

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Contents

Introduction	3
<b>Broadcast Standards cases</b>	
<b>In Breach</b>	
Chorabali <i>Bangla TV, 31 May 2017, 11:30</i>	6
Doktorlar Konusuyor <i>TGRT EU, 20 February 2017, 12:30</i> Sef Abdullah Usta Ile Anadolu Mutfagi <i>TGRT EU, 20 February 2017, 14:00</i>	9
Beverly Hills Cop 3 <i>Universal Channel, 30 July 2017, 20:00</i>	14
AAA Wrestling <i>Front Runner TV, 5 July 2017, 19:00</i>	15
<b>Resolved</b>	
Broadcast competition <i>Radio Plymouth, 20 July 2017, 08:10</i>	18
<b>Not in Breach</b>	
The Lobby <i>Al Jazeera English, 11 to 14 Jan 17, 22:30</i>	20
<b>Broadcast Fairness and Privacy cases</b>	
<b>Not Upheld</b>	
Complaint by Ms Ella Rose <i>The Lobby, Al Jazeera English, 12 January 2017</i>	29
Complaint by Kingsley Napley LLP on behalf of Mr Russell Langer <i>The Lobby, Al Jazeera English, 12 January 2017</i>	51
Complaint by Kingsley Napley LLP on behalf of Mr Luke Akehurst <i>The Lobby, Al Jazeera English, 12 January 2017</i>	66
<b>Tables of cases</b>	
Investigations Not in Breach	81
Complaints assessed, not investigated	82
Complaints outside of remit	90

BBC First 91

Investigations List 93

## Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives<sup>1</sup>. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act<sup>2</sup>.

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

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
  - the prohibition on 'political' advertising;
  - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
  - gambling, dating and 'message board' material where these are broadcast as advertising<sup>3</sup>.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

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

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

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

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

description relevant 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 television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.**

## Broadcast Standards cases

### In Breach

#### Chorabali

***Bangla TV, 31 May 2017, 11:30***

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#### Introduction

Bangla TV is a news and general entertainment channel serving a Bangladeshi audience. The licence is held by Bangla TV (UK) Limited ("Bangla TV" or "the Licensee").

Ofcom was alerted to violent content in *Chorabali*, a 2012 Bangladeshi action thriller film. The film was in Bengali and was broadcast with English subtitles. The film included depictions of the following:

- a man tied to a ceiling by his hands being hit with a stick. The scene included shots of blood dripping from the man's face and feet;
- a man picking up a knife from a plate of food and using it to slice a man's throat, causing blood to spill from his neck;
- a pregnant woman being shot in the back of the head. The scene included shots of an exit wound in her forehead and her body on the floor with a pool of blood around her head;
- a heavily pregnant woman tied to a tree and being beaten to death with a stick;
- a child stabbing a man in the shoulder with a sharp metal bar. The scene included shots of the bar protruding from the man's bleeding shoulder as he cried out in pain, and shots of the child's face covered in blood;
- a child stabbing a man with a large blade, with shots of blood on the man's shirt and on the end of the blade; and
- four instances of men being shot in the chest, with blood seen coming from their wounds.

Ofcom considered that the above content being shown before the watershed raised issues under the following code rule:

Rule 1.11 "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 requested comments from the Licensee as to how the content complied with this rule.

## Response

The Licensee said that the broadcast had been a “gross mistake” and sincerely apologised.

It said that although it edits feature films shown on the channel to comply with the Code, in this case human error resulted in the unedited version of the film being broadcast. Bangla TV said it has since taken steps to ensure that this does not happen again.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring under-18s are protected from material which may cause them harm on the one hand and the right to freedom of expression on the other.

Rule 1.11 states that violence must be appropriately limited in programmes broadcast before the watershed and must also be justified by the context.

We first assessed whether the level and nature of the violence described in the Introduction was appropriately limited. We took account of Ofcom's 2014 research on Audience Attitudes towards Violent Content on Television<sup>2</sup> (“the Violence Research”), which indicated that viewers took various factors into account when evaluating the acceptability of violence on television. Ofcom identified several characteristics of the depictions of violence in the film which the research found could increase the impact of onscreen violence upon viewers.

The Violence Research concluded that the impact of violence increases with the level of detail shown. As described above many of the violent scenes in the film contained a relatively high level of detail of the wounds sustained. These included: a shot of a metal bar protruding from a man's shoulder and the man crying out in pain; a bullet exit wound in a pregnant woman's forehead; and a depiction of blood spilling from a man's neck after his throat was slashed. We also took account of the overall amount of blood shown during the film's numerous other violent scenes.

We acknowledged that many of the scenes of violence were unrealistic and highly stylised, with dramatic music and slow motion effects. However, given the above, and the cumulative impact on viewers of the multiple scenes of violence, we concluded that the violence was not appropriately limited.

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

The Violence Research also drew conclusions on how audience reactions to violent scenes depend on the context in which they are shown. The research found that the power dynamic between the victim and the perpetrator of the onscreen violence can affect how viewers are impacted by it. Audiences were found to be less accepting of pre-watershed violence against

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

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/54933/violence\\_on\\_tv\\_report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/54933/violence_on_tv_report.pdf)

more vulnerable individuals. *Chorabali* included two scenes of violence carried out by men against pregnant women, who Ofcom considered would be perceived as more vulnerable individuals. In both scenes, the violent acts carried out against the pregnant women resulted in their deaths. Therefore, we considered this element of the film's violence was likely to be considered less acceptable by viewers.

We recognised that the film was broadcast on a weekday morning during term time. Therefore, it was likely that most children would be at school and unavailable to view this content. However, we considered the level of bloody violence shown in the film would have far exceeded the expectations of the audience for a film shown at this time and would have been highly distressing for any children, particularly younger children, who may have come across the content.

In light of the above, we considered the violence was not justified by the context.

We took into account the Licensee's apology and that it had taken steps to prevent similar occurrences. However, our Decision is that this was a clear breach of Rule 1.11.

### **Breach of Rule 1.11**



## In Breach

### ***Doktorlar Konusuyor***

**TGRT EU, 20 February 2017, 12:30**

### ***Sef Abdullah Usta ile Anadolu Mutfagi***

**TGRT EU, 20 February 2017, 14:00**

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#### **Introduction**

TGRT EU is a licensed internet television service that broadcasts general entertainment programmes in Turkish and English. The licence for TGRT EU is held by IHA Media Limited ("the Licensee").

During routine monitoring, Ofcom assessed two programmes, broadcast in Turkish. Ofcom commissioned an independent English translations of the material and gave the Licensee the opportunity to comment on the accuracy of the translations. The Licensee did not raise any issues and we therefore used the translations for the purposes of this investigation.

#### *Doktorlar Konusuyor (Doctors Speak)*

This health advice programme featured a presenter and guests from various medical professions discussing health-related problems and answering questions from viewers. One guest was a dermatologist, Doctor Metin Orguz (a doctor employed at Turkiye Hastanesi (Turkish Hospital) in Istanbul), who discussed health problems related to excessive sweating. Three minutes into the programme the following caption was displayed for 17 minutes:

*"FOR QUESTIONS OR INFORMATION  
[telephone number]  
Turkiye Hastanesi".*

In addition, the following references were made to the services offered by Turkiye Hastanesi:

*"As I said, we have a wonderful team, our materials are great, we have patience. We have technicians and doctors who survive operations that last 10 to 12 hours, on only one or two coffee breaks. There have been times when we have worked until midnight, two in the morning. We do these procedures without flinching. And the price is very low. You can't compare it with Europe. It's cheaper in comparison to other surgeries done in Turkey. 10 hours of hair transplant surgery doesn't cost nearly as much as a half-hour appendectomy. If the workmanship is good and the materials are good, the result will be very good".*

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*"We do treatments to thicken the fine hairs, stop hair loss. Because the hair transplants do not affect the life of the remaining hair. Hair loss continues, depending on one's genetics. We use medications to prevent this from happening".*

\*\*\*\*

*"There is a limited amount of hair that can be taken from the back of the head. We only do two sessions, there is no need for a third. There is no need and there would be no hair left. Because our surgeries are big surgeries, very intense. If you obtain 4,500 – 5,000 grafts from there, there is nothing left anyway. Sometimes we wait for a year to let the hair at the back to get thicker or maybe on the top area. The third isn't an option, you would leave the patient with no hair there at all. You could limit yourself to taking 500-1,000 grafts, and then do more sessions, but we do ours in one session".*

Sef Abdullah Usta Ile Anadolu Mutfagi

This cooking programme included several statements encouraging viewers to either purchase a Bimeks grill and/or a Mini Dose Salad Sauce set, as used in the programme, or enter a competition to win them:

*"Our foods are prepared with Bimeks. Bimeks brings simplicity and comfort to your home. You will enjoy cooking meals, grilling, baking and frying with Bimeks. This is a product that looks great and is easy to use in your home. Your home will be odour-free, smoke-free, and soot-free, so you can grill and prepare foods like lahmacun, pancakes, toasted sandwiches, whatever your heart desires. You will thoroughly enjoy using these products to make beautiful meals. Bimeks is practical, easy to use, and it cooks food quickly. You will be able to use it in your home with ease, because Bimeks can do the jobs of five different kitchen appliances. You won't need a separate cooktop, grill, oven, frying pan, or cooking pot. You can use all of these functions and achieve beautiful results with this handsome looking product..."*

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*"It [the Mini Dose Salad Sauce set] is a very useful product that you can use for special meals, or to take on a picnic or trip, and you will use it very often...Now, when you go on a picnic, there will no longer be a need to take along separate containers for vinegar or lemon juice, pomegranate syrup, or salt. This set has all of those things; it's reasonably priced and not expensive...Why should you buy one, my friends?... What is in here, dear viewers? We have our vinegar, like this... Which camera shall I look at? Yes, there is vinegar, as you can see, dear viewers. We have lemon juice, pomegranate syrup, all things we love a lot as you can see. Then we have our olive oil, dear viewers, and that is our Mini Dose set. And there is also salt in this. As you can see, it comes in packages of five, very attractive and convenient. Salt, vinegar, lemon juice, yes, that's right, dear viewers, pomegranate syrup, and olive oil after that, dear viewers. As you can see right now, this is an attractive set...You can also find these products at all large markets, the butcher shop or the deli departments. This set is attractive enough to be used for special meals or dinner functions".*

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*"If there are any viewers in Europe who want to enter the draw for the Bimeks grill, and are wondering which number to call to enter, let me give you the number right now, our number in Germany. You can reach us at the following number to enter your name for the Bimeks: [telephone number]. You can reach us at this number. If you want to buy a Bimeks, leave your first and last names and your address with them, dear viewers. It will be sent by cargo. You can pay for it right at the door when it is delivered right to your door. This is our telephone number, which can be reached from anywhere in Europe.*

*Should you wish to buy a Bimeks from Turkey, they are available at all Schafer department stores. Dear viewers, generally, in Turkey, you can find our Bimeks grills and our lahmacun machines at Schafer department stores”.*

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*“Our Mini Dose salad sauce set is very practical and easy to use. It won't tire you out. It's a product you can use for picnic outings, celebrations, entertaining, and special meals...This set, which is on your screen now, will look elegant and sophisticated on your table. You can use your Mini Dose salad sauce set with confidence. What does it contain? Real olive oil, pomegranate syrup, lemon juice, vinegar, and salt. It looks like this. It's not very expensive at all. Let us give you the internet address where you can find this product. Our telephone and internet address. You can order from this number and begin using it right away. You can also find it in the butchers' section in large markets and it is available wherever the delicatessen items are sold or can be ordered at [website address]. By calling these two numbers, [telephone number] and [telephone number] you can order this product dear viewers”.*

We requested information from the Licensee about any commercial arrangements associated with the references in the programmes to Turkiye Hastanesi, Bimeks grill and Mini Dose Salad Sauce set. Based on the information provided, we considered the programmes raised issues under the following Code rules:

- Rule 9.4: “Products, services and trade marks must not be promoted in programming”.
- Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
  - the manner in which a product, service or trade mark appears or is referred to in programming”.

Ofcom requested comments from the Licensee on how the programme complied with these rules.

## **Response**

### Doktorlar Konusuyor

The Licensee explained that the purpose of the programme was to provide health information to viewers. The Licensee said that it did not request or receive any payment for the programme or for displaying the contact number for Turkiye Hastanesi during the programme.

Sef Abdullah Usta Mutfaqi

The Licensee explained that as TGRT EU was relatively a new channel, it attempted to increase the programme's ratings and viewers by providing free gifts. It confirmed that it did not receive or request payment for the commercial references made in the programme.

**Decision**

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Nine of the Code limits the extent to which commercial references can feature within television programming. Section Nine does not proscribe all references to products and services in programmes. However, it does require such references to be justified by the editorial requirements of a programme and not to be promotional or unduly prominent.

Rule 9.4 requires that products, services and trade marks must not be promoted in programming. Ofcom's published guidance on Rule 9.4 states: "Where a reference to a product or service features in a programme...the extent to which [it] will be considered promotional will be judged by the context in which it appears". Further Rule 9.5, which requires that no undue prominence is given in programming to a product, service or trade mark, makes clear that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner to which the product etc. is referred.

Doktorlar Konusuyor (Doctors Speak)

In this case the telephone number for Turkiye Hastanesi was shown for approximately 17 minutes. Viewers were also encouraged to call the number "*for any questions or information*". These contact details were not specific to the programme or channel but were methods of contacting Turkiye Hastanesi directly.

Further, the guest made several references to the benefits offered to those viewers who decided to have hair transplants at Turkiye Hastanesi, such as the low price for such treatments, the team of dedicated professionals and their expert proficiency in conducting hair transplants and aftercare.

Ofcom considered that the explicit invitations to viewers to contact the Turkiye Hastanesi directly to enquire about the services offered and the references to price and expertise directly promoted the services available at the hospital.

Our Decision is that the promotion of the Turkiye Hastanesi and the services it offered was in breach of Rule 9.4 of the Code.

We took into account the that the programme offered advice to viewers on the treatments available for those suffering from excessive sweating and that Doctor Metin Orguz is a dermatologist who specialises in the treatment of this condition. However, Ofcom did not accept that the subject matter of the programme provided sufficient editorial justification for the numerous and extended references to the services offered by Turkiye Hastanesi, which served an advertising rather than editorial purpose. Our Decision is that the programme gave undue prominence to Turkiye Hastanesi, and was therefore in breach of Rule 9.5 of the Code.

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

*Sef Abdullah Usta Ile Anadolu Mutfaqi*

In this case, viewers were encouraged to contact the programme either to enter a prize draw to win the products used in the programme or to purchase the specific products directly. As detailed above, information was provided to viewers including contact details to order the product, method of delivery, and additional locations where the grill and salad sauce set could be purchased. Further the programme included several references to the benefits and versatility of the products.

We took into account the Licensee's comments that its intention was to increase the number of viewers by offering the products as part of a prize draw. However, in our view, the programme went beyond offering the products as prizes for viewers who interacted with the programme. Instead the programme explicitly promoted the products and their benefits and repeatedly invited viewers to place orders. Ofcom's Decision is that the promotion of the products in the programme was in breach of Rule 9.4. Further, we considered that the emphasis and repeated focus on the benefits of the products and their availability were not editorially justified and therefore our Decision is that the programme was in breach of Rule 9.5.

**Breaches of Rules 9.4 and 9.5**

## In Breach

### Beverly Hills Cop 3

*Universal Channel, 30 July 2017, 20:00*

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#### Introduction

Universal Channel is an entertainment channel that broadcasts on satellite and cable platforms. The licence is held by NBCUniversal International Networks ("NBCUniversal" or "the Licensee").

Ofcom received two complaints about strong language broadcast pre-watershed during the film *Beverly Hills Cop 3*. The word "fucking" was broadcast at 20:40.

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

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

We asked the Licensee for its comments about how this material complied with this rule.

#### Response

The Licensee said this issue was caused by a technical error by a new editor. It said it regretted this error and that the film had now been edited correctly for future broadcasts.

#### Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

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

Ofcom's 2016 research<sup>2</sup> on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language.

Our decision is therefore that this broadcast of the most offensive language at 20:40 was a clear breach of Rule 1.14.

#### Breach of Rule 1.14

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

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

## In Breach

### AAA Wrestling

***Front Runner TV, 5 July 2017, 19:00***

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#### Introduction

Front Runner TV is a satellite television channel broadcasting sports content in the UK. The Licence for Front Runner TV is held by Information TV Limited ("Information TV" or "the Licensee").

Ofcom received a complaint about scenes of violence in a wrestling match from the *Lucha Libre AAA Worldwide*, Mexico's biggest wrestling competition, which was broadcast pre-watershed.

The wrestling match was between two masked wrestlers, "Pagano" and "Psychoclow". It contained several instances of violence and blood and the use of weaponry were shown over approximately an hour (including advertising breaks). For example:

- Pagano tying barbed wire round part of Psychoclow's face that had been exposed by the latter's mask being ripped;
- a sequence where Pagano repeatedly hit Psychoclow's bloodied face with a folded metal chair;
- Pagano wrapping barbed wire tightly around Psychoclow's bare arm as the latter sat on the floor to recover from a previous blow. This was followed by Pagano using a folded metal chair to hit Psychoclow's barb-wired arm twice with full force. Close up footage of Psychoclow's arm covered in blood was shown for approximately four seconds;
- Psychoclow using the barbed wire tied around his arm as a weapon to hit Pagano repeatedly in the face;
- Psychoclow holding a fork and planting it into Pagano's arm and then Pagano's forehead. This was followed by a close-up footage of Pagano's head covered in blood;
- Psychoclow wrapping the barbed wire over his chest and arm as he stood in one of the corners of the ring, and then jumped on to Pagano, who was lying on the ground;
- Both wrestlers landing with their back first on a wooden table covered in drawing pins;
- Pagano lighting a wooden table on fire as Psychoclow ran towards him and pushed him in to the flames. This was followed by close up shots of Pagano rolling in the flames;
- Close up shots lasting approximately 12 seconds showed Pagano's face covered in cuts and blood, as Psychoclow was cutting his bloodied hair with scissors; and,
- throughout the programme, brief images of both opponents' faces and arms covered in cuts and blood.

We considered this content raised potential issues 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 in the case of television...and must also be justified by the context”.

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

### Response

Information TV acknowledged that the content did not comply with Rule 1.11 of the Code. It said that “[b]roadcasting the programme and this content before the watershed was a mistake on our behalf, one that is unusual in our day-to-day undertakings as a responsible licensee and broadcaster”. It added that it apologised “unreservedly for this error”.

The Licensee explained that it had “recently employed two new schedulers in the team and they should have referred this programme” up to senior compliance staff. However, it said that the content broadcast “slipped through our normal compliance processes”. Information TV added that the incident also happened “during absence of other staff on vacation, so the new staff had fewer colleagues with whom to discuss any potential issues”.

The Licensee added that the programme was “a trial broadcast” from a production company that was new to working with Information TV, adding that it had “no intention of broadcasting this form of wrestling in the future”. The Licensee also said that it “added extra compliance training sessions to our normal sessions and will be paying particular attention to Section One of the Code and the protection of children”. It added that it also “stressed with the team the importance in keeping up with the regular Ofcom bulletins”.

### Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

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

Rule 1.11 states that violence must be appropriately limited in programmes broadcast before the watershed and must also be justified by the context.

Ofcom’s 2014 research on Audience Attitudes towards Violent Content on Television<sup>2</sup> indicated that viewers take various factors into account when evaluating the acceptability of violence on television, including the time of the broadcast, how the violence was shown and its duration. In summary, before the watershed audiences are less willing to accept graphic and visible physical harm or infliction of pain.

We first assessed whether the level and nature of the violence was appropriately limited.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/contents>

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/54933/violence\\_on\\_tv\\_report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/54933/violence_on_tv_report.pdf)



This wrestling match included kicks and punches to the head and the fighters being hit hard several times on their heads and bodies with a metal chair. It also included the fighters using barbed wire, a fork and drawing pins as weapons against their opponents, leading to them being covered in cuts, with blood on their faces and arms. It also included one of the wrestlers rolling in flames. We considered that the scenes of violence were clearly not appropriately limited.

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

The Code makes clear that contextual factors include: the editorial content of the programme; the time of broadcast; the service; the likely size and composition of the audience; and, the likely expectations of the audience. The content was shown on Front Runner TV, a channel which describes itself as a free to air sports channel, broadcasting live sports, highlights and sports documentaries. We acknowledged that the audience for this channel were likely to have expected some form of combat sport being featured. However, this content was broadcast at 19:00, with no prior warning to viewers about the violence of some of the fighting scenes, including the use of weaponry and fighters covered in cuts and blood. In our view, this content was likely to have exceeded viewers' (and especially parents') expectations of a free to air sports channel before the watershed.

In reaching our Decision, we took into account the Licensee's apology and acknowledgement that the material was broadcast as the result of a compliance failure. We also considered the steps taken by Information TV to improve compliance following this incident.

Nevertheless, we considered that the violence was not appropriately limited and it was not justified by the context. Our Decision is therefore that the content was in breach of Rule 1.11.

#### **Breach of Rule 1.11**

## Resolved

### Broadcast competition

***Radio Plymouth, 20 July 2017, 08:10***

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#### Introduction

Radio Plymouth is a local commercial radio station which is owned and operated by Plymouth Radio Limited ("the Licensee").

The station ran a competition called "*What's the Word*". Listeners were invited to guess the missing word from a clip of a celebrity interview to win a cash prize. Entry to the competition was by telephone, charged at users' standard local rate. The competition was aired twice every weekday and on each occasion one entrant was taken to air to submit an answer. If neither caller of the day was successful, £10 was added to the prize fund. To assist future entrants, the incorrect guesses were added to a list published on the station's website.

The Licensee notified Ofcom that at some point between 10 and 20 July 2017, the correct answer was erroneously added to the list on the website and that on the morning of 20 July, it was included in a selection of "incorrect" guesses read out to listeners.

Ofcom considered this raised issues under Rule 2.14 of the Code, which states:

"Broadcasters must ensure that listeners are not materially misled about any broadcast competition".

We asked the Licensee for its comments about how the competition complied with this rule.

#### Response

The Licensee said that the broadcast of the correct answer was noticed immediately and an internal investigation was launched. It confirmed that it had listened to every previous instance of the broadcast competition and this was the only time the mistake had been made on-air. The Licensee was unable to identify specifically when the correct answer was added to the list of wrong answers on the website.

The Licensee said it took the decision to abort the competition and carry the existing prize-fund (£550) over to the subsequent "*What's the Word*" competition which began the following week. It identified 17 entrants who had submitted an answer on-air between 10 and 20 July 2017 and contacted them to offer a refund of any charges incurred. The Licensee added that an explanation of the error and an offer to refund all entrants who had submitted answers prior to 10 July 2017 was broadcast the following day and posted on the station's website.

To prevent a recurrence, the Licensee said that it had introduced a daily and weekly audit of the list of incorrect answers and the relevant webpage, to be completed by the programme director and the presenter.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Two of the Code requires that broadcasters provide adequate protection to viewers and listeners from harmful material in programmes.

Rule 2.14 requires broadcasters to ensure that viewers and listeners are not materially misled about any broadcast competition.

In this case, an error resulted in the correct answer to a competition being mistakenly labelled as incorrect both on the station's website, and during the invitation to enter broadcast on 20 July 2017. Entrants may have submitted an answer on the understanding that the correct answer was wrong. Ofcom therefore considered that these entrants may have been materially misled if they incurred a charge for calling.

However, Ofcom took into account: the swift action taken by the Licensee to abort the competition once it had become aware of the incident; the process it put in place to ensure those who may be affected were offered a refund; and the additional measures it had put in place to prevent a recurrence. We also noted that the Licensee had itself alerted Ofcom to this incident.

Taking the above factors into account, Ofcom considers the matter resolved.

## Resolved

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

## Not in Breach

### The Lobby

***Al Jazeera English, 11 to 14 January 2017, 22:30***

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#### Introduction

Al Jazeera is an international news channel, originating in the Middle East, but with different language versions broadcast around the world. These include an English-language version, licensed by Ofcom. The licence for this service is held by Al Jazeera Media Network ("AJMN" or "the Licensee").

*The Lobby* was a four-part documentary programme that used an undercover reporter and secret filming. It explored the degree to which the Israeli Government (primarily through the alleged actions of the Israeli Embassy and its then Senior Political Officer, Shai Masot) attempted to influence British politics (in particular, the Labour Party).

Over the course of the four episodes the programme discussed the extent of Mr Masot's involvement in a number of UK based pro-Israel groups (such as Labour Friends of Israel, We Believe in Israel and Young Fabians) as well as the political impact of alleged anti-Semitic behaviour that occurred during the 2016 Labour Party conference. The final episode culminated in secretly recorded footage of Mr Masot speaking with Maria Strizzolo who was, at the time, a civil servant. The following exchange was shown:

Shai Masot: *"Can I give you some MPs that I would suggest you take down.*

Maria Strizzolo: *Well you know, if you look hard enough I'm sure that there is something that they're trying to hide.*

Shai Masot: *Yeah, I have some MPs.*

Maria Strizzolo: *Well let's talk about it.*

Shai Masot: *No, she knows what MPs I want to take down.*

Maris Strizzolo: *Yeah, it's good to remind me.*

Shai Masot: *The Deputy Foreign Minister [Sir Alan Duncan]".*

At the end of the episode, the following caption was shown:

*"Since this programme was made, the Israeli Ambassador to the UK, Mark Regev, has formally apologised to Sir Alan Duncan. Mr Regev said that Shai Masot's comments were "completely unacceptable". Mr Masot returned to Israel and has now resigned from government service. Maria Strizzolo has also resigned from her post as a British civil servant".*

Ofcom received two standards complaints about the programme<sup>1</sup>. These complainants raised a range of issues about the programme including that they were anti-Semitic and were not duly impartial. Some complainants also considered that the programme was materially misleading. We requested information from the Licensee regarding the allegations of material misleadingness made by the complainants. In light of the Licensee's response, we did not consider that this aspect of the complaints warranted further investigation.

However, we did consider the programme raised potential issues under the following rules of the Code that did warrant further investigation:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

We therefore requested comments from the Licensee on how the programme complied with these rules.

## Response

### Background

AJMN said that *The Lobby* "was produced in house by [its] highly experienced Investigation Unit".

The Licensee told Ofcom that *The Lobby's* findings had been "covered by the leading domestic channels including BBC News, ITV News, Channel 4 News and Sky News and by *all* [emphasis in original] eleven print newspapers". AJMN described the impact of the documentary's findings as follows:

- "Mr Masot was...called home by the Israeli Government and forced to resign";
- "Mark Regev, the Israeli Ambassador to the UK, issued a formal apology to the UK Government...";
- "The House of Commons Foreign Affairs Select Committee announced it would look into the matters uncovered by AJMN";

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<sup>1</sup> A further three complaints were received were from individuals or organisations featured in the programme and were primarily concerned with issues relating to Sections Seven (Fairness) and Eight (Privacy) of the Code. Our decisions regarding these matters can be found starting on page 39 of this issue of the Broadcast Bulletin.

- “The Labour Party demanded an inquiry into the improper interference of Israel in British politics revealed in the programmes...” and,
- “Maria Strizzolo...also resigned in consequence of her dealing with Mr Masot, as revealed in *The Lobby*”.

### Rule 2.3

The Licensee denied that *The Lobby* was anti-Semitic or in breach of Rule 2.3. It said that “the fact that the programmes uncovered evidence of inappropriate behaviour by those acting on behalf of the Israeli Government, or by those belonging to a small number of organisations that promote Israeli policy, does not mean that they were anti-Semitic. In the same way, programmes that expose the violence associated with some black gang culture in Britain’s inner cities are not, by default, racist”. The Licensee also considered that there was “a material danger that taking such an approach to regulation will limit legitimate investigations because of a perceived risk of the possibility of perpetuating stereotype”. AJMN said this “would constitute a serious affront to journalism and an unnecessary restriction of a broadcaster’s freedom of expression rights”.

AJMN told Ofcom that the programmes “were very clear as to what the series and investigation was about and how it would approach its subject matter”. In Episode One, the programme narration stated:

*“How Israel influences British politics...We reveal from the inside how the Embassy penetrates different levels of British democracy”.*

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*“Using an undercover reporter, Al Jazeera’s Investigative Unit exposes Israel’s clandestine activities in London, a city that’s become a major battleground”.*

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*“It’s a battle of ideas – seeking to change not only how Israel is portrayed, but how it is even debated”.*

AJMN described these remarks as explaining to viewers “what the Investigative Unit had discovered and were based purely on the evidence i.e. what the unit had uncovered about how the State of Israel was attempting to change the debate in its favour”. In the Licensee’s view, “there was nothing that could conceivably be viewed as offensive (within the meaning of...Rule 2.3 of the Code)”.

AJMN described Episode Two as focusing on “the undercover reporter making new contacts and meeting pro-Israeli groups, particularly at the Labour Party’s 2016 Conference”. Episode Two also “explained in detail how the Israeli Embassy helps organisations”. AJMN highlighted the secretly recorded statements made by Michael Rubin, Parliamentary Officer for Labour Friends of Israel, in this episode:

*“The Embassy helps us quite a lot. When bad news stories come out of Israel, the Embassy sends us information so we can counter it”.*

*"We've got to be careful because I think there are some people who would be happy to be involved in a Young LFI [Labour Friends of Israel] but wouldn't necessarily be happy if it was seen as an Embassy thing".*

AJMN said that "as the programme uncovers the manner in which the Israeli Embassy operates, it does not generalise about Jews or make any stereotypical comments and there is certainly no evidence of any forms of prejudice or hatred". The Licensee also said that "there are many references in the programme to legitimate and concerning anti-Semitic behaviour...and such evidence of real anti-Semitic behaviour is not challenged or belittled by the programme in any way". The Licensee also pointed to the inclusion in Episode Three of "a long exchange between a Labour Party member and the Labour MP Joan Ryan...[that] encapsulated the debate about what is and is not anti-Semitic and showed both sides of the argument". AJMN was of the view that "an editorial decision to feature a debate of this kind cannot sensibly be viewed as either offensive or anti-Semitic".

Describing the content of Episode Four, AJMN said that this "went to the heart of how the Israeli Embassy and especially Mr Masot was operating". AJMN said that "what was reported...was entirely factual in nature and largely consisted of words coming directly from Mr Masot himself". In the Licensee's view, there "was nothing that can be viewed as offensive or anti-Semitic; what was involved was the exposure of behaviour on Mr Masot's part which was clearly inappropriate".

AJMN described the secretly recorded footage of "Shai Masot's suggestion that he wanted to 'take down' Sir Alan Duncan" as a "classic, secretly filmed sting that had the most serious of outcomes – and which had no connection whatsoever with offensiveness or anti-Semitism".

In conclusion, the Licensee considered that it was "entirely satisfied that it is not possible to find any material in any of these programmes which can be reasonably considered as being either offensive or anti-Semitic".

#### Rule 5.5

The Licensee said "the public interest alongside the broadcaster's and the viewers' freedom of expression are engaged at the highest level when investigative journalism of this nature is involved".

AJMN set out its view that the programme exposed "extremely concerning activity" by the Israeli Government and was not "a discussion about the arguments for and against Israeli policy". It therefore considered that *The Lobby* was not dealing with "matters of political or industrial controversy or matters relating to current public policy" and Rule 5.5 was not engaged.

In summary, the Licensee considered that "the main issue arising from this investigative series with regard to the Israeli Government's behaviour is one of fairness rather than impartiality and, in particular, fairness to the Israeli Embassy and Shai Masot". The Licensee also drew Ofcom's attention to the fact it "offered both the Embassy of Israel and Shai Masot an opportunity to respond to the findings of the investigation well before transmission but neither of those parties responded or chose to participate in the programme".

## Decision

### Rule 2.3

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

In reaching our Decision in this case, we have taken particular account of the audience's and the broadcaster's right to freedom of expression. This is set out in Article 10 of the European Convention of 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 interference by a public authority. These rights are of special importance when considering investigative current affairs programming (such as *The Lobby*) and it is vitally important that broadcasters are free to tackle potentially controversial subject matters. Accordingly, Ofcom must be careful to ensure that any regulatory intervention it takes is both proportionate and necessary while ensuring compliance with the Code.

It was the view of some complainants that *The Lobby* fuelled harmful stereotypes about Jewish people controlling or seeking to control powerful organisations. These complainants considered this was anti-Semitic and offensive.

We considered these complaints under Rule 2.3 of the Code. This requires that material which may cause offence must be justified by the context. Under "meaning of context" the Code lists a number of factors including the editorial content of the programme and the service on which it was broadcast.

*The Lobby* was a serious investigative documentary which explored the actions of the Israeli Embassy and, in particular, its then Senior Political Officer, Shai Masot and his links to several political organisations that promote a pro-Israeli viewpoint. Given the subject matter, it was likely the programme would be controversial, particularly as it raised questions about the actions of Mr Masot, the Israeli Embassy and other individuals (several of whom are Jewish) associated with the various pro-Israeli groups and organisations identified in the programme.

In coming to our Decision in this case we had regard to the International Holocaust Remembrance Alliance's ("IHRA") working definition of anti-Semitism which the UK Government agreed to adopt in December 2016 which states:

"Anti-semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities".<sup>3</sup>

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>3</sup> In December 2016, the UK Government agreed to adopt the International Holocaust Remembrance Alliance's working definition of anti-Semitism. ([https://www.holocaustremembrance.com/sites/default/files/press\\_release\\_document\\_antisemitism.pdf](https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf))



The guidance published with the IHRA's working definition of anti-Semitism includes the following as a contemporary example (amongst others) of what could constitute anti-Semitism in public life and the media, taking into account the overall context:

“Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions”.

The guidance also suggests that manifestations of anti-Semitism might include the targeting of the State of Israel, conceived as a Jewish collective. There was therefore the possibility that a programme, such as *The Lobby*, which focused on the actions of the State of Israel and alleged that individuals associated with it were attempting to inappropriately influence British democracy, may be considered by some to be anti-Semitic.

Importantly however, the IHRA guidance makes clear that criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic.

We considered that the allegations in the programme were not made on the grounds that any of the particular individuals concerned were Jewish and noted that no claims were made relating to their faith. We did not consider that the programme portrayed any negative stereotypes of Jewish people as controlling or seeking to control the media or governments. Rather, it was our view that these individuals featured in the programme in the context of its investigation into the alleged activities of a foreign state (the State of Israel acting through its UK Embassy) and their association with it. We also noted that a number of the organisations featured in the programme, such as Labour Friends of Israel and Conservative Friends of Israel, are not defined by any adherence to Judaism or having a predominantly Jewish membership.

As per the IHRA guidance, Ofcom did not consider that such a critical analysis of the actions of a foreign state constituted anti-Semitism, particularly as the overall focus of the programme was to examine whether the State of Israel was acting in a manner that would be expected of other democratic nations.

For these reasons, our Decision is that there was no breach of Rule 2.3.

#### Rule 5.5

Under the Communications Act 2003<sup>4</sup>, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

Broadcasters must 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.

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 requires broadcasters to ensure that neither side of a debate relating to matters

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

of political or industrial controversy and matters relating to current public policy is unduly favoured. While any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, it must always comply with the Code.

Ofcom underlines that the broadcasting of highly critical comments concerning the policies and actions of any government or state agency is not, in itself, a breach of due impartiality. However, depending on the specific circumstances, it may be necessary to reflect alternative viewpoints or provide context in an appropriate way to ensure that Section Five is complied with.

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.

We first considered whether Rule 5.5 applied in this case. This states that due impartiality must be preserved on "matters of political or industrial controversy and matters relating to current public policy".

We took account of the Licensee's argument that it considered the due impartiality requirements did not apply in this case. The Licensee described the programme as "classic undercover journalism, which exposed extremely concerning activity by a small number of people who worked for and/or had connections or sympathies with the Israeli Government". As *The Lobby* was not a "discussion about the arguments for and against Israeli policy or, say, Israel's activities with regard to Palestine", the Licensee considered it was not dealing with controversial matters and Rule 5.5 was not engaged.

We recognised that *The Lobby* was not primarily concerned with the politically controversial debate regarding the policies and actions of the State of Israel in the Middle East. However, in Ofcom's view the programme was clearly concerned with another matter of political controversy, namely the policies and actions of the State of Israel and its political lobbying in the UK.

We therefore concluded that the due impartiality rules were engaged in this case. Accordingly, we went on to determine whether due impartiality was maintained.

Section Five of the Code does not dictate what broadcasters can or cannot include in their programmes. For example, it does not prevent broadcasters from criticising the policies and actions of any government or state agency. However, in doing so broadcasters must adequately reflect alternative viewpoints on the matters of political controversy and/or current public policy being discussed, or provide sufficient other context.

As described above, the programme's editorial focus was exploring allegations of inappropriate involvement of the Israeli Government in UK politics. Complainants considered that the programme only took a one-sided view on this matter. However, we considered that the viewpoint of the Israeli Government was included in the programme in a number of linked ways. Firstly, given the focus of the programme on the activities of Mr Masot (then an employee of the Israeli Embassy) the programme included frequent instances of him giving

his viewpoint. For example, Episode One include the following conversation between Robin and Mr Masot:

Robin: *"Have you ever built something, like a group?"*

Shai Masot: *"Yeah, I did several things like that yeah".*

Robin: *"OK. In Israel?"*

Shai Masot: *"In Israel and here".*

Robin: *"Ah, here as well".*

Shai Masot: *"Yeah. Nothing that I can share but yeah".*

Robin: *"Nothing you can share?"*

Shai Masot: *"Yeah, because there are things that you know happen but it's good to leave those organisations independent. But we help them to actually—"*

Robin: *"To establish?"*

Shai Masot: *"Yeah".*

In addition, the programme also included statements (recorded in secret) made by a number of other representatives of the Israeli Government. For example, Episode One included a recording of part of a speech by Israel's Minister of Public Security, Gilad Erdan. He said:

*"I grew up with the ideology that the land of Israel totally belongs to the Jewish people. Not any compromise...morally, Biblically. The land of Israel belongs to the Jewish people. It is a strategic threat [BDS<sup>5</sup>] for the future of Israel because if we will allow them to continue with all the lies that they are spreading against Israel...we will lose this fantastic young generation and maybe from here there will be the next leaders of the UK or other countries and they will think Israel is a very bad country".*

Episode Three included secretly recorded video of Mark Regev, the Israeli Ambassador saying:

*"Why are people who consider themselves progressive in Britain, supporting reactionaries like Hamas and Hezbollah? We've gotta say, in the language, I think, of social democracy, these people are misogynistic, they are homophobic, they are racist, they are anti-Semitic, they are reactionary".*

The end of each episode also featured a series of slates which set out the viewpoints of the various groups and individuals featured in the programme. In cases where the Licensee had requested a statement from a group or individual and had not received one, this was made clear to the audience. For example, at the end of Episode Three:

*"Al Jazeera approached all those featured in this programme.*

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<sup>5</sup> BDS was described in *The Lobby* as "the global movement to boycott, divest and impose sanctions on Israel...".

*The Israeli Embassy, Shai Masot, the Young Fabians and Labour Friends of Israel were amongst those who did not respond to our findings.*

*We Believe In Israel did confirm, that while it was not controlled financially or otherwise by Israel, it worked with a range of stakeholders including the Israeli Embassy.*

*The Jewish Labour Movement denies that it has worked closely with Shai Masot”.*

Episode Four also included a statement setting out Mr Regev's view that Mr Masot's comments about Sir Alan Duncan were “*completely unacceptable*”.

We therefore considered that the programme had included a range of viewpoints on this matter of political controversy.

Taking all of the above into account and in light of the nature of the programme and its particular subject matter, we considered that the programme had maintained due impartiality. Our Decision is therefore that there was no breach of Rule 5.5.

**Not in breach of Rules 2.3 and 5.5.**

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Ms Ella Rose

#### *The Lobby, Al Jazeera English, 12 January 2017*

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##### Summary

Ofcom has not upheld this complaint made by Ms Ella Rose of unjust or unfair treatment and unwarranted infringement of privacy.

Al Jazeera English<sup>1</sup> broadcast a four-part investigative programme about the alleged influence of the Israeli Government, through its Embassy in the UK, on the UK Government. In particular, it explored the alleged involvement of the Israeli Embassy in the UK with pro-Israel groups and organisations. The second programme included surreptitiously filmed footage of the complainant, Ms Rose, as she spoke with the undercover reporter about various matters.

Ofcom found that:

- Ms Rose's contribution was not edited in a way which resulted in unfairness to her and material facts were not presented, omitted or disregarded in a way that was unfair to her.
- The statements made about Ms Rose by Ms Jackie Walker and Mr Asa Winstanley in the programme did not amount to significant allegations of wrongdoing and it was therefore not necessary for the broadcaster to have provided Ms Rose with an appropriate and timely opportunity to respond to them.
- Ms Rose had a limited legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of the surreptitiously filmed footage of her. However, on balance, this did not outweigh the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Therefore, we considered that Ms Rose's privacy was not unwarrantably infringed either in connection with the obtaining of the footage or its subsequent broadcast.

##### Programme summaries

On 12 January 2017, Al Jazeera English broadcast the second part of a four-part series of programmes (broadcast on 11, 12, 13 and 14 January 2017) that examined the alleged involvement of the Israeli Government in influencing British politics and, in particular, the British Labour Party. Each episode included the following introduction:

*"Following decades of violence, a new challenge has emerged to Israel's occupation of Palestinian land called BDS... that's the global movement to boycott, divest and impose sanctions on Israel and expose it as an apartheid state. The Israeli Government has*

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<sup>1</sup> Al Jazeera is an international news channel, originating in the Middle East but with different language versions broadcast around the world. These include an English-language version, licensed by Ofcom. The licence for this service is held by Al Jazeera Media Network.

*responded with a campaign to rebrand the country's image... it's an operation run by the secretive Ministry of Strategic Affairs...*

*Using an undercover reporter, Al Jazeera's investigative unit exposes Israel's clandestine activities in London, a city that's become a major battleground... You'll meet people looking to challenge BDS at every level of British politics. One of Israel's main targets is the Labour Party. For the first time, its leader [Jeremy Corbyn MP] is a champion of Palestinian civil rights... It's a covert action which penetrates the heart of Britain's democracy... It's a battle of ideas seeking to change not only how Israel is portrayed, but even how it is debated..."*

In the programmes broadcast on 11, 12 and 13 January 2017, surreptitiously filmed footage of the complainant, Ms Ella Rose, the Director of the Jewish Labour Movement ("JLM"), was included. However, Ms Rose's complaint related solely to the programme broadcast on 12 January 2017.

During the first episode (broadcast on 11 January 2017), the programme's reporter explained that in order for the programme to carry out its investigations, an undercover reporter called "Robin" was used who had posed as a graduate looking for a job in Britain and was a "Labour Party activist with strong sympathies to Israel". The programme explained that he had attended Labour Party functions for over a month and "stood out as a friend of Israel". The programme gave details of a number of groups and organisations in the UK that it said supported Israel and included surreptitiously filmed footage of a Senior Political Officer at the Israeli Embassy, Mr Shai Masot, who described the "Embassy's role in these movements" to the undercover reporter. One of the organisations identified was the JLM. Ms Rose was introduced to the programme as "Director of the Jewish Labour Movement" and an email sent from her to the undercover reporter (who was posing as an activist wanting to establish "Young LFI", i.e. a youth wing of the Young Labour Friends of Israel), was shown in which she said that she was pleased to hear of his plans to set up a Young LFI and she invited him to a JLM barbeque. The programme also referred to a number of roles Ms Rose had held, including that she had worked at the Israeli Embassy.

In the second episode (broadcast on 12 January 2017), the programme explained that Mr Masot wanted the undercover reporter to attend the Labour Party's annual conference and that he had told him about the different people and organisations he should contact to help him set up a youth wing of the LFI. Surreptitiously filmed footage taken at the conference was included of a "private training session" organised by the JLM entitled "Confronting anti-Semitism and engaging Jewish votes" which had been arranged following "anti-Semitism in the Labour Party".

The programme explained that the "JLM training session was about to have very public consequences for one attendee," Ms Jackie Walker, the former Vice-Chairman of Momentum. Surreptitiously filmed footage of the session was included in the programme and Ms Walker described what had happened at the session and how it had been reported in the media. The programme included footage of the remarks Ms Walker had made during the session which included that she had not found a definition of anti-Semitism which she could "work with" and that "Holocaust Day" should be "open to all peoples who have experienced Holocaust". The programme explained that Ms Walker's comments had resulted in her being called anti-Semitic and that she had been "suspended from the Labour Party pending an investigation".

Later, the programme's narrator said:

*"Meanwhile, our undercover reporter [Robin shown getting out of taxi] spots Ella Rose from across the road. News had broken of Ella's former job at the Israeli Embassy which had not been widely known. She's in tears because of what she considers anti-Semitic harassment".*

Surreptitiously filmed footage of Ms Rose was shown and the following conversation took place:

Robin: *"Are you alright?"*

Ms Rose: *It's been a tough week.*

Robin: *I'm sorry to hear that.*

Ms Rose: *It's alright. Essentially Electronic Intifada<sup>2</sup> released that I worked at the Embassy before JLM, and Jackie Walker has been slamming me online all week and I just had to stand in front of her. It was really hard, it was really hard. It's over. I'm going to go run a rally so [bleeped] fuck you, [bleeped] fuck you, [bleeped] fucking anti-Semites the lot of them. [Ms Rose then began to cry]"*

Ms Walker was then shown as she reacted to this footage and she said: *"pfft, oh my God".*

The narrator then stated: *"When our undercover reporter next met Ella, she had regained her composure".* Ms Rose was then surreptitiously filmed as she was sat outside a coffee shop with Robin. She said:

*"I saw Jackie Walker on Saturday and thought you know what, I could take her, she's like 5 foot 2 and tiny. That's why I can take Jackie Walker. Krav Maga training [described in the programme as a hand-to-hand combat technique developed by the Israeli Defence Forces]. Yeah I'm not bad at it. If it came to it, I would win. That's all I really care about".*

Ms Walker's reaction to this footage was included in the programme. She said:

*"Oh my gosh. Well I kind of, that says it all. I mean, you know, I don't even speak about people like that in that way, that you would take somebody? You would take somebody out? And she's speaking about another Jewish Labour member in this way? I think that's breathtaking. It's absolutely breathtaking. I'm just stunned".*

The programme reiterated that it had been reported in the Electronic Intifada that Ms Rose had worked at the Israeli Embassy. Mr Asa Winstanley, a journalist at the Electronic Intifada, said:

*"Ella Rose has been working for a year at the Israeli Embassy in London something that wasn't widely known at all that had been, as far as I could ascertain, had been essentially covered up".*

Surreptitiously filmed footage of Ms Rose was shown and she said:

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<sup>2</sup> The Electronic Intifada states on its website that it "is an online publication and educational resource focusing on Palestine, its people, politics, culture and place in the world."

*"Ah, Asa Winstanley. He was the one that wrote the douchey things about me. He's a [bleeped] dickhead".*

Mr Winstanley continued:

*"They know they can't win when the debates are open so they have to do these things behind closed doors. So when I'm outing her as an officer at the Israeli Embassy and she didn't want that to be publicly known, then yeah, she's not going to like that. She's going to lash out".*

Further surreptitiously filmed footage of Ms Rose was shown as she said:

*"Look at the end of the day these people are sad, sad tossers. They're completely pathetic, and leave them in their corner where they belong. I'm very over them and their existence. As far as I'm concerned, they can go die in a hole".*

Mr Winstanley concluded and said:

*"She's worked for the Israeli State. The Israeli State talks about a war against organisations like us. It, it is a threatening thing to hear about".*

Ms Walker said:

*"What we need to have is some investigation of this from the Labour Party and I will be making a formal complaint against both Ella Rose and the Jewish Labour Movement".*

The programme concluded with surreptitiously filmed footage of Ms Rose as she said:

*"[Bleeped] Shit happens. People are going to hate me no matter what and they're always going to find something. It was all very anti-Semitic to be honest. I'm a Zionist, shoot me".*

Prior to the end credits, responses were included from various people to the claims made in the programme, including one from Ms Rose which said:

*"Ella Rose stated that she had been open about her previous employment with the Israeli Embassy".*

At the beginning of the third episode broadcast on 13 January 2017, the programme included a recap of the previous episodes as the programme said: *"Tensions remain high after a dispute about anti-Semitism at the Labour conference"* and surreptitiously filmed footage of Ms Rose was included as she said:

*"I saw Jackie Walker on Saturday and thought; you know what, I could take her, she's like 5 foot 2 and tiny".*

Ms Walker's reaction was also included in which she said: *"Oh, my gosh, well that kind of says it all".*

The reporter then introduced this episode:



*"In part 3 of The Lobby our undercover finds himself at the centre of a scandal as he secretly records events described by the media as anti-Semitic acts. For the first time, the other side of the story.*

This edition of the programme focussed on alleged anti-Semitic harassment that had occurred at the LFI stall at the Labour Party Conference. There was no further footage of, or reference to, Ms Rose in the programme. Nor was there any further mention or reference to Ms Rose in the fourth and final episode broadcast on 14 January 2017.

### **Summary of the complaint**

#### *Unjust or unfair treatment*

- a) Ms Rose complained that she was treated unjustly or unfairly in the programme as broadcast because the secretly filmed footage of her outside the coffee shop had been unfairly edited and shown out-of-context. She said that her comments were made in response to what the undercover reporter had said to her, but the programme unfairly portrayed her comments as "threatening" when, in fact, her comments were just "boosting my self-esteem".
- b) Ms Rose complained that she was not given an appropriate and timely opportunity to respond to the comments made about her by Ms Walker and Mr Winstanley.

Ms Rose said that she was contacted by the programme makers prior to the broadcast of the programme who sought her response about her former employment at the Israeli Embassy. However, Ms Rose said that she was not informed that she had been surreptitiously filmed by the programme makers which meant she was unable to provide her response about the comments she had made or the comments which were subsequently made about her.

#### *Unwarranted infringement of privacy*

- c) Ms Rose complained that her privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because she was surreptitiously filmed in circumstances where it was not warranted. Ms Rose said that there was no reason to secretly film her because, had the programme makers asked her openly for her views on Ms Walker, she would have given them.

Ms Rose said that she was filmed when she was "upset and distressed" and speaking privately and informally to the undercover reporter, who she considered to be a friend. Ms Rose said she did not know, nor had reason to believe, she was being filmed.

- d) Ms Rose also complained that her privacy was unwarrantably infringed in the programme as broadcast because the surreptitiously filmed footage of her was broadcast in the programme without her consent.

Ms Rose said that the footage of her showed her when she was "upset and distressed" and talking privately and informally to the undercover reporter.

Ms Rose said that she was Director, and sole employee of, the JLM, and had only held the position for "five days" before being filmed. Ms Rose added that she was not a public figure

and had no role in creating policy at any level. Further, Ms Rose said that following the broadcast of the programme she was "left in personal distress" and received threatening and abusive messages on social media.

### **Broadcaster's response**

Al Jazeera Media Network's response was submitted on its behalf by its legal representatives, Carter-Ruck, however, it will be referred to as AJMN's or the broadcaster's response.

AJMN said that the series of investigative programmes "uncovered" how the Israeli Government (primarily through its Embassy in the UK) attempted to sway MPs, political parties, the UK Government and other policy and decision makers, including future decision makers, a campaign it said that could result in undermining democracy in the UK. AJMN said that the activities exposed in the programme could only have been uncovered through surreptitious filming and that it was in the public interest.

#### *Unjust or unfair treatment*

- a) AJMN stated that it did not accept that Ms Rose was treated unjustly or unfairly in the programme and that the extracts of Ms Rose's comments that were broadcast had not been unfairly edited and were not shown out of context.

The broadcaster said that the programme covered the row at the JLM training session at the Labour Party Conference which was immediately followed by the news which had broken regarding Ms Rose's previous employment at the Israeli Embassy. It said that the identity of her previous employer was not commonly known or publicised. Given the concerns about the role of the State of Israel in UK politics, the broadcaster said that this was potentially an important development.

The broadcaster said that the unedited footage of Ms Rose talking with the undercover reporter outside the café showed that she had raised the subject of Ms Walker four times and that on each occasion, she was not prompted by the undercover reporter. It said that Ms Rose and the undercover reporter were having a general conversation about; the undercover reporter's background, how the undercover reporter intended to set up Young LFI; and, an incident that had happened at the LFI stall between a Labour MP and a Labour member.

AJMN said that the undercover reporter did not raise any matter relating to Ms Walker. In fact, the first time Ms Walker's name was mentioned was when Ms Rose looked at her mobile phone and said there was an interesting article about a Labour MP calling on Ms Walker to be expelled from the Labour Party. The broadcaster said that the undercover reporter then engaged to a very limited extent on the subject, but that there was no cajoling or encouraging of Ms Rose. AJMN added that the undercover reporter then actively moved the conversation on to media reports about Ms Rose having worked for the Israeli Embassy before she took on the role of Director of the JLM. The broadcaster said Ms Rose then brought up the subject of Ms Walker for a second time, even though the undercover reporter had continued to speak about the fallout from Ms Rose's past at the Embassy. It said that Ms Rose then interjected and raised unprovoked comments (without any form of encouragement by the undercover reporter) on the subject of Ms Walker. The broadcaster said that instead of potentially eliciting more negative comments from Ms Rose, the undercover reporter purposely moved the conversation on to Mr

Masot and Ms Rose's work with him at the Embassy. It said that the undercover reporter was clearly not playing the role of an "agent provocateur" in trying to provoke Ms Rose into making statements regarding Ms Walker or any other subject. Further, the broadcaster said that it was also clear that the edited version as it appeared in the programme was not taken out of context and represented a fair summary of this part of the conversation.

The broadcaster said that Ms Rose volunteered the information about her being able to "take" Ms Walker and that she had Krav Maga training, again without being prompted by the undercover reporter. The broadcaster added that the undercover reporter never brought up Ms Walker's name and, when Ms Rose mentioned her, he sought to move the conversation on and away from Ms Walker.

AJMN said that there had been no unfair editing and Ms Rose was fairly and accurately portrayed in the programme as broadcast.

- b) AJMN said that the primary focus of the series was the activities of the Israeli Embassy and Mr Masot in particular. It said that Ms Rose and others like her were very much a secondary part of the story as it explained how Mr Masot operated within the pro-Israeli lobby. It said that the programme also informed viewers as to how the Israeli Embassy sought "covertly to influence apparently independent pro-Israeli groups".

The broadcaster said that at the time of filming, Ms Rose had been recently appointed as the Director at the JLM, an organisation not formally affiliated with the Israeli Embassy or Government. It added that during 2016, Al Jazeera said that the Labour Party had become embroiled in rows over anti-Semitism and the JLM had taken the lead in putting allegations of anti-Semitism within the Labour Party centre stage.

The broadcaster said that given the issue was relevant to the overall thread of the story and that there were accusations that Ms Rose had deliberately downplayed her past employment at the Embassy, it had put this point directly to Ms Rose and gave her an appropriate and timely opportunity to respond. The broadcaster also said that these were the same concerns raised by Mr Winstanley in the programme. It said that Ms Rose was shown giving her reaction to the original article in which Mr Winstanley expressed these concerns and viewers would have been in no doubt as to how she felt about these allegations. AJMN said that Ms Rose was provided with an appropriate and timely opportunity to respond to the accusation made in the programme by Mr Winstanley that she sought to cover up her past employment with the Israeli Embassy and to confirm whether she viewed "exposure of her former employment at the Israeli Embassy" as being anti-Semitic or not as she had already suggested to the undercover reporter.

The broadcaster stated that there was no requirement on it to have informed Ms Rose that she had been surreptitiously filmed in order to avoid unfairness to her. It said that to ensure fairness, it considered that the affected party must be given an appropriate and timely opportunity to respond to any allegation of wrongdoing or incompetence, which Ms Rose had been given. Further, the broadcaster said that in this case, notifying certain individuals that they had been secretly filmed would, probably, have thwarted the investigation. The broadcaster said that legitimate investigations in the public interest could be severely restricted or even terminated if there was an obligation to divulge such information at a crucial stage.

AJMN said that the main part of the programme featuring Ms Walker focused on the debate, in the JLM training seminar, about what constituted anti-Semitism. The broadcaster said that Ms Walker had been heavily criticised by the JLM and others for arguing that anti-Semitism in the Labour Party had been deliberately exaggerated to undermine Jeremy Corbyn's leadership and this process continued after the training seminar in reports in the media and internet. It said that Ms Walker had questioned what she had apparently felt to be an expanded and over-broad definition of anti-Semitism being used by the National Vice-Chair of the JLM and asked whether Holocaust Day should be expanded so as to commemorate non-Jewish suffering; this led to calls for her to be expelled from the Labour Party which were reported in the national media.

The broadcaster said that the differences between Ms Rose and Ms Walker represented "nothing more than a spat", when set against the wider background described above. The broadcaster said that Ms Rose was upset that Ms Walker was "slamming her online all week" and that Ms Rose had made a somewhat unguarded comment that she "could take" her since Ms Walker was "tiny". The broadcaster said that while Ms Walker was surprised by Ms Rose's comments, it did not consider that this could be regarded as a "significant allegation" of any type of wrongdoing against Ms Rose. It added that no viewer would have concluded that Ms Rose was actually threatening physical harm to Ms Walker and Ms Rose's own interpretation of her words as doing nothing more than "boosting her self-esteem" cannot be reconciled with her suggestion that the inclusion of those words represented a significant allegation of wrongdoing.

The broadcaster said that Ms Rose's comments regarding Ms Walker were different to the comments she made regarding Mr Winstanley, which related to a central element of the programme (namely the use of allegations of anti-Semitism to attack critics of Israel) and her response to this matter was sought. The broadcaster said that it took the editorial decision to include the material featuring Ms Walker as it considered that this illustrated what was occurring within the Labour Party. It said that to not permit the broadcast of this material would be a serious infringement of a broadcaster's and the viewers' right to freedom of expression.

#### *Unwarranted infringement of privacy*

- c) AJMN said that any infringement of privacy experienced by Ms Rose in connection with the obtaining of the footage included in the programme was warranted by the context, the overall public interest in the story and nature of the investigation.

AJMN said that there was *prima facie* evidence of the existence of a story that was in the public interest, namely, "the efforts of a foreign state covertly to influence and interfere with British democracy and the operation of the political system". The broadcaster said that the Code required a story to be in the public interest, rather than the coverage given to any one individual in the context of that story. It said that this distinction was extremely important when establishing what is and what is not warranted in terms of secret filming. It added that the impact of the investigation was extensive and the programme makers had uncovered evidence of potential wrongdoing.

AJMN said that in July 2016, the undercover reporter attended a number of political meetings without conducting any undercover filming, in order to gather further evidence of Mr Masot's activities and role as an "Israeli operative in the UK". The broadcaster said that these unrecorded conversations revealed that Mr Masot had extensive contacts

within British politics, including within the Labour Party. The broadcaster added that statements made by Mr Masot during these conversations also gave the programme makers reason to believe that Mr Masot was seeking to “influence and direct political activists in support of the State of Israel”. AJMN said that the programme makers therefore concluded that undercover filming was justified.

The broadcaster said that having established that there was *prima facie* evidence of a story in the public interest, it had reasonable grounds to suspect that further material evidence could be obtained using undercover techniques and surreptitious filming. It considered that the evidence already gathered had pointed to the fact that the State of Israel was conducting a “covert operation”. It said that it was therefore unlikely that anyone involved in this process would go on record and speak publicly as to how this covert activity was being conducted.

AJMN said that for the programme makers to demonstrate the way in which Mr Masot and the Israeli Embassy (on behalf of the Israeli Government) were behaving it was necessary for the programme makers to go undercover. The broadcaster said that the authenticity and credibility of the story was dependent on the team gathering filmed evidence of representatives and agents of the State of Israel trying to influence the British political process. It added that in order to “prove that a campaign of inappropriate influence was being conducted”, it was essential that the programme makers obtained evidence. Without such evidence, the broadcaster said that the story would simply amount to a series of allegations made by a number of commentators.

AJMN said that there were also concerns expressed that the State of Israel was using its influence to develop the anti-Semitism narrative in the Labour Party by conflating criticism of Israel with anti-Semitism. It said that a view was being expressed that anti-Semitism was, to a degree, being manufactured and that allegations of anti-Semitic behaviour were being encouraged by Israel, including through its Embassy in London. The broadcaster said that these matters were of public interest and merited investigation.

The broadcaster said that, in this context, the fact that Ms Rose was appointed as the JLM's Director directly from the Israeli Embassy had raised significant issues for those who questioned the JLM's status and policies. The broadcaster added that the unedited footage of the conversation between Ms Rose and the undercover reporter outside a café about an “Israeli delegation” that the JLM had organised at the Labour Party conference also raised issues about the Embassy's involvement in independent organisations. The broadcaster said this raised further concerns about the role being played by the State of Israel in UK politics.

AJMN said that it had satisfied itself that the requirements of Practice 8.13 of the Code had been observed. In these circumstances, it said that the surreptitious filming of Ms Rose in her role as Director of the JLM at, for example, the Labour Party Conference, the JLM barbeque, and other places where she was talking about her and the JLM's work was undoubtedly permissible in connection with obtaining material for the programme.

AJMN said that the undercover reporter first met Ms Rose on 5 September 2016 at an Israeli Embassy reception hosted by the Israeli Minister for Public Security, Strategic Affairs, and Information. It said that despite having never met the undercover reporter, it was apparent that Ms Rose already knew that he had been charged with setting up Young LFI, which it concluded was as a result of Ms Rose's association with Mr Masot. It said that

this was further evidence of how closely the Embassy was able to work with various “pro-Israeli” groups. The broadcaster said that during these initial meetings, Ms Rose appeared particularly keen to recruit the undercover reporter for the JLM and also invited him to a JLM barbeque.

AJMN said that it considered that Ms Rose was a reasonable subject for investigation. It said Ms Rose had worked with Mr Masot at the Israeli Embassy and she still had “excellent connections there” for example, Ms Rose had told the undercover reporter that she could get him an interview for a job there. The broadcaster said that growing concerns had been expressed to it that Ms Rose and her employers had deliberately downplayed her previous employment with the Israeli Embassy when appointing her as the JLM’s Director. It said that Ms Rose was now working as a Director for the JLM which was becoming embroiled in a very public and contentious row within the Labour Party over anti-Semitism. The broadcaster said that there were claims that the JLM, among others, was manipulating allegations of anti-Semitism to undermine the Labour Party leadership which it was concerned was pro-Palestinian in inclination. It said that this was clearly a matter of public interest and Ms Rose proved to be a necessary, though limited, part of the story.

AJMN said it considered that Ms Rose had attempted to downplay her significance in the political arena. However, it said that Ms Rose was, and remained, the Director of the principal lobbying entity connecting the British Jewish community with the Labour Party, an entity intended to influence the latter. As such, the broadcaster said that Ms Rose played a significant role within both the British Jewish community and the Labour Party and therefore in the “political life of this country”. The broadcaster said that although unelected, she was a political figure and “must accept the degree of scrutiny that comes with such a role”. It said that the freedom to scrutinise those who are active on the political stage is central to the role of the media in a functioning democracy and “ought only to be circumscribed in the most unusual of circumstances”. It added that no such circumstances applied in this case.

Further, the broadcaster said that it can be seen from the unedited footage that the undercover reporter filmed Ms Rose in relatively public places and, in discussions with her, sought to ensure that their conversations were always appropriate and focused on her work and on the JLM. As noted above, it said that when Ms Rose became aggravated about matters, the undercover reporter did not encourage or cajole her. Instead, the broadcaster said the undercover reporter sought to take the conversation back to the subjects in hand and away from the personal animosity towards her perceived opponents that Ms Rose occasionally displayed.

The broadcaster said that Ms Rose was never filmed speaking about aspects of her private and/or personal life nor was any attempt made to persuade her to do so. The broadcaster said that such matters were of no interest to it and of no relevance to its investigations into matters that were of a political nature.

AJMN said that although Ms Rose was evidently agitated, it did not consider that this amounted to suffering and distress in the manner envisaged by the Code. It said that as evidenced by the unedited footage, Ms Rose was as much angry as upset and her reaction was derived wholly from a professional, as opposed to a personal matter, namely the article published on The Electronic Intifada website about her previous employment with the Israeli Embassy. It said that this is “all part of the rough and tumble of her chosen political life and her work in political advocacy”. It said that it should not be considered in

the same light as the forms of distress envisaged in the Code for example, where an individual is caught up in personal tragedy, trauma or an emergency.

The broadcaster said that Ms Rose's anger stemmed purely from a professional issue which was central to the programme's public interest investigation. It added that the Electronic Intifada article was immediately equated by Ms Rose with anti-Semitism. They said that in her anger, she referred to the website and her opponents more generally as "fucking anti-Semite, the lot of them". The broadcaster said that Ms Rose was therefore making the most serious allegation against a number of parties, including some of her fellow Labour Party members, to someone she "readily admits to barely knowing". It said that the contention apparently made by Ms Rose was that statements of a political nature relating to matters of public interest ought not to be reported because their maker tended to speak in "intemperate and agitated terms", was unsustainable. It said that if accepted, it would represent "a most chilling limitation on the media's freedom of expression and on public scrutiny of political affairs".

AJMN also said that Ms Rose said she considered the undercover reporter to be a friend. The broadcaster said that it considered this was highly unlikely. It said that outside the Labour Party Conference on 25 September 2016, Ms Rose apologised to the undercover reporter and said "sorry, you barely know me". It added that five days later, at a café, Ms Rose again said she knew little about the undercover reporter by saying "tell me about yourself, though, I don't know much about you. How have you come to LFI?". She also said, "Where are you from?"; "Where's the accent?"; and, "What do you do like day-job wise?". The broadcaster said there was other evidence which points to the fact that Ms Rose did not consider the undercover reporter to be a friend. It said that Ms Rose and the undercover reporter had exchanged mobile phone numbers. It added that less than a fortnight after the meeting at the café, the undercover reporter had texted Ms Rose and she did not reply. On 20 October 2016, the undercover reporter sent Ms Rose another text to which she replied "Sorry, can I confirm who this is? Don't have the number saved, my bad". The broadcaster said that she had never saved the undercover reporter's number. It said that this was the last contact Ms Rose had with the undercover reporter, notwithstanding that a further two months passed before his identity as an undercover reporter became known.

AJMN said that any infringement experienced by Ms Rose in connection with the obtaining of the footage of her was clearly warranted by the context, the overall public interest in the story and nature of the investigation.

- d) AJMN said that any infringement of privacy in the broadcast of the programme experienced by Ms Rose was clearly warranted by the context, the overall public interest in the story and the nature of the investigation.

AJMN said that as noted above, the investigation was in the public interest. It said that Ms Rose played an important, if limited, part in this story and her activities and those of the JLM were an essential part of the matters exposed by the programmes. The broadcaster said that Ms Rose's involvement in the programmes underlined two main lines of investigation, the exploration of both of which was in the public interest:

- The existence of claims that pro-Israeli groups (such as the JLM) were deliberately conflating criticism of Israel with anti-Semitism and were willing to use such accusations "fairly liberally"; and,

- The question of whether there was inappropriate involvement of the State of Israel (through its Embassy) in such pro-Israeli groups.

The broadcaster said that the surreptitiously filmed footage of Ms Rose in the series was part of the evidence gathered by the programme makers to support this public interest story and its limited use in the programme was warranted. It said that any infringement of privacy in the broadcast was outweighed by the public interest. In particular, it said that the footage of Ms Rose that was broadcast showed:

- Ms Rose's connection with the Israeli Embassy;
- How her past employment with the Israeli Embassy was allegedly suppressed;
- Evidence that the Embassy wanted to help direct matters but did not want to be associated with it. For example, in the unedited footage Ms Rose said of an organised delegation that was Mr Masot's "original idea but he couldn't own it because the Embassy can't do that now"; and,
- The speed and frequency with which accusations of anti-Semitism were advanced against Israel's critics.

AJMN acknowledged that Ms Rose was agitated when talking with the undercover reporter in the street outside the Labour Party Conference and it condemned the sending of any threatening or abusive messages to Ms Rose. However, for the reasons noted above, it considered that the use of the footage in the programme as broadcast was warranted.

The broadcaster said that the intention of the programme was not to cause personal distress to Ms Rose. It said that it disagreed with Ms Rose's assessment of her employment and status.

AJMN said that Ms Rose "moves in the world" of pressure groups and lobbies and that having worked in public affairs at the Israeli Embassy and then as Director at the JLM, Ms Rose was "no stranger to controversy and politics and could not expect to avoid close scrutiny of her actions and statements". It said that Ms Rose's attempts to characterise herself as being a non-public figure who was relatively inexperienced in politics and policy were disingenuous. Overall, it said that any infringement of privacy which Ms Rose experienced was outweighed by the public interest in this story. The broadcaster said that the use of this footage went to the credibility and authenticity of the programme. It added that, as noted above, filming openly was not an option in this investigation and to have approached matters in that way would have resulted in this story not being covered. Further, it said that to prohibit the use of this footage would constitute a serious restriction on the programme makers freedom of expression, and that of its audience, in what was a matter of public interest.

### **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this case that the complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View. Both Ms Rose and the broadcaster, submitted representations on the Preliminary View. The relevant representations are summarised below.

#### *Ms Rose's representations*



Ms Rose said that she disagreed with Ofcom's view that the statements made by Ms Walker and Mr Winstanley did not amount to significant allegations and that it was therefore unnecessary for her to be provided with an appropriate and timely opportunity to respond. She said that her view was "based on the fact that both Ms Walker and Mr Winstanley had themselves published articles and social media posts calling for significant consequences in relation to the allegations against [her]". Ms Rose provided Ofcom with a website link and screenshots of the relevant articles and social media posts, and stated that these posts had appeared "both immediately after the broadcast and continued during the period in which Ofcom was considering the matter." Ms Rose said that it was of "no comfort" to her that Ofcom had determined that these allegations were insignificant as "key figures involved in the broadcast have actively used other media outlets to establish a different narrative".

Ms Rose said that the reason no appropriate right to respond was provided to her was because Ms Walker, Mr Winstanley and Al Jazeera English had always intended to set up a narrative, promoting it themselves via other media. Ms Rose said that the Preliminary View was "unsafe" as Ofcom had "not probed the level of collusion" between Ms Walker, Mr Winstanley and Al Jazeera English in the broadcast and attempts to promote or generate interest in the content.

In Ms Rose's view, Ofcom's Preliminary View had restated Al Jazeera's contention that it was necessary to obtain surreptitious footage of her, as the newly appointed director of JLM, in relation to the influence of the Israeli Embassy on UK politics, as if it was "almost self-evident". Ms Rose said that as "a British Jewish organisation, the fact that JLM has an interest in contact with all parts of Israeli society, both Governmental and non-Governmental is obvious" and that it did not "require any special undercover investigation to determine this". Further, Ms Rose said that her personal religious faith which involves attachment to Israel should not make her "a target for infringement of privacy". Ms Rose said that Ofcom's Preliminary View ignored the context and appears to "wholeheartedly buy into the discriminatory Al Jazeera narrative". Ms Rose said that this risked creating a "precedent for the infringement of privacy of any Jewish person involved in public life".

Further, Ms Rose stated that the Preliminary View appeared to find that any infringement of her legitimate expectation of privacy had been warranted on the basis that her previous employment by the Israeli Embassy had "somehow [been] played down" by herself and her employer. Ms Rose disputed that this had happened and provided links to various social media posts to demonstrate her point. Ms Rose added that had Ofcom or the broadcaster checked with her employer or the media that covered her appointment, they would have found further evidence of information in the public domain which related to her previous employment at the Embassy. On that basis, Ms Rose maintained that the assertion made in the programme was false and there was no justification for her privacy being infringed.

*AJMN's representations (made on its behalf by Carter Ruck)*

AJMN said that it did not believe that the view taken by Ms Walker or Mr Winstanley or any other third party, after the broadcast of the programmes, as to what amounts to a serious allegation, can be relevant to Ofcom's consideration of whether Ms Rose should have been given an opportunity to respond. The broadcaster maintained that Ms Rose did not require an opportunity to respond to these specific matters, but that she was given an opportunity to respond where this was appropriate.

AJMN said that it had no intention to set up a different narrative to that broadcast in the programme to be played out in social media. It added that a broadcaster cannot be held responsible for what might occur on social media in the months following the broadcast of its programmes. Rather, AJMN said that a broadcaster's responsibility is to ensure compliance with the Ofcom Broadcasting Code. It reiterated that *The Lobby* was fundamentally a documentary concerning the influence of the State of Israel in British politics and democracy. AJMN said that this was underlined by the fact that its undercover reporter never encouraged or cajoled Ms Rose to talk about her "spat" with Ms Walker; Ms Rose's various observations in relation to Ms Walker were unsolicited and were volunteered by her without being prompted.

AJMN also said that for the first time Ms Rose raised the issue of apparent "collusion" between Ms Walker, Mr Winstanley and Al Jazeera English, but did so without purporting to point to any evidence of the same. The broadcaster stated that it did not understand how any such "collusion" could have any bearing on whether the matters at issue could be considered to be "significant allegations of wrongdoing", but in any event, it assured Ofcom and Ms Rose that it was not party to any activity of this kind. The broadcaster added that any form of online abuse, such as Ms Rose may be receiving, is wholly unacceptable.

AJMN disputed the claim made by Ms Rose that Ofcom's Preliminary View set a precedent for a broadcaster to infringe the privacy of any Jewish person in public life. It said that this was not the case and that, as previously explained, the decision to film surreptitiously was only taken after serious consideration. Carter-Ruck said that the broadcaster's statement had already explained how it had followed the steps set out in Practice 8.13 of the Code and the reason why the JLM was of legitimate interest to this investigation.

AJMN said that its interest in Ms Rose's professional activities was not based solely on the fact that it had appeared to the broadcaster that her employment with the Embassy of Israel had been played down, but that her relationship with Mr Masot, JLM's relationship with the Embassy and JLM's involvement with the high-profile anti-Semitism row within the Labour Party were relevant to the matters being investigated in the programme. Therefore, it was AJMN's view that any infringement of privacy was warranted. The broadcaster added that although Ms Rose maintained that her previous employment with the Israeli Embassy was not downplayed, the programme ensured that her position in this respect was reflected, both in the material that was obtained by secret recording and in her written response which it said was fairly summarised in the programme.

## Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript of it, the

unedited footage and transcript and both parties' written submissions, including the representations made by both parties in response to the Preliminary View. After careful consideration of both parties' representations on the Preliminary View, we concluded that the points raised did not materially affect the outcome of Ofcom's decision not to uphold the complaint.

### *Unjust or unfair treatment*

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

In addition to this Rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) We first considered Ms Rose's complaint that she was treated unjustly or unfairly in the programme as broadcast because the secretly filmed footage of her outside the coffee shop had been unfairly edited and shown out-of-context.

Practice 7.6 states:

"when a programme is edited, contributions should be represented fairly".

Practice 7.9 states:

"before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation".

It is important to note that the editing of a programme is an editorial decision for the broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to the individual or organisation concerned. We therefore carefully compared the unedited footage of Ms Rose outside the café against the parts of the edited footage included in the programme as broadcast.

During Ms Rose's conversation with the undercover reporter outside the café, she spoke about a number of topics including, but not limited to, Ms Walker and an article which had been written about her, the story Mr Winstanley had written about Ms Rose's previous employment at the Israeli Embassy and why Ms Rose thought it had become an issue, and Ms Rose's reaction to having been approached after a particular debate. During the conversation, Ms Rose spoke about how she tried not to involve herself in political activities while working at the Embassy and instead she was involved with volunteering. She spoke about how she had been involved with security. Ms Rose also expressed her views about Ms Walker and Mr Winstanley in a very frank and candid manner.

Having compared carefully the unedited material with the material included in the programme as broadcast, we took account of the fact that Ms Rose's comments about Ms Walker and Mr Winstanley were, at times, included in the programme out of sequence. However, it was our view that this did not result in Ms Rose's views or her discussion with the undercover reporter about Ms Walker and Mr Winstanley being unfairly represented in the programme. Further, while at times the undercover reporter may have asked Ms Rose specific questions about her previous employment at the Israeli Embassy, we noted from the unedited footage that the reporter had not encouraged nor prompted her to make the comments which she did about Ms Walker and Mr Winstanley. Therefore, we considered that the footage of the conversation which was included in the programme was an accurate reflection of what was said and the way it was said in the unedited footage.

We therefore considered that the programme edited Ms Rose's contribution fairly and took reasonable care to satisfy itself that material facts with regard to her views about Ms Walker and Mr Winstanley were not presented, disregarded or omitted in a way that was unfair to her.

Taking the above factors into account, it was our view that Ms Rose was not treated unjustly or unfairly in the programme as broadcast in this respect.

- b) We next considered Ms Rose's complaint that she was not given an appropriate and timely opportunity to respond to the comments made about her by Ms Walker and Mr Winstanley.

Ms Rose said that she was contacted by the programme makers prior to the broadcast of the programme who sought her response about her former employment at the Israeli Embassy. However, Ms Rose said that she was not informed that she had been surreptitiously filmed by the programme makers which meant she was unable to provide her response about the comments she had made or the comments which were subsequently made about her.

Practice 7.11 states:

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

We took into account Ms Rose's representations on the Preliminary View that, since the broadcast of the programme, Mr Winstanley and Ms Walker had published articles online calling for significant consequences for Ms Rose. Any such statements are, however, outside the scope of Ofcom's investigation. We can only consider whether the comments made in the programme *as broadcast* amounted to significant allegations of wrongdoing or incompetence, and whether the broadcaster was therefore required to comply with Practice 7.11 of the Code. Further, on the basis of the broadcaster's denial, and in the absence of evidence to support Ms Rose's allegations that Al Jazeera English colluded with other parties to support a particular narrative, there were no further issues for Ofcom to consider in the context of this investigation.

We therefore first considered whether the statements made in the programme amounted to significant allegations of wrongdoing or incompetence.

We recognised that Ms Rose was provided with an opportunity to respond to the allegation that she had tried to conceal her previous employment with the Israeli Embassy in the UK and that this response was reflected in the programme. However, she was not informed by the broadcaster that she had been surreptitiously filmed, nor was she informed about the comments which would be made about her in the programme by Ms Walker and Mr Winstanley.

In relation to Ms Walker, the programme included her response to Ms Rose's comment that she could "*take her* [Jackie Walker]" and that she would be making a formal complaint about Ms Rose to the Labour Party. We considered that in the programme Ms Walker was simply providing her opinion on Ms Rose's comment about her and in our view, it could not reasonably be regarded as a significant allegation of wrongdoing which would require the broadcaster to have provided Ms Rose with an appropriate and timely opportunity to respond in order to avoid unfairness to her.

In relation to Mr Winstanley, the programme included his response to Ms Rose's comments about him and, in particular, the reason he had decided to write a report about Ms Rose's previous employment at the Israeli Embassy in the UK and his view as to the reason she had spoken about him in this way. We considered that, other than the allegation that Ms Rose's previous employment had not been widely known, to which the broadcaster had provided Ms Rose with an opportunity to respond, Mr Winstanley was simply providing his opinion on Ms Rose's reaction to the news story he had written. In Ofcom's view, Mr Winstanley's comments could not reasonably be regarded as a significant allegation of wrongdoing which would require the broadcaster to have provided Ms Rose with an appropriate and timely opportunity to respond in order to avoid unfairness to her.

We next considered whether Ms Rose should have been informed that she had been surreptitiously filmed in order to avoid unfairness to her. While broadcasters must provide individuals with an opportunity to respond to serious allegations which have been made during the course of surreptitious filming, there is no obligation on broadcasters to inform people that they have been surreptitiously filmed. In this case, other than the discussion regarding Ms Rose's previous employment at the Israeli Embassy, to which Ms Rose was given an opportunity to respond, it was our view that no other information included in the programme as broadcast (as noted above) amounted to a serious allegation of wrongdoing. We therefore considered that there was no requirement on the broadcaster to have informed Ms Rose that she had been surreptitiously filmed and to have provided her with an opportunity to respond to the comments she had made in this footage in order to avoid unfairness to her.

Therefore, we considered that there was no unfairness to Ms Rose in this respect.

#### *Unwarranted infringement of privacy*

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

- c) We first considered Ms Rose's complaint that her privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because she was surreptitiously filmed in circumstances where it was not warranted. Ms Rose said that there was no reason to secretly film her because, had the programme makers asked her openly for her views on Ms Walker, she would have given them.

Practice 8.5 states:

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

Practice 8.9 states:

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

Practice 8.13 states:

"surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if:

- there is *prima facie* evidence of a story in the public interest; and,
- there are reasonable grounds to suspect that further material evidence could be obtained; and,
- it is necessary to the credibility and authenticity of the programme.

We first assessed whether it was warranted for the programme makers to surreptitiously film Ms Rose.

AJMN said that there was a public interest in the matters which the programme investigated. It said that, prior to filming, it had understood that the State of Israel had undertaken a campaign of seeking to influence politics in the UK and was concerned that this campaign could result in an undermining of the UK's democracy. In particular, it said that it had found evidence that the Israeli Embassy and Mr Masot may be a part of this campaign and it was unlikely that those involved (whether knowingly or unknowingly) or connected with Mr Masot, such as Ms Rose, would be willing to speak openly about this matter.

We considered that the claims the broadcaster set out to investigate through surreptitious filming were serious, as they concerned the activities of the Israeli Embassy in the UK through Mr Masot and his attempts through his links with certain individuals and organisations to gain political influence the UK. In relation to Ms Rose in particular, we

considered that it was important for the broadcaster to explore to some extent the links Ms Rose, as the Director of the JLM, had and/or still had with the Israeli Embassy in the UK and the possibility that such links were being downplayed or hidden.

We also considered that the information gathered by the programme makers before the surreptitious filming took place amounted to *prima facie* evidence of a story in the public interest. In Ofcom's view, we considered that on the evidence available to it, the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming.

We took into account Ms Rose's representations, that JLM has an obvious interest in contact with all parts of Israeli society, both "Governmental and non-governmental", and that there was therefore no need for the broadcaster to obtain undercover footage of her in order to reveal this. However, it was our view that it would have been unlikely that the programme makers could have captured footage of the various individuals and organisations, such as Ms Rose, speaking openly about the matters being explored in the programme without using this technique. In addition, we considered that surreptitious filming was necessary to the credibility and authenticity of the programme because without it, the programme makers would have had to rely on second-hand accounts of the alleged activities of Mr Masot and those he was engaged with, which would be less credible than direct evidence of the links and contacts Mr Masot had. Therefore, in our view, the programme makers' decision to surreptitiously film Ms Rose was warranted.

Ofcom also considered whether the means of obtaining the surreptitiously filmed material was proportionate. We took into account the broadcaster's position that the investigation highlighted concerns regarding the involvement of the Israeli Government, through its Embassy in the UK and Mr Masot, with the UK Government, particularly the Labour Party (as set out in detail above). We also recognised that the broadcaster said it conducted research without undercover filming to gather evidence of Mr Masot's activities. We took into account that the filming was used to capture situations or conversations which were directly relevant to the matters being investigated in the programme, such as the links the Embassy had with independent organisations like the JLM, where Ms Rose was a Director. We also noted the broadcaster's representations, that the undercover reporter sought to focus his conversations with Ms Rose directly on the matters which were under investigation. Taking these factors into account, we considered that it was proportionate for the programme makers to surreptitiously film Ms Rose.

Ofcom next assessed the extent to which Ms Rose had a legitimate expectation of privacy with regard to the footage of her which was filmed surreptitiously.

Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be assessed in light of the circumstances in which the person concerned finds him or herself. Ofcom therefore approaches each case on its facts. It is important to note that some activities may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

Although Ms Rose was recorded or filmed on a few occasions, her main concern appeared to be about the filming of her outside the Labour Party Conference and on a second occasion, outside a café. The first occasion showed Ms Rose visibly upset after the Electronic Intifada had published a story about her previous employment at the Israeli Embassy in the UK and in which she provided her view that it and Ms Walker were being

anti-Semitic. On the second occasion which was filmed five days later, Ms Rose was filmed speaking with the undercover reporter about various matters including: that she was a delegate at the Labour Party conference; that she had previously been a delegate at NUS conferences; information about the JLM and the reason she was employed there; her previous role at the Israeli Embassy and the Union of Jewish Students including how she became involved in politics; her previous experience of running stands at conferences; her view of Ms Walker; her view of the article which was written about her by the Electronic Intifada; her current links with the Israeli Embassy and Mr Masot; her view on various Labour Party MPs; some details about a night out Ms Rose had had with other Labour students; and, volunteering activities she was involved with.

On both occasions Ms Rose was filmed sharing her views and opinions on various matters, although we recognised that these comments were limited to events associated with her professional life rather than matters related to her private or personal life. On both occasions, Ms Rose was unaware that she was being filmed and despite both the interactions being filmed in a public place, where any conversation had the potential to be overheard by members of the public, it was likely that she would have understood that she was having a private conversation with the undercover reporter and could speak openly and freely without the details of these conversations being made known to the wider public. We also considered that on the first occasion when she was filmed, she was clearly upset following an encounter she had had with Ms Walker and we considered that on this particular occasion she was filmed while in a sensitive situation.

Taking the above factors into account, it was Ofcom's view that in the particular circumstances of this case, Ms Rose had a legitimate expectation of privacy in relation to both occasions on which she was filmed, albeit limited by the fact the filming was conducted in a public place and that the surreptitiously filmed conversations related to aspects of her professional rather than personal life.

Ms Rose had not consented to being filmed, therefore we went on to consider whether the infringement of Ms Rose's limited legitimate expectation of privacy was warranted.

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

We considered that there was a public interest justification in obtaining this material for the purposes of including it in the programme as it allowed the broadcaster to demonstrate the concerns it had about activities of the Israeli Embassy in the UK through Mr Masot and its attempts to potentially influence UK Government policy through his links with various individuals and organisations. Further, we considered that the filming of Ms Rose was important as it enabled the broadcaster to demonstrate the links she had with Mr Masot and the Embassy. In particular, she had previously worked at the Israeli Embassy in the UK and now worked at the JLM. We also acknowledged that the Labour Party had been embroiled in accusations of anti-Semitism and through the publication of her previous employment in the Electronic Intifada, it enabled the broadcaster to explore this



issue and what might be considered by certain groups as constituting anti-Semitic behaviour.

We took into account Ms Rose's representation, that there was already information in the public domain to demonstrate that she had not down-played the fact of her previous employment with the Israeli Embassy and that the surreptitious filming of her was therefore not warranted in the public interest. However, Ofcom's reasoning is not based on whether, as a matter of fact, Ms Rose did or did not down-play her previous employment at the Israeli Embassy. Rather, Ofcom's role is to consider whether Al Jazeera English complied with its obligations under the Code, having regard to the factors set out in Practice 8.13 above.

We also took into account Ms Rose's representation, that Ofcom's Preliminary View risks creating a precedent for the infringement of the privacy of any Jewish person involved in public life. We do not accept that this is the case. Each privacy complaint we receive is considered on its facts, and must always be assessed in light of the particular circumstances of each case.

Taking all the above factors into account, Ofcom considered that, on balance, the infringement into Ms Rose's limited legitimate expectation of privacy in the circumstances of this case was warranted.

- d) We next considered Ms Rose's complaint that her privacy was unwarrantably infringed in the programme as broadcast because the surreptitiously filmed footage of her was broadcast in the programme without her consent.

Practice 8.4 states:

"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".

Practice 8.6 states:

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

Practice 8.14 states:

"material gained by surreptitious filming and recording should only be broadcast when it is warranted".

As discussed at head c) above, we considered that the use of surreptitious filming was warranted in the circumstances.

We next considered the extent to which Ms Rose had a legitimate expectation of privacy in the broadcast of the material 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.

The programme included footage of Ms Rose having two separate conversations with the undercover reporter related to the publication in the Electronic Intifada about her previous employment at the Israeli Embassy in the UK, as set out in the "Programme summary" section above. Ms Rose's face was shown unobscured and she was named in the programme.

For the reasons set out in head c) above, we considered that Ms Rose had a legitimate expectation of privacy with regard to the inclusion of the footage which showed her having private conversations. However, we considered that any infringement of Ms Rose's legitimate expectation of privacy was limited by the circumstances in which she had been filmed, i.e. in a public place and because the surreptitiously filmed conversations related to aspects of her professional rather than personal life.

The broadcaster did not seek Ms Rose's consent to broadcast the surreptitiously filmed footage of her. We went on to consider whether the infringement of Ms Rose's limited legitimate expectation of privacy was "warranted", within the meaning set out in the Code (see above under head c)).

We balanced carefully Ms Rose's right to privacy with regard to the inclusion of the relevant surreptitiously filmed footage of her 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 in detail in head c) above, we considered that the broadcast footage raised potentially serious concerns about the links between the Israeli Embassy in the UK through Mr Masot and its attempts to potentially influence UK Government policy through his links with various individuals and organisations. In particular, it showed that Ms Rose had previously been employed by the Israeli Embassy and appeared to have retained strong links with it. It also conveyed to viewers an understanding of what might be considered by certain groups as constituting anti-Semitic behaviour. Therefore, we considered there was a public interest justification in the broadcast of this material.

Given all the factors set out above, we considered that there was no unwarranted infringement of Ms Rose's privacy in the inclusion of the surreptitiously filmed footage of her in the programme as broadcast.

**Ofcom has not upheld Ms Rose's complaint of unjust or unfair treatment and 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 Kingsley Napley LLP on behalf of Mr Russell Langer *The Lobby, Al Jazeera English, 12 January 2017***

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#### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Kingsley Napley LLP ("Kingsley Napley") on behalf of Mr Russell Langer.

Al Jazeera English<sup>1</sup> broadcast a four-part investigative programme about the alleged influence of the Israeli Government, through its Embassy in the UK, on the UK Government. In particular, it explored the alleged involvement of the Israeli Embassy in the UK with pro-Israel groups and organisations. The second programme included surreptitiously filmed footage of the complainant, Mr Langer, as he spoke with a Senior Israeli Political Officer, Mr Shai Masot.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Langer.
- The claims made in the programme did not amount to significant allegations of wrongdoing about Mr Langer and it was therefore not necessary for the broadcaster to have provided Mr Langer with an appropriate and timely opportunity to respond to them.
- Mr Langer had a limited legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of the surreptitiously filmed footage of him. However, on balance, this did not outweigh the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Therefore, we considered that Mr Langer's privacy was not unwarrantably infringed either in connection with the obtaining of the footage or its subsequent broadcast in the programme.

#### Programme summaries

On 12 January 2017, Al Jazeera English broadcast the second part of a four-part series of programmes (broadcast on 11, 12, 13 and 14 January 2017) which examined the alleged involvement of the Israeli Government in influencing British politics and, in particular, the British Labour Party. Each episode included the following introduction:

*"Following decades of violence, a new challenge has emerged to Israel's occupation of Palestinian land called BDS... that's the global movement to boycott, divest and impose sanctions on Israel and expose it as an apartheid state. The Israeli Government has responded with a campaign to rebrand the country's image... it's an operation run by the*

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<sup>1</sup> Al Jazeera is an international news channel, originating in the Middle East but with different language versions broadcast around the world. These include an English-language version, licensed by Ofcom. The licence for this service is held by Al Jazeera Media Network.

*secretive Ministry of Strategic Affairs...*

*Using an undercover reporter, Al Jazeera's investigative unit exposes Israel's clandestine activities in London, a city that's become a major battleground... You'll meet people looking to challenge BDS at every level of British politics. One of Israel's main targets is the Labour Party. For the first time, its leader [Jeremy Corbyn MP] is a champion of Palestinian civil rights... It's a covert action which penetrates the heart of Britain's democracy... It's a battle of ideas seeking to change not only how Israel is portrayed, but even how it is debated..."*

In the programme broadcast on 11 January 2017, Mr Langer, who was the Public Affairs Manager with the Jewish Leadership Council ("JLC"), was referred to, and in the programme broadcast on 12 January 2017, surreptitiously filmed footage of Mr Langer was included. Mr Langer's complaint related solely to the programme broadcast on 12 January 2017.

During the first episode (broadcast on 11 January 2017), the programme's reporter explained that in order for the programme to carry out its investigation, an undercover reporter called "Robin" was used who had posed as a graduate looking for a job in Britain and was a "Labour Party activist with strong sympathies to Israel". The programme explained that he had attended Labour Party functions for over a month and "stood out as a friend of Israel". The programme gave details of groups and organisations in the UK that it said supported Israel and included surreptitiously filmed footage of a Senior Political Officer at the Israeli Embassy, Mr Shai Masot, who described the "Embassy's role in these movements" to the undercover reporter.

Later, the programme discussed the National Union of Students ("NUS") and that, during the run-up to the presidential campaign, Mr Langer had had meetings with the NUS Vice-President, Mr Richard Brooks. There was no further reference to Mr Langer in the programme.

In the second episode (broadcast on 12 January 2017), it was explained that Mr Masot wanted the undercover reporter to attend the annual Labour Party Conference in 2016 and that he had told him about the different people and organisations he should contact to help him set up a young wing of the Labour Friends of Israel group ("LFI").

Later, the undercover reporter was shown as he attended the Conference and as he was introduced to members of the LFI at their stall.

The reporter stated that "Shai networked with pro-Israel Labour activists" and surreptitiously filmed footage of Mr Langer speaking with Mr Masot was shown as the programme stated:

*"He [Mr Masot] offered assistance to the Jewish Leadership Council an influential umbrella group of Jewish organisations in Britain".*

Mr Masot then said to Mr Langer:

*"And he told me there is a couple of things that you asked, you JLC, asked to arrange?... So I gave to them a draft schedule".*

A still photograph of Mr Langer was shown in the programme and he was described as the former Campaigns Director at the Union of Jewish Students and the current Public Affairs Manager with the JLC.

The surreptitiously filmed footage continued:

Mr Langer: *"My understanding is, it was just more of an offer from us to them to help facilitate anything they need with some suggestions of what to do.*

Mr Masot: *She wrote to me [Mr Masot showed Mr Langer his phone].*

Mr Langer: *But I don't know anything more than that at this point.*

Mr Masot: *Yeah, but they were amazing. This is the best piece: 'Shai do whatever you want in Israel'.*

Mr Langer: *Ah well, that's good.*

Mr Masot: *And I love when people tell me that".*

Later, the reporter stated that pro-Israeli activists would be *"secretly recording the event"* and surreptitiously filmed footage of Mr Langer was included as he said:

*"There's the Labour Friends of Palestine and the Middle East one at 2.30 which I'll be going to, so I need to charge my phone up so I can get some more recordings".*

No further footage of, or reference to, Mr Langer was included in the programme. Nor was there any reference to Mr Langer in episodes three and four broadcast on 13 and 14 January 2017 respectively.

## **Summary of the complaint**

### *Unjust or unfair treatment*

- a) Kingsley Napley complained that Mr Langer was treated unjustly or unfairly in the programme as broadcast because, by including the surreptitiously filmed footage of Mr Langer having a conversation with Mr Masot, the programme unfairly implicated him in the serious allegations of undermining democracy being made in the programme.

Kingsley Napley said that, contrary to the impression created in the programme, Mr Langer hardly knew Mr Masot and had only ever been introduced to him, but had never worked with him. Kingsley Napley also said that Mr Langer had little knowledge about the matter Mr Masot was discussing with him at the Labour Party Conference.

- b) Kingsley Napley complained that Mr Langer was not given an appropriate and timely opportunity to respond to the allegations made about him in the programme and had not been contacted prior to the broadcast of the programme. Kingsley Napley said that had Mr Langer been asked about his relationship with Mr Masot prior to the broadcast of the programme, he would have been able to inform the broadcaster about his limited association with Mr Masot.

### *Unwarranted infringement of privacy*

- c) Kingsley Napley complained that Mr Langer's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because his conversation with Mr Masot at the Labour Party Conference, which was not a public event, was surreptitiously filmed.

Kingsley Napley said the Mr Langer had attended the conference as part of his job and the filming captured a conversation in which both parties would have felt they could speak openly and freely and that anything said would be regarded as confidential. Kingsley Napley said that there was no prima facie evidence of wrongdoing by Mr Langer that warranted his being filmed, nor was it in the public interest to film him.

- d) Kingsley Napley also complained that Mr Langer's privacy was unwarrantably infringed in the programme as broadcast because the surreptitiously filmed footage of his conversation with Mr Masot was broadcast in the programme without his consent.

Kingsley Napley said that there was no public interest justification in including the surreptitiously filmed footage of Mr Langer in the programme and added that the footage did not support the premise in the programmes that pro-Israel organisations were being established and directed by Israel.

Kingsley Napley said that Mr Langer had only been in his position as Public Affairs Manager for the JLC for three months at the time he was filmed. It said that Mr Langer was not a public figure and that the conversation between Mr Langer and Mr Masot did not show any crime, wrongdoing or incompetence on Mr Langer's part.

### **Broadcaster's response**

Al Jazeera Media Network's response was submitted on its behalf by its legal representatives, Carter-Ruck, however, it will be referred to as AJMN's or the broadcaster's response.

AJMN said that the series of investigative programmes "uncovered" how the Israeli Government (primarily through its Embassy in the UK) attempted to sway MPs, political parties, the UK Government and other policy and decision makers, including future decision makers, a campaign it said that could result in undermining democracy in the UK. AJMN said that the activities exposed in the programme could only have been uncovered through surreptitious filming and that it was in the public interest.

### *Unjust or unfair treatment*

- a) AJMN said that it did not accept that Mr Langer was treated unfairly in the programme. It said that the programme did not implicate him in any serious allegations, including that of undermining democracy.

The broadcaster said that Mr Langer played a very limited role and only appeared in one of the programmes. It added that while his role was relevant to understanding how Mr Masot and the Israeli Embassy operated, Mr Langer himself was not shown in the programme to be involved in any unscrupulous activities.

AJMN said that in the second episode, the undercover reporter was attempting to make new contacts, meeting pro-Israeli groups and attending the 2016 Labour Party Conference. It added that the programme made clear to viewers that Mr Masot was keen to introduce the undercover reporter to a number of his contacts and friends, including the deputy Israeli Ambassador and members of the LFI. It added that Mr Masot was keen for the undercover reporter to set up a youth wing of LFI and introduced him as the new Chair of Youth LFI. The broadcaster said that Mr Masot was shown networking with a number of pro-Israel activists and he was then seen offering assistance to the Jewish Leadership Council through Mr Langer. It said that the exchange between Mr Masot and Mr Langer was an essential part of the story that the programme makers were developing. The broadcaster said that it demonstrated how Mr Masot worked with and tried to influence pro-Israeli groups. It added that the focus was on Mr Masot's behaviour and not Mr Langer's.

AJMN said that there was no implication or innuendo in any of the material broadcast that Mr Langer was or had been involved in anything inappropriate. It added that there was nothing shown as being said by Mr Langer that could be construed in this manner. It added that the programme makers demonstrated how Mr Langer was not necessarily fully across whatever matter was discussed as he stated that he did not know *"anything more than that"*. It said that it did not consider that Mr Langer's brief appearance in the programme could have implicated him in the allegations of wrongdoing being explored in the programme. It added that the commentary in the programme accompanying the conversation made no such allegation. The broadcaster said that Mr Langer, unlike Mr Masot, was seen saying nothing of consequence. However, it said that even though Mr Langer was not implicated in any wrongdoing, the inclusion of footage of him was important to the authenticity and credibility of the story.

The broadcaster said that the activities of the Israeli Embassy and of Mr Masot, in particular, were the primary focus of the series. It said that Mr Langer was very much a secondary part of the story as it explained how Mr Masot operated within the pro-Israel lobby. However, it said that there was no suggestion, whether implicit or explicit, of *"guilt by association"* as far as Mr Langer was concerned, nor was any allegation levied against him.

AJMN reiterated that the programme's focus was on the Israeli Embassy and Mr Masot's behaviour and, in particular, their relationship with pro-Israeli groups such as the JLC. The broadcaster said that it did not consider that anything in the programme made any comment on, or suggestion as to, the extent of Mr Langer and Mr Masot's personal relationship. It said that no reference was made to Mr Langer in episode two and it simply included a photograph of him with reference to his current position at JLC and his position at the Union of Jewish Students. It added that the programme emphasised what it considered to be the essential element of the scene by stating:

*"He [Mr Masot] offered assistance to the Jewish Leadership Council, an influential umbrella group of Jewish organisations in Britain".*

The broadcaster said that the focus in the programme was on Mr Masot and how he was trying to shape relationships with Jewish organisations. It said that the conversation between Mr Langer and Mr Masot provided evidence that Mr Masot worked with JLC and that this was the purpose for it being included in the programme. It added that there was no suggestion made that Mr Langer and Mr Masot knew each other well.

In any event, it said that there was evidence that Mr Langer and Mr Masot did know each other. It said that the conversation between them at the Labour Party Conference “does not appear to be one that two people that hardly knew each other would have”. It said that as can be seen from the unedited footage “the two of them seem to be on friendly terms and share a joke”. In addition, the broadcaster said that they seem to have an understanding about the issue they were discussing and the people working at the JLC. Further, they indicated at the end of the conversation that they would continue dealing with one another after the Conference.

The broadcaster added that the night before the Labour Party Conference, it appeared that Mr Masot and Mr Langer had been at the same Union of Jewish Student's party and had spoken to one another there. It said that the unedited footage showed that when speaking with Mr Langer, the undercover reporter had asked about this party in which he had mentioned speaking with Mr Masot. In further unedited footage, the broadcaster said that in conversation with the undercover reporter, Mr Langer had complained about the excessive involvement of the Israeli Embassy in events organised by British Jewish organisations. Mr Langer also confirmed that he has relations with the Israeli Government.

AJMN said that in light of all the above factors, it was “improbable” that Mr Langer had only just been introduced to Mr Masot and, in any event, the programme did not imply that the two men knew each other well. Therefore, no unfairness occurred to Mr Langer in this respect.

- b) AJMN said that there was a public interest in using footage of Mr Langer speaking to Mr Masot but no allegation was made about Mr Langer in the programme and therefore there was no requirement to give him an opportunity to respond.

The broadcaster said that the programme made no comment on the personal relationship between Mr Langer and Mr Masot and did not assert nor imply that it was anything more than “limited”. In particular, it said that the programme was looking at the way the Israeli Government/Embassy and Mr Masot were behaving.

#### *Unwarranted infringement of privacy*

- c) AJMN said that any *prima facie* infringement of privacy experienced by Mr Langer in connection with the obtaining of the footage was very minor in nature and was warranted by the context, the overall public interest in the story and nature of the investigation.

AJMN said that there was *prima facie* evidence of the existence of a story that was in the public interest, namely, “the efforts of a foreign state covertly to influence and interfere with British democracy and the operation of the political system”. The broadcaster said that the Code required a story to be in the public interest, rather than the coverage given to any one individual in the context of that story. It said that this distinction was extremely important when establishing what is and what is not warranted in terms of secret filming. It added that the impact of the investigation was extensive and the programme makers had uncovered evidence of potential wrongdoing.

AJMN said that in July 2016, the undercover reporter attended a number of political



meetings without conducting any undercover filming, in order to gather further evidence of Mr Masot's activities and role as an "Israeli operative in the UK". The broadcaster said that these unrecorded conversations revealed that Mr Masot had extensive contacts within British politics, including within the Labour Party. The broadcaster added that statements made by Mr Masot during these conversations also gave the programme makers reason to believe that Mr Masot was seeking to "influence and direct political activists in support of the State of Israel". AJMN said that the programme makers therefore concluded that undercover filming was justified.

AJMN said that for the programme makers to demonstrate the way in which Mr Masot and the Israeli Embassy (on behalf of the Israeli Government) were behaving it was necessary for the programme makers to go undercover. The broadcaster said that the authenticity and credibility of the story was dependent on the team gathering filmed evidence of representatives and agents of the State of Israel trying to influence the British political process. It added that in order to "prove that a campaign of inappropriate influence was being conducted", it was essential that the programme makers obtained evidence. Without such evidence, the broadcaster said that the story would simply amount to a series of allegations made by a number of commentators.

AJMN said that it had satisfied itself that the requirements of Ofcom's Broadcasting Code ("the Code") had been followed. In these circumstances, it said that surreptitious filming at the Labour Party Conference was permissible in connection with obtaining material for the programme.

The broadcaster said that having established that there was *prima facie* evidence of a story in the public interest, it had reasonable grounds to suspect that further material evidence could be obtained using undercover techniques and surreptitious filming. It considered that the evidence already gathered had pointed to the fact that the State of Israel was conducting a "covert operation". It said that it was therefore unlikely that anyone involved in this process would go on record and speak publicly as to how this covert activity was being conducted.

AJMN said that Mr Langer was a reasonable subject for investigation. It said that the undercover reporter and programme makers had discovered that in the run-up to the NUS election, the NUS Vice-President, Mr Brooks along with Mr Michael Rubin, had held "secret purpose meetings" with Mr Langer. The broadcaster said that they were campaigning against Ms Malia Bouattia who had adopted a position that Israel's behaviour was "problematic" and who described herself as "anti-Zionist". The broadcaster said that, given this and Mr Masot's involvement with JLC along with other pro-Israeli groups, it followed that permissible surreptitious filming extended to surreptitious filming of Mr Langer. It said that this was not altered by the fact that Mr Langer proved to be a limited, though necessary part of the story.

The broadcaster said that the unedited footage showed that the surreptitious filming of Mr Langer was not extensive and was undertaken in public circumstances. It added that given the nature of the matters Mr Langer was recorded discussing, any infringement of his privacy was limited.

AJMN added that the secret filming also elicited other information which, although not included in the programme as broadcast, provided further evidence to support its content that the Israeli Embassy could be viewed as interfering in the activities of

independent entities for example, Mr Langer confirmed that the Israeli Government had connections with the JLC.

It said that the surreptitious filming undertaken by the programme makers had been appropriate, proportionate and in the public interest.

- d) AJMN said that if there was any infringement of Mr Langer's legitimate expectation of privacy in the broadcast of the footage of him then it was limited and also warranted.

AJMN said that Mr Langer was in a semi-public place, namely a Labour Party Conference. It said that this event was open to party members, organisations and companies who set up stalls, as well as journalists. It said that there are no restrictions on filming in public areas at these events and that "cameras frequently pick up conversations". It added that there were also a large number of people "milling" around the Conference and conversations held in public spaces, such as that involving Mr Langer, can be readily overheard by such people. The broadcaster said that it is evident from the recording that Mr Langer spoke freely and made no effort to hide what he said from those around him. The broadcaster said that the conversation was brief and revealed nothing that could reasonably be considered private. It added that there was also nothing inherently private about the footage that was broadcast which simply showed Mr Langer at the Conference. It said that his presence there was a matter of public record.

The broadcaster said that the exchange between the undercover reporter and Mr Langer could not have had any adverse effect on his employment, future employment or prospects, his status or reputation. Nevertheless, it said that his inclusion was important to the investigation as it provided evidence of the way in which Mr Masot was operating.

AJMN said that Mr Langer was the public affairs manager at the JLC and that his post was both outward facing and public for a high-profile lobby organisation. It added that prior to this appointment, he was the Campaign Director for the Union of Jewish Students. Further, it said that he has publicly called out what he views as anti-Semitism or "hating Israel" and he has also been quoted in many national and international publications. AJMN said that Mr Langer is not a private figure as implied by his complaint and he has courted publicity for his causes and is publicly involved in the Israel and Palestine issue.

In this context, it said that the fact that Mr Masot sought to use contacts such as Mr Langer and such organisations as the JLC was a central part of the story uncovered by the programme makers. The footage of Mr Langer and Mr Masot established Mr Masot's methods and demonstrated how he sought to reach out to, and utilise, people he felt to be well connected and inherently sympathetic. The broadcaster said that Mr Langer's relevance to the story was therefore that he was the kind of contact Mr Masot wished to utilise in pursuit of Israel's objectives. The broadcaster said that the programme explained the *prima facie* evidence that existed and how a large number of diplomats had been despatched to combat BDS, especially targeted at the young and abroad.

AJMN said that if there was any minor infringement of Mr Langer's privacy in the broadcast of the programme, it was limited in nature and far outweighed by the public interest in the story. It said that Mr Langer was a part of the story the programme told of how the Israeli Embassy sought to use its contacts in Parliament, the political parties and elsewhere and of how a newcomer to the cause i.e. the undercover reporter, was welcomed and introduced to a number of influential people. It added that the

programme also informed its viewers as to how the Israeli Embassy, through Mr Masot, sought “covertly to influence apparently independent pro-Israeli groups”. It added that it showed how “deep” an Israeli Embassy employee’s contacts went and how he was willing to attempt to exploit them. The broadcaster said that the use of the footage of Mr Langer was necessary to the credibility and authenticity of the programme. It said that filming openly was not an option in this investigation and to have approached matters in that way would have resulted in this story not being uncovered.

AJMN said that in the context of this public interest story, where no allegation of wrongdoing was made against Mr Langer but he was part of the investigation, to prohibit the use of this footage would constitute a serious restriction on the broadcaster’s freedom of expression, and that of its audience.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View on this case that the complaint should be not upheld. Both the complainant and the broadcaster 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 this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript of it, the unedited footage and transcript and both parties’ written submissions.

#### *Unjust or unfair treatment*

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

In addition to this Rule, Section Seven (Fairness) of the Code contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) We first considered Mr Langer's complaint that he was treated unjustly or unfairly in the programme as broadcast because the programme unfairly implicated him in the serious allegations of undermining democracy being made in the programme.

Kingsley Napley said that, contrary to the impression created in the programme, Mr Langer hardly knew Mr Masot and had only ever been introduced to him, but had never worked with him. Kingsley Napley also said that Mr Langer had little knowledge about the matter Mr Masot was discussing with him at the Labour Party Conference.

Practice 7.9 states:

“before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation”.

The Code recognises the importance of freedom of expression and the public interest need to allow broadcasters the freedom to broadcast matters in programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to individuals or organisations in programmes. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the cases including, for example, the seriousness of any allegations and the context within which they were made.

We first considered the seriousness of the allegations and whether they had the potential to materially and adversely affect viewers' opinions of Mr Langer.

As set out in the “Programme Summary” above, the programme claimed that the Israeli Embassy, through Mr Masot, was attempting to gain influence within a number of political organisations and the UK government to garner support for Israel. The programme included surreptitiously filmed footage of a conversation between Mr Langer and Mr Masot. In our view, the footage in the programme appeared to show that Mr Masot had some sort of relationship with the JLC and that he knew Mr Langer, although the programme did not make any express reference to the nature or extent of their relationship. Further, it was our view that the programme did not state or imply that Mr Langer himself was involved in any wrongdoing. Rather, it was our view that the programme focused on Mr Masot's behaviour and the way he sought to try to influence pro-Israeli organisations. In particular, we considered that although the conversation between Mr Masot and Mr Langer showed that Mr Masot may have worked with the JLC, it would have been clear to viewers from the conversation that Mr Langer had a limited understanding about the matter Mr Masot was discussing with him. Therefore, we considered that it was unlikely that the inclusion of this brief conversation would have led viewers to consider that Mr Langer was involved in any of the alleged wrongdoing being explored in the programme.

Taking the above factors into account, we considered that the programme did not make significant allegations about Mr Langer in the context of him “undermining democracy” and that the inclusion of surreptitiously filmed footage of him was, in itself, unlikely to have materially and adversely affected viewers' perceptions of him unfairly.

Therefore, we considered that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in the programme in a way that was unfair to Mr Langer.

- b) We next considered Mr Langer's complaint that he was not given an appropriate and timely opportunity to respond to the allegations made about him in the programme.

Practice 7.11 states:

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

We first considered whether the statements made in the programme amounted to significant allegations of wrongdoing or incompetence.

Mr Langer was not provided with an opportunity to respond to the claims made in the programme about his relationship with Mr Masot. However, it was our view that Mr Masot was simply shown speaking with Mr Langer and no comments were made about the status of their relationship nor was there any allegation that Mr Langer was involved in any sort of wrongdoing either with Mr Masot or any other individual. Therefore, there was no requirement on the broadcaster to have provided Mr Langer with an appropriate and timely opportunity to respond in order to avoid unfairness to him.

Therefore, we considered that there was no unfairness to Mr Langer in this respect.

#### *Unwarranted infringement of privacy*

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

- c) We considered the complaint that Mr Langer's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because the conversation with Mr Masot at the Labour Party Conference, which was not a public event, was surreptitiously filmed.

Practice 8.5 states:

“any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or be otherwise warranted”.

Practice 8.9 states:

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

Practice 8.13 states:

“surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if:

- there is *prima facie* evidence of a story in the public interest; and,
- there are reasonable grounds to suspect that further material evidence could be obtained; and,
- it is necessary to the credibility and authenticity of the programme.

We first assessed whether it was warranted for the programme makers to film Mr Langer.

We took into account AJMN’s response that there was a public interest in the matters which the programme investigated. It said that, prior to filming, it had understood that the State of Israel had undertaken a campaign seeking to influence politics in the UK and was concerned that this campaign could result in an undermining of the UK’s democracy. In particular, it said that it had found evidence that the Israeli Embassy and Mr Masot may be a part of this campaign and it was unlikely that those involved (whether knowingly or unknowingly) or connected with Mr Masot, such as Mr Langer, would be willing to speak openly about this matter.

We considered that the claims the broadcaster set out to investigate through surreptitious filming were serious, as they concerned the activities the Israeli Embassy in the UK through Mr Masot and his attempt through his links with certain people and organisations to gain political influence in the UK. In relation to Mr Langer in particular, we considered that it was important for the broadcaster to detail, to some extent, the contacts Mr Masot had with pro-Israeli organisations in the UK and the extent to which he used these contacts.

We also considered that the information gathered by the programme makers before the surreptitious filming took place amounted to *prima facie* evidence of a story in the public interest. In Ofcom’s view, we considered that on the evidence available to it, the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming. In particular, it was our view that it would have been unlikely that the programme makers could have captured footage of the various individuals and organisations, such as Mr Langer, speaking openly about the matters being explored in the programme without using this technique. In addition, we considered that surreptitious filming was necessary to the credibility and authenticity of the programme because without it, the programme makers would have had to rely on second-hand accounts of the alleged activities of Mr Masot and those he was engaged with, which would be less credible than direct evidence of the links and contacts Mr

Masot had. Therefore, in our view, the programme makers' decision to surreptitiously film Mr Langer was warranted.

Ofcom also considered whether the means of obtaining the surreptitiously filmed material was proportionate. We took into account the broadcaster's representations that the investigation highlighted concerns regarding the involvement of the Israeli Government, through its Embassy in the UK and Mr Masot, with the UK Government, particularly the Labour Party (as set out in detail above). We also recognised that the broadcaster said it conducted research without undercover filming to gather evidence of Mr Masot's activities. We took into account that the filming was brief and focused, and that it was used to capture situations or conversations which were directly relevant to the matters being investigated in the programme, such as the links the Embassy had with pro-Israeli organisations (for example, the JLC, where Mr Langer was the Public Affairs Manager), and the extent to which Mr Masot wished to utilise his contacts. Taking these factors into account, we considered that it was proportionate for the programme makers to surreptitiously film Mr Langer.

Ofcom next assessed the extent to which Mr Langer had a legitimate expectation of privacy with regard to the footage of him filmed surreptitiously.

Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be assessed in light of the circumstances in which the person concerned finds him or herself. Ofcom therefore approaches each case on its facts. It is important to note that some activities may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

Mr Langer was filmed when Mr Masot approached him at the Labour Party Conference and spoke about the JLC. Mr Langer was unaware that he was being filmed. While the interaction between the two men was filmed in a semi-public place where any conversation had the potential to be overheard by bystanders, it was likely that Mr Langer would have considered that he was having a private conversation in which he could speak openly and freely without the details of these conversations being made known to the wider public. However, it was also our view that the exchange was brief and that the filming did not capture any information about Mr Langer that could reasonably be regarded as being private or sensitive to him nor was he filmed engaged in any conduct or action that could reasonably be regarded as being private. In particular, the conversation was about the JLC rather than anything about Mr Langer himself.

Given the above factors, we considered that in the particular circumstances of this case Mr Langer had a legitimate expectation of privacy in relation to the surreptitious filming of his conversation with the undercover reporter, albeit limited by the fact nothing private or sensitive about Mr Langer was surreptitiously filmed and the filming was conducted in a semi-public place.

Mr Langer had not consented to being filmed therefore we went on to consider whether the infringement of Mr Langer's limited legitimate expectation of privacy was warranted.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to

demonstrate that the public interest outweighs the right to privacy. Examples of broadcasting being in the public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

We considered that there was a public interest justification in obtaining this material for the purposes of including it in the programme as it allowed the broadcaster to demonstrate the concerns it had about activities of the Israeli Embassy in the UK through Mr Masot and its attempts to potentially influence UK Government policy through his links with various individuals and organisations. Further, we considered that the filming of Mr Langer was important as it enabled the broadcaster to demonstrate the contacts Mr Masot had with pro-Israeli organisations and the extent to which he wished to use those contacts.

Taking all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mr Langer outweighed his privacy in the circumstances of this case. Therefore, there was no unwarranted infringement of Mr Langer's limited legitimate expectation of privacy in the obtaining of material included in the programme.

- d) We next considered Mr Langer's complaint that his privacy was unwarrantably infringement in the programme as broadcaster because the surreptitiously filmed footage of his conversation with Mr Masot was broadcast in the programme without his consent.

Practice 8.6 states:

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

Practice 8.14 states:

"material gained by surreptitious filming and recording should only be broadcast when it is warranted".

As discussed at head c) above, we considered that the use of surreptitious filming was warranted in the circumstances.

We next considered the extent to which Mr Langer had a legitimate expectation of privacy in the broadcast of the material 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.

The programme included footage of Mr Langer having a brief conversation with the Mr Masot about the JLC. Mr Langer's face was shown unobscured, his voice was heard and he was named in the programme.

For reasons set out in head c) above, we considered that Mr Langer had a legitimate expectation of privacy with regard to the broadcast of the footage of his conversation with Mr Masot in the programme. However, we considered that any infringement of Mr



Masot's legitimate expectation of privacy was limited by the fact that the conversation did not disclose any private or personal information about Mr Langer or his private life and that he had been filmed in a semi-public place.

The broadcaster did not seek Mr Langer's consent to broadcast the surreptitiously filmed footage of him. We went on to consider whether the infringement of Mr Langer's limited legitimate expectation of privacy was "warranted", within the meaning set out in the Code (see above under head b)).

We balanced carefully Mr Langer's right to privacy with regard to the inclusion of the relevant surreptitiously filmed footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. As set out in detail in head c) above, we considered that the broadcast footage raised potentially serious concerns about the Israeli Embassy in the UK potentially influencing UK Government policy through Mr Masot's links with various individuals and organisations. In particular, in relation to Mr Langer it showed the extent to which Mr Masot had links with pro-Israeli organisations and the manner in which he wished to use these contacts. Therefore, we considered that, on balance, the public interest in broadcasting the footage of Mr Langer outweighed his legitimate expectation of privacy.

Given all the factors set out above, we considered that there was no unwarranted infringement of Mr Langer's privacy in the inclusion of the surreptitiously filmed footage of him in the programme as broadcast.

**Ofcom has not upheld Mr Langer's complaint, made on his behalf by Kingsley Napley, of unjust or unfair treatment and unwarranted infringement of privacy in connection with the obtaining of the material included in the programme, and in the programme as broadcast.**

## Not Upheld

### **Complaint by Kingsley Napley LLP on behalf of Mr Luke Akehurst *The Lobby, Al Jazeera English, 12 January 2017***

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#### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Kingsley Napley LLP ("Kingsley Napley") on behalf of Mr Luke Akehurst.

Al Jazeera English<sup>1</sup> broadcast a four-part investigative programme about the alleged influence of the Israeli Government, through its Embassy in the UK, on the UK Government. In particular, it explored the alleged involvement of the Israeli Embassy in the UK with pro-Israel groups and organisations. The second programme included surreptitiously filmed footage of the complainant, Mr Akehurst, as he spoke with the undercover reporter.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Akehurst.
- Mr Akehurst had a limited legitimate expectation of privacy in relation to the obtaining and subsequent broadcast of the surreptitiously filmed footage of him. However, on balance, this did not outweigh the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Therefore, we considered that Mr Akehurst's privacy was not unwarrantably infringed either in connection with the obtaining of the footage or its subsequent broadcast in the programme.

#### Programme summaries

On 12 January 2017, Al Jazeera English broadcast the second part of a four-part series of programmes (broadcast on 11, 12, 13 and 14 January 2017) that examined the alleged involvement of the Israeli Government in influencing British politics and, in particular, the British Labour Party. Each episode included the following introduction:

*"Following decades of violence, a new challenge has emerged to Israel's occupation of Palestinian land called BDS... that's the global movement to boycott, divest and impose sanctions on Israel and expose it as an apartheid state. The Israeli Government has responded with a campaign to rebrand the country's image... it's an operation run by the secretive Ministry of Strategic Affairs..."*

*Using an undercover reporter, Al Jazeera's investigative unit exposes Israel's clandestine activities in London, a city that's become a major battleground... You'll meet people looking to challenge BDS at every level of British politics. One of Israel's main targets is the Labour Party. For the first time, its leader [Jeremy Corbyn MP] is a champion of*

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<sup>1</sup> Al Jazeera is an international news channel, originating in the Middle East but with different language versions broadcast around the world. These include an English-language version, licensed by Ofcom. The licence for this service is held by Al Jazeera Media Network.

*Palestinian civil rights...It's a covert action which penetrates the heart of Britain's democracy... It's a battle of ideas seeking to change not only how Israel is portrayed, but even how it is debated..."*

In the programme broadcast on 12 January 2017, Mr Akehurst was referred to in the programme and surreptitiously filmed footage of him was included in the programme.

During the first episode (broadcast on 11 January 2017), the programme's reporter explained that in order for the programme to carry out its investigation, an undercover reporter called "Robin" was used who had posed as a graduate looking for a job in Britain and was a "Labour Party activist with strong sympathies to Israel". The programme explained that he had attended Labour Party functions for over a month and "stood out as a friend of Israel". The programme gave details of a number of groups and organisations in the UK that it said supported Israel and included surreptitiously filmed footage of a Senior Political Officer at the Israeli Embassy, Mr Shai Masot, who described the "Embassy's role in these movements" to the undercover reporter. One of the organisations identified was We Believe in Israel, of which Mr Akehurst was Director.

In the second episode (broadcast on 12 January 2017), the programme explained that Mr Masot wanted the undercover reporter to attend the Labour Party's annual conference and he suggested that Robin "liaise with heads of other pro-Israel movements". Surreptitiously filmed footage of Mr Masot as he spoke with Robin was included in the programme. The following conversation took place:

Mr Masot: *"So Luke Akehurst is the Director of We Believe in Israel, he's a great guy.*

Robin: *So you know him?*

Mr Masot: *Of course. So Luke is a great guy, I know him, he's a great friend. We Believe in Israel is sitting together in the offices of BICOM, but it's not the same organisation".*

A still photograph was shown of Mr Akehurst and he was described as "Head of We Believe in Israel, a project of the Britain Israel Communications and Research Centre (BICOM)".

The conversation between Mr Masot and Robin continued:

Mr Masot: *"He's a great campaigner. He's one of the best in the inside, in all the party. Seriously there is not a lot of people like him, and Luke, ask him, if he is keen to.*

Robin: *Can I mention your name towards Luke?*

Shai: *Yeah".*

Later, Robin was then shown as he attended a Labour Party conference. The reporter stated that:

*"Robin learns that young LFI activists are planning to attend a meeting organised by the Labour Friends of Palestine and the Middle East (LFPME). On the way, he spots Luke*

*Akehurst, the prominent pro-Israel operative within Labour, who Shai had told Robin to contact”.*

The programme included surreptitiously filmed footage of Robin as he spoke with Mr Akehurst. Robin introduced himself as the person who was setting up the young LFI. The following conversation then took place:

Mr Akehurst: *“Oh, well done, good, good.*

Robin: *We have a little progress now, we have the first signing up, 22 people on the mailing list.*

Mr Akehurst: *Good, good, excellent.*

Robin: *Are you going to any events?*

Mr Akehurst: *To the LFPME thing? Yes I am, because I need to take notes on that one.*

Robin: *Oh, are you going to write something?*

Mr Akehurst: *No, no just for internal, for BICOM”.*

The reporter then stated:

*“It becomes clear that as well as Akehurst, other pro-Israeli activists will be secretly recording the event”.*

No further footage of, or reference to, Mr Akehurst was included in the programme.

There was no reference to the complainant in episodes three and four broadcast on 13 and 14 January 2017 respectively.

### **Summary of the complaint**

#### *Unjust or unfair treatment*

- a) Kingsley Napley complained that Mr Akehurst was treated unjustly or unfairly in the programme as broadcast because the inclusion of both Mr Masot's conversation with the undercover reporter and the surreptitiously filmed footage of Mr Akehurst resulted in Mr Akehurst being unfairly implicated in the serious allegations of undermining democracy being made in the programme.

In particular, Kingsley Napley said that the footage of Mr Masot speaking with the undercover reporter had been “heavily edited” so it would have been unclear to viewers what the undercover reporter should liaise with Mr Akehurst about. Further, Kingsley Napley said that the footage of Mr Akehurst having a short one-to-one conversation with the undercover reporter was only included because the undercover reporter “happened to spot him at the conference”. Kingsley Napley said that the conversation was “wholly unremarkable and not suggestive of any wrongdoing”.

### *Unwarranted infringement of privacy*

- b) Kingsley Napley complained that Mr Akehurst's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because his conversation with the undercover reporter at the Labour Party Conference, which was not a public event, was surreptitiously filmed.

Kingsley Napley said that the filming captured a conversation in which Mr Akehurst would have felt they could speak openly and freely and that anything said would be regarded as confidential. It said that there was no *prima facie* evidence of wrongdoing by Mr Akehurst that warranted his being filmed, nor was it in the public interest to film him.

- c) Kingsley Napley also complained that Mr Akehurst's privacy was unwarrantably infringed in the programme as broadcast because the surreptitiously filmed footage of his conversation with the undercover reporter was broadcast in the programme without his consent. Kingsley Napley said that there was no public interest justification in including the surreptitiously filmed footage of Mr Akehurst in the programme.

### **Broadcaster's response**

Al Jazeera Media Network's response was submitted on its behalf by its legal representatives, Carter-Ruck, however, it will be referred to as AJMN's or the broadcaster's response.

AJMN said that the series of investigative programmes "uncovered" how the Israeli Government (primarily through its Embassy in the UK) attempted to sway MPs, political parties, the UK Government and other policy and decision makers, including future decision makers, a campaign it said that could result in undermining democracy in the UK. AJMN said that the activities exposed in the programme could only have been uncovered through surreptitious filming and that it was in the public interest.

### *Unjust or unfair treatment*

- a) AJMN said that it did not accept that Mr Akehurst was treated unfairly in the programme. It said that the programme did not implicate him in any serious allegations, including that of undermining democracy. It said that the footage of Mr Akehurst included in the programme had not been heavily edited and the programme was fair in its presentation of the brief conversation that occurred between the undercover reporter and Mr Akehurst.

The broadcaster said that Mr Akehurst played a very limited role and only appeared in one of the programmes. It added that while his role was relevant to understanding how Mr Masot and the Israeli Embassy operated, Mr Akehurst himself was not shown in the programme to be involved in any unscrupulous activities.

AJMN said that in the second episode, the undercover reporter was attempting to make new contacts, meeting pro-Israeli groups and attending the 2016 Labour Party Conference. It added that the programme made clear to viewers that Mr Masot was keen for the undercover reporter to set up a youth wing of LFI. The broadcaster said that it was within this context that Mr Masot was shown talking to the undercover reporter and Mr Akehurst. It said that there was no suggestion or implication that Mr Akehurst

was involved in anything underhand or any wrongdoing. It added that all the viewer was made aware of at this stage was that Mr Akehurst, according to Mr Masot, was:

- the Director of We Believe in Israel (which was a separate organisation from BICOM);
- a “great guy”;
- known to Mr Masot; and,
- a “great campaigner”.

The broadcaster said that there was no implication or subtle innuendo that Mr Akehurst was, or had been, involved in anything inappropriate. Further, it said that the edited conversation directly reflected the full conversation (which it provided to Ofcom) that had taken place.

AJMN also said that viewers would have understood the reason Mr Masot had told the undercover reporter to liaise with Mr Akehurst. It said that the programme accurately recorded that the undercover reporter and Mr Masot were discussing those pro-Israeli “heads” with whom the undercover reporter should make contact. It added that the unedited footage showed that the discussion between Mr Masot and the undercover reporter was not heavily edited and any editing did not distort the conversation or characterise it as anything other than what it was. The broadcaster said that Mr Masot and the undercover reporter were discussing Mr Masot’s contacts within various pro-Israeli groups and how the undercover reporter could reach out to them and that viewers would have understood this to be the case.

With regard to the conversation Mr Akehurst had with the undercover reporter which was included in the programme, the broadcaster said that the accompanying commentary made no reference to Mr Akehurst other than to the fact that the undercover reporter had spotted him and that he was the person that Mr Masot had told the undercover reporter to get in contact with. The broadcaster agreed with the complainant’s assertion that this conversation only occurred because the reporter “happened to spot him at the conference” and it said that the commentary accurately reflected this.

AJMN said that when told that the undercover reporter was setting up Young LFI, Mr Akehurst was shown encouraging him. It added that Mr Akehurst was not shown saying anything that would have suggested to viewers that he was involved in any wrongdoing. It said that the commentary also made no such allegation. However, this footage was important to the authenticity and credibility of the story (see head b) below).

The broadcaster said that the activities of the Israeli Embassy, and of Mr Masot in particular, were the primary focus of the series. It added that Mr Akehurst was very much a secondary part of the story as it explained how Mr Masot operated within the pro-Israeli lobby. However, it said that there was no suggestion, whether explicit or implicit, of “guilt by association” as far as Mr Akehurst was concerned nor was any allegation levied against him.

#### *Unwarranted infringement of privacy*

- b) The broadcaster said that any infringement of privacy experienced by Mr Akehurst in connection with the obtaining of the footage was very minor in nature and was warranted by the context, the overall public interest in the story and nature of the

investigation.

AJMN said that there was *prima facie* evidence of the existence of a story that was in the public interest, namely, "the efforts of a foreign state covertly to influence and interfere with British democracy and the operation of the political system". The broadcaster said that the Code required a story to be in the public interest, rather than the coverage given to any one individual in the context of that story. It said that this distinction was extremely important when establishing what is and what is not warranted in terms of secret filming. It added that the impact of the investigation was extensive and the programme makers had uncovered evidence of potential wrongdoing.

AJMN said that in July 2016, the undercover reporter attended a number of political meetings without conducting any undercover filming, in order to gather further evidence of Mr Masot's activities and role as an "Israeli operative in the UK". The broadcaster said that these unrecorded conversations revealed that Mr Masot had extensive contacts within British politics, including within the Labour Party. The broadcaster added that statements made by Mr Masot during these conversations also gave the programme makers reason to believe that Mr Masot was seeking to "influence and direct political activists in support of the State of Israel". AJMN said that the programme makers therefore concluded that undercover filming was justified.

The broadcaster said that having established that there was *prima facie* evidence of a story in the public interest, it had reasonable grounds to suspect that further material evidence could be obtained using undercover techniques and surreptitious filming. It considered that the evidence already gathered had pointed to the fact that the State of Israel was conducting a "covert operation". It said that it was therefore unlikely that anyone involved in this process would go on record and speak publicly as to how this covert activity was being conducted.

AJMN said that for the programme makers to demonstrate the way in which Mr Masot and the Israeli Embassy (on behalf of the Israeli Government) were behaving it was necessary for the programme makers to go undercover. The broadcaster said that the authenticity and credibility of the story was dependent on the team gathering filmed evidence of representatives and agents of the State of Israel trying to influence the British political process. It added that in order to "prove that a campaign of inappropriate influence was being conducted", it was essential that the programme makers obtained evidence. Without such evidence, the broadcaster said that the story would simply amount to a series of allegations made by a number of commentators.

AJMN said that it had satisfied itself that the requirements of Ofcom's Broadcasting Code ("the Code") had been followed. In these circumstances, it said that surreptitious filming at the Labour Party Conference was permissible in connection with obtaining material for the programme. AJMN said that Mr Akehurst was a reasonable subject for investigation given what Mr Masot had said about him to the undercover reporter and it followed that permissible surreptitious filming extended to surreptitious filming of Mr Akehurst. It said that this was not altered by the fact that Mr Akehurst proved to be a limited, though necessary part of the story.

The broadcaster said that the unedited footage showed that the surreptitious filming of Mr Akehurst was extremely short in duration and was undertaken in public circumstances. It added that given the nature of the matters Mr Akehurst was recorded

discussing, any infringement of his privacy was limited. It added that the surreptitious filming undertaken by the programme makers had been appropriate, proportionate and in the public interest.

- c) AJMN said that if there was any infringement of Mr Akehurst's legitimate expectation of privacy in the broadcast of the footage of him, then it was limited.

AJMN said that Mr Akehurst was in a semi-public place, namely a Labour Party Conference. It said that this event was open to party members, organisations and companies who set up stalls, as well as journalists. It said that there are no restrictions on filming in public areas at these events and that "cameras frequently pick up conversations". It added that there were also a large number of people "milling" around the Conference and conversations held in public spaces, such as that involving Mr Akehurst, could be readily overheard by such people. The broadcaster said that it is evident from the recording that Mr Akehurst spoke freely and made no effort to hide what he said from those around him. The broadcaster said that the conversation was brief and revealed nothing that could reasonably be considered private. It added that there was also nothing inherently private about the footage that was broadcast which simply showed Mr Akehurst at the Conference. It said that his presence there was a matter of public record.

AJMN said that the exchange between the undercover reporter and Mr Akehurst could not have had any adverse effect on his employment, future employment or prospects, his status or reputation. Nevertheless, it said that his inclusion was important to the investigation as it provided evidence of the way in which Mr Masot was operating.

AJMN said that Mr Akehurst was a major figure in the pro-Israel lobby in the UK and an active member of the Labour Party, having been a Labour Councillor and Parliamentary Candidate, as well as previously sitting on the Party's ruling National Executive Committee. The broadcaster added that since 2011, Mr Akehurst had been an employee of BICOM, "the largest arm of the pro-Israel lobby in the UK". It said that Mr Akehurst was an influential figure in both the Israeli lobby and the Labour Party and was an individual who could reasonably be expected to play an important role in the promotion of pro-Israeli policy, including by way of the strategy and practices adopted by Mr Masot. In this context, the broadcaster said that the fact that Mr Masot was seeking to use contacts such as Mr Akehurst and BICOM was a central part of the story uncovered by the programme makers. The footage of the undercover reporter and Mr Masot, and the undercover reporter and Mr Akehurst, established Mr Masot's methods and demonstrated how he sought to reach out to and utilise people he felt to be well connected and inherently sympathetic. The broadcaster said that Mr Akehurst's relevance to the story was therefore that he was the kind of contact Mr Masot wished to utilise in pursuit of Israel's objectives.

The broadcaster said that the way the Israeli Government and its agents were willing to operate was central to the investigation. It said that the programme explained the *prima facie* evidence available in this regard. It said that if there was any minor infringement of Mr Akehurst's privacy in the broadcast of the programme, it was limited in nature and far outweighed by the public interest in the story. It added that Mr Akehurst was a part of the story the programme told of how the Israeli Embassy sought to use its contacts in Parliament, the political parties and elsewhere and of how a complete newcomer to the cause, i.e. the undercover reporter, was welcomed and introduced to a number of



influential people in the Labour Party. It added that the programme also informed its viewers as to how the Israeli Embassy, through Mr Masot, sought “covertly to influence apparently independent pro-Israeli groups”. It added that it showed how “deep” an Israeli Embassy employee’s contacts went and how he was willing to attempt to exploit them. The broadcaster said that the use of the footage of Mr Akehurst was necessary to the credibility and authenticity of the programme. It said that filming openly was not an option in this investigation and to have approached matters in that way would have resulted in this story not being uncovered.

AJMN said that in the context of this public interest story, where no allegation of wrongdoing was made against Mr Akehurst, but he was part of the investigation, to prohibit the use of this footage would constitute a serious restriction on the broadcaster’s freedom of expression, and that of its audience.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View on this case that the complaint should be not upheld. Both the complainant and the broadcaster were given the opportunity to make representations. The complainant did not submit any representations. Carter-Ruck, on behalf of the broadcaster, submitted one representation concerning its statement, which did not raise an issue that materially affected the outcome of the decision.

### **Decision**

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript of it, the unedited footage and transcript and both parties’ written submissions.

#### *Unjust or unfair treatment*

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

In addition to this Rule, Section Seven (Fairness) of the Code contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these

practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) We first considered the complaint made on behalf of Mr Akehurst that he was treated unjustly or unfairly in the programme as broadcast because the inclusion of the footage of Mr Akehurst resulted in him being unfairly implicated in the serious allegations of undermining democracy being made in the programme.

In particular, Kingsley Napley said that the footage of Mr Masot speaking with the undercover reporter had been "heavily edited" so it would have been unclear to viewers what the undercover reporter should liaise with Mr Akehurst about. Further, Kingsley Napley said that the footage of Mr Akehurst having a short one-to-one conversation with the undercover reporter was only included because the undercover reporter "happened to spot him at the conference". Kingsley Napley said that the conversation was "wholly unremarkable and not suggestive of any wrongdoing".

Practice 7.6 states:

"when a programme is edited, contributions should be represented fairly".

Practice 7.9 states:

"before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation".

The Code recognises the importance of freedom of expression and the public interest need to allow broadcasters the freedom to broadcast matters in programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to individuals or organisations in programmes. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the cases including, for example, the seriousness of any allegations and the context within which they were made.

It is important to note that the editing of a programme is an editorial decision for the broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to the individual or organisation concerned. We therefore carefully compared the unedited footage of Mr Masot speaking with the undercover reporter about Mr Akehurst against the parts of the edited footage included in the programme as broadcast.

From reviewing the unedited footage, it appeared to Ofcom that the conversation between Mr Masot and the undercover reporter had been edited in the programme as broadcast. However, it was our view that the extent of the editing was very limited and the conversation included in the programme was an accurate reflection of what was said about Mr Akehurst and the manner in which it was said in the unedited footage. Further, it was our view that the programme as broadcast would have made clear to viewers that Mr Masot wanted the undercover reporter to set up the youth wing of the LFI and that to do so, he should liaise with heads of other pro-Israel movements, such as Mr

Akehurst. Therefore, we considered that the conversation had not been heavily or unfairly edited.

We next considered the seriousness of the allegations and whether they had the potential to materially and adversely affect viewers' opinions of Mr Akehurst.

As set out in the "Programme summary" above, the programme claimed that the Israeli Embassy, through Mr Masot, was attempting to gain influence within a number of political organisations and the UK Government to garner support for Israel. The programme included a brief conversation between Mr Masot and the undercover reporter about Mr Akehurst who, it appeared from the earlier conversation between the undercover reporter and Mr Masot, was well-known to Mr Masot. Mr Masot's comments were limited to his view that Mr Akehurst was someone who he considered to be a "great friend", that he was involved in the pro-Israeli movement, that he was a "great campaigner", and that he was someone who could help the undercover reporter set up the Young LFI. We considered that the inclusion of these comments may have had the potential to cause unfairness to Mr Akehurst, in circumstances where the programme was investigating whether or not there had been any wrongdoing by Mr Masot, and Mr Masot's references to Mr Akehurst as a "great friend" may have implied to viewers that he was somehow involved.

However, considering the programme as a whole, and having regard to the broadcaster's statement that the programme sought to examine Mr Masot's behaviour and how he sought to reach out and utilise people to whom he felt to be well-connected, we considered that the comments were presented in the programme as Mr Masot's opinion of Mr Akehurst and Mr Masot did not suggest that Mr Akehurst had been, or was complicit in, any allegation of wrongdoing which was being explored in the programme. We therefore considered that viewers would have understood that, to the extent Mr Masot may have spoken about Mr Akehurst, it was Mr Masot's, rather than Mr Akehurst's behaviour which was being investigated.

The programme also included surreptitiously filmed footage of a conversation between the undercover reporter and Mr Akehurst at the Labour Party Conference. We considered that this conversation and the accompanying commentary reflected only that Mr Masot had told the undercover reporter to approach Mr Akehurst as someone who was involved in a pro-Israeli movement. We also noted that the programme referred to Mr Akehurst "secretly recording" the Labour Friends of Palestine and the Middle East meeting. However, the programme included Mr Akehurst's response that this was for "internal" purposes. Given that Mr Masot had made no suggestion to the undercover reporter that Mr Akehurst was involved in any wrongdoing or any other significant allegation, we considered that, again, it was unlikely that the inclusion of this brief conversation, in which the undercover reporter simply introduced himself to Mr Akehurst and asked him about the events he would be attending, would have led viewers to consider that Mr Akehurst was involved in any of the alleged wrongdoing being explored in the programme.

Taking the above factors into account, we considered that the programme did not make significant allegations about Mr Akehurst in the context of him "undermining democracy" and that the inclusion of surreptitiously filmed footage of him was, in itself, unlikely to have materially and adversely affected viewers' perceptions of him unfairly.

Therefore, we considered that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in the programme in a way that was unfair to Mr Akehurst.

### *Unwarranted infringement of privacy*

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

- b) We considered the complaint that Mr Akehurst's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because his conversation with the undercover reporter at the Labour Party Conference, which was not a public event, was surreptitiously filmed.

Practice 8.5 states:

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

Practice 8.9 states:

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

Practice 8.13 states:

"surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if:

- there is *prima facie* evidence of a story in the public interest; and,
- there are reasonable grounds to suspect that further material evidence could be obtained; and,
- it is necessary to the credibility and authenticity of the programme.

We first assessed whether it was warranted for the programme makers to film Mr Akehurst.

We took into account AJMN's response that there was a public interest in the matters which the programme investigated. It said that prior to filming, it had understood that the State of Israel had undertaken a campaign of seeking to influence politics in the UK and was concerned that this campaign could result in an undermining of the UK's democracy. In particular, it said that it had found evidence that the Israeli Embassy and Mr Masot may be a part of this campaign and it was unlikely that those involved (whether knowingly or unknowingly) or connected with Mr Masot, such as Mr Akehurst, would be willing to speak openly about this matter.

We considered that the claims the broadcaster set out to investigate through surreptitious filming were serious, as they concerned the activities of the Israeli Embassy in the UK through Mr Masot and his attempt through his links with certain people and organisations to gain political influence in the UK. In relation to Mr Akehurst in particular, we considered that it was important for the broadcaster to detail, to some extent, the contacts Mr Masot had with pro-Israeli organisations in the UK and the extent to which he used these contacts.

We also considered that the information gathered by the programme makers before the surreptitious filming took place amounted to *prima facie* evidence of a story in the public interest. In Ofcom's view, we considered that on the evidence available to it, the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming. In particular, it was our view that it would have been unlikely that the programme makers could have captured footage of the various individuals and organisations, such as Mr Akehurst, speaking openly about the matters being explored in the programme without using this technique. In addition, we considered that surreptitious filming was necessary to the credibility and authenticity of the programme because without it, the programme makers would have had to rely on second-hand accounts of the alleged activities of Mr Masot and those he engaged with, which would be less credible than direct evidence of the links and contacts Mr Masot had. Therefore, in our view, the programme makers' decision to surreptitiously film Mr Akehurst was warranted.

Ofcom also considered whether the means of obtaining the surreptitiously filmed material was proportionate. We noted the broadcaster's representations that the investigation highlighted concerns regarding the involvement of the Israeli Government, through its Embassy in the UK and Mr Masot, with the UK Government, particularly the Labour Party (as set out in detail above). We also recognised that the broadcaster said it conducted research without undercover filming to gather evidence of Mr Masot's activities. We took into account that the filming was brief and focused, and that it was used to capture situations or conversations which were directly relevant to the matters being investigated in the programme, such as the links the Embassy had with pro-Israeli organisations (like We Believe in Israel, where Mr Akehurst was the Director), and the extent to which Mr Masot wished to utilise his contacts. Taking these factors into account, we considered that it was proportionate for the programme makers to surreptitiously film Mr Akehurst.

Ofcom next assessed the extent to which Mr Akehurst had a legitimate expectation of privacy with regard to the footage of him filmed surreptitiously.

Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be assessed in light of the circumstances in

which the person concerned finds him or herself. Ofcom therefore approaches each case on its facts. It is important to note that some activities may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

The only occasion when Mr Akehurst was filmed was when the undercover reporter "spotted" Mr Akehurst at the Labour Party Conference and introduced himself. Mr Akehurst was unaware that he was being filmed. While the interaction between the two men was filmed in a semi-public place where any conversation had the potential to be overheard by bystanders, it was likely that Mr Akehurst would have considered that he was having a private conversation in which he could speak openly and freely without the details of these conversations being made known to the wider public. However, it was also our view that the exchange was brief and that the filming did not capture any information about Mr Akehurst that could reasonably be regarded as being private or sensitive to him, nor was he filmed engaged in any conduct or action that could reasonably be regarded as being private.

Given the above factors, we considered that in the particular circumstances of this case, Mr Akehurst had a legitimate expectation in relation to the surreptitious filming of his conversation with the undercover reporter, albeit limited by the fact nothing particularly private or sensitive about Mr Akehurst was surreptitiously filmed and the filming was conducted in a semi-public place.

Mr Akehurst had not consented to being filmed therefore we went on to consider whether the infringement of Mr Akehurst's limited legitimate expectation of privacy was warranted.

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

We considered that there was a public interest justification in obtaining this material for the purposes of including it in the programme as it allowed the broadcaster to demonstrate the concerns it had about activities of the Israeli Embassy in the UK through Mr Masot and its attempts to potentially influence UK Government policy through his links with various individuals and organisations. Further, we considered that the filming of Mr Akehurst was important as it enabled the broadcaster to demonstrate the contacts Mr Masot had with pro-Israeli organisations and the extent to which he wished to use those contacts.

Taking all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mr Akehurst outweighed his privacy in the circumstances of this case. Therefore, there was no unwarranted infringement of Mr Akehurst's limited legitimate expectation of privacy in connection with the obtaining of material included in the programme.

- c) We next considered Mr Akehurst's complaint that his privacy was unwarrantably infringed in the programme as broadcast because the surreptitiously filmed footage of his conversation with the undercover reporter was broadcast in the programme without his consent.

Practice 8.6 states:

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

Practice 8.14 states:

"material gained by surreptitious filming and recording should only be broadcast when it is warranted".

As discussed at head b) above, we considered that the use of surreptitious filming was warranted in the circumstances.

We next considered the extent to which Mr Akehurst had a legitimate expectation of privacy in the broadcast of the material 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.

The programme included footage of Mr Akehurst having a brief conversation with the undercover reporter. Mr Akehurst's face was shown unobscured, his voice was heard and he was named in the programme.

For reasons set out in head b) above, we considered that Mr Akehurst had a legitimate expectation with regard to the broadcast of the footage of his conversation with the undercover reporter in the programme. However, we considered that any infringement of Mr Akehurst's legitimate expectation of privacy was limited by the fact that the conversation did not disclose any private or personal information about Mr Akehurst or his personal life and that he had been filmed in a semi-public place.

The broadcaster did not seek Mr Akehurst's consent to broadcast the surreptitiously filmed footage of him. We went on to consider whether the infringement of Mr Akehurst's limited legitimate expectation of privacy was "warranted", within the meaning set out in the Code (see above under head b)).

We balanced carefully Mr Akehurst's right to privacy with regard to the inclusion of the relevant surreptitiously filmed footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. As set out in detail in head b) above, we considered that the broadcast footage raised potentially serious concerns about the Israeli Embassy in the UK potentially influencing UK Government policy through Mr Masot's links with various individuals and organisations. In particular, in relation to Mr Akehurst it showed the extent to which Mr Masot had links with pro-Israeli organisations and the manner in which he wished to utilise these contacts. Therefore, we considered that, on balance, the public interest in broadcasting the footage of Mr Akehurst outweighed his legitimate expectation of privacy.

Given all the factors set out above, we considered that there was no unwarranted infringement of Mr Akehurst's privacy in the inclusion of the surreptitiously filmed footage of him in the programme as broadcast.

**Ofcom has not upheld Mr Akehurst's complaint, made on his behalf by Kingsley Napley, of unjust or unfair treatment and unwarranted infringement of privacy in connection with the obtaining of the 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 between 18 September and 1 October 2017 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Medical Detectives	CBS Reality	31/07/2017	Scheduling
Broadcast Competition <sup>1</sup>	5USA	08/01/2017	Competitions
Kevin McNally	Downtown Radio	various	Commercial communications on radio
Good Morning Britain	ITV	20/06/2017	Due impartiality/bias

For more information about how Ofcom conducts investigations about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

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<sup>1</sup> This table has been edited to retrospectively include an investigation which was Not in Breach.

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 18 September and 1 October 2017 because they did not raise issues warranting investigation.

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Ramsay's Kitchen Nightmares USA	4Seven	15/09/2017	Religious/Beliefs discrimination/offence	1
Morari Bapu Katha	Aastha Channel	12/08/2017	Crime and disorder	1
Gross Science (trailer)	Boomerang	13/09/2017	Offensive language	1
Scottish Football	BT Sport	08/09/2017	Generally accepted standards	1
BT Sports (trailer)	BT Sport 2	13/09/2017	Gender discrimination/offence	1
Key of David	CBS Action	09/09/2017	Generally accepted standards	1
Sky Original Productions (trailer)	Challenge	15/09/2017	Scheduling	1
Celebrity Island with Bear Grylls	Channel 4	26/09/2017	Animal welfare	1
Celebrity Island with Bear Grylls	Channel 4	29/09/2017	Race discrimination/offence	1
Channel 4 News	Channel 4	24/08/2017	Generally accepted standards	87
Channel 4 News	Channel 4	11/09/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	12/09/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	15/09/2017	Generally accepted standards	1
Crystal Maze	Channel 4	22/09/2017	Other	1
Eden: Paradise Lost	Channel 4	10/08/2017	Animal welfare	1
Gogglebox	Channel 4	15/09/2017	Nudity	1
Hollyoaks	Channel 4	28/09/2017	Materially misleading	1
Kingsman: The Secret Service	Channel 4	10/09/2017	Offensive language	1
Naked Attraction	Channel 4	08/09/2017	Generally accepted standards	4
Naked Attraction	Channel 4	21/09/2017	Generally accepted standards	1
The Great British Bake Off	Channel 4	19/09/2017	Other	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Great British Bake Off	Channel 4	19/09/2017	Scheduling	1
The State	Channel 4	20/08/2017	Generally accepted standards	22
The State	Channel 4	21/08/2017	Generally accepted standards	11
The State	Channel 4	22/08/2017	Generally accepted standards	5
The State	Channel 4	23/08/2017	Generally accepted standards	4
The State	Channel 4	various	Generally accepted standards	1
The State (trailer)	Channel 4	14/08/2017	Crime and disorder	1
The State (trailer)	Channel 4	20/08/2017	Generally accepted standards	1
The State (trailer)	Channel 4	23/08/2017	Scheduling	1
The Undateables	Channel 4	18/09/2017	Disability discrimination/offence	1
Can't Pay? We'll Take It Away!	Channel 5	12/09/2017	Generally accepted standards	1
Can't Pay? We'll Take It Away!	Channel 5	27/09/2017	Animal welfare	1
Home and Away	Channel 5	14/09/2017	Scheduling	1
Police Interceptors	Channel 5	09/09/2017	Violence	1
Simon	Channel 5	24/09/2017	Scheduling	1
The Mentalist	Channel 5	15/09/2017	Violence	1
The Wright Stuff	Channel 5	19/09/2017	Generally accepted standards	1
The Wright Stuff	Channel 5	26/09/2017	Materially misleading	1
Celebrity 5 Go Motorhoming	Channel 5	15/09/2017	Disability discrimination/offence	1
Impractical Jokers	Comedy Central	16/09/2017	Animal welfare	1
South Park (trailer)	Comedy Central	25/09/2017	Generally accepted standards	1
Porters	Dave	20/09/2017	Disability discrimination/offence	1
Porters	Dave	20/09/2017	Generally accepted standards	1
Would I Lie to You?	Dave	16/09/2017	Offensive language	1
The Bill	Drama	18/08/2017	Violence	1
All Star Driving School	E4	18/09/2017	Dangerous behaviour	1
All Star Driving School	E4	27/09/2017	Dangerous behaviour	1
Celebs Go Dating	E4	19/09/2017	Dangerous behaviour	1
Naked Attraction	E4	17/09/2017	Nudity	1
Naked Attraction	E4+1	26/09/2017	Nudity	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Programming	Fadak TV	18/07/2017	Due accuracy	1
Airplane!	Film4	31/08/2017	Scheduling	1
Club Classics	Heart	26/08/2017	Materially misleading	1
Matt and Michelle	Heart FM (Thames Valley)	15/09/2017	Scheduling	1
Breakfast with Steve Denyer	Heart FM West Midlands	29/08/2017	Due impartiality/bias	1
100 Year Old Driving School	ITV	26/09/2017	Animal welfare	1
Bad Move	ITV	20/09/2017	Generally accepted standards	3
Bad Move	ITV	20/09/2017	Offensive language	1
Britain's Got Talent	ITV	01/06/2017	Nudity	1
Cold Feet	ITV	22/09/2017	Disability discrimination/offence	1
Cold Feet	ITV	22/09/2017	Information/Warnings	1
Cold Feet	ITV	22/09/2017	Materially misleading	1
Coronation Street	ITV	15/09/2017	Disability discrimination/offence	1
Coronation Street	ITV	15/09/2017	Scheduling	1
Coronation Street	ITV	18/09/2017	Generally accepted standards	2
Coronation Street	ITV	18/09/2017	Scheduling	1
Coronation Street	ITV	25/09/2017	Violence	1
Coronation Street	ITV	27/09/2017	Disability discrimination/offence	1
Coronation Street	ITV	27/09/2017	Generally accepted standards	1
Dickinson's Real Deal	ITV	15/09/2017	Generally accepted standards	1
Doc Martin	ITV	20/09/2017	Generally accepted standards	1
Emmerdale	ITV	12/09/2017	Generally accepted standards	1
Emmerdale	ITV	18/09/2017	Generally accepted standards	1
Emmerdale	ITV	21/09/2017	Generally accepted standards	7
Emmerdale	ITV	21/09/2017	Scheduling	20
Good Morning Britain	ITV	04/09/2017	Generally accepted standards	1
Good Morning Britain	ITV	05/09/2017	Due impartiality/bias	14
Good Morning Britain	ITV	05/09/2017	Materially misleading	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Good Morning Britain	ITV	12/09/2017	Generally accepted standards	1
Good Morning Britain	ITV	13/09/2017	Generally accepted standards	1
Good Morning Britain	ITV	13/09/2017	Race discrimination/offence	1
Good Morning Britain	ITV	14/09/2017	Offensive language	10
Good Morning Britain	ITV	20/09/2017	Race discrimination/offence	1
Good Morning Britain	ITV	22/09/2017	Generally accepted standards	1
Good Morning Britain	ITV	25/09/2017	Offensive language	1
Good Morning Britain	ITV	25/09/2017	Sexual material	2
Good Morning Britain	ITV	26/09/2017	Gender discrimination/offence	1
HSL's sponsorship of Tipping Point	ITV	22/09/2017	Sponsorship	1
ITV Evening News	ITV	18/09/2017	Due accuracy	1
ITV London Regional News	ITV	16/09/2017	Race discrimination/offence	1
ITV News	ITV	08/09/2017	Due accuracy	1
ITV News	ITV	08/09/2017	Generally accepted standards	1
Liar	ITV	11/09/2017	Drugs, smoking, solvents or alcohol	1
Liar	ITV	11/09/2017	Generally accepted standards	1
Liar	ITV	11/09/2017	Other	8
Liar	ITV	18/09/2017	Gender discrimination/offence	2
Liar	ITV	25/09/2017	Generally accepted standards	1
Liar (trailer)	ITV	10/09/2017	Generally accepted standards	1
Lorraine	ITV	18/09/2017	Generally accepted standards	1
Lorraine	ITV	26/09/2017	Generally accepted standards	1
Lorraine	ITV	27/09/2017	Other	1
News at Ten	ITV	20/09/2017	Generally accepted standards	1
Programming (trailer)	ITV	23/09/2017	Scheduling	1
Save Money Good Health	ITV	19/09/2017	Harm	1
Super 4	ITV	16/09/2017	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Chase	ITV	19/09/2017	Generally accepted standards	1
The Jeremy Kyle Show	ITV	25/09/2017	Generally accepted standards	1
The X Factor	ITV	16/09/2017	Generally accepted standards	2
The X Factor	ITV	17/09/2017	Disability discrimination/offence	1
This Morning	ITV	07/09/2017	Generally accepted standards	1
This Morning	ITV	12/09/2017	Generally accepted standards	2
This Morning	ITV	12/09/2017	Materially misleading	5
This Morning	ITV	20/09/2017	Scheduling	7
This Morning	ITV	21/09/2017	Competitions	1
This Morning	ITV	27/09/2017	Generally accepted standards	1
Timewasters (trailer)	ITV	16/09/2017	Race discrimination/offence	1
Victoria	ITV	24/09/2017	Materially misleading	1
Victoria (trailer)	ITV	16/09/2017	Other	1
ITV News London	ITV London	08/09/2017	Due accuracy	1
ITV News Tyne Tees	ITV Tyne Tees	08/09/2017	Generally accepted standards	1
Bromans	ITV2	14/09/2017	Gender discrimination/offence	1
Celebrity Juice	ITV2	21/09/2017	Generally accepted standards	1
Celebrity Juice	ITV2	21/09/2017	Race discrimination/offence	1
Coronation Street	ITV2	19/08/2017	Drugs, smoking, solvents or alcohol	1
Family Guy	ITV2	21/09/2017	Sexual orientation discrimination/offence	1
Timewasters (trailer)	ITV2	18/09/2017	Race discrimination/offence	1
Timewasters (trailer)	ITV2	28/09/2017	Race discrimination/offence	1
You've Been Framed	ITV2	20/09/2017	Generally accepted standards	1
Judge Rinder	ITV3	25/09/2017	Materially misleading	1
Midsomer Murders	ITV3	26/08/2017	Sexual orientation discrimination/offence	1
Sunday Night at the Palladium	ITV3	24/09/2017	Age discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Only Way is Essex	ITVBe	17/09/2017	Generally accepted standards	4
2 Ticketan/High Pitch Songs	JUS Punjabi	27/08/2017	Promotion of products/services	1
James O'Brien	LBC 97.3 FM	02/08/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	22/09/2017	Materially misleading	1
Maajid Nawaz	LBC 97.3 FM	17/09/2017	Due impartiality/bias	1
Nick Abbot	LBC 97.3 FM	15/09/2017	Generally accepted standards	1
The Secret Life of the Zoo	More4	27/09/2017	Offensive language	1
8 Out of 10 Cats Does Countdown	More4+1	28/09/2017	Generally accepted standards	1
Ex on the Beach	MTV	15/07/2017	Gender discrimination/offence	1
Geordie Shore	MTV	19/09/2017	Generally accepted standards	1
Programming	New Style Radio 98.7 FM	10/08/2017	Race discrimination/offence	1
Nickelodeon HD promotion	Nickelodeon HD	15/09/2017	Offensive language	1
Playboy TV	Playboy TV	18/08/2017	Participation TV - Offence	1
Piny Institute of New York	Pop	08/09/2017	Generally accepted standards	1
Power Ranger Ninja Skills	Pop	14/09/2017	Generally accepted standards	1
Chris Moyles	Radio X	14/09/2017	Generally accepted standards	1
Ghost Adventures	Really	20/09/2017	Scheduling	1
Paranormal Witness (trailer)	Really	22/08/2017	Scheduling	1
All Out Politics	Sky News	11/09/2017	Due impartiality/bias	1
All Out Politics	Sky News	18/09/2017	Due impartiality/bias	1
Ocean Rescue campaign	Sky News	16/09/2017	Due impartiality/bias	1
Press Preview	Sky News	16/09/2017	Generally accepted standards	2
Press Preview	Sky News	17/09/2017	Generally accepted standards	1
Press Preview	Sky News	25/09/2017	Due impartiality/bias	1
Sky News	Sky News	16/09/2017	Harm	1
Sky News	Sky News	18/09/2017	Gender discrimination/offence	1
Sky News	Sky News	18/09/2017	Privacy	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sky News	Sky News	21/09/2017	Due impartiality/bias	1
Sky News	Sky News	21/09/2017	Generally accepted standards	1
Stella	Sky1	13/09/2017	Offensive language	1
The Simpsons	Sky1	21/09/2017	Scheduling	1
Maid in Manhattan	Sony Movie Channel	03/09/2017	Sexual material	1
The Secret of My Success	Sony Movie Channel	17/09/2017	Offensive language	1
The Late Night Alternative with Iain Lee	Talk Radio	19/08/2017	Generally accepted standards	1
News	Talksport	13/09/2017	Due impartiality/bias	1
Skönhetsfällan Sverige	TV3 Sweden	12/09/2017	Gender discrimination/offence	1
Skönhetsfällan Sverige	TV3 Sweden	19/09/2017	Gender discrimination/offence	1
Bosch	TV8	15/09/2017	Gender discrimination/offence	1
Sa Re Ga Ma Pa Lil Champs 2017	Zee TV	02/09/2017	Under 18s in programmes	1

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

### Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Andrew Marr Show	BBC 1	18/06/2017	Materially misleading	1
This Week	BBC 1	04/05/2017	Elections/Referendums	1
BBC Newsroom Live	BBC 2	05/06/2017	Elections/Referendums	1
Daily Politics	BBC 2	02/06/2017	Due impartiality/bias	1
The Apprentice (trailer)	BBC 2	27/09/2017	Offensive language	1
News	BBC London Radio	30/05/2017	Elections/Referendums	1
The News Quiz	BBC Radio 4	12/05/2017	Elections/Referendums	1



For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf)

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

Licensee	Licensed service	Categories
Sky UK Limited	various	Television Access Services
Tamworth Radio Broadcasting CIC	TCR FM	Key Commitments
That's Oxford Limited	That's Oxfordshire	Other
Voice of Hope Radio	Hope FM	Key Commitments

For more information about how Ofcom assesses complaints about broadcast licences, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf)

### Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Programme	Service	Accessed date	Number of complaints
Electric Dreams (trailer)	All 4	14/09/2017	1
First Dates (trailer)	All 4	26/09/2017	1
Sky Sports Golf (trailer)	Sky Sports	05/09/2017	1

For more information about how Ofcom assesses complaints about on demand services, go

to: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/74499/procedures-investigating-breaches.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf)

## Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service does not fall within the scope of regulation.

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

## Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	5Star	24/09/2017	Advertising content	1
News	BBC and Channel 4	various	Due impartiality/bias	1
Advertisement	Challenge	17/09/2017	Advertising content	1
Advertisement	Channel 4	16/09/2017	Advertising content	1
Advertisement	Channel 4	19/09/2017	Advertising content	1
Advertisement	Channel 4	27/09/2017	Advertising content	1
Advertisement	Channel 4	29/09/2017	Advertising content	1
Advertisement	Classic FM	28/09/2017	Advertising content	1
Celebs Go Dating	E4	15/09/2017	Outside of remit	1
Gemporia	Gemporia	13/09/2017	Generally accepted standards	1
Advertisement	Gold	21/09/2017	Advertising content	1
Competition	Gold	17/09/2017	Competitions	1
Teleshopping	IdealWorld	24/09/2017	Teleshopping	1
Advertisement	ITV	10/09/2017	Advertising content	1
Advertisement	ITV	15/09/2017	Advertising content	1
Advertisement	ITV	17/09/2017	Advertising content	1
Advertisement	ITV	17/09/2017	Advertising minutage	1
Advertisement	ITV	18/09/2017	Advertising content	1
Advertisement	ITV	27/09/2017	Advertising content	1
ITV News London	ITV London	19/09/2017	Outside of remit	1
Advertisement	More4	25/09/2017	Advertising content	1
Advertisement	n/a	14/09/2017	Advertising content	1
NOW TV	NOW TV	various	Outside of remit	1
Advertisement	Sky Cricket	18/09/2017	Advertising content	1

## BBC First

A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the new independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

### Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC	various	Outside of remit	1
Progaming	BBC	various	Due impartiality/bias	1
BBC Breakfast	BBC 1	28/09/2017	Generally accepted standards	1
BBC News	BBC 1	15/06/2017	Due impartiality/bias	1
BBC News	BBC 1	05/09/2017	Generally accepted standards	1
BBC Weather	BBC 1	13/09/2017	Other	1
BBC Weather	BBC 1	18/09/2017	Other	1
Doctor Foster	BBC 1	19/09/2017	Generally accepted standards	1
Doctor Foster	BBC 1	19/09/2017	Sexual material	1
Fake Britain	BBC 1	22/09/2017	Materially misleading	1
Homes under the Hammer	BBC 1	13/09/2017	Offensive language	1
Panorama	BBC 1	03/08/2017	Due impartiality/bias	1
Strictly Come Dancing	BBC 1	23/09/2017	Gender discrimination/offence	1
Strictly Come Dancing	BBC 1	23/09/2017	Religious/Beliefs discrimination/offence	1
The Andrew Marr Show	BBC 1	10/09/2017	Due impartiality/bias	1
The Andrew Marr Show	BBC 1	24/09/2017	Due accuracy	1
The Apprentice (trailer)	BBC 1	25/09/2017	Offensive language	1
Daily Politics	BBC 2	18/09/2017	Due impartiality/bias	1
Later...with Jools Holland 25th Birthday Show	BBC 2	23/09/2017	Offensive language	1
Newsnight	BBC 2	08/08/2017	Due impartiality/bias	1
The Apprentice (trailer)	BBC 2	28/09/2017	Offensive language	1
Fake or Fortune	BBC iPlayer	17/09/2017	Generally accepted standards	1

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>	<b>Categories</b>	<b>Number of Complaints</b>
BBC News	BBC News Channel	17/09/2017	Generally accepted standards	1
Newspaper reviews	BBC News Channel	28/08/2017	Due impartiality/bias	1
Today	BBC Radio 4	21/06/2017	Due impartiality/bias	1
Today	BBC Radio 4	24/08/2017	Due impartiality/bias	1
You and Yours	BBC Radio 4	14/09/2017	Generally accepted standards	1
Stephen Jardine	BBC Radio Scotland	22/09/2017	Due impartiality/bias	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 18 September and 1 October 2017.

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

Programme	Service	Transmission date
Advertisements	B4U Music	various
Jay London	Capital Xtra	10/09/2017
Nasheeds	Radio Ikhlas	07/09/2017
Cumbria Headline News	That's Cumbria	21/08/2017

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

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

### Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Service	Transmission date
Supershoppers	Channel 4	6 June 2017

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/57388/fairness-privacy-complaints.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf)

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

<b>Licensee</b>
Cambridge Radio Ltd
Celtic Music Radio Limited
GGFC UK Limited
Glenn Smith
Glow Radio Limited
News RadioUK Limited
Radio Khushkhabri Ltd
Reprezent Ltd
Spice Project Limited
Starpoint Radio Limited
Tees Valley Christian Media
University of Lincoln

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

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf)