

# **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

#### The Radio 1 Breakfast Show with Nick Grimshaw

*BBC Radio 1, 6 November 2014, 07:55*

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##### Introduction

During the *Breakfast Show with Nick Grimshaw*, a session recording of the Foo Fighters performing their new song “Something from Nothing” was broadcast at about 07:55.

A complainant alerted Ofcom to offensive language included in the track:

*“...you can't make me change my name,  
never make me change my name,  
pay no mind now ain't that something.  
Fuck it all! I came from nothing...”*

This part of the chorus was repeated. The BBC broadcast an apology at 08:04:

*“We must apologise for the swear words that went out in that Foo Fighters live track, so apologies if any offence was taken during that...”*

Ofcom considered the broadcast of the word “fuck” raised issues warranting investigation under Rule 1.14 of the Code, which states:

*“The most offensive language must not be broadcast...when children are particularly likely to be listening...”*

We therefore asked the BBC how the material complied with this rule.

##### Response

The BBC said that it had undertaken an internal investigation to determine the circumstances that led to this incident. The session track had been recorded specifically for BBC Radio 1 and had been played in full the evening before, shortly after 20:00 in a programme presented by Zane Lowe. It explained that ordinarily a session track is listened to and checked for compliance purposes by both the live session staff and then again by the production team responsible for its first broadcast (in this case Zane Lowe’s production team). The broadcaster informed us that on this occasion the session staff had overlooked the offensive language, and that both Zane Lowe’s producer and assistant producer had been absent on 5 November 2014. Each of their temporary replacements had assumed that the other had checked the song, and it was uploaded to the “Radio 1 Music Store” section of their play out system.

The BBC stated that the track had been played in full on Zane Lowe’s programme shortly after 20:00 on 5 November 2014. The broadcaster said that the presenter had noticed the first instance of the word “fuck” and faded down the track for the second instance, and issued an apology. Following this, a warning was placed on the iPlayer version of the show and a general email was sent out, warning all BBC Radio 1

production staff about the offensive language in the track. The BBC explained that the producer of Zane Lowe's programme annotated the track on their scheduling software but was unaware that another version had already been uploaded to the "Radio 1 Music Store". It was this unannotated copy that was played during *the Breakfast Show* the following day.

The BBC said that the *Breakfast Show* team was discussing the next item in the programme while the song was played and did not notice the offensive language. However after the team had been made aware of the swearing in the track, an apology was broadcast at 08.04.

The broadcaster explained that the language would have been picked up if its compliance procedures had been correctly followed. It described the failure of the persons responsible to note the offensive language as "highly unusual" and "unprecedented".

The BBC said that, as a direct result of this incident, the importance of following compliance procedures was stressed at Radio 1's monthly all-staff meeting. Further, the broadcaster said that senior members of the station staff have discussed the incident with the individuals involved.

## 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, one of which is that "persons under the age of eighteen are protected". This objective is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom research on offensive language<sup>1</sup> clearly notes that the word "fuck" is considered by audiences to be among the most offensive language.

Ofcom's guidance on offensive language on radio<sup>2</sup> states that:

"For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:..

- Between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time ...".

Ofcom noted the apology broadcast a few minutes after the incident, the BBC's explanation for this compliance error, and that it had taken measures to prevent similar issues recurring. Nonetheless a version of the Foo Fighters' song "Something from Nothing" was broadcast at 07:55 on the *Breakfast Show with Nick Grimshaw*

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

<sup>2</sup> Ofcom Guidance, Offensive language on radio, December 2011 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>).

containing two uses of the word “fuck”. This was a time when Ofcom considered that, in accordance with published guidance, it was particularly likely that children were listening. Rule 1.14 was therefore breached.

**Breach of Rule 1.14**

## Advertising Scheduling cases

### In Breach

#### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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
Heart TV	27 October 2014, 11:00	Rule 4 of COSTA	<p>Ofcom noted during monitoring that Heart TV exceeded the permitted advertising allowance in a clock hour on 27 October by 72 seconds.</p> <p>The licence holder for Heart TV, Global Music Television Limited (“Global”), explained the error occurred due to the automatic movement of a break to the end of a clock hour, which pushed some commercials intended for the 10:00 clock hour into the 11:00 clock hour.</p> <p>Global said that minutage issues are identified by its scheduling software and are required to be manually checked and corrected, but this overrun was overlooked on this occasion.</p> <p>Global confirmed it had reviewed its procedures, and reiterated to staff the need to ensure compliance with COSTA.</p> <p><b>Breach</b></p>

## Resolved

### Advertising minutage

*Cartoonito, 11 October 2014, 08:00*

*Tru TV, 11 October 2014, 09:00 and 10:00*

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#### Introduction

Tru TV and Cartoonito are television channels owned and operated by Turner Broadcasting System Europe Limited (“the Licensee”).

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

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

Ofcom became aware of an incident on 11 October 2014 that resulted in three clock hours across Tru TV and Cartoonito containing more advertising than permitted by Rule 4 of COSTA. The 08:00 clock hour on Cartoonito exceeded the allowance by 50 seconds, and the 09:00 and 10:00 clock hours on Tru TV exceeded the allowance by 60 seconds and 40 seconds respectively.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee apologised for the incidents and said that it had conducted a full investigation both internally and with its playout provider.

The Licensee said that it has robust compliance processes in place to ensure that the advertising schedules it supplies to its playout provider are compliant with COSTA. However, it explained that on this occasion the incidents were caused by a serious and unavoidable technical failure at the playout provider’s playout centre.

The Licensee added that it will work together with its playout provider to prevent any overruns occurring in future.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

In these cases, the amount of advertising permitted by Rule 4 of COSTA was exceeded. However, Ofcom noted that the circumstances that resulted in these incidents were beyond the control of the Licensee. We also noted that the Licensee

had committed to work with its playout provider to prevent a recurrence. We therefore consider the matter resolved.

**Resolved**

## Resolved

### Advertising minutage

*The Travel Channel, 11 October 2014, 08:00 and 09:00*

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#### Introduction

The Travel Channel broadcasts documentaries and reality programmes related to leisure and world travel on terrestrial, cable and satellite platforms. The licence for the service is owned by Scripps Networks Limited (“the Licensee”).

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

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

The Licensee notified Ofcom of an incident on 11 October 2014 that resulted in the 08:00 and 09:00 clock hours exceeding the permitted allowance by 21 minutes and five seconds, and two minutes and 40 seconds, respectively.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee explained that the incidents were caused by a significant technical failure at its third party playout provider which disrupted The Travel Channel’s schedule between 08:00 and 12:00. During this period, the system could only play short-form content resulting in the broadcast of consecutive advertising breaks. The Licensee added that at this point, the playout provider had no manual control over the transmission system.

The Licensee said it had initiated an immediate investigation to ascertain how the fault occurred and added that its third party provider had assured it that all necessary steps will be taken to ensure the incident is not repeated.

The Licensee reiterated that the Travel Channel did not schedule more than its permitted 12 minutes of advertising in the affected clock hours and that the situation was beyond its control.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom welcomed the Licensee's prompt notification of the matter and while The Travel Channel significantly exceeded its advertising allowance in two clock hours, Ofcom accepted that the incident was beyond the Licensee's control. Ofcom also noted the steps taken by the Licensee to minimise the likelihood of the recurrence.

Taking the above factors into account, Ofcom considers the matter resolved.

**Resolved**

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Kevin Richards

*Week In Week Out: Undercover Veteran, The Battle for Treatment, BBC1 Wales, 22 October 2013*

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#### Summary

Ofcom has not upheld this complaint made by Mr Kevin Richards of unjust or unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

This edition of *Week In Week Out* investigated concerns about Healing the Wounds (“HTW”), a Welsh charity dealing with military veterans with Post-Traumatic Stress Disorder (“PTSD”), and the way it accounted for its charitable activities. The programme included secretly filmed footage of Mr Kevin Richards (who founded and operates HTW with his wife, Mrs Carole Richards) talking to a veteran who had attended HTW, pretending that he had PTSD symptoms, to find out what the charity was offering<sup>1</sup>.

Ofcom found that:

- Notwithstanding some concerns about the accuracy of some aspects of the programme (notably with regard to the testimony of Mr Justin Martin and the reference to the Charity Commission “investigating” HTW or the Forces Aid Foundation (“Forces Aid”) at the time of the broadcast), the broadcaster took reasonable care to satisfy itself that, overall, the programme did not present, disregard or omit material facts, with regard to the claims made about HTW, in a way that resulted in unfairness to Mr Richards.
- HTW was given an appropriate and timely opportunity to respond to the claims made about it in the programme and therefore there was no unfairness to Mr Richards in this respect.
- There was no unwarranted infringement of Mr Richards’ privacy in connection with the obtaining of material included in the programme or in the programme as broadcast because the intrusion into his privacy was warranted by the public interest.

#### Introduction and programme summary

On 22 October 2013, BBC1 Wales broadcast an edition of its weekly current affairs programme *Week In Week Out*. This edition of the programme investigated concerns

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<sup>1</sup> In entertaining this case, Ofcom originally declined to consider that aspect of Mr Richards’ complaint relating to statements which had been made by the second veteran who appeared in the programme. During the course of our deliberations, however, it became apparent to Ofcom that there may have been a misunderstanding as to the point that Mr Richards was originally seeking to make and that, in the interests of fairness, representations should be sought from both parties as to the inclusion of statements made by the second veteran. As a result, Ofcom has further developed its Adjudication in relation to head a) of this complaint. The findings in relation to heads b) to d) remain the same. These are set out further below.

which had been raised about the way HTW dealt with military veterans with PTSD and the way it accounted for its charitable activities. HTW provides Neuro-Linguistic Programming (“NLP”)<sup>2</sup> therapy to treat ex-military personnel suffering from PTSD.

The programme said that NLP, which aimed to “*change patterns of mental and emotional behaviour*”, was a controversial therapy. It included contributions from two veterans with PTSD who claimed that their condition worsened after they received NLP therapy from HTW to the extent that it made them feel suicidal. The programme also said that the NHS did not advocate the use of NLP to treat people suffering from PTSD.

### NHS’ position on NLP

The programme said that HTW was “*using unconventional treatments*” to help veterans with PTSD, which were “*raising concerns in some quarters including the NHS*”. It then showed Dr Neil Kitchiner, Principal Clinician of the NHS’s traumatic stress service, which runs the All Wales Veterans Health and Wellbeing Service (“the AWWHWS”) saying:

*“none of them [the veterans treated by HTW] are cured as far as I have seen after three days treatment [and] some have been very unwell as a result of going there [i.e. HTW] and needed a lot of support from the NHS and veterans’ charities”.*

The programme’s reporter said that the NHS had tried to persuade HTW to “*move away from mental health treatment*”. It then showed further footage of Dr Kitchiner saying:

*“We have asked them to stop it, we’ve showed [sic] them the evidence from the NHS and the NICE guidelines, we’ve shared our concerns with them and yet they continue to operate in the way they do”.*

After this footage, the programme said that “*the charity has been saying in recent months that it no longer treats PTSD sufferers, it supports them*”.

### Secretly filmed footage

The programme then featured a veteran who went undercover, pretending that he had PTSD symptoms, to find out what the charity was offering. During his initial telephone conversation with HTW, the undercover veteran was told that “*if he went to his GP he’d probably be put on a waiting list*”. He was not asked by the charity for permission to call his GP.

The programme showed sections of secretly filmed footage of Mrs Richards providing the undercover veteran with a three-day course of NLP therapy at HTW. The first section of this footage included the undercover veteran telling Mrs Richards that he had not been diagnosed with anything and was not on any relevant medication. She then said:

*“Nobody else will offer you this by the way, the NHS don’t do this, what they’ll offer you if you go and see them, is an hour at a time maybe half an hour at a*

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<sup>2</sup> NLP is an approach to communication, personal development, and psychotherapy that has been adopted by some hypnotherapists. However, it has been discredited by large sections of the scientific community as a way of treating PTSD.

*time over a certain amount of weeks or they might offer you counselling which isn't going to do much for you to be honest".*

The programme said: "*Carole [Richards] appears to be steering him [the undercover veteran] away from the NHS even though she hasn't done any checks with his GP to find out about his true mental and physical condition".*

Lieutenant Colonel John Skipper, who authored a report on health care in Wales for the armed services, was shown expressing concerns about the charity. In particular, he said that "*to start treatment for any mental health condition there must be a diagnosis*" and indicated that he did not believe HTW's claim (made to him during an earlier visit to the charity's facilities) that it had 100% success rate in treating veterans through its three-day NLP therapy course.

### Private Barber

The programme then set out the history of Mr and Mrs Richards' charity. It said that they had started an appeal to raise money for a permanent home for war veterans suffering from PTSD in Golden Grove, a dilapidated mansion in Ammanford, Carmarthenshire, and that part of the plan was for there to be eleven houses named after Welsh soldiers who had died, including Private Craig Barber who was killed in Iraq.

Private Barber's mother (Mrs Cheryl Rowlands) was shown talking about how this plan had lifted her spirits. However, she also said that when Mr Richards asked her to get involved, he told her that he wanted her to: "*hit the public in the guts with your emotional story*". Mrs Rowlands said: "*you don't say that to a mum who has just lost her son in Iraq*". The programme said that with the help of her neighbours, Mrs Rowlands had raised £8,000 for the Craig Barber villa. However, Mr Richards then asked Mrs Rowlands to give this money to the Golden Grove appeal. When she refused, because the money had been raised specifically for the Craig Barber villa, Mr and Mrs Richards' solicitor sent her a letter demanding the money. This was followed by two visits from the police. The programme said that Mrs Rowlands claimed that "*Kevin Richards denied he ever promised her a villa named after Craig*" and showed the following quotation from Mr Richards ("*There will also be a suite [in Golden Grove] named after Private Craig Barber who was killed in Iraq*") which was part of an article published in the South Wales Evening Post on 10 March 2010. The programme added that the police investigated and took no action against Mrs Rowlands. At the end of this section of the programme, the programme stated that "*Healing the Wounds now concedes that they had indicated that an apartment was to have been named after Craig*" before explaining that in January 2011, the plan to buy Golden Grove collapsed. After this, the programme said, Mr and Mrs Richards set up a new charity, HTW, using £120,000 which they had raised toward the purchase of Golden Grove.

### HTW funding and accounts

The programme said that since starting the Golden Grove Appeal (which was launched in 2009) Mr Richards had set up various companies, including one, ForcesDeal.com Limited, which it said: "*was dissolved leaving debts of £288,000*". It added that Mr Richards also created a price comparison website, ForcesAid.com, which: "*promises to donate net profits to veterans' charities... via the Forces Aid Foundation, itself described as a charity*". It said that Forces Aid was not a charity, but a private company and that Mr Richards was one of its directors. Mr Martin Price, the Chair of The Institute of Fundraising Cymru ("the Institute") which supports

charities and fundraising in Wales, was then shown saying that it was inappropriate for a private company to use the word “foundation” in its name: *“because it could mislead the general public if they are being asked for funds to contribute towards this organisation”*. The programme also said that one of the veterans’ charities to which ForcesAid.Com claimed to donate was the Soldiers’ and Sailors’ Families Association (“SSAFA”). At the end of the programme, viewers were told that SSAFA had confirmed that it had never received any donations from Forces Aid.Com and told Forces Aid.com to remove the SSAFA logo from its website: *“to ensure that no endorsement or recommendation is implied”*.

The programme said that HTW’s accounts indicated that the charity had raised almost £500,000 over the preceding three years, but that it was: *“more difficult to find out what they spent that money on”*. It said that Mr Price had told the programme that the fact that all of HTW’s accounts for the past three years were filed on one day was: *“not good and that’s not all”*. Mr Price was then shown saying that, in its accounts, HTW had allocated costs for fundraising, publicity and goods sold to charitable activities, but these three items were: *“clearly not charitable activities”*. He also said: *“we know what money has been spent. What we can’t tell from here [the accounts] is how much money has actually been spent on counselling and post-traumatic stress work with ex-servicemen”*. He added: *“Healing the Wounds is not giving you that nice warm feeling that your money is going to the right place”*. This part of the programme concluded with the reporter stating that:

*“Healing the Wounds told us that using the word charity in connection with the Forces Aid Foundation was an error and thanked us for bringing it to their attention. They added that the Foundation has been dissolved and all references to it will now be removed”*.

The programme then showed more of the secretly filmed footage of Mrs Richards using NLP therapy to treat the undercover veteran. During this footage the programme’s narrator said that the National Institute for Clinical Excellence (“NICE”) *“does not recommend using this therapy [NLP] for PTSD sufferers”*. Afterwards, Dr Kitchiner was shown saying that NLP was used as a motivational tool in business, and that the evidence did not support its use as a treatment for veterans with PTSD. He also said that he believed that Mr and Mrs Richards had had approximately two weeks training in NLP therapy. When asked if he thought this was appropriate, Dr Kitchiner said *“I think it’s very rapid”* and then compared it to the three to five years of training for most mental health professionals.

The programme then alleged that HTW had told veterans whom it had treated to stop taking anti-depressant and anti-psychotic medication prescribed by their GP. A second unnamed veteran whose identify was disguised in the programme (“the second veteran”) said: *“when I got there [to HTW] we all had a sort of debrief and they said for us to stop taking our medication because the medication would get in the way of the treatment that they are going to offer”*.

The programme showed the material it had gathered on HTW’s approach to treating veterans with PTSD to Professor Neil Greenberg, Co-director of the Academic Centre for Defence Mental Health at Kings College London.

It then said that Professor Greenberg was *“worried”* about HTW’s approach and *“particularly concerned”* to hear that HTW did not contact the undercover veteran’s GP and that the second veteran had said that he was told by HTW to come off his medication.

Professor Greenberg was shown saying:

*"If this group who are not medically qualified and don't know a person's whole treatment history, because they haven't got it, that could cause some real problems, it could be really quite dangerous ... Non-evidence based treatments like NLP...should not be used as a first line treatment. There are plenty of evidence based treatments that we know work for mental health conditions and trying to direct people towards non-evidence based interventions first off is concerning and could be dangerous in some cases".*

The programme then said that HTW: *"denies telling veterans to stop taking their medication and says it does tell them to get advice from their GP"*. It also said that the charity had told the programme that it had *"helped 39 veterans who've asked them for help having exhausted all other help from the NHS"* and that: *"they offer more than therapy [because they] place veterans into employment and training"*.

#### HTW policy of leaving PTSD sufferers on their own after therapy sessions

Later, the programme questioned HTW's policy of leaving veterans who were being treated for PTSD alone in a hotel after their therapy sessions. This section of the programme included testimony from both of the veterans with PTSD who had attended HTW's therapy sessions. The first veteran (Mr Justin Martin) described the night he spent alone after therapy at HTW as: *"probably one of the worst nights I have ever had"*. He added that he had had nightmares, wet the bed, had cold sweats, and that he felt so scared and so alone that he: *"had the overwhelming urge just to end it all"*. The second veteran said that when he was left alone after therapy he had *"a really bad time with PTSD"* including having: *"flashbacks and panic attacks"*. The programme's narrator said that HTW had responded that: *"veterans welcome the chance to have some quality time to themselves and that they are given 24-hour contact numbers"*. HTW added that it was: *"unaware of any veteran feeling unhappy with their service"*. The narrator also said that the programme had heard: *"from a number of veterans who say that the charity has helped them"*.

#### Speed of treatment

The programme showed secretly filmed footage of Mrs Richards telling the undercover veteran that on one occasion the NLP treatment for PTSD had worked (i.e. cured the sufferer) in 20 minutes. This was followed by Dr Kitchiner saying that an average patient sees a therapist: *"for anything from 4 months to a year to treat their PTSD...it's not a quick fix"*.

The reporter said that complaints had been made about HTW to the Charity Commission for England and Wales and the Welsh Government: *"but because there are no controls in place to regulate NLP the charity is free to carry on"*. The chair of the Welsh Assembly's cross-party group on the armed forces, Mr Darren Miller AM, was then shown calling for more scrutiny of NLP practitioners and the work of any charity giving support to veterans.

The programme also showed secretly filmed footage of the undercover veteran meeting Mr Richards while he filled out forms about his treatment. In reference to the forms, Mr Richards told the undercover veteran that: *"we've got clinical trials going on and things like that. This is all the evidence to show people, you know, that everything works here. It's all politics isn't it?"* The programme said that although HTW was collecting data to prove its treatment was effective, *"experts say NLP must*

*be subjected to randomised control trials*". Professor Greenberg was then shown saying:

*"NLP has not been investigated by properly rigorous scientific trials to show it works [for PTSD] and the key point is, just because someone feels good at [the end [of a] session, there is no guarantee they're going to feel good in the future. And, given the fact that we know psychological therapies have a potential to harm, we need to do those trials"*.

After this, the narrator said that HTW had told the programme that it had: *"supported more than 130 veterans with PTSD in the last two years"*.

Towards the end of the programme, the reporter said that HTW said its therapy was *"safe and effective"* and that the charity is: *"open and transparent"*. He also said that Mr and Mrs Richards had declined to be interviewed, but had referred the programme to their written statement and told the programme that: *"Healing the Wounds is a small but busy charity which has as its priority the needs of veterans and PTSD sufferers."*

The reporter also said that SSAFA had told HTW *"to remove its logo from the Forces Aid.com website to ensure no endorsement or recommendation is implied"* and that: *"it's never received any donations from ForceAid.Com or the [Forces Aid] Foundation."* He added: *"The Charity Commission is also investigating."* The programme ended with footage of both veterans with PTSD giving negative testimony about their experience of receiving therapy from HTW.

## **Summary of the complaint (as originally entertained) and the broadcaster's response**

### Unjust or unfair treatment

- a) Mr Richards founded HTW, the military charity which was the focus of the above programme. He complained that he was treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a manner which amounted to a personal attack on him. He gave the following examples of information included in the programme which he said resulted in him being unfairly portrayed.

The testimony of Mr Martin (the first veteran with PTSD) in the programme was not credible. Mr Richards said that Mr Martin was described as a PTSD sufferer with: *"nearly a decade of army service"*. However, he only served for three weeks due to a knee injury during basic training and did not suffer from PTSD as he did not serve in combat situations. Mr Richards added that Mr Martin's claim that he wet the bed when staying on his own in a hotel after receiving NLP therapy at HTW was untrue. Mr Richards provided Ofcom with a note from the hotel in question in support of this assertion. Mr Richards also said that Mr Martin had posted a positive testimonial on the charity's website following his treatment at HTW which contradicted the testimony he gave in the programme (a copy of this testimonial was provided to Ofcom).

In response, the BBC acknowledged that, inadvertently, the programme had inaccurately represented the length of time that Mr Martin served in the army. It said that after the programme was broadcast, a viewer contacted the programme makers to suggest that Mr Martin had misled them and that he had in fact only served for 21 days and this was later confirmed by Mr Martin's wife.

The BBC argued that this inaccuracy was neither material nor led to any unfairness to the complainant. This was because HTW: believed Mr Martin's account of his time and experiences in the army; was satisfied that he was suffering from PTSD; and, treated him for it using NLP. The BBC said that Mr Martin told the programme makers that after receiving treatment he was traumatised and felt worse as a result. The broadcaster added that none of the issues raised in connection with Mr Martin in the programme hinged upon the length of his military service.

It also said that the programme makers had no reason to doubt the veracity of Mr Martin's testimony regarding his length of service. Mr Martin gave the same, quite detailed information about his past (i.e. that he had served for eight years in the army; had suffered some bad experiences, particularly being bullied during army training, which caused PTSD, which in turn led him to contemplate suicide) to several people on a number of different occasions. These people were: his counsellor, Mr Paul Mathias, an army veteran who ran a support scheme providing counselling for fellow veterans suffering from PTSD (through whom the programme makers were introduced to Mr Martin in March 2013); the producer of the programme (when they met in August 2013 Mr Martin told the producer that he had been in the army between 1997 and 2006); and, the reporter and camera crew when Mr Martin gave his interview.

The BBC added that Mr Mathias, whose routine checks had established that Mr Martin had been in the army, had believed that Mr Martin was credible, and that the programme makers could not check the length of his service because the Ministry of Defence ("the MoD") will not disclose such information.

The BBC turned to Mr Richards' complaint that Mr Martin's claim to have wet the bed when staying in a hotel after receiving treatment at HTW was untrue. It said that the note from the hotel provided to Ofcom did not claim that the incident did not happen, merely that the writer was "unaware" that it had happened. The broadcaster added that there might be a number of reasons for this even if the incident did happen, for example, it was not actually spotted or reported by hotel staff. However, the broadcaster said that Mr Martin described the incident to both the producer and his PTSD counsellor and, as with the rest of his testimony the programme makers had no reason to doubt its veracity. It also argued that the point being considered in this part of the programme, traumatised veterans being left alone, overnight, in a hotel room in a strange town, did not hinge on whether Mr Martin wet his bed or not.

With regard to his online testimonial for HTW, the BBC said that after giving this testimony to the charity Mr Martin told his counsellor (Mr Mathias), and subsequently the programme makers, that he had been under pressure to provide the testimonial and that his experience of receiving NLP treatment at HTW had actually made him feel worse rather than better. The BBC also said that Mr Martin had told the programme makers that he had not wanted to appear ungrateful to the charity at the end of his treatment so he made some positive remarks. However, "less positive comments" - for example, that his wife had been the greatest source of support through what had been a traumatic time - were not included in the testimonial. He also told the programme makers that the extent to which any comments he had made would be used on the website was not explained to him. The BBC said that the experience of the undercover veteran tended to confirm that the charity was keen to elicit positive feedback from veterans who used their service.

- i) The programme claimed that the NHS considered that HTW should stop providing NLP to veterans with PTSD. This was untrue according to the complainant. Mr Richards said that the two medical professionals who contributed to the programme held this opinion. However, the NHS guidelines<sup>3</sup> simply stated that any person suffering from PTSD may request any therapy they wish as long as they are informed that “there is, as yet, no convincing evidence that for a clinically important effect of these treatments on PTSD” (i.e. that, to date, there have been no clinical trials which demonstrate that NLP was an effective treatment for PTSD sufferers).

In response, the BBC said that senior NHS representatives had requested that HTW stop using NLP to treat veterans suffering from PTSD. The charity had had two meetings at the University Hospital of Wales, Cardiff with Professor Jonathan Bisson, Director, and Dr Kitchiner, Principal Clinician, of the NHS’ traumatic stress service (which operates the AWWHWS). HTW sought the meetings in order to explore ways of working with the NHS and were told a relationship would only be possible if they stopped offering non-evidence based therapies (namely, NLP) and instead concentrated their efforts on supporting veterans in other ways.

The concerns raised were not simply the personal opinions of Professor Bisson, one of the UK’s leading authorities on PTSD and a co-author of the NICE guidelines on PTSD, and Dr Kitchiner. The latter also articulated the settled view of the NHS on this issue in his contribution to the programme: i.e. the NHS does not support the use of non-evidence based treatments and the NICE guidelines do not recommend NLP for PTSD. In addition, Dr Kitchiner told the programme makers that a visit he made to HTW to find out more about how the charity operated, reinforced his concerns about the organisation, and especially its clinical governance and supervision, and he relayed these to a national steering group meeting of the AWWHWS. The consensus at that meeting was that the NHS would not work with HTW and Professor Bisson wrote to the charity explaining the concerns of the NHS. Dr Kitchiner then received an email and phone call from Mr Richards confirming that HTW would stop offering therapy to PTSD sufferers and instead send all patients to the NHS. Dr Kitchiner says this did not happen, further heightening his concerns.

The BBC added that both the programme and the correspondence sent to HTW beforehand made clear that Dr Kitchiner’s contribution to the programme was in his capacity as Principal Clinician of the AWWHWS.

The broadcaster said that the guidelines which Mr Richards cited were intended for the use of practitioners in NHS primary and secondary care and do not, as Mr Richards appeared to suggest, encourage or enable people to request alternative therapies. The guidelines advise doctors what to do when they get such a request, guiding them to advise patients that alternative therapies for PTSD have no evidence base, and, by implication, should be treated cautiously when it comes to their efficacy and safety.

- ii) The claim by Mrs Rowlands, Private Craig Barber’s mother, that Mr Richards had asked her to use the death of her son in order to get more money out of fundraisers was untrue. Mr Richards said that Mrs Rowlands had made these

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<sup>3</sup> NICE Clinical Guidance 26 (<http://guidance.nice.org.uk/CG26>).

comments to the programme as a way “to get back at the charity” following their disagreement about the use of the funds which Mrs Rowlands raised.

The BBC said that the programme reported both that Mr Richards had alleged that Mrs Rowlands had misappropriated funds and that this allegation was investigated by police who took no further action. Mrs Rowlands denied that she lied about the claim she made in the programme to “get back at the charity” and she told the programme makers that she clearly recollected her conversation with Mr Richards when he had just shown her where a villa would be built in memory of her son. The BBC said that Mrs Rowlands maintained that Mr Richards said he wanted her to be the “emotional arm” of the organisation and to “hit people in the guts” (she insisted these were his exact words) with her story in order to raise more funds. Mrs Rowlands acknowledged that the reason she was asked to be a patron was because her son had died on active service and that her story would appeal to people’s emotions. However, Mrs Rowlands had felt that Mr Richards’ approach was insensitive in the circumstances, although she continued to fundraise for the charity because she believed that it was a good cause and would be a lasting legacy for her late son.

The BBC said that the programme was entitled to rely upon Mrs Rowlands’ testimony, and that the inclusion of information relating to the allegations Mr Richards had made against her and the subsequent police investigation ensured that the reporting of this matter was balanced and that no unfairness arose in respect of the complainant.

- iii) The programme included false allegations relating to financial and accounting issues at HTW. Mr Richards said that in contrast to the criticisms made in the programme by Mr Price (the Chair of the Institute), a letter from HTW’s accountants (“LHP”) clearly showed that the majority of the charity’s expenditure was used for the treatment of PTSD sufferers. LHP also said that Mr and Mrs Richards had: “sought advice in relation to a number of areas to ensure that they [were] compliant under both the Charities Act and [the] Companies Act”. Mr Richards said that it was misleading to include Mr Price in the programme because he was speaking on his own behalf and not in his capacity as a member of the Institute (as implied by the programme), and because he is a chartered statistician not a qualified accountant.

In response, the broadcaster said that the point made by Mr Price in the programme was that the only public information about HTW’s expenditure available at the time of broadcast (its accounts), was not sufficiently transparent to permit a clear understanding of how charitable donations were being spent. Mr Price, a well-respected and extremely experienced third sector expert, said that in his view there was a lack of clarity as to what money was being spent on charitable purposes and what was being spent on fundraising and administration. He commented that someone looking at the accounts would draw the conclusion that HTW believed that the business of fundraising was a charitable activity in itself, which it is not. He also stated this was not in line with the Standard of Recommended Practice (“SORP”). The BBC argued that the accountant’s letter, provided by Mr Richards, did not address with any precision the issue of what proportion of the funds raised was actually devoted to charitable purposes. It merely said that: “the majority of expenditure was used in the treatment for PTSD veterans”.

The BBC said Mr Price was a chartered statistician and a leading expert on the finances of the third sector, having had a number of senior management roles in various social enterprises in Wales. He was a consultant working with several successful social enterprises and is extremely familiar with book-keeping practices in charities, one of the reasons he was Chair of the Institute. The programme did not say that he was speaking on behalf of the Institute merely that he was its chairman. Mr Price's position was a matter of fact, whether he spoke on the Institute's behalf or in a personal capacity.

- iv) The claim in the programme that the Charity Commission was investigating HTW was false. Mr Richards provided Ofcom with an email from the Charity Commission which stated that it was "not investigating the charity".

In response, the BBC said that the programme accurately reported the fact that it was informed at the time of broadcast by the Charity Commission that the Commission was investigating the issues the programme had raised in connection with Forces Aid and the accounting practices of HTW. The BBC argued that an email from the Charity Commission to the BBC (provided to Ofcom) confirmed this. See Decision at head a) v) below for details of this email.

In addition, the broadcaster said that the Charity Commission's press office had confirmed in a telephone call to the programme makers on 10 December 2013 that since the programme was broadcast the Charity Commission had advised HTW to amend its accounting practices – which was one of the issues raised by Mr Price in the programme. Therefore, it was not inaccurate to have said that HTW was being investigated by the Charity Commission.

- b) Mr Richards said that he was not given an appropriate and timely opportunity to respond to the claims made about HTW. Mr Richards said that he was given just over one week to respond to the allegations which was insufficient time to prepare a response to the "onslaught of false statements" made by the programme makers. He added that this was despite the fact that the programme had been in development for several months.

In response, the BBC said that the correspondence between the programme makers and Mr Richards showed that the allegations were set out clearly and the charity was given sufficient time to respond to them. It also showed that Mrs Richards had initially indicated that she would be willing to be interviewed regarding the questions which were being raised and at no time during these initial communications indicated that there might be insufficient time to respond. She had explained that Mr Richards would not be interviewed because he had a heart condition. The BBC added that, although Mrs Richards subsequently decided not to be interviewed, she provided a written statement instead.

It also said that some of the concerns raised in the programme (for example, the use of NLP, Mr Richards' associated business interests and the use to which funds were being put), had been put to Mr Richards at a number of public meetings in recent years. Accordingly, Mr Richards would have been quite familiar with these concerns and should have been in a position to respond without having to conduct research.

### Unwarranted infringement of privacy

- c) Mr Richards complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of him was filmed secretly by a veteran posing as a PTSD sufferer without his permission.
- d) Mr Richards complained that his privacy was unwarrantably infringed in the programme as broadcast because part of the secretly filmed footage of him was broadcast without his permission.

In response to heads c) and d) of the complaint, the BBC said that the programme's purpose was to investigate serious allegations from a range of people about how HTW was treating very vulnerable individuals with mental health issues. Concerns had been raised by a number of health professionals that in using NLP to treat veterans with PTSD, the charity was risking further harm to these individuals. The programme makers understood that, despite having given undertakings that it would stop doing so, HTW was still engaged in providing a clinically unproven and possibly harmful treatment.

The broadcaster argued that the programme's investigation was clearly in the public interest and that it was warranted to film the complainant secretly to establish and demonstrate whether the allegations were substantiated. It added that the evidence gathered by the programme established that the concerns about the charity were well-founded and the programme responsibly reported an issue of serious public concern.

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

Ofcom prepared a Preliminary View on this case that Mr Richards' complaint should not be upheld. Both the complainant and the BBC commented on that Preliminary View. The further points made by the parties, relevant to the programme as broadcast, are summarised below:

With regard to head a) ii) Mr Richards said that given that NHS England had spent over £900,000 on NLP and related training between 2006 and 2009 there was no evidence that the NHS was trying to stop the use of NLP therapy. He added that the programme had relied on the views of two people (i.e. Professor Bisson and Dr Kitchiner) to support its view that the whole of the NHS was against NLP.

The BBC said that the programme was concerned not with the use of NLP per se but, very specifically, its use in the treatment of PTSD. It added that Mr Richards' observation that the NHS has spent money on NLP did not indicate that the NHS would be offering NLP as a frontline treatment for PTSD as HTW did.

With regard to head b) of the complaint (opportunity to respond) Mr Richards said that the programme makers told the charity that they were making a programme about charities working together rather than the real purpose of the programme. He added that once he and his wife knew "the real content of the programme"; that the interview would use an "aggressive journalism format"; and that HTW would not be able to prepare for the questions which would be asked, they declined to be interviewed.

The BBC contested this account of the exchanges between the programme makers and Mr and Mrs Richards. It said that the programme makers' first letter to Mr and

Mrs Richards – dated 10 October 2013 (see decision at head b) below for details) comprehensively set out the concerns which the programme was investigating and made clear the exact nature of the programme and the seriousness of the issues raised. It added that the letter did not refer to the programme being about “charities working together”. The BBC repeated its view that Mr and Mrs Richards were given sufficient time and information to respond to the points raised. It also said that the correspondence shows that the programme makers were professional and thorough, rather than “aggressive”, and that they repeatedly tried to obtain information from HTW but significant questions were not addressed by the complainant or his wife.

### **Ofcom’s initial Adjudication**

Following receipt of the parties’ submissions on the initial Preliminary View, Ofcom prepared an initial Adjudication on this case which found that Mr Richards’ complaint should not be upheld. The initial Adjudication found that:

- Notwithstanding some concerns about the accuracy of some aspects of the programme (notably with regard to the testimony of Mr Justin Martin and the reference to the Charity Commission “investigating” HTW or the Forces Aid Foundation (“Forces Aid”) at the time of the broadcast) the broadcaster took reasonable care to satisfy itself that, overall, the programme did not present, disregard or omit material facts, with regard to the claims made about HTW, in a way that resulted in unfairness to Mr Richards;
- HTW was given an appropriate and timely opportunity to respond to the claims made about it in the programme and therefore there was no unfairness to Mr Richards in this respect; and
- There was no unwarranted infringement of Mr Richards’ privacy in connection with the obtaining of material included in the programme or in the programme as broadcast because the intrusion into his privacy was warranted by the public interest.

However, after receiving a copy of this Adjudication, Mr Richards informed Ofcom that it had failed to take account of his complaint that the second veteran who contributed to the programme had not received any treatment from HTW. In particular, Mr Richards stated that:

“The second veteran on the programme did not receive any form of treatment from the staff at HTW as at that time we commissioned an independent organisation to provide PTSD support, and HTW staff were only then under training. This veteran would not participate in any therapy from the organisation that we funded to provide PTSD support for veterans. He was highly disruptive and upset the other veterans his wife picked him up the following morning and left without having any PTSD interventions whatsoever. Yet he went on the programme stating all these false accusations against HTW. How can Ofcom uphold this as HTW did not treat him?”

Having given careful consideration to these representations, it became apparent to Ofcom that, in making its original decision to entertain the complaint, we may have misunderstood that part of Mr Richards’ complaint which related to the claims made by second veteran. In particular, Ofcom had understood that, while Mr Richards disputed the length of time for which the second veteran had received treatment from HTW, he had not disputed that this individual had received at least *some* treatment

from the charity. It was for this reason that Ofcom did not entertain Mr Richards' fairness complaint insofar as it had related to the inclusion of the claims made by the second veteran.

On receiving the representations above, however, it became apparent to Ofcom that the second veteran may not, in fact, have received treatment from HTW *at all*. If so, this was a departure from our earlier understanding, and one which (if established) had the potential to result in the unjust or unfair treatment of HTW and Mr Richards. On this basis, Ofcom took the view that it was necessary to seek further representations from both parties in relation to the second veteran in order to properly adjudicate in this case. This 'new' sub-head of Mr Richards' complaint (relating to the claims made by the second veteran) is now considered as part of head a) i).

#### BBC's initial submission on the second veteran

In response to this complaint, the BBC said that the second veteran did receive therapy for PTSD, and that the distinction Mr Richards made between treatment provided by HTW staff and treatment provided by an independent organisation commissioned by HTW was immaterial to any issue of fairness.

It said that the second veteran gave one of the programme makers a detailed description of the treatment he said he had received. This included: being taken back to his childhood and told not to re-live the original trauma but to focus on his feelings about it; being given a number of "safety" words to focus on in order to distract himself from unpleasant feelings; and, being told to "try to get in touch with his 'unconscious mind' to overcome his problems" and that "relaxation" was the key to achieving this. The second veteran also told the programme maker that the therapy he received was described to him as "neuro-linguistic programming".

The BBC said that this description mirrored that given by Mr Justin Martin and subsequently filmed by the undercover veteran as well as corresponding to the accounts given to programme makers by other veterans who had received treatment at HTW. It argued that the second veteran could not have given such a description, if, as Mr Richards claimed, he was so disruptive that he was removed from the group before treatment had begun.

The broadcaster also said that the programme makers were put in touch with the second veteran by Dr Kitchiner who considered that he (the second veteran) was one of a number of veterans who "had been adversely affected by treatment at HTW". It added that Dr Kitchiner's account of what the second veteran told him corresponded with the veteran's account to the programme maker. According to both accounts, the veteran called Dr Kitchiner from his hotel, reporting that he had become extremely distressed after the day's therapy, and Dr Kitchiner advised him to leave as soon as practicable.

The BBC said that sending veterans to a hotel for two nights following daytime treatment was an aspect of the HTW treatment package that had been present throughout and was highly controversial. It said that experts in this field advise that if veterans undergo therapy during the day that may be intrusive or arouse disturbing memories, it is extremely important that any issues arising from this are dealt with appropriately after the sessions. It also said that some experts believe that veterans should be returned to their families or carers after therapy or, if they are being treated in residential setting, that a doctor should be on call to deal with issues arising from the therapy and administer appropriate medication if necessary.

The BBC said that the programme makers were aware that HTW used third parties on occasion but they were brought in to deliver therapy as part of courses run and organised by HTW. It added that HTW had responsibility for the welfare of those attending these courses and a duty of care towards them. The broadcaster argued that the distinction Mr Richards made between therapy delivered by HTW staff and that delivered by third parties was entirely artificial in relation to both HTW's responsibilities and the expectations and experience of the veterans themselves.

By way of example, it said that the course the second veteran enrolled in was described as being run by HTW and he was never advised differently. It also said that HTW staff were in evidence organising the course, and the second veteran and other participants attended because they were assured when they contacted HTW that they would receive treatment which would benefit them. The BBC said that "it was neither here nor there" whether the therapy sessions were conducted by HTW staff or by third parties commissioned by HTW. The broadcaster also said that at the time (i.e. during the period when the second veteran attended HTW) the charity took credit in the local media for the courses it was running, even though the treatment was at that point delivered by a private company with Mr Richards himself describing it as "*our treatment course*". (The BBC provided Ofcom with a copy of the relevant article about HTW's "first treatment course" which stated that it was delivered by a third party).

#### Mr Richards' follow-up comments on the second veteran

Having seen the BBC's response to this element of the complaint Mr Richards reiterated his claim that the second veteran had not received any treatment. He said that the second veteran was aggressive and disruptive from the start of the first day and that this continued throughout the day and into the evening until he left the hotel with his wife. Mr Richards also said that no therapy was given during the first day of the course which was set aside for administration and explaining the treatment programme (which would commence on the second day) to the veterans.

Mr Richards added that the second veteran could not have been taken back to his childhood, as set out in the BBC's initial submission, as the therapy was "group session based".

Mr Richards said that the second veteran's description to the programme makers of the treatment he received at HTW was "totally fabricated" and that each of the elements of this description could be found on the internet if one searched under the term "NLP". He also said that the BBC's claim that the second veteran's description of treatment was corroborated by accounts given to the programme makers by other veterans who received treatment at HTW was "just hearsay" because the broadcaster did not provide the names of these veterans and should therefore be ignored".

The complainant also questioned how the second veteran was able to contact Dr Kitchiner from his hotel room and tell him about the treatment he had allegedly received at HTW. Mr Richards said that the second veteran had not met Dr Kitchiner at this time and that Dr Kitchiner had no out-of-hours contact telephone number. He asked if there was a telephone log to prove that this telephone call had occurred.

Mr Richards said that "of all the veterans that HTW supported for PTSD the BBC located two veterans, one of which never stayed long enough to receive treatment and fabricated stories for the programme and [the other]...who lied about his military service and state[d] that he suffered PTSD through serving in conflict zones".

### BBC's follow-up comments on the second veteran

The BBC said that the evidence it submitted regarding the corroboration of the second veteran's account was not "hearsay", as claimed by Mr Richards, but based on the testimony of three veterans. It said that these veterans became known to the programme makers separately but their accounts were mutually corroborative and tallied with the secretly filmed evidence.

The broadcaster also said that Dr Kitchiner had confirmed to the programme makers that he remembered the veteran calling him from the hotel and the advice he (Dr Kitchiner) gave to him about leaving the course. Dr Kitchiner said that he believed the treatment being offered was inappropriate and that the man (the second veteran) was very distressed. The BBC also said that the programme did not claim that the veteran made this call from the hotel telephone in his room.

The BBC said that it remained of the view that the programme was not unfair to Mr Richards or HTW. It said that, notwithstanding the issues of concern that were raised (in Ofcom's initial Preliminary View and initial Adjudication), the programme included the fact that a number of veterans spoken to had said they were helped by the charity; the criticisms made in the programme, including the concerns about HTW's use of hotel accommodation for veterans during treatment, were put to Mr Richards in good time for him to respond and his response was fairly reflected in the programme.

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

Following Mr Richards' submission to Ofcom regarding the initial Adjudication and the BBC's comments in response (see above), Ofcom prepared a Revised Preliminary View on this case so that it could consider whether the inclusion of the statements made by the second veteran in the programme resulted in unfairness to Mr Richards. The Revised Preliminary View found that it was reasonable for the programme makers to have understood that the second veteran had received treatment at HTW and therefore to have included his testimony in the programme [see head a) i) of the Decision below for our full consideration of this aspect of the complaint]. The findings in relation to heads b) to d) of the complaint remained the same.

Mr Richards responded to this Revised Preliminary View. The BBC chose not to make any further points.

Mr Richards said the second veteran was not left alone in the hotel. He said that there were four "support staff", who were accommodated on the same floor as the second veteran, as well as other veterans with whom he could discuss any problems. Mr Richards also said that the second veteran did not want treatment and left the hotel with his wife. Finally, Mr Richards said that "[t]he BBC cannot state that [the second veteran] had treatment from Healing the Wounds when this was not the case".

### **Further considerations**

In addition, after further consideration of the Revised Preliminary View, Ofcom decided that it was necessary to clarify its position regarding head a) v) of this complaint – i.e. that HTW was treated unfairly because the claim in the programme that the Charity Commission was investigating HTW was false. For this reason, we prepared a Second Revised Preliminary View on this complaint.

The clarifications to Ofcom's Revised Preliminary View were restricted solely to head a) v) of the complaint. The findings in relation to heads b) to d) of the complaint remained the same.

With regard to head a) v), our Second Revised Preliminary View was that the programme had implied that the Charity Commission was formally investigating Forces Aid and, by association, HTW. Having regard to the information which had been provided to the programme makers by the Charity Commission at the time the programme was broadcast, we considered that the programme had overstated the Charity Commission's position. This was because it appeared to Ofcom that the Commission had acknowledged receipt of information about Forces Aid and HTW passed to it by the programme makers but had not confirmed that it had launched a formal investigation. Our view was that "the inclusion of the claim that at the time of the broadcast the Charity Commission, was formally investigating Forces Aid and possibly, by association HTW, was incorrect and had the potential to result in unfairness to Mr Richards". However, we concluded that in the context of the programme as a whole, the inclusion of the claim would not have had a material detrimental impact on viewers' understanding of HTW or Mr Richards' actions in a way that was unfair and that therefore Mr Richards was not treated unfairly in this respect.

Having made these clarifications, we took the view that it was appropriate in these circumstances (i.e. where part of the reasoning on which Ofcom's Revised Preliminary View was based has been changed as a result of further internal considerations and where neither party to the complaint has previously had an opportunity to see these revisions) to give the complainant and then the broadcaster an opportunity to comment on these changes in order to properly adjudicate on this case.

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

Mr Richards re-iterated several points he had made previously with regard to the complaint as a whole, but did not make any further points regarding the Second Revised Preliminary View.

The BBC responded to the changes made to head a) v) of the Second Revised Preliminary View, noting that Ofcom had now prefaced the word "investigating" with the word "formally". In the BBC's view, the addition of the word "formally" was not inconsequential, as it paved the way to the conclusion that it was "inaccurate for the programme makers to suggest that a formal investigation by the Charity Commission was underway". The BBC argued that there was no warrant for the addition of this word. It said that the term "investigation" covers a range of activities, of which formal investigation is only one and that even when referring to bodies with investigatory functions, "formal investigation" does not exhaust the meaning of the term.<sup>4</sup>

The BBC argued that nothing in the programme (which said only that "*The Charity Commission is also investigating*") or in its submissions was intended to convey the narrow meaning that a formal investigation had been put in hand. It said that it was open to Ofcom to conclude that this was nevertheless the impression which viewers

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<sup>4</sup> By way of example, the BBC noted that the ASA distinguishes between formal and informal investigation of broadcast complaints and provided a link to the ASA's Procedures for handling Broadcast Complaints to illustrate its point:  
[http://www.asa.org.uk/Consumers/~media/Files/ASA/Misc/Broadcast\\_Complaint\\_Handling\\_Procedures.ashx](http://www.asa.org.uk/Consumers/~media/Files/ASA/Misc/Broadcast_Complaint_Handling_Procedures.ashx) (see page 6).

may have formed, but not for Ofcom to state as a fact that the programme makers suggested that a formal investigation was underway, or to conclude as a matter of certainty that the programme was inaccurate in that respect. The BBC said that the most that could be said is what was said in the original Adjudication – that “the programme may have overstated the position”.

## **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 our Decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties’ written submissions and supporting material, including pre-broadcast correspondence between the broadcaster and the complainant. Ofcom also took careful account of the representations made by the complainant and by the BBC in response to Ofcom’s Preliminary View on this complaint and the initial Adjudication; as well as the parties’ comments on both the First and Second Revised Preliminary Views.

### Unjust or unfair treatment

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.

- a) Ofcom first considered Mr Richards’ complaint that he was treated unjustly or unfairly because material facts were presented, disregarded or omitted in a manner which amounted to a personal attack on him.

In assessing this part of the complaint, Ofcom had regard to Practice 7.9 of the Code 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.

The broadcaster and the complainant disagreed about the veracity of several claims made in the programme. It is therefore important to clarify at the outset that it is not for Ofcom to investigate and adjudicate on whether information broadcast or omitted is factually correct or not. Rather, our role is to consider whether the inclusion or omission of the information amounted to unjust or unfair treatment of an individual or organisation. In this case, we considered each sub-head of Mr Richards’ complaint in order to reach an overall view as to whether Mr Richards was treated unfairly in the programme as broadcast.

- i) Ofcom began by assessing the complaint that Mr Martin's testimony was not credible, notably because he did not serve in the army for "*nearly a decade*" as he claimed and he could not have been suffering from PTSD as he did not serve in combat. We further assessed the complaint that Mr Martin's claim that he had wet the bed when left alone in a hotel after his treatment at HTW was untrue.

We noted that in its statement, the BBC acknowledged that the programme had inaccurately represented the length of Mr Martin's army service and explained how this had happened, i.e. Mr Martin had said he had served in the army for eight years and Mr Mathias and the programme makers had no reason to doubt his claim. We also noted that Mr Martin's contribution to the programme focused on his experience of receiving NLP therapy at HTW, rather than his army career. In addition, none of his claims about his experience of receiving treatment at HTW related to the length of his army service. We also do not necessarily accept that Mr Martin was not suffering from PTSD simply because he had not served in combat; it is conceivable that he may still have been suffering from this condition, but for other reasons. Given these factors, we did not consider that the error in the description of Mr Martin's length of service would have had a material or adverse impact on viewers' opinions of Mr Richards in a way that was unfair to him.

That said, the factual discrepancies in Mr Martin's testimony may raise issues as to the appropriateness of his inclusion as a case study in the programme more generally. This is because, while the parties accept that NLP therapy was administered by HTW in order to treat Mr Martin's PTSD, it is not unequivocally clear to Ofcom that this was necessarily the health condition from which he was suffering. In particular, it is not clear to us whether checks were made with Mr Martin's medical practitioner to verify his condition before he was included in the programme. The reason this is potentially relevant is because if Mr Martin was mistaken about the length of time he was in the army, he may also have been mistaken in his belief that he was suffering from PTSD. We note the potential for unfairness to arise, in circumstances where Mr Martin was included making statements specifically about HTW's treatment of PTSD when he did not in fact suffer from that condition. On the information before us, however, we have not concluded that the inclusion of Mr Martin's testimony resulted in unfairness to Mr Richards (see our consideration of this matter in the context of the programme as a whole below).

Mr Richards also complained that, Mr Martin, following his treatment at HTW, provided a positive testimonial for the charity's website which contradicted the testimony he gave in the programme. We noted that, in its response, the BBC said that after giving this testimonial to the charity Mr Martin told Mr Mathias, and subsequently the programme makers, that he had been under pressure to provide the testimonial and that his experience of receiving NLP treatment at HTW had actually made him feel worse rather than better.

It is clear from the BBC's response that the programme makers had been aware of the existence of this earlier contradictory testimonial from Mr Martin prior to the broadcast of the programme. Despite this, the testimonial was not referred to in the programme. Further, it does not appear that the programme makers put to Mr Richards the matters raised by Mr Martin as to why the testimonial was given, nor gave Mr Richards an opportunity to respond. Taken in isolation, it is our view that this omission by the programme, had the

potential to result in unfairness to HTW and, through it, Mr Richards. These aspects of Mr Martin's testimony could, and should, have been more thoroughly investigated before being included in this programme. However, for the reasons set out further below, we do not believe that this omission resulted in unfairness to HTW or Mr Richards when considering the programme as a whole.

Ofcom was not in a position to determine whether or not Mr Martin's claim to have wet the bed in the hotel after his treatment at HTW was true. However, we recognised that the broadcaster said that the programme makers had no reason to doubt the testimony of Mr Martin in regard to this matter. Although the note from the hotel regarding this matter (provided to Ofcom by Mr Richards) states that the hotel was not aware of any such incident involving Mr Martin, this does not, in our view, either confirm or challenge the veracity of Mr Martin's statement on this matter. In addition, the focus of this section of the programme – the issue of veterans with PTSD being left in a hotel overnight after receiving treatment for their condition without supervision or support – was in no way linked to the question of whether or not Mr Martin wet the bed.

As noted above, we did not consider that the error in the description of the length of Mr Martin's army service would have had a material or adverse impact on viewers' opinions of Mr Richards in a way that was unfair to him. Further, we do not consider that the inclusion of Mr Martin as a case study in the programme necessarily resulted in unfairness to Mr Richards.

In order to determine whether the inclusion and presentation of Mr Martin's testimony (including the lack of reference to the earlier contradictory testimonial) may have impacted on the overall fairness with which Mr Richards was treated, Ofcom must consider the programme as a whole. It is clear that the programme's claims about HTW's provision of NLP therapy to PTSD sufferers were based on various sources. These included: not only Mr Martin's testimony but also the testimony of the second veteran (see further below); the recordings of the undercover veteran's experience of receiving treatment at HTW (sections of which were included in the programme); and the concerns about the treatment HTW gave to PTSD sufferers raised by two NHS practitioners (Professor Bisson and Dr Kitchiner, who were both experts in the treatment of PTSD and familiar with HTW (see head a) ii) of the Decision below for details)).

Considering the programme as a whole, and given the wide range of sources of evidence on which the programme's claim that HTW should not be using NLP-therapy to treat PTSD sufferers was based, we do not consider that the inclusion of Mr Martin's testimony and the way in which it was presented (including the lack of reference to the earlier contradictory testimonial) would have had a material impact on viewers' understanding of HTW's actions, or those of Mr Richards, which was unfair.

Ofcom next considered whether the inclusion of the statements made by the second veteran in the programme resulted in the unjust or unfair treatment of HTW and the complainant. This is in relation to Mr Richards' two specific claims, first that the second veteran did not receive any treatment from the staff at HTW, and secondly that, to the extent that an independent organisation may have been commissioned to provide treatment to him, the second veteran left "without having any PTSD interventions whatsoever."

The second veteran made a number of contributions to the programme regarding the treatment which he said he had received at HTW.

At the beginning of the programme the second veteran was shown saying:

*"I done two full days, on the third, I think, I left. My wife at the time came to collect me. As I say, when she came through the doors it was such a relief. I was left feeling worse than I did before I attended Healing the Wounds...I was suicidal".*

Later on he said that, following a "debrief" at the start of the course, those attending were told "to stop taking our medication because medication will get in the way of the treatment they're going to offer". He also said that HTW had promised "to eradicate the PTSD".

The second veteran also contributed to the section of the programme about HTW's practice of leaving veterans who attended its courses alone in a hotel after the therapy sessions. He said:

*"The one night I was having a really bad time with the PTSD so I went into the foyer and asked if they could get hold of somebody. I was maybe a bit louder than I would be normally but that was because I'd had some flashbacks and panic attacks".*

At the end of the programme the second veteran said that he felt that he was "on the right road now" but that if he went back to HTW he would "be on the slippery slope of going downhill again" and that "it (attending HTW) delayed me getting proper treatment".

Ofcom noted the disagreement between the parties as to whether or not the second veteran had received PTSD treatment at all and, if so, from whom. Our role was not, however, to determine as a matter of fact whether the second veteran had received the relevant treatment. Rather, the question for Ofcom was whether or not it was reasonable for the programme makers to have understood that the second veteran had received treatment from HTW and therefore whether it was fair for the programme makers to have included the second veteran's testimony in the programme.

We began by considering whether or not it was reasonable for the programme makers to understand that it was HTW who was providing PTSD treatment to the second veteran. We considered, in particular, Mr Richards statement that: "the second veteran on the programme did not receive any form of treatment from the staff at HTW as at that time we commissioned an independent organisation to provide PTSD support, and HTW staff were only under training."

Ofcom has carefully considered the information before it. It appears from the evidence gathered by the programme makers regarding the way in which HTW promoted and carried out its activities (i.e. the testimony from veterans and clinicians and the secretly filmed footage), that the charity presented itself as being responsible for providing PTSD treatment to the veterans who contacted it (including the second veteran). In particular, we understand that at least some of the treatment of veterans with PTSD was carried out on HTW's premises (as shown in the undercover footage), and under the auspices of HTW, where the charity appears to have endorsed the specific

NLP treatment methods that were being administered to its clients. Such treatment included the practice of sending veterans to a hotel by themselves overnight, which HTW indicated (in its pre-broadcast response to the programme) was a routine part of its treatment package. This was made clear to viewers when the narrator said that the charity had told the programme that: *“veterans welcome the chance to have some quality time to themselves and that they are given 24-hour contact numbers”*. We note too, the statement made by Mr Richards in his representations that *“...the charity [HTW] covers all costs incurred for the treatment course: The NLP therapy, the hotel costs inclusive of meals and transport costs...”*. Taking these statements together, it seems apparent that, to the extent that NLP treatment was being provided by third-party agencies, this was for and on behalf of HTW.

Given the information set out above, Ofcom does not consider that the fact that the treatment offered to the second veteran may have been provided by a third party, rather than by HTW's own staff, is material to whether or not the inclusion of the second veteran's claims in the programme resulted in unfairness to HTW.

Ofcom next considered whether it was reasonable for the programme makers to believe that the second veteran had received PTSD treatment at all (whether this was from HTW's staff, or on their behalf). It is clear that the parties do not agree on the length of time which the second veteran attended HTW (in the programme the second veteran told the reporter that he attended HTW for two days while Mr Richards claims that it was for one day only). However, there is no dispute between the parties that the second veteran attended HTW for at least one day and that afterwards he was sent to a hotel.

Mr Richards claimed that no therapy was given to the second veteran on the first day of the relevant treatment course, as that day had been devoted to other tasks. Mr Richards further stated that the second veteran's description of the treatment he said he received at HTW matched that which could be found for the term "NLP" on the internet.

Ofcom noted, however, that the second veteran's testimony about the treatment corroborated the testimony of other veterans to whom the programme makers spoke and, in particular, the secretly filmed treatment recorded by the undercover veteran. In addition, the programme makers were put in touch with the second veteran by Dr Kitchiner, an expert in the treatment of traumatic stress. It is not possible for Ofcom to determine the precise circumstances in which the second veteran spoke to Dr Kitchiner about his attendance at HTW and his reaction to it. What does appear to be clear, however, is that Dr Kitchiner told the programme makers that he had spoken to the second veteran after he (the second veteran) had attended HTW and that he (Dr Kitchiner) believed that the veteran was deeply distressed as a result of the treatment he received at HTW, such that Dr Kitchiner had advised the second veteran to leave as soon as he could arrange to do so.

Taking account of all of these factors (and notwithstanding the dispute about the length of time which the second veteran attended HTW) our view was that it was reasonable for the programme makers to have understood that the second veteran had received treatment at HTW and therefore to have included his testimony in the programme.

- ii) Ofcom considered the complaint that the claim that the NHS considered that HTW should stop providing NLP to veterans with PTSD was untrue.

Given comments made by the reporter and Dr Kitchiner (see relevant section of the “Introduction and programme summary” above), it was clear in our view that the programme claimed that the NHS considered that HTW should stop providing NLP to veterans with PTSD. We therefore assessed the basis of this claim, noting that both Professor Bisson and Dr Kitchiner had told the programme makers that during meetings they had with HTW that they had informed the charity that a relationship with the NHS would only be possible if it stopped offering non-evidence based therapies (namely, NLP) and instead concentrated its efforts on supporting veterans in other ways. Dr Kitchiner had also told the programme makers that a subsequent visit to HTW reinforced his concerns about its clinical governance and supervision and that he expressed these concerns at a national steering group meeting of the AWWHWS - after which Professor Bisson wrote to the charity about these matters. Dr Kitchiner added that despite Mr Richards’ subsequent agreement to stop offering therapy to PTSD sufferers HTW continued to do so and that this had increased his concerns about the charity.

Ofcom recognised that the parties differed in their interpretation of the NICE guidelines and it was not appropriate for us to seek to interpret these guidelines for the purpose of reaching a view on this element of the complaint. We also noted that these guidelines were co-authored, and regularly updated, by Professor Bisson who, as set out above, had written to HTW to express the AWWHWS’ concerns about the charity’s provision of NLP therapy.

We also recognised that, in his representations on the initial Preliminary View, Mr Richards said that NHS England had previously spent more than £900,000 on NLP. However, in our view, this does not mean that it was unreasonable for the programme to have included the claim that HTW used NLP to treat veteran’s suffering from PTSD specifically and that the NHS (through Dr Kitchiner and Professor Bisson) had asked it to stop doing so.

In light of these observations, we took the view that programme makers had a reasonable and credible basis for the inclusion in the programme of the claim that the NHS considered that HTW should stop providing NLP to veterans with PTSD. We also observed that the programme included the charity’s response to this matter when it noted that: *“the charity has been saying in recent months that it no longer treats PTSD sufferers, it supports them”*.

- iii) Ofcom considered the complaint that Mrs Rowlands’ claim was untrue that Mr Richards had asked her to use the death of her son in order to get more money out of fundraisers and was made “to get back at the charity” following their disagreement about the use of the funds she had raised.

As set out in detail in the “Introduction and programme summary” section above, Mrs Rowlands talked about how the plan to have a villa named after her son as part of a permanent home for war veterans suffering from PTSD lifted her spirits. However, she also said that when Mr Richards asked her to get involved he told her that he wanted her to *“hit the public in the guts with your emotional story”* and that she did not think one should: *“say that to a mum who has just lost her son in Iraq”*. Mrs Rowlands’ comments were shown as part of a section of the programme looking at the raising of funds

for this planned home for veterans with PTSD and, in particular, Mr Richards' allegation (subsequently investigated and not continued by the police) that Mrs Rowlands had misappropriated the £8,000 she raised when she gave it to a different military charity after it became apparent that there would be no villa named after her son.

We recognised that Mr Richards' disputed Mrs Rowlands' recollection of her conversation with him and that Mrs Rowlands' had subsequently reaffirmed these recollections and, in particular, that Mr Richards told her he wanted her to "hit people in the guts" with her story to raise more funds. While Ofcom cannot determine exactly what was said during this conversation, we considered that it was reasonable for the programme makers to rely on Mrs Rowlands' testimony, given in her own words and presented as her view of a conversation to which she was a party, particularly in the context of the reporting of a serious allegation which Mr Richards had made against her.

- iv) Ofcom next assessed the complaint that the programme included false allegations relating to financial and accounting issues at HTW. In particular, Mr Richards said a letter from the charity's accountants ("LHP") (a copy of which was provided to Ofcom) clearly showed that the majority of the charity's expenditure was used for the treatment of PTSD sufferers and that he and his wife had: "*sought advice in relation to a number of areas to ensure that they [were] compliant under both the Charities Act and [the] Companies Act*". He also said that it was misleading to include Mr Price in the programme because he was speaking on his own behalf and not in his capacity as a member of the of the Institute (as implied by the programme), and because he is a chartered statistician not a qualified accountant.

As set out in the "Introduction and programme summary" section above, Mr Price said that it was not clear from the accounts: "*how much money has actually been spent on counselling and post-traumatic stress work with ex-servicemen how much money has actually been spent on counselling and post-traumatic stress work with ex-servicemen*". In our view, it was clear from the programme that this was Mr Price's own opinion and that he had reached it after studying the accounts.

We noted that the BBC acknowledged in its statement that Mr Price is a chartered statistician. However, its response to this complaint also said that he is an expert in the charitable sector; and, that he has specialist knowledge of book-keeping practices in charities. In addition, he told the programme makers that someone looking at HTW's accounts would draw the conclusion that the charity believed that the business of fund-raising was a charitable activity in itself, which it is not. He indicated that HTW's accounts did not meet the Statement of Recommended Practice ("SORP"). We also noted that in saying "*Mr Price is the Chair of the Institute of Fundraising Cymru*" the programme gave an accurate description of Mr Price's position.

With respect to the SORP, we understand that this is a set of guidelines published by the Charity Commission for accountants working in the charity sector. Compliance with these guidelines is, in our view distinct from whether or not a body is complying with its the legislative requirements under the Charities Act and the Companies Act. Therefore, in expressing his opinion that HTW did not comply with the SORP, we do not believe that Mr Price was making a statement one way or the other about the charity's compliance with his legislative responsibilities.

As set out in the Decision at head b) below, we considered that Mr Richards was given an appropriate and timely opportunity to respond to the claims made about HTW. In a letter dated 10 October 2013 (see head b) below for details), the programme makers first asked Mr Richards to talk to them about the various companies he had set up since 2008 one of which was HTW. In particular they asked him to talk about those companies' role, function and accounts and added: "Concerns have been raised that the purposes to which charitable funds are being put is [sic] unclear and that they are not properly accounted for." In our view Mr Richards could have responded to this letter by providing the programme with LHP's view on these matters including its position regarding HTW's accounts. However, he did not do so. Rather Mr Richards' response in this regard was restricted to Forces Aid (both the foundation and website). In addition, as noted in the Decision at head b) below, Mr Richards did not request any extra time in which to draft his response to the programme by, for example, consulting his accountants.

For these reasons, we concluded the programme makers had a reasonable and credible basis for the inclusion in the programme of Mr Price's claims about HTW's accounts, and that viewers would have understood the nature of Mr Price's past experience and the basis on which he formed his opinions. We also considered that the broadcaster had taken reasonable care to satisfy itself that, in relation to the claims relating to financial and accounting issues at HTW, material facts were not presented or omitted or disregarded in a way that portrayed Mr Richards unfairly.

- v) Ofcom considered the complaint that the claim in the programme that the Charity Commission was investigating HTW was false.

We noted that towards the end of the programme, the reporter said that SSAFA had told the programme that it had not received any donations from Forces Aid. He also said that the Charity Commission was investigating (see "Introduction and the programme summary" section above). While Ofcom noted the points made by the BBC in relation to the Second Revised Preliminary View, that the term "investigating" may encompass a range of activities, the implication, which Ofcom believed may reasonably have been drawn by viewers in the context of this programme was that the Charity Commission was formally investigating the claim by Forces Aid (both the Foundation and the associated website) to have supported SSAFA. While these matters related directly to Forces Aid, the programme clearly associated them with HTW by saying that SSAFA had told HTW, rather than Forces Aid, *"to remove its logo from the Forces Aid.com website to ensure no endorsement or recommendation is implied"*.

We noted that on 31 October 2013, Mr and Mrs Richards received an email from the Charity Commission. This was sent in response to an email from Mr Richards on 21 October 2013 (i.e. one day prior to the broadcast) and stated: "we currently do not have any regulatory concerns regarding the charity and are not investigating [it]".

We noted too, that some days prior to the broadcast, the programme makers approached the Charity Commission regarding their concerns about Forces Aid and HTW. According to the BBC, at this time the Charity Commission's press office informed it that it was investigating the issues raised in the programme in connection with Forces Aid and the accounting practices of HTW. Further, the BBC believed that this was confirmed in an email to the

programme makers dated 18 October 2013 in which the Charity Commission said:

*“The information you have provided has been passed to our operations team and we are currently assessing your concern regarding Forces Aid Foundation, its status and activities. This is not currently a registered charity and we are assessing what, if any, regulatory action should be taken.*

*Separately, we are considering the questions you raised about the accounts of Healing the Wounds, how they report on their fundraising costs and whether regulatory action is required in relation to this”.*

Taking account of the information set out above and the implication that viewers may have reasonably drawn from the programme, it is our view that the programme overstated the position when it claimed that the Charity Commission was “investigating” (whether this comment was understood to refer solely to Forces Aid or also to HTW). On our reading, it appears that the email above was an acknowledgement by the Charity Commission of the information that had been passed to it, rather than a confirmation that it was in fact formally investigating. At the stage that this email was sent, it seems that the Charity Commission was still assessing the claims which had been made by the programme makers about both HTW and Forces Aid, before deciding whether or not to launch a formal investigation. In particular, we noted that the Charity Commission specifically said that it was considering “whether any regulatory action is required” in relation to the HTW accounting practices, not that it had in fact opened an investigation.

We recognised that, as set out in the BBC’s response, the Charity Commission contacted HTW on 10 December 2013 and advised it to amend its accounting practices in accordance with SORP. However, we do not consider that this indicated that the Charity Commission was investigating the charity and/or Forces Aid, as opposed to making an initial assessment of these matters, at the time of the broadcast.

On the basis of the facts above, it appears to Ofcom that the programme makers contacted the Charity Commission with its concerns and that the Charity Commission then confirmed that it would consider whether or not any regulatory action was required. It was therefore inaccurate for the programme makers to suggest that a formal investigation by the Charity Commission was underway. In light of these considerations, we concluded that the inclusion of the implication that at the time of the broadcast the Charity Commission, was formally investigating Forces Aid and possibly, by association HTW, was incorrect and had the potential to result in unfairness to Mr Richards.

Ofcom must, however, view this implication in the overall context of the programme as a whole. Even if the Charity Commission was not formally investigating HTW or Forces Aid at the time of the broadcast, in Ofcom’s view, it appeared that the Commission was at least considering whether or not some regulatory action, which may have included the launch of a formal investigation, was necessary. Further, it is not clear that, to any extent that the programme overstated the position with respect to the investigation, this materially undermined the central premise of the programme, which was that HTW should not be using NLP to treat PTSD. For these reasons, we do not consider that the inclusion of the claim that the Charity Commission was

formally investigating HTW or Forces Aid would have had a material detrimental impact on viewers' understanding of HTW or Mr Richards' actions in a way that was unfair. Therefore, we concluded that Mr Richards was not treated unfairly in this regard.

Having assessed each sub-head of head a) of the complaint, Ofcom concluded that there were concerns about the accuracy of some aspects of the programme. However, we have also taken the view that as regards each of these sub-heads, the material facts overall were not presented, omitted or disregarded in a way that portrayed Mr Richards unfairly in the programme as broadcast, having regard to the central premise of the programme.

Ofcom also carefully assessed the parts of the programme relating specifically to Mr Richards and HTW as a whole, to reach a view as to whether the programme in its entirety was unfair. We evaluated whether the various examples taken together created a cumulative effect that might portray Mr Richards in a way that was unfair and whether this resulted in unfairness to Mr Richards. In particular, we noted that what was, in our view, the most serious of the claims about HTW made by the programme – i.e. that the charity's use of NLP therapy to treat PTSD sufferers was not based on accepted clinical evidence but could have resulted in negative consequences for the veterans concerned – was based on a range of credible sources. After careful consideration, and for all the reasons set out above, Ofcom found that, when taken as a whole, the portrayal of HTW did not result in unfairness to Mr Richards in the programme as broadcast.

- b) Ofcom then considered Mr Richards' complaint that that he was not given an appropriate and timely opportunity to respond to the claims made about HTW. Mr Richards said that just over a week was insufficient to respond to the allegations made by the programme makers. He added that the programme had been in development for several months.

In considering this head of complaint, Ofcom took particular account of Practice 7.11 which states that, if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

As noted above, the programme included several allegations about the way in which HTW operated, notably its provision of NLP therapy to treat PTSD sufferers and its accounting practices. We considered that, given the serious nature of these claims, in accordance with Practice 7.11, the programme makers needed to offer HTW an appropriate and timely opportunity to respond to the claims being made about it.

It is important to note that the length of time taken to produce a programme is not relevant to the consideration of whether or not an opportunity to respond is timely. This rests upon the circumstances surrounding that opportunity and, in particular, whether it was reasonable to expect the individual or organisation concerned to provide a full and considered response to the claims made in the time allotted to them.

It is clear from both the initial submissions and the subsequent representations that the parties to this complaint disagree with regard to whether or not the programme makers gave HTW a clear explanation of the nature and concerns of the programme and a suitable opportunity to respond to those concerns.

However, Ofcom considered the evidence available, namely the correspondence between the programme makers and Mr and Mrs Richards.

Ofcom first noted the timeline of the exchange of correspondence between the programme makers and Mr and Mrs Richards (copies of which were provided to Ofcom). On 10 October 2013, the programme makers wrote to both Mr and Mrs Richards setting out the nature of the claims the programme intended to make about HTW. A follow-up email dated 15 October 2013 described the testimony given by several of the contributors to the programme. The first letter offered Mr and Mrs Richards the opportunity to be interviewed for the programme and, initially, Mrs Richards said that she, but not her husband, would be interviewed. She later changed her mind, but Mr Richards provided a written response to the claims made about HTW on 18 October 2013.

We recognised that Mr Richards complained that “just over a week” was insufficient time for HTW to respond to the programme makers’ claims. However, we consider that seven calendar days was, in the circumstances of this case, a reasonable period in which to expect an organisation to draft responses to questions about its own practices. This was especially so, given that, as the BBC set out in its response, several of the concerns raised in the programme had been put to Mr Richards in public meetings that had taken place in recent years and prior to broadcast the programme.

In addition, Ofcom noted that HTW did not request any extra time in which to respond, but did, in fact, provide a response to the claims made about it to the programme makers four days before the programme was broadcast.

Taking into account the factors noted above, we took the view that HTW was given an appropriate and timely opportunity to respond to the claims made about it in the programme. Therefore, Ofcom found that there was no unfairness to Mr Richards in this respect.

#### Unwarranted infringement of privacy

In Ofcom’s view, the individual’s right to privacy has to be balanced against the competing rights 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 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- c) Mr Richards complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of him was filmed secretly by a veteran posing as a PTSD sufferer without his permission.

In considering this part of the complaint, Ofcom had regard to Practices 8.5 and 8.13. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or be otherwise warranted. Practice 8.13 says that surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if: there is *prima*

*facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme. Ofcom also has regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

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

In its statement, the BBC stated that it believed that the surreptitious filming had been warranted because there had been a clear public interest in investigating serious allegations, which had been made by a range of people, about how HTW was treating very vulnerable individuals with mental health issues. It argued that filming the complainant secretly (and the subsequent inclusion of some of this footage in the programme) was necessary in order to establish and demonstrate whether the allegations were substantiated.

The response stated that concerns had been raised by a number of health professionals that in using NLP to treat veterans with PTSD, the charity was risking further harm to these individuals. Further, the programme makers had been informed that, despite having given undertakings that it would stop doing this, HTW had continued to provide a clinically unproven treatment with the potential for harm in certain circumstances. In addition, Ofcom understands that the programme makers gathered the first-hand testimony of the two veterans who had received NLP therapy from HTW prior to surreptitiously filming at HTW. In Ofcom's opinion this information gathered by the programme makers before the commencement of surreptitious filming amounted to *prima facie* evidence against HTW. We then considered the other requirements of Practice 8.13 needed to warrant surreptitious filming. In our opinion, the programme makers had reasonable grounds to believe that, by having an undercover veteran posing as a PTSD sufferer and using hidden cameras to film his interactions with Mr and Mrs Richards, further evidence could be obtained in relation to the claims made about HTW's treatment of veterans with PTSD.

Our view was also that attempts to obtain evidence in other ways, such as approaching Mr and Mrs Richards directly, would be highly unlikely to be successful. Further the first-hand evidence of Mr Richards talking about "*clinical trials*" being conducted at HTW (and also of Mrs Richards providing treatment) added to the credibility and authenticity of the programme. Therefore, in Ofcom's view, the use of surreptitious filming was warranted and the means of obtaining the material had been proportionate.

We then assessed the extent to which Mr Richards had a legitimate expectation of privacy in the circumstances in which he was filmed, i.e. surreptitiously by an undercover veteran. As stated in the Code, "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question". We noted that the filming took place in the offices of HTW. Ofcom observed that the conversation between the complainant and the undercover veteran concerned the filling in of an HTW assessment of treatment form, and Mr Richards' implication that the form was for a clinical trial and would be part evidence to show people that "*it* [HTW's NLP therapy for PTSD sufferers] *works*". Mr Richards was unaware that secret filming was taking place during the

conversation. It is Ofcom's view that, ordinarily, conversations of this type (i.e. conducted during the course of business and in which the parties felt that they could speak openly and freely) could reasonably be regarded as being confidential and therefore could attract an expectation of privacy. However, from the footage included in the programme, Mr Richards did not appear to disclose any private information about his personal life, nor any private and sensitive business or financial information about the charity.

Therefore, taking these factors into account, Ofcom concluded that Mr Richards had a legitimate expectation of privacy in relation to the surreptitiously filmed material, but that this expectation was limited by the fact that the content of the conversation was not particularly private or sensitive in nature.

Ofcom went on to consider whether it was warranted to infringe Mr Richards' expectation of privacy. The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health or safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

As noted above, we considered that there was genuine public interest in the programme's investigation into the allegations made by several individuals and organisations about HTW's provision of NLP therapy because the purpose of the investigation was to determine how HTW was treating very vulnerable individuals with mental health issues. As stated above, the programme makers had gathered prima facie evidence against HTW in relation to its provision of NLP to PTSD sufferers, and had reasonable grounds to believe that the surreptitious filming of Mr Richards might provide further evidence in relation to the allegations that had been made. Therefore, in this instance, there was justification for gathering more evidence to corroborate the claims that had been made about HTW.

On balance, and given all the factors set out above, Ofcom considered the broadcaster's right to freedom of expression and the public interest in obtaining footage of the way in Mr and Mrs Richards operated HTW (including the actual provision of therapy and the charity's internal assessment of the efficacy of this therapy) that corroborated the allegations made in the programme, outweighed Mr Richards expectation of privacy.

- d) Mr Richards complained that his privacy was unwarrantably infringed in the programme as broadcast because secretly filmed footage of him was broadcast without his permission.

In relation to the part of the complaint, we had regard to Practices 8.6 and 8.14 of the Code. Practice 8.6 of the Code states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Having already reached the view that the use of surreptitious filming to obtain the material was warranted, Ofcom next considered the extent to which Mr Richards

had a legitimate expectation of privacy in the broadcast of the material in the programme. We again took account of the circumstances in which Mr Richards was filmed as well as the actual material that was broadcast. Mr Richards was unaware that his conversation with the undercover veteran was filmed. Again, Ofcom took the view that conversations of this type, i.e. conducted during the course of business and in which both parties felt they could speak freely and openly, could reasonably be regarded as being confidential and therefore could attract an expectation of privacy. However, Mr Richards did not disclose anything particularly private in relation to either his personal life or the charity in the footage broadcast during the programme. Taking these factors into account, Ofcom considered that Mr Richards had a legitimate expectation of privacy in relation to broadcast of the footage, but that this expectation was limited because the content of the conversation was not particularly private or sensitive in nature.

Ofcom next took a view as to whether broadcasting this footage was warranted. As considered under head c) above, an individual's privacy must be balanced against the competing rights of broadcasters to freedom of expression. Neither of these rights has precedence over the other and, where there is conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right.

Ofcom carefully balanced Mr Richards' right to privacy in relation to the broadcast footage obtained through surreptitious filming against both the broadcaster's right to freedom of expression and the audience's right to receive information in the public interest. We considered that there was a genuine public interest justification in broadcasting Mr Richards' comments about the charity's assessment of the treatment it provided to PTSD sufferers because the programme was investigating allegations that the charity was providing inappropriate treatment to vulnerable military veterans, and the secretly filmed footage provided valuable evidence of what HTW was doing and Mr Richards' knowledge and involvement.

Therefore, on balance, and taking all the factors set out above into account, Ofcom considered that the broadcaster's right to freedom of expression, and the public interest in broadcasting the material in order to corroborate the allegations made in the programme, outweighed Mr Richards' limited expectation of privacy in relation to the broadcast of the footage.

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

## Not Upheld

### Complaint by Mr John Ashworth

*Call the Council, BBC 2, 22 May 2014*

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#### Summary

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

The programme included a photograph of Mr Ashworth apparently fly-tipping and footage of Mr Ashworth being interviewed by officials in relation to the incident. Mr Ashworth's face and vehicle number plate were obscured in the photograph shown and, in relation to the interview footage, only a brief image of his arm and hand could be seen. Mr Ashworth was not named in the programme, nor was his voice heard.

Ofcom found that:

- Notwithstanding that Mr Ashworth was not cautioned until after the programme was broadcast, as he was not identifiable in the programme as broadcast, the programme was not unfair to him. The broadcaster had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to him.
- Mr Ashworth's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme or in the programme as broadcast because we found that he did not have a legitimate expectation of privacy in the circumstances of this case.

#### Introduction and programme summary

On 22 May 2014, BBC 2 broadcast an edition of *Call the Council*, an observational documentary series following the work of officials working for Tameside Metropolitan Borough Council ("the Council") in Greater Manchester. The programme examined, in two parts, a story about fly-tipping and how the Council's Environmental Services department dealt with the problem.

The first part of the story, which was approximately three minutes in duration, began with a series of statistics about fly-tipping. The programme then followed an Environmental Services officer, Mr Mike Robinson, as he investigated a particular case of fly-tipping. The programme's narrator said:

*"...so catching and convicting culprits is not easy. But today, Environmental Services officer Mike Robinson has struck lucky".*

A photograph was then shown of an individual (Mr Ashworth) appearing to unload a large white object (a fireplace surround) from the back of a flat-bed truck. The individual's face and the vehicle's number plate were blurred. This photograph was shown a number of times in the programme. Mr Ashworth was not named or identified in the programme.

Mr Robinson said:

*“Sometimes we get a statement that somebody has been caught fly-tipping. We don’t usually get a photograph that supports that. Certainly not as clear as this one here”.*

The programme then followed Mr Robinson as he went to speak to the witness who had taken the photograph.

Later in the programme, the second part of the story dealing with fly-tipping, which was approximately one and a half minutes in duration, was shown. It began with the narrator saying:

*“Back at Council HQ, enforcement officer Mike [Mr Robinson] has tracked down the man caught fly-tipping on camera. He’s used the man’s vehicle registration to find his address and has invited him in for an interview with his colleague, Louise Ashton”.*

Footage was shown of Ms Ashton and Mr Robinson inside an interview room within the council’s offices preparing for the interview. Ms Ashton said:

*“We’re here today to conduct an interview under caution with a gentleman who’s suspected of being involved in a fly-tipping in the Mossley area. We’ve got evidence we want to put to him. Photographs we want to show him and really, basically, it’s his opportunity to give his version of events”.*

Footage of the interview taking place was then shown which appeared to have been filmed through window blinds from outside the interview room. Although Mr Ashworth’s face was not shown, his arm and hand could be seen as he inspected the photograph described above. This footage was approximately ten seconds in duration.

At this point, the narrator said:

*“The man admits to dumping the fireplace, but has an unusual explanation”.*

Ms Ashton then explained:

*“He claims that he went on to that land a couple of days previous and found that fireplace, took it to his daughter’s house to use as a fire surround at her house and she didn’t approve, she didn’t like it and she told him to take it back to where he got it from. So, a couple of days later, he did and what the photographs we’ve got are him putting it back where he found it. We have pointed out to him that tough, you’ve took responsibility for it”.*

The narrator then said:

*“On this occasion, Louise and Mike decided to caution the fly-tipper, but if he’s caught again he could face the full force of the law”.*

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

### Unjust or unfair treatment

- a) Mr Ashworth complained that he was treated unjustly or unfairly in the programme as broadcast because the programme's narrator stated that he had received a caution for fly-tipping. Mr Ashworth said that this was not the case and that at the time of broadcast no attempt had been made to caution him. He added that since the programme was broadcast, he had been stopped and abused in the street and the programme had damaged both his reputation and his standing within the local community.

In response, the BBC stated its belief that the programme accurately reported the circumstances in which Mr Ashworth dumped a fire surround onto open ground from the back of his van. It said that prior to broadcast, the programme-makers were told by the Assistant Executive Director for the Council's Environmental Services that Mr Ashworth had been issued with a formal caution for his actions. As a result, the BBC said that a relevant line of script was included, quoting the line: *"On this occasion Louise and Mike decide to caution the fly tipper..."*.

The BBC stated its belief that it was reasonable to rely upon and to reflect the information provided by the Council and that the programme makers had taken reasonable care to ensure that material facts were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Ashworth.

The broadcaster said that the Council subsequently informed it that the process of issuing a formal caution had not been completed at the time of broadcast. However, it said that the Council had said that Mr Ashworth had accepted a formal caution for his actions at a second interview with council officers and his solicitor on 18 June 2014.

The BBC expressed its regret that the programme indicated Mr Ashworth had received a formal caution at the time of broadcast but said it did not accept that this was unfair to him. It said Mr Ashworth had already admitted to fly-tipping for which he received, and accepted, a formal caution at a subsequent meeting with the council.

The BBC also pointed out that the programme did not name or identify Mr Ashworth and so viewers would have been unaware that he was the individual involved.

### Unwarranted infringement of privacy

- b) Mr Ashworth complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he was filmed during a formal interview under caution with Council officials (at which his solicitor was present) without his consent. Mr Ashworth said he was unaware he had been filmed until a member of the programme's production staff informed him after the interview had taken place.

In response, the BBC said that Mr Ashworth was initially filmed in a public waiting area at the Council Offices. It noted that the camera crew were filming with the permission of the Council and were in full view of all those walking through the building and using the public waiting room. It stated that the filming occurred in a public place where people would have had no legitimate expectation of privacy.

The BBC also said that the programme makers explained to Mr Ashworth they were filming for a television documentary and described the nature of the programme to him. It said that before his interview with the Council officers, Mr Ashworth was asked to give his permission for the interview to be recorded, but he declined. The BBC then said that the programme makers therefore took a decision to film a limited number of shots from outside the interview room to illustrate the formal nature of the interview, but not to record anything which was said during the interview.

The BBC stated that the interview took place in a room immediately off the central public waiting area and that Mr Ashworth was clearly visible to any member of the public using the area. It said that Mr Ashworth could not have had a legitimate expectation of privacy with regard to his presence in the interview room. The BBC stated that the effect of the filming which took place was inconsequential to Mr Ashworth and that any infringement of his privacy was minimal. It said that the footage did not record any of the conversation which took place inside the meeting room and it did not reveal any action or behaviour which might be regarded as inherently private.

- c) Mr Ashworth complained that his privacy was unwarrantably infringed in the programme because the programme broadcast footage of him during a formal interview under caution with Council officials (at which his solicitor was present) without his consent. Mr Ashworth said that he was asked for his consent for the footage to be broadcast, but had refused. At no point, Mr Ashworth said, did the programme makers indicate that the footage would still be used.

In response, the BBC noted that the programme included approximately ten seconds of material filmed during the formal interview. It said that the footage was filmed from outside the interview room; that the material showed less detail than would have been visible to any person using the Council's public waiting area; that none of what was said was recorded; and that viewers would have been unable to identify Mr Ashworth from what was broadcast, in that the footage showed only a part of his right forearm and hand through a window obscured by horizontal blinds. The BBC stated that the broadcast footage did not reveal any action or behaviour which might be regarded as inherently private.

The BBC said that any infringement of Mr Ashworth's privacy was warranted in the public interest. It believed there was a legitimate public interest in showing the formal nature of the interview process.

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

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Mr Ashworth should not be upheld. Both parties were given the opportunity to comment on the Preliminary View.

Neither Mr Ashworth nor the BBC made representations on Ofcom's Preliminary View.

### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of

privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions. We also examined the untransmitted footage taken of Mr Ashworth's interview in the Council's offices

### Unjust or unfair treatment

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").

- a) Ofcom considered the complaint that Mr Ashworth was treated unjustly or unfairly in *Call the Council* because the programme's narrator stated that he had received a caution for fly-tipping when this was not the case at the time of broadcast.

In assessing this head of complaint, Ofcom had particular regard to whether reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Ashworth (as outlined in Practice 7.9 of the Code).

Ofcom first noted what the programme said in relation to the individual (i.e. the complainant) who had been interviewed by the Council officials in relation to the fly-tipping incident. After the interview had been conducted, the programme's narrator explained that:

*"On this occasion, Louise and Mike decide to caution the fly-tipper..."*

Mr Ashworth said in his complaint that at the time of the broadcast, he had not been issued with a formal caution for fly-tipping.

Ofcom noted that, in its response to the complaint, the BBC acknowledged that the process of issuing a formal caution to Mr Ashworth had not in fact been completed at the time of broadcast. The BBC said that it had relied upon a statement given to the programme makers by the Assistant Director of the Council's Environmental Services prior to broadcast that Mr Ashworth had been issued with a formal caution and that it was on this basis that the statement in the programme was included. The BBC said that the Council subsequently made clear to the programme makers that the caution was actually issued (and accepted by Mr Ashworth) on 18 June 2014, which was almost a month after the programme was broadcast. On this basis, it appeared that the statement quoted above may not have been correct at the time that it was broadcast.

We then considered, in light of the fact that Mr Ashworth had not been formally cautioned at the time of broadcast, whether the inclusion of the statement in the programme resulted in unfairness to him. Ofcom considered the extent to which

Mr Ashworth may have been identifiable as the fly-tipper featured in the programme as broadcast. In doing so, we took into account what was actually shown of Mr Ashworth in the programme and what, if any, information was disclosed that could reasonably lead to him being identified as the individual suspected of fly-tipping.

We noted that the photograph apparently showing an individual fly-tipping was taken from a distance and that both the individual's face and vehicle registration were obscured. We noted too that there was nothing particularly distinctive about the individual's physical appearance (other than it being a man) and clothing, or the flat-bed truck which also did not appear to have anything particularly distinctive about it (other than that it was white in colour), that could be reasonably regarded as rendering the individual identifiable to the ordinary viewer as being Mr Ashworth. We also noted that the programme did not reveal the exact location as to where the suspected fly-tipping took place, other than it was in the "*Mossley area*" and at no point did the programme suggest that the individual had any connection with that area. We also noted the footage shown of the individual being interviewed in the Council offices that only a hand and arm could be seen holding an obscured photograph. The individual was not named in the programme, nor was any distinguishing information about the individual's identity given, being referred to simply as "*the man caught fly-tipping*".

Given the steps that had been taken by the BBC to obscure Mr Ashworth's identity so that he would not be recognisable to an ordinary viewer, Ofcom's decision is that, to the extent that the statement quoted above may not have been accurate at the time it was broadcast, this did not result in unfairness to Mr Ashworth. We also noted that, in any event, a formal caution was in fact issued to the complainant, albeit subsequent to the broadcast itself.

Ofcom also considered the steps that the programme makers took in order to verify the accuracy of the information included in the programme as broadcast. While the information provided by the Assistant Director of the Council's Environmental Services may not have been correct at the time that the programme was broadcast, it did not seem unreasonable to Ofcom that the programme makers relied upon this. We noted that the process of cautioning the complainant appeared to have commenced at the time of broadcast and that the caution was given (and accepted by Mr Ashworth) a few weeks after the programme was broadcast.

Taking account of all the factors above, we concluded that the broadcaster took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair.

Ofcom concluded, therefore, that Mr Ashworth was not treated unjustly or unfairly in the programme as broadcast.

#### Unwarranted infringement of privacy

The individual's right to privacy has to be balanced against the competing rights 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 the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- b) Ofcom considered Mr Ashworth's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast, in that he was filmed during a formal interview under caution with local council officials, at which his solicitor was present, without his consent.

In assessing this head of complaint, Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

In considering whether or not Mr Ashworth's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first considered the extent to which he had a legitimate expectation of privacy in the circumstances in which he was filmed.

Ofcom noted from the untransmitted material provided by the broadcaster that Mr Ashworth was filmed entering the Council building and was heard talking with another man in the public waiting area outside the interview room. Mr Ashworth was filmed as he waited in this public waiting area and then entered the interview room with his solicitor to talk with the council officers. We noted too that the unedited footage showed Mr Ashworth and his solicitor discussing his case with the Council officials, but that the filming was conducted from outside the interview room and in the public waiting area. The footage appeared to Ofcom to have been filmed openly and in full view of anyone present, including Mr Ashworth, in the public waiting area. We also took into account that none of the conversation between the complainant, his solicitor and the Council officials was recorded by the programme makers.

Ofcom recognised that the filming of an individual in circumstances in which he or she is participating in a formal interview with officials in relation to an alleged criminal offence could potentially give rise to a legitimate expectation of privacy.

Mr Ashworth declined the programme-maker's request to film his interview and the filming was then conducted outside the interview room, openly and in a place where the public had ready access. It appears to Ofcom that none of the material that was recorded disclosed any of the conversation that was taking place inside the interview room, or that the footage that was captured could reasonably be regarded as being particularly private or sensitive to Mr Ashworth. On this basis, we found that Mr Ashworth did not have a legitimate expectation of privacy in relation to the obtaining of material included in the programme as broadcast. Having reached this conclusion, it was not necessary for us to consider whether any infringement into the privacy of Mr Ashworth was warranted.

Therefore, Ofcom considered that Mr Ashworth's privacy was not unwarrantably infringed in connection with the obtaining of material for inclusion in the programme.

- c) Ofcom considered Mr Ashworth's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that a formal interview under caution with local council officials (at which his solicitor was present) was included in the programme without his consent.

In assessing this head of complaint, Ofcom had regard to Practice 8.6 of the Code which states that if a broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom first considered whether Mr Ashworth had a legitimate expectation of privacy in relation to the material broadcast in which he was filmed from outside the interview room and his arm was seen holding an obscured photograph of the fly-tipping incident.

Taking into account the factors detailed above, Ofcom considered that, owing to the fact that none of the actual conversation that had taken place inside the interview room was broadcast, and that the programme makers had taken steps to obscure Mr Ashworth's identity in the programme (as set out in detail in head a) above), he was not identifiable in the programme as broadcast. We therefore considered that, in the circumstances of this case, Mr Ashworth did not have a legitimate expectation of privacy in relation to the footage of the interview included in the programme as broadcast. Having reached this conclusion, it was not necessary for Ofcom to consider whether any infringement into the privacy of Mr Ashworth was warranted.

Ofcom considered, therefore, that Mr Ashworth's privacy was not unwarrantably infringed in the programme as broadcast.

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

## Not Upheld

### Complaint by Miss Jade Oakley

*Saints and Scroungers, BBC 1, 2 October 2014*

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#### Summary

Ofcom has not upheld Miss Jade Oakley's complaint of unjust or unfair treatment in the programme as broadcast.

The programme included two graduation photographs of Miss Oakley with her parents, which were shown in reference to her father's attempt to hide assets from the police by giving a house to his daughter Miss Joanne Oakley (the complainant's sister).

Ofcom found that despite the error in using the wrong photographs in the programme the broadcaster had taken reasonable steps not to identify the complainant and had not presented, disregarded or omitted material facts in a way that was unfair to her.

#### Introduction and programme summary

On 2 October 2014, BBC1 broadcast an edition of *Saints and Scroungers*, a series which, according to the programme's webpage, follows "fraud officers as they bust the benefits thieves stealing millions of pounds every year, while charities and councils track down people who actually deserve government help".

This episode followed the investigation, and subsequent conviction, of the complainant's parents, Mr Stephen Oakley and Mrs Lorraine Oakley. It began with an overview of the cases to be examined in the programme and included various photographs of Mr and Mrs Oakley. These were accompanied by the programme's narrator stating that: "*A respected businessman enlists the help of his wife to hide his assets after a million pound fraud*".

Later in the programme, Mr Oakley's case was examined in more detail. The programme's narrator said that in 2012, Mr Oakley was the subject of criminal investigation and described how Mr Oakley's "*respectable reputation soon came tumbling down*" after he was charged with money laundering as part of a multi-million pound payroll fraud. It explained that a restraining order was placed on Mr Oakley's assets and his bank accounts were frozen. The narrator further explained that police officers also monitored his business activities to ensure that he did not reduce his wealth in an attempt to "*lessen the amount he'd have to pay back to the taxpayer*".

Further into the programme, the narrator said that Mr Oakley had dissolved his business and had given his assets to his wife. A photograph of Mr and Mrs Oakley with Miss Oakley at her graduation was then shown. While Miss Oakley's face was obscured, the photograph was accompanied by the following commentary:

*"And Oakley didn't just involve his wife in his criminal activities. While attempting to hide his assets he also gave a house in Poole, Dorset, to his daughter".*

The "*daughter*" referred to was a reference to the complainant's sister, Miss Joanne Oakley, who did not appear in the photograph.

Immediately following this, Detective Superintendent Shaun Edwards, who had been involved in the investigation, said:

*“That house would otherwise have been seized as part of the confiscation hearing, so in terms of the money we would have said that some of that money used to buy that house or the value in that property was the result of stealing the money from the taxman in the original offence. But by him gifting part of his house to other family members he attempted to hide that”.*

The narrator said that these actions breached Mr Oakley’s restraining order and constituted a criminal offence. A photograph was then shown of Mr Oakley with his grandchildren, which was followed by the contribution of Detective Sergeant Derek Tinsley, another police officer who had been involved in the case, who said:

*”You think you’d like to protect your family, you know and the children, but here he is, you know, exposing them to the full extent of the law by utilising them to try and hide, deal with his assets”.*

A second photograph of Mr and Mrs Oakley with the complainant at her graduation was then shown as the narrator stated:

*“The house that he gave to his daughter was then sold for just under quarter of a million pounds”.*

Detective Sergeant Tinsley then stated that the money was siphoned to Mr Oakley’s business expenses which had allowed him to carry on living his life as normal. The narrator stated that the police had gathered enough evidence to suggest that Mr Oakley was deliberately reducing his wealth and both Mr and Mrs Oakley were arrested and questioned. The narrator said that Mr Oakley claimed to be unaware of the restrictions of the restraining order on his assets.

However, following this, Detective Sergeant Tinsley stated:

*“He [Mr Oakley] set about to try and frustrate it [i.e. the restraining order] in order to try and save himself, and his family, from the distress of having nothing”.*

Immediately after this, Detective Superintendent Edwards was shown describing how the police monitoring of Mr Oakley’s business activity illustrated where his wealth had been diverted and how this was used against him at his trial. Mr Oakley was charged with conspiracy to defraud and perverting the course of justice. The narrator also explained that Mr Oakley was subsequently found guilty of breaching his restraining orders and sentenced to two years imprisonment, while his wife received a suspended sentence. No mention was made in the programme about whether or not the complainant’s sister, Miss Joanne Oakley, faced a criminal prosecution in relation to Mr Oakley’s activities.

Miss Oakley’s face was obscured in the two photographs of her shown in the programme and she was not named in the programme.

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

Miss Oakley complained that she was treated unjustly or unfairly in the programme as broadcast because the programme included a photograph of her whenever a reference was made to her sister’s alleged involvement in a fraud case. Miss Oakley said that her sister was not found guilty of fraud; however, the programme did not

make this clear. Miss Oakley said that her inclusion in the programme inferred wrongly that she had been involved in fraudulent activity which had the result of negatively affecting her business.

In response, the BBC said it regretted that a photograph of Miss Oakley was shown in error in connection with Mr Oakley's crime. However, the BBC said that the complainant was not identified in any way: her name was not mentioned and her face was completely obscured. The BBC stated that she would only, therefore, have been identifiable to family and friends who were aware of her graduation and who were, as a consequence, more likely to know that she had not been prosecuted. Furthermore, the BBC said that there was no suggestion in the programme that either daughter had been knowingly involved in their father's efforts to conceal his assets. The BBC said it therefore believed that no unfairness arose from this error.

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

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment made by the Council should not be upheld. Both parties were given the opportunity to comment on the Preliminary View.

While Miss Oakley made representations on the Preliminary View, we took the view after careful consideration that her comments were not directly relevant to the complaint as entertained or raised points that are already addressed and reflected in the Preliminary View. Therefore, Ofcom's view that her complaint not be entertained remained unaltered.

The BBC made no representations on Ofcom's Preliminary View.

### **Decision**

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and both parties' written submissions. We also took account of the representations made by Miss Oakley in response to Ofcom's Preliminary View on this complaint (which was not to uphold). We concluded that Miss Oakley had not raised any issues to persuade Ofcom to alter its decision 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 considered the complaint that Miss Oakley was treated unjustly or unfairly in the programme as broadcast because it included a photograph of her whenever a reference was made to her sister's alleged involvement in a fraud case and that it inferred wrongly that she had been involved in fraudulent activity.

In considering this complaint, Ofcom had regard to whether reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Miss Oakley (as outlined in Practice 7.9 of the Code).

Ofcom first noted what the programme said while displaying two photographs of Miss Oakley with her parents at her graduation ceremony. We noted that the first photograph was shown in the programme as the narrator said: "*While attempting to hide his assets he [Mr Oakley] also gave a house in Poole, Dorset, to his daughter*". The second photograph of Miss Oakley and her parents shown later in the programme accompanied the commentary that: "*The house that he [Mr Oakley] gave to his daughter was then sold for just under quarter of a million pounds*".

We noted that Miss Oakley said in her complaint that it was her sister, Miss Joanne Oakley, who had been involved in Mr Oakley's case rather than herself and we acknowledged that the BBC said in its statement in response that the photographs of the complainant had been shown in error when the programme referred to Mr Oakley involving his "*daughter*" in his attempts to conceal his assets.

Ofcom then considered, in light of the fact that Miss Oakley was not the daughter who was implicated in Mr Oakley's criminal activity, whether the inclusion of the photographs and commentary in the programme resulted in unfairness to her. In doing so, we assessed the extent to which Miss Oakley may have been identifiable in the programme as broadcast. We took into account what was actually shown of Miss Oakley in the programme and what, if any, information was disclosed that could reasonably lead to her being identified by ordinary viewers.

We observed that both photographs shown in the programme featured Mr and Mrs Oakley standing next to a woman at a graduation ceremony. Given the circumstances in which the photographs were taken and the commentary that accompanied them, it was reasonable to conclude, in our opinion, that the woman in the photographs was their daughter. We noted too that the woman's face was obscured in both photographs and that she was not named. Also, we considered that there was nothing particularly distinctive about the woman's physical appearance and clothing that could be reasonably regarded as rendering her identifiable to ordinary viewers as being Miss Oakley. In these circumstances, we considered that while Miss Oakley was not identified in the programme, she may have been rendered identifiable to a small and limited number of individuals who would have been familiar with her, known she had graduated, and likely to know her family circumstances.

Having concluded that Miss Oakley was identifiable from the inclusion of the photographs in the programme, albeit to a small and limited number of individuals, we then considered whether or not an unfair impression was given in the programme that she was involved in her father's criminal activity.

Ofcom again noted that the graduation photographs had been included in error and that the references to Mr Oakley's daughter referred to the complainant's sister. Ofcom recognised that the inclusion of the photographs in the mistaken belief that they showed the daughter whom Mr Oakley had involved in his attempts to hide his assets had the potential to create unfairness to the complainant. However, having

carefully taken note of the commentary that accompanied the photographs, it was clear to Ofcom that the comments did not suggest that either of Mr Oakley's daughters had knowingly been involved in his attempts to conceal his assets from the authorities. The fact that the programme did not mention that any criminal proceedings were brought against the complainant's sister (while mentioning the trial and conviction of Mr and Mrs Oakley) would have suggested to viewers, in our view, that the daughter referred to was not prosecuted, or at least, not found guilty of any wrongdoing. For these reasons, Ofcom considered that the programme did not make a specific allegation that either of Mr Oakley's daughters had knowingly been involved in fraudulent activity.

Notwithstanding that the photographs of the wrong daughter had been included in the programme in error, given the steps taken by the broadcaster to obscure Miss Oakley's identity so that she would not be recognisable to an ordinary viewer and that no specific allegation was made in the programme that Mr Oakley's daughters had knowingly been involved in fraudulent activity, Ofcom concluded that the programme did not present material facts in a manner that materially and adversely affected viewers' perceptions of Miss Oakley. Ofcom considered therefore that the broadcaster had taken reasonable steps, despite the error in using the wrong photographs, taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Miss Oakley.

Given the above, Ofcom concluded that Miss Oakley was not treated unjustly or unfairly in the programme as broadcast.

**Therefore, Ofcom has not upheld Miss Oakley's complaint of unjust or unfair treatment in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 6 and 19 January 2015 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

### Investigations conducted under the Procedures for investigating breaches of content standards for television and radio<sup>1</sup>

Programme	Broadcaster	Transmission date	Categories
BBC News at Six	BBC 1	06/11/2014	Generally accepted standards
Today	BBC Radio 4	19/11/2014	Drugs, smoking, solvents or alcohol
The Walking Dead	Fox TV	13/10/2014	Scheduling
Programming	Peace FM	30/10/2014	Religious/Beliefs discrimination/offence
US Bounty Hunters	Pick TV	09/11/2014	Gender discrimination/offence

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

### Investigations conducted under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed service	Categories
Waqas Mahroof	Hajj FM Bradford	Provision of information

For more information about how Ofcom conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.

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

## Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 6 and 19 January 2015 because they did not raise issues warranting investigation.

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

For more information about how Ofcom assesses conducts investigations about content standards, go to:

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Little Nicky	5*	18/01/2015	Offensive language	1
Programming	Al Jazeera Arabic	Various	Outside of remit	1
Mere Pasand	Awaz FM	18/12/2014	Generally accepted standards	1
BBC News	BBC 1	11/09/2014	Due impartiality/bias	1
BBC News at Six	BBC 1	07/01/2015	Generally accepted standards	1
BBC News at Ten	BBC 1	07/01/2015	Due impartiality/bias	1
Breakfast	BBC 1	08/01/2015	Outside of remit	1
Breakfast	BBC 1	14/01/2015	Due impartiality/bias	2
Breakfast	BBC 1	14/01/2015	Outside of remit	1
DIY SOS The Big Build	BBC 1	18/12/2014	Gender discrimination/offence	1
Doctor Who	BBC 1	25/12/2014	Scheduling	3
Doctors	BBC 1	08/01/2015	Outside of remit	1
EastEnders	BBC 1	13/10/2014	Scheduling	1
EastEnders	BBC 1	23/12/2014	Race discrimination/offence	1
EastEnders	BBC 1	02/01/2015	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	07/01/2015	Outside of remit	1
Escape to the Country	BBC 1	18/01/2015	Outside of remit	1
Have I Got a Bit More Old News for You	BBC 1	13/01/2015	Offensive language	1
Hotel for Dogs	BBC 1	30/12/2014	Outside of remit	1
Live at the Apollo	BBC 1	02/01/2015	Race discrimination/offence	1
Match of the Day	BBC 1	04/01/2015	Race discrimination/offence	1
Match of the Day Live	BBC 1	05/01/2015	Generally accepted standards	3
Miranda	BBC 1	25/12/2014	Sexual material	1
Panorama	BBC 1	12/01/2015	Due accuracy	1
Panorama	BBC 1	12/01/2015	Due impartiality/bias	3

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Regional News and Weather	BBC 1	13/01/2015	Outside of remit	1
Room 101	BBC 1	02/01/2015	Race discrimination/offence	1
Saturday Kitchen Live	BBC 1	10/01/2015	Animal welfare	1
Silent Witness	BBC 1	06/01/2015	Outside of remit	1
Silent Witness	BBC 1	12/01/2015	Violence and dangerous behaviour	1
The Boy in the Dress	BBC 1	26/12/2014	Sexual orientation discrimination/offence	1
The Boy in the Dress	BBC 1	01/01/2015	Scheduling	1
The One Show	BBC 1	05/01/2015	Generally accepted standards	33
The Voice UK	BBC 1	10/01/2015	Generally accepted standards	1
Party Political Broadcast by Scottish Conservative and Unionist Party	BBC 1 Scotland	14/01/2015	Due accuracy	1
Reporting Scotland	BBC 1 Scotland	02/01/2015	Generally accepted standards	1
Britain's Tudor Treasure: A Night at Hampton Court	BBC 2	10/01/2015	Under 18s in programmes	1
Dragons' Den	BBC 2	N/A	Outside of remit	1
Rip Off Britain	BBC 2	09/01/2015	Flashing images/risk to viewers who have PSE	1
Strictly It Takes Two	BBC 2	05/12/2014	Offensive language	1
The Super-Rich and Us	BBC 2	08/01/2015	Materially misleading	1
The Super-Rich and Us	BBC 2	08/01/2015	Due impartiality/bias	1
The Terminal	BBC 2	21/12/2014	Offensive language	1
The Wind and The Lion	BBC 2	17/01/2015	Generally accepted standards	1
Top Gear	BBC 2	28/12/2014	Generally accepted standards	5
Top Gear	BBC 2	05/01/2015	Offensive language	1
Family Guy	BBC 3	23/12/2014	Generally accepted standards	1
How Safe are My Drugs?	BBC 3	10/12/2014	Drugs, smoking, solvents or alcohol	1
Live at the Apollo	BBC 3	28/12/2014	Disability discrimination/offence	1
Top Gear	BBC 3	03/01/2015	Generally accepted standards	1
News	BBC News	25/11/2014	Due impartiality/bias	1
BBC News	BBC News Channel	19/12/2014	Disability discrimination/offence	1
BBC News	BBC News Channel	11/01/2015	Generally accepted standards	22

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC News	BBC News Channel	Various	Due impartiality/bias	1
Newspaper Review	BBC News Channel	08/11/2014	Religious/Beliefs discrimination/offence	1
Newsbeat	BBC Radio 1	13/01/2015	Due impartiality/bias	1
Steve Wright in the Afternoon	BBC Radio 2	17/12/2014	Generally accepted standards	1
Steve Wright in the Afternoon	BBC Radio 2	17/12/2014	Scheduling	1
The Ken Bruce Show	BBC Radio 2	14/01/2015	Due impartiality/bias	1
The Moral Maze (trailer)	BBC Radio 4	22/10/2014	Generally accepted standards	2
The News Quiz	BBC Radio 4	19/12/2014	Race discrimination/offence	1
Blue Jam	BBC Radio 4 Extra	05/12/2014	Under 18s in programmes	1
Julian Clegg in the Morning	BBC Radio Solent	19/12/2014	Generally accepted standards	1
Iain Lee	BBC Three Counties Radio	24/11/2014	Generally accepted standards	1
Drivetime	Castle FM	03/12/2014	Offensive language	4
Abney and Teal	CBeebies	10/05/2014	Scheduling	1
Magic Hands	CBeebies	07/01/2015	Materially misleading	1
Family Fortunes	Challenge	08/01/2015	Generally accepted standards	1
Advertising	Channel 4	13/01/2015	Advertising content	1
Alan Carr: Chatty Man	Channel 4	26/12/2014	Gender discrimination/offence	1
Banana (trailer)	Channel 4	13/01/2015	Scheduling	1
Bear's Wild Weekend with Ben Stiller	Channel 4	10/12/2014	Undue prominence	1
Bill Bailey Qualmpeddler	Channel 4	03/01/2015	Generally accepted standards	1
Channel 4 News	Channel 4	05/08/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	18/12/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	07/01/2015	Outside of remit	2
Cucumber (trailer)	Channel 4	09/01/2015	Scheduling	1
Cucumber (trailer)	Channel 4	12/01/2015	Scheduling	1
Cucumber (trailer)	Channel 4	15/01/2015	Scheduling	1
Cucumber, Banana, Tofu (trailer)	Channel 4	29/12/2014	Scheduling	2
Cucumber, Banana, Tofu (trailer)	Channel 4	05/01/2015	Scheduling	1
Cucumber, Banana, Tofu (trailer)	Channel 4	16/01/2015	Scheduling	1
Derek	Channel 4	22/12/2014	Offensive language	1
Gogglebox	Channel 4	19/12/2014	Race discrimination/offence	3
Jimmy's Grow Your Own Christmas Dinner	Channel 4	16/12/2014	Undue prominence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Mitsubishi's sponsorship of documentaries on 4	Channel 4	15/12/2014	Generally accepted standards	2
Mitsubishi's sponsorship of documentaries on 4	Channel 4	04/01/2015	Gender discrimination/offence	1
Mitsubishi's sponsorship of documentaries on 4	Channel 4	11/01/2015	Generally accepted standards	1
The Big Fat Anniversary Quiz	Channel 4	02/01/2015	Generally accepted standards	2
The Hotel	Channel 4	11/01/2015	Race discrimination/offence	3
The Hotel	Channel 4	11/01/2015	Sexual orientation discrimination/offence	1
The Hotel	Channel 4	18/01/2015	Generally accepted standards	2
The Simpsons	Channel 4	14/01/2015	Scheduling	1
The Undateables	Channel 4	05/01/2015	Disability discrimination/offence	1
The Undateables	Channel 4	05/01/2015	Nudity	1
Walking the Nile	Channel 4	04/01/2015	Generally accepted standards	4
16 and Pregnant (trailer)	Channel 5	11/01/2015	Scheduling	1
Advertisement	Channel 5	29/12/2014	Advertising content	1
Advertisement	Channel 5	15/01/2015	Advertising content	1
Advertisement	Channel 5	15/01/2015	Advertising content	1
Banana (trailer)	Channel 5	15/01/2015	Scheduling	1
Benefits Britain: Life on the Dole	Channel 5	16/12/2014	Materially misleading	1
Benefits Britain: Life on the Dole	Channel 5	16/12/2014	Race discrimination/offence	2
Benefits: Too Fat to Work	Channel 5	05/01/2015	Generally accepted standards	1
Benefits: Too Fat to Work	Channel 5	07/01/2015	Generally accepted standards	1
Britain's Bloodiest Dynasty	Channel 5	11/12/2014	Violence and dangerous behaviour	1
Closing Time: Southampton After Dark	Channel 5	12/01/2015	Violence and dangerous behaviour	1
Ice Road Truckers	Channel 5	28/11/2014	Offensive language	1
The Dam Busters	Channel 5	29/12/2014	Race discrimination/offence	1
The Gadget Show	Channel 5	19/12/2014	Promotion of products/services	1
The Haunting of Radcliffe House (trailer) and Films on 5 (trailer)	Channel 5	23/12/2014	Scheduling	1
The Wright Stuff	Channel 5	19/01/2015	Generally accepted standards	1
Asian Connections	Climas	18/12/2014	Sexual material	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Comedy Nights with Kapil	Colors	09/11/2014	Race discrimination/offence	1
Drunk History (trailer)	Comedy Central	Various (December 2014)	Offensive language	23
South Park (trailer)	Comedy Central	19/12/2014	Generally accepted standards	1
The Switch (trailer)	Comedy Central	02/12/2014	Scheduling	1
Storage Hunters UK	Dave	18/01/2015	Offensive language	1
Top Gear India Special	Dave	28/12/2014	Generally accepted standards	1
Cucumber, Banana, Tofu (trailer)	E4	27/12/2014	Sexual material	1
Cucumber, Banana, Tofu (trailer)	E4	N/A	Scheduling	1
The 100 (trailer)	E4	06/01/2015	Violence and dangerous behaviour	1
Programming	Fox News	Various	Due accuracy	1
Grimm (trailer)	Good Food	04/01/2015	Scheduling	1
Advertisement	ITV	05/01/2015	Advertising content	2
Advertisement	ITV	11/01/2015	Advertising content	1
Advertisement	ITV	13/01/2015	Advertising content	2
Advertisement	ITV	16/01/2015	Advertising content	1
Advertisement	ITV	Various	Advertising content	4
Benidorm	ITV	02/01/2015	Offensive language	2
Broadchurch	ITV	05/01/2015	Outside of remit	3
Coronation Street	ITV	02/01/2015	Materially misleading	1
Coronation Street	ITV	09/01/2015	Religious/Beliefs discrimination/offence	1
Emmerdale	ITV	26/11/2014	Suicide and self harm	2
Emmerdale	ITV	25/12/2014	Drugs, smoking, solvents or alcohol	1
Emmerdale	ITV	26/12/2014	Scheduling	1
Emmerdale	ITV	30/12/2014	Drugs, smoking, solvents or alcohol	2
Emmerdale	ITV	31/12/2014	Scheduling	2
Emmerdale	ITV	01/01/2015	Scheduling	2
Emmerdale	ITV	07/01/2015	Generally accepted standards	1
Emmerdale	ITV	07/01/2015	Materially misleading	1
Family Fortunes	ITV	30/12/2014	Generally accepted standards	1
Good Morning Britain	ITV	24/12/2014	Generally accepted standards	1
Good Morning Britain	ITV	09/01/2015	Outside of remit	1
Grantchester	ITV	03/11/2014	Television Access Services	1
Harry Hill's Stars in Their Eyes	ITV	10/01/2015	Generally accepted standards	2

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Harry Hill's Stars in Their Eyes	ITV	10/01/2015	Outside of remit	5
Harry Hill's Stars in Their Eyes	ITV	10/01/2015	Sexual orientation discrimination/offence	1
Harry Hill's Stars in Their Eyes	ITV	17/01/2015	Outside of remit	2
ITV News and Weather	ITV	03/01/2015	Generally accepted standards	2
ITV News and Weather	ITV	03/01/2015	Under 18s in programmes	1
ITV News and Weather	ITV	08/01/2015	Due impartiality/bias	3
ITV News and Weather	ITV	11/01/2015	Outside of remit	1
ITV News and Weather	ITV	18/01/2015	Generally accepted standards	1
ITV News at Ten and Weather	ITV	15/12/2014	Generally accepted standards	1
ITV News at Ten and Weather	ITV	16/01/2015	Generally accepted standards	1
ITV News West Country	ITV	Various	National/regional/local issues	1
Loose Women	ITV	13/10/2014	Generally accepted standards	20
Mel and Sue	ITV	13/01/2015	Animal welfare	50
Secret Dealers	ITV	09/12/2014	Disability discrimination/offence	1
Skoda's sponsorship of mystery drama on ITV	ITV	05/01/2015	Crime	1
Sport on ITV4 (trailer)	ITV	08/01/2015	Drugs, smoking, solvents or alcohol	1
Sport on ITV4 (trailer)	ITV	Various	Drugs, smoking, solvents or alcohol	1
The Chase	ITV	06/01/2015	Gender discrimination/offence	1
The Chase	ITV	07/01/2015	Materially misleading	1
The X Factor	ITV	16/11/2014	Competitions	1
This Morning	ITV	01/12/2014	Generally accepted standards	1
This Morning	ITV	05/01/2015	Generally accepted standards	1
This Morning	ITV	06/01/2015	Under 18s in programmes	1
ITV News Central	ITV Central	19/12/2014	Due accuracy	1
ITV News Central	ITV Central	19/12/2014	Materially misleading	1
118118.com's sponsorship of movies on ITV	ITV2	06/12/2014	Generally accepted standards	1
Blue Go Mad in Ibiza	ITV2	06/01/2015	Disability discrimination/offence	1
Celebrity Juice	ITV2	29/12/2014	Generally accepted standards	1
Sport on ITV4 (trailer)	ITV2	31/12/2014	Drugs, smoking, solvents or alcohol	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Sport on ITV4 (trailer)	ITV2	02/01/2015	Drugs, smoking, solvents or alcohol	1
The Jeremy Kyle Show	ITV2	05/01/2015	Generally accepted standards	1
You've Been Framed!	ITV2	07/01/2015	Race discrimination/offence	1
Advertisement	ITV3	06/01/2015	Advertising content	1
Sport on ITV4 (trailer)	ITV3	11/01/2015	Drugs, smoking, solvents or alcohol	1
Smokey and the Bandit	ITV4	21/12/2014	Scheduling	1
Sport on ITV4 (trailer)	ITV4	02/01/2015	Drugs, smoking, solvents or alcohol	2
Clive Bull	LBC 97.3 FM	25/12/2014	Due impartiality/bias	1
Ken Livingstone and David Mellor	LBC 97.3 FM	20/12/2014	Generally accepted standards	1
Ken Livingstone and David Mellor	LBC 97.3 FM	10/01/2015	Offensive language	1
Steve Allen	LBC 97.3 FM	19/12/2014	Generally accepted standards	1
LFC TV subscription promotion	LFC TV	28/10/2014	Materially misleading	1
8 Out of 10 Cats	More4	13/12/2014	Religious/Beliefs discrimination/offence	1
The British Property Boom	More4	05/01/2015	Race discrimination/offence	1
The Look of Love (trailer)	More4	25/12/2014	Scheduling	1
Geordie Shore	MTV	11/12/2014	Violence and dangerous behaviour	1
Subtitling	National Geographic	Various	Television Access Services	1
Programming	RT	Various	Due impartiality/bias	1
Game of Thrones	Sky Atlantic	21/12/2014	Generally accepted standards	1
CSI: Crime Scene Investigation	Sky Living	26/12/2014	Nudity	1
In the Margins (trailer)	Sky News	28/12/2014	Crime	1
In the Margins (trailer)	Sky News	05/01/2015	Crime	1
In the Margins (trailer)	Sky News	05/01/2015	Materially misleading	2
In the Margins (trailer)	Sky News	Various	Crime	1
Sky News	Sky News	03/01/2015	Generally accepted standards	1
Sky News	Sky News	10/01/2015	Generally accepted standards	1
Sky News	Sky News	13/01/2015	Due accuracy	1
Sky News	Sky News	15/01/2015	Outside of remit	1
Sky News at 6 with Andrew Wilson	Sky News	11/01/2015	Outside of remit	1
Sunrise	Sky News	01/01/2015	Due impartiality/bias	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Sunrise	Sky News	14/01/2015	Outside of remit	1
Programming	Sky Sports	Various	Outside of remit	1
Capital One Cup Football	Sky Sports 1	17/12/2014	Nudity	1
In the Margins (trailer)	Sky Sports News	02/01/2015	Materially misleading	1
In the Margins (trailer)	Sky Sports News	31/12/2014	Crime	1
Soccer A.M.	Sky1	27/12/2014	Scheduling	1
Soccer A.M.	Sky1	10/01/2015	Generally accepted standards	1
Katie Hopkins: My Fat Story	TLC	02/01/2014	Violence and dangerous behaviour	1
My Fat Story (trailer)	TLC	21/12/2014	Generally accepted standards	1
Advertisement	Various	31/12/2014	Advertising content	1
Advertisement	Various	Various	Outside of remit	2
BBC News	Various	11/01/2015	Due impartiality/bias	1
News	Various	Various	Outside of remit	1
Top Gear	Various	Various	Generally accepted standards	1
Music Video	VH1	12/12/2014	Scheduling	1
American Horror Story: Freak Show (Trailer)	Virgin Media	07/11/2014	Scheduling	1

## Investigations List

If Ofcom considers that a broadcaster may have breached its codes, a condition of its licence or other regulatory requirements, it will start an investigation.

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

Here are alphabetical lists of new investigations launched between 8 and 21 January 2015.

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

Programme	Broadcaster	Transmission date
November 1984 charity appeal	Akaal Channel	15 October 2014
Advertising minutage	ABN TV	23 November 2014
Advertising minutage	S4C	15 November 2014
Brits Behind Bars	Made in Cardiff	8 December 2014
Countdown to Christmas Comedy (trailer)	Comedy Central	24 December 2014
Drunk History (trailer)	Comedy Central	3, 4 and 7 January 2015
Justice with Jeanine Pirro	Fox News Channel	11 January 2015
Reel	Made in Tyne and Wear	3 January 2015
Rush Hour	Channel 5	4 January 2015
Snow Hotel competition	Channel 5	Various

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

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

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

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Khara Sach	ARY News	25, 26, 27, 28 and 30 October 2013 and 4, 5 and 13 November 2013
Welcome TV	MATV	16, 18, 23 August 2014 and 11 September 2014

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

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

### Investigations launched under the General Procedures for investigating breaches of broadcast licences

<b>Licensee</b>	<b>Licensed Service</b>
Channel 5 Broadcasting Limited	Channel 5
Middlesex Broadcasting Corporation Limited	MATV (Punjabi)
Nation Radio Limited	Nation Radio

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

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