

# 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

#### Udta Punjab

***B4U Movies, 24 March 2018, 19:55***

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#### Introduction

B4U Movies broadcasts Bollywood films and related programming. The licence is held by B4U Network (Europe) Ltd ("B4U Network" or "the Licensee").

*Udta Punjab* was broadcast on B4U Movies between 19:55 and 22:45 in Punjabi with English subtitles. Ofcom received a complaint about the broadcast containing numerous examples of offensive language, drug references and violence before the watershed.

*Udta Punjab* is a film set in the Indian region of Punjab which follows several characters whose lives are affected in negative ways by drug trafficking. The film conveyed a strong anti-drugs message and showed the damaging effects of drug culture, including: police and political corruption, violence, illness and addiction.

The film began with one of the main characters "Tommy", performing a song at a concert. The lyrics contained multiple references to drug use, including: "*Freedom and liberty it's all in the weed*" and "*Don't shy away from high, screw those asking why*". Shortly after, Tommy was shown singing a song in a recording studio; the lyrics again contained multiple drug references such as: "*Tommy's got a tongue sharp like ecstasy*", "*Tommy's lips taste like heroin's intimacy*" and "*Tommy's cock is white as coke's supremacy*". The song's refrain "*coke-cock, coke-cock, coke-cock*" was repeated numerous times. The word "*cock*" had been removed from the song's audio but the words were visible in the English subtitles. Tommy was later arrested and imprisoned; two inmates explained to him how they were inspired by his music and had killed their own mother to get money for their next "*fix*".

The film also featured the story of "Bauria", a young woman who stole three kilograms of heroin from a gang of drug dealers. Bauria tried to sell the drugs but was pursued in a van by a gang of men while she ran away in distress. Following the pursuit, Bauria was shown throwing the heroin into a well and was subsequently captured by the gang and held in a house.

At the house, Bauria sat in a room with a number of gang members. One of the kidnapers attacked another, beating him violently seven times on the legs with a cricket bat. The bat was shown hitting the victim's legs, and the victim shouted in pain. The attacker then dragged the victim out of the house, while another man said not to kill him as he was "*family*". A further gang member asked "*what to do with*" Bauria as she was not "*family*". Bauria started to cry as the men asked her why she had stolen the heroin. One of the gang members attempted to remove her top and said to her "*it won't take long*"; he grabbed hold of Bauria and she struggled against him and screamed. As she freed herself, another kidnapper grabbed Bauria, pushed her onto a bed and tried to kiss her while she continued to scream and pleaded with the men to let her go. Bauria ran outside, where she found a cricket bat which she used to fight her attackers. She struggled against two men who repeatedly grabbed her. A third man arrived, and all three men pushed her to the ground

and held her down. One of the men held up a needle and a close up of Bauria's face was then shown; she stopped screaming and her expression turned vacant, before the scene changed. The sequence of Bauria physically struggling against the men lasted for over a minute.

Shortly after, another character "Sartaj" returned home with his younger teenage brother who had overdosed on drugs. Sartaj entered his teenage brother's room and slapped him angrily across the face three times, his brother fell to the floor crying and Sartaj continued to hit him about the head with his hand before another man pulled him away. A doctor explained to Sartaj that his brother was addicted to illegal prescription medication.

Sartaj, a policeman, was later shown on duty at a road check point. Another policeman approached him and showed him a picture of Bauria on his mobile phone; he asked Sartaj "Do you want to do her? She looks good!". A lorry driver was shown joking with a third policeman, Sartaj approached the driver, slapped him across the face and then pushed him aggressively against the truck. The man fell to the floor and Sartaj kicked him twice before hitting him with a stick and then attacking the truck with the stick.

The second policeman was later shown entering the room where Bauria was held by the gang. He commented that she "looked okay on the phone". He then asked a gang member "she won't bite, right?". He replied that she was "well trained now". Bauria was shown floating through water in a scene that implied she had disassociated from the subsequent events.

The film continued after the watershed. Bauria was shown escaping from the gang, and Tommy reformed and gave up drugs. Sartaj's brother was shown escaping from a rehab centre in a distressed state and stabbing a doctor with a knife as she tried to restrain him.

Prior to the watershed there were 31 uses of the most offensive language, including "fuck", "sisterfucker" and "motherfucker" in the programme's English subtitles on screen, but not in the Punjabi audio. The earliest instance of "sisterfucker" was at 20:03 shortly after the start of the film. There were also four visibly mouthed but audio muted uses of the most offensive language in the Punjabi audio before the watershed, including "fucking", "fucker" and "sisterfucker".

The programme also included at least 22 uses of offensive language in the English subtitles before the watershed: including 17 uses of the word "cock", three uses of the word "shit" and two uses of the word "asshole".

Further, there was an ongoing dark and menacing tone in the film including in the section shown pre-watershed, particularly in the storyline which featured Bauria. This was driven by Bauria's vulnerability as a young women pursued and captured by a violent gang and the concerns the audience would have felt for her, especially given the implied reference to ongoing sexual violence against her.

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

Rule 1.11 "Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed...and must be justified by the context".

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

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

Rule 2.3 "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

### **Response**

The Licensee said that the broadcast of the film was an "inadvertent error". It added that the programme scheduling team inserted the unedited version of the film intended for post-watershed broadcast in the playlist instead of the edited version which did not include "offensive language, gunshots, violent scenes and similar presentations" and was meant for pre-watershed broadcast. It said that the scheduling team were working under "immense time pressure" as they had just been informed that they had to complete their scheduling entries one week early due to a planned software shut down.

The Licensee said it always aims to abide by Ofcom's rules, as reflected by its "general practice", and is "vigilant" of the need to protect children from unsuitable content before the watershed. It said that this "lapse was unintentional".

On being notified of the broadcast, the Licensee said it had detailed discussions with its scheduling team on the importance of monitoring the tapes attentively. It said that it had made adjustments to its software and devised a system of double checks so that such an error is "not repeated...under any circumstance". It added that the new processes are being "strictly followed".

### **Decision**

Reflecting our duties under the Communications Act 2003, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied to the content of television services to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Ofcom takes 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 acknowledges the importance attached to freedom of expression in broadcasting, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority.

#### **Rule 1.11**

The Code does not prohibit violent storylines or scenes, but Rule 1.11 requires that violence must be appropriately limited in programmes broadcast before the watershed and must also be justified by the 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 assessed whether the level and nature of the violence was appropriately limited. We took into account Ofcom's 2014 research on Audience Attitudes towards Violent Content on Television<sup>1</sup> ("the Violence Research") which found that there was a general consensus among respondents that there should be no sexual violence before the watershed, under any circumstances. The research indicated that this is the type of material parents find most disturbing. They considered it to be particularly harmful for children and younger teenagers because it sends ambiguous and negative messages about acceptable sexual behaviour, at a time when young people's attitudes are still being formed.

The film included a depiction of sexual violence, in which a young woman, Bauria, was the victim, and implied that the sexual violence against her continued beyond what was shown on screen. Specifically:

- Bauria was kidnapped by a gang of male drug dealers who pursued her in a van as she fled in clear distress.
- She was held captive by the gang. Two men then subjected her to sexual violence; one by attempting to undress her and one by attempting to kiss her. They then attempted to continue the sexual violence when she resisted.
- Bauria fought back in distress, screaming loudly, for a prolonged period.
- Following the intervention of a third man, Bauria was pushed to the ground and the suggestion was that she had been injected with a drug, although the insertion into her arm was not shown.
- Later, a policeman showed a picture of Bauria on his phone to another policeman and said "*Do you want to do her? She looks good*". Later, when the policeman visited Bauria it was implied she had been an ongoing victim of sexual violence during her capture as the gang member referred to her being "*well trained*".

Bauria was presented as vulnerable as she was a young woman, outnumbered by a gang of men who were holding her captive in a house. She was assaulted by three of them as they held her down and drugged her. Therefore, we considered this element of the film's violence was likely to be considered more problematic by viewers.

Although we acknowledged that some of the sexual violence against Bauria was implied, we considered that older children and teenagers were likely to have understood that she had been the victim of a sexual assault, and that this had continued during her captivity by the gang.

In our view the following sequences added to the impact of the sexual violence broadcast before the watershed:

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/54933/violence\\_on\\_tv\\_report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/54933/violence_on_tv_report.pdf)

- Immediately before the assault on Bauria, one of the gang members aggressively beat another with a cricket bat. While the points of impact of the beating were not visible for most of the sequence, there was a clear shot of the bat hitting the victim's legs. The impact of the violence was further heightened by the victim's screams, shots of the victim's expressions of pain, and the length of the beating (around 10 seconds)
- Sartaj, a policeman, pushed another man to the floor where he kicked and beat him. The impact of the violence was heightened through clear shots of Sartaj kicking the man's body, thudding sounds and Sartaj's angry shouts.
- Sartaj attacked his younger brother with his hands, clearly hitting him eight times across the face and arms and with shots of his brother looking distressed and crying.

While some of the physical violence was implicit and not fully visible on screen, Ofcom considered that the cumulative effect of the repeated violent incidents before the watershed increased its impact.

The Violence Research indicated several other factors which can affect viewers when watching violence in programmes. These factors might include an "atmosphere of unease", music, or implied violence created by prolonged menace which can add to a viewer's discomfort by creating a sense of threat. The participants in the research also indicated the power dynamic between the perpetrator and the victim can be significant. Viewers were found to be less accepting of pre-watershed violence when more vulnerable characters were shown to be the victim of violence.

We considered that there was an ongoing dark and menacing tone and implied sense of threat in the film before the watershed, which added to the impact of the violent scenes. In particular, we considered that there was a build-up of threat and menace in the sequence in which Bauria was physically attacked by the three men. Specifically:

- Bauria was first forced to witness a member of the gang being beaten with a cricket bat, a gang member then instructed another man not to kill him as he was "family". The sense of threat built, as another kidnapper implied that Bauria's fate would be worse than his as she was not "family" while Bauria cried in distress.
- The uneasy tone of the music used during the sequence further added to the menacing tone, as did the implication at the end of the sequence that Bauria was injected with a drug.
- The sense of threat and implied violence against Bauria continued after this sequence; a policeman showed a picture of her on his phone and said "do you want to do her?" and a gang member referred to her being "well trained" implying she was the ongoing victim of sexual violence.

For the reasons set out above, we considered that the violence was not appropriately limited in this programme. We next considered whether the violence was justified by the context.

While the film focused on the dark effects of crime and drug trafficking from an anti-drugs perspective, we considered that it built up a prolonged sense of threat and menace before the watershed that added to the impact of the violent scenes. However, we acknowledge

that there were also lighter sequences, including humorous scenes with Tommy, that provided some relief from the build-up of tension.

We also took into account that the film is well-known and so some viewers of this channel may have had prior knowledge of its themes. However, the film was not preceded by a warning to alert viewers to the violent content in advance, and B4U Movies typically shows a variety of content, including family entertainment. Therefore, we considered that the broadcast in the early evening on a Saturday would have meant that parents and carers were likely to have expected content that was suitable for family viewing.

In light of the above we did not consider that the violence was justified by the context.

Our Decision is that the violence in this film was in breach of Rule 1.11.

#### Rule 1.14

This rule states that the most offensive language must not be broadcast before the watershed on television.

The programme included 31 uses of "fuck", "sisterfucker" and "motherfucker" in the English subtitles before the watershed. It also included four visibly mouthed but audio muted uses of the most offensive language in the Punjabi audio before the watershed, including "sisterfucker", "fucker" and "fucking".

Ofcom's 2016 research<sup>2</sup> on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language. Therefore, our Decision is that the broadcast of this programme before the watershed was also a clear breach of Rule 1.14.

#### Rule 1.16

This rule states that offensive language must not be broadcast before the watershed unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

We took into account Ofcom's research on offensive language<sup>3</sup> which indicated that viewers saw the word "cock" as "strong" language which was generally unacceptable pre-watershed. Our research found that "shit" and "asshole" were viewed as medium strength language, with some potential to offend pre-watershed.

The programme included at least 22 uses of offensive language in the English subtitles before the watershed, including 17 uses of the word "cock", three uses of the word "shit" and two uses of the word "asshole".

We went on to consider whether this use of offensive language was justified by the context.

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<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area – *Attitudes to potentially offensive language and gestures on television and on radio* – which is available at: [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)

<sup>3</sup> See footnote 2

As set out above, while the film focuses on the negative effects of drug culture, B4U Movies shows a variety of content, including family entertainment, and this film was broadcast in the early evening on a Saturday. There was also no warning to alert viewers, and so we do not consider that audiences were likely to have expected the use of this offensive language. We did not consider that the offensive language broadcast was justified by the context.

Further, we considered that 22 instances of offensive language broadcast between 19:55 and 21:00, which included 17 uses of "strong" language, constituted frequent use.

Our Decision is that the broadcast of this programme was also in breach of Rule 1.16.

### Rule 2.3

Rule 2.3 of the Code requires that broadcasters must ensure that material which may cause offence is justified by the context.

In Ofcom's view the 31 instances of the most offensive language and the 22 instances of offensive language before the watershed were clearly capable of causing offence. Viewers expect stronger material to appear later in the schedules.

We therefore considered whether this offensive material was justified by the 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.

Given that B4U Movies is not a channel aimed at children and also that the film focused on the negative effects of drug culture, viewers might have expected some offensive language. However, the film was not preceded by a warning and started at 19:55 on a Saturday. We therefore considered that the nature and frequency of offensive language was likely to have exceeded audience expectations for a programme broadcast at this time on this channel.

Ofcom took into account that the Licensee said that the broadcast of this film was an "inadvertent error" and that it had added new processes so that the error was "not repeated...under any circumstance". However, for the reasons set out above, our Decision is that the broadcast of the most offensive language in this case was not justified by the context, and also breached Rule 2.3.

### **Breaches of Rules 1.11, 1.14, 1.16, and 2.3**

## In Breach

### Trailer for *Veere di Wedding* *Zee TV, 29 April 2018, 15:30*

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#### Introduction

Zee TV is a general entertainment service which predominantly broadcasts programmes in Hindi. The licence for Zee TV is held by Asia T.V. Limited (“Asia T.V.” or “the Licensee”).

“Veere di Wedding” is a Hindi and English-language comedy film, rated ‘15’ by the British Board of Film Classification. Ofcom received a complaint about offensive language before the watershed in a trailer for this film, which was broadcast during the channel’s *International News Bulletin*.

The trailer included: “*Why don’t you get a fucking job, Sakshi?*” (spoken in English).

Ofcom considered this raised potential issues under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast before the watershed...”.

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

#### Response

Asia T.V. apologised for this “regrettable mistake”, adding that this trailer “was never intended to be shown pre-watershed”, and that in all other international feeds it was broadcast later than 9pm. It went on to say that the content broadcast on its channel historically had no swearing or offensive language, and that the “Veere di Wedding” film was an “outlier” in this sense.

The Licensee explained that staff in India had failed to replace the clip with an appropriate pre-watershed version, and that this was an “unusual error” on their part. As a result of this incident, it said that staff had been reminded to account for the 5-hour time difference between the UK and India when scheduling pre-watershed content, particularly considering the new generation of Bollywood films, to ensure that they do not have a repeat of such an issue.

#### Decision

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

Ofcom’s 2016 research on offensive language<sup>2</sup> makes clear that the word “fuck” and its variations are considered by audiences to be amongst the most offensive language.

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

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

Therefore, the use of the word "fucking" in this trailer was a clear case of the most offensive language being broadcast before the watershed.

Our Decision is that the broadcast was in breach of Rule 1.14 of the Code.

**Breach of Rule 1.14**

## In Breach

### Panorama

**BBC1, 11 January 2016, 20:30<sup>1</sup>**

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#### Introduction

This episode of the current affairs programme *Panorama* examined evidence of young people in the Medway Secure Training Centre ("MSTC"), run at the time of broadcast by private security company G4S, being allegedly mistreated, bullied and hurt by G4S staff at MSTC<sup>2</sup>. It included material filmed by an undercover reporter posing as a member of G4S's MSTC staff.

Some of the secretly filmed footage appeared to show the alleged use of excessive force on young people (known as "trainees") held in the facility. It included footage of:

- a 14 year-old boy referred to in the episode by the pseudonym "Billy" to protect him from identification; and
- a 16 year-old boy referred to in the episode by the pseudonym "Lee" to protect him from identification.

Shots of the faces of Billy and Lee were also blurred to help conceal their identity, although their voices were not disguised.

#### Billy

Ofcom received a complaint that Billy was also referred to by his real first name<sup>3</sup> during the programme. One clearly audible instance occurred during a sequence in which the undercover reporter was talking to camera about the boy's alleged mistreatment, which he had secretly filmed previously. There were two other instances of his real name being used, which were almost inaudible, during secretly filmed footage of a conversation between G4S staff at MSTC.

During the investigation, the local authority which had previously been responsible for Billy's care also expressed concern that Billy's voice was not altered and his mother was interviewed, and her face not blurred.

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<sup>1</sup> This Decision was amended on 6 August 2018 after publication to insert text that was missing due to an administrative error.

<sup>2</sup> Following broadcast of the programme, a number of former members of G4S staff were prosecuted for criminal offences, such as assault and misconduct in public office. All were cleared of all charges. Ofcom postponed publication of this decision until all proceedings were concluded.

<sup>3</sup> Ofcom has not included Billy's real name in order to protect his identity.

## Lee

Secretly filmed footage of Lee was featured in one instance only before the end of the programme. This one piece of footage, filmed on the reporter's last shift at MSTC, was accompanied by narration by the undercover reporter which described Lee as 16 years old and vulnerable.

During the investigation, concerns were raised about Lee's<sup>4</sup> participation in the programme by the local authority which had previously been responsible for his care. The concerns related to: (i) the possibility that Lee could be identified; and (ii) Lee's vulnerability and whether the BBC had taken due care when featuring him in this programme.

The local authority also raised the wider issue that during the undercover filming in MSTC, which took place from early October to early December 2015, the reporter witnessed inappropriate treatment of the boys by staff but the BBC did not notify the relevant authorities until the end of December 2015. The local authority considered that during the production, the BBC had left vulnerable young people at risk of abuse.

Ofcom considered that, in the circumstances, the involvement of Billy and Lee in this programme raised potential issues warranting investigation under Rule 1.28 of the Code:

"Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis".

We therefore sought the BBC's views on how this broadcast complied with this rule.

## **Response**

The BBC provided Ofcom with three sets of representations:

- The first set of representations (the "first representations") concerned only the due care of Billy and the comments on the investigation conducted before Ofcom sought third party representations on its first Preliminary View<sup>5</sup>;
- Ofcom invited the BBC to provide further representations (the "second representations") following third party comments made by the local authority responsible for Billy and Lee prior to their detention in MSTC. These second representations contained a detailed response to the concerns relating to both Lee and Billy raised by the local authority; and

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<sup>4</sup> Ofcom provided the first Preliminary View to the third parties referred to by the BBC in its representations, namely: the local authority responsible for Billy and Lee before they went into MSTC; Billy's mother; and, the two independent experts who advised the programme makers on the basis that their identities would not be disclosed. In its response to Ofcom, the local authority raised several concerns about Lee which had not initially been investigated by Ofcom. Therefore, Ofcom invited the BBC to provide a second set of representations responding to the concerns not previously considered.

<sup>5</sup> The first Preliminary View proposed a breach of Rule 1.28 with regard to the BBC's failure to ensure the due care of Billy.



- The BBC also responded to Ofcom's second Preliminary View<sup>6</sup> ("the third representations") providing further evidence relating to the due care of Lee which sought to address the areas of concern raised by the local authority.

### First representations

The broadcaster stated that there was "a clear public interest in gathering and broadcasting material which [allegedly] showed the persistent and aggressive mistreatment of young offenders by staff" at the MSTC. It said that the planning of the programme took place "over several months and involved regular and frequent discussions between the programme makers, senior BBC editorial figures and the BBC's legal advisors". It added that the BBC programme makers were "aware of the need to safeguard the welfare of all the young offenders in the training centre, who were aged between 12 and 18 years old, throughout the production process".

The BBC explained that Billy's real name had been broadcast as the "result of a genuine error which was only spotted as the programme was being transmitted".

The BBC then set out the steps its programme makers had taken at each stage of production to ensure the due care of Billy.

### *Before and during production*

The BBC stated that the undercover reporter was "given clear guidance before any filming took place". He was instructed to limit the covert filming to members of staff where there was "clear evidence of bullying and maltreatment of young offenders or other wrong-doing". The evidence recorded during the secret filming was "regularly reviewed by senior editorial staff to ensure subsequent filming was focussed on specific members of staff".

The broadcaster stated that the programme makers also sought and took advice from two independent experts: an internationally recognised expert on managing challenging behaviour in young people, and a specialist child protection expert. The programme makers discussed with them the extent of the [alleged] mistreatment which had been witnessed and recorded, and considered whether this treatment was likely to have created an immediate risk of substantial harm to any of the young people detained at the centre. The BBC said that the view of the two professionals was that there was no such risk and there was no requirement for the programme makers to take any "pre-emptive action".

### *Post-production*

During post-production, the BBC programme makers continued to consider the need to safeguard the welfare and dignity of the young people who would be featured in the programme.

The programme makers discussed the specific teenagers to be featured in the programme with those most closely involved with, and responsible for, their welfare. In the case of Billy, the programme makers spoke on three occasions to the Director of Children's Services at the local authority which had the longest contact with, and responsibility for, him. They

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<sup>6</sup> The second Preliminary View proposed a breach of Rule 1.28 with regard to the BBC's failure to ensure the due care of both Billy and Lee.

explained the nature of the footage they had gathered and discussed the most effective ways to protect Billy's physical and emotional welfare.

Measures were taken to protect the identity of the young people appearing in the programme including:

- referring to the young people featured only by fictitious first names;
- not using the family name in any instance; and
- obscuring the faces of the young people by "heavy blurring".

The BBC said that the programme makers' decision to blur Billy's facial features and use of a pseudonym was discussed in detail with Billy's mother and the Director of Children's Services. The intention behind these steps was "to ensure his identity was concealed from the general public and to minimise the likelihood of him being identified by the limited number of people who may have known him but were unaware of his custodial sentence". The BBC programme makers took the view that it was not necessary to distort Billy's voice "because there was no aspect of his accent or language which would render him readily identifiable, either by those who knew him but were unaware of his detention, or by members of the general public who had no previous knowledge of him". In addition, the programme makers took the view that "[r]e-voicing or distorting [Billy's] response ran the risk of misrepresenting the seriousness of the events which took place".

The BBC stated that the Director of Children's Services was briefed by social workers on Billy's case and agreed that blurring his features and using a pseudonym was sufficient. It also said that the Director of Children's Services had expressed no concern to the programme makers before transmission that the use of the footage of Billy in the programme was likely to have any detrimental effect on his wellbeing, taking account of what was known about his personality and background.

The BBC stated that the programme makers also held a number of discussions with the Director of Children's Services from the local authority prior to broadcast to review the way in which Billy was portrayed in the programme. In particular, they considered the views expressed by Billy and his mother and assessed how to address any potential negative consequences of including him in the programme. The BBC stated that the Director of Children's Services assured the production team that the local authority would support Billy's family before, during and after broadcast.

The BBC said that the programme makers also spoke to Billy and his mother prior to broadcast, and another family member whom Billy was living with at this time. Billy and his mother were aware of the footage which had been secretly filmed, the specific sequences which the programme makers intended to include in the programme, and the nature of Billy's involvement. They agreed that the measures proposed by the programme makers were sufficient to protect his identity and safeguard his welfare.

The BBC set out how the disclosure of Billy's real first name in the programme had occurred in error:

- the episode was originally scheduled for broadcast on 18 January 2016;

- the transmission date was brought forward to 11 January 2016 because G4S, the company responsible for running MSTC, issued a news release on 8 January 2016<sup>7</sup> stating that it had referred a number of “serious allegations of inappropriate staff conduct” at MSTC to the appropriate investigating authorities;
- the news release and the subsequent public statements made by G4S’s Managing Director for Children’s Services did not, the BBC said, refer to the fact that this action was “a direct response to the evidence gathered by Panorama”;
- the BBC therefore considered there was “a clear editorial justification for putting the evidence of staff malpractice in the public domain as quickly as possible” and accordingly the programme’s transmission was brought forward by one week;
- the BBC said the “unfortunate consequence of the decision to bring forward the transmission date was that reference to the boy’s real first name was inadvertently included”; and
- the BBC concluded that this was “solely the result of time pressures on the programme makers which severely limited the opportunity to check and review the programme before transmission”.

The BBC then explained the steps taken by the programme makers immediately following the broadcast, when the error was identified:

- Billy and his mother were both made aware of the error: the programme makers made contact with Billy’s mother on the evening the programme was first shown. Subsequently, Billy’s mother confirmed that she had spoken to her son on the evening the programme was broadcast and the programme makers also spoke to Billy directly; and
- the programme was immediately removed from the BBC iPlayer and was edited to remove any reference to the Billy’s real first name.<sup>8</sup>

The BBC made clear that Billy’s family name was never used during the programme and considered that, even though Billy’s mother appeared in the programme and her appearance and voice were not obscured, her contribution did not “materially increase the possibility that her son could be, or would be, identifiable”. It gave further background details in support of this view.

In conclusion, the broadcaster stated that it was confident “that there have been no negative consequences for Billy as a result of his inclusion in the programme or the error which led to the use of his real first name”. The BBC said that Billy’s mother had confirmed that, to the best of her knowledge, “her son has not been identified by anyone who did not already know him”.

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<sup>7</sup> See: <http://www.g4s.uk.com/en-GB/Media%20Centre/News/2016/01/08/Medway%20Secure%20Training%20Centre/>

<sup>8</sup> The references to Billy’s real name were edited out of the version of the programme available on BBC iPlayer and the BBC website.

Further, the BBC said Billy and his mother “supported the programme’s efforts to expose the serious [alleged] abuse carried out by staff at the training centre” and Billy’s mother had identified “a number of positive outcomes”. These included that: her son was now more aware of the impact his behaviour has on others; he was now more aware of what could constitute inappropriate behaviour by others towards him, for example when being restrained; and, the BBC said, she was of the view that the programme had “helped to raise awareness of problems within the youth justice system and contributed to a positive shift in public attitude towards young offenders”. The BBC said that Billy’s mother had been “appalled by the evidence she was shown and felt it was in the best interests of both her son and others detained at the training centre for the ill-treatment to be exposed”.

The BBC stated that the programme makers had apologised “for this deeply regrettable error” to Billy’s mother and the children services department responsible for his care.

### Second representations

The first Preliminary View was shared with the third parties referred to in the BBC’s first representations above: namely, the local authority; the independent experts; and Billy’s mother. The independent experts and Billy’s mother were content with the BBC’s references to them as cited in the first Preliminary View. However, the local authority, previously responsible for the care of Billy also raised additional concerns about the due care of a second young person, Lee, who it had also been responsible for before he went to MSTC.

Ofcom therefore sought further information from the BBC about its compliance with Rule 1.28 during production, particularly regarding the due care of Lee.

The BBC restated that the welfare of the young people at MSTC was of “paramount concern” throughout the *Panorama* investigation. It had taken “appropriate steps at every stage to consider and to assess the physical and emotional welfare” of the young people at MSTC and was committed to alerting the appropriate authorities if it judged there was a “serious risk of imminent harm to any individual”.

The BBC also reiterated the overwhelming public interest in reporting “the long-term, systemic intimidation and bullying” which trainees had been subjected to at MSTC. This included alleged physical abuse and inappropriate restraint as well as verbal and physical intimidation. The programme had gathered “damning evidence of serious failings; concerns about these failings had previously been raised, but had not been addressed by any of the agencies or organisations which were actually responsible for safeguarding the trainees at the centre”. As a result of the programme, a number of G4S staff at MSTC were charged with criminal offences and (on 1 July 2016) the Government’s National Offender Management Service took over the running of the centre from G4S<sup>9</sup>.

The BBC said it had taken the view that it had to establish “a pattern of abuse, intimidation and bullying” by the staff at MSTC and demonstrate that the abuse was “systemic and long term” if the investigation was to lead to improvements.

The BBC also said that it had to balance the care of the trainees exposed to potential abuse with the public interest in gathering “sufficient evidence to demonstrate unacceptable

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<sup>9</sup> Following broadcast of the programme, a number of former members of G4S staff were prosecuted for criminal offences, such as assault and misconduct in public office. All were cleared of all charges.

practices which had not been addressed or resolved by the relevant organisations responsible for the welfare of those at the centre”.

The BBC stated that the secret filming of the [alleged] mistreatment over a number of weeks was necessary to establish: “the nature of the abuse and intimidation at Medway”; that the abuse was ongoing; and to establish it was widespread among the staff working there. It said that it would not have been practical, or in the public interest, to inform the authorities after witnessing a single incident unless there was evidence that a child or young person was at serious risk of imminent harm. Reporting a single incident may have led to the identification of the undercover reporter and prevented the further gathering of evidence. In addition, it would have enabled the authorities to dismiss the incident as a “one-off”. This was an important consideration for the BBC because concerns had been raised about MSTC previously but “none of the bodies responsible for safeguarding trainees had taken sufficient action to protect them”. The BBC said that because of this edition of *Panorama* “further mistreatment of children and young people at Medway STC (and potentially at other centres like it) has been prevented”.

The BBC emphasised that the investigation was “overseen, regularly reviewed and discussed” by senior editorial staff. All of those involved “had extensive experience in safeguarding the welfare of children and young people during the making and broadcast of such programmes”. It then set out the measures it had taken to ensure safeguarding before, during and after production:

#### *Before production*

The BBC stated that the safeguarding responsibilities of the undercover reporter were carefully considered before production. It was established that the reporter should intervene directly/immediately where there was “a significant risk of imminent, serious harm to an individual”. Guidance was provided for the reporter, including possible scenarios and advice on how to respond appropriately.

The production team identified key safeguarding issues at MSTC based on information from former staff. This meant the reporter was aware of the likely situations he would encounter and those members of staff most likely to be responsible for mistreating trainees.

Further, a range of training was provided to the undercover reporter before he went to MSTC. This included: a seven-week training course for G4S staff, approved by the Home Office, which included a study of “the Children’s Act, dealing with challenging behaviour and the correct use of Physical Control in Care”; additional training in physical restraint and good care delivered by specialists commissioned by the BBC; and additional training in tactics used by trainees to enable him to assess and deal with situations appropriately.

#### *During production*

The BBC stated that the undercover reporter met the Producer or Assistant Producer before and after each of his shifts at MSTC to assess the investigation, the safety of the reporter and the safety of the trainees. The primary consideration was “whether there was or appeared to be ‘a significant risk of imminent, serious harm to an individual’ such that immediate action was necessary”. In addition, all recorded material was reviewed the following day by the Producer and/or the Assistant Producer.

The investigation was overseen and reviewed on a regular basis by experienced, senior editorial figures including the Deputy Editor and Editor of *Panorama*, a Senior Advisor from the BBC's Editorial Policy Unit and the Deputy Editor of BBC Current Affairs. The Editor of *Panorama* met the Deputy Head of Current Affairs on 5 October, 4 November and 9 November 2015 to assess the evidence gathered to date, to consider whether any action was necessary to safeguard the welfare of trainees, and to consider whether it was appropriate or necessary to continue filming.

In addition, material filmed by the reporter was reviewed and assessed by an independent child welfare expert on 4 November 2015 and a further follow-up meeting was held with the same independent expert on 20 November. This was to review the situation further and confirm whether the expert remained of the view that there was no serious risk of imminent harm to any of the young people. Finally, a second independent expert viewed the previous material, as well as material filmed in the interim, on 24 November. The professional view of both experts was that the conduct of staff was "completely unacceptable but posed no serious risk of imminent harm...such that the police or children's services needed to be informed at that time".

The BBC considered that the incidents involving Billy and Lee were not "so serious, or so likely to lead to imminent harm, when judged in isolation, that it was necessary to inform the police or relevant authority immediately". The decision to end the undercover filming was taken by senior managers in BBC News once sufficient evidence had been gathered to establish a pattern of systemic abuse by staff at MSTC.

#### *Post-production*

The BBC stated that it continued to "assess the potential threat to the trainees at MSTC after the final day of filming on 6 December 2015". This included contacting the relevant authorities with primary responsibility of the trainees at MSTC on 30 December 2015. This was "the earliest date allowing for reviewing and collating the material, setting out the allegations in writing and taking account of the Christmas holiday period". The local authority previously responsible for Billy and Lee was contacted on 31 December 2015.

#### *Lee*

The local authority was concerned about Lee being a vulnerable young person and that his participation in the programme could potentially have negative consequences for him. The BBC said that the local authority was "well placed to offer an informed opinion on whether and how the story of [Lee's] [alleged] mistreatment should be included in the programme and any potential consequences of doing so". It explained its understanding that the local authority's concerns about the "participation" of Lee related not to whether the footage inside MSTC was broadcast, but to the possibility of Billy and/or Lee participating in an interview in which they would speak directly to the programme.

The BBC stated that, although it was in contact with the local authority a number of times from 31 December onwards, it was unaware that the local authority had concerns about the material filmed in MSTC being broadcast until after transmission of the programme on 11 January 2016. Further, the local authority was made aware on 8 January that broadcast of the programme had been brought forward by a week and therefore had sufficient time before transmission to contact the Producer to raise any concerns.

The BBC explained that the local authority confirmed on 5 January 2015 (prior to the broadcast of the programme) that it would contact Lee's family and ensure they were aware he would feature in the programme. However, the BBC added that the programme makers also "took independent steps to find out as much as possible about Lee's background and circumstances to help it make an informed decision about what material to broadcast". This included contacting Lee's family members directly.

The BBC stated that "[e]xtensive discussions were held to decide the amount of detail which should be included" about Lee's circumstances. Following broadcast, a second agency involved in Lee's care had contacted the programme to ask that a specific description of Lee should be removed. Versions of the programme on the *Panorama* website and the BBC iPlayer were edited as soon as possible to remove this reference.

Finally, the BBC stated that to ensure that Lee and Billy were not identified their faces were heavily blurred and pseudonyms used (apart from the erroneous occasions referred to above in the case of Billy). Following the broadcast of the programme, the local authority had raised concerns that the young people's voices had not also been changed. The BBC stated it was unaware of a request from the local authority for their voices to be changed prior to the broadcast of the programme.

### Third Representations

In response to Ofcom's second Preliminary View, in which Ofcom provisionally concluded that the BBC had not sufficiently ensured the due care of Lee (as well as Billy), the BBC provided additional evidence:

- The BBC disagreed with Ofcom that the personal information about Lee, which was broadcast in the programme, could have risked his identification. Ofcom had taken this preliminary view because, following the broadcast, a second agency involved in Lee's care had requested that a specific description of him be removed from any future transmission of the programme. The BBC explained that the concern raised by this agency was not related to any risk of possible identification. Rather, the concern related to Lee's personal request for the description not to be used. The BBC added that the programme makers were "careful to include no information which would have enabled him to be identified by those who did not already know him and his circumstances". The BBC said there were no grounds to conclude that information about Lee broadcast in the programme raised any risk of his identification.
- The BBC also disagreed with Ofcom that it could have alerted the relevant authorities responsible for Billy and Lee about the evidence of [alleged] mistreatment uncovered during the undercover filming in MSTC in a more timely way. The BBC set out details of the thorough internal review of the sensitive and detailed information and evidence which was undertaken in advance of alerting the third parties and the reasons for this:
  - the information provided had to be specific, detailed and evidence based to ensure: it supported the serious allegations being made; and could not be called into question by those bodies whose conduct it was criticising; and
  - the process of informing the third parties had to be carefully considered and co-ordinated. The primary agencies involved were G4S, the Youth Justice Board,

Medway Safeguarding Children Board, Kent Police, and the local authority responsible for Billy and Lee. None of the primary agencies expressed concerns about the timeliness with which the team presented its evidence. Indeed, the only organisation that did raise concerns about timeliness was the local authority and the communication with the council did not have “the same or greater priority than the communication with parties more directly responsible for the welfare of the children in question.”

- Finally, the BBC responded to the issue of contact with the relevant authorities following production. It stated that its communication with the local authority was “clear and sufficient for the purpose and that proper account was taken of the issues [it] raised”.

## Decision

Reflecting our duties under the Communications Act 2003<sup>10</sup>, Section One of the Code requires that people under eighteen are protected, including young people under the age of eighteen who take part in programmes.

If a person aged under eighteen participates in a television or radio programme, the broadcaster must comply with Rule 1.28 of the Code. Ofcom's role in applying Rule 1.28 is to ensure that the broadcaster has taken due care before, during and after production of any under-eighteens who have participated in the programme.

Ofcom has published detailed guidance on this rule (“the Code Guidance”)<sup>11</sup> which was drafted with the assistance of child experts and child welfare groups. The purpose of the Code Guidance is to help broadcasters achieve the appropriate level of protection for under eighteens in programmes to ensure compliance with Rule 1.28. The factors Ofcom expects a broadcaster to consider when providing due care before, during and after production are set out in the Code Guidance.

Ofcom took careful account of the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority.

The concept of “due care” is central to Rule 1.28. The Code Guidance makes clear that the level of care must be “appropriate to the particular circumstances”. Broadcasters are required to decide what measures are appropriate in the context of individual programmes, genres and formats, and the nature and level of child participation involved. Relevant factors include a participant's age, maturity and capacity to make judgments about participation and its likely consequences.

In this case, an episode of this long running current affairs programme featured secretly filmed footage of two trainees, known as Billy and Lee, in a youth prison and training centre in Kent. Billy was described in the programme as having been “in and out of trouble for most

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<sup>10</sup> See section 319 of the Act.

<sup>11</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/updated-code-guidance.pdf>.



of his life", and several examples of footage allegedly showed him being bullied and restrained by the G4S staff at MSTC with what appeared to be excessive force. Lee, who appeared towards the end of the programme, was described in the programme as vulnerable. The one example of Lee's alleged mistreatment showed him with a towel around his wrist, as a result of an act of self-harm, before he was restrained by the G4S staff at MSTC with what was described during the programme as "an improper use of those kind of techniques". To help protect their identities, the boys' faces were heavily blurred and each boy was referred to by a pseudonym, the exceptions being when Billy's real name was used three times (see Introduction). Neither of the boys' voices were altered.

This case involved significant safeguarding issues, given Billy and Lee's ages and their vulnerability in these circumstances. Ofcom therefore considered the various steps taken by the BBC during pre-production, production and post-production to establish whether it took due care of the welfare and dignity of the two young people featured in this programme as required by Rule 1.28.

#### Before and during production

Ofcom acknowledged the significant public interest in gathering the material in this case to examine alleged mistreatment and bullying of young people in a secure centre and that undercover filming was clearly essential in these circumstances. Therefore, we accepted that Billy and Lee could not have been made aware in advance or during the undercover filming and therefore could not have provided assent<sup>12</sup> to participate in this programme before it was filmed. We also took into account of the BBC's view on the need for the filming to continue over time to establish the nature of the alleged abuse and that it was ongoing and widespread, and that reporting a single incident to the relevant authorities may have prevented the further gathering of evidence.

In the second representations as set out above, the BBC explained that it was established before production that the undercover reporter should intervene directly/immediately where there was "a significant risk of imminent, serious harm to an individual". In addition, specific steps were taken to support the reporter working undercover. He was given training in physical restraint and care (in addition to the standard G4S training), as well as information relating to key safeguarding issues at MSTC, so he was prepared for likely situations and aware of the members of staff most likely to mistreat trainees.

During production, there were meetings between the undercover reporter and the Assistant Producer or Producer after every shift, in which the primary consideration was whether there was, or appeared to be, "a significant risk of imminent, serious harm to an individual" such that immediate action was necessary; and all recorded material was reviewed by the Assistant Producer and/or Producer the following day.

Further, as well as scrutiny by those closely involved with the production of the programme, the investigation was "overseen and reviewed" regularly by other senior editorial staff including the Deputy Editor and Editor of *Panorama*, a Senior Advisor from the BBC's Editorial Policy Unit and the Deputy Editor of BBC Current Affairs.

On the issue of expert advice, Ofcom's Guidance sets out that the type of programme may influence the extent of any expert opinion considered appropriate and, in this exceptional

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<sup>12</sup> The Code Guidance explains that, based on expert advice, children under the age of 16 are capable of indicating their willingness ("assent") to participate or be involved in a programme.

case, Ofcom was reassured that the BBC set out in its first representations that it had sought and taken advice from two independent experts – an internationally recognised expert on managing challenging behaviour in young people and a specialist child protection expert.

Given the subsequent concerns raised by the local authority in terms of the “immediate safeguarding needs” of Billy and Lee, Ofcom requested further information and evidence from the BBC regarding the role of the independent experts during production and whether they had, during the filming in MSTC, specifically advised on the footage of Billy and Lee and identified any safeguarding concerns.

In its second representations, the BBC clarified that the first discussion with a child welfare expert regarding the *Panorama* footage took place on 4 November 2015. A follow-up meeting was held on 20 November 2015 “to review the situation further and confirm whether or not the expert remained of the view there was no serious risk of imminent harm to any of the young offenders”. A second expert reviewed material on 24 November 2015 who “confirmed that in his opinion there was no serious risk of imminent harm”. We took into account that neither expert reviewed the secretly filmed footage of Lee, which was broadcast in the programme, to give a view on whether there was a serious risk of imminent harm to him. However, the BBC set out all the internal steps taken to review the footage and identify the threshold for a serious risk of harm throughout the production.

Ofcom considered that these steps taken before and during production demonstrated: a clear threshold for intervention; an appropriate level of ongoing scrutiny and senior oversight; and, the engagement of appropriate experts.

We noted that the BBC had established that where there was a “significant risk of imminent, serious harm to an individual” the reporter should intervene directly/immediately, and he had been prepared through training to assess and deal with situations appropriately. Regular reporting ensured that, within the BBC, the footage was scrutinised and there was senior oversight of the investigation. In addition, although the independent experts only reviewed material on three occasions during the period of undercover filming, and did not review the footage of the incident involving Lee, we considered this was sufficient when taken together with the other steps taken to safeguard Billy and Lee before and during production. In Ofcom's view, therefore, the level of care of Billy and Lee taken by the BBC before and during production was appropriate in this case, in accordance with Rule 1.28.

#### Post production: identification

Given this programme featured undercover filming of vulnerable young people within the care system, we considered the steps taken by the BBC programme makers to protect their identities. We took into account the decisions to refer to them by fictitious first names and to obscure their faces by blurring.

#### *Broadcast of Billy's real name*

The programme when broadcast included Billy's real first name (clearly audible on one occasion and on two further occasions almost inaudibly). The BBC explained how this occurred: a decision was taken to bring forward transmission by a week due to an announcement by G4S that it had referred allegations of staff misconduct at MSTC for investigation (which did not state this was in response to the *Panorama* evidence); this resulted in “time pressures on the programme makers which severely limited the opportunity to check and review the programme before transmission”; and led to the error

not being identified during editing or pre-broadcast viewings, and only being spotted during transmission.

It was clear to Ofcom that protecting Billy's identity was recognised by the BBC programme makers as a fundamental aspect of ensuring his due care. Ofcom was of the view that the inadvertent disclosure in the programme of Billy's real name in one clearly audible instance seriously undermined the effectiveness of the measures that had been identified. This was because, taken together with other factors (such as the name of the facility where Billy was placed, the fact his voice had not been altered in the programme, and the interview with his mother), the disclosure of his real first name increased materially the chance of him being identifiable.

Ofcom took account of the fact that the disclosure of Billy's real name had resulted from an error that arose due to the BBC's editorial decision to bring forward the programme's scheduled transmission by one week in the light of the G4S announcement. Therefore, the BBC had placed itself under an additional time constraint and in doing so failed to ensure the programme was properly checked before broadcast.

We also acknowledged that the BBC said it was confident that there had been no negative consequences for Billy as a result of the inclusion of his name in the programme and that Billy's mother had confirmed that, to the best of her knowledge, after the programme "her son has not been identified by anyone who did not already know him". The BBC had edited out the use of Billy's real name from the programme available on the BBC iPlayer and the *Panorama* website immediately after broadcast.

However, in Ofcom's view, this was a significant error which had the potential to undermine a vulnerable young person's care and lead to negative consequences for him.

#### *Broadcast of potentially identifying information about Lee*

On the issue of the risk of identification of Lee, the BBC said it was "mindful" of his circumstances and "[e]xtensive discussions were held" to decide how much detail should be included. The BBC said that it had only provided sufficient information about Lee in the programme to support the audience's understanding of why he had been placed in MSTC, rather than a young offenders' institution.

Ofcom was made aware that another agency with care for Lee had requested that a specific description of him broadcast during the programme be removed. The BBC stated that it agreed to this immediately and versions of the programme on the BBC iPlayer and *Panorama* website were edited "as quickly as was possible". Ofcom was reassured by the BBC's third representations that the request for the removal of this reference was not because there was a risk to Lee's identification to the general public, but because Lee had requested it to be removed for personal reasons.

#### *Distorting/replacing of the boys' voices*

The BBC stated that it had briefed the local authority before transmission that it intended to blur Billy's features and use a pseudonym and the authority had agreed that these measures were "sufficient". However, the local authority later said to Ofcom that it had made a request to the BBC, before broadcast, that "the young people's voices [Billy and Lee] be changed as well". In its second representations, the BBC reaffirmed that it had no recollection of such a request.

On the evidence available to it, Ofcom was unable to take a view on whether a request was made to the BBC by the local authority prior to broadcast for the boys' voices to be changed. The BBC stated it had only become aware of this after the programme was broadcast. However, Ofcom acknowledged the BBC's arguments that there was "no aspect of his accent or language which would render [Billy] readily identifiable, either by those who knew him but were unaware of his detention, or by members of the general public", and that distorting his voice "ran the risk of misrepresenting the seriousness of the events which took place". We considered the same applied to Lee, particularly given Lee's voice was heard much more briefly and on only one occasion.

With regard to the issue of identification, it was Ofcom's view, therefore, that it was the broadcast of Billy's real name, and not the fact that Billy's and Lee's voices were not disguised, which constituted the failure to take due care in this case.

#### *Post-production: contact with relevant authorities*

Ofcom considered the concern raised by the local authority about consent for Lee to feature in the programme and whether it was appropriate for him to do so given his vulnerability, and the authority's broader concern about the timing and nature of the BBC's contact with relevant authorities post-production.

The Code Guidance states that for participants aged under 16, broadcasters should normally obtain consent from a parent, guardian or other person over 18 *in loco parentis*. It also suggests that appropriate background checks and an assessment of the impact of participation on a young person participating in a programme should usually be considered at the earliest stage of production to ensure due care. This is particularly important where the young person has vulnerabilities and where the nature and level of participation of the young person may result in potentially negative outcomes.

Lee was 16 at the time of undercover filming and broadcast. As set out above, Ofcom accepted that Lee could not have provided assent to participate in the programme and acknowledged the reasons why the BBC did not advise relevant authorities of the undercover filming at the time of production. In Ofcom's view, in the circumstances of this case and given the significant public interest in broadcasting the material to examine alleged mistreatment and bullying of young people in a secure centre, the BBC did not require the local authority's consent to broadcast the footage of Lee.

However, the BBC did need the local authority's input to assess the impact of participation on Lee to ensure due care. Ofcom considered whether, once filming had concluded, the BBC ensured it shared information with the relevant authorities in a timely way before transmission, to ensure it was able to make a fully informed assessment of the impact of participation on Billy and, in particular, Lee.

In the first representations, the BBC stated that the programme makers had discussed the teenagers to be featured "with those most closely involved with, and responsible for, their welfare". In relation to Billy, the BBC said the programme makers had "explained the nature of the footage" and "discussed the most effective ways to protect Billy's physical and emotional welfare".

However, in its response to Ofcom, the local authority raised two concerns on the BBC's timeliness:

- firstly, that the BBC was not timely in its notification of the evidence of [alleged] mistreatment at MSTC so the young people had to spend more time in there than necessary subjected to the [alleged] abuse; and
- secondly, that following notification it was not fully aware from its conversations with the BBC of the significant focus there would be on Billy; it had concerns about the impact of the programme on Lee; and, the decision by the BBC to bring forward the scheduling of the programme by one week meant that its concerns were not further expressed.

The timeliness issues relating to the first point were twofold: the timeliness of alerting the authorities to the actual [alleged] mistreatment itself (which had been filmed over a period from October 2015 to December 2015); and, once filming had concluded, the timeliness of alerting the authorities to the evidence it had gathered over this three-month period (filming finished at the beginning of December 2015 and the various agencies were informed on 30 and 31 December 2015).

On the first point, Ofcom has already set out above that the level of care of Billy and Lee taken by the BBC before and during production was appropriate in this case, particularly given that there was a need for the filming to continue over time to establish the nature of the [alleged] abuse and that it was ongoing and widespread, and that reporting a single incident to the relevant authorities may have prevented the further gathering of evidence.

On the second point regarding the contact with the relevant authorities, we took into account that the conclusion of filming was in early December 2015 and that notification was given on 30 and 31 December 2015. Ofcom acknowledged that the BBC would have required time post-production to review the material and ensure the allegations were scrutinised and secured before presenting them to the relevant agencies, some of whom were directly responsible for the [alleged] mistreatment of the children. Further, the BBC's third representations made clear the extent to which the BBC had to co-ordinate the presentation of this detailed and evidence based information to six different organisations and its need to prioritise its communication to the bodies directly responsible for the welfare of Billy and Lee. In response to the concerns raised about the timeliness of communication between the BBC and the local authority following transmission, Ofcom was aware that once the BBC had contacted the local authority at the end of December, the parties communicated several times before transmission on 11 January 2016.

Ofcom took the view therefore that there was sufficient opportunity for critical information relating to the participation of Billy and Lee to be provided to the BBC, and the rescheduling of the programme by a week (of which the BBC gave the local authority a short period of notice) need not have prevented appropriate assessment being made of the impact on Billy and, in particular, Lee and the measures needed to ensure their due care.

### Conclusion

Ofcom took account of the clear and significant public interest in the exposure by the programme of the alleged maltreatment of young offenders by staff at MSTC. This *Panorama* undercover investigation resulted in G4S dismissing four members of staff who had been

working at MSTC, and Kent police making various arrests as part of an investigation which G4S said it fully supported.<sup>1314</sup>

In exposing the alleged mistreatment at MSTC, however, it was essential that the BBC did not compromise the due care of the under-eighteens featured in the programme. Ensuring the due care of young people at all stages of production is a key requirement of all broadcasters. The level of care must be "appropriate to the particular circumstances". In this case, Ofcom acknowledged the detailed steps and extensive efforts taken by the programme makers before and during production to ensure compliance with Rule 1.28, particularly given the very serious issues under investigation.

Having carefully reviewed the issues raised by the local authority with specific regard to the due care of Lee, Ofcom has concluded that the steps taken by the BBC following production were sufficient to ensure compliance with Rule 1.28.

However, at the post-production stage there were lapses in the BBC's due care of Billy. Following a decision to bring forward the programme's transmission, the BBC failed to check and review its content sufficiently, and failed to implement correctly the measures it had taken to safeguard the welfare and dignity of the vulnerable 14 year-old. By disclosing his real first name in an undercover investigation programme, which had the potential to identify him, the BBC made a significant lapse in its due care of the boy.

Ofcom acknowledged the efforts made by the programme makers to ensure compliance with Rule 1.28, the challenges of undercover filming and the significant public interest in production of the programme. We recognise that mistakes and oversights can occur in the editing of programmes before broadcast, especially when under the pressure of time. However, this failure by the BBC could have seriously compromised the care of Billy and was avoidable. Therefore, Ofcom concluded that the programme breached Rule 1.28 of the Code.

### **Breach of Rule 1.28**

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<sup>13</sup> <http://www.g4s.uk.com/en-GB/Media%20Centre/News/2016/01/12/Update%20regarding%20Medway%20Secure%20Training%20Centre/>

<sup>14</sup> Following broadcast of the programme, a number of former members of G4S staff were prosecuted for criminal offences, such as assault and misconduct in public office. All were cleared of all charges. Ofcom postponed publication of this decision until all criminal proceedings were concluded.

## In Breach

### Radio Exe News

**Radio Exe, 3 May 2018, 08:00 and 09:00**

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#### Introduction

Radio Exe is a commercial radio station broadcasting in the Exeter area, providing a classical and contemporary music service and range of speech and information features focused on matters of local interest. The licence for Radio Exe is held by Radio Exe Limited ("Radio Exe" or "the Licensee").

Ofcom received a complaint about news items broadcast at 08:00 and 09:00 in Radio Exe's news programmes, which included coverage of the local government elections taking place in Exeter on 3 May 2018, while polls were open. The news items consisted of the following:

#### At 08:00:

Presenter: *"Parts of Exeter go to the polls today, it's election day in thirteen wards, that's a third of council seats, as [reporter] reports".*

Reporter: *"Labour currently holds 29 of the 39 seats, the Conservatives have eight and the Lib Dems and Greens have one each. Even though there's the faintest of mathematical hopes for the Conservatives, Exeter will be a Labour council tomorrow, as it has been for the whole of this decade. Because of the current makeup the Tory group would have to take eleven of the thirteen seats available off Labour for control to change, and even then the Conservatives would only have a minority administration. If they won twelve seats from Labour, that would give them the majority. Even the Conservatives privately concede that's not going to happen; they're hoping that contentious issues such as the bus centre redevelopment will swing some voters their way..."*

#### At 09:00:

Presenter: *"59 polling stations across Exeter are open as parts of the city vote for new local councillors".*

Reporter: *"About 90,000 people across the city are able to vote today, if you're one of them you have the choice of Labour, Conservative, Green or Liberal Democrat for all thirteen seats up for grabs. Right now Exeter is Labour controlled, and that's going to be the case tomorrow too so dominant are they. The Tories have the slimmest chance of taking over, but they'd have to win twelve of the thirteen seats, and not even the Conservatives think that's going to happen".*

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

Rule 6.4: *"Discussion and analysis of election and referendum issues must finish when the poll opens..."*

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

### **Response**

The Licensee apologised for what was “a clear mistake” and apologised for the broadcasts. It added that the two news items were intended to “round-up” its coverage of the election, which had included content from each of the four main Parties, but “evidently should have been transmitted before 7am, on the day before or not at all”.

Radio Exe said that it is a “small station” and that “this clear breach of rule 6.4 has arisen at a time when the station had no full-time journalists”. It added that it had taken steps to rectify this by appointing a “news editor” to “tighten” its compliance processes, and that it had considered its future coverage of “local democracy” in light of the complaint.

The Licensee said that it had apologised to each of the four main parties that had taken part in the local government elections, as well as to Exeter City Council, and provided Ofcom with a number of letters of endorsement from these organisations.

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Six of the Code requires that special impartiality requirements are observed, in particular during elections.

Under Rule 6.4, the discussion and analysis of election issues must finish when the polls are open. The purpose of this rule is to ensure that the broadcast coverage on the day of an election does not directly affect voter's decisions.

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.

The two news items in this case included statements on the likely outcome of the local election taking place that day in Exeter. In our view, these various statements constituted discussion and analysis of election issues and were broadcast whilst polls were open for the 2018 English local elections.

We took into account the Licensee's apology, and the steps it had taken as a result of the complaint. However, our Decision is that these were clear breaches of Rule 6.4.

### **Breaches of Rule 6.4**

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



## In Breach

### **Singapore GP: Qualifying highlights** ***Channel 4, 17 September 2016, 17:30***

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#### **Introduction**

Ofcom monitoring identified references to Rolex during Channel 4's highlights coverage of the qualifying laps for the 2016 Singapore Grand Prix. These included: images of a large Rolex clock face superimposed onto an observation wheel<sup>1</sup> which appeared in shots panning over Marina Bay, the race venue; and a small graphic of the Rolex logo which appeared when race information (e.g. a driver's name, constructor's championship data, knockout stage results, the map of the racetrack) was shown.

Ofcom sought information from Channel 4 to determine whether the references to Rolex constituted product placement. Channel 4 explained that the programme was produced on its behalf by an independent production company ("the programme producer"). Channel 4 added that neither it nor the programme producer, or any person connected to either, received any payment or other valuable consideration with regard to the Rolex references ("the commercial references"). Our understanding is that the programme producer repackaged content it acquired from Formula One.

On this basis, we accepted that the commercial references did not meet the definition of product placement. However, we considered that the references raised potential issues under the following Code rule:

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

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

We therefore requested comments from the Channel 4 on how the programme complied with this rule.

#### **Response**

Channel 4 said that, as would be expected, it had an agreement with Formula One regarding the rights to cover the racing events. It explained that Formula One provides an international live feed of all Formula One events (practice, qualifying and races) to global broadcasters, including to Channel 4. It continued that there are terms in its contract with Formula One relating to the inclusion of the international live feed in its programmes and that these terms contain clear contractual obligations that the feed supplied should be compliant with the requirements of the Code. Channel 4 reiterated that neither it nor the programme producer

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<sup>1</sup> The Singapore Flyer, a large Ferris wheel.

(or any party connected to either) had entered into an agreement or contract regarding the inclusion of commercial references in its output.

Channel 4 said it understood that Rolex is a timing partner of Formula One, and the graphics in the international live feed were intended to serve as an acknowledgement of that role, displayed at appropriate junctures when timing data appeared on screen. Channel 4 believed that, in principle, a graphic-based acknowledgement of providers of technical information had been acceptable in compliance terms in the context of event coverage for many years, subject to the undue prominence rule.

However, Channel 4 acknowledged that some of the commercial references identified in this broadcast were "inappropriate". It submitted that for practical reasons, because of the live nature of some of the coverage, there was no opportunity to edit the material provided (with the exception of dipping sound in the event of offensive language). Channel 4 continued that even when it was showing highlights (as in this instance), the turnaround time between the end of the live event and its highlights programme was extremely limited. It said that, even if time permitted, the way in which the graphics were integrated in the international live feed would make it difficult to remove them and still be able to produce a "coherent race story for the viewers".

However, Channel 4 added that the production team did immediately raise serious concerns about the superimposed clock face at a senior level with Formula One. It understood that as a result of this action (and similar representations it believed were made by another broadcaster) there had been no recurrence of the problem since.

## Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Nine of the Code limits the extent to which commercial references can feature within television programming. This helps ensure that a distinction is maintained between editorial and advertising.

Section Nine does not proscribe all references to products and services in programmes. However, it requires that such references are not given undue prominence. Undue prominence is not solely a matter of the size or duration of a commercial reference. The nature of the programme, likely audience expectations and the suitability of the commercial reference are some of the other factors Ofcom will take into account when determining whether a reference is unduly prominent.

In all cases the degree of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. As made clear in Ofcom's guidance, the extent and nature of the exposure a commercial reference receives needs to be considered against the editorial requirements of the programme.

We recognise that industry developments over the years have changed the way in which televised sport reaches viewers. For some sports, individual broadcasters may film and transmit their own coverage. For others, such as F1, content may be provided by a third party. The latter circumstances do not absolve an Ofcom licensee of its responsibilities to ensure that the content it transmits complies with the Code. In terms of the extent to which commercial references can feature in content, broadcasters need to carefully balance the

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

interests of viewers with the need to maintain a clear distinction between advertising and editorial.

We first considered whether the appearance of the graphic Rolex logo alongside race data was unduly prominent. Channel 4 argued that the use of the Rolex logo could be justified on the grounds of the provision of technical information. It pointed to a long-established and accepted practice of crediting, through the use of graphics, the providers of technical information during the broadcast coverage of sports events. Although we accepted that the race information shown would have been important to viewers, it was not the case that Rolex was the provider of the information in all cases. For example, while Rolex may have been responsible for generating lap time information, it clearly had no role in providing the drivers' names.

Although we did not accept that every use of the Rolex logo was justified on the grounds that the brand was the provider of technical information, we acknowledged that Rolex was the event sponsor. Sponsorship is prevalent in sport and viewers are accustomed to seeing a relatively high volume of sponsors' branding in sports coverage. In this case, while frequent, the graphic was small, appeared only briefly and accompanied race information. We also took into account the nature of the reference including, for example, that the sponsor's brand is not one that is subject to product placement restrictions.<sup>3</sup> In this specific context, we did not consider the appearance of the small Rolex logos to be unduly prominent.

We did not, however, accept that this justification extended to the inclusion of the images of the superimposed clock face. These images dominated the screen, appeared during location shots, and were not integral to the sporting event that was the subject of the programme. We took into account Channel 4's submission about the time constraints on producing the programme. However, this was not a live programme but an edited one featuring highlights of the race. There was therefore an opportunity for these images to be edited out of the programme as broadcast.

We took into account the steps taken by Channel 4, both at the contractual stage and immediately after broadcast to limit commercial reference prominence within its F1 highlights coverage, and that the images had not been repeated. However, in the circumstances of this case, we did not accept that the inclusion of these images was justified. We therefore concluded that the commercial references were unduly prominent, in breach of Rule 9.5.

### **Breach of Rule 9.5**

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<sup>3</sup> Within the UK, there is an established statutory and regulatory regime which restricts the promotion of certain products on the basis on that they are potentially harmful. For example, the Code (reflecting the requirements of the Communications Act) prohibits the product placement of tobacco, alcohol and gambling products among other things.

## Resolved

### Lunch

***fUse FM, 31 May 2018, 12:00***

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#### Introduction

fUse FM is a community radio station that serves the Ulster Scots population of Ballymoney and the surrounding areas of North Antrim, Northern Ireland. It is licensed to provide a mix of speech and music, which includes Ulster Scots, current popular and specialist music programmes. The Licence for the service is held by Ullans Speakers Association ("USA" or "the Licensee").

Ofcom received a complaint about offensive language in the music track, *No Words*, by Dave, which was broadcast at approximately 12:28. This song lyrics included two instances of the word "fuck". Immediately after they had been broadcast, the presenter replaced the music track and said:

*"I'm very sorry about that last song. It will be removed from the system. Unfortunately, we have a few wee curse words in it".*

Ofcom considered the material raised issues under Rule 2.3 of the Code:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure the material which may cause offence is justified by the context ... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Ofcom requested comments from the Licensee about how the content complied with this rule.

#### Response

The Licensee said it fully accepted on this occasion that its "procedure for the checking of songs was not fully implemented". It added that this song had "slipped through the net" and, as a precaution, all other songs loaded on to its system on the same day had been checked again. The Licensee confirmed that none had been found to contain explicit language and the above track had been deleted from its system immediately after the programme.

The Licensee said that its playlists are chosen by presenters or, as in this case, through requests and that "all presenters will now be asked to make sure only songs they are familiar with or that have been vetted first, are ... played". USA said this new music policy had now been drafted, ready for distribution.

It added that, as a result of the incident, it had "made the procedure for the loading and checking of every song much stricter" and planned to implement a "restricted access" server in its new studio, to "prevent unauthorized additions" of material.

The Licensee noted that, “the song was faded and cut immediately by the presenter, who also issued an on-air apology and confirmed to the listeners that the song was being deleted”.

USA said it hoped its “admittance and actions” showed it was “fully committed to compliance and that [it] took every action possible at the time to rectify this matter prior to the complaint”.

## Decision

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

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

Ofcom's research on offensive language<sup>2</sup> indicates that the word, “fuck”, is considered by audiences to be among the most offensive language. The use of the word in this case clearly had the potential to cause offence to the audience.

Ofcom therefore considered whether the content was justified by the context.

Our guidance on offensive language on radio<sup>3</sup> states: “In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast”.

In our view, the majority of listeners to a community radio station playing a broad range of music would be unlikely to expect programmes to contain the most offensive language during the daytime, when the song was broadcast.

However, we recognised that, in this instance, the presenter took immediate action by: replacing the music track, apologising to listeners for the language that had been broadcast and confirming the song would be deleted. Further, the Licensee implemented new procedures and produced guidance for its presenters, to ensure no recurrence. Ofcom's view is that the matter was therefore resolved.

## Resolved

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

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

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf)

## Resolved

### **JLS (presented by Sharky Kurt) Legacy 90.1 FM, 7 April 2018, 11:30**

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#### **Introduction**

Legacy 90.1 FM is a community radio station based in Manchester. It is primarily aimed at the African and Caribbean community and broadcasts both music and speech. The licence for Legacy 90.1 FM is held by Peace Full Media Limited ("Peace Full Media Ltd" or "the Licensee").

*JLS* is broadcast between 10:00 and 12:00 on Saturdays. On 7 April 2018, the usual presenters were absent and Sharky Kurt, who presents the preceding programme, was asked to stand in.

Ofcom received a complaint about the broadcast of the song 'Every Nigger is a Star' by Boris Gardiner. At 11:30, the presenter introduced and played the song, which included frequent use of the word "nigger". The complainant considered the frequent use of this word to be offensive.

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

- Rule 1.16: "Offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed".
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Ofcom asked the Licensee how the content complied with these rules.

#### **Response**

Peace Full Media Ltd said that the broadcast of the track was "totally inappropriate" and should not have been played. The Licensee gave Ofcom its assurance that it is "committed to wiping out this kind of terminology" and that it would do everything in its power to ensure that nothing like this happens again.

It stated that the Boris Gardiner track is not, and was never, part of the station's music library and that this was the first time the track was played on-air. It went on to say that "the request-based show that is presented by the guest-presenter played a pivotal role in this

event". It explained that the presenter, who had been on-air for five hours, "accepts this was a serious lack of judgement on his part".

The Licensee explained that the presenter was "receiving some intense training sessions with regard to appropriate content and the Ofcom guidelines that are in place". It continued that this training would be given to all presenters and volunteers, and that it planned to run refresher sessions twice a year. The Licensee also stated that it would print and distribute a copy of Ofcom's 2016 research "Attitudes to potentially offensive language and gestures on TV and radio" to all on-air volunteers, as well as having a copy in the studio for reference. It added that the presenter would offer a formal apology on his show.

The Licensee said that it truly believed that the presenter intended "no malice" but that the broadcast of the song resulted from naivety. The Licensee provided a statement from the presenter, in which he apologised for any offence caused to the audience. The presenter explained that the song was supposed to be of a "positive and uplifting nature", that he considered the word in question to have been "reclaimed in black culture", and that he believed the word is received differently depending on the context. However, he now understands that not everyone shares this view and therefore he "will not air music of such nature again".

In conclusion, the Licensee stated that it is "a community station whose main purpose and commitment is to the African and Caribbean communities we serve, and have done so diligently for...9 years, we would never condone any action that inadvertently or overtly offends the black community or our listeners". It added that it was "fully aware of the high offence of a word which has been hateful towards our community for many years". It reiterated the steps it had taken to rectify the issue and assured Ofcom that it would "do [its] utmost to ensure this doesn't happen again".

## Decision

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

### Rule 1.16

Rule 1.16 states that offensive language must not be broadcast when children are likely to be listening unless it is justified by the context and that in any event, frequent use of such language must be avoided at such times.

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

Ofcom's guidance on offensive language on the radio notes that:

"For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcast content...between 06:00 and 19:00 at weekends all year round and, in addition, during the same times from Monday to Fridays during school holidays".

Ofcom's 2016 research on offensive language<sup>2</sup> clearly indicates that the word "nigger" is considered by audiences as the "strongest language, highly unacceptable without strong contextualisation. Seen as derogatory to black people".

In this case, the three-minute song included 23 instances of the word "nigger" broadcast at 11:30 on a Saturday during the Easter holidays. We considered this constituted frequent use of highly offensive language at a time where it was particularly likely that children would be listening.

### Rule 2.3

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 expectations of the audience.

As set out above, Ofcom's research indicates that the word "nigger" is considered by audiences to be among the "strongest language" and "highly unacceptable without strong contextualisation". We therefore considered that the repeated use of the word in the song had the potential to cause clear offence, so we went on to consider whether the broadcast of this word was justified by the context.

Legacy 90.1 FM describes its character of service<sup>3</sup> as promoting peace within Manchester, offering a "cohesive and inclusive voice" for the community, as well as "tackling issues of discrimination". The response from the Licensee stating that the song was not in the station's music library suggests that this type of language is not a typical feature of Legacy 90.1 FM's output. In this case, the offensive word was used in the introduction of the track and repeatedly throughout the track with no prior warning. Further, the presenter provided no context to the track that mitigated the potential offence. We therefore considered that listeners would not have expected to hear such content broadcast on this station, and on a Saturday morning.

However, we took into account the basis on which the presenter originally chose to play the track and that both the Licensee and the presenter accepted that the broadcast was inappropriate. We also took account of the numerous steps taken by the Licensee to improve compliance. In the circumstances, Ofcom considered that sufficient steps had been taken to prevent recurrence and our Decision is therefore that this matter is resolved.

### **Resolved**

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

<sup>3</sup> <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000164.pdf>



## Resolved

### **Live Singapore GP: Qualifying** ***Sky Sports F1 HD, 17 September 2016, 13:00***

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#### **Introduction**

Sky Sports F1 HD is a channel dedicated to Sky's coverage of Formula 1 motor racing. The licence for Sky Sports F1 HD is held by Sky UK Limited ("Sky" or "the Licensee").

We received a complaint about a large image of a Rolex clock face superimposed onto an observation wheel<sup>1</sup> that was shown during Sky Sports F1 HD's live coverage of the 2016 Singapore Grand Prix. The image appeared in shots panning over Marina Bay, the race venue, during the programme.

In addition, during the coverage, a small graphic of the Rolex logo featured briefly when race information (e.g. a driver's name, constructor's championship data, knockout stage results, the map of the racetrack) was shown.

Ofcom understood that Rolex was an official sponsor of F1<sup>2</sup> and that the live feed shown by Sky Sports F1 HD was provided by Formula One Management Limited ("FOM"). Ofcom therefore considered that the images appeared to meet the Code's definition of product placement:

"The inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement".

In the context of product placement, a relevant provider is:

"the provider of the television programme service in which the programme is included or the producer of the programme".

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

Rule 9.10: "References to placed products, services and trade marks must not be unduly prominent".

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

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<sup>1</sup> The Singapore Flyer, a large Ferris wheel.

<sup>2</sup> See <https://www.rolex.com/rolex-and-sports/motor-sports.html>

## Response

### Definition of product placement

Sky said that it had no commercial arrangement or contract with Rolex for the inclusion of the brand references within the programme.

It recognised that the commercial arrangement relevant in this case was between the programme producer, FOM, and Rolex and acknowledged that the programme appeared to potentially contain product placement if judged strictly against the Code's definition. However, in considering this issue, Sky believed that it was important to note that it had no awareness of the arrangement between FOM and Rolex and whether payment was made to FOM by Rolex. The Licensee emphasised that it derived no financial or other benefit from any such arrangement.

Sky expressed concern that applying the definition of "relevant provider" to FOM, as the producer of a live sports feed, "will potentially pull matters into the scope of product placement (and consequently the associated regulation) that may not have been the intention of the original legislation and may create significant practical challenges for UK licensed broadcasters".

### Undue prominence

Regardless of whether the Rolex references were judged to meet the definition of product placement, the Licensee agreed that undue prominence was at the heart of the issue. Sky explained that it had entered into a media rights agreement with Formula One World Championship Limited ("FOWC") to transmit coverage of the Formula 1 World Championship. As part of this agreement, it said it was contractually obliged to show the practice, qualifying and race live feeds as supplied to it by FOM, although it is not bound by this requirement if to do so would result in a breach of the Code.

Sky submitted that historically Ofcom (and previous UK television regulators) had recognised that, for UK licensed broadcasters to be able to transmit live or near-live sporting event coverage, a degree of latitude was required when applying the Code's rules relating to on-screen commercial references. Sky believed that where there is a live international feed over which the licensed broadcaster is not in immediate control, it had long been accepted that an increased tolerance around undue prominence and product promotion was needed. Otherwise, it added, "there is a substantial risk that such content could not be shown to the audience within the time frames that the audience demands i.e. on a live or near-live basis".

Sky continued that over the last 20 years, the coverage of live sport, and the extent to which a single live feed of an event is distributed for simultaneous transmission in hundreds of countries, had grown exponentially. It said that as a responsible broadcaster, it uses all reasonable efforts to make rights holders aware of UK regulations when acquiring media rights to an event for which it is supplied with a live or near-live feed. It said that it took all practical steps to ensure such feeds delivered and transmitted by Sky are compliant with the Code – both through clauses within the relevant contracts and through direct discussion with the rights holder (or, if applicable, its appointed host broadcaster). However, it added that it was not always possible to guarantee a feed will adhere to the Code, particularly if coverage comes from a part of the world where local arrangements were beyond its control and where rules related to on-screen commercial branding may be less strict than those set by

Ofcom. Sky added that the extent to which it is able to influence the live feed will, in part, depend upon the relative importance of the UK as a market for the particular rights holder.

The Licensee said that if it had concerns over the level of commercial branding within a live sports feed, it would raise the issue with the provider of the international live feed following the incident to try to prevent repetition. However, it added that the success of such action could not be guaranteed as right holders/host broadcasters based in other territories may work to different standards and may not be willing to adapt the live feed to suit the UK market alone.

In the case of the Singapore GP coverage, Sky said that the Rolex references highlighted by Ofcom occurred during the qualifying session. Under the terms of its contract with FOWC, Sky said it was obliged to transmit on an unaltered basis the live feed of a qualifying session from five minutes before the start, until its conclusion. Although, it had control over the content before and after the relevant qualifying session (as this was produced by Sky Sports), it did not have control over the live feed once the session began. It added that the situation was the same in practice sessions and for the race itself.

Sky said it was fully aware of the requirement to ensure that its output is compliant with the Code and its responsibility to retain ultimate control over its programming. It said that it therefore has a process in place to deal with issues of this type, which it applied in this instance.

Sky told us that its contract with FOWC stipulates that it is subject to all applicable laws and to the Code. It also makes clear that Sky is not required to comply with any obligation under the Agreement to the extent it would put Sky in breach of the Code or applicable law. Sky said that it also makes FOWC aware of its obligations under the Code and highlights occasions or examples where it considers commercial references within the live feed may be at the margins of acceptability under the Code.

The Licensee continued that in this case the same feed was broadcast simultaneously live in more than 150 countries globally. Although it was able to make representations to FOWC, it was only one of many parties involved and would not always be able to have total influence over the live feed supplied. However, Sky added that after the broadcast of the programme, it did raise the issue of the prominence of the images in the qualifying session output and it informed FOWC that these were beyond levels that it felt would generally be acceptable. Sky added that following this feedback no live feeds supplied in respect of subsequent Formula 1 events contained branding at the level seen in this programme.

The Licensee said that in addition to contractual provisions and ongoing dialogue with rights holders, it also retained ultimate control over the output so it could potentially remove a live feed from air if it considered a situation required such action. However, Sky did not consider this would have been an appropriate response in the case of this programme. Sky believed that for a live feed to be interrupted or taken off air, there must be discernible and potential harm to viewers, such as the possibility of viewing serious and life threatening injuries to either participants or to spectators. Sky said that it did not consider that potential undue prominence of commercial references within a live or near live feed, could reasonably be viewed as meeting this assessment.

Sky submitted that the only guaranteed way to avoid potential Code breaches in respect of certain global sporting events would be if UK viewers were not permitted to see live

coverage of these events. It added that if UK licensed broadcasters are required to take this approach, it would cause "significant viewer concern and anger given the popularity of sport is entirely driven by viewers being able to follow the action live and simultaneously with it taking place at the venue".

Sky considered that viewers are accustomed to live sports coverage containing a greater amount of commercial branding than in other types of programming. Therefore, in assessing the question of undue prominence and editorial justification, Sky argued that it is appropriate for Ofcom to take into account viewers' reasonable expectations when viewing sporting events and the fact that the level at which such branding becomes unduly prominent is, by its nature, subjective.

In conclusion, Sky reiterated its view that finding this content in breach of the Code would have severe consequences for all broadcasters licensed by Ofcom who wish to show live international sport that originates from other territories. It believed that a ruling against Sky for elements in a live feed that it was unable to edit would represent a substantial change in approach and regulatory position. It would also create a substantial degree of uncertainty about how a licensed UK broadcaster should interpret the Code in this context.

## **Decision**

Reflecting our duties under the Communications Act 2003 ("the Act"), Section Nine of the Code includes rules that apply to product placement in television programmes.

The Code defines product placement as follows:

"The inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not product placement".

In the context of product placement, a relevant provider is:

"the provider of the television programme service in which the programme is included or the producer of the programme".

In this case, Rolex was an official sponsor of F1 and references to Rolex, as set out in the Introduction, were digitally placed within the programme (rather than present at the race venue). Ofcom was not aware of any reason for the references to have been included in the programming otherwise than to expose television viewers to the brand, and this had been facilitated by the content producer (as the brand references were digitally inserted into the content).

Sky accepted that the programme contained product placement "if judged strictly against the Code's definition". Sky has chosen to enter into contractual arrangements which meant that it was not formally told by F1 of matters that result in product placement within the programmes it broadcasts, but on the balance of probabilities we consider there to be little doubt in this case.

We therefore could see no reason why FOM would not be treated as a relevant provider in this case, and concluded that the references met the definition of product placement, as set out both in the Act and the Code.

To ensure that a distinction is maintained between editorial and advertising, the Code limits the prominence that brands can be afforded in programmes. This is the case whether a brand reference in a programme results from a product placement arrangement or otherwise.

Editorial justification is one of the fundamental tests by which Ofcom judges whether the prominence given to a brand in programming is undue. As made clear in Ofcom's guidance on Section Nine of the Code<sup>3</sup>, the extent and nature of the exposure a commercial reference receives needs to be considered against the editorial requirements of the programme. The guidance also makes clear that the degree of prominence that may be afforded to a brand will depend on the context in which it appears.

Ofcom accepts that broadcast coverage of sports events is likely at times to reflect the higher level of branding that is present at venues. It may be inevitable that some references to branding and advertising positioned around venues and on kits etc. may be captured as a result of filming a sporting (or other) event. However, the same justification does not apply to commercial references that are inserted directly into broadcast material (such as the commercial references considered in this case). Such references are not an incidental part of the coverage but are purposely included for television audiences to see. In this case, two distinct forms of commercial references were digitally inserted into the broadcast content: a small graphic logo that accompanied race information; and a large superimposed product image.

We recognise that industry developments over the years have changed the way in which televised sport reaches viewers. For some sports, individual broadcasters may film and transmit their own coverage. For others, such as F1, content may be provided by a third party. The latter circumstances do not absolve an Ofcom licensee of its responsibilities to ensure that the content it transmits complies with the Code. In terms of the extent to which commercial references can feature in content, broadcasters need to carefully balance the interests of viewers with the need to maintain a clear distinction between advertising and editorial.

We first considered whether the brief appearance of the graphic Rolex logo alongside race data was unduly prominent. Sponsorship is prevalent in sport and viewers are accustomed to seeing a relatively high volume of sponsors' branding in sports coverage. In this case, we took into account that Rolex was the event sponsor. While frequent, the graphic was small, appeared only briefly and accompanied race information. We also took into account the nature of the reference including, for example, that the sponsor's brand is not one that is subject to product placement restrictions.<sup>4</sup> In this specific context, we did not consider the appearance of the small Rolex logos to be unduly prominent.

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<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0014/33611/section9\\_may16.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0014/33611/section9_may16.pdf)

<sup>4</sup> Within the UK, there is an established statutory and regulatory regime which restricts the promotion of certain products on the basis on that they are potentially harmful. For example, the Code (reflecting the requirements of the Communications Act) prohibits the product placement of tobacco, alcohol and gambling products among other things.

We went on to consider the inclusion of the images of the superimposed Rolex clock face. These images dominated the screen, appeared during location shots and were not integral to the sporting event that was the subject of the programme. While the live nature of the programme provided some justification for including the images, we were concerned that, in accepting the live feed, the Licensee facilitated prominent references to a commercial product that had no editorial relevance. However, taking into account the processes the Licensee had in place to address such issues, the action it took as a result of this incident and that similar instances had not recurred, our Decision is that the matter is resolved.

**Resolved**

## Not in Breach

### Sponsorship of CiTV *CiTV, various times, 24 July 2017*

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#### Introduction

CiTV is a children's television channel. The licence for the service is held by ITV Digital Channels Limited ("ITV" or "the Licensee").

Ofcom received a complaint about Coco Pops Granola sponsorship credits shown during CiTV's morning programming. The complainant considered the sponsorship credits indirectly promoted a HFSS (High in Fat, Salt or Sugar) product<sup>1</sup> by including references to the brand name (Coco Pops); an animated brand character; and indistinct product packaging.

#### Credit One

The first ten second credit, set in a jungle clearing, opened with a wide shot of the character Coco the Monkey (Coco) standing next to a tree stump. On the tree stump was a box of Coco Pops Granola, a jug of milk and an apple.

Coco provided the voiceover for the credit:

*"T-minus three"* [close up of the cereal box].

*"Two"* [close up of Coco's eyes looking at the cereal box].

*"One"* [close up of cereal box being picked up by Coco].

*"Blast off"* [wide shot of Coco raising the cereal box above his head. Followed by a close up of granola cereal falling from an open cereal box].

*"New Coco Pops Granola"* [close up of the bowl of cereal with the milk gradually turning brown].

*"Sponsors breakfast on CiTV"* [wide shot of Coco eating cereal while standing next to a box of Coco Pops Granola, a jug of milk and an apple].

Text at the bottom of the screen said: *"sponsors breakfast on CiTV"*.

#### Credit Two

The second ten second credit was also set in a jungle clearing and again Coco provided the voiceover.

*"I always wanted to be weightless"* [image of Coco floating in the air while holding a box of Coco Pops Granola].

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<sup>1</sup> HFSS products are food and drink products that are high in fat, salt or sugar as identified using a nutrient profiling model provided by the Department of Health.

*"Floating in space"* [close up of Coco Pops Granola cereal box with cereal floating out of the box].

*"And then I come back to earth"* [cuts to wide shot of Coco falling onto a trampoline and bouncing onto the ground].

*"New Coco Pops Granola"* [close up of a bowl of cereal with the milk gradually turning brown].

*"Sponsors breakfast on CiTV"* [wide shot of Coco eating cereal whilst standing next to a box of Coco Pops Granola, a jug of milk and an apple].

Text at the bottom of the screen said: *"sponsors breakfast on CiTV"*.

Ofcom considered the credits raised issues under the following rule of the Code:

Rule 9.17: Sponsorship must comply with both the content and scheduling rules that apply to television advertising<sup>2</sup>.

Television advertising rules are set out in the UK Code of Broadcast Advertising ("BCAP Code")<sup>3</sup>. The BCAP Code places restrictions on the scheduling of advertisements for certain product categories. In this case the relevant BCAP Code rule states:

Rule 32.5: These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16...

Rule 32.5.1: Food or drink products that are assessed as high in fat, salt or sugar (HFSS) in accordance with the nutrient profiling scheme.

We sought comments from the Licensee as to how the credits complied with these rules.

## Response

ITV said that the credits in the sponsorship campaign were thoroughly assessed prior to broadcast in accordance with the Broadcasting Code, BCAP Code Rules and BCAP Guidance 'Identifying brand advertising that has the effect of promoting an HFSS product'<sup>4</sup> ("the BCAP Guidance"). ITV set out the following reasons why it considered the sponsorship credits did not promote an HFSS product and were therefore not subject to this restriction.

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<sup>2</sup> The Advertising Standards Authority and BCAP regulate the content of broadcast advertising, under a Memorandum of Understanding with Ofcom:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/79472/memorandum\\_of\\_understanding\\_2014.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/79472/memorandum_of_understanding_2014.pdf)

<sup>3</sup> BCAP Code: <https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html>

<sup>4</sup> Guidance on identifying brand advertising that has the effect of promoting an HFSS product:  
<https://www.asa.org.uk/resource/hfss-product-ads-and-brand-ads-identification.html>  
The BCAP Guidance is intended to give greater clarity on when an advertisement for a brand is likely to be subject to the restrictions on the scheduling of HFSS advertising.



The Licensee acknowledged that the Coco Pops range contains some HFSS products. However, it said that Coco Pops Granola was a non-HFSS product and was legitimately able to sponsor CiTV.

ITV said that the references to this product in the credits were “clearly not incidental”. It did not believe there could be “any confusion that the credits are for [this] product alone” and not the overarching Coco Pops brand range. In support of this, it said that the product packaging was prominent in both credits, and verbal references were made to the non-HFSS product via the voiceover. The Licensee added that the product itself has a distinctive shape which is unique, and which clearly differentiates it from other products within the Coco Pops range.

Acknowledging that the brand character, Coco, featured in the sponsorship credits, ITV added that this was “for the purpose of enhancing the appeal of the non-HFSS product and not a ‘Trojan Horse’ to draw attention to the wider Coco Pops product range”. The Licensee argued that in this context, the brand character was being used to promote a healthier breakfast option which forms part of the Coco Pops overall product range.

ITV added that the BCAP Guidance recognises that products and product ranges can evolve, due to reformulation or new products coming to market. It said that the guidance expressly permits the use of branding (including the use of Equity Brand characters<sup>5</sup>, such as Coco), even where that branding may be synonymous with a specific HFSS product, providing the advertisement or sponsorship credit is for a specific non-HFSS product. It cited supplementary advice on the BCAP Guidance published on the ASA website<sup>6</sup> which it considered directly relevant to this case, specifically:

“What do we mean by ‘brand advertising’? Ads that feature products prominently make it easy for the ASA to decide whether to apply the HFSS rules on the basis of that product’s nutrient profile. The guidance helps the ASA in instances where products don’t feature or they’re not clearly identifiable and takes a pretty broad view on what branding can be...”.

## Decision

Reflecting our duties under the Communications Act 2003, Section Nine of the Code requires that “unsuitable sponsorship must be prevented”. Rule 9.17 requires, among other things, that sponsorship must comply with the BCAP Code.

Rule 32.5.1 of the BCAP Code prohibits advertisements for HFSS products from appearing in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16.

It was clear in this case that the sponsorship credits had been broadcast adjacent to children’s programming, on a dedicated children’s channel.

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<sup>5</sup> These are characters that have been created by the advertiser and have no separate identity outside their associated product or brand.

<sup>6</sup> CAP News 29 June 2017 <https://www.asa.org.uk/news/updated-hfss-brand-guidance-for-broadcast.html>

To assist our assessment of the sponsorship credits in this case we also considered the BCAP Guidance published to help broadcasters decide in what circumstances the restrictions on advertising HFSS products apply to brand advertising.

The BCAP Guidance helps advertisers and broadcasters differentiate between advertisements for HFSS and non-HFSS products (and therefore by extension in sponsorship credits). The guidance aims to give greater certainty about when the rules that govern TV advertisements (and sponsorship) that promote, directly or indirectly, an HFSS product apply.

Ofcom acknowledged that Coco Pops Granola is classified as a non-HFSS product under the Department of Health Nutrient Profiling model. We therefore went on to consider whether the sponsorship credits focused on the Coco Pops Granola product, the Coco Pops range more generally or a specific HFSS product within the Coco Pops range.

We recognise that HFSS products can be featured directly, by including them in an advertisement or sponsorship credit, or indirectly through the use of brands or branding that is synonymous with a specific HFSS product. This branding can be product-related or broader, such as company or corporate branding.

We accept that Coco the monkey is closely associated with the Coco Pops brand and is classified as an Equity Brand character. We are aware that Coco regularly features in Coco Pops promotional material and in this case featured prominently in both sponsorship credits as the only character. We also acknowledge that viewers may associate the Coco Pops brand with Coco Pops Original (an HFSS product), given that this was the first product to be launched within the Coco Pops range and accounts for the most sales under the Coco Pops brand. However, in Ofcom's view, this does not automatically render the use of Coco or the brand name, Coco Pops, in the sponsorship credits problematic under the HFSS advertising restrictions. The BCAP Guidance makes specific provision for the use of branding such as Equity Brand characters or brand names, in advertisements (and therefore sponsorship credits) for specific non-HFSS products. The guidance goes on to state:

“[w]here such techniques are synonymous<sup>[7]</sup> with a specific HFSS product, the ASA is more likely to apply HFSS product advertising restrictions where reference to the non-HFSS product is incidental to the use of the techniques”.

We therefore closely examined both Coco Pops Granola sponsorship credits to decide if the references to this non-HFSS product were incidental. Both credits included: identifiable images (close up and wide shots) of a Coco Pops Granola pack for approximately seven seconds; full screen shots of the product (falling from a cereal box and in a cereal bowl) for four seconds; and an explicit audio reference to Coco Pops Granola. There were no references to other specific products within the Coco Pops range or the Coco Pops range more generally.

We considered the references to Coco Pops Granola were the focus of both sponsorship credits and the product was not incidental to the use of the Coco Pops brand name or Coco the monkey.

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<sup>7</sup> For the purposes of the Guidance, “synonymous with” is taken to mean “very strongly associated with”.

We also took into account the complainant's view that the packaging for Coco Pops Original and Coco Pops Granola are similar and that this could have resulted in viewer confusion as to the identity of the sponsor or indirectly promoted Coco Pops Original, an HFSS product. As stated above, the sponsorship credits included pack shots in which the product name was clearly visible and shots of the product. Both credits also included an explicit audio reference to Coco Pops Granola ("*New Coco Pops Granola*"). We considered the combination of the pack shots, images of the product (which has a distinctive shape and appearance) and audio reference were sufficient to enable viewers to identify the sponsor as Coco Pops Granola.

In Ofcom's view, the audience was likely to have understood that the sponsorship directly related to Coco Pops Granola as opposed to other specific HFSS products within the Coco Pops range or the brand more generally. We therefore considered the non-HFSS product, Coco Pops Granola, was clearly identified in, and was the focus of, the credits. As a result, our Decision is that these credits did not breach Rule 9.17 of the Broadcasting Code, with reference to Rule 32.5.1 of the BCAP Code.

**Not in Breach of Rule 9.17 (with reference to Rule 32.5.1 of the BCAP Code)**

## Advertising scheduling cases

### In Breach

#### Advertising minutage

***MYTV, various dates between 9 March 2018 and 3 April 2018, 16:00***

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#### Introduction

MYTV is a general entertainment service, the licence for which is held by Enteraction TV Learning Ltd ("Enteraction" or "the Licensee").

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

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

During routine monitoring Ofcom identified 15 instances when the amount of advertising broadcast on MYTV in a clock hour appeared to exceed the permitted allowance. Ofcom considered that this raised issues under Rule 2 of COSTA and sought comments from the Licensee as to how the content complied with this rule.

#### Response

The Licensee acknowledged that the clock hours identified exceeded the permitted allowance of advertising. Enteraction explained that it had recently added a programme to its regular afternoon schedule, which had a longer running length than expected. In each case, the advertising break following the programme was pushed into the subsequent hour which resulted in this clock hour containing more advertising than permitted. The Licensee added that there was also an element of human error, as a new member of staff was allocated responsibility for this part of the schedule.

The Licensee said that it was very concerned that these incidents had occurred. As a result, it said it had run refresher training on COSTA rules for all schedulers, and introduced a sign-off process for new programmes added to the schedule. Additionally, it said it had enquired about a potential upgrade to its software which would automatically flag any overruns.

#### Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, COSTA sets limits on the amount of advertising than can be broadcast. It includes rules that limit the amount of advertising that can be shown across a broadcasting day as well as during any clock hour.

The amount of advertising broadcast in a clock hour exceeded what is permitted on 15 occasions. Ofcom's Decision is that the Licensee therefore breached Rule 2 of COSTA.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/322>

We acknowledged the steps taken by the Licensee to avoid a recurrence. Ofcom will continue to monitor the Licensee's compliance with COSTA.

**Breach of COSTA Rule 2**

## Broadcast Licence Conditions cases

### In Breach

#### Imprisonment of controlling shareholder *Brighton & Hove Radio Limited*

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##### Introduction

Brighton & Hove Radio Limited ("Brighton & Hove Radio" or "the Licensee") held a Local Sound Programme licence for the FM service Juice 107.2, which has now been transferred to a new licensee. It continues to hold a Local Digital Sound Programme Service licence.

Ofcom became aware of reports that Mike Holland had been convicted of the criminal offence of manslaughter due to gross negligence and sentenced to a term of imprisonment. Mike Holland was a director of Brighton & Hove Radio, the majority shareholder and also held the majority of voting rights in Brighton & Hove Radio at the time of his imprisonment.

Ofcom considered that this raised potential issues under Condition 9(4) of the Local Sound Programme licence Brighton & Hove Radio held at the time of Mike Holland's imprisonment, and Condition 8(4) of the Local Digital Sound Programme Service licence it holds:

"The Licensee shall inform Ofcom if he or any individual having control over him within the meaning of Paragraph 1(3), Part 1 of Schedule 2 to the [Broadcasting Act 1990] is sentenced to a term of imprisonment (including a suspended term) on conviction of a criminal offence".

Paragraph 1(3), Part 1 of Schedule 2 to the Broadcasting Act 1990 states:

"For the purposes of this Schedule a person controls a body corporate if—

- (a) he holds, or is beneficially entitled to, more than 50 per cent of the equity share capital in the body, or possesses more than 50 per cent of the voting power in it, or
- (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body are conducted in accordance with his wishes; or
- (c) he holds, or is beneficially entitled to, 50 per cent of the equity share capital in that body, or possesses 50 per cent of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power".

At the time of his imprisonment, Mike Holland was the majority shareholder and held the majority of voting rights in Brighton & Hove Radio, as well as being a director. We therefore

provisionally considered that Mike Holland has control over the Licensee in accordance with Paragraph 1(3), Part 1 of Schedule 2 to the Broadcasting Act 1990.

Ofcom has an ongoing duty to remain satisfied that the Licensee is fit and proper to hold a broadcast licence, so considered that the conviction also raised potential issues in relation to this duty.

We requested comments from Brighton & Hove Radio as to why it did not inform Ofcom of Mike Holland's conviction in accordance with the licence conditions set out above.

We also requested information from Brighton & Hove Radio as to Mike Holland's ongoing role in relation to the station.

### **Response**

Brighton & Hove Radio accepted it had not informed Ofcom of the conviction. It explained it had overlooked the requirement in its licences to notify Ofcom "in the turbulence ... that followed the conviction".

It also explained that Mike Holland would be resigning as a director of Brighton & Hove Radio, and would be selling his shares in Brighton & Hove Radio.

### **Decision**

We are satisfied that as of 18 June 2018, Mike Holland is no longer a director of, and no longer holds any shares in, Brighton & Hove Radio.

Whilst in light of this fact there is no ongoing issue for Ofcom to consider, it was clear that Brighton & Hove Radio had not informed Ofcom of Mike Holland's conviction and imprisonment when it should have done, and accordingly Ofcom's decision is that Brighton & Hove Radio was in breach of Licence Conditions 9(4) for licence number AL000211 that it held at the time, and 8(4) for licence number DP000075.

**Breach of Licence Conditions 9(4) for the licence formerly held by Brighton & Hove Radio Limited (licence number AL000211) and 8(4) for the licence currently held by Brighton & Hove Radio Limited (licence number DP000075).**

## In Breach

### **Under provision of subtitling** ***Cartoon Network, January to December 2017*** ***Boomerang, January to December 2017***

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#### **Introduction**

Ofcom's Code on Television Access Services<sup>1</sup> ("the Access Services Code") requires certain broadcasters to provide access services (subtitling, signing and audio description) on a proportion of their programming.

Rule 12 of the Access Services Code sets out the proportion of programming that certain domestic channels are required to provide with access services. In 2017, Cartoon Network and Boomerang were required to provide subtitling on 53.3% of their programming. Ofcom informed the Licensee, Turner Broadcasting System Europe Limited ("Turner Broadcasting Ltd" or "the Licensee"), of this on 4 July 2016.

Subsequently, Turner Broadcasting Ltd reported to Ofcom that Cartoon Network and Boomerang provided 51.6% and 47.6% of their programming with subtitling respectively. We considered these shortfalls of 1.7% and 5.7% raised potential issues about how the Licensee had complied with the Access Services Code.

We therefore asked Turner Broadcasting Ltd for its formal comments on this matter.

#### **Response**

The Licensee acknowledged the shortfalls and apologised for this. It said that this was due to a "human error" which led to delays in the processing and delivery of the requirements. The Licensee told Ofcom that it had taken steps to rectify this, and that it was "confident that [we] will hit the access services target for 2018".

#### **Decision**

The Communications Act 2003<sup>2</sup> sets Ofcom's and television broadcasters' responsibilities for the accessibility of broadcast content. It makes specific mention of subtitling, and sets statutory targets for broadcasters.

Under Rule 12 of the Access Services Code, Turner Broadcasting Ltd was required to subtitle 53.3% of Cartoon Network and Boomerang's programming in 2017. However, only 51.6% and 47.6% of the channel's output was subtitled.

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<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/97040/Access-service-code-Jan-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf)

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2003/21/section/303>



We recognised the circumstances that led to Turner Broadcasting Ltd's failure to provide its full subtitling requirement on Cartoon Network and Boomerang. However, our Decision is that these cases of under provision represented clear breaches of the Access Services Code.

**Cartoon Network – Breach of Rule 14 of the Access Services Code**  
**Boomerang – Breach of Rule 14 of the Access Services Code**

## In Breach

### Under provision of audio description *CBS Reality, January to December 2017*

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#### Introduction

Ofcom's Code on Television Access Services<sup>1</sup> ("the Access Services Code") requires certain broadcasters to provide access services (subtitling, signing and audio description) on a proportion of their programming.

Rule 12 of the Access Services Code sets out the proportion of programming that certain domestic channels are required to provide with access services. In 2017, CBS Reality had a requirement to provide 10% of its programming with audio description. Ofcom informed the Licensee, CBS AMC Networks EMEA Channels Partnership ("CBS" or "the Licensee"), of this on 1 July 2016.

Subsequently, CBS reported to Ofcom that CBS Reality provided 6.9% of its programming with audio description in 2017. We considered this shortfall of 3.1% raised potential issues about how the Licensee had complied with the Access Services Code.

We therefore asked CBS for its formal comments on this matter.

#### Response

The Licensee said that technical issues that it had encountered in the first six months of 2017<sup>2</sup> were "the most significant factor" in this shortfall. It explained to Ofcom that it now had a "robust access services technical infrastructure in place which [it] has full confidence it can rely upon in meeting current and future requirements".

The Licensee also said that one of CBS Reality's programmes, *Judge Judy*, represented 29.4% of its broadcast hours in 2017. It said that it had been informed by its access services supplier that "by its very nature" *Judge Judy* is already an audio described programme.

The Licensee therefore requested that *Judge Judy* be considered a "technical exemption in not meeting the 2017 Audio Description target" in accordance with Section 1, paragraph 25a (Technical difficulty) of the Access Services Code<sup>3</sup>, on the grounds that the programme "has no space within the dialogue/sound track to provide additional audio description" and that "the description of the significance of the imagery which would benefit a blind or partially-sighted audience is already present within the dialogue of the programme". However, the Licensee also acknowledged that, "in hindsight, it ought to have sought an exemption from Ofcom in advance of reporting a shortfall".

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<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/97040/Access-service-code-Jan-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf)

<sup>2</sup> 2017 was the first year that CBS Reality had been required to provide access services.

<sup>3</sup> Paragraph 25 lists a number of example cases where access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty. Subparagraph a) includes the example of: "audio description of music and news programmes and services, where there is little space within the dialogue/sound track to provide audio description, and less need".

CBS also told Ofcom that in the first six months of 2018 CBS Reality had broadcast in excess of 18% of its programming with audio description and said it expected "this trend will continue throughout 2018 and beyond".

## Decision

The Communications Act 2003<sup>4</sup> sets Ofcom's and television broadcasters' responsibilities for the accessibility of broadcast content. It makes specific mention of audio description, and sets statutory targets for broadcasters.

Under Rule 12 of the Access Services Code, CBS was required to audio describe 10% of CBS Reality's programming in 2017. However, only 6.9% of the channel's output was provided with audio description.

In its representations, CBS requested a technical exemption from providing audio description on *Judge Judy*, which made up 29.4% of CBS Reality's broadcast hours in 2017. We recognised that the density of dialogue in some programmes (such as *Judge Judy*) means there is more limited opportunity to include audio description. However, we did not consider that the Licensee had provided a valid reason why *Judge Judy* could not, or should not, be audio described. In addition, there is a range of programming other than *Judge Judy* broadcast on CBS Reality that could be audio described. We therefore considered that the channel would still be able to meet its ongoing audio description requirements, as it has done for the first six months of 2018, without a technical exemption in place for *Judge Judy*. For these reasons, we have not granted CBS the technical exemption it requested.

We recognised that 2017 was the first year that this channel was required to provide access services and that difficulties in implementation were "the most significant factor" in this shortfall. However, CBS's failure to provide its full audio description requirement on CBS Reality represents a clear breach of the Access Services Code.

## Breach of Rule 14 of the Access Services Code

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<sup>4</sup> Sections 303 to 305

## Fairness and Privacy cases

### Upheld

#### Complaint by Mr K made on his own behalf and on behalf of Mr L *Can't Pay? We'll Take it Away!*, Spike, 13 September 2016<sup>1</sup>

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##### Summary

Ofcom has upheld this complaint made by Mr K made on his own behalf and on behalf of Mr L of unwarranted infringement of privacy.

The programme which follows High Court Enforcement Agents ("HCEAs") included footage of Mr L and his son, Mr K, and both the exterior and the interior of their home as they spoke with two HCEAs who were there to enforce a Writ of Control ("Writ") against Mr K for the repayment of a debt relating to vehicle insurance. All of the footage shown in the programme of the interior of Mr L and K's home was recorded by the body cameras worn by the HCEAs but belonging to the programme makers.

Ofcom considered that both Mr L and Mr K had a legitimate expectation of privacy in relation to the filming and the subsequent broadcast of the footage of them without their consent. We considered their legitimate expectation of privacy, on balance, outweighed the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Therefore, Mr L and Mr K's privacy was unwarrantably infringed in both the obtaining and broadcast of the footage included in the programme.

##### Programme summary

On 13 September 2016, Spike, a satellite channel operated by Channel 5, broadcast an episode of *Can't Pay? We'll Take It Away!*, a series which followed High Court Enforcement Agents ("HCEAs") as they attempted to resolve debt disputes through negotiated settlements and asset seizures. This particular edition included a segment about Mr K, who the agents alleged owed money for an unpaid insurance claim. The programme's narrator introduced this section of the programme:

*"The effects of Britain's financial crisis are still being felt. The number of consumers being taken to court for unpaid debts rose again in 2014. The third year-on-year increase. It is the latest evidence that shows more and more people are struggling to pay their debts".*

A caption was also shown: *"ALMOST 700,000 COUNTY COURT JUDGMENTS WERE ISSUED IN 2014 WORTH OVER £1.6 BILLION"*.

Two HCEAs, Mr Delroy Anglin and Mr Brian O'Shaughnessy, were shown driving as the narrator said:

*"Brian O'Shaughnessy and Delroy Anglin are High Court Enforcement Agents. They travel hundreds of miles every week collecting payments and seizing goods to settle unpaid*

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<sup>1</sup> The programme was first broadcast on Channel 5 on 21 October 2015.

*debts. Today they are in Andover, Hampshire. The debt is for an unpaid compensation claim following a road traffic accident”.*

Mr Anglin explained that they wanted to collect £4,766.05 from the debtor. The HCEAs were shown arriving at a house in a residential street while the narrator said:

*“As they reach the address, Brian and Del spot someone cleaning a van outside”.*

Mr Anglin was then shown approaching the man (Mr K), who was standing on the pavement next to a van which he was washing. The following exchange took place:

Mr Anglin: *“Hello Sir.*

Mr K: *Hello*

Mr Anglin: *Do you live here?*

Mr K: *Yeah. Why?*

Mr Anglin: *I'm looking for [Mr K's first name].*

Mr K: *Why?*

Mr Anglin: *Are you him?*

Mr K: *What are you doing here?*

Mr Anglin: *I'll tell you if you are him. Are you [Mr K's first name]? I'm a High Court Enforcement Agent, Sir.*

Mr K: *A what?*

Mr Anglin: *A High Court Enforcement Agent.*

Mr K: *What for?*

Mr Anglin: *Well, if I know if you're [Mr K's first name] I'll be able to reveal the details.*

Mr K: *I don't know who you're looking for mate.*

Mr Anglin: *You're not him?*

Mr K: *No”.*

The narrator indicated that Mr Anglin was suspicious, before the conversation continued:

Mr Anglin: *“You said you lived here earlier.*

Mr K: *I didn't say anything mate.*

Mr Anglin: *I asked you if you lived here”.*

At this point, a neighbour called out from across the street saying: “[Mr K’s first name], *who are they?”* after which Mr Anglin said: *“Oh, obviously you are [Mr K’s first name], you’re being called. I need to speak to you about this High Court Writ mate. High Court Writ”.*

The narrator then said:

*“The man is not co-operating, but the Writ allows the team to enter the house without force to seize goods if he can’t, or won’t pay”.*

Footage of the front of the property was shown as Mr Anglin informed Mr K that his colleague had entered the house. Mr K then walked quickly towards the front door and went in to the house. As he did so, he said, repeatedly: *“Get out! Get out!”* while Mr O’Shaughnessy, who was standing just inside the hallway, repeatedly said: *“No”*. As Mr K encountered Mr O’Shaughnessy inside the doorway to the property, Mr O’Shaughnessy said to him: *“get your hands off me”* after which Mr K called out: *“Dad, there’s someone in the house”*.

The programme then showed footage filmed inside the house of Mr K, and his father, Mr L, as they tried to get the HCEAs to leave the house. Mr Anglin explained that he and his colleague were HCEAs, while at the same time Mr K continued to tell them to: *“Get out!”* and his father repeatedly said: *“Can you stand outside my house?”* Mr K also told the HCEAs: *“You’re making a mistake, get out!”*. Both HCEAs declined to leave the property. Mr O’Shaughnessy then said to Mr L: *“Please keep your hands off me, that’s all I’m asking, if you don’t take your hands off me, I’ll call the police”*.

In response to Mr L asking: *“What is this about then?”*, Mr Anglin again explained that he was an HCEA and that they had a High Court Writ for Mr K. When asked what the Writ was for, Mr Anglin said: *“he owes [claimant’s name]”*, after which, Mr K interjected saying: *“oh, it’s about my [bleeped] insurance. You’re going to have to get out...You’re going to have to deal with my insurance, mate”*.

The narrator then stated:

*“The debtor thinks that the money is owed by his insurance company, but the Writ states that he’s personally responsible”*.

The discussion between the HCEAs and Mr K and Mr L continued until Mr O’Shaughnessy suggested that Mr K should get in touch with his insurance company. Mr K responded by saying: *“I’m not going to get onto anybody, mate”*. He and the HCEAs then had the following exchange:

Mr O’Shaughnessy: *“You’re not going to get on to anybody. Fine, then you’re going to have to pay.*

Mr K: *I’m not paying [bleeped] all. You can get out of the house.*

Mr Anglin: *Cool, no”.*

At this point, Mr K held his arms forward and outstretched as if allowing himself to be handcuffed. He then moved past the HCEAs to the front door and said:

Mr K: *"You can take me with you, come on."*

Mr Anglin: *No, we don't arrest...we don't arrest people.*

Mr K: *Well, I'm going outside.*

Mr O'Shaughnessy: *See you later then, cool".*

Mr K was then shown walking out through the front door while the narrator said:

*"As the son is refusing to pay, the team have no option but seize his goods".*

Mr O'Shaughnessy was then shown telling Mr L that he and his colleague needed to determine which goods in the property belonged to him and which to his son. In response, Mr L said:

*"There's [bleeped] all. This is my house... You've no right to lift anything from this property at all...No, you don't. I am not involved in this here, OK?"*

Mr L said that his son did not live at the property and repeatedly expressed his objection to the HCEAs being in his house. Mr Anglin explained to Mr L that they had tried to speak to his son outside the property and that they: *"did not want to come in here, we wanted to speak to him...It's your son's attitude we're in here because he didn't want to speak to us out there..."*. Mr L and the HCEAs had the following exchange:

Mr L: *"You followed him into my house.*

Mr Anglin: *No, we didn't follow him.*

Mr O'Shaughnessy: *We're allowed to be in here.*

Mr L: *But, this is my house.*

Mr Anglin: *We're allowed to be in here and... we didn't follow him.*

Mr L: *But, this is my house mate...*

Mr Anglin: *But, he lives here, he does live here?*

Mr L: *No, he doesn't live here.*

Mr O'Shaughnessy: *So, you don't mind if we walk around and check the rooms and see if his stuff is in here?*

Mr L: *What stuff?*

Mr O'Shaughnessy: *His clothes and his trainers and all his stuff.*

Mr L: *What do you mean his clothes and stuff?*

Mr O'Shaughnessy: *Well, let's go upstairs me and you, let's go.*

Mr L: *No, no mate, you're going no further.*

Mr O'Shaughnessy: *See I will be...OK.*

Mr L: *No, please don't put a smile on your face like you've got one over me.*

Mr O'Shaughnessy: *Why not? It's not about one over you.*

Mr L: *This is my house.*

Mr O'Shaughnessy: *And we respect that".*

At this point, Mr O'Shaughnessy was shown in interview commenting on the situation:

*"People get upset with our presence, people throw the dummy out. They shout, they rant, they rave, and I don't mind that so long as it's not physical".*

The exchange between Mr L and the HCEAs continued until Mr O'Shaughnessy decided to call the police. As Mr O'Shaughnessy called the police, Mr K returned to the house saying:

*"I'm going to tell you now, if you don't get out you're going to get seriously hurt and that's not a threat, it's a promise. Get Out! We'll talk outside. Whatever you've got to say, outside".*

The disagreement between the parties continued and Mr K was shown saying: *"I'm telling you now, you're going to get hurt"*. The HCEAs refused to leave and Mr Anglin asked Mr L, who was trying physically to get the HCEAs to move out of the house, not to touch him. Mr L appeared to become increasingly agitated and breathless. Mr K was then heard to say to the HCEAs: *"This is for your own safety, mate, Get out!...Get out!, I can't protect you from what he's about to do, Get out!...Get out, trust me you're going to get hurt"*; and: *"Get out! Come on, I can talk about anything outside"*. The HCEAs were then shown being physically pushed out of the house by both Mr L and Mr K.

Following a commercial break, the narrator recapped the events explaining that the HCEAs had:

*"come to recover a debt of nearly £5,000 for an unpaid claim resulting from a traffic accident...but the debtor did not want to cooperate; he refused to pay the debt; and his father got involved; serious threats were made; and both men tried to force Brian and Del out of the house"*.

These comments were accompanied by footage shown earlier in the programme.

Footage of Mr L, who appeared to be agitated and breathless, was shown as he told the HCEAs: *"He's trying to protect me. Please get out of my house"*. The HCEAs continued to



refuse to leave the property and repeatedly asked Mr L not to touch them. Mr K was then shown calling the police.

A police officer was shown arriving at the property which was followed by a discussion in which the HCEAs explained to Mr K that the Writ gave them the authority to come into the house and also assured Mr L that they understood that the house belonged to him and that any goods that belonged to him would not be seized. The narrator said: *"The son is still convinced his insurer is liable for the payment"*. Mr K was shown asking the HCEAs: *"How do you expect me to contact them at half past six?"* to which Mr Anglin responded: *"We asked you to speak to them, and you said you weren't going to do it"*. Mr O'Shaughnessy suggested that Mr K was *"being very difficult"*. Mr K said: *"I'm not. This is a situation that I've been put into. This is a situation that I've been put into by someone else's incompetence to do their job"*. Mr O'Shaughnessy advised Mr K that, if the insurance company was liable, it would pay the debt and again asked him to call the company. Mr K replied that the insurance company would now be closed.

A second police officer arrived at the house and was shown explaining to Mr L that the HCEAs had the authority and would now conduct a search of the property. The narrator said: *"The police arrange to give Brian and Del access to the house to see if the son has any belongings that could satisfy the Writ"*. Mr L, who appeared to be very shaken and anxious, was heard saying: *"Come ahead now. I am welcoming you into my house"*.

No footage of the search was shown in the programme. However, footage of Mr Anglin filmed from outside by the camera crew through a window of one of the upstairs rooms in the house was included, as was some of his conversation with Mr L as he searched the property.

After the search, the narrator said: *"After a quick inspection, Del emerges"*. At this point, Mr Anglin was shown coming out of a room he had been inspecting saying: *"He's got nothing else in there. It's Dad's"*, after which, the narrator said: *"With no assets to seize, Brian and Del's only option is to allow time for the son's insurance company to settle the debt"*.

Mr O'Shaughnessy was shown saying to Mr K:

*"What we're going to do, we're going to allow you to speak to the insurance company tomorrow morning, first thing, yeah. What you must do is to stress to them that it's now with the High Court and that this needs to be settled. If they are liable or have made a mistake, they'll have to pay it"*.

The narrator said: *"The tension has gone, but the explosive incident is still raw"*, before Mr O'Shaughnessy made the following comment to Mr K:

*"...I just want to say something, yeah. I'm really upset about what happened earlier. I'm not in this job, I've done this job for 11 years, to be put in a situation like that. I get no enjoyment out of it. I've got four children. I'd like to go home in one piece. I understand why you did it, and, just talk to us next time if ever you get anybody like us. We're not unreasonable. It's a lesson learned, yeah? Alright. I want you to shake my hand before I leave today"*.

Mr K agreed and shook hands with Mr O'Shaughnessy. Mr O'Shaughnessy then said: *"If you are liable for it, call me up and we'll sort it out. OK?"* and again, Mr K agreed and shook hands. The HCEAs then left the house with Mr Anglin saying to Mr K: *"Look after Dad"*.

Towards the end of the programme, a short section of the footage of Mr K and Mr L shown earlier in the programme was shown again, but with no accompanying audio. The following on-screen text appeared below this footage:

*"The outstanding judgment debt was paid by Mr [K]'s insurer the next day"*.

No further footage of, or references to Mr K or Mr L were included in the programme.

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

### The complaint

- a) Mr K complained that his privacy and that of his father, Mr L, was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of them was filmed without consent.
- b) Mr K also complained that his privacy and that of his father was unwarrantably infringed in the programme as broadcast because footage of them was included in the programme without consent. Mr K said that no attempt was made to disguise his father's identity despite that fact that he was not directly involved in the incident that occurred.

By way of background, Mr K indicated that it had not been justified to infringe his or his father's privacy by involving them in the programme because the insurance company was liable for the debt not him. He also said that he had not been living at his father's house at the time the incident occurred and that the camera crew and HCEAs arrived at his father's house at around 18:00, which was after the insurance company office had closed. Therefore, Mr K said that he had no means of contacting his insurance company at that time.

In addition, Mr K said that his father suffered from Post-Traumatic Stress Disorder ("PTSD") and that having the two HCEAs "force" entry into his home, with a camera crew present, had adversely affected his health. He said that he had contacted the programme makers and Channel 5 the day after the filming but said that the broadcaster was not willing to stop the broadcast of the programme.

### The broadcaster's response

Channel 5 said that it is not the law in the United Kingdom that people have a right not to be on television. Nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. The broadcaster said that what matters in each case is whether or not rights are being infringed, and, if they are, whether there are good reasons for those rights to be infringed. Channel 5 said that this requires the balancing of the rights of privacy against the right to freely broadcast matters of public interest.

The broadcaster said that the sequence in the programme which featured the complainants concerned the activities of HCEAs conducting official court business, specifically executing a Writ permitting the seizure of goods, chattels and other property of Mr K to satisfy a judgment debt.

Channel 5 added that: the activities of HCEAs; the manner in which the law is utilised or ignored; the kinds of difficulties the HCEAs face when executing their duties; and the impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties, are all matters of public interest.

Channel 5 said that for all these reasons it was appropriate and reasonable to include footage of persons interacting with the HCEAs in the programme. Channel 5 added, however, that each case is assessed on its own facts, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in particular programmes. Channel 5 said that it never intentionally infringed any legitimate right to privacy.

- a) Channel 5 said that Mr K was the subject of a Writ that the HCEAs were executing. It said that while it was the case that the complainants indicated that they, Mr K and his father, did not want to appear in the programme, no undertaking was given that they would not appear in the programme.

The broadcaster said that the execution of a Writ issued by the High Court is a public matter and that the execution of the Writ was not a matter connected with the complainants' private lives, it was a public matter that involved them. Channel 5 said that Mr K and his father were in a different position from, say, a person arrested on a particular charge. Whether or not the arrest is appropriate or justified may be a consideration in the case of arrests, but there is no similar consideration when a court has deliberated, recorded a judgment for damages or costs, and issued a Writ for the sole purpose of ensuring those debts are properly paid.

Channel 5 said that the complainant's interaction with the HCEAs was not a part of any private life protected by Article 8 of the European Convention of Human Rights ("ECHR") i.e. the right to respect for private and family life. However, communications about those interactions are protected by Article 10 of the ECHR, i.e. the right of freedom of expression.

Channel 5 accepted that neither complainant consented to being filmed or to the house where the interaction occurred being filmed. However, the broadcaster said that as the HCEAs were engaged in official court business, it was not necessary to obtain the complainants' consent in relation to the filming.

Channel 5 also acknowledged that the HCEAs arrived at the complainants' house with no warning. However, it said that no warning was required to be given prior to the execution of the Writ, as doing so might lead to the frustration of the court order and the HCEAs and the programme makers would not know how the complainants would react to them.

The broadcaster said that the Writ authorised the HCEAs to enter the complainants' house and seize any goods which could not be proven to be the property of a person other than Mr K. If the debt was not settled or an appropriate arrangement made, the HCEAs could have legally removed goods and chattels in the house, put them in storage and allowed the rightful owners seven days to prove their ownership. Failing such proof, anything seized could be sold to reduce or satisfy the debt. Therefore, the broadcaster argued that any right to privacy the complainants might have claimed would be outweighed by Channel 5's right to freedom of expression, and the public's right to

receive information concerning matters of public interest including the activities of HCEAs carrying out official court duties.

The broadcaster said that the HCEAs did not force entry into the complainants' property, but entered peacefully through an unlocked door, where they were then faced with "extreme resistance" from both Mr K and his father. At all times, the camera crew remained outside the premises. Channel 5 said that inside the house, the HCEAs explained the position to Mr K first and then to his father. It said that they negotiated with them both about the enforcement of the Writ. Channel 5 said that the HCEAs were wearing body cameras which were not hidden from view and added that most of the footage in the broadcast came from the footage shot by the body cameras worn by the HCEAs and that the filming was carried out lawfully. Channel 5 said that as a matter of policy, HCEAs usually wear body cameras which record their interactions with members of the public while they are carrying out their official court duties both for safety reasons as well as to provide a record of their activities in case of complaint or inquiry. Channel 5 said that this precaution was justified in this case as Mr L "assaulted" the HCEAs and had to be restrained from committing further "assaults". Also, it said that Mr K made "serious threats of violence" to the HCEAs and that the police were called to ensure that no further breaches of the peace would be committed by the complainants.

Channel 5 said that there was no breach of either of the complainants' privacy rights involved in the HCEAs recording their activities by using body cameras, especially as at no time were the cameras hidden or concealed. It said that given that both Mr K and his father had actively interfered with the HCEAs' performance of their duties, with one "threatened serious assault" while both "committed assault", Channel 5 said that their behaviour could not be said to be private "in any realistic fashion". The broadcaster added that no person committing a "criminal offence" can legitimately expect that a right of privacy attaches to their wrongdoing.

- b) Channel 5 said that for the reasons set out above, it did not accept that either Mr K or Mr L had any right of privacy in relation to their interactions with the HCEAs. It said that as the debtor named on the Writ, Mr K brought the attendance of the HCEAs upon himself by failing to pay the judgment debt. Also, by "assaulting" the HCEAs, Mr L had made himself a key part of the story of the interaction between the HCEAs and his son.

Channel 5 said that whatever the role of Mr K's insurance company, it did not detract from the fact that when the HCEAs attended the premises, the Writ they sought to execute was valid and they were obliged to enforce it. It said that the HCEAs would not have known anything about the role of the insurer and it would not have been possible for them or the programme makers to have investigated that role prior to attending the property. Channel 5 added that the execution of the Writ, wherever it occurs, is a public act the HCEAs, in accordance with the law, are obliged to carry out. The timing of the execution is a matter for the HCEAs, but there is no reason why execution cannot be attempted after 18:00.

Channel 5 reiterated that for the reasons already given, there is a clear public interest in seeing the activities of the HCEAs in executing their official duties. It said that that public interest outweighed any right to privacy Mr K or Mr L might have had in relation to such activities. The broadcaster said that in the particular circumstances of this case, where the HCEAs were the subject of "threats of assault as well as actual bodily assault", the public interest in seeing what transpired was necessarily greater. Seeing justice in action

and seeing impediments being imposed upon those who seek to perform the work of the court were, Channel 5 said, matters of considerable public interest.

Channel 5 said that the part of the programme which featured the complainants made several issues clear to the public, all of which it was in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ has been issued, goods and chattels which belong to anyone at the place where the debtor resides can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced;
- significant costs can be incurred if the various stages of the execution of the Writ are breached;
- failure to pay judgment debts, or failure to respond to calls from those collecting judgment debts, can lead to the property of the people who live with the judgment debtor being seized, disrupting ordinary family life;
- even if another party is liable for a debt, the property of the people who live with the judgment debtor can be seized if that other party does not satisfy the debt; and,
- judgment debts cannot and should not be ignored.

Channel 5 added that the broadcast “demonstrated the stark reality of situations” such as that in which the complainants “had put themselves by their actions”. It said that both men could have been arrested for interfering with the lawful activities of the HCEAs.

The broadcaster said that the broadcast of the programme was entirely in the public interest and by including the footage that was shown, the programme did not exceed what was necessary and appropriate to make viewers understand the situation and the ramifications of what the complainants had done. It said that it was important to note that the HCEAs had not forced entry into the home of Mr L, but had, instead, made “peaceable entry”. However, the broadcaster said that they had been resisted, with bodily force, by Mr L, “who assaulted them”.

Channel 5 said that it was acknowledged that the HCEAs were advised that Mr L suffered from PTSD. However, the broadcaster said that this was not a reason which could or should excuse Mr L’s “assault” of the HCEAs and, “but for that significant and serious matter, the broadcast may not have identified Mr L”.

In conclusion, Channel 5 said that it did not believe that the complainants’ privacy was infringed by either the making of the programme or its broadcast.

### Supplementary material

Ofcom’s consideration of Mr K’s and Mr L’s complaint was put on hold pending the conclusion of our investigation into a complaint made by Miss F about a separate edition of *Can’t Pay? We’ll Take it Away!*<sup>2</sup> During the course of our investigation into Miss F’s complaint, Channel 5 provided Ofcom with supplementary material that included details of

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<sup>2</sup> Complaint by Miss F, made on her own behalf and on behalf of her uncle, and her parents about *Can’t Pay? We’ll Take it Away!*, Channel 5, 20 April 2016.

([https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/107433/issue-340-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/107433/issue-340-broadcast-on-demand-bulletin.pdf)).

arrangements between the HCEA company and the programme makers for the provision and use of the body cameras worn by the HCEAs and the subsequent use of the material recorded (both visual and audio) on those body cameras. Channel 5 confirmed to Ofcom that these arrangements were also in place at the time that Mr K and Mr L were filmed and the programme broadcast.

In a document entitled "Main Contributor Release Form" ("Release Form") it was agreed between the programme makers and the HCEA company that:

- the body cameras would be provided to the HCEAs by the programme makers and that the HCEAs would film in the way that they would do normally (i.e. with their own cameras when not engaged in activities with the programme makers);
- the entire copyright in the material recorded by the body cameras belonged to the programme makers for the purposes of the programme; and,
- reasonable access to view the body camera material would be given to the HCEA company upon request, but that material remained the property of the programme makers.

The significant further detail regarding the ownership and use of the body cameras had not been disclosed by Channel 5 in the information it had provided to Ofcom in its statement in response to the complaint. In its initial statement, Channel 5 had said: "As a matter of usual policy, High Court Enforcement Agents wear body cameras which record their interactions with members of the public while they are carrying out their official Court duties. This is for the safety of the Agents as well as providing a record of their activities in case of complaint or inquiry". Included with the supplementary material, Channel 5 also provided Ofcom with the programme production "bible" which provided further detail about the relevant practices and procedures governing the activities of the production team in making *Can't Pay? We'll Take It Away!*. In particular, the document stated that:

- each HCEA wore a body camera and a microphone with sound fed to a central recorder unit. Both the camera and the microphone recorded continuously while they dealt with a case;
- while HCEAs routinely wear body cameras, they are of low quality. Therefore, the programme makers replace them with their own, better quality body cameras and ensure that there is always a sound recordist on the shoots;
- the production team maintain the body cameras while filming and ensure that replacement batteries are carried, and the data backed up;
- if a "debtor" queries the use of the body cameras, the programme makers should respond that they are worn for the HCEAs' security, but that the material may be made available to the programme makers if it is in the public interest to show it; and,
- Ofcom does not view the filming by the HCEAs on the body cameras or the subsequent broadcast of the filmed footage as being surreptitious filming and so it can "be treated for all intent and purpose as being the same as your (i.e. camera crew) filming in most cases".

#### Further submissions by Channel 5

In addition to its response above, Channel 5 made the following, further submissions:

#### *The Balancing Question*

Channel 5 said that it considered that, in its decision in the case of Miss F, Ofcom did not follow the well-established methodology of the Strasbourg case-law in relation to the balancing of Article 8 and Article 10 rights. It referred particularly to the Grand Chamber cases of *Von Hannover v Germany (No 2)*<sup>3</sup>, *Axel Springer v Germany*<sup>4</sup>, and *Couderc v France*<sup>5</sup>. It said that these cases identify the factors which must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights. The first issue, to which the case law attributes particular importance, is whether the information is capable of contributing to a debate of general interest, there being little scope under Article 10 for restrictions on freedom of expression when a matter of public interest is at stake. Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest.

Channel 5 said that the broadcast of the section of the programme featuring Mr K and Mr L was clearly capable of contributing to a debate of public interest, namely the manner in which civil judgments are enforced, the powers granted to HCEAs, and the consequences of not paying proper attention to personal debts. The broadcaster said that where, as in this case, the subject matter of a broadcast contains information which is of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, then this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of the expression, i.e. broadcasting the unobscured footage of the unlawful assaults on the HCEAs, was also protected under Article 10. It said that *Jersild v Denmark*<sup>6</sup> emphasised that it is not for the national authorities to:

*"...substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed".*

This principle, according to Channel 5, was recently reaffirmed in *Khuja v Times Newspapers Ltd and others*<sup>7</sup>:

*"...Does the public interest extend to PNM's identity? This case differs from earlier cases in which the same question has arisen because the order sought by PNM would not prevent the identification of a party to the criminal proceedings or even of a witness. To my mind that makes it even more difficult to justify an injunction, for reasons which I have given. But in any event, I do not think it can be a relevant distinction. The policy which permits media reporting of judicial proceedings does not depend on the person adversely affected by the publicity being a participant in the proceedings. It depends on (i) the right of the public to be informed about a significant public act of the state, and (ii) the law's recognition that, within the limits imposed by the law of defamation, **the way in which the story is presented is a matter of editorial judgment, in which the desire to***

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<sup>3</sup> [2012] ECHR 228.

<sup>4</sup> [2012] EMLR 15.

<sup>5</sup> [2015] ECHR 992.

<sup>6</sup> [1994] 19 EHRR 1.

<sup>7</sup> [2017] UKSC 49.

**increase the interest of the story by giving it a human face is a legitimate consideration. PNM's identity is not a peripheral or irrelevant feature of this particular story"** [emphasis added by Channel 5].

The broadcaster said that the Article 10 rights of it and the programme makers to impart, and the audience to receive, the information in *Can't Pay? We'll Take It Away!* must weigh heavily in the balancing exercise. It said that there must be "very weighty" privacy interests at stake if any restriction is to be placed on those Article 10 rights.

Channel 5 said that this should not be taken as suggesting that its Article 10 rights (and those of the audience) automatically take priority over any Article 8 right enjoyed by the complainants – neither right trumps the other. However, it said that, in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, as opposed to other broadcasts where, say, the purpose of the broadcast is light entertainment or popular comedy, the case law establishes that "very weighty" privacy interests must be at stake if the intense focus on the interaction of the rights will swing against the Article 10 considerations.

Channel 5 submitted that when properly considered, the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of the complainants unobscured, and "such Article 8 rights as might arise in relation to the footage".

#### *Filming the complainants*

The footage contained in the broadcast was a combination of both footage filmed by the body cameras worn by the HCEAs and the footage filmed openly by the crew from the public highway. Channel 5 said that, for almost all of the enforcement procedure, "the open cameras" [i.e. both the programme makers' camera and the body worn cameras] were filming and both Mr L and Mr K were aware they were being filmed by those cameras. It also said that the complainants were aware that they were being filmed by the body cameras and that that footage was for the protection of the HCEAs (which it said turned out to be critical in this case, given the "assaults") and that it would be available for possible broadcast. Channel 5 said that, while the body cameras were owned by the programme makers, they were not imposed on the HCEAs who would have worn their own body cameras when attending the complainants' enforcement whether the programme makers were present or not. Channel 5 said that whether or not the programme was in production, the interaction between the complainants and the HCEAs would have been filmed by the HCEAs.

Channel 5 said that all footage filmed, whether by the camera crew or the body cameras, was thoroughly reviewed by the programme makers to determine whether or not there was sufficient public interest in the filmed material, given the editorial context of *Can't Pay? We'll Take It Away!*, to consider including the footage in a broadcast. After that initial review, the footage was reviewed at least twice more by senior members of the production team to consider the content, the context and the relevant public interest. It said that the footage was then cut for the purposes of broadcast and reviewed by the programme makers' independent lawyer to ensure the cut complied with Ofcom's Broadcasting Code ("the Code") and the "general law". Finally, the cut was reviewed by a senior member of Channel 5's commissioning team as well as a senior member of Channel 5's Content Legal Advice team. It was only after all those separate considerations had occurred that the decision to broadcast was made.



Channel 5 said that this was the identical process that would be undertaken if a production company were obtaining access to footage filmed by the HCEAs before the production company became aware of the existence of the footage. It said that the footage of the complainants had been scrutinised and considered in exactly the same way as it would have been had the production company not been present and the HCEAs were wearing their own body cameras.

The broadcaster said that open filming by the programme makers' main camera continued throughout the enforcement procedure and that the complainants were aware that they were being filmed both by the programme makers' main camera and the body cameras worn by the HCEAs. It added that Mr K was advised that the footage from the HCEAs' body cameras was available to the programme makers and that he should talk to them about its use. Channel 5 reiterated that the complainants had known that they were being filmed by the HCEAs and that the footage might appear in a broadcast.

### *Warranted filming*

Channel 5 said that even though there was some filming of the interior of the property, given that both Mr K and Mr L "committed assault", in its view there was little doubt that the filming of the enforcement action was warranted as that term is understood in the Code. In the case of Miss F, Ofcom said:

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

The broadcaster said that accepting that analysis for the purposes of this case, the filming of Mr L and Mr K was in the public interest because it revealed the "commission of crimes", i.e. "assault" and interference with the execution of the duties of the HCEAs. Channel 5 added that Mr K had made "specific threats of serious violence":

*"I'm going to tell you now, if you don't get out, you're going to get seriously hurt, and that's not a threat, that's a promise".*

Channel 5 said that the fact that the HCEAs chose not to press charges did not diminish the public interest in viewers seeing the extreme difficulties that they faced and overcame while executing official court business. This, Channel 5 said, was "in the clearest public interest". It said that the identities of both Mr L and Mr K were not peripheral to the broadcast, it was critical that viewers could see their faces so that they might judge for themselves the level of hostility and threat that the HCEAs had been required to endure.

### *Information disclosed*

The broadcaster said that the fact that Mr K had been ordered to pay a debt in relation to a motor vehicle accident was not a matter private to him. The fact that the HCEAs sought to execute a Writ against him, and the results of that attempt, were not private matters either. It said that during the enforcement action, the main conversations were constituted by:

- demands that the HCEAs leave the premises;
- “threats to commit violence”;
- the intervention of the police;
- discussion about the size of the debt; and,
- investigation of whether or not there were assets on the premises capable of meeting the debt.

None of these matters, Channel 5 said, was particularly private.

The broadcaster said that the programme contained no discussion of the personal finances of either complainant, save Mr K's comments about his insurance company and its obligation to pay the debt for him. No personal details of either of the complainants were otherwise revealed. It said that in these circumstances, it was difficult to see that any reasonable expectation of privacy could be said to have arisen in relation to anything filmed. If, contrary to that submission, such a right had arisen, Channel 5 said that it would not be a right to which any particular weight ought to be attached.

Channel 5 said that if the complainants enjoyed any Article 8 rights in relation to the filming of the enforcement action, they would be outweighed by the genuine public interest in seeing the “threats and assaults” made and the “serious interference” by the complainants to the lawful activities of the HCEAs.

Channel 5 said that the Strasbourg case law to which previous reference has been made was clear authority for the proposition that, in the circumstances of this case, the broadcast was capable of, and did, contribute to a matter of public debate and the rights of the complainants, if any, are insufficient to outweigh that Article 10 freedom.

In conclusion, Channel 5 said that for these reasons, and those in Channel 5's earlier submissions, the broadcaster did not believe that there had been any unwarranted invasion of the privacy of either Mr K or Mr L. Nor did Channel 5 believe that any of the considerations which led Ofcom to reach the conclusion it did in the case of Miss F were analogous to the circumstances of this case.

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

On 14 May 2018, Ofcom issued its Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant did not submit any representations. Channel 5 made representations which are summarised below.

#### Channel 5's representations

Channel 5 said that it repeated and relied upon its earlier submissions. It also added the following representations.

The broadcaster said that the programme was first broadcast on 21 October 2015 and was repeated since that time without further complaint from the complainants. It said that, importantly, the complainants did not pursue their allegation that the broadcast would have an adverse effect on the psychological state of either of them. Channel 5 said that had they done so, it would have further investigated their concerns and suspended broadcast of the programme while that happened. Equally, Channel 5 said that it was important to note that

the complainants' complaint did not make any accusations about surreptitious filming or indicate that, at any time, either of them did not appreciate that they were being filmed and that they might appear on television.

### *The Articles 8 and 10 Balancing Question*

Channel 5 said that as is always the case where a programme is concerned with matters of public interest, two important principles come into play, which, it said, needed repeating.

The broadcaster said that the first is that Article 10 protects not only publication of the substance of the ideas and information that engage the public interest, it also allows the publisher an editorial margin or latitude to choose the content which the publisher considers will engage and interest viewers and so help get the message across, and as to the form in which the matter is expressed. This prevents the court from substituting its own editorial judgment for the publisher's. This important principle, Channel 5 said, has been recognised at the highest level in this (i.e. UK) jurisdiction, as well as by the European Court of Human Rights ("ECtHR"):

- This principle of editorial discretion has been explained and applied in *Campbell v MGN Ltd*<sup>8</sup> per Lord Nicholl of Birkenhead (at para 28); Lord Hoffmann (at para 59) ("judges are not newspaper editors")<sup>9</sup>, and at paras 61 to 65 and para 77); Lord Hope of Craighead (at paras 107 and 112) (the publisher "should be accorded a reasonable margin of appreciation in taking decisions as to what details needed to be included in the article to give it credibility. This is an essential part of the journalistic exercise"); per Baroness Hale of Richmond (at para 143); Lord Carswell (at para 168); In *Re British Broadcasting Corporation*<sup>10</sup>; In *Re Guardian News and Media and others*<sup>11</sup> ("editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on"); *O (a child) v Rhodes*<sup>12</sup> (at paras 7 and 99); and *Khuja* (at Para29).
- The principle is also clearly stated in the Strasbourg case law. In *Jersild v Denmark* (at para 31) (cited by Lord Hope in *Campbell v MGN Ltd* (at para 108), and in the *Guardian News and Media* case (at para 25):

"At the same time, the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question. It is not for this court, nor for the national courts for that matter, to substitute their own views for those of the press as to

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<sup>8</sup> [2004] 2 AC 457.

<sup>9</sup> In *Re British Broadcasting Corporation* [2001] 1 AC 145 (at para 1251), Lord Hope referred to Lord Hoffmann's observation that "judges are not newspaper editors" and added "they are not broadcasting editors either".

<sup>10</sup> [2010] 1 AC at [25].

<sup>11</sup> [2010] 2 AC 697 at [63].

<sup>12</sup> [2016] AC 219.

what technique of reporting should be adopted by journalists. In this context the Court recalls that article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed"<sup>13</sup>.

The broadcaster said that the second principle is a specific aspect of the first, namely that where the media report on a matter of public interest Article 10 protects their freedom to illustrate their articles and broadcasts with information about actual individuals: *Re S (a child)*<sup>14</sup> (at paras 17 and 34); *Re British Broadcasting Corporation* (at para 26) ("These issues could, of course, be discussed in the abstract by reference to hypothetical facts and circumstances. But the arguments that the programme wishes to present will lose much of their force unless they can be directed to the facts and circumstances of actual cases"), (at paras 65 to 66); *Guardian News and Media* (at para 65 - "if newspapers can identify the people concerned, they may be able to give a more vivid and compelling account which will stimulate discussion about the use of freezing orders and their impact on the communities in which the individuals live"); *Khuja* (at paras 29 to 30 and para 34). Channel 5 said that although these cases were concerned with reports of court proceedings, the principle is of general application and not confined to court reporting: *Trimingham v Associated Newspapers Ltd*<sup>15</sup> (at paras 81 to 86 and para 289); *Rhodes* (at paras 78 and 99).

The extent of the protection which these Article 10 principles provide where a publication concerns a question of general interest was emphasised by Lord Rodger speaking for a seven judge Supreme Court in *Guardian News and Media* (at para 51):

"Since "neither article has as such precedence over the other" (In *Re S (A Child)* (Identification: Restrictions on Publication) [2005] 1 AC 593, para 17, per Lord Steyn), the weight to be attached to the rival interests under articles 8 and 10—and so the interest which is to prevail in any competition—will depend on the facts of the particular case. In this connection it should be borne in mind that—picking up the terminology used in the *Von Hannover* case 40 EHRR I—the European court has suggested that, **where the publication concerns a question "of general interest". article 10(2) scarcely leaves any room for restrictions on freedom of expression: *Petrina v Romania*** (Application No 78060/01) given 14 October 2008, para 40 ("l'article 10(2) de la Convention ne laisse guère de place pour des restrictions à la liberté d'expression dans le domaine des questions d'intérêt général"). (Emphasis added by Channel 5).

The broadcaster said that, accordingly, in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, as opposed to other broadcasts where, say, the purpose of the broadcast is light entertainment or popular comedy, the case law establishes that very weighty privacy interests must be at stake if the intense focus on the interaction of the rights will swing against the Article 10 considerations. Channel 5 said that it follows that the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of the complainants in

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<sup>13</sup> See *Axel Springer AG v Germany* (at para 81): "Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case".

<sup>14</sup> [2005] 1 AC 593.

<sup>15</sup> [2012] 4 All ER 717.

the Ofcom case unobscured, and such Article 8 rights as might arise in relation to the footage.

Channel 5 said that this position was fortified by the decision of Arnold J in *Ali v Channel 5 Broadcasting Limited*<sup>16</sup>. Relevantly, the judge found that *Can't Pay? We'll Take It Away!* contributes to a debate of public interest (at para 195), and that there is a margin of editorial discretion given to Channel 5 in relation to the contents of such a programme, including the way the story is told, the tone of the programme and any decision to use private information (at para 206), but held that, on the facts of that particular case, the margin of editorial discretion was exceeded because the programme contained "the drama of the conflict between [the landlord's son and the claimants] which had been encouraged by Mr Paul Bohill, a HCEA involved in the enforcement, to make good television" (at para 210).

The claimants in *Ali* complained that a number of items of private information had been unlawfully broadcast, including:

- their images and identity;
- "extensive footage of the interior of their home at the time of the eviction, showing the state it was in when they were taken by surprise by the HCEAs and the film crew, including such details as the unmade bed in the downstairs bedroom", about which Mrs Ali was "particularly upset" (at (1441), the children's bedrooms, the bathroom/toilet and the family's personal possessions gathered into large bags;
- the sleepwear Mr Ali was wearing when first encountered by the HCEAs;
- the claimants' demeanour and visible distress;
- details of the claimants' receipt of benefits and the amount of those benefits;
- the circumstances leading to their eviction;
- the identification, by association, of the claimants' children;
- conflict with the landlord's son and associated distress; and,
- images of the claimants filmed on the HCEA's body cameras about which the claimants had not been informed and which the claimants said in evidence they had not expected or foresaw might be broadcast on national television.

The broadcaster said that while the judge found that those matters attracted the protection of Article 8, he did not uphold the claimants' claim of misuse of private information in relation to any of those matters apart from the penultimate bullet point, the conflict with the landlord's son and associated distress, and upheld that part of the claim only because of his finding that Mr Bohill had encouraged that conflict to make "good television" (at para 210). In other words, the Judge found that the Article 10 interests outweighed the Article 8 interests in all but one aspect of the *Ali* case. It said that the claimants' counsel drew the judge's attention to Ofcom's decision in *Miss F*, but the Judge found that decision and earlier Ofcom decisions relating to the series of "little assistance". Channel 5 said that the *Ali* decision is an important recognition of the principle noted by Lord Rodger in *Guardian News and Media*:

"...where the publication concerns a question "of general interest", article 10(2) scarcely leaves any room for restrictions on freedom of expression: *Petrina v Romania*...".

Channel 5 said that in the present case, the unedited material did not disclose any evidence of the kind of encouragement to make "good television" which the judge dealt

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<sup>16</sup> [2018] EWHC 298.

with in *Ali*. However, the unedited material disclosed how difficult the job of enforcing judgments can be and the dangers that HCEAs can face when carrying out their duties. Consistently with the decision in *Ali*, Channel 5's editorial discretion to include information private to the complainants in this Ofcom case was justified as it contributed to a debate of general interest.

### *Filming the complainants*

Ofcom's Preliminary View appeared to accept that the body cameras worn by the HCEAs were worn openly by them. Any reasonable person ought to have understood that the body cameras were filming the activities of the HCEAs. No attempt was made to hide the fact that the HCEAs were filming. While the body cameras were owned by the programme makers, they were not imposed on the HCEAs who would have worn body cameras when attending the enforcement whether the programme makers were present or not. In other words, whether or not the programme was in production, and whether or not the programme makers had signed an access agreement with the HCEA company (which directs the activities of the relevant HCEAs), the interaction between the complainants and the HCEAs would have been filmed by the HCEAs.

Channel 5 said that while the unedited material captured by the body cameras and the programme makers' cameras provided good detail about what happened during the enforcement action, it did not necessarily tell the whole story. Conversations could and often did occur which were not picked up by camera or microphone. Channel 5 submitted that this was what seems to have occurred in this case.

The broadcaster said that the contents of a letter to Channel 5 from Mr L's psychologist dated 8 June 2015 clearly established that the complainants knew that they were being filmed by body cameras to which Channel 5 had access for possible broadcast. The writer of the letter reported what had been said by the complainants:

"The bailiffs who attended his house wore cameras and filmed Mr [L] against his will. They also told Mr [L] that the footage that they were filming was the property of Channel 5 and Touch Productions".

Channel 5 said that in view of the contents of this letter, it was difficult to see how the filming could be considered surreptitious. The complainants were aware that "the body cameras and the material recorded by them belonged to the programme makers and could subsequently be used in the television programme".

Channel 5 also submitted that there were several points concerning the conclusion that the filming was surreptitious which require Ofcom's reconsideration:

- i) In similar circumstances, Arnold J reached no adverse conclusions about Channel 5 in the *Ali* case despite the issue of "surreptitious footage", lack of consent, and lack of knowledge of the use to which the footage might be put were squarely raised before him.
- ii) Ofcom should take into account the fact that the filming by the body cameras was for the protection and safety of the HCEAs and any other purpose should not be overstated. The footage was not filmed for the purpose of broadcast. It was filmed for the protection and safety of the HCEAs and on the basis that it could be reviewed by the programme

makers for possible inclusion in a future broadcast. The fact of filming did not necessarily equate with the fact that the filmed material would be broadcast.

- iii) This was not a case where the complainants had been misled, in any way, about the footage obtained by the body cameras.
- iv) In situations where footage is filmed by HCEAs on body cameras and no access agreement is in place, the debtors in question can never be told that the footage might be broadcast on national television. In those cases, on the basis of previous decisions made by Ofcom in relation to observational factual documentaries, Ofcom would not consider programme makers seeking and obtaining access to such footage after filming has taken place as being unfair to the debtors or a contravention of their privacy rights.

Logically, therefore, there can be no such finding in the present case. The timing of an access agreement to body camera footage filmed by public officials could not be determinative of whether or not the footage was obtained surreptitiously. The Code envisages some kind of deliberate deception, and none existed in the circumstances involving the filming of the complainants.

- v) Nothing in the Code or the general law suggests that a person needs to be told that they are being filmed for television in order for footage of them to be included in a television broadcast.
- vi) The programme makers did not use indiscriminate methods or act in the speculative hope of gathering material for potential broadcast. The interaction between the complainants and the HCEAs would have been filmed regardless of whether or not the programme was in production.
- vii) The production company had not sought to use any method it could to gain footage of the complainants for broadcast. The filming took place as an ordinary, unexceptional part of the activities of the HCEAs. The question of whether or not anything filmed could or should be broadcast was the subject of detailed and serious consideration by the programme makers, the broadcaster, and their respective legal advisers. The filming of the complainants was not "akin to the programme makers leaving an unattended camera or recording device on private property without the consent of the occupiers". The HCEAs wore the body cameras openly and no one was in any doubt that they were filming.
- viii) The situation would be different had the complainants been actively misled in any way or if, for example, the production company had asked the HCEAs to film their interaction in circumstances where they otherwise would not. But that is not what happened here.

Channel 5 said that Ofcom's reasoning in its Preliminary View and the resultant conclusion that the footage used in the broadcast was filmed surreptitiously was, therefore, unsustainable.

#### *Warranted filming*

Channel 5 said that the filming of the complainants was in the public interest because it dealt with the execution of the duties of the HCEAs. In *Ali*, Arnold J accepted that *Can't Pay? We'll Take It Away!* contributed to a debate of general interest but found that the focus of the

segment concerning the *Ali* family was not "upon matters of public interest, but upon the drama of the conflict between the landlord's son and the claimants, a conflict which had been encouraged by Mr Bohill to make "good television".

By contrast, the focus of the segment involving the complaints was entirely about the debate of general interest – the consequences of debt, the consequences of the failure to settle debt, the powers of HCEAs when executing Writs and the possible consequences for family members of the debtor if debts were not paid. The segment did not stray into any ancillary area. Channel 5 said that, accordingly, and given the analysis in *Ali*, there was no basis upon which Channel 5's Article 10 rights and its concomitant editorial discretion as to the tone and way in which the story was told, should be restricted. It said that the inclusion of the limited information private to the complainants (essentially the footage of the hallway by the main entrance) was justified as a contribution to a debate of general interest.

Channel 5 said that the identities of the complainants were not peripheral to the broadcast. It was critical that viewers could see their faces in order that they might judge for themselves the level of hostility and threat that the HCEAs were required to endure. The broadcaster emphasised that the complainants assaulted the HCEAs and thereby, and in other ways, obstructed their activities. It said that the actions of the complainants were serious matters - the assault affected the HCEAs deeply, and there was no excuse for it. Whether or not Mr L was suffering a PTSD episode, there was no justification for committing assault against a person carrying out official duties. Mr O'Shaughnessy had made clear the depth of his feelings about what he had endured in the broadcast and Mr K seemed to accept that and shake his hand in reconciliation.

Channel 5 said that it was not necessary for a crime to be reported, or for charges to be laid, for a crime to have been committed. It said that Mr K's words: "...if you don't get out, you're going to get seriously hurt and that's not a threat, that's a promise, get out", were clearly threatening and obstructive.

Channel 5 suggested that there might have been no filming inside the complainants' home had Mr K not lied about his identity and sought to avoid the HCEAs. The fact that he was caught out in a lie about who he was ensured that the enforcement action moved into the home as a direct result. That was a fundamental consideration and one which, on its own, warranted any filming of the enforcement process which followed, surreptitious or not.

The broadcaster said that the mere fact of the assault justified the filming of the interaction between the complainants and the HCEAs as it was clearly a matter of genuine public interest that viewers see the difficulties faced by those charged by the courts to execute court orders. These factors made this case a very different one to that considered by Ofcom in *Miss F* or *Mr and Mrs T*.

Channel 5 said that Ofcom had identified a number of factors which it considered to be private to the complainants and took the filming of them into account in making its Preliminary View. However, none of those matters were included in the broadcast. Only that material directly relevant to the enforcement, Mr K's lies and aggression and the assault of the HCEAs was included in the broadcast along with the enforcement action itself. It said that Ofcom's Preliminary View stated that there are "sensitive and intimate matters" concerning the complainants apparently contained in the broadcast, but did not identify any of those



matters. The broadcaster said that apart from footage of the hallway in their home, the broadcast only contained matters directly relevant to the enforcement.

The amount of the debt, how it arose, or why the Writ was issued were not matters which should fairly be taken into account in the balancing equation. There was no dispute that the Writ was lawfully issued, that the debt was owing, and that the enforcement action resulted in the satisfaction of the debt. As Ofcom appeared to accept, and as Arnold J did in *Ali*, there was genuine public interest in viewers seeing the manner in which Writs are executed and the difficulties and extreme reactions that HCEAs experience whilst performing their lawful duties.

Channel 5 said that for all the above reasons the filming and the broadcast of some of that footage, was entirely warranted.

#### *Restricting Article 10 rights*

Channel 5 said that Ofcom rested its decision that the Article 8 rights of the complainants justified a restriction on Channel 5's Article 10 rights on the basis that the body camera footage was obtained surreptitiously, and:

- was filmed inside the family home;
- showed the family under pressure and/or distressed;
- showed personal items and furnishings in the family home;
- was obtained without the consent of any member of the complainants;
- showed intimate exchanges between family members; and,
- how the pressure the family were placed under as the HCEAs went about their duties.

None of these matters, Channel 5 said, singly or in combination, were sufficient to persuade the court in *Ali* that Channel 5's Article 10 rights should be restricted. The Judge in *Ali* had considered them all to be personal consequences and part of the impact of the enforcement process upon the Ali family, and Mr and Mrs Ali in particular; they were matters which did "contribute to a debate of general interest". Alone they did not justify any restriction of Channel 5's Article 10 rights or any limitation of its editorial discretion about how to tell a story of general public interest. The broadcaster said that the situation in *Ali* was not relevantly distinguishable from the situation in the Ofcom case. The segment focused exclusively on the enforcement action and the aggressive and/or dishonest actions taken by the complainants.

Accordingly, on the case law authorities, the inclusion of the body camera footage was a matter squarely within the editorial discretion afforded to Channel 5. The fact that the complainants felt the inclusion of particular matters was unnecessary was not a relevant consideration. In the circumstances of the case there was no sufficient reason to fetter that discretion or otherwise restrict Channel 5's Article 10 rights.

In conclusion, for all these reasons above, and those in Channel 5's earlier submissions, Channel 5 said that it did not believe that there has been any unwarranted infringement of the complainants' privacy.

## Decision

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

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

We carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting material. We also examined the unedited footage of the HCEAs' visit to the complainants' home as well as the unedited footage filmed by the programme makers. We also took account of the supplementary material relating to the body camera arrangements between the HCEA company and the programme makers and Channel 5's representations on the Preliminary View. Ofcom considered that the representations made by the broadcaster on its reasoning (insofar as they were directly relevant to Ofcom's consideration of the complaint as entertained) and concluded that the points raised by Channel 5 did not materially affect its decision to uphold the complaint.

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

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

In 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 Mr K's and Mr L's complaint that their privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast as set out under the "Summary of the Complaint section" above.

Ofcom had regard to Practices 8.5, 8.7 and 8.9 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.7 states that if an individual or organisation's privacy is being infringed, and they ask that the filming,

recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Ofcom also had regard to Practice 8.13 which states that surreptitious filming or recording should only be used where it is warranted.

We assessed the extent to which the complainants had a legitimate expectation of privacy in the particular circumstances in which the relevant material was obtained. 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.

The unedited footage showed that Mr K was initially filmed in the street outside his father's house by both the body cameras worn by the HCEAs and the TV cameras used by the programme makers, the majority of the footage of Mr K and Mr L was obtained by the body cameras worn by the HCEAs in Mr L's private home discussing their financial and personal circumstances with the HCEAs. In particular, Mr K was filmed as he explained the circumstances that he believed were behind the Writ issued against him; his belief that it was his insurance company that was liable, not him; that he could not afford to pay the debt; and, that he was temporarily staying at his father's house and sleeping in his van. He was also filmed engaged in a heated exchange with the HCEAs about their presence in the house and the effect it was having on his father's health. This led to an altercation as the complainants attempted to push the HCEAs physically out of the front door, with Mr L apparently falling to the floor. As a result, the police were called. Further, Mr K was filmed discussing and eventually agreeing with the HCEAs about how he could resolve the situation.

Mr L was primarily filmed inside his house by the body cameras worn by the HCEAs. In particular, he was filmed in the hallway repeatedly asking the HCEAs why they were in his house as the debt was not in his name and asking them to leave. He also disclosed to the HCEAs in the unedited footage that he suffered from a medical condition (i.e. PTSD) and, while visibly distressed, alluding to the reasons for his reaction to the body cameras filming in his house (i.e. "...explosions, dead bodies..."). Also, part of the interior of Mr L's home, including some possessions (though these were mainly tools, motorcycle paraphernalia, and jackets) in his hallway, was filmed as the HCEAs tried to enforce the Writ. Part of the conversation between Mr Anglin and Mr L could be heard via the live audio feed to the programme makers outside the house when Mr Anglin's body camera had been turned off in order to facilitate the HCEAs' inspection of the property (see below). While the complete conversation was inaudible, pieces of information such as Mr L confirming that a hi-fi, laptops, and clothing were his, could be heard as well as information that indicated that Mr L was an ex- serviceman, or ex-policeman.

The unedited body camera footage also showed the interaction between the HCEAs and a neighbour who interceded on behalf of Mr L, and the interactions between the complainants and the police. In this footage, the neighbour discussed Mr L's mental health with the HCEAs, as did Mr K who referred to his father as being of a "nervous disposition" and that the presence of the HCEAs in his father's house was making him "feel nervous".

Ofcom considered that from the outset of filming both Mr K and Mr L had been aware of both the HCEAs' body cameras and the presence of the broadcast TV cameras used by

the camera crew to film the HCEAs and that they had made it clear that they did not want to be filmed. The following conversations from the unedited footage filmed on the body cameras worn by the HCEAs illustrated this.

When the HCEAs arrived outside Mr L's home, the following exchange took place between Mr K and Mr Anglin:

- Mr K: *"What's that? [pointing at body camera].*
- Mr Anglin: *That is a camera.*
- Mr K: *What's that for?*
- Mr Anglin: *For me really being protected.*
- Mr K: *Why?*
- Mr Anglin: *Well I don't know who are, are you [Mr K's name]? Are you [Mr K's name]?*
- Mr K: *Are you gonna to turn that off, mate?" [pointing to the body camera].*

Shortly after the HCEAs gained access to the house, the following exchange took place between Mr L and the HCEAs [Ofcom's emphases]:

- Mr L: *"No, no, no, if, if you have any evidence or anything like that then that's fine we'll talk about that now.*
- Mr O'Shaughnessy: *Okay.*
- Mr L: *But that camera [i.e. the TV camera outside], anything with me on it or anybody else on it here, if it appears.*
- Mr O'Shaughnessy: *Okay.*
- Mr Anglin: *Well, I'll tell you what, okay, okay.*
- Mr L: *Let me finish, if it appears, if it appears and I have a witness now behind you which is.*
- Mr Anglin: *Yeah, yeah. Right yeah that's no problem.*
- Mr L: *If this appears on any documentary at all I will hold you guys.*

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- Mr L: *Not your company, you guys, 'cos you guys brought them along with you.*
- Mr Anglin: *Listen, will you listen.*

Mr L: *I will listen to you now.*

Mr Anglin: *Right. I'll tell you what you need to do. Right? **The film crew...the film crew are outside, please go and speak to them right because they're the ones they are the ones that are responsible.***

Mr L: *No.*

Mr Anglin: *No.*

Mr O'Shaughnessy: *If you want to.*

Mr Anglin: *I've listened to you, you don't have to speak to them right, but I'm letting you know, right, that if you've got issues about it with them please speak with them because we don't have that control over them, okay?*

Mr L: ***Why did you bring them here?***

Mr Anglin: *We, they're, they're following us as I said, but I can't discuss that with you, they are happy to discuss it with you, we're not allowed to.*

Mr L: ***Why are they following you here then?***

Mr Anglin: *They're making a documentary".*

A short time later in the unedited footage, the following exchange took place as Mr K explained the reason for his initial reaction to the HCEAs outside in the street:

Mr Anglin: *"I was quite happy to speak to him outside and he refused to. So, now we're inside. Okay?*

Mr K: *Well you [inaudible] a camera, what did you expect?*

Mr Anglin: *No, no, I asked, all you had to do was to turn around and [inaudible] tell me who you was and we could have sorted it out.*

Mr K: *Five people turned up with cameras, what the fuck was that all about?*

Mr Anglin: *No, you were speaking to me first, you didn't see them.*

Mr K: *It doesn't matter.*

Mr Anglin: *Well either which way.*

Mr K: *Well sort of three [inaudible] turned up [inaudible].*

Mr Anglin: *Either which way right, I asked you outside and we could have resolved it outside and you chose not to.*

Mr K: *Why should I speak to you? I was just being confronted by like five people. I was on my own".*

Later in the unedited footage, after the police had been called, Mr L said to Mr O'Shaughnessy, *"Don't keep opening my door. **I want my door closed for privacy. I am allowed my door closed for privacy**" [Ofcom's emphasis]. Further on into the unedited footage, when the police officers discussed the situation in the hallway with the HCEAs, the complainants, and a neighbour, Mr L said: *"There are cameras all over the place. What for, innit? I understand these ones like [indicating the body cameras], but what...? [referring to the TV cameras outside]"*.*

A short while later in the unedited footage, Mr L's neighbour commented to Mr Anglin that: *"...because of his medical condition, right [inaudible], he's getting really worked up with him because of the camera. **He understands it's for safety** [Ofcom's emphasis]...he will have as many police officers with you [inaudible] around the house. [Inaudible] please have some consideration and turn the cameras [off]"*. Mr Anglin responded by explaining that he would face *"discipline"* if he turned the camera off and that doing so would have insurance implications.

Later in the unedited footage, the following exchange took place:

Mr L: *"Please, please [inaudible] the officer will follow you around the house [inaudible].*

Mr O'Shaughnessy: *What's, what's, the issue with the camera?*

Mr L: *Please turn the camera off, it's just for my [inaudible].*

Mr Anglin: *What is the issue with the camera? What's your objection?*

Mr L: *[Inaudible]*

Mr Anglin: *Okay what if...*

Mr O'Shaughnessy: *Let me make a quick call, let me make a quick call, let me make a call to the governor and I'll. Give me two minutes.*

Mr L: *[Inaudible]*

Mr Anglin: *We're going to phone them and find out. But you don't have, you wouldn't be on camera, for example, if you were behind me.*

Mr K: *It's just the camera now...*

Mr L: *...this is my home, it's taken a long time [inaudible] understand when you have not seen [inaudible] explosions, dead bodies...[visibly shaking].*

Police officer 2: *Don't distress yourself alright? [Mr L's name]?"*

After it was eventually agreed that Mr Anglin would turn off his body camera and look around the house with Mr L and a police officer, the following exchange took place between Mr Anglin and Mr K. This occurred almost two hours after the HCEAs has first arrived [Ofcom's emphases]:

- Mr Anglin: *"That's the amount without the fees, the fees bring it up to about, that's the amount you need to give the insurance company [inaudible] my colleague is also [inaudible] he's going to, we're gonna write a letter for you [inaudible]."*
- Mr K: *And obviously I get copies of what's happened today?*
- Mr Anglin: *Well you're gonna, well yeah 'cos...*
- Mr K: *Well, no I mean, obviously all the video evidence [inaudible].*
- Mr Anglin: *The video evidence has got to, this is why I said to you in the first place to speak to the film crew, they will explain, I've got no control over what happens with them.*
- Mr K: *What about your [inaudible, but likely to be referring to the body cameras] get any of that?*
- Mr Anglin: *It's all linked if you want it on disclosure [inaudible].*
- Mr K: ***So that belongs to them, does it?***
- Mr Anglin: ***Yeah.***
- Mr K: *Well, [inaudible] need to speak to them outside.*
- Mr Anglin: *You need to speak to them outside.*
- Mr K: *They're still waiting yeah? Who should I speak to?*
- Mr Anglin: *Any...They'll introduce themselves, go out there and erm, they'll tell you 'cos I can't, I can't, I'm not allowed to say what they can and can't, they will tell you 'cos I'm nothing to do with, I've got no control over it. And then they will give you a card and then what will happen is if you're dead set against it erm, you have to contact erm, the erm, they will tell you, they'll tell you. And that way you can ask them whatever you want, whatever you [inaudible], tell you what you can and can't do. [Inaudible] that's probably the best bet, because I don't want to say anything that might be wrong and that's not my [inaudible]. Just like they can't tell me how to do my job".*

Towards the end of the unedited footage filmed by the camera crew, and prior to the programme makers and the HCEAs leaving, the following exchange took place between Mr K and the programme makers:

Mr K: *"I mean [inaudible] TV, [inaudible] person had come up to me and said 'Look we are making a TV programme', would have been a completely different scenario mate, because at the end of the day, I saw loads of people around the house, and I thought [inaudible] TV, it'd be nice to just announce before [inaudible]."*

Crew member 1: *The problem is that I think they were trying to identify who you were before talking to you [inaudible] so we were just kind of like, held back a little bit you know, erm, but in the first instance we always try and make sure that we inform people of what we're doing.*

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Mr K: *But if I'd approached you, you would have put your hand up and go 'yeah it's me'. I mean, honestly really?*

Crew member 2: *We would have told you who we were, definitely.*

Mr K: *No, but I mean if, if I, I'm asking the question if it was, if it was role reversal...[inaudible].*

Crew member 1: *[Inaudible] from Channel 5, making a documentary called Can't Pay? We'll Take It Away following High Court Enforcement Agents, well at some point we'd be able to tell you, but because they were not able to identify who you were. Literally within minutes they're inside the house.*

Mr K: *You didn't finish it off while I was in there, no? The water's gone cold now.*

Crew Member 2: *Just as important we're not even on their side, we are following them.*

Mr K: *No, I understand where you're coming from, but I mean you're expecting to get abuse, I mean.*

Crew member 2: *[Inaudible] goes up and it's all a bit confusing and it just happens [inaudible]. Well I mean we're not just on their side, we're here to talk to you as well. Yeah? And if you've got any strong feelings about the way they acted, tell us mate. 'Cos, you know it's an impartial programme, we are not making it for them, we are making it for Channel 5. So, if you've got any issues and want to talk, more than happy to...*

Mr K: *Yeah, well, I'll be in touch anyway, so, erm.*

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Crew member 1: *Is there anything...Did you want to tell us anything on camera?*

Mr K: *No, not really mate, no.*



Crew member 2: *Okay fair enough. But, erm, yeah [name] will be able to help you, she's you know got [inaudible].*

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Crew member 2: *Are you sure you don't want to talk to us about it?*

Mr K: *Yeah [inaudible] hair and make-up [inaudible] it's not a problem.*

Crew member 2: *[Inaudible] they won't use that, they won't use that it's the truth. I mean what I mean*

Mr K: *I mean if worse comes to worse I might just pop in the office, I am sure they're not far away.*

Crew member 2: *It's in London, it's in central London.*

Mr K: *It's nothing.*

Crew member 2: *It's a possibility, I mean from your perspective it's good if we do it now in the moment to a degree.*

Mr K: *I know it's in the moment, but I'll say something inappropriate which obviously isn't suitable for camera and it's going to be an argument based on [inaudible], you know what I mean? When you see someone that was unprepared this afternoon that's what happens, and this is what will happen again today, so I mean, I got to run through all this, see exactly where right and wrong is and who's to blame, and then I'll be more than happy to pop up, it wouldn't be a problem.*

Crew member 2: *That's a fair comment, actually. You do need to understand it a bit more don't you?*

Crew member 1: *But I mean even that in itself I think that's quite you know, just trying to get your head around it you know. Tell us that he's popped out, I'm just washing the car, I don't know what's going on, I'm [inaudible] 'cos, in fact, that's how it's resolved you know, you're going to make the phone call tomorrow and that's what happened, you're going to tell, you know you're going to mull it over this evening and work out where right and wrong has happened, I think in a way that sounds to me quite a, could be a potentially interesting stance.*

Crew member 2: *And what is important is that they marched in your house and you went on to answer, that, with that is important and that kind of doesn't come across 'cos it, everyone's blood was up at that point and the anger kind of clouds it a little bit and what I'm worried about is that going out and being slightly one sided and not the other do you understand what I mean?*

Mr K: *Well, I'll have a think about it and I'll be in touch anyway, but, erm, if it does come to that I can always pop up it's not a problem".*

Ofcom was told by Channel 5 in its statement that the HCEAs routinely wore body cameras during their work for personal safety reasons and in case of a complaint or inquiry. However, in this instance, the body cameras being worn were, in fact, provided to the HCEAs by the programme makers with a view to potentially including all or part of the HCEA' interaction with the complainants in the programme as broadcast.

In considering the way this material was obtained, we took account of Practice 8.13 which states that "surreptitious filming or recording should only be used where it is warranted. Normally, any infringement will only be warranted if: there is a *prima facie* evidence of a story in the public interest; 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".

The Code defines "surreptitious filming and recording" as including "the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing with a recording when the other party thinks that it has come to an end".

We did not accept Channel 5's representations on Ofcom's Preliminary View that Ofcom had not taken into account that the filming by the body cameras was for the protection and safety of the HCEAs or that Ofcom overstated any other purpose. Channel 5's initial statement said that the HCEAs routinely wore body cameras to record their interaction with members of the public while they are carrying out their official duties. Channel 5 said this was for personal safety reasons and in case of a complaint or inquiry. Ofcom had understood from this statement that these cameras belonged to the HCEAs and were used by them primarily for that purpose. However, the "Supplementary material" relating to the body cameras revealed that the body cameras were, in fact, the property of the programme makers who owned the entire copyright in the material recorded by the body cameras and had control of access to the footage by the HCEA company. As it had not been aware of the existence of these arrangements, Ofcom had reasonably assumed from the information originally provided by Channel 5 that the body cameras belonged to the HCEAs and therefore that the footage captured by them was taken and retained for official purposes.

Ofcom considered that it was apparent from these arrangements that the body cameras were not being worn by the HCEAs solely for their own benefit. Rather, the provision of the cameras by the programme makers and their ownership of the footage unequivocally showed the existence of an advance arrangement between the programme makers and the HCEA company which provided the programme makers with unfettered access to the footage recorded by the body cameras. A fundamental purpose of the cameras, therefore, was for the programme makers to obtain and retain footage for potential broadcast. The ownership and operation of the cameras guaranteed them exclusivity to the material recorded and enabled free, uninhibited access to Mr L's home as they interacted with the HCEAs. This afforded the programme makers a level of access that exceeded substantially any exposure which anyone in the complainants' position could possibly have expected at the time. As a consequence, the programme makers

acquired access to unguarded interactions and disclosures within the confines of the domestic home and were able to observe and record sensitive and intimate exchanges between Mr K and Mr L, as well as with the HCEAs, the police, and the neighbours, during a stressful and emotional event.

Ofcom noted Channel 5's submission that the contents of a letter to Channel 5 from Mr L's psychologist (dated 8 June 2015) established that the complainants were aware that the body cameras and the material recorded by them belonged to the programme makers and could subsequently be used in the television programme. However, we observed from the unedited footage that there was no evidence that either Mr K or Mr L were told about the ownership and use of the footage at any time before or during the filming of the enforcement. Contrary to Channel 5's submission, the letter from the psychologist did not show that the complainants knew that the footage from the body cameras could be broadcast and we considered that ownership of the body cameras and the material recorded by them and the fact it could subsequently be used in the television programme was not something that the complainants could reasonably have foreseen or appreciated. In fact, the actions of the programme makers in agreeing not to come inside the house and the various conversations between the complainants and the HCEAs about the filming gave every indication that this was not the case. We recognised that broadcasters often obtain material for broadcast from third parties, but in this case, a camera crew was visibly present and had remained on the public highway outside the boundary of the house.

We took into account the following exchange in the unedited footage between the HCEAs and Mr L about the presence of the cameras and the filming [Ofcom's emphases]:

Mr L: *"Why are there cameras there? [i.e. the main TV camera outside]*

Mr O'Shaughnessy: *They're following us.*

Mr Anglin: *They're following us.*

Mr L: *What for?*

Mr O'Shaughnessy: *A documentary.*

Mr L: ***Right, well you've no right coming to my house filming me.***

Mr Anglin: ***We have.***

Mr L: ***No, you have not, no not with a camera.***

Mr O'Shaughnessy: ***Well they're outside.***

Mr L: *If you've got.*

Mr Anglin: ***They're outside.***

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Mr Anglin: *Right. I'll tell you what you need to do. Right? **The film crew...the film crew are outside, please go and speak to them right because they're the ones they are the ones that are responsible.***

Mr L: *No.*

In our view, this conversation and the fact that the programme makers remained on the public highway would have sent a clear message to the complainants that their interactions with the HCEAs inside their home would not be filmed by the programme makers for potential use in a television programme. This was misleading as it was in direct contrast to the actual position, given the programme makers' access to the material recorded by the body cameras. Indeed, from the unedited body camera footage, we recognised that the conversations between the HCEAs, the police, the neighbour, and the complainants inside the house was being relayed live via an audio feed to the programme makers outside the house, thereby enabling the programme makers to listen to the entire interaction between the complainants, the HCEAs and the police officers present as it happened, without the complainants' knowledge. Neither the programme makers nor the HCEAs informed the complainants of this fact at any time during the filming. This was particularly significant as Mr Anglin agreed to switch off his body camera while he searched the property.

During a conversation between one of the police officers and one of the HCEAs, the subject of the purpose of the body cameras arose [Ofcom's emphases]:

Mr Anglin: *They [the complainants] want the camera off, they want our cameras off.*

Mr O'Shaughnessy: *No, it's not happening. So, we'll stay here for now.*

Mr Anglin: *Yes, for now.*

Police officer 1: ***These aren't for the people outside are they?***

Mr O'Shaughnessy: ***Well they are, and for us.***

Mr Anglin: ***They are, and for us, but mostly it's evidence for us. Erm, it's a bit...***

Police officer 1: *[inaudible]*

Mr Anglin: *Yeah, yeah, but if we never had it on god knows what allegations would have been made about us today...".*

While this conversation took place inside the complainants' home, Mr K was talking on his mobile phone and Mr L was in another room with a police officer. In our view, neither Mr K nor his father would have heard or been aware of the content of this conversation. In these circumstances, we considered it was significant that no attempt was made to ensure that the complainants were made aware at the time of filming of the programme makers' use of the body cameras, or the potential consequences of that filming, although

it appeared that Mr K subsequently learned about the ownership of the footage after the filming had taken place<sup>17</sup>.

Taking all these factors into account, Ofcom considered that the material recorded of Mr K and his father and the interior of his father's home by the body cameras had been obtained by the programme makers surreptitiously, notwithstanding the fact that the body cameras themselves were worn openly. An intrinsic purpose of the filming from these cameras was to obtain footage for potential broadcast. As a result, the complainants would not have understood the full significance of the body cameras at the time of the filming, particularly as they understood that the TV cameras belonging to the programme makers had remained outside the property. In these circumstances, we considered that the actions of the programme makers were akin to deliberately continuing with a recording when the other party thinks that it has come to an end. Similarly, by not making the complainants aware of the full significance of the body cameras, the method by which this footage and the accompanying audio was obtained was akin to the programme makers leaving an unattended camera or recording device on private property without the consent of the occupiers. For all these reasons, Ofcom did not accept Channel 5's argument (made in response to the Preliminary View) that the complainants had not been misled in relation to the filming. Accordingly, we concluded that the complainants had not been aware that the body cameras were recording material for possible inclusion in a television programme.

Channel 5 submitted that the execution of a writ issued by the High Court is a public matter and that in this case, the execution of the writ was not a matter connected with the complainants' private lives. It also said that the activities of HCEAs, the kinds of difficulties they face when executing their duties, and the impact on the lives of those affected by the activities of HCEAs are all matters of public interest. However, in Ofcom's view, none of these arguments pointed to a *prima facie* story in the public interest of a type or order which would ordinarily warrant the use of surreptitious filming (as envisaged by Practice 8.13), particularly as the filming itself took place in a private home and concerned not simply the fact of the Writ or its enforcement, but the complainants' personal reaction to that event and their interactions with one another, the HCEAs, and police officers in light of the situation which confronted them in the property.

Ofcom's decision on the issue of surreptitious filming has regard to the fact that an advance arrangement was in place between the programme makers and the HCEA company. This arrangement provided the programme makers with unfettered access to the footage recorded by the body cameras for the purposes of broadcast before any footage had been captured and in the absence of any *prima facie* evidence in this case of a sufficient public interest which would justify any privacy intrusion which would potentially arise from obtaining access to the official footage in question. Contrary to Channel 5's assertions in its representations on the Preliminary View, Ofcom considered that this was a case in which the programme makers acted "in the speculative hope of gathering material for potential broadcast".

For the sake of clarity, while the ownership of the body cameras and the copyright in the footage were notable features of the arrangement, it was the fact that the body cameras were worn with the prior objective of obtaining footage for the purpose of broadcast,

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<sup>17</sup> In response to asking one of the HCEAs about obtaining copies of the video evidence, he was told by the HCEA that he had "no control over it", leading Mr K to conclude: "so that belongs to them, does it?" and the HCEA confirmed: "Yeah".

rather than the fact of the ownership itself, which was the material consideration in this part of Ofcom's analysis (not least as it served to define the purpose for which the footage was obtained in the first place and allowed the programme makers unfettered access to, and use of, the footage which was recorded as a consequence).

The fact that the body cameras were worn with the prior objective of obtaining footage for the purpose of broadcast was not something which was explained to the complainants, nor would it have been something which they could reasonably have foreseen or appreciated. In Ofcom's view, this justifies classifying the manner in which footage was obtained as "surreptitious" in the sense envisaged by the Code. This would not be the case if the complainants had been made aware at the outset that the footage was to be used for purposes of potential broadcast (rather than simply for the HCEAs' own official use).

It is important for Ofcom to stress that the Code does not prohibit the use of surreptitious filming. Indeed, it can be an important means of enabling broadcasters to obtain material evidence where, as envisaged by Practice 8.13, there is a *prima facie* evidence of a story in the public interest; 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. These important prior considerations, which arise because of the potentially significant privacy consequences which surreptitious filming may cause are designed to ensure that broadcasters do not use such methods indiscriminately, or without due cause in the speculative hope of gathering material for potential broadcast.

In this case, however, Ofcom did not accept that the public interest arguments submitted by Channel 5 were of sufficient order and weight to warrant filming of this nature in the circumstances, particularly given that the filming took place within the confines of a domestic home and it therefore recorded intimate and sensitive interactions between the complainants and the HCEAs in that context. In Ofcom's view, although Mr K was the subject of the High Court enforcement process, neither that fact, nor the public interest in programming which seeks to shed light on the issues and difficulties encountered by HCEAs, warranted the decision of the programme makers and Channel 5 to obtain footage of these particular events inside the property in this manner.

It is also important to emphasise that a failure to follow any of the practices in the Code will only constitute a breach of the Code where it results in an unwarranted infringement of privacy. In other words, a finding that a broadcaster has failed to follow Practice 8.13 (in relation to surreptitious filming) does not, in and of itself, automatically lead to an unwarranted infringement of privacy. Ofcom therefore proceeded to consider whether the complainants held a legitimate expectation of privacy in relation to the obtaining of the footage.

Ofcom considered that, ordinarily, personal and financial conversations and negotiations in which the people concerned felt that they could speak openly and where they understood that the matter they were talking about would be treated in confidence, could reasonably be regarded as sensitive and attract an expectation of privacy. Further, we consider that such conversations, particularly where they take place within the confines of a person's home and where those involved are discussing potentially being unable to settle the debt themselves, or, as in Mr L's case, experiencing acute anxiety

because of his PTSD, is a situation that could reasonably be characterised as distressing and sensitive for those involved. We recognised too that the execution of the Writ may have been a matter of public record, however, we do not consider that this fact, of itself, prevents a person subject to those proceedings from having an expectation of privacy in relation to the matter.

#### *Factors specific to Mr K*

In this case, Mr K was approached in the street by the HCEAs without any prior warning that they would be accompanied by a camera crew and immediately questioned about his identity and informed that there was a Writ against him. Mr K was therefore obliged to respond to the HCEAs' enquiries irrespective of the presence of the cameras.

Additionally, the majority of these conversations, and the physical altercation with the HCEAs as the complainants tried to remove them from the property, took place within Mr K's father's home where he was currently residing, without the camera crew being present and were filmed solely by the body cameras belonging to the programme makers and worn by the HCEAs. As set out above in the extracts of the unedited footage, the evidence strongly suggested that Mr K and his father were not aware at the time that this material might be broadcast. Both complainants were therefore considerably more unguarded when dealing with the HCEAs than might have been the case if they had reason to believe that they were still being filmed for the purposes of a television programme.

As mentioned above, as the HCEAs and the programme makers were preparing to leave, Mr K had spoken to the programme makers outside the property. The unedited footage showed that he made it clear that he did not want to discuss on camera what had happened because he wanted time to reflect on events and did not want to say anything on the spur of the moment. Mr K did not discuss any financial or personal circumstances with the programme makers. This material was not subsequently included in the programme as broadcast.

We considered that while Mr K had been aware of the presence of the camera crew outside the house and had chosen to speak to them after the matter with the HCEAs had been resolved, it was important to take into account the wider circumstances of the filming inside the house. This included the private and personal environment in which Mr K was filmed by the HCEAs' body cameras, the sensitive and personal nature of the information that was captured as well as his reaction to the HCEAs, and the intimate exchanges between him and his father and the police.

#### *Factors specific to Mr L*

From both the unedited and the broadcast footage, we took into account that Mr L was filmed in his private home discussing his personal circumstances with the HCEAs. In particular, he was filmed resisting the presence of the HCEAs in this house and becoming increasingly distressed and anxious; getting into a physical altercation with the HCEAs as he tried to remove them from his property and falling to the floor as a result; and, that he suffered from PTSD and had experienced traumatic events in his past. Also, we took into account that the interior of Mr L's home and some personal belongings were filmed, and that as one of the HCEAs inspected the house without the body camera turned on,

the live audio feed was being relayed to the programme makers as the HCEA assessed whether there were any items of value in the property.

We acknowledged that Mr L was not personally named on the Writ but had chosen to involve himself in the situation. In any event, the majority of the conversations were taking place within the confines of Mr L's home and if he was to assist his son he would need to discuss matters with him and the HCEAs, irrespective of the presence of the cameras. In addition, and as mentioned above, we recognised that during most of the unedited footage taken inside the house, Mr L was clearly distressed and anxious as he tried to deal with the situation and the presence of the HCEAs.

We took into account that Mr L did not at any point choose to talk to the camera crew. We also took into account that the body cameras worn by the HCEAs captured footage of Mr L inside his home and his reactions to and discussions with his son, the HCEAs, and the police about matters connected with the Writ and the presence of the HCEAs as the pressurised negotiations with the HCEAs took place. Significantly, this included filming Mr L as he became increasingly distressed and anxious.

#### *The complainants' legitimate expectation of privacy*

Ofcom took into account Channel 5's assertion that the execution of a Writ is a public matter, not a private one, and that the execution of the Writ was not a matter connected with the complainants' private lives, but a public matter. We considered that the existence of a county court judgment may be considered a matter of public record and may not, therefore, be information in relation to which the complainants had a legitimate expectation of privacy. However, the information captured by the filming of Mr K and his father went beyond the fact of the debt, which in this case related to an insurance claim against Mr K which had been admitted, and which he thought his insurers had settled, and the personal consequences and impact of the enforcement process on them. Ofcom did not agree that the events surrounding the enforcement of a debt were necessarily a matter of public record, or that there can be no legitimate expectation of privacy in relation to those events, including where they involve an altercation between the parties, (and especially not where those events take place within the confines of a private, family home). In this instance, Ofcom took the view that much of the information contained in the obtained footage was sensitive and constituted an intrusion into the complainants' private and family life. Ofcom considered that this went beyond the information which might otherwise have been in the public domain as a consequence of the court enforcement process.

As mentioned previously, the test 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<sup>18</sup>. The location where the filming occurred was one of several factors that was relevant to Ofcom's consideration of this case. Taking into account all the circumstances in this case, in our

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<sup>18</sup> See, for example, Anthony Clarke MR in *Murray v Express Newspapers Ltd* [2009] CH 481, at para 36: "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher".



view the events involving Mr K and his father which the footage captured could reasonably be characterised as being highly sensitive to them, taking into account their family situation and Mr L's health, and plainly came within the scope of "private and family life", and thus engaged Article 8. Therefore, we considered that the situation the complainants were in attracted a legitimate expectation of privacy.

Given all the factors above and taking into account the use of surreptitious filming and its consequences, and notwithstanding the Writ, Ofcom considered that the interference with the complainants' privacy which was caused by the obtaining of this material with a view to its being broadcast was very significant.

#### *Whether the infringement was warranted*

There was no dispute between the parties that the complainants' consent was not sought for the filming and subsequent broadcast of the footage included in the programme. Therefore, it was not necessary for Ofcom to consider this point further. We therefore went on to consider whether the infringement of the complainants' legitimate expectation of privacy was warranted on the particular facts of this case.

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

We took into account Channel 5's argument that there was a public interest in the filming of the footage in that it showed the activities of the HCEAs while executing their official duties, that during the course of executing their official duties "threats" of violence were made against them and that the filming "revealed the commission of crimes (i.e. assault and interfering with the execution of the duties of the HCEAs)". We also considered Channel 5's submission that the enforcement of the debt was a public matter and that there is a clear public interest in seeing the activities of the HCEAs in the course of executing their official duties.

Ofcom did not agree with Channel 5's interpretation of the decision in *Ali v Channel 5* in its representations on the Preliminary View. While the Court did accept that the principle of open justice entitled Channel 5 to report that a county court had made an Order for possession and the High Court had issued the Writ against the claimants, the Judge did not accept that this justified broadcasting the information at issue, which was not a foreseeable consequence of the claimants' failure to comply with the Order for Possession, or of their eviction. The Judge rejected all of the grounds relied on by Channel 5 to argue that the claimants did not have a "reasonable expectation of privacy", finding that the claimants had a reasonable expectation of privacy in respect of all the material broadcast. Weighing up the respective ECHR rights of the parties, the Judge decided that the balance came down in favour of the claimants' Article 8 privacy rights. While he accepted that Channel 5 had editorial discretion in the tone and way it told the story, he did not accept that Channel 5's editorial discretion extended to the decision to include the private information, unless it was in the public interest to do so.

On the facts in *Ali* the Judge considered that overall the Programme did contribute to a debate of general interest, but that the inclusion of the claimants' private information went beyond what was justified for that purpose. The Judge went on to say that the focus of the programme was upon the drama of the conflict which had been encouraged by the HCEA to make "good television".

Applying the same approach as the Court in *Ali*, Ofcom accepted that the public interest was engaged in making this programme in that it illustrated the type of interaction HCEAs routinely engage in and the difficulties experienced by people in the position of Mr K and his father. Ofcom also accepted that Channel 5 had editorial discretion in the tone and the way it told the story and that its editorial discretion extended to the decision to include the private information – but only if the inclusion of the private information at issue was justified in the public interest. Therefore, being satisfied that the complainants had a legitimate expectation of privacy, Ofcom intensely focused on the weight of the comparative rights under Articles 8 and 10 that are in issue in order to decide where the balance lies in these particular circumstances.

Ofcom acknowledged that an incident took place involving a physical altercation and a heated exchange between the complainants and the HCEAs, including a warning from Mr K about how his father might react if the HCEAs did not leave his house. However, we noted that no complaints were made by the HCEAs to the police and that neither Mr K nor his father were arrested or charged in relation to any offence. We also considered that the unedited footage showed that the presence of the television crew was likely to have contributed to the tense and highly charged atmosphere. In particular, we took into account Mr K's comment to one of the HCEAs: *"...what did you expect? Five people turned up with cameras, what the fuck was that all about?"* and his reaction to being told by the HCEA that the matter could have been resolved outside: *"Why should I speak to you? I was just being confronted by like five people. I was on my own"*. Similarly, in his comments to the programme makers at the end of the HCEAs' visit, he explained: *"[if a] person had come up to me and said 'Look we are making a TV programme', [it] would have been a completely different scenario mate, because at the end of the day, I saw loads of people around the house..."*.

It was also clear that Mr L was particularly vulnerable due to his health condition and that he became increasingly agitated about the events being filmed by the crew and by the body cameras. This was highlighted by a neighbour's comment to one of the HCEAs about the body cameras: *"he's getting really worked up with him because of the camera"*; and by Mr L's reaction to the HCEA's visit: *"...this is my home, it's taken a long time [inaudible] understand when you have not seen [inaudible] explosions, dead bodies... [visibly shaking]..."*.

On the facts of this case, we considered that the interference with the complainants' rights to privacy was particularly serious, particularly in light of the nature of Mr K's debt, which related to an insurance claim which Mr K thought had been settled by his insurers, and taking into account the manner in which the footage was obtained within the family home and Mr L's state of health. We considered that the level of interference with the complainants' legitimate expectation of privacy was significant and of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme maker.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. The footage was obtained while the programme makers accompanied the HCEAs in carrying out their duties. The filming by the camera crew appeared to be open and unobtrusive and took place outside the complainants' home. However, as set out already above in relation to Practice 8.13, we considered that the manner in which the footage inside their home was obtained was surreptitious. In Ofcom's view, the use of surreptitious filming in this instance was not warranted, particularly as it took place in a private home and, therefore, allowed the programme makers unfettered access to intimate family interactions. As mentioned above, although the fact of the enforcement of a Writ may be a matter of public record, it does not follow that its consequences and impact for a debtor are also necessarily public matters in respect of which no legitimate expectation of privacy arises. Nor does it follow that intrusive footage capturing the debtor's reaction and intimate exchanges between the debtor and their family in a family home is justified by the public interest in learning about the HCEAs' work and the enforcement process. While we took into account Channel 5's representations on this point, Ofcom considered that the means of obtaining the material had not, in all the circumstances, been proportionate for the purpose of Practice 8.9.

Having taken all the above factors into account, including Channel 5's representations on the Preliminary View, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in the obtaining the footage of Mr K and his father in this instance did not outweigh their legitimate expectation of privacy in relation to the filming of them, or justify the very significant intrusion which the obtaining of the footage caused to their rights in this regard. Therefore, we considered that the complainants' privacy in connection with the obtaining of material included in the programme and the use of surreptitious filming was unwarrantably infringed.

- b) Ofcom next considered Mr K and Mr L's complaint that their privacy was unwarrantably infringed in the programme as broadcast. We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

#### *The complainants' legitimate expectation of privacy*

We assessed whether Mr K and Mr L had a legitimate expectation of privacy regarding the broadcast of footage of them included in the programme. We applied the same objective test as set out in head a) above.

As set out in the "Programme summary" above, we took account of the material shown in the programme. In particular, the complainants were shown not only discussing matters relating to the debt with the HCEAs, but also expressing their feelings about the presence of the HCEAs in the house and, in particular, Mr L's highly distressed and anxious reaction to them being there and a reference by Mr Anglin to Mr K to "Look after Dad", a comment in our view that alluded to Mr Anglin being aware of Mr L's state of health and emotional well-being. It also showed the intervention of the police who interceded and assisted in resolving the stand-off between the parties. Neither of the complainants' faces were obscured in the programme, nor were their voices obscured or disguised. Mr K was referred to by name in the programme, and while Mr L was not

named, he was referred to as "Dad". Therefore, we considered that both men were identifiable in the programme.

Practice 8.14 states that "Material gained by surreptitious filming and recording should only be broadcast when it is warranted". As explained in detail at head a) above, Ofcom considered that the footage filmed of Mr K and his father had been obtained surreptitiously.

For the reasons set out in head a) above, Ofcom considered that the footage in question was highly sensitive and private in nature. We also considered that the intrusion was particularly acute as a result of the subsequent disclosure of that footage in a nationally televised programme (with attendant exposure that substantially exceeded anything which someone in the complainants' position could possibly have expected at the time)<sup>19</sup> and taking account of the nature of the debt, which resulted from an insurance claim against Mr K which had been admitted and which he thought had been settled by his insurers. In these circumstances, we considered that the inclusion of this material in the programme as broadcast constituted a very significant interference with Mr K's and Mr L's privacy rights.

#### *Whether the infringement was warranted*

It was not disputed by the broadcaster that the footage was included without the complainants' consent. We therefore went on to consider whether the broadcast of this material was warranted under the Code.

We again carefully balanced Mr K's and his father's right to privacy regarding the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. We also took into account that the footage depicted a physical altercation between the complainants and the HCEAs as the complainants attempted to remove the HCEAs from the property, and the need for the police to attend the scene. However, we noted that no complaints were made by the HCEAs to the police and that neither Mr K nor his father were arrested or charged with any offence. As in head a) above, we also considered that the presence of the camera crew was likely to have contributed to the tense and highly charged atmosphere in which the altercation took place.

We considered that the programme involved a very significant intrusion into the complainants' privacy, which went substantially beyond the fact of the outstanding debt itself as a consequence of including their unguarded exchanges within the confines of the domestic home, the interior of that home, and how they lived and interacted with others in that environment, including the HCEAs and the police. Additionally, the material filmed and subsequently broadcast included footage of Mr L as he became increasingly agitated and while he was visibly distressed.

As above in head a) we took into account Channel 5's argument and its representations that there was a public interest in broadcasting the footage in that it showed the activities of the HCEAs while executing their official duties. We also took into account the broadcaster's representations on the Preliminary View, as also set out above in head a).

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<sup>19</sup> *Peck v United Kingdom* [2003] ECHR 44.

As previously, we acknowledged that the public interest was engaged in broadcasting programmes that highlight the serious issue of debt and the issues which the HCEAs encounter when seeking to enforce court orders made in that regard. We also recognised that the inclusion of named or identifiable individuals may enhance that public interest by making the broadcast footage more accessible or engaging to the watching audience<sup>20</sup>. However, in weighing up the competing rights of the parties, Ofcom took particular account of the serious nature of the interference with the complainants' rights to privacy, particularly in light of the nature of Mr K's debt, which related to an insurance claim which he thought had been settled by his insurers, and taking into account the manner in which the footage was obtained within the family home, and the sensitive and intimate matters which were recorded about their private and family life. Ofcom considered that Mr K's and his father's legitimate expectation of privacy, together with the fact that they did not give their consent to the broadcast of this material and that it was obtained by means that, in Ofcom's view, amounted to surreptitious filming, were significant factors in weighing up the competing rights of the parties.

Having taken all the factors above into account Ofcom considered that, on balance, the interference with the complainants' rights to privacy in this case was significant and of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme makers. Ofcom also took the view that the broadcast of the footage of Mr K and Mr L gained by the surreptitious filming was not warranted for the purpose of Practice 8.14 in these circumstances. For these reasons, Ofcom considered that the complainants' privacy was unwarrantably infringed in the programme as broadcast.

**Ofcom has upheld Mr K's complaint made on his own behalf and on behalf Mr L of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast**

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<sup>20</sup> In re S (identification: Restrictions on Publication); and, In re Guardian News & Media Ltd.

## Not Upheld

### Complaint by Ms Charlotte Morris *First Dates, Channel 4, 27 November 2017*

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#### Summary

Ofcom has not upheld Ms Charlotte Morris' complaint of unjust or unfair treatment in the programme as broadcast.

The programme featured couples meeting for the first time on blind dates. One of the participants, Ms Morris, complained that the programme was edited to give viewers the incorrect impression that she had participated in illegal fox hunting. Ms Morris said that she had only ever been drag hunting.

Ofcom found that Ms Morris' contribution was not edited unfairly, and that the broadcaster had taken reasonable care to satisfy itself that material facts were not presented in the programme in a way that was unfair to her.

#### Programme summary

On 27 November 2017, Channel 4 broadcast an edition of *First Dates*, a dating programme in which participants met in a restaurant on a blind date. One of the couples featured in the programme was "Andrew" and "Charlotte" (the complainant).

The programme narrator introduced Andrew:

*"This is 41 year-old ecologist Andrew, who is more in touch with the mating habits of wild animals than his own".*

Andrew was then shown in a pre-recorded interview talking about the mating habits of badgers. He then said:

*"My ideal woman would be someone who is keen on the environment, but she takes pride in her appearance, not like your typical environmental tree hugger..."*

The narrator introduced Ms Morris, who was shown sitting in the restaurant waiting for Andrew to arrive:

*"Andrew's date is 39 year-old Charlotte, an overseas aid worker whose own love life is in crisis".*

Ms Morris was shown in a pre-recorded interview explaining that:

*"I'm hitting 40, thinking about wanting a family, having spent 20 years travelling around the world".*

Andrew and Ms Morris were shown meeting each other for the first time. Andrew explained his job as an ecologist and spoke about the mating call of badgers. Ms Morris said:

*"I think my father taught me how to make a roe deer call once".*

Ms Morris demonstrated this and they both laughed.

The couple were later shown talking about their travel experiences, past relationships, and thoughts on having a family.

Later in the programme, Andrew and Ms Morris were shown talking about whether they had experienced love at first sight. They agreed that to fall in love, people needed to have shared interests and experiences. The following exchange then took place:

Andrew: *"I couldn't fall in love with someone who goes fox hunting or badger baiting, I couldn't do that, so. You don't do those, do you? You don't go fox hunting on the sly at the weekend, do you? [The camera focused on Ms Morris' face and there was a long pause]. Hmm, silence.*

Ms Morris: *So, I have, so I have been out hunting.*

Andrew: *Really?*

Ms Morris: *Drag hunting.*

Andrew: *Right, I don't have an issue with that, it's when there's a poor animal involved at the end of it, getting mauled.*

Ms Morris: *I can understand why you feel that is [interrupted by Andrew].*

Andrew: *Subject change. Excuse me".*

At this point, Andrew was shown leaving the table to go to the toilet. He was then shown in the toilet speaking on his mobile phone about how the date was going, he said:

*"...I think she's gone fox hunting, so yeah, you know about me and fox hunting, it's [Andrew made a throat cutting gesture with his hand], that's a no, no".*

Footage of Ms Morris in interview was then shown. She said:

*"We've got a huge amount in common and he clearly loves the countryside and he's travelled. I did find him attractive, physically".*

Andrew was then shown joining the interview. The interviewer asked them if they were going to go on a second date. The following conversation took place:

Andrew: *"Fox hunting.*

Ms Morris: *I sensed that that might be an issue.*

Andrew: *Yes.*

Ms Morris: *But, even though I don't really hunt foxes?*

Andrew: *Well.* [Footage was shown of them leaving the restaurant and saying goodbye, before further footage of the interview was shown].

Ms Morris: *If it was something that I did regularly and was a big part of my life, then I can understand why that might be a complete deal breaker for you, 'cause you obviously feel very strongly about it.* [Footage was shown of Andrew getting into a taxi outside the restaurant]. *It was something that I grew up with when I was younger, occasionally have to go to as part of a country lifestyle, it's not something that I can do much about.*

Andrew: *Yeah, it's all right, agree to disagree on that one".*

No further footage was included in the programme of the couple.

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

#### The complaint

Ms Morris complained that she was treated unjustly or unfairly in the programme as broadcast because the programme was edited to give viewers the incorrect impression that she had participated in "illegal" fox hunting. Ms Morris said that she had only ever been drag hunting. Ms Morris said that, for example:

- The programme did not include comments that she had made which she said would have clarified her position to viewers. Ms Morris said that her following comments had been omitted: "I have not been involved in killing foxes or badgers"; "fox hunting is an illegal activity"; and, "I do not condone animal cruelty".
- The comment that she had made about growing up in a farming community and being involved in country activities all her life, referred to farming and not hunting. However, her comment about "doing it all my life" had been included in the programme after her date had referred to fox hunting.
- The programme included repeated statements by Andrew referring to her having been fox hunting.

By way of background, Ms Morris said that she had spoken to the programme makers prior to the broadcast of the programme about her concerns and believed that her position would be fairly reflected in the programme. However, she said that the "impact of the inaccurate edits" was clear in that many viewers referred to her having been fox hunting on social media.

#### Broadcaster's response

Channel 4 said that it did not agree with Ms Morris' complaint that the programme had been edited to give viewers the impression that Ms Morris participated in illegal fox hunting. The broadcaster said that Ms Morris had admitted during filming that she took part in drag hunting, not fox hunting, and that this was included in the programme. Channel 4 said that during the date, Andrew had asked Ms Morris: "You don't go fox hunting on the sly at the weekend, do you?" which was immediately followed by Ms Morris' response: "So, I have been out hunting...Drag hunting". Channel 4 said that after the date, Andrew said that his



reason for not wanting to go on a second date was due to *"fox hunting"*, which was immediately followed by Ms Morris clarifying that she did not hunt foxes by saying: *"Even though I don't really hunt foxes?"* The broadcaster said that, therefore, on the two occasions when Andrew raised fox hunting with Ms Morris, it was made clear in the programme that Ms Morris had participated in drag hunting, but not fox hunting. Channel 4 said that therefore the programme was not edited in any way that implied that Ms Morris took part in fox hunting.

In relation to Ms Morris' claim that the programme had omitted particular comments that she had made which would have clarified her position to viewers, Channel 4 said, that as above, Ms Morris' involvement in drag hunting and not fox hunting was made clear in the programme. In addition, Channel 4 said that when Andrew said in the programme that: *"I don't have an issue with that [drag hunting]"*. *It's when there's a poor animal involved at the end of it getting mauled"*, Ms Morris replied: *"I can understand why you feel that is"*, which demonstrated that Ms Morris agreed with Andrew's view and that she did not condone animal cruelty.

Channel 4 said that it did not consider it was necessary to include in the programme a line regarding the illegality of fox hunting, as this was not being questioned. What was being questioned was whether Ms Morris participated in fox hunting or not.

The broadcaster also said that, although Ms Morris did make other comments during the filming about her views and involvement in fox hunting, while the programme did not include the exact lines Ms Morris wished to be included, alternative statements made by her were included in the programme to the same effect. It said that these statements fairly represented that Ms Morris did not participate in fox hunting and that she sympathised with not condoning animal cruelty.

In relation to Ms Morris' claim that her comment included in the programme about growing up in a farming community and being involved in country activities all her life, referred to farming and not hunting, Channel 4 quoted the following extract from the unedited filmed interview with Ms Morris and Andrew after the date:

Interviewer: *"And, the deal breaker, what was the deal breaker for you in the conversation?..."*

Andrew: *Fox hunting.*

Ms Morris: *I, I sensed that might be an issue.*

Andrew: *Yes.*

Ms Morris: *But, even though I don't really hunt foxes?*

Andrew: *I know, well you never know, it might lead to foxes.*

Ms Morris: *It's always an occasional thing, and things [interrupted by Andrew].*

Andrew: *An occasional fox?*

Ms Morris: *No, no, no, I mean, I don't do it very often, and **it was something that I grew up with when I was younger, occasionally happened to go to as part of a country lifestyle, it's not something I can really do much about.***

Andrew: *Yeah, well that's alright, agree to disagree on that one.*

Interviewer: *What have you got to say to that Charlotte?*

Ms Morris: *I think if, I think if it was, **if it was something that I did regularly and was a big part of my life, then I can understand why that might be a complete deal breaker for you, 'cause you obviously feel very strongly about it**".*

Channel 4 said that the highlighted sections of the conversation above were included in the programme and that it was clear from the unedited footage that Ms Morris was, in fact, referring specifically to fox hunting and not farming. Channel 4 said that therefore Ms Morris' comments that were included in the programme had not been taken out of context or edited unfairly.

In relation to Ms Morris' complaint that the programme included repeated statements by Andrew referring to her having been fox hunting, Channel 4 said that the programme had only included one statement by Andrew referring to Ms Morris as having been fox hunting. It said that this was during a mobile phone conversation he made in the toilet during the date. Channel 4 said that at this point in the programme, the programme had already made clear to viewers that Ms Morris participated in drag hunting, not fox hunting. It said that viewers were further reminded of this in the interview following the date and after the phone call. Channel 4 said that the statement made by Andrew during the phone conversation was his own personal view and that it was integral to include it in the programme as it demonstrated to viewers that Andrew was so fixated on fox hunting, even though Ms Morris had made it clear that it was drag hunting she had participated in, that he could not see beyond this, and that this was the basis for his decision not to go on a second date.

With regard to Ms Morris' having raised her concerns with the programme makers prior to the programme being broadcast, Channel 4 said it was part of the production protocol that the programme makers contacted the main contributors before broadcast to notify them of the broadcast date, briefly summarise their contribution, remind them to check their social media privacy settings to avoid unwanted contact from viewers, and to discuss any concerns they may have post filming. The broadcaster said that, in this instance, Ms Morris was contacted prior to the programme being broadcast and notified of the two specific occasions included in the programme – when Andrew initially asked her if she participated in fox hunting and then, in the interview together after the date, where he stated that fox hunting was the reason he did not want to go on a second date. Channel 4 said that it was confirmed to Ms Morris that on both these occasions, the programme included Ms Morris' clarification that she had participated in drag hunting and not fox hunting. The broadcaster said that Ms Morris was also reminded that, given the controversial nature of the topic, there was potential for negative response from viewers. It said that Ms Morris had confirmed that she was prepared for this as she was aware that fox hunting was a contentious issue and expressed no concerns that she was unhappy with the summary of her contribution.

Channel 4 said that, following the broadcast of the programme, Ms Morris had received some negative comments on social media, some of which it said mistakenly accused her of

fox hunting. Channel 4 said that it did not agree with Ms Morris that this constituted evidence that the programme had been edited unfairly.

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

Ofcom prepared a Preliminary View in this case that Ms Morris' complaint of unjust or unfair treatment in the programme as broadcast 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 footage filmed of Ms Morris for the programme, both parties' written submissions and supporting documentation.

When considering and deciding complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

Ofcom considered Ms Morris' complaint that she was treated unjustly or unfairly in the programme as broadcast because her contribution was unfairly edited to give viewers the incorrect impression that she had participated in fox hunting. Ms Morris said that she had only ever been drag hunting.

Practice 7.6 states:

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

Practice 7.9 states:

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

In assessing whether Ms Morris' contribution to the programme overall had been edited unfairly or not, Ofcom had particular regard to the examples cited by Ms Morris in her complaint. We also carefully examined the full unedited footage of the date and interview with Ms Morris alone and her joint interview with Andrew, and compared it with the what was included in the programme as broadcast.

We first considered Ms Morris' complaint that the programme omitted to include her comments that: "I have not been involved in killing foxes or badgers"; "fox hunting is an illegal activity"; and, "I do not condone animal cruelty", which, she said, would have clarified her position to viewers.

It is an editorial decision for the broadcaster to make as to what content that should, or should not, be included in programmes, subject to ensuring that the content as broadcast complies with the Code. In this case, we took particular account of what was said by Ms Morris in response to Andrew asking her about fox hunting. As set out in detail in the "Programme summary" and Channel 4's response above, we considered that Ms Morris admitted that she had been drag hunting, though not fox hunting, and that she understood Andrew's view on animal cruelty. In addition, in the interview with Ms Morris and Andrew following the date, when Andrew explained his reason for not wanting a second date was "Fox hunting", Ms Morris said "But, even though I don't really hunt foxes". Given this, we considered that Ms Morris' position on fox hunting was made sufficiently clear in the programme and that viewers would have understood that she had engaged in drag hunting, but not fox hunting.

Having watched all the unedited footage, we recognised that Ms Morris had made other comments during the interview about her position on fox hunting that were not included in the programme as broadcast. However, while the programme did not include the exact comments Ms Morris may have preferred to have been in the programme, we considered that the comments that were included in the programme had the same effect in fairly representing her views. In our view, Ms Morris' comments included in the programme made it clear to viewers that she did not hunt foxes and that she understood Andrew's stance on animal cruelty. From these comments, we considered that viewers were likely to have inferred that Ms Morris was not involved in "killing foxes" and that she was sympathetic to Andrew's views on animal cruelty. We also considered that given it was clear from the programme that Ms Morris said that she had not participated in fox hunting, it was not necessary for the programme to have included her comments about fox hunting being "an illegal activity" in order to avoid unfairness to her.

We next considered Ms Morris' complaint that her comment about growing up in a farming community and being involved in country activities all her life referred to farming and not hunting.

Again, we watched the unedited interview footage of Ms Morris, taking particular account of what Ms Morris, Andrew, and the interviewer said on this point (as set out in detail in the "Broadcaster's response" above). While the comments made by Ms Morris were included in the programme in a slightly different order than originally spoken, we considered that Ms Morris' comments at this point of the interview unequivocally referred to her experience of hunting, not farming, when she was younger and that it was something that she grew up with. We therefore did not consider that the slight reordering of the comments had placed them out of context or amounted to unfair editing. Nor did we consider that the inclusion of the comments in the programme unfairly reflected what Ms Morris had said in interview.

We then considered Ms Morris' complaint that the programme included repeated statements by Andrew which referred to her having been fox hunting.

We took into account that Andrew said in a phone conversation while he was in the toilet during the date "*I think she's gone fox hunting*", and that this was included in the programme. However, we considered that the programme had already made it sufficiently clear to viewers, before Andrew was shown making this comment, that Ms Morris said that she had participated in drag hunting, not fox hunting. Additionally, viewers were further reminded of Ms Morris' position that she had been drag hunting, not fox hunting, in the footage shown of the interview between Ms Morris and Andrew following the date. We also considered that viewers would have understood that Andrew was expressing his personal opinion of Ms Morris and his first impressions of her. We considered that in this context, the inclusion of Andrew's comment about Ms Morris and fox hunting in the programme, was unlikely to have materially and adversely affected viewers' opinions of Ms Morris in a way that was unfair to her.

Taking all the above circumstances into account, Ofcom considered that the content of Ms Morris' contribution to the programme was not edited in a way that unfairly misrepresented what she had said or her position. We also considered that in representing Ms Morris' comments in the programme, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that portrayed Ms Morris unfairly.

**Ofcom has not upheld Ms Morris' complaint of unjust or unfair treatment in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 9 and 29 July 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

<b>Programme</b>	<b>Service</b>	<b>Transmission date</b>	<b>Categories</b>
Emmerdale	ITV	21/02/2018	Sexual material

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)

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 9 and 29 July 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	Service	Transmission Date	Categories	Number of complaints
Breakfast Show with Chris Knight	Amber Sound FM	03/07/2018	Generally accepted standards	1
The Best of Scooby Doo	Boomerang	07/07/2018	Generally accepted standards	1
Toni C Breakfast Show	Cannock Chase Radio	23/06/2018	Sexual material	1
Capital Breakfast	Capital FM (London)	18/07/2018	Competitions	1
The Official Vodafone Big Top 40 With Marvin Humes	Capital FM (Yorkshire)	08/07/2018	Crime and disorder	1
NCIS	CBS Action	23/07/2018	Violence	1
Bondi Rescue	CBS Reality	18/07/2018	Offensive language	1
24 Hours in A&E	Channel 4	04/07/2018	Animal welfare	1
24 Hours in Police Custody	Channel 4	09/07/2018	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	16/07/2018	Gender discrimination/offence	1
8 Out of 10 Cats Does Countdown	Channel 4	13/07/2018	Generally accepted standards	1
Celebrity Sextortion (trailer)	Channel 4	11/07/2018	Sexual material	1
Channel 4 News	Channel 4	22/05/2017	Race discrimination/offence	1
Channel 4 News	Channel 4	12/07/2018	Due impartiality/bias	4
Channel 4 News	Channel 4	16/07/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	16/07/2018	Generally accepted standards	1
Come Dine with Me	Channel 4	17/07/2018	Race discrimination/offence	1
Food Unwrapped	Channel 4	16/07/2018	Materially misleading	1
Formula One	Channel 4	01/07/2018	Promotion of products/services	1
Formula One	Channel 4	08/07/2018	Generally accepted standards	1
Holidays from Hell: Caught on Camera	Channel 4	12/07/2018	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
Honda's sponsorship of Film on 4	Channel 4	21/07/2018	Sponsorship credits	1
Inside Facebook: Secrets of the Social Network	Channel 4	17/07/2018	Animal welfare	1
Inside Facebook: Secrets of the Social Network	Channel 4	17/07/2018	Generally accepted standards	10
Naked Attraction	Channel 4	04/07/2018	Nudity	1
News Crack	Channel 4	12/07/2018	Crime and disorder	1
Prison	Channel 4	19/07/2018	Generally accepted standards	1
Prison	Channel 4	26/07/2018	Generally accepted standards	1
Sacha Baron Cohen: Who is America?	Channel 4	16/07/2018	Generally accepted standards	1
Sunday Brunch	Channel 4	27/05/2018	Promotion of products/services	1
Supers shoppers	Channel 4	12/07/2018	Materially misleading	1
The Big Narstie Show	Channel 4	06/07/2018	Offensive language	2
The Big Narstie Show	Channel 4	06/07/2018	Race discrimination/offence	10
The Big Narstie Show (trailer)	Channel 4	29/06/2018	Race discrimination/offence	1
The Handmaid's Tale	Channel 4	03/06/2018	Generally accepted standards	1
Come Dine with Me	Channel 4+1	18/07/2018	Race discrimination/offence	1
5 News	Channel 5	26/07/2018	Due impartiality/bias	1
Britain's Cocaine Epidemic	Channel 5	11/07/2018	Drugs, smoking, solvents or alcohol	1
Chuckletime	Channel 5	08/07/2018	Race discrimination/offence	1
Dirty Dancing	Channel 5	08/07/2018	Scheduling	1
Eamonn and Ruth: How the Other Half Lives	Channel 5	19/07/2018	Competitions	1
Fights, Camera, Action	Channel 5	09/07/2018	Generally accepted standards	1
Fireman Sam	Channel 5	21/07/2018	Generally accepted standards	1
Neighbours	Channel 5	16/02/2018	Sexual material	1
Police Interceptors	Channel 5	04/06/2018	Offensive language	1
The Highland Midwife	Channel 5	04/07/2018	Advertising placement	1
The Highland Midwife	Channel 5	18/07/2018	Generally accepted standards	1



Programme	Service	Transmission Date	Categories	Number of complaints
The Hotel Inspector	Channel 5	19/06/2018	Offensive language	1
The Wright Stuff	Channel 5	02/07/2018	Generally accepted standards	1
The Wright Stuff	Channel 5	11/07/2018	Religious/Beliefs discrimination/offence	1
Shab e Barat er Tatporjo	Channel i	01/05/2018	Generally accepted standards	1
City Beat Breakfast with Nige & Rene	City Beat Preston	06/06/2018	Competitions	1
K-Pop Special: Dance Videos!	Clubland TV	08/07/2018	Offensive language	1
The Clubland Vault	Clubland TV	05/07/2018	Dangerous behaviour	1
Clyde 1	Clyde 1	05/07/2018	Sexual material	1
Dr Kill Me	Crime & Investigation +1	01/07/2018	Crime and disorder	1
Channel ident	Dave	09/06/2018	Generally accepted standards	1
Top Gear	Dave	09/07/2018	Offensive language	1
Running Wild with Bear Grylls	Discovery Channel	05/08/2018	Animal welfare	1
Gotham	E4	17/07/2018	Generally accepted standards	1
Hollyoaks	E4	03/07/2018	Generally accepted standards	1
Naked Attraction	E4	11/07/2018	Generally accepted standards	1
Aaaaaaaah!	Film4	19/07/2018	Generally accepted standards	1
X Men	Film4	21/06/2018	Violence	1
Jack Dee Live at the Apollo	Gold	04/07/2018	Generally accepted standards	1
Heart Breakfast with Jamie & Lucy	Heart (London)	03/07/2018	Due impartiality/bias	1
Sian Welby	Heart (London)	08/07/2018	Offensive language	1
Heart Breakfast with Ed & Gemma	Heart (West Midlands)	28/06/2018	Competitions	1
Heart Breakfast with Ed & Gemma	Heart (West Midlands)	27/07/2018	Dangerous behaviour	1
Swamp People	History	12/07/2018	Animal welfare	1
Advertisement	ITV	30/06/2018	Advertising content	1
Coronation Street	ITV	19/06/2018	Under 18s in programmes	1
Coronation Street	ITV	26/06/2018	Animal welfare	1
Coronation Street	ITV	02/07/2018	Animal welfare	1
Coronation Street	ITV	04/07/2018	Animal welfare	15

Programme	Service	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	04/07/2018	Generally accepted standards	1
Coronation Street	ITV	06/07/2018	Sexual orientation discrimination/offence	1
Coronation Street	ITV	09/07/2018	Materially misleading	2
Coronation Street	ITV	16/07/2018	Generally accepted standards	1
Coronation Street	ITV	18/07/2018	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	23/07/2018	Disability discrimination/offence	2
Coronation Street	ITV	26/07/2018	Disability discrimination/offence	1
Emmerdale	ITV	05/07/2018	Materially misleading	1
Emmerdale	ITV	12/07/2018	Gender discrimination/offence	1
Emmerdale	ITV	12/07/2018	Violence	1
Emmerdale	ITV	17/07/2018	Generally accepted standards	6
Emmerdale	ITV	18/07/2018	Offensive language	1
Emmerdale	ITV	19/07/2018	Materially misleading	1
Emmerdale	ITV	20/07/2018	Generally accepted standards	1
Forgotten (trailer)	ITV	11/07/2018	Scheduling	1
Good Morning Britain	ITV	23/04/2018	Generally accepted standards	1
Good Morning Britain	ITV	25/06/2018	Generally accepted standards	1
Good Morning Britain	ITV	26/06/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	27/06/2018	Due accuracy	1
Good Morning Britain	ITV	03/07/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	03/07/2018	Scheduling	1
Good Morning Britain	ITV	04/07/2018	Race discrimination/offence	2
Good Morning Britain	ITV	06/07/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	06/07/2018	Materially misleading	1
Good Morning Britain	ITV	09/07/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	10/07/2018	Due impartiality/bias	2
Good Morning Britain	ITV	10/07/2018	Generally accepted standards	1
Good Morning Britain	ITV	11/07/2018	Sexual material	1

Programme	Service	Transmission Date	Categories	Number of complaints
Good Morning Britain	ITV	12/07/2018	Due accuracy	1
Good Morning Britain	ITV	12/07/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	12/07/2018	Generally accepted standards	1
Good Morning Britain	ITV	12/07/2018	Religious/Beliefs discrimination/offence	4
Good Morning Britain	ITV	12/07/2018	Sexual material	1
Good Morning Britain	ITV	18/07/2018	Offensive language	1
Good Morning Britain	ITV	23/07/2018	Violence	1
ITV News	ITV	10/05/2018	Generally accepted standards	1
ITV News	ITV	26/06/2018	Due impartiality/bias	1
ITV News	ITV	03/07/2018	Gender discrimination/offence	1
ITV News	ITV	03/07/2018	Transgender discrimination/offence	1
ITV News	ITV	05/07/2018	Generally accepted standards	1
ITV News	ITV	09/07/2018	Due impartiality/bias	1
ITV News	ITV	11/07/2018	Generally accepted standards	1
ITV News	ITV	12/07/2018	Due impartiality/bias	1
ITV News	ITV	17/07/2018	Generally accepted standards	4
ITV News	ITV	19/07/2018	Violence	1
ITV News	ITV	24/07/2018	Generally accepted standards	1
ITV News	ITV	25/07/2018	Fairness	1
Japandemonium	ITV	14/07/2018	Race discrimination/offence	1
Loose Women	ITV	03/07/2018	Generally accepted standards	1
Loose Women	ITV	06/07/2018	Religious/Beliefs discrimination/offence	1
Loose Women	ITV	10/07/2018	Generally accepted standards	4
Programming	ITV	19/07/2018	Competitions	1
Royal Ascot Coverage	ITV	20/06/2018	Other	1
The Big NHS Singalong Live	ITV	04/07/2018	Due impartiality/bias	1
The Chase	ITV	26/07/2018	Materially misleading	1
The Jeremy Kyle Show	ITV	04/07/2018	Scheduling	1
The Jeremy Kyle Show	ITV	09/07/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Voice Kids	ITV	17/07/2018	Race discrimination/offence	1
The Voice Kids	ITV	21/07/2018	Generally accepted standards	2
This Morning	ITV	13/06/2018	Fairness	1
This Morning	ITV	21/06/2018	Race discrimination/offence	1
This Morning	ITV	27/06/2018	Crime and disorder	2
This Morning	ITV	05/07/2018	Generally accepted standards	1
This Morning	ITV	06/07/2018	Generally accepted standards	1
This Morning	ITV	09/07/2018	Generally accepted standards	1
This Morning	ITV	13/07/2018	Generally accepted standards	2
This Morning	ITV	17/07/2018	Transgender discrimination/offence	3
Tonight: Violent Britain	ITV	05/07/2018	Violence	1
World Cup Final 2018	ITV	15/07/2018	Generally accepted standards	1
World Cup Live: England v Columbia	ITV	03/07/2018	Generally accepted standards	21
World Cup Live: England v Croatia	ITV	11/07/2018	Generally accepted standards	1
World Cup Live: England v Croatia	ITV	11/07/2018	Offensive language	1
World Cup Live: England v Croatia	ITV	11/07/2018	Race discrimination/offence	43
World Cup Live: Uruguay v Portugal	ITV	30/06/2018	Advertising placement	1
ITV News Cymru	ITV Wales	23/07/2018	Animal welfare	2
ITV News Calendar	ITV Yorkshire	13/07/2018	Offensive language	1
Coronation Street	ITV2	04/06/2018	Violence	1
Love Island	ITV2	12/06/2018	Generally accepted standards	1
Love Island	ITV2	25/06/2018	Dangerous behaviour	1
Love Island	ITV2	29/06/2018	Sexual material	1
Love Island	ITV2	01/07/2018	Generally accepted standards	5
Love Island	ITV2	04/07/2018	Generally accepted standards	1
Love Island	ITV2	05/07/2018	Generally accepted standards	10

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Love Island	ITV2	05/07/2018	Race discrimination/offence	1
Love Island	ITV2	06/07/2018	Gender discrimination/offence	6
Love Island	ITV2	06/07/2018	Offensive language	32
Love Island	ITV2	06/07/2018	Race discrimination/offence	1
Love Island	ITV2	06/07/2018	Scheduling	1
Love Island	ITV2	08/07/2018	Generally accepted standards	19
Love Island	ITV2	08/07/2018	Materially misleading	1
Love Island	ITV2	08/07/2018	Race discrimination/offence	1
Love Island	ITV2	09/07/2018	Dangerous behaviour	1
Love Island	ITV2	09/07/2018	Generally accepted standards	2
Love Island	ITV2	10/07/2018	Gender discrimination/offence	1
Love Island	ITV2	10/07/2018	Generally accepted standards	633
Love Island	ITV2	10/07/2018	Materially misleading	1
Love Island	ITV2	10/07/2018	Other	1
Love Island	ITV2	10/07/2018	Undue prominence	1
Love Island	ITV2	11/07/2018	Generally accepted standards	4
Love Island	ITV2	12/07/2018	Gender discrimination/offence	1
Love Island	ITV2	12/07/2018	Generally accepted standards	1
Love Island	ITV2	12/07/2018	Materially misleading	1
Love Island	ITV2	12/07/2018	Race discrimination/offence	540
Love Island	ITV2	12/07/2018	Sexual material	1
Love Island	ITV2	16/07/2018	Generally accepted standards	1
Love Island	ITV2	17/07/2018	Generally accepted standards	3
Love Island	ITV2	17/07/2018	Race discrimination/offence	1
Love Island	ITV2	18/07/2018	Generally accepted standards	1
Love Island	ITV2	19/07/2018	Generally accepted standards	2
Love Island	ITV2	22/07/2018	Gender discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Love Island	ITV2	22/07/2018	Generally accepted standards	3
Love Island	ITV2	23/07/2018	Generally accepted standards	40
Love Island	ITV2	26/07/2018	Gender discrimination/offence	1
Two and A Half Men	ITV2	25/06/2018	Suicide and self harm	1
You vs Chris and Kem	ITV2	16/07/2018	Dangerous behaviour	1
You've Been Framed	ITV2	25/06/2018	Under 18s in programmes	1
Lewis	ITV3	25/07/2018	Religious/Beliefs discrimination/offence	1
Born on the Fourth of July	Kanal 11 (Sweden)	19/07/2018	Gender discrimination/offence	1
Botched	Kanal 11 (Sweden)	05/07/2018	Gender discrimination/offence	2
Botched	Kanal 11 (Sweden)	06/07/2018	Gender discrimination/offence	1
Botched	Kanal 11 (Sweden)	08/07/2018	Gender discrimination/offence	1
Botched	Kanal 11 (Sweden)	14/07/2018	Generally accepted standards	1
Botched	Kanal 11 (Sweden)	16/07/2018	Gender discrimination/offence	1
Botched	Kanal 11 (Sweden)	19/07/2018	Gender discrimination/offence	2
Wahlgrens Värld	Kanal 5 (Sweden)	03/05/2018	Undue prominence	1
Programming	Kiss 100	04/07/2018	Offensive language	1
Programming	Kiss Me TV	19/06/2018	Participation TV	1
Barsi Samagam	KTV	06/07/2018	Advertising/editorial distinction	1
Beverley Turner	LBC 97.3 FM	07/07/2018	Sexual orientation discrimination/offence	1
Iain Dale	LBC 97.3 FM	19/07/2018	Religious/Beliefs discrimination/offence	1
James O'Brien	LBC 97.3 FM	19/06/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	20/06/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	06/07/2018	Race discrimination/offence	2
James O'Brien	LBC 97.3 FM	09/07/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	10/07/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
James O'Brien	LBC 97.3 FM	11/07/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	13/07/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	19/07/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	24/07/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	25/07/2018	Race discrimination/offence	2
James O'Brien	LBC 97.3 FM	26/07/2018	Race discrimination/offence	4
Kevin Maguire	LBC 97.3 FM	08/07/2018	Due impartiality/bias	1
Nick Ferrari	LBC 97.3 FM	12/07/2018	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	16/07/2018	Commercial communications on radio	1
Nigel Farage	LBC 97.3 FM	20/06/2018	Materially misleading	1
Nigel Farage	LBC 97.3 FM	09/07/2018	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	24/07/2018	Offensive language	1
Murder Hunter	Lifetime	01/07/2018	Crime and disorder	1
Drivetime	Like Radio	29/06/2018	Competitions	1
Geordie Shore	MTV	17/07/2018	Generally accepted standards	1
Just Tattoo of Us	MTV	21/06/2018	Generally accepted standards	1
Wireless 2018 Live	MTV	08/07/2018	Materially misleading	1
Paddy Power advertisement	n/a	Various	Political advertising	1
Nation Radio Breakfast Show	Nation Radio Wales	06/06/2018	Sexual material	1
Programming	New Big City Radio	03/07/2018	Offensive language	1
News	New Vision TV	09/07/2018	Crime and disorder	1
Babestation Daytime	Party	22/06/2018	Participation TV	1
Racing UK	Racing UK	07/07/2018	Race discrimination/offence	1
Documentary: Testing Tolerance	RT	29/06/2018	Race discrimination/offence	1
The Morning Show	Signal 1	04/07/2018	Race discrimination/offence	1
Sky News	Sky	19/07/2018	Due impartiality/bias	1
British Grand Prix	Sky F1	08/07/2018	Dangerous behaviour	1

Programme	Service	Transmission Date	Categories	Number of complaints
Fred and Rose – The Unanswered Questions	Sky Living	01/07/2018	Generally accepted standards	1
All Out Politics	Sky News	12/07/2018	Due impartiality/bias	1
Line 18	Sky News	19/07/2018	Due accuracy	2
Press Review	Sky News	29/06/2018	Generally accepted standards	1
Press Review	Sky News	14/07/2018	Generally accepted standards	1
Sky News	Sky News	21/06/2018	Due accuracy	1
Sky News	Sky News	06/07/2018	Privacy	1
Sky News	Sky News	08/07/2018	Materially misleading	1
Sky News	Sky News	09/07/2018	Age discrimination/offence	1
Sky News	Sky News	09/07/2018	Due accuracy	1
Sky News	Sky News	09/07/2018	Due impartiality/bias	1
Sky News	Sky News	10/07/2018	Generally accepted standards	1
Sky News	Sky News	12/07/2018	Crime and disorder	1
Sky News	Sky News	12/07/2018	Due impartiality/bias	1
Sky News	Sky News	13/07/2018	Due impartiality/bias	1
Sky News	Sky News	13/07/2018	Generally accepted standards	4
Sky News	Sky News	14/07/2018	Offensive language	1
Sky News	Sky News	21/07/2018	Due accuracy	1
Sky News	Sky News	23/07/2018	Due accuracy	1
Weather	Sky News	06/07/2018	Race discrimination/offence	2
A League of Their Own	Sky1	01/07/2018	Gender discrimination/offence	1
The Simpsons	Sky1	16/07/2018	Scheduling	1
Nurse Shicklly	Sony Crime Channel +1	01/07/2018	Generally accepted standards	1
Police Interceptors	Spike	23/07/2018	Dangerous behaviour	1
McGinley in the Morning	Spirit FM	06/07/2018	Offensive language	1
The Late Night Alternative with Iain Lee	Talk Radio	27/06/2018	Crime and disorder	1
The Late Night Alternative with Iain Lee	Talk Radio	04/07/2018	Offensive language	1
Hawksbee and Jacobs	Talksport	13/06/2018	Generally accepted standards	1



Programme	Service	Transmission Date	Categories	Number of complaints
Mike Parry	Talksport	14/07/2018	Generally accepted standards	1
News	Talksport	21/06/2018	Due accuracy	1
Sports Bar	Talksport	08/07/2018	Crime and disorder	1
The Sports Bar	Talksport	11/07/2018	Generally accepted standards	7
The Sports Bar	Talksport	13/07/2018	Generally accepted standards	1
World Cup Live: England v Sweden	Talksport	07/07/2018	Materially misleading	1
Night of the Generals	TCM	08/07/2018	Scheduling	1
TMCR Breakfast with Malcolm Ley	TMCR	21/06/2018	Generally accepted standards	1
Tudno Breakfast	Tudno FM	09/07/2018	Offensive language	1
Tudno Breakfast	Tudno FM	12/07/2018	Offensive language	1
Programming	Yesterday	17/07/2018	Advertising minutage	1
Shubh Mangal Savdhan	Zee Cinema	04/06/2018	Nudity	1

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

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](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	Service	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	22/01/2018	Due accuracy	1
Doctors	BBC 1	18/05/2018	Generally accepted standards	1
Frankie Boyle's New World Order	BBC 2	18/05/2018	Due impartiality/bias	1
Live at the Apollo	BBC 2	02/06/2018	Disability discrimination/offence	1
Reformation / Gunpowder / Queen Elizabeth: Secret Agents	BBC 2	Various	Materially misleading	1
BBC News	BBC channels	14/05/2018	Due impartiality/bias	1
Feedback	BBC Radio 4	15/06/2018	Other	1
The Museum of Curiosity	BBC Radio 4	01/09/2017	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Today	BBC Radio 4	28/03/2018	Religious/Beliefs discrimination/offence	1
Today	BBC Radio 4	18/07/2018	Due impartiality/bias	1
Good Morning Scotland	BBC Radio Scotland	06/05/2018	Due impartiality/bias	1

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

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 9 and 29 July 2018 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories	Number of complaints
Chorley FM	Chorley FM	Key Commitments	1
Made Television Limited	Made in Tyne and Wear	Programming Commitments (local TV)	2
Radio Hallam Ltd	Hallam FM	Format	1
Real Radio XS Limited	XS Manchester	Format	1
That's Oxford Limited	That's Oxfordshire	Programming Commitments (local TV)	1
That's Oxford Limited	That's Oxfordshire	Programming Commitments (local TV)	1
That's Productions Limited	That's Norfolk	Programming Commitments (local TV)	1

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 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 that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
Can't Pay? We'll Take It Away!	5Star	11/07/2018	Outside of remit	1
Advertisements	All	01/01/2018	Advertising content	1
Wimbledon	BBC 1	07/07/2018	Outside of remit	1
World Cup Live	BBC channels	06/07/2018	Outside of remit	1
Programming	BBC channels	Various	Outside of remit	1
The Organist Entertains	BBC Radio 2	n/a	Outside of remit	1
Advertisement	CFM Radio	01/07/2018	Advertising content	1
Advertisement	Channel 4	30/06/2018	Advertising content	1
Advertisement	Channel 4	20/07/2018	Advertising content	1
Competition	Channel 4	10/07/2018	Competitions	1
n/a	Channel 4 HD (Freesat)	n/a	Provision of licensed service	1
Advertisement	Channel 5	09/07/2018	Advertising content	1
Advertisement	Channel 5	14/07/2018	Advertising placement	1
Advertisement	Channel 5	23/07/2018	Advertising content	1
Advertisement	E4+1	07/07/2018	Advertising content	1
Teleshopping	Gems TV	24/07/2018	Teleshopping	1
Advertisement	Heart	23/07/2018	Advertising content	1
Advertisement	Heart (Oxfordshire)	13/07/2018	Advertising content	1
Advertisement	ITV	07/07/2018	Advertising content	1
Advertisement	ITV	09/07/2018	Advertising content	1
Advertisement	ITV	11/07/2018	Advertising content	1
Advertisement	ITV	13/07/2018	Advertising content	1
Advertisement	ITV	17/07/2018	Advertising content	1
Advertisement	ITV	25/07/2018	Advertising content	1
Advertisement	ITV	26/07/2018	Advertising content	1
Advertisements	ITV	04/07/2018	Advertising content	1
Advertisements	ITV	11/07/2018	Advertising content	1
Advertisements	ITV	23/07/2018	Advertising content	1
World Cup Live	ITV	06/07/2018	Outside of remit	1
World Cup Live: England v Croatia	ITV	11/07/2018	Outside of remit	4
Advertisement	ITV2	10/07/2018	Advertising content	1
Advertisement	ITV2	20/07/2018	Advertising content	1
Love Island	ITV2	29/06/2018	Outside of remit	1
Love Island	ITV2	06/07/2018	Outside of remit	1

Programme	Service	Transmission Date	Categories	Number of complaints
Love Island	ITV2	08/07/2018	Outside of remit	1
Love Island	ITV2	11/07/2018	Outside of remit	1
Love Island	ITV2	18/07/2018	Outside of remit	1
Love Island	ITV2	19/07/2018	Outside of remit	2
Love Island	ITV2	22/07/2018	Outside of remit	1
Advertisement	ITV Hub	04/07/2018	Advertising content	1
Aftonbladet Nyhetsmorgon	Kanal 5 (Sweden)	04/05/2018	Outside of remit	1
Mammagalan	Kanal 5 (Sweden)	27/05/2018	Outside of remit	1
Wahlgrens Värld	Kanal 5 (Sweden)	15/06/2018	Outside of remit	1
Wahlgrens Värld	Kanal 5 (Sweden)	01/07/2018	Outside of remit	1
Nigel Farage	LBC 97.3 FM	15/07/2018	Outside of remit	1
Video	METRO	19/07/2018	Animal welfare	1
Non-editorial (billing)	NOW TV	03/07/2018	Other	1
Non-editorial (customer service)	NOW TV	01/06/2018	Other	1
Summer Dramas (trailer)	Smooth Radio	10/07/2018	Advertising content	1
Spotify	Spotify	01/08/2014	Other	1
Advertisement	STV	09/07/2018	Advertising content	1
Advertisements	Talksport	13/07/2018	Advertising content	1
Extra Time	Talksport	15/07/2018	Outside of remit	1
Podcast	The Guardian: Football Weekly podcast	07/07/2018	Hatred and abuse	1
Advertisement	TLC	26/07/2018	Advertising content	1
Advertisement	Various	21/07/2018	Advertising content	1
Bollywood Movie	Venus TV	22/07/2018	Outside of remit	1
Programming	Venus TV	23/07/2018	Outside of remit	1
n/a	Westside Radio	n/a	Other	1
The Xtra Factor	YouTube	07/12/2014	Outside of remit	1

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>

## 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	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1	19/07/2018	Due accuracy	2
BBC News	BBC 1	26/07/2018	Due accuracy	1
BBC News / Hardtalk	BBC 1	13/07/2018	Due impartiality/bias	1
Doctors	BBC 1	18/05/2018	Generally accepted standards	1
Eastenders	BBC 1	17/07/2018	Religious/Beliefs discrimination/offence	1
EastEnders	BBC 1	26/07/2018	Materially misleading	2
MOTD Live: FIFA World Cup 2018: Sweden v England	BBC 1	07/07/2018	Generally accepted standards	2
Panorama: Trump: Is the President A Sex Pest?	BBC 1	09/07/2018	Due impartiality/bias	1
Panorama: Trump: Is the President A Sex Pest?	BBC 1	09/07/2018	Generally accepted standards	1
Question time	BBC 1	05/07/2018	Due impartiality/bias	1
T1B – The Andrew Marr Show	BBC 1	17/06/2018	Religious/Beliefs discrimination/offence	1
BBC Scotland Investigates: Breaking Point	BBC 1 Scotland	09/07/2018	Due impartiality/bias	1
Reporting Scotland	BBC 1 Scotland	10/07/2018	Due impartiality/bias	1
Jo and Simon Drivetime	BBC 2	25/06/2018	Generally accepted standards	1
Newsnight	BBC 2	15/07/2018	Generally accepted standards	1
Newsnight	BBC 2	18/07/2018	Due impartiality/bias	1
Picnic at Hanging Rock	BBC 2	18/07/2018	Race discrimination/offence	1
PM2	BBC 4	20/07/2018	Generally accepted standards	1
BBC News	BBC channels	Various	Due impartiality/bias	1

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>	<b>Categories</b>	<b>Number of Complaints</b>
Programming	BBC channels	13/07/2018	Generally accepted standards	1
Programming	BBC channels	Various	Due impartiality/bias	1
EastEnders	BBC iPlayer	06/07/2018	Generally accepted standards	1
BBC News 24	BBC News 24	14/07/2018	Due impartiality/bias	1
BBC News	BBC News Channel	13/07/2018	Due impartiality/bias	1
BBC News	BBC News Channel	13/07/2018	Offensive language	1
BBC News	BBC News Channel	17/07/2018	Generally accepted standards	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	22/01/2018	Competitions	1
BBC Radio 2	BBC Radio 2	17/07/2018	Generally accepted standards	1
Today	BBC Radio 4	18/07/2018	Due impartiality/bias	1
Emma Barnett Show	BBC Radio 5 live	26/06/2018	Privacy	1
Newsnight	Various	02/07/2018	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 9 and 29 July 2018.

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

Programme	Service	Transmission date
Homeopathic Clinic	KTV	08/06/2018
Broadcast competition	Northsound 1	05/05/2018
Single Mums Club	Together	24/06/2018

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
On the Front	Dunya TV	11/01/2018
Geo News Bulletin	Geo News	02/02/2018

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)

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

<b>Licensee</b>	<b>Licensed Service</b>
Furness Broadcast Media CIC	Cando FM
Llandudno Community Radio Limited	Tudno FM

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

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