

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

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 advertising³.
- 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 description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

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

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

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.

Note to Broadcasters

Advertising and programming broadcast simultaneously

The Code on the Scheduling of Television Advertising ('COSTA') contains rules that ensure advertising is easily recognisable from programming and does not negatively impact viewers' experience.

Most commonly, advertising is shown during breaks in between programming. However, broadcasters may also transmit advertising and editorial material simultaneously e.g. split-screen advertising, where both types of content occupy separate areas of the screen.

- As made clear in the Note to Broadcasters published in Issue 262 of Ofcom's Broadcast Bulletin⁴ ("the Note"), split-screen advertising is subject to the COSTA requirements in the same way as traditional advertising that appears in breaks. The Note provided guidance on the application of COSTA rules to split-screen advertising, specifically in relation to the potential for such advertising to impact on a programme's integrity.

This note provides broadcasters with additional guidance on the application of COSTA (specifically in relation to Rules 8 and Rule 9) when showing advertising and programming at the same time.

Rule 8: "Where television advertising or teleshopping is inserted during programmes, television broadcast must ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur."

When advertising is broadcast at the same time as a programme, it is not only important that viewers can easily differentiate between the content but also that the advertising does not impact negatively on the viewer experience. As set out in the Note, when determining whether advertising complies with Rule 8, Ofcom will consider the genre of programme⁵. We will also consider how intrusive the advertising is, taking into account:

- how the advertising is delivered, e.g. whether visually, orally or both;
- its duration; and
- where it is positioned, e.g. whether it obscures a significant or important part of the programme content.

Rule 9: "Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception."

This rule limits the extent to which broadcasters can show a standalone advertisement, whether transmitted in between or at the same time as programme content. To comply with Rule 9, standalone advertisements can be broadcast only:

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0021/50763/obb262.pdf

⁵ See Note to Broadcasters in Bulletin 262:
https://www.ofcom.org.uk/_data/assets/pdf_file/0021/50763/obb262.pdf

- during coverage of sports events, e.g. in between rounds of boxing where there may be insufficient time for a traditional advertising break; or
- in exceptional circumstances, e.g. when an advertising break comprises a single long advertisement.

Broadcasters requiring further information should contact the Ofcom Standards and Audience Protection team at OfcomStandardsTeam@ofcom.org.uk.

Broadcast Standards cases

In Breach

Ramsay's Kitchen Nightmares USA **Channel 4, 12 October 2017, 11:00**

Introduction

Ramsay's Kitchen Nightmares USA is a documentary series that follows the efforts of chef Gordon Ramsay to turn around the fortunes of restaurants facing financial difficulties.

We received a complaint about the broadcast of the word "fucking" in the optional subtitles for this programme. Approximately 30 minutes after the start of the programme, the following subtitle was broadcast:

"I've got to be fucking brutally honest, you know that".

The subtitle did not match the programme's soundtrack which had been edited to remove the offensive language.

We considered the material raised issues under the following Code rule:

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

Ofcom provided Channel 4 with an opportunity to comment on its Preliminary View that the content was in breach of Rule 1.14.

Response

Channel 4 accepted that a breach Rule 1.14 had occurred and said the offensive language had been broadcast as a result of human error. It explained that the programme was originally broadcast post-watershed before being edited for this pre-watershed broadcast. Channel 4 said that during the process to re-version the subtitles to match the programme's edited soundtrack, the subtitler responsible for this part of the programme had failed to remove the offensive language. Channel 4 also said that upon completion of the re-editing the subtitler "should run a spell-check in the subtitling software which checks the subtitles against a custom-made 'excluded words list". However, Channel 4 said that the subtitler, "who had only recently been trained in re-versioning", did not run this check.

Channel 4 set out a series of steps it had taken as a result of this incident. These included:

- the subtitler involved being made aware of "the severe impact of their error" and being given "refresher training in best practice regarding re-versioning of subtitle files";
- the subtitling team revising "its guidance around re-versioning of subtitle files, with particular emphasis on checking for strong language"; and
- checks made of all pre-watershed Gordon Ramsay programmes to ensure that no similar errors have occurred.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

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

Ofcom research on offensive language² indicates that the word "fuck" and variations of it are considered by audiences to be among the most offensive.

We took account of the nature of the error that resulted in this breach and the various steps that Channel 4 has taken as a result of it. However, the broadcast of the word "fucking" in this programme's subtitles before the watershed was a clear breach of Rule 1.14.

Breach of Rule 1.14

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

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

In Breach

Wanted

Sky1, 18 September 2017, 21:00

Introduction

Sky1 is a general entertainment channel, the licence for which is held by Sky UK Limited ("Sky" or "the Licensee").

Wanted is a film about an office worker, Wesley, who learns that he is the son of a professional assassin and that he shares his father's superhuman killing abilities. It is an action thriller that was classified at an '18' rating by the British Board of Film Classification in 2008.

Ofcom received a complaint about the broadcast of the word "*fucking*" and a sex scene shortly after the watershed. The complainant said that her 11 year old son was watching and that she considered the scene unsuitable for the time of broadcast.

The film was scheduled to start shortly after the 21:00 watershed. From 18:30 to 21:00, five episodes of *The Simpsons* were broadcast. Before the film started, a continuity announcement said:

"Now on Sky1, the art of bullet bending. It's all in the wrist. Flashing images as James McAvoy and Angelina Jolie star in Wanted".

The film started at about 21:02. In the first scene, Wesley was shown in his office, while he said in commentary:

"My job title is Account Manager. I used to be called an Account Service Representative, but a consultant told us we were to manage our clients and not service them".

The film then cut at 21:03 to a scene in which Wesley's girlfriend and friend, Cathy and Barry, were shown having sex on a kitchen table, while Wesley said in commentary:

"I have a girlfriend whom I neither 'manage' nor 'service'. That's my best friend Barry fucking her on an Ikea kitchen table".

Barry was naked from the waist down, while Cathy was in a skirt and bra. Barry was shown standing while having sex with Cathy, who lay on the table with her legs wrapped around him, slapping his buttocks. The scene was shot mainly from the side and behind Barry. It lasted about 10 seconds.

We considered this raised potential issues under the following Code rule:

Rule 1.6: "The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) ...For television, the strongest material should appear later in the schedule".

Ofcom requested comments from the Licensee on how the programme complied with this rule. We also referred it to a Decision we had published in 2011, where we had considered¹ the broadcast of sex scenes in three episodes of a drama series, *Strike Back: Project Dawn* ("*Project Dawn*"), shortly after the watershed, under Rule 1.6. In that case we had considered the matter resolved.

Response

Sky conceded that "given that the programme contained a brief sexual scene early on that consequently viewers and their expectations should have been better managed". It added that "two errors" had taken place in this case regarding "programme scheduling prior to the watershed and to appropriate announcements being made in continuity". Therefore, the Licensee said that "the scheduling of more mature content before the watershed and a continuity warning preceding the programme to warn viewers [of] the nature of the content should have been in place".

Sky said that the scheduling of *The Simpsons* before *Wanted* did not follow "longstanding agreed procedure". The Licensee also said that it had warned viewers about the adult nature of the content in the following Electronic Programme Guide ('EPG') synopsis:

"...Bullet-bending action thriller. Strong language/sex/graphic violence..."

However, Sky added that "whilst the EPG warning was in-place a single oversight led to the voice over warning not being delivered by a continuity announcement as it should have been". Specifically, the continuity announcement before the film did not contain the same warning as the EPG synopsis "due to an individual's error in not flagging this to the continuity writers".

The Licensee also accepted that the circumstances of the broadcasting of the sex scene in *Wanted* and the sex scenes in the 2011 *Project Dawn* case were similar. It said that, in both cases, the programmes had been preceded by episodes of *The Simpsons*, adding that it had understood from Ofcom's Decision on *Project Dawn* that "the family/younger skewing audience of [*The Simpsons*] wasn't suitable to carry-over into [*Project Dawn*]". Sky said that in the 2011 *Project Dawn* Decision, Ofcom had considered the matter resolved "on the basis of various steps taken by Sky". Such steps included "avoid[ing] [the] scheduling [of] family-orientated content before strong drama programming". The Licensee said that it had taken Ofcom's 2011 Decision seriously and pointed to the fact that the present case was the first case "with any similarity" involving Sky content since 2011. It emphasised that there was a six-year period between the two cases and that the parallels with *Project Dawn* "do not point to a pattern and are not symptomatic of anything other than uncharacteristic human error on this occasion".

Sky said that upon receiving notification of the complaint from Ofcom, it had: blocked the broadcast of *Wanted* before 22:00 in future; ensured that any further repeats included an appropriate warning in the continuity announcement as well as the EPG; and "reminded all relevant teams that scheduling and compliance decisions must take preceding programmes and likely audience into account". It added that it had later "taken significant steps to try and ensure that any similar situations are avoided in future". For example, the Licensee said

¹ See Issue 195 of Ofcom's Broadcast Bulletin, published 5 December 2011, (https://www.ofcom.org.uk/data/assets/pdf_file/0012/51312/obb195.pdf).

it would now “follow a general principle that no episodes of *The Simpsons* are scheduled from [20:30 to 21:00 except] where the 21:00 programme that follows is clearly more suitable for a younger audience (for example where it is an entertainment programme with broad-appeal)”. Sky added that it would also “ensure a robust Compliance approach [by] conducting bespoke and focussed training within the Compliance and Scheduling teams...on compliance with Rule 1.6 on Sky 1 given the unique challenges of a channel with such broad content”.

Decision

Reflecting our duties under the Communications Act 2003², Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Under Rule 1.6, the transition to more adult material must not be unduly abrupt at the watershed, i.e. 21:00.

Ofcom's guidance on observing the watershed on television³ states that “[c]ontent that commences after the watershed should observe a smooth transition to more adult content. It should not commence with the strongest material”. Recognising that children may not have ceased viewing at exactly 21:00, Rule 1.6 is designed to avoid a sudden change to more adult material that would only be suitable for a post-watershed broadcast.

Rule 1.6 is not prescriptive. It does not stipulate a certain set time after the watershed when broadcasters may start to transmit more adult material. What constitutes an “unduly abrupt” transition to more adult material depends on the context: for example, factors such as the nature of the offensive and/or harmful material, the editorial content of the programme, the time of broadcast, and the expectations of the audience. We therefore took all these factors into account when determining whether there was sufficient justification for broadcasting this content.

We first assessed whether the sex scene was “more adult material”. We considered that, although relatively brief, and although the couple were partially clothed, it clearly depicted them having sex. In addition, at the same time as the sex scene, the word “*fucking*” was used. Ofcom's 2016 research on offensive language⁴ highlighted that the word “fuck” and similar words are considered by audiences to be among the most offensive language. Therefore, in our view, this material was aimed at an adult audience and could be considered more adult material in the context of Rule 1.6.

We next considered whether the transition to this more adult material at the watershed was unduly abrupt. Broadcasters are permitted to show sex scenes after the watershed. The scene in question was broadcast at 21:03. We took into account that an episode of *The Simpsons*, which, as Sky said, could attract a ‘family’ demographic, was broadcast immediately before *Wanted*. Audience figures for the age group 4-15 show that 7,000 children were watching *Wanted* at 21:03.

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

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0030/86781/watershed-on-tv.pdf

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

We considered that broadcasting a sex scene and an instance of the most offensive language three minutes after the watershed, and on a channel which had just broadcast family entertainment, was an unduly abrupt transition to more adult material.

We also took into account that although the Licensee had taken steps to improve its compliance with Rule 1.6 following Ofcom's 2011 Decision, Sky accepted that there had been two compliance errors in this case.

Ofcom's Decision is that the material was in breach of Rule 1.6.

Breach of Rule 1.6

In Breach

Health Time

Akaal Channel, 14 November 2016, 13:05

Introduction

Akaal Channel is a general entertainment channel broadcast in English and Punjabi, serving the Sikh Community in the UK and Europe. The licence for the service is held by Akaal Channel Limited ("ACL" or "the Licensee").

During routine monitoring, Ofcom identified the programme, *Health Time*, which was broadcast mainly in Punjabi. Ofcom therefore had the content translated into English. The Licensee agreed the translation was accurate.

The programme comprised a studio-based interview with Subhash Goyal, an Ayurvedic practitioner, who was credited throughout the programme as a doctor in a caption that stated:

"Dr. Subhash Goyal ...[two international (India) telephone numbers]".

Subhash Goyal was introduced as *"the Managing Director of Vardhan Ayurvedic Organisation"* and the presenter discussed with him his 45-day treatment programme for drug and alcohol addiction.

The presenter said:

"We will talk to [Subhash Goyal] and find out why people become addicted and afflicted with this problem...There are many different plans and schemes to help us give up this appalling problem. One such solution is that offered by the Vardhan Organisation, so let's look and see what treatments and medicines this organisation can offer".

Having welcomed Subhash Goyal, the presenter said:

"Let's talk about your organisation...In my opinion the greatest plus point of your treatment is that you don't advocate admitting a person but instead treat him with normal medicines, so tell us a little bit about when your organisation began and how you treat patients".

In his response, Subhash Goyal said:

"...we started this organisation back in 1992 and there is a long process that has evolved during that time, and we now have a system by which we can offer treatment for patients and thus wean them off their addiction...".

During the interview, he also said the following:

"...in 1992...our slogan [was] that, without being admitted into hospital or a clinic, we can offer you treatment, and people were asking, 'what is the big deal that this man Subhash Goyal appears on TV and writes articles making these claims?' But then we went on to

prove this fact. Now many people have been to my clinic and you will be interested to know that we don't have any beds at the clinic, and we have never admitted anyone, for even half an hour, to this day. All we say is here is the medication, go ahead and take this medication, and carry on with your day to day activities and carry on working. Some are even truck drivers in the US, and they have to drive for many hours at great speed, and they are able to perform these tasks without any difficulty whilst on medication. The most important thing is that they should have formed an intent to address their issues".

"As a result of taking this medication there is a radical change in behaviour of the patient and it results in a profound improvement in their behaviour. The interesting thing about their medication is that it contains no intoxicants whatsoever, and our medication is sent overseas to foreign jurisdictions and they are very strict and carry out laboratory tests before allowing them in. They are very strict in these matters, and it is only after testing that these medicines reach you. They are satisfied that there is nothing harmful in the medication, and nothing that could cause you any harmful addiction..."

"...organs such as the heart, liver, brain are all damaged – and even the nervous system – are all affected and he becomes an automaton in his actions and activities. I have great experience of these people because they say to me, or plead with me by saying, "please give me a guarantee that this treatment will work". At that point I become aware that that person has probably been ripped off in the past".

"...we have launched our website, [web address] worldwide, from where you can log in from anywhere in the world and find out any information that you might require about this subject. I can tell you with great certainty that anyone who has become addicted to some form of intoxicant is after a few years desperate to find a way of getting off that addiction, and desperately wants help".

"Within the 45-day period we need to ensure that that person's body is brought back to the same state that it was before he became addicted...I say that you should first order 25 days' worth of medicine and then assess after 15 days and if you feel that what I say is correct and that it is having some positive effect, then you should order more only in that situation. The fact is that my medicines will work from the first day and you will stop using intoxicants straight away. Therefore, if you feel that the medicines are working then, after 15 days, order more and before the 20th day you will receive more medicines, so that there is no break in the cycle of medication. Of course, there are some who have such faith in me that they take the full 45 days of medication straight away, and that is fine too. But, in general, I recommend that they take only 25 days of medicines".

During the interview, the presenter also said:

"I too would say the same thing to viewers, and I would also stress the fact that this organisation was founded in 1992 and has been going on since then, and there surely

must be something good that they are offering that it is still running since all that time. The truth is that we know full well that lesser organisations come and go and we never even hear their name ever again...they work fraudulently for about two years and then disappear, but the fact that [the Vardhan Organisation] has been working for such a great length of time proves that there must be some veracity to the organisation, and I would urge you to go to their website at [web address] and carry out your own research. There is a wealth of detail that can be found that establishes how to obtain the medications and details about how long the organisation has been operating for, and, in particular, how you can end your addiction from any form of intoxication. The truth is that everything is above board and can be found on the internet. In addition, you can see their phone number on the screen and you can obtain all the information that you may require by ringing them up and asking for the relevant information. There is absolutely no attempt to deceive you, as they never ask you to buy 45 days of medicines straight away. In fact, they initially ask that you only buy 25 days' worth of medicines. Try the medicines and if you think that it is helping you wean yourself off your addiction, only then should you order more medication...".

Ofcom considered that the material raised issues under the following Code rules:

- Rule 2.1 "Generally accepted standards must be applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of harmful...material".
- Rule 9.4 "Products, services and trade marks must not be promoted in programming".
- Rule 9.5 "References to placed products, services and trade marks must not be unduly prominent".

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

Response

The Licensee said *Health Time* was acquired from the producer of the series, which was based in India. In response to Ofcom's Preliminary View, it clarified that the programme was not produced for the UK market.

ACL also said that it considered the summary of its response in Ofcom's Preliminary View provided "no context what so ever" and requested that we include the following extract from its representations, in full:

"Ayurveda is a traditional medicine with a long and well documented history. This is what stands out in a programme of this nature. The points of reference are very different. Understanding the translations from the Sanskrit and the meanings are literal. Within the description of the eight components of Ayurveda, the words used are 'cure' and 'treatment'. Therefore, when discussing Ayurveda this is the language used. Much of the work carried out has not been well documented and the results of successes have not been recorded consistently. Therefore, the level of substantiation required by Ofcom on every claim made is well beyond experienced medicals, let alone Akaal Channel.

"It is likely going forward this will change. Last year reported in The Telegraph of India, the documenting of results on a database. The example given is that research into the yellow ingredient of turmeric, curcumin, might have potential to prevent cancer, though the actual dose and how to administer it is not clear.

"Below is an extract from The Telegraph of India from 19 October 2016: -

"The cancer research centre under the health ministry's Indian Council of Medical Research (ICMR) signed a pact with the All India Institute of Ayurveda (AIIA), which functions under the traditional medicine ministry, to jointly investigate the use of traditional medicine in cancer prevention and therapy.

The collaboration between the National Institute of Cancer Prevention and Research (NICPR) and the AIIA will evaluate claims in ayurveda, unani and siddha. It will also launch research to discover new drugs and understand the biological mechanisms that explain how the claimed therapies work, officials said.

The traditional systems of medicine and modern medicine have until now largely worked in parallel. This is an effort to change that," said Soumya Swaminathan, director-general of the ICMR. "The way to get global acceptance for what appear to be promising therapies is through peer review and peer acceptance"".

The Licensee also said that Subhash Goyal was a regular guest in the series, the principal focus of which was to "[share] information with the audience on options for treatments available". It added that "the Punjab region is in the grip of a major drug crisis". ACL said that, "in this episode, the theme [was] addiction, with the aim to ensure that the family of addicts know there's help and do not feel isolated". The Licensee added that Subhash Goyal worked in India and is "well known for his work dealing with drug addiction" and it provided Ofcom with a copy of Subhash Goyal's University qualification in "Pharmacy-Ayurveda". In response to Ofcom's Preliminary View, the Licensee reiterated that "the drugs problem [in] the Punjab where Dr Subhash Goyal works is of [real] concern to [its] community". ACL clarified that the treatment discussed in the programme was not available in the UK and therefore requested that Ofcom remove reference to it not being licensed by the Medicines and Healthcare Products Regulatory Agency.

ACL said it generally expected "delivery of clean versions of the programme from source...which allows [Akaal Channel] to schedule the on-screen information, i.e. the name of the guest", adding that the fact this had not been picked up in its "compliance checking" was an oversight.

ACL confirmed that the telephone numbers displayed in a caption throughout the broadcast were "linked to Dr Subhash Goyal". The Licensee said their purpose was "to give families of addicts a help line to call for support", adding that it was "unaware of any services offered by Dr Subhash Goyal in relation to these numbers". It explained that "the programme producer has a range of different relationships with those that they work with", which "are often used by way of encouraging contributors to the programmes".

The Licensee reminded Ofcom that Akaal Channel is "a small community focused channel", adding that "this style of programming [formed] a tiny percentage of [its] overall programming output". It said the channel was now "reviewing all the complaints received and working on process changes", and had engaged a third party "to assist with compliance

related matters". In response to Ofcom's Preliminary View, the Licensee added that "whilst errors have been made, the channel has learnt from these and changes to the compliance process have been implemented".

Decision

Reflecting our duties under the Communications Act 2003¹, 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 and/or offensive material. In addition, Section Nine of the Code requires that there is a distinction between advertising and editorial content.

Rule 2.1

Rule 2.1 requires, among other things, that generally accepted standards are applied to the content of television services so as to provide adequate protection from the inclusion in such services of harmful material.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material that may be harmful and the right to freedom of expression.

The broadcaster's right to freedom of expression allows it to discuss, within programmes, the perceived benefits of alternative and complementary medicine. Programmes may also provide lifestyle and health advice. However, to comply with the Code, broadcasters must ensure that they provide adequate protection to their audiences if programmes contain potentially harmful material.

In this case, Subhash Goyal and the presenter discussed a specific Ayurvedic treatment for alcohol and drug addiction provided by the Vardhan Organisation. They made a number of claims about the efficacy and safety of the treatment – for example:

"...we now have a system by which we can offer treatment for patients and thus wean them off their addiction..."

"As a result of taking this medication there is a radical change in behaviour of the patient and it results in a profound improvement in their behaviour. The interesting thing about their medication is that it contains no intoxicants whatsoever, and our medication is sent overseas to foreign jurisdictions and they are very strict and carry out laboratory tests before allowing them in. They are very strict in these matters, and it is only after testing that these medicines reach you. They are satisfied that there is nothing harmful in the medication, and nothing that could cause you any harmful addiction..."

"...The fact is that my medicines will work from the first day and you will stop using intoxicants straight away. Therefore, if you feel that the medicines are working then,

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

after 15 days, order more and before the 20th day you will receive more medicines, so that there is no break in the cycle of medication. Of course, there are some who have such faith in me that they take the full 45 days of medication straight away, and that is fine too. But, in general, I recommend that they take only 25 days of medicines”.

The programme provided viewers with details of how to contact the Vardhan Organisation to obtain the medication:

“...everything is above board and can be found on the internet. In addition, you can see their phone number on the screen and you can obtain all the information that you may require by ringing them up and asking for the relevant information. There is absolutely no attempt to deceive you, as they never ask you to buy 45 days of medicines straight away. In fact, they initially ask that you only buy 25 days' worth of medicines. Try the medicines and if you think that it is helping you wean yourself off your addiction, only then should you order more medication...”.

Ofcom acknowledges that Ayurvedic medicine is an established form of complementary or alternative medicine that is widely practised and accepted, particularly in the Indian sub-continent. Our role is not to judge the merits of different systems of medicine, but to ensure that viewers are protected from potential harm in programmes.

Drug and alcohol addiction are serious medical conditions. Within the UK, there is an extensive regulatory framework that covers their treatment, which ensures that patients receive safe and appropriate care. Regulation includes requirements that medicines are licenced by the Medicines and Healthcare Products Regulatory Agency².

Ofcom noted ACL's representations, that the treatment discussed in the programme was not in fact available in the UK and that we should, on that basis, remove the reference to the Medicines and Healthcare Products Regulatory Agency from the Preliminary View. We also noted, however, the statements made in the programme, that *“our medication is sent overseas to foreign jurisdictions and they are very strict and carry out laboratory tests before allowing them in,”* and that *“...we have launched our website [web address] worldwide, from where you can log in from anywhere in the world and find out any information that you may require about this subject”.* Given the fact that ACL chose to broadcast this programme in the UK and there did not appear to be any clarification included in the programme that the medicine was not in fact available here, viewers may have reasonably assumed that the treatment was available in this country (or that it could be sent here), and that it had been subject to the *“strict”* tests referred to. In Ofcom's view, this was misleading to viewers, and potentially harmful, in circumstances where viewers may have taken steps to try to obtain the medicine from overseas.

In this case, viewers were invited both by the presenter and in the on-screen text to call phone numbers displayed throughout the broadcast. These contact phone numbers were not specific to the programme or the channel but were clearly linked to not only Subhash Goyal, as the Licensee confirmed, but also the commercial entity, Vardhan Ayurvedic Organisation. The Licensee said it was *“unaware of any services offered by Dr Subhash Goyal in relation to these numbers”.* Ofcom therefore considered ACL had failed to satisfy itself that viewers who responded to the invitations to call the contact numbers displayed would

² <https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency>

be offered only on-air advice in the programme and not the opportunity to purchase products direct from the manufacturer.

There was therefore the potential for harm to the audience because a treatment unlicensed in the UK was presented as being effective and safe for use by people with a serious medical condition, and possibly could have been purchased and used by viewers with potentially serious consequences for their health.

Further, at no time during the programme were viewers advised to consult their own GP or seek independent medical advice before starting the treatment. We therefore considered that the Licensee had not taken appropriate steps to provide its viewers with adequate protection from potential harm and that generally accepted standards had not been applied to ACL's content so as to provide adequate protection from harmful material, in breach of Rule 2.1 of the Code.

Rule 9.4

Rule 9.4 requires that products, services and trade marks are not promoted in programming. Ofcom's Guidance³ on this rule explains that, "where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed".

The references to Vardhan Ayurvedic Organisation, of which the interviewee, Subhash Goyal, is Managing Director, and its 45-day treatment programme were all presented positively throughout the broadcast. The programme emphasised the claimed efficacy of the treatment and the reputation of the organisation. Further, viewers were invited to visit the organisation's website and to call contact numbers "linked to Dr Subhash Goyal".

ACL claimed that the aim of *Health Time* was "to ensure that the family of addicts know there's help and do not feel isolated". However, Ofcom considered that the programme principally promoted Vardhan Ayurvedic Organisation and its 45-day treatment programme for drug and alcohol addiction.

Ofcom concluded that the references in *Health Time* to products and services were promotional, in breach of Rule 9.4 of the Code.

Rule 9.5

Rule 9.5 requires that references to products, services or trade marks in programming must not be unduly prominent. Undue prominence may result from such references where there is no editorial justification or from the manner in which they are referred to. Ofcom's published guidance⁴ relating to undue prominence makes clear that "whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third-party funder...there must be editorial justification for its inclusion. The level of prominence given

³ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

⁴ See footnote 4.

to a product, service or trade mark will be judged against the editorial context in which the reference appears”.

Throughout the programme promotional references were made to Vardhan Ayurvedic Organisation and its 45-day treatment programme for drug and alcohol addiction. Limited non-promotional references to either may have been acceptable in the context of a programme that aimed “to ensure that the family of addicts know there’s help and do not feel isolated” – as the Licensee claimed was the case in this instance – and discussed more generically methods of treating drug and alcohol addiction. However, *Health Time* focused primarily on promoting a single product of Vardhan Ayurvedic Organisation, for which there appeared to be no editorial justification.

It is difficult to justify invitations to viewers to contact a business in programmes. In this case, as noted above, viewers were invited both by the presenter and in on-screen text to call phone numbers displayed throughout the broadcast, which were linked to both Subhash Goyal and Vardhan Ayurvedic Organisation. Further, the invitations to viewers to call the contact numbers displayed may have resulted in viewers being offered the opportunity to purchase products. Ofcom considered there was no editorial justification for the references to the contact details provided in the programme.

Ofcom concluded that references in *Health Time* to products and services were given undue prominence, in breach of Rule 9.5 of the Code.

Ofcom is particularly concerned by any failure by broadcasters to provide adequate protection from potentially harmful material in programmes offering advice on serious health conditions. We are putting the Licensee on notice that any recurrence of breaches of this nature may lead to Ofcom considering the imposition of a statutory sanction. We are also requesting that the Licensee attends a meeting with Ofcom to discuss its approach to compliance in this area.

Breaches of Rules 2.1, 9.4 and 9.5

Resolved

Cumbria Headline News

That's Cumbria, 21 August 2017, 19:00

Introduction

That's Cumbria is a local television service for Cumbria and the surrounding area. The licence is held by That's Carlisle Limited ("TCL" or "the Licensee").

Cumbria Headline News is a local news programme. Ofcom received a complaint about offensive language in this programme. At the start of the programme no image was on screen for approximately two minutes, but the news presenter could be heard twice using the word "shit" off camera.

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

Rule 1.16: "Offensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed".

We therefore asked TCL how the content complied with this rule.

Response

The Licensee told Ofcom that the opening sequence of *Cumbria Headline News* is "generally pre-recorded prior to [its] transmission". TCL said that regrettably on this occasion a recording made during rehearsals, which included offensive language, was "accidentally mislabelled", and consequently scheduled and broadcast in place of the correct opening sequence. The Licensee stated that a member of the local production team noted the incident and "promptly took action to rectify the error by replacing all further planned uses with the correct opening sequence". The local duty editor also reported the incident to That's TV management, who "discussed policies and procedures with the team to seek to minimise the risk of reoccurrence".

TCL said that it expected Ofcom to understand that "local TV services producing significant local content to deadlines must do so by developing effective and disciplined working practices", and that on this occasion a human error occurred which was "promptly rectified". The Licensee reiterated its regret for this incident and "recognises its seriousness". However, it also said that it believed viewers would "be likely to accept the context with the entire broadcast being unintentional, rather than premeditated". TCL stated that it "trusts Ofcom will accept that there was no breach of Rule 1.16...in light of the action taken, by the production team at the time, to ensure that the matter was promptly resolved".

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

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

Rule 1.16 states that offensive language must not be broadcast before the watershed unless it is justified by the context and that in any event, frequent use of such language must be avoided before the watershed.

Ofcom's 2016² research on offensive language indicates that audiences consider the use of the word "shit" to be potentially unacceptable pre-watershed, particularly when used aggressively or repeatedly. In this case, two uses of the word "shit" were broadcast before the watershed.

We acknowledged that the word was not used aggressively in this programme. We also noted TCL's submission that viewers would likely recognise that the offensive language was broadcast in error.

Notwithstanding the above, the offensive language was used in an evening news programme well before the watershed. Although we accept that the programme was not aimed at children, and was unlikely to particularly appeal to them, we considered viewers, and in particular parents and carers, would not expect to hear offensive language in such programming and that children may have been in the audience.

However, we acknowledged that this incident occurred as a result of human error and that the Licensee had subsequently removed this content to ensure that the offensive language was not repeated in further broadcasts of the programme. Given these factors, Ofcom's Decision is that this matter is resolved.

Resolved

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

Advertising scheduling cases

In Breach

Advertising minutage

B4U Music, various times and dates

Introduction

B4U Music is a digital television channel that broadcasts a mixture of contemporary, Bollywood, Indipop, Bhangra, and international music. The licence for B4U Music is held by B4U Network (Europe) Ltd ("B4U" or "the Licensee").

Rule 2 of the Code on the Scheduling of Advertising (COSTA) states that:

"Time devoted to advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes".

During routine monitoring Ofcom identified 85 incidents on B4U Music where the amount of advertising in a clock hour appeared to exceed the permitted allowance. The overruns varied in length, the most significant being three minutes and 14 seconds.

Ofcom considered that this raised issues under Rule 2 of COSTA and therefore sought comments from the Licensee as to how the content complied with this rule.

Response

The Licensee said that the incidents were unintentional and a result of human error.

It explained that in July, the person responsible for scheduling its advertising left the company without notice and that a temporary scheduler from a different territory was transferred to cover this position.

B4U said that while the total amount of advertising it broadcast across the days in question was compliant with COSTA requirements¹, the temporary scheduler did not take into consideration the individual clock hour restriction set out in Rule 2 when inserting advertising breaks.

The Licensee said that upon being made aware of the issue, it conducted several training sessions with a newly appointed scheduler and devised a new monitoring system that will alert staff if the amount of advertising scheduled for a clock hour exceeds 12 minutes.

¹ Rule 3 of COSTA permits non-public service channels, such as B4U, to broadcast nine minutes of advertising for every hour of transmission across the broadcasting day (subject to there being no more than 12 minutes of advertising in any clock hour).

Decision

Reflecting our duties under the Communications Act 2003², COSTA sets limits on the amount of advertising that can be broadcast. It includes rules that limit the amount of advertising that can be shown across a broadcasting day as well as during any clock hour.

Ofcom acknowledged that these incidents were the result of human error and took into account the measures undertaken by the Licensee to train relevant staff in this area and to implement a system which automatically highlights compliance issues. However, in this case, on a significant number of occasions, the amount of advertising broadcast in a clock hour exceeded what is permitted. The Licensee therefore breached Rule 2 of COSTA.

Ofcom will continue to monitor the Licensee's compliance with COSTA.

Breaches of Rule 2 of COSTA

² <http://www.legislation.gov.uk/ukpga/2003/21/section/322>

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with Format *Q Radio (Coleraine), 31 July to 2 August 2017*

Introduction

Q Radio is a commercial radio station licensed to provide a local commercial radio service for the Coleraine area of Northern Ireland. The licence is held by Northern Media Group Limited ("NMG" or "the Licensee"). The Coleraine licence forms part of NMG's "Q Radio" network of seven local stations which broadcast across a number of different areas within Northern Ireland.

A local commercial radio station's 'Format' document forms part of its licence, and sets out the type of broadcast output that the radio station is required to deliver. It also sets out the station's obligations regarding the provision of local news, the number of hours per day the station must produce locally, and records any programme-sharing and/or co-location arrangements that have been approved by Ofcom.

The Format of the Coleraine licence requires the service to be "A locally-oriented broad music station for the Coleraine area, with a strong commitment to local news and information".

The Format states that the station must produce locally seven hours of output per day on weekdays (four on weekend days). However, following the approval by Ofcom of a Format Change Request in 2015, the service provided under the Coleraine licence can be shared with those provided under six other licences held by the Licensee (Belfast, Ballymena, Cookstown, Londonderry, Newry and Omagh and Enniskillen).

The Licensee also has permission for the local hours of output to be broadcast from within any of the other Q Radio licence areas, in addition to Coleraine.

Ofcom received a complaint that all programming on the Coleraine licence was now being broadcast from Belfast, and that the station was no longer a source of local news and information for the Coleraine area.

NMG is entitled to broadcast the Coleraine service from Belfast, and to share local programming hours with the other Q Radio stations in Northern Ireland. However, regardless of these arrangements, the service provided under the Coleraine licence must still include a certain number of local news bulletins each day, and must still be compliant with its 'Character of service', which requires the station to have "a strong commitment to local [i.e. Coleraine area] news and information."

We requested recordings of three days of Q Radio's output, covering Monday 31 July, and Tuesday 1 and Wednesday 2 August 2017.

We assessed the output against both the Format of the Coleraine licence and Ofcom's published localness guidance¹. We noted that, of the 57 locally-produced news bulletins aired during the monitoring period, only 31 of these bulletins contained any news stories that were directly relevant to the Coleraine licence area.

Aside from some travel news, we did not hear any other local material that was specific to the Coleraine area.

We therefore had concerns that Q Radio (Coleraine) may not have been meeting the following Format requirements:

- Character of service: "A locally-oriented station for the Coleraine area, with a strong commitment to local news and information."
- Local news: "At least hourly during daytime weekdays and peak-time weekends."

Ofcom considered that this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Q Radio's licence. These state, respectively:

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

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

We requested comments from NMG on how the Coleraine licence was complying with these conditions, with reference to the specific aspects of the Format set out above.

Response

Although NMG is permitted to share all of the local programming hours provided under the Coleraine licence with all of the other Q Radio stations, the individual stations which comprise the network (including the Coleraine service) normally opt out of full network programming from Belfast between 10:00 and 13:00 each weekday, when they air more localised programming. The Licensee explained that this is done by local presenters gathering and recording content in their local areas which is then played out locally by the main presenter in Belfast.

However, NMG said that, because of the traditional 'Twelfth of July fortnight' holidays in Northern Ireland, the Coleraine, Ballymena and Cookstown licences remained in full network mode, with no local inserts provided, until Monday 7 August, when local programming material was re-introduced.

With regards to the provision of local news on the Coleraine service, NMG said that it usually provided bespoke local news bulletins for each of its seven licence areas, but because of

¹ These guidelines are not rules as such, but they outline the sort of considerations that may come into play if it becomes necessary to investigate a station's localness output. The guidelines are available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness/localness-guidelines>

some temporary staffing difficulties it was unable to provide this service during Ofcom's monitoring period. This meant that exactly the same local news bulletin was broadcast on both the Belfast and Coleraine transmitters during this period. NMG says it has now re-introduced bespoke local bulletins for each licence area, following resolution of its staffing issues.

The Licensee said that, during the period in question, it had found itself at the centre of a "perfect storm", with staff departures to the BBC, the annual traditional holidays in Northern Ireland and significant bereavements affecting two members of Q Radio's management team. It added that it has since reviewed its local news and programming output, and changes have been implemented "to ensure such an occurrence is not repeated."

Decision

Reflecting our duties to ensure a diverse range of local radio services, commercial radio licensees are required to provide the specified licensed service set out in their Format.

During the monitored period, it was clear that Q Radio (Coleraine) broadcast very little local material, and it frequently failed to include any stories drawn from the Coleraine area in its local news bulletins. In reaching a view on this matter, we applied our localness guidance, which states that local news bulletins should "include at the very least one fully-formed local news story, and normally more than this, alongside national stories. In cases where stations are sharing their local hours within an approved area, and are broadcasting the same news bulletin across more than one licensed area, at least one of the local stories in each bulletin needs to be directly relevant to listeners in each of the licensed areas. This is because stations sharing their local hours remain separate licences which still need to satisfy the localness and character of service requirements set out in their individual Formats".

While we acknowledge the temporary set of circumstances that led to a reduction in the provision of local output during this period, our view is that NMG was in breach of the specific local news obligations contained in its Format, and also did not comply with the 'Character of Service' included in the Coleraine licence, which requires the licensed service to provide "A locally-oriented station for the Coleraine area, with a strong commitment to local news and information".

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the commercial radio licence held by Northern Media Group Limited (licence number AL000254).

Fairness and Privacy cases

Upheld in part

Complaint by Mrs D *News, Channel 44, 4 December 2016*

Summary

Ofcom has upheld in part Mrs D's complaint of unjust or unfair treatment and unwarranted infringement of privacy.

The news programmes reported on an altercation which had taken place between two women, one of whom was the complainant, on a flight from Manchester to Lahore, Pakistan. During the report, an image of Mrs D's passport was shown.

Ofcom found that:

- Material facts were not presented, disregarded or omitted in a way that was unfair.
- Mrs D had a legitimate expectation of privacy in relation to the inclusion of images of her passport in the programme without her consent and that expectation was not outweighed by the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference. Nor was the interference with Mrs D's legitimate expectation of privacy warranted in the public interest. Therefore, Ofcom considered that Mrs D's legitimate expectation of privacy was unwarrantably infringed in the programme as broadcast.

Programme summary

Ofcom obtained English translated transcripts of the programmes and provided copies to the complainant and the broadcaster for comment. Both parties provided comments on the translations which were sent to the translator and no amendments were made to the translations. We provided final versions of the translations to the parties who were informed that Ofcom would use the translations for Ofcom's investigation of the complaint.

On 4 December 2016, Channel 44 broadcast an edition of its news bulletin at 09:00, which included a reference to the story about the complainant. The newsreader in the studio said:

"During a flight from Manchester to Lahore two women [the women's passports were shown] get into an altercation. They pulled each other's hair and also slapped each other. On arrival at Lahore they were taken into custody. Only after written apology was matter resolved".

There was no further reference to Mrs D during this edition.

Later at 18:00, another edition of the news programme was broadcast, which included a more detailed story about the incident. The newsreader in the studio said:

"[Mrs D's passport was shown] On a flight from Manchester to Lahore, two female British individuals have an argument. Slapped each and pulled each other's hair. Upon arrival at Lahore, they were taken into custody. Only after submitting written apologies were they released".

The full story about the incident was included later in the programme. A reporter said:

"During the flight two Pakistani women [the women's passports were shown again] were involved in a fight. They tried to stay calm, but the fight escalated. Next thing you knew they rained down a barrage of slaps on each other. Passengers tried to placate them but they were unsuccessful, as was the airline's staff. [The women's passports were shown] The two women continued to pull each other's hair, and nobody was able to prise them apart or cool them down. Upon landing at Lahore upon the Captain's instructions security personnel took the two women into custody [the women's passports were shown]. To extricate themselves the two violent ladies were required to write a written apology".

Summary of the complaint and broadcaster's response

Unjust or unfair treatment

- a) Mrs D complained that she was treated unjustly or unfairly in the programme as broadcast because she was portrayed as a "criminal" in the programme when, in fact, she was the victim of an assault.

Mrs D said that the report unfairly stated that she had been involved in an altercation, which involved "physical assault", on a flight from Manchester to Lahore airport, and that the pilot had complained to security which resulted in her being arrested on arrival. However, she said that it was the other passenger who had assaulted her and was arrested at the airport.

Aston Brooke Solicitors submitted a statement on behalf of Channel 44. It said that it did not agree that the portrayal of Mrs D in the broadcast was unfair to her and that the report and broadcast was made on the information that was available. It said that it was factually correct that the complainant was involved in an altercation on a flight from Manchester to Lahore airport. Aston Brooke also said that the news report did not state explicitly that the complainant was the aggressor in the incident, nor was she reflected as such. It added that the report was broadcast to represent an impartial news piece based on the information available, namely:

- a "deed of settlement" between Mrs D and the other person (an English translation of the statement was provided to Ofcom) in which the solicitors said it had been stated that the "altercation was caused and participated by both parties inclusively"; and,
- a note of the incident made by the "Deputy Officer of the Lahore Airport Security Force" (an English translation of the statement was provided to Ofcom) which detailed that both women were to be released by the airport authorities on the "proviso of an agreed reconciliation between both ladies. The agreement was made without reference to a named victim and aggressor respectively".

From this, Aston Brooke said that the news report was factually accurate on the basis of the information that was made available to the broadcaster at the time and which was subsequently aired.

Unwarranted infringement of privacy

- b) Mrs D also complained that her privacy was unwarrantably infringed in the programme as broadcast because it repeatedly broadcast an unobscured image of her passport.

In response, Channel 44's solicitors said that the broadcaster adopted a strict-policy in respect of data protection and apologised for any distress caused to the complainant by the image of her passport not being obscured in the programmes.

It said that two edits of the report were produced. The first edit (which was broadcast), did not obscure the complainant's passport details. The second edit obscured the complainant's photograph and "protected data". However, the broadcaster said that the first edit was accidentally broadcast because of human error. However, it maintained that this was "by no means a reflection of the capacity of the Channel to comply with the Ofcom Broadcasting Code" and that it had implemented procedures to ensure that a complaint of this nature does not arise again.

Supplemental material

On receipt of the broadcaster's response, Mrs D contacted Ofcom to query some of the evidence the broadcaster relied on.

In particular, Mrs D said that while it was correct that an altercation did occur on the flight, she had been the victim. She added that the news report referred to both women as slapping each other and pulling hair which portrayed her as an aggressor in the incident. Mrs D also said that the supporting material provided by the broadcaster in response to the complaint, including the deed of settlement referred to above, had been witnessed by the husband of the other woman who had been involved in the incident and that he was therefore not a "valid witness". Mrs D also said that no such settlement had taken place and she questioned the reliability of the document. In particular, she said that the document was invalid as it had not been "officially certified" by way of signature or seal.

Further, Mrs D said that it was her view that the broadcast of her passport was a serious breach of her privacy which resulted in severe distress to her. Mrs D considered that in the absence of video footage of the incident, the broadcaster had displayed her passport to make the report more credible and that this was "by no way [an] accidental broadcast as they maintain". Mrs D said that it was gross negligence on the part of the broadcaster to have displayed her passport page.

Mrs D also provided Ofcom with a police report filed by Mrs D and a "pre-arrest bail petition" in relation to the other woman who had been involved in the altercation.

Ofcom provided this further information to Aston Brooke, and asked for its response on behalf of Channel 44.

Aston Brooke said that Mrs D agreed that an altercation took place. It reiterated that the complainant was not portrayed as the aggressor, but as a party to the altercation. It added that the news story, stating that an incident had taken place between two women, was based on the information which was made available to the broadcaster from the Airport Security Force of Lahore ("ASF") who were responsible for dealing with the incident, which included the deed of settlement.

Aston Brooke added that the police report which was provided to Ofcom by Mrs D was dated three days after the incident and was reported by Mrs D to the local police in Lahore, Pakistan. It said that this report was from the perspective of the complainant as the reporting party and was only available after the incident, so the broadcaster would have been unable to access this information. Further, although the broadcaster recognised that the complainant had issued court proceedings, it said that this action was taken in 2017 and thus was irrelevant to the complaint.

Aston Brooke said that in its response to the complaint, it had provided a note of the incident dated 26 November 2016 by the Deputy Officer of the ASF, which it said was sealed with the ASF's authentication stamp. It said that the note detailed that both women involved in the altercation were only released on the proviso of an agreed reconciliation between them. The note was provided by the ASF and it was reliable when the author and date of the note were taken into account. Aston Brooke added that the note provided an impartial account of the incident

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should be upheld in part and both parties were given the opportunity to make representations. The complainant submitted representations on the Preliminary View as detailed below. Aston Brooke submitted representations concerning the wording used in the Preliminary View, which did not materially affect the outcome of the decision.

Mrs D said that the broadcaster did not take reasonable care to satisfy itself that material facts were not presented in a way that was unfair to her. She said that she was portrayed in the programme as an aggressive party in the incident and that the use of the words "pulled each other's hair and slapped each other" and "both being taken into custody" in the programme, portrayed her as an aggressor which would "undoubtedly affect viewers' opinion about me". Mrs D also said that there was no record of any witness statement describing the above and these "specific violent events were not relayed to the broadcaster by the ASF".

Mrs D said that the ASF report was "distorted, factually incorrect and invalid". She said that on 26 November 2016, she had filed a complaint against the other woman with Lahore Airport Police. Mrs D said that she was not "handed over to the police" as stated and that the ASF staff had referred the case to the airport police for further action. Mrs D also said that her police complaint was then referred by the airport police to the main police station on Sarwar Road, Lahore, Pakistan.

Mrs D said that the broadcaster stated that she had visited a local police station three days after the incident. She said that the airport had only a "police check post" and that the main police station covering the airport jurisdiction was on Sarwar Road. She said that the complete process took three days and that the final police report was subsequently registered. Mrs D said that the police report would not have been registered if the ASF report was accurate. She

said that “the fact that the police entertained my complaint, referred me for a medical examination, and subsequent court proceedings against the assailant, all point towards the fact that I was a victim of assault and not an aggressor as portrayed by the broadcaster”.

Mrs D said that court proceedings started in December 2016 and not in 2017 as stated by the broadcaster.

Mrs D also said that the deed of settlement, which was submitted by the broadcaster, did not include her signature.

Mrs D said that the news report was broadcast on 4 December 2016, which was eight days after the incident had taken place. She said that the broadcaster therefore had sufficient time to clarify the facts that included her registered police complaint. Mrs D added that this information should have been considered by the broadcaster, rather than it relying on unclear information from eight days earlier. Mrs D questioned why the incident had been reported as “breaking news”.

Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, an English translation of the programme, both parties' written submissions, and supporting material, including the representations made by Mrs D 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 to uphold the complaint in part.

Unjust or unfair treatment

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

- a) Ofcom considered Mrs D's complaint that she was treated unjustly or unfairly in the programme as broadcast because she was portrayed as a "criminal" in the programme when, in fact, she was the victim of the assault.

In assessing whether Mrs D was treated unfairly in the programme, we had particular regard to Practice 7.9 of the Code which 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 an individual or organisation".

It is important to note that Ofcom is unable to make findings of fact in relation to the matters reported in the programme. Rather, our role is to consider whether, by broadcasting the relevant footage, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to the complainant.

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. 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 case, including, for example, the way in which an individual is portrayed, the seriousness of any allegations made against them, and the context in which such allegations are made.

Therefore, we began by considering the way in which Mrs D was portrayed in the programme and whether this had the potential to materially and adversely affect viewers' opinion of her in a way that was unfair. We then went on to consider whether, if this portrayal and any allegation made in the programme did have the potential to cause unfairness, the manner in which the allegation was presented in the programme resulted in such unfairness.

We carefully examined the news reports and the English translation of the same content as set out in detail in the "Programme summary" section above. In particular, in the two bulletins broadcast at 09:00 and 18:00, the incident concerning Mrs D was referred to briefly, where it was stated that two women had got into an altercation, that they had *"pulled each other's hair and also slapped each other"* and that they both been taken into custody. The version of the report broadcast at 18:00 included more detail about what was said to have happened between the two women on the flight, for instance: *"They tried to stay calm, but the fight escalated"; "Passengers tried to placate them but they were unsuccessful, as was the airline's staff"; "...nobody was able to prise them apart or cool them down"; and, "Upon landing at Lahore upon the Captain's instructions security personnel took the two women into custody. To extricate themselves the two violent ladies were required to write a written apology"*.

We took into account Mrs D's representations on the Preliminary View that she was portrayed as an aggressive party in the incident. We considered that the allegation that Mrs D had been involved in an incident on a flight, in which it was reported that she had slapped and pulled the hair of the other woman, and that she was held in custody as a consequence of her behaviour, amounted to serious allegations. Therefore, despite the

broadcaster's submission that the report did not portray Mrs D as either the aggressor or the victim in this matter, we considered that Mrs D was portrayed as having acted improperly and in a violent manner towards the other person. We therefore considered that the report clearly had the potential to materially and adversely affect viewers' opinion of Mrs D.

We next considered whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mrs D.

Mrs D disputed her level of involvement in the incident and said that she was a victim of assault. In our view, the extent of her involvement in the incident was a matter of dispute between the parties. We recognise that Mrs D felt that she was the victim of the other woman's aggression and that she had provided Ofcom with documents that she believed supported her assertion. However, as noted above, it is not for Ofcom to determine the facts as to what occurred between the two women who were the subject of the broadcast programme, but rather, our role is to consider whether it was reasonable for the broadcaster to have included the information about the incident in the programme.

We took into account the information which the broadcaster said was made available to it at the time of broadcast by the ASF. We recognised Mrs D's claim that the deed of settlement had been witnessed by the husband of the other woman involved in the altercation and that this man was not therefore a valid witness. We also took into consideration that she said the document was invalid as it had not been "officially certified" and that she had not signed the document. We observed that the deed of settlement, while signed by someone, did not appear to have an official stamp or seal. The note of the incident made by the "Deputy Officer of Lahore Airport Security Force" did, however, have an official stamp and this document also said "settlement done 26 November 2016" which appeared to be a reference to the deed of settlement. In light of this, we had no reason to believe that the documents provided by the broadcaster were not authentic. Therefore, notwithstanding any issue as to who witnessed the deed of settlement (on which Ofcom has not taken a view), it appears that the broadcaster relied upon documents which it had obtained from an official source, authorised to handle the incident, namely the Deputy Officer of Lahore Airport Security Force.

We also considered the documents provided to Ofcom by Mrs D, and her representations in response to the Preliminary View, detailing the reason she filed the report with the police and her view that the broadcaster had sufficient time between the incident taking place and the broadcast of the programme to clarify the facts surrounding the story. We noted the broadcaster's representations, that the police report filed by Mrs D on 28 November 2016 was three days after the incident had taken place and that it had been filed at the Sarwar Road station, where the broadcaster may not have been aware of this report prior to the broadcast. Further, the documents which detailed the pending police investigation or legal proceedings in relation to the other woman involved in the incident were made after the programme was broadcast. As such, we considered that although there was a delay between the incident having taken place and the broadcast of the programme, in light of the fact the broadcaster did not appear to have these documents in its possession prior to the broadcast of the programme, it could not reasonably have represented this information in the report.

The information provided by the ASF stated both parties had “quarrelled with each other along with family members” and got into a heated argument”; that they were brought to the control room by airline staff and the ASF; that, after initial investigations the Company commander had handed them over to police for legal proceedings; that the complainant had suffered a small bruise in the incident; and that neither party wanted the matter pursued further. We therefore considered that the broadcaster had a reasonable and credible basis for the inclusion of the information in the report, regarding an incident between Mrs D and the other woman having taken place on the flight.

We also noted, however, that the reports included in the programme further stated that both women had: “pulled each other’s hair and also slapped each other” and the second report added that “they rained down a barrage of slaps on each other” and “nobody was able to prise them apart or cool them down”. The later report also described the two women as “violent ladies”. These statements do not appear to form part of the information which the broadcaster obtained from the ASF and, from the information submitted to Ofcom, it was not clear the basis on which these statements had been made. We noted that the broadcaster said that the reports included in the programme did not portray either woman as the aggressor or the victim in the incident. However, in Ofcom’s view, the programme presented as fact that Mrs D had been violent towards the other person and there appeared to have been no evidence on which this claim was based. Given this, we considered that the broadcaster had not followed the requirements as set out in Practice 7.9 in this respect.

However, as set out in the Foreword to Section Seven of the Code, a failure to follow Practices will only constitute a breach of Rule 7.1 where it results in unfairness to an individuals or organisation in the programme as broadcast. We therefore went on to consider whether the inclusion of the further claims made about Mrs D in the programme resulted in unfairness to her.

We considered that viewers would have understood from the report that the incident involving Mrs D and the other woman was serious in that both of them were escorted off the plane, taken into custody and only released after they had apologised to each other. In light of this, we considered that the inclusion of the specific claims about the conduct of Mrs D during the incident, including that Mrs D and the other women had “*pulled each other’s hair and also slapped each other*” and that they were described as “*violent ladies*”, was unlikely to have made a material difference to viewers’ perceptions of her and the incident itself in such a way as to cause unfairness to her.

On that basis, taking all of the above factors into account, it was Ofcom’s view that the inclusion of the claims in the report about an incident involving Mrs D, were not presented, disregarded or omitted in a way that resulted in unfairness to Mrs D.

Unwarranted infringement of privacy

- b) Mrs D also complained that her privacy was unwarrantably infringed in the programme as broadcast because it repeatedly broadcast an unobscured image of her passport.

In Ofcom’s view, the individual’s right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering

with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

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.

In considering Mrs D's complaint, we had particular regard to Practice 8.6 of the Code which 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".

We first considered the extent to which Mrs D had a legitimate expectation of privacy in relation to the broadcast of her passport.

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

As set out in the "Programme Summary" section above, the reports included images of the passports of the two women who had been involved in an altercation that had taken place on a plane. The images were shown for approximately 15 seconds in total and the information on the passport page shown, i.e. photograph, nationality, date of birth, and passport number, was not obscured. Mrs D was identified as one of the women involved in the incident.

Ofcom recognises that a passport is an official document issued by the state for the purposes of identification and confirmation of nationality. The information contained in it is personal information which is generally only produced for specific, official purposes. In this context, we considered that the information about Mrs D shown in her passport was private information which, in the absence of her being required to produce her passport for official purposes, would not have been broadcast to the general public. In Ofcom's view, the information contained in Mrs D's passport therefore attracted a legitimate expectation of privacy.

Channel 44 did not seek Mrs D's consent to broadcast the image of her passport. We therefore went on to consider whether the infringement of Mrs D's legitimate expectation of privacy was warranted.

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

demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Channel 44 said that the image of Mrs D's passport and the disclosure of her personal information was included in the reports in error. It did not put forward a public interest justification for the infringement of Mrs D's privacy by including an image of her passport in the programme. We considered more broadly the broadcaster's right to freedom of expression in broadcasting the programme, and the audience's right to receive information and ideas without interference. However, in the particular circumstances of this case, we did not consider that these rights warranted including Mrs D's passport image without her consent.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression in broadcasting the image of Mrs D's passport and the audience's right to receive that information did not outweigh her legitimate expectation of privacy. Given the above factors, Ofcom considered that Mrs D's privacy was unwarrantably infringed in the programme as broadcast.

Ofcom has upheld in part Mrs D's complaint of unjust or unfair treatment and unwarranted infringement of privacy.

Not Upheld

Complaint by Mr Justin Brown

Can't Pay? We'll Take It Away!, Channel 5, 19 October 2016

Summary

Ofcom has not upheld Mr Justin Brown's complaint of unwarranted infringement of privacy about the programme.

The programme included footage of Mr Brown who was shown at his place of work as two High Court Enforcement Agents ("HCEAs") attempted to enforce a High Court Writ against his employer who, it was alleged, owed money to a supplier.

Ofcom found that, in the particular circumstances of this case, Mr Brown did not have a legitimate expectation of privacy with regards to the footage of him broadcast in the programme. Therefore, it was not necessary for Ofcom to consider whether any infringement into his privacy was warranted.

Programme summary

On 19 October 2016, Channel 5 broadcast an edition of *Can't Pay? We'll Take It Away!*, a series which followed HCEAs as they attempted to resolve debt disputes through negotiated settlements and asset seizures. In this edition of the programme two HCEAs, Mr Stewart McCracken and Mr Ian Taylor, visited a business premises to recover a debt of nearly £4,500 which, the programme explained, was "owed by Brian Hitchin, an optician, to an equipment supplier". This section of the programme began with the programme's narrator stating that:

"Business debt has risen by 25% in the last five years, with nearly three in five companies facing some sort of debt. It's small to medium sized firms that face major financial hardship with money owed to suppliers totalling 6.3 trillion pounds".

A caption stated that: "A debt of less than £20,000 is enough to put a quarter of small companies out of business".

The HCEAs were shown driving to Mr Hitchin's optician premises as the narrator explained that:

"If Mr Hitchin can't, or won't pay, the Writ instructs Stewart and Ian to collect full payment or remove assets to cover the debt today".

The HCEAs were shown as they entered the premises and explained to Mr Hitchin the purpose of their visit. Mr Hitchin asked to see the paperwork and he asked the bailiffs to leave. Mr McCracken explained that they would not as they "had a Writ to execute". Mr Hitchin stated he was "coming up to 83" and could "do without grief from you or anybody else". Mr Hitchin then became visibly agitated and stated, in a raised voice:

"I don't owe him [the supplier] any money...he gives me a load of rubbish and these people want banning from the world".

The narrator stated that Mr Hitchin:

"...claims he is in dispute with the claimant...even though the goods that he was sent from the supplier were substandard he paid the invoice and owes the company nothing - but the High Court Writ says otherwise".

Mr Hitchin was then seen agitated and upset and said:

"Please go away, go away, leave me alone, don't look at me. Go out the back!"

Mr Hitchin questioned whether Mr McCracken had *"...the brains to understand what you are doing"*. The programme then showed an interview with Mr McCracken, filmed at a later date, where he explained that:

"Sometimes, the older generation can be the trickier customers...they start to question your authority and believe what we are doing is incorrect. And we should stop doing what we are doing immediately because they don't agree with it".

The narrator explained that:

"Despite the dispute with the supplier, Stuart needs to make Mr Hitchin aware of the consequences of not paying his four and a half thousand pound debt".

Mr McCracken was then shown in situ in the optician's shop as he explained: *"If we do start writing things down it goes up to what we call a 'Stage 3 Enforcement' which means it will go up to five thousand..."*. Mr Hitchin then interrupted Mr McCracken and shouted *"Leave me alone I am trying to do this"* as he attempted to use the telephone. Mr Hitchin asked Mr McCracken:

"People don't deserve to be treated like this, do you not understand?"

Mr McCracken replied that he just wanted the matter settled and asked Mr Hitchin if he was *"able to make payment?"* Mr Hitchin replied, in a raised voice: *"Yes I can, now shut up"*.

Mr Hitchin was then shown on the telephone to the bank as he explained that he was in a *"terrible mess"* and that the HCEAs were:

"...all crooks...why can't they make a living out of sweeping the streets or nursing elderly people".

Following the call, Mr Hitchin explained that he could pay £1000 and Mr McCracken stated that that would not be sufficient and he would have to *"take control of goods"*. The narrator explained that:

"The agents start to make an inventory of goods when Mr Hitchin's assistant arrives".

Footage of a man with his back to the camera was shown as he walked along the pavement towards the opticians.

Another man (the complainant) was then shown as he entered the opticians and Mr Hitchin exclaimed *"Oh Justin, thank God you've come!"*. The exchange between Mr McCracken and Mr

Hitchin continued and Mr Hitchin disputed that he had been able to go to court to counter the supplier's claim and was again shown to be visibly agitated. Mr Hitchin was then shown on the telephone as he explained the situation to his son and asked if he could help him settle the debt. During the course of this call Mr Brown was shown sat behind a desk next to Mr Hitchin and on a further occasion, sat beside Mr Hitchin as he made a card payment for the full amount to the HCEAs. Mr Brown's face was not obscured and he did not talk during the exchanges.

The narrator concluded this section of the programme: *"It has been a stressful job for the agents"* and Mr McCracken reflected that *"It is quite clear he [Mr Hitchin] has got a dispute with it...but sadly the job's a job isn't it?"*

At the end of the programme further footage of Mr Hitchin was shown, under which a caption stated: *"The default judgement against Mr Hitchin was set aside. The dispute about the debt is now proceeding through the courts"*.

Summary of the complaint and the broadcaster's response

The complaint

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

By way of background, Mr Brown stated that he was not the subject of the High Court Writ and he had asked the programme makers (on the day of the filming and subsequently by email) and the broadcaster not to include him in the programme. Mr Brown said that following the broadcast of the programme he had been the subject of prank calls and that he felt "abused, used, and victimised".

The broadcaster's response

Background

Channel 5 said that UK law does not provide that people have a right not to be on television, nor does the law prevent footage or photographs of people being taken and then broadcast without their consent.

The broadcaster said that what mattered in every case was whether or not rights were infringed, and, if they were, whether there was good reason for those rights to be infringed. It said that this required the balancing of the rights of privacy (Article 8 of the European Convention of Human Rights ("ECHR")) against the right to freely broadcast matters of public interest (Article 10 of the ECHR).

Channel 5 said that there could be no doubt that the activities of the HCEAs (conducting official court business in the execution of a Writ allowing them to seize goods, chattels, and other property in order to satisfy a judgment debt); the manner in which the law is utilised or ignored; the kinds of difficulties the HCEAs face when executing their duties; and, the impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties were all matters of "acute public interest".

Channel 5 said that, for all of these reasons, it considered that, generally speaking, it was appropriate and reasonable to include footage of people interacting with the HCEAs in the programme. However, the broadcaster acknowledged that each case would turn on its own facts, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in a programme.

Response to the complaint

Channel 5 said that the execution of a Writ issued by the High Court is a public matter; it is not a private matter. It said that particularly, the execution of the Writ in this case was not a matter connected with Mr Brown's private life; it was a public matter that involved Mr Brown's employers.

Channel 5 said that the interactions between the HCEAs and Mr Brown's employers were not a part of any private life protected by Article 8. However, it said that communications about those interactions were protected by Article 10.

Channel 5 said that it was not the case that Mr Brown did not consent to being filmed. It said that Mr Brown's employer, Mr Hitchin, gave the programme makers permission to remain in the premises and continue to film. Channel 5 said that Mr Brown had been made aware of the fact that the programme makers were from Channel 5 and the name of the programme they were filming for and that Mr Hitchin had agreed to them continuing to film at his business.

Channel 5 said that later Mr Brown had taken up a position behind the reception desk of the optician's premises and assisted Mr Hitchin making calls and handling the card machine with which Mr Hitchin paid the debt. It said that at no time during the filming process did Mr Brown indicate that he had any issue with filming taking place, nor did he object to being filmed. However, Channel 5 said that after the HCEAs finished their duties, the programme makers had spoken to Mr Brown off camera and at that point he stated that he did not want to be included in any broadcast. It said that Mr Brown did not raise any question of his privacy and none was discussed with him.

Channel 5 said that even though Mr Brown consented to the filming, given that the HCEAs were engaged in official court business it was not necessary to obtain Mr Brown's consent in relation to the filming. It said that, accordingly, any right to privacy claimed in relation to the execution of the Writ would be outweighed by Channel 5's Article 10 right to communicate, and the public's right to receive, information concerning matters of public interest including, without doubt, the activities of the HCEAs carrying out official court duties.

Channel 5 added that given the programme makers had permission to film on the premises, there was no issue with Mr Brown being filmed as part of that process. Nothing Mr Brown was doing was private and his employer had authorised the filming.

With regards to the broadcast of the footage of Mr Brown, Channel 5 said that Mr Brown was not the focus of the segment and that he was not depicted talking about or indicating anything that was private to him or to anyone else. It said that Mr Brown was portrayed as a loyal and helpful employee and that no adverse view of Mr Brown could be formed from watching the broadcast.

The broadcaster said that it did not accept that Mr Brown had any right of privacy infringed by the broadcast. Mr Brown was not shown in a bad light and he was not shown doing or saying anything which might be considered private. Channel 5 said that Mr Brown appeared to act in

the role of receptionist for the premises and seemed to have an outward facing role on a daily basis; it would therefore be entirely normal for him to interact with the public or answer queries or be otherwise seen as he went about his duties. It said that the premises where Mr Brown worked was part of a parade of shops which faces onto a main road. Any passer-by, it said, could see the interior of the shop, and the activities of anyone inside, at any time. Channel 5 said that absent some special characteristic, Mr Brown simply did not have an expectation of privacy in relation to what was included in the broadcast.

The broadcaster said that although Mr Brown's image was included in the broadcast without his express consent, nothing flowed from that. The law in the United Kingdom did not provide that individuals have a right to prevent their appearance in television broadcasts. Channel 5 said that, "Where, as in this case, the broadcast of an image of a person is part of the actual circumstances the subject of the broadcast and does not, and cannot, be considered detrimental to the person, there is no violation of any Article 8 right"¹. Channel 5 said that no information about Mr Brown whatsoever, apart from his image, was communicated as part of this segment in the programme.

Channel 5 said that for the reasons already given, there was a clear public interest in seeing the activities of the HCEAs in the course of executing their official duties in accordance with the law. Channel 5 said that that public interest extended to including brief shots of Mr Brown in the broadcast where doing so did not involve anything other than disclosing that Mr Brown was at the premises going about his duties when the HCEAs attended to execute the Writ.

Channel 5 explained that in this case, the sequence in question made several things clear to the public, all of which it said were in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ has been issued, goods and chattels which belong to anyone at the place where the debtor resides can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced;
- significant costs can be incurred if the various stages of the execution of the Writ are reached;
- failure to pay judgment debts, or failure to respond to calls from those collecting judgment debts, can lead to the property of people unrelated to the judgment debtor being seized, disrupting ordinary business activities; and,
- judgment debts cannot and should not be ignored.

Channel 5 said that the broadcast was entirely in the public interest and by including the footage that was shown, the broadcast did not exceed what was necessary and appropriate to make viewers understand the situation and the ramifications of what the HCEAs were doing.

Channel 5 said that nothing private to Mr Brown was revealed in the broadcast and that it did not consider that Mr Brown had a legitimate expectation of privacy in connection with either the filming or broadcast of the fleeting footage of him.

¹ Channel 5 referred to the House of Lords judgment in *Campbell v MGN Limited* [2004] UKHL 22 noting that what made the publication actionable in that case was not the fact that a photograph of Miss Campbell was published, but that it was coupled with information about her health. Channel 5 said that no such line had been crossed in this case as no information about Mr Brown was broadcast apart from his image.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr Brown's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant submitted representations which are summarised below (insofar as they were relevant to the complaint considered by Ofcom). Channel 5 did not submit any representations.

Mr Brown's representations

Mr Brown disagreed with Ofcom's Preliminary View that his complaint should not be upheld. He stated that he was filmed "during my normal day at work" without his consent and was named in the programme. Mr Brown added that he was depicted in the programme as being "guilty" and had been confronted by people who had seen him in the programme, none of whom, he said, had watched the programme to the end to see the "disclaimer", which stated that the judgment against his employer had been set aside and that the debt dispute was proceeding through the courts.

Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, both parties' written submissions and supporting documentation. Ofcom also took account of the representations made by the complainant in response to being given the opportunity to comment on Ofcom's Preliminary View. We concluded that they did not materially affect the outcome of Ofcom's decision not to uphold his complaint.

In Ofcom's view, the individual's right to privacy under Article 8 of the ECHR has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

In considering Mr Brown's complaint that his privacy was unwarrantably infringed in the programme as broadcast because he was named in the programme and footage of him was included in the programme without his consent, we had regard to Practices 8.6 and 8.8 of the Code. Practice 8.6 states:

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

Practice 8.8 states:

"When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required".

Ofcom first assessed the extent to which Mr Brown had a legitimate expectation of privacy in relation to the broadcast of the footage of him included in the programme. The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation:

"...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...".

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual is concerned finds him or herself. In considering whether Mr Brown had a legitimate expectation of privacy, we considered the nature of the material obtained and included in the programme.

As set out in detail above in the "Programme summary" section, footage of Mr Brown in his workplace was included in the programme. Mr Brown's face was shown unobscured and he was referred to in the programme by his first name. Mr Brown's voice was not heard.

Ofcom recognises that a person may have a legitimate expectation of privacy in relation to activities of a private nature that are undertaken in the individual's workplace which need protection from unwanted intrusion (for example, a discussion about personal matters with a colleague, or carrying out a business function in a workplace to which the public do not have open access).

In this case, footage of Mr Brown was included in the programme of him in his workplace, he was shown entering the premises, his first name was spoken and he was also shown sitting behind a reception desk. We also took account of the following factors:

- the programme makers had permission from Mr Brown's employer to remain on the premises and to keep filming, in accordance with Practice 8.8, as set out above;

- while footage of Mr Brown in his workplace was included in the programme, he was not shown engaged in any conduct that could reasonably be regarded as being particularly sensitive or private to him;
- Ofcom understood from the programme that Mr Brown worked in the role of Mr Hitchin's assistant at the opticians and that, as such, he would ordinarily work in a publicly accessible area in the premises, where he would ordinarily be expected to be observed by others and interact with the public;
- the footage of Mr Brown included in the programme showed him sitting behind a reception desk, located immediately through the front door of the office and where he could be seen by passers-by through the shop window; and,
- the footage included in the programme of Mr Brown was fleeting and he was not the subject of the Writ but shown incidentally in the background.

Taking all these factors into account, Ofcom considered that nothing of any particular private or sensitive nature was broadcast and therefore Mr Brown did not have a legitimate expectation of privacy with regards to the inclusion of the footage of him in the programme.

Having come to the view that Mr Brown did not have a legitimate expectation of privacy, in relation to the inclusion of footage of him in the programme, it was unnecessary for Ofcom to consider whether any infringement of his privacy was warranted.

Therefore, Ofcom's considered that there was no unwarranted infringement of Mr Brown's privacy in the broadcast of the material in these circumstances.

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

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 13 and 26 November 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
Love & Hip Hop: Atlanta	4Music	16/11/2017	Offensive language	1
Gogglebox	4Seven	09/11/2017	Violence	1
Black History Week	ABN TV	06/11/2017	Materially misleading	1
Self promotions	Adventist Radio	18/09/2017	Materially misleading	1
Capital Breakfast With Adam & JoJo	Capital FM	21/11/2017	Race discrimination/offence	1
Capital Xtra Afternoon Show	Capital Xtra	27/09/2017	Competitions	1
Written in Blood	CBS Reality	05/11/2017	Materially misleading	1
Angry, White and American	Channel 4	09/11/2017	Due impartiality/bias	1
Celebrity Hunted	Channel 4	31/10/2017	Offensive language	1
Channel 4 News	Channel 4	02/10/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	10/11/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	15/11/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	16/11/2017	Due impartiality/bias	1
Channel ident	Channel 4	12/11/2017	Generally accepted standards	1
Channel ident	Channel 4	15/11/2017	Dangerous behaviour	1
Channel ident	Channel 4	16/11/2017	Generally accepted standards	1
Channel ident	Channel 4	17/11/2017	Generally accepted standards	2
Channel ident	Channel 4	18/11/2017	Dangerous behaviour	1
Dispatches	Channel 4	06/11/2017	Offensive language	1
Gogglebox	Channel 4	10/11/2017	Generally accepted standards	1
Hollyoaks	Channel 4	26/08/2017	Scheduling	1
Hollyoaks	Channel 4	01/11/2017	Offensive language	1
Naked Attraction	Channel 4	13/11/2017	Generally accepted standards	1
Norskov (trailer)	Channel 4	28/10/2017	Scheduling	1
Ramsay's Hotel Hell	Channel 4	08/11/2017	Offensive language	1
Ramsay's Hotel Hell	Channel 4	09/11/2017	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Last Leg	Channel 4	17/11/2017	Disability discrimination/offence	1
The Last Leg	Channel 4	17/11/2017	Race discrimination/offence	1
The Truth About Slim People	Channel 4	08/11/2017	Generally accepted standards	1
Becky Watts: Killed For Kicks	Channel 5	09/10/2017	Materially misleading	1
Eight Days of Rome: Hannibal's Last Stand	Channel 5	27/10/2017	Advertising/editorial distinction	1
Eight Days That Made Rome	Channel 5	10/11/2017	Violence	1
Live MTV European Music Awards	Channel 5	12/11/2017	Drugs, smoking, solvents or alcohol	2
Live MTV European Music Awards	Channel 5	12/11/2017	Other	1
The Nightmare Neighbour Next Door	Channel 5	19/10/2017	Privacy	1
The Nightmare Neighbour Next Door	Channel 5	27/10/2017	Privacy	3
The Wright Stuff	Channel 5	31/10/2017	Due impartiality/bias	1
The Wright Stuff	Channel 5	15/11/2017	Due impartiality/bias	1
Traffic Cops	Channel 5	08/11/2017	Race discrimination/offence	1
When Kids Kill	Channel 5	08/11/2017	Offensive language	1
Station ident	Chris Country FM	06/11/2017	Materially misleading	1
Bigg Boss – Weekend Ka Vaar	Colors	21/10/2017	Generally accepted standards	1
Angus, Thongs and Perfect Snogging	Comedy Central	12/11/2017	Offensive language	1
Your Face or Mine	Comedy Central	10/11/2017	Generally accepted standards	1
The Bill	Drama	06/11/2017	Materially misleading	1
Hollyoaks	E4	24/10/2017	Gender discrimination/offence	1
Made in Chelsea	E4	13/11/2017	Generally accepted standards	4
Made in Chelsea	E4	20/11/2017	Generally accepted standards	4
The Secret Life of Bees	Film4	07/11/2017	Scheduling	1
Murder on the Blackpool Express	Gold	11/11/2017	Religious/Beliefs discrimination/offence	1
Rebel (trailer)	Gold	04/11/2017	Violence	1
Heart Gloucestershire	Heart (Gloucestershire)	07/11/2017	Gender discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Heart Breakfast with Joel & Lorna	Heart Radio North West	23/10/2017	Generally accepted standards	1
Forged In Fire	History Channel	03/11/2017	Violence	1
Lost in Space	Horror Channel	09/11/2017	Other	1
Acid Attacks: How Scared Should We Be? Tonight	ITV	16/11/2017	Crime and disorder	3
Bear's Mission	ITV	08/11/2017	Animal welfare	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	06/11/2017	Sponsorship credits	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	10/11/2017	Sponsorship credits	1
Coronation Street	ITV	23/10/2017	Materially misleading	1
Coronation Street	ITV	25/10/2017	Violence	2
Coronation Street	ITV	03/11/2017	Violence	1
Coronation Street	ITV	06/11/2017	Generally accepted standards	1
Coronation Street	ITV	06/11/2017	Scheduling	2
Coronation Street	ITV	13/11/2017	Generally accepted standards	3
Coronation Street	ITV	15/11/2017	Generally accepted standards	1
Coronation Street	ITV	17/11/2017	Scheduling	1
Doc Martin	ITV	08/11/2017	Generally accepted standards	1
Doc Martin	ITV	08/11/2017	Materially misleading	1
Emmerdale	ITV	08/11/2017	Violence	3
Emmerdale	ITV	14/11/2017	Materially misleading	11
Emmerdale	ITV	16/11/2017	Race discrimination/offence	1
Emmerdale	ITV	16/11/2017	Violence	1
Emmerdale	ITV	13/11/2017	Generally accepted standards	1
Exposure: Inside Britain's New Far Right	ITV	09/11/2017	Materially misleading	8
Gone to Pot: American Road Trip	ITV	13/11/2017	Drugs, smoking, solvents or alcohol	2
Gone to Pot: American Road Trip	ITV	15/11/2017	Drugs, smoking, solvents or alcohol	2
Good Morning Britain	ITV	06/11/2017	Generally accepted standards	3
Good Morning Britain	ITV	07/11/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Good Morning Britain	ITV	08/11/2017	Generally accepted standards	3
Good Morning Britain	ITV	10/11/2017	Due impartiality/bias	1
Good Morning Britain	ITV	13/11/2017	Transgender discrimination/offence	2
Good Morning Britain	ITV	15/11/2017	Advertising content	1
Good Morning Britain	ITV	16/11/2017	Due impartiality/bias	1
Good Morning Britain	ITV	16/11/2017	Religious/Beliefs discrimination/offence	1
Good Morning Britain	ITV	22/11/2017	Offensive language	13
Harassment: Uncovering the Truth?	ITV	09/11/2017	Gender discrimination/offence	1
HSL's sponsorship of Tipping Point	ITV	07/11/2017	Sponsorship credits	1
I'm A Celebrity...Get Me Out of Here!	ITV	23/11/2017	Disability discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	20/11/2017	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2017	Offensive language	1
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2017	Sponsorship	2
I'm a Celebrity...Get Me Out of Here!	ITV	20/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	20/11/2017	Religious/Beliefs discrimination/offence	1
I'm A Celebrity...Get Me Out of Here!	ITV	21/11/2017	Animal welfare	2
I'm A Celebrity...Get me Out of Here!	ITV	21/11/2017	Materially misleading	1
I'm a Celebrity...Get Me Out of Here!	ITV	21/11/2017	Race discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	22/11/2017	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	22/11/2017	Disability discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	23/11/2017	Other	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV	09/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV	14/11/2017	Generally accepted standards	1
ITV Granada News	ITV	07/11/2017	Due impartiality/bias	1
ITV London News	ITV	18/11/2017	Other	1
ITV News	ITV	24/10/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
ITV News	ITV	31/10/2017	Due accuracy	1
ITV News	ITV	07/11/2017	Due impartiality/bias	1
ITV News	ITV	08/11/2017	Due impartiality/bias	1
ITV News	ITV	09/11/2017	Gender discrimination/offence	1
ITV News	ITV	16/11/2017	Violence	7
Live International Football	ITV	10/11/2017	Other	1
Loose Women	ITV	03/11/2017	Generally accepted standards	1
Loose Women	ITV	10/11/2017	Sexual material	1
Loose Women	ITV	13/11/2017	Gender discrimination/offence	1
Loose Women	ITV	16/11/2017	Generally accepted standards	1
Loose women	ITV	16/11/2017	Religious/Beliefs discrimination/offence	1
Loose Women	ITV	Various	Competitions	1
Lorraine	ITV	09/11/2017	Disability discrimination/offence	72
Lorraine	ITV	09/11/2017	Race discrimination/offence	1
Lorraine	ITV	10/11/2017	Race discrimination/offence	3
Ross Kemp Behind Bars: Inside Barlinne	ITV	02/11/2017	Generally accepted standards	1
Serial Killer with Piers Morgan	ITV	16/11/2017	Materially misleading	1
The Chase Celebrity Charity Special	ITV	12/11/2017	Other	1
The Jonathan Ross Show	ITV	21/10/2017	Offensive language	1
The Jonathan Ross Show	ITV	11/11/2017	Race discrimination/offence	1
The X Factor	ITV	28/10/2017	Nudity	1
The X Factor	ITV	18/11/2017	Voting	1
This Morning	ITV	10/10/2017	Materially misleading	1
This Morning	ITV	31/10/2017	Competitions	1
This Morning	ITV	13/11/2017	Generally accepted standards	1
This Morning	ITV	13/11/2017	Religious/Beliefs discrimination/offence	180
Tombola Arcade's sponsorship of I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2017	Sponsorship	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Tonight at the London Palladium	ITV	20/10/2017	Dangerous behaviour	1
Victoria	ITV	22/10/2017	Violence	1
ITV News Central	ITV Central	09/11/2017	Generally accepted standards	1
ITV News London	ITV London	14/11/2017	Other	1
ITV News Calendar	ITV Yorkshire	11/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV+1	22/11/2017	Generally accepted standards	1
You've Been Framed	ITV2	13/11/2017	Offensive language	2
HSL's sponsorship of ITV3 late evenings	ITV3	12/11/2017	Sponsorship credits	1
HSL's sponsorship of ITV3 late evenings	ITV3	21/11/2017	Sponsorship credits	1
HSL's sponsorship of ITV3 late evenings	ITV3	23/11/2017	Generally accepted standards	1
Dinner Date	ITVBe	08/11/2017	Sexual material	1
Våra Pinsamma Kroppar	Kanal 11 (Sweden)	25/10/2017	Nudity	1
Wahlgrens Värld	Kanal 5 (Sweden)	05/10/2017	Promotion of products/services	1
Trafikpoliserna	Kanal 5 (Sweden)	07/11/2017	Materially misleading	1
Darren Adam	LBC 97.3 FM	01/11/2017	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	08/11/2017	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	13/11/2017	Generally accepted standards	5
James O'Brien	LBC 97.3 FM	15/11/2017	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	16/11/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	16/11/2017	Religious/Beliefs discrimination/offence	1
Lucy Beresford	LBC 97.3 FM	04/11/2017	Sexual material	1
Nick Ferarri	LBC 97.3 FM	03/11/2017	Generally accepted standards	4
Nick Ferrari	LBC 97.3 FM	07/11/2017	Materially misleading	1
Steve Allen	LBC 97.3 FM	22/11/2017	Crime and disorder	1
Steve Allen	LBC 97.3 FM	15/11/2017	Sexual material	1
Steve Allen	LBC 97.3 FM	17/11/2017	Sexual material	1
Britain's Next Top Model	Lifetime	19/10/2017	Generally accepted standards	1
Magic Christmas	Magic Christmas	23/11/2017	Offensive language	1
Eddie Stobart's Excellent Adventures	My5	10/11/2017	Dangerous behaviour	1
Sky Sports Football (trailer)	Pick TV	14/11/2017	Violence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Afternoon Racing	Racing UK	12/11/2017	Generally accepted standards	1
Keiser Report	RT	16/11/2017	Transgender discrimination/offence	1
Ian Downs	Sam FM 106	15/11/2017	Religious/Beliefs discrimination/offence	1
Local News Bulletin	Sandgrounder Radio DAB	31/10/2017	Commercial communications on radio	1
Press Preview	Sky News	13/11/2017	Race discrimination/offence	1
Sky News	Sky News	08/11/2017	Due impartiality/bias	1
32Red Online Casino's sponsorship of Sky Sports Main Event	Sky Sports Main Event	09/11/2017	Sponsorship credits	1
Sick Note	Sky1	07/11/2017	Animal welfare	1
Sick Note	Sky1	07/11/2017	Generally accepted standards	1
STV News at Six	STV	30/10/2017	Due impartiality/bias	1
Bad Ass Women's Hour	Talk Radio	29/10/2017	Race discrimination/offence	1
Paul Ross Full Set Breakfast	Talk Radio	07/11/2017	Materially misleading	1
Programme trailer	Talksport	12/11/2017	Generally accepted standards	1
The Final Word	Talksport	13/11/2017	Religious/Beliefs discrimination/offence	1
Skönhetsfällan Sverige	TV3 Sweden	09/09/2017	Gender discrimination/offence	1
Skönhetsfällan Sverige	TV3 Sweden	07/10/2017	Nudity	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

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
Bargain Hunt	BBC 1	06/08/2017	Generally accepted standards	1
BBC Breakfast News	BBC 1	09/06/2017	Due impartiality/bias	1
BBC Weather	BBC 1	09/10/2017	Other	1
Doctors	BBC 1	17/10/2017	Materially misleading	1
Question Time	BBC 1	06/07/2017	Materially misleading	1
The Andrew Neil Interviews	BBC 1	26/05/2017	Due impartiality/bias	1
Election 2017: The Scottish Leaders' Debate	BBC 1 Scotland	21/05/2017	Due impartiality/bias	1
Gay Britannia Season	BBC 2	various	Generally accepted standards	1
Gay Britannia: Against the Law (trailer)	BBC 2	20/07/2017	Materially misleading	1
Hard Talk	BBC 2	22/10/2017	Due impartiality/bias	1
King Charles III	BBC 2	10/05/2017	Generally accepted standards	1
Newsnight	BBC 2	10/10/2017	Generally accepted standards	1
Victoria Derbyshire	BBC 2	10/10/2017	Generally accepted standards	1
BBC News	BBC News Channel	24/10/2017	Race discrimination/offence	1
Victoria Derbyshire	BBC News Channel	12/10/2017	Race discrimination/offence	1
Programming	BBC Radio Merseyside	various	Charity appeals	1
The Kaye Adams Programme	BBC Radio Scotland	12/06/2017	Due impartiality/bias	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

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

Licensee	Licensed service	Categories
Radio Asian Fever CIC	Radio Asian Fever	Key Commitments
Alpha Radio Ltd	Rathergoodradio	Format
Tamworth Radio Broadcasting CIC	TCR FM	Provision of licensed service
Wave 102 FM Limited	Wave 102	Format

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

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

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	4Music	23/11/2017	Advertising content	1
Advertisement	5USA	15/11/2017	Advertising content	1
Advertisement	Channel 4	22/11/2017	Advertising content	1
British Workers Wanted	Channel 4	16/11/2017	Outside of remit	1
My Week As A Muslim (pre-tx)	Channel 4	23/10/2017	Outside of remit	1
Stand Up to Cancer	Channel 4	01/11/2017	Outside of remit	1
Advertisement	Channel 5	16/11/2017	Advertising content	1
Advertisement	Channel 5	23/11/2017	Advertising content	1
Advertisement	Comedy Central Extra	18/11/2017	Advertising content	1
Advertisement	E4	17/11/2017	Advertising content	1
Non-Stop 80s Feel Good	Heart 80s	23/11/2017	Advertising content	1
Advertisement	ITV	27/10/2017	Advertising content	1
Advertisement	ITV	08/11/2017	Advertising content	1
Advertisement	ITV	10/11/2017	Advertising content	1
Advertisement	ITV	11/11/2017	Advertising content	2
Advertisement	ITV	12/11/2017	Advertising content	1
Advertisement	ITV	13/11/2017	Advertising content	3
Advertisement	ITV	17/11/2017	Advertising content	1
I'm A Celebrity...Get Me Out of Here!	ITV	21/11/2017	Outside of remit	1
Advertisement	ITV2	16/11/2017	Advertising content	1
Advertisement	ITV2	18/11/2017	Advertising content	1
Advertisement	ITV3	22/11/2017	Advertising content	1
Advertisements	n/a	12/11/2017	Advertising content	1
Advertisement	Premier Sports	11/11/2017	Advertising content	3

Programme	Service	Transmission Date	Categories	Number of complaints
Teleshopping	QVC Style	08/11/2017	Teleshopping	1
Advertisement	Sky Sports 1	18/11/2017	Advertising content	1
The Simpsons	Sky1	08/11/2017	Outside of remit	1
Cross word search	TruTV	29/10/2017	Advertising content	1
Programming	Various	Various	Due impartiality/bias	1
Advertisement	W	22/11/2017	Advertising content	1
Ourtime.co.uk	Yesterday	04/11/2017	Sexual material	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 between 13 and 26 November 2017.

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Programming	BBC	various	Due impartiality/bias	1
BBC Breakfast	BBC 1	10/11/2017	Sexual material	1
BBC Election Debate 2017	BBC 1	31/05/2017	Elections/Referendums	1
BBC London News	BBC 1	17/11/2017	Due accuracy	1
Breakfast	BBC 1	23/11/2017	Due impartiality/bias	1
EastEnders	BBC 1	20/11/2017	Animal welfare	1
Have I Got News For You	BBC 1	03/11/2017	Gender discrimination/offence	5
Midlands Today	BBC 1	10/11/2017	Due impartiality/bias	1
Rellik	BBC 1	16/10/2017	Violence	1
South Today News	BBC 1	24/11/2017	Due accuracy	1
Strictly Come Dancing	BBC 1	11/11/2017	Voting	1
BBC News and Newsnight	BBC 1 and BBC 2	03/11/2017	Due impartiality/bias	1
Daily Politics	BBC 2	14/11/2017	Due impartiality/bias	1
Newsnight	BBC 2	22/11/2017	Due accuracy	2
Coconut	BBC 3	29/10/2017	Violence	1
Botticelli's Venus: the Making of an Icon	BBC 4	29/10/2017	Nudity	1
Programming	BBC Channels	various	Other	1
Jeremy Vine	BBC Radio 2	15/11/2017	Generally accepted standards	1
Programming	BBC Radio 2 / BBC Radio 4	01/11/2017	Due impartiality/bias	1
Programming	BBC Radio 4	09/08/2017	Generally accepted standards	1
Programming	BBC Radio 4	17/09/2017	Due accuracy	1
Saturday Live	BBC Radio 4	11/11/2017	Other	1
Today	BBC Radio 4	16/11/2017	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 13 and 26 November 2017.

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

Programme	Service	Transmission date
News Report	Al Arabiya	24 May 2017
The X Factor	ITV	21 October 2017
Sadiq Khan	LBC 97.3 FM	27 October 2017
Advertising minutage	PBS America	Various
Advertising minutage	Prime TV	Various
Tameside Today with Joshua Littlehales	Tameside Radio	19 October 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

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

Programme	Service	Transmission date
The World at One	BBC Radio 4	26 January 2017

For information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0003/100101/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf