

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Contents

Introduction	3
<b>Broadcast Standards cases</b>	
<b>In Breach</b>	
Medical Detectives <i>CBS Reality, 20 February 2017, 19:00</i>	5
Drivetime <i>Gravity FM, 24 February 2017, 17:30</i>	8
Advertising distinction <i>Aaj Tak, 6 September 2016, 13:00</i> <i>Aaj Tak, 25 October 2016, 12:30</i>	10
Channel i News <i>Channel i, 2 December 2016, 07:57</i>	13
News <i>Channel 44, 20 and 21 November 2016, various times</i>	16
<b>Resolved</b>	
PiYO teleshopping <i>More4, 11 February 2017, 08:55</i>	21
<b>Broadcast Licence Conditions cases</b>	
<b>In Breach</b>	
Retention and production of recordings <i>Steg G in the Morning, Sunny Govan Radio, 1 to 2 March 2017</i>	24
Broadcasting licensees' late payment and non-payment of licence fees <i>Various licensees</i>	26
<b>Broadcast Fairness and Privacy cases</b>	
<b>Not Upheld</b>	
Complaint by Miss Lisa Buchanan, made on her behalf by KRW Law LLP <i>The Secret, ITV, 29 April and 6, 13 and 20 May 2016</i>	27

## Tables of cases

Complaints assessed, not investigated	53
Complaints outside of remit	58
Complaints about the BBC, not assessed	59
Investigations List	61

## Introduction

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

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

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

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

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

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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.

## Broadcast Standards cases

### In Breach

#### Medical Detectives

***CBS Reality, 20 February 2017, 19:00***

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#### Introduction

CBS Reality is a television channel that broadcasts reality and factual TV programmes, predominantly from the United States. The licence is held by CBS AMC Networks EMEA Channels Partnership ("CBS" or "the Licensee").

*Medical Detectives* is a long-running American factual TV series which highlights how forensic science has assisted in solving criminal cases. This episode explored the death of a four year-old girl called April Tucker and how forensic science led to her parents being exonerated of her murder by proving that a dog attack had caused her fatal injuries.

Ofcom received a complaint that this episode featured numerous photographs of the dead child's injuries which were not suitable for broadcast at 19:00. The 30 minute programme included:

- two black and white photographs of the child's full body showing the open leg wound broadcast 10 seconds after the start of the programme and before the title sequence;
- one black and white photograph of the child's corpse with the open leg wound highlighted with a white ring which remained on screen for 14 seconds;
- five colour photographs of the open wound and other abrasions and bruising to the body taken during the child's autopsy; and
- a series of colour photographs of the bloodied open wound from when the child first arrived at hospital; a close-up full screen black and white still image of the wound and a further black and white photograph with the wound circled.

We considered the programme raised potential issues under the following Code rule:

Rule 1.3: "Children must be protected by appropriate scheduling from material that is unsuitable for them".

We therefore asked CBS how the content complied with this rule.

#### Response

CBS Reality stated that the channel was not aimed at, or scheduled to appeal to, children. The core audience for the channel was adults aged 55 and over. It said that, to advise viewers, a pre-programme announcement stated that the programme included scenes "unsuitable for younger viewers". Audience data showed that 2,200 10-15 year olds initially viewed the first three minutes of the programme, but after this, the programme was not viewed by anyone aged 15 or under.

The Licensee stated that the focus of the episode was not the child's wounds, but "the forensic detail of the how the victim came to be wounded and how these wounds caused her death". It said that the images of the dead body were brief and in context when exploring whether the wounds could have been made with either a knife or a dog's mouth and claws. The Licensee also said that, as 50 per cent of the images were in black and white this gave "less prominence" to the wounds. The images in total amounted to approximately two minutes of the programme as several editorial cuts had been made to the original content to reduce the overall impact for daytime.

The Licensee said that it fully understood and accepted that a child's death needed to be treated sensitively to minimise offence. In its view, the tone of the programme reflected this and the evidence presented concluded that the circumstances of her death were tragic, rather than a coldly calculated murder.

## Decision

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

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of broadcast; and likely audience expectations.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Ofcom first considered whether the material in this case was unsuitable for children.

Although the images of the child's wounds were limited to approximately two minutes in total, the same images were repeated throughout the programme, both in close up, and for a relatively prolonged period of time. For example, one black and white still image appeared for at least 14 seconds. In addition, where black and white photographs were shown, a circle had been placed over the wound so that viewers could identify it more clearly. We acknowledged that the impact of the images was lessened to some degree by many of them being shown in black and white. However, even taking this into account, Ofcom considered that the images of the child's body and wounds were graphic and distressing. In our view, their repeated and prolonged use during this programme was unsuitable for children.

Ofcom went on to consider whether this material was appropriately scheduled.

We recognised that CBS Reality is a television channel not aimed at children, and that audience viewing figures showed that 2,200 10-15 year olds initially viewed the first three minutes of the programme, but there were no viewers aged 15 or under after this time. However, we considered that children were likely to be watching television at 19:00, potentially unaccompanied by adults, and may therefore have watched this programme even though it was not intended for a child audience.

We took account of the fact that the Licensee included the following pre-broadcast warning to viewers: "*now Medical Detectives containing scenes unsuitable for younger children*". While this type of information may be useful to viewers in some circumstances, it does not

ensure that material is appropriately scheduled. The protection offered by the watershed is in part an acknowledgment of the potential for child viewers, unaccompanied by adults, to watch programmes that are unsuitable for them and therefore, broadcasters still need to ensure content is appropriate for the time of transmission.

Ofcom acknowledged that there was a clear editorial justification for the inclusion of the images in terms of demonstrating the importance of forensic examination in establishing the true cause of the child's death. However, the graphic and distressing photographs, which showed a dead child and her fatal injuries, were repeated, close-up and at times remained visible for a prolonged period. We acknowledged that the Licensee said it had edited the programme for daytime transmission. However, we considered that the programme contained unsuitable images and was inappropriately scheduled. This was a breach of Rule 1.3 of the Code.

### **Breach of Rule 1.3**

## In Breach

### Drivetime

**Gravity FM, 24 February 2017, 17:30**

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#### Introduction

Gravity FM is a community radio station that provides a service for people living in Grantham. The licence for the service is held by Gravity FM CIC ("GFM" or "the Licensee").

*Drivetime* is an evening radio show which broadcasts on weekdays between 15:00 and 18:00. The programme features a mix of travel updates, interviews and music.

A complainant alerted Ofcom to the use of the most offensive language broadcast during the programme. During the programme the song "My Generation" by Limp Bizkit was played and contained 20 instances of "fuck", "fucking" and "fucked up".

Ofcom considered the material raised issues under the following rule of the Code which states:

Rule 1.14: "The most offensive language must not be broadcast...when children are particularly likely to be listening".

We therefore asked GFM how the content complied with this rule.

#### Response

The Licensee explained that there were "two occurrences of explicit material being broadcast" and "the two instances were caused by the same presenter inappropriately loading music on to the database". GFM stated that "we have been broadcasting for 20 years and this is the first time anything like this has ever happened"

GFM went on to explain that "the presenter in question has been removed from the station permanently and the entire music library has been removed and...the facility to add music is now pass-worded so it can never happen again". Finally, the Licensee stressed that it was "appalled at this situation and will vigilantly police the station to the highest standard", and "we as directors are so sorry that it happened and can assure you that it will never happen again...".

#### Decision

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

Rule 1.14 states the most offensive language must not be broadcast when children are particularly likely to be listening.

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

Ofcom's 2016 research<sup>2</sup> on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language.

The Code states that the phrase "when children are particularly likely to be listening" refers to: "the school run and breakfast time, but might include other times". Ofcom's guidance on offensive language on radio<sup>3</sup> notes that:

"For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcast content at the following times: between 15:00 and 19:00 Monday to Friday during term-time...".

In this case 20 instances of "fuck", "fucking" and "fucked up" were broadcast at 17:30 on a Friday afternoon. The most offensive language was therefore broadcast when, in Ofcom's view, children were particularly likely to be listening.

Although GFM acknowledged that this song had been broadcast in error and had taken steps to prevent a recurrence, lyrics including "fuck" and "fucking" on a drivetime programme at 17:30 was the most offensive language being broadcast when children were particularly likely to be listening. Our Decision is therefore that this material was clearly in breach of Rule 1.14.

#### **Breach of Rule 1.14**

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<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area: *Attitudes to potentially offensive language and gestures on television and on radio*:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

## In Breach

### Advertising distinction

***Aaj Tak, 6 September 2016, 13:00***

***Aaj Tak, 25 October 2016, 12:30***

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#### Introduction

Aaj Tak is a 24 hour news channel broadcast in Hindi on the digital satellite platform. The licence for Aaj Tak is held by TV Today Network Ltd ("TVTAN" or "the Licensee").

#### 6 September 2016

A complaint alerted Ofcom to the following announcement which was broadcast in between a news bulletin and a current affairs programme.

*"Presented by Bulldog energy drink with taurine. Bulldog's sheer energy".*

As it appeared that this material was a sponsorship credit, we considered that it raised issues under Rule 9.15 of the Code which prohibits the sponsorship of news and current affairs programmes. However, the Licensee told us that this material was advertising.

#### 25 October 2016

A complaint alerted Ofcom to the following announcement broadcast before a programme:

*"Brought to you by YepINGO. Call more, pay less".* This was accompanied by on-screen text stating *"YepINGO CALL MORE PAY LESS"*, along with a table of prices for calling various countries and the company's web address.

The Licensee also confirmed that the material had been scheduled as advertising, not sponsorship.

Ofcom considered that the above material raised potential issues under Rule 1 of the Code on the Scheduling of Television Advertising (COSTA):

*"Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical and spatial means; acoustic signals made also be used as well".*

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

## Response

### 6 September 2016

The Licensee said that it did not consider the programme which followed the material was a current affairs programme and reiterated that the material was an advertisement and not a sponsorship credit.

The Licensee submitted that its viewers would have been able to distinguish the advertisement from the programme. It continued that the programme had a very clear beginning and end, and featured a different voiceover. It added that the advertisement was independent of the satirical humour of the programme.

The Licensee said that the use of the phrase "brought to you by" followed an industry practice in India. It continued that it regularly uses such phrases in advertisements around programming but "this is not meant to convey that the show is sponsored by or paid for by the advertiser". TVTN believed that "in order to be regarded as a sponsored programme, a product or service advertised for must feature in the editorial content which is not the case here".

The Licensee argued that it should not be singled out for following what it considered to be a widely established and accepted practice.

### 25 October 2016

TVTN explained that a third party created two voiceover messages for the material: one for its UK feed and one for its Middle East feed. The Middle East feed included the "call to action" and, as a result of human error, this voiceover was included in the UK feed.

The Licensee said that "the concerned have been cautioned not to allow such an error to recur" and that it hoped that this would be taken into account "while granting pardon to TVTN for the inadvertent error resulting in breach of...COSTA".

TVTN assured Ofcom that it will "ensure the Company and its employees' adherence to the Ofcom's rules".

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Rule 1 of COSTA requires television advertising to be readily recognisable and distinct from programming.

Sponsorship credits, which tell viewers when a programme is sponsored, are a form of programming. They must be broadcast in or around the sponsored programme and make clear the nature of the arrangement between the sponsor and the programme (e.g. "[programme] is brought to you by [sponsor]").

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>.

## 6 September 2016

Ofcom agreed with the Licensee that the advertisement was distinguishable from the programme it preceded. However, our concern was that the Licensee had failed to maintain a distinction between the advertisement and other parts of the programme service, specifically sponsorship credits.

In this case, the advertisement was positioned immediately before a programme and used language that, in Ofcom's view, implied to viewers that there was a sponsorship arrangement in place between the featured brand and the programme (i.e. "*presented by Bulldog energy drink with taurine*").

COSTA does not prohibit the use of voiceovers in advertisements around programming. However, to comply with Rule 1 of COSTA, broadcasters must ensure that the wording used in voiceovers does not result in the content being perceived as editorial material or another form of programming, such as sponsorship credits.

Ofcom considered that viewers were likely to infer from the positioning of the material and the language used that they were watching a sponsorship credit for the subsequent programme rather than an advertisement. Therefore, Ofcom concluded that this content was not readily recognisable as advertising or sufficiently distinct from other parts of the programme service (specifically sponsorship credits) in breach of Rule 1 of COSTA.

## 25 October 2016

The Licensee's response suggested that it had not fully understood Ofcom's concerns and that the issue with the material was that it included a call to action (i.e. "call more"). As the material was scheduled as advertising, the inclusion of advertising messages (e.g. calls to action and price information) did not raise a regulatory issue.

Our concern was the positioning of the material combined with the "*brought to you by*" statement. As above, this was likely to have given viewers the impression that they were watching a sponsorship credit for the subsequent programme rather than an advertisement. Therefore, Ofcom's considered that this content was not readily recognisable as advertising or sufficiently distinct from other parts of the programme service (specifically sponsorship credits), in breach of Rule 1 of COSTA.

## **Breaches of Rule 1 of COSTA**

## In Breach

### Channel i News

#### *Channel i, 2 December 2016, 07:57*

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#### Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited ("Prime Bangla" or "the Licensee").

As part of its routine monitoring, Ofcom identified a number of commercial references to Well Food, Symphony and Aquafina in a news item about "Band Fest", a music event organised by Channel i. These references included:

*"Well Food, powered by Symphony, sponsored the programme as well".*

*"Well Food and Symphony helped Channel i to make the programme a success".*

*"There was another partner who assisted this programme, sponsored by Well Food, Channel i, and Symphony, the drinking partner Aquafina".*

*"With the assistance of Well Food, Channel i presents 3<sup>rd</sup> Band fest 2016 powered by Symphony".*

*"Channel i 3<sup>rd</sup> Band fest 2016 assisted by Well Food powered by Symphony".*

During the item, the Head of Marketing of "Symphony" and CEO of "Well Food" were interviewed and said:

*"We have been with Channel i band fest from the very beginning. We will be with them in the future".*

*"Ayub Bachhu and Rumi started it and you will take the band song to a higher level. You will hold the red and green flag higher in the world".*

The following captions also appeared on screen during the interviews:

*"Head of Marketing Symphony".*

*"CEO, Well Food".*

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

We also requested information from the Licensee about any commercial arrangements associated with the references to the brands. Based on the information provided, Ofcom considered that the material raised issues under the following Code rule:

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

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

Ofcom asked the Licensee for its comments on how *Channel i News* complied with Rule 9.5.

### Response

The Licensee explained that the news was produced by Channel i Bangladesh. It said that it was not associated with Channel i Bangladesh, apart from having distribution rights to re-broadcast material in the UK.

The Licensee did not address specifically the references to the brands in the news report, but apologised and said there would not be a recurrence of this "mistake".

### Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Nine of the Code limits the extent to which commercial references can feature within television programming. This ensures there is a distinction between advertising and programming, and prevents broadcasters exceeding the limits on the amount of time they are allowed to use for advertising.

Under Rule 9.5, no undue prominence may be given in programming to a product, service or trade mark. Rule 9.5 makes clear that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to.

Ofcom's published Guidance<sup>2</sup> on Rule 9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears".

In this case, the news item included numerous references to Well Food, Symphony and Aquafina, sponsors of the "*Band Fest*" event. Ofcom accepts there may be editorial grounds to report on such events in the news. We also accept that, in some circumstances, references to event sponsors may be editorially justified in these reports. However, in our view, there was insufficient editorial justification for the frequency and prominence of the references to the event sponsors in this report.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>.

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/33611/section9\\_may16.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf).

Ofcom's Decision is therefore that the programme was in breach of Rule 9.5.

**Ofcom is concerned about the number of breaches of Section Nine it has recorded against Prime Bangla. We are therefore putting the Licensee on notice that we will consider taking further regulatory action, including the possible imposition of a statutory sanction, if similar compliance issues recur.**

**Breach of Rule 9.5**

## In Breach

### News

#### **Channel 44, 20 and 21 November 2016, various times**

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##### Introduction

Channel 44 is a cable television channel that broadcasts Urdu language programmes in the UK. The licence for this service is held by City News Network (SMC) Pvt Ltd ("the Licensee").

Ofcom was alerted by a complaint to a report during Channel 44's news about the opening of a new garage in High Wycombe. The report was broadcast on three occasions over two days.

Ofcom translated the item into English. The Licensee was given an opportunity to comment on the accuracy of the translation and did not dispute it. We relied on this translation for the purposes of this investigation.

The report was introduced by the studio presenter and then went to a pre-recorded item from the garage. The report contained several references to products and services available at the garage, for example:

Studio presenter: *"Councillor Zia Ahmad opened the modern AIHL auto repairing workshop today. Customers will find expert mechanics and modern machinery all housed under one roof. Every form of technical service will be provided. Here is a report from Asad Ali Engineer".*

Reporter: *"The opening of renowned Pakistani businessman Naeem Tahir's new workshop in High Wycombe took place [today]...Guests were shown around the modern workshop and inspected the modern complex machinery... skilled staff have been retained who will offer a satisfactory service".*

Naeem Tahir: *"I have opened this modern workshop and garage here in High Wycombe and I have introduced this modern machinery and technology. I have retained staff who are highly trained and professional staff, and as you know AIHL has been doing similar activities for the benefit of the community in the past, and now I have brought this new venture. This will be the best workshop in High Wycombe where the most modern and best technology will be used".*

Reporter: *"In this new auto workshop all under one roof, car engine repairs, wheel balancing, tyre fixing and other services will be available to customers. Customers can also avail various special deals that are available to them...You can use modern technology for car repairs aided by expert staff for less price for a better service".*

Ofcom requested information from the Licensee to determine whether the references to the garage constituted product placement as defined in the Code<sup>1</sup>. Based on the information provided, Ofcom considered that the item raised issues under the following Code rules:

Rule 9.4 "Products, services and trademarks must not be promoted in programming".

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

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

Ofcom therefore sought the Licensee's comments on how the item complied with these rules.

### Response

The Licensee said that "the bulletin was produced by one of the channel's less experienced reporters who, whilst briefed on the Ofcom Broadcasting Code, included more detail in the report than was editorially justified". It said that "this was an oversight and in no way was [the report] intended to promote the garage". The Licensee apologised and reiterated that there was no commercial relationship between it, as the producer and broadcaster of the programme, and the garage in question.

The Licensee stated that it had "implemented new procedures to ensure all reports are vetted by a senior producer to ensure the work of less experienced reporters is signed off" and that "additional compliance training has been arranged for all reporters and the new vetting procedures will ensure this incident does not recur".

The Licensee also stressed the importance of broadcast compliance to the channel: "Prior to launching the channel, the News team and channel management attended a bespoke compliance workshop presented by [its] independent compliance consultant". The Licensee continued that "the team understands the importance of maintaining the integrity of the news and includes experienced producers".

In response to Ofcom's Preliminary View that the bulletin was in breach of the Code, the Licensee said that although it did not dispute the translation used by Ofcom it was "arguable whether the language used in the report could be seen as promotional or as advertising the services of the workshop" because of "the different ways in which certain words and phrases are translated from Urdu".

The Licensee emphasised that Channel 44 is a new and innovative channel and is "the first and only local news and current affairs channel for the Pakistani and South Asian community".

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<sup>1</sup> The Code defines product placement as: "The inclusion in a programme of, or reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not prop placement".

It continued that “[o]ne of the primary purposes of the channel is to report on local news” to enable its viewers to “keep up to date with current affairs within their local community”.

The Licensee said that the report was not intended to promote or advertise the services of the workshop: its purpose was to “celebrate the entrepreneurial skills and successes of a well-established member of the Pakistani community within the local area”. Furthermore, the report celebrated “his presence within the labour market and the creation of jobs the workshop will inevitably provide”.

The Licensee conceded that, with the benefit of hindsight, the reporters may have appeared “over-zealous” and the content “could be perceived as promotional for the workshop”. However, it stressed that this was a result of the excitement of the event: “it speaks volumes that members of the local dignitary attended to witness and join in unison with the local community in celebrating the unveiling of a new business”.

The Licensee disputed that the report gave undue prominence to the services provided by the workshop. It stated that the report was “predominantly centred on the magnitude of the event” and “made extensive references to the dignitaries that were present; the prayers and ceremonies that took place at the opening and the pride which the community shared towards the achievements and future prospects of [the owner]”. The Licensee believed that these factors were the primary focus of the report and that the “significance of the report to the target audience should not be undermined in this regard”.

The Licensee acknowledged that the workshop opening was not a “headline news event” and said that this was reflected in the short duration of the report and the fact that it was broadcast on three occasions only over a two day period, one occasion being at 23:00 (which the Licensee noted could not be considered to be “prime time”). The Licensee likened the report to those broadcast by “everyday local news channels...which report on local events within the community such as fetes, charity excursions and other details of community life”.

In conclusion, the Licensee said that, as a “newly-incorporated news channel” it was keen to prove “that the integrity of news...is of the upmost importance and is maintained at all times”. It said that this oversight was “a mere tooting issue” and reiterated the steps it had taken as a result to prevent a similar complaint.

## Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Nine of the Code limits the extent to which commercial references can feature within television programming. This ensures there is a distinction between advertising and programming, and prevents broadcasters transmitting more advertising than permitted.

### Rule 9.4

Ofcom’s Guidance on Rule 9.4 states: “In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed”.

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>.

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

In this case, there were a number of references in the report to the availability and quality of services provided by the garage, with frequent use of superlatives. For example:

*"In this new auto workshop all under one roof, car engine repairs, wheel balancing, tyre fixing and other services will be available to customers. Customers can also avail various special deals [package] that are available to them".*

\*\*\*\*

*"Customers will find expert mechanics and modern machinery all housed under one roof. Every form of technical service will be provided".*

\*\*\*\*

*"Less price for a better service".*

\*\*\*\*

*"Skilled staff have been retained who will offer a satisfactory service".*

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*"This will be the best workshop in High Wycombe where the most modern and best technology will be used".*

We noted the Licensee's assertion that the reporters may have been caught up in the excitement of the event and that it was "arguable whether the language used in the report could be seen as promotional or as advertising the services of the workshop" because of "the different ways in which certain words and phrases are translated from Urdu". However, we also noted that the Licensee did not dispute the translation used and provided no evidence as to which phrases they felt could be interpreted differently.

We also took into account that Channel 44 viewers may expect the channel to cover, in its news output, events such the opening of a business involving local dignitaries. However, we did not agree that this justified the overtly promotional language used in what was a pre-recorded report. We concluded that the references to the availability and quality of services at the garage were promotional and in breach of Rule 9.4.

#### Rule 9.5

Ofcom's published guidance on Rule 9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be

editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears”.

As stated above, Ofcom recognises that there may be legitimate editorial grounds for news programmes to feature stories about businesses. However, we considered that the emphasis and repeated focus on one company's business on three occasions across two days was not editorially justified and was therefore unduly prominent. The promotional manner in which the workshop, services and staff were referred to – as set out above under Rule 9.4 – further contributed to the undue prominence. Our Decision is that the content was also in breach of Rule 9.5.

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

## Resolved

### PiYO teleshopping

**More4, 11 February 2017, 08:55**

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#### Introduction

More4 is a general entertainment channel available on terrestrial, cable and satellite platforms. The licence for the service is held by Channel 4 Television Corporation ("Channel 4" or "the Licensee").

A complainant alerted Ofcom to material featuring the brand PiYO (a weight loss and muscle toning exercise plan).

The material, which followed a programme and was directly preceded by a More4 channel ident, lasted approximately 12 minutes. It comprised various elements, including studio-based segments interspersed with identifiable teleshopping<sup>1</sup> material. It began with a woman in a studio speaking directly to camera:

*"Hey everybody I'm Maria Menounos and I'm about to reveal a simple fun low impact work out that can completely transform your body without weights or high impact moves and the results are incredible".*

For approximately five seconds a caption was shown at the bottom of the screen, which informed viewers the woman was "Maria Menounos" (MM) and the "Host". This was followed by a sequence showing four people exercising in a fitness studio with a large sign for PiYO on a wall behind them. A voiceover (V/O) accompanied this sequence:

*"Introducing PiYO, a new low impact, weight loss and body sculpting system from fitness and nutrition sensation Chalene Johnson. It takes the best of pilates, the best of yoga and fuses them together in one incredible programme".*

The material then cut back to the studio and showed Chalene Johnson (CJ) talking directly to camera:

*"I've combined the best of pilates and yoga to give you flat and sculpted bodies and flexibility but with sequences that deliver fat burning cardio workouts at the same time".*

While CJ was talking, images of the people exercising in the fitness studio were shown, together with images of her leading outdoor PiYO lessons with thousands of participants.

The material then cut back to the studio, where MM was joined by CJ and a studio audience:

V/O: *"...and today Chalene joins Maria Menounos, the ultimate authority of what's hot in Hollywood, to share incredible stories from people who changed their bodies thanks*

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<sup>1</sup> Teleshopping means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.  
([https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/32162/costa-april-2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/32162/costa-april-2016.pdf))

*to PiYO and keep watching for an amazing bonus PiYO offer you don't want to miss...Now here's your Host and a total PiYO believer Maria Menounos".*

Approximately four minutes into the material another guest was introduced ("*Everyone welcome Andrea to the show*") who had "*lost 40 pounds and five dress sizes*" by following the PiYO plan.

At approximately four minutes and 20 seconds MM said: "*don't miss this deal guys, we'll be right back*" [studio audience applauded]. This was followed by content, of approximately three minutes in duration, promoting the PiYO workout package. This content had the characteristics of advertising (a description of the PiYO package, pricing, availability and acceptable payment methods). After this sequence ended the screen faded to black and then returned to the studio, in which MM and CJ stood in front of the studio audience:

*"Welcome back everyone, I'm here with celebrity trainer Chalene Johnson and were learning all about her amazing new PiYO program..."*

The material included another testimonial ("*...and no one proves that better than our next guest...*") and at approximately nine minutes 20 seconds MM said:

*"Well the results are undeniable, PiYO works so if you're frustrated with your boring workouts that aren't giving you the results you want, then now is the time to try this fun and effective low impact program that is guaranteed to transform your body or you get your money back. It's pretty awesome so keep watching to take advantage of the special offer. Bye everyone. [studio audience applauds]"*

The material then cut to a similar advertising sequence as previously shown.

We considered the material raised potential issues under COSTA Rule 1:

"Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used".

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

## **Response**

Channel 4 confirmed that the material was advertising and therefore was broadcast in commercial airtime. The Licensee said a full screen More4 optical ident was used at the start and end of the advertisement to distinguish it from editorial content and the advertisement was "scheduled in a slot which is readily recognisable as teleshopping".

It said that the advertisement had originally included the following introductory statement: "The following is a paid advertisement for the fat burning fusion of Pilates and yoga called PiYo, brought to you by Beachbody". However, due to human error this advertising message was removed during the editing process and this was not picked up at the clearance stage by Clearcast<sup>2</sup>.

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<sup>2</sup> Clearcast is the broadcasting industry body that assesses television advertising on behalf of broadcasters in advance of transmission.

Channel 4 added that once it was made aware of the complaint it immediately removed the advertisement from its schedule.

Channel 4 recognised the importance of labelling advertisements which are similar in style to programmes. As a precaution, it said that it now requires Clearcast to alert Channel 4 if an advertisement uses a situation, performance or style reminiscent of editorial content to prevent similar issues arising in future.

## Decision

Reflecting our duties under the Communications Act 2003<sup>3</sup>, Rule 1 of COSTA requires television advertising to be readily recognisable and distinct from programming.

In this case, the material was structured in a way which suggested it was a programme punctuated by advertising. It featured content akin to editorial, for example, a studio based discussion with a studio audience, a host and guests. More traditional advertising material was inserted within this content but was separated from the studio based content by statements made by the host and of the type usually used in a programme to signal an advertising break e.g. *"we'll be right back"* and *"welcome back everyone"*. In our view, the presentation style of the PiYO advertisement risked confusing viewers in respect of its advertising status.

Channel 4 submitted that the broadcast of the More4 channel ident immediately before and after the advertisement, and the slot in which the advertisement appeared (a slot it told us is regularly used for teleshopping content) would have aided viewers' assessment of the material. Although these factors may have provided limited signalling to viewers, for the reasons set out above, Ofcom was concerned about the degree to which the material was readily recognisable as advertising.

However, in view of the steps taken by Channel 4 to immediately remove the advertisement and ensure similar teleshopping presentations are more clearly recognisable as advertising – in particular the Licensee's decision to include information clearly stating that such material is advertising – our Preliminary View is the matter is resolved.

## Resolved

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>.

## Broadcast Licence Conditions Cases

### In Breach

#### Retention and production of recordings

#### *Steg G in the Morning, Sunny Govan Radio, 1 to 2 March 2017*

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##### Introduction

Sunny Govan Radio is a community radio station licensed to provide a service to Govan in the central Glasgow area. The licence is held by the Sunny Govan Community Media Group ("SGCMG" or "the Licensee").

Ofcom received a complaint about innuendo and sexual content during the *Steg G in the Morning* programme on 2 March 2017.

Ofcom asked SGCMG to provide a recording of the output. The Licensee did not provide the content requested.

Ofcom considered that this raised potential issues under Conditions 8(2)(a) and (b) of SGCMG's licence, which require the Licensee to:

- (a) "make and retain, for a period of 42 days from the date of its inclusion therein... a recording of every programme included in the Licensed Service..." ; and
- (b) "...at the request of Ofcom forthwith produce to Ofcom any... recording for examination or reproduction...".

We requested comments from the Licensee on how it was complying with these licence conditions.

##### Response

SGCMG said it fully accepted responsibility for its failure to record the output in question. It explained that it had failed to secure recordings of the station's output on 1 and 2 March 2017 due to temporary problems with its equipment. The Licensee said its failure to make a back-up recording was because its main system had been working "for nearly 10 years with no issues so [we] were caught off guard...".

SGCMG said it was implementing a back-up system with an "off line PC away from the main studio alongside our original recording and logging method".

##### Decision

Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the licensee to retain recordings of every programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. These obligations are reflected in Conditions 8(2)(a) and (b) of community radio licences, as set out above.

In this case, the Licensee failed to provide a recording of its output requested by Ofcom, and subsequently confirmed that it had not made recordings on these dates. Ofcom's Preliminary View is therefore that it breached Licence Conditions 8(2)(a) and (b).

Breaches of Licence Condition 8 are significant because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can affect Ofcom's ability to carry out its statutory duties to regulate broadcast content.

We remind the Licensee of its obligations under the terms of its licence to ensure that recordings of its output are retained for 42 days and provided to Ofcom on request. We are therefore putting SGCMG on notice that we will monitor its ongoing compliance in this area and should similar issues arise in the future, Ofcom may take further regulatory action.

**Breaches of Licence Conditions 8(2)(a) and (b) in Part 2 of the Schedule to the community radio licence held by Sunny Govan Community Media Group (licence number CR00018BA).**

## In Breach

### Broadcasting licensees' late payment and non-payment of licence fees

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Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles<sup>1</sup>. Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables<sup>2</sup>.

The payment of a licence fee is a requirement of a broadcasting licence<sup>3</sup>. Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

#### In Breach

The following radio licensees failed to pay their annual licence fees by the required payment date. These licensees have therefore breached their broadcast licences.

The outstanding payments have now been received by Ofcom. Ofcom will not be taking any further regulatory action in these cases.

Licensee	Licence Number	Service Name
Down Community Radio Ltd	CR000047BA	Down FM
Sutton Youth Radio Ltd	CR000169BA	Takeover Radio 106.9
Wolverhampton Community Radio Training	CR000042BA	WCR FM

#### Breaches of Licence Condition 3(2) in Part 2 of the Schedule of the relevant licences.

In the specific circumstances of the following case, the fee remains outstanding. This non-payment was considered by Ofcom to amount to a serious licence breach. **Ofcom is therefore putting this licensee on notice that the breach is being considered for the imposition of a statutory sanction, which may include a financial penalty.**

Licensee	Licence Number	Service Name
Awaaz Radio Limited	CR000208BA	Awaaz Radio

#### Breaches of Licence Conditions 3(1) and (2) in Part 2 of the Schedule of the relevant licence.

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0034/57976/tariff-tables-2016-17.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0034/57976/tariff-tables-2016-17.pdf)

<sup>3</sup> As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

## Fairness and Privacy cases

### Not Upheld

#### **Complaint by Miss Lisa Buchanan, made on her behalf by KRW Law LLP *The Secret, ITV, 29 April and 6, 13 and 20 May 2016***

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##### Summary

Ofcom has not upheld Miss Lisa Buchanan's complaint, made on her behalf by KRW Law LLP ("KRW Law"), of unjust or unfair treatment and unwarranted infringement of privacy in the programmes as broadcast.

The four-part drama series depicted the real life double murder of Mrs Lesley Howell and Mr Trevor Buchanan (the complainant's father) in Coleraine, Northern Ireland in 1991, by their respective spouses who were having an affair. Miss Buchanan complained that she was treated unfairly in the series because it promoted itself as being "*A true story*", "...thereby inviting the audience to take all scenes and dialogue as factual". She also complained that her privacy had been unwarrantably infringed because "...the entire series was an invasion of our family privacy" and she had not approved of the series being made and she found the programmes "traumatic".

Ofcom found that:

- Miss Buchanan was not treated unjustly or unfairly in the programme as broadcast. In particular, we considered that viewers would have understood that the series was not a documentary, and that while the drama was based on real events, the characters and scenes presented in the programme were not intended to represent a complete and accurate reflection of the real people and events they depicted.
- Although viewing a programme about a past traumatic event is, understandably, capable of causing distress and upset, in the particular circumstances of this case, and having particular regard to the fact that the information relating to the murders and the notorious events surrounding them was already widely available in the public domain, to the extent that Miss Buchanan had any legitimate expectation of privacy in relation to aspects of the broadcast, it was limited. In the circumstances of this case, the complainant's right to privacy in relation to those parts of the broadcast was outweighed by the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference. Therefore, Miss Buchanan's privacy was not unwarrantably infringed in the programme as broadcast.

##### Programme summary

On 29 April and 6, 13 and 20 May 2016, ITV broadcast a four-part drama series based on the real life double murder of Mrs Lesley Howell, "Lesley", and Mr Trevor Buchanan (the complainant's father), "Trevor", in Coleraine, Northern Ireland in 1991.

Each episode began with the on-screen text:

*"A true story"*

Immediately followed by:

*"What follows is a dramatisation of real events that took place in Coleraine between 1990 and 2011".*

The programmes depicted the affair between Mr Colin Howell, "Colin", and Mrs Hazel Buchanan (the complainant's mother), "Hazel", which led them to devise a plan to murder their respective spouses, Lesley and Trevor.

Colin and Hazel met at their local church and began an affair. Having been informed of the affair by a member of the congregation, the church Pastor confronted the two and their respective partners were informed. Colin and Hazel agreed to end the affair.

Lesley spoke to her father about feeling that she had no option but to stay with her husband because: *"...the children adore him. Who else would clothe and feed them?"*

Lesley was later shown to have survived a suicide attempt and Colin was shown removing a note written by Lesley, which he later used to convince police that her murder was a suicide. Lesley's father offered her money which provided her with the option of leaving her husband. Lesley told Colin:

*"As of now me and the children are financially independent, my father's taken care of us, he's been very generous and you won't get a penny...you disgust me".*

Lesley's father died soon after this.

Colin and Hazel were shown to meet and discuss the possibility of murdering their partners:

Colin: *"If you were to leave Trevor to be with me, would he survive it?"*

Hazel: *What?*

Colin: *Would he want to go on living?*

Hazel: *He said he'd die if I left. What about Lesley?*

Colin: *She's lost the will to live. If she and Trevor were to die, the children could have no better parents than you and me. Now what if we could help them?*

Hazel: *What?*

Colin: *End their suffering humanely.*

Hazel: *You're mad, that would never work, how would you get away with it?*

Colin: *We".*

Colin and Hazel were later shown murdering their spouses by suffocation and carbon monoxide poisoning and deceiving police into believing that they had committed suicide together.

The church Pastor asked Colin to leave the church congregation and explained that he had asked the same thing of Hazel who had agreed. The Pastor said:

*"Colin, it is my belief that you are wholly responsible for this terrible tragedy...I simply cannot accept that Lesley would have abandoned the children".*

The series depicted the police investigation and the inquest in which the character of the police officer in charge of the case stated:

*"I conducted an immediate and thorough investigation into both deaths...It is believed that the deaths were brought about as a result of the affair by the spouses of the victims up until the time of the suicide incident. Lesley Howell had made previous suicide attempts. Despite reconciliation attempts made by Reverend Hansford, neither of the victims could come to terms with their spouses' infidelity and [this] was most likely the motivating factor in both of them taking their lives".*

A message on screen later stated: *"5 months later"*.

Colin and Hazel and their children were shown playing in a forest together. Hazel approached her daughter, "Lisa" (an actor playing the complainant), who was sitting alone, and the following conversation ensued:

Hazel: *"You're not playing, you're not playing darling?"*

Lisa: *I miss Daddy.*

Hazel: *I know that, I know.*

Lisa: *Why did he want to die?*

Hazel: *Well, sometimes people get so sad, so sad, that they have to leave this world and he'll be in heaven now. Hey, you okay?"*

Lisa was shown walking away from Hazel.

Colin and Hazel were then shown away on a short trip together. Hazel talked about her guilt, she said: *"He sees us...God, I can feel his eyes on us"*.

At a later time, Colin responded: *"God will pardon us in time"*.

Colin talked about the possibility of them getting married. He said: *"I will love Lisa and Andrew as my own"*. Hazel responded:

*"I'm not sure I can be a loving mother to yours...I feel so guilty...I do love you...I just can't do it, I'm sorry".*

✂ [REDACTED]<sup>1</sup>

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<sup>1</sup> Text redacted for legal reasons.

The relationship between Colin and Hazel eventually broke down and they were later shown to have each re-married. Colin married "Kyle" and on the day they brought home their baby, Colin informed Kyle that he had murdered Lesley and Trevor:

Colin: *"I need to tell you something, I killed Lesley.*

Kyle: *What?*

Colin: *I killed Lesley and I killed Trevor.*

Kyle: *What are you talking about? They killed themselves.*

Colin: *No. I killed them and faked their suicide with Hazel. I felt it was what God wanted me to do. They were both so unhappy, they didn't want to live. I did it for the children, to protect them.*

Kyle: *Is this true Colin?*

Colin: *It's the truth, yes.*

Kyle: *Then you have to tell someone, you have to tell the police.*

Colin: *I will if you want me to, but my duty is to provide for you and our children...without me, you'll lose the house and everything that we have...I will do whatever you choose, I'm placing our future in your hands".*

Colin was later shown sexually assaulting a female patient in a dental chair at his surgery.

Colin was informed that his son, "Matthew", who was away at university, had slipped and fallen over a stairwell banister and had died of his injuries.

Colin was shown at the beach walking into the sea asking God for forgiveness.

Kyle and Colin were shown arguing. Colin stated: *"I sinned and God took my son"* and Kyle said:

*"...God is still punishing us...you still haven't repented Colin...I want you out of the house...I just don't believe you anymore..."*

Colin later confessed to the murder of Lesley and Trevor in front of several witnesses:

*"I fear for my immortal soul. I have been unfaithful to you many times and I have touched female patients, I touched them sexually, they were under sedation. I can't stop myself. I've taken £238,000 from patients whose treatments I might not be able to complete, maybe more. I owe over £100,000 to the Inland Revenue. I've emptied our savings accounts. I've lost £360,000. We'll lose this house, we'll lose everything...the whole thing was a gigantic con...I realised that I am a fraud, my whole life has been a fraud. God finally told me, I heard his actual voice...On the night of May the 18<sup>th</sup> 1991 I murdered my wife Lesley and Trevor Buchanan. What Hazel and I were doing was causing so much pain to Lesley and Trevor, I actually thought I could take that away from them. We talked about divorce but I believed that would cause the children too much suffering. In my mind*

*it was much worse for Trevor and Lesley to live than to die, so I made a plan to kill them and to make it look like suicide...I wanted it to be easy and painless...but in the end they did [fight]. Lesley woke up, she called out for Matthew. Trevor woke up. I'd told Hazel to take something to make him fall asleep but he woke up and he fought, so Lesley and Trevor both knew they were going to die...I never thought we'd get away with it, but God knew and he took my son...Lesley dying with Matt's name on her lips, that was God's warning to me..."*

Colin and Hazel were re-interviewed by the police. During her interview, Hazel stated:

*"...why should I be taken down because of his act? Why should he drag me down? I was a victim in my own home because of him...I couldn't do anything because he controlled me. He told me to go into the guest room [on the night of the murders] and not to come out and I was so scared. I thought if I say something against this, he's going to turn around and kill me"*

The police informed Colin:

*"...she's pleading not guilty on the grounds that you coerced her. She says it was all down to you"*

Hazel was shown on a beach being supported by her family (including the complainant) on the day of her trial. Her husband, "David", prayed to God:

*"...Let the jury understand that she was his victim too, an innocent victim"*

Hazel was shown on trial in court. Colin gave evidence against her:

*"This was a completely mutual decision...she was my full partner"*

The verdict of guilty was read out and Hazel's daughter, Lisa (the complainant), could be seen crying at the decision.

An onscreen message stated:

*"Hazel Stewart was sentenced to life with a minimum of 18 years for the murders of both Lesley and Trevor. All appeals by her have failed"*

Hazel was shown being taken into prison.

Colin was shown being escorted from the court and an on-screen message stated:

*"Colin Howell is serving life with a minimum of 21 years for double murder and 5 ½ years for sexual assaults on patients. Kyle divorced Colin and returned to America with her children. No charges were brought against her"*

Colin was shown back in prison and he stated:

*"When I walk back out of here, I'll have atoned for my crimes and paid my debt. The slate will be wiped clean and I'll have another 20 years of life to enjoy. My family is known for its longevity"*

Photographs of the real Lesley Howell and Trevor Buchanan were then shown on-screen with their names stated below.

The final episode ended.

Throughout the series, scenes of both couples' family life were shown, with actors playing their various children (including the complainant), for example, scenes showing the children at the dinner table, in church or in swimming lessons.

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

#### Complaint

##### *Unjust or unfair treatment*

- a) Miss Buchanan complained that she was treated unjustly or unfairly in the programmes as broadcast because the series promoted itself as "*A true story*", which she asserted was "...thereby inviting the audience to take all scenes and dialogue as factual". Miss Buchanan said that the series was a "...sensational melodrama and meets the needs of the genre not truth. Much of it is made up and embellished".

In particular, Miss Buchanan said that the representation of her mother was "...untrue and inaccurate and simply accepts what Colin Howell states as truth". For example, she said that the scene in which the character depicting her asked the character depicting her mother why her father had wanted to die was "entirely fictitious". Miss Buchanan said that this made the character representing her mother "appear heartless and a liar to her daughter". She said that her mother had never behaved like that with her. Miss Buchanan noted that the programme makers did not discuss with her "any scenes in which a character would depict me" and she was not offered an opportunity to view the programmes before they were broadcast.

##### *Unwarranted infringement of privacy*

- b) Miss Buchanan complained that her privacy was unwarrantably infringed in the programmes as broadcast because she considered "...the entire series was an invasion of our family privacy" and said that she had not approved of the series being made. Miss Buchanan also said that the series had been "traumatic" for her. For example, the programmes included an "entirely fictitious" scene in which the character depicting her asked the character depicting her mother why her father had wanted to die. Miss Buchanan said that her mother never talked to me in such a way about her father and that she found the scene an invasion of her privacy and "very distressing emotionally". She also said that the "series has been grossly insensitive especially the prolonged and graphic murder scenes".

#### The broadcaster's response

ITV said that the series dramatised real events between 1990 and 2011 and depicted: the affair between Colin and Hazel; the murder of their spouses, Lesley and Trevor; their deception of the police and their families to suggest their spouses had committed suicide;

the breakdown of their relationship and their marriage to new partners; Colin's confession to the murders; and, the trial and conviction for the murder of Hazel as Colin's accomplice.

ITV said that it had a long and distinguished record of broadcasting factual dramas based on real events, and depicting real people involved in criminal cases and/or other fatal tragedies. It said that, as with its previous similar dramas, *The Secret* featured events that had been widely publicised and discussed previously in other media sources. It said that:

"A key editorial purpose of factual dramas is to portray already well-known events, which are of genuine public interest, in a form that can provide an engaging and fresh insight into those events".

The broadcaster said that the original source for the series was a book about the case, 'Let This Be Our Secret', published in 2011 and written by a journalist, Mr Deric Henderson. ITV said the series was also developed on the basis of detailed and extensive further research - the writers and programme makers contacted and spoke directly to many individuals who had had a role in the events to be depicted, and also had access to court records related to the case.

ITV said that the confession and conviction of Colin, and the subsequent trial and conviction of Hazel, had been reported across the UK, but in Northern Ireland, it said the case was one of the most widely discussed murder cases in its recent history, other than those related to terrorism. It said that the original police investigation into the deaths of Lesley and Trevor was also the subject of a detailed Police Ombudsman's Statement, published in December 2011. ITV said that therefore the affair between Colin and Hazel and the murders had been the subject of detailed public and media scrutiny, not only at the time of Hazel's trial, but in numerous television reports and documentaries. The broadcaster also said that the complainant herself had spoken publicly about the case and its impact on her family. It gave the example of the BBC's programme, *Spotlight*, where Miss Buchanan spoke about the fact that she believed that her mother should not have been convicted for murder.

ITV said that the programme makers contacted the complainant via her stepfather at an early stage of the development of the programme in January 2015, but the complainant declined to discuss the project with them or have further contact. However, ITV also said that the programme makers also contacted other relatives of Trevor, and kept his brother fully informed of the progress of the production on behalf of other members of Trevor's family, and provided Trevor's brother with the opportunity to preview the series prior to its broadcast.

ITV then addressed each of the heads of complaint.

#### *Unjust or unfair treatment*

- a) ITV said that Ofcom could not find that the programme had treated Miss Buchanan unfairly "simply because she disagrees with the depiction in the programme of her mother Hazel Stewart as a murderer". ITV acknowledged that Miss Buchanan was entitled to her own opinion that her mother is not guilty of murder, however, it pointed out that a criminal court had established her mother's guilt, and that all attempts to appeal that verdict had been unsuccessful. ITV said that in these circumstances, it could not be unfair to portray Hazel as a guilty accomplice in the murders, whether or not Hazel and her family continued to assert her innocence.

ITV said that most of the details of the murders depicted in the series were admitted by Hazel herself in her police interviews, although it recognised that she now sought to retract those admissions. It explained that the question for the jury at her trial was not whether she had had an affair with Colin before the murders, or whether she had taken part in the murders with Colin, or whether she had subsequently helped to cover up the murders with lies to the police, since it said that all of these facts were admitted. The main question for the jury was whether Colin had exercised control over Hazel in the carrying out of these crimes, such that she was not his willing accomplice as a matter of law. The court found on all the evidence, and not just on the account of Colin, that she was guilty of both murders.

ITV said that contrary to the assertion in Miss Buchanan's complaint, the drama was not based simply on what Colin had stated in his police interviews and court evidence, although it said that these were among many sources of information that informed the script. It said, for example, that the series did not ignore Hazel's account, given in her police interviews, recordings of which were heard in evidence during the trial. It said that these interviews were another significant source for the series, and were depicted in a sequence in the final episode. It said that the dialogue in these interview scenes was based on Hazel's words, recorded in the actual police interviews.

ITV also said that Miss Buchanan's assertion that the captions at the beginning of the programme invited viewers to "take all scenes and dialogue as factual" was incorrect. It said that each episode began with the title of the series, followed by a caption which stated "*A true story*", followed immediately after with "*What follows is a dramatisation of real events that took place in Coleraine between 1990 and 2011*". ITV said that:

"These captions therefore made clear to viewers that this was a dramatisation of a true story, not a documentary or mimetic reproduction of those events, nor would viewers have taken it has such".

The broadcaster also pointed out that:

"Dramatisation always involves a degree of selection, simplification and condensation of events, as well some invention of scenes and dialogue. The drama did not purport and could not possibly reproduce in every detail what happened over a period of 21 years, but it dramatised (i.e. put into dramatic form) the affair of Colin and Hazel, their joint murder of their respective spouses, their deception of the police and families about the nature of those deaths, and the eventual confession of Colin and trial and conviction of Hazel. In doing so it drew on extensive documentary and other research materials, and did not distort events in a way that was unfair to the real individuals portrayed in the drama".

ITV said that it did not accept Ms Buchanan's criticism that the programme was a "sensationalist melodrama" and that it believed that most viewers would have considered the drama to be "a sober account of events portrayed in a realistic style, in which the victims, their families, and indeed the murderers are portrayed with humanity and sensitivity". ITV said that the complainant specified only one particular scene, in episode three, which she suggested was unfair because it was "entirely fictitious". The scene, outlined in detail in the "Programme summary" section above, showed Hazel and Colin taking their children out in a forest together and included a conversation between

the actors playing Hazel and her daughter Lisa (the complainant). ITV said it accepted that the dialogue between Hazel and Lisa was invented. It explained that the dramatic purpose of the scene was to show that after the murder, Colin and Hazel resumed their relationship, and that Colin would bring his children to visit Hazel's family, in the hope that eventually they could form a joint household.

ITV said that while it regretted that the scene may have caused distress to Miss Buchanan, it did not agree that the scene made Hazel "appear heartless", or that the scene or the decision to include it was "crass". Neither did the broadcaster consider that the scene was unfair in its depiction of either Hazel or the complainant as a child. It said that the complainant would have been grieving for her father at the time depicted in the scene, and that at that time it is not disputed that Hazel was deceiving her family about Trevor's death, including her children. ITV said that it considered that the scene depicted Hazel sympathetically, in that it "...shows her already suffering from the pangs of her own conscience and empathising with her daughter's grief, having assisted Colin Howell in depriving her children of their father".

ITV noted that the complainant had stated that she "did discuss my father's death with my mother and she responded in a caring loving and Christian way". ITV said that it was not disputed that Hazel's children had grown up understanding that their father had committed suicide, which it said Hazel always knew to be untrue. The broadcaster said:

"In this regard she did therefore deceive her children. But this scene sought to also represent that Hazel was nevertheless a loving mother to her children, and in this dialogue she seeks to comfort her daughter by offering a consoling explanation of her father's death that suggests he is now in heaven (reflecting the religious beliefs of the family)".

ITV said that it appreciated that the fact that Hazel withheld the truth of their father's death from her children was a sensitive matter for the complainant, however considered that the scene "...did not unduly distort the reality of events, notwithstanding that this particular dialogue was invented". It also said that Hazel's lies about Trevor's and Lesley's deaths were an important part of the prosecution case against her, i.e. that she deceived the police and her own family in order to avoid their murders being discovered.

ITV said that the programme makers had offered to discuss the drama with Miss Buchanan (care of her stepfather) well before the script was completed, and she declined to do so. It said that there is no obligation on broadcasters to offer those depicted in factual dramas a preview of the programme before it is broadcast, but it said, had the complainant requested this, it would have willingly provided this.

ITV further said that there was no unfairness in the programmes to Miss Buchanan arising from the fact that the producers had not discussed any scene depicting her, and that she was not depicted in the programmes in a way that was unfair. ITV also said that the depiction of the complainant's mother in the programmes was not unfair, and that therefore her depiction did not create any unfairness to the complainant.

ITV said "Ofcom cannot find that a programme treated deceased persons or their relatives unfairly simply because, as in this case, those relatives did not wish that programme to be made at all".

### *Unwarranted infringement of privacy*

- b) ITV said that the murders of Lesley and Trevor, and the conviction of Colin and Hazel were matters of public record. It said that the details of the murders themselves were "exhaustively" examined, firstly at the original inquest, and again in open court during Hazel's trial and that these details had been widely published in media reporting of the trial, in television documentaries, and in Mr Henderson's book about the case. It said that:

"Murder is a crime against society, not just against the individual concerned, and details of any murder are therefore always matters of public interest and not simply private to the family of the victims, although of course the publication of those details may well be distressing to the family".

The broadcaster said that it regretted any distress caused to the complainant by the broadcast of the programmes. However, it pointed out that an individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression.

ITV said that the series depicted the murders in some detail, in order that viewers could understand the callous and carefully planned nature of those murders, the roles that Colin and Hazel played in the execution of the crimes, and to understand how they were able to deceive the police into believing that the deaths had been suicides. The broadcaster continued stating that the factual details of the murders had previously been published in many forms, and that the programme makers "...took pains to depict the crimes as accurately as possible, including (but not dwelling upon) the final moments and suffering of the victims". ITV said that whether or not Miss Buchanan considered the murder scenes "prolonged and graphic", it did not consider the depiction of the murders could reasonably be found to infringe her privacy given the public nature of all of the information in the scenes concerning the execution of the murders.

ITV said that it has never been the case that broadcasters are required to seek consent from the families of victims of crime before making a programme that portrays those victims and crimes.

ITV said that, given *The Secret* dramatised events that had been widely publicised and discussed previously in other media, the programme makers did not seek the consent of the complainant before broadcasting the programme. The broadcaster also said that:

"...insofar as the complainant might have any reasonable expectation of privacy in relation to the depiction of the murder of her father, or scenes of her family life with her mother following the murder of her father, that expectation was severely limited by the amount of information already in the public domain concerning the murder, its impact on Trevor's family, and the later prosecution and conviction of her mother".

It further said that any infringement of Miss Buchanan's privacy in broadcasting the programmes was therefore warranted, and was outweighed by the genuine public interest in a double murder case, and the audience's right to receive information about it, in this instance in the form of a factual drama.

ITV went on to discuss broadcasters' obligations to seek to reduce potential distress to victims of crime and their relatives, in line with Practice 8.19 of the Ofcom Broadcasting Code ("the Code") (as discussed below). ITV said that it would always, as far as reasonably practicable, ensure that it sought to reduce the potential distress to victims and/or the immediate families of those whose experience is to feature in a factual drama, and that those families were informed of the plans for the programme and its intended broadcast, even though the events being dramatised have been in the public domain in the past. It said that this was what it and the programme makers had sought to do in relation to Miss Buchanan.

ITV said that the programme makers had offered to discuss the series with Miss Buchanan at a very early stage of development. It said that the scriptwriter had written to the complainant and her brother (care of their stepfather) on 29 January 2015, asking to interview them by way of background research (a copy of this letter was provided to Ofcom). ITV pointed out that this was well before any script had been written, filmed or scheduled for broadcast. It said that the letter made clear that "We are proposing to dramatised a few scenes that might portray you at various ages".

The scriptwriter received a response from the complainant's stepfather dated 14 February 2015 (a copy of which was also provided to Ofcom), which stated that he had discussed the request with the complainant and her brother and was replying on their behalf. ITV said that the letter made clear that they considered a fictional drama would portray Hazel and what had happened in a manner that they dispute, and were unwilling to see Hazel depicted as Colin's willing partner in the murders. The complainant's stepfather therefore confirmed "none of us wish to participate". The programme makers therefore respected the complainant's decision not to engage in discussion about the series, having been informed of it.

ITV said that, by contrast, another close relative of Trevor, his brother, who was contacted around the same time by the programme makers, agreed to discuss the project with the programme makers, and be kept informed of its progress, although he did not authorise or approve it. The broadcaster said that Lesley's daughter had also agreed to meet the programme makers to discuss the making of the series, although it said that she actively disapproved of it and did not wish it to be made at all. ITV said that these individuals therefore effectively became the programme maker's contact points for other Howell and Buchanan family members. The broadcaster said that both were offered the opportunity to view the series prior to broadcast. It said that Trevor's brother did view the series in advance of its broadcast and also shared it with other family members.

ITV said that Miss Buchanan was not offered the opportunity to view the series before it was broadcast because she had already been notified about the programme by the programme makers, and had declined further contact. It also said that there had been extensive publicity surrounding the programme prior to its being broadcast, particularly in Northern Ireland, where it said the case is a matter of huge public interest. ITV therefore said that, having been informed 15 months earlier, the complainant could not have been unaware that the series was going to be broadcast. It said that had the complainant contacted ITV at any time requesting to preview the series before its broadcast, it would have arranged this, even though there was no obligation on it to do so.

ITV said that given the above, it considered that the requirement of Practice 8.19 had been met. ITV said that although the programme makers did not formally notify Miss Buchanan of the actual date of broadcast, this did not in itself result in an unwarranted infringement of privacy, given the complainant was already well aware of the series being made.

ITV also said that Ofcom "...should not find that a programme unwarrantably infringed the privacy of relatives of a deceased victim of crime, simply because the broadcaster did not seek the consent of those relatives before making a programme featuring the crime". The broadcaster added that this was especially so where the subject matter of the programme is a notorious murder case that had already attracted an enormous amount of publicity.

ITV said that it has never been a requirement, either legal or regulatory, that such a drama programme can only proceed with the consent of the families directly affected by the subject matter of the programme. It said that such a requirement would be a "wholly undesirable and unworkable fetter on freedom of speech and creative expression".

ITV therefore said that the programmes did not unwarrantably infringe Miss Buchanan's privacy.

In conclusion, ITV said that it considered the programme makers had undertaken the creation of the series with due respect for the feelings of the families of the victims, and took appropriate steps to minimise their distress. It said that the programmes had not treated the complainant unfairly or unwarrantably infringed her privacy.

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

Ofcom prepared a Preliminary View that Miss Buchanan's complaint should not be upheld. Shortly before Ofcom issued this Preliminary View, KRW Law, on behalf of Miss Buchanan, submitted representations on ITV's statement in response to Miss Buchanan's complaint, a copy of which Ofcom provided to ITV. The parties were given the opportunity to make representations on the initial Preliminary View. Both parties made representations which are summarised below. As KRW Law's representations on ITV's statement were largely reiterated in its representations on the initial Preliminary View, we have summarised these together, as relevant.

#### Representations by KRW Law on behalf of the complainant

##### *Unjust or unfair treatment*

On behalf of the complainant, KRW Law stated that:

- ITV portrayed, and viewers perceived, *The Secret* as being materially true. KRW Law said that therefore viewers would likely to have understood the programmes to have been essentially true and that even dramatised scenes would have some basis in reality. It further said that Miss Buchanan did not consider the programmes to be unfair simply because her mother was portrayed as a murderer, but rather, it said that:

"The unfairness to the complainant arises from the portrayals that have been included by the broadcaster, i.e. scenes that are entirely incidental to the murders

and which depict events that never happened but which the audience would believe were true”.

KRW Law said that, for example, it considered that viewers would have understood the scene set in the forest in which Hazel was shown speaking with Lisa, to have been true. It said that the scene, portraying the complainant, was unnecessary and “[a]nother scene could have been created to establish that same, extremely broad, assertions that did not include the complainant”.

It said that Ofcom had considered whether the depiction of the complainant’s mother was fair in this scene and whether the depiction of the complainant’s mother was fair to the complainant. However, KRW Law said that Ofcom had failed to consider the unfairness to the complainant herself.

### *Unwanted infringement of privacy*

On behalf of the complainant, KRW Law said that it considered Ofcom was not correct in its approach to determining an individual’s right to privacy and that the complainant did have a legitimate expectation of privacy in the circumstances. Its arguments are summarised in more detail below:

- KRW Law said that:

“The right to privacy is the right to have a private life. It is not whether private information has been revealed. Any intrusion in an individual’s private life is an invasion of their privacy, whether or not the intrusion is later deemed justified”.

- It said that the approach taken by Ofcom in our Preliminary View to the question of whether the complainant had a legitimate expectation of privacy was not consistent with the “right to be forgotten” and recent Supreme Court and European Court of Justice judgments<sup>2</sup>, which suggested that an “intrusion” to privacy was caused on each occasion details of an individual’s private and family life is published to an audience.
- KRW Law set out in detail, referencing case law, what it considered the correct considerations should be when determining whether the complainant had a right to privacy. In particular, KRW Law said that the first question was whether there was a “reasonable expectation” that the information in question will remain private<sup>3</sup>, which it said extends to every occasion on which a person can be said to have a reasonable expectation that there will be no interference with the broader right of personal

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<sup>2</sup> It cited in particular *PJS v News Group Newspapers Ltd* [2016] UKSC 26 and *Gonzalez v Google Spain and Google Inc* [2014] 3 WLR 659 which related to the “right to be forgotten” within the context of the Data Protection Directive.

<sup>3</sup> It cited *McKennit v Ash* [2008] QB 73 at paragraph 11 which states: “where the complaint is of the wrongful publication of private information, the court has to decide two things. First, is the information private in the sense that it is in principle protected by article 8? If “no”, that is the end of the case. If “yes”, the second question arises: in all the circumstances, must the interest of the owner of the private information yield to the right of freedom of expression conferred on the publisher by article 10?” In respect of the first aspect, it also said that the “relevant question” had been summarised as “what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity”, per Lord Hope in *Campbell v MGN* [2004] 2 AC 547 at paragraph 99.

autonomy<sup>4</sup>. It said that it considered that the right to respect private life embraces more than one concept, two core components being unwanted access to private information and unwanted access to or intrusion into one's personal space.<sup>5</sup> It also argued that information which is in the public domain can, through the passage of time, recede into the past and become a part of a person's private life.<sup>6</sup>

- KRW Law also suggested that, in assessing whether the complainant had a legitimate expectation of privacy, Ofcom should have taken account of all the circumstances of the case, including the factors listed in *Murray v Express Newspapers Plc* [2009] Ch 481. It then gave its assessment of those factors:
  - In terms of the attributes of the complainant, it said she was the daughter of the murder victim and the events depicted were presented as relating to her childhood.
  - In terms of the nature of the activity depicted, it related to the complainant's home and family life when she was a child and depicted her suffering emotional distress following the death of her father, and depicted her at home with her family and with her family members and her father's murderer.
  - It said that ITV was primarily depicting the complainant's family life for the purposes of dramatic entertainment and profit, and knew that the complainant and other relatives of the victims strongly objected to the commissioning and production of the broadcast.
  - Finally, it said that the effect of the broadcast on the complainant was to cause her extreme distress and upset.
- KRW Law argued that the depiction of real individuals participating in fictional events engaged the privacy and family rights of the complainant. KRW Law gave the example of the scene set in the forest in which Hazel was shown speaking with Lisa. It said that it was significant that the broadcaster had said that it had wished to portray the "religious beliefs of the family" because "...the broadcaster is admitting that it wished to portray the complainant's religious beliefs – which are matters which are extremely private". KRW Law therefore said that the depiction of Miss Buchanan's religious beliefs "within a wholly fictitious scenes [sic] actually misrepresented her religious views and was an entirely unwarranted infringement of her family, privacy and religious rights".

✂ [REDACTED]<sup>7</sup>

- KRW Law disagreed with ITV's approach to privacy, and, in particular, with regards to ITV's view that Miss Buchanan's expectation of privacy was severely limited by the amount of information already in the public domain about the murders. KRW Law said

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<sup>4</sup> It cited *R (Catt) v ACPO* [2015] 2 WLR 664 at paragraph 4 in support of this.

<sup>5</sup> It said that these were referred to as the "confidentiality component" and the "intrusion component" in *Goodwin v NGN Ltd* [2011] EMLR 27 at paragraphs 85 and 86.

<sup>6</sup> It referred to *R (T) v Chief Constable of Greater Manchester* [2014] 3 WLR 96 in support of this.

<sup>7</sup> Text redacted for legal reasons.

that the complainant retained a reasonable expectation of privacy with regards to information not disclosed in the trial; it said that the position was different for material that was disclosed in open court. Further, KRW Law said that ITV failed to acknowledge that the series had substantial viewer numbers, many of whom would have had no knowledge of the criminal proceedings or factual information included in the programmes.

- KRW Law also questioned why Ofcom had seemingly disregarded ITV's "admissions" that accepted that the complainant's privacy and family rights were engaged.
- KRW Law also disagreed with ITV's interpretation of 'public interest'. It said that: "...what has been said in open court can be reported. However, there is no public interest in making up dialogue regarding a family dynamic for an entertainment show". It said that the broadcaster had "...inappropriately equated 'public interest' with 'what is interesting to the public'". It said that:

"...there is a clear difference between the public interest in respect of (a) of reports of the criminal proceedings at the date of their occurrence in the context of 'factual' reporting... and (b) the commissioning and broadcasting of a 'drama' which... included wholly 'artistic' (or inaccurate) depictions of our client and presented to the audience in a manner whereby fictional content is to be perceived as factual/non-fictional".

#### ITV's representations

ITV did not raise any representations with regards to Ofcom's initial Preliminary View. However, it provided further information in response to KRW's comments, as summarised above.

#### *Unjust or unfair treatment*

ITV stated that:

- As detailed in its response to the complaint, the series "...did not distort events in a way that was unfair to the real individuals portrayed, and that the 'forest' scene did not unduly distort the reality of events, notwithstanding that the particular dialogue in this scene was invented". The broadcaster said that the depiction of the complainant's mother was not unfair to her or to the complainant.

ITV also said that it did not agree with KRW Law that Ofcom had failed to consider whether this scene was unfair to the complainant as well as her mother. ITV said that the complaint alleged that the scene was unfair to the complainant because it was fictitious, and that it made her mother "appear heartless and a liar to her daughter". ITV said that it was correct to conclude that the scene was not unfair to the complainant on the grounds that it was "fictitious", given that viewers would have understood the series was a drama based on factual events, and that the dialogue (such as in this particular scene) did not represent a full and accurate factual account of conversations relating to the murders over a period of 21 years. It said that the depiction of the complainant's mother was not unfair to her, and her depiction did not create any unfairness to the complainant.

### *Unwanted infringement of privacy*

ITV stated that:

- In relation to the 'forest' scene, there was no infringement of the complainant's privacy in the programmes as broadcast, given the information in the public domain, and viewed in the round, the scene did not reveal any private information about the complainant.

With regards, in particular, to KRW Law's view that this scene had misrepresented the complainant's religious views and infringed her privacy by including information pertaining to her religious beliefs, ITV said that this scene represented Hazel as a loving mother seeking to comfort her child by suggesting her father was now in heaven. It said that this clearly reflected the religious (i.e. Christian) beliefs of the family. It said that Miss Buchanan herself had said in her complaint that she had discussed her father's death with her mother, who "responded in a caring, loving and Christian way". ITV said that the suggestion by KRW Law that this scene thereby infringed on the complainant's privacy by depicting her religious beliefs, and "misrepresented" the complainant's religious beliefs, was unsustainable, given the nature of the dialogue and the information already in the public domain about the Buchanan family and their religious background.

- It did not make any "admission" that "the complainant's family and privacy rights were engaged". ITV said that it had referred in its response to the complaint to the complainant having a sufficiently direct interest in the treatment of the murder of her father in the series, and the depiction of herself, i.e. a sufficiently direct interest in order to satisfy the requirements of the Broadcasting Act 1996 to bring a complaint of unfair treatment.
- It did not state that the complainant had an expectation of privacy in relation to the matters depicted in the series. ITV said that it "...suggested that, insofar as the complainant *might* have any expectation of privacy, that expectation was severely limited, given the information already in the public domain concerning her father's murder, and her family life following the murder". ITV said that it agreed with Ofcom's view that the complainant did not have a legitimate expectation of privacy in relation to the depiction of the murders, the events surrounding them, and her mother's trial and conviction.
- In its view, Ofcom had properly taken into account all the circumstances of the case (in line with recent case law) in reaching the correct conclusion that the complainant did not have a legitimate expectation of privacy in relation to the depiction of the murders and the events surrounding them. It considered that KRW Law's reference to the concept of intrusion and the "right to be forgotten" were irrelevant to the complaint.
- It did not agree with KRW Law's comments on 'public interest' and for the avoidance of doubt, it does not equate 'public interest' with what is "interesting to the public".

✂ [REDACTED]<sup>8</sup>

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<sup>8</sup> Text redacted for legal reasons.

- It said that, while the complainant was entitled to her opinion as to whether certain scenes were “surplus to requirement” in telling the story of the murders and the events surrounding them, and was sympathetic to the complainant for the loss of her father and the traumatic discovery of his murder, it considered that the series did not treat the complainant unfairly or unwarrantably infringe her privacy.

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

Following its consideration of the representations, as outlined above, on Ofcom's initial Preliminary View, Ofcom prepared a revised Preliminary View that Miss Buchanan's complaint should not be upheld. The parties were given the opportunity to make representations on the revised Preliminary View. Neither party made any further representations.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, both parties' written submissions and supporting material provided by ITV with its written submissions, which included a recording of the BBC programme *Spotlight* and a copy of the book 'Let This Be Our Secret'. Ofcom also took account of the representations made by KRW Law on ITV's response to the complaint and made by both parties in response to Ofcom's initial Preliminary View on this complaint.

#### *Unjust or unfair treatment*

- a) Miss Buchanan complained that she was treated unjustly or unfairly in the programmes as broadcast because the series promoted itself as being “*A true story*”, which Miss Buchanan asserted was “...thereby inviting the audience to take all scenes and dialogue as factual”. Miss Buchanan said that the series was a “...sensational melodrama” and that much of it was “made up and embellished”.

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

In assessing whether Miss Buchanan had been treated unjustly or unfairly, we had particular regard to Practice 7.10 of the Code which states:

“Programmes – such as dramas and factually-based dramas – should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation”.

Before considering the substance of the complaint, Ofcom assessed whether or not Miss Buchanan was identifiable as one of the individuals depicted in the programmes. We noted that the series was a factual drama about the double murder of Lesley and Trevor (the complainant's father). The programmes included scenes of both victims' family life, including actors playing their various children, several of whom represented the complainant at various ages. We considered that the complainant was identifiable as “Lisa” in the programmes.

At the beginning of each episode, the programme stated “A true story”. However, we also noted that this was followed immediately with “What follows is a **dramatisation of real events** that took place in Coleraine between 1990 and 2011 [Ofcom's emphasis]”. Given this, we considered that viewers would have understood that the series was not intended to be a documentary, and that while the drama was based on real events, the characters and scenes presented in the series were not intended to represent a complete and accurate reflection of the real people and events they depicted.

It was in this context we went on to consider the complainant's concern that the representation of her mother was “...untrue and inaccurate and simply accepts what Colin Howell states as truth”. Ofcom recognised that Miss Buchanan is entitled to her own opinion that her mother is not guilty of murder. However, it is not disputed that her mother has been convicted for the crime after a trial and that her attempts to appeal the conviction have been, to date, unsuccessful. We therefore did not consider that it was unfair to portray Hazel as an accomplice in the murders. Also, and notwithstanding that we did not consider viewers would have understood the series to be a documentary, as outlined above, we noted that it was made clear in the programmes that Hazel did not consider herself to be guilty of murder and neither did her close family, and that they continued to assert her innocence. For example, while shown being interviewed by police, Hazel stated:

*“I couldn't do anything [to prevent the murders] because he [Colin] controlled me...I was so scared, I thought if I say something against this, he's going to turn around and kill me. I am a soft person. But he was a very controlling person. I was easy prey”.*

Hazel's family were shown praying for her before going in to court, her husband saying:

*“Lord, we ask you watch over our beloved Hazel and grant her justice in her time of trial. Let the jury understand that she was his victim too. An innocent victim”.*

During Hazel's trial, Hazel and her family spoke about her legal strategy:

David: *“We've agreed that the way to do this is to expose Colin. The jury must see him for the liar that he is.*

Andrew: *He's a double murderer.*

Lisa: *He'll make the jury see that.*

Hazel: *You don't know him. You don't know what he's capable of'.*

At the end of the final programme, as the verdict of guilty was announced, Lisa, Andrew and David were shown visibly upset. On-screen captions stated:

*"Hazel Stewart was sentenced to life with a minimum of 18 years for the murders of both Lesley and Trevor".*

And,

*"All appeals by her have failed".*

Miss Buchanan also specified in her complaint a particular scene, in episode three, which she said was unfair to her because it was "entirely fictitious" and made her mother "appear heartless and a liar to her daughter". We also took into account KRW Law's representations that the unfairness to Miss Buchanan was caused by the inclusion in the programmes of "...scenes that are entirely incidental to the murders and which depict events that never happened but which the audience would believe were true" and its comments that viewers would have expected the series to portray scenes in a way which was "materially true". The particular scene highlighted by Ms Buchanan, outlined in detail in the "Programme summary" section above, showed Hazel and Colin taking their children out in a forest together and included a conversation between the actors playing Hazel and her daughter Lisa (the complainant). In its response to the complaint, ITV said it accepted that the dialogue between Hazel and Lisa was invented and explained the dramatic purpose of the scene.

As outlined above, we considered that viewers would have understood that the series was a drama based on factual events, and not a documentary. We therefore considered that viewers would have recognised that the scripted dialogue in the programmes did not represent a full and accurate factual account of the conversations relating to the murders over a period of 21 years. We acknowledged that the drama did include real facts and considered that viewers may not have been clear at all times precisely where fact and fiction overlapped. However, because the programmes as a whole were clearly a drama series, we considered that viewers were unlikely to have concluded that the particular forest scene, for example, represented a real or, even if this was the case, an entirely accurate reflection of an event in the life of the complainant.

In any event, we did not consider that viewers would be likely to have considered that the particular conversation included in the episode between Hazel and the complainant in the forest, talking about her father's death, presented Hazel as "heartless". It was not disputed that Hazel had withheld the truth of their father's death from her children and had also deceived the police to avoid Lesley and Trevor's murders being discovered. In our view, we considered that the scene presented a sympathetic view of Hazel and the love she had for her children. We therefore did not consider that the inclusion of this scene in the series was likely to have materially and adversely affected viewers' opinions of the complainant's mother in a way that was unfair to her. We further considered that neither her mother's depiction nor the inclusion in the series of dramatised scenes involving the complainant, including the scene in the forest showing the conversation between the complainant and her mother about her father's death, misrepresented the events that had taken place so as to create any unfairness to Miss Buchanan.

In addition, we also noted from KRW Law's representations the complainant's view that the scene misrepresented her religious beliefs. However, we did not consider that the scene would have been taken by viewers to have been a reflection of the personal religious beliefs of the complainant, and, in any case, it is not a matter of dispute that the family were practising Christians at the time the events depicted took place. The complainant herself stated in her complaint that she discussed her father's death with her mother, who "responded in a caring loving and Christian way". We also noted that the family's religious beliefs were already in the public domain, having been referred to, for instance, throughout Mr Henderson's book 'Let This Be Our Secret' and discussed in the media with regards to the murders. Therefore, although we acknowledged that this scene may have been sensitive, and resulted in distress, to the complainant, we did not consider that it resulted in any unfairness to her. We address the privacy aspects raised in relation to this below.

We also considered the complainant's objection to the fact that the programme makers had not discussed any scenes with her in which she would be depicted and she was not offered an opportunity to view the programme before it was broadcast. Broadcasters are not obliged to provide participants or people with a direct interest in the content of a programme with the opportunity to view it before broadcast or to discuss the content of any particular scenes in which they would be featured, unless not doing so would result in unfairness to them in the programme as broadcast. For the reasons set out above, we did not consider in this case that the depiction of Miss Buchanan or her mother resulted in any unfairness to her, and that accordingly there was no unfairness to her arising from the fact that the programme makers had not discussed any particular scenes depicting her. However, in any case, we noted that the programme makers did write to Miss Buchanan and her brother (care of their stepfather) on 29 January 2015, asking to interview them regarding the series. The letter made it clear that "We are proposing to dramatise a few scenes that might portray you at various ages". Miss Buchanan's stepfather wrote back to the programme makers, in a letter dated 14 February 2015, confirming that "none of us wish to participate". ITV explained in its response to the complaint, that the programme makers therefore respected the complainant's decision not to engage in discussion of the series, having been informed of it. We also noted that ITV said in its response that had the complainant requested a preview of the programmes prior to their broadcast, which it said she had not, it would have willingly provided this.

Taking all the factors above into consideration, we did not consider that Miss Buchanan had been treated unjustly or unfairly in the programmes as broadcast.

#### *Unwarranted infringement of privacy*

- b) Miss Buchanan also complained that her privacy was unwarrantably infringed in the programmes as broadcast because she considered "...the entire series was an invasion of our family privacy" and said that she had not approved of the series being made.

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

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

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

In considering Miss Buchanan’s complaint, we had particular regard to Practices 8.6 and 8.19 of the Code. Practice 8.6 states:

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

Practice 8.19 states:

“Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

- In particular, so far as it is reasonably practicable, surviving victims and/or the immediate families’ of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past”.

In considering whether or not Miss Buchanan’s privacy was unwarrantably infringed in the programmes as broadcast, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the broadcast of information about her included in the programmes.

We carefully considered the representations made by KRW Law in relation to the complaint and following Ofcom’s initial Preliminary View. However, we do not agree with KRW Law that our approach is contrary to the prevailing law in England and Wales.

We noted KRW Law’s comments that a person does not necessarily lose a reasonable expectation of privacy in respect of information simply because it has previously been made public, and that a new “intrusion” into the privacy of an individual may be caused by a new publication of that information.<sup>9</sup> We agree with KRW Law that a person’s rights

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<sup>9</sup> We note that KRW Law cited *PJS v News Group Newspapers* [2016] UKSC 26 in this context. That judgment concerned the question as to whether it was right to retain an injunction against the publication of information when that information had been widely disseminated online. It was accepted during the proceedings that the information in question, regarding extra-marital sexual relations, was information in relation to which the claimant had a legitimate expectation (or

under Article 8 of the ECHR may be engaged in respect of information which is in, or previously has been in, the public domain, and that a subsequent publication – or broadcast – of such information may, depending on the circumstances, infringe a person's rights under Article 8.<sup>10</sup> However, the first question remains whether the complainant had a legitimate expectation of privacy in relation to the broadcast of information about her included in the programmes.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts and taking account of all of the circumstances of the case.

We considered KRW Law's comments as to why we should consider that the complainant did have a legitimate expectation of privacy in the circumstances, in particular in light of the factors discussed in the *Murray v Express Newspapers* case.<sup>11</sup> The series contained details of her mother's affair with Colin, her father's murder and the trial and conviction of her mother in relation to this (as set out in detail above in the 'Programme summary' section). As outlined above at head a), we considered that the complainant was identifiable in the programmes as "Lisa" and that it therefore represented these events as taking place in the context of her childhood.

We also took into account that the murders of Lesley and Trevor, and the conviction of Colin and Hazel, were matters of public record. The details of the murders were examined, firstly at the original inquest, and again in open court during Hazel's trial, and have been the subject of varied public and media scrutiny. Details of the events surrounding the murders have also been widely publicised by the media reporting of the trial, in television documentaries, in a detailed Police Ombudsman statement, and the book 'Let This Be Our Secret'. In addition, the complainant herself has openly discussed details of her father's murder, and her views and feelings about it, publicly. For example, she appeared along with her brother and stepfather in the BBC programme *Spotlight*, broadcast in March 2011, in which she was shown being interviewed about her feelings about the murders and why she considered her mother to be innocent.

The series depicted the murders in some detail. Miss Buchanan considered the series to have been "...grossly insensitive especially the prolonged and graphic murder scenes".

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"reasonable expectation") of privacy, and that was not a question which arose on appeal. It therefore proceeded on a somewhat different basis to the present case, where there is a prior question to be addressed about whether the complainant had a legitimate expectation of privacy in connection with the information broadcast about her in the programmes. We also note that KRW Law referred to *Gonzalez v Google Spain and Google Inc* [2014] 3 WLR 659. That case concerned the application of the Data Protection Directive in the context of online searches not an individual's rights to privacy under Article 8 of the European Convention on Human Rights in a broadcasting context, and we do not therefore consider it to be relevant to the matters at issue.

<sup>10</sup> See, for instance, *R (L) v Commissioner for Metropolitan Police* [2010] 1 AC 410 and *Goodwin v NGN Ltd* [2011] EMLR 27

<sup>11</sup> These are: the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.

Ofcom fully appreciated that Miss Buchanan found it distressing to watch the series. We recognised that viewing a programme about a past traumatic event, for instance, as in this case, the murder of an immediate family member during the complainant's childhood, is understandably capable of causing substantial distress and upset, particularly where that programme includes dramatic reconstructions of the events which took place. However, distress alone (including as a result of subsequent press coverage and public comment on these events in connection with the broadcast) is not sufficient by itself to mean that the complainant's privacy rights are engaged. Instead, the complainant must hold a legitimate expectation of privacy and/or protection in respect of the aspect of her private life which is the subject of the complaint.<sup>12</sup> In this instance, we considered that the information revealed in the scenes regarding the notorious murders, which had been widely reported in the public domain as a result of the court proceedings as noted above, and which continued to generate substantial publicity and coverage (including as a result of the subsequent appeal process), could not reasonably be considered to be information which, through the passage of time, had receded into the past and become a part of the complainant's private life. We therefore did not consider a legitimate expectation of privacy could be said to arise on the part of the complainant in relation to the depiction of the murders themselves or the subsequent court proceedings.

✂ [REDACTED]<sup>13</sup>

Taking all the above factors into consideration, it was our view that, in the particular circumstances of this case, and in particular given the gravity and notoriety of the murders, the prominent nature of the trial and conviction of Colin and Hazel and the amount of information already available in the public domain about these events, Miss Buchanan did not have a legitimate expectation of privacy in relation to the depiction in the series of Hazel and Colin's affair, Lesley and Trevor's murders, the events surrounding them, and Hazel's trial and conviction. In reaching this view, we took into account Miss Buchanan's comments regarding the distress caused by the programmes. While we acknowledged that the series was capable of causing her substantial distress and upset, as noted above, distress alone is not sufficient to engage the complainant's privacy rights by itself.

It was possible that a legitimate expectation of privacy might arise in connection with the programme's wider depiction of scenes of family life involving Miss Buchanan at the time of the murders and the subsequent trial, where those scenes could be said to reveal private or sensitive information about the complainant and her family life. In this context, we took into account that Miss Buchanan had raised a specific concern about the inclusion in the series of the scene taking place in a forest, in which an actor playing her as a child had a conversation with Hazel about her father's death, but that Miss Buchanan had not otherwise highlighted any specific private or sensitive information revealed about her in the programmes in connection with any other scenes depicting her as a child.

The scene in the forest was depicted in the series as a private moment between a mother and her daughter in which 'Lisa' said that she was missing her father and asked

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<sup>12</sup> *In re JR38* [2016] AC 1131

<sup>13</sup> Text redacted for legal reasons.

her mother why he wanted to die, and her mother suggested that he had committed suicide because he was very sad, but would now be in heaven. The complainant had said that this scene was "entirely fictitious". As outlined above, detailed information about the death of her father, and the fact that her mother had led her and her siblings to believe he had committed suicide, was already widely available in the public domain. We considered that, viewed in the round, this particular scene did not reveal anything particularly private about the complainant which could not be inferred from the circumstances (e.g. that she missed her father following his death), and was relatively anodyne in nature.

We also took account of KRW Law's representations that this scene had misrepresented the complainant's religious views and infringed her privacy by including information pertaining to her religious beliefs. We considered that this scene represented Hazel as a loving mother seeking to comfort her child by suggesting her father was now in heaven. While we acknowledge that the complainant's personal religious beliefs are private to her, as outlined above at head a), we did not consider that the scene would have been taken by viewers to have been a reflection of the personal religious beliefs of the complainant, and, in any case, it is not a matter of dispute that the family were practising Christians at the time the events depicted took place. The complainant herself stated in her complaint that she discussed her father's death with her mother, who "responded in a caring loving and Christian way". The family's religious beliefs were already in the public domain, having been referred to, for instance, throughout Mr Henderson's book 'Let This Be Our Secret' and discussed in the media with regards to the murders.

We considered that, taking all the above factors into account, it may be arguable that Miss Buchanan had a legitimate expectation of privacy in relation to the depiction of her interaction with her family members in scenes, such as the forest scene discussed above. However, in view of the fact that the scenes featuring the complainant as a child did not appear to reveal any particularly private or sensitive information about her which was not already in the public domain, we considered that any such expectation of privacy would have been engaged only at a low level.

Given our view that Miss Buchanan may have a limited expectation of privacy in connection with the scenes which depicted her family life as a child, and that she did not consent to the broadcast of such scenes in the programmes, Ofcom went on to consider whether the infringement of her privacy was warranted.

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 would include revealing or detecting crime, protecting the public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

The individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression and of the audience to receive the information broadcast without unnecessary interference. Neither right 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 right.

We carefully balanced Miss Buchanan's limited right to privacy in relation to the material included in the programmes which depicted her as a child interacting with her family and weighed it against the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference.

In this case, we considered that there was a significant public interest in broadcasting information about the murders, which were a very serious crime, and in the public being informed of the circumstances surrounding them and in understanding their consequences, which had been explored in detail in the criminal proceedings. This had been a very prominent case, particularly in Northern Ireland and, as discussed above, there was already very detailed information in the public domain about them.

The programmes were a dramatic reconstruction of the events and included fictional scenes featuring the complainant which showed her family life and which were not directly connected to the murders or the criminal proceedings. However, we considered that these scenes were relatively anodyne in nature (rather than disclosing particularly private or sensitive information about the complainant) and were included for the purposes of giving context to the events depicted. Miss Buchanan herself had previously openly and publicly discussed details of her father's murder, and her views and feelings about it, for example in the *Spotlight* programme mentioned above.

We did not agree with KRW Law that the fact that the programme was a drama, as opposed to a documentary or factual report about the murders or criminal proceedings, meant that less weight should be given to the broadcaster's freedom of expression in the circumstances. Broadcasters' freedom of expression must take account of the significant editorial latitude which they hold as to how they impart and convey information to the public and includes the freedom to create dramas drawing upon real life events, including high profile crimes and their consequences, provided that in doing so the broadcaster avoids unjust or unfair treatment, or unwarranted infringements of privacy.

Taking into account all the factors set out above, to the extent that the complainant had a limited legitimate expectation of privacy in relation to the depiction of her family life in the programmes as broadcast, Ofcom considered that the broadcaster's right to freedom of expression, and the audience's right to receive the information broadcast without unnecessary interference, outweighed Miss Buchanan's limited legitimate expectation of privacy in relation to the broadcast of the footage in the circumstances of this case.

As noted above, Practice 8.19 explains that broadcasters should (unless it is warranted to do otherwise) try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals, in particular, so far as it is reasonably practicable, by informing surviving victims and/or their immediate families of the plans for the programme and its intended broadcast. Practice 8.19 is an example of good practice which we expect broadcasters to follow in connection with seeking to avoid unwarranted infringements of privacy in programmes; however, failure to follow this practice will only constitute a breach of the Code where it results in an unwarranted infringement of privacy.

We went on to consider whether the broadcaster had followed Practice 8.19. The programme makers had contacted the complainant (via her stepfather) to inform her that the programme was being made and received a response confirming that "none of

us wish to participate". ITV stated in its response to the complaint that the programme makers therefore respected the complainant's decision not to engage in discussion of the series, having been informed of it, and for this reason, she was also not offered the opportunity to view the series before it was broadcast. ITV also said that had the complainant contacted it at any time requesting to preview the series before its broadcast, it would have arranged this, even though there was no obligation on it to do so.

Making programmes about real life events which have caused trauma to people carry a significant risk of causing further distress to them. As such, Ofcom expects that broadcasters take care to reduce any potential distress when making and broadcasting these types of programmes. In this case, we were of the view that ITV had taken considerable measures in this regard.

Ofcom's decision is therefore that Miss Buchanan's privacy was not unwarrantably infringed in the programmes as broadcast.

**Ofcom has not upheld Miss Buchanan's complaint, made on her behalf by KRW Law, of unjust or unfair treatment in the programmes and unwarranted infringement of privacy in the programmes as broadcast.**

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 2 and 14 May 2017 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 complaints about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

Programme	Service	Transmission Date	Categories	Number of complaints
Can't Pay? We'll Take It Away!	5Star	07/05/2017	Offensive language	1
£10,000 Giveaway	Absolute Radio	28/04/2017	Competitions	1
Fighting Talk	BBC Radio 5	25/03/2017	Generally accepted standards	1
Capital Breakfast with Jono and Emma	Capital FM (Southwest)	05/05/2017	Sexual material	1
Teens Who Kill (trailer)	CBS Action	16/04/2017	Violence	1
Death Row Stories	CBS Reality	30/04/2017	Generally accepted standards	1
Programme trailers	Challenge	30/04/2017	Violence	1
Channel 4 News	Channel 4	01/05/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	03/05/2017	Generally accepted standards	1
Channel 4 News	Channel 4	08/05/2017	Elections/Referendums	1
Channel 4 News	Channel 4	09/05/2017	Elections/Referendums	1
Eat the Week with Iceland	Channel 4	07/05/2017	Promotion of products/services	1
Obsessive Compulsive Cleaners	Channel 4	09/05/2017	Offensive language	1
Sunday Brunch	Channel 4	30/04/2017	Drugs, smoking, solvents or alcohol	1
The Island with Bear Grylls	Channel 4	24/04/2017	Generally accepted standards	1
The Island with Bear Grylls	Channel 4	01/05/2017	Generally accepted standards	3
Water Wipes' sponsorship of One Born Every Minute	Channel 4	11/04/2017	Materially misleading	5
Can't Pay? We'll Take it Away!	Channel 5	03/05/2017	Materially misleading	1
GPs Behind Closed Doors	Channel 5	02/05/2017	Generally accepted standards	1
Inside Strangeways	Channel 5	18/04/2017	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
Inside the Gang: Young Blood (trailer)	Channel 5	27/04/2016	Scheduling	1
On Benefits: Breadline Scousers	Channel 5	20/04/2017	Generally accepted standards	2
Spectacular Spain with Alex Polizzi	Channel 5	28/04/2017	Animal welfare	3
When Magic Goes Wrong	Channel 5	07/05/2017	Offensive language	1
Grizzly Tales for Gruesome Kids	CITV	05/05/2017	Generally accepted standards	1
The 100 / Supernatural (trailer)	E4	04/05/2017	Offensive language	1
Jamie's 15 Minute Meals	Food Network	18/04/2017	Product placement	1
Admiral's sponsorship of DIY SOS: The Big Build	Home	02/03/2017	Sponsorship credits	1
Ant and Dec's Saturday Night Takeaway	ITV	11/03/2017	Materially misleading	1
Ant and Dec's Saturday Night Takeaway	ITV	08/04/2017	Promotion of products/services	1
Babushka	ITV	05/05/2017	Generally accepted standards	2
Benidorm	ITV	03/05/2017	Disability discrimination/offence	131
Bigheads	ITV	30/04/2017	Scheduling	1
Bigheads	ITV	30/04/2017	Sexual material	1
Britain's Got More Talent	ITV	29/04/2017	Generally accepted standards	1
Britain's Got More Talent	ITV	06/05/2017	Generally accepted standards	2
Britain's Got More Talent	ITV	06/05/2017	Offensive language	1
Britain's Got More Talent	ITV	06/05/2017	Sexual material	1
Britain's Got Talent	ITV	15/04/2017	Gender discrimination/offence	5
Britain's Got Talent	ITV	15/04/2017	Generally accepted standards	1
Britain's Got Talent	ITV	22/04/2017	Scheduling	1
Britain's Got Talent	ITV	29/04/2017	Generally accepted standards	1
Britain's Got Talent	ITV	29/04/2017	Race discrimination/offence	2
Britain's Got Talent	ITV	29/04/2017	Sexual material	2
Coronation Street	ITV	26/04/2017	Scheduling	1
Coronation Street	ITV	28/04/2017	Generally accepted standards	7
Coronation Street	ITV	01/05/2017	Scheduling	2
Coronation Street	ITV	03/05/2017	Scheduling	2
Coronation Street	ITV	05/05/2017	Sexual material	3
Coronation Street	ITV	12/05/2017	Generally accepted standards	1
Culinary Genius	ITV	04/05/2017	Dangerous behaviour	1
Emmerdale	ITV	24/04/2017	Violence	101

Programme	Service	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	04/05/2017	Violence	6
Emmerdale	ITV	08/05/2017	Violence	8
Emmerdale	ITV	09/05/2017	Religious/Beliefs discrimination/offence	1
Emmerdale	ITV	09/05/2017	Violence	1
Emmerdale / Emmerdale Omnibus	ITV	10/03/2017	Offensive language	1
Good Morning Britain	ITV	24/04/2017	Violence	1
Good Morning Britain	ITV	25/04/2017	Due impartiality/bias	1
Good Morning Britain	ITV	03/05/2017	Elections/Referendums	1
Good Morning Britain	ITV	05/05/2017	Disability discrimination/offence	1
Good Morning Britain	ITV	09/05/2017	Elections/Referendums	2
Good Morning Britain	ITV	11/05/2017	Elections/Referendums	1
ITV News	ITV	23/04/2017	Due impartiality/bias	3
ITV News	ITV	03/05/2017	Due accuracy	1
ITV News	ITV	10/05/2017	Elections/Referendums	2
Little Boy Blue	ITV	01/05/2017	Offensive language	1
Newzoids	ITV	01/10/2016	Race discrimination/offence	1
Off Their Rockers	ITV	01/05/2017	Gender discrimination/offence	1
Off Their Rockers	ITV	01/05/2017	Generally accepted standards	1
Party Election Broadcast by the UK Independence Party	ITV	13/04/2017	Elections/Referendums	1
Peston on Sunday	ITV	07/05/2015	Elections/Referendums	1
Peston on Sunday	ITV	30/04/2017	Due impartiality/bias	1
Seat's sponsorship of Mystery Drama on ITV	ITV	26/03/2017	Sponsorship credits	1
This Morning	ITV	26/04/2017	Race discrimination/offence	8
Tonight (trailer)	ITV	04/05/2017	Elections/Referendums	1
ITV News Central	ITV Central	19/04/2017	Scheduling	1
Britain's Got More Talent	ITV2	29/04/2017	Animal welfare	1
Britain's Got More Talent	ITV2	29/04/2017	Generally accepted standards	6
Celebrity Juice	ITV2	04/05/2017	Generally accepted standards	2
Celebrity Juice	ITV2	06/05/2017	Generally accepted standards	1
Celebrity Juice	ITV2	10/05/2017	Generally accepted standards	1
Coronation Street Omnibus	ITV2	30/04/2017	Generally accepted standards	1
The Only Way is Essex	ITVBe	03/05/2017	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Checkaprofessional.com's sponsorship of Weather	Jack FM	21/04/2017	Commercial communications on radio	1
Botched	Kanal 5	28/02/2017	Gender discrimination/offence	1
News	KTV	03/02/2017	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	28/04/2017	Race discrimination/offence	1
Maajid Nawaz	LBC 97.3 FM	11/04/2017	Commercial communications on radio	1
Nick Ferrari	LBC 97.3 FM	10/04/2017	Due accuracy	1
Nick Ferrari	LBC 97.3 FM	02/05/2017	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	03/05/2017	Elections/Referendums	1
The Last Whites of the East End	London Live	13/04/2017	Race discrimination/offence	1
The World's Most Extreme: Roads	More4	29/04/2017	Animal welfare	1
Penallta v Ystalyfera S4C	S4C interactive English commentary	16/04/2017	Generally accepted standards	1
Breakfast Show	SFM 106.9 (Sittingbourne)	20/04/2017	Offensive language	1
Live Derby Q&A	Sikh Channel	12/02/2017	Generally accepted standards	1
Press Preview	Sky News	03/05/2017	Elections/Referendums	1
Press Preview	Sky News	06/05/2017	Elections/Referendums	1
Sky News	Sky News	10/04/2017	Due accuracy	1
Sky News	Sky News	20/04/2017	Due impartiality/bias	1
Sky News	Sky News	23/04/2017	Due impartiality/bias	1
Sky News	Sky News	25/04/2017	Due impartiality/bias	1
Sky News	Sky News	06/05/2017	Elections/Referendums	1
Sky News	Sky News	10/05/2017	Elections/Referendums	1
Sophy Ridge	Sky News	30/04/2017	Generally accepted standards	1
Sunrise	Sky News	12/05/2017	Gender discrimination/offence	2
The Pledge	Sky News	22/04/2017	Due impartiality/bias	2
Sausage Party	Sky Premier	05/05/2017	Sexual material	1
Friday Night Football	Sky Sports 1	05/05/2017	Generally accepted standards	1
Gillette Soccer Saturday	Sky Sports 1	22/04/2017	Generally accepted standards	1
Cricket	Sky Sports 2	11/05/2017	Information/Warnings	1
Kia's sponsorship of Modern Family	Sky1	26/04/2017	Sponsorship credits	1
Wild Things	Sky1	06/05/2017	Religious/Beliefs discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
As Good As It Gets	Sony Movie Channel	21/03/2017	Advertising placement	1
The Last of the Mohicans	Sony Movie Channel	03/04/2017	Violence	1
Can't Pay? We'll Take it Away!	Spike	27/04/2017	Materially misleading	1
Scottish Leaders' Debate 2017	STV	24/05/2017	Elections/Referendums	5
STV News at Six	STV	18/04/2017	Due impartiality/bias	1
Alan Brazil's Sports Breakfast (trailer)	Talksport	15/04/2017	Generally accepted standards	1
Programming	The Craft Channel	24/01/2017	Advertising content	5
Kan vi hjälpa till?	TV3	26/03/2017	Undue prominence	1
The Frank Mitchell Show	U105	12/04/2017	Due impartiality/bias	1
Mr Robot	Universal Channel	19/04/2017	Advertising minutage	1
UTV News	UTV	17/04/2017	Due impartiality/bias	1
Party Election Broadcast	Various	Various	Elections/Referendums	1
Masterchef USA	W	24/04/2017	Religious/Beliefs discrimination/offence	1
Blackadder (trailer)	Yesterday	14/04/2017	Materially misleading	1
Wildest Africa	Yesterday	12/04/2017	Animal welfare	1
Programming	Zing	05/04/2017	Crime and disorder	1

### Complaints assessed under the General Procedures for investigating breaches of broadcast licences

For more information about how Ofcom assesses complaints about broadcast licences, go to: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf)

Licensee	Licensed service	Categories
Irvine Beat FM (SCIO)	Irvine Beat FM	Key Commitments
Spice Project Limited	Spice FM 98.8	Key Commitments

## Complaints outside of remit

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

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

### Complaints about television or radio programmes

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

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

Programme	Service	Transmission Date	Categories	Number of complaints
Babestation	Babestation	21/04/2017	Outside of remit	1
BBC News	BBC 1	Various	Other	1
European Champions Cup	BT Showcase HD	Various	Outside of remit	1
Advertisement	Channel 4	01/07/2002	Advertising content	1
Advertisement	Channel 4	05/05/2017	Advertising content	1
Advertisement	Channel 4	07/05/2017	Advertising content	2
Channel 4 News	Channel 4	05/05/2017	Other	1
Advertisement	Channel 5	01/05/2017	Advertising content	1
Advertisement	Channel 5	08/05/2017	Advertising content	1
Advertisement	E4+1	02/05/2015	Advertising content	1
Advertisement	ITV	29/04/2017	Advertising content	4
Advertisement	ITV	06/05/2017	Advertising content	2
Britain's Got Talent	ITV	06/05/2017	Other	1
The Deal Shop	Property TV	13/04/2017	Advertising content	1

## Complaints about the BBC, not assessed

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

Here are alphabetical lists of complaints about the BBC that Ofcom was unable to assess. This is because Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision. The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

### Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC	Various	Gender discrimination/offence	1
As It Happened West of England	BBC 1	06/01/2017	Due accuracy	1
BBC London News	BBC 1	03/05/2017	Sexual orientation discrimination/offence	1
BBC News	BBC 1	24/04/2017	Due impartiality/bias	2
BBC News	BBC 1	27/04/2017	Due impartiality/bias	1
BBC News	BBC 1	02/05/2017	Due impartiality/bias	1
BBC News	BBC 1	03/05/2017	Elections/Referendums	1
BBC News	BBC 1	04/05/2017	Due impartiality/bias	1
BBC News	BBC 1	08/05/2017	Elections/Referendums	1
BBC News	BBC 1	11/05/2017	Elections/Referendums	4
Breakfast	BBC 1	02/05/2017	Due impartiality/bias	1
Breakfast	BBC 1	11/05/2017	Elections/Referendums	1
EastEnders	BBC 1	09/05/2017	Materially misleading	1
Grand Tour of Scotland	BBC 1	04/05/2017	Other	1
Panorama: Madeleine McCann - Ten Years On	BBC 1	03/05/2017	Generally accepted standards	2
Party Election Broadcast by the Labour Party	BBC 1	21/04/2017	Under 18s in programmes	1
Pointless	BBC 1	29/04/2017	Generally accepted standards	1
Queer Britain iPlayer (trailer)	BBC 1	10/05/2017	Sexual material	1
The One Show	BBC 1	28/04/2017	Due impartiality/bias	1
The One Show	BBC 1	02/05/2017	Generally accepted standards	1
The One Show	BBC 1	09/05/2017	Elections/Referendums	6
BBC News	BBC 1, BBC News Channel and BBC Radio 4	27/04/2017	Due impartiality/bias	1
Various	BBC 1 and BBC Radio 4	02/05/2017	Due impartiality/bias	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1 and BBC 2	05/05/2017	Elections/Referendums	1
BBC Newsroom Live	BBC 2	03/05/2017	Elections/Referendums	1
Daily Politics	BBC 2	09/05/2017	Elections/Referendums	1
King Charles III	BBC 2	10/05/2017	Generally accepted standards	1
King Charles III	BBC 2	11/05/2017	Generally accepted standards	1
Morocco to Timbuktu: An Arabian Adventure	BBC 2	11/05/2017	Violence	1
Newsnight	BBC 2	20/04/2017	Due impartiality/bias	1
Newsnight	BBC 2	08/05/2017	Elections/Referendums	1
World Snooker	BBC 2	28/04/2017	Generally accepted standards	1
BBC News	BBC Channels	15/03/2017	Due impartiality/bias	1
BBC News	BBC Channels	01/05/2017	Elections/Referendums	1
Question Time, Daily Politics Show and Sunday Politics	BBC Channels	30/04/2017	Due impartiality/bias	1
Victoria Devonshire, Question Time, all news	BBC Channels	02/05/2017	Elections/Referendums	1
Have I Got News For You	BBC iPlayer	Various	Due impartiality/bias	1
All BBC news content	BBC News	05/05/2017	Elections/Referendums	1
BBC News	BBC News	25/04/2017	Due impartiality/bias	1
BBC News	BBC News Channel	02/05/2017	Due impartiality/bias	1
BBC News	BBC News Channel	05/05/2017	Elections/Referendums	1
Today	BBC Radio 4	11/05/2017	Elections/Referendums	1
BBC News	BBC Radio 4 and BBC Radio 5 Live	03/05/2017	Elections/Referendums	1
Today / BBC news	BBC Radio 4 and BBC Channels	11/05/2017	Elections/Referendums	1
Breakfast and The One Show on BBC1	BBC1	26/04/2017	Undue prominence	1
Stephen Nolan	Radio 5 Live	05/05/2017	Elections/Referendums	1

For more information about how Ofcom deals with BBC television, radio and on demand complaints, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/how-ofcom-deals-with-bbc-complaints>

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 2 and 14 May 2017.

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

Programme	Broadcaster	Transmission date
Top 3 de la Presse	Al Magharibia	9 February 2017
Martin Lowes	Capital FM (North East)	27 March 2017
Ramsay's Hotel Hell	Channel 4	28 April 2017
The Wright Stuff	Channel 5	2 May 2017
Rise of the Warrior Apes	Discovery	5 March 2017
Drivetime	Gravity FM	27 March 2017
Polisskolan (Police Academy)	Kanal 9	14 April 2017
Programming	Sangat	28 February 2017
Programming	Star Utsav	9 March 2017
7 days of Talk Radio	Talk Radio	2 April 2017
Qanoon Ki Baat	TV99	8 February 2017

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

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

## Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints<sup>1</sup>

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
North West Today	BBC North West	15 March 2017
Naya Pakistan with Talat Hussain	Geo News and GEO Tez	3 February 2017

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

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/57388/fairness-privacy-complaints.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf)

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<sup>1</sup> In issue 326 of the Broadcast and On Demand Bulletin we published a new investigation for The Fried Chicken Shop, London Live broadcast on 30 January 2017. The complaint has been withdrawn and we are no longer investigating this programme.