

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by ATVOD and the ASA on the basis of their rules and guidance for ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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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.

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

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

## Standards cases

### In Breach

#### Retention and production of recordings

*My Channel, 24 December 2012, 04:00*

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##### Introduction

My Channel is a general entertainment channel broadcast on the Sky digital satellite platform. The licence is held by Enteraction Television Learning Limited (“Enteraction TV” or “the Licensee”).

Ofcom undertakes routine monitoring of licensees’ compliance with the Code on the Scheduling of Television Advertising (“COSTA”). Rule 4 of COSTA states: “[T]ime devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

On 24 December 2012, My Channel appeared to have broadcast more than the permitted amount of advertising in a clock hour. Ofcom noted that, between 04:00 and 05:00, 14 minutes and 35 seconds of advertising had been broadcast.

The Licensee disputed this, stating that its monitoring system had not identified any such overrun. To resolve the discrepancy, Ofcom requested a recording of the relevant material from Enteraction TV.

The Licensee was unable to provide the recording as requested. Ofcom considered this warranted investigation under Television Licensable Content Service (“TLCS”) Licence Conditions 11(1) and (2)(a) and (b):

“11(1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint...”

(2) In particular, the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...”

Ofcom therefore asked Enteraction TV for its formal comments on how it had complied with these Licence Conditions.

##### Response

Enteraction TV offered assurances that it takes its compliance obligations seriously, including the retention of recordings required by its licence. The Licensee emphasised that the channel had always previously produced recordings to Ofcom when requested, most recently in May 2012. However, the Licensee confirmed that it had not made a recording of material broadcast between 04:00 and 05:00 on 24

December 2012. Further, the Licensee admitted that it had failed to make such recordings for a longer period, but was unable to indicate the precise date at which the practice had ceased.

Enteraction TV attributed this uncertainty to an ongoing upgrade to the technical infrastructure at My Channel, which it said had been implemented in order to improve the service offered to viewers. The Licensee added: "The technical upgrade was introduced in 2012...and will be finalised this year." With regard to the specific failure to produce a recording for 24 December 2012, the Licensee stated: "[W]e attribute this to the changes made to the Server Room at the end of 2012. Although we are unable to pinpoint the actual date when the recordings ceased, this will have occurred during the last few months of 2012 when the Server Room's technical upgrade took place."

Enteraction TV admitted that the problem had therefore been ongoing since that time, and had been brought to its attention and corrected as a result of the intervention by Ofcom. However, the Licensee added that the problem would have been picked up as part of the checks made by the channel to ensure full functionality of the new systems installed in the Server Room. Regarding the corrective action it had taken, Enteraction TV stated: "The recordings have been reinstated immediately, both locally here in the UK, and at My Channel's HQ in Portugal. The Portuguese office has recently invested in extra server capacity and this recording will be used as a back-up to the UK recording. This will ensure that the channel is never again in a position where it is unable to provide recordings to Ofcom upon request. Both the UK recording, and the Portuguese back-up recording, will be retained for 90 days as a safeguard against future problems."

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. TLCS licences enshrine these obligations in Licence Conditions 11(1) and (2)(a) and (b).

Licence Condition 11(1) requires licensees to adopt procedures for the retention and production of recordings which are acceptable to Ofcom. Under Licence Condition 11(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 60 days after broadcast. Under Licence Condition 11(2)(b), Ofcom requires licensees to produce such recordings forthwith upon request.

Breaches of Licence Conditions 11(1) and (2)(a) and (b) are serious because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

In this case, Ofcom noted that Enteraction TV had failed to "retain or arrange for the retention of a recording" and to "forthwith produce...any such recording for examination" of material broadcast between 04:00 and 05:00 on 24 December 2012. These are clear breaches of Licence Conditions (11)(2)(a) and (b).

Furthermore, the Licensee admitted that it had failed to make any recordings of the output on this service for a period of uncertain duration, beginning "at the end of

2012”, and ending “immediately” after the problem was brought to its attention by Ofcom in February 2013. Ofcom last requested a recording of material broadcast on My Channel in May 2012. In light of the uncertainty over the precise date at which the production and retention of recordings ceased, Ofcom noted that the Licensee could potentially have failed to retain copies of material broadcast on My Channel for a period of between three and nine months. The procedures in place to ensure the retention and production of recordings were therefore clearly inadequate, in breach of Licence Condition 11(1).

Ofcom noted the measures the Licensee said it has now adopted to ensure that this problem does not recur, including: retaining two copies of material broadcast; keeping these recordings in different locations; and storing the recordings for 90 days, instead of the 60 days required by the TLCS Licence.

However, Ofcom was extremely concerned that a technical upgrade would cause the Licensee to overlook such a key licence requirement as the retention and production of recordings of its output. We were further concerned that this problem continued for a period of uncertain duration, and that the Licensee became aware of it as a result of intervention by Ofcom.

**In the event of any other similar breaches, Ofcom will consider the imposition of a statutory sanction.**

**Breaches of TLCS Licence Conditions 11(1) and (2)(a) and (b)**

## In Breach

### Cancer: Forbidden Cures

Showcase 2, 8 May 2012, 19:00

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#### Introduction

Showcase 2 is a general entertainment service that broadcasts on Sky Channel 192. The licence for Showcase TV 2 is held by Information TV Limited (“Information TV” or “the Licensee”).

Ofcom received a complaint about the programme *Cancer: Forbidden Cures*. In particular the complainant considered that a segment of the broadcast on the Italian oncologist, Tullio Simoncini, was misleading and potentially harmful. Tullio Simoncini has put forward a theory that the cause of cancer is not genetic but is instead a fungus called *Candida Albicans*, and cancer can be successfully ‘treated’ with solutions of bicarbonate of soda injected into the site of a tumour.

Ofcom noted that during the course of this one hour and 43 minute programme the following subjects were covered: the emergence of the pharmaceutical industry in the United States of America (“the US”) and how it has a vested economic interest in promoting expensive treatments; the current generally accepted medical view that cancer is caused by abnormal cell growth; the mainstream treatments and therapies that are presently used to treat cancer (chemotherapy, radiotherapy and surgery); and possible reasons why alternative treatments are not used by the medical profession to treat cancer today (the programme suggested it was not in the economic or professional interests of doctors and the pharmaceutical industry to research and develop alternative treatments).

The majority of the programme (approximately one hour 18 minutes) covered in some detail eight alternative potential ‘cures’ for cancer, the history of those treatments and the negative way in which the alternative cancer practitioners had been treated by the official medical establishment in the US who according to the programme “*ostracised, derided or persecuted [the alternative practitioners] without the therapies ever being considered for serious scientific evaluation*”.

The alternative treatments included in the programme were:

- a herbal remedy called Essiac, created by René Caisse (a Canadian nurse). The programme included: testimonials from people who claimed that Essiac had cured them of cancer; a testimonial from René Caisse claiming to have ‘cured’ and ‘treated’ thousands of patients; and, a voiceover to the programme that referred to Essiac as a ‘cure’ for cancer. The programme stated that in 1958 the US Cancer Commission investigated Essiac and rejected the evidence in support, therefore it was never officially recognised as a cure for cancer.
- a herbal remedy created by Harry Hoxsey (a Texan businessman), referred to in the programme as “*The Charlatan who cured cancer*”. The programme explained that given Harry Hoxsey’s wealth he was able to make a legal challenge to the medical authorities in the US. The programme included: a clip of Harry Hoxsey claiming to have a cure for cancer; the spread of Hoxsey clinics across the US and the fact the two federal courts had upheld its



therapeutic value; a testimonial from a journalist for 'Esquire' magazine who in 1939 investigated the story and found that the treatment clearly had an effect of those suffering from cancer; a court record that showed the editor of the American Medical Association ("AMA") Journal admitting that Harry Hoxey's treatment could "*cure external cancers*"; and a clip from a film that Harry Hoxey made to prove the effectiveness of his product. According to the programme, the US Food and Drug Administration ("the FDA") eventually outlawed the treatment on the basis of "*false labelling and interstate commerce*". The voiceover explained that Harry Hoxey's clinics based in the US were forced to close and only one clinic in Mexico is open today which "*has been treating thousands of patients over the years and is still active today...*".

- Max Gerson's theory that the detoxification of the body through a series of intestinal washes based on organic coffee, and a strict diet of raw vegetables and fruit, could cure cancer, diabetes and skin tuberculosis. The voiceover of the programme explained Max Gerson's theory was tested by Dr Ferdinand Zauerbrook who conducted a trial on 450 people suffering from skin tuberculosis, of whom it said 446 recovered. The voiceover said that in 1946 Max Gerson took five of his recovered patients to US Senate to testify that his therapy could cure cancer, after which a renowned ABC news correspondent "*declared on his radio broadcast to the entire United States that for the first time in history there had been discovered a cure for cancer*". The programme also included: testimonials from Max Gerson's daughter, grandson, ex-patients, and medical practitioners who have published books that support the controversial viewpoint put forward by the programme (one of whom predicted that the cancer death rate would fall by at least 50% if the Gerson therapy was permitted in the US); and, audio clips of a recording from an interview with Max Gerson, claiming to have "*cured*" patients who had been diagnosed with terminal cancer.
- Dr Ernst T Krebs' theory that Laetrile (Vitamin B-17), found in the seeds of apricots and similar fruits, is an effective 'cure' for many types of cancer, "*especially breast, lung, colon and prostate cancers*". The programme said that Dr John Richardson began applying this theory to his patients whom he was treating and this resulted in a high success rate of patients who made a full recovery. The voiceover of the programme explained that "*medical authorities have never recognised the therapeutic use of Laetrile while the FDA [the US Food and Drug Administration] have listed it amongst the toxic substances, making it in fact, illegal to be sold in the United States*".
- Mistletoe – which, according to the programme, has "*immune stimulatory properties*" and is "[a]nother well known remedy against cancer and particularly popular in Europe". This segment included testimonials from medical professionals both supporting and rejecting the benefits of mistletoe and a celebrity who claimed that mistletoe had cured her cancer.
- References to other potential "*cures*" such as: "*the Vitamin C cure from Nobel prize winning Linus Pauling to the infamous Kribiozen by Dr Andrew Ivy, molecular cures through the microscope or Dr Rife to Dr Coley's Toxins, the dynamics have always been the same: the doctors have been ostracised, derided or persecuted without the therapies ever being considered for serious scientific evaluation*".

- Dr Tullio Simoncini's 'Fungal Hypothesis'. This suggests that the cause of some types of cancer is not genetic but a fungus called *Candida Albicans* and these can be successfully treated with solutions of bicarbonate of soda injected into the site of a tumour. This theory, the programme stated, is based on the manner in which cancer cells behave (particularly during biopsy procedures or surgery) in the body and that the cancer is "always" white in colour. The voiceover of the programme stated "*it should be clarified the presence of fungi in tumours is nothing new in the medical world*". The programme referred to the Italian doctor Tullio Simoncini in on-screen captions as an 'Oncologist' and 'Diabetologist' and showed clips of him speaking at conferences. The programme also included testimonials from Tullio Simoncini's first patient who said he was cured of lung cancer through following this treatment and a man named Dr Lombardo who said he was cured of lung and liver cancer using Tullio Simoncini's treatment. In this segment of the broadcast the voiceover said that once this fungus begins to spread around the body it is necessary to ensure the immune system is operating efficiently to defeat the disease. However the programme claimed that "*if the patient is given chemotherapy instead, this only accelerates the destruction of his natural defences as the drug kills indiscriminately cancer cells and healthy cells. While possibly prolonging the survival by a few months chemotherapy makes it impossible for the organism to recover its defence capabilities, making it bound to succumb sooner or later to the multiplying fungal attacks*".

Ofcom noted that it appears that the programme (or a version of it) had been originally released on DVD in June 2010 and is available for purchase on the internet. The programme maker, Massimo Mozzucco, is an Italian documentary maker known for producing programmes that explore conspiracy theories, such as those surrounding the 9/11 terrorist attack in America.

Ofcom considered this raised issues warranting investigation under Rule 2.2 of the Code which states:

"Factual programmes or items or portrayals of factual matters must not materially mislead the audience."

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

Ofcom was concerned that this material also raised issues warranting investigation Rule 2.1, which states:

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

Ofcom did not consider it necessary to seek the Licensee's comments as to how this content complied with Rule 2.1 before reaching its Preliminary View on this rule.

## Response

In response to Ofcom's initial request for formal comments Information TV explained that the programme is one of a series made by the production company Paradigm Shift TV ("PSTV") which are regularly broadcast on this service. The Licensee said

that PSTV produces programmes with the intention of broadcasting information on matters that would not normally be covered on mainstream television channels. The Licensee said that PSTV researches its subject matter thoroughly and always attempts to provide a balance of views and opinions. The programmes often present what are minority opinions, placed in the context of 'accepted' views.

Information TV explained that the programme synopsis provided on the Sky electronic programme guide stated: "*More than 20,000 people die of cancer every day, without official medicine being able to offer a true sense of hope to those affected by it. Why?*" The Licensee said that this synopsis "highlights that the programme was not about suggesting new cures, but that cancer is a huge concern, for which medicine did not have a lot to offer. Its core message was that while there is potentially a number of alternative treatments which may merit further investigation, those who had stumbled into the 'alternative' treatments often find it difficult to gain attention from an 'industry' which is arguably driven by more commercial objectives than simply progress".

Information TV submitted that the programme was "manifestly not a recommendation that viewers should embark on unconventional treatments for cancer. Rather, its thesis was, quite simply, that there is now a huge 'cancer industry', dependent on often very expensive 'approved' treatments – which have only modest success rates. The organisations behind what is a £multi billion industry are not likely to welcome the possibility that less conventional treatments can for some patients produce equally (or even more) effective results."

The Licensee said that the programme only presented experimental potential treatments which had been observed to be effective by individuals, but were clearly stated as unsubstantiated by appropriate research and clinical trials. The Licensee said that in every case the programme also contained the official view of the alternative treatment and that "at no point was any of the potential treatments suggested as a 'cure for cancer'".

The Licensee said that the programme stated that Tullio Simoncini "presented his preliminary findings to the Italian Department for Health, hoping that his theory would be put to test under proper scientific protocols." Information TV said that the programme then provided a counter view from "an enlightened Italian oncologist".

Information TV said that the programme maker, in exploring several other unconventional potential treatments (for example those put forward by René Caisse, Harry Hoxley, and Max Gerson, and treatments involving Laetrile B17 and mistletoe), "consistently placed the unconventional treatment in the context of the establishment view, but also repeatedly highlighted the need for further, intensive research".

Information TV said that "far from misleading viewers, the programme made a very positive contribution in informing viewers that there is a range of potential treatments which have been observed and commented on, but that all of them required proper, appropriate scientific research and clinical evaluation." The Licensee continued that the programme highlighted the issues that a number of individuals have had in gaining support for alternative therapies, and argued that the only controversial aspect of the programme was the suggestion that there were vested interests which worked against treatments which could have a negative commercial impact on conventional treatments.

Information TV then referred to the provisions of the Cancer Act 1939<sup>1</sup>. It said “the prohibition in the [Cancer] Act [1939] of the promotion of ‘unapproved’ treatments surely does not embrace the factual description of what some observers have discovered, and their suggestion that proper research was justified to look further into the observations. The programme did just this. It did not promote any alternative treatments”.

Information TV said that it “cannot be considered ‘harm’ to deny citizens information about what might in some circumstances be effective”. The Licensee added that the only people who might be misled as a result of the programme are those who “were told by third parties that they had seen a TV programme that said that sodium bicarbonate cured cancer”, rather than watching it themselves and seeing that it did not suggest that.

Ofcom gave Information TV an opportunity to comment on our Preliminary View (which was to record breaches of Rules 2.1 and 2.1).

In response to the Preliminary View, Information TV said that none of the treatments presented in the programme had been “proved” as “cures” for cancer, but neither had they “been disproved – which was the whole point of the programme – because they had not been properly researched”. The Licensee said none of the treatments portrayed were claimed to be a cure for cancer. “[The alternative practitioners] simply presented empirical evidence that they had observed that in their experience, cancer sufferers being brought under a variety of regimes had variously exhibited remission of cancer symptoms, and that this merited further investigation.” The programme simply “highlighted reasons why this further investigation was perhaps being variously delayed or obstructed”.

Information TV said [the alternative practitioners’] comments in the documentary “were not being extrapolated into statements of verified facts or statements of verified cures for cancer”. Each alternative practitioner stated that further investigation into their personal experiences was required. “The repeated scenarios in the programme gave a full and appropriate context for the individualised claims, and informed the viewer repeatedly of the fact that no substance can, could or should be claimed to be a cure or treatment for cancer until it has been through the appropriate and extensive clinical trial and research process”. This ensured that “no misunderstanding or misleading context was suggested, implied or communicated”.

Information TV said the programme did not at any time suggest that viewers should abandon the treatment regime which they were currently pursuing. It added “we do not agree with Ofcom’s implication ...that viewers would be likely to embark (to their harm) on any of these treatments. The call to action – if any – would be that they might support detailed research on these and other areas of research”. Information TV further argued:

- the “fact that the internet provides viewers with the ability to seek alternative treatments cannot be ignored. The programme served to provide information on the context of their existence, but not to promote them”;

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<sup>1</sup> Cancer Act 1939 (Section 4) which can be found at: <http://www.legislation.gov.uk/ukpga/Geo6/2-3/13/section/4>. (Ofcom had asked Information TV to comment on Section 4 of the Cancer Act 1939.) Section 4 of the Cancer Act 1939 makes it a criminal offence for anyone to publish an “advertisement” offering to treat anyone with cancer or give any advice with the connection or treatment of cancer.

- “the fact that some patients have apparently been ‘cured’ by alternative treatments is not necessarily undermining the balance of views, but does surely merit proper research, rather than being dismissed by the ‘establishment’ view”;
- Ofcom’s Preliminary View appears “to somewhat deride testimony from professionals (e.g. reference to Dr Lombardo). Medicine is full of discoveries from previously sceptical professionals who have subsequently discovered breakthroughs and their contribution must surely be encouraged and not dismissed”;
- Ofcom’s Preliminary View that the treatments were presented as ‘effective’ and ‘safe’ in the programme is incorrect. The testimonials for treatments were factually correct and were “from people who were cancer victims whose symptoms had apparently disappeared”;
- the programme presented historical fact. The Licensee added those “who watched the programme in its entirety were likely to be cancer patients...and while they might be tempted to invest financially in the hope of a solution to their illness, they will already be well aware they should research thoroughly, and discuss with their current advisor, the advisability of pursuing any alternative treatment”; and
- “that it would be pleased to broadcast any contra-position from the ‘establishment’”.

With regard to the viewer complaint about Tullio Simincini’s fungal hypothesis, the Licensee said any viewer who had viewed the whole programme would see his [Tullio Simincini’s] thesis in the context of the other ‘alternative’ treatments, i.e. the therapy might produce positive results in some cancer sufferers.

Information TV provided “additional evidence” to support the hypotheses and claims in the programme. This included research being conducted on the potentially beneficial effects of curcumin, BioBran, Iscador and Bicarbonate of Soda. The Licensee said that “increasing numbers of qualified and registered medical practitioners are working outside and alongside the conventional system using natural, complementary, integrative treatments for people with cancer” and provided six examples of such practitioners. Further Information TV argued “it is accepted (as the programme described) that conventional treatments for cancer ....can all weaken and undermine the optimum functioning of the immune system, which is part of the body’s defence against cancer” and modern medicine is beginning to consider the need to support the immune system when conventional treatments are used.

The Licensee said that “there needs to be exposure and debate around personal experiences of some observed clinical efficacy or substances such as these, in order for society to evolve in its approach to complex medical conditions such as cancer. We believe this dialogue should include the (viewing) public, otherwise important and vital contributions to the evolution of medicine in our society may well be marginalised or even lost, at a huge cost to many”. Information TV added “[t]he producers have received many positive and interested emails from people grateful for the informative and enlightened view which it presented. If people were being harmed, misinformed or misled, then we consider there would be more than just one complaint”. The Licensee said “the threat of a possible sanction is disproportionate, and potentially amounts to curtailments of freedom of information and freedom of speech”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards are applied to the contents of television... services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.” This objective is reflected in Section Two of the Code. Rule 2.1 is a general rule concerned with providing adequate protection to the audience from harmful (or offensive) broadcast material. Rule 2.2 also relates to protecting the public from material which may be harmful or offensive, but specifically focuses on requiring the broadcaster to ensure that the portrayal of factual matters does not materially mislead the audience so as to cause harm or offence.

The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority. Ofcom must therefore seek an appropriate balance between ensuring members of the public are protected from material which may be considered harmful on one hand and the broadcaster’s and audience’s right to freedom of expression on the other.

Ofcom acknowledges that a programme which explores the controversial suggestion that the pharmaceutical industry in the US has systematically blocked research into a natural cure for cancer and stopped some practitioners from publicising potential cures, is a legitimate subject for broadcasters to explore and it is a valid avenue for a factual, investigative piece of programming. However, matters of this nature must be carefully presented to ensure that viewers, some of whom may be vulnerable, are appropriately protected from potential harm. The Licensee has a duty of care to ensure that in cases such as this, any claims included in the programme are sufficiently contextualised to ensure that viewers are not materially misled so as to cause harm.

Ofcom considered this was especially important when considering cancer ‘cure’ claims because Section 4 of the Cancer Act 1939 makes it a criminal offence for anyone to publish an “advertisement” offering to treat anyone with cancer or give any advice in connection with the treatment of cancer. While *Cancer: Forbidden Cures* may not be interpreted as an “advertisement”, the existence of such a crime on the statute book highlights that Parliament considered the public provision of any advice on how to treat cancer to be in a special category, and therefore that it should be tightly regulated in the public interest and only provided by those appropriately qualified or authorised to do so.

In investigating this case it was not Ofcom’s role to establish whether or not the alternative treatments included in this programme were capable of curing various forms of cancer. Rather, Ofcom’s role was to determine whether or not the programme was compliant with the Code, and to examine the steps taken by Showcase 2 to ensure that it took reasonable care to properly consider the material facts and present them in a manner that ensured the audience was not materially misled. Ofcom assessed the measures taken by Showcase 2 to ensure the audience was not materially misled in two ways: firstly with regard to the way the effectiveness and potential side effects of conventional treatments for cancer were featured; and, secondly with regard to the way in which facts were presented overall.

## Rules 2.1 and 2.2

Rule 2.1 states that generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material. This rule is specifically concerned with the protection of the audience from harm.

Rule 2.2 states that: “Factual programmes or items or portrayals of factual matters must not materially mislead the audience”. Guidance to this rule underlines that it is “designed to deal with content that **materially misleads the audience so as to cause harm or offence** [emphasis in original]”. Whether a programme “materially” misleads an audience so as to cause harm or offence is a high test. The guidance states that: “[w]hether a programme or item is “*materially*” misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred.”

In circumstances where a programme presents alternative treatments or medical advice that includes references to potentially serious medical conditions, such as cancer, Rules 2.1 and 2.2 serve to mitigate the risk that viewers who suffer from such conditions might forego or delay orthodox medical treatment in favour of the advice given during the programme, and attempt to treat themselves with alternative, untested treatments, with consequent potentially serious harm caused to their health.

## Premise of the programme

The programme was presented as a documentary about potential alternative treatments for cancer which had either been blocked or not sufficiently explored, allegedly because of opposition from big pharmaceutical companies in the US supported by orthodox medical opinion. The main reasons for that opposition – according to the programme – were firstly, that big pharmaceutical companies were not interested in natural alternative remedies for cancer as those remedies could not be patented; second, the pharmaceutical companies make a significant amount of money from chemotherapy medicines; and thirdly, a cure for cancer would negatively affect the future profits of the pharmaceutical companies. For example the programme voiceover claimed at one point that cancer is:

*“big business” generating “millions and millions of dollars for the medical and pharmaceutical industries”. It continued: “to modern oncology, cancer still remains a mystery.... The only thing that has not changed in the last hundred years is the apparent capacity of medical science to understand and conquer a disease like cancer. Why?”*

Further we noted that the programme suggested that the pharmaceutical industry in the US had limited interest in developing potential cures. For example Mark Abadi, described in an on-screen caption as an “*Integrated Quantum Psychologist*”, stated:

*“The drug industry is the most successful global industry in the world. What they don’t want you to do is get better, ‘cause if you get better their market’s gone.”*

This material, in our view, clearly suggested that pharmaceutical companies in the U.S. had the potential to explore possible treatments for cancer; however it was not in their interests to do so.

### Conventional cancer treatment

The programme then set out its opinion of the current generally accepted medical view that cancer is caused by abnormal cell growth creating tumours. This theory associates most cancer related deaths with metastasis, the process by which once a tumour forms cancer cells spread to other parts of the body from that tumour. The programme claimed that this current theory (also known as 'Molecular Theory') is the same theory that was formulated over 50 years ago. The programme went on to explain that today scientists are trying to identify which genes are responsible for the development of the different forms of cancer. However, it suggested (in opposition to widely accepted medical and scientific opinion) that *"no one has been able to prove that the official theory is the correct one and that the origin of cancer is in fact of genetic nature"*. Ofcom understands that various cancers have now been associated with faults in specific genes<sup>2</sup> and we therefore considered the programme presented outdated and potentially misleading background information regarding the development of the different forms of cancer.

The programme set out what it considered to be the principal current and widely accepted forms of treatment for cancer (radiotherapy, chemotherapy and surgery) and included some remarks by a science writer, Peter Barry Chwoka, who said, *"We've lost the war on cancer. Since the 1950s the outlook for most cancer patients has remained the same, a one in three chance of living for five years after diagnosis using conventional therapies: surgery, radiation, chemotherapy drugs. The fact is that today, two out of three American cancer patients will be dead before five years"*. The voiceover went on to state that *"despite such dismal results official oncology continues to impose on patients the only three therapies that have ever been authorised in the last hundred years: surgery, chemotherapy and radiotherapy; and two of the three are actually carcinogenic"*.

We noted the programme then set out in more detail its controversial view of the three types of conventional treatment and their associated potentially harmful side effects.

With regard to surgical treatment, the voiceover claimed that: *"surgery is the oldest technique and the most successful of the three. But surgery is only successful when the cancer is localised, a minority of cases"*.

In the case of radiotherapy, the voiceover suggested: *"patients also fear radiation's dangerous side-effects, one of these is that radiation can actually cause cancer. The use of radiation remains controversial even in medical circles"*. This was immediately followed by an interview with the mother of a child cancer survivor. She put forward her personal opinion that the part of her child's brain responsible for memory had been destroyed by the radiotherapy the child underwent to treat her cancer.

In the case of chemotherapy, the voiceover put forward the view that *"many chemotherapy drugs are carcinogenic"*. The programme then proceeded to list possible side effects such as hair loss, nausea and sickness (which it stated can be countered by anti-sickness drugs), taste change, a sore mouth and tiredness. The programme referred to a condition it described as *"Chemo brain"*, which was commented on by an individual referred to on screen as 'Bernadine Cimprich, RN, PhD', a researcher at the University of Michigan Comprehensive Cancer Centre. She

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<sup>2</sup> <http://www.nature.com/nature/journal/v476/n7360/full/nature10350.html>  
<http://www.bbc.co.uk/news/health-14152095>  
<http://www.nhs.uk/Livewell/Breastcancer/Pages/Breastcancergenes.aspx>



suggested that “*Chemo brain*” was a “*phenomenon*” in which patients have reported cognitive changes such as loss of concentration and memory as a result of undergoing chemotherapy. This was followed by a brief excerpt from an interview with a cancer survivor who was labelled in an on-screen caption as a “*CHEMO-BRAIN VICTIM*”.

We noted that the voiceover then posed the question: “*Is there any benefit in chemotherapy?*” The programme again featured Peter Barry Chowka, who said that a study published in ‘Scientific American’ entitled ‘The Treatment of Diseases and the War against Cancer’, allegedly found that “*chemotherapy drugs benefited at most five per cent, one out of twenty, of the cancer patients they’re given to*”.

The programme then set out its view of why conventional treatment is used if it has such allegedly “*limited results*” and why “*the medical profession [is not] willing to investigate alternative approaches*”. The programme gave its version of the history of the medical establishment in America and how “*empirical doctors*” or “*homeopaths*” were stopped from practising. We noted that the programme argued that the US pharmaceutical industry: gained control of medical schools, enabling the American Medical Association to exclude all ‘*empirical doctors*’ from practising; controlled the medicine testing process; heavily influenced the medical publications; and “*extended its control*” over the Food and Drug Administration, which ensures all medicines are tested for safety and efficacy.

Ofcom considered the programme presented a one-sided and critical view of conventional cancer treatments and used statistics and testimonials to support that position. We recognise that in discussing established medical treatments it is a legitimate editorial decision to highlight the potential detrimental effects of such treatments, for example the effects that radiation, when delivered through radiotherapy, has on the body. However in this case we considered that the programme presented the potential side-effects associated with the conventional therapies in a disparaging, exaggerated and alarming manner, and to help fulfil this aim used various techniques not normally associated with documentaries on serious medical subjects and issues. To accompany the programme’s critical comments on conventional treatment for cancer for example, it frequently used sombre music over old camera footage of patients undergoing conventional treatment and at one point a sequence of images including a nuclear explosion, Hitler and a burning crucifix was shown. This sequence was accompanied by words spoken by the actress Dame Judi Dench (taken from a different context): “*...fear anaesthetises us, it coerces us, making us believe we can do little on our own to prevent or treat disease, and forces whole nations to kneel at the altars of the drug industry...*”.

We also noted for example that the statistic (“*chemotherapy drugs benefit at most five per cent, one out of twenty of the cancer patients they’re given to*”) would give viewers a misleading impression of the effectiveness of this therapy, particularly as the statistic was not qualified (i.e. by referring to a particular stage of cancer or type of cancer).

Importantly the programme refuted the significant fact that cancer care has improved substantially in recent years. Early diagnosis, for example through screening and public health awareness more generally, has improved considerably. New techniques and vaccines have also noticeably improved survival rates, for example, combination therapy (for example chemotherapy combined with other treatment/s) is now commonly used to treat many cancers and has contributed to increasing survival rates. Ofcom noted for example that statistics published in November 2010, by the

US National Cancer Institute<sup>3</sup> demonstrate that there have been significant improvements in cancer survival rates.

We therefore considered the programme presented a materially misleading view of conventional cancer treatment which had the potential to cause serious harm, particularly to those who currently suffer from a form of cancer and might forego or delay orthodox medical treatment based on the information provided in this programme.

#### Alternative cancer treatment

Ofcom noted the programme went on to give its view, in some detail, of what it presented as eight alternative treatments for cancer. These were all conveyed in a positive manner by the voiceover and by the programme more generally by including: references to testimonials from ex-patients, other medical practitioners and relatives and representatives who had been close to the alternative practitioners; references to 'published articles' and results of medical trials that had been published in Europe but were not available in the US; legal documents such as medical records that allegedly demonstrated the effectiveness of the relevant alternative treatments and in one case an extract from a court transcript from the 1940s<sup>4</sup>.

We noted the premise of the programme was to present various alleged potential 'cures' for cancer that had not been subject to clinical trials and tests for safety or efficacy. The programme also examined how treatments for cancer, in particular, were historically regulated in the United States and how the sector is regulated today. Given that this programme was broadcast in the UK, we considered that the majority of viewers would have understood that the programme appeared to have been originally aimed at, and made for, a US audience.

Ofcom went onto consider how the programme presented each alternative therapy and whether there was a potential for harm due to insufficient context and the potential therefore to materially mislead viewers so as to cause harm.

We noted that there were several statements made in the programme that were potentially harmful in two respects. Firstly, the programme included statements from the alternative practitioners themselves, ex-patients and the voiceover of the programme which gave the clear impression that the alternative treatments could 'cure' or 'treat' cancer, without this being placed in an appropriate context, for example by the provision of any kind of proper substantiation of these claims or warnings to viewers. Secondly, we were particularly concerned that some of the alternative treatments included in the programme are easily available for purchase or use, in particular by means of the internet<sup>5</sup>. In Ofcom's view, this increased the risk that viewers suffering from cancer might decide to forego or supplement conventional treatment by trying some of the alternative approaches featured in the programme.

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<sup>3</sup> The National Cancer Institute <http://www.cancer.gov/cancertopics/factsheet/cancer-advances-in-focus/cancer>

<sup>4</sup> This reference was used to support the effectiveness of the 'Hoxey treatment' (see below).

<sup>5</sup> For example:  
<http://www.theoriginallessiac.com/renecaissestory.htm>  
<http://www.curenaturalcancro.com/cancer-therapy-faq.html> (for the bicarbonate of soda treatment).

Some examples of the problematic content are set out below in relation to each alternative treatment, followed by Ofcom's assessment of the risk of harm to viewers.

### Essiac treatment/René Caisse

We noted that this segment included a historical examination of how René Caisse, a Canadian nurse, had discovered this alternative treatment in 1922. The programme went onto to explain how René Caisse had *"treated from three hundred to six hundred patients a week"* and included numerous testimonials supporting the alleged effectiveness of the product:

- [man speaking to camera] *"I took treatment from her [René Caisse] every week for about a year and have no cancer today"*.
- [woman speaking to camera] *"In about 1943 I was diagnosed in Toronto general hospital as having a growth in the bowel, which was inoperable and that was in January. And my husband was told that when the snow was gone I would probably be gone with it. So through friends I was directed to Miss Caisse and I came to her and had treatments from her for practically three years and felt I was cured and I've had no return of it since"*.
- [Dr Charles Brush speaking to camera] *"About 20 years ago, 1958, here in this laboratory...undertook a study into the effects of a drug or a herb called Essiac and we found that it was non-toxic and did have effects and helped in the treatment of cancer"*.
- [René Caisse speaking to camera] *"If you have the proof... the diagnoses from the doctor... you have the pathological findings and you find you have the living patient to show that they are still alive after the medical profession has given them up and yet they refuse to admit that it is a cure."*
- [The voiceover of the programme] *"This fragile Canadian nurse has heroically managed to cure thousands of people from cancer with a simple concoction of herbs" and "...after she recovered from the breakdown René started again from scratch [images of René Caisse mixing herbs] brewing her herbal mixture and curing patients in her own basement"*.
- [The voiceover of the programme] *"After a while a mysterious group of entrepreneurs showed up offering René one million dollars for the secret formula, but she flatly refused, as they would not guarantee that her cure would be made available for free to anyone who ever needed it"*.

In Ofcom's view the numerous testimonials by ex-patients, René Caisse, medical practitioners such as Dr Charles Brush and the voiceover of the programme, clearly supported the view that this treatment was a potential cure for cancer. We considered a brief reference to the failure of the FDA to approve the treatment for use in the US provided very limited balance to the overall impression that the product was effective and safe. In Ofcom's view the segment on Essiac provided very restricted context to the claims which were overwhelmingly in support of this product which is easily available on the internet and therefore presented the potential for financial harm to consumers. Further, in light of the availability of these products and the lack of relevant clinical trials and tests for efficacy and safety, Ofcom considered viewers were potentially at serious risk of medical harm. We therefore considered the programme presented a materially misleading view of this alternative treatment which

had the potential to cause harm, particularly to those who currently suffer from a form of cancer and might forego or delay orthodox medical treatment based on the information provided in this programme. In our view the broadcaster did not apply generally accepted standards to this programme material so as to provide adequate protection for members of the public.

### Herbal remedy/Harry Hoxey

The programme explained how Harry Hoxey had established his first clinic in 1924 and went on to open 16 further clinics in 17 US states. The voiceover of the programme explained that two federal courts “*upheld its therapeutic value*” and although the medical profession failed to examine the product, numerous sceptics were – it was claimed – “*turned into believers*”.

The programme included a number of testimonials which supported the alleged effectiveness of the Hoxey treatment:

- [Audio of Gerald Winrod (a radio broadcaster) reading a statement by Judge W L. Thorton] “*...this is the second jury of twelve men that has found in my court that the Hoxey treatment cures cancer. Ten doctors [image of ten men] found that that number of cures reaches into the thousands...*”
- [Voiceover of the programme] “*Dr Fishbein [the editor of the American Medical Association Journal] admitted in court that Hoxey’s supposedly brutal pastes actually did cure external cancers... [sombre music and photos of skin cancers]. The most dangerous external cancer is Melanoma. It can spread rapidly through the body, doctors advise extremely radical surgery. Even so melanoma is often fatal*” [sombre music ends]. [Image of Harry Hoxey speaking to camera] “*We have more positive proven cases of melanoma in our records and files of patients to talk to, that have been cured in this institution than any other institution in the world and that’s a broad statement and we have the facts to back it up*”.

Ofcom noted that there were no testimonials from ex-patients; however there were testimonials in support of Harry Hoxey’s treatment, for example from his former attorney, a transcript of a court judgement and numerous images of newspaper headlines that presented the alternative treatment in a positive light. Further, we noted that the voiceover of the programme referred to a Hoxey clinic that presently operates in Mexico:

- [Voiceover] “*Hoxey gave up the 25 year long fight against the medical establishment. ...He built a new clinic in Mexico [image of clinic] and died in 1974 in Texas. This clinic has treated thousands of patients and is still active today. The product has never been available to cancer patients and cannot be shipped to the country [United States of America] so sufferers [image of people in a waiting room] must travel to Mexico each time for treatment*”.

In Ofcom’s view the testimonials and reference to the clinic, which is in operation today and has treated “*thousands of patients*”, had the potential to lead vulnerable viewers to believe that this alternative treatment had been authenticated and could be substantiated. Therefore we considered Information TV had not adequately contextualised the claims in relation to this alternative therapy and the potential for harm was significant, particularly to those viewers who were vulnerable. We therefore considered the programme presented a materially misleading view of this alternative

treatment which had the potential to cause harm, particularly to those who currently suffer from a form of cancer and might forego or delay orthodox medical treatment based on the information provided in this programme. In our view the broadcaster did not apply generally accepted standards to this programme material so as to provide adequate protection for members of the public.

### Detoxification/Max Gerson

We noted that the programme set out the theory that “*good health depends primarily on good nutrition*” and that “*once detoxified the human body confirms being a wonderful machine, capable of healing itself from any given disease*”. The programme included testimonials from: four ex-patients who claimed that their cancer had been cured as a result of following the Gerson therapy; Max Gerson’s daughter and grandson; and authors who supported Max Gerson’s theory, for example:

- Dr Saul (Author of “Doctor yourself” and “Fire your doctor”) “*Why was the American Medical Association so opposed to the Gerson therapy? I think all the medical associations were opposed to the Gerson therapy. Here comes a new approach, a nutritional approach, an effective approach. The medical/pharmaceutical industry, if it even wants a cure for cancer, since there’s so much profit in this disease, certainly does not want the cure to be a nutritional one*”; and “*If the Gerson therapy was permitted inside the United States, and I believe that it should be, we would see a dramatic decrease in deaths from cancer. I estimate the fatality rate would go down at least by 50%, very possibly more so*”.

[Voiceover] “*Gerson continued to cure patients with his therapy*”

The programme did include some alternative views on the Gerson therapy which provided some very limited balance, such as:

- [Dr Dean Edell MD (Described on screen as a “Celebrity Doctor”)] “*I doubt the Gerson therapy has ever cured a terminally ill patient. People get confused by this...If you think of basically what’s in Gerson therapy, you really wouldn’t expect it to cure cancer. But people - sometimes cancer cures itself, there is a rate of cancer that goes away by itself. Some people didn’t really have cancer, it was a misdiagnosis...*”.

However, the image of Dr Dean Edell was then frozen and an image of a woman appeared in the top left corner of the screen. This graphic gradually increased in size. She stated:

- “*In 1986 I was diagnosed with pancreas cancer which had spread to my liver, gall bladder and spleen. Doctors told me I had three months to live, to go home, get my finances in order and prepare to die. My husband just wouldn’t accept it. I was only 46 at the time far too young, so we came home, did the therapy for two years and after three months my doctor wondered why I was still living. He asked me whether I would have a...scan. I did. The masses of cancer had gone. He said I don’t know what you’re doing, and I don’t want to know what you’re doing, just keep doing it....*”.

The programme included statements from Dr Wallace Sampson the editor of Scientific Review of Alternative Medicine and Dr Stephen Barrett a “Health Fraud Expert”. Both men stated that the Gerson therapy is not effective and there is no

evidence which would support claims that it can cure cancer. Again (as with the Dean Edell statements above), following these statements questioning the alternative therapy, the programme immediately cut to a view supporting it. For example following Dr Stephen Barrett's statement the programme cut to a still image and audio of Max Gerson stating:

- *"I was investigated five times [by] the AMA [American Medical Association]. Every time they come I showed them, here's a patient you sent home to die, cured. Other patient, you sent home to die, cured. Next patient, you sent home to die, cured".*

Ofcom considered the statements from Dr Dean Eddell, Dr Wallace Sampson and Dr Stephen Barret provided some very limited context to put the claims that the Gerson therapy cured cancer into some perspective. However, these statements were immediately undermined by testimonials from patients who had been 'cured', or statements by Max Gerson himself claiming to have cured numerous patients. Ofcom considered the programme presented the Gerson therapy as a potential treatment that could cure cancer and we were concerned that the claims were not sufficiently contextualised. We therefore considered the programme presented a materially misleading view of this alternative treatment which had the potential to cause harm, particularly to those who currently suffer from a form of cancer and might forego or delay orthodox medical treatment based on the information provided in this programme. In our view here too the broadcaster did not apply generally accepted standards to this programme material so as to provide adequate protection for members of the public.

#### Laetrile/Dr Ernst T Krebs

The voiceover of the programme set out the basis of this theory, specifically that Laetrile (Vitamin B-17), found in the seeds of apricots and similar fruits is an effective 'cure' against many types of cancer. We noted that this segment included various statements in support of the alleged therapeutic benefit of Laetrile for example:

- [Voiceover] *"...According to [Ernst] Krebs Vitamin B17 which is found in the seed of apricots [image of apricots] and other similar fruits is an effective cure against many kinds of cancers and especially breast, lung, colon and prostate cancers. Vitamin B17 also known as Laetrile has been one of the most [images of a book on B17 and its effects on cancer cells] popular remedies against cancer since the 1950s and in the last decade has collected support [images of various men named as: Dr Ernesto Contreras; N.R.Bouziane M.D; Hans Nieper M.D; Manuel Navarro M.D.] from many scientists and oncologists from all over the world" and "In Italy Dr Guidetti from the Turin University undertook a scientific study on Laetrile that showed very promising results. Dr Dean Burk [on screen caption: Dr Dean Burk Ph.D.], head of the [...] chemistry section at the National Cancer Institute has reported in a series of tests on animal tissue, the B17 had no effect on normal cells, but released so much cyanide and benzaldehyde when it came in contact with cancer cells that no one of them could survive. He said that when we add Laetrile to a cancer culture under the microscope we can see the cancer cells dying off like flies".*
- [G. Edward Griffin the author of a 'World without Cancer' who referred to a trial that a doctor had conducted in his cancer clinic in the 1970s]: *"Dr Richardson began to cautiously use [Laetrile] in his practice. He was losing*

*most of his patients that he was treating with cancer. He went from that to a high success rate, almost overnight by using [Laetrile]. And so he became very enthusiastic about it and the word got around, and his patients were very happy of course and they told their friends. It wasn't very long before people were coming from all over the United States and in some cases even from Europe, to be treated at the Richardson clinic".*

- The voiceover of the programme suggested that Sloan-Kettering, the New York Cancer Research Institute was aware of the "*therapeutic qualities of Laetrile for a long time*" and the voiceover stated that one of the foremost cancer researchers of the time had claimed in a magazine interview published in 1977, that "*Laetrile was more effective in the control of cancer than any substance he had ever tested*".

In Ofcom's view this material, which appeared to use sources which were over 30 years old, had the potential to mislead viewers. We noted that the voiceover of the programme did state that "*medical authorities have never recognised the therapeutic use of Laetrile while the FDA have listed it amongst the toxic substances, making it in fact, illegal to be sold in the United States*". We considered however that this very brief reference to the legal status of Laetrile in the US provided only very limited balance to the overall opinion presented by the programme (particularly in the voiceover) that Laetrile was effective and safe, and which we also noted is easily available on the internet<sup>6</sup>. We considered therefore the harm to viewers might be financial (given that the products were easily available online), through viewers being led to believe the products included in the programme would have a beneficial effect and in some cases completely cure sufferers, particularly those suffering from breast, lung, colon and prostate cancers, as these types of cancer had been specifically referred to in this segment of the programme. In light of the widespread availability of these products and the lack of relevant clinical trials and tests for efficacy and safety, Ofcom considered viewers were potentially at serious risk of harm.

We therefore considered the programme presented a materially misleading view of this alternative treatment which had the potential to cause harm, particularly to those who currently suffer from a form of cancer and might forego or delay orthodox medical treatment based on the information provided in this programme. In our view the broadcaster did not apply generally accepted standards to this programme material so as to provide adequate protection for members of the public.

#### Mistletoe/Iscador

We noted the following parts of this segment of the programme:

- Voiceover: "*Another well known remedy against cancer, and particularly popular in Europe, is mistletoe: a semi-parasitic plant found on oaks and other similar trees. Mistletoe is used to produce different medicines, like Iscador, whose effectiveness against cancer has been known for many years*".
- [Image of man with on screen caption: 'Walter Lemmo MD'] "*I think it deserves some merit, because it's nothing new, it's not a fad, it's been around a long time it's been used for over 70 or 80 years*" and "*we do know that it has immune stimulatory properties, like if you measure cytokines, you can see*

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<sup>6</sup> For example: [http://www.anticancerinfo.co.uk/b17\\_suppliers.html](http://www.anticancerinfo.co.uk/b17_suppliers.html)

*them actually go up with using mistletoe. There [are] components of mistletoe that are actually cyto-toxic, meaning that it can actually kill cancer cells, or it can put them to sleep”.*

- Voiceover [Image of Rudolph Steiner on-screen] *“Austrian scientist and philosopher Rudolph Steiner founder of anthropological medicine suggested the use of mistletoe against Cancer almost 100 years ago.... In a cancer patient mistletoe causes an immediate increase in the macrophages which is normally followed by a regression of the disease.*
- [Voiceover] *“Recently American author and actor Suzanne Sommers [image of Suzanne Sommers] announced that she defeated cancer using mistletoe”.* [Image cuts to Suzanne Sommers on the *Larry King Show*].

Larry King: *“You mentioned a Cancer back in 2001, you, on this programme announced that you had been battling cancer. Most people would just go to a doctor and get chemo. You went a different route. How are you now”?*

Suzanne Sommers: *“Well, I just had my killer cells tested, naturally - that’s your immune system - and you know I’ve been injecting Iscador now for eight years. So I haven’t had a cold, I haven’t had anything.*

Larry King: *“You don’t have cancer?”*

Suzanne Sommers: *“I don’t have cancer anymore”.*

In Ofcom’s view the segment on Iscador provided very limited context to the claims (particularly those made by the voiceover of the programme) which were overwhelmingly in support of this product as capable of successfully treating cancer. We noted the programme included a brief reference to the lack of *“convincing supporting evidence”*, however we considered this was insufficient to provide adequate balance and therefore sufficient context for the claims for Iscador. In response to Ofcom’s Preliminary View, the broadcaster provided a reference on the University of Bristol website dated 2011 to a planned pilot study for a randomized controlled trial investigating the feasibility of mistletoe treatment for women who have been diagnosed with early breast cancer. The research article highlighted that this would be the first trial of mistletoe in the United Kingdom. However we noted the Licensee did not provide Ofcom with the results of any pilot study, and nor did the programme itself refer to this proposed trial. We therefore considered the programme presented a materially misleading view of this alternative treatment which had the potential to cause harm, particularly to those who currently suffer from a form of cancer and might forego or delay orthodox medical treatment based on the information provided in this programme. In our view the broadcaster did not apply generally accepted standards to this programme material so as to provide adequate protection for members of the public.

#### Bicarbonate of soda/Tulio Simoncini

Ofcom was particularly concerned about the segment on Tulio Simoncini’s theory which lasted approximately 19 minutes and detailed Simoncini’s belief that bicarbonate of soda, when injected into the site of a tumour, can ‘cure’ cancer. We noted that a brief interview with an Italian doctor named Carmello Lombardo was included in the broadcast. This was accompanied by an on-screen caption that stated his name, title and the date (February 2009). The voiceover said that Doctor Lombardo had been diagnosed with liver cancer and prior to surgery to remove the



cancer, it was found that the cancer had spread to his lungs and in Dr Lombardo's opinion this gave him *"one and a half years to live, maybe two"*. Dr Lombardo explained that, after hearing about Tullio Simoncini's theory, he used the equipment that had been inserted into his body in preparation for chemotherapy to instead inject a bicarbonate solution into his own body. The voiceover claimed that an X-ray later revealed that *"both tumours had disappeared from his lungs"*.

We considered the testimonial from a medical practitioner like Doctor Lombardo could have had significant impact on viewers, because he was presented as a conventional medical professional. We did not agree with the Licensee's assertion that Ofcom's Preliminary View appeared to "to somewhat deride testimony from professionals" such as Dr Lombardo. Ofcom accepts that it would be perfectly legitimate for alternative treatments for cancer to be researched, and in principle for individuals who claim to have been cured of serious illnesses through the use of alternative treatments to speak about their experiences on television. However because of the serious harm that could be caused by the use of alleged treatments for cancer whose efficacy is not supported by a reputable body of medical opinion, great care must be taken in broadcasting material about individuals' experiences of such treatments to ensure they are not promoting them in an inappropriate and potentially dangerous way.

In this case Dr Simoncini's bicarbonate of soda theory had not been subject to clinical trials and tests and Ofcom considered Dr Lombardo's testimony (as a conventional medical practitioner) could have adversely influenced vulnerable viewers. Ofcom noted the programme made clear Tullio Simoncini had been *"repeatedly sued for wrongful death and in one case was sentenced to three years in prison for allegedly having caused the death of patients who had undergone his treatment"*.

We also considered whether there was a realistic likelihood that viewers would attempt to self-administer a sodium bicarbonate solution either to the site of the tumour or indirectly, by consuming solutions. We noted that Dr Lombardo had used the port that had been inserted into his body for chemotherapy treatment, to inject two solutions of bicarbonate of soda. The programme said that Tullio Simoncini had developed techniques to transport the solutions directly to the sites of tumours via arteries *"in order to obtain the maximum effectiveness with the minimum amount of sodium bicarbonate"*. Ofcom considered the likelihood of viewers being able to access the vein or artery to administer a sodium bicarbonate solution directly to the site of a tumour was low. However a brief statement by Tullio Simoncini that breast, bladder and brain cancer could be treated without the use of a catheter was of concern because it implied that a bicarbonate of soda solution could perhaps be consumed by the person with cancer and that this may be effective. Ofcom noted that sodium bicarbonate is conventionally used mainly to neutralize overly acidic conditions, usually in the stomach, urine or blood. However we also noted that consuming large quantities of sodium bicarbonate can be very harmful and may lead to adverse reactions such as: heart failure; metabolic alkalosis (a condition in which the pH level of the tissue is elevated); or oedema (the accumulation of fluid in the tissue). We therefore considered the potential for harm - regardless of whether someone was currently suffering from a form of cancer or not - existed.

We also noted the programme contained references in the programme that provided some very limited context for Tullio Simoncini's treatment. For example:

- Voiceover: *“Dr Simoncini was repeatedly sued for wrongful death and in one case was sentenced to three years in prison for allegedly having caused the death of patients who had undergone his treatment”.*
- Clip of Professor Francesco Cognetti (Scientific Director of National Tumour Institute of Regina Elena, Rome) being interviewed on an Italian talk show:

[subtitles over Professor’s comments spoken in Italian] *“Quite a bizarre idea to put it mildly. I’d say it’s crazy. There is no evidence of a correlation between fungal infections and neoplasms, nor is there any evidence that fungi are the only cause of cancer as claimed by Dr Simoncini”.*

Interviewer: *“Can we state with absolute certainty that baking soda is totally useless against tumours”?*

Francesco Cognetti: *“Absolutely useless. It could even be dangerous, if administered in large quantities, it can cause major metabolic unbalances, which can jeopardize kidney functions, respiratory functions, cardiac functions, brain functions. This drug if administered in serious quantities can even cause death”.*

We noted Information TV’s statement in relation to Tullio Simoncini’s therapy that “others have written about the positive effects of sodium bicarbonate as part of a treatment regime (links available if required)” and “that several unconventional therapies have already gained early endorsement from respected ‘conventional’ cancer practitioners”. However the programme did not contain any reference to these arguments or any evidence to support these arguments. In response to Ofcom’s Preliminary View the Licensee provided a link to a medical research article from 2009 which suggested that “bicarbonate increases tumour pH and inhibits spontaneous metastasis” and an article on the Arizona University website dated 21 March 2012 which stated that a professor at that university had secured a \$2 million grant to examine the effects of sodium bicarbonate in women with breast cancer. Neither of these articles however in Ofcom’s opinion constituted evidence that sodium bicarbonate is an effective treatment regime for cancer.

We also took account of the Licensee’s argument that – as with the other alternative treatments already explored in the programme – there was some evidence that some individuals suffering from cancer had benefitted from Tullio Simincini’s treatment. However we considered the programme presented a materially misleading view of this alternative treatment which had the potential to cause harm, particularly to those who currently suffer from a form of cancer and might forego or delay orthodox medical treatment based on the information provided in this programme. In our view the broadcaster did not apply generally accepted standards to this programme material so as to provide adequate protection for members of the public.

#### Adequate protection

Ofcom went onto consider if overall the programme provided sufficient information to viewers to put the claims for the alternative cancer therapies into an appropriate context and so provide adequate protection for viewers. How such adequate protection might be achieved is an editorial matter for the individual broadcaster. Having reviewed all of the content extensively, Ofcom noted there were some limited steps taken by the Licensee to caveat the claims in this programme or alert viewers to the potential dangers, for example we noted the following text in the end credits:

*“This film makes no medical claims, and its purpose is purely informative. The authors do not intend to promote any particular cure, nor do they suggest that patients should eventually abandon their ongoing therapies in favour of any others”.*

We considered this reference was clearly insufficient, given: its wording (for example viewers were not specifically advised to seek professional medical advice); and, the fact that the caveat appeared at the end of the programme, when many viewers may no longer have been watching.

We have already noted - in the context of our analysis of some of the individual treatments - that some statements from healthcare professionals, intended to provide balance or perhaps even warnings to viewers, were included throughout the programme. However, as already pointed out, these statements were frequently undermined by testimonials from patients who claimed they had been ‘cured’ (for example during the segment on the Gerson theory), or were presented as another attempt by the medical establishment in the US to either purchase the formula and patent the product for commercial gain (for example in the case Essiac) or prevent those alternative treatments from being used more widely given the potential financial impact on pharmaceutical companies.

Ofcom had regard to the fact that the Licensee did not accept Ofcom’s view that the treatments were presented in the programme as ‘effective’ and ‘safe’. We also noted that it maintained that the testimonials from individuals were factually correct and were “from people who were cancer victims whose symptoms had apparently disappeared”. However, Ofcom strongly disagreed with this view. The manner in which the testimonials were presented (i.e. with very limited objectivity and therefore context) would undoubtedly have left viewers with the impression that the alternative treatments included in this programme were effective and safe.

We noted, contrary to the Licensee’s submission that “at no point were any of the potential treatments suggested as a ‘cure for cancer””, that in fact the programme regularly included explicit statements from numerous ex-patients that stated that the products had ‘cured’ or ‘treated’ their cancer or were ‘remedies’ for cancer. In our view the programme title also would have led viewers to believe the alternative treatments included in the programme were capable of curing cancer. We noted the Licensee’s argument that “in every case, the proponent of the treatment stated that more and intensive clinical research was clearly required in order to properly assess the possible benefits which appeared to be present in some cases”. However we noted that this was not the case for each alternative treatment included in the programme and assessed in this finding. Further we considered the unsubstantiated statements by contributors presented as authors, television reporters and prominent medical practitioners working in the field of cancer research would have given viewers an inaccurate message that the alternative treatments were effective and safe. In response to the Preliminary View the Licensee provided Ofcom with a list of six “qualified and registered medical practitioners who are working outside and alongside the conventional system using natural, complementary, integrative treatments for people with cancer”. We noted however that the programme did not present the alternative treatments in the broadcast as “complementary or integrative” but instead presented those alternative treatments as by themselves sufficient cures, treatments or remedies for various forms of cancer.

We noted the Licensee’s argument that the premise of the programme was to show that practitioners of ‘alternative’ treatments “often find it difficult to gain attention from an ‘industry’ which is arguably driven by more commercial objectives than simply

progress” and that programme was, in part, a historical examination of the American pharmaceutical industry and medical establishment. Ofcom considered that in the majority of cases above, the editorial voice of the programme did not present the facts of the alternative treatments in an objective and balanced manner. Instead we considered it regularly presented the alternative treatments as effective and safe. In Ofcom’s view these positive endorsements were presented as fact (rather than as a controversial and highly contested opinion) and, contrary to the Licensee’s argument, reinforced the overall impression that the alternative treatments included in the programme were capable of curing, and had cured, cancer.

We noted that during the programme there were: no references for the need for people with any potentially serious illnesses to consult a qualified doctor; nor any advisory text on-screen suggesting to viewers that they should seek professional medical advice before abandoning prescribed medicines or a course of medical treatment (apart from the on-screen text in the end credits); nor any examples where it was made clear that individuals making testimonies of being ‘cured’ had continued or were continuing to receive conventional medical treatment for the cancer with which they had been diagnosed.

Ofcom noted the Licensee’s argument that the programme “served to provide information on the context” of the existence of the alternative treatments, but did “not promote them”. Ofcom agreed that the programme did directly encourage viewers to use the alternative treatments. We were however concerned that several of the alternative treatments were easily available for purchase online. Therefore the potential for viewers to purchase these products and use them alone to treat their conditions was significantly increased. Ofcom considers the potential for harm associated with purchasing unlicensed products from unregulated suppliers online for the treatment of medical conditions is significant given the potentially serious health implications<sup>7</sup>.

Taking into account the above it is Ofcom’s view that the Licensee did not take sufficient steps to provide adequate protection to viewers.

### Materially misleading

It is Ofcom’s conclusion that some viewers may have reasonably understood that cancer could be treated with the products included in the programme alone (some of which are readily available via the internet<sup>8</sup>) or that conventional medical treatment could be abandoned. This was further emphasised by the negative and outdated view of conventional cancer treatment and the position presented by the programme that the medical establishment has failed to fully understand and defeat cancer, despite having discovered, over 100 years previously, how the disease grows and spreads. We are very concerned that Information TV put forward the argument that potential cancer sufferers would “already be well aware they should research thoroughly, and discuss with their current advisor, the advisability of pursuing any alternative treatment” and appeared to have relied on that argument to justify the broadcast of this material. In our view given that some viewers who may have watched this material may also have been suffering from a form of cancer, and were therefore likely to be in a particularly vulnerable state, Ofcom concluded that this

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<sup>7</sup> [http://www.rpharms.com/what-s-happening-/news\\_show.asp?id=735](http://www.rpharms.com/what-s-happening-/news_show.asp?id=735)

<sup>8</sup> For example:  
<http://www.theoriginalellessiac.com/renecaissestory.htm>  
<http://www.curenaturalcancro.com/cancer-therapy-faq.html>

material clearly had the potential to cause harm, and possibly very serious harm. We considered the harm might also be financial (given that the products were easily available online), through viewers being led to believe the products included in the programme would have a beneficial effect and in some cases completely cure sufferers. Further, in light of the availability of these products and the lack of relevant clinical trials and tests for efficacy and safety, viewers were potentially at serious risk.

We were concerned that the Licensee considered broadcasting a “contra-position from the establishment” some time after the transmission of *Cancer: Forbidden Cures* was an appropriate measure to ensure compliance with Rules 2.1 and 2.2 of the Code. In our view broadcasting a “contra-position” would have a very limited effect in providing context to help counteract the potentially harmful explicit and implicit claims in support of the alternative treatments included in the programme. Further we noted that the programme was broadcast in 2012 and any programme that presented a “contra-position” nearly 12 months later could not help protect members of the audience who may have been materially misled by the first broadcast.

Ofcom noted the Licensee’s point (made in the programme) that chemotherapy and radiotherapy may adversely affect the body’s natural immune system. We also noted the Licensee’s argument that the “programme presented historical fact”, however we considered the programme failed to address the fact that conventional cancer care has improved substantially in recent years. Further we noted that the programme was presented as a serious documentary whose overall presentation of conventional cancer treatment was almost unremittingly negative, exaggerated and alarmist. By contrast the view of the alternative treatments was overwhelmingly, if not wholly exclusively, favourable. This was in Ofcom’s view materially misleading, and could have encouraged vulnerable viewers in particular to buy the products referred to in the programme and use them alone to treat their condition, or not seek conventional medical treatment, or delay seeking or abandon existing conventional medical treatment. We considered this could cause serious harm.

Ofcom noted the point made by the Licensee about the number of complaints Ofcom received in relation to the material and the Licensee’s view that the material was unlikely to materially mislead or cause harm. Although Ofcom may take account of the number of complaints, the focus of Ofcom’s attention when investigating a case is on the potential issues raised. In this case Ofcom reached the view for the reasons stated above that issues were raised which warranted investigation. Concerning the second point, Ofcom set out above the reasons why we considered that this content was materially misleading and potentially harmful. The fact that only one complaint was received in this case did not affect Ofcom’s analysis and conclusion.

### Conclusion

A programme that explores the allegation that pharmaceutical companies in the US have blocked or not supported research into potential alternative cures for cancer is a valid avenue for investigation. Television is a legitimate medium for programme makers to explore subjects of this nature. However, the broadcaster did not present the facts of conventional or alternative cancer treatments in this highly partial and alarmist documentary in a sufficiently accurate and objective manner so as to provide adequate context and so protection for viewers. Therefore this material had the potential to materially mislead viewers, especially those who were vulnerable, so as to cause medical harm. This harm could also potentially be financial given the alternative products included in this programme were easily available for purchase on

the internet and have not been clinically proven to have any beneficial effect. Rules 2.1 and 2.2 were therefore breached.

This contravention of the Code is serious. In light of this breach and concerns about the Licensee's compliance, Ofcom is therefore requiring the Licensee to attend a meeting to explain its compliance procedures in this area. The Licensee is also put on notice that, following that meeting, any further similar contraventions of the Code will be considered for the imposition of statutory sanctions by Ofcom.

### **Breaches of Rules 2.1 and 2.2**

Ofcom recognises that it is very important for broadcasters to have the editorial freedom to explore potentially controversial matters provided they comply with the Code. However, broadcasters should exercise caution when dealing with medical conditions where the treatment or issues are controversial. There is no requirement in the Code for broadcasters to ensure that "due impartiality" is applied to such subjects, unless they are matters of political or industrial controversy or relating to current public policy. Nevertheless, broadcasters must give careful consideration to the potential for harm to be caused by materially misleading the audience through the omission of facts or opinions. This may be particularly important where a programme might cause members of the public to behave to their detriment (e.g. programmes involving medical recommendations).

## In Breach

### The Alan Titchmarsh Show

ITV, 14 February 2013, 15:00

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#### Introduction

*The Alan Titchmarsh Show* is a daily magazine programme “that celebrates the very best of British”, featuring items such as interviews with celebrity guests, music, current affairs and consumer issues. The programme is broadcast either live or ‘as live’.

During this episode Alan Titchmarsh interviewed the actress Patsy Kensit. The item lasted five minutes and 14 seconds. Alan Titchmarsh introduced Patsy Kensit as follows:

AT: *“My next guest is an actress who’s gone from Hollywood to Holby, stopping off at Strictly and Emmerdale along the way. But it’s winning the battle of the bulge that’s occupying her time these days, if you can believe that. And she’s happy to share the secrets of her success with us today. Please welcome Patsy Kensit. [Patsy Kensit walks onto the set to greet Alan Titchmarsh] But there’s nothing of you! Hello.”*

After greeting each other, the first three minutes and seven seconds of the interview focused on Patsy Kensit’s weight:

AT: *“But you are a bit a shadow of your former self. Give us the sort of weight history then.”*

PK: *“Well I was a person who could eat whatever they wanted up until the age of 30. And I love food, I love to eat, I think it’s a wonderful thing to sit down with your family and enjoy a meal. But I really ate a lot and I remember someone saying ‘you’re not going to be able to eat like that after you turn 30, you know your body changes’. And I turned 30 and at the age of 31 I’d put on about three stone in what seemed like overnight. It wasn’t, but it felt like that. And it felt like I was taken out of this body that I’d been very comfortable in for 30 years and put into someone else’s. So I was doing a show called Emmerdale and a lot of the people at Yorkshire TV were – each week someone would come and they’d go to this Weight Watchers meeting. So I joined and it’s an amazing diet.”*

AT: *“You tried stuff before though? Had you tried dieting before?”*

PK: *“Well when I put all of the weight on I was sort of, well you know, training like an athlete and I have to say that Weight Watchers was the one thing –”*

AT: *“That worked”*

PK: *“That worked. The weight comes off and it stays off. Being a person who loves food, you can eat whatever you want, you can have a bit of everything. The minute someone says to me, ‘you’re not allowed that’, it’s all I think about, Alan. So this is why it works. So I did it 11 years ago and then lost all*

*the weight and then it kind of crept back on again and last August I started again with the programme and it's worked."*

AT: *"Do you feel the responsibility? Because celebrity, the expectations of celebrity, people watch celebrities all the time and they look slender and wonderful, I mean do you in a way sort of think I can really do this to show other folk that it can be done?"*

PK: *"The best successes I've had in my life have been when I've done things for me, not to please a job, or another person, or my children – I seek their approval. But this has been for me and also I'm small you see and at my heaviest I was 11 and a half stone, and someone might say, 'well that's not' – you know, but I'm small and every pound shows. And whether you've got seven stone to lose or seven pounds, any weight loss is an achievement and should be supported."*

AT: *"Any weight you lose is hard"*

PK: *"Well the older you get! I mean I'm nearly 50."*

AT: *"You're not?!"*

PK: *"I'm 45 in March."*

AT: *"That's not nearly 50, that's only just over 40. But the thing is, they tell you when you get older – we won't talk diet the whole time – but they tell you you're metabolism slows down. I was eight and half stone when I got married."*

PK: *"See you were like me."*

AT: *"Yeah. Thin as a rake."*

PK: *"And I could eat whatever I wanted and wake up – you know everything. I was like – 'cause I love food. This way, it's a healthy way. I've got two gorgeous sons and I cook a lot and we have an evening meal together and I'm not there drinking some goop, or –"*

AT: *"You're eating healthily."*

PK: *"This week I'm only eating food that's the colour pink. We all have the same meal, except I can adapt it for myself with the ProPoints."<sup>1</sup>*

The remaining one and a half minutes of the interview focused on Patsy Kensit's acting career, during which she made a further mention of Weight Watchers' ProPoints:

PK: *"So for the last two and a half years I've just been hands-on full time mum, soccer matches and baking for the school sometimes, but not having the cakes 'cause they're about seven ProPoints."*

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<sup>1</sup> ProPoints is a Weight Watchers counting system whereby each food has a numeric value and each dieter has a daily ProPoints total to utilise.



A viewer was concerned that during the interview Patsy Kensit endorsed Weight Watchers.

The Licensee is Channel Television Limited which is an indirectly wholly owned subsidiary of ITV Plc. Compliance of this programme was undertaken on behalf of Channel Television Limited by the ITV compliance department, who therefore responded to Ofcom on behalf of the Licensee.

The Licensee confirmed to Ofcom that neither it, the programme producer, nor any person connected with either<sup>2</sup>, received payment or other valuable consideration for the inclusion of the references to Weight Watchers during the programme, and that therefore the references had not been subject to any product placement arrangement.

Ofcom therefore considered the material raised issues warranting investigation 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.”

We therefore asked the Licensee for its comments on how the material complied with Rules 9.4 and 9.5.

## Response

ITV stated that the references to Weight Watchers made by the Patsy Kensit were brief and not unduly prominent.

ITV submitted that in the interview Patsy Kensit referred to her history of weight issues, and how she put on weight after she reached the age of 30. The Licensee said that she mentioned Weight Watchers in passing when describing how, when working on *Emmerdale*, she joined a Weight Watchers meeting with other cast members, and said that this had worked for her. ITV said that the guest twice mentioned “ProPoints” in the context of discussing how she now manages her diet. The Licensee added that the discussion was very much centred on the guest’s personal experience, and the expectations on celebrities to lose weight.

ITV noted that during the interview the presenter made a point of saying “*we won’t talk about diet the whole time*” when moving the interview on to other areas of Patsy Kensit’s life, such as her recent work and career.

The Licensee explained that the production team was advised by ITV’s compliance team before the programme that the guest should not be allowed to make

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<sup>2</sup> “Connected person” is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

promotional references to Weight Watchers and that no video or stills connecting Patsy Kensit with Weight Watchers should be included.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Article 19 of the EU Audiovisual Media Services Directive (“the AVMS Directive”) requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are reflected in, among other rules, Rule 9.4 of the Code which states that products, services and trade marks must not be promoted in programming. Rule 9.5 of the Code prohibits products, services or trade marks being given undue prominence in programming.

It is common during magazine programmes for presenters and guests to discuss aspects of the guest’s personal life and career. Often discussion of career developments will involve mentioning book, film or music releases, television programmes, or fashion and beauty lines. However, broadcasters are expected to ensure that any such references are both editorially justified and presented in a way that do not raise concerns under Section Nine of the Code. Any references to commercial products or services should be appropriately limited so as not to become promotional or unduly prominent.

Further, Ofcom acknowledges that viewers of this programme are likely to have an interest in the life and work of celebrity guests. However, where a guest has some form of involvement or arrangement with a commercial product or service, particularly where there appears to be no particular link to their profession or experience, there may be less editorial justification for interviews to feature these topics in detail.

Ofcom noted that Patsy Kensit is a Weight Watchers ‘Weight Loss Ambassador’<sup>3</sup>. However this association was not made clear in the interview. Indeed, we noted that Patsy Kensit said, “*So I was doing a show called Emmerdale and a lot of the people at Yorkshire TV were – each week someone would come and they’d go to this Weight Watchers meeting. So I joined...*”, which gave the impression that she was making a spontaneous reference to Weight Watchers. She did not indicate that she was commercially involved with its promotion.

In addition Patsy Kensit made a number of claims about the efficacy of Weight Watchers. She said, “*Weight Watchers was the one thing that worked*”, and “*This way, it’s a healthy way*”; the presenter Alan Titchmarsh did not challenge these statements or suggest alternative methods for losing weight. Further, the guest made the following references to Weight Watchers:

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<sup>3</sup> <http://www.newapproachweightwatchers.co.uk/meet-our-new-weight-watchers-weight-loss-ambassadors/>

- *“The weight comes off and it stays off. Being a person who loves food, you can eat whatever you want, you can have a bit of everything. The minute someone says to me, ‘you’re not allowed that’, it’s all I think about, Alan. So this is why it works. So I did it 11 years ago and then lost all the weight and then it kind of crept back on again and last August I started again with the programme and it’s worked”;*
- *“I’ve got two gorgeous sons and I cook a lot and we have an evening meal together and I’m not there drinking some goop, or this week I’m only eating food that’s the colour pink. We all have the same meal, except I can adapt it for myself with the ProPoints”;* and
- *“it’s an amazing diet”.*

Ofcom considered these references to Weight Watchers to be promotional and an endorsement of the product/service.

Ofcom did not accept ITV’s argument that the references to Weight Watchers in the interview were brief or made in passing. When introducing Patsy Kensit, the presenter, Alan Titchmarsh, referred to her issues with managing her weight: *“My next guest is an actress who’s gone from Hollywood to Holby, stopping off at Strictly and Emmerdale along the way. But it’s winning the battle of the bulge that’s occupying her time these days, if you can believe that. And she’s happy to share the secrets of her success with us today.”* Further, from the outset of the interview, Alan Titchmarsh initiated the discussion about his guest’s weight, *“But you are a bit a shadow of your former self. Give us the sort of weight history then”* and the majority of the interview focused on the guest’s weight history and new method of weight management.

The information conveyed and overall effect was to promote and endorse Weight Watchers as an effective method of weight loss. The manner and language was promotional and Ofcom considered that the information included in the discussion went beyond what would be justified for editorial reasons, even taking into account Patsy Kensit’s own weight issues or the pressure on celebrities to lose weight. Ofcom therefore concluded that the references to Weight Watchers were promotional and unduly prominent, in breach of Rules 9.4 and 9.5 of the Code.

Ofcom noted that these breaches were similar in nature to breaches of Rules 9.4 and 9.5 Ofcom recorded in issue 192 of the Broadcast Bulletin for promotional and unduly prominent references made by a guest, Amanda Holden, to a group of law firms, on ITV’s *This Morning*<sup>4</sup>, and also in issue 223 of the Broadcast Bulletin for promotional and unduly prominent references made by a guest, Dannii Minogue for A2 milk, on ITV’s *Lorraine*<sup>5</sup>. In both those cases, the guests in question also had commercial arrangements to promote the brands, products or services that were the subjects of the discussions which breached the Code. In the latter case, Ofcom stated in its Finding that it expected ITV to take further steps to ensure compliance in this area.

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<sup>4</sup> Broadcast Bulletin, issue 192, 24 October 2011, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb192/obb192.pdf>

<sup>5</sup> Broadcast Bulletin, issue 223, 4 February 2013. <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

Therefore, in light of the current latest case, Ofcom is requesting that ITV attends a meeting at Ofcom to discuss its compliance in this area.

**Breaches of Rules 9.4 and 9.5**

## Advertising Scheduling cases

### In Breach

#### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
RT	14 to 28 December 2012, various times	COSTA Rule 4	Ofcom noted, during monitoring, that RT exceeded the permitted advertising allowance in eight clock hours. These clock hours contained between seven and 102 seconds more advertising than permitted.  <b>Finding: Breaches</b>
Star Life OK	21 January 2013, 23:00	COSTA Rule 4	Ofcom noted, during monitoring, that the amount of advertising exceeded the permitted hourly allowance by 235 seconds in clock hour 23:00 on 21 January 2013.  <b>Finding: Breach</b>
Sunrise TV	19, 20 and 21 January 2013, 19:00	COSTA Rule 4	Sunrise TV exceeded the permitted advertising allowance on these dates by 30 seconds.  <b>Finding: Breaches</b>

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Mrs Karen Peaston

*Obese: A Year to Save My Life, Sky1 HD, 30 January 2012 and repeat broadcasts until 13 May 2012*

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#### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment made by Mrs Karen Peaston.

This programme followed Mr Dean Peaston as he attempted to lose ten stone in weight over the course of one year. It also featured Mrs Karen Peaston, Mr Peaston's wife. Some months into his weight loss regime, Mr Peaston decided to leave his wife and the programme included both Mr Peaston and Mrs Peaston's individual reflections on this event.

Ofcom found that the programme did not result in unfairness to Mrs Peaston in respect of her complaint that it erroneously included the claim that she and her husband had slept in separate bedrooms for two years and omitted the information that her husband had left her for a third party.

#### Introduction

On 30 January 2012, Sky1 HD broadcast an edition of *Obese: A Year To Save My Life*, a series of programmes that followed nine morbidly obese people striving to shed up to half their bodyweight. As well as looking at the progress of each participant in losing weight and changing his/her lifestyle, the programmes also examined the root cause of the participants' extreme relationship with food. This edition of the programme featured Mr Dean Peaston as he attempted to lose ten stone over the course of a year-long diet and exercise regime. It also featured his wife, Mrs Karen Peaston. Some months into the regime Mr Peaston left his wife and the programme included both Mr Peaston and Mrs Peaston's individual reflections on this event. In particular, it included Mr Peaston saying:

*"To the outside world we was like the perfect couple, but we wasn't you know. People didn't see that. You didn't advertise the fact that I slept in the spare room for nearly two years. You didn't advertise the fact that we didn't hardly make love. You just don't go round telling people that you know. But when I started to do this programme and I started to lose weight I thought yeah you know I do love her, but I don't love her like a man should love his wife. I really don't. I hope people get how hard it is to make that decision and to say them words because it breaks you to be honest. Even me saying it broke me. It's just the hardest thing I've ever had to do".*

This edition of the programme was broadcast on three further occasions, the last of which was on 13 May 2012. However, following a complaint made by Mrs Peaston to British Sky Broadcasting Limited ("BSkyB"), the licensee for the Sky1 HD channel, the broadcaster edited the programme so that transmissions after the 13 May 2012 did not include the comments by Mr Peaston set out above. Notwithstanding BSkyB's decision to edit the programme, Mrs Peaston continued with her complaint to the

broadcaster. Following the end of that process Mrs Peaston complained to Ofcom that she was treated unjustly and unfairly in the programme as broadcast.

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

Mrs Peaston complained that she was treated unjustly or unfairly in the programme as broadcast in that the programme portrayed her unfairly. In particular, Mrs Peaston said that:

- i) The programme included Mr Peaston's assertion that they had slept in separate bedrooms for two years despite her having told the programme makers that this was not true.

Mrs Peaston said that following her split from her husband she was interviewed for the programme on her own without Mr Peaston's knowledge. She said that when Mr Peaston found out about the interview, he was angry and therefore retaliated by telling the programme makers that they had slept in separate bedrooms for the preceding two years. Mrs Peaston said that her husband had informed her of his actions and that she called the programme makers to tell them that his claim about their sleeping in separate beds was incorrect and should not be included in the programme. Mrs Peaston added that she repeated her concerns to the Executive Producer of the programme during a telephone conversation on 23 December 2011.

In response, BSkyB first set out the basis of Mrs Peaston's participation in the programme and the circumstances surrounding the relevant contribution by Mr Peaston. The broadcaster said that in August 2011 (nine months after filming began) Mrs Peaston informed the programme makers that her husband had left her. BSkyB said that Mrs Peaston was then offered three options: to withdraw her consent to participate and have none of her contributions included in the programme; to allow the inclusion of any footage of her to that date; or, to give a further interview specifically about her separation from Mr Peaston which may or may not be included in the programme. BSkyB said that Mrs Peaston was advised to think very carefully about the third option as the matters concerned were very personal in nature and that it could be difficult for the programme producers to separate opinion from fact with regard to such material. Mrs Peaston chose to give another interview, but said that she did not want her husband to know about it. However, she was told that although the programme makers would delay informing Mr Peaston about this interview until November 2011 (when the main bulk of filming would be completed) they would have to tell him about it before filming was completed in order to be fair to him. BSkyB said that Mrs Peaston was also told that only part of the interview would be used as the main story was Mr Peaston's weight loss. Mrs Peaston's interview took place in mid September 2011 and throughout the same month, Mr Peaston gave several interviews during which he spoke about his relationship with his wife including the one in which he made the comments set out above.

BSkyB said that a few weeks later (i.e. in October 2011), Mrs Peaston informed the programme makers that she had told Mr Peaston about her interview. Mr Peaston subsequently contacted the programme makers to express his anger that he had not been informed about the interview previously. BSkyB said that therefore it was clear that the interview with Mr Peaston containing the relevant comments was conducted when he was unaware that Mrs Peaston had given an interview specifically about their separation.

In addition, BSkyB said that the programme makers were unaware that Mrs Peaston refuted Mr Peaston's claim that they had slept in separate beds for two years until Mrs Peaston contacted BSkyB regarding the issue on 25 March 2012. It said that the programme makers had found no evidence that Mrs Peaston had told them that this claim was untrue.

- ii) The programme failed to include the information that Mr Peaston had left her for a third party although the programme makers were aware of this prior to the broadcast.

In response, BSkyB said that the programme makers were unaware that Mr Peaston had left his wife for a third party. It added that even if this was what happened, and the programme makers had been aware of it, this information was not editorially relevant to the programme (which was about Mr Peaston's weight loss campaign) and therefore would not have been included within it.

In relation to both elements of the complaint BSkyB said that it could not comment on the validity of any correspondence between Mr and Mrs Peaston during the making of the programme.

### **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this case that Mrs Peaston's complaint should not be upheld. Both the complainant and BSkyB commented on that Preliminary View. The main points made by Mrs Peaston which are relevant to the complaint as entertained<sup>1</sup> and BSkyB's responses to those points were, in summary, as follows.

- i) With regard to the first element of her complaint, Mrs Peaston said that Sky's assertion that the interview during which Mr Peaston made the comment that he and his wife had slept in separate beds for nearly two years took place in mid September 2012 was incorrect.

She said that a couple of weeks after her interview with the programme about the break-up of her marriage (which took place on 16 September 2012) she called the Executive Producer and told her that she would prefer it if the programme rather than she herself told Mr Peaston about her interview. However, on 22 November 2012 Mr Peaston visited her and during this visit she told him that she had been interviewed for the programme. Mrs Peaston added that Mr Peaston subsequently sent her a text message on 25 November 2012 in which he said: "I ain't hurt you done an interview. I'm hurt it was hidden from me but I've been interviewed today and yesterday and for the first time in this programme I've told my side because up until now I've not said anything about us...now everyone is going to know I slept in [the] spare room for four years and we only had sex three or four times a year so no-one can say there wasn't cracks in the relationship."

Mrs Peaston argued that therefore BSkyB's position that the interview with Mr Peaston containing the relevant comments was conducted when he was unaware

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<sup>1</sup> Ofcom noted that within her representations on the Preliminary View Mrs Peaston raised the issue of a request she made to the production company for the source of allegedly incorrect information about her which was published in *The Sun* newspaper's TV listings on 30 January 2012. Mrs Peaston raised this matter in her initial complaint to Ofcom. However, as set out in the Entertainment Decision on Mrs Peaston's Ofcom complaint, this matter falls outside Ofcom's remit and was therefore not entertained as part of the complaint currently being considered.



that Mrs Peaston had given an interview specifically about their separation was incorrect. She added that in the month following Mr Peaston's text of 25 November 2012 she called the programme makers and told a number of individuals (including the Executive Producer) that Mr Peaston's comments should not be broadcast and that he was lying in retaliation for her having taken part in an interview about which he had not been informed at the time.

- ii) With regard to the second element of her complaint, Mrs Peaston repeated her position that the programme makers were aware prior to the broadcast of the programme that Mr Peaston had left her for a third party. Mrs Peaston said that, notwithstanding Mr Peaston's comments to the contrary when he told her he was leaving her, on 11 June 2012 he admitted that he was seeing someone else. The complainant added that some time later this month she called the Executive Producer who confirmed that she knew that Mr Peaston was in a new relationship. Mrs Peaston also said that Mr Peaston referred to his new partner by name in the text message he sent her on 25 November 2012 (see above).

Mrs Peaston also said that she disagreed with BSkyB's position that, even if Mr Peaston had left his wife for a third party and the programme makers had been aware of it, this information was not editorially relevant to the programme as she believed that if the public had been made aware of this information they would have regarded Mr Peaston in a completely different light.

In response to Ofcom's Preliminary View and the complainant's comments on both elements of it, BSkyB said that it stood by all of its comments in its initial response to this complaint. It added that it had gone back to the producers of the programme regarding their understanding of the dates and the process of filming and been assured that all the details provided to Ofcom were, to the best of its knowledge, correct. BSkyB said it appreciated that Mrs Peaston may not agree with it and was sorry if that was the case but that these were the facts as it understood them. BSkyB again noted that it could not comment on any personal issues, communications between Mr and Mrs Peaston, or what might or might not be 'lies'<sup>2</sup> according to any party.

## 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 its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions. Ofcom also took careful account of

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<sup>2</sup> Ofcom noted that throughout her representations Mrs Peaston said that the production company's understanding of events, as set out in its submissions, implied that she was "a liar".

the representations made by the complainant and by Sky in response to Ofcom's Preliminary View on this complaint. However, it concluded that the representations did not raise any substantive points which affected Ofcom's Preliminary View not to uphold the complaint.

When considering complaints of 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"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

Ofcom considered Mrs Peaston's complaint that the programme portrayed her unfairly.

In considering this complaint, Ofcom had regard to Practice 7.9 which provides that 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 the individual or organisation, and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

Ofcom assessed the two elements that Mrs Peaston complained resulted in unfairness to her separately.

- i) The programme included Mr Peaston's assertion that she and her husband had slept in separate bedrooms for two years despite her having told the programme makers that this was not true.

Ofcom noted that the subject of the programme was an obese man, Mr Peaston, and his efforts to lose ten stone over the course of one year. It also noted that the programme included a section explaining that about half way through the year-long regime Mr Peaston left his wife. This section of the programme included Mr Peaston explaining that he had realised that he "*felt different towards her* [Mrs Peaston]" and saying "*[I] just don't feel I've got that love for her anymore...that a man should have for his wife*". He added that leaving his wife was "*the hardest decision*" for him to make. Ofcom noted that this was followed by footage of Mrs Peaston expressing her feelings of shock and hurt at Mr Peaston's decision to leave her:

*"He went away for a week, came back on a Saturday and just announced that he didn't wanna be with me anymore. Total shock, disbelief, didn't know where that came from. Asked him if he'd met somebody else, said he hadn't. Next day he said the same thing; he didn't wanna be with, didn't love me like he should, still cared about me and that we had to sell this house and he was taking the cat".*

Mr Peaston was then shown describing his decision to move out of the marital home as "*tough*" and his life over recent months as "*horrendous*".

After this footage the programme included the following commentary by Mr Jesse Pavalka (the personal trainer and fitness coach who was in charge of Mr Peaston's weight loss regime):

*“When you lose a significant amount of weight it can sometimes cause deep personal changes too and I’m very sad for Karen and Dean. All I can do to help is not let Dean go back to 27 stone”.*

Later on in the programme viewers were informed that eight months into the regime Mr Peaston had lost seven stone. Mr Pavalka described this as “a remarkable weight loss given the upheaval in his personal life”.

Immediately afterwards Mr Peaston was shown saying:

*“To the outside world we was like the perfect couple but we wasn’t you know. People didn’t see that. You didn’t advertise the fact that I slept in the spare room for nearly two years. You didn’t advertise the fact that we didn’t hardly make love. You just don’t go round telling people that you know. But when I started to do this programme and I started to lose weight I thought yeah you know I do love her but I don’t love her like a man should love his wife. I really don’t. I hope people get how hard it is to make that decision and to say them words because it breaks you to be honest. Even me saying it broke me. It’s just the hardest thing I’ve ever had to do”.*

Subsequently, Mr Pavalka spoke to Mr Peaston about the struggle he was having keeping on track with the weight loss regime in light of the problems he had been dealing with in recent months. Mr Pavalka also tried to get Mr Peaston to address his emotional issues in order to enable him to achieve his goal and maintain a healthier lifestyle.

Ofcom observed that while the programme informed viewers that Mr and Mrs Peaston’s marriage had broken up and showed both Mr and Mrs Peaston reflecting on this event, the inclusion of this material was supplementary to the main focus of the programme which was Mr Peaston’s efforts to lose a significant amount of weight over the course of one year.

Ofcom recognised that there is a dispute between the parties regarding whether Mrs Peaston informed the programme makers that she disputed her husband’s assertion that they had slept in separate bedrooms for two years prior to the break-up of their marriage, and that this dispute was reflected within the complainant’s representations on the Preliminary View. However, it is important to note that Ofcom’s role is not to establish from the programme, or the submissions and supporting material, whether or not the programme makers were so informed; but rather to address the question of whether the programme portrayed facts, events, or individuals in a way that was unfair to Mrs Peaston.

During the section of the programme described above, Ofcom noted that Mr Peaston said that he and Mrs Peaston had slept apart for two years and that they rarely made love. However, he did not suggest that this was Mrs Peaston’s fault, he made no adverse reflections upon Mrs Peaston throughout the programme and he did not claim that she was responsible for the break-up of their marriage. Rather, Mr Peaston spoke of his realisation that his feelings towards his wife had changed and how hard it had been to reach the decision to leave his marriage.

In addition, Ofcom observed that at the beginning of the programme Mr Peaston was shown praising his wife saying “*She’s brilliant you know. She looks after me*” and noting that it was she who had suggested that he needed to address his weight problem. Mrs Peaston was also shown expressing her concern about the

potentially grave impact on Mr Peaston's health if he did not lose weight and supporting his efforts to do so.

Ofcom also noted that when talking about the consequences of being extremely overweight during the first part of the programme Mr Peaston said that *"the intimate side of things, it could be a lot better than it is. Because the fact is sometimes you think I'd rather not bother than put the effort in. But being fat makes you lazy"*.

Ofcom considered that this comment would have made it clear to viewers that even prior to his decision to leave his wife, Mr Peaston recognised and acknowledged that his weight gain had had a detrimental impact on their sex life.

In addition, in Ofcom's view, all of the footage relating to the break up of Mr and Mrs Peaston's marriage gave the clear impression that both Mr and Mrs Peaston were deeply distressed about the situation and were struggling to cope with the emotional impact of it.

Taking account of all the factors set out above, Ofcom concluded that given the context in which Mr Peaston's claim that he and his wife had not slept in the same bed for two years prior to the end of their marriage was shown (in particular, the fact that the programme included no negative comments about Mrs Peaston and that Mr Peaston was previously shown indicating that his sex life during his marriage had suffered due to his extreme weight gain) its inclusion was unlikely to have materially and adversely affected viewers' understanding of Mrs Peaston in a way that was unfair to her.

- ii) The programme omitted the information that Mr Peaston had left her for a third party although the programme makers were aware of this prior to the broadcast.

Ofcom noted that the programme did not say that Mr Peaston had left his wife for a third party and that Mrs Peaston's own comments (as set out above) indicated that when Mr Peaston left her he had assured her that this was not the case. Ofcom also noted that in her representations on the Preliminary View, Mrs Peaston said that having initially told her that he had not left her for a third party Mr Peaston subsequently informed her that he had done so. However, having again recognised that there is a dispute between the parties in relation to this point, Ofcom reiterates that its role in this adjudication was to address the question of whether the programme portrayed facts, events, or individuals in a way that was unfair to Mrs Peaston.

Ofcom recognised that Mrs Peaston considered that the information that Mr Peaston left her for a third party may have altered viewers' perceptions of Mr Peaston. However the specific issue in this decision is whether Mrs Peaston was portrayed unfairly, rather than how her husband was portrayed. Ofcom noted that it is not in a position to determine whether or not this information is true; and if it were true whether or not the programme makers were aware of it prior to the broadcast. Moreover, even if the information were true and the programme makers were aware of it, Ofcom takes the view that the inclusion or omission of material in a programme is an editorial matter for broadcasters, although broadcasters must ensure that material facts are not presented or omitted in a way that results in unfairness to an individual or organisation in a programme as broadcast.

In this context, Ofcom observed that: the programme included no adverse reflections upon Mrs Peaston; at no point did Mr Peaston claim that she was responsible for the break-up of their marriage; and, the programme made it clear that it was Mr Peaston who had chosen to leave the marriage and Mrs Peaston was both shocked and deeply distressed by his decision. Also the programme had made it clear to viewers that even prior to his decision to leave his wife, Mr Peaston had recognised and acknowledged that his weight gain had had a detrimental impact on their sex life.

In light of these factors, Ofcom considers that the omission of the information that Mr Peaston had left his wife for a third party would not have had a material or adverse impact on viewers' opinions of Mrs Peaston in a way that was unfair to her.

Having considered each of the elements to Mrs Peaston's complaint of unfair portrayal in the programme as broadcast, Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to her.

**Accordingly, Ofcom found that Mrs Peaston's complaint of unfair treatment should not be upheld.**

## Not Upheld

### Complaint by Miss Karen Richardson

*EastEnders*, BBC 1, 25 December 2012

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#### Summary

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

During this episode of *EastEnders*, a close-up shot of a mobile telephone number belonging to a character in the programme was shown on screen for approximately two seconds. The programme was subsequently repeated on a number of occasions.

Following the broadcast of the programme, Miss Richardson complained to Ofcom that it was her mobile telephone number that was shown in close up in the programme and, as a result, that her privacy was unwarrantably infringed in the programme as broadcast.

Ofcom considered that Miss Richardson did not have a legitimate expectation of privacy in relation to the programme as broadcast. The programme did not, in fact, disclose Miss Richardson's mobile telephone number and so, given this conclusion, it was not necessary to go on to consider whether any infringement into Miss Richardson's privacy was warranted.

#### Introduction

On 25 December 2012, BBC 1 broadcast an episode of its regular soap opera, *EastEnders*. In this episode, one of the characters, Max Branning ("Max"), had invited his extended family and various other guests to his house for Christmas Day. He had also arranged for a surprise visit from a registrar to marry him to his partner. However, Derek Branning ("Derek"), Max's brother with whom he had been locked in a bitter dispute, had informed Max's estranged wife, Kirsty Branning ("Kirsty"), of the planned wedding. Kirsty arrived at the house at the end of the episode.

In the course of this episode, Derek received a text message from Kirsty which read "On my way". The mobile telephone number of the sender was displayed above the message and was shown in a close-up for approximately two seconds. The episode was repeated on BBC 3 on 25 December 2012 and on BBC 2 on 30 December 2012.

Following the broadcast of the programme, Miss Richardson complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

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

Miss Richardson complained that her privacy was unwarrantably infringed in the programme as broadcast in that her mobile telephone number was shown in close-up during the episode.

By way of background, Miss Richardson said that she had received a number of unwanted telephone calls as a result of the broadcast of the programme and the repeats. She said she had been scared and intimidated by the volume and the nature

of the telephone calls and had been forced to change the mobile telephone number which she had had for over five years.

In response to the complaint, the BBC said that it regretted any inconvenience or distress experienced by Miss Richardson. However, it pointed out that the mobile telephone number broadcast in the programme was similar, but not identical, to that belonging to Miss Richardson. The mobile telephone number broadcast in the programme began "+447544" (equivalent to "07544" without the international dialling code), whereas Miss Richardson's mobile telephone number began with "077544". The subsequent five digits of both numbers were the same, and the mobile telephone number broadcast in the programme ended with an additional "0".

The BBC said that it was aware that some viewers invariably attempt to call telephone numbers that feature on screen. It said that the *EastEnders* production team therefore customised the mobile telephone handsets used in the programme so that numbers were not displayed along with messages. It also said that where customisation was not possible a system was in place to ensure that only 'cleared' numbers owned by the production team were used.

The BBC further explained that the mobile telephones used in *EastEnders* were either bought new from high street outlets or provided as free or reduced-cost props by the manufacturers. It said that the SIM cards were always bought new from a variety of network providers and only SIM cards bought by the production team were used. The BBC said that after Ofcom upheld a similar complaint about the inclusion of a mobile telephone number belonging to a member of the public in *EastEnders* in April 2010<sup>1</sup>, the BBC had tightened up its procedures and was confident that there had been no lapse in this case.

## 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. These standards are reflected in Sections Seven and Eight of the Code.

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 its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and both parties' written submissions. Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was not to uphold the complaint). However, neither party made any submissions in response.

Ofcom considered Miss Richardson's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that her mobile telephone number was

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<sup>1</sup> Issue 156 of Ofcom's Broadcast Bulletin, 26 April 2010, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb156/Issue156.pdf>.

shown in the programme.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcasters 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 Ofcom's Broadcasting Code ("the Code") which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement is warranted.

In considering whether or not Miss Richardson's privacy had been unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which Miss Richardson could have a legitimate expectation of privacy in that her mobile telephone number would not be disclosed in the programme without her consent.

Ofcom recognised that an individual's personal mobile telephone number was information that could reasonably be regarded as private, and that it was reasonable to expect it would not be disclosed publicly in a television programme without consent. However, in this case (based on the information provided by Miss Richardson and the BBC), Ofcom noted that the mobile telephone number broadcast in the programme was not Miss Richardson's number, but a similar number. As the number broadcast in the programme was not Miss Richardson's, and the programme as broadcast did not disclose anything of a personal or private nature, Ofcom considered that Miss Richardson did not have a legitimate expectation of privacy in relation to the material broadcast.

Ofcom acknowledged the inconvenience and distress caused to Miss Richardson by the telephone calls she received after the broadcast of the programme. It understood, too, that the calls had been made by some viewers misdialling the number shown in the programme that, unfortunately, was similar to Miss Richardson's number. However, Ofcom noted from the BBC's submission that the production team took measures to avoid such incidents by using only 'cleared' numbers owned by the production team or customising handsets so that numbers are not displayed along with messages. While noting the unfortunate experience of Miss Richardson in this case, Ofcom considered that the particular circumstances which gave rise to the calls she received could not reasonably have been foreseen by the broadcaster.

Therefore, taking all the above factors above into account, Ofcom did not consider that Miss Richardson had a legitimate expectation of privacy in relation to the programme as broadcast. In particular, Ofcom noted that the programme did not, in fact, disclose Miss Richardson's mobile telephone number. Given this conclusion, it was not necessary for Ofcom to consider whether any infringement into Miss Richardson's privacy was warranted.

**Accordingly, Ofcom has not upheld Miss Richardson's complaint of unwarranted infringement of privacy in the programme as broadcast.**



## Other Programmes Not in Breach

Up to 8 April 2013

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Hollyoaks	E4	13/03/2013	Violence and dangerous behaviour
The Removal Men	Channel 5	24/10/2012	Undue prominence
Those Bedroom Eyes	True Entertainment	31/01/2013	Scheduling

## Complaints Assessed, not Investigated

### Between 26 March and 8 April 2013

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation<sup>1</sup>.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118's sponsorship of ITV Movies	ITV2	24/03/2013	Disability discrimination/offence	1
118 118's sponsorship of ITV Movies	ITV4	24/03/2013	Disability discrimination/offence	1
5 Live Breakfast	BBC Radio 5 Live	27/03/2013	Generally accepted standards	1
8 Out of 10 Cats (trailer)	Channel 4	29/03/2013	Scheduling	1
A League of Their Own	Sky1	25/03/2013	Race discrimination/offence	1
A Room With A View	Film4	27/03/2013	Nudity	2
A Touch of Frost	ITV3	31/03/2013	Advertising minutage	1
Advertising content	Various	n/a	Outside of remit / other	1
Advertising scheduling	ITV	n/a	Advertising scheduling	1
Afterlife	ITV3	18/03/2013	Violence and dangerous behaviour	1
Alan Carr: Chatty Man	Channel 4	29/03/2013	Religious/Beliefs discrimination/offence	1
Alapcharita	ATN Bangla	14/03/2013	Due impartiality/bias	1
America's Funniest Home Videos	Kanal 5	16/03/2013	Animal welfare	1
Ant and Dec's Saturday Night Takeaway	ITV	23/03/2013	Offensive language	3
Are You Having a Laugh? Comedy and Christianity	BBC 1	27/03/2013	Outside of remit / other	1
Are You Having a Laugh? Comedy and Christianity	BBC 1	27/03/2013	Violence and dangerous behaviour	1
Babylon A.D.	E4	23/03/2013	Offensive language	1
Bangladesh Protidin	CHSTV	13/03/2013	Premium rate services	1
Barely Legal Drivers	BBC 3	02/04/2013	Outside of remit / other	1
BBC News	BBC 1	01/04/2013	Outside of remit / other	1
BBC News	BBC News Channel	12/03/2013	Religious/Beliefs discrimination/offence	1
BBC News at One	BBC 1	02/04/2013	Generally accepted standards	1
BBC News at One	BBC 1	08/04/2013	Outside of remit / other	2
BBC News at Ten	BBC 1	18/03/2013	Outside of remit / other	1
BBC programming	BBC channels	n/a	Outside of remit / other	1
BBC religious programming	BBC channels	n/a	Religious/Beliefs discrimination/offence	1
BBC weather forecasts	BBC channels	n/a	Outside of remit / other	1

<sup>1</sup> This table was amended after publication to correct a factual inaccuracy.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Big Body Squad (trailer)	Channel 5	29/03/2013	Generally accepted standards	1
Big Body Squad (trailer)	Channel 5	02/04/2013	Scheduling	1
Big Fat Quiz of the 80s	Channel 4	30/03/2013	Generally accepted standards	1
Bluestone 42	BBC 3	05/03/2013	Outside of remit / other	1
Boom Box	B4U Music	21/03/2013	Scheduling	1
Boulton and Co	Sky News	04/04/2013	Disability discrimination/offence	1
Brainiac: Science Abuse	Challenge	16/02/2013	Scheduling	1
Broadchurch	ITV	25/03/2013	Generally accepted standards	1
Broadchurch	ITV	01/04/2013	Offensive language	1
Broadchurch (trailer)	ITV	16/03/2013	Scheduling	1
Capital Breakfast	Capital FM North East	13/02/2013	Disability discrimination/offence	1
Capital Breakfast	Capital FM	16/02/2013	Religious/Beliefs discrimination/offence	1
Capital Breakfast with Des & Jennie	Capital FM Scotland	27/02/2013	Race discrimination/offence	1
Channel 4 News	Channel 4	25/02/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	25/03/2013	Violence and dangerous behaviour	2
Channel 4 News	Channel 4	29/03/2013	Generally accepted standards	1
Channel 4 News	Channel 4	03/04/2013	Due impartiality/bias	5
Chronicles of Narnia: The Voyage of the Dawn Treader	Channel 4	31/03/2013	Outside of remit / other	1
Come Dine With Me	Star Life OK	13/03/2013	Generally accepted standards	1
Coronation Street	ITV	11/03/2013	Drugs, smoking, solvents or alcohol	7
Coronation Street	ITV	01/04/2013	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	03/04/2013	Materially misleading	2
Coronation Street (trailer)	ITV	23/03/2013	Scheduling	1
Countdown	Channel 4	27/03/2013	Advertising minutage	1
Dance Academy	Nickelodeon	11/03/2013	Sexual material	1
Deal or no Deal	Channel 4	n/a	Generally accepted standards	1
Dexter (trailer)	CBS Drama	19/03/2013	Violence and dangerous behaviour	2
Dogging Tales	Channel 4	04/04/2013	Gender discrimination/offence	1
EastEnders	BBC 1	26/03/2013	Crime	2
EastEnders	BBC 1	29/03/2013	Race discrimination/offence	1
EastEnders	BBC 1	29/03/2013	Violence and dangerous behaviour	2
Embarrassing Bodies	Channel 4	18/03/2013	Generally accepted standards	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Embarrassing Bodies	Channel 4	01/04/2013	Generally accepted standards	1
Emmerdale	ITV	14/03/2013	Generally accepted standards	1
Emmerdale	ITV	28/03/2013	Outside of remit / other	1
Emmerdale	ITV	04/04/2013	Animal welfare	1
FA Cup Replay Live	ITV	01/04/2013	Offensive language	2
Food Glorious Food	ITV	20/03/2013	Materially misleading	2
Ford Football Special	Sky Sports 2	16/03/2013	Race discrimination/offence	1
Formula 1	Sky Sports	n/a	Listed Events	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	26/03/2013	Generally accepted standards	2
Foyle's War	ITV	24/03/2013	Advertising scheduling	1
Foyle's War	ITV	31/03/2013	Advertising minutage	2
Geordie Shore (trailer)	VIVA	01/04/2013	Scheduling	1
Giant Otters of the Amazon	BBC 2	09/02/2013	Scheduling	1
God TV	God TV	n/a	Outside of remit / other	2
Gogglebox	Channel 4	14/03/2013	Sexual orientation discrimination/offence	1
Got to Dance	Sky1	17/03/2013	Voting	1
Have I Got News For You	Dave	24/03/2013	Offensive language	1
Hidayat TV	Hidayat TV	30/01/2013	Religious/Beliefs discrimination/offence	1
Hollyoaks	E4	26/03/2013	Offensive language	1
Horrible Histories	CBBC	27/03/2013	Violence and dangerous behaviour	1
Horsemeat Banquet	BBC 3	27/03/2013	Generally accepted standards	1
Ian Payne	LBC 97.3FM	02/04/2013	Generally accepted standards	1
Irn Bru advertisement	Channel 4	23/03/2013	Political advertising	1
ITV News and Weather	ITV	25/03/2013	Due impartiality/bias	1
ITV News and Weather	ITV	26/03/2013	Generally accepted standards	1
ITV News and Weather	ITV	04/04/2013	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	25/03/2013	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	04/04/2013	Due impartiality/bias	1
ITV News Granada Reports	itv Granada	25/03/2013	Due impartiality/bias	1
ITV News London	itv London	22/03/2013	Due impartiality/bias	1
Jacob's Creek's sponsorship of The Jonathan Ross Show	ITV1	n/a	Sponsorship credits	1
James Max	LBC 97.3FM	29/03/2013	Due impartiality/bias	1
Jimmy Carr: Being Funny	Channel 4	23/03/2013	Religious/Beliefs discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Jonathan Creek	BBC 1	01/04/2013	Generally accepted standards	1
Joop Homme's sponsorship of drama on Fox	Fox	20/03/2013	Scheduling	1
Labyrinth	Channel 4	30/03/2013	Advertising minutage	3
Labyrinth	Channel 4	30/03/2013	Sexual material	2
Labyrinth	Channel 4	31/03/2013	Advertising minutage	1
Lee Nelson Live	BBC 3	15/03/2013	Generally accepted standards	1
Lee Nelson's Well Funny People	BBC 3	29/03/2013	Generally accepted standards	1
Lent Talks	BBC Radio 4	24/03/2013	Religious/Beliefs discrimination/offence	1
Live UEFA Champions League	ITV	02/04/2013	Religious/Beliefs discrimination/offence	1
Loose Women	ITV	26/03/2013	Generally accepted standards	87
Loose Women	ITV	28/03/2013	Generally accepted standards	1
Loose Women	ITV	04/04/2013	Competitions	1
Lorraine	ITV	21/03/2013	Generally accepted standards	1
Lyxfällan	TV3	24/02/2013	Outside of remit / other	1
Mantracker	Extreme Sports	04/04/2013	Offensive language	1
Morrisons' sponsorship of Ant and Dec's Saturday Night Takeaway	Various	03/03/2013	Sponsorship	1
Motorway Cops	BBC 1	25/03/2013	Race discrimination/offence	1
My Big Fat Fetish	Channel 4	22/05/2012	Outside of remit / other	1
News	Smooth Radio 105.2FM	26/03/2013	Due accuracy	1
Newsnight	BBC 2	25/03/2013	Outside of remit / other	1
Nick Ferrari	LBC Radio	27/03/2013	Offensive language	1
Nihal	BBC Asian Network	05/04/2013	Outside of remit / other	1
Nihal	BBC Asian Network	n/a	Religious/Beliefs discrimination/offence	1
Obsessive Compulsive Cleaners	Channel 4	20/03/2013	Disability discrimination/offence	2
Open Air	BBC Radio 4	25/03/2013	Generally accepted standards	1
Open Air	BBC Radio 4	26/03/2013	Generally accepted standards	1
Open Air	BBC Radio 4	n/a	Outside of remit / other	1
Party Political Broadcast by the Scottish National Party	BBC 1 Scotland	22/03/2013	Under 18s in programmes	1
Playboy TV Chat	Playboy TV Chat	21/03/2013	Participation TV – Offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Plebs	ITV2	25/03/2013	Generally accepted standards	1
PM	BBC Radio 4	26/03/2013	Race discrimination/offence	1
Prisoners' Wives	BBC 1	21/03/2013	Drugs, smoking, solvents or alcohol	1
Programming	Various	31/03/2013	Outside of remit / other	1
Psychic Sally	Pick TV	03/04/2013	Materially misleading	1
Quiz	Channel 5	n/a	Competitions	1
Rags to Riches Holiday	Sky 2	28/03/2013	Generally accepted standards	1
Regional News and Weather	BBC 1	26/03/2013	Outside of remit / other	1
Religious programming	ITV	31/03/2013	Outside of remit / other	1
Rowing	BBC 1	31/03/2013	Promotion of products/services	1
Rude Tube	Channel 4	29/03/2013	Under 18s in programmes	1
Sally Pepper	BBC Radio Derby	04/04/2013	Generally accepted standards	1
Samaa Metro	Takbeer TV	23/03/2013	Religious/Beliefs discrimination/offence	1
Saturday Kitchen Live	BBC 1	23/03/2013	Outside of remit / other	1
Scott and Bailey	ITV	03/04/2013	Violence and dangerous behaviour	1
Scott and Bailey	ITV3	29/03/2013	Transgender discrimination/offence	1
See No Evil, Hear No Evil	Channel 5	03/03/2013	Nudity	1
Shameless	Channel 4	02/04/2013	Generally accepted standards	1
Sky News	Sky News	19/03/2013	Generally accepted standards	1
Sky News	Sky News	22/03/2013	Due impartiality/bias	1
Sky News at 11 with Mark Longhurst	Sky News	30/03/2013	Due impartiality/bias	1
Spiral 4: State of Terror	BBC 4	02/03/2013	Violence and dangerous behaviour	1
Sports programming	Various	n/a	Outside of remit / other	1
Subtitling	Sky on demand services	n/a	Television Access Services	1
Subtitling	Various	n/a	Generally accepted standards	2
Subtitling	Various	n/a	Television Access Services	1
Sunrise	Sky News	26/03/2013	Generally accepted standards	1
The Andrew Marr Show	BBC 1	24/03/2013	Generally accepted standards	2
The Andrew Marr Show	BBC 1	24/03/2013	Outside of remit / other	1
The Baby Bomb	BBC 3	21/03/2013	Crime	1
The Cube	ITV	02/03/2013	Competitions	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
The Curse of the Ice Mummy	Yesterday	26/02/2013	Television Access Services	1
The Disappearance of Alice Creed	BBC 1	05/04/2013	Generally accepted standards	1
The Greatest Show on Earth	BBC 1	01/04/2013	Outside of remit / other	1
The Jeremy Kyle Show	ITV1	n/a	Generally accepted standards	1
The John Smith's Grand National (trailer)	Channel 4	19/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	Channel 4	24/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	Channel 4	25/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	Channel 4	27/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	Channel 4	n/a	Animal welfare	4
The John Smith's Grand National (trailer)	E4	23/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	More4	28/03/2013	Animal welfare	1
The Jonathan Ross Show	ITV	23/03/2013	Generally accepted standards	1
The Karate Kid	Watch	30/03/2013	Offensive language	1
The Mystery of Mary Magdalene	BBC 1	29/03/2013	Religious/Beliefs discrimination/offence	6
The National Lottery: Who Dares Wins	BBC 1	23/03/2013	Materially misleading	3
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	20/03/2013	Harm	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	22/03/2013	Generally accepted standards	1
The Syndicate	BBC 1	02/04/2013	Disability discrimination/offence	1
The Wright Stuff	Channel 5	19/03/2013	Due impartiality/bias	1
The Wright Stuff	Channel 5	28/03/2013	Due impartiality/bias	1
The Wright Stuff	Channel 5	29/03/2013	Animal welfare	1
The Wrong Show	Hallam FM	24/03/2013	Offensive language	1
The Xfm Breakfast Show with Jon Holmes	XFM London	20/03/2013	Scheduling	1
The Xfm Breakfast Show with Jon Holmes	XFM London	28/03/2013	Religious/Beliefs discrimination/offence	1
This Morning	ITV	28/03/2013	Materially misleading	4
This Morning	ITV	04/04/2013	Competitions	1
Top Gear - India Special	Dave	31/03/2013	Offensive language	1
UEFA Europa League Live	ITV	04/04/2013	Competitions	1
Wedding Band (trailer)	Channel 5	30/03/2013	Scheduling	1
We're Having a Baby	BBC 3	20/03/2013	Race discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Woman's Hour	BBC Radio 4	27/03/2013	Generally accepted standards	1
World Cup 2014 Qualifier	ITV	26/03/2013	Violence and dangerous behaviour	2
WPC 56	BBC 1	18/03/2013	Violence and dangerous behaviour	1
You've Been Framed!	ITV	30/03/2013	Religious/Beliefs discrimination/offence	1
You've Been Framed!	ITV2	23/03/2013	Animal welfare	1



## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 28 March and 10 April 2013.

Programme	Broadcaster	Transmission date
Advertising minutage	ATN Bangla	14 February 2013
Advertising scheduling	PTV Global	24 March 2013
Advertising scheduling	The Africa Channel	26 January 2013
Comic Relief: Funny for Money	BBC 1	15 March 2013
Cowboy Builders	Channel 5	26 March 2013
CSI: Crime Scene Investigation	Channel 5	26 March 2013
Dispatches: How Safe is Your Child's Nursery?	Channel 4	11 February 2013
F*** off, I'm Small	Really	12 March 2013
Inside Out London	BBC 1	10 December 2012
Police Interceptors	Channel 5	11 February 2013
Rowing	BBC 1	31 March 2013
The Daily Show (Global Edition)	Comedy Central Extra	5 March 2013
The Village	BBC 1	31 March 2013
The Village	BBC 1	7 April 2013
The Wright Stuff	Channel 5	27 March 2013

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.**

For more information about how Ofcom assesses complaints and conducts investigations go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

For fairness and privacy complaints go to:  
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.