

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

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

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

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

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

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

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

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

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

It is Ofcom's policy to describe fully 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.

Standards Findings

In Breach

OMG: Painted, Pierced and Proud **Channel 5, 2 July 2017, 22:05**

Introduction

OMG: Painted, Pierced and Proud was an observational documentary broadcast on Channel 5. It featured people who have undertaken extreme body modifications in the name of body art.

Ofcom received a complaint about the part of the programme involving a contributor called Torz, who had deliberately cut off part of one of her fingers.

The following warning was broadcast at the start of the programme:

"Be prepared for highly offensive language and extremely graphic scenes of surgery and other procedures which may distress some viewers right from the very start and throughout".

Interspersed with short clips of some of the people featured in the programme, the programme's narrator said:

"An epidemic is sweeping the nation...Meet the men and women going to the extreme...To disfigure their bodies...Hooked on the ink...addicted to the knife...and going for the...self-expression of self-mutilation... One thing's for certain...there's no going back...With a tattoo or piercing parlour on every High Street, Britain has embraced body art. But some have taken it to the extreme and it's become an obsession".

Torz was the first person the programme focused on. She said:

"I've always kind of identified as a bit of a freak. Cause I'm a freak. Proud of it".

Shortly afterwards, Torz described how she amputated part of her little finger:

"It was just like a normal day, except I chopped my finger off between dinner and bedtime ha ha...To begin with, I set everything up, I had a mat on the floor and everything, just in case there was a lot of blood, and then, I used this bit of ribbon to just do a little tourniquet. After that, got my trusty bolt cutters. I just sat down, I had them, like this, and it took a little while before I could work up the courage. And then I had that fuck it moment. And then just... crunch, that horrible crunch".

As she said this, Torz reconstructed how she had cut off her finger by placing it between the blades of a bolt cutter.

Narrator: *"Despite the trauma to her body, Torz controlled the blood loss and didn't contract a serious infection".*

The programme also included the following statements made by Torz and her father, Rich, about her decision to cut off her finger:

Torz *"It's just cute as fuck! Like isn't this cute! I think it's cute. And that's all that matters really".*

Torz: *"I've wanted like half my finger chopped off for about ten years".*

Torz: *"Yeah but you're like super chill about all that [Torz's body modifications]".*

Rich: *"Yeah well the thing is you can't impose your own will on children. You know it's, I want you to be like this, or I want you to be a doctor or like this, it's like no, let them get on and do what they want; up to a point obviously".*

Rich: *"The thing is I might not understand it all but I'm really proud of you being an individual, I mean I'd hate for you to be a bit vanilla and boring and normal if you like. Chip off the old block really".*

Torz: *"When I realised how easily accessible this stuff [body modifications] was I just went for it".*

Narrator: *"And there was no stopping her, even when modification turned to mutilation".*

Torz: *"I really appreciate how much you support everything I do. I really do, it's really rare. But how did you feel when I took it up a notch?"*

Rich: *"I didn't think you were full of shit, I thought oh you'll probably do it, but I thought yeah she probably won't do it and then you done it".*

Narrator: *"Accepting that she'd amputated her finger is one thing, but how will dad stomach seeing it in black and white".*

The programme then showed Torz and her father watching home-video footage of the amputation on a mobile phone. The video was also shown full screen during this sequence. It showed Torz, in her home, kneeling with her finger between the jaws of a pair of bolt cutters. Torz's finger was blurred out and the precise moment that she cut off her finger was not shown. However, the immediate aftermath of the amputation was shown, with Torz holding her severed finger and with small amounts of blood on a sheet Torz had laid down:

Torz (on video): *"And I done it".*

Rich: *"Ah mate".*

Torz (on video): *"Cos I fucking do everything I say I'm gonna do".*

Torz (on video): *"That was so much fun let's do it again!"*

Torz: *"Let's do it again! Ha ha! I'm not doing it again, that was it Dad I promise"*

Rich: *"You better not"*

Torz (on video): *"Fuck yes!"*

Rich: *"I'm hoping that's the most extreme thing you're gonna fucking do to be honest".*

Narrator: *"Until now, Rich has been incredibly relaxed about her extreme body mods, even her decision to sever her finger...but there is one thing he feels strongly about".*

Rich: *"There is not that many things that she can do that will sort of bother me. The eyes will bother me".*

Torz and Rich were then shown discussing Rich's concerns about Torz tattooing her eyes:

Torz: *"...is it the look of it as well as the safety side or is it more just safety?"*

Rich: *"It's the safety side. I'll do a deal with you. If you come and see a specialist and we'll go from there 'cos they will tell you what the dangers are".*

In the following sequence, Torz and Rich went to see an optometrist who told Torz about the potential risks of getting her eyes tattooed. Torz and Rich then agreed they would review the situation in 15 years to wait for more research to be done.

Torz and Rich then spoke in a coffee shop.

Rich: *"I'm not onboard with the eyes but I'm onboard with other things".*

Torz *"Out of respect for you I'm not gonna do it..."*.

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

Rule 2.4 *"Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour".*

Rule 2.5 "Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context".

We therefore asked Channel 5 how the material complied with this rule.

Response

Channel 5 described the purpose of the *OMG* strand of documentaries as examining "extremes and obsessions, from scarification to unnecessary surgical procedures and addictive tanning regimes" and "the tolls such extremes and obsessions take on the individuals". In the Licensee's view, the programme "questions whether the goals of the various contributors are sensible and appropriate" and does not "present those goals as desirable, glamorous, or the kinds of activity which should be condoned or copied".

Channel 5 identified the warning broadcast at the start of the programme and said that this "provided information about the content sufficient to properly warn any post-Watershed audience about the likely content of the programme and to avoid or minimise any possible offence".

Channel 5 stated that "no part of the programme glamorised the self-mutilation carried out by the contributor, Torz; nor did the programme treat Torz's conduct as behaviour that ought to be copied". It considered that Torz was not presented as a role-model, but rather a "self-identifying extreme individual who made unfathomable choices in the pursuit of her personal fascination with removing her own body parts".

The Licensee argued the "programme did no more than tell Torz's story in the context of a programme that inherently questioned whether or not Torz's conduct was sensible".

Channel 5 quoted narration from the programme as evidence of this, such as:

- *"An epidemic is sweeping the nation. Meet the men and women going to the extreme. To disfigure their bodies. Hooked on the ink, addicted to the knife, and going for the...self-expression or self-mutilation. One thing's for certain, there's no going back".*
- *"With a tattoo or piercing parlour on every High Street, Britain has embraced body art. But some have taken it to the extreme and it's become an obsession".*
- *"Pretty soon, removing mere strips of skin, didn't quite cut it for Torz. Driven by her obsession, she pushed her body mods beyond the edge of reason".*

Channel 5 also said that the input of Torz's father acted to help discourage anyone from potentially copying Torz's behaviour. Channel 5 argued that "it was perfectly clear to any reasonable viewer that Torz's father did not approve of what his daughter had done, even though he was careful to express his support for her generally".

It was Channel 5's view that "the programme did no more than tell Torz's story in the context of a programme that inherently questioned whether or not Torz's conduct was sensible". It considered that "nothing about the programme sought to glamorise or condone Torz's conduct and it is difficult to see how a reasonable viewer could have thought otherwise".

The Licensee also considered that part of the point of the programme was that "individuals explain their extreme attitudes about their bodies and how they look and the viewing public can be informed about those attitudes and form their own opinions about them". Channel 5 said that this sort of discussion is clearly permitted "given the Article 10 rights enjoyed by both the contributors and Channel 5".

In addition, the Licensee said that it "considered it was necessary, in order to minimise possible harm...to identify the device used in the amputation". Channel 5 said that "If the bolt cutters were not named, there was a possibility that members of the audience might have thought that more dangerous, or potentially more dangerous, household items were involved: carving knives, meat cleavers, electric knives, paper guillotines, home meat slicers". The Licensee also said it "wished to avoid any possibility that anyone watching the programmes could seek to imitate Torz's behaviour with a possibly more dangerous instrument".

Channel 5 also said that showing the bolt cutters used was likely to have discouraged people from imitating Torz's behaviour, and that it was in the public interest to show the safety procedures Torz took. It argued that including this information made clear to viewers the potential dangers involved. Nevertheless, Channel 5 said that this was not a complicated procedure and that it was therefore not necessary for the programme to leave out steps in the process to prevent imitation.

Channel 5 was also of the view that Rule 2.4 had "no applicability to this broadcast and the inclusion of Torz's story in the broadcast". This was because, in its view, the purpose of this rule "appears clearly to be about behaviour directed *at* people *other* than the person exhibiting the behaviour". Channel 5 considered that self-inflicted injuries would be covered by Rule 2.5¹. In any event, Channel 5 stated that the content "was not presented in a way which seeks to condone or glamorise Torz's behaviour or is likely to encourage others to copy such behaviour".

With respect to Rule 2.5, Channel 5 stated its belief that "the editorial spine of the programme justified the inclusion of the content...despite its strength and capacity to create possible offence, and that the context within the programme both explained and justified that content".

In conclusion, Channel 5 stated its belief that "all appropriate steps, given the particular context of the broadcast, were taken to ensure that Torz's self harm was not portrayed in a way that was inappropriate, imitable, glamorised or promoted" and no breach of the Code had occurred.

Response to Preliminary View

The Licensee also provided representations in response to Ofcom's Preliminary View which was to find the programme in breach of Rules 2.4 and 2.5 and consider these breaches for the imposition of a statutory sanction.

¹ Rule 2.5 states that "Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context".

Rule 2.4

In relation to Rule 2.4, Channel 5 acknowledged that the programme included instances of Torz expressing her own positive views about the amputation of her own finger. However, it was the Licensee's view that "in considering context, Torz's own positive views of her actions should not, on Channel 5's understanding of Rule 2.4, predetermine how the relevant context is assessed". Rather, while Torz's condoning of her actions may have 'triggered' Ofcom's assessment, Channel 5 stated that "it is the larger context in which that material must be considered." In that regard, Channel 5 referred to the non-exhaustive list of factors which may contribute to context, as set out in relation to Rule 2.3 of the Code². The broadcaster added that, the fact that Ofcom had not found a breach of Rule 2.3 meant that "Ofcom considered that the programme as a whole was not capable of causing widespread harm and offence."

Channel 5 stated that "once [Torz's] own expressions of satisfaction/pleasure about the procedure are removed from the equation, we do not believe there is anything within the programme (either general or specific) that condones or glamorises her actions". It was the Licensee's view that "the remainder of the content all acts as a counter to Torz's own views and contextually repeatedly seeks to condemn, question, criticise or single out her behaviour as inappropriate". As an example of this, Channel 5 highlighted that the programme was broadcast after 22:00 on a Sunday evening and therefore would be "viewed by everyone in the context of similarly controversial and difficult subjects designed to provoke debate". Channel 5 also said that the reference to "*other procedures*" in the warning included the finger-amputation and scarification processes in the programme. In Channel 5's view, "viewers therefore were told to 'brace themselves' for something that is out of the norm and extreme" and "implicit in this is an obvious message that the context is unlikely to be condoned nor suitable for mimicry".

Channel 5 also considered that due to the programme being titled *OMG: Painted Pierced and Proud*, the epithet "'Oh My God'" is squarely in the viewers' minds when they sit down to watch this post-watershed programme carrying with it an extreme warning". The Licensee was therefore of the opinion that viewers "are likely to be shocked or appalled by what they see, rather than persuaded to condone or copy it".

In light of these factors, Channel 5 considered that "everything that the viewer is therefore told and sees before the programme even starts takes the viewer squarely away from any suggestion of condonation or suitability for copying; quite the opposite – the content is going to be extreme, shocking, offensive, graphic and distressing".

The Licensee also identified statements in the programme's voiceover that it considered reinforced these messages. These included the narration informing viewers they were about to "*meet the men and woman going to the extreme*" as well as describing those in the programme as "*addicted to the knife*". Channel 5 characterised the voiceover as telling the viewers "in plain terms that the subjects of the programme are extreme addicts who are obsessed". The Licensee said that to "impute any of these characteristics to a person or their behaviour is not consistent with condoning that behaviour or suggesting it is suitable for being copied".

² Rule 2.3 states: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...".

The Licensee highlighted Torz's self-identification in the programme as a "*freak*". Channel 5 suggested that "people are not expected to, nor do they generally, condone freaks nor mimic them; instead they are shunned and/or ridiculed by society for their behaviour and the characteristics that make them freaks". It was also Channel 5's view that as the programme narration described her actions as "*unbelievable and unreasonable*", the narrator and the programme cannot realistically be said to be condoning her actions nor suggesting they should be copied. Rather, Channel 5 considered these references "establishe[d] exactly the opposite".

Channel 5 objected to Ofcom's Preliminary View that Torz's father was seen to condone her actions in the programme. The Licensee considered this did not "fairly reflect the nuances of her father's comments and visual appearance [emphasis in original] on the programme. Channel 5 considered that Torz's father "is clearly disapproving of her conduct" and although "he is torn between wanting to show support for his daughter on camera and expressing his true feelings...those true feelings do emerge". In response to watching the video of the incident, Channel 5 said Torz's father "visibly recoils and winces, then states in terms "*that's extreme*". He also stated to his daughter that "*you'd better not do it again*". In the Licensee's view, "this reaction is unlikely to be understood as him condoning what he has seen or suggesting that any viewer should follow his daughter's lead".

Channel 5 also considered Torz's comments in this section of the programme to be highly relevant to Ofcom's consideration of Rule 2.4. Channel 5 described Torz as "confirming that despite the video footage at the time showing her initially suggesting she would do it again, she now with the passage of time has changed her mind and would not repeat the exercise". In the Licensee's view, Torz herself "acts as a powerful contextual counterfoil to her initial condonation of what she did". Because of this, Channel 5 considered that "no viewer is left in doubt: self-amputation of a finger is dangerous and extreme and not something that should be copied".

The Licensee objected to Ofcom's argument in the Preliminary View that the manner in which the amputation was portrayed could have led viewers to perceive the amputation as "fun, harmless and easy to undertake at home". Although the Licensee accepted that "Torz herself was initially positive about the procedure and viewed it as '*fun*'...nothing else in the programme supports her view that it was fun, and indeed everything else was either, at best, neutral but mostly positively disapproving of it". In support of this, Channel 5 identified Torz's description of "*that horrible crunch*" when she amputated her finger and her admission she had to "*work up the courage*" to do it. In addition, Channel 5 directed Ofcom to the narrator referring to the "*trauma to her body*" as a result of the procedure and Torz's father wincing as he watched the video of the procedure and "mak[ing] it clear beyond doubt that he does not want Torz to repeat it".

The Licensee also disagreed with Ofcom's Preliminary View that the procedure would be "easy to undertake at home" and the description by Ofcom of the bolt cutters used by Torz as "a household tool that would be easily accessible to viewers". Channel 5 did not consider "a set of bolt cutters to be a 'household tool' that viewers would easily come across...".

In conclusion, Channel 5 said that in its view "there is no evidence which underpins a finding that the material was likely to encourage others to copy the behaviour shown in the programme".

Rule 2.5

In its response to Ofcom's original request for comments, Channel 5 had said that "Torz's story, as well as other stories in the programme, concerns self-harm of one sort or another" and that "[s]elf-harm and individualism is a legitimate topic of genuine public interest". In Channel 5's view, the "editorial spine" and context of the programme justified the inclusion of the content.

However, in response to Ofcom's Preliminary View, Channel 5 argued that Rule 2.5 had no application to the programme. The broadcaster stated that if Rule 2.4 applied to the acts identified in this programme then "Rule 2.5 must therefore be addressing something different than body piercing, extreme body art and the like". Channel 5 also considered that as Rule 2.5 makes reference to suicide as well as self-harm it "must be concerned with harm of a kind different to individualism or self-expression" and that as Torz conduct was being considered under Rule 2.4, "Rule 2.5 must be about 'self-harm' of a totally different kind".

In particular, Channel 5 stated that it believed that "self-harm" as referred to in Rule 2.5 "is generally and commonly understood to mean a form of mutilating one's own body other than by way of tattoos, body piercing or other forms of extreme body art or body modification". In Channel 5's view, this form of self-harm is "most commonly associated with an underlying medical condition that causes the desire to self-harm in the first place, that is usually linked to depression, eating disorders, distress or mental turmoil". In support of this, Channel 5 provided links to a number of medical websites included definitions of self-harm. The broadcaster stated that "[s]uch websites associate acts of self-harm with acute anxiety or distress that cause the person to feel the need to self-harm", and that this is "a world away from the obsession with extreme body art or modification held by the subjects shown in the programme." On that basis, in the case of this particular programme, the amputation of a finger is "not necessarily self-harm as that term is used in the Code".

Consideration of the Imposition of a Statutory Sanction

Channel 5 also provided representations regarding Ofcom's Preliminary View that it considered the breaches of Rule 2.4 and 2.5 to be "serious" and that it would consider the breaches for the imposition of a statutory sanction. Channel 5 said that "no evidence of any actual physical harm to any viewers, vulnerable or otherwise (noting in passing that neither Rule 2.4 or 2.5 are specifically directed by their content at "vulnerable viewers") is put forward by Ofcom nor is Channel 5 aware of any.

In the Licensee's view "anyone who even considered following Torz's [actions] would be acutely aware that the process was not easy to go through, was painful and anything but harmless and unlikely to be viewed as acceptable. Channel 5 also considered that as Ofcom had only received one complaint about the programme (and the Licensee itself had not received any) and that if any consequences of the broadcast had occurred these "would have manifested themselves by now and either Ofcom or Channel 5 would have learned about them". In these circumstances, Channel 5 considered that "it is difficult to see how any breach...could be fairly said to be serious, or sufficiently serious as to warrant the imposition of a sanction". In Channel 5's view "at most, we would submit that we must have fallen only slightly over the line in an editorial judgement required under Rules 2.4 and 2.5, as to (i) whether to include the particular footage and storyline in question within the context of a programme about which the footage was squarely 'on point', and (ii) as regards to which the

viewing public were clearly advised, even before the footage in question was shown, that they may be shocked or upset by it, as it was extreme, graphic and highly offensive”.

Lastly, Channel 5 stated that, of the seven previous cases it has identified where Ofcom has found a breach of Rule 2.4, only two of these have led to the imposition of a sanction³. Channel 5 said these programmes “involved firstly statements being made which Ofcom considered were likely to encourage or incite the commission of crime against homosexuals, and secondly the glorifying of people dying in support of an overseas independence movement, revolting against the government and carrying weapons”. Although Channel 5 acknowledged that each case turns on its facts, it considered that these two programmes involved “the condoning or glamorising of actions which are in [its] view far more serious than those engaged in by Torz in this programme”.

Decision

Reflecting our duties under the Communications Act 2003⁴, Section Two of the Code requires that members of the public are adequately protected from harmful and/or offensive material.

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 must seek to balance broadcasters' freedom to discuss any controversial subject or point of view in their programming, and compliance with Section Two.

Rule 2.4

It was Channel 5's initial view that Rule 2.4 did not apply in this case as it considered this rule only concerned behaviour directed at other people. However, there is nothing in the wording of this Rule to suggest that it does not capture violent or dangerous behaviour directed against one's self, or carried out alone. Ofcom's Guidance for Section Two of the Code⁵ makes clear that depictions of extreme sports or stunts may raise issues under this Rule. Consistent with that approach, Ofcom has published decisions regarding Rule 2.4 which related to an action that may result in people causing harm to themselves⁶. We therefore considered there were no reasonable grounds to consider Rule 2.4 did not apply to the material in this case.

Channel 5 argued that as Ofcom's Preliminary View in this case did not find the programme in breach of Rule 2.3⁷ this “means that Ofcom considered that the programme as a whole was not capable of causing widespread harm and offence”. However, Rule 2.3 only includes a

³ Decision against Aden Live, 10 August 2011, Issue 191 of Ofcom's Broadcast Bulletin (https://www.ofcom.org.uk/_data/assets/pdf_file/0031/46867/obb191.pdf) and Decision against Radio Asian Fever, 11 June 2012, Issue 207 of Ofcom's Broadcast Bulletin (https://www.ofcom.org.uk/_data/assets/pdf_file/0026/45773/obb207.pdf)

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

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0026/36386/50.pdf, page 16 and https://www.ofcom.org.uk/_data/assets/pdf_file/0029/45668/issue58.pdf page 18

⁷ See footnote 2 above.

consideration of a programme's relevant contextual factors in relation to offence. As Rule 2.4 is solely concerned with protecting viewers from harm, our Decision not to pursue any further investigation under Rule 2.3 in this case is separate from our consideration of Rule 2.4.

Under Rule 2.4 a programme must not, taking into account the context, condone or glamorise violent, dangerous or seriously antisocial behaviour; and it should not be likely to encourage others to copy such behaviour.

Ofcom considered that Torz's self-amputation was a clear example of dangerous behaviour, as Channel 5 appeared to acknowledge in its representations. The procedure was carried out at home, with readily available items and was not performed by a medical professional.

We therefore went on to consider whether, taking into account the context, the programme condoned or glamorised this behaviour.

We firstly took into account the manner in which Torz expressed her pleasure with carrying out the procedure and the appearance of her amputated finger and did not appear to regret taking such a dangerous action. For example, Torz described the process as *"so much fun"* and the look of her partially amputated finger as *"cute as fuck"*. Torz also expressed her desire to continue modifying her body in extreme ways by wanting to have her eyes tattooed. Given the degree to which Torz clearly condoned her own actions we went on to consider the degree that other contextual elements of the programme provided any counter to this.

It was Channel 5's view that Torz's father, Rich, condemned Torz's actions. We recognised that Rich said that Torz *"better not"* carry out another amputation and that he hoped the amputation was the *"most extreme thing"* she was going to do. However, it was our view that overall viewers were left with the impression that Rich largely supported Torz's decision to amputate her finger. For example, Torz said to Rich *"Yeah, but you're like super chill about all that [Torz's body modifications]"* and *"I really appreciate how much you support everything I do"*. Rich also said to Torz *"I'm really proud of you being an individual"*.

We also considered that the concern Rich demonstrated regarding Torz's desire to get her eyes tattooed served to reinforce the idea that this was a line he was not prepared for her to cross but he had accepted, and was relatively comfortable with, the other body modifications she had already completed, including the self-amputation of her finger. For example, the programme's narration stated that *"until now, Rich has been incredibly relaxed about her [Torz's] extreme body mods, even her decision to sever her finger"*, before going on to discuss Rich's objections to Torz having any body modifications done to her eyes. Rich also said to Torz *"I'm not onboard with the eyes but I'm onboard with other things"*. Later in the programme, Rich was shown taking Torz to visit an optometrist who warned of the dangers of Torz having her eyes tattooed. We considered that this contrasted strongly to Rich recounting his reaction to Torz telling him that she was going to amputate her finger. He said: *"I didn't think you were full of shit, I thought oh you'll probably do it, but I thought yeah she probably won't do it and then you done it"*.

As noted by Channel 5 in its representations, we considered that the sequence in which Torz and Rich watched the home video of Torz amputating her finger did, to some extent, serve to counter the degree to which Torz's actions were condoned in the remainder of the programme. For example, Torz and Rich both winced as they watched Torz carry out the procedure, highlighting the severity of what Torz had done. However, we considered that the

impact on viewers of their reactions was limited by the simultaneous broadcast of Torz's immediate reaction to carrying out the act itself (which was to exclaim "*that was so much fun, let's do it again*" and "*fuck yes*").

Channel 5 also considered that Torz's comment "*I'm not going to do it again*" when watching back the video of her carrying out the amputation "acts as a powerful contextual counterfoil to her initial condonation of what she did". However, in Ofcom's view Torz's lack of desire to carry out an amputation on another finger did not suggest that she necessarily regretted her original actions.

We also acknowledged that the programme's narration made clear that the behaviour included within it was "*extreme*" and suggested that Torz and other contributors were obsessed with body modification. However, we did not consider that the programme's narration provided sufficient counter to Torz and her father's view that Torz's actions were a positive act of self-identity. Furthermore, at no point during the programme did the narration explicitly warn viewers of the dangers of the procedure or advise viewers against imitating it. Rather, the narration made clear to viewers that the method Torz had used to amputate her finger had resulted in her being able to control the blood loss and avoid serious infection. There appeared to be no negative impacts resulting from Torz's self-amputation.

We also took account of the broader context of the programme in our consideration of whether the programme condoned or glamorised dangerous behaviour. As set out above, the programme featured a series of people who had undertaken extreme body modifications in the name of body art.

We took account of the fact that the programme was broadcast well after the watershed and was preceded by a warning that alerted viewers to "*highly offensive language*" and "*extremely graphic scenes of surgery and other procedures which may distress some viewers*". Channel 5 considered that viewers were therefore "told to 'brace themselves' for something that is out of the norm and extreme. In Ofcom's view, this warning would have served to suggest to viewers that the programme would include some gory or graphic content that some members of the audience may prefer not to see. However, as it did not alert viewers to the potential risks involved in replicating Torz's actions or otherwise discourage them from copying her behaviour, we did not consider this warning had a material impact on the extent to which the remainder of the programme condoned Torz's actions.

The Licensee also considered that the descriptions of the programme's contributors by the narrator such as "*going to the extreme*" as well as Torz's self-identification as a "*freak*" further suggested the programme did not condone Torz actions. However, in our view, it was clear to viewers that Torz saw being a "*freak*" as a positive attribute and believed her extreme body modifications (including the amputation of her finger) to be a way of expressing her individualism.

Taking all of the above into account, it was Ofcom's Decision that insufficient context was provided to counter the degree to which this example of dangerous behaviour was condoned.

Ofcom went on to consider whether, in light of all the relevant factors, the programme was likely to encourage others to copy Torz's behaviour. In coming to its Decision, Ofcom took account of the time of broadcast, and the nature of the content itself. Nevertheless, Ofcom

guidance on Rule 2.4 states that even programming scheduled late at night “may still raise questions in terms of vulnerable and younger viewers who may be encouraged to believe such behaviour is easily/harmlessly copied or acceptable”⁸.

Ofcom considered the instructional nature of content increased the likelihood of viewers replicating the actions taken by Torz, particularly given that Torz's procedure would be easy to copy. As set out above, the programme explained in detail the steps taken by Torz to amputate her finger at home, including reference to a tourniquet and the item Torz used to sever the finger. Channel 5 argued that this fact did not raise compliance issues as it was a simple process and the method used by Torz was one of a number that viewers could have used. Channel 5 also considered that to not show the method may have caused more harm to viewers because anyone watching might have sought to imitate Torz's behaviour with a possibly more dangerous instrument. It was Channel 5's view that by showing the steps taken the programme made clear the danger involved. In Ofcom's view, by identifying the bolt cutters to ensure viewers did not attempt the amputation with a different instrument, Channel 5 appeared to acknowledge the risk that viewers could be encouraged to imitate the dangerous behaviour.

Ofcom did not consider that the amputation was an entirely straightforward and simple process. The method used by Torz included several steps to try and minimise the pain and risk involved. Furthermore, while there are several crude methods that Channel 5 suggested people could use to remove part of their own finger, the method used by Torz could be easily imitated and used equipment that is both easy and cheap to acquire. However, what was of most concern to Ofcom was that it was presented as having no negative consequences for Torz. The narration made clear that Torz was able to control the blood loss and did not contract an infection. Furthermore, as described above, viewers were shown Torz's immediate reaction to chopping off her finger which appeared almost euphoric as she exclaimed “*fuck yes*” and described the process as “*so much fun*”.

Although Channel 5 identified Torz describing the “*horrible crunch*” when cutting into her finger and “*working up the courage*” to do it, we considered that these comments simply indicated the sound of the amputation was unpleasant and that Torz was nervous about carrying it out. We did not consider, and Channel 5 did not identify, any other ways in which negative consequences of Torz performing the amputation were identified in the programme.

For all the reasons above, we considered that the procedure was portrayed as a positive act of self-identification and individualism that would be easy and safe to replicate. We therefore concluded that the programme was likely to encourage others to copy Torz's behaviour. Our Decision is that the programme was in breach of Rule 2.4.

Rule 2.5

This rule prohibits the broadcast of methods of self-harm except where they are editorially justified and are also justified by the context. Ofcom's Guidance on this rule⁹ states that this rule “reflects a continued concern about the impact of real or portrayed suicide, and self-harm, on those whose minds may be disturbed”.

⁸ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf

⁹ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf

In its representations on the Preliminary View, Channel 5 argued that Rule 2.5 does not apply in this case. This is because it considered, if Rule 2.4 applies to violent and dangerous acts, such as those identified by Ofcom in the programme, Rule 2.5 must apply to a different type of self-harm, separate from tattoos, body piercing and other extreme forms of body art which are generally associated with individualism and self-expression. Such self-harm is, in Channel 5's view, that associated with underlying medical or psychological conditions, such as "depression, eating disorders, distress or mental turmoil". This form of self-harm is, in Channel 5's view, "a world away from the obsession with extreme body art or modification held by the subjects shown in the programme".

Ofcom does not accept Channel 5's representations on this point. While Rule 2.4 relates to material which condones or glamorises violent, dangerous or seriously antisocial behaviour, Rule 2.5 relates to material which depicts the methods by which suicide or self-harm may be carried out. "Self-harm" in this context should be construed generally, to mean any act by which an individual deliberately inflicts injury to oneself, where the "self-mutilation" referred to by the narrator in the programme is clearly included. In applying Rule 2.5, Ofcom is not seeking to make any assessment as to *why* the behaviour arose, or the causal factors at play, nor are we forming any opinion as to the psychological state or well-being of particular individuals. That is simply not Ofcom's role. Rather, our concern is whether the *methods* by which suicide or self-harm has been depicted in a programme are editorially justified and also justified by the context.

As discussed above, the programme set out both the process and the items used by an individual to amputate their own finger. In Ofcom's view, carrying out the amputation of one's own finger in such a way is clearly a method by which one can cause physical harm to one's self. We therefore concluded that Rule 2.5 did apply in this case and we went on to consider whether this material was editorially justified and justified by the context.

We did not agree with Channel 5 that "the editorial spine of the programme justified the inclusion of the content". We acknowledged that this was a programme about people who undertake extreme body modifications and therefore it may include some examples of what could be considered to be self-harm. However, we were concerned by the level of detail provided in the programme as well as its instructional nature. Not only did the programme include a verbal description of the method and items used by Torz, it also included a visual demonstration, with Torz reconstructing the process from beginning to end. Further detail was then provided when home video footage was shown. Torz had recorded this when she carried out the amputation.

As described in relation to Rule 2.4, the programme failed to make clear the dangers involved in what Torz had done. Instead, the narration stated how, by taking the precautions she did, Torz was able to "*control the blood loss and not contract an infection*". In addition, as part of the home video footage, viewers were shown the immediate aftermath of the amputation. In the video, Torz was shown as being clearly happy with how the procedure had gone and did not appear to be in pain or distress. She described it as "*fun*".

We also took account of other contextual factors such as the time of broadcast (22:05) and the inclusion of a warning for "*extremely graphic scenes of surgery*". However, we did not consider that these factors provided sufficient protection to vulnerable viewers to provide justification for the broadcast of this method of self-harm. Therefore, our Decision is that the programme was also in breach of Rule 2.5.

Conclusion

It is a fundamental requirement of the Code that broadcasters provide viewers with adequate protection from harm. In this case, we concluded the steps taken by the Licensee were insufficient to ensure that this requirement was met. These breaches are of concern to Ofcom as they resulted in there being a material risk of physical harm to viewers. Should we record similar breaches against the Licensee in the future, we may consider they warrant the imposition of a statutory sanction.

Breaches of Rules 2.4 and 2.5

In Breach

Vanessa Carter

Harbour Radio 107.4, 31 August 2017, 12:00

Introduction

Harbour Radio is a community radio service providing music and programmes of interest to listeners in Great Yarmouth, Norfolk. The licence for the service is held by Harbour Radio CIC Limited ("Harbour Radio" or "the Licensee").

We received a complaint about references to cancer in this live programme, which provided listeners with an opportunity to get to know the presenter and trailed upcoming programmes. During this broadcast the presenter made the following statements:

"So, my show is 10 till 12 on Thursdays. And it's called Against All Odds and I interview people locally and from around the world who have survived the worst life situations and come out of it by achieving their dreams and completely turning their lives around. So, I've interviewed people who have come close to death and they are achieving what they've always wanted to do. These near-death experiences have actually made them transform their lives completely, so one lady, she was on drugs, she was drinking alcohol, and she was on the floor and she was in depression and she was about to give up on life and just suddenly she just thought 'What am I doing? What am I doing?' and she just had this 'ah-ha' moment and she wrote a book and she just started writing all these beautiful words and she just changed her life. And so, there's lots of stories like that, maybe that's not a good example, but there's lots of stories like that and I'll be interviewing all these people".

"So, the reason I'm doing this show is really to help those people who are going through maybe cancer, suffering from depression or going through some bad times in their lives, split up from a relationship, lost their job, whatever, whatever you're going through, these stories, even though they're quite sad stories to begin with they give you hope. So, the reason I'm doing that is because of my own fight against cancer. And so, I'll be telling you my story right after this..."

"...so that all came to an end in 2015 when my Mum was diagnosed with cancer. So, I just spent all my time researching to find cures for cancer really, she had breast cancer and then luckily it was only 10mm, 1cm, so they did surgery and she went and had radiation. And half way through her radiation treatment I was diagnosed with breast cancer and that was in December 2015. So, mine is stage four, and when they say stage four they basically say there is no cure and that's why I'm interviewing people because I've made contacts all over the world through this journey. People who have gone through the cancer journey, stage four also, and their medical team has told them they've got months to live and 10 years later they are still here. So really these stories give a lot of hope and that's what I needed. I know when I was going through it, I was going through a really rough deal when my Mum's diagnosed with cancer, I had this opportunity in Mayfair [to]

start my own hypnotherapy business and the day before I fell down the stairs and broke my nose and hurt my arm and all things were going wrong, my life seemed like it was spiralling down and then I think the cusp of it was obviously being diagnosed with cancer. So, I was looking for something and I was looking for a Church, I was looking for anything really and that really did change my life. It gave me faith that there is something more. Of course, there is something more. And it gave me a lot of hope. I was talking to a lot of women who through faith and reiki healing, Buddhism all these sorts of things that people call airy fairy, and also positive affirmations and meditation, they are all really helping to heal people, I'll be talking about those sorts of things in my show. And people saying how it changed their lives and earlier Victoria talked about a man who said acupuncture changed his life and so that's really interesting because there are so many people looking into these things and healing where medical teams say there is no cure. So I'll be talking more about that..."

"I've done a lot of research and talked to people around the world and found that the power of eating healthy and things like that. I often go on to the public medical journey where they do experiments with foods. So, they are finding herbs like thyme and things like that, they are actually trying to put them into medical drugs to help heal things like cancer, like pain relief and things like that. So, it's really interesting when you research into things how powerful good food is and how bad some food is, like sugar is really bad. And so, I would suggest if anyone's going through the cancer journey or going through depression or anything like that look into your diet, because when you change and add vitamins to your diet it really transforms you. So, for example, cancer, if you avoid sugar, sucrose and animal produce you will find that that will stop your cancer from growing quickly. It will almost stop it, so you can stabilize it just by going vegan, which is amazing. And if you look on YouTube you'll see so many people are doing this. There's also a thing called the China experiment where this man has been researching this for 50 years and they're now doing clinical trials, it's cost millions. They're doing clinical trials connected to cancer and diet, which is very interesting, so I'll be telling you more about that. I'll try and get an interview with him and if there's anyone you want me to interview, if you know anyone who's really pulled through hard times against all odds, get in touch and I'll interview them..."

"...and also, I'll be interviewing Candice who saved herself from cancer. They said there was no hope for her and she just changed her diet, went vegan and through changing her diet she actually healed her cancer. That's an amazing story..."

"Ok, so I've introduced my show, I hope you tune in listen to those stories you know my mission is to give people hope so anyone who is going through the cancer journey, anyone going through depression, fibromyalgia, anything, you've just split up from your boyfriend or anything, tune into the show, because I'll be interviewing some people who will give you some real hope and inspiration and that's what you need really when you're going through a rough time, you just need to know that you can make it through and if people have been diagnosed with cancer, given three months to live and have lost

everything, that puts it all into perspective and it really makes you grateful for what you've got".

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

Rule 2.1 "Generally accepted standards must be applied to the contents of television... services so as to provide adequate protection for members of the public from the inclusion in such services of harmful...material".

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

Response

Harbour Radio apologised for the broadcast of this material and said that the presenter "has been spoken [to] and has subsequently been suspended from [its] schedule". It explained that this broadcast was a "showcase presentation" which trailed its upcoming programmes and gave listeners an opportunity to become acquainted with the presenters and their shows. Harbour Radio confirmed that the programme being trailed was never broadcast.

Harbour Radio provided a statement from the presenter in which she acknowledged the potential for harm. She recognised that, as the host of the programme, it was her responsibility to ensure listeners were not dissuaded from seeking appropriate medical treatment or advice or encouraged to stop conventional medical treatment.

The presenter explained that it was her first live broadcast and she was suffering from high levels of anxiety as well as technical difficulties in the studio and, as a result, she failed to mention that "people should always have medical treatment" and "nutrition is an additional way to heal alongside medical treatment". She added "[o]n my other shows I always explain that the stories are of extraordinary people and the accounts of these true stories are not the norm. I always make it clear that Harbour Radio is airing these stories but if they cover anything medical it is always best to seek medical advice first. Unfortunately, I presumed people would know that medical treatment is a must along-side anything else". She added "I have stage [four] cancer and I'm on a chemotherapy tablet, so I am sometimes forgetful...".

The Licensee set out measures that it said the station could put in place to prevent a recurrence of the issue, such as prefacing similar statements (as those highlighted in the Introduction) with phrases such as "some people believe" and "whilst there is no hard evidence" and reiterating that patients should always seek advice from their GP. It said other measures could include ensuring that "anyone at Harbour Radio planning to discuss medical matters on air as a presenter should be obliged to formally acknowledge in writing their adherence to Ofcom Rule 2.1 Furthermore, any future inaccuracies should be corrected on air by a senior member of the staff and /or an appropriate Medical Practitioner...as soon as possible".

Decision

Reflecting our duties under the Communications Act 2003¹, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

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

Rule 2.1 requires, among other things, that generally accepted standards are applied to the content of television services to provide viewers with adequate protection from harmful material.

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

The broadcaster's right to freedom of expression means that it can discuss in programmes the perceived benefits of alternative and complementary medicine and therapies. Programmes may also provide lifestyle and health advice.

Cancer is a serious medical condition and there is an extensive regulatory framework that covers its treatment and ensures that patients receive safe and appropriate care. We acknowledge that some people undergoing treatment for cancer adopt different diets to complement their treatment. We also accept that audiences may have an interest in programmes that explore "true life stories" of people's experiences following a prognosis. Ofcom's role is not to judge the experiences of individuals, but to ensure that audiences are protected adequately from potentially harmful material.

In this case, we were concerned that listeners suffering from cancer could be encouraged, as a result of listening to the programme, to make decisions about their health with potentially harmful effects. During the programme the presenter explained how 'Candice' overcame cancer and later discussed her own treatment for breast cancer. In particular, she made a number of claims about the positive effects of dietary change on those suffering from cancer (*"if you avoid sugar, sucrose and animal produce you will find that that will stop your cancer from growing quickly. It will almost stop it, so you can stabilize it just by going vegan"* and *"...they said there was no hope for her and she just changed her diet, went vegan and through changing her diet she actually healed her cancer"*).

Ofcom's published research and updated guidance on health and wealth claims in programming² shows that one of the principal drivers for potential harm is the severity of the situation (e.g. a focus on a serious illness such as cancer). A secondary factor is the tone of the advice included in the programme. Applied to this case, the presenter frequently referred to cancer throughout the programme and made statements about the treatment of cancer e.g. *"So, for example, cancer, if you avoid sugar, sucrose and animal produce you will find that that will stop your cancer from growing quickly. It will almost stop it, so you can stabilize it just by going vegan, which is amazing"*. This appeared to suggest that a dietary change alone could be an effective treatment for cancer. As stated above, there is an extensive regulatory framework that covers cancer treatment and ensures patients are given appropriate care. In our view, this material could have encouraged listeners with cancer to significantly change their diet without appropriate medical supervision and was therefore potentially harmful.

Ofcom went on to consider whether the Licensee took appropriate steps to provide adequate protection for listeners from this potential harm.

² https://www.ofcom.org.uk/_data/assets/pdf_file/0016/104650/Health-claims-report.pdf.

The programme contained explicit statements regarding potential treatments for cancer, but failed to include sufficient discussion of the subject or provide an alternative point of view to that stated by the presenter. In our view the manner in which the claims and testimonial were presented (i.e. from a purely personal viewpoint) would undoubtedly have left listeners with the impression that the suggested treatments included in this programme were effective, safe and easy to implement without the need for appropriate medical advice or oversight. The programme did not contain any reference to the need for listeners to seek appropriate medical advice before making significant lifestyle changes, such as those suggested in the programme. Finally, the Licensee did not provide any information about the compliance steps it took prior to broadcasting this content.

We took into account the remedial actions proposed by Harbour Radio to limit a recurrence (see above). However, the Licensee did not take appropriate steps to provide its listeners with adequate protection from potential harm, in breach of Rule 2.1 of the Code.

Breach of Rule 2.1

In Breach

Journey To Al-Aqsa 2017 **NTV, 27 September 2017, 22:30**

Introduction

NTV is a general entertainment and news service aimed at the Bangladeshi community in the UK. The licence for the service is held by International Television Channel Europe Limited ("ITCE" or "the Licensee").

Ofcom received a complaint about *Journey To Al-Aqsa 2017*, a live programme presented by the founder of an Islamic tour operator. The presenter and four studio guests discussed Islamic pilgrimage tours to the Al-Aqsa Mosque. They also spoke to callers who shared their experiences of previous tours or asked questions about the tours.

As the programme was in Bengali, Ofcom commissioned an independent English translation of the material and gave the Licensee an opportunity to comment on the accuracy of the translation. The Licensee did not raise any issues and we therefore used the translation for the purposes of this investigation.

Shortly after the programme began, the following caption, in English, was displayed for approximately 21 minutes, then again from 33 minutes into the programme for approximately a further 12 minutes:

"LIVE Journey To Al-Aqsa 2017
FOR MORE DETAILS PLEASE CONTACT:
Text [two telephone numbers]
Studio Hotline [telephone number]
Further Information [telephone number]
Email [email address for the founder of the tour operator]
Web [website address for the tour operator]"

In addition, the following references were made, that appeared to relate to the services offered by the tour operator, during discussions with the studio guests and callers to the programme:

Presenter: *"Let me ask you a few questions [To Studio Guest 3] ...you went twice with us. On one occasion, you went with your family. Would you please tell our viewers how you felt when visiting Al-Aqsa Masjid?"*

Studio Guest 3: *"Assalamu alaikum. I first thank you (for organising this programme). Al-Aqsa is a very valuable mosque. I have been able to visit it twice through you by the command of Allah. This year, I went with my family. Alhamdulillah¹, the first thing I realised by visiting Al-Aqsa that my faith got strengthened. The second thing that inspired me was the feeling that my prophet (peace be upon him) prayed on the land of the Mosque. I was fortunate to prostrate myself on this land. I request the viewers to visit Al-Aqsa at least once as long*

¹ All praise be to Allah

as the opportunity is available. Because, we don't know whether this opportunity will remain available for a long time. I would like to say that I am very happy regarding the way this visit was planned. I visited twice. Insh'Allah, I would like to go again. I request you to visit. Please visit Al-Aqsa Masjid and you will also feel good and you would like to go again and again".

Presenter: [To Studio Guest 1] *"...We visited 15/16 times. God willing, we will again visit on 18 December this year. We take a group to visit the Al-Aqsa and we explain about it at different locations of importance. Could you please explain to us how nicely it is explained and whether people are happy about it? What is your view?"*

Studio Guest 1: *"Alahamdullilah. You have asked a very important question... You and I have been visiting Al-Aqsa for a long time now as Allah has given us the ability. When we go to a particular place, we sit there for 10 minutes to half an hour and discuss the history and importance of that place".*

Presenter: [To a caller] *"You were with us during our April visit. Could you please tell me how you felt about the visit, whether you felt bad or good?"*

Caller 3: *"I had been near Baitul Muqaddas for a number of years and later went there a few times from here. However, the April visit seemed to me the best visit of my life. I felt very comfortable visiting with you and didn't face any problem. I have seen those places through you and I pray for your long life to Allah. I pray for all brothers who have not been able to go, that they can go. Once they are there, they will understand about this place. Their faith will get stronger. The faith will get stronger by seeing the Ashabe-e-Kahf², the Dead Sea and the place where prophet Yunus prayed: There is none worthy of worship beside you, glorified are you, surely, I am from among the wrong doers. The tomb of the prophet Ibrahim is there. These things are mentioned in the Qur'an".*

Presenter: *"We took you to different places and explained to you about those sites. Could you please explain whether you liked it or not?"*

Caller 3: *"Yes, we liked it very much. You explained clearly about these places. Alhamdullilah, it has got fixed in our mind. I will remember this until my death, Insh'Allah".*

Caller 4: *"I would like to ask a question. I would like to know how much money would be required to visit Al-Aqsa".*

Presenter: *"Please leave your number at the information desk after calling them. We will discuss it tomorrow. We have other live calls to respond to".*

Caller 4: *"No, I would like to know the fare (of travel to Al-Aqsa)".*

² The place where three believing people took shelter due to the torture of their ruler

Presenter: *"If you call the information centre, they will tell you about it, Insh'Allah. The number is on the screen; please note it down".*

Caller 5: *"Your programme is a nice one. How long is your December tour going to be?"*

Presenter: *"It will be a two-week tour".*

Caller 5: *"Where is your first stop going to be?"*

Presenter: *"It will be three nights in Jordan, Al-Aqsa for four nights, Mecca for four nights and Medina for three nights. If you call the information line, you will get all the information".*

Studio Guest 1: [To Presenter] *"You asked me whether we like the description you gave about each place we stopped at. When we stop at a particular place/spot, we explain the history and significance of that place in a very calm and quiet atmosphere".*

Caller 7: *"What is the cost of visiting Al-Aqsa?"*

Presenter: *"Dear sister, call that number again and ask for the information line. They will put you through to the information line who will provide you with all the information. There are two numbers on the screen. Please note these numbers and call tomorrow...If you would like to know about it now, please call on the information line".*

Studio Guest 1: [To Presenter] *"You asked me about how we explain people regarding different important places. When we go to any spot of interest, we show it to the visitors and then explain them about it from beginning to end. For example, when we visit 'Ashabe-e-Kahf', we show this place to the visitors and then explain them about it. When we visited the place of the prophet Suaib (peace be upon him), we explained to the visitors in detail about him and his place".*

Caller 8: *"Walaikum assalam. I would like to know whether we can take children with us and when your next trip is going to be".*

Presenter: *"Okay sister. Thank you for your call. Our next tour will be on the 18th of December and we will return on the 1st of January. This is a holiday period.*

We have chosen this time so that people can take their children with them. This is an educational tour. This is not only a holiday tour. It's an educational tour and people will be able to take their family and children in this tour. We also have special arrangement for them. Brothers and sisters who are watching this programme, if you would like to follow, then ask for the information. You will get details from the information. Thank you for your call".

Caller 9: *"Hello. Can I please have the price for children to visit the Al-Aqsa Mosque?"*

Presenter: *"... There is a number on the screen for text messaging. You can text that, or you can call information and get the information you need".*

Caller 10: *"I have a question. Do you take the visitors to Al-Aqsa Mosque only or you also take them to other places?"*

Presenter: *"This visit includes three nights in Jordan, four nights in Al-Aqsa, four nights in Mecca and three nights in Medina. In one visit, you will be able to see Al-Aqsa, Jordan, Mecca and Medina".*

Caller 10: *"It's 15 days in total".*

Presenter: *"Yes, it's two weeks in total, 14 days. You will be able to visit the 'Cave of Seven Sleepers' in Jordan, the tomb of Suaib (peace be upon him), Hazrat Isa Ibn Noon (peace be upon him), Dead Sea, Holy Shrine of Abu Ubaidah Ibn Jarrah, Muadh ibn Jabal, and if possible other places. You will visit the Al-Aqsa Mosque, inside and out. You will also visit the tomb of the prophet Ibrahim, outside of Jerusalem. You will also go to Bethlehem where the prophet Isa (peace be upon him) was born and visit the Mount of Olives. You will also visit different other places".*

Caller 10: *"Is the Senai mountain near Al-Aqsa?"*

Presenter: *"The Senai is near Egypt".*

Caller 10: *"Can I visit there?"*

Presenter: *"No, our tour doesn't cover that area".*

In addition to the discussion about the tours, there was a pre-recorded segment lasting approximately 13 minutes about the tour destinations, including footage of tour groups visiting the Al-Aqsa Mosque and other sites.

We requested information from ITCE about any commercial arrangement associated with the references in the programme to the tour operator founded by the programme's presenter. Based on the information provided, we considered the programme raised issues under the following rules of the Code:

- Rule 9.2: "Broadcasters must ensure that editorial content is distinct from advertising";
- Rule 9.4: "Products, services and trade marks must not be promoted in programming"; and
- 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 sought comments from the Licensee on how the programme complied with these rules.

Response

ITCE said that the programme was "designed to make viewers aware of Al-Aqsa Mosque as it is an important place for the Muslim community to visit" and that the presenter was chosen due to "the expertise he has in this field". It said that while he had been reminded of the Broadcasting Code rules, and had signed a declaration agreeing to observe them, it considered that the presenter had "violated the regulations". It provided Ofcom with a copy of this declaration, which all of its presenters must sign as part of its compliance procedure. This declaration requires presenters to agree to uphold Ofcom's rules, including specific rules relating to advertising and commercial references.

The Licensee added that due to unforeseen staffing issues on the day of the live broadcast, its usual compliance procedure was not followed. Following this incident, it said that it had taken steps to prevent a breakdown in the compliance procedure occurring again in future, including giving an additional member of staff responsibility for overseeing compliance issues.

ITCE said that the channel had gained a reputation for the quality of its programmes and news and that it always tried its best to uphold community standards and Ofcom's rules. It said that while it had been found in breach of the Code on several previous occasions, it had since improved its compliance and described this incident as "accidental" and "a mistake".

In response to Ofcom's Preliminary View that the programme was in breach of the Code, the Licensee said that since 2015, when it had been financially penalised for a series of Code breaches³, it had successfully implemented "considerable changes" to improve its compliance processes. For example, it had introduced mandatory training for staff and a

³ Between April 2013 and September 2014 Ofcom recorded 20 breaches of the Code against ITCE, 15 of which were breaches of Section Nine rules. On 17 December 2015, ITCE was found in breach of Licence Condition 17(2) and Ofcom imposed a financial penalty of £20,000 on the Licensee. The sanctions adjudication is available here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0025/71359/itce_sanction_151215.pdf

code of conduct for presenters. The Licensee expressed regret that it “finds itself in the spot light given the considerable changes to its compliance processes that have been in place and working for over two years” and emphasised that during that period “there have been no repeats of the compliance breaches of the past”.

ITCE also provided a letter from the presenter in which he admitted he had not followed the Licensee's editorial guidelines and took responsibility for his actions.

Decision

Reflecting our duties under the Communications Act 2003⁴, Section Nine of the Code limits the extent to which commercial references can feature within television programming. The rules in this section require broadcasters to retain editorial control over the programmes they transmit and ensure that editorial content remains distinct from advertising. The rules serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;
- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

Section Nine does not proscribe all references to products and services in programmes. However, it does require all such references to be justified by the editorial requirements of a programme and not to be promotional or unduly prominent.

In this case, the programme included:

- positive reviews of the tours, e.g. *“I would like to say that I am very happy regarding the way this visit was planned”, “The April visit seemed to me the best visit of my life. I felt very comfortable visiting with you and didn't face any problem” and “we liked it very much. You explained clearly about these places. Alhamdulillah, it has got fixed in our mind. I will remember this until my death, Insh'Allah”;*
- a tour itinerary, e.g. *“It will be three nights in Jordan, Al-Aqsa for four nights, Mecca for four nights and Medina for three nights” and “It's two weeks in total, 14 days. You will be able to visit the ‘Cave of Seven Sleepers’ in Jordan, the tomb of Suaib (peace be upon him), Hazrat Isa Ibn Noon (peace be upon him), Dead Sea, Holy Shrine of Abu Ubaidah Ibn Jarrah, Muadh ibn Jabal, and if possible other places. You will visit the Al-Aqsa Mosque, inside and out. You will also visit the tomb of the prophet Ibrahim, outside of Jerusalem. You will also go to Bethlehem where the prophet Isa (peace be upon him) was born and visit the Mount of Olives. You will also visit different other places”;*

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

- references to the timing of the tours, e.g. *“Our next tour will be on the 18th of December and we will return on the 1st of January. This is a holiday period. We have chosen this time so that people can take their children with them. This is an educational tour. This is not only a holiday tour. It’s an educational tour and people will be able to take their family and children in this tour. We also have special arrangement for them”*; and
- details of how to book or request further information, e.g. *“Call that number again and ask for the information line. They will put you through to the information line who will provide you with all the information. There are two numbers on the screen. Please note these numbers and call tomorrow...If you would like to know about it now, please call on the information line”* and *“There is a number on the screen for text messaging. You can text that, or you can call information and get the information you need”*.

In addition, the tour operator’s website address, email address, two telephone numbers offering *“more details”* by text message and a *“Further Information”* telephone number appeared in text alongside the *“Studio Hotline”* number for approximately 33 minutes of the programme’s 45 minute duration.

Rule 9.2 requires editorial content to be distinct from advertising in order to prevent it being distorted for commercial purposes. This is intended to ensure that the Licensee maintains editorial control over its programming and that it is clear to viewers that programming has not been subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising. As this programme was presented as editorial material, but nevertheless contained direct, detailed and extended promotions of the tours’ features and positive qualities, Ofcom took the view that the item was akin to an advertising feature and therefore the programme was in breach of Rule 9.2 of the Code.

Rule 9.4 requires that products, services and trade marks must not be promoted in programming. Ofcom’s published guidance⁵ on Rule 9.4 states: *“Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed”*. Ofcom considered the material clearly directly promoted the tours, their features and positive qualities over an extended period, and included contact details for viewers to request further information. The programme therefore breached Rule 9.4 of the Code.

Under Rule 9.5, no undue prominence may be given in programming to a product, service or trade mark. Rule 9.5 makes clear that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom’s published Guidance⁶ on Rule 9.5 explains that *“the level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears”*. We considered that the nature and duration of the promotion of the tours throughout this programme was such that

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf

⁶ See footnote 4.

they were clearly presented in an unduly prominent manner, in breach of Rule 9.5 of the Code.

In reaching our decision in this case, we took into account that ITCE requires its presenters to sign a declaration in which they agree to uphold Ofcom's rules and that the presenter of this programme had admitted he had not followed these rules despite being made aware of them in advance by the Licensee. Further, that the Licensee told us that its usual compliance procedure had not been followed due to unforeseen circumstances, resulting in "a mistake". However, we remind the Licensee that it is responsible for ensuring the material it broadcasts complies with the Code and that it must have in place sufficiently robust compliance procedures.

While we accept that the Licensee's compliance record has improved since 2015, we continue to be concerned about ITCE's compliance with Section Nine of the Code. We are therefore requesting the Licensee's attendance at a meeting to discuss its approach to compliance. We are putting the Licensee on notice that we are likely to consider further regulatory action should additional similar breaches occur.

Breaches of Rules 9.2, 9.4 and 9.5

Not in Breach

The X Factor

ITV, 21 October 2017, 20:20

Introduction

The X Factor is a reality show, compiled by the ITV compliance department ("ITV") on behalf of the ITV Network.

During this episode, the contestants were sent to perform at the judges' houses and were told whether they would progress to the next stage or leave the competition.

Ofcom received two complaints about references in the programme to the Three mobile phone network.

The references included:

- a scene in which a group of contestants ("the girls") were surprised at Dublin Airport by judge Louis Walsh, who told them that instead of performing at his house, they were going to San Francisco to the home of judge Sharon Osbourne. A member of the production team then handed one of the contestants a mobile phone and said, "*Right girls, so now you know you are going to San Francisco, here's a phone from Three to call Sharon when you arrive*". A brief shot, lasting approximately one second, showed one of the girls holding the phone, which displayed Three branding on the back;
- a scene in which the same contestants were on a sightseeing tour of San Francisco when one of them said, "*Guys, I just got a text message from Sharon*". They gathered around to read the message and the Three branding was briefly visible on the back of the phone. The shot then cut to the phone's screen as a contestant read out, "*Hi girls, hope you had a great day sightseeing in San Francisco. Now let's have some tea and cake at mine! See you soon, Mrs O!*". Several subsequent shots of the contestants reacting to this news included sight of the Three branding on the back of the phone; and
- a scene in which a contestant was told she was going through to the next stage of the competition by Sharon, who told her to "*go call your mum*". Presenter Dermot O'Leary then congratulated her and said, "*Your mum's gonna freak...go and call her*". The contestant was then shown using a mobile phone to speak to her mum in a conversation lasting approximately 22 seconds. Three branding on the back of the phone was visible several times during this conversation.

We requested information from ITV about any commercial arrangement associated with the references in the programme to Three. ITV confirmed that the references resulted from a product placement arrangement. We considered the programme raised potential issues under the following rule of the Code:

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

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

Response

ITV said that it always gives “careful consideration” to fit product placements “as seamlessly as possible within editorial content”. It said that its primary concern is always to ensure that the use of the product in the programme feels like a “natural fit” within the editorial narrative of events, and that any verbal or visual references are not unduly prominent, or promotional of the product itself and that there must be “a suitable editorial context”.

ITV continued that product placement “of a variety of different technology products” had been regularly incorporated in *The X Factor* over the past six years, “because there is a strong editorial purpose and justification for the contestants to be seen using such devices”. It explained that over the course of a series, the contestants are often away from their homes and are therefore regularly seen talking to their families or to their mentor judges using mobile phones and tablets. It said that “these contacts may convey the importance of the support of families and friends to them emotionally, or may show them conveying exciting news of their progress in the competition, or may show them receiving advice from their mentors”. ITV provided examples of the product placement of mobile phones and tablets in previous series of *The X Factor*.

ITV said that the references to Three in this episode were carefully integrated into the editorial, and it believed that the placement did not distract from the story being told. It believed the use of the phone by the contestants in each scene was in keeping with how mobile phones had been used in the programme by contestants over a number of years. It continued that the filming and editing of the scenes was carefully judged so as not to give the brand on the phone undue prominence, or more time on screen than was justified by the editorial context. Further, it said that “any close up shots of the phone were very short, and the branding was not continuously in vision in any of these scenes”. ITV concluded that it “felt that the references to Three were not unduly prominent in this context, and did not exceed the expectations of viewers of this long running series”.

Decision

Reflecting our duties under the Communications Act 2003¹, Section Nine of the Code contains rules that apply to product placement in programming. These rules include a requirement that programmes containing product placement do not give undue prominence to the placed products, services or trade marks.

One of the key principles that underpin the rules in Section Nine is that a distinction is maintained between editorial content and advertising. While product placement provides brands with scope to gain exposure for their products during programmes, it does not allow commercial arrangements to distort programmes so that they effectively become advertising vehicles. It is for this reason that the Code limits the degree of prominence that products, services and trade marks can receive in editorial content.

Ofcom's Guidance to Section Nine² makes clear that the prominence given to a placed product, service or trade mark will be judged against the editorial context in which it appears. The Guidance also sets out the following factors that it suggests broadcasters take

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

² https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf

into account when considering whether product placement is likely to give rise to issues of undue prominence:

- Is the placement easily accommodated editorially, or do significant changes have to be made to integrate the placement?
- Would viewers be likely to perceive the placement as natural and in keeping with the programme's style and content?
- Does any repetition of reference to the product, in vision or sound or both, suggest that the placement is guiding or distorting editorial content?

The X Factor is a long running show and its format is familiar to many viewers. The contestants' reactions as they progress through the competition is a key component of the programme. Their use of technology, including mobile phones, to communicate with their judges and families is an established way in which the programme shows these reactions. The placement of a branded mobile phone therefore did appear to be in keeping with the usual narrative of the programme and no significant changes appeared to have been made in order to integrate the placement.

Although there was a clear editorial basis for using the phones in the programme, we recognised that some viewers may have been surprised by the manner in which the brand references featured. Regular viewers of *The X Factor* may be familiar with similar previous product placement arrangements, which have involved the placement of branded devices such as mobile phones and tablets.

However, in this case, the product placement was that of a service, the mobile network Three, rather than the placement of a specific branded product. The brand had been integrated into the editorial by way of a single verbal reference and the addition of a logo on to the back of the mobile phones used by the contestants. We considered that while viewers may find this placement more conspicuous than the placement of a traditionally branded product (e.g. a phone that has a manufacturer's logo already embedded in its design), the placement was not significantly out of keeping with the programme's style and content. Further, the references were limited, both in volume and duration, and did not suggest that the placement had distorted the established style and format of the series.

Ofcom's view is therefore that this programme was not in breach of Rule 9.10.

Not in Breach of Rule 9.10

Fairness and Privacy cases

Not Upheld

Complaint by Mr Eliot Higgins *RT News, RT, 28 September 2016*

Summary

Ofcom has not upheld this complaint made by Mr Eliot Higgins of unjust or unfair treatment in the programme as broadcast.

The programme included a report on the findings of the Dutch-led criminal investigation into the cause of the MH17 passenger jet crash in Ukraine. This included various reports about the crash, including a report on Mr Higgins and his investigations, and the controversies surrounding the various investigations into the cause of the crash.

Ofcom found that:

- Material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Higgins.
- The material in the programme did not amount to allegations of wrongdoing or incompetence, or other significant allegations, about Mr Higgins. Therefore, it was not necessary for the broadcaster to have provided Mr Higgins with an appropriate and timely opportunity to respond.

Programme summary

On 28 September 2016, RT broadcast an edition of *RT News* which included various reports on the MH17 passenger jet crash in Ukraine. The presenter introduced the first pre-recorded report:

“On Wednesday, the Dutch-led criminal investigation looking into the downing of the MH17 passenger jet in 2014 is expected to identify those responsible for the tragedy. It took the lives of nearly 300 people, most of whom were from the Netherlands”.

The report included various images from the crash site which showed debris from the aircraft and people's belongings, and included an interview with a person who had witnessed the incident.

An RT reporter, Ms Paula Slier, was in the Netherlands where the Dutch investigators' findings were to be presented at a press conference. She said:

“Now, what we are expecting is that we will be told from where exactly the missile was fired and what type of weapon was used. But Dutch investigators have already cautioned that they won't be naming culprits...”.

Shortly afterwards, a pre-recorded report was shown in which Ms Slier visited a town in the Netherlands worst hit by the disaster. The programme then returned to the studio where the newsreader said:

"According to the Dutch investigators, the weapon that shot down the plane was a certain type of Russian made Buk missile. Its manufacturer, Almaz-Antey, recreated the crash to confirm this, but the findings actually contradict the claims".

Footage of the reconstruction was shown and another reporter, Mr Murad Gazdiev, then identified various pieces of information which contradicted the Dutch investigators' findings.

The presenter introduced another pre-recorded report regarding the Ukraine's response to the investigations. The report's narrator stated:

"Well the mystery behind the MH17 crash has prompted many to launch their own investigations. Among them is a group named Bellingcat, which went far beyond the Dutch investigators and already claimed that the weapon that brought down the plane did come from Russia. You might think that such investigators require a certain level of expertise, sadly though that's just not always the case. The criminal probe into the tragedy of MH17 hasn't been published, but one blogger says that he already has the answers".

It was accompanied with text stating: *"Criminal probe hasn't been published yet";* and *"One blogger says he has answers".*

The narrator continued:

"Eliot Higgins who runs the website 'Bellingcat' is a laid off admin worker who made a name for himself by analysing weapons used in the Syrian conflict".

A photograph of Mr Higgins was shown with the following text alongside it: *"Eliot Higgins"; "Former admin worker";* and *"No background or training in weapons".*

Footage of an unidentified female presenter speaking on a stage was then shown in which she said: *"Never been to Syria. Doesn't speak a word of Arabic. And he conducts his profound research from the comfort of his armchair in his home".* This was accompanied by text stating: *"Never been to Syria";* and *"Doesn't speak Arabic".*

The narrator said that: *"Higgins himself admits he has no experience in the field",* and the following text stating: *"No experience in the field"* alongside a photograph of Mr Higgins was shown.

The following quote from Mr Higgins was shown in text and recited by voiceover:

"Before the Arab Spring, I knew no more about weapons than the average Xbox owner. I had no knowledge beyond what I'd learnt from Arnold Schwarzenegger and Rambo".

The reported stated that the source of the quote was said to be *"The Guardian"* newspaper, and action film footage of Arnold Schwarzenegger and Sylvester Stallone was then shown. The narrator continued:

"His tools of choice for uncovering global conspiracies: YouTube and Google Earth".

Footage of Mr Higgins presenting his findings at a conference was included in which he said:

"Billboards in the area kind of look the same ["Kind of look the same" highlighted by text] but it wasn't really, this isn't enough to say it's definitely the same area...There was, you can see the path from the grass, but again it's not a great match ["Not a great match" highlighted by text]...So we know the Russians lied".

The narrator then said: *"And the media loves him"*. Various media agencies' logos were shown along with various reporters introducing Mr Higgins. The narrator continued *"but some are questioning his methods"*, and text was shown stating: *"Seeing things. Jumped to conclusions. Questionable sources. Not supported by data"*.

The narrator continued: *"Like the developer of the photo analysis programme which Bellingcat used to claim Moscow faked satellite images"*. A tweet from Dr Neal Krawetz was shown: *"Yeah...chalk this up as a how to not do image analysis"*. The text *"how to not do image analysis"* was highlighted.

The narrator continued: *"And image forensic experts aren't fans either"*.

A comment attributed to Mr Jens Kriese, a German *"image forensics expert"*, was shown on screen and read by the narrator: *"What Bellingcat is doing is nothing more than reading tea leaves. Error level analysis is a method used by hobbyists"*.

The narrator said: *"But, fellow obsessives are ecstatic about scrutinising Bellingcat's analysis"*.

A picture of an *"Anti-Bellingcat"* report entitled *"The falsification of open sources about MH17: Two years later"* was shown. The narrator said:

"Bloggers claim he's showing photos of two different Buk missile systems in an attempt to prove the weapon came from Russia. They say the one pictured in Russia is a newer model because it features a recent modification".

Photographs from the report of Buk missile systems were then shown with parts circled. The narrator continued:

"As for the claim that no Ukrainian Bucs were in the area at the time of the crash, well fellow bloggers dug up screen shots from Ukrainian TV apparently showing a Buk missile system in the area, complete with radar, just a few days before the tragedy".

Further photographs from the report of a Ukrainian Buk missile system were then shown.

The report ended, and the presenter concluded this part of the programme by stating that *"the press conference on the results on the criminal probe is due to start now in less than two hours...we'll be very closely following it"*.

No further reference to Mr Higgins was made in the programme.

Summary of the complaint

- a) Mr Higgins complained that he was treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a way that was unfair to him. In particular, Mr Higgins said that the programme failed to recognise his achievements which were relevant to the matter being discussed in the programme and instead chose examples which undermined him and his work. For example:
- i) the report stated that he was a *"laid-off admin worker"*. Mr Higgins said that it was correct that he was *"laid-off"*, but that this had occurred three and half years ago. He said that the report failed to mention that, since then, he had worked full-time on his website and lectured on the matters being discussed in the programme at a number of universities, and was a senior fellow, research associate and research fellow at other universities.
 - ii) the report included the quote: *"Higgins himself admits he has no experience in the field"* which Mr Higgins said was taken out of context in that it was a reference he had made to his experience before he started to work in *"online open source investigation"*. He said that he is now a *"worldwide recognised expert"* in this field, which the report failed to recognise.
 - iii) the report included footage of an unidentified speaker who said of Mr Higgins that he had *"never been to Syria, doesn't speak a word of Arabic, and he conducts his profound research from the comfort of his armchair in his home"*. Mr Higgins said that this was taken out of context in that it formed only part of an introduction to a conference at which he was speaking. Mr Higgins said that the speaker went on to state: *"so, don't let the modest exterior of Eliot Higgins fool you because his armchair analytics are definitely a force to be reckoned with"*.
 - iv) the footage of Mr Higgins presenting at a conference was heavily edited to make it look like he was *"using flimsy evidence to claim Russia was lying"* which was not the case. Mr Higgins said that the footage was taken from a much longer presentation and that the applause that accompanied this footage had been taken from an unrelated part of the presentation.
 - v) the report said *"his [Mr Higgins'] tools of choice for uncovering global conspiracies: YouTube and Google Earth"* and failed to recognise that a range of organisations use the same techniques as him and that online open source investigation was an *"increasingly recognised field"*.
- b) Mr Higgins said that he was not given an appropriate and timely opportunity to respond to the allegations made about him in the programme.

By way of background, Mr Higgins said that his website published extensive work on the MH17 crash in Ukraine. He added that much of that work had been critical of the Russian government and had indicated that the Buk missile system allegedly used to bring down the passenger jet came from Russia. As a result, he said he had received *"repeated attacks"* from various Russian organisations and individuals.

Summary of the broadcaster's response

RT described Mr Higgins as a "social media phenomenon having made a name for himself through his blog". RT added that Mr Higgins had acknowledged that his methods, and the matters he deals with, are controversial. RT said that this was reflected in its broadcasts about Mr Higgins and his work, which RT considered to be "fair comment" on matters which Mr Higgins had put into the public domain. In addition, RT said that it had given Mr Higgins "ample opportunities to respond which...he had declined". Therefore, RT said that it had avoided any unfair treatment of Mr Higgins in its programmes generally, and in the programme complained of, and that therefore Mr Higgins' complaint was not well founded. RT then made representations on each head of Mr Higgins' complaint.

- a) RT said that Mr Higgins was under the impression that the sole purpose of the programme was to "attack him and to damage his reputation". However, RT said that the feature concerning Mr Higgins was not a stand-alone feature about him, as his complaint suggested. Rather, RT explained that it was an integral part of a longer news bulletin concerning the MH17 crash and a number of investigations, including that carried out by Mr Higgins, into the circumstances of the crash, a topic of legitimate public interest. RT explained that the 10-minute report on the crash contained a six-minute segment about other investigations into the crash and controversies surrounding the evidence and its interpretation, and that this included a two-minute sequence about Mr Higgins and his investigation. RT also explained that the reason the item on the crash was included in the news bulletin was that an international Joint Investigation Team was due to report later that day on the interim results of its investigation into the crash, which was a matter of legitimate public interest.

RT said that, therefore, the two-minute sequence about Mr Higgins was not included for the sole purpose of attacking him and his work, and that no unfairness arose on that account. It said that Mr Higgins had recognised that there had been criticism of his work and that in the programme these criticisms were clearly attributed to those who made them.

RT stated that the programme fairly recognised Mr Higgins' achievements without making specific reference to his academic qualifications. In any event, RT said that Mr Higgins' appointments at universities were not "established posts" and Mr Higgins' descriptions of his appointments "exaggerate his academic standing". RT said that Mr Higgins was introduced in the programme as a worker "who made a name for himself" by analysing weapons used in the Syrian conflict. RT stated that "making a name for oneself is an achievement in itself" and that, therefore, the programme reported from the "very outset on the fact that he had achieved recognition...but was general in its effect and can reasonably be assumed to have coloured everything that followed". RT considered that it was editorially justified not to include a full list of Mr Higgins' appointments and awards in the programme because it "would not have added materially to the recognition already afforded to him by the programme", and it would have presented timing problems given the short length of the news item.

RT said that the programme contained substantial media recognition of Mr Higgins' work. It said that the programme included a compilation of the media outlets who supported Mr Higgins' work and video "snapshots" relating to his work from Sky News and CNN. RT also said that Mr Higgins uses a similar compilation of media sources on his crowdfunding website to demonstrate his achievements. In addition, RT said that the

programme stated that the “media loves” Mr Higgins and that the inclusion of the report on Mr Higgins’ investigation in the programme was, in itself, a form of recognition of his work, and that this was heightened by including his investigation alongside two major official international investigations. RT stated that even though the programme criticised Mr Higgins’ work, the criticisms did not go beyond those which were recognised by Mr Higgins in his complaint, or in his various presentations of his work, which he characterises as “armchair” analytics.

RT submitted that, overall, the programme gave a fair account of the controversies arising from investigations into the crash. This included criticism of Mr Higgins’ work made by third parties, his own recognition of these criticisms and his own lack of qualifications, and that the programme did not result in any unfairness to Mr Higgins.

RT then addressed each sub-head of Mr Higgins’ complaint under head a), as follows.

- i) RT explained that Mr Higgins’ work began as a hobby, and it referred to a number of sources in which Mr Higgins described his early work in that way.¹ RT said that, in any event, whatever the true position, the programme described Mr Higgins as a blogger who runs the “Bellingcat” website. The broadcaster stated that this sufficiently conveyed the “intensity of [Mr Higgins’] engagement with his subject matter to avoid any unfairness” to him. If anything, RT said, the programme “goes further by describing him obliquely as an obsessive”.
- ii) RT said the fact that Mr Higgins only began carrying out his work a few years ago, with no experience in any field, was, in its view, a part of his story “which he himself embraces”.² RT said that conveying this “uncontroversial editorial message by the use of extracts edited from one or more other contexts is within the scope of the broadcaster’s editorial discretion”.

The broadcaster also responded to Mr Higgins’ complaint that the programme failed to recognise that he is now a worldwide recognised expert in the field. RT said that Mr Higgins incorrectly considered that the field referred to in the statement was ‘online open source investigation’, when it was about weapons. RT said that, therefore, this part of Mr Higgins’ complaint was based on a false premise, and that Mr Higgins could not complain of any unfairness resulting from it.

¹ RT referenced Mr Higgins’ presentation “Armchair Analytics: The Story of ‘Brown Moses’” in which it noted Mr Higgins said: “In March 2012 I decided I needed a hobby. So I decided I’d start a blog to write about things I was interested in”. RT also referenced an interview of Mr Higgins by Arjen van der Horst of NOS, the Dutch Broadcast Foundation, in which Mr Higgins said: “I’d like to try and do this full time... So I just I, if it was possible, I’d like to turn this into some sort of career but because it’s something that I’ve never really considered when I started doing this, it’s not like I know what my career path is going to be, because it’s just all new to me”. RT also referenced a quote by Mr Higgins on his crowdfunding website: “the Brown Moses Blog is something I’ve always done in my spare time I get between work and helping my wife look after my daughter...What I’m hoping with this campaign is to turn the Brown Moses Blog from a part-time hobby to a full-time job”.

² In support of this, RT referred to the conference “Armchair Analytics: the story of Brown Moses” in which Mr Higgins was introduced as having “made a name for himself by analysing weapons in the Syrian conflict” despite having “no experience in the field”. RT also referred to a description underneath a YouTube video of the conference: “Brown Moses (aka Eliot Higgins) had no previous experience or ties to Syria, but became a leading global expert on the arms used in the Syrian conflict by spending days (and nights) analysing YouTube video clips. He shares his story”.

Even if the complaint had been correctly premised, RT questioned whether 'online open source investigation' was a recognised field, and stated that it had not been able to find any reference to it as a "discrete field". In this regard, RT said that Mr Higgins appeared to acknowledge that it was not a recognised field. In support of this, RT quoted Mr Higgins in a December 2016 talk on 'Finding truth in a post-truth world': "I like to call this field online open source investigation". RT added that Mr Higgins appeared to suggest that this was a "new field for him to name and that he is a pioneer of it as well as its principal exponent". RT stated that if this was the case then "it would be a little excessive to claim to be a worldwide recognised expert in a field of his own invention". RT said that in any event, whether or not it was a recognised field, relying on unverified open source information is "open to the same methodological criticisms as have been advanced against Mr Higgins' work by the academic commentators referenced in the programme".

RT stated that it did not appear that Mr Higgins had provided any evidence of his claim to be a worldwide recognised expert in any recognised field. In this regard, RT also noted that, at the time of broadcast, neither of the two main international investigations into the crash (the investigations by the Dutch Safety Board and the international Joint Investigation Team) had adopted or endorsed any of the material from Mr Higgins' investigation into the crash. RT said that at the time of broadcast, Mr Higgins had achieved a degree of public recognition and this was duly recognised by the programme to avoid any unfairness to him (as explained under head a) i) above).

- iii) RT said that the footage was taken from the conference entitled "Armchair Analytics: the story of Brown Moses". RT explained that this was a presentation given by Mr Higgins in 2013 in which he described the background to his blog and his use of social media to investigate the use of weapons in Syria. RT said that the unidentified speaker was the person who introduced Mr Higgins' conference presentation. RT also said that it appeared from Mr Higgins' complaint that by omitting the unknown speakers' further comments about him, the programme had undermined him and his work.

RT also said that Mr Higgins had taken the omission out of context. The context was an editorial sequence in which he was introduced as having "*made a name for himself*" by analysing weapons used in the Syrian conflict, and in which he was shown as having been applauded by conference audiences and lionised by the media. In addition, RT stated that Mr Higgins' work was supported by the unknown speaker in that she had referred to his work as "*profound*". RT said that this context and the description of Mr Higgins' research as profound, conveyed "at least as much recognition of Mr Higgins and his work" as the statement made by the unknown speaker which was not included in the programme in which she said, "his armchair analytics are definitely a force to be reckoned with". RT added that even the omitted statement would have conveyed "only qualified support" since it was part of a conference presentation which featured prominently the fact that Mr Higgins' analysis had been conducted from an armchair. As such, RT said that it did not consider that Mr Higgins' complaint, that the omission of the speaker's further comments about him resulted in unfairness, was well founded.

- iv) RT explained that the footage was taken from a video recording of a presentation entitled "War and Pieces – Social Media Investigations" given by Mr Higgins in 2014. RT explained that the presentation described Mr Higgins' use of social media to investigate the downing of MH17. It said the main purpose of the presentation was to seek to demonstrate, using "open source information from social media", that the Russian account of events was untrue. RT said that conclusions of such seriousness needed to be founded on reliable evidence.

RT stated that "nobody would deny that by the time of the [programme, Mr Higgins] had turned up some interesting material but, by its nature, culled as it was from social media, it is likely to be unverified, and as stated in the [programme] 'some are questioning his methods'". In the context of a report on the various investigations into the MH17 crash, RT said that "it was not unreasonable for a broadcaster to approach with caution a claim that the Russian account of events was untrue...from an amateur, unqualified armchair investigator whose research was based on social media". RT also said that Mr Higgins made clear in the supporting material to his complaint that he is a "full time hobbyist with no relevant qualifications" and that he "bases his conclusions on social media using methods that he recognises are subject to criticism". RT said that in the circumstances, it is not unreasonable that a broadcaster reporting on an upcoming international investigation should draw attention to the reliability of the conclusions of an "unofficial amateur investigator, however much he may have been lionised by the media".

RT explained that in conveying this point to its audience, "editors customarily have a discretion as to how they edit illustrative material". It said that while the editing of the presentation "may have been taken out of its immediate context, a standard practice for any TV channel when it needs to accommodate the strict time limits of a news programme, in the wider context of the editorial thrust of the programme it illustrated a point that was properly taken by RT about the relative weight to be accorded to Mr Higgins' conclusions compared with those of the official investigations". RT added that while "it is true that the footage of Mr Higgins presenting at the conference was heavily edited from a longer presentation to make it look like he was 'using flimsy evidence to claim Russia was lying', it was done to illustrate a legitimate point about the reliability of his conclusions and did not result in unfairness to him".

RT added that while the applause which accompanied the footage had been taken from an unrelated part of the presentation, it was done so to illustrate that his presentation was well received by his audience and it was "difficult to see how, in the context of the programme, it could result in any unfairness to him".

- v) RT said that Mr Higgins' complaint was essentially that the programme failed to recognise that online open source investigation was an increasingly recognised field and that a range of organisations use it. RT said that for the reasons set out under head a) ii) above, it was not apparent that online open source investigation was a recognised field. It said that the programme had accorded appropriate recognition to Mr Higgins, and there was no unfairness to him as a result. RT also said that it was not unfair to Mr Higgins for the programme to have failed to recognise that a range of organisations use YouTube and Google Earth and similar techniques to uncover information.

- b) RT said that it had given Mr Higgins many opportunities to respond to criticisms of his work as follows.
- RT explained that on 2 June 2015, it had emailed Mr Higgins asking him to participate in an MH17 related programme, and that he had declined the invitation in a Twitter post to RT. During a programme, *In the Now*, broadcast on RT on 2 June 2015, RT said that the presenter invited Mr Higgins to take part in a live interview, which he also declined on Twitter. On 3 June 2015, RT said that Mr Higgins was invited by an RT reporter via Twitter to appear on a programme and, again, he declined the invitation in a Twitter post. The broadcaster said that these events showed that Mr Higgins had been given an appropriate and timely opportunity to respond to the allegations made about him in the *In the Now* programme which, RT said, was in substance the same as those made about him in the programme. RT said that Mr Higgins' settled view was that he did not need any such opportunities to respond since he could use other media to express his views.
 - RT said that subsequently, on or around 6 October 2015, a freelance reporter, who RT had asked to question Mr Higgins, sought to doorstep Mr Higgins, using his publicly available addresses. RT stated that some of this footage was included in an *RT News* bulletin broadcast on 8 October 2015. RT explained that following the doorstep, on 7 October 2016, Mr Higgins and the freelance journalist exchanged a number of tweets. RT said that the footage and the tweets showed that RT, via a freelance journalist, had made another attempt to contact Mr Higgins for comment and that he had declined the opportunity.
 - RT also explained that, on 7 October 2015, one of its reporters emailed Mr Higgins asking to arrange an interview with him but Mr Higgins did not reply. RT said that the view that Mr Higgins had expressed in June 2015 that he did not need opportunities to respond to the allegations made about his work in relation to MH17 had evidently not changed. RT also said that, on 8 October 2015, Mr Higgins again expressed, via Twitter, his position that he had no intention of being interviewed by RT.

RT explained that, in light of Mr Higgins' views on the matter, it did not make any further attempt to contact Mr Higgins when it planned to publish another report on the MH17 crash in the programme. RT said it included the two-minute sequence on Mr Higgins and his work in the programme, which covered in substance the same ground as the earlier broadcasts in June 2015 and October 2015, "without reference to him since he had had an opportunity to comment and had made it clear that any approach would have been unwelcome and pointless".

RT said that the programme and the earlier broadcasts in June 2015 and October 2015 covered the same ground. It said that the programmes adopted a similar editorial structure and sequence in their description of Mr Higgins' work. For example, the 2015 broadcasts:

- described Mr Higgins as a "*laid-off admin worker*" having made a name for himself by analysing arms in the Syrian conflict despite having no experience in that field;
- referred to the fact Mr Higgins acknowledged that he knew little about Syria or any Arabic;

- described Mr Higgins' investigative tools of choice as YouTube and Google Earth;
- explained the media's response to Mr Higgins; and
- explained that his analysis had been questioned.

RT also said that the *In the Now* programme covered the same ground as the later part of the programme.

RT said that the broadcast of the programme without further reference to Mr Higgins did not result any unfairness to him because:

- the programme covered "essentially the same ground" as the earlier programmes;
- Mr Higgins had "ample opportunity" to respond to the allegations made about him in the earlier programmes;
- Mr Higgins had made it clear that he did not want to talk to RT and that he could use other media to express his views; and
- he has acknowledged in his complaint to Ofcom that "he remains unwilling to take the opportunities offered to him".

RT submitted that, overall, Mr Higgins was not treated unjustly or unfairly in the programme and that his complaint should not be upheld.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should be not upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. Both parties submitted representations, all of which we considered carefully. We have summarised the representations from both parties below insofar as they address the complaint entertained by Ofcom.

Mr Higgins' representations

Mr Higgins said the idea that his work and the work of Bellingcat was highly criticised appeared to be key to RT's response to the Preliminary View, and that this appeared to be "the crux of their argument" for using edited footage of him to make this point in the programme.

Mr Higgins said that it was important to look at exactly why RT considers Bellingcat's work to be highly criticised, and that the idea of something being highly controversial itself often depended on the perspective of the person making that claim. He said that this was especially relevant to the MH17 case because it involved parties who had presented a range of different versions of events.

Mr Higgins said that while the programme focussed heavily on him, much of the work he had been involved in regarding the MH17 crash was based on the collaborative effort of "over a dozen people" working under the name "Bellingcat Investigation Team". He added that this was the case for nearly all of the work carried out by Bellingcat on the MH17 crash.

Therefore, Mr Higgins said that to focus on his qualifications and experience in relation to Bellingcat's work on MH17 would be unfair. He added that to his knowledge, RT had never mentioned other members of Bellingcat in its coverage of Bellingcat's work. Therefore, Mr Higgins said that to claim or imply the reports specifically criticised in the programme were solely Mr Higgins' work, is inaccurate and unfair.

Mr Higgins said to fully understand RT's position on Bellingcat and himself, and the criticism by some parties of their work, it was important to understand the context of their work into the MH17 crash. In this regard, Mr Higgins provided details on the MH17 case, how it was reported, the Russian government response, the work of Bellingcat, and the methodologies used by Bellingcat and their development and growing importance.

Mr Higgins also included details about his background in which he explained that he began blogging, through his Brown Moses Blog, in early 2012 while working as a finance administrator. He explained this came from a personal interest in the ongoing events of the Arab Spring, where he had seen a lot of discussions about the validity of claims made on social media and interesting events on social media which were broadly ignored by the media. Mr Higgins explained that, following this, he developed a range of investigative techniques to verify claims made online, one core technique being geolocation.³ Mr Higgins explained that geolocation is "core to the reliability of Bellingcat's techniques", and provided a case study of one of his first uses of the technique using videos uploaded to YouTube and satellite imagery from Google Earth.

Mr Higgins explained that by the start of 2013 he "had gained increasing credibility with what RT would describe as the mainstream media" in respect of his work on the Syrian conflict. Mr Higgins provided details of the work which had built and solidified his reputation with the mainstream media, and referenced media reports about his work. Mr Higgins said that while RT may claim that the support and praise of him by the mainstream media included in the programme balanced the criticism against him, "one only has to look at the way in which RT covers the mainstream media to see that the RT network frequently publishes reports and articles critical of the mainstream media". In this regard, Mr Higgins said that it would be more than reasonable to say that the statement "*and the media loves him*" contained in the programme "is not intended as any sort of compliment, but further criticism of the mainstream media" showing that it is using unreliable information.

Mr Higgins then explained how he had founded Bellingcat.⁴ He explained it was launched on 14 July 2014 with a small group of contributors writing articles, many of which focused on the conflict in Syria, including his own articles. He explained that the MH17 crash happened three days after Bellingcat's launch and it rapidly became the main focus of Bellingcat's work. Mr Higgins explained that due to a massive amount of interest in the crash, there was a lot of discussion about it on social media, as well as the sharing of various photographs and videos. He explained that these photographs and videos were geolocated by Bellingcat. Mr Higgins

³ Mr Higgins described geolocation, in relation to the verification of imagery, as "a core technique used to confirm the location a video or photograph was taken". Mr Higgins said that geolocation has become increasingly popular since 2011. He explained that "while this technique has been used by open source intelligence professionals for years recent technological changes have made geolocation something accessible to an ordinary person at home". He explained that this technique is used by journalists, the Russian Ministry of Defence and RT, and gave examples of material broadcast by RT.

⁴ Mr Higgins explained that Bellingcat had two aims when it was launched. That is, to bring together other open source investigators to one website, and to publish guides, case studies, and other information so readers could learn how to do their own open source investigation.

said that this work was done not only by him but by a growing community of enthusiasts, some of which were invited to join Bellingcat. Mr Higgins then explained that he was interviewed as a witness by the Joint Investigation Team into the MH17 crash, and based on their clear interest in Bellingcat's work on MH17, he invited his contributors who had been writing about MH17 to join the newly formed "Bellingcat Investigation Team". Mr Higgins said it was this work that was the subject of criticism in the programme.

Mr Higgins referred to the programme's citation of the "Anti-Bellingcat" report, and explained that the programme referred to the persons involved in the report as "bloggers" but it did provide any further details about them. Mr Higgins explained that the programme included images used in the Anti-Bellingcat report. In addition, Mr Higgins explained that the reference in the programme to "bloggers" who had "dug up screen shots from Ukrainian TV apparently showing a Buk missile system in the area, complete with radar, a few days before the tragedy" was also a reference to the Anti-Bellingcat report. Mr Higgins then commented on the analysis used in the Anti-Bellingcat report, and disputed its accuracy, with reference to these images and this reference. Mr Higgins said that RT had "failed to produce any coverage where the claims of the Anti-Bellingcat report are verified or fact-checked, but is willing to cite their work to attack the investigation [regarding MH17] by Bellingcat". Mr Higgins also referred to the tweets included in the programme by Dr Neal Krawetz and Mr Jens Kriese, which he explained were used by RT in the programme as examples of criticism of Bellingcat's work. Mr Higgins explained that these tweets related to Bellingcat's analysis of satellite imagery, and that Dr Krawetz's criticism of Bellingcat's analysis was "based on what appears to be nothing more than his intuition".

Mr Higgins said that while he recognised that he and Bellingcat had been criticised, he considered that the criticism came from claims which were based on "faulty analysis, and outright falsehoods". He added that "to then use that criticism to attack Bellingcat and myself, and as a basis of justifying the editing of footage of [him] talking about Bellingcat's work to bring it inline with that criticism would be unfair" (sic). Mr Higgins said that this was especially true when RT had repeatedly used other work on the same subject with none of the same degree of criticism and "despite it being objectively wrong". Mr Higgins said that the controversy which RT referred to came from unreliable individuals, many of whom had their own agendas, and who produced "objectively incorrect claims to attack [his] work". Mr Higgins added that "when controversy and criticism is manufactured in this way, it does not mean it is legitimate, even if its existence is acknowledged by its target". Mr Higgins said that while RT may claim that Bellingcat's work in relation to MH17 is highly criticised and supposedly controversial, it has not stopped it reporting on and using the same methodologies as Bellingcat. Mr Higgins said that this undermines the sincerity of RT's claim.

Mr Higgins said that if his work and that of Bellingcat is highly criticised and controversial in this manner, using probably false claims, and can be used to justify the use of edited footage, then "Ofcom should make it clear than any criticism no matter if it is correct or entirely and objectively wrong, is acceptable to make a point against an individual or organisation, including editing footage to make that point". Mr Higgins also said that "we should ask, when considering criticism what is the value of that criticism of a person whose analysis independent experts have repeatedly shown to be wrong, including the case referred to in the RT report." He questioned whether all criticism was acceptable for Ofcom, even when experts have proved it wrong.

Mr Higgins considered it was inaccurate for Ofcom's Preliminary View to state that it was "legitimate for RT to consider the reliability of Mr Higgins' evidence" (emphasis added by

Ofcom). He said often the work of Bellingcat involves collecting publicly available evidence (such as photographs and social media posts) and then producing analysis of that evidence. Mr Higgins made reference to an example of his early work to demonstrate this point. He said that the work of Bellingcat is not necessarily evidence, but an analysis of the evidence. Mr Higgins said that if the criticism was against his and Bellingcat's analyses then "the question is how reliable is my analysis and the analysis of Bellingcat, and how reliable is the analysis of those criticising the reliability of our analysis". Mr Higgins also said that "if we do not make a judgement about the reliability and validity of the criticism then in the future all criticism would be considered equal, regardless of whether it is valid and credible".

Mr Higgins said it was also worthwhile addressing how Bellingcat's investigations compared to the two official investigations into the MH17 crash. Mr Higgins cited these as an investigation by the Dutch Safety Board and the ongoing criminal investigation by the Joint Investigation Team. Mr Higgins provided detail on both of these investigations, and explained that there were many consistencies between the findings of these investigations and that of Bellingcat.

Mr Higgins then provided representations on whether he was given the opportunity to respond to the programme. Mr Higgins said that although RT claimed that it believed his view was that he "did not need opportunities to respond to the allegations made about his work in relation to MH17", previously, RT had not "selectively and deceptively edited footage of [his] work to make their point, nor had they cited the report published a few days prior to September 28th 2016 that was filled with basic investigative errors". Mr Higgins added that the circumstances were different in this case as this was the day the Joint Investigation Team was presenting its findings on the MH17 investigation, which he "was fully confident would be consistent with, if not identical to the findings of Bellingcat's investigations", and which he would have "happily discussed [...] with RT if offered the opportunity". Mr Higgins said he could not think of a single day that was more important to the work of Bellingcat, and which would have demonstrated the validity of Bellingcat's research and that "therefore [he] would have been happy to appear on RT to discuss this with them". Mr Higgins said that he was not offered the opportunity to discuss the work of Bellingcat in this "unique set of circumstances".

Mr Higgins said that RT had also claimed that programmes in June 2015 and October 2015, referred to in its representations on Ofcom's Preliminary View, covered similar matters to the programme. However, Mr Higgins said that the earlier programmes had not covered the Anti-Bellingcat report which was published after they were broadcast. He said that the only way the earlier programmes could be considered as covering essentially the same grounds as the programme is in relation to "any attacks on the work of Bellingcat using unreliable and untrue claims", and not the specifics of the Anti-Bellingcat report. Mr Higgins said that he could not have had an "ample opportunity" to respond to allegations made in an, as then, unpublished report that was not mentioned in the earlier programmes.

RT's representations

In response, RT considered that Mr Higgins' representations appeared to be concerned for the most part with head (a)(iv) of the entertained complaint. However, RT said that, in fact, many of Mr Higgins' representations went beyond the scope of the entertained complaint. In particular, RT said that Mr Higgins' representations appeared to make a new complaint either that RT unfairly failed to give Mr Higgins' colleagues sufficient prominence or that it unfairly blamed him for their work.

In addition, RT said that, as regards head (a)(iv), Ofcom had taken the Preliminary View that the inclusion of the footage of Mr Higgins presenting at a conference caused him no unfairness because, among other things, his work had already been criticised. RT said that Mr Higgins now sought to show in his representations that the three sources of criticism cited by RT in the programme (i.e. the Anti-Bellingcat report, and the comments by Dr Neal Krawetz and Mr Jens Kriese) were unreliable, invalid and insincere. RT said that Mr Higgins had made these assertions "not on the basis of any new and compelling evidence". RT said it saw no reason why Mr Higgins' representations on these points should disturb Ofcom's Preliminary View.

In this regard, RT made a number of representations on Mr Higgins' analysis of the comments made by Dr Krawetz and Mr Kreise cited in the programme, and said that Mr Higgins was seeking to change the grounds of his complaint. RT also commented on the Anti-Bellingcat report. RT said that Mr Higgins had said it was important to understand his methodologies so as to understand the full context of the criticisms of his work, and considered that the Anti-Bellingcat report contained false claims which RT failed to verify. RT did not consider that these representations addressed the entertained complaint. As regards the authors of the Anti-Bellingcat report, RT said they were only indirectly relevant to the programme, which referred only to claims by "bloggers" and not to the opinions of independent experts, which it said would have been given more weight.

RT also commented on Mr Higgins' representations on whether he was given an appropriate opportunity to respond to the programme. RT said that these representations were not relevant because Ofcom's Preliminary View, with which RT agreed, is that the material broadcast about Mr Higgins was a fair account of his work and it was not required to offer him an opportunity to respond. RT added that Mr Higgins had previously told Ofcom that he had no interest on appearing on RT, but now explained that he would have been happy to appear on the service.

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 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.

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

In addition to this Rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected, by programmes. 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.

In reaching this decision, Ofcom carefully considered all of the relevant material provided by both parties. This included a recording of the programme as broadcast, and both parties' written submissions. Ofcom also took careful account of the representations made by the parties in response to Ofcom's Preliminary View.

- a) We first considered the complaint that Mr Higgins was treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a way which was unfair to him. In particular, Mr Higgins said that the programme failed to recognise his achievements which were relevant to the matter being discussed in the programme and instead chose examples which undermined him and his work.

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”.

Ofcom's role is to consider, taking into account Section 7 of the Code, whether a programme has caused unfairness to an individual or organisation. In particular, we consider whether material facts have been presented, disregarded or omitted in a way that was unfair to people or organisations. This will depend on all the particular facts and circumstances of the case including the nature of the material and the context within which it was broadcast.

As regards context, Ofcom took into account RT's submission that the international Joint Investigation Team was due to release its interim report on the cause of the MH17 crash later on the date of broadcast of the programme. RT said that therefore the programme, which reported on the MH17 crash and various investigations into it, was reporting on a topic of legitimate public interest. Against this context, we considered it legitimate for a broadcaster to broadcast a programme considering the various investigations into MH17 crash, and the criticisms which had been made of these investigations. However, in doing so, it is incumbent on the broadcaster to ensure that material facts are not presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Taking into account this context and the representations received from the parties, for the reasons set out below, we considered the material contained in the programme to be a fair account of Mr Higgins' experience and the nature of his investigations and weapons analysis, including that undertaken by him through the Bellingcat website. We considered that material facts had not been presented, disregarded or omitted in a way which was unfair to Mr Higgins, and we explain our reasons below with reference to each aspect of Mr Higgins' complaint as entertained by Ofcom.

We first considered whether the programme caused unfairness to Mr Higgins by referring to him as a *“laid-off admin worker”* who *“admitted that he has no experience in the field”*, but had failed to mention that he had worked full time on his website, was a *“world-wide recognised expert”* and had held various university posts.

In assessing this aspect of Mr Higgins' complaint, we carefully considered Mr Higgins' representations on the Preliminary View detailing his background. In this regard, we noted that Mr Higgins explained that as a result of a personal interest in the Arab Spring, in 2012, while working as a finance administrator, he began blogging and developing investigative techniques to assess claims made online. Mr Higgins stated that he had been "laid-off" from his role as an administrator three and a half years ago and that since then he had worked full-time on his websites. Mr Higgins also stated that he subsequently gained increasing credibility with the mainstream media in relation to his work on the Syrian conflict. Following this, Mr Higgins explained that in July 2014 he founded the Bellingcat website which included articles from him and a small group of contributors focusing on the conflict in Syria and the MH17 crash, and that Bellingcat had attracted interest, including from the Joint Investigation Team into the MH17 crash.

We considered it was clear from the programme that since Mr Higgins had lost his position as an administrative worker, he had dedicated a significant amount of time and resource to his websites, including running the Bellingcat website, and to his investigations into weapons analysis and the cause of the MH17 crash. In particular, the programme explained that Mr Higgins was a blogger who ran the Bellingcat group's website and it recognised that he had "*made a name for himself by analysing weapons used in the Syrian conflict*". The programme showed Mr Higgins presenting his work using online open internet sources at a conference. The programme also said that Mr Higgins' work had received recognition from various media outlets and had been considered and criticised by various experts and other individuals with interests and/or experience in weapons analysis. We therefore did not consider that the programme caused any unfairness to Mr Higgins in this respect.

We also considered Mr Higgins' complaint that he had made comments about his lack of experience before he started working in online open source investigations, but that this was not made clear in the programme.

Ofcom noted that the programme said that Mr Higgins accepted that he "*has*" no experience in the field. However, this was immediately followed by a quote attributed to Mr Higgins in which he explained that he had very limited experience "*before the Arab Spring*". We considered that viewers would have understood from this quote, alongside the other content in the programme, that despite Mr Higgins' initial lack of knowledge or formal experience, he had since undertaken a significant amount of work and gained experience in, and a greater understanding of, this area. We therefore did not consider that the way in which this material was presented in the programme caused any unfairness to Mr Higgins.

We then went on to consider whether the programme caused unfairness to Mr Higgins by not mentioning his achievements, specifically that he had held various university appointments and was a "world-wide recognised expert". In doing so, we took into account that, in line with the broadcaster's right to freedom of expression, editorial decisions about what should and should not be included in a programme are a matter for the broadcaster. However, broadcasters must take care to ensure that the omission of material facts from a programme does not result in unfairness to organisations or individuals. In addition, we also took into account RT's comments that the programme was about the various investigations into the crash and the controversies surrounding the evidence about the cause of the crash, not a standalone feature about Mr Higgins and his work. For the reasons explained above, we considered it legitimate for RT to

broadcast a programme of this nature. Against this context, and for the reasons explained above, we considered that the programme was a fair account of the nature of Mr Higgins' investigations into weapons analysis including the MH17 crash, and contained sufficient information to enable viewers to understand the nature of his investigations, including those undertaken through the Bellingcat website. In this regard, we did not consider it was necessary for the programme to refer to Mr Higgins' academic appointments, any of his other achievements, or refer to him as a "worldwide recognised expert" to avoid unfairness to him.

Ofcom also considered Mr Higgins' complaint that footage relating to him and of him in the programme had been taken out of context and/or edited in a way which caused unfairness to him. As explained above, it is an editorial decision for the broadcaster to decide what material should be included in a programme. In this regard, it is open to broadcasters to include edited footage in a programme provided it does not result in unfairness to people or organisations.

Mr Higgins considered that the inclusion of footage of an unidentified speaker stating that Mr Higgins had *"never been to Syria, doesn't speak a word of Arabic, and he conducts his profound research from the comfort of his armchair in his home"* had been taken out of context. We noted that Mr Higgins and RT explained that this footage had been taken from a presentation given by Mr Higgins, and the speaker was introducing Mr Higgins. We recognised that this quote did form part of a longer sequence, which was not included in the programme. We also recognised that the context in which the statement was made was not made clear to viewers, and we considered that some viewers may have considered that the speaker was criticising Mr Higgins' level of experience. However, Mr Higgins did not dispute the accuracy of the statement, and both Mr Higgins and RT referred to sources in which Mr Higgins had endorsed his work as "armchair analytics". Therefore, we considered it reasonable for the broadcaster to include footage of an individual describing Mr Higgins and his work in this way. We therefore did not consider that the inclusion of this footage in the programme caused unfairness to Mr Higgins.

Mr Higgins also considered that the inclusion of the footage in the programme of him presenting at a conference had been edited in a way which was unfair to him as it made it look like he was "using flimsy evidence to claim Russia was lying". In considering this, we took into account RT's representations in which it said that the footage of Mr Higgins had been heavily edited to "illustrate a legitimate point about the reliability of [Mr Higgins'] conclusions". We also took into account that RT explained that the programme was not a standalone feature about Mr Higgins, rather it was a programme about investigations into the MH17 crash, that its purpose was to "report on the controversies surrounding the evidence and its interpretation" and that the broadcaster had included the footage of Mr Higgins to draw attention to issues of the reliability of the conclusions of Mr Higgins' investigation.

We understood from the representations provided by the parties that the reliability of Mr Higgins' work, including that undertaken through the Bellingcat website, had been highly scrutinised and criticised, including through the Anti-Bellingcat report referred to in the programme. Both parties commented on the validity of this criticism. However, in reaching a decision on this matter, and on this aspect of the complaint, Ofcom's role is not to consider whether such criticism was founded, rather it is to consider whether the

inclusion of the footage of Mr Higgins presenting his findings was presented in the programme in a way which was unfair to him.

In doing so, Ofcom took into account that this footage had been heavily edited, and we considered that the footage shown was likely to suggest to viewers that Mr Higgins' investigative techniques may not have been reliable. However, for the reasons explained above, we considered it was legitimate for RT to broadcast a programme about the MH17 crash and in doing so to raise questions about the reliability of the evidence used by individuals such as Mr Higgins as part of a wider report considering investigations into the crash. We recognised that the reliability of Mr Higgins' work had been criticised and scrutinised, and we considered against the context of the programme, it was legitimate for RT to consider the reliability of Mr Higgins' work, including the work he undertook through Bellingcat, using edited footage of Mr Higgins discussing his investigative techniques. Therefore, on balance, we did not consider that the inclusion of this footage in the programme caused unfairness to Mr Higgins.

We also considered whether the programme caused unfairness to Mr Higgins because it explained that "*his tools of choice for uncovering global conspiracies*" were YouTube and Google Earth, and failed to recognise that a range of organisations use the same techniques as him and that online open source investigation was an "increasingly recognised field".

From the material referred to by both Mr Higgins and RT, Ofcom understood that Mr Higgins had explained that he used online open source tools and resources, which include online resources such as YouTube and Google Earth, to undertake his investigations. We also took into account Mr Higgins' representations that the use of these online resources was "core to the reliability of Bellingcat's techniques", including the use of the geolocation technique. We therefore considered it was reasonable for the programme to state that Mr Higgins' investigative "tools of choice" were YouTube and Google Earth, and that this did not cause unfairness to Mr Higgins.

The programme also explained that other individuals had launched investigations into the MH17 crash and that fellow bloggers had analysed the cause of the crash using online sources. Ofcom therefore considered it was clear from the programme that online open source investigations had been recognised by others and that other individuals had used the same techniques as Mr Higgins. In any event, we did not consider it was necessary for the programme to explain the investigative tools used by other individuals or that online open source investigation was an "increasingly recognised field" to avoid unfairness to Mr Higgins.

Taking account of the circumstances, and for the reasons set out above, Ofcom did not consider that material facts were presented, omitted or disregarded in a way that was unfair to Mr Higgins.

Ofcom found that Mr Higgins was not treated unfairly in the programme in this respect.

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

In considering this aspect of the complaint, we took into account Practice 7.11 of the Code which states:

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

In considering this aspect of the complaint, we took into account both parties' representations addressing the extent to which they considered Mr Higgins was provided with the opportunity to respond to the content relating to him in the programme.

However, for the reasons set out above, we considered that the material broadcast about Mr Higgins in the programme was a fair account of his work. Although the programme referred to criticisms of Mr Higgins' work made by various individuals, it did not contain allegations of wrongdoing or incompetence or make any other significant allegations about Mr Higgins and did not result in any unfairness to Mr Higgins. Therefore, there was no requirement on the broadcaster to have provided Mr Higgins with an appropriate and timely opportunity to respond in order to avoid unfairness to him.

Ofcom found that there was no unfairness to Mr Higgins in this respect.

Ofcom has not upheld Mr Higgins' complaint of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by PJW Law on behalf of Mr Ian Peermamode *Police Interceptors, Spike, 27 July 2017*

Summary

Ofcom has not upheld PJW Law's complaint, made on behalf of Mr Ian Peermamode, of unwarranted infringement of privacy in the programme as broadcast.

The programme showed Mr Peermamode being stopped by police officers while driving a suspected stolen vehicle on the motorway. Footage of Mr Peermamode being questioned by police officers and, subsequently arrested for drug related offences, was included in the programme without his consent. Mr Peermamode was not named in the programme, but his face was shown unobscured and his voice was heard.

Ofcom found that, in the particular circumstances of this case, Mr Peermamode did not have a legitimate expectation of privacy in relation to the inclusion of unobscured footage of him without his consent in the programme as broadcast. Therefore, there was no unwarranted infringement of Mr Peermamode's privacy.

Programme summary

On 27 July 2017, Spike broadcast an edition of *Police Interceptors*, a series which followed the work of different police units across the country.

This programme followed the work of a police unit in Cheshire, and included a segment in which police officers successfully intercepted a vehicle suspected to have been stolen. The vehicle was shown parked on the side of the road as a police officer, PC Neil Jones, approached it and asked the driver (the complainant, Mr Peermamode), to step outside. Mr Peermamode, who was not named in the programme, was shown being placed in handcuffs by police officers as PC Jones said:

"You are under arrest for suspicion of theft of this motor vehicle at the moment because of a marker held on the vehicle, okay?"

The programme's narrator said:

"Bizarrely, the driver seems very polite for someone who's suspected to be driving a stolen motor".

Mr Peermamode was shown with his hands behind his back, surrounded by police officers as he was arrested. The following exchange took place between Mr Peermamode and PC Jones:

PC Jones: *"Do you have anything about your person we need to know about sir?"*

Mr Peermamode: *No, only my change in my right-hand pocket.*

PC Jones: *Okay. Anything sharp, anything pointed, any drugs, anything like that at all?*

Mr Peermamode: *No, no. Nothing like that at all.*

PC Jones: *Not a problem, thank you very much".*

Mr Peermamode was shown being placed inside of a police vehicle as the narrator explained that officers were about to find out that the case was not *"as clear cut as they first thought"*. The conversation between PC Jones and Mr Peermamode continued:

PC Jones: *"I'm not saying you've nicked the vehicle, what I'm saying is there is a marker on that vehicle being stolen.*

Mr Peermamode: *It's a company car though, I don't own it.*

PC Jones: *That's no problem. Okay".*

PC Jones was shown speaking directly to the camera as he explained the reasons behind the investigation into the suspected stolen vehicle. He said:

"The vehicle belongs to his now ex-employer as of a few days ago, so that's the purpose of the initial investigation at the roadside, to find out where we are with the vehicle. Has he been told? Should he have handed it back? And, is he in unlawful possession of that vehicle?"

The narrator said:

"Neil [PC Jones] now needs to carry out a number of routine checks which could be about to reveal more than he bargained for".

Mr Peermamode was shown being questioned by PC Jones and PC Steve Johnston inside the police vehicle. The following exchange took place:

PC Johnston: *"Anything in the van that shouldn't be there?"*

Mr Peermamode: *No.*

PC Johnston: *Use any alcohol or cocaine or cannabis lately?"*

Mr Peermamode: *No. Oh yeah, I smoked last night.*

PC Johnston: *Smoked a joint last night?"*

PC Jones: *How often do you use cannabis?"*

Mr Peermamode: *I smoke every other day.*

PC Johnston: *Every other day. Right okay".*

PC Jones was then shown speaking directly to the camera as he explained what the next steps in the investigation were. He said:

"He's confessed to us that he's smoked cannabis within the last 24 hours and is a regular user, so we have to go through [a] preliminary impairment test to see if he's fit and okay to drive the vehicle".

The narrator said:

"As Neil [PC Jones] waits for the results, Johnno [PC Johnston] has a rummage through the car, and he makes an interesting discovery in the suitcase in the bloke's boot".

PC Johnston explained that he had *"just found a small pot of cannabis"* in the boot of the vehicle, and said that, in addition to being arrested for driving a stolen car, Mr Peermamode would also be arrested for possession of cannabis.

The narrator said:

"And things could be about to get worse for the driver as the results of the drugs test are in".

PC Jones was shown arresting Mr Peermamode. He said:

"There are red marks there for both cannabis and cocaine okay. What I would say to you, at this time is, I am placing you under arrest for suspicion of driving a motor vehicle on the public road whilst over the specified limits of both cannabis and cocaine. And you are also under arrest for possession of a controlled substance, i.e. cannabis".

PC Jones said:

"It's come back as both a positive indicator of both cannabis and cocaine. So, he's been arrested under section 5 rules, or section 5A rules sorry, of the new offence of drug driving".

The narrator said:

"After further investigation, it transpired the car wasn't stolen, it was merely a dispute with his former employer, and no further action was taken once the vehicle was returned to them. A blood sample revealed the bloke was over the limit for both cannabis and cocaine. In court, he pleaded guilty to drug driving and possession of the class B drug cannabis. He received a 12-month driving ban, and had to pay £415 in fines and costs. For Interceptor Neil, having helped take another drug driver off the road, it's been another successful night at the office".

No further reference to the complainant was included. Mr Peermamode was not named in the programme, but his face was shown unobscured and his voice was heard undisguised.

Summary of the complaint and broadcaster's response

The complaint

PJW Law complained that Mr Peermamode's privacy was unwarrantably infringed in the programme as broadcast because unobscured footage of him was included in the programme without his consent. It said that despite Mr Peermamode having asked

programme makers to anonymise him, his face was not obscured, and he was identifiable in the footage included in the programme.

PJW Law said that, in principle, Mr Peermamode did not dispute that there was a right to film the incident, but did dispute that the broadcaster had a right to show his face in the programme as broadcast. It said that the same effect could have been achieved even if Mr Peermamode's face had been obscured. As a result of the programme, PJW Law said that Mr Peermamode's young children had been bullied at school and that his partner had been harassed. It also said that he had suffered medically because of the stress caused to him by the programme.

The broadcaster's response

Background

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 consent¹.

Channel 5 said that Article 8 of the European Convention of Human Rights ("ECHR") did not confer an unqualified right of privacy². It added that "sub-article (2) provides that the right conferred by (1) should not be interfered with by a public authority unless such interference is lawful and necessary in a democratic society in the interests of, inter-alia, the economic well-being of the country, the prevention of disorder, and for the protection of the rights and freedoms of others". Channel 5 said that if the complainant had no reasonable expectation of privacy, Article 8 was not engaged, and the claim failed at the outset.

Channel 5 said that it was not the location where filming occurs which establishes whether Article 8 is invoked or not, but rather the activity filmed that is the determining question³. It said that no aspect of the activities of police officers carrying out their official duties could properly be regarded as private, and that "no right thinking, ordinary, reasonable person" could think that such activities were private. Channel 5 said that it followed that the filming of those activities was not filming of anything private. Just as the method and procedure of slaughtering animals in *Lenah Game Meats*⁴ was not confidential or private, nor was the manner in which police officers perform their duties and enforce legislation and regulations. Channel 5 said that Article 8 might be engaged on the question of a broadcast, but that it did

¹ Channel 5 cited *Campbell v MGN Ltd* [2004] 2 AC 457 as authority for this, referencing Lord Nicholls' judgment at paragraph 73: "*In the present case, the pictures were taken without Ms Campbell's consent. That in my opinion is not enough to amount to a wrongful invasion of privacy. The famous and even the not so famous who go out in public must accept that they may be photographed without their consent, just as they may be observed by others without their consent. As Gleeson CJ said in Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd (2001) 185 ALR 113, para 41: 'Part of the price we pay for living in an organised society is that we are exposed to observation in a variety of ways by other people'*". Channel 5 also referred to Lord Hope's judgment at paras 93-94, 107-108 and Lady Hale's judgment at para 154.

² *M v Secretary of State for Work and Pensions* [2006] 2 AC 91 at para 83.

³ *Weller v Associated Newspapers* [2015] EWCA Civ 1176, at paras 60 and 61.

⁴ *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63.

not follow that Article 8 is engaged when filming occurs. It said that Article 8 is only engaged in filming when the activity being filmed is private. The activities of police officers in carrying out their "court approved duties" were not private.

Channel 5 said that there can be no doubt that the activities of police officers are matters of genuine public interest and that the manner in which the law is utilised, or ignored, is a matter of acute public interest. The kinds of difficulties police officers face when executing their duties is also a matter of acute public interest as is the impact of their activities on the lives of those affected. Equally, there was a clear public interest in members of the public seeing how the effective enforcement of legislation and regulations actually affects people who are arrested and convicted. It said that seeing "the impact of their transgressions" on police officers, and the "foolishness of conduct" designed to deceive them, conveys to members of the public "the seriousness of such transgressions and the true consequences of breaking the law".

The broadcaster said that each case turned on its own facts and matters such as the unusual vulnerability of a particular person or situation impact on decisions to include particular footage in particular programmes. It said that no two privacy rights are necessarily the same. It added that the nature of the right was a factor that came into play when the balancing competing rights; it has no place in whether there is, in fact, anything private for Article 8 to protect⁵. Channel 5 said that no legitimate right of privacy was ever intentionally infringed by any broadcast.

Response to the complaint

Channel 5 said that Mr Peermamode did not consent to the broadcast identifying him, but that his consent was not necessary given the circumstances. It said it was "critical to note" that no objection was taken about any aspect of the broadcast, apart from the identification of Mr Peermamode as a person convicted of a criminal offence. That, it said, was not a matter about which Mr Peermamode has any expectation of privacy, given that his trial was conducted, and that he was convicted and sentenced, in open court. Channel 5 said that it followed that the broadcast did not infringe Mr Peermamode's privacy.

Channel 5 said that *Police Interceptors* was educational in that it demonstrated, even in sometimes emotionally charged situations, the constant work carried out by police officers. It said it demonstrated their work to ensure that the laws of the land were enforced, and that criminals were prosecuted and punished to ensure the social good that comes from the rule of law in a democracy.

Channel 5 said that the sequence about which the complainant takes issue involved "matters relevant to the organisation of the economic, social and political life of the country [which] is crucial to any democracy", and without which "it can scarcely be called a democracy at all"⁶. The sequence in question concerned the apprehension and conviction of Mr Peermamode. He was found to be driving while the concentration of drugs in his bloodstream was above the legal limit and to be in possession of illegal substances. Channel 5 said that driving while under the influence of drugs was a serious crime and that the detection, apprehension and conviction of such drivers was a matter of genuine public interest. Channel 5 said that it

⁵ [Campbell v MGN Ltd \[2004\] 2 AC 457, Baroness Hale at para 157 and Weller v Associated Newspapers \[2015\] EWCA Civ 1176, para 15.](#)

⁶ [Campbell v MGN Ltd \[2004\] 2 AC 457, Baroness Hale at para 148.](#)

followed that the segment involving Mr Peermamode and his criminal actions was in the public interest.

Channel 5 said that it did not condone any action directed at Mr Peermamode's children or partner, however, they were not featured in the broadcast. It said that Mr Peermamode was found guilty of driving under the influence of drugs in open court. The fact of his arrest and other information contained in the broadcast was also referred to in open court and capable of being reported in accordance with the ordinary principles of open justice. It said that, whatever effect the broadcast had on Mr Peermamode's partner or children, those effects stemmed from the fact that Mr Peermamode broke the law and was convicted. It said that the collateral impact on those in his family was part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on public judicial proceedings.

Channel 5 said it did not believe that any Article 8 right of Mr Peermamode arose in the circumstances of this case. It said that even if Article 8 rights were engaged, the broadcast of Mr Peermamode's interaction with police officers and details of his arrest, conviction and sentencing was a matter of genuine public interest. It said that the relevant Article 10 rights, both of Channel 5 and the British public, would outweigh any such Article 8 rights on the part of Mr Peermamode.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that PJW Law's complaint made on behalf of Mr Peermamode 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, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and the unedited footage, transcripts of all the footage, and both parties' written submissions.

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 in the circumstances of the case. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

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

In assessing the complaint that Mr Peermamode's privacy was unwarrantably infringed in the programme as broadcast, we had regard to Practice 8.4 of the Code which states:

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

Ofcom also had regard to Practice 8.6, which states:

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

In considering whether or not Mr Peermamode's privacy was unwarrantably infringed in the programmes as broadcast, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in relation to the broadcast of the unobscured footage of him in the programme.

Ofcom considers that the test applied 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.

As set out in detail in the "Programme summary" above, footage was included in the programme of Mr Peermamode being stopped, questioned, and arrested by the police. While he was not named in the programme, his face was shown unobscured. We took into account that Mr Peermamode had been filmed openly by the programme makers in a public place, namely a public highway, and in full view of any members of the public who drove past. We also took into account that Mr Peermamode appeared to be calm and engaged willingly with police officers, and that he was not shown engaged in any conduct or action which could reasonably be regarded as being particularly sensitive or private to him, other than his interaction with the police for suspected criminal offences.

Ofcom recognises that being questioned by the police and subsequently arrested in relation to a criminal offence may reasonably be regarded as a sensitive situation, in that the individual involved is likely to feel under pressure and not in control, and this could, depending on the particular circumstances, give rise to an expectation of privacy. Ofcom also took the view that the detail of Mr Peermamode's interaction with the police officers at the roadside and in the police vehicle was unlikely to have been in the public domain prior to the broadcast of the footage of him in this situation in the programme.

However, we took into account that PJW Law confirmed to Ofcom in making the complaint on Mr Peermamode's behalf that Mr Peermamode, in principle, did not dispute that there was a right to film the incident, but that he did dispute that the broadcaster had a right to show his face in the programme. Specifically, PJW Law said that the programme could have still had the same effect even if Mr Peermamode's face was obscured. In Ofcom's view, this suggested that Mr Peermamode did not consider the circumstances in which he was filmed were sensitive or private. Nor did it suggest that he considered the footage of the incident broadcast was private or sensitive. The complaint appeared only to object to the fact that Mr Peermamode was identifiable in the programme.

We acknowledged the comment in the complaint that Mr Peermamode's face was shown unobscured in the programme, while the faces of other people in the programme had been obscured, allowing them to remain anonymous. However, Ofcom considered that the decision of whether to include obscured or unobscured footage of people in programmes to be an editorial decision for the broadcaster to make, so long as it complies with the Code. We recognise that a person's face may be obscured for reasons other than privacy concerns, for instance, because that person has an upcoming court case and that to broadcast material that could identify them could be contempt of court.

In the particular circumstances of this case, Ofcom did not consider that the fact of Mr Peermamode's arrest and subsequent conviction, which were a matter of public record, amounted to information about him to which could reasonably be regarded as particularly private or sensitive in nature. We took into account that the inclusion of unobscured footage of Mr Peermamode in the programme identified him as having committed the offences for which he was ultimately convicted. However, we did not consider that he had a legitimate expectation of privacy in relation to the broadcast of this fact in the circumstances of this case.

Having reached this conclusion, it was therefore unnecessary for Ofcom to consider whether any infringement of Mr Peermamode's privacy was warranted. Therefore, Ofcom considered that there was no unwarranted infringement of Mr Peermamode's privacy in the programme as broadcast.

Ofcom has not upheld PJW Law's complaint made on behalf of Mr Peermamode of unwarranted infringement of privacy in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 1 and 14 January 2018 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Tamara's World (trailer)	ITV	26/11/2017	Offensive language

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

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 14 January 2018 because they did not raise issues warranting investigation.

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Fifty Shades of Grey	5Star	28/12/2017	Sexual material	1
The Absolute Breakfast Show	Absolute Radio	03/01/2018	Generally accepted standards	1
BBC News	BBC 1	18/06/2017	Due impartiality/bias	1
BBC News	BBC 1	26/06/2017	Due impartiality/bias	1
Newsnight	BBC 2	16/06/2017	Due impartiality/bias	1
Newsnight	BBC 2	23/06/2017	Due impartiality/bias	1
Newsnight	BBC 2	28/06/2017	Due impartiality/bias	1
The Daily Politics	BBC 2	27/06/2017	Due impartiality/bias	1
Mid Morning	Big City Radio 89.1FM	08/12/2017	Offensive language	1
Looney Tunes	Boomerang	04/12/2017	Generally accepted standards	1
My Reality	CBS Reality	Various	Generally accepted standards	1
Programming	CBS Reality	Various	Crime and disorder	1
Alan Carr's Christmas Chatty Man	Channel 4	25/12/2017	Generally accepted standards	1
Big Fat Quiz of the Year 2017	Channel 4	31/12/2017	Offensive language	1
Channel 4 News	Channel 4	19/12/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	22/12/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	04/01/2018	Other	2
Pepsi Max's sponsorship of Channel 4	Channel 4	21/12/2017	Dangerous behaviour	3
Channel ident	Channel 4	02/01/2018	Crime and disorder	1
Crocodile Dundee	Channel 4	23/12/2017	Transgender discrimination/offence	1
Derry Girls (trailer)	Channel 4	18/12/2017	Generally accepted standards	1
Finding Me a Family	Channel 4	05/12/2017	Under 18s in programmes	1
Gogglebox	Channel 4	24/12/2017	Nudity	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Guy Martin vs the Robot Car	Channel 4	16/12/2017	Materially misleading	1
Hollyoaks	Channel 4	09/01/2018	Materially misleading	1
Hunted	Channel 4	04/01/2018	Offensive language	2
Naked Attraction	Channel 4	10/01/2018	Nudity	1
Naked Attraction	Channel 4	Various	Generally accepted standards	1
Shamed	Channel 4	19/12/2017	Sexual orientation discrimination/offence	1
The Price is Right	Channel 4	30/12/2017	Sexual material	1
The Simpsons	Channel 4	25/12/2017	Scheduling	1
Blind Date	Channel 5	27/12/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	01/01/2018	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	02/01/2018	Generally accepted standards	1
Celebrity Big Brother	Channel 5	02/01/2018	Materially misleading	1
Celebrity Big Brother	Channel 5	02/01/2018	Transgender discrimination/offence	1
Celebrity Big Brother	Channel 5	03/01/2018	Gender discrimination/offence	15
Celebrity Big Brother	Channel 5	04/01/2018	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	04/01/2018	Transgender discrimination/offence	6
Celebrity Big Brother	Channel 5	05/01/2018	Gender discrimination/offence	2
Celebrity Big Brother	Channel 5	05/01/2018	Generally accepted standards	2
Celebrity Big Brother	Channel 5	05/01/2018	Nudity	2
Celebrity Big Brother	Channel 5	06/01/2018	Gender discrimination/offence	3
Celebrity Big Brother	Channel 5	06/01/2018	Generally accepted standards	13
Celebrity Big Brother	Channel 5	06/01/2018	Nudity	2
Celebrity Big Brother	Channel 5	06/01/2018	Transgender discrimination/offence	1
Celebrity Big Brother	Channel 5	07/01/2018	Gender discrimination/offence	3
Celebrity Big Brother	Channel 5	07/01/2018	Nudity	1
Celebrity Big Brother	Channel 5	07/01/2018	Sexual orientation discrimination/offence	2
Celebrity Big Brother	Channel 5	07/01/2018	Violence	1
Footloose	Channel 5	29/12/2017	Offensive language	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Greatest Ever Celebrity Wind-Ups	Channel 5	06/01/2018	Offensive language	2
Live Aviva Premiership Rugby	Channel 5	30/12/2017	Materially misleading	1
Pets Make You Laugh Out Loud	Channel 5	03/01/2018	Disability discrimination/offence	1
Sinkholes (trailer)	Channel 5	04/12/2017	Scheduling	1
Survival of the Fittest (trailer)	Channel 5	06/01/2018	Sexual material	1
The Secret Life of Puppies	Channel 5	05/01/2018	Animal welfare	1
The Wright Stuff	Channel 5	09/01/2018	Due accuracy	1
World's Strongest Man	Channel 5	27/12/2017	Animal welfare	1
Strongbow Dark Fruit's sponsorship of characters on Dave	Dave	02/01/2018	Sponsorship credits	1
Iron Resurrection	Discovery Turbo	11/01/2018	Offensive language	1
Grey's Anatomy	Diva Universal	09/01/2018	Sexual orientation discrimination/offence	1
Pepsi Max's sponsorship of Channel 4	E4	27/12/2017	Dangerous behaviour	1
Hollyoaks	E4	04/01/2018	Scheduling	1
Made in Chelsea	E4	18/12/2017	Animal welfare	1
Made in Chelsea Christmas Ding Dong	E4	25/12/2017	Religious/Beliefs discrimination/offence	1
The Big Bang Theory	E4	02/01/2018	Advertising minutage	1
The Goldbergs	E4	03/01/2018	Offensive language	1
Pepsi Max's sponsorship of Channel 4	Film4	23/12/2017	Dangerous behaviour	1
Jenni Falconer	Heart London	19/11/2017	Commercial communications on radio	1
Majlis-e-Aza	Hidayat TV	19/12/2017	Hatred and abuse	1
2nd Hum Style Awards	Hum Europe	31/12/2017	Undue prominence	1
All Star Musicals	ITV	24/12/2017	Offensive language	1
Coronation Street	ITV	20/11/2017	Generally accepted standards	1
Coronation Street	ITV	18/12/2017	Generally accepted standards	4
Coronation Street	ITV	22/12/2017	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	25/12/2017	Violence	3

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	26/12/2017	Materially misleading	1
Coronation Street	ITV	27/12/2017	Race discrimination/offence	15
Coronation Street	ITV	29/12/2017	Materially misleading	1
Coronation Street	ITV	01/01/2018	Race discrimination/offence	3
Coronation Street	ITV	01/01/2018	Sexual material	2
Coronation Street	ITV	04/01/2018	Violence	1
Coronation Street	ITV	08/01/2018	Generally accepted standards	1
Coronation Street	ITV	08/01/2018	Race discrimination/offence	1
Coronation Street	ITV	08/01/2018	Violence	1
Coronation Street	ITV	10/01/2018	Generally accepted standards	1
Coronation Street	ITV	10/01/2018	Race discrimination/offence	1
Dancing on Ice (trailer)	ITV	25/12/2017	Materially misleading	1
Dove's sponsorship of Lorraine	ITV	19/12/2017	Sponsorship credits	1
Emmerdale	ITV	28/12/2017	Violence	1
Emmerdale	ITV	04/01/2018	Violence	1
Emmerdale (trailer)	ITV	06/12/2017	Generally accepted standards	1
ET the Extra-Terrestrial	ITV	26/12/2017	Offensive language	1
Good Morning Britain	ITV	08/01/2018	Due impartiality/bias	1
Good Morning Britain	ITV	10/01/2018	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	24/11/2017	Animal welfare	15
ITN News	ITV	15/12/2017	Due impartiality/bias	1
ITV News	ITV	17/12/2017	Generally accepted standards	1
ITV News	ITV	27/12/2017	Due impartiality/bias	1
ITV News	ITV	09/01/2018	Animal welfare	1
Lethal Weapon (trailer) / Next of Kin (trailer) / Vera (trailer)	ITV	07/01/2018	Violence	9
Loose Women	ITV	19/12/2017	Gender discrimination/offence	1
Loose Women	ITV	09/01/2018	Race discrimination/offence	1
Next of Kin (trailer)	ITV	07/01/2018	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Ratburger (trailer)	ITV	12/12/2017	Animal welfare	1
Saturday Morning with James Martin	ITV	16/12/2017	Drugs, smoking, solvents or alcohol	1
The Chase	ITV	Various	Fairness	1
The Dam Busters	ITV	26/12/2017	Offensive language	1
The Jeremy Kyle Show	ITV	09/01/2018	Scheduling	1
This Morning	ITV	14/12/2017	Race discrimination/offence	1
This Morning	ITV	19/12/2017	Competitions	1
This Morning	ITV	19/12/2017	Product placement	2
This Morning	ITV	04/01/2018	Generally accepted standards	1
This Morning	ITV	05/01/2018	Generally accepted standards	1
Transformation Street	ITV	11/01/2018	Generally accepted standards	1
Transformation Street (trailer)	ITV	06/01/2018	Sexual material	1
Transformation Street (trailer)	ITV	07/01/2018	Scheduling	1
Transformation Street (trailer)	ITV	07/01/2018	Sexual material	1
Twins	ITV	27/12/2017	Nudity	1
Twins	ITV	27/12/2017	Violence	1
ITV News Granada Reports	ITV Granada	03/01/2018	Due impartiality/bias	1
Celebrity Juice	ITV2	22/04/2016	Race discrimination/offence	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	06/01/2018	Sponsorship credits	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	11/01/2018	Sponsorship credits	1
Vera (trailer)	ITV3	28/12/2017	Violence	1
Vera (trailer) / A Caribbean Mystery (trailer)	ITV3	30/12/2017	Violence	1
Botched By Nature	ITVBe	24/12/2017	Generally accepted standards	1
News	Juice 107.2 FM	05/12/2017	Commercial communications on radio	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Ett Pärön Till Farsa På Semester i Europa (National Lampoon's European Vacation)	Kanal 9 (Sweden)	03/01/2018	Gender discrimination/offence	1
Ett Pärön Till Farsa (National Lampoon's Vacation)	Kanal 9 (Sweden)	02/01/2018	Gender discrimination/offence	1
Love Actually	Kanal 9 (Sweden)	25/12/2017	Gender discrimination/offence	1
The Wedding Crashers	Kanal 9 (Sweden)	29/12/2017	Gender discrimination/offence	1
Andrew Pierce (standing in for James O'Brien)	LBC 97.3 FM	27/12/2017	Race discrimination/offence	1
Andrew Pierce (standing in for James O'Brien)	LBC 97.3 FM	28/12/2017	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	21/12/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	11/01/2018	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	15/12/2017	Generally accepted standards	1
Shelagh Fogarty	LBC 97.3 FM	06/12/2017	Materially misleading	1
Shelagh Fogarty	LBC 97.3 FM	13/12/2017	Violence	1
Steve Allen	LBC 97.3 FM	26/12/2017	Offensive language	1
Steve Allen	LBC 97.3 FM	27/12/2017	Generally accepted standards	1
Four in a Bed	More4	31/12/2017	Materially misleading	1
Teen Mom OG	MTV	14/12/2017	Generally accepted standards	1
Saturday Morning Show	NLive Radio	09/12/2017	Offensive language	1
Dreams' sponsorship of Pick	Pick	01/12/2017	Sponsorship credits	1
Dreams' sponsorship of Pick	Pick	19/12/2017	Dangerous behaviour	1
Chris Moyles	Radio X	23/11/2017	Race discrimination/offence	1
The Russell Howard Hour	Sky1	14/12/2017	Generally accepted standards	1
Swipe	Sky News	09/12/2017	Violence	1
Soccer AM	Sky Sports Football	23/12/2017	Sexual material	1
Live Mosconie Cup Pool	Sky Sports Main Event	06/12/2017	Generally accepted standards	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Tunnel (trailer)	Sky Sports News	12/12/2017	Violence	1
Carpool Karaoke Special	Sky1	28/12/2017	Scheduling	1
Delicious	Sky1	29/12/2017	Generally accepted standards	1
Arlington Road	Sony Movie Channel	17/12/2017	Advertising placement	1
Police Interceptors	Spike	06/01/2018	Offensive language	1
Studio 66 Days	Studio 66 TV	21/12/2017	Nudity	1
Best of Live at Five	STV2	29/12/2017	Generally accepted standards	1
Iain Lee's Late Night Alternative	TalkRadio	04/01/2018	Offensive language	1
Say Yes to the Dress (trailer)	TLC	06/01/2018	Offensive language	1
Bizarre Foods	Travel Channel	01/12/2017	Advertising minutage	1
The Change-Up	TV3	30/12/2017	Gender discrimination/offence	1
American Pie Presents: The Book of Love	TV6 (Sweden)	04/12/2017	Nudity	1
Crank: High Voltage	TV6 (Sweden)	17/12/2017	Nudity	1
UTV Live	UTV	08/01/2018	Generally accepted standards	1
Eastenders / Coronation Street / Hollyoaks	Various	10/01/2018	Other	1
Pepsi Max's sponsorship of Channel 4	Various	14/12/2017	Materially misleading	1
Programming	Various	11/01/2018	Violence	1
Carpetright's sponsorship of Outnumbered	W	30/12/2017	Sponsorship credits	1
Addicted to Porn (trailer)	Yesterday	04/12/2017	Sexual material	1

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	26/09/2017	Due impartiality/bias	1
BBC News at Ten	BBC 1	02/06/2017	Due impartiality/bias	1
Gunpowder	BBC 1	21/10/2017	Violence	1
BBC News	BBC Channels	Various	Due impartiality/bias	1
Beyond 100 Days (trailer)	BBC News Channel	Various	Due accuracy	1

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

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

Complaints outside of remit

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

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

Complaints about television or radio programmes

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	5Star	03/01/2018	Advertising content	1
Watchdog	BBC 1	28/06/2017	Outside of remit	1
Davis Cup Tennis	BBC Red Button	17/09/2017	Outside of remit	1
Advertisement	Capital Radio	02/01/2018	Generally accepted standards	1
The Green Mile	Channel 4	29/12/2017	Advertising content	1
Advertisement	Channel 5	30/12/2017	Advertising content	1
Celebrity Big Brother	Channel 5	30/12/2017	Outside of remit	1
Celebrity Big Brother	Channel 5	02/01/2018	Outside of remit	1
Advertisement	History Channel +1	12/01/2018	Advertising content	1
Programming	Ideal World	28/12/2017	Advertising content	1
Teleshopping	Ideal World	07/12/2017	Teleshopping	1
Advertisement	ITV	01/01/2018	Advertising content	1
Advertisement	ITV	08/01/2018	Advertising content	1
Advertisement	ITV	09/01/2018	Advertising content	1
Good Morning Britain	ITV	25/12/2017	Outside of remit	1
Harry Potter	ITV	30/12/2017	Outside of remit	1
Harry Potter and the Deathly Hallows: Part 2	ITV	31/12/2017	Outside of remit	1
Advertisement	ITV2	09/01/2018	Advertising content	1
Advertisements	n/a	25/12/2017	Advertising content	1
Advertisement	National Geographic	05/01/2018	Advertising content	1
Live Jewellery Auctions	Rocks and Co	03/01/2018	Advertising content	1
Advertisement	Sky1	31/12/2017	Advertising content	1
Advertisement	Sky1	09/01/2018	Advertising content	1

BBC First

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

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

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

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC Teletext	BBC	Various	Due impartiality/bias	1
Bargain Hunt	BBC 1	20/12/2017	Outside of remit	1
BBC Breakfast	BBC 1	29/12/2017	Promotion of products/services	1
BBC News	BBC 1	09/01/2018	Due impartiality/bias	2
Countryfile	BBC 1	07/01/2018	Animal welfare	1
EastEnders	BBC 1	18/12/2017	Race discrimination/offence	1
EastEnders	BBC 1	28/12/2017	Disability discrimination/offence	1
EastEnders	BBC 1	28/12/2017	Violence	1
EastEnders	BBC 1	29/12/2017	Materially misleading	4
EastEnders	BBC 1	03/01/2018	Generally accepted standards	2
EastEnders	BBC 1	08/01/2018	Generally accepted standards	1
Match of The Day	BBC 1	05/01/2018	Generally accepted standards	2
Match of the Day 2	BBC 1	10/12/2017	Due impartiality/bias	1
Match of the Day 2	BBC 1	05/01/2018	Generally accepted standards	1
McMafia	BBC 1	07/01/2018	Violence	1
Monsters vs Aliens	BBC 1	29/12/2017	Offensive language	1
Question Time	BBC 1	14/12/2017	Due impartiality/bias	1
The One Show	BBC 1	11/01/2018	Generally accepted standards	1
Strictly Come Dancing: The Final	BBC 1 / BBC iPlayer	16/12/2017	Voting	1
BBC Points West	BBC 1 West	04/01/2018	Crime and disorder	1
Fighting for Air	BBC 2	10/01/2018	Materially misleading	1
House of Saud	BBC 2	09/01/2018	Materially misleading	1
EastEnders	BBC iPlayer	29/12/2017	Materially misleading	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
EastEnders	BBC iPlayer	05/01/2018	Generally accepted standards	1
EastEnders	BBC iPlayer	06/01/2018	Generally accepted standards	1
BBC News	BBC News Channel	08/01/2018	Generally accepted standards	1
Alexei Sayle's Imaginary Sandwich Bar	BBC Radio 4	Various	Generally accepted standards	1
Jeremy Hardy Feels It	BBC Radio 4	03/01/2018	Offensive language	1
Today	BBC Radio 4	04/01/2018	Due impartiality/bias	1
Today	BBC Radio 4	10/01/2018	Gender discrimination/offence	1
Today	BBC Radio 4	01/08/2017	Due impartiality/bias	1
5 Live Breakfast	BBC Radio 5 Live	03/01/2018	Due impartiality/bias	2
Programming	Various	01/01/2018	Due impartiality/bias	1
Programming	Various	Various	Other	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 1 and 14 January 2018.

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

Programme	Service	Transmission date
Coronation Street	ITV	27 October 2017
The Healing School	Loveworld Television Network	10 November 2017
Drivetime	Raaj FM	18 December 2017
Sky News	Sky News	14 November 2017
Frances and Friends	Sonlife	11 November 2017
Fast Freddie, the Widow and Me	STV2	30 December 2017

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

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

Programme	Service	Transmission date
BBC Points West	BBC 1	6 March 2017
Can't Pay? We'll Take it Away!	Channel 5	3 May 2017

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

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