

# 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 objectives<sup>1</sup>. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act<sup>2</sup>.

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

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

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

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

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

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

## Broadcast Standards cases

### In Breach

#### Dirty Retro

***Kane FM, 13 December 2017, 09:00***

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#### Introduction

Kane FM is a community radio station in Guildford that focuses on independent urban music. The station is owned and operated by Kane FM Limited ("Kane FM" or "the Licensee").

*Dirty Retro* is a regular weekday multi-genre music show. We received a complaint about the following birthday dedications ("*birthday shout-outs*"), which listeners had sent into the station for the presenter to read out:

*"18 today. That's [name]...Happy birthday to [name]. Have a good one. And, oh, 18. And, 'can I have as special shout-out to my girlfriend? She's had our first baby at 15'. Congratulations, [name]"*.

The presenter then said:

*"If they're old enough to breed, they're old enough to bleed. Although, that's not good, is it? When there's grass on the wicket, let's play cricket. All those sort of things, but, you know, yeah. Good luck to you..."*

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

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context..."

We therefore sought comments from the Licensee and the presenter on how the above comments complied with this rule.

#### Response

Kane FM apologised for "the improper actions and offence caused by the presenter". It said its committee members acknowledged "the extreme inappropriateness of the presenter's comments", which they considered to have been unjustified and deeply offensive. It added that the presenter was a professional DJ, but would not be offered future employment by the station.

The Licensee said it had "no reason to believe that the presenter was not conversant with Ofcom's standards and requirements", as "the station's manual containing Ofcom codes of conduct relating to radio broadcast is given to all [its] presenters, and...all [its] volunteers". Kane FM added that they are "instructed via training, a handbook, and ongoing support to continually be mindful of the quality of their broadcast and the legal guidelines". Further, the Licensee said it was undertaking an internal investigation to identify and address concerns arising from this incident.

In their representations, the presenter of *Dirty Retro* apologised and said that, “on this one occasion [they had] made a mistake and...deeply [regretted] what was said”. The presenter also confirmed that they had received “adequate training” from Kane FM management and had regularly received “updates” on the Code.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

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 which may be considered offensive on one hand and the right to freedom of expression on the other.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We first considered whether the language had the potential to cause offence. The presenter congratulated a listener, whose 15 year-old girlfriend had just had their first baby. The presenter then made a number of comments which in Ofcom's view appeared to condone the possibility of sex with underage girls. This had the clear potential to be highly offensive.

We then considered whether the broadcast of these comments was justified by the context. Ofcom agreed with the Licensee that there was no editorial justification for making them. After making the first comment, the presenter then said, “*that's not good, is it?*”. However, we considered that any potential softening of the offence in this case was immediately undercut by the presenter's second comment. We considered such statements were likely to have been well beyond the expectations of listeners to this station and to a programme of this type.

Ofcom took into account both the presenter's regret for what they had said, and the action taken by Kane FM to avoid any recurrence. Nevertheless, the broadcast of these potentially highly offensive comments was not justified by the context, in breach of Rule 2.3 of the Code.

## Breach of Rule 2.3

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

## In Breach

### A Family At War

**Talking Pictures TV, 19 November 2017, 20:15**

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#### Introduction

Talking Pictures TV is an entertainment channel broadcasting classic films and archive programmes. The channel is owned and operated by Talking Pictures TV Ltd ("Talking Pictures" or "the Licensee").

*A Family At War* was a British period drama series made between 1970 and 1972, about the experiences of a family from Liverpool during the Second World War. The episode *Hazard* was produced in 1971 and showed one of the main characters, Philip Ashton, serving in the British army in Egypt in 1942, focusing on his encounter with another soldier, Jack Hazard.

We received a complaint about offensive language in this episode, as follows:

- in a scene set in an army mess in the Egypt desert, Hazard, a white British soldier, ordered some drinks and asked the barkeeper to get a waiter to bring the drinks over to where Hazard and Ashton were sitting by saying: "*Send the wog over with them, will you?*". When the Egyptian waiter brought the drinks to Hazard and Ashton's table, Hazard said to him, "*And how's the war going for you, Ahmed, you thieving old wog...you old thief...you thieving old sod?*";
- in a scene set in Hazard and Ashton's tent on their army base, Hazard asked Ashton to accompany him to the army bar by saying: "*Let's go down to the wogger, there's bound to be a fair bit of skirt out of bounds... Or perhaps Ahmed could fix us up with a female wog? [laughs] I bet he rents out his kid sister*"; and
- in a later scene set in Hazard and Ashton's tent Hazard said the following to Ashton: "*You know what I think I'll do on my next leave? I'll pay a visit to the wog tattooist*".

We considered the language raised potential issues under Rule 2.3 of the Code, which states:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context..."

We therefore sought comments from the Licensee on how the programme complied with this rule.

#### Response

Talking Pictures said that it believed the inclusion of the potentially offensive racist language in this episode was justified by the context. It explained that the creator of the series, John Finch, had intended it to challenge the 1970s audience's understanding of the Second World War by being "honest to the realities of the war time period... shocking as that may be, and broadcast within the constraints and conventions of the time".

The Licensee said “some of the comments said by Hazard in the Mess related to actual Second World War references, namely the term WOG was originally ‘Working on Government Service’ before it became an ethnic and racial slur”.

According to Talking Pictures, in this episode the character of Jack Hazard was “reviled” by his fellow servicemen and their comments prepared the viewer “to meet a controversial character” who presents himself as a “gallant pioneer” but whose image is debunked over the course of the episode.

It said that throughout the episode, the characters of Ashton and Hazard were contrasted, with Ashton “demonstrating exemplary behaviour and tolerance” and Hazard displaying “belligerence and disrespect for army rules”. The Licensee also said that Hazard was “characterised as a trumped-up bigot”, though his remarks and his attitudes were not condoned by the other characters, who challenged his behaviour several times. It added that “all Hazard’s behaviour and language were intended to be abhorrent and were challenged by Ashton, in a manner typical of an Officer in the era”.

Talking Pictures argued that the “inclusion of objectionable terms is to discredit Hazard, never to condone the use of the terms or his treatment of the Egyptian waiter”. It added that “If we were to have muted the term “wog” whenever it was said, it would have erased the character of Hazard and the moral of the story”.

The Licensee said that it had considered the series’s content when making scheduling decisions, as it had previously broadcast series one of *A Family At War* at 18:00, and had scheduled series two at 20:00 “as it contained more mature content”. It also said it had considered whether to include a warning about the language used but had balanced this against its viewers’ expectations. Specifically, it said that; “We receive numerous emails directly from viewers and also via social media posts objecting to the warnings because, to them, our programming always reflects the attitudes and language used in the eras they are set thus providing contextual justification”. Therefore, Talking Pictures said it had decided against providing a warning in this case because it “felt the programme contained strong contextual justification and would be clearly understood by our viewers”. The Licensee also provided several examples of warnings which it had broadcast before other programmes and said that in this case, “no warning was used out of respect for our viewers’ expression of their choice to view classic TV series”.

In conclusion, Talking Pictures said that it had suspended any further broadcast of this episode. It also said that it had contracted a third-party expert to conduct a review of “all content containing racial language” to complement its existing compliance system.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Two of the Code requires that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

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

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



seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We first considered whether the language had the potential to cause offence. Ofcom's 2016 research<sup>2</sup> on offensive language makes clear that the word "wog" is considered by audiences to be a derogatory term for black people and to be among the "strongest language" and "highly unacceptable without strong contextualisation".

Ofcom then considered whether the broadcast of this word was justified by the context.

Ofcom acknowledges that Talking Pictures is a channel that specialises in broadcasting examples of programmes originally broadcast decades ago. The series *A Family at War* was originally produced and shown in the early 1970s when different attitudes about language existed. However, as Ofcom research has shown, UK audiences today regard racist language of this nature as highly unacceptable, and therefore expect strong contextualisation if it is broadcast.

In this case, we took into account that Hazard was presented to the audience as an essentially flawed character which caused him to be "reviled" by his fellow servicemen in contrast to the "exemplary behaviour" of Ashton. Talking Pictures said that Hazard was a "trumped-up bigot", and his use of the word "wog" was part of his characterisation and was not condoned by the other characters, including the main character Ashton. The Licensee also argued that the "inclusion of objectionable terms [was] to discredit Hazard, never to condone the use of the terms or his treatment of the Egyptian waiter".

We considered that the word "wog" was used in a clearly derogatory way towards an Egyptian character Ahmed, both directly to Ahmed's face and later when he is not present. The Licensee argued that some of Hazard's offensive statements "related to actual Second World War references, namely the term WOG [which] was originally 'Working on Government Service' before it became an ethnic and racial slur". We understand that the derivation of "wog" is contested, but irrespective of its origins, and as acknowledged by Talking Pictures, the term today is considered highly offensive.

The Licensee also argued that "all Hazard's behaviour and language were intended to be abhorrent and were challenged by Ashton, in a manner typical of an Officer in the era". We disagreed. While Ashton challenged Hazard on some of his behaviour, in our view, this appeared to focus on Hazard's brashness and desire for attention, rather than his use of racist language. For example, Ashton at different times said to Hazard: "*Do you have to stir it up all the time? It is their mess, we are only just guests*" and, "*you need an audience don't you... Why don't you give it a rest?*". Therefore, we considered that neither Ashton nor any

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<sup>2</sup> Attitudes to potentially offensive language and gestures on TV and radio, September 2016. See page 13 of the Quick Reference Guide:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/91625/OfcomQRG-AOC.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf)

See also the main report:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

other character directly challenged nor made reference to Hazard's use of racist language. We recognised that Hazard's choice of language informed his character and that this was part of the programme makers' desire to depict realistically a complex character in a particular historical period and situation. We acknowledged that the Licensee's audience would have recognised that they were watching a programme made several decades ago when attitudes to language were different. However, we considered that the repeated use of highly offensive racist language without direct challenge carried a high risk of causing significant offence today.

Talking Pictures also said that it had considered the "more mature content" of series two of *A Family At War*, and had therefore scheduled this series including the programme in this case at 20:00. However, we did not consider that the time of broadcast, which was before the 21:00 watershed, provided sufficient contextual justification for the repeated use of highly offensive racist language in this case.

We also took into account that no warning was broadcast before this programme to alert viewers and provide context to the potentially offensive language it contained. The Licensee had decided not to use a warning as it felt its viewers would object to such warnings because to its viewers, Talking Pictures' "programming always reflects the attitudes and language used in the eras they are set thus providing contextual justification". The Licensee provided to Ofcom some examples of emails sent from viewers objecting to Talking Pictures providing pre-broadcast warnings at the start of programmes containing potentially offensive language. However, given the general unacceptability of racist language to audiences, as found by Ofcom's research, we considered that a warning would have alerted viewers, including those new to the channel, to potentially offensive language.

We acknowledged the steps taken by the Licensee to improve its compliance in this area. However, given all the above, it is Ofcom's view that the broadcast of this offensive language exceeded generally accepted standards, in breach of Rule 2.3 of the Code.

Talking Pictures was previously found in breach of the Code for the broadcast of racially offensive language without sufficient contextual justification on 9 January 2017<sup>3</sup> and 8 January 2018<sup>4</sup> (for material broadcast on 24 August 2016 and 13 September 2017 respectively). Ofcom is requesting Talking Pictures to attend a meeting to discuss its approach.

### **Breach of Rule 2.3**

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<sup>3</sup> See issue 320 of Ofcom's Broadcast and On Demand Bulletin, 9 January 2017:  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/96558/Issue-320-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/96558/Issue-320-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf)

<sup>4</sup> See issue 345 of Ofcom's Broadcast and On Demand Bulletin, 8 January 2018:  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/109235/issue-345-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/109235/issue-345-broadcast-on-demand-bulletin.pdf)

# Broadcast Licence Conditions cases

## In Breach

### Providing a service in accordance with ‘Key Commitments’

#### *TD1 Radio, 9 to 11 November 2017*

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#### Introduction

TD1 Radio (“TD1”) is a community radio station licensed to provide a local service for people who live and work in Galashiels. The licence is held by Borders Community Radio & Media Limited (“BCRM” or “the Licensee”).

Like other community radio stations, TD1 is required to deliver the ‘Key Commitments’ which form part of its licence<sup>1</sup>. These set out how the station will serve its target community and include a description of the programme service.

Ofcom received a complaint that TD1 was not delivering some of the programming requirements set out in the station’s Key Commitments.

We requested recordings of three days of TD1’s output, covering Thursday 9, Friday 10 and Saturday 11 November 2017.

After listening to the output, we identified some potential issues with BCRM’s delivery of the following Key Commitments:

- “Programming typically comprises 80% music and 20% speech during day time hours”
- “Speech output is in English/Scottish and includes community, local and national news, interviews, discussions, features and magazine type programmes, and a job spot with featured vacancies.”
- “The service broadcasts live and pre-recorded, mainly locally originated programming for ten hours per day.”<sup>2</sup>

Ofcom considered that this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to TD1’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

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<sup>1</sup> The Key Commitments are contained in an annex to BCRM’s licence. They can be viewed in full at: <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000266.pdf>

<sup>2</sup> Original output is defined by Ofcom as output that is first produced for and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or ‘voice-tracked’. Repeat broadcasts of original output do not count towards the minimum requirement, and neither does continuous music.

“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 BCRM on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

### **Response**

BCRM stated that TD1 is “emerging from a very difficult and trying period in its history”. It accepted that throughout the duration of its licence it has had difficulty in meeting the speech content requirement stipulated in the Key Commitments set out above. The Licensee explained that the station faced “a series of significant problems” in 2017 which included the resignation of several presenters and the station’s manager.

The Licensee explained that it had begun to implement some organisational changes, including the formation of “a new committee which is looking positively at progressing the station” with “a number of new presenters”, allowing for increases in “the amount of locally made programming” and “speech content”.

BCRM stated that in the coming year it plans to “share production of speech based programming” with “the local Talking Newspaper” as well as aiming to increase speech-based content with the re-establishment of “input from the local college and university”. BCRM informed us that it intended to offer a “regular Community Council update” from February 2018, as well as updates from “various community and literary groups” and the reinstatement of “The Job Spot” in January 2018.

Additionally, the Licensee detailed an increase in staff through the addition of two presenters who have “recently complet[ed] their training” as well “some former volunteers [who] have returned to regular broadcasting”.

### **Decision**

Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the licensed service specified in their Key Commitments.

We noted that BCRM had taken measures to increase its speech and locally produced content. However, during the monitored period, it was clear that TD1 was not meeting the Key Commitments relating to the volume and variety of speech output, and the minimum amount of original output hours per day. While Ofcom acknowledged that the service was providing community information, there was no evidence of speech output in the form of interviews, discussions, features and job advertisements.

The Licensee was broadcasting less original output per day than is required (ten hours per day). Original output amounted to eight hours on Thursday 9 November and five hours on Friday 10 November. The Licensee did not broadcast any original output on Saturday 11 November. Ofcom therefore found BCRM in breach of Conditions 2(1) and 2(4) of its licence.

We intend to put the Licensee on notice that Ofcom is likely to monitor this service again, and should further breaches of this type occur, we may consider further regulatory action including the imposition of a statutory sanction.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Borders Community Radio and Media (Galashiels) Limited (licence number CR000266).**

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Universal Wealth Preservation

**Money Box: The Care Fee Trap, BBC Radio 4, 15 April 2017, 12:04**

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#### Summary

Ofcom has not upheld Universal Wealth Preservation's ("Universal") complaint of unwarranted infringement of privacy in relation to the above programme.

*Money Box* is a radio programme which provides news and advice on personal finance. This episode included an investigation into Universal and whether it was promoting the use of trusts to avoid paying care fees. Universal complained that its privacy had been infringed both in connection with the obtaining of material included in the programme and in the programme as broadcast because the programme included audio clips of material secretly recorded at a Universal seminar in 2017 and audio clips of a doorstep interview filmed at another one of its seminars in 2011.

Ofcom found that Universal did not have a legitimate expectation of privacy in the obtaining of the material included in the programme or in its subsequent broadcast. We therefore considered that there was no unwarranted infringement of Universal's privacy in either the obtaining or the broadcast of the material complained of.

#### Programme summary

On 15 April 2017, BBC Radio 4 broadcast an episode of its personal finance advice programme, *Money Box*, entitled *The Care Fee Trap*. The programme, presented by Mr Michael Robinson, focused on the cost of long term care for the elderly, that people were having to sell their properties to pay for care, and the firms offering ways around this. The presenter said:

*"Today on Money Box, we investigate one of the firms that says it can do just that, they took us to court to try and block this report, but we show why, despite the thousands of pounds these services cost, there is no guarantee they will work, and we question a means tested system which encourages perfectly ordinary law-abiding people to shield their assets from the authorities".*

The programme investigated a complaint made against Universal by Mr and Mrs Steer. The presenter said:

*"Universal Wealth Preservation, is one of a number of companies offering advice on inheritance, trusts and will writing which also say they can protect your home and savings if you need long term care. In 2015, Susan and her husband Don, paid the company nearly £4,000 for what it calls its Wealth Preservation Trust. They were interested because Don had just received bad news from his doctor".*

Throughout the programme, excerpts from a pre-recorded interview with Mrs Steer were played. Mrs Steer explained that her husband had been diagnosed with a terminal illness and

that *"...They [Universal] said that they could protect the house from care home fees, he thought that yes we must do something, and this would be a good thing to do"*.

The presenter explained that while medical care from the NHS was free, physical or mental health issues requiring long term care had to be paid for. He said that while local councils offered financial help, this was means tested, so that if a person owned their home, and it and their savings were valued at £23,250 or more, then that person would have to pay for their care. He said that if a person could not afford to do this, then the money would be taken out of the value of their estate when they died. The presenter stated:

*"...which is why one of Universal's marketing claims jumps out. It says, 'Find out how you can protect your home and savings from care fees'"*.

A recording from the BBC's television programme, *Inside Out East*, broadcast in 2011, was then played. A reporter featured in the recording asked:

*"I've got to ask you a question Mr Long, why is it that you are selling a product called 'How to Avoid Care Fees'?"*

The presenter explained:

*"The man behind Universal is Steven Long. In 2011, the BBC's 'Inside Out' TV programme confronted him over his company's advice about care fees"*.

The reporter featured in the recording asked Mr Long:

*"This is from the Government, who's wrong, you or the Government?"*

The presenter then said:

*"Universal had said they could protect people's homes and savings by putting them into a trust, a long established legal device which holds assets on behalf of nominated beneficiaries, such as the original owner's family"*.

The recording was played again and Mr Long protested that he had been *"put...on the spot"* and said:

*"All I can say is that the trust that we use, has a 100% track record, we have documentary evidence"*.

The presenter said:

*"The trust would then own the assets and Universal said that would protect them against charges for care. Three years later, 'find out how you can protect your home and savings from care fees', were the words on a flyer that caught the eye of Susan and Don Steer when it came through their door. Now Universal deny that they offer strategies to avoid care fees and deny that their marketing literature states that they can protect people's homes and savings from being sold to pay them...This is one of Universal's marketing flyers, the first stage in the selling process, designed to attract people to a free seminar held locally entitled 'Keep it in the Family'. According to the leaflet, the 100 minute seminar shows you how to write the perfect will, and covers issues like how to avoid*

*probate fees, inheritance tax or claims on your estate, but the top spot headlined 'It's just not fair', with a photograph of a concerned looking elderly couple, over the caption '45,000 families every year forced to sell their homes to pay for their care' is reserved for care fees".*

The presenter then said that it was this leaflet that that had persuaded Mr Steer to attend a Universal seminar. The presenter said:

*"Universal's care fee protection is based on transferring the ownership of clients' assets into one of their trusts. Inside the trust, the theory is the assets will be disregarded in the Council means test and so will not be used to pay care fees. That's what Don Steer hoped to achieve and why he signed up for a home visit".*

Mrs Steer explained that due to her husband's terminal illness, they were concerned that they would not be accepted by Universal, however she said that the Universal representative had assured her husband that "...because he hadn't been assessed [by the Council] for care home fees, that he would be accepted" and that "...they could definitely protect the house".

Mrs Steer said that her husband had signed up to Universal's services.

The presenter said that Universal denied being told that Mr Steer had terminal cancer and said that it would have provided different advice had it known that this was the case.

The presenter explained that Mr Steer had died in 2016 and that he had not had to pay care home fees, because his cancer treatment and care were covered by the NHS for free.

Mrs Steer said:

*"Universal should have pointed out to us that because my husband was ill, the care he would have needed would have been paid for by the NHS, but that wasn't mentioned, you know, it was to save the care home fees".*

The presenter said:

*"Following Don's death, Susan discovered the care fees Catch 22. If you give away your assets to avoid paying care fees, to a trust or to anyone else, it's called deliberate deprivation, and you will be assessed under the means test, just as though you still owned them".*

Excerpts of a pre-recorded interview with Ms Bridget Shilton, the National Group of Council Assessment Officers, were then included. She said:

*"If people are actually trying to protect their house in the avoidance of care fees, then that's not allowed, that is clear deprivation of assets...".*

The presenter explained that the National Group of Council Assessment Officers' role was to decide how much financial support people going into care were entitled to receive.

Ms Shilton continued:



*“As soon as we know that property has been transferred, we will be looking into the motivation, we will be asking those questions”.*

The presenter said:

*“Since avoiding care fees dominates the front page of Universal’s marketing flyer, you might think that if a council were to investigate, the Universal scheme would fail, but not so fast, because the official paperwork tells a very different story...Although Susan insists there was plenty of discussion of care fees at the meeting, there is barely a mention in these notes. Instead the reason for the Steers putting their family home into a Universal trust is given as ‘being helpful for their son in the future, re-administering their estate and after they have died’. Universal say their representative wasn’t told the Steers’ main goal was protecting the family home from care fees and that their salesman’s paperwork is accurate, so there are clearly big discrepancies between what clients like Susan Steer say Universal are selling and what the company says it does”.*

The presenter explained that he had attended a Universal seminar, posing as a potential customer, to *“...find out what Universal is actually telling potential clients”*. He said that *“There were signs prohibiting any form of recording, I chose to ignore them”*. A partial recording of the seminar was played. The Universal representative said:

*“The final example I would like to share with you on this particular part of the seminar is a particular hot potato at the moment, care fees, social care, it’s been all over the media for several years and with the recent budget, it’s been in the press again for the last couple of weeks”.*

The recording was interrupted by the presenter who said:

*“And [Universal’s presenter], Val, stressed the devastating effect care fees can have as your assets are used up paying them”.*

The recording resumed and Universal’s representative said:

*“The property, at some point, ladies and gentlemen, will have to be sold to pay for the care fees and again this cash will shrink and shrink and shrink”.*

The presenter interrupted the recording and said:

*“But, it still wasn’t clear how Universal delivers the protection from care fees so prominently advertised in its leaflets. So, when a man called Colin Robson came on stage to answer our questions, I decided to ask one”.*

The recording resumed and the presenter, still posing as a potential customer, said:

*“I am here specifically because I am interested in protection from care fees and Val said, I think, ‘your assets will be disregarded for care fees’, is that right, is that how it works?”*

The Universal representative responded:

*“Getting to the heart of the matter now regarding care fees, it’s a very emotive subject, but let me say one thing very clearly, and, I will repeat it. You cannot set up a trust to*

*specifically avoid care fees, I will say it again if anyone is in doubt, you cannot set up a trust to specifically avoid care fees”.*

The recording was interrupted and the presenter said:

*“So far so good, the deliberate deprivation rules would catch you out, but Mr Robson went on to hint at a way round that”.*

The recording resumed and the Universal representative said:

*“However, as long as it’s done for the right reasons, with the right motivation, at the right time, the local authorities will not assess on a trust as long as those conditions have been met...”.*

The recording was interrupted and the presenter said:

*“So, what are the right reasons and the right motivation, any of the other potential benefits and services that Universal claim for their trust, like those listed in the marketing literature. Universal says the advice they give at seminars is for general information purposes only and is in line with Government guidance and they say Mr Robson denies suggesting a trust could be set up to avoid care fees but in a one to one conversation after the seminar, still posing as a potential customer, I told Mr Robson that a solicitor had advised me that the deliberate deprivation rules meant Universal’s trust wouldn’t work”.*

The recording resumed and Mr Robson said:

*“It does work, what the solicitor is saying is that you can’t do a trust deed in care fees and he’s right, but the problem is a lot of solicitors don’t have the expertise because it is not their specialism...so they just put people off and say, you can’t do it anyway, because they can’t be wrong then can they?...But we have used these trusts for the last 13 years, what the local authority will do is when you have a trust, if you go into care, and I have been through this with my family, so I know this, but...I have been through it with my family who have a trust, so I know exactly how it works, yeah, unsurprisingly, my mum went into care and guess what, I’ve still inherited the house because as long as you haven’t had a discussion with your doctor that you were needing care, you hadn’t had a care assessment...you have no foreseen danger to say that you are going to go into care, there is nothing that a local authority can do about it, and that is the 2014 Care Act, it all comes down to could you prove beyond any reasonable doubt that you knowingly deprived yourself of assets, so what a local authority will do invariably is they will test the date of the trust against your doctor’s records, right, and if they don’t find any of those things in your doctor’s records, they haven’t got a leg to stand on”.*

The recording stopped, and the presenter questioned whether the advice given was correct. He said that the programme had been told that local authorities could use the marketing material behind any scheme as evidence of its intended purpose. A further recording of Ms Shilton was played, she said:

*“As soon as there is anything in any of their marketing to suggest that that is one of the products of moving their money into a trust, it’s clear deprivation as far as our guidance is concerned”.*

The presenter asked Ms Shilton about Universal's flyer and she agreed that what was being offered by Universal would not work. The presenter said:

*"Bridget Shilton says the test is whether avoiding care fees was a significant motivation in setting up a trust, so a trust set up many years before there was any need of care may prove more difficult to challenge, but if you are a bit older, and you are worried about care fees, beware".*

Excerpts of a pre-recorded interview with Ms Mary Butler, a solicitor who worked with older, vulnerable people, was played. Ms Butler said:

*"I am not saying that these products would not, in certain circumstances, work, but whilst this is true that local authorities may have been less inclined to get pugnacious about this back in the day, we have got a social care crisis on our hand now, a local authority funding crisis, and they are using every possible means to get money in...they are wise to the stunts that people pull, so they will be saying, for example, 'well, what happened to your house?'...".*

The presenter said:

*"Universal told us that Mr Robson does sometimes refer to the experience of his family at presentations, but never says his mother's house was in a trust to avoid fees, because it wasn't, and they deny that the trusts themselves [sic] are open to attack from local authorities. Many other firms offer a similar range of services...but Mary Butler says there is something that almost all these firms have in common, their advice is unregulated, so unlike solicitors or investment advisors, there's no one to complain to if things go wrong".*

The presenter asked Ms Butler about efforts to have companies offering care fee protection schemes regulated and that if such schemes were regulated, consumers would have more recourse. A recording was played of Sir Andrew Dilmott, an economist from the Resolution Foundation<sup>1</sup>, giving a lecture on social care. He talked about the means test which decides who qualifies for help with care costs, and said that it:

*"...causes a massive sense of inequity, and partly because of that, it encourages a significant amount of activity that we could best describe as cheating and cheating the social security system is no better than cheating the tax system, it's just wrong...but systems that encourage it, are not good systems, and this one certainly does so".*

The presenter explained that Sir Andrew Dilmott had proposed a solution to the Government in 2011, which involved implementing a limit to the maximum amount any individual should have to pay towards the cost of their care. The presenter said that the Government said that it would bring in a cap of £72,000 in April 2016, however, this was postponed until April 2020.

The presenter asked Mrs Steer whether she thought it was right that her and her husband were *"...trying to avoid, care fees in the first place?"*

Mrs Steer responded that she had mixed feeling about this but that it was *"...human nature to want not to sell the house and things"*.

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<sup>1</sup> According to its website, the Resolution Foundation is a 'think-tank' that works to improve the living standards of those in Britain on low to middle incomes.

The programme ended.

### Summary of the complaint and the broadcaster's response

a) Universal complained that its privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because:

i) The programme makers secretly recorded one of its seminars in 2017 without its consent.

Universal said that the programme makers had not requested an interview with it prior to the seminar, but instead secretly recorded one of its presenters, even though there were signs up prohibiting this. The company said that it had never denied the BBC an interview, and that it had provided the programme makers with "all the information to confirm Universal's version of events". Universal said that the secret recording was neither justified nor proportionate in these circumstances.

ii) The programme makers were not justified in "doorstepping" Mr Long in 2011, audio extracts of which were included in the *Money Box* programme broadcast in 2017. Universal said that it had never denied the BBC an interview and that it had explained to the programme makers of the 2011 programme that Mr Long had been out of the country when they initially sought to interview him.

b) Universal also complained that its privacy was unwarrantably infringed in the programme as broadcast because:

i) The programme included secretly recorded material of one of its 2017 seminars without its consent.

ii) The programme included material obtained through the doorstepping of Mr Long in 2011.

### The broadcaster's response

#### *Background*

The BBC said that the complaint was about a report into the costs of long term care for the elderly and whether it was possible to avoid liability for the costs of such care and the advice given on this by Universal. The BBC said that the programme cited publicity material published by the company (which it said appeared to suggest that asset protection trusts marketed by the company might protect assets from being taken into account in assessing contributions to long term care) and advice proffered at a seminar conducted by the company for prospective clients. It said that the seminar had been secretly recorded by the programme makers. The BBC explained that the programme also featured a segment of a doorstep interview conducted with Mr Steven Long, a Director of the company, in 2011 as part of an investigation by the BBC regional television programme *Inside Out*.

The BBC said that *Inside Out* had revealed that the Universal Group was charging around £3,000 to set up trusts which it said would protect assets from a local authority means test should "end of life" care be required. The programme reported expert opinion that these trusts might not actually ensure such protection and that a typical solicitor would only

charge about £700 to £1,200 for similar work (although the BBC said that most solicitors would be expected to advise against such a course of action). The BBC said that *Inside Out* attended Universal seminars and secretly recorded Mr Long who ran the company claiming, inaccurately, that he was offering a service that solicitors did not know how to provide.

The BBC said that in 2017, *Money Box* was contacted by a listener, Mrs Susan Steer, whose account of her dealings with Universal seemed to suggest that the company was still engaged in activities similar to those which were the subject of the allegations on *Inside Out* six years earlier. Her story was set out in the broadcast programme. It said that, in summary, the allegations arising from her account were that she and her late husband had been sold an asset protection trust which they were assured would protect their assets from care fee assessments but which, arguably, would not; that in any case they did not need such protection because her husband had prostate cancer and his “end of life” needs would therefore be met by the NHS; and that she was misled as to the fees which would be charged by Universal for setting up and administering the trust.

The BBC said that, in the course of its investigation, *Money Box* had obtained recent publicity material used by Universal. This declared: “It’s just not fair!” and that “45,000 families every year are forced to sell their homes to pay for care”. It invited recipients to a free seminar which would explain how “YOU can protect your home and savings from care fees, the taxman and many other threats”. Under the heading “Dealing with Care Fees,” it said: “We will show you how to legally protect your home and savings for your loved ones using methods known by the wealthy for centuries. Don’t leave it too late to protect those you love”. The BBC said that “...the asset protection trust arrangements being marketed by [Universal] were clearly being offered as a means of avoiding paying care fees”. The BBC said that the programme was advised that this leaflet might itself mean that the scheme it advertised would fall foul of the “intentionality” test used by local authorities to assess liability for long term care and therefore fail to deliver the protection it promised.

a) The BBC addressed the sub-heads of complaint in turn.

- i) The BBC said that it considered that there was a significant public interest in conducting investigations such as this into allegations that consumers were being misled and that the secret recording carried out at the Universal seminar was proportionate and warranted in the public interest.

The broadcaster said that given the allegations which were made about the company’s activities in 2011, and the fact that it “appeared to be persisting with similar behaviour”, secret recording was an appropriate means of gathering evidence of what prospective customers were being told by the company about the efficacy of the asset protection trust funds which it was marketing. The BBC said that whether an interview had been requested prior to the secret recording was “wholly immaterial”. It said that: “Given [Universal’s] record of evasion and bad faith...the company’s protestations in interview about its activities could not in any case be relied upon”. Furthermore, the BBC argued that there could only be “a vanishingly small expectation of privacy” at an event which was, in effect, open to the public and where what was being recorded was a public sales pitch. The broadcaster said that it also noted that participants in the seminar were invited to make notes and keep their own record of what was being said. In addition, the audience was told by the seminar presenter that “95% of what I’m going to tell you is actually in [the] brochure”. The BBC therefore argued that this meant that the content of the seminar

was not considered private and that “the prohibition on recording was motivated by concerns other than protecting privacy”. It said that, in effect, this waived any residual expectation of privacy which Ofcom might attach to the seminar itself.

The BBC said that it considered that recording the conversation between the reporter and one of the seminar presenters was justified in order to explore and obtain evidence as to what customers were told about the efficacy of its trust arrangements in a more private setting. The BBC said that while it acknowledged that one of the seminar presenters said, in public, “...you cannot set up a trust to specifically avoid care fees”, it said that in private he had been “considerably less categorical”, and said:

*“So, what the solicitor is saying is that you can’t do a trust to avoid care fees and he’s right, but the problem is a lot of solicitors don’t have the expertise because it’s not their specialism, so they just put people off and say, well, you can’t do it anyway because they can’t be wrong then, can they? But we’ve used these trusts for the last 13 years”.*

The BBC said that it considered that this justified both the recording and subsequent broadcast of the material.

- ii) The BBC said that that the complaint appeared to have been entertained by Ofcom as a complaint against the 2011 *Inside Out* programme, despite the complaint about this programme having been made “out of time” under Ofcom’s time limits. However, the BBC said that if Ofcom took the view that this head of complaint should be entertained, it would argue that the doorstep interview with Mr Long in 2011 was justified in the public interest and by the fact that Mr Long’s and Universal’s behaviour “suggested a pattern of evasion in relation to answering the allegations that were being made”. The BBC also said that the basis upon which Universal had argued that the doorstep interview was not justified was “seriously misleading”.

- b) The BBC said that its reasoning above at heads a) i) and a) ii) applied equally to sub-heads b) i) and b) ii) of the complaint.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View in this case that Universal’s complaint of unwarranted infringement of privacy should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

### **Decision**

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which

regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching this decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, the unedited audio secretly recorded at the Universal seminar held in 2017, a recording of the *Inside Out* programme broadcast in 2011, both parties' written submissions and supporting documentation.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression and the audience's right to receive ideas and information without undue interference. 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.

- a) Ofcom considered Universal's complaint that its privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

We had particular regard to Practices 8.5, 8.9, and 8.13 of the Code. Practice 8.5 states:

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

Practice 8.9 states:

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

Practice 8.13 states:

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

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

We considered each of the sub-heads of the complaint in turn.

- i) The programme makers secretly recorded one of Universal's seminars in 2017 without its consent.

We assessed whether it was warranted for the programme makers to record Universal's seminar in line with Practice 8.13, as outlined above.

We took account of the circumstances which preceded the broadcaster's decision to surreptitiously record audio material of the seminar as well as the broadcaster's representations. These were that:

- In 2017 *Money Box* was contacted by a listener, Mrs Steer, who alleged that her and her late husband had been sold an asset protection trust which they were assured would protect their assets from care fee assessments but which, arguably, would not; that, in any case, they did not need such protection because her husband had prostate cancer and his "end of life" needs would therefore be met by the NHS; and, that she was misled as to the fees which would be charged by Universal for setting up and administering the trust.
- Mrs Steer's account of her dealings with Universal seemed to suggest that the company was still engaged in activities similar to those which were the subject of the allegations on the programme *Inside Out* six years earlier.
- *Money Box* had obtained recent publicity material used by Universal which stated: "It's just not fair! 45,000 families every year are forced to sell their homes to pay for care...Find out how YOU can protect your home and savings from care fees, the taxman and other threats" and under the heading "Dealing with Care Fees," it stated: "We will show you how to legally protect your home and savings for your loved ones using methods known by the wealthy for centuries. Don't leave it too late to protect those you love". The BBC said that this demonstrated that Universal was marketing its asset protection trust arrangements as a means of avoiding paying care fees.

We considered that the information gathered by the programme makers before the surreptitious filming took place amounted to *prima facie* evidence of a story in the public interest. In our view, it appeared there was a likelihood that surreptitious recording would uncover evidence relating to what prospective customers were being told by the company about the efficacy of the asset protection trusts it was marketing.

We took into account Universal's objection to not having been offered an interview prior to the seminar. However, Ofcom recognises that there is no obligation for programme makers to seek comments from an individual and/or an organisation prior to the use of surreptitious filming or recording as part of an investigation. Surreptitious filming or recording can provide a useful means of corroborating programme makers' initial research; for example, people may behave differently if they know they are being filmed or recorded. Indeed, in this case, we considered that recording the conversation between the reporter and one of the Universal seminar presenters, for example, was justified to obtain evidence of what customers were told about the efficacy of its trust arrangements in a more private setting.



While one of the seminar presenters said, in public, “...you cannot set up a trust to specifically avoid care fees”, later, in conversation with the undercover reporter, he had said:

*“...what the solicitor is saying is that you can’t do a trust deed to avoid care fees and he’s right, but the problem is a lot of solicitors don’t have the expertise because it’s not their specialism, so they just put people off and say, well, you can’t do it anyway because they can’t be wrong then, can they? But we’ve used these trusts for the last 13 years...”*

We considered it was unlikely that the programme makers could have captured this audio material of one of the Universal seminar presenters speaking openly to a potential customer (the undercover reporter) about its asset protection trusts without using this technique. For these reasons, Ofcom considered that the use of surreptitious recording was warranted in the circumstances.

Ofcom also considered whether the means of obtaining the surreptitiously recorded material was proportionate. The investigation formed part of a consumer financial advice programme and specifically highlighted concerns about the public being potentially misled to their financial detriment. As above, in our view, it appeared likely that surreptitious recording would uncover evidence about what prospective customers were being told by the company about the efficacy of the asset protection trusts it was marketing. Taking these factors into account, we considered that it was proportionate for the programme makers to surreptitiously record the Universal presenters at the seminar.

Ofcom next assessed the extent to which Universal (i.e. the company, rather than its individual employees included in the programme) had a legitimate expectation of privacy with regards to the audio recorded at the Universal seminar for inclusion 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 concerned finds him or herself.

We considered the nature of the material obtained and included in the programme (as outlined in detail above in the “Programme summary” section). *Money Box* presenter, Mr Robinson, attended a Universal seminar, posing as a potential customer, and secretly recorded the seminar, which was approximately two hours in length, including a question and answer section at the end. The seminar provided advice on how people could ensure that, in the event of their death, their wealth was distributed in the way that they wanted it to be, and included information about setting up trusts. During the question and answer section of the seminar, Mr Robinson asked whether Universal could offer “*protection from care fees*”. Mr

Robinson also recorded a conversation he had with one of the Universal presenters, following the conclusion of the seminar. During this exchange, Mr Robinson continued to ask the presenter how assets could be protected from care fees using trusts.

We took account of the fact that Universal's presenters were recorded delivering a seminar in a hotel, where we understood there were signs up prohibiting any recording. The presenters were not aware that they were being recorded during the seminar while speaking openly about the services being offered by Universal. However, we also took account of the following: the audio material was recorded at a seminar which had been advertised to the public to attend, and the purpose of which was to publicise the services of Universal; one of the presenters explained at the beginning of the seminar that attendees should have all received a brochure and stated: *"I'm sure some of you are going to want to make your own notes as I go through the seminar presentation this evening. The good news is, 95% of what I'm going to tell you is actually in that brochure, so that will make it a bit easier when you go away to reflect and remember back today"*; and, the question and answer section of the seminar was an open forum for anyone in attendance to ask a question. In these circumstances, we did not consider that the presenters disclosed any particularly sensitive or private information about Universal in the audio extracts of the seminar included in the programme.

Taking all these factors into account, we considered that, on balance, Universal did not have a legitimate expectation of privacy with regards to the audio material recorded of the seminar for inclusion in the programme.

With regards to the audio material recorded after the seminar, we took into account the fact that the seminar presenter was not aware that he was being recorded while speaking openly with the undercover reporter about care fees and Universal's use of trusts. Ofcom takes the view that, ordinarily, conversations in which the parties feel they can speak openly and freely about financial matters can reasonably be regarded as being confidential and therefore can attract an expectation of privacy. However, we also took account of the fact that the conversation had been recorded in a publicly accessible area of the hotel, and therefore we considered that it was reasonable to expect that the presenter would have been aware that any conversation had the potential to be overheard by anyone present or passing by.

We considered whether any private or sensitive information was revealed about Universal in the conversation between its presenter and Mr Robinson. From the extract of the conversation included in the programme, we did not consider that the presenter disclosed any particularly private or sensitive information about Universal. We considered that the conversation was simply a continuation of that initiated by the undercover reporter in the question and answer section of the seminar, in which Mr Robinson had asked the presenter:

*"I am here specifically because I am interested in protection from care fees and Val said, I think, 'your assets will be disregarded for care fees', is that right, is that how it works?"*

The Universal presenter responded:

*“Getting to the heart of the matter now regarding care fees, it’s a very emotive subject, but let me say one thing very clearly, and, I will repeat it. You cannot set up a trust to specifically avoid care fees, I will say it again if anyone is in doubt, you cannot set up a trust to specifically avoid care fees”.*

The Universal presenter further said that:

*“However, as long as it’s done for the right reasons, with the right motivation, at the right time, the local authorities will not assess on a trust as long as those conditions have been met...”.*

Following the conclusion of the seminar, Mr Robinson struck up a conversation with the Universal presenter and informed him that a solicitor had told him that the deliberate deprivation rules meant that Universal’s trust would not work. The Universal presenter responded:

*“It does work, what the solicitor is saying is that you can’t do a trust deed in care fees and he’s right, but the problem is a lot of solicitors don’t have the expertise because it is not their specialism...so they just put people off and say, you can’t do it anyway, because they can’t be wrong then can they?...But we have used these trusts for the last 13 years...”.*

Although we acknowledged that the Universal presenter went on to talk about his personal experience of using a trust, we did not consider this would constitute private or sensitive information about Universal. Therefore, taking all these factors into account, we considered that, on balance, Universal did not have a legitimate expectation of privacy with regards to the audio material recorded of the conversation between its presenter and the undercover reporter and included in the programme.

Having come to this, it was not necessary for Ofcom to consider whether any infringement of Universal’s privacy was warranted.

- ii) The programme makers were not justified in “doorstepping” Mr Long in 2011, audio extracts of which were included in the *Money Box* programme broadcast in 2017. Universal said that it had never denied the BBC an interview and that it had explained to the programme makers of the 2011 programme that Mr Long had been out of the country when they initially sought to interview him.

Ofcom took into account the BBC’s statement that the complainant’s concern about the obtaining of the doorstepped material obtained in 2011 was made to Ofcom “out of time”<sup>2</sup>.

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<sup>2</sup> Ofcom’s ‘Procedures for the consideration and adjudication of Fairness and Privacy complaints on BBC broadcasting services and BBC on demand programme services’ provides that complainants should submit their complaint to Ofcom within 20 working days after broadcast of the relevant programme, or where they have made a complaint to the BBC first, within 20 working days of having received a final response to their complaint from the BBC, and that, ordinarily, Ofcom will not accept a complaint which is submitted after this deadline.

We considered that Universal was aware in 2011 that the footage had been filmed of Mr Long in a doorstep interview and that the programme makers planned to include this footage in the programme *Inside Out*. The programme makers contacted Universal prior to taking the decision to doorstep Mr Long and sent Universal a letter dated 4 October 2011, which informed Universal of concerns they had and their intention to include an investigation into the company in the programme *Inside Out*. The programme makers explained that they wanted to offer Mr Long the opportunity to answer their concerns in a recorded interview. Universal declined the programme makers' request to interview Mr Long and on 19 October 2011, the programme makers doorstepped Mr Long at a Universal seminar.

Universal did not make a complaint to Ofcom in 2011 about how the material was obtained for broadcast in the 2011 programme. We considered that having been fully aware of the footage obtained and of the programme makers' intention to broadcast it, it had been open to Universal to make a complaint to Ofcom about its concerns after the 2011 programme was broadcast.

Taking these factors into account, and, importantly, the significant lapse of time since the obtaining of the 2011 footage and the broadcast of the audio extracts from it in the 2017 programme, Ofcom did not consider that it was necessary for it to consider this sub-head of complaint further.

- b) Ofcom next considered Universal's complaint that its privacy was unwarrantably infringed in the programme as broadcast.

We had particular regard to Practices 8.4, 8.6 and 8.10. Practice 8.4 states:

"Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted".

Practice 8.6 states:

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

Practice 8.10 states:

"Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and the used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material".

We also took into consideration Practice 8.13 (see head a) above).

We considered each of the sub-heads of the complaint in turn.

- i) The programme included secretly recorded material of one of Universal’s seminars in 2017 without Universal’s consent.

Before assessing whether Universal’s privacy was unwarrantably infringed in the programme as broadcast, we again considered whether it was warranted to film surreptitiously in accordance with Practice 8.13. For the reasons set out in detail above in head a) i), Ofcom considered that the use of surreptitious filming was warranted in the circumstances.

Ofcom then assessed the extent to which Universal had a legitimate expectation of privacy in relation to the broadcast of the audio extracts recorded at the Universal seminar in 2017. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be considered in light of the circumstances in which the individual finds him or herself.

As set out in detail above in the “Programme summary” section and at head a) i), *Money Box* presenter, Mr Robinson, attended a Universal seminar, posing as a potential customer, and secretly recorded the seminar, including a question and answer section at the end, and, also a conversation, between him and one of the Universal presenters, following the conclusion of the seminar. Audio extracts of this material were included in the programme.

It was Ofcom’s view that, for the same reasons as outlined above at head a) i), Universal did not have a legitimate expectation of privacy with regards to the broadcast of the material recorded surreptitiously at its seminar. In the context of the material being recorded at a seminar, the purpose of which was to publicise the services of Universal, we did not consider that the presenters disclosed any information that could reasonably be regarded as being sensitive or private to Universal.

Having come to this view, it was not necessary for Ofcom to consider whether any infringement of Universal’s privacy was warranted.

Therefore, Ofcom considered that there was no unwarranted infringement of Universal’s privacy in the programme as broadcast in this regard.

- ii) The programme included material obtained through the doorstepping of Mr Long in 2011.

We assessed the extent to which Universal had a legitimate expectation of privacy in relation to the broadcast of the audio extracts of the material obtained through the doorstepping of Mr Long in 2011. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be considered in light of the circumstances in which the individual finds him or herself.

We considered the nature of the material included in the programme (as outlined in detail above in the “Programme summary” section).

The BBC was unable to provide Ofcom with the unedited material relating to the 2011 doorstep interview with Mr Long owing to the time that had elapsed since the interview was filmed. However, Ofcom was provided with a copy of the 2011 *Inside Out* programme. From the footage included in the 2011 programme, it appeared to us that Mr Long had been filmed while presenting a Universal seminar at a hotel. The *Inside Out* reporter was filmed entering the conference room and walking through the audience to the front of the room where he confronted Mr Long. In considering whether Universal had a legitimate expectation of privacy with respect to the inclusion of the audio extracts in *Money Box*, we took into account that: Mr Long was filmed openly and was aware of the fact that he was being filmed; the footage was filmed at a seminar which Ofcom understood had been advertised to the public to attend, and the purpose of which was to publicise the services of Universal; and, Mr Long was questioned openly about Universal's services in front of the Universal seminar audience. In these circumstances, we did not consider, from the audio extracts of the doorstep interview included in the *Money Box* programme, that Mr Long disclosed any information that could reasonably be regarded as being sensitive or private to Universal.

Taking all these factors into account, we considered that, on balance, Universal did not have a legitimate expectation of privacy with regards to the broadcast of the material recorded at the doorstep interview in 2011.

Having come to this, it was not necessary for Ofcom to consider whether any infringement of Universal's privacy was warranted.

Therefore, Ofcom considered that there was no unwarranted infringement of Universal's privacy in the programme as broadcast in this regard.

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

## Investigations Not in Breach

Here are alphabetical lists of investigations<sup>1</sup> that Ofcom has completed between 29 January and 11 February 2018 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Programming	Fadak TV	12/10/2016	Generally accepted standards
News Beat with Paras Jahanzeb	Samaa TV	18/08/2017	Crime and disorder

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

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

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<sup>1</sup> The tables in this Bulletin were corrected and updated following publication.

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 29 January and 11 February 2018 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
According to Jim	5Star	01/02/18	Offensive language	1
Extraordinary People: the Boys with No Skin (trailer)	5Star	24/01/18	Scheduling	1
The Christian O'Connell Breakfast Show	Absolute Radio	24/01/18	Race discrimination/offence	1
Community Issues	ATN Bangla UK	14/11/17	Due accuracy	1
Ernie the Wildman	Blaze	27/10/17	Animal welfare	1
Mid Morning Show	BRSM	06/02/18	Offensive language	1
FA Cup (trailer)	BT Sport	28/01/18	Generally accepted standards	1
FA Cup Football: Liverpool v West Bromwich Albion	BT Sport 2	27/01/18	Disability discrimination/offence	2
Ninjago: Masters of Spinjitzu	Cartoon Network (Dutch)	14/01/18	Violence	1
8 Out of 10 Cats Does Countdown	Channel 4	26/01/18	Gender discrimination/offence	1
AncestryDNA advertisement	Channel 4	31/01/18	Political advertising	1
AncestryDNA advertisement	Channel 4	03/02/18	Political advertising	4
Channel 4 News	Channel 4	16/01/18	Due impartiality/bias	10
Derry Girls	Channel 4	18/01/18	Generally accepted standards	1
Derry Girls	Channel 4	18/01/18	Race discrimination/offence	1
Derry Girls	Channel 4	18/01/18	Religious/Beliefs discrimination/offence	1
Hollyoaks	Channel 4	05/02/18	Generally accepted standards	2
Hunted	Channel 4	25/01/18	Dangerous behaviour	2
The Bulger Killers: Was Justice Done? (trailer)	Channel 4	04/02/18	Scheduling	1
Blind Date	Channel 5	30/12/17	Animal welfare	1
Blind Date	Channel 5	06/01/18	Generally accepted standards	1
Blind Date	Channel 5	27/01/18	Sexual material	33



<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Celebrity 5 Go Barging	Channel 5	02/02/18	Offensive language	1
Celebrity Big Brother	Channel 5	18/01/18	Generally accepted standards	4
Celebrity Big Brother	Channel 5	18/01/18	Sexual orientation discrimination/offence	1
Celebrity Big Brother	Channel 5	19/01/18	Generally accepted standards	1
Celebrity Big Brother	Channel 5	21/01/18	Sexual orientation discrimination/offence	1
Celebrity Big Brother	Channel 5	22/01/18	Sexual orientation discrimination/offence	7
Celebrity Big Brother	Channel 5	24/01/18	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	25/01/18	Offensive language	21
Celebrity Big Brother	Channel 5	25/01/18	Sexual orientation discrimination/offence	128
Celebrity Big Brother	Channel 5	30/01/18	Disability discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	16/01/18	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	16/01/18	Race discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	16/01/18	Violence	1
Channel 5 News	Channel 5	08/02/18	Generally accepted standards	1
Pixels	Channel 5	21/01/18	Offensive language	2
Police Interceptors	Channel 5	22/01/18	Offensive language	1
The Wright Stuff	Channel 5	10/01/18	Generally accepted standards	1
The Wright Stuff	Channel 5	11/01/18	Race discrimination/offence	1
The Wright Stuff	Channel 5	19/01/18	Generally accepted standards	1
Mr Bean The Animated Series	CITV	22/01/18	Offensive language	1
Super 4	CITV	02/02/18	Offensive language	1
Bowie at Breakfast	Clyde 1	26/01/18	Generally accepted standards	1
Ace Ventura Pet Detective	Comedy Central	28/01/18	Offensive language	1
Roast Battle	Comedy Central	06/02/18	Generally accepted standards	1
Yukon Men	Discovery	19/01/18	Animal welfare	1
Advertisements	Drama	30/01/18	Advertising minutage	1
8 Out of 10 Cats Does Countdown (trailer)	E4	18/01/18	Sexual material	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Celebs Go Dating	E4	07/02/18	Gender discrimination/offence	1
Derry Girls (trailer)	E4	16/01/18	Generally accepted standards	1
Hollyoaks	E4	05/01/18	Gender discrimination/offence	1
The Inbetweeners	E4	15/07/08	Generally accepted standards	1
The Inbetweeners Movie	E4	12/11/17	Generally accepted standards	1
The Big Bang Theory	E4+1	30/01/18	Other	1
AncestryDNA advertisement	Film4	29/01/18	Political advertising	1
Programming	Gaydio	n/a	Competitions	1
Programming	Heart FM	08/01/18	Competitions	1
Heart Four Counties Breakfast Show	Heart Four Counties	16/01/18	Exorcism, the occult and the paranormal	1
AncestryDNA advertisement	History Channel	29/01/18	Political advertising	1
Coronation Street	ITV	15/01/18	Sexual material	3
Coronation Street	ITV	22/01/18	Generally accepted standards	9
Coronation Street	ITV	22/01/18	Materially misleading	3
Coronation Street	ITV	22/01/18	Scheduling	1
Coronation Street	ITV	22/01/18	Sexual material	3
Coronation Street	ITV	22/01/18	Violence	10
Coronation Street	ITV	25/01/18	Sexual material	1
Coronation Street	ITV	26/01/18	Sexual material	2
Coronation Street	ITV	29/01/18	Generally accepted standards	2
Coronation Street	ITV	31/01/18	Materially misleading	1
Coronation Street	ITV	31/01/18	Sexual orientation discrimination/offence	1
Coronation Street	ITV	31/01/18	Violence	1
Coronation Street	ITV	02/02/18	Materially misleading	1
Coronation Street	ITV	05/02/18	Offensive language	1
Coronation Street	ITV	05/02/18	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	09/02/18	Violence	1
Coronation Street	ITV	various	Violence	5
Dancing on Ice	ITV	04/01/18	Other	1
Dancing on Ice	ITV	07/01/18	Generally accepted standards	1
Dancing on Ice	ITV	07/01/18	Sexual material	1
Dancing on Ice	ITV	14/01/18	Gender discrimination/offence	1
Dancing on Ice	ITV	14/01/18	Generally accepted standards	8

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Dancing on Ice	ITV	14/01/18	Sexual material	1
Dancing on Ice	ITV	21/01/18	Sexual material	1
Dancing on Ice	ITV	21/01/18	Voting	3
Dancing on Ice	ITV	28/01/18	Gender discrimination/offence	1
Dancing on Ice	ITV	28/01/18	Generally accepted standards	1
Dancing on Ice	ITV	28/01/18	Other	1
Dickinson's Real Deal	ITV	02/02/18	Competitions	1
Emmerdale	ITV	22/01/18	Scheduling	1
Emmerdale	ITV	30/01/18	Sexual material	1
Emmerdale	ITV	31/01/18	Violence	1
Emmerdale	ITV	09/02/18	Violence	1
Endeavour	ITV	04/02/18	Violence	1
Girlfriends	ITV	17/01/18	Animal welfare	2
Good Morning Britain	ITV	22/01/18	Offensive language	1
Good Morning Britain	ITV	23/01/18	Generally accepted standards	1
Good Morning Britain	ITV	29/01/18	Generally accepted standards	2
Good Morning Britain	ITV	30/01/18	Generally accepted standards	2
Good Morning Britain	ITV	31/01/18	Disability discrimination/offence	1
Good Morning Britain	ITV	31/01/18	Generally accepted standards	1
Good Morning Britain	ITV	05/02/18	Generally accepted standards	1
Good Morning Britian	ITV	26/01/18	Product placement	2
ITV News	ITV	09/01/18	Race discrimination/offence	1
ITV News	ITV	16/01/18	Due impartiality/bias	1
ITV News	ITV	19/01/18	Due impartiality/bias	1
ITV News	ITV	29/01/18	Due accuracy	1
ITV News	ITV	02/02/18	Due impartiality/bias	1
James Martin's Saturday Morning	ITV	20/01/18	Generally accepted standards	2
Live Six Nations Rugby League	ITV	04/02/18	Other	1
Loose Women	ITV	06/02/18	Sexual material	1
Next of Kin	ITV	08/01/18	Materially misleading	1
NHS Winter Crisis: What's the Truth? Tonight	ITV	01/02/18	Age discrimination/offence	1
Peston on Sunday	ITV	28/01/18	Due impartiality/bias	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
President Trump – The Piers Morgan Interview	ITV	28/01/18	Due impartiality/bias	10
President Trump – The Piers Morgan Interview	ITV	28/01/18	Race discrimination/offence	1
Seat's sponsorship of ITV mystery drama	ITV	22/01/18	Sponsorship credits	1
Six Nations Live	ITV	04/02/18	Generally accepted standards	10
Survival of the Fittest (trailer)	ITV	14/01/18	Sexual material	1
Take Me Out	ITV	27/01/18	Gender discrimination/offence	1
Take Me Out	ITV	03/02/18	Gender discrimination/offence	1
The Chase	ITV	30/01/18	Materially misleading	1
The Chase	ITV	31/01/18	Generally accepted standards	1
The Jeremy Kyle Show	ITV	07/02/18	Crime and disorder	38
The National Television Awards	ITV	23/01/18	Animal welfare	1
This Morning	ITV	24/01/18	Drugs, smoking, solvents or alcohol	1
This Morning	ITV	02/02/18	Generally accepted standards	1
Through the Keyhole	ITV	26/01/18	Generally accepted standards	1
Vera	ITV	28/01/18	Sexual orientation discrimination/offence	1
You've Been Framed	ITV	27/01/18	Generally accepted standards	2
ITV News London	ITV London	12/01/18	Generally accepted standards	1
American Dad	ITV2	06/01/18	Generally accepted standards	1
Ibiza Weekender	ITV2	28/07/18	Generally accepted standards	1
AncestryDNA advertisement	ITV3	29/01/18	Political advertising	1
Specsavers Audiologists' sponsorship of ITV3	ITV3	27/01/18	Sponsorship credits	1
Botched	Kanal 11	04/01/18	Gender discrimination/offence	1
Plastikturisterna	Kanal 11	10/01/18	Gender discrimination/offence	1
American Hustle	Kanal 5 (Sweden)	20/01/18	Gender discrimination/offence	1
Beat Geeks	Kemet Radio	23/11/17	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Key 103 Breakfast Show with Gemma, Matt & Mike	Key 103 Manchester	17/01/18	Offensive language	1
James O'Brien	LBC 97.3 FM	16/11/17	Religious/Beliefs discrimination/offence	1
James O'Brien	LBC 97.3 FM	01/02/18	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	02/02/18	Generally accepted standards	1
LBC 'Catch Up' app promotion	LBC 97.3 FM	04/01/18	Materially misleading	1
Nigel Farage	LBC 97.3 FM	25/01/18	Due impartiality/bias	1
Shelagh Fogarty	LBC 97.3 FM	02/02/18	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	25/01/18	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	29/01/18	Materially misleading	1
Alan Robson's Night Owls	Metro Radio	25/12/17	Religious/Beliefs discrimination/offence	1
Back in 2018	MTV Base	31/01/18	Nudity	1
AncestryDNA advertisement	n/a	29/01/18	Political advertising	1
Holocaust programming	n/a	28/01/18	Generally accepted standards	1
Programming	n/a	29/01/18	Sexual material	1
AncestryDNA advertisement	Pick	30/01/18	Political advertising	1
Sky Store (trailer)	Pick	12/01/18	Scheduling	1
The Cambridge Rapist	Pick	11/01/18	Generally accepted standards	1
AncestryDNA advertisement	Quest +1	04/01/18	Political advertising	1
Radio City Breakfast Show with Leanne & Dave	Radio City 96.7	10/01/18	Disability discrimination/offence	1
Who'd Be A Billionaire	Sky Living	21/01/18	Gender discrimination/offence	1
Sky News	Sky News	16/01/18	Due impartiality/bias	1
Sky News	Sky News	23/01/18	Due impartiality/bias	1
Sky News	Sky News	27/01/18	Generally accepted standards	1
Sky News	Sky News	01/02/18	Due impartiality/bias	1
Sunrise	Sky News	04/02/18	Due accuracy	1
Rugby Union: Scarlets v Toulon	Sky Sports Action	20/01/18	Race discrimination/offence	1
Delicious	Sky1	19/01/18	Animal welfare	1
Harry Hill's Tea Time	Sky1	03/02/18	Generally accepted standards	1
Strike Back (trailer)	Sky1	29/01/18	Sexual material	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Casillero del Diablo's sponsorship	Sony Movie Channel	03/12/17	Sponsorship	1
Party Political Broadcast by the Scottish National Party	STV	18/01/18	Materially misleading	2
Party Political Broadcast by the Scottish National Party	STV	19/01/18	Materially misleading	1
The Sports Bar	Talksport	29/01/18	Generally accepted standards	1
Morning Show	The Bay	24/01/18	Gender discrimination/offence	1
Masha and the Bear	Tiny Pop	23/01/18	Violence	1
Breakfast Show	Touch FM 102	29/01/18	Commercial communications on radio	1
Bad Teacher	TV3 (Sweden)	08/01/18	Gender discrimination/offence	1
The Victoria's Secret Fashion Show	TV3 (Sweden)	14/01/18	Gender discrimination/offence	1
AncestryDNA advertisement	Universal	29/01/18	Political advertising	1
Your FM	Your FM 107.8	23/01/18	Offensive language	1

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Abortion on Trial	BBC 2	16/10/17	Due impartiality/bias	1
Glastonbury 2017	BBC 2	23/06/17	Crime and disorder	1
Newsnight	BBC 2	09/08/17	Due accuracy	1
University Challenge	BBC 2	21/08/17	Materially misleading	1
News bulletin	BBC Radio 4	11/08/17	Generally accepted standards	1

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

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

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

Licensee	Licensed service	Categories
Big City Radio CIC	Big City Radio	Key Commitments

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

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

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

Service provider	Categories	Number of complaints
NOW TV	Accessed Date	1

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

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

## Complaints outside of remit

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

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

## Complaints about television or radio programmes

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

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

Programme	Service	Transmission date	Categories	Number of complaints
Advertisement	Cartoon Network	08/02/18	Advertising content	1
Advertisement	CBS Reality +1	04/02/18	Advertising content	1
Advertisement	Channel 4	08/02/18	Advertising content	1
Advertisements	Channel 5	26/01/18	Advertising content	1
Celebrity Big Brother	Channel 5	22/01/18	Outside of remit	1
Advertisement	E4	07/02/17	Advertising content	1
Programming	Freeview	n/a	Outside of remit	1
Advertisement	ITV	27/01/18	Advertising content	7
Advertisement	ITV	28/01/18	Advertising content	1
Advertisement	ITV	29/01/18	Advertising content	2
Advertisement	ITV	30/01/18	Advertising content	2
Advertisement	ITV	01/02/18	Advertising content	2
Advertisement	ITV	03/02/18	Advertising content	1
Advertisement	ITV	05/02/18	Advertising content	3
Advertisement	ITV	08/02/18	Advertising content	1
Advertisement	ITV	09/02/18	Advertising content	1
Emmerdale	ITV	n/a	Outside of remit	1
Advertisements	ITV2	28/01/18	Advertising content	1
Advertisement	ITV2+1	06/02/18	Advertising content	1
Advertisement	ITV3	30/01/18	Advertising content	1
Advertisement	ITV4	30/01/18	Advertising content	1
Royal Cars of Oxford's sponsorship	Jack FM	01/12/17	Commercial communications on radio	1
News	n/a	03/02/18	Outside of remit	1
Sky Sports	Sky Sports Day Pass	28/01/18	Other	1
Advertisement	Sky1	27/01/84	Advertising content	1
Advertisement	Sky1	07/02/18	Advertising content	1



<b>Programme</b>	<b>Service</b>	<b>Transmission date</b>	<b>Categories</b>	<b>Number of complaints</b>
Advertisements	Sony Movie Channel	28/01/18	Advertising content	1
Advertisement	The Wave	09/02/18	Advertising content	1
Advertisement	Vault	03/02/18	Advertising content	1

## BBC First

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

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

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

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

Programme	Broadcaster	Transmission or accessed date	Categories	Number of complaints
Programming	BBC	various	Due impartiality/bias	1
All Together Now	BBC 1	27/01/18	Generally accepted standards	1
BBC Breakfast	BBC 1	29/01/18	Due impartiality/bias	1
BBC News	BBC 1	09/01/18	Generally accepted standards	1
BBC News	BBC 1	02/02/18	Due impartiality/bias	1
BBC News	BBC 1	07/02/18	Due accuracy	1
BBC News	BBC 1	07/02/18	Generally accepted standards	1
Chinese Burn	BBC 1	19/01/18	Race discrimination/offence	1
Doctors	BBC 1	07/02/18	Sexual material	1
EastEnders	BBC 1	12/01/18	Race discrimination/offence	1
EastEnders	BBC 1	05/02/18	Offensive language	1
Eurovision: You Decide	BBC 1	07/02/18	Due impartiality/bias	1
Question Time	BBC 1	01/02/18	Due impartiality/bias	1
Silent Witness	BBC 1	29/01/18	Generally accepted standards	1
South Today Weather	BBC 1	26/01/18	Due accuracy	1
The Andrew Marr Show / Sunday Politics	BBC 1	various	Due impartiality/bias	1
Party Political Broadcast by the Scottish National Party	BBC 1 Scotland	18/01/17	Materially misleading	1
BBC 2 Show	BBC 2	31/01/18	Gender discrimination/offence	1
Chris Packham: in Search of the Lost Girl	BBC 2	30/01/18	Disability discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission or accessed date</b>	<b>Categories</b>	<b>Number of complaints</b>
Daily Politics	BBC 2	17/01/18	Due impartiality/bias	1
Inside the Factory	BBC 2	16/01/18	Promotion of products/services	1
Newsnight	BBC 2	29/01/18	Due impartiality/bias	2
Sahara with Michael Palin	BBC 2	30/01/18	Violence	1
Surgeons: At the Edge of Life	BBC 2	15/01/18	Generally accepted standards	1
The Mash Report	BBC 2	01/02/18	Generally accepted standards	12
Chinese Burn	BBC 3	25/12/17	Race discrimination/offence	1
Chinese Burn	BBC 3	25/01/18	Race discrimination/offence	1
Chinese Burn	BBC 3	27/01/18	Race discrimination/offence	1
Stacey Dooley Investigates: Second Chance Sex Offenders	BBC 3	27/01/18	Generally accepted standards	1
Shaun Keaveny Breakfast Show	BBC 6 Music	02/01/18	Due impartiality/bias	1
BBC News	BBC News	01/01/18	Due impartiality/bias	1
Jeremy Vine	BBC Radio 2	08/02/18	Due impartiality/bias	1
BBC News	BBC Radio 2 / BBC website	31/01/18	Animal welfare	1
The Archers	BBC Radio 4	various	Other	1
Today	BBC Radio 4	30/11/17	Due impartiality/bias	1
Today	BBC Radio 4	31/01/18	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 29 January and 11 February 2018.

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

Programme	Service	Transmission date(s)
Point of View	Channel 44	04/12/2017 and 11/12/2017
Gem At Breakfast with Jo & Sparky	Gem 106	11/01/2018
Peston on Sunday	ITV	14/01/2018
Steve Allen	LBC 97.3 FM	28/12/2017
Max Rushden (filling in for Jim White)	Talksport	08/01/2018
Oli and Simon Breakfast Show	Touch FM (Stratford Upon Avon)	12/01/2018

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

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

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

Programme	Service	Transmission date
Can't Pay? We'll Take It Away!	Channel 5	5 February 2017
Familien fra Bryggen	TV3 Denmark	7 September 2017 / 21 September 2017

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

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

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