

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

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

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

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

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

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

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

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

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.

Note to Broadcasters

Monitoring of diversity and equal opportunities in broadcasting

Radio

On 13 June, Ofcom published its first Diversity and equal opportunities in radio report, as part of its ongoing annual monitoring of TV and Radio diversity. It set out how the industry is doing on equality and diversity overall, both in terms of what it's doing well and what it could do better. The [report](#) also contained our key recommendations on where industry needs to do more.

We would like to thank all those broadcasters who responded to our information request and provided us with the relevant data within the set timeframe.

Television

Introduction

In March we published a summary for broadcasters in Ofcom's Broadcast and On Demand bulletin¹, explaining our planned next steps for carrying out the television monitoring exercise. We detailed the timings for the stage one information request which has now been completed and we have published our decision in this bulletin on the 21 licensees who failed to respond to the stage one request by the required deadline.

We will be engaging further with any licensee who was also found in breach for failure to respond to our diversity information request last year.

Our previous note also highlighted the requirements and the timeline for those licensees who would be required to complete stage two. This note provides an update on the status of stage two and next steps.

We are also inviting television broadcasters who did not meet the threshold for stage two of our diversity questionnaire to tell us about any diversity initiatives within their organisations.

Stage two information request

On 21 February we sent out our initial stage one information request to television broadcasters. You will have received this request if you who told us last year that your employees totalled **50 or under** or you are a new licensee.

If you identified at stage one as meeting the relevant thresholds², or you informed us last year that you have **over 50 employees**³, you will have received the stage two information request which we sent out in April. This request was sent to company secretaries by post and to

¹ Issue number 350, published 19 March 2018

² Have more than 20 employees and licensed to broadcast for more than 31 days per year.

³ This number was selected as those with employees higher than 50 in our first report were less likely to have fallen below the employee threshold of 21 employees in a time period of a year.

licence contacts by email on 11 April. A reminder email was also sent to all licensees who still had not submitted a response on 22 May and a further final reminder was sent on 11 June. The stage two information request consisted of a detailed questionnaire asking about your equal opportunities arrangements and your workforce, which needs to be completed and returned to Ofcom. The questionnaire takes the form of an editable pdf, included as part of the email sent to licence contacts.

The deadline for completing the questionnaire and submitting to Ofcom is 20 June 2018⁴. All television licensees are required to respond to this request and may be found in breach of their licence if they fail to do so by 20 June 2018.

How will the information be used?

We will use the information to produce our second annual diversity and equal opportunities in television report in Autumn 2018.

How smaller broadcasters can take part

We are also keen to capture good examples of diversity schemes and initiatives from those smaller television broadcasters who did not meet the employee threshold. If you would like to be considered for inclusion in our report, we are inviting you to send an outline, in less than 250 words, of what diversity looks like at your television station and what arrangements or initiatives you have in place to promote diversity and inclusion. Please send this to diversityinbroadcasting@ofcom.org.uk by Friday 29 June 2018.

Any broadcasters who have questions related to this note please contact diversityinbroadcasting@ofcom.org.uk

Finally, we would like to remind you that it is your responsibility to ensure that your contact details held by Ofcom are accurate and up-to-date. Therefore, if this isn't the case, we ask that you email Broadcast.Licensing@ofcom.org.uk with your correct contact details.

⁴ Unless we have already pre-arranged a later submission date.

Note to Broadcasters

Cigarette packaging in TV programming

Smoking and the Broadcasting Code

There are a number of rules in the Code which apply to the portrayal of smoking in programmes:

Rule 1.10 of the Code states that smoking: must not be featured in programmes made primarily for children unless there is strong editorial justification; must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed unless there is editorial justification; and must not be condoned, encouraged or glamorised in other programmes likely to be widely seen, heard or accessed by under-eighteens unless there is editorial justification.

Rule 2.1 of the Code requires broadcasters to apply generally accepted standards to programmes so as to provide adequate protection for the audience from harmful and/or offensive material.

Section Nine of the Code contains rules that restrict the extent to which branding for cigarettes and other tobacco products can feature in programmes. For example, product placement of cigarettes and other tobacco products is prohibited (Rule 9.11(a)) and there is a ban on such products sponsoring programmes (Rule 9.16). The Code also contains general rules which ensure that programmes do not promote or give undue prominence to products, including cigarettes and other tobacco products (Rules 9.4 and 9.5).

Cigarette packaging in TV programming

To comply with the rules in Section Nine, broadcasters should generally avoid featuring branding for cigarettes and other tobacco products in programmes. It may be appropriate to obscure promotional features of packaging, for example covering trademarks and logos.

However, the Tobacco and Related Products Regulations 2016¹ set out requirements for health warnings which must appear on packaging, including their content, size and positioning. Although the packaging of cigarettes and other tobacco products produced outside the UK may not always carry the same health warnings which are in place in the UK, they do generally carry similar messages.

The purpose of these health warnings is to encourage a reduction in the use of cigarettes and other tobacco products. To provide audiences with adequate protection from harm, broadcasters should take care when obscuring branding on cigarettes and other tobacco products to avoid also obscuring messages, including images, designed to protect consumers.

Any broadcaster who requires further guidance on the depiction of cigarette packaging in TV programming should contact Ofcom's Standards and Audience Protection team at OfcomStandardsTeam@ofcom.org.uk.

¹ <http://www.legislation.gov.uk/ukxi/2016/507/contents/made>

Broadcast Standards cases

In Breach

Programming

Encore Radio, Various dates and times

Introduction

Encore Radio is a radio station that primarily plays songs from stage and film musicals. The service broadcasts on DAB in London, the South East and North Yorkshire. The licence is held by Encore Radio Limited ("Encore Radio Ltd" or "the Licensee").

We received a complaint about offensive language broadcast on the service on 1 April 2018. When we contacted the Licensee to request a recording of the content, it informed us that two further incidents of offensive language being broadcast had occurred. The three broadcasts were as follows:

- on 30 March 2018 at 11:29, the word "motherfuckin'" was included in the lyrics of the song *Washington On Your Side* from the musical *Hamilton*;
- on 1 April 2018 at 13:17, the word "fuck" was broadcast in the lyrics of the song *Schadenfreude* from the musical *Avenue Q*; and,
- on 13 April 2018 at 13:08, the word "fuck" was broadcast in the lyrics of the song *Let's Have Lunch* from the musical *Sunset Boulevard*.

Each of these broadcasts occurred during the Easter school holidays.

We considered the language broadcast in each case raised potential issues under Rules 1.14 and 2.3 of the Code. These state:

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

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

We therefore requested comments from the Licensee about how this content complied with these rules.

Response

The Licensee gave its "sincerest apologies for the broadcasting of inappropriate language on three separate occasions".

The Licensee said that upon being first contacted by Ofcom it "immediately implemented a check of all broadcast material as it had become clear there had been a failure in the existing processes and systems that ensure no inappropriate material is broadcast". The Licensee explained that it was at this stage that, "in the spirit of absolute transparency", it notified

Ofcom of the “two further incidents and carried out a thorough review and implemented subsequent changes to [its] processes and systems to ensure this would not happen again”.

The Licensee explained the circumstances that resulted in these instances of offensive language being broadcast. It said that each of the songs “were not, and never have been in active rotation” on the station but were played during “the station’s annual listener voted ‘Favourite 500’ countdown” and a regular listener request feature.

The Licensee also set out the steps it had taken to improve its compliance processes. It said it “was now an absolute requirement that all music added to the Encore Radio playout system” for inclusion in these programme features “must be listened to in full” and it would not be assumed “that lack of an ‘explicit’ warning [or] checking lyrics means it is suitable for broadcast”. The Licensee also said that it had “removed all music loaded [onto its systems] prior to April 13 2018”.

In response to Ofcom’s Preliminary View, the Licensee said that it was “confident” that the improvements it had made to its compliance processes “will ensure that this will not happen again”.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected. Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Rule 1.14

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

Ofcom’s 2016 research on offensive language² makes clear that the words “fuck” and “motherfucker” (and variations of these words) are considered by audiences to be amongst the most offensive language.

The first of these incidents of the most offensive language being broadcast took place on a Sunday afternoon. The second occurred on Friday morning and the third on a Friday afternoon. Each broadcast was during the Easter school holidays.

The Code states that the times “when children are particularly like to be listening” to radio are “the school run and breakfast time, but might include other times”. Ofcom’s guidance on offensive language in radio³ states:

“broadcasters should have particular regard to broadcasting content at the following times: between 06:00 and 19:00 at weekends all year around, an in addition, during the same times from Monday to Fridays during school holidays”.

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

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf

In each of these cases, the most offensive language was broadcast either during the day on a Sunday or a Friday in the school holidays and therefore at a time when children were particularly likely to be listening. Therefore, our Decision is that each broadcast was in breach of Rule 1.14.

Rule 2.3

Rule 2.3 requires that broadcasters must ensure that the broadcast of potentially offensive content is justified by the context.

As set out above, Ofcom's research on offensive language indicates that the words "fuck" and "motherfucker" (and variations of these words) are considered by audiences to be among the most offensive language. Clearly, the use of these words had the potential to cause offence to the audience.

We therefore considered whether the content was justified by the context.

Our guidance on offensive language in radio states (regarding Rule 2.3) that: "In reaching any decision about compliance with the Code, Ofcom will take into account the likely expectations of a particular radio station at the time of broadcast".

In our view, the majority of listeners to a radio station specialising in playing songs from musicals would not have expected the most offensive language to be broadcast, particularly during the day. As a result, we considered each of these broadcasts of the most offensive language was not justified by the context.

Although we acknowledged the various actions taken by the Licensee to address the initial incident, and that it had proactively alerted Ofcom to two further incidents, our Decision is that each of these three broadcasts were in breach of Rule 2.3.

Breaches of Rules 1.14 and 2.3

In Breach

The Everly Pregnant Brothers: Live at the Lyceum Theatre SheffieldLive!, 13 April 2018, 20:00

Introduction

SheffieldLive! is a local television service for Sheffield and its surrounding areas. The licence is held by Sheffield Local Television Limited ("the Licensee").

The Everly Pregnant Brothers: Live at the Lyceum Theatre was a 20-minute programme comprising the final three songs of a live performance by the featured band in 2011.

We received a complaint about the broadcast of offensive language in this pre-watershed programme. The programme contained 24 instances of the word "fuck" or "fucking".

We considered that this material raised issues under the following Code rules:

Rule 1.14: "The most offensive language must not be broadcast before the watershed";

Rule 2.3: "In applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context...Such material may include...offensive language".

We asked the Licensee for its comments about how the material complied with these rules.

Response

The Licensee said that broadcast of the programme at this time was a result of human error.

The Licensee explained that as part of its compliance process, a tag is applied to content that is restricted to a post-watershed transmission. However, it added that in this case, no such tag was applied and consequently, it was assumed that the programme was appropriate for a pre-watershed broadcast.

The Licensee explained that it had subsequently implemented a new process that requires tags to be applied to all content rather than just post-watershed material. It said that the tags indicate whether programmes are suitable for pre-watershed broadcast and, in the case of the strongest material, if additional care should be taken when scheduling the programme.

The Licensee added that the featured band was well-known locally for its humorous and bawdy take on popular songs and that the programme carried a warning at the beginning of the programme about "very strong language". It therefore submitted that, with regard to Rule 2.3, the use of offensive language could have been justified by the context provided the programme was restricted to a later post-watershed slot intended for a mature and open-minded audience.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied to the content of television services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Rule 1.14

This rule states that the most offensive language must not be broadcast before the watershed on television. Ofcom's research on offensive language² indicates that the word "fuck" and variations of it are considered by audiences to be among the most offensive language.

In this case, the words "fuck" and "fucking" were broadcast repeatedly before the watershed.

Rule 2.3

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by the context.

As set out above, Ofcom's research on offensive language indicates that the repeated use of the words "fuck" and "fucking" clearly carries the potential to cause offence to viewers. We therefore considered whether this potentially offensive material was justified by the context.

Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material is broadcast, the time of broadcast and the likely expectation of the audience. The rule also states that appropriate information should be broadcast where it would assist in avoiding or minimising offence.

We acknowledged that the expected audience may have been aware of the style of the featured band and that a warning about the use of offensive language was broadcast before the programme started. However, we considered that both the language itself and the frequency with which it was broadcast was very likely to have exceeded viewers' expectations for a programme shown at this time on a local television channel. We therefore did not consider that the offensive language was justified by the context.

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

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

Conclusion

Ofcom took into account the Licensee's acknowledgement that the content was not suitable for the time of broadcast, had been broadcast in error, and the steps it said it had taken to improve its compliance processes. However, our Decision is that the content was in breach of Rule 1.14 and Rule 2.3.

Breaches of Rules 1.14 and 2.3

In Breach

Gold Rush

Discovery, 19 January 2018, 20:00

Introduction

Gold Rush is an hour-long reality show, broadcast on the Discovery Channel. The series follows various family-run gold mining companies in North America and the highs and lows they encounter as they search for gold.

Ofcom received a complaint from a parent who was concerned about the amount of offensive language in this pre-watershed programme that they had previously watched with their young children. This episode contained 18 instances of the word "shit", two instances of the words "piss" or "pissed" and two instances of the word "bitch". There were a further 70 instances of offensive language which had been masked by the Licensee with 'bleeping', and some with blurring.

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

Rule 1.16: "Offensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed".

Ofcom requested the Licensee's comments on how the item complied with this rule.

Response

Discovery Corporate Services Limited (or "the Licensee") explained that *Gold Rush* is a reality documentary, now in its eighth series, which follows miners searching for gold. The Licensee accepted that there was some "low level" swearing in this episode but did not believe that it breached the Code when considering the full context.

The Licensee said that the Discovery Channel and *Gold Rush* were aimed at an adult audience and were unlikely to appeal to children. It also said that the programmes scheduled before and after this content, *Wheeler Dealers* and *How It's Made*¹ respectively, did not appeal to younger viewers and attracted a very small child audience.

The Licensee said that due to the nature of *Gold Rush*, it was only ever scheduled at times when low numbers of younger viewers were anticipated and, based on the Licensee's audience research, this was the case with the 20:00 timeslot. It said that BARB² viewing figures for this broadcast indicated that no children aged 4-15 years old had watched *Gold Rush* between 20:00 and 21:00. The Licensee said it was "evident that this programme only appeals to an audience over the age of 35 years old and, particularly, those over 55 years old". It also said that, given its familiarity with the typical audience for the programme, the

¹ *Wheeler Dealers* is a programme focussing on the restoration of classic cars. *How it's Made* is a programme investigating how everyday items are manufactured.

² BARB is the Broadcasters Audience Research Board.

subject matter and time of broadcast, it was highly unlikely that any children would have viewed the programme – a fact borne out by the BARB³ data. In this context, and with appropriate editing of the strongest language, the Licensee argued this programme was suitable for a pre-watershed transmission.

The Licensee regretted that there had been a complaint about the programme and apologised, in its representations to Ofcom, for any distress caused.

The Licensee explained that it had taken care to edit out all instances of the strongest language, including blurring the mouths of the miners when they used such language. It believed that the rest of the swearing was relatively low level. The Licensee highlighted that, although these words may be considered offensive by some viewers, Ofcom's research⁴ has shown they are, under certain circumstances and within the right context, acceptable pre-watershed. It said that the language was not used in an aggressive, derogatory or discriminatory manner and was not aimed at anyone, but was a reflection of the frustration of the workers as they mined in very stressful circumstances.

The Licensee said that the opening titles, which included a few bleeped words but no audible strong language, gave a good indication of what could be expected from the programme. It pointed out that the first use of offensive language was "shit" at one minute and 49 seconds into the programme, and that the language was spread over the hour-long programme.

Decision

Reflecting our duties under the Communications Act 2003⁵, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.16 states that offensive language must not be broadcast before the watershed unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

The hour-long programme included 22 instances of audible offensive language ("shit", "piss"/"pissed" and "bitch"). Ofcom's latest research on offensive language indicated that audiences consider the use of these words to be potentially unacceptable pre-watershed depending on the context.

We therefore considered whether the multiple uses of audible offensive language in this case were justified by the context. Context includes, but is not limited to, the nature of the editorial content, the time of the broadcast, the service the material was broadcast on, audience expectations and any warnings given to viewers.

We acknowledged that the use of these words was spread out across the programme and none of the language was used aggressively or was directed at another person. We also considered that *Gold Rush* was not aimed at children and was unlikely to particularly appeal

³ BARB is the Broadcasters Audience Research Board. It measures television viewing for the UK.

⁴ Ofcom's 2016 research on *Attitudes to potentially offensive language and gestures on TV and radio*, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

⁵ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

to them. However, it is clear from the 2016 Ofcom research that audiences, and particularly parents and carers, expect the use of offensive language to be kept to a minimum in pre-recorded material shown before the watershed.

We also took into account the Licensee's representations that "given its familiarity with the typical audience for the programme, the subject matter and time of broadcast ... it was highly unlikely that any children would be viewing the programme". We recognised that BARB data suggested that no children had watched the programme. However, we did not consider this provided sufficient justification for these repeated uses of offensive language, particularly as the programme was broadcast pre-watershed on a Friday evening and there was a significant likelihood that children might have been viewing, potentially without adult supervision.

We were mindful of the Licensee's argument that the programme was in its eighth series and that it would likely have been obvious to viewers early on in this programme that offensive language would feature throughout. However, we also took into account that there was no warning before or during the programme that it would feature offensive language. Therefore, considering the nature of the channel and the time it was aired, viewers were unlikely to have expected this offensive language to feature throughout the programme.

In addition to the 22 instances of audible offensive language, the programme also included 70 instances of masked offensive language. Ofcom acknowledged that in the vast majority of these instances, when the word was bleeped out and the mouths of those using the offensive language were blurred, it was not possible to determine what was being said. However, the 2016 research states: "repeated bleeps in a programme can draw attention to the underlying strong language, especially for children, by creating an audible sign-post and can, in this way, potentially amount to a breach of the Code". In addition, Ofcom's Guidance on "Protecting the Under-Eighteens: Observing the watershed on television and music videos"⁶ states: "If the use of the masked offensive language in a programme is frequent...there can be a cumulative effect on viewers similar to that of the offence caused by repeated broadcast of the unedited offensive language". This guidance goes on to advise broadcasters that they "may need either to edit the programmes more rigorously for pre-watershed transmission to take care of this cumulative effect, or consider whether the programme is in fact appropriate for pre-watershed broadcast at all". We therefore considered that the inclusion of these very frequent instances of masked offensive language were an important contextual factor in our consideration of the acceptability of the unmasked offensive language.

In light of the above, we considered that the uses of offensive language were not justified by the context and our Decision is that Rule 1.16 was breached.

Breach of Rule 1.16

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0030/86781/watershed-on-tv.pdf

Resolved

STV News North STV, 23 February 2018, 18:05

Introduction

STV North broadcasts to audiences in northern and central Scotland. The licence for STV is held by STV North Limited ("the Licensee").

A complainant alerted Ofcom to offensive language in a news report about a pension dispute at Aberdeen University.

The pre-recorded news package included a shot of someone wearing a t-shirt that read "*Fuck gender norms*", which was visible for approximately four seconds.

We considered this raised potential issues under Rule 1.14 of the Code which states:

"The most offensive language must not be broadcast before the watershed...".

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

Response

STV expressed its disappointment that the incident had happened and apologised for any offence caused. It said that it had "robust procedures in place which require that all reporters editing news stories check the content prior to broadcast to ensure the material is compliant". However, it said that on this occasion the offending language was broadcast as a result of human error, after the late arrival of the footage.

STV said that "The item was spotted as soon as the report was broadcast, remedial action was taken immediately to edit the report, and the edited version, with the offensive language removed, was included in the news programme broadcast later that same evening and also on catch-up". The Licensee also said it took further remedial action, including: "issuing a notice to the individuals involved as well as all editorial and production staff, to remind them of the importance of checking material to spot such items before a report is broadcast".

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed. Ofcom research² on offensive language clearly states that the word "fuck" and similar words are considered by audiences to be among the most offensive language.

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

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

In this case, a t-shirt reading "*Fuck gender norms*" could be seen by viewers for approximately four seconds and was shown before the watershed.

Ofcom took into account that the offensive language appeared on screen relatively briefly and was not prominent, and robust remedial action was taken immediately, including removing the content from all subsequent broadcasts.

Therefore, our Decision is that the matter is resolved.

Resolved

Broadcast Licence Conditions cases

In Breach

Compliance with ownership restrictions

JML Media Limited, 15 February 2013 to 26 May 2018

Introduction

JML Media Limited (or “the Licensee”) holds a Television Licensable Content Service licence to broadcast the teleshopping service JML Direct on cable and satellite television platforms. The Licensee has held this licence since October 2009.

Part 2 of Schedule 2 of the Broadcasting Act 1990 (“the 1990 Act”) lays down a number of restrictions on who may hold a broadcasting licence. A body whose objects are “wholly or mainly of a political nature” is disqualified from holding a broadcasting licence. So are certain persons who are linked with such a body in any of the ways set out in that Schedule.

Application of the disqualified persons rules

The Licensee’s parent company is John Mills Limited. An individual, John Mills, has a majority shareholding in John Mills Limited and is also a director of it.

For the purposes of Schedule 2 of the 1990 Act, a person “controls” a body corporate if:

- he holds or is beneficially entitled to more than 50% of the equity share capital in the body, or possesses more than 50% of the voting power in it; or
- although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted according to his wishes.

We have found that the Licensee is therefore controlled by John Mills.

A person is a disqualified person in relation to a Broadcasting Act licence if it is “a body corporate which is an **associate** of a body corporate whose objects are wholly or mainly of a political nature”.¹

One company is an associate of another if one controls the other or if the same person controls both.²

We have found that the Licensee is a disqualified person because it is an “associate” (of the companies listed below, which have wholly or mainly political objects, by virtue of John Mills’ significant control of each of them):

¹ See paragraph 1(1)(g) of Part II of Schedule 2 of the 1990 Act.

² See paragraph (1A) of Part I of Schedule 2 of the 1990 Act.

- Labour Future Limited
- Labour Leave Limited
- Business for Brexit Limited
- The Pound Campaign
- Labour for Britain Limited

A person is also a disqualified person in relation to a Broadcasting Act licence if it is “a body which is controlled by an individual who is an officer of a body whose objects are wholly or mainly of a political nature”.³

John Mills is an officer of companies listed above, which are bodies whose objects are wholly or mainly of a political nature.

Licence condition 15(3)

We considered that the fact that JML Media Limited had failed to notify Ofcom of the circumstances above when they arose or at any time since raised potential issues under Condition 15(3) (“Compliance with ownership restrictions”) of its licence, which states:

“The Licensee shall inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee’s obligations imposed on him by or under Schedule 2 to the 1990 Act ... immediately upon becoming aware of such circumstances or events”.

We requested comments from JML Media Limited about how it had complied with this licence condition.

Response

JML Media Limited accepted that it was in breach of its licence and apologised for the fact that the situation had arisen. The Licensee asserted “a long time elapsed between when JML originally acquired a transmission licence and when the companies listed in [Ofcom’s] recent letters were formed” and that its failure to update Ofcom was “a clerical oversight”.

Decision

Condition 15(3) of the licence requires the Licensee to inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee’s obligations imposed on him by or under Schedule 2 to the 1990 Act immediately upon becoming aware of such circumstances or events. The Licensee did not do so.

We noted the Licensee’s representations that the failure to inform Ofcom of changes in the circumstances of the major shareholder and director of both it and its parent company John Mills Limited – resulting in the Licensee becoming disqualified from holding the licence – was an oversight. However, this oversight resulted in the JML Media Limited holding the licence unlawfully.

³ See paragraph 1(1)(i) of Part II of Schedule 2 of the 1990 Act.

Ofcom's Decision is therefore that JML Media Limited has been in breach of Condition 15(3) of its licence for the period 15 February 2013 to 26 May 2018.

Ofcom has a duty to ensure that a person does not become or "remain" the holder of a licence if he is a disqualified person. In this case, Ofcom intends to revoke JML Media Limited's licence on 2 July 2018 **unless either the licensee ceases to be disqualified or the Licence is transferred to a person who is not disqualified.**

Ofcom considers this to be a serious breach of the licence. Ofcom is therefore putting the Licensee on notice that this contravention of its licence will be considered for the imposition of a statutory sanction.

Breach of Licence Condition 15(3) to the Television Licensable Content Service licence held by JML Media Limited (licence number TLCS000223).

In Breach

Broadcast licensees' late and non-payment of licence fees *Various licensees*

Introduction

Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory obligation 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.¹ Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables.²

The payment of a licence fee and payment made on time is a requirement of a broadcasting licence.³

- 1) "The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 87 (3) of the 1990 Act as Ofcom shall from time to time publish in such manner as it considers appropriate".
- 2) "Payment of the fees referred to...above shall be made in such manner and at such times as Ofcom shall specify..."

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 – late payment

The following licensees failed to pay their annual licence fees by the required payment date. These licensees have therefore breached Condition 3(2) of their licences.

Licensee	Service Name	Licence Number
An individual	Radio City Swansea	LRSLO00180
Down Community Radio Limited	Down FM	CR000047
RadioReverb Limited	Radio Reverb	CR000057
Sandgrunder Radio Limited	Sandgrunder Radio	DP101453
Sunny Govan Community Media Group	Sunny Govan Radio	CR000018
Sutton Youth Radio Limited	Takeover Radio 106.9	CR000169

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

¹ http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

² https://www.ofcom.org.uk/_data/assets/pdf_file/0019/112465/Tariff-Tables-2018_19.pdf

³ As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

In Breach – non-payment

The following licensees failed to pay their annual licence fees. These licensees have therefore been found in breach of Conditions 3(1) and 3(2) of their licences.

Licensee	Service Name	Licence Number
Awaaz Radio Limited	Awaaz Radio	CR000208

As Ofcom considers these to be a serious and continuing licence breaches, **Ofcom is putting these licensees on notice that this contravention of their licences will be considered for the imposition of a statutory sanction, which may include a financial penalty and/or licence revocation.**

In Breach/Resolved

Provision of information: Diversity in Broadcasting *Various licensees*

Introduction

Ofcom has a statutory duty under the Communications Act 2003 to take all such steps, as we consider appropriate, for promoting equality of opportunity in relation to employment and training by broadcasters, in terms of three of the 'protected characteristics' in the Equality Act 2010: gender, racial group and disability.

In February 2018, Ofcom wrote to TV licensees, who were either new licensees, or who had informed Ofcom in 2017 that they had 50 or fewer employees, requiring them to submit:

- information relating to the number of people employed in connection with the provision of their broadcast service; and
- the number of days per year for which they are licensed to broadcast.

This information was to determine if the licensees met the threshold¹ requiring them to complete a more detailed questionnaire on their employees and equal opportunities arrangements.

We requested this information in accordance with Condition 12(1) of the Television Licensable Content Service ("TLCS") licence, "General provision of information to Ofcom", which states:

"The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act, or the Communications Act..."

Failure by a licensee to submit this information when required represents a breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

In Breach

The following licensees failed to submit the required information. These licensees have therefore been found in breach of Licence Condition 12(1) of the TLCS licence.

Licensee	Service Name	Licence Number
A&A Inform Limited	Russian Hour	TLCS000680
Alliance Media FZ LLC	Urdu1 Europe	TLCS101789
Almogran Media Organisation	Mogran TV	TLCS101779

¹ Licensees employing more than 20 people in connection with the provision of their licensed services and authorised to broadcast for more than 31 days a year.

Licensee	Service Name	Licence Number
AplusLive Media Limited	Muzik Ankara	TLCS001195
Cira Media Productions Limited	Cira TV	TLCS001556
Galaxy Television Limited	Galaxy TV	TLCS102196
Global Tamil Vision Limited	Global Tamil Vision	TLCS001281
Global TV Broadcasting Limited	F Plus TV	TLCS001533
	iFilm	TLCS100747
	Fashion Elite	TLCS100749
	Nova Cinema	TLCS101270
	Play Animal	TLCS101271
	N Movies	TLCS101272
	Wild West	TLCS101273
	Favori	TLCS101314
	Potpori	TLCS101317
GoGetSale Limited	Moda Life TV	TLCS001537
	ADA TV	TLCS101360
	Gonul TV	TLCS101361
	Meta TV	TLCS101782
	Sultan Film	TLCS101787
	Yore TV	TLCS101791
International Broadcasting Limited	Teletime TV	TLCS001354
	Safran TV	TLCS001356
	Nova TV	TLCS001536
	HD Film	TLCS101313
	EN TV	TLCS101315
	Zimane Pop	TLCS101316
	Sinema Max	TLCS101359
	Cinenom	TLCS101362
	Canli TV	TLCS101363
Prime Bangla Limited	Channel i	TLCS001127
Sunbiz (PVT) Limited	7 News	TLCS101711

Resolved

The following licensees failed to submit the required information in accordance with the deadline, but subsequently submitted a late return. For these licensees, we therefore consider the matter resolved, under licence condition 12(1) of the TLCS licence.

Licensee	Service Name	Licence Number
Arti TV Limited	Arti TV	TLCS101890
ATN Bangla UK Limited	ATN Bangla UK	TLCS001029
Excellent Entertainment Limited	Athavan TV	TLCS100516
Filmflex Movies Limited	FilmFlex	TLCS000861
Glory TV Limited	Glory TV	TLCS001206
Lebara Media Services Limited	Lebara Play Electronic Programme Guide	TLCS100871
Mena News Limited	Arab News Network	TLCS000180

Licensee	Service Name	Licence Number
Pavers Limited	PaversShoes.tv	TLCS000514
REAL Digital TV Limited	REAL Digital	TLCS001447

Fairness and Privacy cases

Upheld

Complaint by Mr and Mrs T

Can't Pay? We'll Take it Away!, Channel 5, 25 May 2016

Summary

Ofcom has upheld this complaint of unwarranted infringement of privacy made by Mr T on his own behalf and on behalf of his wife, Mrs T.

The programme which followed High Court Enforcement Agents ("HCEAs") included footage of Mr and Mrs T and the interior of their home as they spoke with two HCEAs who were there to enforce a Writ of Control ("Writ") against Mr T for the repayment of a debt made against him and his company. The footage of the interior of Mr and Mrs T's home was recorded by the body cameras worn by the HCEAs but belonging to the programme makers.

Ofcom found that Mr and Mrs T had a legitimate expectation of privacy in relation to the filming and the subsequent broadcast of the footage of them without their consent. We considered their legitimate expectation of privacy, on balance, outweighed the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Mr and Mrs T's privacy was unwarrantably infringed in both the obtaining and broadcast of the footage included in the programme.

Programme summary

On 25 May 2016, Channel 5 broadcast an edition of *Can't Pay? We'll Take it Away!*, a series which follows HCEAs as they attempt to resolve debt disputes through negotiated settlements and asset seizures. This particular edition included a story about the complainant, Mr T, whose company owed more than £3,000 to a customer. The programme's narrator introduced this section of the programme:

"Nearly 60% of businesses in the UK have some sort of debt and the amount owed is on the rise. In the last five years, business debt has risen by 25% and it's forcing many companies to close their doors altogether".

A caption was also shown:

"Since 2009 nearly 1.5 million businesses have ceased trading across the UK".

The narrator explained that the HCEAs had visited Mr T's home on three previous occasions, but that he had not been in. The narrator added that Mr T had recently contacted the HCEAs' office to claim that he had no means to pay the debt, but that today the two HCEAs, Mr Delroy Anglin and Mr Brian O'Shaughnessy, would be serving the notice on him directly to try to resolve the case. One of the HCEAs was then shown approaching and knocking on the front door of Mr T's house. Mr T opened the door and the following conversation took place on Mr T's doorstep:

Mr Anglin: *"We've got a High Court Writ. We need to see your circumstances, so I can put this to bed and see what we do with it, ok?"*

Mr T: *Right, so what do you want?"*

Mr Anglin: *We need to come in and see your circumstances".*

Mr T allowed both HCEAs to enter his property and, while they were stood in the hallway, Mr T explained to them the reason he was in debt:

"Basically, it's a website that we agreed to build for the guy. They never gave us any information and then all of a sudden, he just said you know, you're not doing it for what...how we want it. The company was in trouble, we couldn't afford anything, so we rented out the house and went to, basically, live in Spain. So, we've literally just moved back Sunday night. So, the company is being closed down".

Mr Anglin then walked through Mr T's property and his body worn camera captured footage of the hallway and another room.

The narrator said that Mr T believed the debt would: *"disappear when the company folded"*. However, Mr Anglin explained to Mr T that: *"if it was just the company, you might have had an argument, but you can see that your name's on there, along with the company, so because you're named on it, we have to look at what assets you have"*. Mr T responded: *"we've basically got nothing"*.

In a separately recorded piece of footage to the television camera, Mr O'Shaughnessy said that: *"if people are in debt, it's not a positive thing for people, but it's how people choose to deal with it, you've got to plough through it, don't bury your head"*.

The narrator explained that the HCEAs needed proof that Mr T had no assets of value. Mr Anglin walked to the upstairs of the property and his body camera captured footage of the main bedroom.

Mr Anglin then asked Mr T: *"what are you doing for money at the moment?"* and Mr T responded:

"[Mr T's company name] shut down. We've had to start up again. Same thing, that's what we know. We basically couldn't afford to go bankrupt".

As Mr T was speaking, he and Mr Anglin walked along the landing and into a different room. Footage of a computer could be seen on the desk in this room and Mr Anglin asked Mr T for information about this computer. The narrator stated that the computer and a laptop were the only items of value in the property, but that without them, Mr T may: *"struggle to make a success of his new IT business"*.

Later in the programme, Mrs T was shown entering the hallway from another room and she introduced herself to Mr Anglin as Mr T's wife. Mr Anglin then said to Mr and Mrs T:

"Unless we come to some arrangement in relation to the outstanding debt here, we will be calling a van to remove goods of value. I don't want to disrupt your business that you're

bringing up, but I will take the computer and all computers in the house. I don't want to do that, but you need to understand that I will".

Mrs T said that they did not have "£4,000 available" to which Mr Anglin responded: "If you're getting your business up and running again, does it suit you for me to take your computer and remove your goods and we'll be here all night? But that's what I'll do".

In a separately recorded piece to the television camera, Mr O'Shaughnessy said:

"Racking up the pressure at certain points when enforcing a High Court Writ is imperative, it's to show your intention and it's to make debtors understand the severity of what's in front of them [footage of an A4 piece of paper stuck to a mirror was shown which had the text 'Welcome home! We're glad to have you back :)']. We don't take any pleasure in trying to upset anybody, but they need to work with us".

Mrs T then said that: "no one in our family's got any money" and asked whether it would be possible to come to an arrangement where they could pay instalments on a monthly basis. Mr Anglin explained that in order for him to consider an alternate agreement, he would need a deposit of at least half of the debt owed. Mr T said that he did not have the money to pay that amount.

Mr O'Shaughnessy said that he would call the removal vehicle while the other explained that this would result in an increase to the balance. The following conversation between Mrs T and Mr Anglin then took place:

Mrs T: *"So you're saying if we don't pay £2,000 now, this second, you're going to start taking our stuff now?"*

Mr Anglin: *Yeah. It's better than finding £4,000 isn't it?*

Mrs T: *It might as well be £4,000.*

Mr Anglin: *You must have somebody who can help you?*

Mrs T: *We haven't. Our family's broke. We haven't got money in our family".*

Footage of Mr and Mrs T sitting on the staircase in the property was shown. Mrs T could be heard getting upset as Mr T said: "Do you think [Mr T's uncle] would lend us the money?" and Mrs T responded: "I don't know. We could always ask him". Mr T was then shown going up the stairs and out of view of Mr Anglin's body camera to contact his uncle. The programme's narrator then said: "while [Mr T] speaks to his Uncle [name removed], Del [Anglin] wants to find out more from his wife about the couple's move to Spain". The following conversation took place:

Mr Anglin: *"Why did you come back? Was it not working out there, the business?"*

Mrs T: *Yeah, we were homesick. We moved out there because we needed to get things back on track. We felt that now we were starting to get things back on track, it would enable us to move back".*

In a separately recorded interview, Mr Anglin said:

"They've buried their heads in the sand for such a long time that they think that the problems are going to disappear and when someone like me arrives, they're actually made to face the issues that they've been avoiding for months or years and in a funny sort of way it brings them a little bit of relief, because they can unburden it all".

Mr T then came down the stairs and said: *"we can get the money"*. Mr Anglin then said to Mrs T: *"you don't have to cry anymore, your husband's come good"*.

Mr O'Shaughnessy then spoke to the camera crew outside the property to explain that Mr T's uncle would be coming to the property to pay the money owed. Mr T's uncle was then shown in the house as he asked: *"what's going on?"*. Footage of Mrs T giving him a hug and Mr T's uncle then paying the debt was shown.

All of the footage of Mr and Mrs T included in the programme was filmed on the body cameras worn by the HCEAs.

Towards the end of the programme, a still image of Mr T was shown with the following text:

"[Mr T] applied to have the judgment set aside. His appeal was not upheld".

Mr T's face was shown, and his voice heard in the programme. Mrs T's face was obscured, however, her voice was heard, and she was identified in the programme as being Mr T's wife.

No further footage of Mr and Mrs T was included in the programme as broadcast.

Summary of the complaint and the broadcaster's response

The complaint

- a) Mr and Mrs T complained that their privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast because:
 - they were not informed that they were being filmed by the HCEAs for a television programme. Mr and Mrs T said that one of the HCEAs explained to him that the sole purpose of his body camera was to record the events which had taken place in the property in case there were any subsequent questions or disputes about them. Mr and Mrs T said that had they known that the footage filmed by the HCEAs would be included in a programme, they would not have let them into their home and would not have discussed private matters and their financial situation with the HCEAs.
 - the HCEAs filmed Mr and Mrs T's personal belongings, including a poster made by their friends which welcomed them home. Mr and Mrs T said this was unnecessary.
- b) Mr and Mrs T also complained that their privacy was unwarrantably infringed in the programme as broadcast because:
 - footage of Mr and Mrs T discussing private matters and their financial situation with the HCEAs was broadcast without their consent.

- the programme included footage of Mr and Mrs T's personal belongings, including a poster made by their friends which welcomed them home. Mr and Mrs T said this was unnecessary.

By way of background, Mr and Mrs T said they felt they had been deceived by the programme makers from the outset. Mrs T said that she was exploited by the programme makers in that she was clearly distressed and upset by the situation. In particular, Mrs T said that the comment: "*you can stop crying now*" included in the programme led to "untold worry, distress and humiliation". Mrs T said that the programme "cruelly treated us and went with the story they originally wanted with no regard for facts, in order to provide good 'entertainment'".

Broadcaster's response

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

Channel 5 said that the sequence in the programme which featured Mr and Mrs T concerned the activities of HCEAs conducting official court business, specifically executing a Writ which permitted the seizure of goods, chattels and other property of Mr T in order to satisfy a judgment debt.

Channel 5 added that the activities of HCEAs; the manner in which the law is utilised or ignored; the kinds of difficulties the HCEAs face when executing their duties; and the impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties, are all matters of public interest.

Channel 5 said that for all these reasons it was appropriate and reasonable to include footage of persons interacting with the HCEAs in the programme. Channel 5 added, however, that each case is assessed on its own facts, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in particular programmes. Channel 5 said that no legitimate right to privacy is ever intentionally infringed.

- a) Channel 5 said that Mr T was the subject of a Writ that the HCEAs were executing. The broadcaster added that the HCEAs had already sought to enforce the Writ previously. Channel 5 added that the execution of a Writ by the High Court is a public matter and that the execution of the Writ in this case was not a matter connected with the complainants' private lives, it was a public matter that involved the complainants.

Channel 5 said that the complainants' interactions with the HCEAs was not part of any private life protected by Article 8 of the European Convention of Human Rights ("ECHR") i.e. right to respect for private and family life, although communications about those interactions were protected by Article 10 of the ECHR, i.e. freedom of expression.

Channel 5 accepted that neither complainant had consented to being filmed or to their house being filmed. However, the broadcaster said that given the HCEAs were engaged in

official court business it was not necessary to obtain the complainants' consent in relation to the filming. Channel 5 said that Mr T did consent to be interviewed by the crew, however, he later sought to retract that consent.

Channel 5 also acknowledged that the HCEAs arrived at the complainants' house with no warning. However, they said that no warning was required to be given prior to the execution of the Writ as doing so might lead to the frustration of the court order and the HCEAs would not know how the complainants would react to them.

The broadcaster said that the Writ authorised the HCEAs to enter the complainants' house and seize any goods which could not be proven to be the property of a person other than Mr T. If the debt was not settled or an appropriate arrangement made, the HCEAs could have legally removed goods and chattels in the house, put them in storage and allowed the rightful owners seven days to prove their ownership. Failing such proof, anything seized could be sold to reduce or satisfy the debt. Therefore, the broadcaster argued that any right to privacy the complainants might have claimed would be outweighed by Channel 5's right to freedom of expression, and the public's right to receive information concerning matters of public interest including the activities of HCEAs carrying out official court duties.

Channel 5 said that the complainants were incorrect in their claim that the camera crew did not explain why they were filming. The broadcaster said both Mr and Mrs T were told that filming was being conducted for a Channel 5 series that followed the activities of the HCEAs. Further, Channel 5 said that the complainants were also incorrect when they stated that the HCEAs misled them about their body cameras. The broadcaster said there was no discussion between Mr and Mrs T and the HCEAs about the cameras or their use.

Channel 5 said that while the HCEAs were inside the complainants' house, they explained the position to Mr T first and then to Mrs T. The broadcaster added that they negotiated with them both about the enforcement of the Writ. Channel 5 said that the HCEAs were wearing body cameras which were not hidden from view and added that most of the footage in the broadcast comes from the footage shot by the body cameras worn by the HCEAs and that the filming was carried out lawfully. Channel 5 said that as a matter of policy, HCEAs usually wear body cameras which record their interactions with members of the public while they are carrying out their official court duties both for safety reasons as well as to provide a record of their activities in case of complaint or inquiry.

Channel 5 said there was no breach of either of the complainants' privacy in the HCEAs recording their activities by using body cameras especially given the cameras were not hidden or concealed. Further, the broadcaster said there was nothing in Mr and Mrs T's argument that they would not have allowed the HCEAs into their home or discussed financial matters with them had they known that the body camera footage would be broadcast. This was because the HCEAs had the power to enter the complainants' home and to seize goods and chattels. Channel 5 said that Mr T "unhesitatingly" allowed the HCEAs access to the home without knowing what they were going to do despite the fact the production crew were present. The broadcaster added that had the complainants sought to obstruct the HCEAs, the police would have been called to ensure the peace was not breached. In addition, there was no discussion about the body cameras worn by the HCEAs despite their conspicuous presence. Channel 5 said that it followed that the complainants were unconcerned about the cameras and they conducted themselves as

they chose without being assured that the footage filmed by the body cameras would not be broadcast.

- b) Channel 5 said for the reasons already set out above, it did not accept that the complainants had any right of privacy in relation to their interactions with the HCEAs. The broadcaster added that as directors of the company debtor, both brought the attendance of the HCEAs upon themselves by failing to pay the judgment debt. Channel 5 said that Mr T stated that the couple could not afford bankruptcy and that they were starting up a new corporate entity to trade in the same manner as they had traded using the corporate debtor.

The broadcaster said that Mr T had telephoned the office from which the HCEAs receive their instructions and stated that the judgment debt would not be paid as he had no access to any funds. Channel 5 said that it appeared that the complainants thought that their debt and the debt of the corporate debtor would be left unrecovered and that they could continue trading under a new corporate name without needing to settle the debt or surrender to bankruptcy.

Channel 5 reiterated that the execution of the Writ, whenever it occurs, is a public act the HCEAs were obliged to carry out. Further, Channel 5 said for the reasons already given above, there was a clear public interest in seeing the activities of the HCEAs executing their official duties. Channel 5 added that that public interest outweighed any right to privacy the complainants might have had in relation to such activities.

Channel 5 said that the part of the programme which featured the complainants made several issues clear to the public, all of which it was in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ has been issued, goods and chattels which belong to anyone at the place where the debtor resides can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced;
- significant costs can be incurred if the various stages of the execution of the Writ are breached;
- failure to pay judgment debts, or failure to respond to calls from those collecting judgment debts, can lead to the property of the people who live with the judgment debtor being seized, disrupting ordinary family life; and,
- judgment debts cannot and should not be ignored.

Channel 5 added that the broadcast "demonstrated the stark reality of situations such as that in which Mr and Mrs T had put themselves by their actions". Further, Channel 5 said that the broadcast was entirely in the public interest and by including the footage that was shown, the broadcast did not exceed what was necessary and appropriate to make viewers understand the situation and the ramifications of what the complainants had sought to do.

Channel 5 said that footage of the interior of the complainants' home was included solely because it demonstrated the kinds of items the HCEAs would seize if payment was not made. The broadcaster added that without sight of the interior, it would not have been clear to the viewer the "kind of stakes that were in play" under the Writ.

Background information to the complaint

Channel 5 stated that Mr and Mrs T did not provide any evidence to support their contentions that they were deceived, or that anything in the reporting of the visit by the HCEAs was factually inaccurate.

The broadcaster said there was no basis for the suggestion that Mrs T was exploited in any way, either in relation to the filming or the broadcast. Nor, Channel 5 said, was there any basis for the allegation that the complainants were "cruelly treated". The broadcaster said that the programme makers had no agenda for an outcome in relation to the encounter with the complainants, and that their story was just another story filmed in the course of the series. It said that until filming was completed, the programme makers had no expectations about whether the encounter with the complainants would be suitable for inclusion in the series.

Channel 5 also said that it was difficult to understand how the remarks of the HCEAs could lead to Mrs T experiencing "untold worry, distress and humiliation". Quoting in full the passage in which the comment: "*you don't need to cry anymore*" was made, Channel 5 added that there was nothing in the language used by the HCEAs which suggested that they behaved in any way other than with professionalism and empathy. Channel 5 said that the opinions the HCEAs expressed were based on the facts set out in the broadcast.

The broadcaster said that the footage of the interior of the house in which Mr and Mrs T resided was not extensive or detailed. The broadcaster said it was necessary to show the interior of the house because one of the key issues facing the HCEAs when executing the Writ was determining what chattels and goods there were on the premises which might be impounded. Channel 5 said the HCEAs had to explore the premises and it was appropriate that the options they were forced to explore were filmed and broadcast to properly explain the issues they faced in executing their duties.

In addition, Channel 5 said that nothing especially private was disclosed in the footage of the interior of the home. The "welcome home" sign to which the complainants make reference, was not, the broadcaster said, obviously private and, unlike an intimate family photograph for example, it did not reveal anything private about Mr and Mrs T which was not otherwise disclosed by them to the HCEAs.

Channel 5 said that by demonstrating how failing to meet obligations as a debtor can lead to further cost and trauma, the public interest was served. The broadcaster said that telling Mr and Mrs T's story, including the fact that they had to be funded by a relative to avoid the impending seizure of the family's goods and chattels, was entirely in the public interest.

Further submissions from the complainants and the broadcaster

On receipt of the broadcaster's response and unedited footage, Mrs T contacted Ofcom to explain that she was concerned that some of the footage was missing. In particular, footage in which the HCEA spoke to Mrs T about his body camera. She said that this took place at a similar time to when their neighbour, who was visiting when the HCEAs had arrived, left the

home. Mrs T also said that she and Mr T were not told that the footage filmed by the other HCEA's body camera would be broadcast, nor were they informed that the other HCEA was recording at all.

Ofcom provided this further information to Channel 5 and it asked the programme makers to confirm that all of the unedited footage had been provided. In response, the programme makers said that they re-watched every frame of the footage filmed by the HCEAs' body cameras when the HCEA was in attendance at Mr and Mrs T's home and compared this with the transcripts. The programme makers also confirmed that the timecode on the recordings was continuous and that all the unedited footage and material reflected exactly what took place at the property and that nothing was missing.

The programme makers also said that there was no mention of the body cameras by the HCEAs throughout the visit. In particular, the programme makers said that they paid particular attention to when one of the HCEAs was in the hallway alone with Mrs T and there was no conversation to this effect or evidence that the sound had been dropped in some way. The programme makers added that the neighbour who Mrs T refers to may have been in the front room out of sight but was not seen in the footage and did not leave while the HCEAs were in attendance. Channel 5 also said that they checked with the programme makers in case the agents had subsequently returned to the property. They said that it would have been an "extraordinary thing for them to do" as "they never return after collection". In fact, the unedited footage showed that when the HCEAs left they got back into their vehicle and drove away.

Ofcom's First Preliminary View

On 15 November 2016, Ofcom issued its first Preliminary View on this case that the complaint made by Mr and Mrs T should not be upheld. This was provided to the parties with an invitation for them to make representations. Neither party chose to make representations on the first Preliminary View.

Ofcom's consideration of Mr and Mrs T's complaint was put on hold pending the conclusion of our investigation into a complaint made by Miss F about separate edition of *Can't Pay? We'll Take it Away!*¹

Supplementary material

During the course of our investigation into Miss F's complaint, Channel 5 provided Ofcom with details of arrangements between the HCEA company and the programme makers regarding the provision and use of the body cameras worn by the HCEAs and the subsequent use of the material recorded (both visual and audio) on those body cameras. Channel 5 confirmed to Ofcom that these arrangements were also in place at the time that Mr and Mrs T were filmed and the programme broadcast.

In a document entitled "Main Contributor Release Form" ("Release Form") it was agreed between the programme makers and the HCEA company that:

¹ Complaint by Miss F made on her own behalf and on behalf of her uncle, and her parents about *Can't Pay? We'll Take it Away!*, Channel 5, 20 April 2016.
(https://www.ofcom.org.uk/data/assets/pdf_file/0018/107433/issue-340-broadcast-on-demand-bulletin.pdf).

- the body cameras would be provided to the HCEAs by the programme makers and that the HCEAs would film in the way that they would do normally (i.e. with their own cameras when not engaged in activities with the programme makers);
- the entire copyright in the material recorded by the body cameras belonged to the programme makers for the purposes of the programme; and,
- reasonable access to view the body camera material would be given to the HCEA company upon request, but that material remained the property of the programme makers.

The significant further detail regarding the ownership and use of the body cameras had not been disclosed by Channel 5 in the information it had provided to Ofcom in its statement in response to the complaint. In its initial statement, Channel 5 had said: "As a matter of usual policy, High Court Enforcement Agents wear body cameras which record their interactions with members of the public while they are carrying out their official Court duties. This is for the safety of the Agents as well as providing a record of their activities in case of complaint or inquiry". Channel 5 also provided Ofcom with the programme production "bible" which provided further detail about the relevant practices and procedures governing the activities of the production team in making *Can't Pay? We'll Take It Away*. In particular, the document stated that:

- each HCEA wore a body camera and a microphone with sound fed to a central recorder unit. Both the camera and the microphone recorded continuously while they dealt with a case;
- while HCEAs routinely wear body cameras, they are of low quality. Therefore, the programme makers replace them with their own, better quality body cameras and ensure that there is always a sound recordist on the shoots;
- the production team maintain the body cameras while filming and ensure that replacement batteries are carried, and the data backed up;
- if a "debtor" queries the use of the body cameras, the programme makers should respond that they are worn for the HCEAs' security, but that the material may be made available to the programme makers if it is in the public interest to show it; and,
- Ofcom does not view the filming by the HCEAs on the body cameras or the subsequent broadcast of the filmed footage as being surreptitious filming and so it can "be treated for all intent and purpose as being the same as your (i.e. camera crew) filming in most cases".

Ofcom's Second Preliminary View

Having reconsidered the balance between the competing rights of the complainant and the broadcaster under Articles 8 and 10 of the ECHR, and taking account of the supplementary material, Ofcom decided that it was not appropriate to continue with its first Preliminary View. We decided to withdraw it and issue a new, second Preliminary View.

On 28 February 2018, Ofcom issued its second Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the second Preliminary View. The complainant did not submit any representations. Channel 5 made representations which are summarised below.

Channel 5's representations

Channel 5 said that it repeated and relied upon its earlier submissions. It also added the following representations.

The Balancing Question

Channel 5 said that it considered that, in its decision in *Miss F*, Ofcom did not follow the well-established methodology of the Strasbourg case-law in relation to the balancing of Article 8 and Article 10 rights. It referred particularly to the Grand Chamber cases of *Von Hannover v Germany (No 2)*², *Axel Springer v Germany*³, and *Couderc v France*⁴. It said that these cases identify the factors which must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights. The first issue, to which the case law attributes particular importance, is whether the information is capable of contributing to a debate of general interest, there being little scope under Article 10 for restrictions on freedom of expression when a matter of public interest is at stake. Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest.

Channel 5 said that the broadcast of the section of the programme featuring Mr and Mrs T was clearly capable of contributing to a debate of public interest, namely the manner in which civil judgments were enforced, the powers granted to HCEAs, and the consequences of not paying proper attention to personal debts. The broadcaster said that where, as in this case, the subject matter of a broadcast contained information which was of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, then this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of the expression, i.e. broadcasting the unobscured footage of Mr and Mrs T, was also protected under Article 10. It said that *Jersild v Denmark*⁵ emphasised that it is not for the national authorities to:

“...substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed”.

This principle, according to Channel 5, was recently reaffirmed in *Khuja v Times Newspapers Ltd and others*⁶:

“...Does the public interest extend to PNM’s identity? This case differs from earlier cases in which the same question has arisen because the order sought by PNM would not prevent the identification of a party to the criminal proceedings or even of a witness. To my mind that makes it even more difficult to justify an injunction, for reasons which I have given. But in any event, I do not think it can be a relevant distinction. The policy which permits media reporting of judicial proceedings does not depend on the person adversely affected

² [2012] ECHR 228.

³ [2012] EMLR 15.

⁴ [2015] ECHR 992.

⁵ [1994] 19 EHRR 1.

⁶ [2017] UKSC 49.

by the publicity being a participant in the proceedings. It depends on (i) the right of the public to be informed about a significant public act of the state, and (ii) the law's recognition that, within the limits imposed by the law of defamation, **the way in which the story is presented is a matter of editorial judgment, in which the desire to increase the interest of the story by giving it a human face is a legitimate consideration. PNM's identity is not a peripheral or irrelevant feature of this particular story** [Channel 5's emphasis].

The broadcaster said that the Article 10 rights of it and the programme makers to impart, and the audience to receive, the information in *Can't Pay? We'll Take It Away* must weigh heavily in the balancing exercise. It said that there must be very weighty privacy interests at stake if any restriction is to be placed on those Article 10 rights.

Channel 5 said that this should not be taken as suggesting that its Article 10 rights (and those of the audience) automatically take priority over any Article 8 right enjoyed by the complainants - neither right trumps the other. However, it said that, in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, as opposed to other broadcasts where, say, the purpose of the broadcast is light entertainment or popular comedy, the caselaw establishes that very weighty privacy interests must be at stake if the intense focus on the interaction of the rights will swing against the Article 10 considerations.

Channel 5 submitted that when properly considered, the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of the complainants unobscured, and "such Article 8 rights as might arise in relation to the footage". It said that this position is fortified by the decision of Arnold J in *Ali v Channel 5 Broadcasting*⁷. The broadcaster said that, relevantly, the judge found that *Can't Pay? We'll Take It Away* contributed to a debate of public interest, and that there was a margin of editorial discretion given to Channel 5 in relation to the contents of such a programme. This discretion included the way the story is told, the tone of the programme, and any decision to use private information. However, Channel 5 said that on the facts of the *Ali* case, that judge held that the margin of editorial discretion was exceeded because the programme contained "the drama of the conflict between [the landlord's son and the claimants] which had been encouraged by Mr Paul Bohill [one of the HCEAs in that case] to make good television". Channel 5 said that the claimants in the *Ali* case had complained that a number of items of private information had been unlawfully broadcast, including:

- their images and identity;
- "extensive footage of the interior of their home at the time of the eviction, showing the state it was in when they were taken by surprise by the HCEAs and the film crew, including such details as the unmade bed in the downstairs bedroom", about which Mrs Ali was "particularly upset", the children's bedrooms, the bathroom/toilet and the family's personal possessions gathered into large bags;
- the sleepwear Mr Ali was wearing when first encountered by the HCEAs;
- the claimants' demeanour and visible distress;
- details of the claimants' receipt of benefits and the amount of those benefits;
- the circumstances leading to their eviction;
- the identification, by association, of the claimants' children;

⁷ [2018] EWHC 298.

- conflict with the landlord's son and associated distress; and,
- images of the claimants filmed on the HCEAs' body cameras about which the claimants had not been informed and which the claimants said in evidence they had not expected or foresaw might be broadcast on national television.

Channel 5 said that while the judge in the *Ali* case made a finding that the claimants had a reasonable expectation of privacy in relation to the matters they complained about, the only matter he identified as not in the public interest was the "drama of the conflict" with the landlord's son and associated distress. According to Channel 5 it was the inclusion in the broadcast of *that* information (the arguments and the distress caused by them), not the other material found to be private to the claimants, which the Judge identified as material where the balance came down in favour of Article 8. This was because of his finding that one of the HCEAs had encouraged that conflict to make "good television". Arnold J did not find that the other matters, although private to the claimants, did not go beyond what was justified by Channel 5's Article 10 rights. The broadcaster added that the claimants' counsel drew the judge's attention to Ofcom's decision in *Miss F*, but that the Judge found that decision, and earlier Ofcom decisions relating to the series, of "little assistance".

Channel 5 submitted that the *Ali* decision is an important recognition of the principle noted by Lord Rodger in *von Hannover v Germany*⁸:

"...where the publication concerns a question "of general interest", article 10(2) scarcely leaves any room for restrictions on freedom of expression: Petrina v Romania..."

It said that in Mr and Mrs T's case, the unedited material did not disclose any evidence of the kind of encouragement to make "good television" which Arnold J dealt with in *Ali*. In those circumstances, Channel 5 submitted that, consistently with the decision in *Ali*, Channel 5's editorial discretion to include information private to Mr and Mrs T was justified as it contributed to a debate of general interest.

Filming Mr and Mrs T

Channel 5 said that Ofcom appeared to accept that the body cameras worn by the HCEAs were worn openly by them. It said that any reasonable person ought to have understood that the body cameras were filming the activities of the HCEAs, and that no attempt was made to hide the fact that the HCEAs were filming.

The broadcaster said that while the body cameras were owned by the programme makers, they were not imposed on the HCEAs who would have worn body cameras when attending the enforcement against Mr T whether the programme makers were present or not. In other words, Channel 5 said that whether or not the programme was in production, and whether or not the programme makers had signed an access agreement with HCEA company, DBCL, (who direct the activities of the relevant HCEAs), the interaction between Mr and Mrs T and the HCEAs would have been filmed by the HCEAs.

Channel 5 quoted from Ofcom's second Preliminary View:

"The fact that the body cameras were worn with the prior objective of obtaining footage for the purpose of broadcast was not something which was explained to [Mr and Mrs T],

⁸ [2005] 40 EHRR 1.

nor would it have been something which they could reasonably have foreseen or appreciated. In Ofcom's view, this justifies classifying the manner in which footage as obtained as "surreptitious" in the sense envisaged by the Code [Ofcom's Broadcasting Code, "the Code"]. This would not be the case if [Mr and Mrs T] had been aware at the outset that the footage was to be used for potential broadcast (rather than simply for the HCEAs own official use)".

The broadcaster said that there were several points concerning this conclusion which it submitted required reconsideration [emphases are all Channel 5's]:

- i) In similar circumstances, the judge in the *Ali* case reached no adverse conclusions about Channel 5 despite the issue of "surreptitious footage". It said that the lack of consent and the lack of knowledge of the use to which the footage might be put, were squarely raised before him.
- ii) Ofcom did not take into account the fact that the filming by the body cameras **was** for the protection and safety of the HCEAs and overstates any other purpose: the footage was **not** filmed for the purpose of broadcast. Channel 5 said that it was filmed for the protection and safety of the HCEAs and on the basis that it could be reviewed by the programme makers for *possible* inclusion in a future broadcast. The fact of filming did not equate with the fact of broadcast.
- iii) This was not a case where Mr and Mrs T had been misled, in any way, about the footage obtained by the body cameras. Channel 5 said that there simply was **no** discussion about what the body cameras were for. If there had been, it said that there was no reason to believe that, in accordance with their standing instructions, the programme makers would not have advised Mr and Mrs T that the footage would be made available to Channel 5 and could be broadcast.
- iv) In essence, Channel 5 said that Ofcom has found that the arrangement between the programme makers and the HCEA company was unfair, but it said that unfairness in relation to the **making** of a programme was not a matter within the remit of Ofcom. The broadcaster said that this was easily tested by reference to situations where footage is filmed by HCEAs on their body cameras where no access agreement is in place (so that the debtors in question can never be told that the footage might be broadcast on national television). It said that in those cases, on the basis of previous decisions made by Ofcom in relation to observational factual documentaries, Ofcom would not consider that programme makers seeking and obtaining access to such footage after filming has taken place as being unfair to the debtors, or a contravention of their privacy rights. Logically, according to Channel 5, it follows that there can be no such finding in Mr and Mrs T's case. It said that it cannot be correct that the timing of an access agreement to body camera footage filmed by public officials will be determinative of whether or not the footage was obtained surreptitiously. Channel 5 said that some kind of deliberate deception is envisaged by the Code. None existed in the circumstances involving the filming of Mr and Mrs T.
- v) Nothing in the Code, or the "general law", suggests that a person needs to be told that they are being filmed for television in order for footage of them to be included in a television broadcast. Channel 5 said that to find, as Ofcom did, that the filming on the body cameras was surreptitious because Mr and Mrs T were not so told opened Ofcom up to accusations that it was acting *ultra vires*. It said that absent the ordinary and expected

processes involved in amending the terms of the Code, Ofcom has no ability to widen its powers in this way.

- vi) This is not a case where the programme makers used “methods indiscriminately” or acted “in the speculative hope of gathering material for potential broadcast”. Channel 5 said that the interaction between Mr and Mrs T and the HCEAs would have been filmed regardless of whether or not *Can't Pay? We'll Take It Away* was in production. This was not a case, Channel 5 said, where the programme makers picked out a story and asked for it to be filmed by the HCEAs on an entirely speculative basis.

Nor was it a case where the programme makers sought to use any method it could to gain footage of Mr and Mrs T for broadcast. The filming took part as an ordinary, unexceptional part of the activities of the HCEAs. The question of whether or not anything filmed could or should be broadcast was the subject of detailed and serious consideration by the programme makers, Channel 5, and their respective legal advisers. To suggest that what happened with the Mr and Mrs T was “akin to the programme makers leaving an unattended camera or recording device on private property without the consent of the occupiers” was unsustainable – the HCEAs wore the cameras openly and “no one should have been in any doubt that they were filming”.

- vii) The situation would be different, Channel 5 said, had Mr and Mrs T been actively misled in any way or if, for example, the programme makers had asked the HCEAs to film their interaction in circumstances where they otherwise would not. But this was not what happened.

Channel 5 submitted that, for these reasons, Ofcom's reasoning in its second Preliminary View and the resultant conclusion that the footage used in the broadcast was filmed surreptitiously was unsustainable.

Warranted filming

In Ofcom's second Preliminary View, as in *Miss F*, Ofcom stated:

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

Channel 5 said that accepting that analysis for present purposes, the filming in relation to Mr and Mrs T was in the public interest, because it dealt with the execution of the duties of a HCEA. In *Ali*, the judge accepted that *Can't Pay? We'll Take It Away* contributed to a debate of general interest but found that the focus of the segment concerning the Ali family was not “upon matters of public interest, but upon the drama of the conflict between Omar Amed and the Claimants, a conflict which had been encouraged by Mr Bohill to make ‘good television’”.

Here, Channel 5 said, the focus of the segment involving Mr and Mrs T was entirely about the debate of general interest – the consequences of debt, the consequences of the failure to settle debt, the powers of HCEAs when executing Writs and the possible consequences for

family members of the debtor if debts are not paid. The broadcaster said that the segment did not stray into any ancillary area. Accordingly, on the basis of *Ali*, it said that there was no basis upon which Mr and Mrs T could base a “justification for restricting Channel 5’s Article 10 rights and the concomitant editorial discretion as to the way the story was told and its tone”. The broadcaster said that the inclusion of information private to Mr and Mrs T was justified as a contribution to a debate of general interest.

Channel 5 said that for all of these reasons, there was no basis for Ofcom to hold that the filming in question, and the broadcast of that footage, was unwarranted.

Information disclosed by Mr T

Channel 5 said that Ofcom did not give sufficient consideration to the significance of the personal information that Mr T willingly divulged to the programme makers in his filmed interview, which he knew could have been included in the broadcast. The disclosure made by Mr T was significant and made in the expectation that it might be broadcast.

It said that Ofcom identified ten issues captured on the body cameras that it considered private to Mr and Mrs T. The fact that their previous digital marketing company owed £35,000 in VAT and that it was being wound up under a voluntary arrangement were not private matters; searches of the public record would reveal those facts. Channel 5 said that all of the other matters specifically identified by Ofcom were matters essentially disclosed by Mr T in his interview. Indeed, it would be fair to say that the material disclosed in the interview provided *more* private information about Mr and Mrs T’s family than that identified by Ofcom. Given that Mr T disclosed that information in the expectation that it would be televised as part of the broadcast, Channel 5 said that there was little basis for suggesting it retained the protection of Article 8.

Restricting Article 10 rights

Channel 5 said that Ofcom rested its decision that the Article 8 rights of Mr and Mrs T justified a restriction on Channel 5’s Article 10 rights on the basis that the body camera footage was obtained surreptitiously and:

- was filmed inside the family home;
- showed the family under pressure and/or distressed;
- showed the personal items and furnishings in the family home;
- was obtained without the consent of any member of Mr and Mrs T’s family;
- showed intimate exchanges between family members; and,
- showed the pressure the family were placed under as the HCEAs went about their duties.

Channel 5 said that none of these matters, singly or in combination, were sufficient to persuade the Court in *Ali* that Channel 5’s Article 10 rights should be restricted. The court considered them all to be personal consequences and part of the impact of the enforcement process upon the Ali family, and Mr and Mrs Ali in particular. It said that they were matters which did “contribute to a debate of general interest”. Alone, they did not justify any restriction of Channel 5’s Article 10 rights or any limitation of its editorial discretion about how to tell a story of general public interest.

The broadcaster said that the situation in *Ali* was not relevantly distinguishable from the situation in Mr and Mrs T’s case, although it could be argued that the footage of the Ali family

to which the court did not take issue in the programme was capable of causing them greater distress than that stated by Mr and Mrs T. No complaint was made about any interference with the privacy rights of Mr T's uncle and the segment focuses exclusively on the enforcement action.

Accordingly, on the authorities, Channel 5 submitted that the inclusion of the body camera footage was a matter squarely within the editorial discretion afforded to Channel 5. The fact that Mr and Mrs T thought that the inclusion of particular matters was "not necessary" was not a relevant consideration. The broadcaster said that in the circumstances of this case, there was no sufficient reason to fetter that discretion, or otherwise restrict Channel 5's Article 10 rights.

In conclusion, for the reasons above and given in Channel 5's earlier submissions, the broadcaster said that it did not believe that there has been any unwarranted invasion of the privacy of either Mr or Mrs T. Channel 5 said that Ofcom's first Preliminary View in this matter was correct and should be reinstated.

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 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.

We carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting material. We also examined the unedited footage of the HCEAs' visit to Mr and Mrs T's home as well as the unedited footage filmed by the programme makers. We also took account of the supplementary material relating to the body camera arrangements between the HCEA company and the programme makers and Channel 5's representations on Ofcom's second Preliminary View. Ofcom considered the representations made by the broadcaster on its reasoning (insofar as they are directly relevant to Ofcom's consideration of the complaint as entertained) and concluded that the points raised did not materially affect its decision to uphold the complaint.

In Ofcom's view, the individual's right to privacy under Article 8 of the ECHR has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

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

- a) Ofcom considered Mr and Mrs T's complaint that their privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme as broadcast as set out under the "Summary of the Complaint section" above.

Ofcom had regard to Practices 8.5, 8.7 and 8.9 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.7 states that if an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Ofcom also had regard to Practice 8.13 which states that surreptitious filming or recording should only be used where it is warranted.

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

The unedited footage showed that most of the filming of Mr and Mrs T was from the cameras worn by the HCEAs in their private home discussing their financial and personal circumstances with the HCEAs. In particular, Mr T was filmed as he explained the circumstances which had led to the Writ being issued against him; that he was in the process of winding up their previous digital marketing company due the financial difficulties it faced; and, that they had recently set up a new company. He was also filmed as he discussed with his wife and the HCEAs how best to resolve the matter, in particular, that he was currently unable to pay the money owed and needed a family member to repay the debt on his behalf. Further, Mr T was filmed as he disclosed that he and his wife had recently returned from a life in Spain where they had been living to reduce their outgoings because they were in debt; and, that they had rented their house in the UK to pay for the mortgage on the property and their rent while they were living in Spain. Also, the interior of Mr and Mrs T's home, including several rooms and their personal belongings, as well as a poster made by their friends welcoming Mr and Mrs T home, were filmed as the HCEAs assessed whether or not there were any items of value in the property. The filming also revealed that they had little furniture and that their belongings were in disarray and mostly still in removal boxes.

We acknowledged from the unedited footage that Mr T later agreed to be filmed by the main camera crew outside his property in which he spoke about the matters raised in conversation with the HCEAs inside his home. We recognised that Mr T was filmed on his

doorstep and by the programme makers outside his property. However, we understood from Mr T's complaint that his concerns related solely to the material filmed by the HCEAs' body cameras while they were inside his home.

Ofcom considered that from the outset of filming, Mr T had been aware of, and had asked about, the presence of the broadcast cameras used by the camera crew to film the HCEAs and that he had made it clear that he did not want the programme makers to film inside the house or to film his wife and, later, his uncle. The following conversations from the unedited footage illustrated this:

When the HCEAs arrived at Mr and Mrs T's home and were invited in, the following exchange took place [Ofcom's emphases]:

Mr T: *"They're not coming in [i.e. the camera crew].*

Mr Anglin: *No, no, but there's a film crew, that's my colleague [Mr O'Shaughnessy].*

Mr T: *Hello [to Mr O'Shaughnessy].*

Mr Anglin: *Um, to let you know, there is a film crew out there.*

Mr T: *Right.*

Mr Anglin: *They follow us about in relation to Channel 5.*

Mr T: *Right.*

Mr Anglin: *I would suggest you speak with them. I'm not saying they're going to show anything, it's not my call. They would explain to you what your position is.*

Mr T: *OK".*

Mr T also told the HCEAs that a neighbour was in the house and was *"just about to ask her to go, **but not with a TV crew in there**"⁹.*

Later in the unedited footage, the following exchange took place between Mr Anglin and Mr and Mrs T:

Mr Anglin: *"Like I explained to your husband, there's a film crew outside.*

Mrs T: *[unclear].*

Mr Anglin: *Let me just explain. They, they, um, they follow us up and down the country for Channel 5, Can't Pay, We'll Take It Away. You may not have – I'm not too sure what your options are with them, but I'd suggest that you speak with them, so you know what those options are. Because they can explain to you – they'll be able to explain to you what – what your rights*

⁹ Since the camera crew never entered the house and it was clear from the footage when viewed in its full context that Mr T was not referring to the body cameras worn by the HCEAs Ofcom assumed that Mr T was referring to the camera crew outside the house and had meant to say: *"out there"*, rather than: *"in there"*.

are, which are – so if nothing else, they'd be interested in – in trying to help you, in some respect.

Mr T: *Well, how are they going to do that?*

Mr Anglin: *Well you need to speak to them because one, you need to know what rights you have in relation to what they do, in relation to whether or not this will be shown or not shown, I don't know if it will be. Other than them following us about I don't have an awful lot to do with them in that respect. And I don't wanna say anything that is incorrect, so what I can do, the – one of them can come in without their camera and have a chat with you so that you know where you stand. Ok... That's probably the best way if you don't want them in here, 'cos they're filming outside anyway. [unclear].*

Mr T: *Well, if you ask them... We don't want a film crew in.*

Mr Anglin: *No, one member will come in and explain. It's easier that way, so I don't get anything wrong, they can explain where they stand with what they do".*

At this point, one of the programme makers entered Mr and Mrs T's house and explained that they are working on behalf of the production company that makes *Can't Pay, We'll Take It Away* for Channel 5. He said that they followed the HCEAs wherever they go on every job and asked Mr and Mrs T if they were happy for the camera crew to come in to their house to follow the story:

Mr T: *"Er, no.*

Crew member: *You'd rather us stay outside?*

Mr T: *Yeah.*

Mrs T: *Yeah, I mean this is our, you know, this is our personal home...*

Crew member: *Yeah".*

Further on in the unedited footage, the HCEAs and Mr and Mrs T were discussing how the debt would be being paid by Mr T's uncle who was on his way to the house. The following exchange took place:

Mrs T: *"You won't – you won't film him outside?*

Mr O'Shaughnessy: *Well they'll – they'll – let me deal with that now.*

Mrs T: *No, I don't want him filmed, [Mr T].*

Mr Anglin: *Ok, we'll deal with that. We'll deal with that.*

Mr Anglin: *Well, if he's [the uncle] coming in 15 minutes, my colleague is going to speak to the film crew outside to make them aware of what's going on and they're going to...*

Mrs T: *If they [unclear] that they won't film, [unclear] he won't come [unclear].*

Mr Anglin: *I understand that, but my colleague will deal with that. We'll be able to address that.*

[to Mr T] Yeah, feel free to. Um and it's a good idea to speak to them just in – you know, because you might have a right grievance and you need to put your side. Um I don't know what they do and – I don't even know when I'm on. You know, um that's that, I mean the programme's on tonight at nine o'clock, I don't think I feature, but the first I'll know about it is well if it's in the TV guide. It's like I do so much of it over the period and I don't know what they do and what they're not gonna do".

Later in the unedited footage, when speaking to the programme makers outside in the road, the following exchange took place between them and Mr T about filming his uncle:

Crew member: *"How would you feel about us filming the last process with your uncle?"*

Mr T: *Er, I'd rather not. He's 80. Um and my wife's like quite really upset, so er I'd rather not.*

Crew member: *I totally understand that. We'll, um, we'll stay outside. Ok. We'll – we'll **come in and give you our details after**".*

Ofcom was told by Channel 5 in its statement that the HCEAs routinely wore body cameras during their work "for their safety and in case of complaint or inquiry" and that these cameras "were not hidden". However, in this instance, the body cameras being worn were, in fact, provided to the HCEAs by the programme makers with a view to potentially including all or part of the HCEAs' interaction with Mr and Mrs T in the programme as broadcast.

In considering the way this material was obtained, we took account of Practice 8.13 which states that "surreptitious filming or recording should only be used where it is warranted. Normally, any infringement will only be warranted if: there is a *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme".

The Code defines "surreptitious filming and recording" as including "the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing with a recording when the other party thinks that it has come to an end".

We did not accept Channel 5's representations on the second Preliminary View that Ofcom had not taken into account that the filming by the body cameras was for the

protection and safety of the HCEAs and that Ofcom overstates any other purpose. Channel 5's initial statement said that HCEAs routinely wore body cameras to record their interaction with members of the public while they are carrying out their official duties and that this was for personal safety reasons and in case of a complaint or inquiry. Ofcom had understood from this statement that these cameras belonged to the HCEAs and were used by them primarily for that purpose. However, the "Supplementary material" relating to the body cameras revealed that the body cameras were, in fact, the property of the programme makers who owned the entire copyright in the material recorded by the body cameras and had control of access to the footage by the HCEA company. As it had not been aware of the existence of these arrangements, Ofcom had reasonably assumed from the information originally provided by Channel 5 that the body cameras belonged to the HCEAs and therefore that the footage captured by them was taken and retained for official purposes.

Ofcom considered that it was apparent from these arrangements that the body cameras were not being worn by the HCEAs solely for the benefit of the HCEAs. Rather, the provision of the cameras by the programme makers and their ownership of the footage unequivocally showed the existence of an advance arrangement between the programme makers and the HCEA company which provided the programme makers with unfettered access to the footage recorded by the body cameras. A fundamental purpose of the cameras, therefore, was for the programme makers to obtain and retain footage for potential broadcast. The ownership and operation of the cameras guaranteed them exclusivity to the material recorded and enabled free, uninhibited access to Mr and Mrs T's home as they interacted with the HCEAs. This afforded the programme makers a level of access that exceeded substantially any exposure which anyone in Mr and Mrs T's position could possibly have expected at the time. As a consequence, the programme makers acquired access to unguarded interactions and disclosures within the confines of the domestic home and were able to observe and record sensitive and intimate exchanges between Mr and Mrs T, Mr T's uncle, as well as with the HCEAs themselves, during a stressful and emotional event.

From the complaint made to Ofcom and the unedited footage provided by Channel 5, we observed that at no time during the filming were Mr and Mrs T made aware that the body cameras and the material recorded by them belonged to the programme makers and could subsequently be used in the television programme and this was not something they could reasonably have foreseen or appreciated. In fact, the actions of the programme makers in agreeing not to come inside the house and the various conversations between Mr and Mrs T and the HCEAs about the filming gave every indication that this was not the case. We recognised that broadcasters often obtain material for broadcast from third parties, but in this case, a camera crew was visibly present, and they agreed not to enter the house to film. We took into account the following exchange in the unedited footage between one of the HCEAs, the programme makers, and Mr and Mrs T about whether the programme makers could film inside their house [Ofcom's emphases]:

Mr Anglin (to the programme makers):

"They're happy for a member of the crew to come in without the camera crew to speak to them.

Mr T: *We don't want a film crew in.*

Mr Anglin: *No, one member will come in and explain. It's easier that way, so I don't get anything wrong, they will explain where they stand with what they do.*

Mr T: *Shut the door please. Can you shut the door please?*

Crew member: *Yeah, sorry.*

Hi, my name's [first name – who then explained the purpose of the filming by the camera crew].

...Um, are you happy for us to continue, to come in here and follow the story?

Mr T: *Er, no.*

Crew member: *You'd rather us stay outside?*

Mr T: *Yeah.*

Mrs T: *Yeah. I mean this is our, you know, this is our personal home. It's...*

Crew member: *Yeah.*

Mrs T: *That you can't get across in a film.*

Crew member: *Ok.*

Mrs T: *It's already hard enough as it is.*

Crew member: *Ok, well as you can imagine, we go for all sorts of different stories, er with the agents, some of them, you know, are very – are very upsetting to do, very, er aggressive. I think this has a – from what I can gather, that you've got quite a strong case, um you know, you sound like quite honest people to me, so if, you know, you'd like to give your side of the story and want to give your version of the facts, that's something we'd be very interested in broadcasting as well. So, if you want to talk to the agents first and then I'll come back and speak to you at the end of the (unclear), alright?*

Mr T: *Yeah. But that doesn't help the situation.*

Mr Anglin: *It might do because if they did decide to show it, it would go out very one-sided, and about two million people watch this programme every week. However, you might be able to bring some balance to it. That's completely up to you, it's not me to [unclear] it's...".*

In our view, this conversation and the subsequent action of the programme makers in withdrawing from the house would have sent a clear message to Mr and Mrs T that their interactions with the HCEAs inside their home would not be filmed by the programme makers for potential use in a television programme. This was misleading as it was in direct

contrast to the actual position in light of the programme makers' access to the material recorded by the body cameras. Indeed, from the unedited footage, we recognised that the entire conversation between the HCEAs and Mr and Mrs T (and later with Mr T's uncle) inside the house was being relayed live via an audio feed to the programme makers outside the house, thereby enabling the programme makers to listen to the entire interaction between Mr and Mrs T and the HCEAs as it happened without the complainants' knowledge. Neither the programme makers nor the HCEAs informed Mr and Mrs T of this fact at any time during the filming.

In these circumstances, it was significant that Mr and Mrs T were not made aware of the programme makers' use of the body cameras, or the potential consequences of that filming. Taking all these factors into account, Ofcom considered that the material recorded of Mr and Mrs T and the interior of their home by the body cameras had been obtained by the programme makers surreptitiously notwithstanding the fact that the body cameras themselves were worn openly. An intrinsic purpose of the filming from these cameras was to obtain footage for potential broadcast and Mr and Mrs T were not made aware of this, irrespective of whether or not they were nevertheless aware of the body cameras. As a result, Mr and Mrs T would not have understood the full significance of the body cameras, particularly as they understood that the cameras belonging to the programme makers had remained outside the property. In these circumstances, the actions of the programme makers were akin to deliberately continuing with a recording when the other party thinks that it has come to an end. Similarly, by not making Mr and Mrs T aware of the full significance of the body cameras, the method in which this footage and the accompanying audio was obtained was akin to the programme makers leaving an unattended camera or recording device on private property without the consent of the occupiers. For all these reasons, Ofcom did not accept Channel 5's argument (made in response to the second Preliminary View) that Mr and Mrs T had not been misled in relation to the filming.

Channel 5 submitted that the execution of a writ issued by the High Court is a public matter and that in this case, the execution of the writ was not a matter connected with the complainants' private lives. It also said that the activities of HCEAs, the kinds of difficulties they face when executing their duties, the way the law is utilised or ignored and the impact on the lives of those affected by the activities of HCEAs are all matters of acute public interest. However, in Ofcom's view, none of these arguments pointed to a *prima facie* story in the public interest of a type or order which would ordinarily warrant the use of surreptitious filming (as envisaged by Practice 8.13), particularly as the filming itself took place in a private home and concerned not simply the fact of the Writ or its enforcement, but Mr and Mrs T's personal reaction to that event and their intimate interactions with one another in light of the situation which confronted them in their own home.

Ofcom's decision on the issue of surreptitious filming has regard to the fact that an advance arrangement was in place between the programme makers and the HCEA company. This arrangement provided the programme makers with unfettered access to the footage recorded by the body cameras for the purposes of broadcast before any footage had been captured and in the absence of any *prima facie* evidence in this case of a sufficient public interest which would justify any privacy intrusion which would potentially arise from obtaining access to the official footage in question. Contrary to Channel 5's assertions in its representations on the second Preliminary View, Ofcom considered that this was a case in which the programme makers acted "in the speculative hope of gathering material for potential broadcast".

For the sake of clarity, while the ownership of the body cameras and the copyright in the footage was a notable feature of the arrangement, it was the fact that the body cameras were worn with the prior objective of obtaining footage for the purpose of broadcast, rather than the fact of the ownership itself, which was the material consideration in this part of Ofcom's analysis (not least as it served to define the purpose for which the footage was obtained in the first place and allowed the programme makers unfettered access to, and use of, the footage which was recorded as a consequence).

The fact that the body cameras were worn with the prior objective of obtaining footage for the purpose of broadcast was not something which was explained to Mr and Mrs T, nor would it have been something which they could reasonably have foreseen or appreciated. In Ofcom's view, this justifies classifying the manner in which footage was obtained as "surreptitious" in the sense envisaged by the Code. This would not be the case if Mr and Mrs T had been made aware at the outset that the footage was to be used for purposes of potential broadcast (rather than simply for the HCEAs own official use).

It is important for Ofcom to stress here that the Code does not prohibit the use of surreptitious filming. Indeed, it can be an important means of enabling broadcasters to obtain material evidence where, as envisaged by Practice 8.13, there is a *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme. These important prior considerations, which arise because of the potentially significant privacy consequences which surreptitious filming may cause are designed to ensure that broadcasters do not use such methods indiscriminately, or without due cause in the speculative hope of gathering material for potential broadcast.

In this case, however, Ofcom does not accept that the public interest arguments submitted by Channel 5 were of sufficient order and weight to warrant filming of this nature in the circumstances, particularly given that the filming took place within the confines of a domestic home and was thereby able to record intimate and sensitive interactions between Mr and Mrs T and the HCEAs in that context. In Ofcom's view, although Mr T was the subject of the High Court enforcement process, neither that fact, nor the public interest in programming which seeks to shed light on the issues and difficulties encountered by HCEAs, warranted the decision of the programme makers and Channel 5 to obtain footage of these particular events inside the complainants' family home in this manner.

It is also important to emphasise that a failure to follow any of the practices in the Code will only constitute a breach of the Code where it results in an unwarranted infringement of privacy. In other words, a finding that a broadcaster has failed to follow Practice 8.13 (in relation to surreptitious filming) does not, in and of itself, automatically lead to an unwarranted infringement of privacy. Ofcom therefore proceeded to consider whether the complainants held a legitimate expectation of privacy in relation to the obtaining of the footage.

Ofcom considered that, ordinarily, personal and financial conversations and negotiations in which the individuals concerned felt that they could speak openly and where they understood that the matter they were talking about would be treated in confidence, could reasonably be regarded as sensitive and attract an expectation of privacy. Further, we consider that such conversations, particularly where they take place within the confines of

a person's home and where those involved are discussing potentially being unable to settle the debt themselves, is a situation that could reasonably be characterised as distressing and sensitive for those involved. We recognise too that the execution of the Writ may have been a matter of public record, however, we do not consider that this fact, of itself, prevents a person subject to those proceedings from having an expectation of privacy in relation to the matter.

Factors specific to Mr T

In this case, Mr T was approached by the HCEAs without any prior warning that they would be accompanied by a camera crew. He was questioned about an outstanding debt and informed that there was a Writ against him and his company which allowed the HCEAs to seize items in the property if the debt was not repaid in full forthwith. Mr T was therefore obliged to respond to the HCEAs and to discuss financial matters with them irrespective of the presence of the cameras.

Additionally, the conversations took place within Mr and Mrs T's home without the camera crew being present and were filmed solely by the body cameras belonging to the programme makers and worn by the HCEAs. As set out above, the evidence strongly suggested that Mr and Mrs T were not aware that this material might be broadcast. Both Mr and Mrs T were therefore considerably more unguarded when dealing with the HCEAs than might have been the case if they had reason to believe that they were still being filmed for the purposes of a television programme.

The information revealed by Mr T during his conversation with the HCEAs included the following in particular:

- their previous digital marketing company owed about £35,000 in VAT and they were in the process of an individual voluntary arrangement to wind it up;
- the company was in trouble following a project which fell apart after several months when the client pulled out and disputed the work they had done;
- they could not afford to pay any debts, so they rented out their house and moved to Spain to reduce their outgoings;
- they used the income from renting their house to keep the mortgage going and to pay their rent in Spain;
- as a result, they just managed to "survive" and to keep the house from being repossessed;
- they did not have a bank account in Spain and they had left their car behind as it had broken down and they couldn't repair it;
- they had returned from Spain in a rented van with their few belongings;
- they could not afford to go bankrupt and had only one bank account, which had no money in it;
- they were living off the new business which they were trying to get off the ground; and,
- they had no property of value other than a nine-month old computer.

As mentioned above, although Mr T's complaint appeared to concern solely the material obtained by the HCEAs, he had agreed to be filmed by the programme makers outside the property. This material was not subsequently included in the programme as broadcast, but it was clear from the unedited footage that Mr T was happy to be interviewed on camera by the programme makers in order to explain his version of events and that he spoke

freely about matters to do with his financial and personal circumstances during that interview.

In particular, Mr T disclosed the following information to the programme makers outside the house:

- they did not know about the county court judgment until after it had happened;
- they had just come back from Spain and were trying to get their life back on track;
- their digital marketing business got into debt and they could not get a bank loan;
- they could not pay the VAT they owed because they were paying staff wages;
- they were also unable to pay their mortgage;
- the company was in trouble following a project which fell apart after several months when the client pulled out and disputed the work they had done;
- the client who pulled the project was a difficult customer who had been “to-ing and fro-ing” for several months. He wanted his deposit back, but they had already done work to at least the value of the deposit;
- they were in debt and just could not “survive” so they moved to Spain to reduce their outgoings and to try to keep the business going, but finally they could not do it;
- they returned because Mrs T was homesick;
- they were now finally back on track with the house, which was not going to be repossessed, and they were going to start again from scratch and had very little to live off;
- Mr and Mrs T were working together so they could reduce their outgoings and not have to pay for any staff; and,
- Mr T had previously had a landscaping business which had also closed down as a result of going into debt.

It was evident from the above that Mr T had openly disclosed a large amount of the information relating to his financial and personal circumstances to the programme makers that he had disclosed to the HCEAs inside the house. As Channel 5 pointed out in its representations on the Second Preliminary View, Mr T had disclosed this information in the expectation that it would be broadcast. Channel 5's representations echoed Ofcom's view that these factors brought into question the extent to which that information was private and could continue to attract a legitimate expectation of privacy. However, the nature of the material captured by the body cameras inside the house covered a broader range of private information which included Mr T's initial reactions to the HCEAs as well as footage of him inside his private family home, an environment which he had specifically told the programme makers they were not allowed to enter, and they had expressly agreed not to do so. The filming followed the HCEAs around the house as they discussed the issues with Mr and Mrs T and assessed whether or not there were any items of value in the property. This included filming of the pressurised financial negotiations which took place between the HCEAs and Mr T as they tried to reach an agreement to settle the matter. It also included Mr and Mrs T's discussion with the HCEAs about Mr T's 79-year old uncle and whether he might be able to help them. As to the interior of their home, the filming captured several rooms and the contents of their house, including their personal belongings and a poster made by their friends welcoming them home. The filming also recorded the fact that they had little furniture and that their belongings were in disarray and mostly still in removal boxes.

Therefore, we considered that while Mr T may have chosen later to disclose their financial and personal circumstances to the programme makers outside the house, it was also

important to take into account the wider circumstances of the filming inside the house. This included the private and personal environment in which Mr T was filmed by the HCEAs' body cameras, the sensitive and personal nature of the information that was captured as well as his reaction to the HCEAs, and the intimate exchanges between him and his wife and uncle.

Factors specific to Mrs T

From both the unedited and the broadcast footage, we took into account that Mrs T was filmed in her private property discussing her financial and personal circumstances with the HCEAs. In particular, she was filmed as she explained that she and her family did not have the ability to pay the money owed; that she was married; that she and her husband had recently returned from living in Malaga for two years, because they were homesick; and, that they had rented their house in the UK to pay for the mortgage on the property and their rent while they were living in Spain. Also, as in relation to Mr T, we noted that the interior of Mrs T's home and her personal belongings were filmed as the HCEAs assessed whether or not there were any items of value in the property.

We acknowledged that Mrs T was not personally named on the Writ but that she was also a director of the company named on the Writ and had chosen to involve herself in the situation. In any event, we noted that the majority of the conversations were taking place within the confines of Mr and Mrs T's home and if she was to assist Mr T she would need to discuss matters with him and the HCEAs irrespective of the presence of the cameras. In addition, we recognised that during some of the unedited footage, Mrs T was clearly distressed as she discussed the matters with Mr T and the HCEAs.

As above, we took into account that Mr T chose to discuss his and Mrs T's financial and personal circumstances with the programme makers later outside the house and that this had the effect of limiting the factual information over which Mrs T might retain an expectation of privacy. We also took into account from Mrs T's conversation with the HCEAs inside the house that some of the information she gave was not mentioned by Mr T in his conversation with the programme makers. For example, she said more about their time in Spain, explaining where they had been living and how long they had been there. She also discussed the size of their mortgage and the fact that no one in their families had any money and told the HCEAs that they had no children and spoke about their four dogs. As in relation to Mr T, we took into account that the body cameras worn by the HCEAs captured footage of Mrs T inside her property and her reactions to and discussions with Mr T and the HCEAs about matters connected with the Writ as the pressurised financial negotiations with the HCEAs took place. Significantly, this included filming Mrs T as she became increasingly upset. It also included filming Mrs T as they discussed involving Mr T's 79-year old uncle who lived locally and her concerns about doing so.

Therefore, while Mr T may have chosen later to disclose their financial and personal circumstances to the programme makers outside the house, it was also important to take into account the wider circumstances of the filming inside the house. This included the private and personal environment in which Mrs T was filmed by the HCEAs' body cameras and the sensitive and personal nature of her conversations with them, as well as the intimate exchanges between her and her husband and his uncle. Additionally, Mrs T was filmed while she was visibly distressed.

Mr and Mrs T's legitimate expectation of privacy

Ofcom took into account Channel 5's assertion that the execution of a Writ is a public matter, not a private one, and that the execution of the Writ was not a matter connected with the complainants' private lives, but a public matter. We considered that while the existence of a county court judgment may be considered a matter of public record and may not, therefore, be information in relation to which Mr and Mrs T had a legitimate expectation of privacy, the information captured by the filming of Mr and Mrs T went beyond the fact of the debt and the personal consequences and impact of the enforcement process on them. Ofcom did not agree that the events surrounding the enforcement of a debt were necessarily a matter of public record, or that there can be no legitimate expectation of privacy in relation to those events (and especially not where those events take place within the confines of a private, family home). In this instance and taking account of the information freely disclosed later by Mr T to the programme makers in his conversation with them outside the house, in Ofcom's view the nature of much of the information contained in the obtained footage was sensitive and constituted an intrusion into Mr and Mrs T's private and family life. Ofcom considered that this went beyond the information which might otherwise have been in the public domain as a consequence of the court enforcement process.

As mentioned previously, the test 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 herself¹⁰. The location where the filming occurred was one of several factors that was relevant to Ofcom's consideration of this case. Taking into account all the circumstances in this case, in our view the events involving Mr and Mrs T which the footage captured could reasonably be characterised as highly sensitive to them and plainly came within the scope of "private and family life" and thus engaged Article 8. Therefore, we considered that the situation Mr and Mrs T were in attracted a legitimate expectation of privacy.

Given all the factors above, and taking into account the use of surreptitious filming and its consequences, and notwithstanding the Writ and the fact that Mr T had spoken to the programme makers later to explain his version of events, Ofcom considered that the interference with Mr and Mrs T's privacy which was caused by the obtaining of this material with a view to its being broadcast was significant.

Whether the infringement was warranted

There was no dispute between the parties that the complainants' consent was not sought for the filming and subsequent broadcast of the footage included in the programme. Therefore, it was not necessary for Ofcom to consider this point further. We therefore went on to consider whether the infringement of Mr and Mrs T's legitimate expectation of privacy was warranted on these facts.

¹⁰ See, for example, Anthony Clarke MR in *Murray v Express Newspapers Ltd* [2009] CH 481, at para 36: "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include 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".

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

We took into account Channel 5's argument that there was a public interest in the filming (and subsequent broadcast) of the footage in that it showed the activities of the HCEAs while executing their official duties. We also considered Channel 5's representations that the enforcement of the debt was a public matter and that there is a clear public interest in seeing the activities of the HCEAs in the course of executing their official duties.

Ofcom did not agree with Channel 5's interpretation of the decision in *Ali v Channel 5* in its representations on the second Preliminary View. While the Court did accept that the principle of open justice entitled Channel 5 to report that a county court had made an Order for possession and the High Court had issued the Writ against the claimants, the Judge did not accept that this justified broadcasting the information at issue, which was not a foreseeable consequence of the claimants' failure to comply with the Order for Possession, or of their eviction. The Judge rejected all of the grounds relied on by Channel 5 to argue that the claimants did not have a “reasonable expectation of privacy”, finding that the claimants had a reasonable expectation of privacy in respect of all the material broadcast. Weighing up the respective ECHR rights of the parties, the Judge decided that the balance came down in favour of the claimants' Article 8 privacy rights. While he accepted that Channel 5 had editorial discretion in the tone and way it told the story, he did not accept that Channel 5's editorial discretion extended to the decision to include the private information, unless it was in the public interest to do so. On the facts in *Ali* the Judge considered that overall the programme did contribute to a debate of general interest, but that the inclusion of the claimants' private information went beyond what was justified for that purpose. The Judge went on to say that the focus of the programme was upon the drama of the conflict which had been encouraged by the HCEA to make “good television”.

Applying the same approach as the Court in *Ali*, Ofcom accepted that the public interest was engaged in making this programme in that it illustrated the type of interaction HCEAs routinely engage in and the difficulties experienced by people in the position of Mr and Mrs T. Ofcom also accepted that Channel 5 had editorial discretion in the tone and way it told the story and that its editorial discretion extended to the decision to include the private information – but only if the inclusion of the private information at issue was justified in the public interest. Therefore, being satisfied that the complainants had a legitimate expectation of privacy, Ofcom intensely focussed on the weight of the comparative rights under Articles 8 and 10 that are in issue in order to decide where the balance lies in these particular circumstances. On the facts of this case, we considered that the interference with Mr and Mrs T's rights to privacy was particularly serious, particularly in light of the manner in which the footage was obtained within the family home, and the sensitive and intimate matters which were recorded about their private and family life. While we recognised that Mr T's debt related to his business, that the Writ was in both his company's name and his own name and that he had openly spoke about the matters raised in conversation with the HCEAs inside his home, we considered that the level of interference with Mr and Mrs T's legitimate expectation of privacy was significant. We

recognise that there is a public interest in the work of the HCEAs. However, in Ofcom's view, Mr and Mrs T's legitimate expectation of privacy was of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme maker.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. The footage was obtained while the programme makers accompanied the HCEAs in carrying out their duties. The filming by the camera crew appeared to be open and unobtrusive and took place outside Mr and Mrs T's home. However, as set out already above in relation to Practice 8.13, we considered that the manner in which the footage inside her home was obtained was surreptitious. In Ofcom's view, the use of surreptitious filming in this instance was not warranted, particularly as it took place in a private home and therefore allowed the programme makers unfettered access to intimate family interactions. As mentioned above, although the fact of the enforcement of a Writ may be a matter of public record, it does not follow that its consequences and impact for a debtor are also necessarily public matters in respect of which no legitimate expectation of privacy arises. Nor does it follow that intrusive footage capturing the debtor's reaction and intimate exchanges between the debtor and their family in a family home is justified by the public interest in learning about the HCEAs' work and the enforcement process. While we took into account Channel 5's representations on this point, Ofcom considered that the means of obtaining the material had not, in all the circumstances, been proportionate for the purpose of Practice 8.9.

Having taken all the above factors into account, including Channel 5's representations on the second Preliminary View, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mr and Mrs T in this instance did not outweigh their legitimate expectation of privacy in relation to the filming of them or justify the significant intrusion which the obtaining of the footage caused to their rights in this regard. Therefore, we considered that Mr and Mrs T's privacy in connection with the obtaining of material included in the programme and the use of surreptitious filming was unwarrantably infringed.

- b) Ofcom next considered Mr and Mrs T's complaint that their privacy was unwarrantably infringed in the programme as broadcast. We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Mr and Mrs T's legitimate expectation of privacy

We assessed whether Mr and Mrs T had a legitimate expectation of privacy regarding the broadcast of footage of them included in the programme. We applied the same objective test as set out in head a) above.

As set out in the "Programme summary" above, we took account of what material was shown in the programme. In particular, Mr and Mrs T were shown not only discussing their financial situation with the HCEAs, but also candidly expressing their feelings about how they got into debt, their move and subsequent return from Spain, and asking Mr T's uncle for the money to pay off their debt. At one point, as they spoke about their situation, Mrs T was shown visibly distressed. Mr T's face was not obscured in the programme, though Mrs T's was. However, neither Mr and Mrs T's voices were obscured or disguised in the

programme and Mr T was referred by name, therefore rendering him and his wife identifiable in the programme.

Practice 8.14 states that "Material gained by surreptitious filming and recording should only be broadcast when it is warranted". As explained in detail at head a) above, Ofcom considered that the footage filmed of Mr and Mrs T had been obtained surreptitiously.

For the reasons set out in head a) above, Ofcom considered that the footage in question was highly sensitive and private in nature. We also considered that the intrusion was particularly acute as a result of the subsequent disclosure of that footage in a nationally televised programme (with attendant exposure that substantially exceeded anything which someone in Mr and Mrs T's position could possibly have expected at the time)¹¹. In these circumstances, we considered that the inclusion of this material in the programme as broadcast constituted a significant interference with Mr and Mrs T's privacy rights.

Whether the infringement was warranted

It was not disputed by the broadcaster that the footage was included without Mr and Mrs T's consent. We therefore went on to consider whether the broadcast of this material was warranted under the Code.

We again carefully balanced Mr and Mrs T's right to privacy regarding the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. We took into account the information Mr T openly chose to disclose later to the programme makers in the knowledge that it could eventually be broadcast. We nevertheless considered that the programme involved a significant intrusion into Mr and Mrs T's legitimate expectation of privacy, which went substantially beyond the fact of the outstanding debt itself as a consequence of including their unguarded disclosures within the confines of the domestic home, the interior of that home, and how they lived and interacted with others in that environment, including the HCEAs and Mr T's uncle. Additionally, the material broadcast included footage of Mrs T while she was distressed and crying.

As above in head a) we took into account Channel 5's argument and its representations that there was a public interest in broadcasting the footage in that it showed the activities of the HCEAs while executing their official duties. We also took into account the broadcaster's representations on the second Preliminary View, as also set out above in head a).

We acknowledged that the public interest was engaged in broadcasting programmes that highlight the serious issue of debt and the issues which the HCEAs encounter when seeking to enforce court orders made in that regard. We also recognised that the inclusion of named or identifiable individuals may enhance that public interest by making the broadcast footage more accessible or engaging to the watching audience¹². However, in weighing up the competing rights of the parties, Ofcom took particular account of the serious nature of the interference with Mr and Mrs T's rights to privacy, particularly in

¹¹ *Peck v United Kingdom* [2003] ECHR 44.

¹² *In re S (identification: Restrictions on Publication)* [2005] 1 AC 593 (at p604); *In re Guardian News & Media Ltd* [2010] 2 AC 697 (at para 63).

light of the manner in which the footage was obtained within the family home, and the sensitive and intimate matters which were recorded about their private and family life. Ofcom considered that Mr and Mrs T's legitimate expectation of privacy, together with the fact that they did not give their consent to the broadcast of this material and that it was obtained by means that, in Ofcom's view, amounted to surreptitious filming, were significant factors in weighing up the competing rights of the parties.

Having taken all the factors above into account, Ofcom considered that, on balance, the interference with Mr and Mrs T's rights to privacy in this case was significant and of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme makers. Ofcom also took the view that the broadcast of the footage of Mr and Mrs T gained by the surreptitious filming was not warranted for the purpose of Practice 8.14 in these circumstances. For these reasons, Ofcom considered that the complainants' privacy was unwarrantably infringed in the programme as broadcast.

Ofcom has upheld Mr T's complaint made on his own behalf and on behalf his wife, Mrs T, of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 28 May and 10 June 2018 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Service	Transmission date	Categories
Ant and Dec's Saturday Night Takeaway	ITV	10/03/2018	Competitions
Premier League Football: Brighton and Hove Albion v Tottenham Hotspur	Sky Sports Main Event	17/04/2018	Offensive language

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

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

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 28 May and 10 June 2018 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
News	Absolute 80s	23/05/2018	Animal welfare	1
Ancient Aliens	Blaze	19/05/2018	Materially misleading	1
Mr Bean	Boomerang	06/05/2018	Other	1
Competitions	Capital FM	22/01/2018	Competitions	1
Capital Drive Time	Capital FM North East	25/05/2018	Gender discrimination/offence	1
Are You Smarter Than a Ten Year Old?	Challenge	29/05/2018	Race discrimination/offence	1
The Chase	Challenge	24/05/2018	Generally accepted standards	1
24 Hours in Police Custody	Channel 4	21/05/2018	Generally accepted standards	1
24 Hours in Police Custody	Channel 4	28/05/2018	Animal welfare	1
Bride and Prejudice	Channel 4	05/06/2018	Generally accepted standards	1
Bride and Prejudice	Channel 4	07/06/2018	Race discrimination/offence	1
Bride and Prejudice (trailer)	Channel 4	Various	Race discrimination/offence	1
Channel 4 News	Channel 4	23/04/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	14/05/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	15/05/2018	Due accuracy	2
Channel 4 News	Channel 4	21/05/2018	Due impartiality/bias	1
Four in a Bed	Channel 4	23/05/2018	Dangerous behaviour	1
Gogglebox	Channel 4	25/05/2018	Sexual material	1
Hollyoaks	Channel 4	10/05/2018	Generally accepted standards	1
Hollyoaks	Channel 4	22/05/2018	Offensive language	1
Humans	Channel 4	17/05/2018	Generally accepted standards	1
Humans (trailer)	Channel 4	various	Materially misleading	9
Manchester: A Year of Hate Crime	Channel 4	21/05/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Manchester: A Year of Hate Crime	Channel 4	21/05/2018	Race discrimination/offence	1
Ramadan Diaries	Channel 4	31/05/2018	Generally accepted standards	1
The Battle for Britain's Heroes	Channel 4	29/05/2018	Generally accepted standards	5
Kittens Got Talent	Channel 5	13/05/2018	Animal welfare	1
Mofy	Channel 5	29/05/2018	Dangerous behaviour	1
Neighbours	Channel 5	28/05/2018	Gender discrimination/offence	1
Neighbours	Channel 5	28/05/2018	Nudity	1
The Wright Stuff	Channel 5	15/05/2018	Due impartiality/bias	1
Football's 47 Best Worst Songs	Dave	27/05/2018	Offensive language	1
Gavin and Stacey	Dave	27/05/2018	Offensive language	2
Quite Big Thursdays (trailer)	E4	26/05/2018	Offensive language	1
Continuity announcement	Film4 +1	03/06/2018	Race discrimination/offence	1
Gem at Breakfast with Jo & Sparky	Gem 106 FM	15/05/2018	Competitions	1
The Andromeda Strain	Horror Channel	05/05/2018	Violence	1
A&E Live	ITV	22/05/2018	Generally accepted standards	2
And and Dec's Saturday Night Takeaway	ITV	07/04/2018	Undue prominence	1
Britain's Got Talent	ITV	12/05/2018	Materially misleading	1
Britain's Got Talent	ITV	26/05/2018	Generally accepted standards	1
Britain's Got Talent	ITV	28/05/2018	Generally accepted standards	4
Britain's Got Talent	ITV	28/05/2018	Offensive language	17
Britain's Got Talent	ITV	29/05/2018	Generally accepted standards	5
Britain's Got Talent	ITV	29/05/2018	Offensive language	1
Britain's Got Talent	ITV	29/05/2018	Race discrimination/offence	1
Britain's Got Talent	ITV	29/05/2018	Sexual material	1
Britain's Got Talent	ITV	29/05/2018	Voting	1
Britain's Got Talent	ITV	30/05/2018	Generally accepted standards	1
Britain's Got Talent	ITV	30/05/2018	Sexual material	51
Britain's Got Talent	ITV	31/05/2018	Offensive language	1

Programme	Service	Transmission Date	Categories	Number of complaints
Britain's Got Talent	ITV	31/05/2018	Race discrimination/offence	1
Britain's Got Talent	ITV	31/05/2018	Voting	1
Britain's Got Talent	ITV	01/06/2018	Generally accepted standards	2
Britain's Got Talent	ITV	03/06/2018	Disability discrimination/offence	1
Britain's Got Talent	ITV	03/06/2018	Generally accepted standards	1
Britain's Got Talent	ITV	03/06/2018	Nudity	1
Britain's Got Talent	ITV	03/06/2018	Offensive language	19
Britain's Got Talent	ITV	03/06/2018	Race discrimination/offence	1
Britain's Got Talent	ITV	03/06/2018	Sexual material	57
Coronation Street	ITV	31/05/2018	Generally accepted standards	2
Coronation Street	ITV	31/05/2018	Violence	1
Coronation Street	ITV	01/06/2018	Violence	8
Coronation Street	ITV	various	Violence	1
Dickinson's Real Deal	ITV	04/06/2018	Competitions	1
Emmerdale	ITV	17/05/2018	Violence	1
Emmerdale	ITV	22/05/2018	Violence	2
Emmerdale	ITV	24/05/2018	Violence	6
Emmerdale	ITV	various	Violence	1
Gala Bingo's sponsorship of The Chase	ITV	05/05/2018	Sponsorship credits	1
Good Morning Britain	ITV	14/05/2018	Due impartiality/bias	1
Good Morning Britain	ITV	15/05/2018	Generally accepted standards	1
Good Morning Britain	ITV	18/05/2018	Race discrimination/offence	2
Good Morning Britain	ITV	29/05/2018	Due impartiality/bias	1
Harry Hill's Alien Fun Capsule	ITV	26/05/2018	Generally accepted standards	3
Harry Hill's Alien Fun Capsule	ITV	27/05/2018	Generally accepted standards	1
Heathrow: Britain's Busiest Airport	ITV	16/05/2018	Due accuracy	1
How to Spend It Well: House and Garden	ITV	06/06/2018	Harm	1
Innocent	ITV	14/05/2018	Flashing images	1
ITV News	ITV	13/05/2018	Due impartiality/bias	1
ITV News	ITV	29/05/2018	Due impartiality/bias	2
ITV News	ITV	02/06/2018	Due accuracy	1

Programme	Service	Transmission Date	Categories	Number of complaints
Little Big Shots	ITV	20/05/2018	Due impartiality/bias	1
Lorraine	ITV	07/06/2018	Nudity	1
Lottoland.co.uk's sponsorship of Who Wants to Be a Millionaire?	ITV	07/05/2018	Generally accepted standards	1
Lottoland.co.uk's sponsorship of Who Wants to Be a Millionaire?	ITV	11/05/2018	Dangerous behaviour	1
Peston on Sunday	ITV	13/05/2018	Due impartiality/bias	1
Soak.com's sponsorship of Local Weather on Good Morning Britain	ITV	06/06/2018	Dangerous behaviour	1
The British Soap Awards	ITV	02/06/2018	Suicide and self harm	1
The Chase	ITV	14/05/2018	Generally accepted standards	1
The Chase	ITV	29/05/2018	Competitions	1
The Jeremy Kyle Show	ITV	25/05/2018	Transgender discrimination/offence	1
The NHS Heroes Awards	ITV	21/05/2018	Transgender discrimination/offence	1
The Queen's Coronation in Colour	ITV	04/05/2018	Materially misleading	2
This Morning	ITV	08/05/2018	Nudity	1
This Morning	ITV	09/05/2018	Generally accepted standards	1
This Morning	ITV	24/05/2018	Gender discrimination/offence	2
This Morning	ITV	28/05/2018	Generally accepted standards	1
USwitch's sponsorship of Britain's Got Talent	ITV	28/05/2018	Sponsorship credits	2
USwitch's sponsorship of Britain's Got Talent	ITV	29/05/2018	Sponsorship credits	1
Who Wants to Be a Millionaire?	ITV	11/05/2018	Disability discrimination/offence	1
Who Wants to Be a Millionaire?	ITV	11/05/2018	Generally accepted standards	1
Zoe Ball on Saturday	ITV	05/05/2018	Scheduling	1
Britain's Got More Talent	ITV2	30/05/2018	Violence	23
Britain's Got More Talent	ITV2	31/05/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Britain's Got More Talent	ITV2	02/06/2018	Generally accepted standards	1
Celebrity Juice	ITV2	24/05/2018	Generally accepted standards	1
Coronation Street Omnibus	ITV2	02/06/2018	Violence	1
Family Guy	ITV2	05/06/2018	Generally accepted standards	2
Family Guy	ITV2	05/06/2018	Religious/Beliefs discrimination/offence	1
Love Island	ITV2	04/06/2018	Generally accepted standards	2
Love Island	ITV2	05/06/2018	Drugs, smoking, solvents or alcohol	1
Love Island	ITV2	05/06/2018	Generally accepted standards	1
Love Island	ITV2	07/06/2018	Generally accepted standards	1
Two and a Half Men	ITV2	15/05/2018	Generally accepted standards	1
The Opening Show	ITV4	05/05/2018	Gender discrimination/offence	1
The Only Way is Essex	ITVBe	23/05/2018	Offensive language	1
Veet's sponsorship of The Only Way Is Essex	ITVBe	20/05/2018	Sponsorship	1
Botched	Kanal 11 (Sweden)	04/06/2018	Gender discrimination/offence	1
Advertisements	LBC 97.3 FM	01/05/2018	Commercial communications on radio	1
Maajid Nawaz	LBC 97.3 FM	31/05/2018	Generally accepted standards	1
Programming	LBC 97.3 FM	01/01/2018	Generally accepted standards	1
Tom Swarbrick	LBC 97.3 FM	28/05/2018	Generally accepted standards	1
Sport Show	Link FM	23/04/2018	Generally accepted standards	1
Brexit programme (trailer)	London Live	02/05/2018	Materially misleading	1
MK Breakfast Show	MKFM	31/05/2018	Offensive language	1
999: What's Your Emergency?	More4	23/05/2018	Sexual material	1
The Incredible Dr Pol	Nat Geo Wild	29/05/2018	Animal welfare	1
UK Border Force	Pick	18/05/2018	Materially misleading	1
Scrap Kings	Quest	04/05/2018	Offensive language	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Chris Moyles Show	Radio X	30/05/2018	Offensive language	1
The Kickabout with Johnny Vaughan	Radio X	26/05/2018	Race discrimination/offence	1
Kid Criminals	Really	14/05/2018	Scheduling	1
Novosti	REN TV Baltic	11/04/2018	Due impartiality/bias	1
Guinness Pro14 Championship	Sky Sports Action	26/05/2018	Race discrimination/offence	1
Billions	Sky1	10/05/2018	Gender discrimination/offence	1
Mike Graham	Talk Radio	09/05/2018	Race discrimination/offence	1
The Breakfast Show with Julia Hartley Brewer	Talk Radio	09/05/2018	Commercial communications on radio	1
Alan Brazil Breakfast Show	Talksport	11/05/2018	Generally accepted standards	1
Forged in Fire	The History Channel	07/05/2018	Violence	1
Aftonbladets Morgonprogram	TV3 (Sweden)	19/04/2018	Generally accepted standards	1
The Breakfast Show with Rick Jackson	Wave 105	14/05/2018	Due impartiality/bias	1

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

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

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

Programme	Service	Transmission Date	Categories	Number of complaints
EastEnders	BBC 1	Various	Violence	1
Reporting Scotland	BBC 1	04/04/2018	Materially misleading	1
The Andrew Marr Show	BBC 1	05/11/2017	Due impartiality/bias	1
South East Inside Out	BBC 1 South East	29/01/2018	Due accuracy	1
South East News	BBC 1 South East	29/01/2018	Due accuracy	1
BBC News	BBC channels	Various	Due impartiality/bias	2
Weather	BBC channels	Various	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
BBC News	BBC News Channel	20/06/2017	Other	1

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

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

Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Service provider	Categories	Number of complaints
All 4	Misleadingness	1

For more information about how Ofcom assesses complaints about on demand services, go

to: https://www.ofcom.org.uk/_data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf

Complaints outside of remit

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

Complaints about television, radio or on demand services

Programme	Service	Transmission Date	Categories	Number of complaints
The Nolan Show ¹	BBC Radio Ulster	19/12/2016	Due impartiality	1
Advertisement	Channel 4	05/06/2018	Advertising content	1
Channel 4 – Youtube	Channel 4 YouTube Channel	n/a	Due impartiality/bias	1
Advertisement	Channel 5	14/05/2018	Generally accepted standards	1
Advertisement	Heart 80s	28/05/2018	Advertising content	1
Advertisement	ITV	25/05/2018	Advertising content	1
Advertisements	ITV	29/05/2018	Advertising content	1
Britain's Got Talent	ITV	28/05/2018	Outside of remit	1
Non-editorial (subscription / account)	ITV Hub	27/05/2018	Other	1
Advertisement	ITV2	01/06/2018	Advertising content	1
Advertisement	ITV2	07/06/2018	Advertising content	1
Love Island	ITV2	04/06/2018	Outside of remit	2
Love Island	ITV2	05/06/2018	Outside of remit	1
Love Island	ITV2	08/06/2018	Outside of remit	1
Advertisement	n/a	25/05/2018	Advertising content	1
Advertisement	n/a	29/05/2018	Advertising content	1
Background music	n/a	Various	Outside of remit	1
Safe	Netflix	04/06/2018	Suicide and self harm	1
Advertisement	Nick Jr	07/06/2018	Advertising content	1
Beauty Bakeries	QVC	06/05/2018	Advertising content	1
Advertisements	Sky Sports	03/06/2018	Advertising content	1
NCIS	Universal Channel	29/05/2018	Outside of remit	1
Advertisement	Various	01/06/2018	Advertising content	1
TOTP2 The 60s	Yesterday	26/05/2018	Outside of remit	1

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>

¹ The BBC only became subject to Ofcom's rules on due impartiality and due accuracy on 22 March 2017, after these programmes were broadcast. This complaint therefore fell outside of Ofcom's remit.

BBC First

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

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

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

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Eurovision Song Contest: Grand Final	BBC 1	12/05/2018	Other	1
Question Time	BBC 1	31/05/2018	Generally accepted standards	1
Frankie Boyle's New World Order	BBC 2	18/05/2018	Race discrimination/offence	1
Grammar Schools: Who Will Get In?	BBC 2	29/05/2018	Materially misleading	1
BBC News	BBC channels	27/05/2018	Due impartiality/bias	1
BBC News	BBC iPlayer	31/05/2018	Privacy	1
This Country	BBC iPlayer	30/03/2018	Generally accepted standards	1
The Papers	BBC News Channel	25/03/2018	Generally accepted standards	1
Clara Amfo: Smug Fridays	BBC Radio 1	01/06/2018	Undue prominence	1
Today	BBC Radio 4	29/05/2018	Due impartiality/bias	1
You and Yours	BBC Radio 4	24/05/2018	Sexual material	1
Monday Night Club	BBC Radio 5 Live	19/03/2018	Sexual orientation discrimination/offence	1
Radio Wales	BBC Wales	28/05/2018	Outside of remit	1
The Story of Britain	YouTube	11/05/2018	Race discrimination/offence	1

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 28 May and 10 June 2018.

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

Programme	Service	Transmission date
Bob's Breakfast	Bob FM	04/05/2018
Programming	Box Hits	Various
Text Dating	Kiss Me TV	08/01/2018
Radio Exe News	Radio Exe	03/05/2018
Steg in the Afternoon	Sunny Govan Radio 103.5 FM	21/05/2018
Now News	Zee TV	29/04/2018

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

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

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

Programme	Service	Transmission date
Sri Guru Singh Sabha Election Debate	Akaal Channel	28 September 2017
Sri Guru Singh Sabha Election Debate	Sangat TV	30 September 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

Programme	Service	Transmission date
BBC Inside Out West	BBC One	26 February 2018

For information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0003/100101/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf

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

Licensee	Licensed Service
Lochbroom FM Limited	Lochbroom FM

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf