

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Introduction

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

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

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

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

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

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

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

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

## Broadcast Standards cases

### Complaint Assessment

#### BBC Breakfast

***BBC 1, 17 July 2019, 07:11***

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#### Summary

Ofcom received 18 complaints about the above programme. The majority of complainants objected to the fact that the BBC Executive Complaints Unit (“ECU”) had, at that time, partially upheld a complaint about the programme under the BBC’s Editorial Guidelines<sup>1</sup> on the grounds that it breached the BBC’s impartiality requirements. Following public criticism, the BBC’s Director-General overturned the ECU’s finding on 30 September 2019. Two complainants objected to this.

Ofcom has assessed the programme under the due impartiality rules in the Broadcasting Code. Our assessment is that, overall, the programme was duly impartial. After carefully considering all the contextual factors, such as the format of the programme, the nature of the exchange and the specific remarks, we did not consider that Naga Munchetty and Dan Walker’s discussion would have breached the due impartiality rules in the Broadcasting Code. Therefore, we do not consider that the programme raised issues warranting investigation by Ofcom.

Given the significant public concern about this case, Ofcom has decided that it is in the public interest to publish its reasons for its assessment, to provide guidance to the BBC and other broadcasters. Also, in the interests of transparency, we have published [our exchange of correspondence with the BBC](#) about our decision to carry out this assessment.

Neither the BBC ECU’s full reasoning or the Director-General’s reasoning for overturning the ECU’s finding have been published by the BBC. We will be addressing the BBC’s lack of transparency as a matter of urgency.

#### Introduction

##### The broadcast content

On 17 July 2019, that day’s edition of *BBC Breakfast* was co-presented by Dan Walker (“DW”) and Naga Munchetty (“NM”). At 07:11, they began discussing comments made by the US President Donald Trump relating to four female Democratic Party Congresswomen<sup>2</sup>, as follows:

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<sup>1</sup> The BBC’s Editorial Guidelines must incorporate the specific obligations of the Ofcom Broadcasting Code. The Guidelines also cover the BBC’s journalistic best practice and other requirements for its staff, programmes and non-broadcast activities. In this instance, the BBC’s Editorial Guidelines and the Ofcom Broadcasting Code require essentially the same standards for news presenters.

<sup>2</sup> Alexandria Ocasio Cortez, Ilhan Omar, Ayanna Pressley and Rashida Tlaib. Collectively they have been referred to as “The Squad”.

- DW: *"Overnight, the US House of Representatives have condemned comments made by President Trump to those four Congresswomen as racist".*
- NM: *"The President called for the Democratic Congresswomen, three of whom were born in the United States and all of them are US citizens, to go back home to the countries they originally came from".*
- DW: *"Mr Trump has defended what he said, insisting that he doesn't have a racist bone in his body. And he made more comments about the women".*

The following clip of President Trump talking about the four Congresswomen was then broadcast:

*"They should love our country. They shouldn't hate our country. You look at what they said – I have clips right here – the most vile, horrible statements about our country, about Israel, about others. It's up to them. They can do what they want. They can leave. They can stay. But they should love our country and they should work for the good of our country".*

The clip was followed by Dan Walker conducting an interview, by video-link, with Jan Harper-Hayes of the *"Trump Victory 2020 Campaign"*, who was described as someone who would be *"working alongside [President Trump] as he campaigns to be re-elected in 2020"*:

- DW: *"...most importantly, do you think President Trump is a racist?"*
- JHH: *"No, I don't think he is a racist. And actually he orchestrated this whole thing because if you go back a few days, Nancy Pelosi<sup>3</sup>, the Speaker of the House, gave an interview to Maureen Dowd of the New York Times, and she referred to the four as: 'These people', which she was then accused of being racist. And she really did that because she's tired of them basically representing the Democratic side of the party".*
- DW: *"Can I come in on that? Surely, you can see the difference between referring to these four women as: 'These people', and what the President has said, and if you say that he brought this all around – he inaugurated all this – well, what does that say to you defending that position saying that he would say these things. And you're saying that it's okay because he...orchestrated it...?"*
- JHH: *"No just let me finish on that. See the thing is Nancy wanted them off of centre stage. What he has now done he's united Nancy with 'The Squad'<sup>4</sup> as she has called them. And the country is focusing again on the four, who care about socialism, who hate our country. And that is what he did to make people focus. I don't think that the way he said it and what he said was appropriate at all. At all. It was wrong...and it could be perceived as racist, but I also know that he isn't. I know how he manipulates the press to get things going".*

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<sup>3</sup> A Democratic Party Congresswoman and the Speaker of the House of Representatives.

<sup>4</sup> See footnote 2.

The interview continued with Dan Walker posing further questions to Jan Harper-Hayes about the comments made by President Trump about the four US Congresswomen. This included the following exchanges:

DW: *"What does it say about American politics at the moment, that the President feels that talking in this way – because it's obviously quite calculated and he has repeated these comments as well – which actually put him in a good position to be re-elected next year?"*

JHH: *"It actually has put him in a very good position".*

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DW: *"[Donald Trump] is holding the most important in the United States – and you could argue the world – if he is in that position...why [is] the President using that language?"*

JHH: *"Well, and I'm trying to explain to you that, one, the way he said that, many people including Republicans have come out and said that that was inappropriate. But the strategic part of it is that he has now put The Squad back in the centre of the media. They stand for socialism. They stand for hating the country. And so he is using that language – we're talking about it but its deeper and more strategic because it is influencing the country and getting them to see the difference. And Nancy did not want them to be the centre of attention, and he, by doing this, has made them the centre of attention again".*

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DW: *"...Even though you don't agree with the words that he said, you're saying that it's a political strategy to put him in a better position?"*

JHH: *"Yes. I mean, I have lots of friends who can't stand to listen to him but totally support his policies. And I think he's done a lot of good things for our country. And I am not for socialism".*

\*\*\*

DW: *"...I just find it interesting that the man in the position that he's in, President of the US, you're happy for him to be represented around the world in that way as long as he gets re-elected?"*

JHH: *"To put the word that I'm happy for him to be thought of that way: No. I really think he could probably clean up the way he says things. But, what people do is they focus on his delivery and we never have a chance to talk about the policies and what he has done for the country. I mean it's phenomenal the way things have changed. And so, there is going to be an enormous amount of support for him. He's going to win in 2020".*

Following the interview with Jan Harper-Hayes, Dan Walker turned to Naga Munchetty and they had the following exchange in the studio:

DW: *"It's a funny old world we're living in at the moment, isn't it, 2019?"*



NM: *"Well done for asking good questions".*

[NM then turned to camera and said:]

NM: *"Eighteen minutes past seven is the time".*

[NM turned back to DW and said:]

NM: *"God, people are going to be talking about that, I tell you".*

DW: *"I mean, it's the President. That was the most telling quote for me last night – I can't remember who said it – but she said 'I've been told to "go home" many times, "go back to where I come from" many times in my life, but I've never been told by the man who's sitting in the Oval Office".*

NM: *"And every time I have been told as a woman of colour to go back to where I came from, that was embedded in racism. Now, I'm not accusing anyone of anything here, but there is, you know what certain phrases mean".*

DW: *"Are you still told that? Do you hear that quite regularly?"*

NM: *"Yeah. Not regularly, but, you know, I've been told it".*

DW: *"I know you're sitting here not giving an opinion, but how do you feel then, as somebody who's been told that before, when you hear that from him?"*

NM: *"Furious. Absolutely furious, and I can imagine that lots of people in this country will be feeling absolutely furious that a man in that position feels it's okay to skirt the lines with using language like that".*

DW: *"Does that then, do you feel that his use of that – because that's the point I was trying to make – it then legitimises other people to use that–"*

NM: *"Yes, yes".*

DW: *"–and as our guest was saying there, it feels like a thought-out strategy to strengthen his position".*

NM: *"It's not enough to do it just to get attention. He's in a responsible position. Anyway, look, I'm not here to give my opinion. The lady gave her opinion, and it was a good interview. So I hoped you enjoyed that".*

The discussion then proceeded to the next item.

### The BBC's investigation

A viewer complained to the BBC that the programme included, as summarised by the BBC ECU, "the expression of personal opinions which were inconsistent with the BBC's commitment to impartiality".

The BBC investigated the complaint under its Editorial Guidelines, which must incorporate the specific obligations of the Ofcom Broadcasting Code. The Guidelines also cover the BBC's journalistic best practice and other requirements for its staff, programmes and non-

broadcast activities. In this instance, the BBC's Editorial Guidelines and the Ofcom Broadcasting Code require essentially the same standards for news presenters.

On 26 September 2019, following the completion of the BBC complaints process, the BBC ECU published a [summary of its finding](#) to partially uphold the complaint that the programme had breached the BBC's Editorial Guidelines on impartiality. The BBC ECU does not publish the full reasoning for its decisions. The published summary said Naga Munchetty had commented "...critically on the possible motive for, and potential consequences of, the President's words. Judgements of that kind are for the audience to make, and the exchange fell short of due impartiality in that respect".

The BBC informed us that the full reasoning of the ECU finding was contained in a letter of an earlier date that had been sent to the complainant. The BBC has not published the full ECU reasoning or provided this letter to Ofcom.

Following a significant amount of public criticism of the ECU summary finding, on 27 September 2019, the BBC Executive sent an email to all BBC staff which stated, among other things, that the BBC is not impartial on racism and that it supported Naga Munchetty in speaking about her own experiences. It said that the "very limited finding was not about Naga's comments on racism".

On 30 September 2019, the BBC Director-General, Lord Hall, sent an email to all BBC staff, stating that he had reviewed the ECU's finding, all the materials and the complaint itself. He said that "racism is racism and the BBC is not impartial on the topic". He said he had decided that he did not "think Naga's words were sufficient to merit a partial uphold of the complaint around the comments she made". The BBC has not published any further reasoning for the Director-General's decision.

### The complaints

Ofcom received 18 complaints about the above programme. The majority of complainants objected to the fact that the BBC ECU had partially upheld a complaint about the programme under the BBC's Editorial Guidelines on the grounds that it breached the BBC's impartiality requirements. Ofcom received a further two complaints about the BBC's Director-General's decision to overturn the ECU's finding.

### Ofcom's due impartiality rules

Reflecting our duties under the Communications Act 2003, Section Five of the Ofcom Broadcasting Code ("the Code") requires that news in television and radio services is presented with due impartiality. It also requires that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

Section Five of the Code makes clear that "due" is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side or another. "Due" means adequate or appropriate to the subject and nature of the programme.

Rule 5.1 of the Code states that "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

Rule 5.9 of the Code states that "Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of 'personal view' or 'authored'

programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole....”.

Ofcom has published [Guidance Notes](#) to assist broadcasters in complying with Section Five of the Code. The Guidance Notes make clear that:

- the concept of due impartiality is central to the application of Section Five and in reaching a decision on whether due impartiality needs to be preserved in a particular case, broadcasters should have regard to the likely audience expectations of the content, and all other relevant contextual factors<sup>5</sup>; and
- it is an editorial matter for the broadcaster how due impartiality is preserved, as long as the Code is complied with, and there are various editorial techniques which can help to ensure this<sup>6</sup>.

Ofcom's Code and Guidance Notes are drafted, and are given effect to, in accordance with Article 10 of the European Convention on Human Rights. This provides for the broadcaster's and audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The right to freedom of expression is not absolute. Ofcom must exercise its duties in light of the broadcaster's and audience's Article 10 rights and not restrict that right unless it is satisfied that it is necessary and proportionate to do so. This means that each and every time Ofcom applies the Code to broadcast content, Ofcom gives careful consideration to the broadcaster's and the audience's Article 10 rights, as it has done in this case.

## Response

We had an exchange of correspondence with the BBC in which we invited the BBC to provide any further background information that it considered relevant for the purposes of helping us to carry out our assessment of the programme against the Code.

The BBC stated that it did not wish to provide any further information at this time. It also questioned whether it was within Ofcom's remit under the BBC Charter and Agreement to assess this programme.

Ofcom has a duty to act transparently and we are therefore publishing [this exchange of correspondence](#) alongside our assessment.

## Our assessment

Ofcom considered whether, in light of all the relevant contextual factors, the programme raised potentially substantive issues under Section Five of the Code which warranted investigation.

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<sup>5</sup> Ibid, paragraph 1.4. See also paragraph 1.34.

<sup>6</sup> Ibid, paragraph 1.6. See also paragraph 1.37 which makes clear a range of editorial techniques can be used.

This programme was news programming to which Rule 5.1 of the Code applied. This requires that broadcasters ensure that “news, in whatever form, is reported with due accuracy and presented with due impartiality”. These requirements are key components in establishing and maintaining the high levels of trust audiences have in broadcast news content.

We considered that the political debate about President Trump's statements and the language he used about the four US Congresswomen was a matter of political controversy requiring due impartiality to be preserved, and therefore Rule 5.9 was also engaged on this issue.

Importantly, the Code's due impartiality rules take into account the nature of the subject featured in a programme. In this case, Naga Munchetty's own experience of racism was not a matter of political controversy. This aspect of the presenters' exchange did not, therefore, engage Rule 5.9 of the Code.

### Rule 5.1

We assessed the news item as a whole against Rule 5.1, including: the initial introduction by the presenters, Dan Walker and Naga Munchetty; the brief clip of President Trump speaking; Dan Walker's interview with Jan Harper-Hayes, a representative of the “Trump Victory 2020 Campaign”; and the subsequent conversation between Dan Walker and Naga Munchetty.

As set out above, “due” is an important qualification to the concept of impartiality, and means adequate or appropriate to the subject and nature of the programme. Context is important – the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely audience expectations of the content, and the extent to which the content and approach is signalled to the audience.

Due impartiality does not mean that every argument and every facet of every argument has to be represented in a programme. A news item that discusses language widely understood as racist does not require a broadcaster to reflect an alternative viewpoint defending such language. However, if the policies and actions of particular politicians or governments are criticised within programming, depending on the facts, we would expect alternative viewpoints to be reflected and/or context provided, as appropriate.

A key contextual factor was the high expectations audiences have – in particular for BBC content – surrounding the discussion of politically controversial matters in news content. It was an editorial matter for the BBC as to how it preserved due impartiality in this case. As our Guidance<sup>7</sup> makes clear, there are various editorial techniques which a broadcaster can use to help ensure alternative viewpoints are sufficiently represented and due impartiality is preserved.

In this case, we considered that various editorial techniques were used, including the following:

- both presenters introduced the news item by highlighting the public criticism that President Trump had attracted for the critical comments he had made about the four US Congresswomen, and in particular the accusation that he was being racist;

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<sup>7</sup> Ibid, paragraph 1.17 (for news) and paragraph 1.37.

- Dan Walker summarised President Trump's defence of his comments and denial that he was racist;
- a clip of President Trump was shown, which included him giving more detail of his viewpoint on the four Congresswomen; and
- Dan Walker interviewed Jan Harper-Hayes, a supporter of President Trump, during which Dan Walker put forward alternative viewpoints and challenged Jan Harper-Hayes on the views she expressed in support of President Trump.

Having taken into account the broadcaster's and audience's rights to freedom of expression, and all relevant contextual factors and editorial techniques as set out above, Ofcom considered that, consistent with Rule 5.1, alternative viewpoints on the political debate surrounding President Trump's statements, and the specific language he used, were sufficiently represented in this programme.

### Rule 5.9

We also assessed the exchange between Dan Walker and Naga Munchetty against Rule 5.9. To help preserve due impartiality, news presenters and reporters may not express their own views on matters of political controversy. However, there is a long tradition of broadcast news presenters and reporters providing analysis to challenge and probe views being expressed. This is a legitimate editorial technique, with which audiences are familiar, that may be used to preserve due impartiality.

We took into account that *BBC Breakfast* is a magazine-style news programme which, in contrast to traditional news bulletins, has over many years featured informal exchanges between the presenters on news items. This style of analysis can be engaging for viewers and can enhance public understanding of the news. Audiences are familiar with this format and, in our view, it would have shaped their expectations of the presenters and programme in this case.

This programme style was reflected in the exchange between Dan Walker and Naga Munchetty, following the interview with Jan Harper-Hayes, which differed materially in tone and context to the rest of the news item. Naga Munchetty began by drawing on her own experience of racist comments. Importantly, what she said about her own experience of racism was not a matter of political controversy. This aspect of the presenters' exchange, therefore, did not engage Rule 5.9 of the Code in this case.

Naga Munchetty said:

*"And every time I have been told as a woman of colour to go back to where I came from, that was embedded in racism. Now, I'm not accusing anyone of anything here, but there is, you know what certain phrases mean".*

During the exchange between the presenters, Dan Walker posed several questions directly to Naga Munchetty about her experiences of being on the receiving end of racist language and her perception of Mr Trump's use of controversial language about the four US Congresswomen, in line with the established *BBC Breakfast* style featuring informal discussion and conversation between presenters.

DW: *"Are you still told that? Do you hear that quite regularly?"*

- NM: *"Yeah. Not regularly, but, you know, I've been told it".*
- DW: *"I know you're sitting here not giving an opinion, but how do you feel then, as somebody who's been told that before, when you hear that from him?"*
- NM: *"Furious. Absolutely furious, and I can imagine that lots of people in this country will be feeling absolutely furious that a man in that position feels it's okay to skirt the lines with using language like that".*
- DW: *"Does that then, do you feel that his use of that – because that's the point I was trying to make – it then legitimises other people to use that–"*
- NM: *"Yes, yes".*

We also took into account that during what was a brief exchange, Naga Munchetty made it clear that she was discussing the use of racist language in general:

*"...Now, I'm not accusing anyone of anything here, but there is, you know what certain phrases mean".*

The presenters went on to analyse the point made by the preceding interviewee, Jan Harper-Hayes, that President Trump's use of language was a deliberate strategy to make the four Congresswomen *"the centre of attention again"*:

- DW: *"–and as our guest was saying there, it feels like a thought-out strategy to strengthen his position".*
- NM: *"It's not enough to do it just to get attention. He's in a responsible position. Anyway, look, I'm not here to give my opinion. The lady gave her opinion, and it was a good interview. So I hoped you enjoyed that".*

Further, Naga Munchetty sought to limit her comments and brought the exchange to a close:

- NM: *"...Anyway, look, I'm not here to give my opinion..."*

Taking into account all the contextual factors including the format of this news magazine programme, its long-established style of informal discussion between presenters, that Dan Walker asked Naga Munchetty direct questions about her own experience, and the specific nature of her remarks, we considered that the brief exchange between the two presenters did not raise issues under Rule 5.9.

Due impartiality is a fundamental part of broadcast news programming, and we acknowledge that audiences have particular expectations of BBC news content. Rule 5.9 continues to play an important role in ensuring due impartiality and maintaining audience trust in broadcast news. Ofcom always considers each case on its facts and it is important to note that this assessment is based on the specific facts and the particular context of this programme. In accordance with the right to freedom of expression, each broadcaster has the freedom to decide on the editorial style and techniques it wishes to use to preserve due impartiality, provided that in doing so it complies with the Code. Therefore it is for broadcasters to determine how they wish to comply with Section Five of the Code and to ensure they provide clear guidance on this to their editorial staff and presenters. It is also a matter for broadcasters if they wish to go further than the Code in their own guidelines, for example covering non-broadcast activities.

Taking account of the specific facts of this case, our assessment is that the programme would not breach the Code's due impartiality rules and therefore did not raise issues warranting investigation.

### **Not Pursued**

#### **Ofcom's next steps**

Ofcom considers that some of the public concern about this case has been due to the lack of transparency around the BBC complaints process and the reasons for the decisions that it reaches. The BBC ECU has not published the full reasoning for its partially upheld finding. Neither has the BBC published any further reasoning for the Director-General's decision to overturn that finding.

We consider that this case highlights the need for the BBC to provide more transparency on the reasons for its findings on compliance with its requirements that reflect the Code. Transparency is important for public confidence in the operation and effectiveness of the BBC's complaints process. We will be addressing the BBC's lack of transparency as a matter of urgency.

## In Breach

### The Rightly Guided Khalifas *Islam Channel, 11 November 2018, 23:00*

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#### Introduction

Islam Channel is an Islamic-focused, English language satellite television channel broadcast in over 136 countries worldwide, including the UK. Its output includes religious instruction programmes, current affairs, documentaries and entertainment programmes, all from an Islamic perspective. The licence for Islam Channel is held by Islam Channel Ltd ("Islam Channel" or "the Licensee").

*The Rightly Guided Khalifas*<sup>1</sup> is a religious education series on the history of the Qur'an, detailing its origins, its written compilation and the measures used to preserve its original wording.

During routine monitoring, Ofcom identified potentially antisemitic content during the programme. The programme was narrated in Arabic with English subtitles. There was also an on-screen graphic ("the graphic") written in Arabic. We provided English translations of the narration and on-screen graphic to the Licensee and gave it an opportunity to comment on their accuracy. Islam Channel did not raise any issues with the translations, and we therefore relied on them for the purposes of our investigation.

At the beginning of this episode a narrator set out that Caliph Uthman<sup>2</sup> supported the Prophet Muhammad while he received the Qur'an in the form of oral revelation from the Angel Gabriel and that Caliph Uthman was one of the first scribes to transcribe the Qur'an. The episode later set out that Caliph Uthman, in order to reconcile differences among varying Arabic dialects in the oral recitation of the Qur'an, commissioned the production of written copies of the Qur'an which were to be "*sent over to the outlying provinces and serve as original copies for the recitation and writing of Allah's revelations*". Quoting Caliph Abū Bakr<sup>3</sup>, the narrator said that Caliph Uthman's intention was "*to abolish other uncanonical recitations*" and to "*provide them with a one and only copy of the Qur'an that remained undisputed, one that is true to the original revelation and standardised in terms of recitation... [and one] that documents how to properly recite it and memorise it*". The narrator then spoke about other key figures and how they continued Caliph Uthman's work. He went on to explain the calligraphy and orthographic rules used to write down the Qur'an. Then the narration in Arabic said:

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<sup>1</sup> After the Prophet Muhammed's death in 632 A.D., the first four Muslim leaders were known as the Khulafa Rashidun, or "Rightly Guided" caliphs. See [Rightly Guided Caliphs](#), Oxford Islamic Studies Online.

<sup>2</sup> Uthman ibn Affan was the third Caliph from 644–656 A.D. Under his leadership, the text of the Qur'an was collated, "with variant collections being destroyed". See [Uthman ibn Affan](#), Oxford Islamic Studies Online.

<sup>3</sup> Abū Bakr was the first of the four successors to the Prophet Muhammad known as the Rightly Guided Caliphs or Kulafa. See [Abū Bakr, Muslim Caliph](#), Encyclopaedia Britannica.



*“Previously Israel had printed hundreds of thousands of distorted copies of the Qur’an in 1961. It distributed those copies in African and Asian countries with changed sentences, some letters deleted, and verses removed. Sheikh of Al Azhar<sup>4</sup> wrote/sent a telegraph in the middle of the last century in which he said ‘Israel, which was formed on the basis of tyranny and aggression directed towards [‘natives’] property/wealth and holy sites, and which continues to live in this tyrannical frame of mind. In its distortion of the Holy Qur’an, it seeks the destruction of our belief and religion. In this way, it continues to practice what their forefathers had done before, in terms of distortion of the meaning of the words/text’.<sup>5</sup> At that time [1961], an Islamic summit was held to reveal this crime of distortion [of Quranic text]. The response [by the summit] was the distribution of recordings of recitation of the Qur’an to the same countries Israel had distributed the distorted versions of the Qur’an earlier. And thus, Israel had failed [to distort the Qur’an] because Allah will always protect His Qur’an, will always complete his enlightenment [of humanity] and will always do so in spite of those who believe not”.*

The graphic was shown at the same time as this narration. It appeared to be an on-screen graphic of a letter written in Arabic. Translated into English, it read:

*“Israel, that was established on tyranny and oppression with its beliefs and sacred aspects, continues to practice its troublemaking and continues with its poisonous acts with its attempt to change the meaning of the Qur’an. It wants the obliteration of our beliefs and religion and in this way, it continues to practice what their forefathers had engaged in the past, particularly in their practice of changing the words in the past.<sup>6</sup> Signed: Shaykh Al Azhar<sup>7</sup>”.*

There was no further evidence presented that the graphic represented an authentic letter written by the Shaykh of Al Azhar.

The English subtitles of this section of the programme differed from the narration and read:

*“Keeping in mind that the Jews once tried to distort The Book (Al Quran) of Allah (Glory be to Him) when they printed hundreds of thousands of corrupted copies back in the year 1961. They distributed the corrupted copies in the African and Asian countries after they deleting certain letters and verses. Sheikh AlAzhar in Egypt wrote a letter in the previous century in which He said ‘the occupying state of Israel (the jews) which was formed on the basis of tyranny, oppression and assaulting the lands of wealth of others’ ‘is still living*

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<sup>4</sup> From 1956 till 1963, the Shaykh of Al-Azhar was Alsheikh Mahmoud Shaltout. See [Philosophers of the Arabs](#). Oxford University Press states that “Al-Azhar University in Cairo is the foremost Sunni Islamic educational institution” and that “in 1961, the state of Egypt turned al-Azhar into a state-owned university” See: [Al-Azhar University](#), Changing Structures of Islamic Authority, University of Oxford.

<sup>5</sup> A reference to the Islamic belief that previous holy books such as the Torah and Bible had, over time, been distorted and their original meaning lost. See also the [Oxford University Press definition of ‘tahrif’](#). In more recent times some have used the term tahrif and applied it to allegations of distortion of Qur’anic text rather than the orthodox Islamic meaning of distortion of previous scriptures such as the Torah and Bible.

<sup>6</sup> See footnote 5.

<sup>7</sup> See footnote 4.

*in this world with the same evil mind' 'and in their futile attempt to corrupt AlQuran they tried to destroy our beliefs and Religion', 'by doing so the new jews tried to do the same thing their ancestors did when they displaced words from (their) right places'. At that time an Islamic summit was held in order to uncover the crime. The jewish attempt was encountered with distributing recordings of recited Quran in the countries which the news<sup>8</sup> tried to spread the corrupted copies and by so the jewish attempt failed for Allah will protect the AlQuran and He will bring His light to perfection even though the disbelievers hate (it)".*

The narration then continued to discuss the copies of the Qur'an attributed to Caliph Uthman that remain today.

We considered both the spoken content in Arabic about events in 1961 and the English subtitles of that narration raised issues under the following Code rules:

- Rule 3.2: "Material which contains hate speech must not be included in television...programmes...except where it is justified by the context".
- Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television...services...except where it is justified by the context...".
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race, religion or belief...)".

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

## **Response**

In its initial response, Islam Channel made various points of mitigation against finding the programme in breach of the Code. We considered these points in forming our Preliminary View, which was that all three rules were breached.

In its second response, made following receipt of our Preliminary View, the Licensee accepted that breaches of Rules 3.2, 3.3 and 2.3 had occurred, but argued that it would be disproportionate to consider the matter for statutory sanction.

## **The Licensee's initial response**

### Rule 3.2

Islam Channel referred to the Code's definition of hate speech as "all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of...ethnicity... nationality... race [or] religion". It said that the content in question did "not contain either a direct or indirect call for action and [was] not therefore going to encourage

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<sup>8</sup> Ofcom considered that viewers would have regarded the word "news", as used in the subtitles, as a typing mistake and understood that the subtitles were meant to read "the [Jews] tried to spread the corrupted copies".

or incite the commission of any crime". It added that "viewers [were] not encouraged to spread, incite or promote hatred" and that the programme did not "seek to justify hatred".

The Licensee also said that the content in question "account[ed] for a small part (less than 0.5%) of the whole series". It added that the series "neither promote[d] nor justify[d] hatred or violence which would ultimately be upsetting to [viewers]".

### Rules 3.3 and 2.3

Islam Channel referred to the context of the programme. It said that overall it was about "the purity of what to Muslims is deemed the book of divine guidance revealed from God to Muhammad as God's final revelation to humanity". Therefore it said "attempts to move away from the purity of the Qur'an would be deemed [a] legitimate topic and contextually justified". It added that the content in question did not "revile, attack or vehemently express condemnation without justification or context".

### Approach to compliance

Islam Channel also set out its editorial position and approach to compliance. It said that it is "an ethical broadcaster who takes its responsibilities in protecting its audience seriously". It added that it "takes great pride in its interfaith and community cohesion work", citing work it had done with multi-cultural organisations<sup>9</sup>.

The Licensee also said that it has "a rigorous Ofcom compliance policy" including induction and annual refresher training, and the dissemination of new learning from Ofcom's Broadcast Bulletin "where relevant".

### Production and commission of content

The licensee said that The *Rightly Guided Khalifas* series was produced by an overseas third party rather than in-house. It added that it had discussed the claims made within the episode about the circulation of a tampered version of the Qur'an with the programme's researcher who advised that the claim was based on the book "First collection of a voice recorded version of the Holy Qur'an: motives and plans"<sup>10</sup>. Islam Channel enclosed a photocopy of "the relevant extract" of this book. Ofcom translated it from Egyptian Arabic to English. The extract argued Israel had been involved in distributing "distorted" versions of the Qur'an, particularly citing the alleged incidents set out in this programme.

The Licensee said that "the episode in question refers to several thousand copies of the Qur'an which included several mistakes, which in some cases altered the meaning of the overall text". It said that at the time "the Egyptian Ministry of Religious Endowments and the

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<sup>9</sup> The Licensee said these included participating in the Forum for Promoting Peace in Muslim Societies in Abu Dhabi with representatives from Jewish, Muslim and Christian organisations also attending.

<sup>10</sup> The Licensee said the book is also known as "The recited Qur'an" and is by Mr Labib As-Said and published by Dar al-Kitab al-Arabi, Cairo, 1975.

Egyptian Embassy in Morocco placed blame of the tampered version of the Qur'an with Israel" and this was reported in newspapers in December 1960 and January 1961<sup>11</sup>. The Licensee said that, as "the purity of the Qur'an was the theme of the programme" it was legitimate to discuss "any attempts to step away from the purity".

However, the Licensee also said that it did not endorse what was said and did not subscribe to the theory that Israel disseminated corrupted copies of the Qur'an.

### Subtitles

Islam Channel also addressed the matter of the English subtitles treating narration about Israel as comments about "the jews", "the new jews" and "The jewish". It said that this was explained by the fact that the subtitles were produced by an overseas producer and that "in the context of the Middle East conflict, Israel, Israelis and Jews, much like Arabs, Palestinians and Muslims are all used interchangeably". However, it added that it did "not endorse this conflation".

### Reasons for broadcast and remedial action

Islam Channel said that because it did not endorse the theory set out in this particular episode and recognised it "may be open to potential misinterpretation", it had removed it from its schedules when it first reviewed the programme. However, it said that when the series was later repeated, the episode was included due to an error on the part of a junior level scheduler.

It added that following Ofcom's contact it had removed the entire series from its playlist. It also extended its "sincere apologies for any offence that may have been caused" and said that it had since "introduced new measures to avoid [a recurrence]". These, it said, would "see all repeats being subject to the approval of compliance".

### **The Licensee's second response**

In its second response, following receipt of our Preliminary View, the Licensee accepted the reasons given by Ofcom that the programme breached Rules 3.2, 3.3 and 2.3 of the Code. It said that the content did not incite or encourage any crime, but acknowledged that it did meet the Code's definition of hate speech. It also acknowledged that its broadcast was not justified by the context.

The Licensee emphasised that said the broadcast of this content was not deliberate, and resulted from an error by a junior member of staff in failing to review content, rather than a judgement by the channel about the nature of the content. It added that the offending episode had been "spotted as problematic" on a prior occasion and removed from the

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<sup>11</sup> Specifically, the Licensee referred to publication in Al Ahram Newspaper on 28 December 1960, Al Akhbar Newspaper on 30 December 1960 and Akhir Sa'a Newspaper on 11 January 1961. All three publications are widely recognised to be Egyptian, state-owned newspaper outlets. Al-Ahram (The Pyramids) is an Egyptian, "state-owned daily, the oldest newspaper in the Arab world". See [Country Policy and Information Note Egypt](#), page 40, the Home Office, July 2017. Al Akhbar (The News), like Al Ahram, was controlled by the Nasser government. See [The Political Role of the Media in Egypt: A Country Study](#), Washington: GPO for the Library of Congress, 1990.

broadcast schedule. It argued therefore that there was no systemic problem in its compliance arrangements.

The Licensee said that in addition to its apologies in its initial response to Ofcom, it had since decided to transmit a statement twice to offer an apology to viewers and stress that Islam Channel “unreservedly condemns all types of hate speech”. It added that the first statement would be broadcast at peak time on 29 August 2019 at 18:00, and the second on the same day and time that the “offending episode” was broadcast (1 September 2019 at 23.00).

Ofcom has watched both apologies, which were broadcast in English and with English subtitles as follows:

*“On the 11th of November 2018 at 11pm, Islam Channel transmitted an episode in a series called The Rightly Guided Khalifas. The series is not produced in-house by Islam Channel but by a third party based outside Britain.*

*Part of the programme included allegations that in 1961 Israel printed many copies of the Quran with deliberate distortions and distributed them to countries in Africa and Asia. The programme did not mention that these allegations are disputed. Other comments in the programme suggested Jewish people and the state of Israel had done this to try to destroy the ‘beliefs and religion’ of Muslims and wanted the ‘obliteration’ of those beliefs and religion. In various comments in English and Arabic the programme mixed up Israel as a state and Jewish people.*

*Islam Channel wanted to make clear to viewers that this programme was transmitted by mistake. It contained various comments, which can be regarded as ‘hate speech’. The channel condemns unreservedly all hate speech. Hate speech has no place on our service. Islam Channel profoundly regrets that this programme was broadcast and apologises sincerely to all viewers”.*

The Licensee added that it is determined to learn from the Code breaches, and will use them to “further educate its staff and viewers about the serious dangers of, and harms caused by all types of hate speech”.

### Statutory Sanction

Islam Channel accepted that its breaches of the Code were serious, but argued that it would be disproportionate to impose a statutory sanction in light of the broadcast apology, and the Licensee’s review of compliance arrangements. That review had led to new compliance training in relation to hate speech (making use of a specialist), and a process in which any programme previously marked as non-compliant is to be automatically referred to its compliance department prior to any later consideration of including it in the broadcast schedule.

Islam Channel also argued it has an “excellent” compliance record with no breach of the Code since August 2014, which showed its “willingness and ability to learn from some previous weaknesses in its compliance” and its “commitment to comply at all times with the Code”.

The Licensee asked Ofcom to consider whether in the circumstances of the current case, rather than refer these breaches for sanction, it would be more proportionate for Ofcom to

take other regulatory action such as a direction to broadcast a statement of findings, a formal warning, or a meeting with the Licensee to discuss compliance procedures.

## Decision

Reflecting our duties under the Communications Act 2003 (section 319), Section Three of the Code requires that material which contains hate speech must not be included in television programmes except where it is justified by the context. Section Two of the Code requires that generally accepted standards are applied to the content of television services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Ofcom must have regard to the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights ("ECHR"). We must also have regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". Ofcom has taken account of these rights when considering the Licensee's compliance with the Code.

In the exercise of its functions, Ofcom must also have due regard<sup>12</sup> to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as religion or belief, and those who do not.

Under the Code, broadcasters can transmit programmes taking a critical view of a particular religion or broadcast opinions that some viewers may find offensive. The Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising people of differing views or beliefs. To do so would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information. However, when broadcasting material of this nature, broadcasters must comply with the Code.

In this case, Ofcom's role is not to judge the veracity of the allegation that Israel was involved in the distribution of inaccurate copies of the Qur'an nearly 60 years ago, but to ensure that the audience is protected adequately from potentially offensive and harmful material, and material which contains hate speech or abusive or derogatory treatment of individuals, groups, religions or communities except where justified by the context.

We have taken into account that the allegation is highly controversial and disputed, and appears to have first been disseminated via government-controlled<sup>13</sup> media in Egypt in the early 1960s, relatively soon after the second Arab-Israeli War in 1956 and subsequent occupation of Sinai in 1957. The Licensee itself stated that it does not subscribe to the "theory". The programme as broadcast, however, clearly presented the matter as historical fact.

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<sup>12</sup> Under section 149 of the Equality Act 2010.

<sup>13</sup> According to the Licensee's representations, the allegation first appeared in Al Ahram Newspaper [on] 28 December 1960 and Al Akhbar Newspaper [on] 30 December 1960. For information about these publications, see footnote 10.

## Rule 3.2

Rule 3.2 of the Code states:

“Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context”.

We first considered whether the content in this programme constituted “hate speech”. The Code defines hate speech as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of...ethnicity...nationality, race, [or] religion...”.

### IHRA working definition of antisemitism

As part of our consideration, we had regard to the International Holocaust Remembrance Alliance's (“IHRA”) working definition of antisemitism which states:

“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities”<sup>14</sup>.

The accompanying guidance to this definition (“the guidance”) includes the following as contemporary examples (amongst others) of what could constitute antisemitism in public life and the media, taking into account the overall context:

- “Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews”.
- “Holding Jews collectively responsible for actions of the state of Israel”.
- “Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions”.

### Whether the broadcast material constituted hate speech

Our Decision is that several elements of this programme, individually and in combination, met the IHRA definition of antisemitism. In particular:

- The subtitles stated that *“the Jews ... tried to distort [the Qur’an] when they printed hundreds of thousands of corrupted copies [in] 1961 ... ‘and in their futile attempt to corrupt AlQuran they [modern-day Jewish people] tried to destroy our beliefs and religion’, ‘by doing so the new jews tried to do the same thing their ancestors [Jewish people in ancient times] did when they displaced words from (their) right places’ [of the Jewish Bible (Torah)]”*.

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<sup>14</sup> In December 2016, the UK Government agreed to adopt [the International Holocaust Remembrance Alliance's working definition of anti-Semitism](#).

- The narration said *“In its corruption/distortion of the Holy Qur’an, it [modern-day Israel] seeks the destruction of our belief and religion. In this way, it continues to practice what their forefathers [Jewish people in ancient times] had done before, in terms of distortion of the meaning of the words/text [of the Jewish Bible (Torah)]”*.
- The on-screen graphic said *“Israel...continues with its poisonous acts with its attempt to change the meaning of the Qur’an. It [modern-day Israel] wants the obliteration of our beliefs and religion and in this way, it continues to practice what their forefathers [Jewish people in ancient times] had engaged in the past, particularly in their practice of changing the words [of the Jewish Bible (Torah)] in the past. Signed: Shaykh Al Azhar”*.
- In this programme there was conflation between Israel as a state, and the Jewish people, both in the Arabic and English language material broadcast. For example, as set out above, the Arabic language material said that Israel, *“continues to practice what their forefathers had engaged in the past”*, while the English language content stated, *“the occupying state of Israel (the jews) ... was formed on the basis of tyranny”*. Additionally, Arabic content referring to Israel was translated into English subtitles to refer to *“the jews”*.

We considered that these elements, individually and in combination, conflated Israel and the Jewish people (for both Arabic and English language viewers) and held contemporary Jewish people collectively responsible for allegations based on the concept of ‘tahrif’<sup>15</sup> dating back to around the time of the foundation of the Islamic faith and to the early 1960s (based on a singular interpretation of tahrif<sup>16</sup>).

In our view, the programme ascribed a perpetually negative characteristic to Jewish people; namely corrupting Holy Books and seeking the destruction of Islam in both ancient and more recent times. In addition, through the conflation of Israel and Jewish people the content characterised Jewish people as *“tyrannical”* and having an *“evil mind”* at least from the formation of the state of Israel in 1948 to the date of the Shaykh of Al Azhar’s letter (i.e. post December 1960).

Given all these factors, our Decision is that the content met Ofcom’s definition of hate speech. We considered these statements were expressions of hatred based on intolerance of Jewish people. In our view, their broadcast had the potential to promote, encourage and incite such intolerance among viewers.

#### Whether justified by context

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<sup>15</sup> See footnote 5 for an explanation of tahrif. According to tradition, the Prophet Muhammad received his first divine revelation in 610 (see [Oxford Islamic Studies Online](#)). The verses in the Qur’an from which the concept of tahrif is derived (see footnote 5) do not refer to a time period. Commentary on the concept of tahrif appeared as early as within 50 years of the death of the Prophet Muhammad in 632 AD. See [Islam teaches the Torah is corrupted / tahrif, but what does that mean?](#).

<sup>16</sup> Some interpretations of tahrif teach that ancient Israel misinterpreted the Torah. Others teach that ancient Israel changed the text of the Torah, with some teaching that the changes were too extensive as to render the Torah in its current form a completely unreliable record of divine revelation (“tahrif al-nass”). See for example the online discussions [The Word of God: Has It Been Changed?](#), 15 July 2009; [Islam teaches the Torah is corrupted / tahrif, but what does that mean?](#), 22 September 2012; and the mini-thesis [Ibn Hazm on the Doctrine of Tahrif](#).



We next considered whether there was sufficient context to justify the broadcast of hate speech in this case.

Our published Guidance to Rule 3.2 makes clear that there are certain genres of programming where there may be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. However, the greater the risk the material may cause harm or offence, the greater the need for contextual justification. In this case, we considered that the risk of the material broadcast causing harm or offence was particularly high, given the marked increase in antisemitic hate crimes recorded in the UK in recent years<sup>17</sup>.

In assessing whether there was a contextual justification, Ofcom must take proper account of the broadcaster's and the audience's right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion.

The Code states that contextual factors relevant to Rules 3.2 and 3.3 of the Code may include, but are not limited to:

- the service on which the programme is broadcast and the likely size and expectations of the audience;
- the genre and editorial content of the programme;
- the extent to which sufficient challenge is provided; and
- the status of anyone featured in the material.

We therefore considered whether these or any other contextual factors were relevant to this case.

We took into account that Islam Channel has an Islamic focus, and that it told Ofcom that *Rightly Guided Khalifas* was a religious instruction programme on the preservation of "the purity of [the Qur'an]" over the centuries. We accepted that this type of service and genre of programme could legitimately include discussion of what the Licensee described as "attempts to move away from [this] purity", subjects such as tahrif and include critical commentary on the religious beliefs of other faith groups and religions. However, in our view, although the audience would have expected to see a programme promoting and exploring Islamic beliefs, it would not have expected it to include hate speech without very careful contextualisation. We considered this to be particularly the case given Islam Channel's stated participation in interfaith and community cohesion work.

The Code does not prohibit discussions about controversial topics, the broadcasting of opinions that some viewers may find offensive or criticism of differing beliefs. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules of the Code to ensure that any such content does not cause unjustifiable harm or offence.

The potential for unjustifiable harm or offence may be greater when a programme offers, unchallenged, a singular interpretation involving other religions or groups. *Rightly Guided*

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<sup>17</sup> See, for example page 77 onwards of "[Antisemitism – Overview of data available in the European Union 2007–2017 published in November 2018](#)" by The European Union Agency for Fundamental Rights. See also "[Antisemitic Incidents Report 2018](#)" by the Jewish charity the Community Security Trust, which shows that the number of antisemitic hate incidents in the UK rose by 16% in 2018.

*Khalifas* did not discuss which organisation, if any, distributed “*corrupted copies*” of the Qur’an in 1960. Rather, it presented the theory that the state of Israel (conflated with the Jewish people as discussed above), had distributed a corrupted version of the Qur’an, as fact.

The programme did not set this theory in context. There was no mention that this allegation was contested<sup>18</sup> nor reference to the historical context of enmity between Egypt and Israel in which the allegation arose<sup>19</sup>. In addition, the programme did not explore the sources of the allegation or discuss their reliability or otherwise<sup>20</sup>. Similarly, the programme did not discuss the various interpretations of tahrif. Instead, it referred to a single potentially harmful and highly offensive interpretation of the concept, that ancient Israel or Jewish people of that time had corrupted (as opposed to misinterpreted) the Torah in a similar way to what it described as the “*poisonous act*” of modern Israel or Jewish people attempting to “*change the meaning of the Qur’an*” today.<sup>21</sup>

We considered the status of those featured in the broadcast. The narrator quoted what he said was an open letter written by the Shaykh of Al Azhar university, widely recognised as the highest seat of Islamic learning within Islam, and referred to an Islamic summit to support the allegation being made. Given the religious standing of the Shaykh of Al Azhar, we considered the statements attributed to him could have been interpreted as providing a moral and religious justification for antisemitism. We considered that this was particularly so given the programme was broadcast on a channel with a specialist Islamic focus. In our view, this compounded the potentially harmful and offensive nature of the comments.

Islam Channel said that the content in question was brief in duration (1 minute and 30 seconds) and “account[ed] for a small part (less than 0.5%) of the whole series” and had been broadcast in error. We considered whether the brevity within a longer series sufficiently contextualised the harmful material, but our Decision was that it did not. In the context of a programme praising the efforts of a very important figure in Islamic faith (Caliph Uthman) to preserve the purity of the Qur’an and encouraging the Qur’an to be revered as “*the book of divine guidance revealed from God to Muhammad as God’s final revelation to humanity*”, it is likely viewers would have seen any attempt to corrupt the Qur’an as a serious wrongdoing (the programme used the word “*crime*” to describe it). Therefore, we did not consider that the brevity of the content diminished the impact of this hate speech. We considered that this antisemitic hate speech would have been both harmful and highly offensive to some viewers of the programme and potentially damaging to relationships between Jewish and Muslim communities.

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<sup>18</sup> See for example [the Middle East Record Volume 2, 1961](#), pages 185 and 202. This publication for Tel Aviv University in Israel stated: “the image of Judaism, Zionism and Israel as inherently immoral found its expression also in such often-repeated allegations by UAR [Until 1961, Egypt was united with Syria as the United Arab Republic] and other Arab sources as that Israel was disseminating in Africa copies of a ‘forged Qur’an’ or sending young Israeli girls there to ensnare African leaders”. It regarded the allegation as propaganda, noting that “there were no African or any other non-Arab reports on any such Israel activities” and that “none of the sources available ever reported that a ‘forged’ Qur’an had been produced in evidence”.

<sup>19</sup> See [Arab-Israeli wars](#), Encyclopaedia Britannica.

<sup>20</sup> See footnote 12.

<sup>21</sup> i.e. the programme taught that tahrif was a deliberate act. Other teachings within the Islamic community teach that tahrif happened through unintentional misinterpretation. See footnote 15.

Our Decision is that Rule 3.2 was breached.

### Rule 3.3

Rule 3.3 of the Code states:

“Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context”.

The Code does not prohibit criticism of any religion or communities. However, such criticism must not spill over into abuse. Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in the Human Rights Act 1998 and Article 10 of the European Convention on Human Rights. In the context of Rule 3.3, it does so in particular in relation to the right to freedom of expression which encompasses the broadcaster's and audience's right to receive material, information and ideas without interference, as well as the right to freedom of thought, conscience and religion and the right to enjoyment of human rights without discrimination on grounds such as religion.

We first considered whether this programme contained abusive or derogatory treatment of individuals, groups, religions or communities. As set out under Rule 3.2, our Decision is that the programme included antisemitic hate speech, conflating Israel and Jewish people and portraying them as a homogenous group that had been opposed to Islam in ancient and modern times, using negative and stereotypical terms including “*tyrannical*”, guilty of “*this crime of distortion* [of Quranic text]”, an “*occupying state... formed on the basis of tyranny, oppression*” and “*with [an] evil mind*”. It also associated Jewish people with “*tyranny*”, “*oppression*”, “*troublemaking*” and “*poisonous acts*”. We considered this constitutes abusive and derogatory treatment of Jewish people.

Rule 3.3 states that abusive and derogatory treatment of religions and groups can only be included in television and radio where it is justified by the context. As previously discussed above in relation to Rule 3.2, we considered that the strength of this material would have exceeded viewers' expectations and there was insufficient context to justify the broadcast of antisemitic hate speech. For the same reasons, we consider there was insufficient context in this programme to justify the broadcast of abusive and derogatory treatment.

Our Decision is that Rule 3.3 was breached.

### Rule 2.3

Rule 2.3 of the Code states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race, religion or belief...)”.

This rule requires broadcasters to ensure that potentially offensive material is justified by context. Context includes, for example: the editorial content of the programme, the service

in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

In assessing whether there was a contextual justification, Ofcom must take proper account of the broadcaster's and the audience's right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion. As set out above, the Code does not prohibit discussions about controversial topics, the broadcasting of opinions that some viewers may find offensive or prohibit followers of one religion from being able to express views rejecting or criticising people of differing beliefs. To do so would, in our view, be a disproportionate restriction of the broadcaster's rights to freedom of expression, thought, conscience and religion and the audience's right to receive information. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules of the Code to ensure that any such content does not cause unjustifiable offence.

We first considered whether the material had the potential to cause offence. For the reasons set out above under Rules 3.2 and 3.3, we considered that the content amounted to antisemitic hate speech and was abusive and derogatory towards Jewish people. We took the view therefore that this content would have been offensive to most people who do not share the antisemitic views expressed and highly offensive and distressing to: Jewish people; practitioners of Judaism; and Christian and Muslim people (and others) who esteem the original Abrahamic religion<sup>22</sup>.

In regard to audience expectation, Ofcom considered that the programme's narrow interpretation of tahrif and limited exposition of the factual basis for the allegation that Israel attempted to corrupt the Qur'an in 1960 do not represent the view or understanding of mainstream Muslim people in the UK. Our understanding of this view is given added weight as Ofcom could not find any reference to such an allegation from any mainstream Muslim group in the UK. We considered this was in fact implicit in the Licensee's own representations when it said that it does not support the theory presented in the programme.

Further, we took into account the perspective of those Muslim viewers aware of the historical context of the allegation. We considered that such viewers would have been offended by the programme's attribution of the allegation to the Shaykh of Al Azhar without setting out greater evidence for this, given the Shayk's respected position of authority and the offensive, antisemitic nature of the allegation as presented in the programme.

For the reasons set out above under Rules 3.2 and 3.3, we considered these programmes presented an antisemitic and extremely negative view of Jewish people. In Ofcom's view, the highly offensive comments were broadcast as religious instruction to be accepted by viewers as fact without any challenge or critique, or sufficient historical context.

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<sup>22</sup> All three religions count Abraham as the human founder of their faiths. See the Encyclopaedia Britannica's biography of Abraham: "[Abraham, Hebrew Patriarch](#)". See also the British Library's article in its online gallery "[Sacred Contexts; Elements of the Abrahamic Faiths: Judaism, Christianity, Islam](#)". This states: "Each religion acknowledges the preceding texts and draws from them, with differences of interpretation and emphasis. So Christianity inherits from Judaism, and Islam inherits from both Judaism and Christianity. In this way the Hebrew Bible, the Christian Bible and the Qur'an form one linked textual tradition".

We were satisfied that there was insufficient context to justify the material causing offence in this broadcast and it was our view that it was likely to have exceeded audience expectations.

Our Decision is that Rule 2.3 was breached.

We noted the Licensee's representations on the reasons for the breach, apologies subsequently broadcast, previous compliance record, and steps taken to prevent repetition. We will consider these as part of the sanctions process<sup>23</sup>.

### Conclusion

The broadcast of this potentially very harmful and highly offensive antisemitic content represents serious breaches of the Code.

**We are putting the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.**

**Breaches of Rules 3.2, 3.3 and 2.3**

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<sup>23</sup> See: [Procedures for the consideration of statutory sanctions in breaches of broadcast licences](#).

## In Breach

### Beyond Sport

***Front Runner, 12 July 2019, 14:00***

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#### Introduction

Front Runner is a free-to-air satellite sports channel broadcasting live sports, highlights and documentaries. The licence for this service is held by Information TV Ltd ("Information TV" or "the Licensee").

This documentary programme followed a mixed martial arts gym and included footage of the gym's Head Coach and fights featuring the gym's clients.

Ofcom received a complaint about offensive language in this programme. At approximately 14:20 there were 11 instances of the word "fucking" or "fuck".

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

Rule 1.14: "The most offensive language must not be broadcast before the watershed (in the case of television)...".

Rule 2.3: "...broadcasters must ensure that material which may cause offence is justified by the context...Such material may include...offensive language".

Ofcom requested comments from the Licensee about how the content complied with these rules.

#### Response

The Licensee accepted that the programme was not suitable for pre-watershed transmission and told Ofcom that it was broadcast in error.

The Licensee said that under its established internal processes, content unsuitable for pre-watershed transmission is labelled "post-watershed ONLY". In this instance, this content was not named as per the above convention and was broadcast at 14:00 in error.

As a result of this incident, the Licensee told Ofcom that it had started an audit to check that programmes are correctly named in accordance with its internal processes.

#### Decision

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

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights, when considering a broadcaster's compliance with Section Two of the Code.

#### Rule 1.14

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

[Ofcom's 2016 research on offensive language](#) indicates that the word "fuck", and variations of this word, are considered by audiences to be the strongest language and unacceptable pre-watershed.

The inclusion of 11 uses of the words "fucking" or "fuck" was a clear example of the most offensive language being broadcast before the watershed. Therefore, our Decision is that Rule 1.14 was breached.

#### Rule 2.3

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

In Ofcom's view 11 uses of the most offensive language before the watershed were clearly capable of causing offence. Viewers expect stronger material to appear later in the schedules.

We then considered whether the offence was justified by the context. Front Runner is a channel that broadcasts live sports, highlights and documentaries. However this programme, which followed people involved in mixed martial arts, was pre-recorded. Given the time of the programme's transmission in the early afternoon, we considered that the repeated use of the most offensive language was likely to have been beyond audience expectations.

We considered the Licensee's explanation that the programme was not intended for pre-watershed broadcast, and the steps that it said it had taken as a result of this incident to ensure such compliance errors would not happen again in the future.

However, Ofcom's Decision is that the broadcast of the most offensive language in this programme was not justified by the context, in breach of Rule 2.3.

#### **Breaches of Rules 1.14 and 2.3**

## In Breach

### Studio 66 TV

***Studio 66, 15 April 2019, 10:00***

***Studio 66, 28 April 2019, 18:30***

***Studio 66, 8 May 2019, 11:10***

***Studio 66, 20 May 2019, 10:00***

***Studio 66, 23 May 2019, 10:00***

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### Introduction

Studio 66 TV is interactive 'daytime chat' advertising broadcast on the service Studio 66, which is available as part of a standard satellite subscription package. The content consists of presenters inviting viewers to contact them via premium rate telephony services ("PRS"). Studio 66 is available without mandatory restricted access and is situated in the 'adult' section of Sky's electronic programme guide ('EPG'). The licence for the service is held by 914 TV Limited ("914 TV" or "the Licensee").

Ofcom received five complaints, each about a different broadcast. In each case, the complainant considered that the presenters were not wearing suitable clothing, their bodies were inadequately covered, and in some instances their behaviour was sexualised. Having viewed the material, Ofcom identified the following examples:

#### 15 April 2019, 10:00

- The presenter lay on her side wearing a small black dress, which on several occasions was hitched up at the bottom partially exposing her thigh and buttock; and
- on several occasions, the presenter stroked and thrust her buttocks.

#### 28 April 2019, 18:30

- The presenter wore black lingerie which exposed a significant part of her breasts and buttocks;
- on several occasions, the presenter thrust and gyrated her breasts towards the camera; and
- the presenter turned, shaking her buttocks to the camera and rocked her body; and
- the presenter stroked her thighs, breasts and buttocks.

#### 8 May 2019, 11:10

- The presenter lay on her side and front wearing a short dress which at times was hitched up at the waist exposing a significant part of her buttock.



20 May 2019, 10:00

- The presenter wore a dress which she tucked between her legs, exposing a significant part of buttock and thigh.

23 May 2019, 10:00

- The presenter lay on her front with her knee to the side, wearing a short dress which exposed her buttock and thigh; and
- when in this position, the presenter repeatedly thrust her buttocks into a mat she was lying on, mimicking sexual activity.

Ofcom considered that this material raised potential issues under the following rule of the [UK Code of Broadcast Advertising](#) ("the BCAP Code")<sup>1</sup>.

Rule 32.3: "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them".

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

**Response**

The Licensee said that in light of Ofcom's previous decisions and published guidance in this area, it accepted that the material identified may be considered to be non-compliant and therefore apologised.

914 TV acknowledged that the combination of the presenters' movements and outfits could be considered too provocative for the times of broadcast and, as such, the material failed to meet its own internal standards and guidelines for daytime broadcasts.

The Licensee did, however, argue that because of its positioning within the 'adult' section of the EPG and the fact that most set-top boxes are delivered with this section hidden (and also offer robust parental controls), the likelihood of a child viewing Studio 66 is very low. It believed that, in any event, it was very unlikely that the content in question would have caused actual harm or distress to children.

Response to Ofcom's Preliminary View

Ofcom's Preliminary View was that the content breached Rule 32.3 of the BCAP Code, and that a contributing factor was that the material was broadcast on an easily accessible service. 914 TV strongly disagreed that Studio 66 was easily accessible and re-emphasised the points above.

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<sup>1</sup> 'Daytime chat' and 'adult chat' interactive PRS are regulated as participation tv services. Participation TV is defined as "long form television advertising for direct response, remote entertainment services that typically include the possibility of interacting with the broadcast content". See paragraph (n) of the introduction to the BCAP Code. Examples of Participation TV also includes on-screen quizzes, chats and message boards. See paragraphs 3.19 to 3.24 of Ofcom's June 2010 Statement "Participation TV: Regulatory Statement".

The Preliminary View also indicated that Ofcom would consider these cases for the imposition of a statutory sanction. The Licensee said it while it did not dispute that content in question breached the BCAP Code, it argued that it was not dissimilar to content appearing in music videos broadcast on Ofcom licensed services during the day and the nature of the breaches were not comparable to any of the cases in which sanctions have been imposed by Ofcom on adult broadcasters in the past. The Licensee therefore submitted that the imposition of a sanction would be neither fair nor proportionate.

The Licensee reiterated its apology for the broadcast of this content and reassured Ofcom of its on-going commitment to responsible and compliant broadcast advertising. 914 TV added that it had reminded its staff of its compliance obligations.

## Decision

Reflecting our duties under Section 319 of the Communications Act 2003, Rule 32.3 of the BCAP Code requires timing restrictions to be applied to advertisements that might harm or distress children, or that are otherwise unsuitable for them.

Ofcom's [published guidance](#) on the advertising of PRS 'daytime chat' services ("the Chat Service Guidance") sets out what Ofcom considers to be acceptable to broadcast on these services.

The Chat Service Guidance requires 'daytime chat' services to be placed within the 'adult' or similarly identified section of EPG listings. It also states that the "presentation of daytime chat should always be suitable for wide audiences, that is for audiences including children and young persons...should they come across it unawares". It requires that "all dress and behaviour should be non-sexual in tone and apparent intent", and specifically that 'daytime chat' broadcasters should:

- "ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks";
- "not broadcast images of presenters touching or stroking their bodies in a suggestive manner, in particular avoiding breasts, thighs, crotches and buttocks"; and
- "not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses."

Ofcom considered the content across these five broadcasts did not reflect the elements of the Chat Service Guidance listed above. It featured presenters who were positioned and dressed in such a way that resulted in significant exposure of their buttocks, thighs or breasts. Further, in some cases, the presenters:

- touched and stroked their buttocks and breasts in a sexual way; and
- repeatedly thrust or gyrated their breasts or buttocks, mimicking sexual activity.

In light of the above, Ofcom considered that in all five cases, the presenters' clothing and behaviour were sexual in tone and apparent intent.

Ofcom acknowledged that Studio 66 is situated in the 'adult' section of the Sky EPG and that this reduced the likelihood of children watching the channel. However, this material was broadcast without mandatory restricted access during late morning or early evening. In particular, in two cases, the date of broadcast coincided with a weekend or a school holiday, times when children are more likely to be watching unsupervised.

Ofcom took into account the Licensee's submissions on Ofcom's Preliminary View but maintained that, because the service was not subject to mandatory restricted access and the content was available by scrolling through Sky's EPG (or inputting the specific channel number), Studio 66 was easily accessible.

In Ofcom's view, audiences – and in particular parents and carers – would not expect material of this nature to be broadcast on easily accessible services at these times of the day. Therefore, our Decision is that these five broadcasts breached Rule 32.3 of the BCAP Code.

On 8 April 2019, in [Issue 376 of its Broadcast and On Demand Bulletin](#), Ofcom recorded a breach of Rule 32.3 against the Licensee for the pre-watershed broadcast of content featuring three presenters who behaved inappropriately and were inadequately dressed. While we acknowledged the Licensee's apology and recognition that the material was non-compliant, we are very concerned that a further breach of this nature occurred just seven days later, and then on four further occasions across a matter of five weeks.

We considered the Licensee's representations on Ofcom's proposed regulatory action. However, in light of the circumstances set out above, Ofcom considers these repeated breaches to be serious and we are therefore putting the Licensee on notice that we will consider these cases for the imposition of a statutory sanction.

#### **Breaches of 32.3 of the BCAP Code**

## In Breach

### 9pm Primetime Bulletin 92 News UK, 29 May 2019, 21:26

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#### Introduction

92 News UK is a television service that broadcasts in Urdu and English. The licence for this service is held by Galaxy Broadcasting Network Limited ("Galaxy Broadcasting" or "the Licensee").

Ofcom received a complaint that a news report covering the opening of a restaurant in Southall promoted the restaurant.

Ofcom translated the report from Urdu to English 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 this translation for the purposes of this investigation.

The programme lasted for five minutes and included shots of a variety of different dishes served on large serving platters and footage of a chef preparing food in addition to the following statements:

Presenter: *"In London, what's becoming popular in Asian cuisine is this new restaurant which for the first time serves both Pakistani and Iranian food. This unique restaurant...was inaugurated today".*

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Reporter: *"Who doesn't like some wholesome food? People are willing to travel to the land of the unknown in search of delicious food. The Asian community is heartily fond of its traditional cuisine. Famous businessman [name]...has opened the first restaurant which captures both Iranian and Pakistani flavours in one building. For Asian food, [restaurant name] might be the only restaurant where there are over eighty types of Iranian dishes and one hundred and twenty types of Pakistani dishes available. Chicken Toast, Makhani Karahi, Pulao, Biryani are prepared so well that if anyone eats them once, they'll keep coming back for more...This modern kitchen will be able to serve more than two hundred and fifty customers at a time. For the first time, this restaurant has introduced free parking for customers. Whether it be Iranian Chelo Kebab or Saffron Rice, Lahori Chickpeas or Karachi's Nihari, you will find it all under one roof. At the restaurant's inauguration, special guest [name] said that it's a good thing that a modern restaurant acting as a meeting point for two different civilisations has been opened".*

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Owner: *"For a long time, people were awaiting a kind of combination which would bring Persian and Asian food together. Usually they are separate. Today, there has been this great addition in Southall. [restaurant name] has given fame to this step. People came in great numbers".*

- Guest 1: *"...The food was wonderful. The flavour was absolutely delicious. It tasted exactly like how we make it at home".*
- Guest 2: *"I think it's unique to our area, that you would find these two things together. May God grant them success. By God's grace the food is tasty. It was delicious".*
- Guest 3: *"It's a completely different type of restaurant. A new opening wherein you'll find Persian food and Pakistani food, which people thoroughly enjoyed. They liked it a lot. It is something very different, very unique, and I wish them the very best of luck".*
- Guest 4: *"The restaurant has Persian and Asian food. The combination is very good...This is really very happy news for everyone".*
- Guest 5: *"...By God, it was very good food, I liked it a lot".*

Ofcom requested information from the Licensee about any commercial arrangements associated with the references to the restaurant in the programme. Based on the information provided, we considered that the programme raised potential issues under the following Code rules:

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

Ofcom requested comments from the Licensee about how the content complied with these rules.

## **Response**

Galaxy Broadcasting said that its news covered community events that were of interest to its viewers. On this occasion it had received an invitation to the opening of the restaurant from the Deputy Mayor of Ealing and the restaurant owner. The Licensee said that it had covered the opening because it was a "unique" event "in relation to Pakistani and Iranian food availability in Southall".

The Licensee said that the material was "specifically intended to allow viewers to benefit fully from or to interact with" the news item and that it had received no financial benefit from covering the event. The Licensee believed that because of the above, the content did not breach the Code.

## Decision

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

The Licensee argued that the references to the restaurant were “intended to allow viewers to benefit fully from or interact with” the programme.

Section Nine of the Code allows broadcasters, subject to certain restrictions, to refer to the availability of Programme Related Material (“PRM”) in programming. The Code defines PRM as:

“Programme-related material consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or to interact with, that programme”.

To qualify as PRM, material must satisfy both elements of the meaning. Generally, PRM is editorially based, for example a website, book or DVD. In this case, we did not consider that the restaurant was directly derived from the programme and therefore did not accept that it satisfied the definition of PRM.

Ofcom went on to consider whether the references in the programme to the restaurant were promotional and unduly prominent.

### Rule 9.4

Rule 9.4 requires that products, services and trade marks are not promoted in programming. Ofcom's [Guidance](#) on this rule explains that “where a reference to a product or service features in a programme...the extent to which a reference will be considered promotional will be judged by the context in which it appears”.

We recognise that there may be legitimate grounds for news programmes to feature stories about businesses for editorial reasons. However, when covering such events broadcasters must take care to ensure that any reference to the business, and the products and services it offers, is justified by the context of the news report and not promotional.

In this case, the report contained frequent references to the range and quality of food available at the restaurant using favourable and positive language, as well as multiple shots of the food on offer.

We took into account that News 92 UK viewers may expect the channel to cover, in its news output, events such as the opening of a business involving local dignitaries, such as the Mayor. However, we did not agree that this justified the frequent and overtly promotional language and images used in this pre-recorded report. We concluded that the references to the availability and quality of the services at the restaurant were promotional, in breach of Rule 9.4.

### Rule 9.5

Rule 9.5 requires that references to products, services and trade marks in programming must not be unduly prominent. Undue prominence may result from the inclusion of such

references without sufficient editorial justification, or from the manner in which products, services or trade marks are referred to. Ofcom's [Guidance](#) on undue prominence makes clear "The level of prominence given to a product, service or trade mark will be judged against the editorial context in which it appears".

As stated above, Ofcom recognises that there may be legitimate editorial grounds for news programmes to feature stories about businesses. However, given the duration of the report and the extent to which specific menu items and characteristics of the restaurant were referenced, we considered that the emphasis placed on this business was not editorially justified and was therefore unduly prominent. Therefore, our Decision is that the content was also in breach of Rule 9.5.

### **Breaches of Rules 9.4 and 9.5**

## In Breach

### Istikhara

**TV99, 13 August 2018, 11:00**

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#### Introduction

TV99 is a general entertainment channel aimed at the Asian community in the UK and in Europe. The licence for the service is held by 99 Media Org Limited ("99 Media" or the Licensee").

*Istikhara* is a live interactive series offering viewers advice and guidance based on Islamic teaching. Viewers are invited to call either a UK landline number, which will connect them to the presenter on-screen if available, or two Pakistani mobile telephone numbers.

Ofcom received six complaints about the series. The complainants claimed that the two Pakistani mobile numbers connected callers to an independent *Istikhara* service which attempted to charge for advice.

Ofcom reviewed the programme broadcast in Urdu on 13 August 2018, and obtained an independent translation.

During the programme, the presenter referred to the two Pakistani mobile numbers as follows:

*"The personal [phone] numbers are being displayed on the pink strip. These numbers are for those viewers who do not want to discuss their issues on-air. Whatever problem they may have, whatever kind of problem they may have, please note the numbers on the pink strip, which start with 0092. Save these numbers and keep them with you. After the programme, you can contact us on these numbers...Actually, you can even call on these numbers now because anyone who calls on these numbers now, will prove their luck, and will be very fortunate because, at the moment, these numbers are with the respected teacher. You can speak to the respected teacher, discuss your issue with him, and know the solution to your problem in the light of the Koran and the traditions of Prophet Muhammad".*

We requested information from the Licensee about any commercial arrangements for the inclusion of the mobile telephone numbers in the programme. The Licensee said that the numbers were for "social media activity like social media, FB and whats App, YouTube, Instagram and all other social channels". Ofcom considered that the material raised potential issues under Rule 9.4 of the Code.

Rule 9.4: "Products, services and trade marks must not be promoted in programming."

Ofcom therefore sought comments from 99 Media on how the programme complied with this rule.



## Licensee's Initial Response

The Licensee said that it had complete control over the calls made to the UK landline number displayed in the programme. It added that it kept all records of these calls made during the broadcast.

The Licensee said that the two Pakistani mobile telephone numbers featured in the programme were "for social media activity only". It also said that it did not offer additional services outside of the programme.

## Licensee's Response to Ofcom's Preliminary View

Ofcom's Preliminary View was that the promotion of the two Pakistani mobile numbers within the programme was in breach of Rule 9.4 of the Code. In reaching this Preliminary View, Ofcom took into account that:

- during the programme the presenter said these numbers were "*for those viewers who do not want to discuss their issues on-air*" and advised viewers to "*save these numbers*" because "*after the programme, you can contact [them] on these numbers*".
- Ofcom identified internet advertisements for Istikhara services that could be accessed by calling the mobile telephone numbers featured in the programme.

This information indicated that the numbers were for Istikhara services offered by third parties that were generally available to the public (i.e. not specific to the programme) and appeared to contradict the Licensee's statement that two Pakistani mobile telephone numbers were used "for social media activity only".

99 Media disagreed with the Preliminary View that the content was in breach of Rule 9.4 of the Code and provided oral representations in response.

In its oral representations, the Licensee said that the content was teleshopping. It added that, although it was responsible for the UK based studio number promoted in the programme, it had an agreement with an Istikhara Centre in Pakistan to feature the Pakistani mobile numbers<sup>1</sup>.

The Licensee reiterated that these Pakistani mobile numbers were for social media activity and stated that it "cannot stop [the services from providing]...social media details on their programme"<sup>2</sup>. It added that calls to these numbers using social media applications are free for viewers across the world who do not want to pay to call [the studio's] UK landline number<sup>3</sup> and confirmed that these numbers can be called outside the times of broadcast<sup>4</sup>.

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<sup>1</sup> Oral Representations Transcript; page 7, line 10.

<sup>2</sup> Oral Representations Transcript; page 10, line 2.

<sup>3</sup> Oral Representations Transcript; page 6, line 8.

<sup>4</sup> Oral Representations Transcript; page 9, lines 7-19.

99 Media said it had been informed that on occasions, these services were demanding a large amount of money from callers. However, it said that its response to callers who had contacted it about this matter was *"it's your choice, you want to take advice or not"*<sup>5</sup>. The Licensee confirmed that it did not consider itself responsible for the operation of the mobile telephone numbers featured in the content. Its view was that if callers were dissatisfied, it was entirely a matter between them and the advice service<sup>6</sup>.

## Decision

In its initial representations to Ofcom, 99 Media referred to the content as a programme, however during its oral representations, it stated that the content was teleshopping.

Ofcom's Code on the Scheduling of Television Advertising defines teleshopping as:

"television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment".

In [Issue 193 of Ofcom's Broadcast Bulletin](#), Ofcom published a Note to Broadcasters which identified a number of key characteristics of teleshopping. This made clear that only material that contained "constant or near-constant direct offers" of goods or services met the definition of teleshopping. Although in this case, there were invitations for viewers to call the Pakistani mobile numbers, most of the content comprised references to Islamic scripture, and advice from the presenter directed at audiences generally or callers to the studio via the UK landline number. Taking these factors into account, Ofcom did not consider the content met the definition of teleshopping.

We therefore considered the promotion of the mobile numbers under Section Nine of the Code, which applies to commercial references in programming.

Reflecting our duties under the Communications Act 2003, Section Nine of the Code limits the extent to which commercial references can feature within editorial content. The rules in this section help to ensure that audiences are protected from the risk of financial harm and that there is a distinction between advertising and programming.

Rule 9.4 of the Code requires that products, services and trade marks must not be promoted in programming. [Ofcom's Guidance on this rule](#) explains that: "where a reference to a product or service features in a programme...the extent to which a reference will be considered promotional will be judged by the context in which it appears".

Ofcom recognises that viewer interaction can be a key component of some programmes. When encouraging viewer interaction, broadcasters must take care to ensure that editorial content is not used, or perceived as being used, for advertising purposes (e.g. to promote a business).

In this case, the UK number referred to in the programme was used as a means of enabling viewers to interact with the programme to seek advice from the presenter. However, as

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<sup>5</sup> Oral Representations Transcript; page 6, line 14.

<sup>6</sup> Oral Representations Transcript; page 11, lines 19-22.

acknowledged by 99 Media in its oral representations to Ofcom, the two Pakistani mobile numbers promoted in the programme were for Istikhara Centres operated by a third party. Ofcom's Decision is therefore that the promotion of these numbers was in breach of Rule 9.4 of the Code.

### **Additional issues following oral representations**

Having considered 99 Media's oral representations, and in particular that the mobile numbers promoted in the programme were for Istikhara Centres operated by a third party, Ofcom identified further compliance issues that it believed raised issues under the following condition of its Television Licensable Content Service ('TLCS') licence.

Condition 6A:           (1)     The Licensee shall be responsible for all arrangements for the management of communication, including telephony, between members of the public and the Licensee or the Licensee's contractors or agents (together here described as "the Licensee") where such communication is publicised in programmes. Communication "includes, but is not limited to, methods of communication in which consideration is passed between a member of the public and the Licensee directly or indirectly and methods of communication intended to allow members of the public to register with the Licensee indications of preference or intended to allow entry to any competition, game or scheme operated by the Licensee."

#### TLCS Licence Condition 6A

TLCS Licence Condition 6A requires the Licensee to be responsible for all communication between members of the public and the Licensee (or the Licensee's contractors or agents) where such communication is publicised in programmes. In its oral representations, the Licensee said it had "an agreement" with an Istikhara Centre in Pakistan to feature the mobile numbers in the programme. Consequently, Ofcom considered the Istikhara Centre to be a contractor of the Licensee.

In its oral representations, the Licensee said it was aware of claims that the Istikhara services (contactable using the Pakistani mobile numbers featured in the programme) had demanded large sums of money for the services offered<sup>7</sup>. 99 Media added that it had no control over the operation of these services and that when contacted by viewers about the issue, it had advised them that it had been their choice to call these telephone numbers and take the advice offered<sup>8</sup>. In this regard, we note that the Licensee had an arrangement with the programme provider for the provision of the programme in which the numbers were promoted, and therefore we do not accept that it had no control over the operation of the services.

Ofcom was concerned that despite the requirements of TLCS Licence Condition 6A, 99 Media took no responsibility for the operation of the Pakistani mobile numbers it promoted in its content. We were particularly concerned at the Licensee's view on this matter given that it

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<sup>7</sup> Oral Representations Transcript; page 6, line 14.

<sup>8</sup> Oral Representations Transcript; page 6, line 15.

was aware of the on-going potential for financial harm to audiences but seemingly did nothing to address it.

In this case, the Licensee acknowledged that it took no responsibility for the management or operation of the Pakistani mobile numbers featured on its programming. Therefore, it is Ofcom's Decision that 99 Media breached Condition 6A(1) of its licence.

As reported in Issues [312](#), [313](#) and [333](#) of Ofcom's Broadcast and On Demand Bulletin, 99 Media has breached Rule 9.4 three times in the past three-and-a-half-year period. In light of 99 Media's repeated failure to apply rules in Section Nine of the Code we are minded to consider this case for the imposition of a statutory sanction.

#### **Breaches of Rule 9.4 and TLCS Licence Condition 6A(1)**

## In Breach

**Shelagh Fogarty**

**LBC 97.3 FM, 22 May 2019, 13:00**

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### Introduction

Shelagh Fogarty ("SF") presents a weekday afternoon show on the speech-based radio station, LBC 97.3 FM, between 13:00 and 17:00. The licence for the service is held by LBC Radio Limited ("LBC" or "the Licensee").

In this programme, the presenter was discussing the psychological impact of reality television, when she said:

*"...whether we like it or not, most of us spend a huge part of our life at work, so it's important that we're able to be at our best while we're there. As an employer, of course, you need to look after your staff and their mental wellbeing, but productively and humanly it's the right thing to do. Here to discuss this with me is Pablo Vandenabeele [{"PV"}], who's the Clinical Director for Mental Health at Bupa UK. Good afternoon to you".*

The interview continued as follows:

PV: *"Good afternoon, Shelagh. Thank you for having me".*

SF: *"My pleasure. Why do you say mental health and mental wellbeing in the workplace is so important?"*

PV: *"Well, we know that mental health affects many of us every day – issues like stress, anxiety, depression, are all common – but, because so many people still consider mental health to be such a taboo subject, only half of those who are struggling speak to their managers about it. Now, in our insurance business, in Bupa UK, the percentage of employees from a corporate customer [inaudible] who seek support on mental health issues has more than doubled over the last decade. And that's just the tip of the iceberg, really, as we know many people don't seek help".*

SF: *"And what have Bupa being doing, though, to show the commitment, to embed that commitment to mental wellbeing, because when people hear Bupa they probably think just of physical health?"*

PV: *"Well, that's right, but mental health has been a big area of focus for us at Bupa. It's relevant to our employees, but also to our customers and communities that we operate in. Mental health issues can affect anyone and what we know is that early diagnosis improves outcomes, so it is really important that everybody recognises what's happening to them and speaks up about it. Now, what we did is, we launched our 'Open Up' campaign, which really focuses on the power of open conversations, and it encourages people from across [inaudible] to share their mental health stories, and we do have a couple of videos sitting on our website, alongside practical support*

*and guidance. Really, they're designed to help good businesses to do the same".*

SF: *"And 'Open Up' is a great title for it, but I wonder how concerned individuals are, wherever they work, about opening up, as to whether their employer will do something to actually help improve their situation. What are the key things employers can do, would you say?"*

PV: *"But there's a number of things. There's small things, like freeing up some time to talk and get to know the signs of common mental health problems, but then there's also the bigger issues, such as reviewing company policies and making adjustments to workloads. Now, we run through all of those in our 'Managers' Guide', which anyone can download for free from the LBC website".*

SH: *"And, I suppose we all have a responsibility to each other, in the workplace as well, don't we?"*

PV: *"Well, that's right and we can help our colleagues, so, something as simple as asking, "how are you?", is a good place to start. It's about trying choosing honestly open questions, rather than avoiding the issue completely or referring to it indirectly. And that's especially useful if there's particular issues to address, such as in our performance or absence. And there's a lot of conversation tips in our 'Managers Guide', which helps employers to have the confidence to do what they need to do to approach someone".*

SH: *"And I know there's a groundswell of support for mental health first aid in the workplace, so not just thinking, you know, who here knows how to apply a bandage or who here knows how to do mouth-to-mouth resuscitation, it's about making sure that you have an equipped team when it comes to mental health first aid and I know that Bupa has signed a petition on that in the UK".*

PV: *"That's correct, because, I mean, mental health is just as important as physical health, so it makes perfect sense that help should be on hand for [inaudible]. Now, since signing the petition, the whole of our UK insurance executive team have gone on to become mental health first aiders and I understand they're the first executive team of any UK business to have done this".*

SH: *"Well thank you – good to talk to you, thanks for joining us. That's Pablo Vandenabeele, from... he's the Clinical Director, I should say, for Mental Health at Bupa UK. For more information on that health insurance scheme, or schemes plural, that he mentioned for Bupa, as well as the chance to win a wellbeing tech bundle, you can go to [LBC.co.uk](http://LBC.co.uk) and find out a great deal more...".*

A listener complained that the "questions and responses sounded prepared" and the interview was "an advert for Bupa".

LBC provided Ofcom with a copy of a commercial arrangement it had in place with Bupa, which included the broadcast of an interview on LBC 97.3 FM and stated that "BUPA will have sign off on each of the interview questions".

We therefore considered the content raised potential issues under the following Code rule:

Rule 10.1: "Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners".

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

## Response

The Licensee said that Shelagh Fogarty's telephone interview with Pablo Vandenaabeele was "part of the 'Brand A View' feature on LBC for Mental Health Awareness Week (13th – 19th May 2019)". It added that "a 'Brand A View' is a paid for feature in which a client spokesperson or representative comes to air to give a newsworthy interview about a topic". It said that, as each feature was subject to a commercial arrangement, appropriate signalling was to be broadcast at the outset and conclusion of the interviews, but, "in this instance, due to human error, ...credits were not included in documentation provided to the presenter and were therefore not read out on air". LBC said this lack of signalling was an isolated incident, adding that "Global has a thorough and well-established practice of signalling commercial agreements in which all producers and presenters are well-versed".

The Licensee added that, in this instance, the interviewee and presenter had made references "to products or services offered by Bupa in relation to mental healthcare, which may have indicated to listeners that there was a commercial arrangement in place". As evidence, LBC cited: the launch of Bupa's 'Open Up' campaign; videos on Bupa's website "alongside practical support and guidance designed to help other businesses..."; Bupa's 'Manager's Guide', available for download; and listeners being directed to LBC's website "for more information on Bupa's health insurance schemes...".

LBC acknowledged, however, that broadcast material may not have been adequately signalled as being subject to a commercial arrangement. It said that, "following this complaint, all relevant producers, script writers and presenters [had] been given written and verbal reminders of the importance of clear signalling of material subject to a commercial arrangement", adding that "all scripts and briefing documents [would] continue to mark the signalling clearly in bold, to emphasise this".

## Decision

Reflecting our duties under the [Communications Act 2003](#), Section Ten of the Code requires the transparency of commercial communications on radio as a means to secure consumer protection.

The Code does not prohibit radio broadcasters discussing and promoting products and services in programming. However, Rule 10.1 of the Code requires that programming subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure the commercial arrangement is transparent to listeners.

Ofcom acknowledged that Shelagh Fogarty's interview with Bupa's Clinical Director for Mental Health contained references to the healthcare provider's products and services (for example, its: 'Open Up' campaign; videos; 'Manager's Guide'; and health insurance schemes), some of which were promotional and may have indicated to some listeners that there was a commercial arrangement in place between the healthcare provider and LBC. We also took into account both that LBC had acknowledged the interview may not have been adequately signalled as being subject to a commercial arrangement and the action taken by the Licensee to help avoid recurrence.

Nevertheless, as no reference to this commercial arrangement was broadcast, it is Ofcom's view that the Licensee had not used appropriate signalling to ensure the arrangement was transparent to listeners, in breach of Rule 10.1.

### **Breach of Rule 10.1**



## Broadcast Licensing cases

### In Breach

#### **Provision of information: Fairness and Privacy complaints *Abu Dhabi Channel, Abu Dhabi Media Company PJSC***

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##### **Introduction**

Abu Dhabi Channel is a global news and current affairs television channel, broadcast in the UK. Abu Dhabi Media Company PJSC ("ADMC" or "the Licensee") holds a Television Licensable Content Service ("TLCS") licence (the "Licence") for the broadcast of this service.

As the regulator for television and radio broadcasting in the UK, Ofcom's statutory functions include considering and adjudicating upon complaints which are made to it under the Ofcom [Broadcasting Code](#) ("the Code").

The Licensee is required under the conditions of the Licence to provide information on request to Ofcom for the purposes of carrying out its regulatory functions. The Licensee's obligations in this regard include those under Condition 20(1)(e), which provides:

"The Licensee shall comply with such directions and requests for information as may be given to him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:

- ...
- (e) provide Ofcom with such other things that Ofcom may specify or describe and that appear to Ofcom to be relevant to its consideration of the complaint and to be in the possession of the Licensee..."

On 16 March 2018, Ofcom received two fairness complaints under the Code about programmes that were broadcast on the Abu Dhabi Channel on 22 June 2017 and 28 June 2017. Details of these complaints were provided to the Licensee.

For the purposes of its investigation into the complaints, Ofcom wrote to the Licensee on 19 February 2019 requiring the provision of certain information by 5 March 2019, under Condition 20(1)(e) of the Licence. The Licensee failed to provide the information requested in its response of 5 March 2019.

On 20 May 2019, Ofcom made a further request under Condition 20(1)(e) of the Licence for specified information related to the fairness complaints and the broadcast programming under investigation. The Licensee was required to provide the information by 4 June 2019.

In its response of 30 May 2019, the Licensee failed to provide the information requested.

We therefore issued a Preliminary View to ADMC that it was in breach of Condition 20(1)(e) of its Licence by failing to provide the information requested and gave ADMC the opportunity to make representations.

## Response

In its letter dated 19 August 2019, ADMC said that it “does not deny that it declined to provide this information”. It said that it was not intending to obstruct Ofcom’s work, but that it had a duty of care to its sources and “also to material going beyond its sources, which the law also protects”. It said that it “did not wish to breach its licence conditions and did so extremely reluctantly, having weighed up its obligation to its source and its obligations to Ofcom”.

The Licensee explained that its previous management had decided that the right approach was not to respond to Ofcom’s questions, but that new management was reviewing this decision and that “ADMC does wish to be as cooperative as possible”. ADMC provided responses to all of Ofcom’s information requests on 27 August 2019.

## Decision

On 19 February 2019 and 20 May 2019, Ofcom required the Licensee to provide specified information, which appeared to Ofcom to be relevant to its consideration of fairness complaints which had been made about programming broadcast on the Licensee’s service, Abu Dhabi Channel.

The requests were made under Condition 20(1)(e) of the Licence and included questions about when ADMC became aware of certain footage which had been broadcast in the programmes which were the subject of the complaint and the steps that ADMC had taken to ascertain the circumstances in which the footage had been filmed.

The Licensee declined to provide responses to the information requested in its replies of 5 March 2019 and 30 May 2019.

The Licensee admitted in its representations of 19 August 2019 that it had declined to provide the information requested by Ofcom and that by doing so it had breached the conditions of the Licence. It said that it had done so in order to protect the identity of its source.

In its request of 19 February 2019, Ofcom made it clear that the Licensee was not required to disclose the identity of confidential third-party sources in its response if it did not wish to do so. None of the information sought by Ofcom in its request of 20 May 2019 required the Licensee to disclose the identity of its sources. The explanation put forward by the Licensee therefore does not provide any justification for its failure to provide responses to the requests made on 19 February 2019 and 20 May 2019, in accordance with its obligations under Condition 20(1)(e) of its Licence.

By refusing to provide the information required by Ofcom in its responses of 5 March 2019 and 30 May 2019, the Licensee breached its obligations under Condition 20(1)(e) of its Licence and impeded Ofcom’s ability to consider and adjudicate on the fairness complaints it had received about the Licensee’s broadcast programming.

**Breach of Licence Condition 20(1)(e) of the Television Licensable Content Service licence held by Abu Dhabi Media Company PJSC (licence number TLCS001660)**

## Broadcast Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Christopher Lomax

#### ***Panorama: Teenage Prison Abuse Exposed, BBC 1, 11 January 2016<sup>1</sup>***

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##### Summary

Ofcom has not upheld this complaint by Mr Christopher Lomax of unjust or unfair treatment in the programme as broadcast and unwarranted infringement of privacy.

The programme investigated the treatment of young people at Medway Secure Training Centre ("MSTC"). Mr Lomax complained that he was treated unjustly or unfairly in the programme because footage of him, obtained by undercover filming, had been unfairly edited and was included alongside "biased commentary" to make "extremely serious criminal allegations" about his conduct. Mr Lomax also complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the footage was filmed secretly without his consent. He also complained that his privacy was unwarrantably infringed in the programme as broadcast because no attempt was made to disguise his identity by blurring his face or obscuring his voice.

Ofcom considered that:

- The inclusion of footage of Mr Lomax in the programme was not edited in a way that unfairly misrepresented him or his actions in restraining one of the young people at the centre. We also considered that in representing the professional opinion of Professor McDonnell in the programme, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that portrayed Mr Lomax unfairly.
- In the particular circumstances of this case, Mr Lomax had a legitimate expectation of privacy in relation to the filming and the subsequent broadcast of the footage of him. However, we considered that his legitimate expectation of privacy did not outweigh the broadcaster's right to freedom of expression and the public interest in the filming and broadcasting of the footage. Therefore, Mr Lomax's privacy was not unwarrantably infringed in either the obtaining or the broadcast of the footage included in the programme.

##### Programme summary

On 11 January 2016, BBC1 broadcast *Panorama: Teenage Prison Abuse Exposed*, an investigation into the treatment of young people (known as "trainees" in the programme) at MSTC – a custodial facility for young people between the ages of 12 and 18. The programme included footage which had been secretly filmed by an undercover reporter who had gained employment at MSTC as a custody officer for the purpose of the programme's investigation.

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<sup>1</sup> Ofcom received Mr Lomax's complaint in October 2018 following his acquittal in criminal proceedings that concluded in March 2018.

The programme began with clips from the secretly filmed footage which later appeared in the main programme. This included footage of a number of staff members (including the complainant, Mr Lomax) restraining a young male trainee, referred to in the programme as "Billy". The undercover reporter, who was also the programme's narrator, provided a commentary over this footage, which was interspersed with audio from the filming:

Reporter: *"Undercover in a prison for teenagers.*

Billy: *Can't breathe. Get off me".*

Further footage of staff members restraining Billy was also shown as the reporter said: *"Tonight, we ask: is G4S failing some of the most vulnerable teenagers in the country?"*

Following the title sequence, footage was included showing routine, daily life in MSTC. All those shown in this sequence had their faces blurred. The reporter said:

*"Medway Secure Training Centre, near Rochester in Kent. This is a prison not like other prisons. It's home to around 70 boys and girls, aged 12 to 18, who are accused or convicted of crimes, from theft to murder".*

Footage of the reporter filming himself in a bathroom mirror was shown as he said: *"I'm here for the BBC. Day One, undercover".*

More footage of routine life at MSTC was shown. The reporter continued:

*"I'm here to investigate allegations from whistle-blowers that teenagers are being mistreated, bullied, and even abused by custody officers. I've got a job with G4S who run Medway, as a custody officer. The inmates here are called trainees. There's up to eight in each unit, looked after by two or three custody officers, like me. They're sent here specifically because they're vulnerable, or at risk. They're also challenging".*

Footage was shown of Billy playing a board game and then in the gym. The reporter's commentary continued:

*"This is Billy, not his real name. He's 14 years old. He's been in and out of trouble for most of his life and is now at Medway because he attacked someone. He's just arrived from a secure children's home, which couldn't cope with him".*

Billy was then shown in a classroom being disruptive. The programme then showed footage of the reporter speaking to camera:

*"As much as he drives me to the brink of going, 'I just can't do it', there's still a little boy in there who's just lonely and doesn't know what to do. It's pretty sad, really".*

The programme then showed more footage of Billy in the classroom saying: *"See that? I'll [bleeped out] stab you with it".*

The reporter then said in commentary: *"It's Medway's job to keep Billy and the other young trainees safe, provide high quality education and rehabilitation".* Footage of new custody officers at MSTC receiving training in a gym hall was shown. The reporter said:

*"Before starting work at Medway, G4S provides all new recruits with eight weeks of basic training. There are three main grades of custody officer: training centre assistants, like me, team leaders, and the most senior, duty operations managers. We're taught that we must keep the youngsters in our care safe, and that if there's trouble, we may have to restrain them. But only if absolutely necessary".*

Footage was then shown of two instructors who said:

First Instructor: *"It's not your job to harm anyone. If you're harming anyone it's classed as excessive use of force, ok.*

Second instructor: *If a young person says they can't breathe, what's the first thing I'm going to do? Check and adjust, basically. Check and adjust my hold".*

The reporter said in commentary that if staff members used excessive force, they could be disciplined, or prosecuted. More general footage of MSTC was shown as the reporter explained that once out of training and in the prison itself *"it's a different world"*. Footage was shown of staff members in a classroom with some trainees. The reporter in commentary said:

*"It's my 13th shift, and I'm in a classroom. I'm waiting with a female custody officer and three trainees for the next class to start. One of them is 14 year-old Billy".*

Footage of Billy and a member of staff was then shown, interspersed with the reporter's commentary.

Billy: *"Gareth's [a member of staff] a pussy. You suck cock at a brothel.*

Reporter: *He's shouting at Gareth, a team leader, who's outside in the corridor with Chris [Mr Lomax], a Duty Operations Manager.*

Billy: *He's gay.*

Reporter: *Gareth comes to the door and tries to get in.*

Billy: *Bruv. Are you my bruv? Little gay boy.*

Reporter: *Then it looks like Billy may be trying to reach for the female officer's radio or keys.*

Staff member: *Don't touch the [bleeped out] radio.*

Reporter: *I don't expect what happens next".*

Gareth was then shown entering the classroom and putting Billy into a restraint position while saying *"You [bleeped out] touched me. First response"*. The reporter then explained in commentary that *"First response means emergency. He restrains Billy, and I have to help"*.

The reporter was shown assisting Gareth in restraining Billy.

Gareth: *"Watch his arm.*

Reporter  
to Gareth: *Where are you going, figure of four or what?*

Reporter  
in commentary: *Other officers arrive, including Chris [Mr Lomax], the most senior officer present. He's the one with the red watch".*

Mr Lomax was shown assisting in restraining Billy. The footage showed Mr Lomax's arm positioned around Billy's head and neck, his face pressed into Mr Lomax's torso.

Billy: *"I can't breathe.*

Unidentified voice: *What now?*

Billy: *What are you doing?*

Reporter  
in commentary: *He [Mr Lomax] has his fingers on Billy's throat".*

This footage was slowed down in the programme, allowing a longer view of Mr Lomax's hold on Billy. The footage appeared to show Mr Lomax's fingers on the underside of Billy's neck.

Unidentified voice: *"Calm down.*

Billy: *Get him off.*

Reporter  
in commentary: *During training, we were repeatedly told to always protect airways. Choking anyone is never allowed.*

Billy: *Ahh, my neck".*

The programme then showed the reporter watching the footage of Billy being restrained with Dr Andrew McDonnell. During the exchange which followed, the programme slowed-down footage of Mr Lomax restraining Billy. A caption said: *"Andrew McDonnell/Clinical Psychologist".*

Reporter: *"Dr Andrew McDonnell is one of the most published experts on how to handle challenging behaviour, including physical restraint.*

Dr McDonnell: *Yeah. He's got his fingers right in there, I can actually see them in there [positioning his fingers on his own neck to demonstrate]. He's applying pressure there. That is really dangerous. He's telling you he can't breathe, so let go of him! That, to me, is an example of actually excessive force while applying restraint".*

Footage was then shown of Mr Lomax, Gareth, and another staff member removing Billy from the classroom. The faces of Mr Lomax and Gareth were visible, while the face of the third staff member was blurred. The reporter then said in commentary that: *"Hurting inmates in this way is against the rules. It may also make these youngsters more likely to reoffend".*

Dr McDonnell then said:

*"If I was a young person in that situation and that was done to me, I'd be pretty angry. Although, these people are role models, so what they're doing almost makes it legitimate for those young people also to be violent and aggressive".*

Gareth was then shown moving Billy through a door. Mr Lomax was visible as one of a number of figures standing in the background. Further footage was shown of members of staff, including the reporter, Gareth, and Mr Lomax, pinning Billy to the ground. Billy could be heard screaming. Mr Lomax's face was not visible in this footage.

Reporter  
in commentary: *"Billy is being forcibly taken to his cell.*

Reporter: *[To Billy] Listen to me. You need to calm down. Stop moving.*

Unidentified voice: *Right, clear the arm.*

Unidentified voice: *That's fine.*

Billy: *He's hurting me. Rob [the reporter], get him off.*

Unidentified voice: *Hold it there, mate. That's fine.*

Billy: *He's hurting me.*

Unidentified voice: *Cop the wrist.*

The reporter then said in commentary: *I don't know how much weight Gareth's putting on Billy's arm and wrist, but it looks painful".*

Mr Lomax and other staff members were then shown holding Billy upright and walking with him. Mr Lomax's face was briefly visible in this footage. Dr McDonnell was shown again and said:

*"Well that's a 14 year-old, probably very traumatised, boy. The fact that these kids have actually been involved with crime – some of them have committed some serious crimes – doesn't make them any less human".*

The programme then showed footage of Mr Lomax and other members of staff walking Billy down a corridor to his room. Mr Lomax's face was briefly visible in profile.

Reporter  
in commentary: *"It takes the team of custody officers nearly eight minutes to get Billy into his cell.*

Billy: *Watch when I get out of my room, you little prick. Let him in here, let him in here.*

Reporter

in commentary: *He acts tough. But Billy has mental health issues, and behavioural difficulties.*

Unidentified officer: *Can we empty the corridor please, guys?"*

Footage was shown of Billy lying in his bed. The reporter said in commentary that "At the end of it all, he [Billy] looks broken". The reporter then said:

*"He's scared. He can't breathe, you know. He's crying. And you just see a child, who's literally just kind of been manhandled. Excessive use of force. It was not necessary".*

The programme then included footage of Billy's mother, Claire, watching the secretly filmed footage with the reporter. She said:

*"I know when these children wind you up, in the way he was winding that officer up, can be hard. But, they are there to do a job, and to help that child rehabilitate, and I can't see how they're gonna do that. Seeing that just completely blows everything I thought out the water".*

Footage was shown of Gareth in an office. The reporter explained that "Gareth, the team leader who began the restraint, tells us how he's going to justify it".

Gareth: *"Went for the radio. I was trying to get into the room. Blocked the door with his foot. As I got in there he grabbed hold of me. That's pretty much it, really".*

A repeat of the footage showing Gareth entering the classroom to restrain Billy was shown. The reporter said in commentary:

*"Billy may have been reaching for the radio. But he wasn't trying to grab Gareth. Billy was trying to defend himself".*

Footage was then shown of the reporter being interviewed by G4S managers who were investigating the incident.

Reporter  
in commentary: *"G4S investigate...Gareth and two other custody officers say the restraint was justified.*

G4S manager: *You didn't see anything untoward happen? Or from Gareth?*

Reporter: *No, not really. It literally happened in like 30 seconds.*

Reporter  
In commentary: *To continue our investigation, I feel I have to stick to the story too. Three weeks later, Gareth is allowed back to work".*

General footage of MSTC was shown and the reporter explained in commentary that the then Chief Inspector of Prisons, Mr Nick Hardwick, had found evidence of abuse in one of the three secure training centres G4S was responsible for, and that it no longer held the contract



there. Mr Hardwick explained that the abuse found at the training centre “echoed” what he had found at MSTC.

Later in the programme, the reporter said: *“Many of the staff I meet are ok. A few are amazing. But, some really worry me, like this man, Anthony”*. The programme then focused on the alleged conduct of another staff member, Anthony. Mr Lomax was not present in any of the footage involving Anthony.

Later in the programme, the quality of staff and their training at centres such as MSTC was discussed. Billy's mother said:

*“You think of abuse in these situations, and you think it'd be one member of staff slyly digging a child when no one else is around, but looking at this, it's so openly obvious that it is just a day-to-day management strategy for them, which is despicable”*.

Mr Hardwick also made a general comment about staffing at MSTC:

*“A key line of defence is professional staff who are prepared to say: ‘this isn't right here, I'm not happy with this, I'm prepared to do that.’ It takes staff to blow the whistle...why did nobody say, ‘look, I'm not happy with what's going on here?’”*

Towards the end of the programme, the reporter said:

*“G4S haven't responded to us about our allegations, but claimed the filming was illegal, and that the programme shouldn't be broadcast. G4S told BBC News they thoroughly vet their staff and that external monitors hadn't raised any concerns”*.

Mr Paul Cook, the Managing Director of G4S Children's Services, then said:

*“These are extremely shocking allegations and have no part in our business or in any establishment that looks after young people. We were unaware of these allegations until Panorama sent them to us and took immediate action to report them to the police and the local authority”*.

Towards the end of the programme, brief clips of footage of Mr Lomax pulling Billy upright and walking with him were shown as the reporter concluded the programme:

*“Since we informed G4S of our evidence, they have suspended seven custody officers. Gareth, who unnecessarily restrained Billy. Duty Operations Manager Chris [Mr Lomax], who choked him. And team leaders Matt and Anthony, who were bullying him. Billy has finished his sentence and is out of Medway. Kent Police have launched an investigation. Children are currently not being sent here”*.

The programme ended with no further footage of, or reference to, Mr Lomax.

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

### Complaint

### Unjust or unfair treatment

- a) Mr Lomax complained that he was treated unjustly or unfairly in the programme as broadcast because footage of him, obtained by undercover filming, had been unfairly edited and was included alongside "biased commentary" to make "extremely serious criminal allegations" about Mr Lomax's conduct. In particular, Mr Lomax said that the programme:
- alleged, "without any investigation", that he had used his fingers to choke a young person in the neck area while restraining him. Mr Lomax said that the footage was edited "in a way without any context" to unfairly accuse him of assault; and,
  - used an 'expert' who had no knowledge of restraint techniques in order to guide viewers to the wrong conclusion as to what was happening in the "highly volatile incident" in which Mr Lomax was involved. Mr Lomax said that at his criminal trial, a qualified restraint expert gave evidence that completely disagreed with the commentary in the programme.

#### Unwarranted infringement of privacy

- b) Mr Lomax complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme. He said that the footage of MSTC was "illegal" as it was filmed in a "secure establishment". Mr Lomax said that he was "unaware of being filmed at the time".
- c) Mr Lomax also complained that his privacy was unwarrantably infringed in the programme as broadcast because no attempt was made to disguise his identity by blurring his face or obscuring his voice. Instead, he said that the programme showed his face and used his name to identify him. Mr Lomax said that the programme had left him in genuine fear of reprisals from convicted criminals and the general public. He said that the programme had violated his basic human right to a private life.

#### Broadcaster's response

##### *Background*

The BBC said that it believed that there was an "overwhelming public interest in gathering and broadcasting material which showed the long-term, systemic intimidation and bullying to which children" at MSTC were subjected to by staff responsible for their care and welfare. It said that the programme's investigation had produced evidence which "demonstrated a pattern of ongoing, systemic abuse, bullying and mistreatment of trainees by staff which included physical abuse and inappropriate restraint, as well as verbal and physical intimidation". It said that concerns about these failings had previously been raised by others (see below), but had not been addressed by any of the agencies or organisations which were actually responsible for safeguarding trainees at the centre.

The BBC said that its investigation, which included secret filming over a number of weeks, was necessary to establish the nature of the abuse and intimidation at MSTC, to establish such abuse was ongoing, and to establish it was widespread among some staff working there.

The BBC said that the evidence gathered by the *Panorama* programme had been a significant factor in the subsequent decisions to bring criminal proceedings against members of staff at

MSTC including Mr Lomax, a review of practice at MSTC, and a transfer of the operation of the centre from G4S to Her Majesty's Prison and Probation Service.

It said that it contacted all the relevant authorities with primary responsibility for the welfare of trainees at MSTC on 30 December 2015, including G4S's Director of Children's Services, setting out the evidence that the programme makers had obtained and giving G4S an appropriate opportunity to respond. The broadcaster explained that the programme was originally scheduled for broadcast on 18 January 2016, but the date was brought forward to 11 January 2016 after G4S issued a news release on 8 January 2016 stating it had referred a number of "serious allegations of inappropriate staff conduct" at MSTC to the appropriate investigating authorities<sup>2</sup>. It said that the news release had made it clear that "The allegations centre around the unnecessary use of force and the use of improper language" and that the Local Authority Designated Officer for safeguarding children "in conjunction with the police and other relevant authorities, has commenced an independent investigation into the allegations". The BBC said that G4S then published a further statement on 11 January 2016 after the broadcast of the programme<sup>3</sup> in which it said that there was "no place for the conduct shown in the programme within any of our Secure Training Centres and it will not be tolerated. We took immediate action to suspend the staff concerned on 30 December and we will take further action as appropriate once the police investigation is complete". The BBC also said that G4S published a further an update on 12 January 2016<sup>4</sup> confirming that four members of staff had had their employment "terminated with immediate effect". The BBC added that it had not been aware of the subsequent decision by the Crown Prosecution Service ("CPS") to charge some members of G4S staff filmed by the programme. It said that it became aware of the decision by the CPS to prosecute Mr Lomax when it was reported in September 2016.

#### Unjust or unfair treatment

- a) The BBC said that the programme's undercover reporter filmed the incident in question on 22 October 2015. It said that the unedited material of the incident showed that Mr Lomax had held his fingers against the throat of a 14 year-old child (Billy) while seeking to restrain him. The BBC said that this restraint technique was "inappropriate and unacceptable in any circumstance when used by staff responsible for the welfare of children". It said that the unedited footage showed Billy repeatedly crying out to say that he could not breathe, and complaining that the restraint was hurting his neck, but that Mr Lomax made no attempt to check or adjust his hold on Billy.

#### *Unfair editing*

The BBC maintained that the edited version of the incident as broadcast in the programme was an accurate and fair portrayal of what happened. It also said that the programme had provided viewers with appropriate context and background information to the incident. In particular, that MSTC looked after young people aged between 12 and 18 who had been accused or convicted of crimes from theft to murder, and that the role of the centre's staff was to keep the trainees safe and to provide them with education and rehabilitation. The BBC said that the programme explained Billy's background and

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<sup>2</sup> [G4S News Release 8 January 2016](#).

<sup>3</sup> [G4S News Release 11 January 2016](#).

<sup>4</sup> [G4S News Release 12 January 2016](#).

why he was at MSTC, and “accurately reflected Billy’s provocative behaviour and language prior to his restraint in the classroom”. The BBC also said that the programme “accurately described and illustrated what happened” when Billy was restrained by Mr Lomax and the other member of staff.

The broadcaster said that all members of staff responsible for safeguarding children at centres such as MSTC were taught the circumstances in which restraint may be justified, and learn how to use appropriate, approved methods to restrain trainees. They were also taught how to avoid the use of any excessive force, and to “*check and adjust*” a restraint hold, if the young person complained about not being able to breathe, which was illustrated in the programme.

The BBC said that the use of a “choke hold” or putting fingers on or around the throat of a child was understood by staff at MSTC to be unacceptable. It said that the evidence from the secret filming for the programme, however, was that Mr Lomax had used inappropriate and unacceptable force even though, as the programme made clear, “*Choking anyone is never allowed*” and “*Hurting inmates in this way is against the rules*”. The BBC said that the unedited footage showed Mr Lomax had his fingers around Billy’s neck and was applying pressure against Billy’s throat. It said that at no stage did Mr Lomax appear to check or adjust his hold, despite repeated cries from Billy that he could not breathe, and that Mr Lomax’s method of restraint was hurting his neck.

The broadcaster said that it was fair and reasonable for the programme to present Mr Lomax’s actions in the context of G4S’s own training requirements and the standards it expected from its staff. It said that G4S dismissed Mr Lomax from his job as Duty Operations Manager on the basis of the evidence gathered by the programme.

The BBC said that it was not accurate for Mr Lomax to complain that the programme was unfairly edited to make “*extremely serious criminal allegations*”. It said that the programme judged Mr Lomax’s conduct solely in light of his professional responsibilities as a Duty Operations Manager responsible for the safety and welfare of vulnerable children. The BBC said that the programme’s commentary did not state that Mr Lomax had acted unlawfully, nor was this implied. The broadcaster said that there was a clear public interest “in presenting demonstrative evidence of inappropriate behaviour by a senior manager towards a trainee”.

#### *Expert opinion*

The BBC said that the decision to broadcast the footage of Mr Lomax and state in the programme that “*He has his fingers on Billy’s throat*” was informed by independent, expert opinion. It said that the programme makers had shown the unedited footage of the restraint incident to two experts prior to broadcast – one, it said, was an internationally recognised expert on managing challenging behaviour, including young people, and the other was a specialist child protection expert. The BBC said that both viewed the undercover filming and considered the extent of the mistreatment which had been recorded and the specific actions of Mr Lomax. The BBC said that the programme makers took account of their expert opinions to help inform their understanding of the incident and its seriousness. It also explained that the two experts provided their input and advice after being given an assurance of anonymity and confidentiality and so the BBC said that it was not in a position to provide Ofcom with the names of the experts or the details of their comments about Mr Lomax’s restraint of Billy.

The broadcaster said that programmes such as *Panorama* frequently consulted relevant experts to benefit from their experience and expertise. It said that, often, experts stipulate anonymity and confidentiality in order to avoid adverse professional consequences and so the BBC has a duty to honour that commitment. It said that to breach such an agreement would undermine the BBC's ability to consult with such professionals in the future and its ability to conduct investigations, such as this one, which are clearly in the public interest.

The BBC said that the programme also included an interview with Professor Andrew McDonnell (referred to as "*Dr McDonnell*" in the programme). It said that Professor McDonnell, a clinical psychologist with more than 30 years' experience working with people exhibiting extreme behaviours, was a recognised expert in the use of restraint on children. The BBC said that he was the author of "*Managing Aggressive Behaviour in Care Settings*" and, in 1992, had established an independent training organisation on managing challenging behaviour. It went on to say that in 2008, Professor McDonnell was a member of the expert panel created by the British Institute of Learning Disabilities ("*BILD*") which examined the physical methods adopted by the Youth Justice Board at that time, and that he was a founder member of the committee led by BILD which had developed an accreditation system for physical interventions training which still exists today.

The BBC said that Professor McDonnell viewed the unedited footage of the restraint incident and had summarised his concerns about Mr Lomax's actions in the programme as follows:

*"He's got his fingers right in there. I can actually see them in there. There's applying pressure there... That is really dangerous. He's telling you he can't breathe so let go of him. That to me is an example of actually excessive force while applying restraint".*

The BBC said that Mr Lomax has provided no evidence to support his complaint that Professor McDonnell has "no experience or knowledge of restraint techniques in order to guide the viewing public to a wrong conclusion".

In conclusion, the BBC said that there was no unjust or unfair treatment of Mr Lomax in the programme. It said that the programme gave an accurate account of the restraint incident in the classroom and had relied upon independent analysis from relevant experts to conclude that Mr Lomax's actions went beyond what was acceptable when seeking to restrain a child.

#### Unwarranted infringement of privacy

- b) In relation to Mr Lomax's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, the BBC said that there was a clear public interest in gathering and broadcasting material which showed the "long-term, systemic intimidation and bullying of children" at MSTC by those responsible for their care and welfare.

The BBC said that secret filming was necessary and justified to establish the nature of the abuse and intimidation at MSTC, to establish such abuse was ongoing, and to establish that it was widespread among the staff working there. It said that it would not have been possible to capture evidence showing the unacceptable treatment of trainees, including

the use of unauthorised choke holds, without the use of secret filming. The BBC reiterated from its background introduction above, that complaints about the mistreatment of young people at MSTC had been made for several years prior to the programme's investigation, but had not been addressed by any of the agencies or organisations which were responsible for safeguarding trainees at the centre.

The broadcaster said that it accepted that Mr Lomax had a reasonable expectation of privacy while at work but, for the reasons set out above, it said that it believed that any infringement of his privacy was warranted.

### *Surreptitious filming*

The BBC said that its decision to conduct an undercover investigation into "long-term, systemic intimidation and bullying of children by staff" at MSTC was based on extensive evidence and information gathered in advance by the programme makers. It said that the programme makers began to investigate the situation at the start of 2015, after being told that incidents of violence towards children by staff at MSTC were commonplace. The broadcaster said that evidence and information was collected and assessed over several months by a team of journalists with extensive experience of investigating and exposing mistreatment and abuse of vulnerable individuals. The BBC said that this evidence formed the basis for the approval which was sought and given by senior BBC managers to carry out secret filming at MSTC, in line with the BBC's own Editorial Guidelines.

The broadcaster said that the decision to undertake surreptitious filming was based on the clear and overwhelming public interest in revealing ongoing and systemic abuse and intimidation of children at MSTC and that it was warranted to obtain filmed evidence without the consent of G4S employees because such evidence could not reasonably have been obtained without surreptitious filming; and it was warranted to infringe the privacy of G4S employees for the same reason.

The BBC said that much of the information given to the programme makers was provided on the basis of anonymity and confidentiality, and that this still applied. It said, however, that the programme makers had obtained first-hand *prima facie* evidence, and further corroborative and supporting evidence, prior to the start of the undercover investigation which justified the decision to pursue secret filming. The BBC said that the evidence obtained included, but was not limited to, the following:

- Regular face-to-face conversations with an employee who worked at MSTC between February 2009 and 2013. It said that this source spoke to the programme makers on the record and had been willing to be interviewed on camera for broadcast in the programme. The programme makers confirmed that the assistant had been employed as a custody officer and had tested the evidence given during repeated research meetings. The BBC said that the evidence given by the assistant included:
  - Witnessing at first-hand incidents of violence and inappropriate use of restraint by MSTC staff, including those at a senior level such as Duty Operations Managers.
  - Witnessing at first-hand G4S staff at MSTC recounting and boasting about incidents in which they had abused and assaulted children in the centre.

- Details of complaints the assistant had made to G4S managers about the incidents witnessed at MSTC and details of complaints made by other members of staff who had also said that they had witnessed inappropriate behaviour by colleagues.
- Details of conversations the assistant held with people in a position to provide evidence of current conditions at MSTC.
- The programme makers were aware of the existence of CCTV footage from MSTC which, the BBC said, showed unacceptable conditions within the centre. These included the slow response of staff to incidents and evidence of chaos inside the centre, such as trainees fighting during recreation time.
- The programme makers received information from “reliable, confidential sources in regular and direct contact with G4S staff currently working at Medway STC”. The BBC said that these sources reported to the programme makers verbatim details of conversations conducted with staff members who had separately and independently confirmed that there were ongoing concerns about the behaviour of some colleagues, including the continued use of inappropriate restraint techniques and bullying of children. The broadcaster said that the staff members in question were not aware that the details of their conversations were being passed to the programme makers, but their evidence corroborated the information gathered independently by the programme makers and provided greater certainty that the issues reported at MSTC were “serious, systemic and ongoing”. The BBC said that it is usual practice in such investigations to gather information from both first and second-hand sources, as it is “frequently necessary to do so to limit the number of people who are aware of a programme’s interest in order to safeguard the welfare of those involved”.
- The programme makers were aware of a letter that had been sent in 2003 to the Youth Justice Board, Social Services Inspectorate, and G4S by a youth crime expert, Professor John Pitts. It said that Professor Pitts was writing on behalf of whistleblowers who had alleged children at MSTC had been badly hurt when “guards” had tried to restrain them, including one incident in which a boy sustained a dislocated shoulder.
- Documents obtained by the programme makers under the Freedom of Information Act showed the high number of restraints used by staff at MSTC, including cases which had led to children requiring medical treatment.
- The Prison Correspondent of The Guardian newspaper, Mr Eric Allison, had been investigating allegations of the abuse of children held at MSTC for several years prior to 2015. The BBC said that he brought his evidence to the programme makers at the start of 2015 and acted as a consultant throughout the making and broadcast of this programme. It said that his evidence included, but was not limited to:
  - Regular conversations with numerous sources that had worked or were currently working at MSTC. His sources included staff responsible for the welfare of trainees, who spoke to him ‘off the record’ about the abuse of children and the use of inappropriate restraint techniques.
  - Copies of MSTC documents, provided to the programme makers, which listed the physical restraints carried out at the centre between August 2008 and April

2009. The BBC said that the list demonstrated, by MSTC's own admission, restraint being used inappropriately in situations where no one was at risk or trying to abscond.

- "Off-the-record" information that whistleblowers at MSTC made allegations about trainees being abused as far back as 2003.

The BBC said that there was an overwhelming public interest in continuing to film surreptitiously inside MSTC for two months. It said that the filming was necessary to establish the nature of the abuse and intimidation at MSTC, to establish such abuse was ongoing, and to establish it was widespread among staff working there. It said that the programme makers were aware that numerous complaints had been made in the past, but these had not been addressed and had not led to any systemic change. It said that it would not, therefore, have been practical or in the public interest to inform the authorities after witnessing a single incident (except in the case there was evidence a child or young person was at serious risk of imminent harm). The BBC said that reporting a single incident could have led to the identification of the undercover reporter and prevented further gathering of evidence and would also have given the relevant authorities the opportunity to dismiss any single incident as a "one-off".

In conclusion, the BBC said that the decision to obtain material through surreptitious filming was justified in the public interest and any potential unfairness to G4S staff or any infringement of privacy was warranted.

- c) In relation to Mr Lomax's complaint that his privacy was unwarrantably infringed in the programme as broadcast because no attempt was made to disguise his identity by blurring his face or obscuring his voice, the BBC said that it was warranted and justified to identify Mr Lomax in the context of this programme, and that there was no requirement to conceal his identity.

The broadcaster reiterated that staff working at secure training centres, such as MSTC, had a responsibility to keep trainees safe and to provide high quality education and rehabilitation. It said that they all received relevant training, including learning how to use appropriate methods of restraint and understanding which restraint techniques are unacceptable. The BBC said that the evidence gathered by the programme indicated that Mr Lomax had used an unauthorised method of restraint, used excessive force, and did not adjust his hold even though he repeatedly heard Billy say he could not breathe.

The BBC said that in its view, Mr Lomax's actions fell far short of the standard the public might reasonably expect from a senior member of staff responsible for the welfare of children. There was, it said, a clear public interest therefore "in identifying an individual who persisted in using an inappropriate restraint technique despite repeated cries from a 14-year old child that, as a result, he could not breathe".

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

Ofcom prepared a Preliminary View that Mr Lomax's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The representations of both parties are summarised, insofar as they are relevant to the complaint entertained and considered by Ofcom, below.



### Complainant's representations

Mr Lomax said that although the BBC was still stating that he had "used a restraint technique which is inappropriate and unacceptable in any circumstance when used by staff responsible for the welfare of children in a Secure Training Centre", he was, after "all evidence was examined", "found unanimously not guilty at Crown Court".

Mr Lomax said that he stood by his complaint that the use of Professor McDonnell and his commentary was unfair and biased and had only been used by the BBC to suit the programme's narrative. He said that in pre-trial documents showing Professor McDonnell's qualifications, "he had listed no knowledge of the MMPR<sup>5</sup> restraint package that was used at MSTC at the time". Therefore, claiming to be an expert simply was not true. Mr Lomax added that Professor McDonnell's comments that "the restraint should have been stopped, or I should have let go of 'Billy', or [his] opinion of finger placements" had given viewers the wrong advice on what should have happened in a restraint incident. Mr Lomax said that "in restraint incidents, you cannot simply 'let go', for various reasons" and that "no MMPR restraint expert would ever say those comments while examining footage".

Mr Lomax said that the UK has a principle of the presumption of innocence before the thorough scrutiny and examination of evidence. He said that the narrative used by the BBC and their decision to reveal his identity to the public in the programme was wholly against this principle, which, he said, had put him and his family at unnecessary risk and took away his right to a private life. Mr Lomax said that the BBC have often used public interest to justify its actions in this case, but that he saw no reason or justification why the BBC decided not to protect his identity.

### Broadcaster's representations

The BBC said that it had nothing substantive to add to its earlier submissions and did not propose to respond in detail to the points raised by Mr Lomax in his representations.

## **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 the recordings and transcripts of the programme as broadcast and the unedited footage of Mr Lomax, both parties' written submissions, and additional material provided by the BBC. We also took careful account of the representations made by both parties in response to Ofcom's Preliminary View on the complaint. After careful

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<sup>5</sup> Minimising and Managing Physical *Restraint*, a behaviour management and *restraint* system.

consideration of these representations, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to not uphold the complaint.

### Unjust or unfair treatment

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) We first considered Mr Lomax's complaint that he was treated unjustly or unfairly in the programme as broadcast because the secretly filmed footage of him had been edited unfairly and was included alongside "biased commentary" to make "extremely serious criminal allegations" about his conduct. We considered, in particular, Mr Lomax's complaint that the footage of his restraint of Billy was edited unfairly to "accuse him of assault", and that the programme had used an "expert" with no knowledge of restraint techniques in order to guide viewers to the wrong conclusions.

In considering this complaint, we had particular regard to the following Practices of the Code:

Practice 7.6 states:

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

Practice 7.9 states:

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

### *Unfair editing*

We first assessed whether the secretly filmed footage of Mr Lomax included in the programme had been edited unfairly. Ofcom had particular regard to the example cited by Mr Lomax in his complaint, namely that the footage of his restraint of Billy was edited unfairly to "accuse him of assault". In doing so, we carefully examined the full unedited footage of the incident in which Mr Lomax was filmed restraining Billy and compared it with the edited footage included in the programme as broadcast.

It is important to understand from the outset that it is an editorial decision for the broadcaster to make as to what content should, or should not, be included in programmes, subject to ensuring that the content as broadcast complies with the Code. In this case, we took particular account of the lead up to the incident and the restraint itself.

As set out in the "Programme summary", the programme showed an edited version of the lead up to Billy being restrained, first by Gareth and then a number of other members of staff including Mr Lomax. It was clear from this footage that Billy was being disruptive, and abusive towards Gareth in particular, before apparently reaching for the radio or keys of one of the other members of staff. It was after this point that Gareth was shown restraining Billy before other staff members came to assist, including Mr Lomax, who was the most senior member of staff there. The programme then focused on Mr Lomax and his hold on Billy. The footage was slowed down to show the position of Mr Lomax's hold around Billy's head and neck, and, in particular, to show what appeared to be Mr Lomax's fingers on Billy's neck.

Having watched all of the unedited footage, we recognised that some footage of Mr Lomax during the incident in which Billy was restrained was not included in the programme as broadcast. In particular, we observed that footage in which Mr Lomax made comments about getting Billy into the restraint position, for example "*Move to the front..*"; "*That's it, and left arm through*"; and, "*...cock his wrist, that's it...*" were not included, nor were his comments directed to Billy once the restraint was in place: "*Stop moving or it will hurt you*"; "*Stop moving or we will hurt*"; "*You need to stop moving*"; and, "*we will look after you, do you understand*". While the programme did not include these comments (or any comments made by Mr Lomax) or all of the footage taken of the restraint, we considered that the edited footage that was included in the programme was an accurate reflection of the incident and, in particular, accurately depicted the restraint hold that Mr Lomax had used on Billy, and that he had not adjusted his hold despite Billy saying that he could not breathe. In our view, the focus of this part of the programme was on the appropriateness or otherwise of the restraint hold used by Mr Lomax on Billy and was shown following footage of MSTC training instructors telling new members of staff that a restraint hold should be adjusted and checked if young person complained of not being able to breathe. We considered that, in this context, the footage included in the programme, albeit edited, provided viewers with a portrayal of Mr Lomax's restraint hold on Billy that was not unfair to Mr Lomax.

We also took into account that nowhere in the programme did it state that Mr Lomax's restraint hold on Billy amounted to an "assault" or that his actions were criminal. While the programme did, at the end, say that G4S had suspended the "*Duty Operations Manager, Chris who choked him [Billy]*" and that "*Kent Police have launched an investigation*", viewers would have understood that no criminal proceedings had been taken at that time against Mr Lomax or any of the other member of staff featured in the programme.

Given the above factors, therefore, we did not consider that the manner in which the edited footage was presented in the programme unfairly to "accuse him of assault", or to make allegations that Mr Lomax's actions were "criminal" in nature.

#### *Expert opinion*

Ofcom next assessed Mr Lomax's complaint that the programme unfairly used an 'expert' [Professor McDonnell, referred to as "*Dr McDonnell*" in the programme] who had no knowledge of restraint techniques in order to guide viewers to the wrong conclusion about what had happened during Billy's restraint. We also took into account Mr Lomax's representations made on the Preliminary View in this respect.

While programme makers and broadcasters have editorial discretion over what material to include in a programme, there is an obligation on them to ensure that material facts are presented fairly, in compliance with the Code. It is important too to understand from the outset that Ofcom's role is not to establish whether the substance of Professor McDonnell's contribution to the programme was correct or not, but to determine whether, in including his opinions in the programme, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Lomax. In doing so, Ofcom considered the basis for Professor McDonnell's opinion as expressed in the programme and whether the context of the programme's presentation of his opinion resulted in unfairness.

Ofcom took into account what was said by Professor McDonnell in the programme and the context in which his comments were made. As set out in the "Programme summary", Professor McDonnell was introduced to viewers immediately following the edited footage of Mr Lomax restraining Billy was shown. Professor McDonnell, who was described by a caption in the programme as a "Clinical Psychologist", was shown watching the footage of the restraint with the reporter. The following was included in the programme:

Reporter: *"Dr Andrew McDonnell is one of the most published experts on how to handle challenging behaviour, including physical restraint."*

Dr McDonnell: *"Yeah. He's got his fingers right in there, I can actually see them in there [positioning his fingers on his own neck to demonstrate the hold Mr Lomax had on Billy]. He's applying pressure there. That is really dangerous. He's telling you he can't breathe, so let go of him! That, to me, is an example of actually excessive force while applying restraint".*

Professor McDonnell also commented on footage of Billy being removed from the room after the restraint incident. He said:

*"If I was a young person in that situation and that was done to me, I'd be pretty angry. Although, these people are role models, so what they're doing almost makes it legitimate for those young people also to be violent and aggressive".*

Ofcom took the view that Professor McDonnell was presented as an "expert" and that viewers would have understood that the purpose of his contribution to the programme was to express his expert professional opinion on the manner in which Billy had been restrained by Mr Lomax, and whether such a restraint hold was appropriate in the circumstances in which it was applied. Ofcom took into account the BBC's statement above in which it set out the experience and qualifications that Professor McDonnell had in the field of "working with people exhibiting extreme behaviours" and being an "expert in the use of restraint on children". Ofcom considered that Professor McDonnell's professional expertise in the subject was clearly signalled to viewers by the reporter's introduction of him and that in this context it was legitimate for the programme to include Professor McDonnell's opinion.

Ofcom went on to consider whether the presentation of Professor McDonnell's opinion in the programme resulted in any unfairness to Mr Lomax. Professor McDonnell was shown watching the secretly filmed footage of Mr Lomax and other custody officers

restraining Billy and expressing his own professional opinion on what he saw. We took into account the language used by Professor McDonnell when giving his opinion and, in particular, his comment *"That, to me, is an example of actually excessive force while applying restraint"* and *"If I was a young person in that situation and that was done to me, I'd be pretty angry"*. In our view, it would have been clear to viewers that his comments constituted his own opinion, and were based only on what he saw from the footage shown to him. Given the above, we considered that Professor McDonnell and the nature and content of his comments were presented in the programme in a way that made it clear to viewers that he was an expert giving his personal, professionally informed opinion on what he could see of Mr Lomax's restraint hold on Billy.

Ofcom also had regard to the complainant's submissions that expert evidence given at a criminal trial following the programme had "disagreed with the commentary in the programme" and that the BBC had argued, by contrast, that the expert evidence given by a witness in Mr Lomax's criminal trial "support[ed]" the programme's assessment that the restraint used was "excessive". However, it is not for Ofcom to determine the validity or otherwise of the opinion given by an expert such as Professor McDonnell, or to assess it against the opinions of other experts. Our role is to consider whether the manner in which expert opinion was presented in the programme as broadcast resulted in unfairness. In the circumstances of this case, we considered that Mr Lomax's complaint that an expert at his subsequent criminal trial took a different view to Professor McDonnell was not relevant to our consideration of whether the inclusion of Professor McDonnell's comments in the programme resulted in unfairness to Mr Lomax.

We also took into account the BBC's submission that the programme makers had also obtained the professional opinion of two additional experts before the broadcast who had watched the unedited footage of Mr Lomax's restraint of Billy, although these opinions were not referred to in the programme as broadcast. The BBC did not disclose to Ofcom the identity of the two experts or provide Ofcom with a summary of their opinions (for the confidentiality reasons explained by the BBC in its submissions, as summarised above). However, the BBC did tell Ofcom that one was an internationally recognised expert on managing challenging behaviour, including that of young people, and one was a specialist child protection expert. The BBC also said that both experts had considered "the extent of the mistreatment which had been recorded and the specific actions of Mr Lomax", and that their opinions had informed to the programme makers' decision to broadcast the footage of Mr Lomax and state in the programme that *"He has his fingers on Billy's throat"*.

Taking all the above circumstances into account, including the representations made by Mr Lomax on the Preliminary View, Ofcom considered that the inclusion of footage of Mr Lomax in the programme was not edited in a way that unfairly misrepresented him or his actions in restraining Billy. We also considered that in representing the professional opinion of Professor McDonnell in the programme, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that portrayed Mr Lomax unfairly.

#### Unwarranted infringement of privacy

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression and the audience's right to receive ideas and information without undue interference. Neither right as such has precedence over the

other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

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

- b) Ofcom considered Mr Lomax's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because the footage was secretly filmed in a "secure establishment" and he was "unaware of being filmed at the time".

Ofcom had regard to Practices 8.5, 8.8 and 8.9 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.8 states that in potentially sensitive places, such as prisons, separate consent should normally be obtained from individuals before filming or recording from those in sensitive situations (unless not obtaining consent is warranted). Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Ofcom also had regard to Practice 8.13 which states:

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

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

Before assessing the extent to which Mr Lomax had a legitimate expectation of privacy in connection with the obtaining of the material included in the programme, Ofcom considered whether the surreptitious filming was, in itself, warranted in the circumstances.

Ofcom considered that there was a significant public interest in the programme makers investigating the alleged (at the time) mistreatment and abuse by staff of young people at a secure centre such as MSTC. We also considered that it was in the public interest for the programme to investigate the conduct of staff at MSTC who were responsible for the safety and wellbeing of the children in their care.

We took into account the reasons put forward by the BBC to explain why the programme makers had decided to film undercover at MSTC. We took into account particularly that

the decision to film at MSTC was based on evidence and information gathered by the programme makers from the beginning of 2015 relating to allegations of “violence towards children by staff at MSTC”, and it was on this basis that approval was given by senior BBC managers to the programme makers to conduct an undercover investigation, using surreptitious filming, at MSTC. Ofcom acknowledged the BBC’s position that much of the information the programme makers were provided with was given on the basis of “anonymity and confidentiality, and this this still applied”. However, we took into account that the BBC had said some of this material was provided “first-hand” by past and present staff at MSTC who were concerned about the conduct of some of their colleagues towards the trainees.

Given the above, we considered that there was *prima facie* evidence of a story in the public interest and were satisfied that the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming. Given the nature of the matters the programme set out to explore, we considered it unlikely that the programme makers could have captured footage of staff at MSTC speaking openly and candidly about their treatment of particular trainees without using surreptitious filming, which was necessary to allow the programme makers to capture footage of the treatment of trainees, including restraint techniques used by the staff at MSTC. Accordingly, we considered that the surreptitious filming was necessary to the credibility and authenticity of the programme. Taking all these factors into account, it was Ofcom’s view that the programme makers’ decision to film surreptitiously at MSTC, including Mr Lomax carrying out his duties as a relatively senior member of staff at the centre, was warranted and that the means of obtaining the material had been proportionate in accordance with Practice 8.9.

We next assessed the extent to which Mr Lomax had a legitimate expectation of privacy in the particular circumstances in which the relevant material was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

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

In this case, we took into account that Mr Lomax was filmed, in a private, sensitive and secure environment in which filming without permission was restricted, carrying out his day to day tasks as a Duty Operations Manager at MSTC, which, Ofcom understood, included the oversight of the welfare of the young people there and the conduct of the MSTC staff under his supervision. This included being filmed assisting in the restraint of trainees, including the classroom incident in which Mr Lomax restrained Billy. From the unedited footage provided to Ofcom, we observed that Mr Lomax did not discuss anything that was personal or private about himself, but instead focused on his professional interactions with trainees and his colleagues. However, we acknowledged that the interactions Mr Lomax was filmed having with trainees and staff at MSTC concerned sensitive matters and were conducted for the purpose of his work in a secure environment to which only his colleagues had access, and in which he would have felt he

could act openly and freely. In these circumstances, we considered that Mr Lomax's interactions could be regarded as attracting a legitimate expectation of privacy.

The broadcaster confirmed in its submissions that neither Mr Lomax's consent, nor that of MSTC, was obtained in connection with the filming of him at the centre. As already mentioned above, Practice 8.8 of the Code recognises that a prison is a "potentially sensitive" place and that separate consent should normally be obtained before filming from those in sensitive situations (unless not obtaining consent is warranted). Therefore, Ofcom went on to consider whether the infringement of Mr Lomax's legitimate expectation of privacy in the obtaining of the material of him was warranted without his consent. In doing so, we also took into account Mr Lomax's representations made on the Preliminary View in this respect.

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

Ofcom carefully balanced Mr Lomax's rights to privacy with regards to the broadcasting of the footage with the broadcaster's right to freedom of expression, and the audience's right to receive the information broadcast without unnecessary interference.

As already expressed above, Ofcom considered that there was a significant public interest in the programme makers investigating the alleged mistreatment and abuse by staff of young people at a secure centre such as MSTC and questioning the conduct of those members of staff who were responsible for the safety and wellbeing of those in their care. On the facts of this case, we considered that the footage of Mr Lomax played a key role in the programme's ability to demonstrate to viewers concerns that staff at MSTC were potentially behaving inappropriately towards trainees in some cases. In our view, as a relatively senior member of MSTC staff, Mr Lomax had a responsibility to safeguard the young people at MSTC and to set a positive example to more junior members of staff in the way they conducted themselves with the young people, including the correct and appropriate manner in which to apply a restraint hold. In our view therefore, and despite the fact that Mr Lomax was filmed in a secure environment, there was a public interest justification for secretly filming Mr Lomax in these circumstances and without his consent.

We also took into account that the footage filmed of Mr Lomax did not reveal any personal information about him or his private life but focused instead on his professional interactions with trainees and colleagues, which, for the reasons already set out, there was a significant public interest in examining, including in relation to the conduct shown.

Taking all the relevant factors set out above into account, including Mr Lomax's representations on the Preliminary View, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the significant public interest in the obtaining the footage of Mr Lomax in this instance outweighed his legitimate expectation of privacy in relation to the filming of him. Therefore, we considered that Mr



Lomax's privacy in connection with the obtaining of material included in the programme was not unwarrantably infringed.

Therefore, Ofcom considered that there was no unwarranted infringement of Mr Lomax's privacy in connection with the obtaining of material included in the programme.

- c) We next considered Mr Lomax's complaint that his privacy was unwarrantably infringed in the programme as broadcast because no attempt was made to disguise his identity by blurring his face or obscuring his voice, and he was identified by name in the programme.

We had regard to Practices 8.6, 8.8, and 8.14 of the Code when considering this part of Mr Lomax's complaint. Practice 8.6 states that if the broadcast of the programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Practice 8.8, as above, also states that in potentially sensitive places such as prisons, separate consent should normally be obtained for broadcast from those in sensitive situations (unless not obtaining consent is warranted). Practice 8.14 states that "Material gained by surreptitious filming and recording should only be broadcast when it is warranted".

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

We assessed whether Mr Lomax had a legitimate expectation of privacy regarding the broadcast of footage of him included in the programme. We applied the same objective test set out in head b) above.

As set out in detail above at head a) and in the "Programme summary" section, footage of Mr Lomax at work, principally shown assisting in restraining trainees, and in particular restraining Billy in the classroom incident, was shown in the programme. While Mr Lomax was not the only member of MSTC staff featured in the programme, he was referred to in the programme by his first name "Chris", brief unobscured footage of his face was shown, and his voice was heard undisguised. This, we considered, rendered Mr Lomax identifiable in the programme.

As explained in detail at head b) above, Ofcom considered that all of the footage filmed of Mr Lomax had been obtained surreptitiously by the undercover reporter without Mr Lomax's knowledge or consent. As set out at head b) above, we acknowledged that the interactions broadcast between Mr Lomax and the trainees and staff at MSTC, for example, his involvement in the restraint of Billy, concerned sensitive matters and were conducted for the purpose of his work in a secure environment to which only his colleagues had access and in which he would have felt he could act openly and freely. We also took into account that the programme revealed that Mr Lomax not only worked as a manager at MSTC, but also had been suspended from his position as a result of his alleged behaviour towards Billy shown in the programme. In these circumstances, we considered that Mr Lomax had a legitimate expectation of privacy in respect of the material broadcast of him in the programme. We therefore went on to consider whether the broadcast of this material without consent was warranted under the Code.

We again carefully balanced Mr Lomax's right to privacy regarding the inclusion of the footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary

interference. We also took into account that the footage showed Mr Lomax interacting with young people and staff as part of his work as a Duty Operations Manager at MSTC. The footage principally depicted Mr Lomax restraining Billy during an incident in a classroom.

As above in head b), we considered that the footage of Mr Lomax included in the programme as broadcast did not reveal any personal information about him or his private life, but focused instead on his professional interactions with trainees and colleagues. We took into account Mr Lomax's submission that by rendering him identifiable in the footage as broadcast, he had been in fear of reprisals from convicted criminals and the general public as a result of the broadcast. We also took into account the BBC's submission that there was a public interest justification in broadcasting the footage of Mr Lomax demonstrating what it said was "evidence of inappropriate behaviour by a senior manager towards a trainee".

Ofcom carefully balanced Mr Lomax's rights to privacy with regards to the obtaining of the footage with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference.

Again, as above, in weighing up the competing rights of the parties, we considered that there was a significant public interest in the programme makers investigating the alleged mistreatment and abuse by staff of young people at a secure centre such as MSTC and questioning the conduct of those members of staff who were responsible for the safety and wellbeing of those in their care. We acknowledged that as Mr Lomax was identifiable in the programme, the broadcast could have had an impact on Mr Lomax by making public his involvement in the conduct shown, and the fact that he had been suspended from his job subsequently. However, we considered that Mr Lomax, as a relatively senior member of MSTC staff, had a responsibility to safeguard the trainees and to set a positive example to more junior members of staff in the way they conducted themselves with the trainees, including when restraining them. In our view therefore, there was a public interest justification for including in the programme as broadcast the secretly filmed footage of Mr Lomax in these circumstances.

Taking all the relevant factors set out above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the significant public interest in broadcasting the footage of Mr Lomax in this instance outweighed his legitimate expectation of privacy in relation to its broadcast. Therefore, we considered that Mr Lomax's privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Mr Lomax's complaint of unjust and unfair treatment in the programme, and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**

## Not Upheld

### **Complaint by the National Farmers Union Scotland and Mr Charles Adam, made on their behalf by Gillespie Macandrew LLP**

***Disclosure: The Dark Side of Dairy, BBC1 Scotland, 10 September 2018***

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#### **Summary**

Ofcom has not upheld this complaint by the National Farmers Union Scotland ("the NFUS") and Mr Charles Adam, made on their behalf of Gillespie Macandrew LLP ("Gillespie Macandrew"), of unjust or unfair treatment in the programme as broadcast.

The programme investigated the export of male dairy calves from Scotland to Europe and included interview footage of Mr Adam representing the NFUS. Gillespie Macandrew complained that the NFUS and Mr Adam were treated unjustly or unfairly in the programme as broadcast because Mr Adam's comments were included in the programme out of context, giving a misleading impression of the "true facts" and of the views of the NFUS and Mr Adam.

Ofcom considered that Mr Adam's contribution was edited fairly, and that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in the programme as broadcast in a way that was unfair to Mr Adam or the NFUS.

#### **Programme summary**

On 10 September 2018, BBC1 Scotland broadcast *Disclosure: The Dark Side of Dairy*, an episode of the investigative journalism series *Disclosure*. This episode focused on the export of male dairy calves from Scotland to Europe.

During the title sequence, which included clips of footage subsequently featured in the programme, the programme's reporter introduced the programme:

*"It's a controversial trade...I go on the trail of cattle trucks across Europe. Six days, two ferries, five countries...I discover the bleak choice farmers are faced with".*

Interview footage of Mr Adam was then shown, who said: *"The alternative argument may well be that you just have to shoot this animal"*. The reporter continued: *"Tonight I investigate the dark side of dairy"*.

The programme began by focusing on the separation of calves from cows shortly after birth in the dairy industry. The reporter said:

*"It's not just that calves are normally taken away from their mothers. Male calves obviously can't join the milking herd. In Europe, they are often slaughtered around 20 weeks of age for veal. But that's not popular with UK consumers, and the industry says there's no market for them here. So, these dairy calves are essentially a waste product, and that's led to a dark trade".*

The programme then went on to investigate the journey taken by these male dairy calves during their export from Scotland, through Ireland, and then on to Europe. The reporter said:

*"Campaigners object to long journeys for calves, because they can't control their own temperature and don't have developed immune systems. But, the alternative to export is potentially just as bleak. Right now, farmers in Scotland say these animals are worth so little that it's either ship them or shoot them at birth".*

Interview footage of Mr Adam, described by a caption as "NFU Scotland Livestock Convener", was then shown. The following conversation took place:

Reporter: *"Are we comfortable with either of those?"*

Mr Adam: *Well we're certainly not comfortable with shooting them, because, I mean, no farmer wants to shoot anything. We are in the business of trying to produce good food for people to consume.*

Reporter: *But, exporting calves at the age of two weeks, two weeks old, is that something we are comfortable with?"*

Mr Adam: *I don't think we are particularly comfortable with it, it certainly would be the bottom of our list of wants for what we do with those calves. But, if we come down to the point where it's either that or shooting them, then it's marginally better".*

The reporter then said:

*"There doesn't sound like much of a choice. But, if I'm to understand the favoured option of export better, then I'm going to have to get closer to the trade itself".*

The programme went on to examine the journey the calves took from the British Isles to the continent of Europe, their treatment during the journey, and their eventual slaughter.

Later in the programme, the reporter referred to the possibility of Scottish cattle being exported further after reaching Europe:

*"I know Scottish calves are being exported to Spain. I know they then enter the general cattle market, and I now know that market involves further export to places where slaughter conditions are almost unimaginable.*

*Can we be 100 per cent sure that Scottish cattle end up like that? No. But can we 100 per cent sure that they don't end up like that? Equally, no. Because this is a massive part of the meat industry here in Spain".*

Further interview footage of Mr Adam was then shown, and the following conversation took place:

Reporter: *"Is it acceptable to say, once an animal leaves our borders, once an animal leaves what we can control, it's okay?"*

Mr Adam: *I'm not sure if I would say it's acceptable, I think it's just the real world at the moment, and we would obviously prefer to be able to control everything, but I think we have to be realistic. So, if acceptable means 'Do we reluctantly accept it?' then the answer is yes".*

The programme then moved on to focus on the involvement of ferry companies and the Scottish government in the export process. The reporter said: *"The Scottish Government says it will take note of any changes in England, but currently the options for calves here remain: shoot them or ship them"*.

The programme then explored alternative farming practices that had been adopted by a Scottish dairy farmer. There was no further footage of, or reference to, Mr Adam or the NFUS in the programme.

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

#### Complaint

Gillespie Macandrew complained that the NFUS and Mr Adam were treated unjustly or unfairly in the programme as broadcast because Mr Adam's comments were included in the programme out of context, giving a misleading impression of the "true facts" and of the views of the NFUS and Mr Adam.

In particular, Gillespie Macandrew said that while Mr Adams had "provided many answers on camera about the various options open to Scottish bull dairy calves", the programme had only included his comments on the "much rarer alternatives of 'shipping' and 'shooting'" and those comments in which he accepted that the industry could not control what happened to Scottish cattle once they had been exported.

By way of background, Gillespie Macandrew said that the interview footage of Mr Adam was obtained through misrepresentation. It said that Mr Adam, and thus the NFUS, was "not fairly or fully advised" of the planned nature of the programme, nor of the context of their contribution when they were asked to take part. Gillespie Macandrew said that it was not made clear to Mr Adam, or the NFUS, that the programme's focus would be that "there was no choice for Scottish dairy farmers other than to shoot the bull calves at birth or to export them". Gillespie Macandrew also said that Mr Adam's comments on the industry's inability to control what happened to cattle once they left Scotland were made on the incorrect understanding given to him by the programme makers that the BBC had evidence that Scottish cattle had been illegally exported to North Africa, when this was not the case. Gillespie Macandrew said that had the NFUS been "fairly warned of the polemical arguments of the programme, it would have offered others for interview who would have been armed with facts and figures that would have helped put the programme's claims into true perspective".

#### Broadcaster's response

The BBC said that the programme had set out to investigate the export of live cattle to Europe and, in particular, claims that Scotland had become the centre of a controversial trade in very young male dairy calves, raising serious questions about animal welfare and traceability. The BBC said that the programme also investigated concerns about the difficulties of tracing calves shipped from Scotland after they join the general cattle market in

Spain for fattening. It said that exports had been rising from the general cattle market in Spain to North Africa, where stricter European Union slaughter regulations did not apply.

With regard to the complaint that the interview footage of Mr Adam was obtained through misrepresentation, the BBC said that the premise of the programme and the basis of the interview request were made clear to the NFUS, and that there were no grounds for the claim of misrepresentation. The BBC said that contact was made with the NFUS on 9 August 2018 when the programme's reporter asked to speak to someone about live animal export, particularly young male dairy calves from Scotland. The BBC said that on the 10 August 2018, the reporter spoke to the NFUS's Animal Health and Welfare Policy Manager, and requested an interview with her in an email on 13 August 2018:

"I would like to put a bid in for an interview with her [the NFUS's Animal Health and Welfare Policy Manager] regards the subject of live animal transport/export. We have been looking at the trade from Scotland to Europe and also looking at the movement of bull dairy calves.

It is difficult to give specific questions however I am keen to talk about the trade generally, what the scale of the trade is, how the traceability works, where the cattle/calves end up, what happens once they arrive in countries such as Spain and what happens afterwards".

The BBC said that the NFUS decided to nominate Mr Adam, the NFUS's Vice President and Livestock Chairman to give the interview. It said that before the interview, the reporter explained to Mr Adam: "This is an interview for a BBC documentary looking at live animal export, looking at cattle and focusing more on dairy bull calves".

The BBC said that as to the focus of the programme, it believed that: "the most that can be said is that it turned out to be somewhat narrower" than the reporter's email of 13 August 2018, taken on its own, might have led the NFUS to expect. However, the BBC said that the email was explicit about the programme's interest in the issue of male dairy calves and the options which apply to them, and that the reporter's questions during the interview were principally on that topic. The broadcaster said that misrepresentation could not be claimed in this case, where the programme's likely concerns had been clearly set out, but that "the final focus of the programme was more closely on particular aspects of them than might have been anticipated". The BBC added that the focus of the programme was consistent with the focus of the interview.

With regard to the complaint that, had the NFUS been "fairly warned of the polemical arguments of the programme, it would have offered others for interview who would have been armed with facts and figures that would have helped put the programme's claims into true perspective", the BBC said that the choice of representative in the programme was a matter for the NFUS, and that the reporter had actually requested to speak to the NFUS's Animal Health and Welfare Policy Manager.

The BBC also said that one thesis of the programme was that there was no choice for Scottish dairy farmers other than to shoot the male dairy calves at birth or to export them. This, it said, was the broad impression formed by the programme makers by their research for the programme, which included discussions with the Scottish Government and several Scottish dairy farmers as well as the NFUS. The BBC said that far from countering this impression, Mr Adam's answers in the interview tended to confirm it. The BBC said that this

was effectively acknowledged by Gillespie Macandrew in its 'Statement of Reasons' submitted to Ofcom on 21 December 2018, in which it stated that Mr Adam had "allowed himself to be taken to suggest" that the only choice was between shooting and export. The BBC said that in the same document, Gillespie Macandrew stated:

"Had NFUS been advised properly of the principal theses which the programme would seek to advance, they would have made sure that either Mr Adam or a substitute NFUS representative was fully briefed on these matters, including with a) data to show that about 80% of Scottish dairy bull cattle are neither shot at birth nor exported but rather reared to maturity elsewhere in Scotland or the UK..."

The BBC said that the NFUS's representations on this point changed over the course of the complaint. The BBC said that, in the 'Statement of Complaint' enclosed within the NFUS's letter to the BBC Executive Complaints Unit dated 11 October 2018, the NFUS said that the programme "propagated a polemic based on a false premise" and the fact that "the premise was false should have been clear to...[the reporter] from the interview and pre-interview meeting that day". The BBC said that "if there is any room for doubt about the identity of the premise whose falsity 'should have been clear to...[the reporter]', it is removed by the 'Statement of Complaint' which said: '...[the reporter] knew that exports and being shot at birth were a minority'". However, the BBC said that in the 'Statement of Reasons' submitted to Ofcom on 21 December 2018, the claim that the reporter was informed that exports and being shot at birth were a minority at the pre-interview meeting, or during the interview, had been abandoned, in favour of a claim that the NFUS would have prepared its interviewee to rebut the premise in question or offered someone else for interview, had it known the part it would play in the programme, and that the "NFUS and Mr Adam were unfairly prevented from preparing and delivering appropriate explanatory material in the interview". The BBC said that the position now arrived at by Gillespie Macandrew was consistent "with what Mr Adam said in his interview (when he was plainly not in possession of the information that Scottish dairy bull calves being exported or shot at birth were a minority)", but that this position contradicted the position the NFUS previously maintained.

With regard to the complaint that Mr Adam's comments on the industry's inability to control what happened to cattle once they left Scotland were made on the incorrect understanding given to him by the programme makers that the BBC had evidence that Scottish cattle had been illegally exported to North Africa, when this was in fact not the case, the BBC said that there was no record of any communication from the programme makers to the NFUS or Mr Adam that supported this suggestion. The BBC also said that this suggestion was inconsistent with what the reporter said in the programme:

*"I know Scottish calves are being exported to Spain. I know they then enter the general cattle market. And I now know that market involves further export to places where slaughter conditions are almost unimaginable. Can we be 100% sure that Scottish cattle end up like that? No. But can we be 100% sure that they don't end up like that? Equally no. Because this is a massive part of the meat industry here in Spain".*

The BBC said there was no basis for suggesting that the programme makers had claimed to have evidence of illegal export to North Africa, and therefore there were no grounds for supposing Mr Adam's responses were affected by such a claim. The BBC said that the relevant exchanges were entirely as one would expect in a situation where both the interviewer and interviewee were aware of onward export of cattle from Spain and neither could rule out the possibility of Scottish calves reaching destinations in North Africa or other

places with animal welfare standards which would be unacceptable in the UK. The BBC said that if Mr Adam had believed that no Scottish cattle exported to Spain were subsequently exported to North Africa, then he could have stated it, but he did not.

The BBC said that the impression formed by the programme makers based on their research was that, although other options were available to a limited extent, the alternatives for male dairy calves in the Scottish dairy industry were largely confined to export or shooting at birth. The BBC said that, in its final response letter of 28 November 2018 to the NFUS, it accepted that this was not the case but also made the point that the data cited by the NFUS as controverting this impression was not publicly available at the time that the programme was being researched. The broadcaster also said that it had been unable to find any published source for data available at the time of research which would have modified the programme makers' impression. The BBC said that the NFUS provided figures over three weeks after the broadcast of the programme, from a database that was not publicly accessible. The BBC said that using that data with other information (also not publicly accessible) the NFUS estimated that 13 per cent of calves in Scotland were shot before registration in 2017. The BBC further said that figures from the independent Cattle Health and Welfare Group suggested that nearly one in five calves were euthanised before registration. However, the BBC said that those figures were from 2015 and for the whole of the UK. The BBC said it was therefore unclear from either of these data sources exactly how many dairy calves are retained within the dairy beef industry in Scotland and what happens to them if they are not euthanised before registration or subject to live export.

The BBC said that as the NFUS acknowledged that Mr Adam "allowed himself to be taken to suggest that the only choice was to 'shoot them or ship them'", the BBC said that "it appears to be common ground that this is indeed what his answers suggested". The BBC said that the NFUS's Animal Health and Welfare Policy Manager attended both the pre-interview discussion and the interview with Mr Adam himself, and "so it is not as if the NFUS had no opportunity of contesting the impression it later objected to".

The BBC said that the complaint seemed to come down to the point that the programme did not include the "many answers" that Mr Adam had provided "about the various options open to Scottish bull dairy calves". The BBC said that Mr Adam had only mentioned two alternative options: the sale of calves into the UK market, and the use of sexed semen by dairy farmers. The BBC quoted Mr Adam's comments about the sale of the calves into the UK market from the unedited interview footage:

"Well, the ideal option would be to grow them into mature beef-producing animals and to find a market for them and they could actually supply a market possibly further down the chain than the top quality market but at a price that a lot of people could afford...ideally we would feed them, finish them and consume them at home...but we're not, and I mean we would like to move towards a situation where we can do that, but our efforts to do that have been limited".

The BBC said that, in the same exchange, Mr Adam referred to "the very limited demand for these animals on the home market", which he attributed at various points during the interview to consumer resistance arising from unfavourable perceptions of veal production and the reluctance of retailers to promote beef from the dairy herd. The BBC said that no one could reasonably draw the impression from Mr Adam's answers that selling into the UK market was a ready alternative for Scottish dairy farmers, rather than a matter of largely



undeveloped potential. The BBC said that this impression given by Mr Adam was supported by a press statement issued by the President of the NFUS on 10 September 2018:

“The Union, along with other stakeholders, is beginning to look at the development of a home market for dairy beef and rose veal, which would hopefully decrease the need for dairy farmers to export dairy bull calves.

This is a difficult process which required the cooperation of everyone in the supply chain, but we believe will be more than worthwhile if we can make it happen”.

The BBC said that Mr Adam's sole reference to sexed semen during his interview was similarly qualified, and quoted Mr Adam's comments from the unedited interview footage:

“...there is technology now which can actually produce sexed semen to a certain degree and we would like to move, and the dairy industry is moving, towards a situation where they reduce the number of bull calves that are produced by using sexed semen. I know that technology isn't perfect and there's work to be done but that's something that could help...”.

The BBC said that, as with the development of a domestic market for dairy beef, this reference to sexed semen was couched in terms of potential, and Mr Adam did not suggest that either option represented a substantial current alternative. It said that it did not believe that it could be argued that the programme gave a misleading impression of the views Mr Adam expressed. The BBC said that, on the contrary, it was the views expressed by Mr Adam which guided the programme makers' selection of the extracts of his interview to be included in the programme.

With regard to Gillespie Macandrew's complaint that only “those comments in which [Mr Adam] accepted that the industry could not control what happened to Scottish cattle once they had been exported” were included, the BBC said that it was unclear what other comments of Mr Adam's the NFUS believed should have been included. The BBC said that, during his interview, Mr Adam did not make any comments in which he affirmed that the industry could control what happened after export and said that neither Mr Adam nor anyone else would be in a position to affirm this. The BBC said that, in any event, the issue in the programme was not whether such control could be exercised, but whether, in its absence, the export trade of very young calves was acceptable. It said that this was necessarily a matter of judgement, and that it believed that Mr Adam's judgement on the matter was reflected with complete fairness in the programme.

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

Ofcom prepared a Preliminary View that the complaint made on behalf of Mr Adam and the NFUS should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The representations of both parties are summarised, insofar as they are relevant to the complaint entertained and considered by Ofcom, below.

#### Complainant's representations

Gillespie Macandrew said that the complainants were misled by the BBC journalist, who went looking for material to support her theses that the Scottish dairy farmer had only two

choices, to shoot or export male dairy calves, and that exportation involved exposing Scottish-born cattle to inhumane conditions outside the EU. It said that the complainants considered that this was the intended main theme of the programme "certainly from before the date of the request for the interview", and that that theme was not fairly and properly disclosed to them in advance. Gillespie Macandrew provided Ofcom with "pointers" it said supported this view. For instance, the programme included segments which did not have any direct link to the Scottish dairy industry, such as footage of adult Irish beef cattle being transported through France, Hungarian calves being loaded onto a boat in Romania; and, an Egyptian slaughterhouse, without explanation that Scottish male dairy calves could not legally be transported there.

Gillespie Macandrew also said that what was said off-camera to Mr Adam and the other NFUS representative in a pre-meeting before the interview was filmed contributed to the unfairness. It said that the reporter had erroneously led Mr Adam to believe the programme makers had evidence of the export of Scottish-born calves to North Africa or the Middle East, contrary to NFUS's research, which showed the opposite. Gillespie Macandrew said that this meant that Mr Adam did not feel able to deny that such export took place during the interview, when he would otherwise have done so and that this had changed the whole tone of the interview.

Gillespie Macandrew said that in the pre-interview meeting there was discussion about the other options, i.e. not "shooting" or "shipping", available in relation to male dairy calves, such as finishing them in the UK for food production, or the use of sexed semen. However, it said that the interview side-lined alternatives so that the programme could present, "the false 'shooting/shipping' dichotomy as the only choices".

Ofcom's Preliminary View had said that it was not "provided with any evidence to support Gillespie Macandrew's complaint" in relation to evidence of export of Scottish male dairy calves to North Africa. Gillespie Macandrew said that this referred to the lack of any correspondence and footage of the interview dealing with that topic, but had ignored the fact that the "misleading assertions were made not in writing or on camera but in oral discussions before filming began, as mentioned above".

In short, Gillespie Macandrew contended that alternative options to shipping or shooting were not ruled out by Mr Adam, and had been discussed before the interview, yet the excerpts used from the interview seemed to suggest that Mr Adam supported the "shipping or shooting" thesis. This, it said, was unfair. It said that the uncertainty that the reporter expressed in the programme on this point did not feature in what she said to Mr Adam and the NFUS representative before the interview took place, and the damage was thereby done in terms of Mr Adam's hesitancy about putting across the true (and correct) NFUS position on this issue in the interview.

#### Broadcaster's representations

The BBC said that Gillespie Macandrew's representations did little more than reargue points which Ofcom has already considered, and that it rejected Gillespie Macandrew's representations with regard to the "programme-makers' integrity" in relation to the conduct of the interview and the programme itself.

The broadcaster said that the reporter may well have referred to evidence that Scottish-bred cattle might have reached such destinations, because the programme makers had evidence

to that effect (in the form of information from animal welfare groups about animals' tags being removed and replaced). It said that this would have been entirely consistent with the questions put by the reporter to Mr Adam during the interview and what she said in the programme.

## Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, a recording and transcript of the complainant's unedited contribution to the programme, and both parties' written submissions. We also took careful account of the representations made by both parties in response to Ofcom's Preliminary View on the complaint. After careful consideration of the representations, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to not uphold the complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

Ofcom considered Gillespie Macandrew's complaint that the NFUS and Mr Adam were treated unjustly or unfairly in the programme as broadcast because Mr Adam's comments were included in the programme out of context, giving a misleading impression of the true facts and the views of the NFUS and Mr Adam. In considering this complaint, we had particular regard to the following practices:

Practice 7.2 states:

"Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise".

Practice 7.3 states:

“Where a person is invited to make a contribution to a programme...they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute...;
- be told what kind of contribution they are expected to make...;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;

...

- Taking these measures is likely to result in the consent that is given being ‘informed consent’ ...”.

Practice 7.6 states:

“When a programme is edited, contributions should be represented fairly”.

Practice 7.9 states:

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

#### *Nature and purpose of the programme*

In assessing the NFUS's and Mr Adam's complaint, Ofcom began by considering whether the programme makers were fair in their dealings with the NFUS and Mr Adam as potential contributors to the programme, as outlined in Practice 7.2, and in particular, whether the NFUS and Mr Adam gave their informed consent to participate in the programme, as outlined in Practice 7.3. We began by considering the information that was made available to the NFUS and Mr Adam by the programme makers with regards to the nature, likely content of the programme and Mr Adam's likely contribution in advance of agreeing to participate. In doing so, we took account of both parties' submissions (set out in detail in the “Summary of the complaint and the broadcaster's response” section above). We also took into account the parties representations made on the Preliminary View in this respect.

We recognise that there was conflict in what the NFUS and Mr Adam said they understood as the focus of the interview and what the programme would be about, and what the programme makers said they had communicated to the NFUS and Mr Adam. Gillespie Macandrew said that it was not made clear to Mr Adam or the NFUS that the programme's focus would be that “there was no choice for Scottish dairy farmers other than to shoot the bull calves at birth or to export them”. Gillespie Macandrew also said that Mr Adam's comments on the industry's inability to control what happened to cattle once they left Scotland were made on the incorrect understanding given to him by the programme makers that the BBC had evidence that Scottish cattle had been illegally exported to North Africa, when this was not the case. Gillespie Macandrew said that had the NFUS been “fairly warned

of the polemical arguments of the programme, it would have offered others for interview who would have been armed with facts and figures that would have helped put the programme's claims into true perspective".

However, the BBC argued that the premise of the programme and the basis of the interview request were made clear to the NFUS, and that there were no grounds for misrepresentation. We took into account the BBC's points that:

- The BBC requested an interview with the NFUS on 13 August 2018, explaining in an email to the NFUS:

"I would like to put a bid in for an interview...regards the subject of live animal transport/export. We have been looking at the trade from Scotland to Europe and also at the movement of bull dairy calves.

It is difficult to give specific questions however I am keen to talk about the trade generally, what the scale of the trade is, how the traceability works, where the cattle/calves end up, what happens once they arrive in countries such as Spain and what happens afterwards".

- Prior to the interview with Mr Adam, the reporter explained: "This is an interview for a BBC documentary looking at live animal export, looking at cattle and focusing more on dairy bull calves".

We considered that the programme makers' email of 13 August 2018 to the NFUS set out clearly that the programme would be about male dairy calves and the current options available to farmers for them. We also considered that the reporter made the subject of the interview clear with Mr Adam before she began interviewing him for the programme and that her questions during the interview were clearly on this topic.

With regard to Gillespie Macandrew's complaint, which was reiterated in its representations on the Preliminary View, that it was not made clear to Mr Adam or the NFUS that the programme's focus would be that "there was no choice for Scottish dairy farmers other than to shoot the bull calves at birth or to export them", we acknowledge that Mr Adam may not have expected the interview to take the direction that it did, i.e. to focus on two particular options currently available to farmers of either shooting male dairy calves at birth or exporting them at a young age. However, we did not consider it to be necessary as a matter of fairness for the broadcaster to have informed the NFUS and Mr Adam in advance precisely of the direction of discussion or what questions he would be asked. Instead, Practice 7.3 refers to "areas of questioning" which allows for discussion to progress in one way or another and questions to adapt according to answers given whilst remaining within the area notified to the contributor. The purpose of an interview such as this one, in our view, is to establish facts and to provide an opportunity for potentially affected parties to give their position or respond to claims the programme intends to make; it is therefore not possible for programme makers to know what information will be revealed by participants or how a line of questioning will develop. Indeed, we took into account what the BBC said in its submissions on this point:

"As for the thesis...that 'there was no choice for Scottish dairy farmers other than to shoot the bull calves at birth or to export them', this was the broad impression formed by the programme makers as a result of their research for the programme...Far from

countering that impression, the answers given by Mr Adam in his interview tended to confirm it".

Ofcom was not provided with any evidence to support Gillespie Macandrew's complaint that Mr Adam's comments on the industry's inability to control what happened to cattle once they left Scotland were made on the incorrect understanding given to him by the programme makers that the BBC had evidence that Scottish cattle had been illegally exported to North Africa. For instance, Gillespie Macandrew did not provide Ofcom with any records of correspondence from the programme makers to the NFUS or Mr Adam that suggested they had evidence of Scottish cattle being illegally exported to North Africa. We also watched both the unedited footage of the interview with Mr Adam and the broadcast programme, neither of which made this claim. This is clear from the extract of the unedited footage of the interview transcribed below in the "Unfair editing" section and in the broadcast programme, in which the reporter said:

*"I know Scottish calves are being exported to Spain. I know they then enter the general cattle market. And, I know that market involves further export to places where slaughter conditions are almost unimaginable.*

*Can we be 100% sure that Scottish cattle end up like that? No. But, can we be 100% sure that they don't end up like that? Equally no. Because this is a massive part of the meat industry here in Spain".*

Footage of the interview with Mr Adam was then shown:

Reporter: *"Is it acceptable to say, once an animal leaves our borders, once an animal leaves what we can control, it's okay?"*

Mr Adam: *"I'm not sure if I would say it's acceptable. I think it's just, I think it's the real world at the moment, and we would obviously prefer to be able to control everything, but I think we have to be realistic. So, if acceptable means, do we reluctantly accept it, then the answer is, yes".*

Given the content of the unedited footage of the interview (below) and what was broadcast (above), we considered that the reporter did not suggest to Mr Adam in the interview that the BBC had evidence of Scottish calves being exported illegally to North Africa, or that the broadcast programme subsequently suggested that this was the case. Nor did Mr Adam's response suggest he was proceeding on the basis that there was onward export to North Africa. Instead, he was merely agreeing that animals outside a country's borders are not realistically within its control.

Therefore, taking into account all of the above factors, including the representations made by the parties on the Preliminary View, we considered that the BBC fulfilled its obligations in terms of dealing fairly with the NFUS, including by informing it of the nature of the programme and of its requested contribution to it. Ofcom also considered that the programme makers had given the NFUS sufficient information to be able to make an informed decision about who to put forward for the interview and for the NFUS and Mr Adam to give informed consent to participate.

### *Unfair editing*

Ofcom next considered whether Mr Adam's comments were included in the programme out of context, giving a misleading impression of the true facts and the views of the NFUS and Mr Adam. In assessing whether Mr Adam's contribution to the programme overall had been edited unfairly, Ofcom carefully examined the full unedited footage of the interview with Mr Adam and compared it with what was included in the programme as broadcast.

It is an editorial decision for the programme makers and broadcasters to select and edit material from interview footage or general footage of a contributor for inclusion in a programme. However, in editing such material, broadcasters must ensure that they do so in a manner that represents the contribution fairly.

We considered Gillespie Macandrew's complaint that, while Mr Adams had "provided many answers on camera about the various options open to Scottish bull dairy calves", the programme had only included his comments on the "much rarer alternatives of 'shipping' and 'shooting'" and those comments in which he accepted that the industry could not control what happened to Scottish cattle once they had been exported.

During the unedited interview with Mr Adam, the reporter and Mr Adam began by discussing the problem farmers faced with male dairy calves. The reporter asked Mr Adam why the UK was exporting these cattle, to which he replied: "...we're exporting cattle fundamentally because we have a limited market for our cattle at home...what we can't sell on the home market, which is probably where we would prefer to sell it, we have to export". The following conversation then took place between Mr Adam and the reporter:

Reporter: *"What are the options for these bull calves then?"*

Mr Adam: *Well, the ideal option would be to grow them into mature beef-producing animals and to find a market for them. And, they could actually supply a market possibly further down the chain than the top-quality market, but at a price that a lot of people could afford.*

Reporter: *But, the realistic alternatives as they stand now are what?"*

Mr Adam: *Well, they are that given the very limited demand for these animals on the home market, we have to look abroad and within the EU, as members of the EU, presents a market where we can sell these calves for further finishing and we, we are happy to do that, given that they operate to the sort of standards that we operate to ourselves, which are very high.*

Reporter: *You're talking about exporting the calves abroad for fattening prior to slaughter?"*

Mr Adam: *Yes, that's right. And [interrupted by the reporter].*

Reporter: *Because the alternative is, as I understand it, that we then just shoot them at birth? It's the kind of other [interrupted by Mr Adam].*

Mr Adam: *In the absence, yes.*

Reporter: *Realistic option.*

Mr Adam: *Well, we don't want to do that...ideally, we would feed them, finish them, and consume them at home.*

Reporter: *But, we're not?*

Mr Adam: *But, we're not, and I mean, we would like to move towards a situation where we can do that, but our efforts to do that have been limited. It doesn't mean there are not dairy calves finding a market on the home market, and, wherever that market can be satisfied, or is there, we will supply it, but it isn't a big enough market at the moment to take all the calves that we necessarily produce.*

Reporter: *So, with that in mind, the options as they stand for farmers are what?*

Mr Adam: *Well, the options are either to finish them or to export them, and I would say that among the things that we could do about that, there is technology now which can actually produce sexed semen to a certain degree, and we would like to move, and the dairy industry is moving towards a situation where they reduce the number of bull calves that are produced by using sexed semen.*

*I know that the technology...isn't perfect and, and there's work to be done, but that's something that could help, and we would like to develop markets for that beef at home, as I've said, but, in the past, we've had quite a lot of consumer resistance...".*

The reporter and Mr Adam spoke about UK consumers being reluctant to buy and eat veal and the reasons for this and the fact that retailers had a role to play in promoting veal. The conversation continued (with the text in bold being broadcast):

Mr Adam: *"...I feel that there would be potential to supply dairy beef at a price that quite a lot of people could afford on the home market, and with the help of the retailers and the right facts being given to consumers, I think that there's lots of potential there that could actually reduce the number of calves that we end up having to export.*

Reporter: *So, the options as I see them at the moment, unpalatable, farmers do not like it, from, from having spoken to them, the options are, we shoot them at birth or we export them at a very young age? And, I mean, **are we comfortable with either of those?***

Mr Adam: ***We're certainly not comfortable with shooting them, because I mean no farmer wants to shoot anything. I mean, we are in the business of trying to produce good food for people to consume.***

Reporter: ***But, exporting calves at the age of two weeks old, is that something we're comfortable with?***

Mr Adam: ***I don't think we are particularly comfortable with it. It certainly would be at the bottom of our list for wants for what we do with those calves. But, if***



***we come down to the point where it's either that or shooting them, then it's marginally better, but, as I've said already, I think we would like to investigate possibilities of all, all possibilities of doing something rather better with them than that.***

Reporter: *...Where are these cattle going? Do you know where these cattle are going?*

Mr Adam: *Well, we know where they're going in the first instance. To the best of my knowledge, we are exporting those cattle largely into Europe, and Europe operates to the same EU high welfare standards which we operate to ourselves...But, clearly not everywhere in the world operates to those standards. We are not in the business, nor do we want to be, of directly sending animals into markets and places where there are unacceptable standards of welfare, but what we can't do is necessarily control what happens to them if someone chooses to move them on from, from the point, the first point of sale as far as our trading goes.*

Reporter: *Because there is further export and some of that further export is to places like North Africa and the Middle East, where the animal welfare standards are not the same.*

Mr Adam: *...I can't argue with you over the fact that some of them may be exported. We have been led to believe that, that the proportion of the sort of calves that we are sending that are moved on is not very high, but the facts may counter that.*

*However, in the end of the day, as in any dealing that you do, you can do your absolute best to make sure that your customer is operating properly, but you really can't necessarily control what they may then go and do thereafter.*

Reporter: *Would you be comfortable knowing that some of these cattle will be ending up in North Africa or the Middle East for slaughter?*

Mr Adam: *I would prefer that they weren't, but, as I say, I think there's a limit to the extent to which we can control the whole world.*

...

Reporter: ***Is it acceptable to say once an animal leaves our borders, once an animal leaves what we can control, it's okay?***

Mr Adam: ***I'm not sure I would say it's acceptable. I think it's just, I think it's the real world at the moment and we would obviously prefer to be able to control everything, but I think we have to be realistic. So, if acceptable means do we reluctantly accept it, then the answer is yes. We would prefer it to be different, equally, we would, but, in the same way as there are people here who don't like bullfighting, the fact is we do not actually control what goes on in every country in the world.***

Reporter: *But, surely, we should have some more control over what was ours and actually should still be ours?*

Mr Adam: *Yes, but there is a limit as to what we can reasonably expect to do".*

The reporter and Mr Adam then spoke about what conditions were like on the journey for calves exported, before returning to the topic of the options available. Mr Adam said:

*"...so we then have to look at what to do with that calf, and how we handle it as, as carefully and humanely as we can, and I think we do that, and we have, there are fairly strict regulations over you know what we do.*

*But, we are actually, what we're trying to do is keep something alive and make use of it, because we don't actually want to kill it, and if you want **the alternative argument may well be that, that you just have to shoot this animal**, so it's a choice. We often have to make choices that are imperfect, but we do our best, I think is the answer".*

They then spoke about fattening farms and again about the importance of changing consumers and retailers' views on veal.

Having carefully compared the unedited footage of Mr Adam's interview with the footage included in the programme as broadcast, we did not consider that Mr Adam's comments about the options available to farmers with regard to male dairy calves included in the programme had been taken out of context or were unfair in how they represented Mr Adam's position as set out in those parts of the discussion that were not broadcast. We considered that, while Mr Adam had spoken about there being various options available to farmers, such as the use of sexed semen and the development of a domestic market for veal, he presented these as potential future options rather than as viable alternatives currently available. Also, as above, we considered that the reporter did not suggest to Mr Adam in the interview that the BBC had evidence of Scottish calves being exported illegally to North Africa or that the broadcast programme subsequently suggested that this was the case. Nor did we consider that viewers would be left with this impression. In the broadcast programme, the reporter made it clear that there was uncertainty as to whether or not Scottish calves were subject to onward export.

Taking all the above circumstances into account, Ofcom considered that the content of Mr Adam's contribution to the programme was not edited in a way that unfairly misrepresented his or the NFUS' position, or what he had said in the interview. We also considered that in representing Mr Adam's comments in the programme, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that portrayed Mr Adam or the NFUS unfairly.

**Ofcom has not upheld this complaint by the NFUS and Mr Charles Adam, made on their behalf by Gillespie Macandrew, of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### **Complaint by Ms Bobbie Johnson on behalf of her son (a minor) *Who Needs a Man When You've Got a Spray Tan: Single Mums & Proud, Channel 5, 28 February 2019***

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#### **Summary**

Ofcom has not upheld Ms Bobbie Johnson's complaint on behalf of her son (a minor) of unwarranted infringement of privacy in connection with the obtaining of material in the programme, and in the programme as broadcast.

The programme followed a group of single mothers in Knowsley, Liverpool as they went about their daily lives. During the programme, footage of general members of the public in a shopping area was shown. This footage included Ms Johnson as she walked along with her one-year-old son in a pushchair.

Ofcom considered that Ms Johnson's son did not have a legitimate expectation of privacy in connection with obtaining of footage of her son included in the programme and the subsequent broadcast of this footage. Therefore, Ofcom concluded that there was no unwarranted infringement of Ms Johnson's son's privacy.

#### **Programme summary**

On 28 February 2019, Channel 5 broadcast *Who Needs a Man When You've Got a Spray Tan: Single Mums & Proud*, a documentary about the daily lives of single mothers in Knowsley, Liverpool.

During the programme, footage was included of general members of the public in a shopping area in Knowsley. In this footage, Ms Johnson was shown briefly walking along with her young son in a pushchair. Both Ms Johnson and her son were not obscured in the footage. The footage of Ms Johnson and her son was shown for approximately two seconds.

Accompanying the footage, the programme's narrator said:

*"1 in 4 children round here are said to be living in poverty. Knowsley mums don't have much, but they always find what they need. Whether it's their car on credit, or cash for the kids".*

Ms Johnson and her son were not referred to or shown again in the programme.

#### **Summary of the complaint**

- a) Ms Johnson complained that the privacy of her one-year-old son was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast. Ms Johnson said that she was not aware that she and her son were being filmed at the time because she did not see anyone filming them.
- b) Ms Johnson also complained that the privacy of her one-year-old son was unwarrantably infringed in the programme as broadcast because the broadcaster had not informed her

that footage of her son would be broadcast on TV. Ms Johnson also said that the broadcaster had not sought her consent to show footage of her son.

### **Broadcaster's response**

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

The broadcaster said that Article 8 of the European Convention on Human Rights ("ECHR") conferred a right to "respect" for privacy rather than an absolute right and it was neither possible, nor desirable, to seek to give individuals complete autonomous control over information that relates to them. Further, and in accordance with Article 10(2) of the ECHR, the right to freedom of expression 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 wellbeing 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's son had no reasonable expectation of privacy, then Article 8 is not engaged.

Channel 5 said that in this case, less than two seconds of the programme featured the complainant's son. It said that he appeared in footage that comprised general views of the area featured in the programme, and that Ms Johnson happened to be walking through the area with her son in a pushchair.

Channel 5 said that the courts have considered Article 8 in various cases where children have been photographed in public places<sup>1</sup>. Channel 5 said that in its view, the following could be discerned from the case law in relation to photographs or footage of people (including children) taken in a public place. For example:

- There was a distinction between a person engaged in family and sporting activities and something as simple as a walk down a street, or going into a grocery shop.
- There could be no complaint over a photograph (even surreptitiously taken) of someone going about their business in a street and later published as a street scene.
- There were specific circumstances where people in a public place were not protected, for instance, crowd shots of a street showing unknown children.

The broadcaster said that in order to establish that there was a legitimate expectation of privacy in a public place, the information or activity photographed must be private. It said that in the *Weller* case, the court decided that the 10-month old children photographed in a public place and who could not have otherwise had a legitimate expectation of privacy, did so because:

- they were on a family outing;
- they were children;
- they were identified by name and surname in the newspaper article; and,

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<sup>1</sup> It cited *Weller vs Associated Newspapers* [2015] EWCA Civ 1176, paras 18, 47 and 61-63, and *Murray v Express Newspapers plc* [2009] Ch 481, paras 50 and 55.

- the photographs of them were taken deliberately, they had been targeted as the children of famous people.

Channel 5 said that it was also important to recognise that the rights protected by Article 8 should not be read so widely that its scope becomes unreal and unreasonable. It said that in order for Article 8 to be engaged, the alleged infringement of privacy must attain a certain level of seriousness. Channel 5 referred to the following extract from the IPSO's Editors' Codebook: "The mere publication of a child's image, unaccompanied by details of its private life, when he or she is in a public place could not be held by the Commission to breach the Code". Channel 5 said that this reflected succinctly the current case law in relation to the privacy of children and submitted that Ofcom should take the same approach.

Channel 5 said that in the case of Ms Johnson's son, he was filmed for less than eight seconds while general views of the streets of Knowsley were being filmed for the programme. The broadcaster said that it understood that a camera crew of two people had filmed openly in Kirkby Market in Knowsley and that they were filming in the shopping area for over an hour using a standard broadcast camera on a tripod. It said that the camera crew and the camera were "very visible". Channel 5 said that it was clear from the unedited material that a number of people were clearly aware that they were being filmed.

The broadcaster said that despite Ms Johnson's claim that she was not aware that she and her son were being filmed, at one point, she appeared to look directly into the camera. However, it said that even if Ms Johnson was unaware of the filming, case law had made clear that even surreptitiously filmed footage of people on a public street, absent of any other factors, would not give rise to a legitimate expectation of privacy.

Channel 5 said that the footage filmed and broadcast of Ms Johnson's son contained no private information. It said that he appeared to be on an excursion equivalent to "just popping out to the shops", he was not specifically targeted and was not identified by name in the programme as broadcast. In addition, there was nothing to suggest that Ms Johnson's son was aware of, or was caused fear or distress by, either the filming or broadcast.

The broadcaster said that it did not consider that any information contained in the less than eight seconds of footage filmed of Ms Johnson's son or the less than two seconds of footage that was broadcast of him, reached the level of seriousness required to engage Article 8. It did not consider that the complainant's son had a legitimate expectation of privacy in relation to the information filmed or broadcast in the programme.

Channel 5 said that, in its view, to conclude that there had been an unwarranted infringement of privacy in this case would constitute a disproportionate interference with the rights of the media to report in a responsible and engaging way, and would effectively remove the ability of the media to film and broadcast general high street, crowd or location footage in which individuals feature and may be identifiable, but which do not name them or disclose any private information about them.

### **Preliminary View**

Ofcom prepared a Preliminary View that Ms Johnson's complaint 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 an unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

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

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

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

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

- a) Ofcom first considered Ms Johnson's complaint that her son's privacy was unwarrantably infringed in connection with the obtaining of material in the programme because she was not aware that she and her son were being filmed at the time, as she did not see anyone filming them.

In assessing this head of complaint, Ofcom had particular regard to Practices 8.5 and 8.9 of the Code: Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances, and in particular to the subject matter of the programme.

Ofcom also had regard to Practices 8.20 and 8.21. Practice 8.20 states that broadcasters should pay particular attention to the privacy of people under sixteen, and Practice 8.21 states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent,

guardian or other person of eighteen or over *in loco parentis*; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

We first considered the extent to which Ms Johnson's son had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme had been obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We recognise that children do not have a legitimate expectation of privacy merely because they are children. However, there are relevant considerations that may result in a child having a legitimate expectation of privacy where an adult might not. For instance, the age of the child, the nature of what was filmed and where the filming took place, the purpose of the filming and the broadcast, whether there was consent and the effect on the child are all relevant factors. These must be taken into account along with all the other circumstances of the case in determining whether or not a child has a legitimate expectation of privacy.

In considering whether Ms Johnson's son had a legitimate expectation of privacy in relation to the filming of him, we took into account that Ms Johnson's son, who was a one-year-old at the time, was filmed in his pushchair as his mother walked along. We understood that the filming was conducted in a public place, i.e. in a busy shopping area in Knowsley, and that Ms Johnson's son could have been seen by any members of the public who were there at the time.

We took into account that Ms Johnson said that she was not aware that her son was being filmed. From the unedited footage, it appeared to Ofcom that the camera crew had filmed openly in full view of members of the public passing by in the area, including Ms Johnson. While it did not appear to us from this footage that Ms Johnson was particularly aware of the filming, given the manner in which she and her son were filmed, Ofcom did not consider that the filming of them was surreptitious.

While we took into account that Ms Johnson's son was only a one-year-old at the time he was filmed, having viewed the unedited footage, we considered that Ms Johnson's son was filmed incidentally as he was pushed along by his mother, and was not the specific focus of the filming. We also considered that her son was not filmed doing anything of a particularly private or sensitive nature, nor was her son filmed in a particularly sensitive or private situation that would reasonably attract an expectation of privacy.

Taking all of the above factors into account, we considered that, in the particular circumstances of the case, Ms Johnson's son did not have a legitimate expectation of privacy in relation to the obtaining of footage of him. It was not necessary therefore, to assess whether any infringement of Ms Johnson's son's privacy was warranted.

Ofcom's decision was therefore that there was no unwarranted infringement of Ms Johnson's son's privacy in connection with the obtaining of material of him.

- b) Ofcom then went on to consider Ms Johnson's complaint that the privacy of her one-year-old son was unwarrantably infringed in the programme as broadcast because the

broadcaster had not informed her that footage of her son would be broadcast on TV, or sought her consent to show footage of her son.

Ofcom had regard to Practice 8.6 which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. In addition, Ofcom took into consideration Practice 8.4 which states that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted. We also took into account Practices 8.20 and 8.21 of the Code (as explained under head (a) above).

We first considered the extent to which Ms Johnson's son had a legitimate expectation of privacy in relation to footage of him being included in the programme. As set out above, the test applied by Ofcom is as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be considered in light of the circumstances in which the individual finds him or herself.

As set out in the 'Programme summary' above, footage was included in the programme of Ms Johnson's one-year-old son, and while neither he nor Ms Johnson were named, his face was shown unobscured.

As set out at head a), Ms Johnson's son had been filmed openly in a public place (i.e. not surreptitiously), and in full view of any members of the public who happened to be present at the time. While we took into account Ms Johnson's son's age, we considered that the footage included did not reveal anything which could reasonably be considered to be of a particularly private or sensitive nature about Ms Johnson's son nor did it show him engaged in a private or sensitive activity. In particular, we took into account the very fleeting nature of the footage of Ms Johnson's son included in the programme, amounting to less than two seconds, and the fact he was not the subject of the programme and instead shown only incidentally as part of general footage of members of the public passing through the shopping area.

For these reasons, and the reasons set out in head a) above, following careful consideration of the footage as broadcast, it was our view that, on balance, in the particular circumstances of this case, Ms Johnson's son did not have a legitimate expectation of privacy in relation to the broadcast of the footage of him in the programme. Having reached this conclusion, it was not necessary to consider whether any infringement into the privacy of Ms Johnson's son was warranted.

Ofcom therefore concluded that Ms Johnson's son's privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Ms Johnson's complaint that her son's privacy was unwarrantably infringed in connection with the material obtained for the programme, and in the programme as broadcast.**



## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 16 and 29 September 2019 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
High Society: Cannabis Cafe	4Seven	05/09/2019	Drugs, smoking, solvents or alcohol	1
Sun, Sea and Selling Houses (trailer)	4Seven	21/09/2019	Offensive language	1
Undercover Twins	5 Star	09/09/2019	Gender discrimination/offence	1
White Chicks	5 Star	13/09/2019	Generally accepted standards	1
White Chicks	5 Star	19/09/2019	Race discrimination/offence	1
Evening Hour	Ahlebeit TV	16/08/2019	Hatred and abuse	1
Paintra	Awaaz FM	16/06/2019	Offensive language	1
The Early Kick Off Show	BT Sport 1	17/08/2019	Offensive language	1
Live UFC	BT Sport 2	07/09/2019	Violence	1
Jez Welham	Capital Xtra	29/07/2019	Competitions	1
News	Capital Xtra	11/09/2019	Generally accepted standards	1
Channel 4 News	Channel 4	09/08/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	14/08/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	18/08/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	20/08/2019	Due accuracy	1
Channel 4 News	Channel 4	21/08/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	28/08/2019	Due accuracy	2
Channel 4 News	Channel 4	02/09/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	03/09/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	05/09/2019	Due impartiality/bias	4
Channel 4 News	Channel 4	11/09/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	12/09/2019	Due accuracy	1
Channel 4 News	Channel 4	13/09/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	16/09/2019	Due accuracy	2
Channel 4 News	Channel 4	18/09/2019	Due accuracy	3
Channel 4 News	Channel 4	24/09/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Come Dine with Me	Channel 4	16/08/2019	Race discrimination/offence	1
Complaints Welcome campaign	Channel 4	25/09/2019	Generally accepted standards	1
Complaints Welcome campaign	Channel 4	25/09/2019	Religious/Beliefs discrimination/offence	1
Crime and Punishment	Channel 4	16/09/2019	Suicide and self harm	1
First Dates Hotel	Channel 4	12/09/2019	Generally accepted standards	1
First Dates Hotel	Channel 4	19/09/2019	Dangerous behaviour	1
Gogglebox	Channel 4	20/09/2019	Due impartiality/bias	1
Gogglebox	Channel 4	20/09/2019	Gender discrimination/offence	25
Gogglebox	Channel 4	20/09/2019	Sexual material	1
High Society: Cannabis Cafe	Channel 4	03/09/2019	Drugs, smoking, solvents or alcohol	2
Hollyoaks	Channel 4	19/09/2019	Race discrimination/offence	1
Jade: The Reality Star That Changed Britain	Channel 4	21/08/2019	Generally accepted standards	1
Jamie Oliver: The Naked Chef Bares All	Channel 4	21/08/2019	Offensive language	8
Naked Attraction	Channel 4	22/08/2019	Generally accepted standards	1
Naked Attraction	Channel 4	28/08/2019	Generally accepted standards	1
Naked Attraction	Channel 4	30/08/2019	Generally accepted standards	1
Naked Attraction	Channel 4	11/09/2019	Generally accepted standards	4
Naked Attraction	Channel 4	13/09/2019	Nudity	1
Naked Attraction	Channel 4	18/09/2019	Generally accepted standards	1
Public service announcement	Channel 4	22/09/2019	Political advertising	1
Public service announcement	Channel 4	24/09/2019	Political advertising	1
Sink or Swim for Stand Up to Cancer	Channel 4	10/09/2019	Disability discrimination/offence	1
Sun, Sea and Selling Houses (trailer)	Channel 4	17/09/2019	Offensive language	1
Sun, Sea and Selling Houses (trailer)	Channel 4	18/09/2019	Offensive language	1
Sun, Sea and Selling Houses (trailer)	Channel 4	20/09/2019	Offensive language	2

Programme	Service	Transmission Date	Categories	Number of complaints
Sun, Sea and Selling Houses (trailer)	Channel 4	22/09/2019	Offensive language	1
Sun, Sea and Selling Houses (trailer)	Channel 4	23/09/2019	Offensive language	1
Sunday Brunch	Channel 4	08/09/2019	Race discrimination/offence	10
The Great British Bake Off	Channel 4	17/09/2019	Advertising minutage	1
The Great British Bake Off	Channel 4	17/09/2019	Age discrimination/offence	1
The Great British Bake Off	Channel 4	17/09/2019	Gender discrimination/offence	1
The Great British Bake Off	Channel 4	17/09/2019	Generally accepted standards	3
The Great British Bake Off	Channel 4	17/09/2019	Materially misleading	1
The Great British Bake Off	Channel 4	17/09/2019	Race discrimination/offence	2
The Great British Bake Off	Channel 4	24/09/2019	Generally accepted standards	2
The Great British Bake Off	Channel 4	24/09/2019	Sexual material	1
The Great British Bake Off: An Extra Slice	Channel 4	20/09/2019	Generally accepted standards	1
The Simpsons	Channel 4	13/09/2019	Suicide and self harm	1
Treasure Island with Bear Grylls	Channel 4	15/09/2019	Animal welfare	1
Treasure Island with Bear Grylls	Channel 4	22/09/2019	Animal welfare	2
Treasure Island with Bear Grylls	Channel 4	22/09/2019	Gender discrimination/offence	1
Sun, Sea and Selling Houses (trailer)	Channel 4+1	23/09/2019	Offensive language	1
5 News	Channel 5	09/09/2019	Generally accepted standards	1
5 News	Channel 5	10/09/2019	Due impartiality/bias	1
Celebs on The Farm	Channel 5	05/09/2019	Offensive language	1
Fireman Sam	Channel 5	11/08/2019	Generally accepted standards	1
GPs: Behind Closed Doors	Channel 5	18/09/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	19/08/2019	Materially misleading	2
Jeremy Vine	Channel 5	21/08/2019	Race discrimination/offence	1
Jeremy Vine	Channel 5	22/08/2019	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Jeremy Vine	Channel 5	26/08/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	28/08/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	29/08/2019	Race discrimination/offence	1
Jeremy Vine	Channel 5	02/09/2019	Materially misleading	1
Jeremy Vine	Channel 5	13/09/2019	Gender discrimination/offence	1
Jeremy Vine	Channel 5	13/09/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	19/09/2019	Age discrimination/offence	1
Jeremy Vine	Channel 5	23/09/2019	Gender discrimination/offence	1
Jeremy Vine	Channel 5	24/09/2019	Due impartiality/bias	1
Jeremy Vine	Channel 5	27/09/2019	Gender discrimination/offence	2
Neighbours	Channel 5	28/08/2019	Sexual material	1
The Gypsies Next Door	Channel 5	29/08/2019	Materially misleading	1
The Oath (trailer)	Channel 5	15/09/2019	Violence	1
WW2: The True Cost of War	Channel 5	10/08/2019	Generally accepted standards	1
Public service announcement	Classic FM	13/09/2019	Political advertising	1
Public service announcement	Classic FM	Various	Political advertising	1
Climax	Climax (Sky Q EPG)	24/07/2019	Sexual material	1
Gorilla Glue's sponsorship of daytime on Crime Investigation	Crime & Investigation Network	16/09/2019	Sponsorship credits	1
Live at the Apollo	Dave	10/09/2019	Religious/Beliefs discrimination/offence	1
Finding Escobar's Millions	Discovery	25/09/2019	Offensive language	1
Celebs Go Dating	E4	22/08/2019	Generally accepted standards	1
Naked Attraction	E4	08/09/2019	Generally accepted standards	1
Naked Attraction	E4	22/09/2019	Generally accepted standards	1
The 100	E4	11/09/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Bend It Like Beckham	Film4	17/08/2019	Offensive language	1
X-Men: The Last Stand	Film4	19/08/2019	Scheduling	1
The Russ and Jono Fix Radio Experience	Fix Radio	11/09/2019	Offensive language	1
Rick Stein's Fruits of the Sea	Food Network	20/09/2019	Materially misleading	1
Competition	Heart FM Bristol	05/09/2019	Competitions	1
Programming	Islam FM	06/08/2019	Due impartiality/bias	1
A Confession	ITV	09/09/2019	Generally accepted standards	1
Billy Connolly's Great American Trail	ITV	08/09/2019	Promotion of products/services	1
Britain's Got Talent: The Champions	ITV	14/09/2019	Generally accepted standards	1
Celebrity Catchphrase	ITV	21/09/2019	Sexual material	1
Coronation Street	ITV	28/08/2019	Materially misleading	1
Coronation Street	ITV	30/08/2019	Materially misleading	2
Coronation Street	ITV	30/08/2019	Violence	2
Coronation Street	ITV	02/09/2019	Generally accepted standards	1
Coronation Street	ITV	09/09/2019	Generally accepted standards	1
Coronation Street	ITV	11/09/2019	Generally accepted standards	3
Coronation Street	ITV	13/09/2019	Materially misleading	2
Coronation Street	ITV	16/09/2019	Generally accepted standards	1
Coronation Street	ITV	17/09/2019	Generally accepted standards	1
Coronation Street	ITV	18/09/2019	Generally accepted standards	2
Coronation Street	ITV	18/09/2019	Materially misleading	1
Coronation Street	ITV	20/09/2019	Generally accepted standards	1
Deep Water	ITV	18/09/2019	Offensive language	1
Emmerdale	ITV	28/08/2019	Materially misleading	1
Emmerdale	ITV	02/09/2019	Generally accepted standards	1
Emmerdale	ITV	03/09/2019	Sexual material	1
Emmerdale	ITV	05/09/2019	Sexual material	3
Emmerdale	ITV	06/09/2019	Generally accepted standards	1
Emmerdale	ITV	09/09/2019	Violence	1
Emmerdale	ITV	12/09/2019	Drugs, smoking, solvents or alcohol	2

Programme	Service	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	13/09/2019	Drugs, smoking, solvents or alcohol	1
Emmerdale	ITV	17/09/2019	Sexual material	2
Good Morning Britain	ITV	01/08/2019	Generally accepted standards	1
Good Morning Britain	ITV	19/08/2019	Due impartiality/bias	1
Good Morning Britain	ITV	19/08/2019	Materially misleading	5
Good Morning Britain	ITV	28/08/2019	Drugs, smoking, solvents or alcohol	1
Good Morning Britain	ITV	03/09/2019	Generally accepted standards	35
Good Morning Britain	ITV	03/09/2019	Generally accepted standards	1
Good Morning Britain	ITV	06/09/2019	Due impartiality/bias	1
Good Morning Britain	ITV	06/09/2019	Generally accepted standards	1
Good Morning Britain	ITV	09/09/2019	Due impartiality/bias	4
Good Morning Britain	ITV	09/09/2019	Gender discrimination/offence	4
Good Morning Britain	ITV	09/09/2019	Generally accepted standards	3
Good Morning Britain	ITV	10/09/2019	Due impartiality/bias	1
Good Morning Britain	ITV	10/09/2019	Sexual orientation discrimination/offence	1
Good Morning Britain	ITV	11/09/2019	Gender discrimination/offence	6
Good Morning Britain	ITV	16/09/2019	Due impartiality/bias	1
Good Morning Britain	ITV	16/09/2019	Generally accepted standards	11
Good Morning Britain	ITV	17/09/2019	Due impartiality/bias	1
Good Morning Britain	ITV	17/09/2019	Generally accepted standards	2
Good Morning Britain	ITV	19/09/2019	Generally accepted standards	1
Good Morning Britain	ITV	23/09/2019	Generally accepted standards	1
Heathrow: Britain's Busiest Airport	ITV	11/09/2019	Generally accepted standards	2
I'm a Celebrity...Get Me Out of Here!	ITV	09/11/2018	Animal welfare	1
ITV News	ITV	20/08/2019	Due impartiality/bias	2
ITV News	ITV	03/09/2019	Due impartiality/bias	1
ITV News	ITV	05/09/2019	Generally accepted standards	4
ITV News	ITV	16/09/2019	Due accuracy	1

Programme	Service	Transmission Date	Categories	Number of complaints
ITV News	ITV	18/09/2019	Due impartiality/bias	1
ITV News	ITV	19/09/2019	Race discrimination/offence	1
ITV News	ITV	26/09/2019	Due impartiality/bias	1
James Martin's Saturday Morning	ITV	07/09/2019	Generally accepted standards	1
Killer Women with Piers Morgan	ITV	21/08/2019	Generally accepted standards	1
Loose Women	ITV	12/09/2019	Violence	1
Lorraine	ITV	04/09/2019	Competitions	1
Lorraine	ITV	09/09/2019	Generally accepted standards	1
Party Political Broadcast by the Brexit Party	ITV	26/09/2019	Materially misleading	3
Public service announcement	ITV	18/09/2019	Political advertising	2
Save Money: Good Health	ITV	27/08/2019	Generally accepted standards	1
Scott and Bailey (trailer)	ITV	27/08/2019	Violence	1
Soak.com's sponsorship of ITV Weather	ITV	23/09/2019	Sponsorship credits	1
The Cameron Interview	ITV	16/09/2019	Generally accepted standards	1
The Chase	ITV	13/09/2019	Fairness	3
The Chase	ITV	23/09/2019	Fairness	1
The Chase: Celebrity Special	ITV	26/08/2019	Gender discrimination/offence	1
The Chase: Celebrity Special	ITV	14/09/2019	Fairness	1
This Morning	ITV	19/08/2019	Animal welfare	1
This Morning	ITV	19/08/2019	Disability discrimination/offence	1
This Morning	ITV	19/08/2019	Generally accepted standards	3
This Morning	ITV	21/08/2019	Generally accepted standards	1
This Morning	ITV	12/09/2019	Promotion of products/services	1
This Morning	ITV	18/09/2019	Race discrimination/offence	1
Tipping Point	ITV	06/09/2019	Gender discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Who Wants to Be a Millionaire?	ITV	15/09/2019	Age discrimination/offence	1
Who Wants to Be a Millionaire?	ITV	15/09/2019	Gender discrimination/offence	1
Who Wants to Be a Millionaire?	ITV	15/09/2019	Generally accepted standards	4
Who Wants to Be a Millionaire?	ITV	15/09/2019	Race discrimination/offence	1
ITV News Calendar	ITV Yorkshire	05/09/2019	Due accuracy	1
Public service announcement	ITV+1	16/09/2019	Political advertising	1
Public service announcement	ITV2	19/09/2019	Political advertising	1
Supermarket Sweep	ITV2	09/09/2019	Generally accepted standards	1
You've Been Framed	ITV2	12/08/2019	Religious/Beliefs discrimination/offence	1
You've Been Framed	ITV2	20/08/2019	Race discrimination/offence	1
British Touring Cars: Round Eight from Knockhill	ITV4	15/09/2019	Generally accepted standards	1
Gemma Collins: Diva Forever	ITVBe	14/08/2019	Generally accepted standards	1
Sam and Billie Faiers: the Mummy Diaries	ITVBe	11/09/2019	Product placement	1
Sam and Billie Faiers: the Mummy Diaries	ITVBe	18/09/2019	Dangerous behaviour	1
Sam and Billie Faiers: the Mummy Diaries	ITVBe	25/09/2019	Undue prominence	1
The Only Way is Essex	ITVBe	01/09/2019	Generally accepted standards	29
The Only Way is Essex	ITVBe	08/09/2019	Generally accepted standards	1
Wahlgrens Värld	Kanal 5 (Sweden)	22/08/2019	Generally accepted standards	1
Kerrang Radio News	Kerrang Radio	06/09/2019	Due impartiality/bias	1
KTV Window	KTV	31/07/2019	Violence	1
Clive Bull	LBC 97.3 FM	07/09/2019	Crime and disorder	1
Darren Adam	LBC 97.3 FM	09/09/2019	Generally accepted standards	1
David Lammy	LBC 97.3 FM	15/09/2019	Generally accepted standards	4
Eddie Mair	LBC 97.3 FM	29/08/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	16/05/2014	Race discrimination/offence	1



Programme	Service	Transmission Date	Categories	Number of complaints
James O'Brien	LBC 97.3 FM	07/08/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	08/08/2019	Violence	1
James O'Brien	LBC 97.3 FM	09/08/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	19/08/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	22/08/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	27/08/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	28/08/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	02/09/2019	Materially misleading	1
James O'Brien	LBC 97.3 FM	05/09/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	09/09/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	12/09/2019	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	02/09/2019	Due impartiality/bias	1
Nick Ferrari	LBC 97.3 FM	03/09/2019	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	03/09/2019	Materially misleading	1
Nick Ferrari	LBC 97.3 FM	10/09/2019	Crime and disorder	1
Public service announcement	LBC 97.3 FM	11/09/2019	Political advertising	1
Public service announcement	LBC 97.3 FM	19/09/2019	Political advertising	1
Public service announcement	LBC 97.3 FM	24/09/2019	Political advertising	1
Shelagh Fogarty	LBC 97.3 FM	05/08/2019	Generally accepted standards	1
Shelagh Fogarty	LBC 97.3 FM	05/08/2019	Race discrimination/offence	1
Shelagh Fogarty	LBC 97.3 FM	19/08/2019	Materially misleading	1
Shelagh Fogarty	LBC 97.3 FM	27/08/2019	Due impartiality/bias	2
Shelagh Fogarty	LBC 97.3 FM	28/08/2019	Gender discrimination/offence	1
Shelagh Fogarty / James O'Brien	LBC 97.3 FM	29/08/2019	Due impartiality/bias	1
Steve Allen	LBC 97.3 FM	19/08/2019	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	02/09/2019	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	09/09/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Steve Allen	LBC 97.3 FM	25/09/2019	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	25/09/2019	Sexual orientation discrimination/offence	1
Programming	Lincs FM	08/08/2019	Competitions	1
Urdu Political	Link FM	08/09/2019	Generally accepted standards	1
Drive Show	Lyca Radio	22/08/2019	Generally accepted standards	1
Magic FM	Magic FM	25/09/2019	Offensive language	1
Advertising minutage	n/a	n/a	Advertising minutage	1
Truth Exposed	Peace TV	27/08/2019	Hatred and abuse	2
Motorway Patrol	Pick	22/09/2019	Violence	1
The Force: Manchester	Pick	24/09/2019	Drugs, smoking, solvents or alcohol	1
Goblin Works Garage	Quest	12/09/2019	Crime and disorder	1
Wheels That Fail	Quest	19/09/2019	Generally accepted standards	1
Talking Football with Bill Young	Rocksport Radio	02/09/2019	Generally accepted standards	1
Euphoria	Sky Atlantic	13/08/2019	Sexual material	1
All Out Politics	Sky News	27/08/2019	Due accuracy	1
All Out Politics	Sky News	29/08/2019	Due impartiality/bias	1
All Out Politics	Sky News	29/08/2019	Offensive language	3
All Out Politics	Sky News	12/09/2019	Due accuracy	1
All Out Politics	Sky News	24/09/2019	Due accuracy	1
FYI	Sky News	07/09/2019	Generally accepted standards	1
Kay Burley	Sky News	09/09/2019	Gender discrimination/offence	1
Kay Burley	Sky News	10/09/2019	Due impartiality/bias	1
Kay Burley	Sky News	11/09/2019	Due impartiality/bias	1
Kay Burley	Sky News	12/09/2019	Generally accepted standards	1
Sky News	Sky News	11/08/2019	Under 18s in programmes	1
Sky News	Sky News	12/08/2019	Due impartiality/bias	7
Sky News	Sky News	14/08/2019	Generally accepted standards	1
Sky News	Sky News	21/08/2019	Due impartiality/bias	2
Sky News	Sky News	25/08/2019	Due impartiality/bias	1
Sky News	Sky News	26/08/2019	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	27/08/2019	Due impartiality/bias	1
Sky News	Sky News	29/08/2019	Due impartiality/bias	2

Programme	Service	Transmission Date	Categories	Number of complaints
Sky News	Sky News	29/08/2019	Materially misleading	1
Sky News	Sky News	03/09/2019	Due impartiality/bias	1
Sky News	Sky News	03/09/2019	Generally accepted standards	1
Sky News	Sky News	05/09/2019	Due impartiality/bias	1
Sky News	Sky News	06/09/2019	Due impartiality/bias	2
Sky News	Sky News	07/09/2019	Generally accepted standards	1
Sky News	Sky News	08/09/2019	Due accuracy	1
Sky News	Sky News	08/09/2019	Due impartiality/bias	1
Sky News	Sky News	11/09/2019	Due impartiality/bias	1
Sky News	Sky News	12/09/2019	Generally accepted standards	1
Sky News	Sky News	13/09/2019	Generally accepted standards	1
Sky News	Sky News	15/09/2019	Due impartiality/bias	1
Sky News	Sky News	18/09/2019	Due impartiality/bias	1
Sky News	Sky News	20/09/2019	Offensive language	1
Sophy Ridge on Sunday	Sky News	11/08/2019	Due impartiality/bias	1
Sophy Ridge on Sunday	Sky News	08/09/2019	Due impartiality/bias	1
The Pledge	Sky News	20/09/2019	Generally accepted standards	1
Live SPL: Rangers v Celtic	Sky Sports Football	01/09/2019	Race discrimination/offence	1
Live Premier League: Manchester City v Tottenham Hotspur	Sky Sports Main Event	17/08/2019	Offensive language	1
Renault Super Sunday	Sky Sports Premier League	22/09/2019	Due impartiality/bias	1
A League of Their Own	Sky1	05/09/2019	Generally accepted standards	1
A League of Their Own	Sky1	12/09/2019	Generally accepted standards	1
A League of Their Own	Sky1	12/09/2019	Race discrimination/offence	1
Brassic	Sky1	19/09/2019	Generally accepted standards	1
Public service announcement	Smooth Sussex	25/09/2019	Political advertising	1
Jamie Jones Day Show	Studio 66 TV	27/08/2019	Participation TV – Harm	1
Studio 66 TV	Studio 66 TV	14/09/2019	Participation TV – Offence	1
STV News	STV	06/09/2019	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Breakfast Show	Switch Radio 107.5	20/08/2019	Race discrimination/offence	1
The Independent Republic of Mike Graham	Talk Radio	15/08/2019	Due impartiality/bias	1
James Whale	Talk Radio	28/08/2019	Generally accepted standards	2
James Whale	Talk Radio	10/09/2019	Generally accepted standards	1
The Late Night Alternative with Iain Lee	Talk Radio	12/08/2019	Generally accepted standards	1
The Late Night Alternative with Iain Lee	Talk Radio	05/09/2019	Generally accepted standards	1
Sapphire	Talking Pictures	02/08/2019	Race discrimination/offence	1
Programming	Talksport	17/08/2019	Generally accepted standards	1
Programming (trailer)	Talksport	21/08/2019	Generally accepted standards	1
The Sports Bar	Talksport	16/08/2019	Generally accepted standards	1
The Sports Bar	Talksport	20/08/2019	Under 18s in programmes	1
Public service announcement	UTV	16/09/2019	Political advertising	1
News	Various	Various	Due impartiality/bias	1
The Chris Evans Breakfast Show	Virgin Radio	06/09/2019	Due impartiality/bias	2
The Chris Evans Breakfast Show	Virgin Radio	19/09/2019	Commercial communications on radio	1
Programming (trailer)	W	17/09/2019	Sexual material	1
Carl Ashwin in the Morning	Wessex FM Radio	12/09/2019	Race discrimination/offence	1
Competitions	West Sound	27/09/2019	Competitions	1

[How Ofcom assesses complaints about content standards on television and radio programmes](#)

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

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
BBC News	BBC 1	25/04/2019	Due impartiality/bias	1
Health: Truth or Scare?	BBC 1	23/04/2019	Materially misleading	1
Points West	BBC 1	21/05/2019	Due impartiality/bias	1
Stephen: The Murder that Changed a Nation	BBC 2	17/04/2019	Materially misleading	1
Thatcher: A Very British Revolution	BBC 2	Various	Materially misleading	1
Victoria Derbyshire	BBC 2	03/06/2019	Generally accepted standards	1
8 Days: To the Moon and Back	BBC iPlayer	13/09/2019	Materially misleading	1
Climate Change: The Facts	BBC iPlayer	25/04/2019	Materially misleading	1
In Tune: Mix Tape	BBC Radio 3	19/07/2019	Due impartiality/bias	1
Today	BBC Radio 4	07/05/2019	Due impartiality/bias	1
Today	BBC Radio 4	21/08/2019	Due impartiality/bias	1
5 Live Breakfast: Your Call	BBC Radio 5 Live	28/05/2019	Due impartiality/bias	1

[How Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS](#)

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 16 and 29 September 2019 because they did not raise issues warranting investigation.

<b>Licensee</b>	<b>Licensed service</b>	<b>Categories</b>	<b>Number of complaints</b>
Chase Media Training CIC	Cannock Chase Radio FM	Provision of licensed service	1
JACK Media Surrey Limited	Union Jack Radio	Other	1
Preston Community Radio 23	The Beat	Provision of licenced service	1

### [How Ofcom assesses complaints about broadcast licences](#)

## Complaints outside of remit

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

Programme	Service	Transmission Date	Categories	Number of complaints
A Very British History – Uganda	BBC 1	18/09/2019	Outside of remit	1
Programming	Black Country Radio	Various	Other	1
Advertisement	BT Sport 1	14/09/2019	Advertising content	1
Celtic vs Dunfermline	Celtic TV	18/08/2019	Generally accepted standards	1
Advertisement	Channel 4	27/08/2019	Advertising content	1
Advertisement	Channel 4	10/09/2019	Advertising content	1
Advertisement	Channel 4	20/09/2019	Advertising content	1
Advertisement	Channel 4	21/09/2019	Advertising content	1
Advertisement	Channel 4	24/09/2019	Advertising content	1
Gogglebox	Channel 4	20/09/2019	Outside of remit	1
The Great British Bake Off	Channel 4	17/09/2019	Outside of remit	1
The Great British Bake Off	Channel 4	24/09/2019	Outside of remit	4
Advertisement	Channel 4+1	12/09/2019	Advertising content	1
Advertisement	Channel 5	27/09/2019	Advertising content	1
Police Interceptors	Channel 5	19/09/2019	Outside of remit	1
Public service announcement	Classic FM	24/09/2019	Political advertising	1
Advertisement	Drama	26/08/2019	Advertising content	1
Death in Paradise	Drama	23/09/2019	Outside of remit	1
Last of the Summer Wine	Drama	20/08/2019	Outside of remit	1
Advertisement	E4	18/09/2019	Advertising content	1
Live: Bennetts British Superbikes	Eurosport 2 HD	21/09/2019	Outside of remit	1
Programming	Facebook	n/a	Hatred and abuse	1
Advertisement	Film4	27/08/2019	Advertising content	1
Advertisement	Film4	31/08/2019	Advertising content	1
Heart Triple Play	Heart FM	01/09/2018	Outside of remit	1
Teleshopping	Ideal World	28/08/2019	Teleshopping	1
A Confession	ITV	16/09/2019	Outside of remit	1
Advertisement	ITV	26/08/2019	Advertising content	1
Advertisement	ITV	12/09/2019	Advertising content	1
Advertisement	ITV	20/09/2019	Advertising content	1
Advertisement	ITV	22/09/2019	Advertising content	1

Programme	Service	Transmission Date	Categories	Number of complaints
Britain's Got Talent: The Champions	ITV	14/09/2019	Outside of remit	1
Britain's Got Talent: The Champions	ITV	21/09/2019	Outside of remit	3
Emmerdale	ITV	11/09/2019	Outside of remit	1
Rugby World Cup: Wales v Georgia	ITV	23/09/2019	Outside of remit	1
Rugby World Cup	ITV / ITV4	20/09/2019	Outside of remit	1
Advertisement	ITV Sport	22/09/2019	Advertising content	1
Advertisement	ITV3	25/07/2019	Advertising content	1
Advertisement	ITV3	29/08/2019	Advertising content	1
Advertisement	ITVBe	06/09/2019	Advertising content	1
Advertisement	ITVBe	23/09/2019	Advertising content	1
Advertisement	ITVBe	25/09/2019	Advertising content	1
Fatmagül'ün suc'u ne	Kanal D	Various	Outside of remit	1
Advertisement	Kisstory	24/09/2019	Advertising content	1
Advertisement	More4	12/09/2019	Advertising content	1
Advertisement	n/a	27/08/2019	Advertising content	1
Advertisement	n/a	13/09/2019	Advertising content	1
Advertisements	n/a	01/09/2019	Advertising content	2
Advertisements	n/a	26/09/2019	Advertising content	1
Programming	Netflix	09/09/2019	Protection of under 18s	1
Advertisement	Pick	23/09/2019	Advertising content	1
AIK Stockholm v Celtic	Premier Sports	29/08/2019	Outside of remit	1
Advertisement	Sky	23/09/2019	Advertising content	1
Trump blames Democrats for drowned migrant father and girl	Sky News website	26/06/2019	Outside of remit	1
Advertisement	STV / Sky channels	02/09/2019	Advertising content	1
n/a	Twitter	18/09/2019	Due impartiality/bias	1
n/a	Twitter	26/09/2019	Outside of remit	2
Advertisement	UTV	23/09/2019	Advertising content	1
Advertisement	Yesterday	21/09/2019	Advertising content	1
Yorkshire Coast Radio vouchers	Yorkshire Coast Radio	16/09/2019	Outside of remit	1
Advertisement	Your TV	26/09/2019	Advertising content	1

[More information about what Ofcom's rules cover](#)



## BBC First

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

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

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

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

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC Breakfast	BBC 1	26/09/2019	Due impartiality/bias	1
BBC News	BBC 1	22/07/2019	Due impartiality/bias	1
BBC News	BBC 1	24/09/2019	Due impartiality/bias	1
BBC News	BBC 1	26/09/2019	Due impartiality/bias	1
EastEnders	BBC 1	23/09/2019	Generally accepted standards	1
EastEnders	BBC 1	24/09/2019	Race discrimination/offence	1
Panorama: Is Labour Anti-Semitic?	BBC 1	10/07/2019	Due impartiality/bias	1
Party Political Broadcast by the Brexit Party	BBC 1	26/09/2019	Generally accepted standards	1
Question Time	BBC 1	Various	Due impartiality/bias	1
RuPaul's Drag Race (trailer)	BBC 1	21/09/2019	Scheduling	1
Victoria Derbyshire	BBC 1	16/09/2019	Due impartiality/bias	1
Match of the Day 2	BBC 2	15/09/2019	Generally accepted standards	1
The Mash Report	BBC 2	12/09/2019	Race discrimination/offence	1
Mercury Prize	BBC 4	19/09/2019	Generally accepted standards	2
News	BBC channels	01/09/2019	Due impartiality/bias	1
News	BBC channels	Various	Due impartiality/bias	1
Programming	BBC channels	Various	Promotion of products/services	1
News	BBC News Channel	01/09/2019	Due impartiality/bias	1
News	BBC News Channel	14/09/2019	Due impartiality/bias	1
Programming	BBC Radio 1Xtra	18/09/2019	Scheduling	1
Rape Trials: Is the Jury Out?	BBC Radio 4	27/08/2019	Due impartiality/bias	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 16 and 29 September 2019.

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

Programme	Service	Transmission date
Babecall TV	Meet The Babes	18/07/2019
Dave Knowles	Radio St Austell Bay	12/08/2019
Rolling News	Republic Bharat TV	20/08/2019
Studio 66 TV	Studio 66	13/08/2019

[How Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes](#)

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

Programme	Service	Transmission date
James O'Brien, LBC,		26/02/2019 and 08/03/2019

[How Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes](#)

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

<b>Licensee</b>	<b>Licensed Service</b>
Premier Christian Communications Ltd	Premier Christian Radio
Preston Community Radio 23	Beat Radio Preston
University of Lincoln	Siren FM

### [How Ofcom assesses complaints and conducts investigations about broadcast licences](#)