taking place in Ukraine. Ofcom licensees always have the editorial freedom to challenge any ‘orthodox’ viewpoint on any controversial issue (including any view perceived to be that of “the West”) in news and other output, as long as due impartiality is preserved. It is essential that news and current affairs programmes are able to explore and examine controversial issues, and contributors are able to take a robust and highly critical position. However, depending on the specific circumstances of any particular case, as already pointed out, it may be necessary to reflect alternative viewpoints in an appropriate way and/or provide context to ensure due impartiality is preserved.

Rule 5.1 of the Code states that:

“News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

The application of Rule 5.1

The obligation in Rule 5.1 to present news with due impartiality applies potentially to any matter covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures a news story is presented with due impartiality. We take into account all relevant facts in the case, including: the substance of the story in question; the nature of the coverage; whether there are varying viewpoints on a news story, and if so, how a particular viewpoint or viewpoints on a news item could be or are reflected within news programming; and, the context of the particular broadcast material in issue, including factors such as the type of programme and channel, and the likely expectation of the audience as to content. A key part of Ofcom’s analysis is an assessment of whether a particular view or response needed to be reflected, or context provided, to ensure due impartiality, and – if so – whether it was appropriately reflected or provided. This is a matter of judgement, to be decided taking account of all the relevant circumstances.

The two news programmes in this case dealt with different aspects of the on-going political and military situation in Ukraine. This material included reporting on the policies and actions of the Ukrainian Government and its armed forces in south-eastern Ukraine and on the issue of conscription to the Ukrainian army. In reporting these matters in these two news programmes, BMAL included various statements (made by its own journalists or interviewees) that commented directly or indirectly on them.

We noted that the Licensee argued that many of the statements made in the programmes and identified by Ofcom in the Introduction were “impartially represented facts” or comments. In response to this point, we considered that these various statements related to the policies and actions of the Ukrainian Government and/or its military forces, were highly critical of these policies and actions, and were policies and actions on which the Ukrainian Government and/or its military forces were likely to have view different to that expressed in the two programmes.

By way of example, we noted the following:

28 January 2015

This programme broadcast a news item about difficulties with conscription to the Ukrainian army and a reported Ukrainian Government/military policy to deal with Ukrainian soldiers who “*would not obey orders*”, that is the use of some soldiers to block the retreat of, and if necessary to fire on, Ukrainian army troops. In this context, we noted various statements relating to the policies and actions of the Ukrainian Government military forces:

Reporter: *“Apparently, taking into account this data, the Verhovna Rada had already registered a bill under number 1762 giving additional powers to Commanders to use special means and even weapons against those who would not obey orders. For example, the day before, representatives of the Military headquarters of the DPR stated that they had already heard about the use of barrier troops by the Ukrainian army”.*

Eduard Basurin: *“An injured military officer from the 128 special infantry brigade had surrendered to our units. During an interview he told us about the facts regarding the use of anti-retreat troops from the battalions of the Territorial defence against the Ukrainian military servicemen. As the result of the shooting opened directly on the Ukrainian military servicemen from the positions of the National Guard, more than 20 people died instantly and several dozens were injured”.*

30 January 2015

This programme featured a news item about the reported effects of Ukrainian military shelling in South-eastern Ukraine. We noted various statements relating to the actions of the Ukrainian Government and/or its military forces:

Reporter: *“Colleagues, yes. They are still firing and I would like to demonstrate the extent of those atrocities – and I won’t hesitate to use this word – the atrocities, which are being committed by the Ukrainian military. We*

are now at the place where one of the mines had landed. Here, stood several cars completely obliterated. Right here – and I am now asking my cameraman to show it – lay the bodies of five people who have died here as a result of the Ukrainian fire. They were still lying here during the day. We understand that the attack was intentional, and on peaceful civilians because this square is constantly crowded by people receiving humanitarian aid. We saw the relatives of the dead who came here to cry over their loved ones”.

Woman: *“Let this war be cursed for ever! Hated murderers! It was my husband! We got married only recently – about two years ago. What was it for? Who will...? I can’t”.*

Caption: *“Shelling of Donetsk. Peaceful civilians became victims of artillery fire”*

Reporter: *“The family did not live far from the airport. Back in summer when the Ukrainian security forces started to bomb villages near the airport, they refused to leave their home. They thought that the war wouldn’t reach them, but it did in the end. When his parents and Seriozha were returning home from a shop, a shell exploded near them. The tragedy happened on this street. The parents together with the child were on their way home when all of a sudden a shell exploded next to their house fired by the Ukrainian military. The couple were badly injured and unfortunately died...The number of wrecked lives in Donbass is impossible to measure. The Teplovs, a retired couple, had worked all their lives to make Ukraine flourish, were now left without a roof above their heads. A shell shattered their house. The former miner Alexei Kirillovitch, who is now paralysed, had to live wherever he could find until he and his wife were provided with a place in the hospital...”.*

Reporter: *Both these pensioners and the relatives of Seriozha [another civilian injured by the fighting] do not understand what they had done to deserve this life. They, as they said themselves, would very much want to look into the eyes of those Ukrainian military men who had constantly ruined their houses”.*

Woman 1: *“They are monsters not people. Maybe they are not people at all. They say that they are called ‘cyborgs’...”.*

Woman 2: *“How can one shoot at houses and the airports and villages where peaceful civilians live without the coordinates for firing? So, there are no coordinates, right?”*

In summary, the 28 January 2015 news programme featured a news item on a reported Ukrainian Government/military policy to shoot Ukrainian soldiers who “*would not obey orders*” or retreated. The 30 January 2015 news programme reported on the ongoing conflict in south-eastern Ukraine and, various actions of the Ukrainian military forces (e.g. referring to these as “*atrocities*”). In doing so, the news programmes contained various comments that were critical of, or in opposition to, the

Ukrainian Government and/or its military forces on these issues and actions (see examples immediately above). We considered that to ensure that the news about these matters was presented with due impartiality, the viewpoint of the Ukrainian Government and/or its military forces needed to be reflected, or sufficient context provided, and reflected or provided appropriately.

The preservation of due impartiality

Ofcom went on to assess whether each of the news programmes preserved due impartiality. In doing so, we took into account that NTV Mir Lithuania is a service that reports the news from a Russian viewpoint.

28 January 2015

In this news programme there was a news item about conscription to the Ukrainian army which also focused on a reported Ukrainian policy to deal with Ukrainian soldiers who *“would not obey orders”*. This news item reported that: the Ukrainian Parliament had legislated for Ukrainian military commanders *“to use special means and even weapons against those who would not obey orders”*; Ukrainian military forces had used *“barrier troops”* and *“anti-retreat troops”* against its own forces; and, *“anti-retreat troops”* had fired on regular soldiers resulting in *“more than 20 people [having] died instantly and several dozens [having been] injured”*. We noted that this item was referred to in the lead headline of the programme by the words: *“Forbidden methods. The insurgents maintain that Kiev uses the tactics of anti-retreat troops”*.

In our view, the report was suggesting that the Kiev Government had introduced and implemented a new policy of having certain parts of its forces deliberately shooting at and killing other Ukrainian troops to stop the latter from retreating. In commenting on our Preliminary View in this case, BMAL said that this characterisation of the report’s subject matter distorted a statement made by the reporter in the programme, namely that the Ukrainian Parliament was *“giving additional powers to Commanders to use special means and even weapons against those who would not obey orders”*. We disagreed. This news item referred to the Ukrainian Parliament’s consideration of the piece of legislation mentioned above. A statement by a representative of the Donetsk People’s Republic (the separatist entity in armed conflict against the Ukrainian Government) immediately followed stating as fact that *“anti-retreat troops”* had been used and a number of Ukrainian soldiers had been killed and wounded as a result. In our view as a result viewers would have been given the impression that the Ukrainian Government had introduced and implemented a new policy of having certain parts of its forces deliberately shooting at and killing other Ukrainian troops to stop the latter from retreating. In our opinion, this view would have been reinforced by lead headline of the programme which referred to *“Forbidden methods”* and *“Kiev”* (i.e. the Ukrainian Government) using *“the tactics of anti-retreat troops”*.

This was clearly a grave allegation to make against the Ukrainian Government and armed forces. Accordingly, in our view, this was a matter which needed to be presented with due impartiality in a news programme of this nature. The Licensee therefore needed to ensure either that the viewpoint of the Ukrainian Government and/or its military forces was appropriately reflected, or that appropriate context was provided. However, we could not identify any such viewpoints being reflected in this item, or appropriate context being given. We noted that the relevant headline did source the allegation (*“insurgents maintain”*), and that the interviewee representing the Donetsk People’s Republic sourced the allegation to a captured Ukrainian officer. However, bearing in mind in particular that this allegation was the lead headline of the programme and its seriousness, Ofcom considered that there was clearly

insufficient context provided to ensure this matter was presented in the news with due impartiality.

In its representations, BMAL argued that in this news item the Ukrainian's Government's viewpoint had been provided by the programme making a "clear reference¹⁰ to the adopted Ukrainian law – Bill No. 1752...without any estimations or advancement of opinions". It added the programme was "making a clear reference to the fact" that the Kiev Government had introduced and implemented a new policy. In addition, the Licensee added that in the programme dated 30 January 2015, there was a statement¹¹ by Sergei Melnichuk, an acting senator of the Ukrainian Parliament and formerly with the Ukrainian armed forces, which referred to the topic being discussed in the news item in the 28 January 2015 programme. Therefore, in BMAL's view, "clearly there [was] a balance of opinions" with the above statements balancing the viewpoint of an interviewee¹² representing the Donetsk People's Republic. We disagreed with this line of argument. Bill No. 1752 to which the programme referred had been published¹³ for consideration by the Ukrainian Parliament on 15 January 2015. Having obtained an independent translation of this Bill, Ofcom noted that the Bill contained the following provision:

"Commanders (leaders) in a special period, including in conditions of war or battle, with the aim of detention of military personnel who commit criminal violations involving insubordination, resistance or threat to a leader involving violence, with desertion of a military unit or place of deployment of a military unit (sub-division), in an area where military tasks are being carried out, have the right personally to apply measures of physical restraint, and also in battle conditions to use weapons and order subordinates to use such methods, if the criminal action cannot be stopped in another way. In a case when the circumstances permit, a commander (leader) must warn the individual against whom such measures may be used verbally or by firing a warning shot before using such measures".

Therefore the Bill suggested that Ukrainian military commanders should be given (in the case of military personnel committing various "criminal violations") powers "to apply measures of physical restraint, and also in battle conditions to use weapons and order subordinates to use such methods, if the criminal action cannot be stopped in another way". The Bill did not become Ukrainian law until 5 February 2015, and the final version¹⁴ of the proposed provision above was amended so that in taking any

¹⁰ BMAL cited the following statement: "Apparently, taking into account this data, the Verhovna Rada [the Ukrainian Parliament] had already registered a bill under number 1762 giving additional powers to Commanders to use special means and even weapons against those who would not obey orders".

¹¹ "Nobody will leave the frontline and their positions. Even if they are stormed by their own people and such people are already there. I was told today that they had been firing upon from our side. Our own people fired upon our positions".

¹² Eduard Basurin, who said: "*An injured military officer from the 128 special infantry brigade had surrendered to our units. During an interview he told us about the facts regarding the use of anti-retreat troops from the battalions of the Territorial defence against the Ukrainian military servicemen. As the result of the shooting opened directly on the Ukrainian military servicemen from the positions of the National Guard, more than 20 people died instantly and several dozens were injured*".

¹³ See http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=535877

¹⁴ Ofcom obtained an independent translation of the final law ("Certain legal acts for strengthening accountability of military personnel, provision of additional rights for

special measures in battle conditions, Ukrainian military leaders may use weapons “but without causing the death of the military personnel”.

We noted that, although this law had not yet been passed, the 28 January 2015 news item included the following statement from a representative of the Donetsk People’s Republic (i.e. an entity fighting the armed forces of the Ukrainian Government):

“An injured military officer from the 128 special infantry brigade had surrendered to our units. During an interview he told us about the facts regarding the use of anti-retreat troops from the battalions of the Territorial defence against the Ukrainian military servicemen. As the result of the shooting opened directly on the Ukrainian military servicemen from the positions of the National Guard, more than 20 people died instantly and several dozens were injured”.

In our view, this statement (which was not challenged in any way) set out “*the facts regarding the use of anti-retreat troops*” and stated in unequivocal terms that “*more than 20 people died instantly and several dozens were injured*” as a result of certain Ukrainian armed forces (“*anti-retreat troops*”) intentionally firing on Ukrainian military servicemen. We considered that the brief reference to a legislative proposal which had yet to become law (which ultimately prohibited Ukrainian military leaders from causing the deaths of their soldiers) was not sufficient to counter the very serious allegations that certain parts of the Ukrainian armed forces were deliberately killing other Ukrainian troops.

The Licensee also said that the Ukrainian Government’s viewpoint had been provided in the edition of *Today* broadcast on 30 January 2015 (i.e. broadcast two days later), when a “top rank Ukrainian militant Sergey Melnichuk” of the Aidar Battalion¹⁵ stated his “support” for the allegation, reported in the 28 January 2015 programme, that “*barrier troops*” had been used by the Ukrainian army. We therefore assessed the statement identified by the Licensee. We noted that the statement (set out below) was made in the 30 January 2015 programme as part of a news item about a dispute between members of the Aidar Battalion and the Ukrainian Ministry of Defence:

“Nobody will leave the frontline and their positions. Even if they are stormed by their own people and such people are already there. I was told today that they had been firing upon from our side. Our own people fired upon our positions”.

We did not consider that this statement (included in a separate news programme broadcast two days after the edition of *Today* broadcast on 28 January 2015) could be relied upon as a viewpoint to counter the very serious allegations that certain armed forces allegedly acting on behalf of the Ukrainian Government were

commanders and imposition of duties for special periods”). The relevant provision stated: “Commanders (leaders) in a special period, including in conditions of war or battle, with the aim of detention of military personnel, **who commit actions classed as crimes** involving insubordination, resistance or threat to the leader involving violence, with desertion of a military unit or place of deployment of a military unit (sub-division), in an area where military tasks are being carried out, have the right personally to apply measures of physical restraint, **without damaging the health of military personnel and special methods which are sufficient to stop the criminal action being committed. In battle conditions, commanders (leaders) may use weapons and order subordinates to use such methods, if the criminal action cannot be stopped in another way, but without causing the death of the military personnel.**” (Changes from the original Bill in bold).

¹⁵ Ofcom understands the Aidar Battalion to be a volunteer unit within the Ukrainian military forces fighting in south-eastern Ukraine.

deliberately killing members of the Ukrainian armed forces to make them “obey orders” or not retreat.

For all the reasons above, and after taking careful account of the context of the 28 January 2015 news programme, we decided that it did not present the news with due impartiality.

30 January 2015

In a news item about the effects of Ukrainian military shelling in south-eastern Ukraine, a reporter described the Ukrainian authorities as having committed “atrocities”, and the deaths of five civilians shown in the news item was described as being an “intentional [attack] on peaceful civilians”. The Ukrainian authorities were described as “Hated murderers” and a caption in the programme referred to: “Peaceful civilians became victims of artillery fire”. The news item reported on an adult couple being killed by a shell “fired by the Ukrainian military”. In addition, the “Ukrainian military men” were described as “monsters” and as having fired at “houses and the airports and villages where peaceful civilians live without the coordinates for firing”. The report was therefore alleging that Ukrainian military forces had committed “atrocities” by killing civilians intentionally and indiscriminately in Donetsk. This again was clearly a serious allegation to make against the Ukrainian Government and armed forces.

Accordingly, in our view, this was a matter which the Licensee was required to present with due impartiality in a news programme of this nature. The Licensee was therefore obliged to ensure either that the viewpoint of the Ukrainian Government and/or its military forces was appropriately reflected, or that appropriate context was provided. However, we could not identify any such viewpoints being reflected in this item, or appropriate context being given. The only viewpoints provided were ones critical of the Ukrainian Government and its military forces, being those either of the reporter, certain Donetsk or Donbass residents, or of the head of the Donetsk People’s Republic. Regarding context, Ofcom noted that the correspondent (Mikhail Fedotov) was for some of the item reporting live but clearly in Ofcom’s opinion he chose his words and critical tone deliberately (“...I would like to demonstrate the extent of those atrocities – and I won’t hesitate to use this word – the atrocities, which are being committed by the Ukrainian military”). By failing to provide such viewpoints or appropriate context, the very serious allegation that the Ukrainian armed forces had intentionally targeted civilians and had committed “atrocities” remained unchallenged and therefore BMAL failed to ensure this news was presented with due impartiality.

In its representations, the Licensee pointed to one statement¹⁶ made by a resident of south-eastern Ukraine which did not specify which “party” had fired upon them. We noted however that of the two parties in conflict in south-eastern Ukraine, only the Ukrainian Government and/or its military forces had been accused of deliberately shelling civilians or more widely criticised in this news item. We therefore considered it likely that the audience would have interpreted the resident’s statement as referring only to the Ukrainian Government forces and/or its military forces.

BMAL also argued that the viewpoint of the Ukrainian authorities was reflected in two statements made in the 30 January 2015 news programme. We assessed these two statements but our view was that they were not relevant in this case. This was because neither was in the news item about the conflict in south-eastern Ukraine we

¹⁶ “Let this war be cursed for ever! Hated murderers! It was my husband! We got married only recently – about two years ago. What was it for? Who will...? I can’t”.

were investigating. They were included in relation to separate news stories. The first statement was made by Sergey Melnichuk (see above), an acting senator of the Ukrainian Parliament, in a different news item about a dispute between members of the Aidar Battalion and the Ukrainian Ministry of Defence. The second statement was made by a reporter summarising the viewpoint of Oleksandr Turchynov, acting Secretary of the National Defence Council of Ukraine in relation to Ukrainians' use of Russian internet services. We therefore considered that neither of these statements could be relied upon by the Licensee as a way of appropriately reflecting the viewpoint of the Ukrainian Government and/or its military forces in response to the serious allegations that Ukrainian forces had intentionally and indiscriminately shelled civilians in south-eastern Ukraine.

In responding to our Preliminary View in this case, BMAL made various further comments. Firstly, it referred to statements made in the programme broadcast on 30 January 2015, relating to the effects of shelling on Debaltsevo and Donetsk which BMAL said were "controlled by separatists...it is obvious that only an opposing party – that is the Ukrainian armed forces – could strike against it". Therefore, it argued, the shelling by the Ukrainian armed forces "coupled by the definition of violent death as atrocity, definitely leads to the appropriateness of the reporter's¹⁷ text in the Programme and its impartiality". We were not persuaded by this argument. Ofcom assessed the news item overall. We considered the cumulative effect of all the statements within the item. As well as describing of the Ukrainian armed forces as having committed "atrocities" and being "monsters" and "Hated murderers", it was also stated that the Ukrainian armed forces had launched an "intentional [attack] on peaceful civilians" and had fired at "houses and the airports and villages where peaceful civilians live without the coordinates for firing". We considered that the report was making the very serious allegation that Ukrainian military forces had intentionally and indiscriminately killed civilians in Donetsk. As such, we considered that the Ukrainian Government and/or its military forces would have had view on this significant matter, which was not reflected.

Second, the Licensee said that: "Alternative opinions of the Ukrainian military so demanded by Ofcom would have little practical use. As common sense would suggest those will surely deny the fault of the Ukrainian armed forces in causing these casualties, those will deny the obvious. Therefore, a requirement for their mandatory presence in the Programme would be a demand for creating the simulacrum of impartiality and not impartiality itself." We disagreed. Part of the Code's definition of "due impartiality" states: "Impartiality itself means not favouring one side over another. 'Due' means adequate or appropriate to the subject and nature of the programme". Given the serious allegations that the Ukrainian Government and/or its military forces had been accused of deliberately shelling civilians, we considered that this was an issue upon which the Ukrainian authorities would have had a view. By reflecting the viewpoint of the Ukrainian Government and/or its military forces upon this controversial matter, viewers would have known the official position of Kiev on this issue. Viewers would have been able to make up

¹⁷ The reporter in this programme said: "They are still firing and I would like to demonstrate the extent of those atrocities – and I won't hesitate to use this word – the atrocities, which are being committed by the Ukrainian military. We are now at the place where one of the mines had landed. Here, stood several cars completely obliterated. Right here – and I am now asking my cameraman to show it – lay the bodies of five people who have died here as a result of the Ukrainian fire. They were still lying here during the day. We understand that the attack was intentional, and on peaceful civilians because this square is constantly crowded by people receiving humanitarian aid. We saw the relatives of the dead who came here to cry over their loved ones".

their own minds what weight to give to this viewpoint, but by featuring it in the news item the Licensee would have ensured the news item was not unduly favouring one side over another.

For all the reasons above, and after taking careful account of the context of the 30 January 2015 news programme, we decided that the Licensee did not present this news item with due impartiality.

Other matters

In reaching our Decision, Ofcom took into account other relevant points raised by BMAL.

Firstly, the Licensee argued that the nature of its audience “provided sufficient grounds for the broadcaster to choose and to schedule the Programmes with this specific level” of impartiality. BMAL said that the “disinterest” of the NTV Mir Lithuania audience in news items concerning Ukraine, amongst for example Ukrainian and Russian citizens in Lithuania or the “other portion” of NTV Mir Lithuania’s audience, justified the Licensee’s approach to due impartiality in this case. We disagreed. The level of actual or possible engagement with issues of politics or current affairs does not obviate the need for Ofcom licensees to present news with due impartiality. In this case however the Licensee did not produce any evidence about the attitudes of either Lithuanian viewers in general, or NTV Mir Lithuania’s audience in particular, about the level of due impartiality they expected in broadcast news reporting by Ofcom licensed services.

Second, the Licensee said that its news programmes will not always present “the alternative opinion as such in full” but would present “the source that contains [the viewpoint] (television channel, webpages, profile in a social network etc)”. BMAL added that in determining the extent to which it needed to reflect alternative viewpoints, it took into account “the degree of significance of the programme matter and contextual peculiarities, including the nature of our audience and our position on the TV landscape in Lithuania”. In response, Ofcom acknowledged that there is no requirement on broadcasters to provide an alternative viewpoint in all news stories or on all issues in the news. However, as discussed above, in this case we considered that the serious nature of the criticisms being made of the Ukrainian Government and/or its military forces necessitated the inclusion of alternative viewpoints challenging those criticisms to some extent and/or appropriate context. It is an editorial matter for broadcasters to decide how and the extent to which alternative viewpoints are reflected or context given, but in this case the Licensee failed to reflect alternative viewpoints sufficiently or provide appropriate context.

Third, the Licensee said that it maintained its editorial independence “from the current political environment in Lithuania and its dawning censorship”. The Licensee said its news programmes were providing “points of view of separatists, civilians suffering in the territories of the armed conflict, and sometimes, their interpretation of events” and this approach “is practically non-existent in pro-government media that fully prevail in Lithuania”. In response, Ofcom’s concern in this case was whether BMAL had complied with the Code which binds equally all Ofcom licensees. In applying this obligation Ofcom has regard to all the relevant circumstances. These do not however include the regulatory rules, statutory framework and relative freedom or otherwise applicable to competitor broadcasters not licensed by Ofcom, in countries which Ofcom licensees also target their services.

Fourth, BMAL said that it “needs no explanation that in a news programme it is difficult (if possible at all) to be critical and maintain impartiality at the same time”. We disagreed. There is a long tradition of broadcasters producing news output which contains highly critical statements and commentary about the actions and policies of particular countries, institutions or organisations, but which is also presented with due impartiality. This can be done by a range of editorial techniques¹⁸ including the provision of context or alternative viewpoints. In any case, Ofcom noted that in other news items broadcast on NTV Mir Lithuania in the two editions of *Today* that are the subject of this Decision, the viewpoint of the Ukrainian authorities was reflected to some extent.

Fifth, the Licensee said that the programmes reported “actual scenes without expressing neither viewpoints of the Programme authors, nor criticism towards any of the warring parties in Donbass”, and on “many occasions, presentations made by the Programme authors prove to be impartial once underlying facts are checked”. Ofcom acknowledged that there was of course an element of fact in many of the statements included in the news programmes, but BMAL had to make editorial decisions about which facts to select and how to present them. When including facts in news the Code requires that they must be reported with due accuracy but also presented with due impartiality. The news items in this case included statements that were strongly critical of the policies and actions of the Ukrainian Government and/or its military forces. Some of these statements did contain alleged facts or summarised alleged facts, such as the killing of civilians by Ukrainian military forces in south-eastern Ukraine. However, to the extent they were either directly or implicitly critical of the Ukrainian Government and/or its military forces, we considered that the Licensee had to reflect alternative viewpoints or provide appropriate context to counter or react to the criticisms being made.

Sixth, the Licensee cited various contextual¹⁹ factors which, in its view, ensured that due impartiality had been preserved in this case. We disagreed. Most of the factors it put forward were irrelevant to, or of marginal importance, to whether or not news was presented with due impartiality in this case. For example, the fact that the two *Today* broadcasts on NTV Mir Lithuania were watched by a small number of viewers did not remove the need for the Licensee to preserve due impartiality, or do so in a materially less significant way. In addition, the fact that trailers²⁰ for *Today* “contained all the major topics” covered in the programmes did not alter our view that BMAL did not adequately reflect alternative viewpoints or provide other appropriate context.

¹⁸ For example paragraph 1.17 of Ofcom’s published Guidance to Section Five of the Code states “Where a broadcaster attempts to seek alternative views, but these are not readily available (for example, an individual or organisation declines to give an interview or give comments), there are a range of editorial techniques for maintaining due impartiality. For example, broadcasters could: seek alternative viewpoints from a range of sources; summarise with due objectivity and in context the alternative viewpoints, for example, through interviewees expressing alternative views; make clear with appropriate frequency and prominence that a broadcaster has sought alternative views from particular individuals or organisations; and/or ensure that the views expressed in a news item are challenged critically by presenters and reporters within the programmes”. (See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>).

¹⁹ In this regard BMAL noted that the definition of “due impartiality” in Section Five specifically states that: “Context, as defined in Section Two: Harm and Offence of the Code, is important”.

²⁰ According to the Licensee: “The probability that a viewer may have come across the Programme unawares was minimised by announcements of the Programme during the day by means of showing trailers which ‘contained all the major topics of the Programme’”.

Another argument put forward by BMAL was that NTV Mir Lithuania is targeted at the Russian-speaking community within Lithuania. The Licensee said that “Russian-speaking residents of Lithuania have opinions that differ from the official public view on a great deal of domestic and foreign issues” and a “noticeable part of Lithuanians desire alternative sources of information besides pro-official and mainstream media”. It therefore argued that NTV Mir Lithuania’s audience did not “expect bigger impartiality of the Programme[s] than [they] contained, and the audience perceived [their] content as duly impartial”. Ofcom acknowledged that NTV Mir Lithuania, as a channel serving the Russian-speaking community in Lithuania, would want to produce current affairs programming from a Russian viewpoint. However, in doing so, it must comply with the Code. We accepted that to some extent the audience for these programmes was self-selecting. The majority of the audience to a service may materially share the same viewpoint on a matter or issue as the Licensee²¹. This does not mean however that that the news on that particular matter or issue does not need to be presented with due impartiality. Nor does it weaken the obligation on that service to reflect alternative viewpoints or provide context as appropriate to maintain due impartiality.

The Licensee also argued that Ofcom had “unjustifiably downgraded extensive contextual factors” referred to by the Licensee. It alleged that Ofcom “almost never takes into account the contextual factors provided, rather preferring to ground its opinion merely on the presence or absence of a weighty alternative viewpoint, verging on an arithmetical approach to determine whether such viewpoints are sufficient”. We disagreed with this assertion of BMAL. In our view, contextual factors such as the nature of the channel and audience expectations should be taken into account as appropriate and relevant. However, when a news programme deals with controversial matters which must be presented with due impartiality, viewpoints or views from different sides of the debate will almost certainly exist. Therefore, central to preserving due impartiality in news is the requirement to reflect alternative viewpoints or views in an appropriate way.

Finally, we noted that BMAL cited various practical and logistical problems that Russian journalists faced while reporting in Ukraine. We acknowledged the challenges associated with current affairs and news reporting, for example from war zones. However, there are a number of editorial techniques²² that broadcasters can use to ensure news is presented with due impartiality. As noted above, BMAL did reflect some brief alternative viewpoints in these and other programmes. However, as explained above, we did not consider these (or the context provided) were sufficient to preserve due impartiality in this case.

For all the reasons set out above, Ofcom therefore considered that items in these two news programmes breached Rule 5.1 of the Code.

Breaches of Rule 5.1

²¹ Ofcom noted that the Licensee produced no reliable evidence to support its assertion that this was the case as regards the audience for NTV Mir Lithuania.

²² See for example paragraph 1.17 of Ofcom’s Guidance Notes on Section Five of the Code.

In Breach

Subh-e-Pakistan

Geo TV, 29 December 2014, 10:00

Introduction

Geo TV is a general entertainment television channel for the Asian community, broadcasting in English and Urdu. The licence for this service is held by Geo TV Limited (“Geo TV” or “the Licensee”). *Subh-e-Pakistan* is a magazine style live morning show presented by Aamir Liaquat Hussain.

A complaint initially alerted Ofcom to the edition of this morning show broadcast on 29 December 2014. Ofcom commissioned a transcript of the programme into English from the original Urdu by an independent translator. Ofcom gave the Licensee an opportunity to comment on the transcript and Geo TV confirmed that the translation was accurate.

Having assessed the programme¹, Ofcom was concerned about the astrology and lifestyle advice section within the programme. This nine minute segment offered lifestyle advice, and advice on treatment for various medical problems, based on the teachings of the Prophet Mohammed and of the Qu’ran, and on the reciting and chanting of certain verses from the Qu’ran.

The astrology and lifestyle segment was introduced by the presenter as follows:

“Peace be upon you. Welcome again to Subh-e-Pakistan. It is time now for finding solutions to your problems through wazifa². We have the prominent spiritual person with us, the Head of Seylani Welfare Trust Pakistan International³, Maulana⁴ Bashir Farooq Qadri”.

Ofcom was concerned by the following exchange between a caller and Maulana Qadri:

Presenter: *“We have another caller. Peace be upon you”.*

Caller: *“Peace be upon you. I am calling from Jeddah in Saudi Arabia. My daughter is eight years old and she has been suffering from*

¹ The complainant considered that the programme included hate speech against the Ahmadiya community. Ofcom assessed whether the material complied with the requirements of Rule 3.1 of the Code which states: “Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television or radio services”. After careful assessment, however, Ofcom concluded that programme did not raise issues under Rule 3.1.

² Wazifa is a practice in which a verse or chant from the Qu’ran is recited prior to blowing on the subject’s face or body.

³ The Seylani Welfare International Trust distributes aid to communities in Pakistan and offers Ishtikhaara (help from Allah through prayer and the interpretation of dreams and feelings) and Rohani Ejtema (a chant based on an individual’s personal circumstances).
See: <http://saylaniwelfare.com/introduction/>

⁴ Maulana is a title for respected Muslim religious leaders and graduates of Islamic religious institutions.

epilepsy for the last three years. I want to ask if there is a chant I can use for her. You had a doctor on the programme and I wanted to ask her too but I was unable to note her number. Please let me know”.

Maulana Qaadri: *“In order to get rid of epilepsy, there is a special amulet. Islamic oral traditions prove that there is a jinn⁵ which makes the person fall and suffer from epilepsy. To get the amulet, you need to write a letter to Seylani Welfare Trust’s Bahadarabad, Karachi, Pakistan address and Allah willing I shall send the amulet to you. She will recover by Allah’s grace. There is also a chant which you can say in the heavenly court of Allah: ‘O the Living and the Great’ or you can say it as ‘O the Great and the Living’. These are two of the names of Allah and you need to chant them 200 times after each namaaz⁶ and blow your breath on the girl. Allah willing it will benefit her a lot. God forbid, when such an event happens [i.e. an epileptic fit], chant ‘Allah is Great’ and blow your breath on her. Allah willing this girl will immediately get up but I pray that she never gets an epileptic fit again”.*

Ofcom considered this material raised issues warranting investigation under Rule 2.1 of the Code, which states that:

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

We therefore sought comments from the Licensee as to how the material complied with this rule.

Response

The Licensee explained that wazifa⁷ is a practice in which “Qu’ranic Verses are recited in a particular count and manner...[and] it is believed as a result God may reward the individual...Wazifa...is known as spiritual prayer[s] in Muslims...[and] believed by [many] Muslims”. Geo TV considered that “it would be unfair” if such a belief was considered “harmful or not to meet the generally accepted rules”.

The Licensee argued that the Maulana “simply gave the caller a few verses from the Qu’ran to recite [and] in no manner...claimed that this was the only cure available or that the person would be cured immediately”.

Geo TV said that “it did not accept” that the programme breached Rule 2.1 of the Code. However, it had taken steps to “introduce clear disclaimers in programmes where such content may appear”, to inform the audience that these segments are not “a solution to their medical problems...[and to] consult their doctors for advice”.

⁵ A Jinni is a supernatural creature based on Islamic mythology.

⁶ Namaaz, also known as Salat, is a ritual prayer in Islam said five times a day.

⁷ See footnote 4

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards to broadcast content as appears to it best calculated to secure the standards objectives, including that: “generally accepted standards are applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”. This objective is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom has taken into account the broadcaster’s and audience’s right to freedom of expression. This gives the broadcaster a right to impart information and ideas, and the audience a right to receive them without unnecessary interference by public authority, but subject to restrictions prescribed by law necessary in a democratic society. It is set out in Article 10 of the European Convention on Human Rights (“ECHR”).

Ofcom also had regard to Article 9 of the ECHR which states that everyone “has the right to freedom of thought, conscience and religion.” This Article goes on to make clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others”.

Rule 2.1 states that generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material. This rule is specifically concerned with the protection of viewers from harm.

Programmes that provide lifestyle and health advice about potentially serious medical conditions against a background of religious belief and prayer can be broadcast providing adequate protection is provided for members of the public so as to comply with the Code. Whether such protection is provided will depend on all the circumstances, including as relevant: the health or lifestyle issues being discussed; the extent to which a cure or answer is offered; and, any warnings or caveats given to viewers.

We noted that members of the public contacted the programme to seek advice on various lifestyle problems and medical issues. One called in seeking a Qu’ranic chant for her eight year old daughter who suffered from epilepsy. Epilepsy is a potentially serious medical condition, with various risks associated with epileptic seizures, and for which there are various widely accepted and recommended medical treatments.⁸

Ofcom considered that the astrology and lifestyle segment of the programme was intended to a certain extent to encourage and offer spiritual support based on astrology and the teachings of the Qu’ran. We also took into account the Licensee’s comments that “wazifa is known spiritual prayer [for] Muslims” and “when Qu’ranic verses are recited in a particular count or manner, it is believed...[that] God may reward the individual”. However, in Ofcom’s view the segment clearly went further than providing a forum for members of the public to discuss problems they were facing and receive spiritual support and advice.

⁸ See for example: <http://www.epilepsysociety.org.uk/risks-epilepsy>;
<http://www.nhs.uk/conditions/Epilepsy/Pages/Introduction.aspx>

The presenter introduced the segment by stating: *“It is time now for finding solutions to your problems through wazifa”*. The mother who called in to the programme posed her question to the Maulana as follows: *“My daughter is eight years old and she has been suffering from epilepsy for the last three years. I want to ask if there is a chant I can use for her. You had a doctor on the programme and I wanted to ask her too but I was unable to note her number”*. In Ofcom’s view the mother was clearly seeking advice on effective treatment for her daughter’s epilepsy. We noted that the Maulana described the practices he advocated (wearing an amulet, saying certain prayers, and blowing on the person having an epileptic seizure) as being *“to get rid of epilepsy”* and that if the practices were followed, *“She [the girl] will recover by Allah’s grace”*. He said, *“God forbid, when such an event happens [i.e. an epileptic seizure], chant ‘Allah is Great’ and blow your breath on her. Allah willing this girl will immediately get up”*. The Maulana also discussed the causes of epilepsy, stating that *“Islamic oral traditions prove that there is a jinni which makes the person fall and suffer from epilepsy”*. We considered these remarks amounted to advice to the caller that, if the Maulana’s recommended prayers were said and practices followed, they would by themselves provide an effective treatment for the potentially serious medical condition of epilepsy.

In Ofcom’s view the Maulana’s statements were capable of encouraging some viewers to believe that epilepsy could be successfully treated by the type of faith healing advocated in this programme. We were mindful that some viewers may have suffered epileptic seizures, or were suffering from epilepsy. As a result they may have been more vulnerable to accept the advice in the programme that the practices advocated alone might effectively treat epilepsy without the need for conventional medical advice. This clearly had the potential to cause harm to viewers because some of them – especially more vulnerable ones – may not seek, or may abandon, existing conventional medical treatment on the basis of the advice given in the programme.

We also took into account that the presenter introduced the Maulana as a *“prominent spiritual person”* and *“Head of Seylani Welfare Trust Pakistan International”*. The Maulana was therefore presented to viewers as someone with considerable status and authority, whose views deserved respect. As a result, we considered it more likely that some viewers would respect and follow his advice about epilepsy, and this in turn increased to some extent the likelihood that the broadcast of his advice might cause harm.

We next considered whether the Licensee took steps to provide adequate protection to viewers from this potentially harmful material.

In this case the potentially serious medical condition of epilepsy was described as a spiritual ailment (*“jinni”*) rather than a medical one⁹. In particular, a solution to epileptic seizure (through the use of an amulet, prayer and wazifa) was advocated as a method that – in Ofcom’s opinion – some viewers could and would have perceived as providing an effective treatment. If a programme provides and/or offers advice on potentially serious medical conditions, the Code requires that the broadcaster applies “generally accepted standards” to provide adequate protection from potentially harmful material. The purpose of the requirement is to mitigate any risk that viewers who suffer from such conditions might forego or delay orthodox medical treatment or other advice in favour of the advice given during the programme, with consequent harm caused to their health or general wellbeing.

⁹ <http://www.nhs.uk/Conditions/Epilepsy/Pages/Symptoms.aspx>

The more serious the risk of harm to susceptible and vulnerable viewers, the greater the protection that should be provided. We took into account the Licensee's comment that there was no material risk to viewers because the Maulana did not claim "that the person could be immediately cured". We disagreed. Through the Maulana stating for example that his advice was "*to get rid of epilepsy*", and that after following his advice "*this girl will immediately get up*", he was suggesting that if his advice were followed it would alone provide an effective treatment.

We noted that at no point immediately before, during or immediately after the astrology and lifestyle segment of the programme was a warning to viewers broadcast or any reference made to the need to seek qualified medical advice. The Maulana did, during his response to the mother of the eight-year-old girl, say that the girl "*will recover by Allah's grace*" and "*Allah willing this girl will immediately get up*". But in Ofcom's view these comments were not sufficient to mitigate the risk of viewers following these practices as an alternative method of treatment.

Ofcom was concerned that the Licensee did not consider the advice from the Maulana included in this segment of the programme to be potentially harmful in the form it was broadcast. As a result of this Decision, Ofcom will contact the Licensee to seek reassurance that Geo TV understands its obligations under the Code to provide adequate protection to its viewers from potentially harmful material of the type discussed in this finding.

We noted that the Licensee has taken some steps to prevent a recurrence of a similar compliance error. Nonetheless, for all the reasons set out above, Ofcom considered that Geo TV did not provide adequate protection to viewers from potentially harmful material, and so breached Rule 2.1.

Breach of Rule 2.1

In Breach

Family Guy

TV6 (Sweden), 3 April 2015, 19:30

Introduction

TV6 is a Swedish language channel licensed by Ofcom that is controlled and complied by Modern Times Group MTG Limited (“MTG” or “the Licensee”). MTG holds 25 Ofcom licences for separate television channels which broadcast from the United Kingdom to various Scandinavian and Eastern European countries, including Sweden. MTG’s compliance department is based in London and manages compliance for all these licensees centrally. TV6 is not available on any of the United Kingdom’s broadcasting platforms and cannot be received in the UK on standard satellite or cable equipment.

Family Guy is an irreverent adult animated comedy produced in the United States. It centres on the Griffin family, consisting of parents Peter and Lois, their teenage children Meg and Chris, and their son Stewie, who is highly intelligent and – although only one year old – acts and talks like an adult, is a megalomaniac and has an evil disposition. The family also has a talking dog called Brian who has a close relationship with Stewie.

Ofcom was alerted by a viewer in Sweden to scenes of violence in an episode of this programme broadcast before the watershed on TV6. The viewer considered that it was inappropriate to schedule such scenes of “brute force” when his children aged seven to twelve were available to watch.

The storyline in this Christmas episode revolved around what is described by Stewie and Brian as a “*home invasion*”. Stewie and Brian take over Father Christmas’ present-giving duties after they find him in poor health because of overwork. In one scene, lasting around two minutes, Stewie and Brian deliver their first Christmas presents, including a baseball bat. While in the house where they were making the delivery, Brian makes a noise, and they are confronted by a man who lives there. The man starts to call the police because he thinks Stewie and Brian are burglars. Before he can make the phone call, Stewie hits the man over the head twice with the baseball bat, causing him to fall to the floor unconscious. Blood covers the man’s head, the bat, the floor and Brian’s face. Stewie and Brian then drag the man, bleeding all over the floor, to a cupboard. While pushing him in, the man opens his eyes and regains consciousness so Stewie hits him over the head very violently with the baseball bat four more times and the man slumps to the floor again. In the brief, later shots in which the man appears, he is motionless.

When trying to cover up their crime, Stewie wakes up a girl of about five years of age who walks down the stairs, quickly followed by her mother. The mother sees her husband, covered in blood, fall out of the cupboard. Hysterical, the woman grabs her daughter to run away, but she is tackled to the ground by Brian, who the woman tries to fight off. Brian yells, “*Quick, Stewie, get the bat*”, and Stewie hits the woman violently over the head once with the baseball bat. The woman collapses to the floor, motionless and the little girl screams “*Mommy*” and runs over to her mother’s crumpled body, crying hysterically. Stewie tears off some duct tape to put around the young girl’s mouth to silence her.

The scene cuts to the little girl, who is shown tied by duct tape to a chair, with her parents slumped motionless next to her. Stewie and Brian mop up the blood, then discover they have delivered the presents to the wrong house, and so make their getaway.

Ofcom considered the material raised issues warranting investigation under Rule 1.11 of the Code, which states:

“Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed...and must also be justified by the context”.

We therefore wrote to MTG for its formal comments on how the broadcast complied with these rules.

Response

MTG said it was “confident...this programme was scheduled appropriately with regards to the composition and expectations of our audience”.

The Licensee explained its compliance team views all episodes of *Family Guy* before broadcast. The episodes are given time restrictions and, according to MTG, are scheduled in line with its obligations under the Code “and with the sensitivities of a Scandinavian audience in mind.” MTG said “[a]ny episodes deemed to be unsuitable for pre-watershed broadcast are placed accordingly in the schedules.”

The Licensee said “[i]n Scandinavia, the programme is rated as an animation suitable for all viewers”, and *Family Guy* “is broadcast throughout the day in both Sweden, Denmark and Norway.” MTG added that TV6 is aimed at males aged 15 to 34 and *Family Guy* “has been a staple of TV6’s schedules both pre- and post-watershed for over 10 years”. It said this particular episode has been broadcast pre-watershed 25 times since 2011 “without complaint” and the “indexed audience figure” for this episode showed that “the overwhelming majority of the audience was adult”, with the indexed figure for children aged four to 15 illustrating an average of 500 viewers in that age group.

The Licensee said that “violence is a common theme throughout the history of animated programmes, which will often feature characters attempting to kill each other in means that would otherwise be viewed as unacceptable in a programme which depicted ‘true to life’ events.” It added that “the impact of violence is significantly decreased in an animated context” and that “Itchy and Scratchy”¹ sequences in *The Simpsons* “enact violent deaths in comedic ways and are frequently shown pre-watershed in the UK.”

MTG referred to a previous Ofcom decision which it said supported the view that animated violence had less impact than ‘real life’ violence. The Licensee quoted from Ofcom’s Finding in that case which stated: “A broadcast depicting real violence or violent scenes filmed in a realistic way (for example, in news coverage, films and drama) has the potential to have a strong impact on viewers. An animated comedy

¹ “Itchy and Scratchy” is a surreal and exaggerated version of Tom and Jerry included in *The Simpsons* where a cat and mouse torment, torture and kill each other in various very violent and bloody ways. But, as with Tom and Jerry, Itchy and Scratchy always reappear later, alive or fully recovered.

featuring similar violence is likely to be less impactful and therefore has more latitude regarding what it is permitted to show in terms of violence.”²

The Licensee said the violence in the house “is perpetrated by a baby in the presence of a talking dog, presenting the scenario as bizarre and unrealistic. The characters that are subject to violence are not killed and jokes are made throughout the sequence, which under-cut any potentially disturbing tone with humour.”

The Licensee argued there was “strong editorial justification” for the sequence as it showed the characters of Stewie and Brian trying in increasingly desperate circumstances to replace Father Christmas.

MTG said the “fact that the violence is animated and that the sequence is humorous and surreal in line with the general tone of the programme meant that it was unlikely to be taken seriously or seen as disturbing by viewers.”

MTG said that following the complaint from Ofcom, and as a sign of how seriously it takes its obligations to viewers, it had undertaken a full review of the series *Family Guy* and reassessed every episode in its catalogue. In addition its compliance team had held meetings with all planning teams to highlight the issues raised by Ofcom.

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 1.11 requires that violence, its after-effects and descriptions of violence must be appropriately limited in programmes shown before the watershed and must be justified by the context.

In applying Rule 1.11, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority. In accordance with the fundamental right to freedom of expression, the Code does not prohibit the broadcast of violent content before the watershed. However, the material must be appropriately limited and justified by the context.

We first assessed the level and nature of the violence in the scene described in the Introduction and whether it was appropriately limited.

The Licensee asserted in its submissions that: “The characters that are subject to violence [i.e. the father and mother] are not killed...” Ofcom was of the view that there was no evidence within the programme to suggest to viewers that this was the case. Stewie was shown to beat the man violently about the head with a baseball bat on two separate occasions (the second time after he regained consciousness), spilling blood all around, and the woman once. After the attacks both characters were depicted as completely motionless. In Ofcom’s view many viewers would have

² See Finding for *American Dad!* from issue 219 of Ofcom’s Broadcast Bulletin, available at <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb219/obb219.pdf>

reasonably concluded that either or both of the characters had been killed by the attacks.

Ofcom's opinion was therefore that this sequence showed: Stewie brutally attacking and probably murdering a male householder with a baseball bat; the man's wife being very violently assaulted (and quite probably) killed by a blow to the head with the same baseball bat; and the couple's very young daughter witnessing the attack (and possible murder) of her mother and then being tied up by duct tape so she could not talk or move. In Ofcom's view the impact of the sequence was heightened by the facts that:

- after the first attack, there was a considerable amount of blood on the baseball bat, the carpet and spattered over Brian's face;
- there was a large blood trail on the floor as the man was dragged to be hidden in a cupboard; when the man regained consciousness, Stewie callously delivered a violent volley of blows with the bat to his head to seriously injure or kill him; and
- when deciding their next steps, Stewie said (thinking that he still needed to deliver the baseball bat as a present to the couple's son), "*Let me just clear his father's blood and hair off it [i.e. the bat]*".

Ofcom considered these scenes were strong and shocking, whether or not these two characters were in fact killed in the attacks.

The arrival of the young girl on the scene added to the tension because it was unclear whether the girl would discover her father's body, or what Stewie and Brian would do to the girl. When the mother came downstairs to discover her unconscious (or murdered) husband, Brian, who had previously been seen to be a witness to Stewie's violence, tackled her and attempted to restrain her while the mother desperately kicked at him to get free. In Ofcom's opinion many viewers would have concluded that Stewie's blow to the mother's head killed her instantly. The young girl was terrified by the sight of her mother being attacked, and was constantly crying and screaming "*Mommy*" until Stewie covered her mouth with duct tape. In the following scene, when Stewie and Brian were depicted finishing the work of cleaning up the house, the girl was shown tied to a chair and gagged with duct tape next to a Christmas tree and her motionless parents. She looked very frightened as Stewie and Brian cleaned up the blood on the floor and then discovered they had delivered presents to the wrong house.

We considered that the violence depicted in this sequence was not appropriately limited for broadcast at 19:30. Ofcom appreciated that the violence was included in an animated comedy series. But we did not agree with MTG's argument that the fact that the violence was contained in an animated comedy series was in itself sufficient to appropriately limit the violence.

Ofcom next considered whether the violence was justified by the context.

We took into account the research Ofcom published in July 2014 about "Audience attitudes towards violent content on television"³. This showed that viewers take various factors into account when deciding whether they consider violence on television to be acceptable: principally the time when the material is broadcast, but

³ http://stakeholders.ofcom.org.uk/binaries/research/tv-research/violence/Violence_on_TV_Report.pdf

also various other contextual factors, such as warnings, the duration and overall impact of the violence, and also the channel and genre of programme.

This programme started at 19:30 (Swedish time), well before the 21:00 watershed set out in the Code. *Family Guy* is well known as an animated comedy series aimed at an adult audience where the storylines, jokes and visual humour challenge the audience and often cause offence. We note that licensees broadcasting *Family Guy* to viewers in the UK have scheduled it to start at 21:00 at the earliest. We understand that this is because it is not a series which in our view is suitable for children to view without careful editing. We also noted that there was no warning to viewers (and especially parents) about the violence, broadcast either before or during the programme.

In Ofcom's view the violent sequence in the house had the potential to have a considerable impact on any young viewers. It was deliberately intended to shock viewers about how two well-known characters in the series could carry out, in their own words, a "home invasion" at Christmas and carry out an unprovoked, violent attack on (and probably kill) two parents in front of their young daughter.

We took into account the Licensee's reference to Ofcom's published decision that a violent sequence in the animated comedy series *American Dad!* shown at 20:30 before the watershed breached the Code⁴. In that decision, Ofcom noted that an animated comedy featuring similar violence is likely to be less impactful and therefore has more latitude regarding what it is permitted to show in terms of violence. However this decision also stated:

"In Ofcom's opinion the intensity and length of the violence shown in this episode ... was very unusual for a pre-watershed cartoon programme... While FX [the channel on which the programme was broadcast] is primarily directed towards adult viewers and *American Dad!* is known to be an edgy comedy, Ofcom does not believe an audience (and in particular parents) would have expected cartoon content with this level of violence to be shown on FX before the watershed."

Ofcom acknowledges that the fact that violence is contained in an animated or cartoon programme can distance viewers from that violence and mitigate its impact to some extent. As the *American Dad!* Decision underlined, however, this does not mean that the violence licensees can include in pre-watershed animated or cartoon programmes is unrestricted. It must comply with Rule 1.11 the Code. Whether it does so depends on the context and all other relevant circumstances.

MTG for example argued that the violence in the sequence was justified by the "bizarre and unrealistic" scenario of it being perpetrated by a baby in the presence of a talking dog, and by the jokes "made throughout the sequence, which under-cut any potentially disturbing tone with humor." Ofcom accepted that the macabre humour of this sequence mitigated the effect of the violence to a limited extent. In Ofcom's opinion, however, from the point when the father was first hit on the head to the point where Stewie and Brian realised they were in the wrong house, the intended humour of the scene appeared to rely to a great extent on the shock created by the unexpected and intense violence inflicted by Stewie and Brian rather than on other factors. The humour also did not, in Ofcom's view, sufficiently mitigate the potential impact of the violence on children in the audience. This was heightened by the sense of menace in the sequence from the moment Stewie first attacks the father. The

⁴ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb219/obb219.pdf>

violence was also inflicted on a very young girl and her parents in their family home, a supposedly safe environment, which, in Ofcom's opinion, children in the audience would have easily identified with.

MTG drew comparisons with "Itchy and Scratchy" in *The Simpsons*. However, Ofcom considered the intensity of the "*home invasion*" sequence and realistic nature of the violence within this part of the programme distinguished it from more surreal and exaggerated, and self-contained, violent scenes within "Itchy and Scratchy". In this episode of *Family Guy* for example the violent attacks killed the mother and father (or at least left them seriously injured), and there was nothing in the programme to suggest they recovered or survived. By contrast, the two animal protagonists in "Itchy and Scratchy" regularly inflict extreme acts of violence on each other but always reappear later, alive or fully recovered.

Ofcom considered, when reaching a view in this case, whether viewer attitudes to protecting children and to violence in a pre-watershed animated comedy in Sweden might differ materially from those in the UK. The MRTV, the Swedish Broadcasting Authority, provided to Ofcom some background information about the regulatory and cultural context to help inform our decision⁵. The MRTV confirmed that it had various rules to protect minors from violent content. It also pointed out to Ofcom that it had in the past upheld a complaint about scenes of violence in an animated programme shown before 21:00.

All Ofcom licensees must comply with the Code, wherever their audience is located. Ofcom has some limited latitude in applying the Code if cultural norms differ appreciably between the UK and other countries. However, in Ofcom's opinion, viewer and regulatory attitudes to protecting children and to violence in an animated comedy shown pre-watershed do not differ appreciably between Sweden and the UK.

Ofcom noted that MTG's representations that TV6 is aimed at males aged 15-34, this particular episode had been broadcast 25 times since 2011 without complaint, and that audience data for this episode showed "the overwhelming majority of the audience was adult". Ofcom recognised that the channel is aimed at a largely adult audience. Nevertheless, when making scheduling decisions, broadcasters must take account of the fact that children are likely to be available to view in the early evening. Because this programme was broadcast at 19:30, children were available to view it.

For all the reasons set out above, Ofcom considered that the violent "*home invasion*" sequence as presented in this episode of *Family Guy* was neither appropriately limited, nor justified by the context. This content therefore breached Rule 1.11.

Breach of Rule 1.11

⁵ In accordance with Ofcom Guidelines for dealing with regulators of other EU (and EFTA) states:
http://stakeholders.ofcom.org.uk/binaries/broadcast/international/Procedural_Guidelines.pdf

In Breach

49 Days

Phoenix Chinese News and Entertainment, 12 May 2015, 20:30

Introduction

Phoenix Chinese News and Entertainment is a Chinese language general entertainment television channel targeted at Chinese speakers across Europe. The licence for the channel is held by Phoenix Chinese News and Entertainment Limited (“PCNEL” or “the Licensee”).

49 Days was a historical drama series in Mandarin Chinese, Japanese and English which depicted fictional events against the backdrop of the Japanese army’s occupation of the Chinese city of Nanking during late 1937 and early 1938. The occupation of Nanking is a controversial historical event during which, it is widely acknowledged, the Japanese army committed many acts of murder and rape against the local Chinese population of Nanking¹.

Ofcom was alerted to this programme by a viewer who objected to a scene broadcast at approximately 20:35 which showed a woman being “tied up and being stabbed repeatedly”.

We viewed the programme and obtained an independent translation of it. On assessing the content we were concerned by two sequences broadcast within the first 12 minutes. In the first of these, a woman who was tied to a board (who viewers understood had been raped by several Japanese soldiers) was seen to be bayoneted six times in the chest by one soldier. In the second sequence, a Japanese soldier chopped off a civilian’s hand with a sword and a close-up shot of the bloodied stump of the civilian’s arm was shown.

Ofcom considered the material raised issues warranting investigation under Rule 1.11 of the Code:

“Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed ... and must also be justified by the context”.

We therefore asked the Licensee for its comments on how it had complied with this rule.

Response

PCNEL accepted that the contents of the programme “caused distress” and “sincerely and deeply” apologised for these scenes. By way of background, it explained that the programme was broadcast pre-watershed because the Licensee’s Head Office in China, which has responsibility for scheduling on PCNEL’s UK channel, scheduled the programme to be transmitted “in the UK at 20:30 while it was broadcast in Mainland Europe at 21:30”.

¹ The number of Chinese civilians killed during the Japanese occupation of Nanking is disputed, with some Chinese sources stating that up to 300,000 deaths occurred, while some Japanese nationalists have suggested a lower number (see for example <http://www.bbc.co.uk/news/world-asia-30460818>).

The Licensee acknowledged that it “should have checked the program and deemed it acceptable for pre-watershed viewing” before broadcast. However, it added that this did not happen in this case due to human error.

PCNEL said that on being alerted by Ofcom of the broadcast of the content in this case it “immediately” stopped broadcasting the *49 Days* series to prevent further breaches of the Code. To stop a recurrence of a similar problem in future, it said it had introduced new procedures to ensure that additional staff would review all programming prior to broadcast to ensure compliance 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, including that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.11 requires that violence, its after-effects and descriptions of violence must be appropriately limited in programmes shown before the watershed and must be justified by the context.

In Ofcom’s view, the violence in the scenes described above was not appropriately limited. This was because of the extreme nature of the violent acts shown and the graphic way in which they were depicted. The impact of the first sequence was heightened by the screams of the female victim, shots of the soldier twisting the bayonet in the woman’s chest, images of her bloodied face as she was being stabbed to death, and its length (about one minute and 15 seconds in total). The impact of the second sequence was emphasised in particular by the close-up shot of the man’s bloody stump after his hand was chopped off.

Ofcom also considered whether the violence was justified by the context. We noted that *49 Days* was broadcast on a general entertainment and news channel half an hour before the start of the watershed when children were available to view. No warning was given at the start of the programme. We considered that the audience for this programme would not have expected such graphic depictions of violence to be shown at this time on this channel, especially in the first twelve minutes of the broadcast. In Ofcom’s view therefore, the violence was not justified by the context.

We recognised that the Licensee sincerely apologised for the broadcast of this programme before the watershed, accepted that this was as a result of “negligence on [its] part”, and had taken steps to ensure a similar compliance problem does not recur. However, the broadcast of this material represented a clear breach of Rule 1.11.

Breach of Rule 1.11

Resolved

Drivetime

Corby Radio, 13 April 2015, 15:00

Introduction

Corby Radio is a community radio station licensed to provide a service for “the population of Corby and surrounding area”. The licence is held by Corby FM Limited (“Corby Radio” or “the Licensee”).

A complainant alerted Ofcom to the broadcast of a *Drivetime* feature entitled ‘*Safe and Sound*’. The complainant considered it was unclear that the feature was subject to a commercial arrangement between the station and Corby Community Safety Partnership (“CCSP”).

Ofcom reviewed *Drivetime* and noted that, during the first hour of the programme, the ‘*Safe and Sound*’ feature was broadcast in three segments – at 15:18, 15:37 and 15:50. The presenter interviewed a panel of three studio guests – two representatives of Northamptonshire Police and Corby Borough Council’s Community Safety Officer – and listeners’ questions were put to them. Issues discussed included Northamptonshire’s latest crime levels, how the Council and the Police work together as ‘Partners of Corby Community Safety Partnership’, CCSP’s forthcoming ‘Take Action’ event and road safety issues.

We asked Corby Radio for information about this broadcast, including details of any commercial arrangement between the Licensee and CCSP. Corby Radio confirmed that the broadcast of ‘*Safe and Sound*’ was sponsored by CCSP, and was therefore subject to a commercial arrangement, although the inclusion of its associated representatives (from Northamptonshire Police and Corby Borough Council) and the specific items discussed in the feature did not form part of the agreement.

Ofcom considered the material raised issues warranting investigation under Rule 10.1 of the Code, which states:

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

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

Response

Corby Radio said, “in this instance...an error [was] made by a young inexperienced presenter who was very apologetic about it...”. The Licensee added that the volunteer had “got in a fluster with technical issues, and it was his very first high profile interview and he forgot to play the jingles that were available to him for the purpose of identifying the sponsorship of the feature”.

To ensure no recurrence, Corby Radio said it had put in place a staff training scheme that highlighted the requirements of Section Ten, adding that it had also introduced a

policy of running only pre-scheduled sponsored features that did not therefore rely on manually-inserted sponsorship credits.

The Licensee assured Ofcom that it had “learned from this [experience]”, which it hoped would “help to make [Corby Radio] stronger and to continue providing a valued service to [its] community”.

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, including “that generally accepted standards are applied to the contents of...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material”.

This is reflected in, among other rules, Rule 10.1 of the Code, which requires that radio programming subject to, or associated with, a commercial arrangement is appropriately signalled, so as to ensure the transparency of that arrangement to listeners. Ofcom’s associated guidance to Rule 10.1¹, clarifies that “broadcasters are required to give, at appropriate times, clear information in and around programming, to inform listeners of any commercial arrangement affecting that programming...”.

Like other community radio stations, Corby Radio is required to deliver the ‘Key Commitments’ which form part of its licence. These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community. Ofcom noted that, among other things, Corby Radio’s social gain objectives include “[encouraging] as many people to be involved in the station as possible...”, “[offering] work placements to local schools and colleges as often as is possible...” and running a training academy that “encourages students to produce and broadcast to the station’s local audience...”. We recognise that enabling volunteers to participate in this way will inevitably produce challenges for the Licensee in terms of maintaining Code compliance.

Nevertheless, Section Ten of the Code affords all radio licensees, including community radio stations, considerable scope for raising revenue through commercial arrangements that permit third party involvement in programming. To ensure such arrangements are transparent to listeners, it is crucial they are appropriately signalled. In this instance, the feature, ‘*Safe and Sound*’, was sponsored by CCSP and featured representatives (i.e. from Northamptonshire Police and Corby Borough Council), who discussed material of relevance to it (i.e. Northamptonshire’s latest crime levels and road safety) and promoted its ‘Take Action’ event. Despite this, no reference was made at any time to the fact that the feature was sponsored by CCSP.

Ofcom considered Corby Radio had failed to signal appropriately to listeners that the broadcast of the feature was subject to a commercial arrangement, or that the references in the feature to the sponsor’s associated representatives and its ‘Take Action’ event were linked with that commercial arrangement. However, we also noted the actions the Licensee said it had taken to minimise the risk of recurrence,

¹ See ‘Appropriate signalling’, in Ofcom’s Guidance Notes to Section Ten of the Code, at: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>.

including additional training and development for presenters and the pre-scheduling of all sponsorship features. Ofcom therefore considered the matter resolved.

We noted that this is the third Finding Ofcom has published regarding this Licensee this year. We put the Licensee on notice that we will monitor its output over the coming months.

Resolved

Not in Breach

Top Gear

BBC 2, 2 February 2014, 20:30

Introduction

Top Gear is a long-running magazine series on motoring. Presenters Jeremy Clarkson, James May and Richard Hammond provide information and commentary about cars and interact with the audience and special guests. Programmes are light-hearted in tone, and typically include quirky and humorous exchanges between the presenters.

Ofcom received a complaint from The Traveller Movement (“TM”)¹ regarding the use of the phrase “*Pikey’s Peak*” in a pre-recorded item in an episode of *Top Gear*. As explained in more detail below, the complainant objected to the use of the word “pikey” in this context because it was an offensive and derogatory term for Gypsies and Travellers, who are legally recognised ethnic minorities².

The programme

The item in question consisted of a hill-climb race in which the three presenters road tested the performance of used hatchback cars from the 1980s against a newer hatchback model. The location of the race was Shelsley Walsh Hill Climb in Worcestershire, the site of a particularly steep racing climb. At the start of the item, Jeremy Clarkson said the following in narration:

“We arrived at the terrifying Shelsley Walsh Hill Climb. Germany has the Nürburgring, America has Pikes Peak, we have this [i.e. Shelsley Walsh Hill Climb]. It’s more than half a mile long and at the bottom of this fearsome river of tarmac we were given more details of our challenge”.

During this item, one of the presenters, Richard Hammond, was to drive his hatchback car over the hill course. Prior to Richard Hammond starting the course, Jeremy Clarkson was shown attaching a hand painted sign, bearing the words “*Pikey’s Peak*”, to the side of a wooden building located near the course. While Jeremy Clarkson did this, James May said in commentary:

“...Jeremy prepared the course for Hammond’s Nova”.

This comment referred to the fact that fellow presenter Richard Hammond was about to start the course driving a used Vauxhall Nova hatchback.

Complaint to the BBC Trust

Before making its complaint to Ofcom, the TM had made a similar complaint about the same programme to the BBC Editorial Complaints Unit. The BBC Editorial

¹ The Traveller Movement is an organisation that campaigns on issues affecting the Irish Traveller, English Traveller, Gypsy and Romany communities within Great Britain (see <http://www.travellermovement.org.uk/>).

² Irish Travellers, Romany Gypsies and Scottish Travellers are legally recognised as ethnic minorities and protected against discrimination under the Equality Act 2010.

Complaints Unit did not uphold the complaint. The TM therefore appealed this decision to the BBC Trust's Editorial Standards Committee ("the Committee"). In its published decision of 17 March 2015³, the Committee decided⁴ not to uphold the appeal against the programme.

Complaint to Ofcom

Ofcom's procedures for investigating breaches of content standards for television and radio ("the Procedures")⁵ state that:

"Where a complainant has previously complained directly to the broadcaster, the complainant should wait to see if he/she is satisfied with the broadcaster's response (in accordance with the broadcaster's own complaints procedures) before referring it to Ofcom"⁶.

In this case the complainant referred the complaint to Ofcom following the Committee's decision not to uphold the appeal against the programme.⁷ In summary, the TM complained to Ofcom that:

- the use of the term "pikey" on *Top Gear* was "part of an acknowledged long-running gag" on the series which relied on its racial reference to Gypsies and Travellers for its impact and plays on stereotypical assumptions of members of those ethnic communities as being "cheap", "chavvy" and "cheapskate". Had a more neutral word like "cheapskate" been used, it would not have had such a "transgressive punch" i.e. provocative impact;
- the word "pikey" is now generally accepted to be a derogatory word that contains an inherent racial reference to Gypsies and Travellers, and the wider public would be offended that a popular pre-watershed BBC light entertainment programme would actively promote a racist term that discriminates against a significant section of the UK's population; and
- the TM therefore considered that the use of this word in the programme was a breach of Rule 2.3 of the Code which requires broadcasters to ensure that, in applying generally accepted standards, material which may cause offence is justified by the context.

In support of its complaint, the TM also made the following points:

³ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2014/dec.pdf

⁴ The Committee stated that in this case: "...the programme met generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. In light of that conclusion and the nature of the programme, the Committee judged that the content of this episode was suitable for audiences, including children".

⁵ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/breaches-content-standards.pdf>

⁶ Ibid, paragraph 1.15.

⁷ Under the BBC Royal Charter and Agreement, the BBC has to comply with the standards objectives under section 319 of the Communications Act 2003 which are reflected in the Ofcom Broadcasting Code (except for Sections Five and Six concerning impartiality and accuracy).

- it was incorrect to consider (as had been suggested in the Committee’s decision) that “pikey” had a “dual-usage”, one of which was “racist” and referred to Gypsies and Travellers, and the other usage was not racist and had no reference to Gypsies and Travellers and instead meant “cheap” or “chavvy”⁸. The TM argued this was “a false distinction” as terms like “cheap”, “chavvy” and “low rent” are “intrinsically linked to the origin of pikey as a derogatory name for Gypsies and Travellers”.
- the TM referred to Ofcom’s research report on offensive language published in 2010 (the “Ofcom 2010 Research”).⁹ The TM noted that the Ofcom 2010 Research (which had been referred to in the Committee’s decision) stated that: “Where discriminatory words have an additional meaning which is negative but not directly discriminatory, some participants from the general UK sample found it acceptable, provided that it was used in its non-discriminatory sense (e.g. “pikey” to mean “cheap” rather than directly referring to travellers)”. However, the TM said this report was “out of date” because the research was undertaken prior to a range of developments involving the Gypsy and Traveller communities which mean that “most people now realise” that “pikey” is a derogatory name for Travellers and Gypsies. According to the complainant, this therefore meant that more of the wider public would have been offended by the term “pikey” included in a programme in 2014 than a few years earlier.
- the TM noted that Ofcom had previously published a decision which found the use of the word “slope”¹⁰, in a separate episode of *Top Gear*, had breached the Code¹¹. TM said that this decision was “strikingly similar” to this current case because, like the use of the word “pikey” in this case, *Top Gear* had “used a similar comic device to exploit the word “slope” for comic effect and with clear transgressive intent”. TM argued that Ofcom’s decision in this case was significant because it established that “if a term is recognised as racist and causes offence, and that viewers are likely to consider it to be more offensive’...., then, all things being equal Ofcom will consider that the broadcaster has been irresponsible in using the word”.
- the TM also noted that the Ofcom 2010 Research had found that “if participants felt that the language broadcast was likely to encourage further use of the word or present potentially discriminatory language as socially acceptable, they were more likely to find the language unacceptable and consider that the broadcaster had not acted responsibly”. The TM considered that the reference to “pikey” in the programme was therefore liable to lead to bullying in schools by “normalising” the use of the word.

⁸ Ofcom notes that “Chav” (from which “Chavvy” is derived) is defined as: “A young lower-class person typified by brash and loutish behaviour and the wearing of (real or imitation) designer clothes”. Source: Oxford Dictionaries (Oxford University Press) (<http://www.oxforddictionaries.com/>).

⁹ <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

¹⁰ *US informal, offensive* A person from East Asia, especially Vietnam. Source: Oxford Dictionaries (Oxford University Press) (<http://www.oxforddictionaries.com/definition/english/slope>).

¹¹ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb259/>

Ofcom's investigation

Having received the complaint from the TM, Ofcom considered that the use of the phrase "*Pikey's Peak*" in this programme raised issues warranting investigation under Rule 2.3 of the Code:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to... 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)."

Ofcom therefore asked the BBC to provide comments on how the programme complied with this rule.

Response

The BBC acknowledged that the use of the word "pikey" could give rise to offence given that it can be understood as a derogatory term for members of the Gypsy and Traveller community.

However, the broadcaster argued that there was strong evidence that the word had, in recent times, taken on a possible alternative meaning which did not necessarily involve any derogatory reference to Gypsies or Travellers. The BBC explained that the "evolved meaning" of the word "pikey" corresponded to "chav", "cheap", "tacky" or "low rent". The BBC also cited Wikipedia¹², the online reference source, which included the following definition of "pikey":

"In recent years, the definition has become loose and is sometimes used to refer to a wide section of the (generally urban) underclass of the country, or merely a person of any social class who "lives on the cheap". This seems to be the meaning intended by Stephen Fry in an episode of QI, grouping together "hoodies and pikeys and chavs", and intimating that these people are of a sort who "go out on the town, beating people up and drinking Bacardi Breezers".

The BBC referred to the Ofcom 2010 Research¹³, which the BBC said concluded that people have very different views about the use of the word "pikey":

"Participants from the general UK sample had a wide range of reactions to the use of the word "pikey", depending on their knowledge of what the word means. Some had never heard of the word and therefore were unable to comment about how acceptable they thought it was."

According to the BBC, the Ofcom 2010 Research found that:

- some participants had heard the word "pikey" being used before, but understood it only to mean "cheap";
- these participants had thought that it was generally acceptable to use this word, because they did not know its original meaning or its implications, and therefore

¹² Ofcom noted that this definition was removed from Wikipedia in December 2009.

¹³ See footnote 9.

assumed that the word “pikey” would only ever be used in a light-hearted way to mean “cheap”;

- some participants had heard the word “pikey” and were aware that it was used as a word for Travellers, but did not know that it was considered derogatory or racist; and
- a number of participants knew that the word “pikey” was used to refer to Travellers and some considered it to be derogatory.

The BBC added that the Ofcom 2010 Research had also indicated that even some Travellers did not necessarily find the use of the word offensive and quoted the following from the 2010 Research:

“Most travellers in this research study said that they personally felt that the word “pikey” was an offensive, derogatory term and did not think it should be used on television. However, some travellers were aware that the word “pikey” was often used nowadays to mean “cheap”, and thought that it was acceptable for this word to be used in a gentle, light-hearted context. For example, some travellers (particularly males) thought that the reference to the word “pikey” on the factual entertainment programme about cars¹⁴...was acceptable, because it was a pun (i.e. the images of the pie and key) and they found it funny”.

The BBC was of the view that there was clear evidence of a new meaning attached to the word “pikey” and therefore that “its mere use cannot be assumed to be offensive in all circumstances.” The broadcaster added that “the issue in determining whether it is offensive in any particular case is the intention behind its use, and the context in which it is used”.

In terms of the context in which the word was used, the BBC said that *Top Gear* was a programme where “ribbing” between the three presenters was an established element of the programme, and it had become “something of a commonplace for [two of] the...presenters to refer to Richard Hammond as a “pikey””. The BBC argued that the use of “pikey” in relation to Richard Hammond was “clearly intended” to carry the “newer meaning” of “chavvy” or “low rent”.

The BBC stated that the use of the phrase “*Pikey’s Peak*” in this programme was not intended as a derogatory reference to Travellers or Gypsies, and there was nothing in the actual words used or the context in which they were used to suggest that it was. Further, there was also an added layer of relevant humour deriving from the play on words with “Pikes Peak”, referred to in the programme, and which is the scene of an annual international hill climb race in the United States.

For these reasons, the BBC did not believe that the use of this phrase in the programme amounted to a breach of the Code.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives. One of these is that “generally accepted standards” are applied so as to

¹⁴ The participants in the research viewed a previous episode of *Top Gear* which had included the use of ‘pikey’, but in a different context to that in the broadcast in the episode 24 February 2014.

provide adequate protection for members of the public from the inclusion of offensive and harmful material. This standard is reflected in Section Two of the Code.

In reaching a Preliminary View in this case, Ofcom has taken account of the audience's and broadcaster's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. Therefore, Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the broadcaster's and audience's right to freedom of expression on the other.

Under Rule 2.3, broadcasters must ensure that potentially offensive material (including offensive and discriminatory language) is justified by its context. This means that although there is significant room for innovation, creativity and challenging material within programming, broadcasters do not have *unlimited* licence to include offensive material in programmes.

In this case, Ofcom considered firstly whether the use of the word "pikey" in the phrase "*Pikey's Peak*" had the potential to cause offence.

Ofcom noted the complainant's view that the Ofcom 2010 Research was out of date as developments in society in recent years have made the term "pikey" more widely known as a term of racial abuse. We acknowledged that the meanings of words change over time and that audience research cannot provide a definitive measure of how offensive use of a particular word may be, as that will depend on the whole context in which it is used. However, the Ofcom 2010 Research remains the most up-to-date study that Ofcom has conducted in this area and we consider that it provides a helpful indication that there are a range of opinions and interpretations which viewers may have with regard to the use of this term.

The 2010 Research indicated that the word "pikey" had two meanings. On the one hand, respondents found the word to be a pejorative racial term which had the potential to be clearly offensive to Gypsies and Travellers, as well as to viewers more generally. In its representations, the BBC acknowledged that the use of the word "pikey" could give rise to offence because of its possible use as a derogatory term for Gypsies and Travellers. However, the 2010 Research also found that the term "pikey" had a much less offensive and non-discriminatory meaning, being a synonym for "cheap".

We also noted that the Oxford English Dictionary ("OED") defined "pikey" as a "slang (derogatory)" term "now considered offensive" and as:

"A traveller, a gypsy; a vagrant, a tramp; (hence more generally) a lower-class person, regarded as coarse or disreputable (noun); and
"Of or relating to such people; (also in later use) squalid, disreputable, vulgar."
(adjective)¹⁵.

Therefore, Ofcom was of the view that it was likely that some in the audience would also perceive the word "pikey" in the phrase "*Pikey's Peak*" as being a derogatory term for Gypsies and Travellers, and that the use of the word here was therefore capable of causing offence, in particular to members of these communities.

¹⁵ <http://www.oed.com/view/Entry/143798?rskey=r1CNwj&result=1#eid>

We therefore went on to consider whether the broadcast of this potentially offensive word was justified by the context in this case. As noted in the Code, context includes but is not limited to: the editorial content of the programme, the service on which the material was broadcast, the time of broadcast, what other programmes are scheduled before and after, the degree of harm or offence likely to be caused, likely audience expectations, warnings given to viewers and the effect on viewers who may come across the material unawares.

We assessed first the editorial context in which the phrase "*Pikey's Peak*" was used. It featured in a pre-recorded item featuring a race between the three *Top Gear* presenters testing the performance of 1980s small hatchback cars against a newer hatchback model. Ofcom noted that such races have been a common feature of *Top Gear*, and that in such items the three presenters habitually made fun of each other, through for example, ridiculing the choice of cars that each was racing. In this case, we noted there was a jokey exchange from Jeremy Clarkson and James May that Richard Hammond's choice of car was "*not wise at all*". Although references were made by Richard Hammond to the unmatched doors and tailgate of his chosen car, Jeremy Clarkson laughed off Richard Hammond's positive comments about it being a "*very desirable*" car by stating it had "*spent more time on its roof than its wheels*" and that "*all Novas are driven by yobbos who turn them over*". Jeremy Clarkson added that nobody "*had to buy a Vauxhall Nova as it was easier to steal one*".

During the item itself, we noted that – ahead of Richard Hammond's turn in the race featured in the item – the words "*Pikey's Peak*" were handwritten on a sign which was fixed to a shed by presenter Jeremy Clarkson. He made no comments as he attached the sign to the shed, and the accompanying narration by the third presenter, James May, did not refer to the text on the sign. Rather, James May only stated that Jeremy Clarkson had "*prepared the course*" for Richard Hammond's turn in the hill race. We noted that the sign on which "*Pikey's Peak*" was written was featured in the programme only when it was Richard Hammond's turn to take part in the race.

In Ofcom's view, taking all of the above into account, the editorial context suggested to viewers was that Jeremy Clarkson and James May perceived that: Richard Hammond's choice of car was inferior to their selection of used car; his choice of vehicle lacked class; and, that he had chosen a used car associated with anti-social activity. In other words, that they considered that Richard Hammond and his Vauxhall Nova were, to use the terms used by the BBC, "chavvy" or "cheap". As a result, in our view, when the sign stating "*Pikey's Peak*" was shown just before Richard Hammond's turn in the race, viewers would have been more likely to construe the use of the word "pikey" within it as meaning "cheap" or 'disreputable' rather than a pejorative and discriminatory term for Gypsies and Travellers.

We also took into account the degree of offence likely to be caused by the use of the phrase "*Pikey's Peak*". The Ofcom 2010 Research highlighted that participants considered the intent behind the use of any language had an impact on the way in which viewers assessed its level of offence. For example, if the offensive language was aimed at individuals or targeted at specific groups or used aggressively, participants were more likely to consider the language offensive. In this particular case, Ofcom was of the view that the use of the term "*Pikey's*" on the "*Pikey's Peak*" sign was specifically aimed at Richard Hammond and his choice of car. While acknowledging that some viewers may have linked the term to Gypsies and Travellers, it was Ofcom's view that the absence of any direct reference to these communities in the item minimised the level of potential offence. The term was not for example used aggressively against an individual but on a handwritten sign, as part of what was intended to be a humorous exchange. Finally, there was no accompanying

narration to suggest or highlight to viewers any negative racial association with Gypsies and Travellers.

On this point, TM said in its complaint that to separate the term “pikey” into “a perceived racially-neutral usage alongside a racist usage is a false distinction, as “cheap” or “chavvy” and “low rent” are intrinsically linked to the very origin of “pikey” as a derogatory name for Gypsies or Travellers”. The complainant highlighted that in its view it was “obvious from the context of the running gag” that the use of “pikey” in *Top Gear* was intended to be “racially offensive” and that the programme was “knowingly (and this is known to the audience as well as themselves) exploiting the grey area between generally acceptable and unacceptable language”. In other words, the complainant was of the view that there was no meaningful difference between the offence caused by use of the word “pikey” as a pejorative reference to Gypsies and Travellers or the other “evolved meaning” of the word as a synonym for “cheap” or “chavvy”.

Ofcom considered, however, that the likely degree of offence would be dependent on the context in which this word is used. As mentioned above, the Ofcom 2010 Research¹⁶ identified that “pikey” was a “polarising word” with the level of offence created dependent upon the respondents’ understanding of what the word meant. In summary:

- some participants in the research had heard the word “pikey” being used before, but understood it only to mean “cheap”;
- others thought that it was generally acceptable to use the word “pikey”, because they did not know its original meaning or its implications;
- some had heard the word “pikey” and were aware that it was used as a word for Travellers, but did not know that it was considered derogatory or racist by some; and
- other participants knew that the word “pikey” was used to refer to Travellers and considered it to be derogatory and would prefer it were not used.

In addition, some Travellers who participated in the Ofcom 2010 Research study said that they personally believed that the word “pikey” was an offensive, derogatory term and did not think it should be used on television. Other Travellers who took part were aware that the word “pikey” was often used nowadays to mean “cheap”, and thought that it was acceptable for this word to be used in a gentle, light-hearted context. Therefore, our published research in this area indicated that there were a range of interpretations of, and views about, the term “pikey” and that the likely level of offence caused by the use of the term is likely to be dependent on the context. For example, as noted above, the Ofcom 2010 Research indicated that some viewers would perceive the use of the word “pikey” to mean “cheap”, “chavvy” or “low rent” as acceptable where it is used in a non-discriminatory context.

While our 2010 Research suggested that some people were not aware of the potential discriminatory meaning of the word “pikey”, it demonstrated that the term evoked different reactions and caused varying levels of offence, depending on the context in which it was used. We therefore assessed carefully how the word was used in this case and particularly whether, as the complainant has argued, it was

¹⁶ Ibid.

“obvious” that the term was used in a way which was intended to be “racially offensive”.

Ofcom’s 2010 Research indicated that viewers are likely to consider a word to be more offensive if they understand it to be making a derogatory reference to specific characteristics of a defined ethnic group. This was a point which was also considered in the previous Ofcom decision on *Top Gear*¹⁷, which was referred to by the complainant. In that particular decision, Ofcom noted that the word “slope”, which can be an offensive term for a person from East Asia and especially Vietnam, was deliberately employed in the programme to refer both to the Asian person shown crossing a bridge as the word was used, and to camber of the bridge. By contrast, in this case, the words “*Pikey’s Peak*” were not employed in a context so as to make any direct reference to Gypsies and Travellers or directly associate the term with those communities.

Ofcom’s Guidance on Rule 2.3 states that: “Whether language is offensive depends on a number of factors. Language is more likely to be offensive, if it is contrary to audience expectations. Sensitivities can vary according to generation and communities/cultures...”.

Accordingly, Ofcom took account of the fact that *Top Gear* was widely known for its irreverent style and sometimes outspoken humour, as well as the humorous exchanges between the three presenters and that the regular audience for this programme adjusted its expectations accordingly. We noted the TM’s reference to the use of the term “pikey” as being part of a “long running gag” on *Top Gear* and that Richard Hammond had been linked to it on previous occasions. It was Ofcom’s opinion that any repeated use of the term underlined for viewers that it was intended to be associated with Richard Hammond in this context, and what appeared to his fellow presenters to be the “cheap” or “chavvy” aspects of his activities and image, and not with Gypsies and Travellers. We therefore considered that the degree of offence caused by the reference to the word “pikey” in the sign “*Pikey’s Peak*” was likely to have been reduced to some extent by the audience knowing the “humour” in this case was directed at Richard Hammond. In Ofcom’s view, the use of “pikey” in this sort of humorous context was likely to have been in line with the likely expectation of the audience.

We also took into account that during the item in question, just as the presenters arrived at the Shelsley Walsh Hill Climb before the start of their road testing and before the sign bearing the words “*Pikey’s Peak*” was erected, Jeremy Clarkson commented that:

“Germany has the Nürburgring, America has Pikes Peak, we have this [i.e. Shelsley Walsh Hill Climb]”.

Nürburgring and Pikes Peak are two well-known racing circuits, located in Germany and the US respectively. We considered that the use of the term “*Pikey’s Peak*” was also a direct play on words with the name of the celebrated racing circuit in the US. This direct association with Pikes Peak was another factor that was likely to have minimised the degree of potential offence in this case.

Ofcom acknowledges that decisions regarding the use of potentially discriminatory language are often finely balanced. As the Ofcom 2010 Research and the Guidance

¹⁷ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb259/>

on Rule 2.3 highlight, any offence is likely to be felt most keenly by the groups who experience discrimination, and those who are aware of the original, discriminatory meaning or etymology of a particular word.

As noted above, we must ensure that we secure the application of generally accepted standards in a way that guarantees an appropriate level of freedom of expression for the broadcaster and the audience. The Code makes clear that Ofcom will consider the application of generally accepted standards having regard to the context in which particular words are used. We consider this is an important aspect of achieving an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on the one hand, and the broadcaster's and audience's right to freedom of expression on the other. We accept that it is possible that there is a greater awareness of the discriminatory potential of the word "pikey" now compared to when the research for Ofcom's 2010 study was carried out. However, it is Ofcom's view that, on the particular facts of this case, it is likely that the audience would not generally have considered that there was a direct and pejorative association between the reference to the word "pikey" in the sign "*Pikey's Peak*" and a discriminatory usage referring to Gypsies and Travellers in a way which would cause widespread offence.

In conclusion, it is Ofcom's view that the broadcaster ensured there was sufficient context in the way the word was used to minimise offence and therefore that the use of the word in the context of this programme was not in breach of Rule 2.3 of the Code. This does not mean that the use of the word "pikey" is acceptable in any programme in any context. Ofcom reminds all broadcasters that this word is capable of causing significant offence in certain contexts and therefore that they should be mindful of their obligations under the Code if the word is used in broadcast material.

Not in Breach

Advertising Scheduling cases

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Sikh Channel	22 April 2015, 19:00	Rule 4 of COSTA	Ofcom noted, during monitoring, that Sikh Channel exceeded the permitted advertising allowance by 55 seconds. Finding: Breach

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with ‘Key Commitments’

Penistone FM, 12 to 14 March 2015

Introduction

Penistone FM is a community radio station licensed to provide a service for people in Penistone in South Yorkshire, and the surrounding area. The licence is held by Penistone Community Radio Limited (“PCR” or “the Licensee”).

Like other community radio stations, PCR is required to deliver the ‘Key Commitments’ which form part of its licence.¹ These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint alleging that PCR was failing to meet a number of its Key Commitments, specifically around social gain and programming.

We requested recordings of three days of Penistone FM’s output, covering Thursday 12 March, Friday 13 March and Saturday 14 March 2015. After monitoring this output we were satisfied that the station was meeting its Key Commitments relating to social gain, but we identified a potential issue with PCR’s delivery of the following Key Commitment:

- “Output will typically comprise 70% music and 30% speech during the day, with a higher percentage of music in the evening and at night. (‘Speech’ excludes advertising, programme/promotional trails and sponsor credits).”

In particular, we noted that a significant proportion of the station’s programming contained very little speech content. For example, on Thursday 12 March between 06:00 and 13:00 there appeared to be no speech content other than national Sky News bulletins and a few short pre-recorded interview inserts. While there was a greater amount of speech broadcast on Friday 13 March and Saturday 14 March, the levels of speech were significantly below the 30% – almost a third of the station’s total output – required by the Key Commitment.

Ofcom considered this warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to PCR’s licence. These state, respectively:

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

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

¹ The Key Commitments are contained in an annex to PCR’s licence. They can be viewed in full at: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000153.pdf>

We therefore requested PCR's comments on how it was complying with these conditions, with reference to the specific Key Commitment set out above.

Response

The Licensee said that it had previously believed that its requirement for 30% speech during daytime was only applicable to the hours of output that were broadcast live.

PCR stated that despite this misunderstanding, it was still including some pre-recorded speech content (such as community news and job vacancy information) into its automated programming hours, and believed that it was meeting all of the social gain requirements in its Key Commitments.

The Licensee added that on one of the days monitored, Thursday 12 March, for which Ofcom had identified a particularly low level of speech, a number of presenters were absent from their regular shows for a variety of different personal reasons.

PCR confirmed that it has put together a plan to increase the station's speech output during automated hours by creating new pre-recorded programmes and expanding current features. The Licensee said it also plans to increase the use of voice-tracking (pre-recorded links) during some automated hours which would have previously only contained back-to-back music.

Decision

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

Ofcom has traditionally regulated speech output on all stations on the basis of an average percentage, rather than requiring licensees to meet the percentage speech requirement in every single clock hour. This is because we recognise that licensees may legitimately wish to over-deliver on speech content during some hours, but place a greater emphasis on music during other hours.

However, even when calculated on this averaged-out basis, PCR was not delivering the required 30% level of speech content. We noted that the Licensee had believed that this speech requirement applied only to live programming, rather than to the station's output as a whole. We also acknowledged that some presenters were absent from their shows during the week we monitored, for a variety of different reasons.

Ofcom welcomed the steps the Licensee told us it is taking to increase its speech output. However, it was clear that, during our monitoring period, PCR failed to deliver the amount of speech output required by its Key Commitments, therefore breaching Licence Conditions 2(1) and 2(4).

We are putting the Licensee on notice that, should similar issues arise in future, we may consider taking further regulatory action.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Penistone Community Radio Limited (licence number CR000153BA).

Fairness and Privacy cases

Not Upheld

Complaint by Mrs B and Mr C

Countdown to Murder: Killer Schoolgirl, Channel 5, 3 September 2014

Summary

Ofcom's has not upheld this complaint made by Mrs B on her own behalf and on behalf of her brother, Mr C, of unwarranted infringement of privacy in the programme as broadcast.

The programme provided a detailed account of the events leading up to the murders in 2009 of Ms Rosalyn Hunt and Mr Desmond Thorpe by his 15 year old daughter, Ms Lorraine Thorpe, and Mr Paul Clarke. The complainants were not referred to by name and did not appear in the programme.

Ofcom found that, in the particular circumstances of this case, Mrs B and Mr C did not have a legitimate expectation of privacy with regard to the information included in the programme about the murder of their brother, Mr Desmond Thorpe, and the depiction of him and his murder in the dramatic reconstructions. Therefore, Mrs B's and Mr C's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 3 September 2014, Channel 5 broadcast an edition of *Countdown to Murder*, a documentary series which recounted high-profile murder cases. This edition, entitled *Killer Schoolgirl*, provided a detailed account of events leading up to the torture and murder in 2009 of Ms Rosalyn Hunt and the murder of Mr Desmond Thorpe by his 15 year old daughter, Ms Lorraine Thorpe, and Mr Paul Clarke. The programme included interviews with various people, including: Ms Emma Kenny, a psychologist; Detective Chief Inspector Richard Munns, who investigated the murders; and Mr Colin Adwent, a local newspaper journalist. Throughout the programme dramatic reconstructions of the events leading up to and including the murders were included.

The programme explained that Mr Desmond Thorpe, originally from Norfolk, was "one of eleven children" and had met and married Ms Thorpe's mother, "Deborah", with whom he had four children. A photograph of Mr Desmond Thorpe was shown. It said that in 2006, the couple separated and that Ms Thorpe, one of the couple's four children, was placed into care at the age of 12. However, the programme said that Ms Thorpe and her father had had a close relationship and that she often absconded from her care home to be with her father. The programme said that after the separation, Mr Desmond Thorpe had become part of a group of "street drinkers" in Ipswich, Suffolk, and that Ms Thorpe began spending a lot of time with her father and other members of the group. It was at this time, the programme said, that Ms Thorpe began a relationship with a prominent member of the group, Mr Paul Clarke.

Dramatic reconstructions included at this point in the programme showed Mr Desmond Thorpe and Ms Thorpe (depicted by actors) slumped against a wall sleeping rough and another reconstruction showed Ms Thorpe bathing her father. The programme explained that Mr Desmond Thorpe had been a chronic alcoholic

and was often incapable of washing himself or going to the toilet. It said that, in effect, Ms Thorpe had become her father's carer.

The programme went on to describe the events leading to the torture and murder of Ms Hunt, who was also part of the same group of "street drinkers". In summary, the programme explained that Ms Hunt had kicked Mr Clarke's dog which resulted in Mr Clarke and Ms Thorpe brutally torturing Ms Hunt for at least four days before leaving her to die in her flat. Graphic dramatic reconstructions accompanied this part of the programme. The programme said that Mr Clarke and Ms Thorpe had boasted to other members of the street drinking community in Ipswich about what they had done and that Mr Desmond Thorpe had overheard them. It said that they could not risk him going to the police. At this point in the programme, a dramatic reconstruction was shown of Mr Desmond Thorpe being frog marched by Mr Clarke and Ms Thorpe to his flat where he was attacked. The reconstruction continued with Mr Clarke and Ms Thorpe shown kicking and stamping on Mr Desmond Thorpe (though actual contact with Mr Desmond Thorpe's body was not depicted in the reconstruction) and ended with Ms Thorpe putting a cushion over the camera lens, replicating the smothering with a cushion that actually killed Mr Desmond Thorpe. The programme explained that after beating and smothering her father, Ms Thorpe and Mr Clarke had left his body on a sofa.

Towards the end of the programme, it was explained that Ms Thorpe was 16 years old when she was convicted of double murder and sentenced to 14 years imprisonment. It also explained that Mr Clarke was sentenced to 27 years imprisonment for his part in the murders. The programme concluded and the following text appeared on-screen:

"In April 2011, Lorraine Thorpe appealed her conviction. The appeal was thrown out.

On Monday 1st September 2014 [two days before the broadcast of the programme] Paul Clarke was found dead in his cell at HMP Whitemoor. He had served 5 years of his life sentence".

Summary of the complaint and the broadcaster's response

In summary, Mrs B complained on her own behalf and on behalf of Mr C, her brother, that their privacy was unwarrantably infringed because they were not told that the programme would be broadcast prior to its transmission. In particular, Mrs B said that the depiction of their brother, Mr Desmond Thorpe, and his murder in the dramatic reconstructions in the programme had shocked and upset them. They said that they had not been prepared for the "shocking scenes" and that no account had been taken of their feelings.

By way of background to the complaint, Mrs B said that she had contacted Channel 5 after the programme was broadcast and was told that another one of her brothers had been contacted by the programme makers during the programme making process. She also said that Channel 5 had told her that the programme makers could not find any other members of her family to inform about the programme. Mrs B said that her other brother had not informed them about the programme.

In summary, Channel 5 said that the application of Practice 8.19¹ of Ofcom's Broadcasting Code ("the Code") had nothing to do with the assessment of whether any infringement of privacy was warranted. In its view, an unwarranted infringement of privacy, either in the making of the programme or in a programme as broadcast, would not be saved by the broadcaster providing prior notification of the impending broadcast of the programme to that person. Equally, a programme that did not unwarrantably infringe a person's privacy could not infringe that person's privacy merely because that person did not receive prior notification of the broadcast of the programme. Channel 5 argued that this approach was consistent with the Foreword to Section Eight (Privacy) of the Code and the general law of privacy. It said that the Foreword to Section Eight made it clear that Practice 8.19 does not purport to, and could not, create privacy rights where they are unknown in the general law".

The broadcaster said that Practice 8.19 was aimed at minimising distress by requiring that broadcasters, where reasonably practicable, advise victims and/or relatives if a programme was being made or broadcast which might reasonably be expected to cause them potential distress. However, Channel 5 said that Practice 8.19 did not, and could not, create a right to privacy where these rights did not exist at law. Channel 5 said that a programme either complied with Rule 8.1 of the Code² or did not and that any prior notification or failure to provide prior notification would not affect that.

The broadcaster said that Mrs B and Mr C did not have a legitimate expectation of privacy in relation to the information included in the programme. Channel 5 stated that Mrs B and Mr C: were not identified in the programme; there was no discussion about them or the effect the murder had upon their lives; no accusations were made about them and no photographs of them appeared in the programme.

Channel 5 said that causing distress does not equate to an unwarranted infringement of privacy which, the broadcaster said was made clear by Lord Nicholls in the case Campbell v MGN³. Channel 5 added that while the House of Lords in that case found that there had been an infringement of the applicant's privacy, this was not on the basis that she had suffered distress. Rather, the test as set out by Baroness Hale was "... what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity". Channel 5 said that there were many things which were published and broadcast which individuals would likely prefer were not published but that this did not mean that those individuals had a legitimate expectation of privacy or any right to prevent such publication or broadcast.

¹ "Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

In particular, so far as is reasonably practicable, surviving victims, and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past".

² "Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted".

³ [2004] UKHL 22.

Channel 5 stated that it had acknowledged that Mrs B and Mr C were distressed by the broadcast of the programme and apologised for this. However, the broadcaster added that this acknowledgement should not be regarded as being an acceptance by Channel 5 that there had been any infringement of privacy of Mrs B and Mr C.

With regards to the information included in the programme about the murder, Channel 5 said that this was not private to Mrs B and Mr C and that this complaint was based on the claim that the infringement of privacy is “because they were not told that the programme would be broadcast prior to its transmission”. Channel 5 argued that while a broadcast about the murder may cause them distress, such a broadcast “cannot constitute an invasion of privacy”. In support of this, Channel 5 referred again to the case of Campbell v MGN.

Channel 5 said that Mrs B and Mr C could not have had a legitimate expectation of privacy in relation to the content of the programme and so its broadcast could not have amounted to an unwarranted infringement of their privacy regardless of whether Practice 8.19 was followed or not.

In any event, the broadcaster said that it had followed Practice 8.19. Channel 5 argued that the production team “took all reasonably practicable steps to locate Mrs B and Mr C so that they could be notified about the broadcast”. To support this, Channel 5 said that:

- There are “thousands” of people with the surname “Thorpe” in the United Kingdom and that there was no “simple way of ascertaining who were the relatives of the victim in this case of murder”. Channel 5 argued that it was not “reasonably practicable” to expect the production team to contact every person in the United Kingdom with the surname Thorpe. Further, it was not known by the production team how many members of the immediate family of the murder victim now used different surnames.
- The production team “made every effort” to locate relatives which included contacting known family member on Facebook. Channel 5 said their messages were not answered.
- Local journalists and officials were either unable or unwilling to provide contact details for the family of the murder victim.
- The production team managed to locate one of the murder victim’s siblings but he refused to provide contact details for his siblings. Channel 5 said that this sibling represented to the production team that he would inform the other members of his family about the broadcast. The broadcaster added that this sibling knew that the programme was being made, its subject matter and likely transmission time. Further, this sibling initially agreed to participate in the programme but subsequently changed his mind and “ceased to respond to message from the production team”. When the production team contacted this sibling to inform him of the precise broadcast date, he did not return their calls.

Channel 5 said that it was difficult to see how the production team “could have done anything more (that was reasonably practicable) to locate the siblings of the family of the murder victim”.

The broadcaster added that Mrs B and Mr C both knew about the broadcast prior to it occurring because both had made contact with Channel 5 on 1 September 2014 in which they expressed displeasure about not being contacted about the programme prior to it being scheduled for broadcast. Therefore, Channel 5 submitted that Mrs B and Mr C would have been in the same position prior to the broadcast of the programme, had the production company been able to contact them.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld.

The parties were given the opportunity to comment on the Preliminary View.

In response to the Preliminary View, Mr C said that he considered that his and Mrs B's privacy were infringed by the programme as broadcast because they were not told about the programme and no thought was given to the impact this had caused them. Mr C said in his view, the programme makers would have been able to have found him had they made more effort to do so.

Mr C said it was shocking to see the programme advertised in the TV listing magazine and he could not believe that this matter was being made so public. Mr C added that nothing was done to prepare himself or his sister for the shocking way the matter was handled. Mr C said that he did not agree that distress was not sufficient to give him a right to privacy in this case.

Further, Mr C said that the reason their names and photographs were not included in the programme was because the programme was not about them.

Mrs B and Channel 5 chose not to make any representations on the Preliminary View.

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, both parties' written submissions and supporting material. We also took into account Mr C's representations in response to Ofcom's Preliminary View on this complaint, which was to not uphold.

In considering whether or not Mrs B's and Mr C's privacy was unwarrantably infringed in the programme as broadcast because they were not told that the programme would be broadcast prior to its transmission, Ofcom first assessed the extent to which they had a legitimate expectation of privacy in relation to the information included in the programme about the murder of their brother, Mr Desmond Thorpe, and the depiction of him and his murder in the dramatic reconstructions.

As set out in detail in the "Introduction and programme summary" section above, we carefully noted the content of the programme and, in particular, the details about, and dramatic reconstructions of, the events leading up to the murder of Mr Desmond Thorpe and the murder itself.

In evaluating whether or not Mrs B and Mr C had a legitimate expectation of privacy, we took account of the fact that nothing private or sensitive about the complainants was revealed in the programme, nor was there any discussion about the effect the murder had upon their lives. We noted also that the circumstances of Mr Desmond Thorpe's murder had been widely reported and the complainants' had not identified any information included in the programme about the murder which was not already in the public domain. Further, the only discussion about Mrs B and Mr C related to a vague comment made by DCI Richard Munns in which he stated that Mr Desmond Thorpe was from Norfolk and was "*one of eleven children*". The complainants and other siblings of Mr Desmond Thorpe were not named or referred to in any other way.

Taking all the above factors into consideration, we considered that, in the particular circumstances of this case, Mrs B and Mr C did not have a legitimate expectation of privacy in relation to the information included in the programme about the murder of their brother and the depiction of him and his death. We took into account Mr C's representations on Ofcom's Preliminary View regarding the impact finding out about the programme had on him and his sister and we recognise that viewing a programme about a past traumatic event, for instance as in this case the murder of an immediate family member, particularly where that programme includes dramatic reconstructions of the events which took place, without being informed about its broadcast prior to transmission, is understandably capable of causing substantial distress and upset to those family members. However, distress alone is not sufficient to engage the complainants' privacy rights. Given our conclusion that the complainants did not have a legitimate expectation of privacy in the material as broadcast, it was not appropriate for Ofcom to go on to consider whether or not the broadcaster had complied with Practice 8.19 of the Code.

In response to Channel 5's representations more generally, however, it is important to note that whether or not individuals become aware of an intended broadcast through means other than the broadcaster, this is, in our view, immaterial to the requirements placed on the broadcaster itself to reduce potential distress to victims and/or relatives. Where an individual does have a legitimate expectation of privacy, the broadcaster itself is required to take reasonably practicable steps to inform victims and/or relatives about programmes intended to examine past events that involve trauma to individuals in advance of making the programme and its intended

broadcast.

Therefore, Ofcom has not upheld Mrs B's complaint made on her own behalf and on behalf of her brother, Mr C, of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Miss R

24 Hours in Police Custody, Channel 4, 6 October 2014

Summary

Ofcom's has not upheld this complaint made by Miss R of unwarranted infringement of privacy in the programme as broadcast.

The programme followed the work of police officers and civilian staff at Luton Police Station as they dealt with arrested suspects held in police custody. This particular episode was about domestic disputes and one of the cases under investigation related to an allegation of theft and harassment made by the complainant's friend against his former wife, "Sharon". Miss R was referred to by her first name in the programme.

Ofcom found that Miss R had a legitimate expectation of privacy in relation to the broadcast of details of the nature of her relationship with Sharon's former husband included in the programme. However, on balance, we considered that the broadcaster's right to freedom of expression and the public interest in broadcasting the relevant material in order to illustrate the work of the police in dealing with domestic disputes outweighed Miss R's expectation of privacy.

Introduction and programme summary

On 6 October 2014, Channel 4 broadcast an edition of its observational documentary series *24 Hours in Police Custody* which followed the work of the Bedfordshire Police. This particular edition, entitled *Love Hurts*, included the case of "Sharon" (the former wife of the complainant's friend) who was being held in custody at Luton police station on suspicion of theft and harassment. The narrator introduced the programme as:

"Once a suspect is in custody, the police have 24 hours to investigate and interview. After that it's either charge or release. It's the police's job to ask what really happened. Who's innocent, who's guilty. From the streets to the interrogation rooms. From the suspects to the Head of CID. These are the men and women who have just 24 hours to find the evidence. Will they discover it before time runs out?"

Sharon was shown being searched at the police station and a voiceover of her was heard:

"Meeting him was love at first sight. As soon as I saw him I definitely loved him. Our relationship was so perfect".

Sharon was then shown answering questions as she was booked in by the police custody sergeant. She answered "yes" to having mental health issues and depression. She was told that two allegations had been made against her – one of harassment and one of theft, and that she would be detained and then interviewed so she could tell her side of the story.

Throughout the programme further details about Sharon's case was discussed by the police officers and Sharon made some general comments about love and her marriage.

Later in the programme, Sharon was formally interviewed by Police Constable Cheryldeen Liversidge. The allegations of theft and harassment were put to Sharon and her responses to PC Liversidge's were included. The following exchange took place:

PC Liversidge: *"Your current husband, who you are separated from, has made these allegations of harassment and the theft of a camera and camera lenses and some clothing...Are you responsible for these offences for which you have been arrested?"*

Sharon: *"I can't agree that I am responsible for the offences. When I left the house I did take a lot of things that were in the spare bedroom but later on I did see that there were some t-shirts of his which obviously I don't want to really be in contact with him necessarily about it, so, with my things, I took them to the charity shop".*

There was a brief discussion about the type of clothing Sharon had taken and Sharon explained that her son had similar clothes. The interview continued:

PC Liversidge: *"When you realised that they were your husband's clothing, what did you do with them?"*

Sharon: *"I scooped the whole lot up and just took it down to the charity shop."*

PC Liversidge: *"Did you make mention at all to him about having his clothing?"*

Sharon: *"We had discussed the clothes – I actually informed him via his girlfriend as well, and I said just to let him know I've taken them to the charity shop..."*

PC Liversidge: *"He's saying it's a friend of his".*

Sharon: *"That's his girlfriend".*

PC Liversidge: *"He says she's a good friend who he's having stay at the house to look after the dogs when he's not there. I just want to speak to you about an email. She hasn't given me a date but an email was sent to her. I'm just going to read it out. 'After what the two of you started together, he is lucky that I only took some of them and dumped them in the charity shop, rather than leaving shredded in the wardrobe like scorned wives usually do'. Can you remember sending that email to [Sharon spoke over the police officer as she said the Miss R's first name]?"*

Sharon: *"Yeah, that sounds about right, yeah."*

PC Liversidge: *"Just the bit about leaving them in the 'wardrobe like scorned wives usually do', have you got any comment to make about that part of the email?"*

Sharon: *“Some people who are scorned wives do all sorts of things and I could have made things very difficult. I think they’re very lucky that I’ve sat back and let them get on with it – and moved out of the house for them, you know. So, really, I think they’re quite, they’re quite lucky that I’m the sort of person I am really”.*

The interview continued and PC Liversidge asked Sharon about some allegedly stolen camera lenses and the ownership status of the property in the house.

Later in the programme, further footage of Sharon being interviewed was shown. PC Liversidge asked Sharon about an incident where she allegedly sexually harassed her former husband in his home. Miss R was not mentioned.

Towards the end of the programme, Sharon was shown being bailed and released.

Summary of the complaint and the broadcaster’s response

Miss R complained that her privacy was unwarrantably infringed in the programme as broadcast because details of her relationship with “*Sharon’s*” former husband were discussed in the programme without her consent.

In particular, the programme included a reference to an email from Sharon to Miss R. Part of the email was read out by a police officer during Sharon’s formal police interview. Miss R said that her first name was disclosed, thereby identifying her to family and friends. She said that: “I was assured that I as a victim of crime would not be identified but my name was broadcast”.

Before responding specifically to the complaint, Channel 4 explained that the series had a serious public service purpose of providing insight into the complex and sensitive challenges faced by the staff of a busy police station. Channel 4 added that the series provided an important perspective on policing in modern Britain and that the themes of the individual programmes were of public and social interest.

The broadcaster said that this particular episode in the series included two contrasting stories involving allegations of harassment and domestic abuse which it said showed viewers the police’s approach when dealing with allegations across the full spectrum of such cases. It added that it is estimated that crimes related to domestic disputes “take up to 40 per cent of police time nationally” and the decision to follow and include the story about the investigation into the allegations made by the complainant’s friend against his former wife was to show how police dealt with that type of dispute and to exemplify the issue of the allocation of police resources to settle disputes that many may regard as more appropriately (and discreetly) dealt with through the civil courts.

Channel 4 said that subsequent to Sharon’s arrest on 21 April 2014, it had the “full, informed consent” of Sharon to follow her throughout her time at the police station. The broadcaster said that given the reasons for Sharon’s arrest it was inevitable that she would discuss her relationship with her former husband and the allegations he had made against her. Channel 4 said that Sharon responded to the allegations with several counter-allegations against her former husband including Sharon’s express belief that Miss R was her former husband’s girlfriend. The broadcaster added that the programme makers were therefore mindful from the outset of the possible tension between the requirement to be fair to all those involved in the dispute and their privacy, particularly of Miss R and her friend who had not consented to take part in the programme.

Channel 4 explained that to achieve this, the programme makers wrote to the complainant's friend on 7 July 2014 explaining, amongst other things, that they wished to interview him to "reflect [his] experiences and to ensure that the film is factually accurate". Channel 4 said that the conclusion of the letter stated:

"We are mindful of the sensitivities involved in a case of this nature and would like to reassure you that no details revealing your identity, such as your name, or job as a police officer, will be broadcast unless you are happy for us to do so, and that the film itself will not be transmitted until the trial has concluded".

A meeting between the programme makers and the complainant's friend took place on 22 July 2014. Channel 4 explained that Miss R also attended this meeting. Channel 4 stated that the purpose of the meeting was to discuss with the complainant's friend the idea that he could offer the "victim's" perspective in the programme (anonymously, if he wished) and also to demonstrate to complainant's friend that it was possible to edit material already filmed in such a way that anyone not familiar with his situation (i.e. his separation from his former wife and the consequent events) would not be able to identify him from the programme as broadcast. Channel 4 added that the programme makers explained to Miss R that the cases to be included in the programme would raise important issues of public interest about how the police in general, but in particular Bedfordshire Police, deal with domestic disputes, including physical abuse and harassment cases.

The broadcaster said that the main concern raised by both Miss R and her friend was that being identified to those previously unfamiliar with the case might affect the ability of her friend to go about his job. Channel 4 said that programme makers recognised this concern and made it clear that they were prepared to take any necessary steps to help prevent this happening. The broadcaster said that the programme makers requested again for the complainant's friend to consider providing his perspective in the programme. It was also explained that this could be done in an anonymous manner. Miss R and her friend were also shown two versions of the material concerning Sharon, one which included Miss R's friends and information about his profession, and the second which had removed these details. Channel 4 said that both Miss R and her friend were given the opportunity to comment on the footage they viewed.

During this meeting, Channel 4 said that the programme makers carefully explained that because the case was still active the likely content could not be finalised or discussed in any detail with Miss R and her friend until the conclusion of the case. The programme makers therefore spoke in general terms and explained that Sharon had discussed her relationship with her former husband, but had only provided general comments, for example, about the nature of marital break ups and her thoughts on love, and that in terms of the allegations of harassment and theft, her comments were her version of events. Channel 4 said that the programme makers made clear that they had a "duty to be fair, honest and accurate in reporting the story".

The programme makers also explained to the complainant and her friend that Sharon had described Miss R as the girlfriend of her former husband but that if they wished, it would be made clear in the programme that this was denied. Channel 4 said that in the meeting, Miss R made clear to the programme makers that she was a private person and did not want to be involved in the programme. Miss R also pointed out that she regarded Sharon's suggestion that she had been having an affair as untrue, and vehemently denied this. The broadcaster said that while the programme makers explained to Miss R that they had no intention of involving her in the programme in a

way that would make her identifiable to anyone who did not know her, they were under a duty to be fair and accurate in what the programme might finally report. Further, Channel 4 said that it was made clear in subsequent communications with Miss R's friend that the programme makers were trying to tell the story in a fair and balanced way and without unduly infringing the privacy of him or Miss R. Channel 4 added that Miss R and her friend had an open invitation to contact the programme makers at any time.

On 25 September 2014, the programme makers wrote a letter to the former husband of Sharon. In the letter they provided more specific details about the programme, confirmed that in the final version of the programme he was not named or identified as a police officer, and explained that Sharon had only been referred to by her first name. The programme makers also specifically stated that they understood that Miss R was keen not to be involved and that she was "not named at any point in the programme". Further, it was explained in the letter that during the police interview Sharon had referred to Miss R as the girlfriend of her former husband, but the investigating officer interviewing Sharon had explained that Sharon's former husband had said that Miss R was a friend who was staying at the house to look after his dogs.

Channel 4 said that on 2 October 2014, the programme makers received a letter from Miss R's friend's solicitor. The broadcaster stated that in the letter, the solicitor explained that Miss R's friend was grateful for the assurances that any allegations levelled by Sharon against him had been dealt with in a fair and balanced way so that his position was reflected and that he was grateful that the final edit did not contain his name or identify his profession, that Sharon was referred to only by her first name and that Miss R had not been named.

Channel 4 said that Miss R's complaint is that the programme included details about her relationship with her friend without her consent but that she did not specify which details she was referring to. The broadcaster therefore said "apart from the fact of (some sort of) a relationship between the complainant and her friend" of which their family, colleagues and friends would be aware, no details of a private nature were included. Channel 4 argued that if private details were included, the inclusion was warranted in the circumstances.

Channel 4 explained that careful consideration was given by the programme makers and Channel 4 as to which parts of the filmed interviews with/of Sharon it would be warranted to include in the programme as broadcast. Channel 4 said that a decision was taken to include "only those parts of the interviews that were key to the viewers' understanding of the case and/or necessary for reasons of fairness".

In relation to the inclusion of Miss R's first name in the programme as broadcast, Channel 4 apologised and said that it was with great regret that contrary to the assurances which had been given to Miss R in relation to not naming her, the programme did contain her first name at one point. Channel 4 said that this was simply due to human error. Channel 4 said that they had investigated how this happened and stated that the programme was viewed and listened to numerous times throughout the edit stages by the programme makers, commissioning editor and the programme lawyer at Channel 4. However, despite the repeated forensic examination of the interview, at no stage did anyone pick up the words "to [Miss R's first name]" used by PC Liversidge. In addition, Channel 4 said that the prepared transcript of the audio that the programme makers and Channel 4 were working from did not include the words "to [Miss R's first name]". The broadcaster said that this inaudibility was compounded by that fact that the words "to [Miss R's first name]"

were spoken at the same time as, and over, Sharon when she said “yes, *that sounds about right*”, at which point the camera was focussed on Sharon and PC Liversidge was out of shot. Therefore, Channel 4 said that it could only assume that it was not until after the “final post” when the sound was mixed that the complainant’s first name could be heard but that even then, it could only be deciphered if listened to very carefully and only if it was known it was there or it was expected. Further, Channel 4 said that neither the experienced programme makers who sat in on the sound mix nor those who watched the programme transmit heard the words “to [Miss R’s first name]”. Channel 4 added that given the difficulty making out the name, even in the programme as broadcast, those who might attach any significance to the name – if it was heard – would be exclusively those who already knew about the relationship between Miss R and her friend and possibly also the circumstances of the case. The broadcaster said that to anyone else it would have had no significance.

Channel 4 said that whatever the circumstances in which the email sent to Miss R by Sharon came to the attention of the investigating police officer, following the allegations made by Sharon’s former husband against her, once this had happened it became part of the narrative of the case and if the matter proceeded to trial, it would have forfeited any privilege of privacy. Therefore, Channel 4 said that, in the circumstances, the email having been disclosed, Miss R would (or at least should) have had a reasonable expectation that if the matter proceeded to trial this evidence and her identity would have entered the public domain, and that given that she had no way of knowing whether or not the matter would come to court, she therefore could not have had a reasonable expectation of privacy in relation to the broadcast without her consent of the information included in the programme as broadcast. Channel 4 said that, in this context, while it was regrettable that Miss R’s first name was included in the programme contrary to the assurances she had been given, the decision by the programme makers and Channel 4 not to name her was taken not as a result of any representations she made, nor as part of any obligation to her, but for editorial reasons in that Channel 4 believed they could report the story in a fair and accurate way without the need for Miss R to be named. In any event, Channel 4 said that the inclusion of Miss R’s first name would have been meaningless to anyone who was not already aware of the case.

The broadcaster therefore said that taking all the above factors into account, Miss R did not have a legitimate expectation of privacy in relation to the broadcast without her consent of the information pertaining to her being included in the programme as broadcast. Further, the broadcaster said that Miss R’s privacy was not infringed, given that neither her identity nor her relationship were made known to anyone who was not already aware of them.

However, Channel 4 said that if Ofcom considered that Miss R’s privacy had been infringed, then any infringement had been warranted, and that Channel 4’s right to receive and impart the information complained of outweighed Miss R’s expectation of privacy.

Channel 4 said that “investigations into many (if not most) types of crime will involve private and/or sensitive information about those involved to some extent”. In particular, Channel 4 said that any coverage of a domestic dispute will involve some intrusion into the private lives of those involved. The broadcaster said that it cannot be the case that the fact that because the particular alleged crimes related to conduct arising from a failed marriage and the ensuing fall-out for those involved, Channel 4 should be automatically prohibited from broadcasting details of the case without the consent of all the parties involved. Channel 4 said that having decided to include this case in the programme as broadcast, its concern was to keep any intrusion into the

privacy of the individuals involved to a minimum and to include only that footage and information that was warranted by the circumstances. The broadcaster said that, in practice, this meant including material that was consistent with the viewers' need for sufficient information about the nature and context of the dispute to inform their understanding of the police conduct in these cases.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld.

Both parties were given the opportunity to comment on the Preliminary View. Both made representations and the relevant points relating to the Preliminary View are summarised below.

Miss R's representations

Miss R provided Ofcom with three statements; one made by her and two made by associates of hers. Miss R's statement set out the stressful impact that the programme had had on her work and personal life, while the other two statements reflected on the extent to which Miss R was identifiable from the broadcast. Miss R's associates stated that her first name was clearly audible and that they had identified her from the programme. Miss R said that she did not consider it acceptable to broadcast her name in the programme, given that she was a victim of a crime and that she had been given assurances by the programme makers that she would not be identified.

Miss R also said that Ofcom should reconsider its Preliminary View in relation to the correct balance between the individual's right to privacy against the rights of the broadcaster to freedom of expression, especially when considered in the context of the broadcaster's apology that "it was with great regret that contrary to the assurances which had been given to Miss R in relation to not naming her, the programme did contain her first name at one point" and because of the fact Miss R had been identified by people who knew her and who heard/saw the broadcast.

Channel 4's representations

In response to Miss R's representations, Channel 4 noted that the statements provided by Miss R were from two of her friends who already knew her and her situation, or at least something about it. Channel 4 said that it always accepted that it was a possibility that, even without Miss R's name being mentioned, Miss R might have been identifiable to a limited number of people who already knew her and/or knew her situation. The broadcaster said that as previously indicated, in the making of the programme, it sought at all times to achieve the appropriate balance between Miss R's right to privacy and its competing right to freedom of expression, an outcome which Channel 4 said it had achieved.

Channel 4 said that although the two individuals who had provided statements said that they had heard Miss R's first name, it maintained that it would have been extremely difficult for an ordinary viewer to have heard this and that the likely reason for it being picked up by friends of the complainant was because they already had some knowledge of the individuals concerned and the background.

Further, the broadcaster noted that Miss R described herself as a "victim of crime", however it said that without wishing to negate or minimise Miss R's feelings, Channel

4 wished to clarify that, as far as the programme makers were aware, Miss R made no formal complaint to the police on her own behalf, but rather acted as a witness for Sharon's former husband in respect of the allegations of harassment he made against his then wife.

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

In reaching this Decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions. We also took into account both parties' representations in response to Ofcom's Preliminary View on this complaint, which was to not uphold.

In assessing Miss R's complaint that her privacy was unwarrantably infringed in the programme as broadcast because details of her relationship with Sharon's former husband were discussed in the programme without her consent, Ofcom had regard to Practice 8.6 of the Code. This states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Miss R's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she had a legitimate expectation of privacy in relation to the information included in the programme about her.

As set out in the "Introduction and programme summary" section above, Ofcom noted that the programme included details about the allegations which Sharon's former husband had made against Sharon. In this context and during an interview with the investigating police officer, Sharon explained that she had given her former husband's clothing to a charity shop and informed his "girlfriend" about this. We noted that the investigating officer refuted Sharon's claim that the person she was referring to was her former husband's girlfriend and said that "He says she's a good friend". It was during this discussion that the investigating officer also mentioned an email which had been sent by Sharon to Miss R.

We first considered whether Miss R had a legitimate expectation of privacy in relation to the material included in the programme about her and her relationship Sharon's former husband. We recognise that an individual may have a legitimate expectation of privacy in relation to aspects of their personal relationships with other people. We noted that the programme referred to Miss R as both a "*friend*" and "*girlfriend*" of Sharon's former husband, which, in our view, was information that alluded to the nature of the relationship between them. In particular, Sharon's insistence that the complainant was her former husband's "*girlfriend*", despite PC Liversidge's comments, suggested that their relationship was sexual. In these circumstances, we considered that this information could reasonably be regarded as private, particularly in light of the fact that Miss R had informed the programme makers that she was a private person and that it was clearly not information which Miss R wanted to be revealed.

Ofcom noted the steps that Channel 4 took to limit the information included in the programme about Miss R for example, Miss R was only briefly discussed by Sharon and the investigating officer and the investigating officer contested Sharon's claims that Miss R was her former husband's girlfriend. Further, we considered that the focus of the relevant part of the programme was about the allegations made by Sharon's former husband against Sharon and Sharon's response to those allegations.

We next assessed whether Miss R was identifiable in the programme as broadcast. In the circumstances of this case we noted that while the programme makers explained to Miss R that they were under a duty to be fair and accurate in what the programme might finally report, they also said she would not be identifiable from the information included in the programme. We noted that human error was the cause of Miss R's first name being included in the programme as broadcast. We also took into account Miss R's representations on the Preliminary View that people had identified her from the programme as broadcast, as reflected in the statements produced by her associates.

However, Ofcom also took into account the broadcaster's representations, that Miss R's associates already knew her and her situation, or at least something about it. In Ofcom's view, it would have been difficult for an ordinary viewer (i.e. someone who did not have the same knowledge as Miss R's associates) to have heard Miss R's first name. This was because Sharon spoke over the investigating officer when she said Miss R's name. Therefore we considered that if any viewers had heard the Miss R's first name said in the programme, then it was possible that this may have rendered Miss R identifiable but it would only have been to a limited number of individuals who already knew her and/or knew about her situation. We therefore considered that, to the extent she was identifiable from the information given in the programme, it was only to a limited degree.

We considered that the information included in the programme which related to Miss R's relationship with Sharon's former husband was private and that it was possible that the inclusion of her first name in the programme may have made her identifiable to a limited number of individuals who already knew her. Given this, we therefore considered that Miss R had a legitimate expectation of privacy in relation to the information included in the programme about the nature of her relationship with Sharon's former husband.

Ofcom noted that discussions took place between Miss R and the programme makers prior to the broadcast of the programme with respect to obtaining her consent and that certain written assurances were given to her that her name would not be

disclosed in the programme. Despite those assurances, we noted that the complainant's first name was mistakenly – albeit fleetingly – disclosed in the programme without her consent. Therefore, in the absence of Miss R's consent, we went on to consider whether this infringement into her privacy was warranted in the circumstances.

In determining whether or not any infringement into Miss R's privacy was warranted in the circumstances, we assessed the broadcaster's right to freedom of expression and the viewers' right to receive information against any infringement of Miss R's legitimate expectation of privacy in the material as broadcast. We also took into account Sharon's right to freedom of expression. Ofcom considered whether there was sufficient public interest or other reason to justify any infringement of Miss R's privacy in broadcasting this information.

We considered that there was a significant public interest in programmes showing the work of the police in dealing with difficult cases, namely the arrest and detention of suspects in police custody cells who have been involved in domestic disputes. We also took into account the need to have careful regard to the editorial freedom of the broadcaster. The broadcaster's primary interest in this case was its ability to make a factual programme about the police dealing with arrest suspects. In doing so, we had regard to Channel 4's response in which it said that "investigations into many (if not most) types of crime will involve private and/or sensitive information about those involved to some extent" and in the case of domestic disputes, this will involve some intrusion into the private lives of those involved. However, we noted also that Channel 4 said they had only included information which was necessary for the viewer to sufficiently understand the nature and context of why Sharon had been arrested. In these circumstances, allegations had been made against Sharon and she had denied that there been any wrongdoing and in the process also alleged that Sharon's former husband had some form of relationship with the complainant. It was therefore our view that, in accordance with the broadcaster's rights to freedom of expression and the viewers' right to receive such information, it was necessary to reflect Sharon's view and also include her former husband's and Miss R's denial of this claim to ensure fairness to all those involved. Given these factors, we considered that the inclusion of the material broadcast was warranted.

Taking all these factors into consideration, we considered, on balance that the broadcaster's right to freedom of expression and the public interest in receiving the relevant material in order to illustrate the work of the police in dealing with domestic disputes outweighed Miss R's legitimate expectation of privacy.

In conclusion, Ofcom's considered that Miss R's privacy was not unwarrantably infringed in the programme as broadcast.

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

Not Upheld

Complaint by Mr S

24 Hours in Police Custody, Channel 4, 6 October 2014

Summary

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

The programme followed the work of police officers and civilian staff at Luton Police Station as they dealt with arrested suspects held in police custody. This particular episode was about domestic disputes and one of the cases under investigation related to an allegation of theft and harassment made by Mr S against his former wife. Mr S was not named or otherwise identified in the programme.

Ofcom found that Mr S had a legitimate expectation of privacy in relation to the broadcast of material about his relationship with his former wife and the complaint he had made to the police about her. However, on balance, the broadcaster's right to freedom of expression and the public interest in broadcasting the relevant material in order to illustrate the work of the police, outweighed Mr S's expectation of privacy.

Introduction and programme summary

On 6 October 2014, Channel 4 broadcast an edition of its observational documentary series *24 Hours in Police Custody* which followed the work of the Bedfordshire Police. This particular edition, entitled *Love Hurts*, included the case of "Sharon" (the former wife of the complainant) who was being held in custody at Luton police station on suspicion of theft and harassment. The narrator introduced the programme as:

"Once a suspect is in custody, the police have 24 hours to investigate and interview. After that it's either charge or release. It's the police's job to ask what really happened Who's innocent, who's guilty. From the streets to the interrogation rooms. From the suspects to the Head of CID. These are the men and women who have just 24 hours to find the evidence. Will they discover it before time runs out?"

Sharon was shown being searched at the police station and a voiceover of her was heard:

"Meeting him was love at first sight. As soon as I saw him I definitely loved him. Our relationship was so perfect. It was like my own version of a Hollywood movie star. Being in love is lovely".

Sharon was then shown answering questions as she was booked in by the police custody sergeant. She answered "yes" to having mental health issues and depression. She was told that two allegations had been made against her – one of harassment and one of theft, and that she would be detained and then interviewed so she could tell her side of the story.

Police Constable Cheryldeen Liversidge was then shown being interviewed to camera and said: *"Love can make people behave in strange ways"*. PC Liversidge provided an example of this and then said that *"Everybody falls in love. Love goes*

wrong, no matter who you are and sometimes it ends up having the police having to deal with it".

PC Liversidge was then shown in an office discussing Sharon's case with a colleague. She asked what had the person who had made the complaint against Sharon had found harassing about her behaviour and what Sharon was saying had happened. Her colleague said:

"...I think she turned up at his house to try and take some belongings and they've split up and they've got this house together and a lot of the stuff in there is jointly owned and that".

PC Liversidge then said:

"It does get messy and then it comes to us and sometimes it gets distorted and we have to unravel the mess".

They concluded that it was likely that Sharon still had keys to the house.

PC Liversidge's colleague then said:

"...what he did recently was he, all the stuff that belonged to her he's bagged up and put it outside and she's taken it...and he's absolutely adamant that nothing in that house belongs to her now, that she's had all her stuff".

Sharon was then shown being interviewed by the programme makers in her cell; she said:

"We were married in 2012. How could he have even thought about having me arrested? A person has taken more control than the other. And, whilst they see themselves as a victim, I would say that the victim is the one that's here right now. Sounds like Princess Diana doesn't it?"

Later, Sharon was shown in her cell doing yoga exercises. Footage of her doing yoga was shown throughout the programme. She then spoke about how the actor, Tom Cruise, was a *"really good, huge icon"* for her and that: *"he's the total opposite of my ex-husband"*.

Footage of various people in police cells was then shown as the police officers discussed each suspect's case. One of the police officers said of Sharon:

"She's been sending unwanted texts. He's living in the house which they both own. He won't let her have access to it. She's trying to get access so she can get her stuff. She turns up unannounced when he wasn't there. She basically took some of his clothing and took them to a charity shop. And, there's a possibility that bail conditions need to be put on her".

Later in the programme, footage of Sharon was shown and the programme's narrator explained that *"Sharon has been arrested for harassing her husband after the collapse of their marriage"*. Sharon then briefly discussed the marriage and said that she *"kept thinking about all those people sitting around the table at our wedding, all those expectant faces just thinking that that's going to go on forever"*.

The narrator then explained that: *"PC Cheryldeen Liversidge is examining Sharon's husband's allegations"*. PC Liversidge was shown reading information from her

computer screen: *“Whilst exposing her breasts, the victim [the complainant] rebuffed her sexual advances”*. She then said:

“So, she broke in through an open window and she’s walked around the house and then nicked his iPhone. But then he didn’t do nothing about that. This is just the conduct of harassment – there’s quite a bit of it...I’m just doing the most significant ones”.

One of the police officers then asked: *“Why are we investigating it?”* and PC Liversidge responded: *“we’re all human. A human who has never made a mistake has never been born”*.

Further footage was then shown of Sharon in her cell, while a voiceover of PC Liversidge was heard: *“The victim rebuffed her sexual advances and she walked around the house. Ah, this is a fucking nightmare”*. PC Liversidge was then shown speaking to Sharon through the cell door. The following exchange took place:

PC Liversidge: *“We’ve spoken to your ex-husband and he’s made [interrupted]”*

Sharon: *“He’s not my ex-husband”*.

PC Liversidge: *“Sorry, your husband, you’re still married, I appreciate that. Ex-partner, should I say. He’s made us aware of some other property in relation to camera lenses that haven’t been recovered”*.

Sharon: *“You do realise why he’s doing this don’t you?”*

PC Liversidge then explained that she would have to discuss this in the formal interview. She said that for now she just needed to know if Sharon’s son was at home so that the police could arrange a search of her house for the camera lenses.

The programme then included footage of Sharon’s house being searched by the police and Sharon’s son, “Josh”, was shown being interviewed by the programme makers. Sharon’s son spoke about her wedding and explained that he gave his mother away at the wedding and that it was a *“proud moment”*. He added that his mother had been arrested on three occasions for harassment and that she had been *“forcibly removed from the house, while I’ve been here, in handcuffs”* which had been *“very traumatic”* for him and his mother. He said that it was *“very hard to see her that way and deal with that”*.

Later in the programme, Sharon was shown being formally interviewed by PC Liversidge. The following exchange took place:

PC Liversidge: *“Your current husband, who you are separated from, has made these allegations of harassment and the theft of a camera and camera lenses and some clothing...Are you responsible for these offences for which you have been arrested?”*

Sharon: *“I can’t agree that I am responsible for the offences. When I left the house I did take a lot of things that were in the spare bedroom, but later on I did see that there were some t-shirts of his which, obviously, I don’t want to really be in contact with him necessarily about it, so, with my things, I took them to the charity shop”*.

There was a brief discussion about the type of clothing Sharon had taken and Sharon explained that her son had similar clothes. The interview continued:

PC Liversidge: *“When you realised that they were your husband’s clothing, what did you do with them?”*

Sharon: *“I scooped the whole lot up and just took it down to the charity shop.”*

PC Liversidge: *“Did you make mention at all to him about having his clothing?”*

Sharon: *“We had discussed the clothes – I actually informed him via his girlfriend as well, and I said just to let him know I’ve taken them to the charity shop...”*

PC Liversidge: *“He’s saying it’s a friend of his.”*

Sharon: *“That’s his girlfriend.”*

PC Liversidge: *He says she’s a good friend who he’s having stay at the house to look after the dogs when he’s not there. I just want to speak to you about an email. She hasn’t given me a date but an email was sent to her. I’m just going to read it out. ‘After what the two of you started together, he is lucky that I only took some of them and dumped them in the charity shop, rather than leaving shredded in the wardrobe like scorned wives usually do’. Can you remember sending that email to [Sharon spoke over the police officer as she said the first name of friend].*

Sharon: *“Yeah, that sounds about right, yeah”.*

PC Liversidge: *“Just the bit about leaving them in the ‘wardrobe like scorned wives usually do’, have you got any comment to make about that part of the email?”*

Sharon: *“Some people who are scorned wives do all sorts of things and I could have made things very difficult. I think they’re very lucky that I’ve sat back and let them get on with it – and moved out of the house for them, you know. So, really, I think they’re quite, they’re quite lucky that I’m the sort of person I am really”.*

The interview continued and PC Liversidge asked Sharon about some allegedly stolen camera lenses and the ownership status of the property in the house.

Later in the programme, further footage of Sharon being interviewed by PC Liversidge was shown. The following exchange took place:

PC Liversidge: *“I’m going to ask you about another incident. He was in bed and he’s alleging that you climbed through an open window at the rear of the house and then you’ve alleged to have said to him ‘Come on, you know you want it, let’s talk about it’. At the same time he’s saying that you exposed your breasts to him.”*

Sharon: *"Did he say what he means when he says 'You know you want it'?"*

PC Liversidge: *"He's saying that they are sexual advances that you made and the words were that you said 'come on, you know you want it, let's talk about it'.*

Sharon: *"I went round there to talk to him and then he put the kettle on and I said 'I don't really want tea'.*

PC Liversidge: *"He's saying that you entered through an open rear window.*

Sharon: *"I did, yeah.*

PC Liversidge: *"Can you explain why you entered that way?"*

Sharon explained that she had knocked on the front door, but no one had answered. The interview continued:

PC Liversidge: *"But, the fact that you he didn't want to let you in through the door, you know, and you've then entered through an open window".*

Sharon: *"But then obviously, because I got in, he was like, 'okay, do you want a cup of tea then, I'll put the kettle on'. I was like, 'well I don't really want the kettle on, but that's fine, if you want to make me tea, that's fine'. I didn't really come round for tea, I just thought we could talk and [Sharon trailed off]".*

PC Liversidge: *"What was the reason for you attending at that time of night?"*

Sharon: *"Um, because I wanted to speak with him and have sex with him".*

PC Liversidge: *"Was there any prior arrangement before you attended?"*

Sharon: *"No, you don't need a prior arrangement for that sort of thing".*

PC Liversidge: *"He's saying that you exposed your breasts to him and made sexual advances, but he rebuffed that. Did you have any sexual contact?"*

Sharon: *"We embraced, I would call it if that's the proper word for it".*

PC Liversidge: *"So you embraced, and he offered you a cup of tea?"*

Sharon: *"Yeah [Sharon laughed]".*

PC Liversidge: *"The fact that he's had you arrested for an allegation of harassment in the past, does that not give you an indication that he probably doesn't want contact with you?"*

Sharon: *"Well, he's never expressed that he doesn't want to have contact with me. If he wants to actually express that, if that's what he's trying to say, then he should just say I don't want to*

have – you know – I’m not a mind reader. He could just say I don’t want to have anything to do with you directly, please can we deal just through the solicitors. But, you know, it would seem logical not to have any form of contact with him whatsoever and to try and hope that the solicitors can make headway but they’re not getting anywhere to be honest with you”.

The interview concluded and Sharon said: *“it’s like having a baby being here isn’t it? You sort of, kind of, when it comes to the end you kind of forget all the pain you’ve been through”.*

Later in the programme, the narrator explained that after 12 hours in police custody, Sharon was waiting to be bailed and released. Sharon spoke to the programme makers about her experience: *“It’s easier than I ever thought to be on this side of that door. It’s you know, I’m a normal person, I’m a normal mother...”.*

Sharon was then shown being bailed and released.

At the end of the programme, the text below appeared on screen:

“Sharon’s ex-husband strongly denies any physical contact between them after they split up. Sharon was offered a deal to settle out of court and is now divorced. She agreed not to contact her ex-husband for twelve months”.

Sharon was then shown being interviewed by the programme makers. She said:

“Obviously we take love from lots of different situations and each relationship I think you learn from. A relationship is like a garden. It’s like a new garden and you’ve got to keep re-planting the flowers that die. You’ve got to dead-head your pansies. I have to look for the relationship – people tell me that I deserve. So I have hope. I’m a very romantic person”.

Summary of the complaint and the broadcaster’s response

In summary, Mr S complained that his privacy was unwarrantably infringed in the programme as broadcast because private details of his relationship with his ex-wife “Sharon” and his police complaint of harassment made against her were discussed in the programme without his consent.

Mr S pointed out that the programme makers had asked him to be interviewed for the programme. He said that he had refused and that: “I made it quite clear that he [the Executive Producer] was forbidden to broadcast ANY information pertaining to me”. He said that despite being assured that “nothing pertaining to me” would be broadcast, information about him was included in the programme.

By way of background, Mr S explained that people had identified him as the victim of the harassment charge discussed in the programme.

Before responding specifically to the complaint, Channel 4 explained that the series had a serious public service purpose of providing an insight into the complex and sensitive challenges faced by the staff of a police station. Channel 4 added that the series also provided an important perspective on policing in modern Britain and that the themes of the individual programmes were of public and social interest.

The broadcaster said that this particular episode in the series included two contrasting stories involving allegations of harassment and domestic abuse which it said showed viewers the police's approach when dealing with allegations across the full spectrum of such cases. It added that it is estimated that crimes related to domestic disputes "take up to 40 per cent of police time nationally" and the decision to follow and include the story about the investigation into the allegations made by Mr S against his former wife was to illustrate how the police dealt with that type of dispute and to exemplify the issue of the allocation of police resources to settle disputes that many may regard as more appropriately (and discreetly) dealt with through the civil courts.

Channel 4 said that subsequent to Sharon's arrest on 21 April 2014, it had the "full, informed consent" of Sharon to follow her throughout her time at the police station. The broadcaster said that given the reasons for Sharon's arrest it was inevitable that she would discuss her relationship with Mr S and the allegations he had made against her. However, Channel 4 said that the programme makers were mindful of the need to be fair to both parties and to respect their privacy, particularly that of Mr S. Channel 4 explained that to achieve this, the programme makers wrote to Mr S on 7 July 2014 explaining, amongst other things, that they had been filming at Luton police station and that one of the cases they had followed and filmed was that of Sharon. The programme makers had also said that they wished to interview him to "reflect [his] experiences and to ensure that the film is factually accurate". Channel 4 said that the conclusion of the letter stated:

"We are mindful of the sensitivities involved in a case of this nature and would like to reassure you that no details revealing your identity, such as your name, or job..., will be broadcast unless you are happy for us to do so, and that the film itself will not be transmitted until the trial has concluded".

Channel 4 said that a week later, arrangements were made between the programme makers and Mr S for them to meet at Mr S's house. Channel 4 explained that the purpose of this meeting was to discuss with Mr S the idea that he could offer the victim's perspective, in an anonymous interview with him in the programme, and also to show him how scenes could be included in the programme with his name and profession edited out. This was because Mr S had expressed concerns that if these were mentioned it could affect his ability to do his job.

On 22 July 2014, the meeting between the programme makers, Mr S and his friend, took place. Channel 4 said that the programme makers explained to Mr S that the cases to be included in the programme would raise important issues of public interest about how the police in general, but, in particular, Bedfordshire Police, dealt with domestic disputes. During this meeting, the programme makers repeated their request for him to provide his perspective in the programme. It was also explained that this could be done in an anonymous manner. Mr S and his friend were also shown two versions of the material concerning Sharon, one which included his name and information about his profession, and the second which had these details removed.

In the meeting, Mr S also expressed concerns about the precise allegations which might have been made about him by Sharon during her filmed interviews. Channel 4 added that, contrary to Mr S's view that the programme makers had been "evasive" in their response, it was, instead, explained to him that while the case was still active it would be inappropriate for them to go into any detail about what Sharon had said or claimed. The broadcaster said that the programme makers explained to Mr S that Sharon had discussed their relationship, but had only provided general comments,

for example, about the nature of marital breaks ups, and in relation to the allegations made against her by Mr S, she had provided her version of events. The programme makers also explained to the complainant that Sharon had described the friend as Mr S's "girlfriend", but that if they wished, it would be made clear in the programme that this was denied. Channel 4 said that while Mr S made it clear during the meeting that he did not want "any information about him to be broadcast", he was never given an assurance by the programme makers that no information about him would be included in the programme. The broadcaster said that it was agreed between the programme makers and the complainant that Mr S would not be named or identified by his occupation in the programme.

On 14 August 2014, having had no contact with Mr S since 22 July 2014, the programme makers sent Mr S a text message to ask him again about the prospect of taking part in an interview for the programme. They also reiterated that he would not be named or his occupation revealed in the programme. The broadcaster said that the programme makers received no response to this text from Mr S.

On 25 September 2014, the programme makers wrote a letter to Mr S and confirmed that in the final version of the programme, Mr S had not been named or identified by his occupation and that Sharon had only been referred to by her first name. The programme makers also included specific details about what would be included in the programme including that when Sharon entered through an open window, Mr S and Sharon embraced each other.

On 28 September 2014, the programme makers received a text from Mr S (who had not yet received the letter of 25 September 2014) stating that he did not want to take part in the documentary and that:

"I DO NOT give permission implied or otherwise, to broadcast ANY information that directly or indirectly names/relates/identifies, or is pertaining to me".

The broadcaster said that there was a text message exchange on 29 September 2014 in which the programme makers informed Mr S about the letter of 25 September 2014 (which was then forwarded to Mr S by email). The broadcaster added that Mr S requested a copy of the proposed broadcast.

Channel 4 said that on 2 October 2014, Mr S sent a text message to the programme makers to say that he had received their letter of 25 September 2015 and email, but reiterated that he did not want "any reference to my private life being broadcast" and objected to the inclusion of a statement in the programme that he and his former wife embraced when she entered his property. On the same day, the programme makers received a letter from Mr S's solicitor in which they said that Mr S did not want "any private information about him and/or intimate details about the relationship being broadcast in the programme", but also acknowledged that given the nature of the offences with which Sharon was charged, "it must be inevitable that personal and sensitive information about him [i.e. Mr S] will be broadcast". Mr S's solicitor added that they assumed that the broadcaster would not be "broadcasting anything which **unjustifiably** [emphasis added by Channel 4]...invades his privacy".

The broadcaster said that Mr S's solicitor also requested that the programme reflected Mr S's position that in relation to the alleged embrace, he denied that there had been any sexual contact between him and Sharon. The broadcaster said that programme makers then spoke to Mr S's solicitor to take instructions on whether Mr S agreed to the following statement being included in the programme: "Sharon's ex/former husband strongly denies that there was any sexual contact between them

after they split up". On 3 October 2014, Mr S's solicitors responded that Mr S agreed that the wording reflected his position.

On 6 October 2014, Channel 4 said that Mr S's solicitor emailed the programme makers and requested that the word "sexual" was removed from the statement. During a telephone conversation between Mr S's solicitor and the programme makers, it was agreed that the wording of the statement should be "Sharon's ex/former husband strongly denies that there was any physical contact between them after they split up". The broadcaster said that continuing and substantial efforts were made in advance of broadcast to accommodate the complainant's various concerns with the way in which the programme would cover the arrest and charging of Sharon. Channel 4 added that from an early stage, the programme makers made clear to Mr S that he would not be named or his profession revealed in the programme. Further, it was also made clear to Mr S that the programme makers wanted to include his version of events as a victim and that it would be possible to conceal his identity if he chose to contribute.

Channel 4 added that very detailed consideration was given by it and the programme makers about what information in relation to Sharon would be warranted to include in the programme. It said that in Mr S's complaint, he referred to the inclusion of "private moments in the relationship", but did not specify exactly what he was referring to. The broadcaster also said that apart from some general reflections made by Sharon on her marriage and the nature of relationships and love, a decision was taken to include only those parts of her interviews that were key to the viewers' understanding of the case and/or necessary for reasons of fairness.

Channel 4 concluded by stating that an individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression which includes conveying to the viewer the true context of the situation which is being depicted. It acknowledged that the allegations made by Mr S against his former wife related to his private relationship with Sharon, as did Sharon's response to those allegations when they were put to her. However, the broadcaster added that Mr S was aware when he made his police complaint that filming was taking place at the police station. Channel 4 also said that Mr S had acknowledged that Mr S's work colleagues already knew about the ongoing dispute between him and his former wife. Further, the broadcaster said that having reported the matter to the police for investigation, Mr S, would, or should, have understood that if the matter proceeded to trial, his allegations, Sharon's defence and any counter allegations made by her would have entered the public domain. In any event, Channel 4 said that it had taken steps to ensure that Mr S was not named in the programme, no reference was made to his profession, and Sharon was only referred to by her first name. Therefore, Channel 4 said that it would have been difficult for anyone to identify him as the victim in the case unless they already knew him and his circumstances. Channel 4 said, therefore, that taking all the above circumstances into account, Mr S did not have a legitimate expectation of privacy in relation to the broadcast without his consent of footage of Sharon being investigated in relation to the allegations he had made against her.

However, Channel 4 added that if Ofcom considered that Mr S did have a legitimate expectation of privacy in the material broadcast then any infringement into Mr S's privacy was warranted. The broadcaster said that there was a genuine public interest in including the cases of Sharon and the investigation into the other individual who featured in the programme. Channel 4 said that "investigations into many (if not most) types of crime will involve private and/or sensitive information about those involved to some extent". In particular, Channel 4 said that any coverage of a

domestic dispute will involve some intrusion into the private lives of those involved. The broadcaster said that it cannot be the case that because these particular alleged crimes relate to conduct arising from a failed marriage it automatically prohibited it from broadcasting details of the case if they did not have the consent of all the parties involved. Channel 4 said that having decided to include this case in the programme as broadcast, its concern was to keep any intrusion into the privacy of Mr S to a minimum and to include only that footage and information that was warranted by the circumstances. The broadcaster said that, in practice, this meant including material that was consistent with the viewers' need for sufficient information about the nature and context of the dispute to inform their understanding of the police conduct in these cases.

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

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 not uphold the complaint). Neither party made any representations on the Preliminary View.

In assessing Mr S's complaint that his privacy was unwarrantably infringed in the programme as broadcast because private details of his relationship with Sharon and his police complaint of harassment made against her were discussed in the programme without his consent, Ofcom had regard to Practice 8.6 of the Code. This states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr S's privacy had been unwarrantably infringed in the programme as broadcast, we first considered the extent to which he had a legitimate expectation of privacy in relation to the material broadcast about his relationship with his former wife and his police complaint made against her.

As set out in the “Introduction and programme summary” section above, Ofcom noted that the programme included both details about Mr S’s relationship with Sharon and the allegations which he had made against his former wife. In particular, the programme revealed that Sharon was separated and later divorced from the person who had made the allegations against her. It was also revealed that the allegation of theft related to camera lenses and clothing and that the allegation of harassment was related to Sharon sending unwanted texts to her former husband and entering the former marital home. In this context and during the police interview, it was also revealed that Sharon had entered the house through an open window and had made sexual advances toward her former husband, which he had rebuffed. The programme did not name Mr S or identify his profession.

Ofcom noted the steps that Channel 4 took to give Mr S an opportunity to preview part of the programme, that any references to his name and occupation were removed, and that Sharon was only referred to by her first name. We also noted the steps taken by Channel 4 to limit the information included in the programme about Mr S’s relationship with Sharon and the allegations made by Mr S against his former wife, for example Channel 4 said the programme makers decided to include “only those parts of the interviews that were key to the viewers’ understanding of the case and/or necessary for reasons of fairness”; that Sharon’s comments were either her general comments e.g. on marital breakdown or her version of the events; and, that they took steps to accommodate any of Mr S’s concerns e.g. at Mr S’s request the programme makers removed the word “sexual” from the final statement in the programme.

In considering whether Mr S had a legitimate expectation of privacy in relation to the broadcast, Ofcom assessed whether he was identifiable from the material included in the programme as broadcast. We noted that Channel 4 had said the programme-makers had taken steps to ensure that Mr S could not be identified from the material broadcast. In particular, we noted that Mr S was not named in the programme, no information about his profession was revealed and his former wife was only referred to by her forename. However, his former wife’s face was shown unobscured. Therefore, this may have been sufficient to render Mr S identifiable, albeit to a limited number of individuals who knew about his relationship with Sharon or who already knew about the circumstances surrounding the allegations.

We then considered whether Mr S had a legitimate expectation of privacy in relation to material broadcast in the programme about his relationship with his former wife. We recognise that an individual may have a legitimate expectation of privacy in relation to aspects of their personal relationships with other people. While Mr S did not identify any specific information about his relationship with his former wife which was included in the programme which he considered to be private, we considered that the information included in the programme – i.e. that his marriage to Sharon had broken down in what appeared to be difficult circumstances and that they were separated at the time of the filming – could reasonably be regarded as information about his personal life which was sensitive and private in nature. Therefore, we considered that Mr S did have a legitimate expectation of privacy in relation to the broadcast of the material included in the programme about his relationship with Sharon.

We then assessed whether Mr S had a legitimate expectation of privacy in relation to material broadcast in the programme about the claims of harassment and theft he had made against his former wife and the circumstances surrounding her arrest. Ofcom recognises that where an individual is the victim of an alleged crime and has

reported that crime to the police, that the individual may have a legitimate expectation of privacy in relation to that information.

We noted that Mr S had reported an allegation of theft and harassment against his former wife to the police and that she had been arrested as a result. In the particular circumstances of this case, we considered that having some of the detail regarding a domestic dispute disclosed in a programme may reasonably be regarded as being sensitive and private information about an individual's personal life. In this regard, we also took account of the fact that the allegations made by Mr S against his former wife did not appear to be in the public domain prior to the broadcast of the programme. Given these factors, we therefore considered that, Mr S also had a legitimate expectation of privacy in relation to the information about the harassment complaint he had made to the police.

Having found that Mr S had a legitimate expectation of privacy in relation to the information disclosed in the programme about his relationship with, and police complaint about, his former wife, we then assessed whether Mr S's consent had been obtained to include this material in the programme. It was not disputed that the broadcaster had not obtained Mr S's consent for the material now complained about to be included in the programme. On that basis, Ofcom considered whether or not any infringement of his legitimate expectation of privacy was warranted.

In determining whether or not any infringement into Mr S's privacy was warranted, we assessed the broadcaster's rights to freedom of expression and viewers' right to receive information against the infringement into Mr S's legitimate expectation of privacy in the material as broadcast. We also took into account Sharon's right to freedom of expression. Ofcom considered whether there was sufficient public interest or other reason to justify any infringement of Mr S's privacy in broadcasting this information.

We considered that there was a significant public interest in programmes showing the work of the police in dealing with difficult cases, namely the arrest and detention of suspects in police custody cells who have been involved in domestic disputes. We also took into account the need to have careful regard to the editorial freedom of the broadcaster. The broadcaster's primary interest in this case was its ability to make a factual programme about the police dealing with arrest suspects. In doing so, we had regard to Channel 4's response in which it said that "investigations into many (if not most) types of crime will involve private and/or sensitive information about those involved to some extent" and in the case of domestic disputes, this will involve some intrusion into the private lives of those involved. However, we noted also that Channel 4 had only included information which was necessary for the viewer to sufficiently understand the nature and context of why Sharon had been arrested. In these circumstances, allegations had been made against Sharon and she had denied that there had been any wrongdoing. Therefore, we considered it necessary for the programme to reflect this in accordance with the broadcaster's rights to freedom of expression and the viewers' right to receive such information. Given these factors, we considered that the inclusion of the material broadcast was warranted.

Taking all these factors into consideration, we considered that, on balance, Sharon and the broadcaster's rights to freedom of expression and the public interest in receiving the relevant material in order to illustrate the work of the police in dealing with domestic disputes, outweighed Mr S's legitimate expectation of privacy. In conclusion, Ofcom considered that Mr S's privacy was not unwarrantably infringed in the programme as broadcast.

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

Not Upheld

Complaint by Ms D

Muggings and Mayhem: Caught on Camera, Channel 5, 20 November 2014

Summary

Ofcom has not upheld this complaint by Ms D of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme was part of a series that focussed on how closed circuit television (“CCTV”) cameras were used by the emergency services and included CCTV footage of the complainant being assaulted at night in a street in west London.

Ofcom found that:

- Ms D had a legitimate expectation of privacy in relation to the obtaining of the CCTV footage of her by the broadcaster. However, on balance, and in the particular circumstances of this case, the broadcaster’s right to freedom of expression and the public interest in obtaining the footage outweighed her legitimate expectation of privacy. Ofcom considered therefore that there was no unwarranted infringement of Ms D’s privacy in connection with the obtaining of material included in the programme.
- Ms D also had a legitimate expectation of privacy with regards to the broadcast of the CCTV footage of her. However, on balance, and in the particular circumstances of this case, we considered that the broadcaster’s right to freedom of expression and the public interest in broadcasting the footage outweighed her legitimate expectation of privacy. We considered therefore that there was no unwarranted infringement of Ms D’s privacy in the programme as broadcast.

Introduction and programme summary

On 20 November 2014, Channel 5 broadcast *Muggings and Mayhem: Caught on Camera*, a programme which focussed on how CCTV cameras were used to help emergency services react to a number of situations across the country. The programme included a montage of clips showing CCTV footage of different people being mugged and assaulted. The programme’s narrator introduced the sequence:

“When night falls, it’s not just boozed-up thugs menacing our streets. Every day, 1700 people have something valuable stolen from their bags or pockets, and there are plenty of opportunist thieves looking for rich pickings”.

One of the people shown being assaulted was Ms D, the complainant. The footage began showing a man walking down a street over which the narrator said:

“Past midnight in Hammersmith, the streets are nearly deserted. A man in a blue hoody is on the prowl”.

Ms D was then shown walking down the street with her back to the CCTV camera, as the man followed her at a distance. The narrator said:

“Spotting his victim, he follows her - then attacks”.

The man was then shown pulling at Ms D’s bag before she was pushed to the ground. Ms D was shown fighting against her assailant while she was on the ground. A car was then shown pulling up to the side of the road, about which the narrator said:

“A passing car stops by and the passengers come to her aid”.

Four people were shown emerging from the vehicle and running towards the scene of the attack. The narrator then said:

“But in this next brutal attack in the West Midlands the victim isn’t that lucky”.

The section of the programme including the CCTV footage of Ms D’s attack was approximately 30 seconds in duration. The footage showing Ms D herself was about 15 seconds in duration. Ms D was not shown or referred to again in the programme. Ms D’s face was not shown in the programme, nor was she named.

Summary of the complaint and the broadcaster’s response

The complaint

- a) In summary, Ms D complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the broadcaster obtained CCTV footage of her being assaulted without her knowledge for broadcast.
- b) Ms D also complained that her privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her being assaulted was broadcast without her consent.

By way of background, Ms D said that she had been identified in the programme by work colleagues and was concerned that if her colleagues had recognised her then she may be recognised by anyone who knew her, including family members. She also said that the broadcast of the programme had had a significant negative impact on her recovery from the assault, and had made her “re-live the whole horrible event again”.

Channel 5’s response

Before addressing the specific elements of Ms D’s complaint, Channel 5 said that the CCTV footage was sourced from the London Borough of Hammersmith and Fulham (“the Council”). It said that the programme makers were not provided with the contact details of the people included in the CCTV footage of the incident. The broadcaster said that the footage provided did not identify the complainant as no aspect of Ms D’s features was discernible.

Channel 5 said that the first question to ask in a case such as this is whether or not the complainant had a reasonable expectation of privacy in relation to whatever it is that is sought to be protected by Article 8 of the European Convention on Human

Rights (“ECHR”)¹. Channel 5 said that this was an objective question. It said that as made clear in *Murray v Big Pictures (UK) Ltd*², not every action or inaction involving a person will be private. It explained that “...where action or inaction occurs as part of a person’s private life, whether or not that action or inaction is private will be an objective question of degree, considering all of the circumstances of the case”.

Channel 5 said that the second question to ask, and only if it was determined that the individual did have an expectation of privacy, was whether there was a public interest in connection with Article 10 of the ECHR, which details the right to freedom of expression.

It also acknowledged that there was no general rule about when matters were considered to be private and that the different circumstances of each case needed to be considered.

Channel 5 said that the taking of a photograph or the filming of a subject did not amount, in itself, ordinarily to a breach of Article 8. It pointed out that this was demonstrated in *Wood v Commissioner of Police for the Metropolis*³.

Channel 5 went on to explain that Article 8 affords protection to a person’s private and family life, his home and his correspondence. It said that it did not afford protection to a person’s public activities. It said that public activities were “...activities which either occur in public spaces and are not inherently private or which occur in a way which makes it impossible to regard them as inherently private”.

It said that there was nothing in the ECHR or any other relevant law that establishes a right “not to be on television”. It also said that latitude must be given to the view of the broadcaster about what is appropriate to be broadcast.

Channel 5 then examined the circumstances of the particular programme in question. It explained that the programme was part of a series which demonstrated the ways in which CCTV cameras were used to prevent crime, keep public areas safe and crime-free, and to assist in the identification and apprehension of criminals across the UK. It said the programme sought to demonstrate the work the cameras do and the skills, diligence and dedication that police officers and CCTV control room staff bring to the tasks they perform for the public. The broadcaster also said that the programme showed the obstacles, difficulties and dangers individuals faced as they embarked on anti-social behaviour and focussed on the human cost to the individuals who commit crimes, whether they are convicted or cautioned or released without further action. It said that it did this with a view to educating the public about the risks they take when they seek to transgress the law or behave in an antisocial manner.

In addition, Channel 5 said that, as in this case, the series also sometimes featured instances where crimes were committed unexpectedly, demonstrating the danger present on the streets at different times of day. It said that these instances provided a fuller picture of the ways in which CCTV cameras can aid the public. It said that the programme was underpinned by a clear public interest:

¹ Article 8 of the ECHR enshrines “the right to respect for...private and family life...” with certain exceptions designed to protect either society at large or individuals therein. One of these is “the protection of the rights and freedoms of others”.

² [2008] EWCA civ 446.

³ [2009] EWCA civ 414.

“...in depicting the consequences of stupid or reckless decisions (such as binge drinking, street fighting, shoplifting, pickpocketing etc.), showing perpetrators of violence or crime in action, and the myriad of ways in which such conduct may impact adversely on society generally, members of the public, members of the police force and the lives of the person making the relevant decision”.

Channel 5 next went on to address the specific heads of complaint:

- a) Channel 5 said that, for the reasons already outlined above, there was no infringement of Ms D’s privacy by the recording of the events surrounding her assault. It said that Ms D’s assault occurred in public and could have been witnessed by anyone who was present.

The broadcaster also said that neither was her privacy infringed in Channel 5’s obtaining of the CCTV footage from the Council as she was not identifiable from the recording. It said that when the recording was provided, no one at Channel 5 knew who Ms D was or was able to identify her from the material supplied.

- b) Channel 5 said that, for the reasons already outlined above, there was no infringement of Ms D’s privacy by the broadcasting of the events surrounding her assault.

Channel 5 said that the sequence in the programme involving Ms D did not involve any image capable of identifying her to strangers. It said that Ms D’s identity was not ascertainable from the recorded images. The broadcaster further said that Ms D was unidentifiable except to people who knew her and of her involvement in the incident and that Ms D had accepted this in an email to Channel 5 dated 26 November 2014 in which she stated:

“I do not care that I was not identifiable to the public at large, that is irrelevant, I only care that I was recognised by at least one work colleague. There may be more friends/family who saw it who have not raised it with me knowing how upset I was in the aftermath. I cannot hold Channel 5 responsible for the repercussions – but I would like you to be aware that three other colleagues have raised the subject with me after the first colleague discussed what she had seen with them. There may be more and I suspect there are”.

The broadcaster said that it was clear from this email that Ms D was concerned about the fact that people who knew her and knew that she had been attacked and knew that she was understandably upset by the aftermath of the incident, had assumed that the footage included in the programme concerned her.

Channel 5 said that although Ms D regarded the question of whether or not she was identifiable to the public at large as “irrelevant”, it considered that this was the only critical question. Channel 5 said that if an individual shown in a programme was not identifiable to the public at large, there could be no infringement of privacy. Further, it said that even if it were the case that Ms D had a legitimate expectation of privacy, the broadcaster’s right to freedom of expression and the public interest in broadcasting the footage would have outweighed this. The broadcaster said that, as outlined above, there was a clear public interest in the broadcast of the programme.

It said that accordingly, Article 10 ensured that, in the circumstances of this case, the balance favoured freedom of expression even if, which it denied, a privacy

right protected by Article 8 arose in the circumstances. It said that the decision in *Peck v The United Kingdom*⁴ supported this view.

Given the above factors, Channel 5 did not consider that the programme had contravened the Ofcom Broadcasting Code (“the Code”). However, while Channel 5 did not consider that Ms D’s complaint should be upheld, it acknowledged the distress caused to her by the inclusion of the footage in the programme and had taken the decision to completely remove the footage of her from any future broadcast of the programme.

Ofcom’s Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, and both parties’ written submissions and supporting documentation.

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.

- a) Ofcom first considered Ms D’s complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the broadcaster obtained CCTV footage of her being assaulted without her knowledge for broadcast.

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. We also had regard to

⁴ [2003] EHRR 41.

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 assessing whether or not Ms D's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first considered the extent to which Ms D had a legitimate expectation of privacy in the circumstances in which she was filmed.

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 particular, as stated in the Code, "[t]here may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy."

Ofcom noted that the footage of Ms D being assaulted was filmed by a CCTV camera, that the incident had taken place on a public street and that, as the footage showed, was witnessed by members of the public who tried to intervene. Ofcom accepted that Ms D had been unaware that she was being filmed at the time of the incident. We also noted that the footage was not filmed by the programme makers or the broadcaster with a view to subsequent broadcast, but by a CCTV camera that belonged to the Council and had been filmed for the Council's purposes.

Notwithstanding the fact that the incident occurred in a public place and was witnessed by members of the public, Ofcom considered that this footage showed Ms D in an incident that was, in our view, sensitive and private to her. Ms D had been filmed while she was in a vulnerable state, as the victim of a violent physical assault. Ofcom therefore considered that despite the public nature of the footage filmed, Ms D had been filmed in a situation in which we considered she could expect a degree of privacy.

Given the above, we considered that Ms D had a legitimate expectation of privacy in regard to the obtaining of this footage by the broadcaster from the Council with a view to it being broadcast.

Having established that Ms D had a legitimate expectation of privacy we next considered whether it was warranted for the programme makers to have infringed Ms D's expectation of privacy by obtaining footage of her without her consent.

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 and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

To decide this, we carefully balanced the broadcaster's right to freedom of expression and the viewers' right to receive information and ideas without unnecessary interference against the complainants' right to privacy. In particular,

we considered whether there was sufficient public interest or other reason to justify the infringement into Ms D's privacy that resulted from the obtaining of this footage of her.

We observed that Channel 5 did not provide any specific arguments regarding why, in its view, it might be warranted to have infringed Ms D's privacy in this respect. However, we noted that it did explain that the programme demonstrated how CCTV cameras were used to prevent crime, identify and apprehend criminals and keep the public safe. In addition, it said that the programme showed the work of police officers and CCTV control room staff.

We considered that there was a genuine public interest in the broadcast of this programme, in that it, for example, demonstrated to viewers how CCTV cameras were used to assist the emergency services and, in particular, the police in the work they undertake and showed viewers various criminal activities as they happened. Therefore, in the case of the particular footage of Ms D, allowing the programme makers to obtain the relevant footage was important. This was because it enabled the broadcaster to use a specific example of an incident that illustrated the types of violent crimes being committed on the streets at night. It also demonstrated the fact that these types of violent crimes were being recorded, and as such, the CCTV footage could potentially provide assistance to the police with their investigations.

On this basis, and notwithstanding the fact that Ms D did not consent either to the original filming or the subsequent obtaining of the footage by Channel 5 with a view to it being broadcast, Ofcom concluded that any infringement of her legitimate expectation of privacy in connection with the obtaining of this material was warranted under Practice 8.5.

Ofcom went on to consider whether the means of obtaining the footage was proportionate in all the circumstances and, in particular, to the subject matter of the programme. Ofcom observed that, as noted above, the footage was filmed by the Council's CCTV cameras. We considered that the filming was unobtrusive. We also noted that when Channel 5 obtained the footage from the Council it was not informed of Ms D's identity, nor provided with any information about her (other than that included in the footage itself) through which she might be identified by Channel 5. Given this set of circumstances, Ofcom considered that the means by which the footage was obtained had been proportionate in accordance with Practice 8.9.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Ms D, outweighed her legitimate expectation of privacy in the circumstances of this case. Therefore, our decision is that there was no unwarranted infringement of Ms D's privacy in connection with the obtaining of material included in the programme.

- b) Ofcom next considered Ms D's complaint that her privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her being assaulted was broadcast without her consent.

In assessing this element of the complaint, Ofcom had regard to Practice 8.4 which states that broadcasters should ensure that words, images or 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 or organisation

concerned, unless broadcasting without their consent is warranted and Practice 8.6 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

We also had regard to Practice 8.16 which states that broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

In considering whether or not Ms D's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the broadcast of the footage of her included in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in detail in the Decision at head a) and the "Introduction and programme summary" section, CCTV footage of Ms D being assaulted was included in the programme along with commentary on the incident as it was shown. The CCTV footage of Ms D included in the programme was approximately 15 seconds in duration; Ms D's voice was not heard in the programme; her face was not seen; and, she was not named.

In assessing whether or not Ms D had a legitimate expectation of privacy, we considered whether Ms D was identifiable in the programme as broadcast.

We noted that Ms D said that work colleagues had identified her from the footage of her and information about the assault included in the programme. We also noted however, Channel 5's argument that: "No information about Ms D sufficient to identify her to people who did not know that she had been attacked was broadcast". It argued that Ms D herself acknowledged this in an email to the programme makers on 26 November 2014 (as detailed above in the "Summary of the complaint and the broadcaster's response") in which she stated that: "I do not care that I was not identifiable to the public at large, that is irrelevant".

Taking account of all the factors set out above, we took the view that, given the nature of the footage shown and, notwithstanding the information which was included about the incident (i.e. that the assault had occurred "*Past midnight in Hammersmith*"), it was unlikely that Ms D was identifiable from the programme to anyone who did not already know her and also knew of the incident in which she had been involved.

However, as outlined above in the Decision at head a), it was Ofcom's view that, with regards to the obtaining of the footage of Ms D for inclusion in the programme, despite the fact that the incident occurred in a public place, Ms D had been filmed in a situation (i.e. the victim of a violent assault) in which we considered she could expect some degree of privacy. For the same reasons, we also considered that Ms D had a legitimate expectation of privacy with regards to the broadcast of the footage of her.

Having established that Ms D had a legitimate expectation of privacy in relation to the broadcast of footage of her being assaulted, we next considered whether in

the absence of Ms D's consent, the infringement into her privacy was warranted in the circumstances. In doing so, we again considered the meaning of "warranted" as set out in the Code.

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

We carefully balanced Ms D's right to privacy in the broadcast of the footage of her included 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.

As set out at head a) of the Decision, we considered that there was a genuine public interest in the broadcast of this programme in that it, for example, demonstrated to viewers how CCTV cameras were used to assist police with their work and showed viewers various criminal activities as they happened. Therefore, in the case of the particular footage of Ms D, allowing the programme makers to obtain and subsequently broadcast the relevant footage was important. This is because it enabled the broadcaster to use a specific example of an incident that illustrated the types of violent crimes being committed on the streets at night. It also demonstrated the fact that these types of violent crimes were being recorded, and as such, the CCTV footage could potentially provide assistance to the police with their investigations.

On this basis, and notwithstanding both the distressing and sensitive nature of the incident in question for Ms D and that Ms D did not give her consent for the broadcast of the relevant material, Ofcom concluded that the infringement into Ms D's legitimate expectation of privacy was warranted.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in broadcasting the footage of and information about Ms D, outweighed her legitimate expectation of privacy in the circumstances of this case. Therefore, we concluded that there was no unwarranted infringement of Ms D's privacy in the programme as broadcast in this respect.

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

Not Upheld

Complaint by Ms T

Muggings & Mayhem: Caught on Camera, Channel 5, 20 November 2014

Summary

Ofcom has not upheld Ms T's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme was part of a series that focused on how Closed Circuit Television ("CCTV") cameras were used by the emergency services and included footage of police officers rescuing three women (a mother and her two daughters) from the River Thames in central London. The faces of the women were either indistinct or had been obscured by the broadcaster.

Ofcom found that:

- Ms T had a legitimate expectation of privacy with regard to the obtaining of the footage of her. However, on balance, and in the particular circumstances of this case, the broadcaster's right to freedom of expression and the public interest in obtaining the footage outweighed her legitimate expectation of privacy. Ofcom considered therefore that there was no unwarranted infringement of Ms T's privacy in connection with the obtaining of material included in the programme.
- Ms T had a legitimate expectation of privacy with regard to the broadcast of the relevant footage and information in the programme. However, on balance, and in the particular circumstances of this case, we considered that the broadcaster's right to freedom of expression and the public interest in broadcasting the footage outweighed her legitimate expectation of privacy. We considered therefore that there was no unwarranted infringement of Ms T's privacy in the programme as broadcast.
- The broadcaster should, as a matter of best practice, have taken reasonably practicable steps to inform Miss T about its plan to make and broadcast the programme, in order to try to reduce any potential suffering and distress to her. However, given that Miss T's privacy was not unwarrantably infringed by the broadcast of the footage, the fact that the broadcaster did not take such steps did not, constitute an unwarranted infringement of Miss T's privacy.

Introduction and programme summary

On 20 November 2014, Channel 5 broadcast an episode of *Muggings and Mayhem: Caught on Camera*, a programme which focused on how CCTV cameras were used to help emergency services react to a number of situations across the country. This particular episode included a segment (approximately five minutes in length) which showed police officers rescuing three women (a mother and her two daughters, one of whom was the complainant) who had jumped into the River Thames in central London.

The programme included a mixture of footage of people working in a police control centre, CCTV footage and footage filmed from the police helicopter "*India 99*". One of

the people working in the control centre was the Communications Supervisor, Ms Amanda Octave. The programme's narrator explained that: *"Using CCTV she coordinates police responses to emergency calls"*.

The narrator then explained that: *"It's Saturday night. 999 calls are flooding in from a tourist hotspot next to Big Ben"*. The programme showed Ms Octave at her desk and a voice over the radio was heard saying: *"...caller states that this mother has just jumped into the river"*. Ms Octave confirmed the location of the incident was by the north bank of the River Thames next to the Hungerford Bridge. She was then shown searching for CCTV cameras that would show the area in question. The narrator explained:

"This is a matter of life and death. To get the right units there, Amanda needs to see what she's dealing with...More than 50 people die in the Thames every year – many of them suicides. Amanda can just about see the woman, but she needs a better view than this to coordinate the rescue [a very distorted CCTV image of a person in the river was shown]. So, she calls on the one police resource with a camera powerful enough to help – the Met helicopter India 99..."

The narrator went on to say:

"The crew are already in the skies over London, but they're precious minutes away from the north bank of the Thames where it's estimated that someone jumping in would have just two minutes to survive. The race is on".

A Metropolitan Police Marine Unit boat was then shown arriving at the scene. The narrator said:

"As the Marine Unit arrives on scene, the situation has got worse...Two people have jumped in to rescue the woman – but at last, India 99 has arrived".

The programme showed footage of the scene recorded using a using the thermal-imaging camera mounted on the police helicopter that attended this incident. This footage, which included images of Ms T, her mother and sister in the water, was clearer than that recorded by the CCTV cameras. However, on the occasions when the faces of the individuals concerned (including that of Ms T) might have been visible the broadcaster had blurred the image of that person's face. The narrator said: *"It's now believed that the woman jumped in, followed by her two daughters who were trying to rescue her"*.

The programme then showed footage of police officers and two members of the public in a second boat as they attempted to rescue the three women from the water. The narrator said:

"India 99's camera shows one of the daughters clinging to the side of a civilian boat on the left. Officers on the police boat on the right have managed to grab the other daughter and pull her out. The mum is in the middle, but is refusing to be helped".

Ms Octave was then shown again. She said: *"The reports at the moment are that one [of the] females isn't being very cooperative"*. Following this, one of the civilians was shown reaching out to the person identified as the mother and taking hold of her. The narrator said:

“One of the civilians has managed to grab the mum. Now mother and daughter are side-by-side in the water. But the mum is still refusing to be helped out”.

Following this, police officers were shown boarding the civilian boat and helping to pull the two women out of the water. The narrator said: *“It takes two cops to pull her on board, but the mum is now out of the water. And just out of camera shot of India 99, her daughter is also rescued”.*

The programme then showed Ms Octave communicating with India 99 confirming that all three women were out of the water. Ms Octave then said: *“People do jump into the river, but it’s not all the time that they’re fighting us when we’re trying to get them out”.*

The narrator then stated: *“The women are drenched but safe, and they’ll soon be in hospital”.*

No further footage of Ms T was included in the programme. Ms T was not named in the programme.

Summary of the complaint and the broadcaster’s response

The complaint

- a) Ms T complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she had been unaware that she was being filmed by the police and that this footage would then be obtained by Channel 5 with a view to it being broadcast in a television programme.
- b) Ms T also complained that her privacy was unwarrantably infringed in the programme as broadcast because:
 - She did not give her consent for footage of and information about her to be included in the programme. Ms T said that the details included in the programme about the incident in which she was involved were so specific that she was identifiable.
 - She was not informed about the plan to include footage of and information about her in the programme before it was broadcast.

By way of background, Ms T said that she suffered a panic attack after she received a telephone call informing her that she was on television. She said that she, her mother and her sister had been receiving counselling ever since the incident.

Channel 5’s response

The broadcaster said that the footage was obtained from the Metropolitan Police Service and explained that programme makers were not given the contact details for the people included in the footage because the police do not provide such information. In response to a request for clarification from Ofcom, the broadcaster subsequently confirmed that the programme makers were given “no identifying details of any kind about the individuals involved in the incident, apart from what was contained in the footage”.

Channel 5 also set out its understanding of how privacy law applies to circumstances that it considered relevant to this complaint. It said that the first question which must be asked is whether the individual concerned has a reasonable expectation of privacy in relation to whatever it is that is being sought to be protected by Article 8¹. It also said that case law makes it clear that: a) not every action or inaction involving a person will necessarily be private and b) where an action or inaction occurs as part of a person's private life, whether or not it is private will be an objective question of degree, considering all the circumstances of the case.

Channel 5 said that only if it is concluded that the individual has a reasonable expectation of privacy in regard to the material in question should the "second question" be asked. Although it was not made explicit what was meant by the 'second question', we assumed that Channel 5 was referring to whether or not an individual's reasonable expectation of privacy has been infringed. Channel 5 added that questions of public interest in connection with Article 10² never arise unless there is a reasonable expectation of privacy. However, it acknowledged that it may be necessary to consider the public interest as part of the objective process of determining whether or not specific material attracts a reasonable expectation of privacy.

The broadcaster said that case law supports the view that the mere taking of a photograph or the filming of a subject will not amount, in itself, ordinarily to a breach of Article 8³. It also said that *Campbell*⁴ makes clear that what is important is not whether or not the subject of the disclosure takes offence but whether, from an objective viewpoint, it would be reasonable for "an ordinary person" to consider the particular disclosure to the general public to be offensive.

Channel 5 argued that the efforts of rescue workers and police officers to assist persons who attempt to take their own life in public are matters of public interest. So too were the actions of Ms T in relation to the rescue of her mother. Channel 5 said that a reasonable person of ordinary sensibilities would not find the disclosure of the details of their public attempt to prevent suicide to be offensive – rather, such disclosure was to be expected and, as such, it was not private information.

Channel 5 said that Article 8 does not afford protection to a person's public activities - i.e. activities which either occur in public spaces and are not inherently private or

¹ Article 8 of the European Convention on Human Rights ("ECHR") enshrines "the right to respect for...private and family life..." with certain exceptions designed to protect either society at large or individuals therein. One of these is "the protection of the rights and freedoms of others".

² Article 10 of the ECHR enshrines the "right to freedom of expression ...[including the] freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". Like Article 8 it is subject to certain conditions or exceptions designed to protect either society at large or individuals therein. One of these is "the protection of the reputation or rights of others".

³ Channel 5 referred to paragraph 31 of Lord Justice Laws' judgment in *Wood v Commissioner of Police for the Metropolis* [2009] EWCA Civ 414 to support of its position.

⁴ Ofcom understood Channel 5 to be referring to *Campbell v MGN Ltd* [2004] UKHL 22 on appeal from: [2002] EWCA Civ 1373.

which occur in a way which makes it impossible to regard them as inherently private⁵. It also said that nothing in the ECHR or any other relevant law establishes a right not to be on television.

Channel 5 said that case law recognises that courts must give latitude to the view of the publisher/broadcaster about what is appropriate to be published or broadcast and argued that the same latitude should be given to broadcasters who disseminate information to the public about matters of public interest.

Turning to the complaint itself, Channel 5 said that the programme was part of a series which demonstrated the ways in which CCTV cameras were used to prevent crime, keep public areas safe and crime free and to assist in the identification and apprehension of criminals. The series also focused on the human cost to the persons who commit crimes and occasionally, as in this case, showed instances where quick and brave actions by police officers and other rescue personnel saved lives, thereby providing a fuller picture of how CCTV cameras can assist and aid the public.

Channel 5 said that the programme was underpinned by the public interest in that it depicted the consequences of reckless decisions and the myriad ways in which such conduct may impact adversely on society generally, members of the public or the police and the lives of the persons making the relevant decisions.

Channel 5 went on to address the specific heads of the complaint:

- a) In response to this head of complaint, Channel 5 said that for the reasons already given, no privacy right of Ms T's was infringed by the recording of the events surrounding her mother's rescue from the River Thames. In particular, it said that the events occurred in public; were witnessed by everyone who was present and were not private.

It also argued that this case differed from that considered by the European Court of Human Rights in *Peck v United Kingdom*⁶ because in that case the images broadcast were of an individual late at night, in the dark, wielding a knife following a suicide attempt which had not been witnessed by anyone and to which rescue workers and police officers had not been called.

- b) Channel 5 said that for the reasons already given, no privacy right of Ms T's was infringed by the broadcasting of the events surrounding her mother's rescue from the River Thames. In particular, it said that no Article 8 rights attached to the relevant actions of Ms T or her family because these actions did not take place in private and did not attract any reasonable expectation of privacy. It also said that it would have been open for Channel 5 to have identified Ms T in relation to these matters, but it did not do so. Instead the footage shown in the programme did not include any close-ups of either Ms T or her family which would have made her identifiable to strangers and her identity and that of her family members was obscured so that each would not be identifiable except to people who knew of the incident and their involvement in it. It added that no information about the complainant or her family from which they could have been identified to any other group of people was broadcast.

⁵ It said that paragraph 22 of the Supreme Court judgment in *Kinloch (AP) v HM Advocate* [2012] UKSC 62 provided authority for this view.

⁶ [2003] EHRR 41.

In any case, Channel 5 argued that, even if Ofcom concluded that Ms T had a legitimate expectation of privacy with regard to the material broadcast (which it denied was the case) any balancing exercise between the complainant's right to privacy and its right to freedom of expression would determine that Channel 5's right to freely communicate the issues dealt with in the programme to its audience, in circumstances where the faces of the complainant and her family had been blurred by the broadcaster to prevent identification, outweighed any right to privacy found to be held by Ms T.

It said that the decision in *Peck* supported this view because in that case (in contrast to this complaint) the Court was particularly concerned that the identity of the individual concerned had not been masked in the photographs which were broadcast so that he could be, and was, identified by people who knew him, but did not know about his suicide attempt.

Channel 5 concluded that given that Ofcom's Broadcasting Code ("the Code") did not establish any rights to privacy over and above those conferred by the general law, and it cannot be said that the broadcast violated a right known to the law, the complaint must fail.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that Ms T's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant commented on the Preliminary View, while Channel 5 requested that, in line with another of Ofcom's recent privacy decisions, the following sentence be added to the final paragraph: "A failure to follow Practice 8.19 will only constitute a breach of Rule 8.1 where it results in an unwarranted infringement of privacy." The further points made by the complainant which are relevant to the complaint being considered (i.e. that which was Entertained) are summarised below.

Ms T agreed that it was important to highlight the good work that the emergency services do and the extreme circumstances with which they have to work. However, she said that, in her view, Channel 5 had tried to intensify the "story" with information that didn't need to be shared to make the programme better and which made it more distressing to watch. For example, Ms T said that it was unnecessary for the programme to have included footage of a note of a specific call alerting the emergency services to the incident in which she was involved (shown on the computer screen of the Communications Supervisor in the CCTV control centre) which said that a "young man is crying down the phone shouting that his mum and sisters are in the water" and for the narrator to have said that her mother was refusing help to get out of the water. Ms T said that she could not see how either of these things was relevant in highlighting the work of the emergency services.

Ms T also said that Ofcom had "agreed" that she and her sister and mother were not identifiable. However, after the programme was broadcast two people who were not present during the incident, and had no connection to anyone else who was present, contacted her to say that they had identified her because of the distinctive top she was shown wearing in the programme. Ms T acknowledged that her face and those of her mother and sister were blurred but argued that the cumulative effect of the inclusion in the programme of all of the specific information about them and the incident in question was that it was not "hard for anyone in our lives to know it was us".

Ms T also said that, given that the police took names, addresses and contact telephone numbers for her and her sister and mother, she did not understand why it had not been possible for Channel 5 to have obtained their contact details.

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 our Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript of the relevant section and both parties' written submissions. Ofcom also took careful account of 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 of Ofcom's Broadcasting Code ("the Code") which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- a) Ofcom first considered Ms T's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

In assessing this head of the complaint, Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. Ofcom 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 considering whether or not Ms T's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first considered the extent to which she had a legitimate expectation of privacy with regard to the obtaining of the relevant footage.

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

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

With regard to the filming itself, we observed that Ms T was filmed while she and her sister tried to rescue their mother who had jumped in to the River Thames in an attempt to take her own life. We also noted that the incident occurred in a public place and that, as the footage and commentary included in the programme make clear, it was witnessed by members of the public.

We accepted that at the time the incident took place, Ms T was unaware that she was being filmed. However, we also noted that the footage was recorded not by the broadcaster or a production company with a view to its subsequent broadcast. Rather, the majority of it (apart from a brief section of CCTV footage from which it was only just possible to discern the figure of person in the water whom we were told was a woman who had jumped into the River Thames) was filmed using the thermal-imaging camera of the police helicopter that attended the incident and was filmed by the police for their own purposes.

Notwithstanding the fact that the incident occurred in a public place and was witnessed by members of the public, we considered that this footage showed Ms T and her immediate family engaged in an incident which was extremely sensitive in nature and which was private to them. We also noted that, although the police did not disclose the identity of Ms T or her immediate family to Channel 5, the broadcaster had obtained sufficient information in order to convey that:

- the incident involved a mother who had jumped into the River Thames and two of her daughters who had also jumped in to the river to try to rescue her;
- in the words of the programme narrator, “this is a matter of life and death” and “more than fifty people die in the River Thames every year. Many of them suicides”;
- the incident was clearly a ‘rescue’ situation and the mother repeatedly resisted both her daughters’ attempts, and those of civilians and police officers, to rescue her;
- eventually all three women were rescued and taken to hospital;
- the incident took place on a Saturday night on the north bank of the River Thames close to “*Big Ben*” and Hungerford Bridge and overlooked by “*the Hispanola and Tattershall Castle*” – two restaurant boats which were moored nearby.

Given the extremely sensitive nature of the incident recorded in the footage obtained by Channel 5, and taking account of the fact that: the footage was recorded at night when those witnesses who were present were unlikely to have had a clear view of Ms T; the sole reason this footage was captured was because of the CCTV cameras which operate in the area and enable the police to do their work; and, the extent of the information about the incident provided to Channel 5, we concluded that, despite the fact that the footage was filmed in a public place and was witnessed, Ms T had a legitimate expectation of privacy in regard to the obtaining of this footage by the broadcaster from the police with a view to it being broadcast.

Ms T’s consent with regard to the obtaining of the footage with a view to it being broadcast was neither sought nor obtained. In the absence of such consent, we then considered whether or not any infringement of Ms T’s legitimate expectation of privacy in the obtaining of the material 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.

To decide this, we carefully balanced the broadcaster’s right to freedom of expression and the viewers’ right to receive information and ideas without unnecessary interference against the complainant’s right to privacy. In particular, we considered whether there was sufficient public interest or other reason to justify the infringement into Ms T’s privacy that resulted from the obtaining of this footage of and information about Ms T and her immediate family.

We observed that Channel 5 did not provide any specific arguments regarding why, in its view, it might be warranted to have infringed Ms T’s privacy in this respect.

However, it did say that the programme demonstrated the use that was made of CCTV to prevent crime, identify and apprehend criminals and keep people safe. In addition, it said that in this case it showed an instance where quick and brave actions by police officers and other rescue personnel saved lives and thereby gave a fuller picture of how CCTV cameras can assist and aid the public.

We consider that there was a genuine public interest in the broadcast of this programme, in that it examined the use of CCTV cameras (and the helicopter mounted cameras used by the police) with the aim of conveying to viewers an understanding of the use they are put to; the work undertaken by the people operating the cameras and surveying the footage provided; and, the help the cameras provide to police officers and rescue workers in their efforts to prevent crime and keep people safe or, as in this case, to rescue people who are in danger. In our view, allowing the programme makers to obtain the relevant footage was important. This was because it enabled the broadcaster to use a specific example of an incident that illustrated the difficulties that rescue workers and police officers face when trying to help people who are attempting to take their own lives and the help that CCTV and helicopter mounted cameras can provide in such situations.

On this basis, and notwithstanding the fact that Ms T did not consent either to the original filming or the subsequent obtaining of the footage by Channel 5 with a view to it being broadcast, Ofcom concluded that any infringement of her legitimate expectation of privacy in connection with the obtaining of this material was warranted under Practice 8.5.

Ofcom went on to consider whether the means of obtaining the footage was proportionate in all the circumstances and, in particular, to the subject matter of the programme. Ofcom observed that, as noted above, the footage was filmed either by CCTV or by the police (rather than the programme makers) using the thermal-imaging camera mounted on the police helicopter that attended this incident; and, on the information available, it appears that the footage was recorded by the police for their own purposes. We considered that both sets of filming were unobtrusive. We also noted that when Channel 5 obtained the footage from the police it was given a number of details about the incident and the individuals concerned (as set out in the bullet points above). However, it was

not told the identity of either Ms T or her immediate family or given other information about them (other than that included in the footage itself) through which Ms T could be identified. Given this set of circumstances, Ofcom considered that the means by which the footage was obtained had been proportionate and in accordance with Practice 8.9.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Ms T, outweighed her legitimate expectation of privacy in the circumstances of this case. Therefore, we found that there was no unwarranted infringement of Ms T's privacy in connection with the obtaining of material included in the programme.

- b) We next assessed Ms T's complaint that her privacy was unwarrantably infringed in the programme as broadcast.

We first considered the first part of her complaint, that she had not given her consent for footage of and information about her to be included in the programme. In assessing this, Ofcom had regard to Practice 8.4 which states that broadcasters should ensure that words, images or 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 or organisation concerned, unless broadcasting without their consent is warranted and 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 also had regard to Practice 8.16 which states that broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

In considering whether or not Ms T's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the broadcast of the footage of her included in the programme.

As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in detail in the Decision at head a) and the "Introduction and programme summary" section above, footage of three people in a river (one of whom was Ms T) was shown in the programme. In addition, and again as set out above, the programme included information about the events shown in the footage and the location where they took place and the relationship between the three people concerned.

We took into account Ms T's representations that she was recognised by family members and colleagues within her immediate circle. However, we also noted that the faces of all three women were blurred and that they were not otherwise identified in the programme. On that basis, taking account of all the factors set out above, we considered that, given the nature of the footage shown and notwithstanding the information which was included about the incident, it was

unlikely that Ms T was identifiable from the programme to anyone who was not either already aware of the incident or who did not already know her.

We considered that this was a sensitive incident for Ms T and her family. Taking particular account of Practices 8.4 and 8.16, we concluded that, notwithstanding the fact the incident took place in public and in front of witnesses; that neither Ms T nor her immediate family were named in the programme and that, in our view, Ms T was unlikely to have been identifiable to anyone who was not either already aware of the incident or who did not already know her, Ms T still had a legitimate expectation of privacy in regard to the broadcast of this footage and the information about her and her family members in the programme.

Having come to the view that Ms T had a legitimate expectation of privacy with regard to the broadcast of the footage and information relating to her, we noted from the submissions of both parties that Ms T did not consent to the broadcast of this material. In the absence of such consent, Ofcom then went on to consider whether or not any infringement of Ms T's legitimate expectation of privacy in the broadcast of this footage was warranted. In doing so, we again considered the meaning of "warranted" as set out in the Code.

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

We carefully balanced Ms T's right to privacy in the broadcast of the footage of her included 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.

As set out at head a) above, we considered that there was a genuine public interest in the broadcast of this programme, in that it examined the use of CCTV cameras (and the helicopter mounted cameras used by the police) with the aim of conveying to viewers an understanding of the use they are put to; the work undertaken by the people operating the cameras and surveying the footage provided; and, the help they provide to police officers and rescue workers in their efforts to prevent crime and keep people safe or, as in this case, to rescue people who are in danger. In our view, the broadcast of the relevant footage was important. This was because through it the programme gave viewers a specific example of an incident that illustrated the difficulties that rescue workers and police officers face when trying to help people who are attempting to take their own life and the help that CCTV and helicopter mounted cameras can provide in such situations. On this basis, and notwithstanding the sensitive nature of the incident in question for Ms T, Ofcom concluded that any infringement into Ms T's legitimate expectation of privacy was warranted on this occasion.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in broadcasting the footage of and information about Ms T, outweighed her legitimate expectation of privacy in the circumstances of this case. Therefore, we found that there was no unwarranted infringement of Ms T's privacy in the programme as broadcast in this respect.

Having concluded that Ms T's privacy was not unwarrantably infringed in the programme as broadcast, Ofcom considered the part of her complaint relating to her not being informed about the broadcaster's intention to include the footage in the programme prior to broadcast.

In assessing this element of the complaint, Ofcom had regard to Practice 8.19 which states that "broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes".

For the reasons set out in our consideration of the first element of this head of complaint above, Ofcom concluded that Ms T had a legitimate expectation of privacy in relation to the broadcast of the relevant footage. We also considered that, in light of the nature of the incident shown in the footage and Ms T's direct involvement in it, as well as her close relation to the other two people concerned (i.e. her mother and sister), it is reasonable to have expected the broadcaster to have foreseen that the broadcast of this the material had the potential to cause distress to Ms T.

Given this, we next considered the steps that Channel 5 took in order to comply with Practice 8.19 of the Code.

Practice 8.19 requires that: "Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals...unless it is warranted to do otherwise". The Practice then goes on to provide what steps are contemplated in this respect, and states that:

"In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past".

It is clear that Practice 8.19 does not (by contrast with Practice 8.6) require broadcasters to obtain (prior) consent or permission from relevant surviving victims and/or immediate relatives to broadcast material: it simply contemplates broadcasters seeking to reduce potential distress to victims and/or relatives by, "so far as is reasonably practicable", informing them of the "plans for the programme and its intended broadcast". This Practice is expressed to apply "even if the events or material to be broadcast have been in the public domain in the past".

Ofcom observed that, on the information available, it appeared that the programme makers did not take any steps before the broadcast of the programme to inform Ms T or another member of her immediate family about their plans to make the programme or its intended broadcast.

We also observed that Channel 5 made no mention of Practice 8.19 in its response to the complaint. In particular, other than its general statement that, in the circumstances, its right to freedom of expression would outweigh any counterbalancing right to privacy which Ofcom considered was held by Ms T in regard to the broadcast of the relevant material, Channel 5 made no arguments

regarding why it was not either necessary or “reasonably practicable” for it to have complied with Practice 8.19 of the Code.

We noted that in her response to the Preliminary View, Ms T said that, given that the police took names, addresses and contact telephone numbers for her and her sister and mother, she did not understand why it had not been possible for Channel 5 to have obtained their contact details. However, we also noted that Channel 5 had said that when the relevant footage was obtained with a view to it being broadcast, the programme-makers were not given the contact details for the people included in the footage (i.e. Ms T, her mother and her sister) because the police do not provide such information. The broadcaster subsequently confirmed that the programme makers were given “no identifying details of any kind about the individuals involved in the incident, apart from what was contained in the footage”.

In light of these observations, we considered that the only reasonably practicable step which Channel 5 could have taken in order to comply with Practice 8.19 was to have asked the police to contact the relevant parties on its behalf in order to inform them of its plans. This is because, without a name or any other information from which to identify Ms T or her immediate family members, we do not consider that there were any other “reasonably practicable” steps the broadcaster could have taken in order to contact the complainant directly.

As set out above, on the information available, it appeared that the programme makers did not take this step.

Ofcom also considered whether there were any wider public interest considerations (such as those taken into account when determining that the inclusion of the relevant material in the programme was warranted), which justified the broadcaster not taking the protective steps set out by Practice 8.19. However, it was our view that there was no reason why, either in the public interest or on the basis of the broadcaster’s freedom of expression, that step could not have been taken to inform Miss T in the manner envisaged by the Practice, such as seeking to contact Miss T via the police. In Ofcom’s view, this was an appropriate and proportionate step to have taken in the particular circumstances of this case, particularly when taking into account the potential effect of the programme on the complainant.

Taking into account all the factors set out above, Ofcom considered that Channel 5 had not followed ‘best practice’, as recommended under Practice 8.19. However, having already concluded that that the broadcast of the relevant footage was warranted, Ofcom does not consider that the failure to follow Practice 8.19 was, by itself, sufficient to constitute a breach of Rule 8.1 of the Code. A failure to follow Practice 8.19 will only constitute a breach of Rule 8.1 where it results in an unwarranted infringement of privacy. As a result, Ofcom found that Miss T’s privacy was not unwarrantably infringed in this respect.

Ofcom has not upheld Ms T’s complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed 20 June and 3 July 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
Saturday Live	Heartland FM (Perth)	02/05/2015	Elections/Referendums
News	Geo News	04/05/2015	Elections/Referendums

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

Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 4 and 17 July 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
Castle	Alibi	08/07/2015	Scheduling	1
Live Telethon	Ary QTV	21/06/2015	Charity appeals	1
A Deadly Warning: Srebrenica Revisited	BBC 1	06/07/2015	Religious/Beliefs discrimination/offence	1
BBC News	BBC 1	28/06/2015	Generally accepted standards	2
BBC News	BBC 1	11/07/2015	Generally accepted standards	1
BBC News at Six	BBC 1	29/06/2015	Generally accepted standards	1
BBC News at Six	BBC 1	29/06/2015	Scheduling	1
BBC News at Ten	BBC 1	10/07/2015	Generally accepted standards	1
Breakfast	BBC 1	27/06/2015	Scheduling	1
Britain Beneath Your Feet	BBC 1	02/07/2015	Offensive language	1
Call the Council	BBC 1	13/07/2015	Animal welfare	1
Casualty	BBC 1	11/07/2015	Outside of remit	1
Celebrity MasterChef	BBC 1	26/06/2015	Sexual orientation discrimination/offence	1
Celebrity MasterChef	BBC 1	02/07/2015	Generally accepted standards	1
EastEnders	BBC 1	19/06/2015	Religious/Beliefs discrimination/offence	1
EastEnders	BBC 1	22/06/2015	Materially misleading	1
EastEnders	BBC 1	23/06/2015	Materially misleading	1
EastEnders	BBC 1	29/06/2015	Generally accepted standards	1
EastEnders	BBC 1	29/06/2015	Race discrimination/offence	2
Look East	BBC 1	07/07/2015	Generally accepted standards	1
Programme trailers	BBC 1	13/07/2015	Advertising scheduling	1
Tennis	BBC 1	04/07/2015	Sexual orientation discrimination/offence	2
Tennis	BBC 1	11/07/2015	Outside of remit	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Interceptor	BBC 1	08/07/2015	Violence and dangerous behaviour	1
The Outcast	BBC 1	12/07/2015	Religious/Beliefs discrimination/offence	1
The Syndicate	BBC 1	16/06/2015	Generally accepted standards	1
Midlands Today	BBC 1 (Midlands)	28/06/2015	Generally accepted standards	1
Midlands Today	BBC 1 (West Midlands)	13/07/2015	Generally accepted standards	1
Glastonbury 2015	BBC 2	27/06/2015	Race discrimination/offence	1
Live	BBC 2	06/07/2015	Outside of remit	1
Newsnight	BBC 2	09/07/2015	Generally accepted standards	1
Newsnight	BBC 2	09/07/2015	Offensive language	2
Newsnight	BBC 2	10/07/2015	Generally accepted standards	1
Top Gear	BBC 2	22/02/2015	Violence and dangerous behaviour	1
Victoria Derbyshire	BBC 2	06/07/2015	Outside of remit	1
Watchdog	BBC 2	07/07/2015	Offensive language	1
Wimbledon 2day	BBC 2	03/07/2015	Outside of remit	1
Wimbledon 2day	BBC 2	07/07/2015	Outside of remit	1
Don't Tell the Bride	BBC 3	05/07/2015	Scheduling	1
Family Guy	BBC 3	08/07/2015	Animal welfare	1
Nihal	BBC Asian Network	29/06/2015	Religious/Beliefs discrimination/offence	2
BBC News	BBC News Channel	01/07/2015	Generally accepted standards	1
BBC News	BBC News Channel	08/07/2015	Outside of remit	1
National Anthem	BBC Radio 4	Various	Generally accepted standards	1
Today	BBC Radio 4	09/07/2015	Offensive language	1
Melvin in the Morning	BBC Radio Lincolnshire	01/07/2015	Sexual orientation discrimination/offence	1
Iain Lee	BBC Three Counties Radio	03/07/2015	Race discrimination/offence	1
'Benefits' themed programming	Various	Various	Generally accepted standards	1
Crossroads	Big Centre TV	13/07/2015	Outside of remit	1
Newsround	CBBC	07/07/2015	Scheduling	1
Takeshi's Castle	Challenge	17/06/2015	Scheduling	1
8 Out of 10 Cats Does Countdown	Channel 4	07/07/2015	Transgender discrimination/offence	1
8 Out of 10 Cats Does Countdown	Channel 4	12/07/2015	Generally accepted standards	1
Career Criminals	Channel 4	02/07/2015	Generally accepted standards	1
Channel 4 News	Channel 4	26/06/2015	Crime	1
Channel 4 News	Channel 4	28/06/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Channel 4 News	Channel 4	29/06/2015	Religious/Beliefs discrimination/offence	2
Channel 4 News	Channel 4	30/06/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	15/07/2015	Violence and dangerous behaviour	4
Channel 4 News Summary	Channel 4	15/07/2015	Generally accepted standards	1
How to Get a Council House	Channel 4	13/07/2015	Disability discrimination/offence	6
Inside the Ku Klux Klan	Channel 4	13/07/2015	Generally accepted standards	1
Inside the Ku Klux Klan	Channel 4	13/07/2015	Race discrimination/offence	1
Inside the Ku Klux Klan (trailer)	Channel 4	09/07/2015	Race discrimination/offence	1
Married at First Sight	Channel 4	09/07/2015	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	14/07/2015	Offensive language	1
The Last Leg	Channel 4	26/06/2015	Generally accepted standards	3
The Last Leg	Channel 4	03/07/2015	Religious/Beliefs discrimination/offence	1
The Tribe	Channel 4	13/07/2015	Under 18s in programmes	1
90 Cats and Counting: Cat Craziest	Channel 5	01/07/2015	Offensive language	1
Autopsy: the Last Hours of Marilyn Munroe	Channel 5	13/05/2015	Nudity	1
Benefits Britain: Life on the Dole	Channel 5	08/07/2015	Animal welfare	1
Benefits by the Sea: Jaywick	Channel 5	07/07/2015	Animal welfare	28
Big Brother	Channel 5	24/06/2015	Generally accepted standards	2
Big Brother	Channel 5	27/06/2015	Violence and dangerous behaviour	3
Big Brother	Channel 5	05/07/2015	Generally accepted standards	3
Big Brother	Channel 5	07/07/2015	Disability discrimination/offence	2
Big Brother	Channel 5	07/07/2015	Generally accepted standards	2
Big Brother	Channel 5	07/07/2015	Outside of remit	1
Big Brother	Channel 5	07/07/2015	Violence and dangerous behaviour	1
Big Brother	Channel 5	09/07/2015	Generally accepted standards	1
Big Brother	Channel 5	13/07/2015	Generally accepted standards	6
Big Brother: Live Eviction	Channel 5	03/07/2015	Voting	13

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Big Brother: Live Eviction	Channel 5	04/07/2015	Generally accepted standards	1
Big Brother: The Live Final	Channel 5	16/07/2015	Outside of remit	1
Big Brother's Bigger Bit on the Side	Channel 5	09/07/2015	Disability discrimination/offence	1
Big Brother's Bit on the Side	Channel 5	03/07/2015	Race discrimination/offence	5
Big Brother's Bit on the Side	Channel 5	07/07/2015	Disability discrimination/offence	1
Can't Pay? We'll Take it Away!	Channel 5	11/07/2015	Materially misleading	1
Cats Make You Laugh Out Loud 2	Channel 5	13/05/2015	Offensive language	1
Celebs on Benefits: Fame to Claim	Channel 5	25/06/2015	Offensive language	1
Gypsies on Benefits and Proud	Channel 5	11/04/2014	Race discrimination/offence	1
Noddy in Toyland	Channel 5	15/07/2015	Outside of remit	1
Psycho Pussies: When Cats Attack	Channel 5	24/06/2015	Animal welfare	1
Spies Like Us	Channel 5	28/06/2015	Offensive language	1
The Wright Stuff	Channel 5	03/07/2015	Due accuracy	1
The Wright Stuff	Channel 5	07/07/2015	Materially misleading	1
The Wright Stuff	Channel 5	08/07/2015	Due impartiality/bias	1
The Wright Stuff	Channel 5	10/07/2015	Due impartiality/bias	1
Fort Boyard Ultimate Challenge	CITV	21/06/2015	Animal welfare	1
Broad City (trailer)	Comedy Central	25/06/2015	Scheduling	1
South Park (trailer)	Comedy Central	20/06/2015	Scheduling	1
Summer of Stand Up (trailer)	Comedy Central	06/07/2015	Generally accepted standards	1
Storage Hunters UK	Dave	23/06/2015	Race discrimination/offence	1
Cars and Vitaminamulch (trailer)	Disney Junior	07/07/2015	Materially misleading	1
Programming	DM News Plus	18/06/2015	Charity appeals	1
Crocodile Shoes	Drama	19/06/2015	Advertising minutage	1
News	Dunya TV	15/06/2015	Due accuracy	1
Gogglebox	E4	04/07/2015	Race discrimination/offence	1
News	Geo Tez / Geo News/ Dunya TV	15/06/2015	Due accuracy	1
Hadayat	Hadayat	18/06/2015	Charity appeals	1
Heart Breakfast with Ed, Troy & Paulina	Heart FM Bristol	10/07/2015	Generally accepted standards	1
IQRA Channel	IQRA Channel	18/06/2015	Charity appeals	1
Anadin's sponsorship of The Chase	ITV	15/06/2015	Sponsorship credits	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Britain's Got Talent	ITV	28/05/2015	Flashing images/risk to viewers who have PSE	1
Coronation Street	ITV	10/07/2015	Outside of remit	1
Coronation Street	ITV	13/07/2015	Outside of remit	1
Coronation Street	ITV	Various	Materially misleading	1
Emmerdale	ITV	25/06/2015	Violence and dangerous behaviour	3
Emmerdale	ITV	07/07/2015	Generally accepted standards	1
Emmerdale	ITV	08/07/2015	Scheduling	7
Good Morning Britain	ITV	30/06/2015	Competitions	1
Good Morning Britain	ITV	01/07/2015	Generally accepted standards	1
Harry Potter and the Deathly Hallows: Part 1	ITV	11/07/2015	Outside of remit	1
Harry Potter and the Goblet of Fire	ITV	20/06/2015	Scheduling	1
It's a Funny Old Week	ITV	06/07/2015	Generally accepted standards	1
ITV News and Weather	ITV	30/06/2015	Generally accepted standards	1
ITV News and Weather	ITV	08/07/2015	Outside of remit	1
ITV News at Ten and Weather	ITV	15/07/2015	Generally accepted standards	1
Jeremy Kyle's Emergency Room	ITV	24/06/2015	Generally accepted standards	1
Jeremy Kyle's Emergency Room	ITV	24/06/2015	Nudity	1
Jeremy Kyle's Emergency Room	ITV	25/06/2015	Generally accepted standards	1
Jeremy Kyle's Emergency Room	ITV	25/06/2015	Scheduling	1
Lexus' sponsorship of crime drama	ITV	Various	Generally accepted standards	1
Loose Women	ITV	29/06/2015	Generally accepted standards	2
Loose Women	ITV	03/07/2015	Generally accepted standards	3
Loose Women	ITV	09/07/2015	Gender discrimination/offence	1
Loose Women	ITV	09/07/2015	Generally accepted standards	3
Love Your Garden	ITV	07/07/2015	Harm	1
Rookies	ITV	13/07/2015	Fairness	1
Rookies	ITV	13/07/2015	Race discrimination/offence	1
Secret Dealers	ITV	08/07/2015	Outside of remit	1
The 7/7 Bombing: Survivors' Stories	ITV	30/06/2015	Generally accepted standards	1
The Jeremy Kyle Show	ITV	12/07/2015	Gender discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Jeremy Kyle Show	ITV	16/07/2015	Offensive language	1
This Morning	ITV	01/07/2015	Scheduling	1
This Morning	ITV	10/07/2015	Generally accepted standards	2
Tipping Point	ITV	22/06/2015	Competitions	1
Tipping Point	ITV	08/07/2015	Outside of remit	1
Vicious	ITV	06/07/2015	Disability discrimination/offence	2
ITV News Granada Reports	ITV Granada	29/06/2015	Generally accepted standards	1
ITV News London	ITV London	09/07/2015	Due impartiality/bias	1
Love Island	ITV2	29/06/2015	Generally accepted standards	2
Love Island	ITV2	30/06/2015	Sexual material	1
Love Island	ITV2	30/06/2015	Voting	1
Love Island	ITV2	02/07/2015	Sexual material	1
You've Been Framed!	ITV2	07/07/2015	Generally accepted standards	1
Til Death Us Do Part	ITV3	03/04/2015	Race discrimination/offence	1
Tour de France Live	ITV4	15/07/2015	Outside of remit	1
The Only Way is Essex	ITVBe	21/06/2015	Generally accepted standards	10
The Only Way is Essex	ITVBe	24/06/2015	Gender discrimination/offence	2
The Only Way is Essex	ITVBe	05/07/2015	Generally accepted standards	1
The Only Way is Marbs	ITVBe	17/06/2015	Generally accepted standards	1
Breaking News	Kanal 5	15/06/2015	Due impartiality/bias	1
Sean Goldsmith	Key2 Manchester	16/06/2015	Due impartiality/bias	1
Steve Allen	LBC 97.3 FM	08/07/2015	Disability discrimination/offence	1
Steve Allen	LBC 97.3 FM	08/07/2015	Race discrimination/offence	2
James O'Brien	LBC 97.3FM	24/06/2015	Materially misleading	1
Nick Ferrari	LBC 97.3FM	24/06/2015	Race discrimination/offence	1
MATV	MATV National	13/04/2015	Materially misleading	1
Embarrassing Bodies: Penis Special	More4	26/06/2015	Materially misleading	1
Four in a Bed	More4	04/07/2015	Outside of remit	1
The World's Most Extreme Roads	More4	05/07/2015	Animal welfare	1
Programming	Noor TV	18/06/2015	Charity appeals	1
Programme trailers	Now TV	N/A	Outside of remit	1
Programming	NTV	18/06/2015	Charity appeals	1
Programming	Radio Biafra	13/07/2015	Outside of remit	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Radio Essex Drive Time	Radio Essex	29/04/2015	Materially misleading	1
The Ambulance: 8 Minutes to Disaster	Really	28/06/2015	Generally accepted standards	2
Interview with Ty Bolinger	Revelation TV	08/07/2015	Harm	1
Dr Sayed Ammar Nakshawani: An Introduction to the Life of Imam Ali	Safeer TV	18/06/2015	Religious/Beliefs discrimination/offence	1
Nadeem Malik Live	Samaa	15/06/2015	Due accuracy	1
Game of Thrones	Sky Atlantic	08/06/2015	Generally accepted standards	1
The Tunnel	Sky Atlantic	14/07/2015	Generally accepted standards	1
True Detective	Sky Atlantic	22/06/2015	Violence and dangerous behaviour	1
True Detective	Sky Atlantic	29/06/2015	Sexual material	1
Imperial Leather's sponsorship of Drama on Sky Living	Sky Living	14/07/2015	Sponsorship credits	1
Sky News	Sky News	16/06/2015	Generally accepted standards	1
Sky News	Sky News	01/07/2015	Generally accepted standards	1
Sky News	Sky News	11/07/2015	Due accuracy	1
Sky News	Sky News	12/07/2015	Generally accepted standards	1
Sky News at Nine	Sky News	28/06/2015	Crime	1
Sky News at Nine	Sky News	30/06/2015	Due accuracy	1
Sky News at Seven with Steve Dixon	Sky News	28/06/2015	Generally accepted standards	1
Sky News with Colin Brazier	Sky News	16/07/2015	Generally accepted standards	1
Sky News with Dermot Murnaghan	Sky News	29/06/2015	Scheduling	1
Sunrise	Sky News	24/06/2015	Due impartiality/bias	1
The Budget (trailer)	Sky News	04/07/2015	Generally accepted standards	1
Sky News	Sky News Website	N/A	Outside of remit	1
Pinkhams F1	Sky Sports F1	06/06/2015	Generally accepted standards	1
Programming	Star Plus	03/07/2015	Advertising scheduling	1
Win Cash Live	STV	02/07/2015	Gambling	1
Drivetime	Talksport	14/07/2015	Disability discrimination/offence	2
Taqbir Channel	Taqbir Channel	18/06/2015	Charity appeals	1
2015's Hot Vids for Summer	The Box	04/07/2015	Violence and dangerous behaviour	1
2015's Hot Vids for Summer	The Box	07/07/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
2015's Hot Vids for Summer	The Box	07/07/2015	Violence and dangerous behaviour	1
2015's Hot Vids for Summer	The Box	11/07/2015	Generally accepted standards	1
Cake Boss	TLC	05/07/2015	Race discrimination/offence	1
Assalam TV	TV99	13/06/2015	Charity appeals	1
Assalam TV	TV99	14/06/2015	Charity appeals	1
Ummah Channel	Ummah Channel	18/06/2015	Charity appeals	1
Programming	Various	N/A	Charity appeals	1
Programming	Various	12/07/2015	Generally accepted standards	1
Programming	Various	N/A	Gender discrimination/offence	1
Venus	Venus	18/06/2015	Charity appeals	1
KPMG Women's PGA Championship	Viasat Golf	07/06/2015	Outside of remit	1
Blackhat (trailer)	Virgin on Demand EPG	N/A	Scheduling	1
XFM Breakfast	XFM	22/06/2015	Drugs, smoking, solvents or alcohol	1

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

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

Licensed service	Licensee	Categories	Number of complaints
Citybeat	Belfast City Beat Limited	Format	1
Blast 106 Belfast	Blast 106 Limited	Key Commitments	1
Castledown Radio	Castledown Radio Limited	Key Commitments	1
Silk FM	Silk FM Limited	Public File	1
Cross Rhythms Teesside	Tees Valley Christian Media	Key Commitments	1
Voice of Africa Radio	Voice of Africa Radio	Key Commitments	1

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom between 4 and 17 July 2015 that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television and radio adverts, or accuracy in BBC programmes.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

Complaints about television or radio programmes

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
Advertisements	Challenge	08/07/2015	Advertising content	1
Advertisements	Channel 4	07/07/2015	Advertising content	1
Advertisements	Channel 4	12/07/2015	Advertising content	1
Advertisements	Channel 5	06/07/2015	Advertising content	1
Advertisements	Dave	06/07/2015	Advertising content	1
Advertisements	Discovery	09/07/2015	Advertising content	1
Advertisements	Disney XD	07/07/2015	Advertising content	1
Advertisements	ITV	07/07/2015	Advertising content	1
Advertisements	ITV	13/07/2015	Advertising content	1
Advertisements	ITV	14/07/2015	Advertising content	1
Advertisements	ITV	16/07/2015	Advertising content	1
Advertisements	ITVBe	12/07/2015	Advertising content	1
Advertisements	More4+1	15/07/2015	Advertising content	1
Advertisements	National Geographic	07/07/2015	Advertising content	1
Advertisements	Sky Living	09/07/2015	Advertising content	1
Advertisements	Sky News	14/07/2015	Advertising content	1
Advertisements	SyFy	04/07/2015	Advertising content	1
Advertisements	The Voice (North Devon)	12/07/2015	Advertising content	1
Advertisements	True Entertainment	15/07/2015	Advertising content	1
F1: Grand Prix	BBC 1	05/07/2015	Promotion of products/services	1
NHS: The Perfect Storm	BBC 1	13/07/2015	Due impartiality/bias	1
South East Today	BBC 1 South East	N/A	Due impartiality/bias	1
Budget 2015	BBC 2	08/07/2015	Due impartiality/bias	1
Children of the Gaza War	BBC 2	08/07/2015	Due impartiality/bias	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Glastonbury 2015	BBC 2	28/06/2015	Product placement	1
Napoleon	BBC 2	17/06/2015	Materially misleading	1
Sunday Morning Live	BBC 1	05/07/2015	Premium rate services	1

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 4 and 17 July 2015.

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

Programme	Broadcaster	Transmission date
Furious and Funny: Caught on Camera	Channel 5	29 June 2015
News	CHS.TV	27 April 2015
Nick Ferrari	LBC 97.3 FM	16 June 2015
Twisted Wheels Show	North Manchester FM 106.6	10 June 2015
Jesse Duplantis Ministries	TBN UK	21 June 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 Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
Kaumi Masle	Sangat TV	7 February 2015

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

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

Licensee	Licensed Service
Bradley Stoke Radio Limited	Bradley Stoke Radio

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/>.