

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

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

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

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

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

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

## Standards cases

### In Breach

#### Playboy TV Chat

*Playboy TV Chat, 28 May 2013, 00:00*

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#### Introduction

Playboy TV Chat is a channel broadcasting on the digital satellite platform (Channel 902) which transmits interactive ‘adult chat’ advertising content. This service is freely available without mandatory restricted access. Viewers are invited to contact on-screen presenters via premium rate telephony services (“PRS”). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers. The licence for this channel is owned by Playboy TV UK/Benelux Limited (“the Licensee”).

Ofcom received a complaint that a female presenter was simulating sex on the channel between 00:00 and 00:30.

Ofcom noted that during this time a sequence was shown in which the left hand side of the screen was filled by a door. The right hand side showed a table and a female presenter, partially obscured by the door. The presenter was lying on the table, sometimes on her front and sometimes on her back, with the bottom half of her body hidden by the door but with the naked top half of her body visible to the viewer. The presenter then simulated that she was having sex with an unseen partner behind the door. At one point, the female presenter knelt by the door and simulated that she was performing oral sex on an unseen man behind the door.

All PRS chat-based services, including ‘adult chat’ services and ‘daytime chat’ services are defined as long-form advertising and are regulated as advertising. Such services continue to be regulated by Ofcom, but under the UK Code of Broadcast Advertising (“the BCAP Code”).

Ofcom considered that the programme raised issues warranting investigation under Rule 4.2 of the BCAP Code, which states:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

We asked the Licensee for its comments on how the item complied with Rule 4.2 of the BCAP Code.

#### Response

The Licensee explained that the producer responsible for this content had decided to use this style of production without informing the studio manager or the other management, and in doing so circumvented the internal guidelines issued by the Licensee. The producer had been under the mistaken belief that the lack of a visible sexual partner meant that the material would be permitted under the BCAP Code. The Licensee informed us that the producer responsible has now been dismissed as a result of this incident.

The Licensee argued that the level of nudity was very low, and “somewhat tamer than the standard miming of sex acts [in ‘adult chat’ broadcast advertising].” It also argued that it has had no recorded breaches against its ‘adult chat’ or ‘daytime chat’ services since November 2011.

The Licensee clarified this was the only instance where one of its producers had used this style of production in any of its ‘adult chat’ output, and assured us that it will never be repeated. The Licensee apologised for the error, stated that it takes all compliance issues very seriously, and has updated its internal training manuals in response to this matter.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.” This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. But they must carefully circumscribe their content to exclude inappropriate material. These rules apply to both ‘daytime’ and ‘adult chat’ services.

When setting and applying the standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code states that: “Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

On 4 February 2013, Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the “Guidance”)<sup>1</sup>. The Guidance sets out what Ofcom considers to be acceptable to broadcast on these services post-watershed<sup>2</sup>. Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in ‘adult chat’ advertising content which is available without mandatory restricted access.

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<sup>1</sup> Ofcom’s guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services updated and reissued on 4 February 2013. See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

<sup>2</sup> For example, *Elite Nights*, Studio 66 TV 2, issue 223 of Ofcom’s Broadcast Bulletin, 4 February 2013 <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

The Guidance states that broadcasters should “at no time broadcast images of any real or simulated sex acts (these include vaginal or anal intercourse, masturbation, fellatio or cunnilingus).”

Between 00:00 and 00:30 the female presenter adopted a variety of sexual positions with the clear intention of making viewers think that she was having sex with an unseen partner who was behind the door. The presenter was nude. For the most part she simulated that she was having sex by thrusting backwards and forwards while lying on the table. She also simulated that she was performing oral sex. At one point the impression was given that a man had ejaculated onto her breasts.

Ofcom noted the Licensee’s argument that the level of nudity was relatively low. However, in Ofcom’s view the intention of the producer and the presenter was to give the impression to viewers that the presenter was taking part in real sexual acts, which was clearly at odds with the Guidance. In Ofcom’s view the broadcast of this material in ‘adult chat’ advertising content was likely to cause serious or widespread offence against generally accepted moral, social or cultural standards.

To assess further under BCAP Code Rule 4.2 whether serious or widespread offence was caused against generally accepted standards, however, Ofcom also took into account whether appropriate scheduling restrictions were applied to this material. Ofcom noted that the content was broadcast well after the 21:00 watershed, and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed. Ofcom had regard to the fact that this channel was positioned in the ‘adult’ section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the Sky EPG than on other channels in other sections.

However, in this case, given the images so clearly did not comply with the Guidance, the location of the channel in the ‘adult’ section of the Sky EPG and the time of the broadcast at 00:00 were not sufficient to ensure serious or widespread offence against generally accepted standards was not caused.

Taking into account all the reasons above, Ofcom concluded that relevant scheduling restrictions were not applied so as to ensure that the material broadcast did not cause serious or widespread offence against generally accepted moral, social or cultural standards. Specifically, this content should not have been broadcast within the context of ‘adult chat’ advertising content that was freely available without mandatory restricted access.

Ofcom noted the apology provided by the Licensee and the assurances given to Ofcom that this was a one-off error which would not occur again. However, this material was clearly in breach of BCAP Code Rule 4.2.

Ofcom has recorded a number of breaches of the BCAP Code by this Licensee since we issued the Guidance. We are therefore requiring the Licensee to attend a meeting at Ofcom to discuss its compliance arrangements.

#### **Breach of BCAP Code Rule 4.2**

## In Breach

### Sponsorship of Al Jazeera Weather Reports by Qatar Airways

*Al Jazeera, various dates and times*

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#### Introduction

Al Jazeera is an international news channel, originating in the Middle-East but with different language versions being broadcast around the world, including an English-language version broadcast on the Sky platform and licensed by Ofcom. The licence for Al Jazeera is held by Al Jazeera International Limited (“Al Jazeera” or “the Licensee”).

A complainant drew Ofcom’s attention to the content of sponsorship credits for Qatar Airways shown around the weather reports broadcast at regular intervals throughout the day, which the complainant considered contravened the Code.

We noted that the weather reports on Al Jazeera, which each lasted approximately 60 seconds, included a ten second opening sponsorship credit and a five second closing sponsorship credit. Several variations of the opening credits were broadcast in rotation.

Ofcom considered seven variations of the opening credits, which included the following voiceovers and visuals:

#### Credit One

*“Over the Sea of Japan, as cool conditions persist, you’ll find something to whet your appetite.”*

The graphics showed an image of an ocean, which transitioned to a shot of a bowl of soup.

#### Credit Two

*“As the fog hangs wearily over London, we can offer something to cheer you up”.*

The graphics showed fog over a city skyline which gradually changed into steam coming from a hot drink, being drunk by a woman.

#### Credit Three

*“As the hot spell extends across the Gulf, we’ll still make sure you feel refreshed”.*

The graphics showed a shimmering sun which gradually changed into a scoop of yellow ice cream in a bowl.

#### Credit Four

*“As the dry condition extends over Amritsar, we’ll find a blend of flavours to tempt your palate”.*

The graphic showed an armful of multicoloured bangles, gradually coming into focus which then faded into a plate of sliced fruit.

#### Credit Five

*“Over the north of Beijing, as the visibility drops, you’ll still see things with perfect clarity”.*

The graphics showed a bright sun in a hazy city skyline which changed into an airline cabin reading light that a man was using to read.

#### Credit Six

*“As the clouds roll in across the Mediterranean, you’ll still find it easy to drift away”.*

The graphic showed an image of clouds forming, which then transitioned to a white sheet, panning across to reveal a woman asleep.

#### Credit Seven

*“As the rain pours over Johannesburg, we’ll keep your spirits up.”*

The graphics showed the face of two children laughing and playing in the rain, as the camera zoomed out a man was shown watching the children on an in-flight screen and wearing Qatar Airways headphones.

In each case, after the voiceover, the Qatar Airways logo appeared briefly on screen.

#### Closing Credit

*“Qatar Airways: World’s Five Star Airline.”*

The graphic focused on the face of a Qatar Airways hostess. The Qatar Airways logo appeared next to her, with the words *“World’s 5-star airline”* underneath. The web address *“qatarairways.com”* also appeared at the bottom of the screen.

Ofcom considered that the opening credits raised issues warranting investigation under Rule 9.19 of the Code, which states that:

“Sponsorship must be clearly identified by means of sponsorship credits. These must make clear

- a) the identity of the sponsor by reference to its name or trade mark; and
- b) the association between the sponsor and the sponsored content”.

We also considered that the closing credit raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action.”

We therefore requested comments from the Licensee on how the sponsorship credits complied with the relevant rules of the Code.

## Response

The Licensee told us that it took its compliance obligations very seriously. It said that in light of Ofcom's previous decision concerning Qatar Airways' sponsorship of Sky News<sup>1</sup>, the Licensee had already taken the decision to pull the Qatar Airways sponsorship campaign as of 3 July 2013. Al Jazeera said that it had replaced all of the pre-existing credits with new versions which clearly identified the sponsorship arrangement between Qatar Airways and the Al Jazeera weather updates.

The Licensee explained that it had provided "supplementary training" conducted by external legal consultants to its staff in London and Doha on its compliance obligations under the Code in relation to sponsorship and advertising campaigns. In addition, it had put in place new internal compliance procedures to ensure similar issues would not arise in future, including regular checks of long running campaigns.

In relation to Rule 9.19, the Licensee said it believed that the long running nature of the campaign, coupled with the wording used in the credits, meant that viewers would have been aware of the thematic link between the sponsorship credit and programme content.

In relation to Rule 9.22(a), the Licensee stated that the strapline "*World's 5-star Airline*" was a key branding message widely used by Qatar Airways. The Licensee argued that, unlike in other cases in which Ofcom had recorded a breach of Rule 9.22a, the credit did not provide any information about particular products or services offered by Qatar Airways, or represent any form of exhortation to viewers to purchase goods or services from Qatar Airways.

Nevertheless, in order to avoid any possible room for confusion among viewers, the Licensee had decided to remove the strapline from the end credit and taken steps to ensure that the sponsorship arrangement was clearly identified in both the opening and closing credits.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to ensure the standards objectives, one of which is "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". The rules in Section Nine of the Code, among others, reflect this objective.

### Rule 9.19

The AVMS Directive requires sponsored programmes to be "clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s), or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes". Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The requirements of the AVMS Directive to identify sponsorship arrangements are reflected in Rule 9.19 of the Code which states that sponsorship must be clearly identified by means of sponsorship credits, and that the sponsorship credits must

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<sup>1</sup> See finding on sponsorship of Sky News Weather Reports by Qatar Airways, Bulletin 223 <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

make clear the identity of the sponsor, and the association between the sponsor and the sponsored content.

In Ofcom's view, Al Jazeera's argument that the association was clear to the viewer was not sufficient to preclude the Licensee from its obligation to comply with the requirements of Rule 9.19 which are clearly explained in the guidance which accompanies the rule:

"Viewers should be told when a programme is sponsored and who the sponsor is. The sponsor's association with the sponsored content must be clear to the audience in all sponsorship credits. Broadcasters are free to use various and different creative messages to identify sponsorship, for example "sponsored by..."; "in association with..."; "brought to you by...", however, care should be taken to avoid ambiguous statements that may lead to viewer confusion over the nature and purpose of the announcement".

In our view, the ten second opening credits had the appearance of advertisements, and therefore the potential to confuse viewers. Although the credits sought to create thematic links between weather conditions at various locations served by Qatar Airways and services on board Qatar Airways flights, because information to identify the sponsorship arrangement was not included, the distinction between advertising and sponsorship was not sufficiently distinct.

Ofcom noted the Licensee's statement that it had independently decided to remove the credits in question when it became aware of Ofcom's judgment on a similar issue. We also noted the further corrective actions taken by the Licensee in addressing this matter, including the provision of training to remind staff of code compliance obligations and new internal compliance procedures to ensure similar issues do not arise. We also noted the Licensee had apologised to Ofcom for not having taken our guidance around Rule 9.19 into consideration in this case.

However, Ofcom also considered the fact that the Licensee's statement had taken steps to remove credits with effect from 3 July 2013. Our previous finding on this matter, to which the Licensee referred in its representations, was published in Broadcast Bulletin 223 some six months earlier, on 4 February 2013.

We consider that the Licensee should have been aware of the ruling published in February 2013 and taken action to ensure compliance with Rule 9.19 as soon as realistically possible. Instead, however, no action was taken until after we had first sought its views as part of this current investigation. As a result, we found the Licensee in breach of Rule 9.19.

#### Rule 9.22(a)

The AVMS Directive limits the amount of advertising a broadcaster can transmit, and requires that advertising is distinguishable from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22 of the Code therefore requires that sponsorship credits must be distinct from advertising. Sponsorship credits must therefore not contain advertising messages or calls to action.

Ofcom noted that the closing credit referred to Qatar Airways as “*World’s 5-star Airline*”. Although we noted the Licensee’s argument that this phrase was a common branding message for Qatar Airways, we considered that this strapline amounted to an endorsement of the quality of the service provided by the airline. In our view, the strapline was likely to be interpreted as an advertising message rather than as a means of identifying the company. While we noted the Licensee had now removed the strapline, the credit was in breach of Rule 9.22(a).

**Breaches of Rules 9.19 and 9.22(a)**

## Broadcast Licence Condition cases

### Broadcasting licensees' Relevant Turnover returns

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Ofcom is partly funded by the licence fees it charges television and radio licensees. In setting these fees, Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles. Chief among these principles is that for all television and for national and local analogue radio licensees, the fees they are required to pay are based on a percentage of their turnover from related activities. This is known as Relevant Turnover.

In order to enable Ofcom to charge licensees the appropriate fee, each licensee is required each year to submit to Ofcom a statement of its Relevant Turnover for the last but one calendar year. This provision of information is a licence requirement. As well as enabling the charging of fees, this information is also used by Ofcom to fulfil its obligations regarding market reporting. It can therefore be seen that submission of Relevant Turnover is an extremely important requirement upon all relevant broadcasting licensees. Failure by a licensee to submit an annual Relevant Turnover return when required represents a serious and fundamental breach of a broadcast licence, as the absence of the information contained in the return means that Ofcom is unable properly to carry out its regulatory duties.

### In Breach

The following licensees have failed to submit their Relevant Turnover returns, despite repeated requests for this information. These licensees have therefore been found **in breach** of their licences. As a consequence of this serious and continuing licence breach, Ofcom is putting these licensees on notice that their present contravention of their licences is being considered for the imposition of a statutory sanction, including licence revocation.

Licensee	Service Name
Cira Media Productions	Cira TV
Passion Broadcasting Limited	Passion TV
Playjam Limited	Free & Prize Playjam
Poker Channel Limited	Poker TV
Sunrise TV Limited	Sunrise TV
The Light Academy	Believe TV
Wesal TV Limited	Noor TV

### Resolved

The following licensees failed to submit their Relevant Turnover return in accordance with the original deadline, but have subsequently submitted a late return. For these licensees, we therefore consider the matter **resolved**.

<b>Licensee</b>	<b>Service Name</b>
Al Quds Limited	Al Quds Sat
BFTV Limited	Baby First TV
Harmony Media Enterprises Limited	UKS Fuzion UK
Joint Stock Company Channel One Russia Worldwide	Channel One Russia
Live Television Limited	Storm
Media Liberty Limited	Iran Farda
Middlesex Broadcasting Limited	MATV (Punjabi)
Middlesex Broadcasting Limited	MATV Music
MSM Asia Limited	Sony SAB
Shorts International Limited	Shorts HD
Sundance Channel (UK) Limited	Sundance Channel
Tuwa TV	Tuwa
Top Up TV Limited	Top Up Data service
TV Enterprises Limited	NTAI
Up and Coming TV	Saama
Zion the Holy One	Olive TV

## Fairness and Privacy cases

### Upheld in Part

#### Complaint by Mr Mohammed Nobab Uddin

*News at Ten, ATN Bangla UK, 24 November 2012*

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#### Summary

Ofcom has upheld in part Mr Mohammed Nobab Uddin's complaint of unjust or unfair treatment in the programmes as broadcast.

The programme featured a report about an organisation called the British Bangladeshi Chamber of Commerce ("the BBCC"), and recent elections held by the organisation to elect members to act as BBCC officials. The report included a number of statements about Mr Uddin and another organisation, the London Bangla Press Club ("the LBPC"). Mr Uddin is the president of the LBPC.

Ofcom found that:

- The broadcaster did not take reasonable care to satisfy itself that certain material facts (notably allegations that the LBPC was a corrupt organisation that allowed non-journalists to join it in order to gain votes for certain candidates in internal elections for official positions) were not presented, omitted or disregarded in a way that resulted in an unfair portrayal of Mr Uddin. This was because Ofcom found that serious allegations of wrong doing had been made against Mr Uddin, but that these allegations were not supported by sufficient evidence. Nor, in Ofcom's view, were the allegations of sufficient public interest to justify broadcasting them in the absence of such evidence.
- The broadcaster failed to provide Mr Uddin with an appropriate and timely opportunity to respond to all the significant allegations made about him in the programme.
- However, Mr Uddin's complaint that he was dealt with unfairly in the programme, and that he was given a misleading impression of the nature of the programme and his contribution to it, was not upheld.

#### Introduction and programme summary

On 24 November 2012, ATN Bangla UK<sup>1</sup> ("ATN" or "the Licensee"), a Bengali-language television service that provides programming to members of the Bangladeshi community in the UK, broadcast an edition of its nightly news programme, *News at Ten*.

A transcript in English of the relevant part of the programme, translated from the original Bengali and agreed by both parties to the complaint to be a fair and accurate reflection of the relevant section of the programme, was prepared by an independent translation service for Ofcom. Both parties were informed that Ofcom would rely on the translated transcript in considering the complaint. The translated transcript has been used to construct the following introductory paragraphs.

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<sup>1</sup> ATN Bangla UK broadcasts on channel 827 on Sky's electronic programme guide.

The programme included a report about the BBCC. The report focused on recent elections that the BBCC had held to elect a number of its members to act as directors of the organisation. The report began with a studio-based presenter stating that recent comments by Mr Mohammed Nobab Uddin (the complainant) had solicited a “*massive reaction*” from BBCC members, with “*Senior executives [of the BBCC] as well as the general members of the organisation [stating] that this kind of comment has upset them deeply*”. The comments in question had been made by Mr Uddin a number of days earlier on a different UK-based Bengali-language television channel, Channel S<sup>2</sup>, on 21 November 2012. The *News at Ten* presenter alleged that in these comments Mr Uddin had questioned the “*eligibility*” of certain people to be BBCC members and thus participate in the elections.

The report continued with a series of pre-recorded interview clips in which people, who were identified as BBCC members, commented on Mr Uddin’s statements, and made allegations about Mr Uddin, and the LBPC, of which Mr Uddin is its president

In particular, in the report, a person identified as Mr Chowdhury Mahtab, who was described as “*DG, BBCC*”, said that “[Mr Uddin] *always talks too much*”, adding:

*“[h]ad the question been raised by someone other than him – say the previous chairman of the Press Club...we would have taken it seriously”.*

In another clip a person identified as Mr Taj Rahman “*Member, BBCC*” stated:

*“The comments made by an editor, or a chief editor, are very important for the community. So, we should carefully assess before making comment against any organisation”.*

At this time, Mr Uddin was not only president of the LBPC, but also the editor of the *Weekly Janomat*, a UK-based Bengali-language newspaper.

In further clips, Mr Mahtab and another person identified as Mr Hafiz Alam Bakhsh, “*Member, BBCC*”, demanded that Mr Uddin apologise for the comments he had made about the BBCC and its members.

Subsequently, the reporter said:

*“Many senior executives of the BBCC are saying that in London Bangla Press Club people may have been enrolled as members who are not journalists. Perhaps Nobab Uddin [the complainant] has questioned the eligibility of the BBCC members from that perspective”.*

This comment was made alongside an image of Mr Uddin.

A further clip featuring Mr Mahtab was then shown in which he stated:

*“There are many in the Press Club [i.e. the LBPC] who are not real journalists. Obviously I am not ready to comment on that. Many say that some people who distribute the Weekly Janomat to shops have been made members of the LBPC just for their votes. Here we do not make anyone [a] member for votes. Our*

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<sup>2</sup> At the time of the broadcast complained of (November 2012) Channel S was broadcasting on Channel 814 of the Sky electronic programme guide.

*members must have a business. Without [a] business, they cannot have a membership”.*

This was followed by another video clip in which Mr Bakhsh stated:

*“There are many incidents of corruption in the organisation of which he is the president. There are many members in that organisation who are not even journalists”.*

The reporter concluded the item with the following commentary, which was again shown alongside an image of Mr Uddin:

*“Meanwhile when the ATN Bangla UK contacted Nobab Uddin, he informed [us] that he has the right to express his opinion. In addition, he informed [us] that his comments in the TV news [i.e. on Channel S] may have been broadcast in part. The BBCC was launched in 1991 with an aim to help flourish businesses owned by British Bangladeshis. This organisation has been growing since then. BBCC members have called for watching out against any adverse impact due to comments by anyone”.*

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

Mr Uddin complained that he was treated unjustly or unfairly in the programme as broadcast in that:

- a) Disparaging statements about him were included in the programme which seriously compromised his “social standing as a professional journalist” and made him feel as if he had been “publically humiliated”. In particular, Mr Uddin said that:
  - i) allegations of hypocrisy and unprofessionalism were made in the programme against him; and
  - ii) allegations of wrongdoing and corruption were made in the programme in relation to the London Bangla Press Club (“the LBPC”), an organisation with which he was closely connected in his capacity as its president. Mr Uddin added that it was alleged in the programme that the LBPC was corrupt in that it had admitted members who were not journalists in order to secure their votes, in internal elections.

Ellis Taylor Law LLP (“Ellis Taylor”), which responded on behalf of ATN, said that the comments in the programme about Mr Uddin and the LBPC were not unfair because, seen in their proper context, they constituted “reportage” on an on-going dispute between Mr Uddin and the BBCC. It said that the dispute was initiated by Mr Uddin when he made comments about the membership of the BBCC on Channel S on 21 November 2012, and that this context was clearly set out at the beginning of the relevant report in the presenter’s opening commentary.

Ellis Taylor also said that the report was not broadcast with an ill-motivated intention to humiliate Mr Uddin in public. It added that, having chosen to publicly attack the membership of a prestigious organisation (i.e. the BBCC), Mr Uddin might reasonably have expected a robust and wide-ranging reaction.

Ellis Taylor also argued that the majority of the interview clips in the report consisted of legitimate reaction and comment on, Mr Uddin's initial statements about the BBCC made on Channel S. However, Ellis Taylor accepted that some of the comments in the clips related to Mr Uddin's behaviour and character, rather than his previous statements about the BBCC, and that the interviewees in some of the clips "raised suspicions" about the LBPC. However, Ellis Taylor suggested that Mr Uddin was accustomed to controversy, in that he had a track record of making intemperate remarks about other Bangladeshi organisations for which he had subsequently had to apologise.

- b) Mr Uddin's second complaint was that he was not given an opportunity to respond to all of the allegations made in the programme. He said that, although he was contacted by telephone on the day the programme was broadcast by ATN for what he understood to be a pre-interview off the record chat, he was not informed that the programme would include allegations of serious wrong doing against him and the LBPC.

In response, Ellis Taylor disputed that the telephone conversation in question was off the record. Mr Uddin, Ellis Taylor said, was given an opportunity to record an interview to be included in the programme broadcast on 24 November 2012, but he had declined this offer because he was unavailable on the day in question. In addition, Ellis Taylor added that the material complained of formed part of "a running news programme", adding that "ATN Bangla was not responsible for the comments made by other people who were interviewed in connection with the programme". In response to additional questions by Ofcom, Ellis Taylor also confirmed that at the time the programme makers spoke to Mr Uddin prior to the broadcast they had yet to speak to all of the contributors to the relevant section of the programme, and therefore were unaware that some of the interviewees would make "allegations of corruption" against Mr Uddin which would subsequently be included in the programme.

- c) Mr Uddin complained that he had made comments to the programme makers, the details of which were included in the programme without his knowledge or permission. Mr Uddin said that these comments were made during what he understood to be a pre-interview off the record research telephone conversation and that he had been led to understand that he would be contacted again later that day for an "on-the-record" recorded interview.

In response, Ellis Taylor confirmed that ATN's News Editor telephoned Mr Uddin on 24 November 2012 to ask him if he wished to give an on-camera interview to be included in that evening's news programme. The programme's reporter had also spoken to Mr Uddin regarding this matter, but Mr Uddin had declined the request for an interview because he said "he was not available for a couple of days". Ellis Taylor said that ATN was adamant that the programme makers had never told Mr Uddin that their conversations with him would be "off-the-record". It added that, in ATN's view, given that Mr Uddin was an experienced journalist, it would have been obvious to him that his comments would be "on-the-record" and that there was a possibility that they might be included in that night's programme.

Ellis Taylor stated that it was during the conversation with the ATN programme reporter (which Mr Uddin considered to be "off-the-record") that Mr Uddin expressed his unhappiness with the way his comments about the BBCC had been reported on Channel S.

## Decision

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

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

When considering the complaint, Ofcom had regard to whether the portrayal of Mr Uddin in the programme complained of was consistent with the broadcaster's obligation to avoid unjust or unfair treatment of individuals in programmes, as outlined in Rule 7.1 of the Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on all the heads of Mr Uddin's complaint as detailed below.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast; a transcript in English of the relevant part of the programme (translated from the original Bengali by an independent service and verified by both parties); and, both parties' written submissions. Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

- a) Ofcom first considered Mr Uddin's complaint, as detailed above under head a) (Summary of the complaint and the broadcaster's response), that he had been treated unjustly or unfairly in the programmes as broadcast.

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

Having considered the transcript of the programme closely, Ofcom noted that most of the comments made in the interview clips were reactions to, and comments on, Mr Uddin's statements about the BBCC in his earlier appearance on Channel S. Ofcom noted however that in some of the clips, interviewees' statements went beyond this subject and made disparaging personal remarks about Mr Uddin's character and allegations of corruption and impropriety against the LBPC.

### *Reactions to Mr Uddin's comments about the BBCC*

As noted above, most of the comments made in the interview clips complained of were reactions to, and comments on, Mr Uddin's statements about the BBCC in his earlier appearance on Channel S. Ofcom did not consider these comments, such as Mr Rahman's statement that "*an editor...should carefully assess before making comments against any organisation*", to raise issues of unfairness, as they were expressions of the individual's opinion on a topical issue. Also these

comments did not raise any new issues, or constitute specific allegations of wrongdoing or incompetence on the part of Mr Uddin or the LBPC, which were not already part of the public discourse within the Bangladeshi community as a result of Mr Uddin's previous statements on Channel S.

Ofcom therefore limited its further consideration of this head of complaint to the statements in which interviewees made negative comments about Mr Uddin's character or made allegations about the LBPC.

In considering these comments, Ofcom had regard to the broadcaster's right to freedom of expression and the right of the audience served by the broadcaster to receive information and ideas without unnecessary interference.

#### *Disparaging personal remarks against Mr Uddin*

One contributor, Mr Mahtab, described as "DG, BBCC", said that Mr Uddin "always talks too much", and that:

*"[h]ad the question been raised by someone other than him – say the previous chairman of the Press Club...we would have taken it seriously".*

Ofcom noted that Ellis Taylor stated in its submissions that having chosen to publically attack the membership of the BBCC, Mr Uddin might reasonably have expected a robust and wide-ranging reaction. In relation to this, Ofcom regarded Mr Mahtab's comments to be a criticism of Mr Uddin. This was because they queried his judgement for not having made a careful enough assessment of the situation before allegedly questioning the "eligibility" of certain people to be BBCC members and thus participate in the organisation's internal elections.

However, when considered within the context of an ongoing and "robust" debate between well-known members of London's Bangladeshi community, a debate in which heated exchanges had taken place, Ofcom took the view that, when considered alongside Mr Uddin's earlier comments on Channel S, the inclusion of these statements in the programme did not result in unfairness to Mr Uddin.

#### *Allegations of corruption*

Ofcom went on to consider the statements in which serious allegations of wrongdoing were made against the LBPC, and by extension its president, Mr Uddin.

For example in one clip, a Mr Mahtab stated:

*"There are many in the Press Club [i.e. the LBPC] who are not real journalists. Obviously I am not ready to comment on that. Many say that some people who distribute the Weekly Janomat to shops have been made members of the LBPC just for their votes. Here we do not make anyone [a] member for votes. Our members must have a business. Without [a] business, they cannot have a membership".*

While in another a Mr Bakhsh, described as "Member, BBCC", stated:

*"There are many incidents of corruption in the organisation of which he is the president. There are many members in that organisation who are not even journalists".*

In Ofcom's view, even though these statements were clearly made as counter allegations to Mr Uddin's earlier comments about the BBCC on Channel S, they were not merely refutations of Mr Uddin's earlier comments about the BBCC elections, but instead amounted to a number of new allegations, about an organisation that had not already featured in Mr Uddin's previous appearance on Channel S.

Ofcom noted that at no point did the broadcaster present any material evidence to support the allegations being made against the LBPC. Nor did the broadcaster attempt to represent either the LBPC's or Mr Uddin's response (as the LBPC's president) to these serious allegations of corruption. In addition, Mr Uddin was not given an opportunity to respond to these specific allegations (see head b) below for a detailed consideration of this aspect of the complaint).

Ofcom therefore considered that the comments alleging impropriety and corruption on the part of the LBPC amounted to allegations of wrongdoing against an organisation with which Mr Uddin was closely connected, in his role as president. Ofcom's view was also that the statements suggested that in view of the problems which allegedly existed in his own organisation (the LBPC), Mr Uddin was being hypocritical when he levelled similar allegations against the BBCC during his contribution to the programme on Channel S.

Consequently, taking all these factors into account, Ofcom concluded that in relation to the comments made against the LBPC, the broadcaster did not take reasonable care to satisfy itself that the material facts surrounding the allegations of corruption were not presented, disregarded or omitted in a way that was unfair to Mr Uddin.

Ofcom found that Mr Uddin was treated unfairly in the programme as broadcast with respect to the inclusion of the claims about the allegations of corruption in the LBPC and that this head of complaint should be upheld.

- b) Next Ofcom considered Mr Uddin's complaint that he was not given an appropriate or timely opportunity to respond to the allegations made in the programme.

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

For the reasons given in the decision at head a) above, Ofcom considered that the statements made in the programmes about the LBPC amounted to allegations of wrongdoing against the LBPC, and given his role as its president, Mr Uddin in particular.

Ofcom first considered whether Mr Uddin had been given an appropriate and timely opportunity to respond to the allegations made against him and the LBPC in the programme. In the programme the presenter stated:

*"ATN Bangla-UK contacted Nobab Uddin, he informed [us] that he has the right to express his opinion. In addition he informed [us] that his comments in the TV news may have been broadcast in part".*

However, Ofcom also noted that in its submission on behalf of ATN, Ellis Taylor stated:

“[o]ur client did not know when they spoke to Mr Uddin that allegations of corruption would be made as they spoke to Mr Uddin prior to speaking to the other parties...”

Consequently, Ofcom considered that while Mr Uddin had been given the opportunity to respond to some of the comments and allegations ATN intended to include in the programme (i.e. those that related to his earlier remarks about the BCC on Channel S), Mr Uddin had not been made fully aware by ATN of all the allegations to be made against him. In particular, it was clear from Ellis Taylor’s submissions that the allegations of hypocrisy and corruption against Mr Uddin and the LBPC were not put to Mr Uddin during the pre-broadcast telephone conversation on 24 August 2012, because at the time of the call, ATN had not recorded the video clips for the report and thus did not know that the contributors would make these allegations.

Ofcom considered Ellis Taylor’s submissions that the programme was “a running news programme” and that “ATN Bangla was not responsible for the comments made by other people who were interviewed in connection with the programmes”.

Ofcom fully recognises that there are occasions when newsworthy events unfold rapidly and when it is not possible for programme makers to contact all relevant parties for comment before an item is first broadcast. However, it is Ofcom’s view that when (as here) a broadcast contains significant allegations against a person, the broadcaster has a duty normally to give that person an appropriate and timely opportunity to respond. The fact that the allegations are made by interviewees and not directly by the broadcaster does not diminish the broadcaster’s responsibility to ensure that its broadcast does not result in unfairness in this respect.

Ofcom noted that at no time during the programme did the studio presenter make clear to viewers that neither Mr Uddin nor another representative of the LBPC had been able to respond to the allegations of corruption made by the contributors to the report. Ofcom also considered that the allegations could not reasonably be considered to be so time sensitive or so in the public interest, that the broadcaster was justified in broadcasting them, without first giving Mr Uddin a timely and appropriate opportunity to respond.

Therefore, Ofcom found that Mr Uddin was treated unfairly in the programme as broadcast in this respect and that this head of complaint should be upheld.

- c) Finally, Ofcom considered Mr Uddin’s complaint that comments he made during a telephone conversation with ATN employees on 24 November 2012 were included in the programme without his knowledge or consent. When considering this head of Mr Uddin’s complaint Ofcom had regard to Practice 7.2, which requires broadcasters to deal fairly with contributors unless exceptionally it is justified not to; and Practice 7.3, which includes the requirement for broadcasters to inform contributors about the nature and purpose of a programme and the kind of contribution they are expected to make.

Ofcom noted from the transcript of the programme that towards the end of the report, the reporter stated:

*“Meanwhile when the ATN Bangla-UK contacted Nobab Uddin, he informed [us] that he has the right to express his opinion. In addition, he informed [us] that his comments in the TV news may have been broadcast in part”.*

Ofcom also noted that in his complaint Mr Uddin stated that he had understood his conversation with ATN employees to be an off-the-record pre-interview background chat. It noted too that in its representations on behalf of ATN, Ellis Taylor stated that Mr Uddin was never assured “that the conversation would be off record” and that “as an experienced journalist” it “would have been absolutely obvious...that his comments would be on the record and that they would be used in the programme complained of”.

In view of the above, Ofcom concluded that there was a factual dispute between the parties with regard to the nature of events that took part on 24 November 2012, with Mr Uddin on the one hand stating that he considered his remarks to be off the record, and ATN on the other stating that Mr Uddin’s comments were on the record. In the absence of any material evidence to support either party’s version of events, and in view of Ofcom’s opinion that the comments of Mr Uddin referred to immediately above did not seem to reveal anything about Mr Uddin which might be unfair to him if broadcast, Ofcom did not uphold this head of complaint.

**Accordingly, Ofcom has upheld in part Mr Uddin’s complaint of unjust and unfair treatment in the programmes as broadcast.**

## Not Upheld

### **Complaint by Mr David Elkington and Mrs Jennifer Elkington** *Inside Out West, BBC1 West, 26 November 2012*

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#### **Summary**

Ofcom has not upheld Mr and Mrs Elkington's complaint of unjust or unfair treatment and unwarranted infringement of privacy.

This edition of *Inside Out West* included a report on the Jordan Codices ("the Codices"), approximately 70 small metal volumes found in caves in Jordan in 2005 and 2007 that have been claimed to be the earliest examples of Christian writing and the foundation of the New Testament. The programme's presenter stated that the find created a media storm at the time and that at the centre of the media attention was "*David Elkington, Gloucestershire's own 'Indiana Jones', an adventuring scholar who, with his wife, brought the so-called Codices from the Middle East to the West Country*". The programme questioned the authenticity of the Codices and the credentials of Mr Elkington.

Ofcom concluded that:

- The programme makers dealt with Mr and Mrs Elkington fairly by providing sufficient information about the nature and purpose of the programme to them.
- The programme makers took reasonable care in satisfying themselves that material facts relating to Mr Elkington's character were not presented, disregarded or omitted in a way that was unfair and that the omission of Professor Saad's comments about Mr Elkington was not unfair.
- Mr and Mrs Elkington had been given an adequate and appropriate opportunity to respond to the allegations made in the programme.
- Mr and Mrs Elkington did not have a legitimate expectation of privacy in relation to the obtaining of material included in the programme and in the programme as broadcast given that their home was not filmed by the programme makers and information about the location of their house was not disclosed in the programme.

#### **Introduction and programme summary**

On 26 November 2012, BBC1 West broadcast an edition of *Inside Out West*, its regional current affairs and investigative programme. This edition included a report on the Jordan Codices approximately 70 small metal volumes found in caves in Jordan in 2005 and 2007 that have been claimed to be the earliest examples of Christian writing and the foundation of the New Testament. The programme's presenter stated that the find created a media storm at the time and that at the centre of the media attention was "*David Elkington, Gloucestershire's own 'Indiana Jones', an adventuring scholar who, with his wife, brought the so-called Codices from the Middle East to the West Country*".

The presenter went on to question whether the Codices were authentic and claimed that it had "*discovered that not only could the Codices be fake, but that the man behind them [Mr Elkington] is far from what he seems*". The programme said that

when the Codices were discovered, experts from Europe went to examine them. Archive interview footage of Mr Elkington and his wife was shown in which he described himself as “*an Egyptologist by training and a historian, expert on linguistics ancient and not so modern*”. A biography page taken from Mr Elkington’s literary agent’s website was shown on which it was claimed that Mr Elkington had trained under a leading curator of a “*leading archaeological museum*” (i.e. the Petrie Museum of Egyptian Archaeology, University College London), had written a highly acclaimed academic thesis, and had lectured across the world.

The programme included an interview with Mr Robert Feather, a metallurgist, who had planned to examine the Codices with Mr Elkington in the Middle East. Mr Feather said that he did not go on the trip with Mr Elkington as he had asked him to sign a non-disclosure agreement that would, effectively, have assigned all rights in what Mr Feather may wish to write about the Codices to Mr Elkington. Mr Feather said that, in the event, he went to the Middle East on his own and was able to examine two of the Codices. He said that he was sceptical that they were ancient texts because the copper binding seemed “*suspect*”.

The programme included interview footage of Dr Peter Thonemann, a lecturer in ancient history at the University of Oxford, who said that Mr Elkington had asked him to give his expert opinion on the Codices and, especially, his opinion on a Greek inscription on a particular Codex. Dr Thonemann said that upon seeing the inscription he was convinced that the Codices were a modern forgery, made within the last 20 to 30 years. He said that Mr Elkington accepted that this particular Codex was a fake, but had insisted that the others in the collection could be authentic. Dr Thonemann said that he was surprised when, six months later, he saw Mr Elkington giving interviews about the Codices. He said that they appeared to be the product of the same workshop as the one he had examined and was absolutely certain that they were also fakes.

The presenter said that Mr Elkington insisted that Dr Thonemann was wrong and that testing of the Codices revealed that they were “*old*” and that he was working with a team of international experts carrying out further work on them. The presenter said that Mr Elkington provided the programme with the names of two members of his team: one declined to take part in the programme; and the other would only contribute if her interview was not edited in any way. The presenter said that her offer was declined. The presenter went on to say that while publicising the Codices, Mr Elkington had said that he had had to go into hiding “*in the Gloucestershire countryside because of alleged death threats*” from those wanting the Codices for themselves. The presenter stated too that Mr Elkington was planning to release a book entitled “*Divine Revelation*”.

At this point in the programme, the presenter posed the question whether Mr Elkington was the right person to be testing the authenticity of the Codices and said that the programme had discovered that Mr Elkington’s credentials did not “*stack up*”, namely, that:

- he was not a high flying academic and did not have recognised qualifications in the field;
- the woman he claimed he had trained under was not the curator of a leading archaeological museum;

- the British School of Egyptology of which he was a member was nothing more than a club for enthusiastic amateurs; and
- his *“highly acclaimed”* academic thesis was, in fact, a self-published book that had sold *“poorly”*.

The presenter then stated that Mr Elkington’s writing partner had taken him to the small claims court to recover a £5,000 debt and that over the years Mr Elkington had taken thousands of pounds in investments to make a film based on his theories. This was accompanied by footage of an investment agreement signed by Mr Elkington. Another contributor to the programme, Mr Edward Lawrence, was then introduced in the programme as Mr Elkington’s *“estranged son from a former relationship”* who said of Mr Elkington:

*“He’s a very good story teller. He said he was studying for a doctorate at Oxford University. He also told me that I was Maori prince of some tribe in New Zealand”.*

Mr Lawrence went on to say that although Mr Elkington was a good story teller, he was surprised to see him on the news talking about the Codices *“not just claiming that he was an archaeologist, but that the media embraced him, supported him. It was a sensationalised story that did well for him”*.

The presenter stated that Mr Elkington had raised financial backing from wealthy investors impressed by his claims including Princess Elizabeth of Yugoslavia who had paid him *“tens of thousands of pounds”*. However, the presenter said that they had since *“fallen out”* and that she no longer thought the Codices were real. The programme also stated that the Israeli Antiquities Authority had expressed doubt over the Codices’ authenticity and that the Jordanian Government was *“still to make an official announcement about them”*. Also, the owner of the Codices had denied Mr Elkington any further access to them.

Towards the end of the report, the presenter said that the programme makers had wanted to speak to Mr Elkington about his background and his current work on the Codices, but that he had declined to appear on camera. Extracts of a statement from Mr Elkington were then read out, and captioned on screen:

*“In a statement he told us he has ‘had to make clear on several occasions that I was neither ‘Doctor’ nor ‘Professor’ Elkington, but plain ‘Mr’...I am not a descendant of a Maori prince. However, my family is connected to the Maori tribes of the same name...(I) acknowledge a small personal debt to (Princess) Elizabeth which...has never been disputed and will be paid back in full...(I) never claimed to have had any formal qualifications and have been largely self taught...(I) have always been upfront about this”.*

The report concluded with the presenter stating that Mr Elkington’s role in the secret of the Codices was only going to add to the mystery.

Throughout the report, archive footage of Mr Elkington and his wife was shown.

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

### Unjust or unfair treatment

Mr Elkington complained that he and his wife were treated unjustly or unfairly in the programme as broadcast in that:

- a) The programme makers did not deal with Mr and Mrs Elkington fairly as potential contributors to the programme.

Mr Elkington said that when he was initially contacted by the programme makers, he was told that they wanted to make a programme purely on the historical aspect of the Codices. He agreed in principle to contribute so long as the subject and the academic team investigating the Codices were treated with respect. Mr Elkington said that the following day, a third party had reported to Mr and Mrs Elkington that the programme makers had visited the village in which they had once lived and had branded Mr Elkington a “conman” to those they sought to interview. Mr Elkington said that the interviewees were made aware that this was the basis of the programme.

Mr Elkington said that the programme makers’ motives as presented to him were deceptive in order to elicit his personal views and other information which could be misconstrued as they were on the programme. He said that the personal angle had nothing to do with the discovery of the Codices, nor how he and his wife had been represented in the media. Mr Elkington said that had he known that the purpose of the programme was to question his personal integrity and character he would not have spoken with the programme makers at all.

In response, the BBC said that it believed the nature and content of the programme was clearly explained to Mr Elkington in a series of conversations and emails prior to broadcast and that he could have been in no doubt about the scope of the programme. The BBC said that the claims about his conduct were put to him on the telephone and confirmed in writing by email, and he was given an appropriate and timely opportunity to respond. The BBC submitted a timeline of contacts and the transcripts of telephone conversations and emails between the programme makers and Mr Elkington to Ofcom and stated that they showed that Mr and Mrs Elkington were made fully aware of the nature and scope of the programme and, as a result, there was no unfairness to Mr Elkington or his wife.

The BBC said that it initially contacted Mr Elkington on 6 November 2012 through Ms Hilary Baker, who was acting as Mr Elkington’s personal representative. A request was made to speak to Mr Elkington about contributing to a proposed television report. No specific details were given about the nature of the report. The BBC said that Mr Elkington returned the call the same day. The call was recorded for note taking purposes, as were all subsequent phone calls between Mr Elkington and the programme makers. The programme makers told Mr Elkington that they were considering producing a report about the Codices given that Mr Elkington was living in its catchment area. During the conversation, Mr Elkington acknowledged that “*some questions have been raised [about the Codices] that are very good and...do need to be answered*” and sought and received reassurance that the programme would be open minded. The BBC said that there was a discussion about any forthcoming news events linked to the Codices and, at Mr Elkington’s request, an agreement was reached to meet in person two days later.

The BBC said that the initial telephone call was for research purposes and gave the programme makers an opportunity to hear what claims Mr Elkington was currently making about the Codices. It said that while the programme makers were already investigating claims about Mr Elkington’s background and had gathered *prima facie* evidence concerning such claims, they were not in a position to put any allegations to Mr Elkington at that point. It said that much of the evidence on which the final film was based did not emerge until after this

initial call and no detail from this first telephone contact with Mr Elkington was used in the programme itself.

The BBC said that the following day (i.e. 7 November 2012), the programme makers (specifically, the Investigations Producer) spoke to three local people about the allegations surrounding Mr Elkington and made it clear that this was what they were investigating. However, the Investigative Producer did not recall using the word “conman”. The BBC said that on the same day, Mr Elkington informed the programme makers that he did not think the time was right to go ahead with an interview but said: “*let’s see what happens in the next few weeks*”.

The BBC stated that the contact between the programme makers and Mr Elkington as outlined above clearly demonstrated that Mr Elkington was aware of the allegations the programme was intending to make about him and he was given an appropriate opportunity to respond to them. It said that when the programme makers telephoned Mr Elkington the following week on 13 November 2012, they were explicit about the nature of the planned report and had told Mr Elkington of the programme’s interest in his credentials and the claims surrounding his background. The BBC highlighted excerpts of the exchange between the programme makers and Mr Elkington:

Mr Elkington: “What is the, what is the editorial take on this?”

Programme makers: Well basically looking into, um, you know, the arguments over whether the Codices are authentic or whether they are not authentic. And then also looking into the claims obviously that have been made about your involvement and your background as well”.

The BBC said that the programme makers provided a further explanation to Mr Elkington about why they believed the programme was justified in examining his background:

“It, it’s not so much, I suppose, your personal life, I think what we’re looking at is whether, um, you are perhaps as a...whether your credentials are as good as you say they are and therefore whether you are the right person to be making these statements”.

The BBC said that Mr and Mrs Elkington have consistently represented themselves as experts who were at the heart of the discovery of the Codices despite, as the programme makers discovered, no longer having access to the collection. It said that their involvement was, therefore, relevant to the story. The BBC said that much of the previous media coverage had focused on the couple as a direct result of the original press release they released which claimed:

*“The team involved in bringing the find to the world’s attention has been led by David Elkington, a British scholar of the early Christian period and of ancient religious history. David has been supported by his wife Jennifer...In announcing the find, David Elkington said: “It is an enormous privilege to be able to reveal this discovery to the world””.*

The BBC said that although Mr Elkington had complained that he would not have spoken to the programme makers at all if he had known the purpose of the report, the evidence set out above did not support his claim. The BBC said that on 13 November 2013 Mr Elkington had proposed a filmed interview after a lengthy

discussion about the nature and scope of the programme. The BBC said that it was also made clear to Mr Elkington by a programme producer that he would be offered a right of reply by telling him:

“Because I’m being very clear that, um you know, I want to give you this right of reply, um, you know we are obviously basing our claims on evidence as opposed to...”

The BBC said that the programme makers followed up their telephone call to Mr Elkington the same day with an email confirming that the report was looking at questions raised over the authenticity of the Codices and Mr Elkington’s claims about them, the funding of his work, and his background and credentials. The email stated that:

“As discussed, we are making a film looking at the Jordan Codices and at your involvement with them.

As mentioned, the film focuses on two main areas:

- 1) The questions raised over the authenticity of the Codices, the claims you have made about them and the funding of your work.
- 2) Your own background and credentials, including the various claims made by you over the years, your involvement in a number of failed media projects and the financial complaints arising as a result of those projects and others.

We would like to offer you the chance to address these points in detail in a filmed interview.”

The BBC said that it gave Mr Elkington every opportunity to put his case to the programme makers and that the programme makers had extended their offer of a filmed interview up to the day before transmission on 26 November 2012. In addition, the BBC said that further emails put detailed allegations to Mr and Mrs Elkington for response in writing. It said that an email was sent to Mr Elkington on 16 November 2012 in which the following points were set out:

“You have a background of making false or exaggerated claims which include claiming to be being a qualified Professor, a doctorate student at Oxford University, a student of the curator of the Petrie Museum, a Carthusian Monk, a descendant of a Maori Prince and a former Catholic Priest.

You claim to have studied at the British School of Egyptology, which is misleading because it was never a formally recognised academic body but a group for amateurs.

You have a history of falling out with former supporters, including the publishers of your book ‘In the Name of the Gods’ and its co-author, who claims to have won a small claims court judgement for £5,000 against you for not paying him for his services.

‘In the Name of the Gods’ is not a “highly-acclaimed academic thesis” as stated in Curtis Brown’s biography of you but is in fact a self-published book which did not sell well.

You have worked on a number of film and television projects, which have failed to materialise.

You were a director of Bradford on Avon Films Company Ltd, which took thousands of pounds from investors and the BBC has seen no evidence that those investors received a return.

In 2009, you attempted to have relevant parties sign a confidentiality agreement that would in effect allow you to exploit the media coverage of the Jordan Codices.

Despite criticism of your experience and knowledge in this area, you plan to release a book about the Codices, entitled Divine Revelation, and hope to develop a film based on that book.

Your current work on the Jordan Codices and your lifestyle have been funded by a series of benefactors and you have a history of living off the financial support of well-wishers and supporters.

You claim to have a large team of international experts working directly with you on the Codices, but you have only be able to confirm Dr Margaret Barker and Professor Philip Davies as members. Can you provide additional evidence of other experts working with you on this project?

The current owner of the Codices, [Mr] Hassan Saeda, and his former partner, [Mr] Ilan Shibli, no longer work with you or allow you access to the collection.

We are keen to ensure that the programme is as fair and balanced as possible and would therefore like to offer you the opportunity to respond to these points in writing”.

The BBC said that further points were put to Mr Elkington in another email sent on 22 November 2012, including:

“You still owe Princess Elizabeth of Yugoslavia £90,000, which she loaned you to finance your work and expenses. She now believes the Codices are fake.

In 2008, you told your son Edward Lawrence that he was related to Lawrence of Arabia.

In June 2007, you attended Amonbe’s 1st International Assembly in Monaco, organised by Peter von Schoenborn, as a Professor.

On your CV, you claim to have trained under Julia Samson, curator of the Petrie Museum, despite Julia Samson never being a curator of the Petrie Museum but a honorary research associate.

On your CV, you claim to have been an “advisor” to Dr Mike Ibison of Princeton University regarding linguistics and symbolism. Dr Ibison says this claim is exaggerated and gives a false impression.

We cannot find any evidence of you having any higher or further education qualification. We would be grateful if you could supply us with details of any such qualifications you may have”.

The BBC said that this contact between the programme makers and Mr Elkington demonstrated that it had dealt with him, and his wife, fairly.

- b) The programme examined Mr Elkington and his character in a manner which was unfair to him and his wife. In particular, Mr Elkington said that:
- Mr Lawrence, Mr Elkington’s son, was given free rein to make comments about his character, despite the fact that they had never had a relationship or had been in contact with each other for many years. Mr Elkington said that he had only met Mr Lawrence three times between March and June 2008.

In response, the BBC said that there was a clear editorial justification for including a contribution from Mr Elkington’s son. It said that Mr Lawrence had first-hand experience of his father’s history of story-telling and embellishing the truth. However, the BBC said that viewers were made fully aware of the nature of the relationship between the two men and were therefore able to draw their own inferences about Mr Lawrence’s objectivity. The programme said:

*“One person who knows about David Elkington’s habit of embellishing the truth is Edward Lawrence, his estranged son from a former relationship. Mr Elkington has had little contact with his son, but they have met up over the years...”*

The BBC said that Mr Lawrence was not given “free rein” to make comments about Mr Elkington’s character. It said that he had made two comments about his father that had been substantiated by other sources and a single comment about his reaction to the media coverage of his father’s involvement with the Codices. It said that Mr Elkington himself had acknowledged to the programme makers in the telephone conversation on 13 November 2012 that he liked to tell stories and that he had made bogus claims in jest:

*“I may have said out of jest, I’ve often turned round and said that you know I come from a titled family. I come from a long line of [misters], I come, you know I’ve said all that sort of stuff...”*

The BBC said that the programme makers had put the anecdotes given by his son to Mr Elkington and had offered him a right of reply. It said that his response was represented in the programme fairly.

- The programme portrayed a contract with Bradford on Avon Films as being a bill of debt that Mr Elkington owed to a third party. This was inaccurate and cast a negative view on his character.

In response, the BBC said that the programme did not show a bill of debt but an investment of £4,000 into an “Investment into the Development of the film 783 Awakening Sound and associated products”. The programme stated: *“And over the years he’s taken thousands of pounds as investment to make a film based on his theories, a project he says is now on hold”*. The BBC said that this was a statement of fact and in no way be considered to be unfair to Mr Elkington.

The BBC said that the programme makers had spoken to a number of separate investors who had confirmed that they had invested money in film and media projects set up by Mr Elkington which had not come to fruition.

- The programme wrongly accused Mr Elkington of calling himself “Doctor” or “Professor” when he was not entitled to do so, which was incorrect. Mr Elkington said that these titles had been attributed to him accidentally and without his knowledge. He said that the title “Professor” was often used out of respect in European circles and meant to contribute as a teacher, rather than being an academic title.

In response, the BBC said that the weight of the evidence gathered by the programme makers, which principally came from talking to people who knew Mr Elkington, indicated that he was content for such errors to be perpetuated and took no action to correct any misapprehension that organisations may have had about his academic qualifications or achievements.

The BBC said that the programme did not say that Mr Elkington claimed to be a professor, though there was a visual reference to the Amonbe conference website which listed him as “Professor”. The BBC said that Mr Elkington was given a right of reply to the suggestion that he was allowing people to refer to him as “Professor” and the programme reported his response as follows:

*“In a statement he told us he has “had to make it clear on several occasions that I was neither Doctor nor Professor Elkington but plain ‘Mr’”.*

- The programme alleged, wrongly, that Mr Elkington had been involved in a number of failed media projects. Mr Elkington said that he had put the programme makers in contact with some of the “shareholders” in his projects who had confirmed that the projects were “ongoing, not failed”.

In response, the BBC said that the programme did not allege that Mr Elkington had been involved in a number of failed projects. It said that the programme makers had spoken to a number of people who had invested tens of thousands of pounds in total in projects set up by Mr Elkington, but who had said that they had not received a return on their investments. This, the BBC said, was reflected in the programme. The BBC said that this specific allegation was put to Mr Elkington in the email of 16 November 2012 and that he had confirmed in his reply of 20 November 2012 that:

“Indeed, I have an on-going media project (singular) which cannot be considered ‘a failure’, as it is still very much active, though at present this project to which I have been working towards, is in hibernation due to present commitments”.

- c) The programme omitted to include the statement made by Professor Zaid al Saad, former Head of Antiquities of Jordan, to the programme makers in support of Mr and Mrs Elkington’s efforts and that they had acted in a “morally upright manner” and had shown “great integrity”.

Mr Elkington said that Professor Saad had given a full statement to the programme makers and that, when they pressed him for further information, Professor Saad had told them that he had said as much as he wanted. However,

the programme makers had taken this to mean that he did not want to contribute to the programme. Mr Elkington said that the BBC had chosen to ignore Professor Saad's statement which left the programme unbalanced and unfair to Mr and Mrs Elkington.

In response, the BBC said that the programme makers had contacted Professor Saad to find out if he could give them an update on the position of the Jordanian Department of Antiquities on the authenticity of the Codices. Professor Saad confirmed that it was his understanding that an official announcement would be made in due course but said he was not in a position to comment because he no longer worked for the department. The BBC said that at no stage did Professor Saad tell the programme makers that either Mr or Mrs Elkington had acted in a "morally upright manner" or show "great integrity".

The BBC said that Professor Saad had confirmed that he regarded Mr Elkington as "credible", but had also made it clear they had different areas of interest and were considering the Codices from different perspectives. It said that there was, therefore, no unfairness in omitting Professor Saad's brief comments made in passing about Mr Elkington.

- d) Mr and Mrs Elkington were not given an opportunity to respond to the allegations made in the programme.

In response, the BBC said that Mr and Mrs Elkington were given a clear explanation of the allegations that were being made about them. It said that they were given substantial time and a number of opportunities to respond to the allegations and they were contacted several times by the programme makers via email and the telephone. The BBC said that Mr Elkington was sent emails that detailed the allegations about him and he subsequently provided the programme makers with a written response on 20 November 2012. This response was accurately and fairly reflected in the programme.

#### Unwarranted infringement of privacy

- e) Mr Elkington complained that his and his wife's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that the programme makers turned up at Mr and Mrs Elkington's private address and began to film outside their property. Mr Elkington said that he and his wife were living under "police supervision" owing to the controversial and sensitive nature of the Codices' discovery and threats having been made. He also said that his landlord had told the programme makers that they did not have permission to film as where they were filming was not a right of way.

By way of background to the complaint, Mr Elkington said that he and his wife had agreed with the programme makers to respond to the allegations to be made in the programme in an interview that would be held in his literary agent's office in London. Instead, Mr Elkington said that the BBC resorted to a "witch hunt" and tracked them down to their home and filmed there.

In response, the BBC said that it was not true that the programme makers turned up outside Mr Elkington's private address, or carried out any filming outside his home. It said that a number of "pieces to camera" were recorded in the area but, as was evident from the programme as broadcast, the background to this filming was non-specific and gave no indication of Mr and Mrs Elkington's address.

The BBC said that the programme makers had been aware of Mr and Mrs Elkington's concerns about safety, which was confirmed by the police, and so care was taken not to reveal the location of their home. It said that none of the broadcast images revealed their house, its entrance from the road, or any identifying details. The BBC said that all the footage filmed for the programme was taken at a location in Gloucestershire that was entirely unconnected to Mr and Mrs Elkington's address.

The BBC said that at one stage of the filming process, the programme makers were told they were filming on private property as they were recording a "piece to camera" on a path several hundred yards from Mr and Mrs Elkington's home. It said that the programme makers immediately moved location and none of the material filmed was used in the programme as broadcast.

The BBC also said that Mr and Mrs Elkington's address was already in the public domain. It said that in March 2011, Mr and Mrs Elkington had invited The Telegraph Online to their address and were photographed "in their remote Gloucestershire hideaway". Also, an article in the Gloucestershire Echo on 4 June 2011 had published details of their address.

The BBC said that the programme makers made it clear to Mr Elkington in their telephone conversation of 13 November 2012 that the programme makers would be happy to conduct an interview at the office of Mr Elkington's literary agent. It said that the purpose of visiting Gloucestershire was purely to film a number of "pieces to camera" in the broad vicinity of his home.

- f) Mr Elkington also complained that his and his wife's privacy was unwarrantably infringed in the programme as broadcast in that the programme disclosed their whereabouts. Mr Elkington said that the police had warned the programme makers that they would be in "breach of the law" if the footage was broadcast, but the programme disregarded that warning.

In response, the BBC said that the programme did not disclose the whereabouts of Mr and Mrs Elkington's home and so it could not be said to have infringed their privacy. The BBC said that the programme makers spoke to the Gloucestershire Police press office about safety concerns and took appropriate action to ensure the programme as broadcast did not disclose the location of Mr and Mrs Elkington's home.

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

Ofcom prepared a Preliminary View in this case that Mr and Mrs Elkington's complaint of unjust or unfair treatment and unwarranted infringement of privacy should not be upheld. In commenting on the Preliminary View, Mr and Mrs Elkington submitted representations which were either not relevant to the issues raised by the entertained complaint, or simply restated the points made in the entertained complaint. Ofcom sets out below only the main points made by Mr and Mrs Elkington in their representations on the Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom. Mr and Mrs Elkington's and the BBC's representations were, in summary, as follows.

#### **Summary of Mr and Mrs Elkington's representations**

Mr and Mrs Elkington again stated that Professor Saad had given the programme makers a lengthy interview in which he confirmed the status of the discovery as

authentic. They said that, although Professor Saad had terminated the interview when the programme makers asked questions of a personal nature about Mr Elkington, he had given his permission for the programme makers to air what he had already stated in the interview. Mr and Mrs Elkington said that the programme makers had told them that Professor Saad had not given his permission for his comments to be aired. This, they said, was false and designed to mislead.

Mr and Mrs Elkington said that the Preliminary View stated that they had “no right to privacy’ as the discovery [of the Codices] is a matter of public interest”. They said that these were two separate issues and at no stage had they sought to merge the two. Mr and Mrs Elkington said that the discovery had nothing to do with their private lives, perhaps with the exception that they used their own resources and time to pursue it.

### Summary of the BBC’s representations

The BBC said that much of Mr and Mrs Elkington’s representations appeared to be a restatement of the original complaint to Ofcom and so it did not intend to offer any further comments. However, it did state that, in the BBC’s view, there was no requirement to include contributions from all those who were interviewed by the programme makers, whether supportive or not of Mr and Mrs Elkington. It said that the requirement was to ensure there was no unfairness to Mr and Mrs Elkington and it said that its statement in response to the complaint (summarised above) explained how that was achieved.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties’ written submissions and accompanying documentation. It also included the parties’ representations on Ofcom’s Preliminary View.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom’s Broadcasting Code (“the Code”). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

### Unjust or unfair treatment

- a) Ofcom first considered the complaint that the programme makers did not deal with Mr and Mrs Elkington fairly as potential contributors to the programme.

In considering this head of the complaint Ofcom had regard to Practice 7.2 of the Code which states that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. It also had regard to Practice 7.3 which sets out that in order for a person who is invited to contribute to a programme to be able to make an informed decision about taking part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; be informed about the areas of questioning and wherever possible, the nature of other contributors; and any significant changes to the programme that might affect their decision to contribute.

In essence, potential contributors to a programme should be given sufficient information about the programme's nature and purpose for them to be able to make an informed decision about whether or not to take part. It is important to note that, in Ofcom's view, consent is a continuum that applies from the start of a contributor's participation and continues until their involvement is concluded. Therefore in assessing whether a contributor has given informed consent for their participation, Ofcom will not only look at the information that was provided to the contributor prior to the recording of the contribution (that has been made available for its consideration), but where possible Ofcom will also consider the contribution itself.

Ofcom therefore examined how the programme was described to Mr and Mrs Elkington by the programme makers and examined the email correspondence and notes taken to record the numerous telephone conversations between Mr Elkington and the programme makers.

Ofcom noted that on 6 November 2012, the programme makers made their initial contact with Mr Elkington in a telephone conversation. The programme makers said that it was intending to broadcast a report about the Jordan Codices, but seemed not to discuss the programme in further detail. Ofcom noted that Mr Elkington said that there remained questions to be answered about the Codices and that he had asked the programme makers to be open minded when reporting on the topic. Ofcom noted that the programme makers gave Mr Elkington such an assurance. Mr Elkington asked to meet the programme makers in person two days later and Ofcom noted that the programme makers did so.

Ofcom considered that this initial contact, if viewed in isolation, would not have been sufficient to explain the nature and purpose of the programme to the complainants. However, Ofcom noted that this conversation was only the initial conversation in a series of conversations and email correspondence between the programme makers and Mr Elkington and that none of the information gleaned by the programme makers in this initial conversation was used in the programme.

Ofcom noted that the following day, 7 November 2012, the Investigations Producer spoke to three local people about the allegations surrounding Mr Elkington, but his recollection was that at no point did he use the term "conman" as alleged by Mr and Mrs Elkington in their complaint. Ofcom noted too that Mr Elkington had told the programme makers that he did not want to contribute to the programme at that juncture, but that he left the option open by saying: "let's see what happens in the next few weeks".

On 13 November 2012, the programme makers and Mr Elkington spoke again on the telephone. In this conversation, Ofcom noted that Mr Elkington had asked "what is the editorial take on this?" to which the programme makers replied that

they would be looking into: “the arguments over whether the Codices are authentic or whether they are not authentic [and] the claims...that have been made about your involvement and your background...[and] whether your credentials are as good as you say they are and therefore whether you are the right person to be making these statements”. Ofcom noted that the programme makers followed up this conversation with an email to Mr Elkington summarising what had been said: “[a]s discussed, we are making a film looking at the Jordan Codices and at your involvement with them”. This email went on to explain that the programme would focus on questions raised over the authenticity of the Codices, the claims Mr Elkington had made about them and the funding of his work. It also said that the programme would focus on Mr Elkington’s background and credentials, including his involvement in a number of “failed media projects and the financial complaints arising as a result of those projects and others”.

Ofcom considered from that above dialogue between the programme makers and Mr Elkington that he could be regarded as having been reasonably informed about what the programme would be investigating.

Ofcom noted further that on 16 November 2012, the programme makers sent Mr Elkington two more emails relating the allegations that the programme would be addressing and which sought his response. The contents of both these emails are set out in detail in head a) of the “Summary of the complaint and the broadcaster’s response” section above.

Ofcom considered that these emails set out comprehensively, in nineteen individual points, the allegations that the programme would be looking into. In Ofcom’s view, Mr Elkington would have had a clear and unequivocal understanding of what the purpose of the programme was and the nature of any contribution to the programme he was willing to make (namely, to answer the allegations and present his side of the story).

Ofcom then went on to compare what Mr Elkington had been told by the programme makers about the programme prior to broadcast, and the content of the programme broadcast itself, to ascertain whether or not he had been given information about the allegations to be made which was sufficient enough to avoid unfairness to him and his wife. In this respect, Ofcom noted that the programme included a report on the Codices and stated that the focus of the media attention surrounding the Codices was on Mr Elkington who it described as *“Gloucestershire’s own ‘Indiana Jones’, an adventuring scholar who, with his wife, brought the so-called Codices from the Middle East to the West Country”*. Ofcom noted that the programme questioned the authenticity of the Codices and stated that: *“not only could the Codices be fake, but that the man behind them [Mr Elkington] is far from what he seems”*.

The programme questioned whether Mr Elkington was the right person to be testing the authenticity of the Codices and stated that it had discovered that Mr Elkington’s credentials did not *“stack up”*. The programme also discussed how Mr Elkington’s writing partner had taken him to the small claims court to recover a £5,000 debt and how over the years Mr Elkington had taken thousands of pounds in investments to make a film based on his theories. It also discussed his relationship with his son, Mr Lawrence, the financial support received from Princess Elizabeth of Yugoslavia and their subsequent falling out, and how other authorities had cast doubt over the authenticity of the Codices.

Given these factors, Ofcom considered that it was clear that the allegations made in the programme accorded with and reflected the information given to Mr Elkington by the programme makers in the telephone conversations and email correspondences prior to broadcast. Ofcom therefore found that Mr Elkington had been given sufficient information about the programme to be able to make an informed decision as to whether or not to participate in the programme.

Ofcom considered therefore that there was no unfairness to Mr and Mrs Elkington in this respect.

- b) The programme examined Mr Elkington and his character in a manner which was unfair to him and his wife.

When considering this head of complaint, Ofcom had due regard to Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

In reaching its decision on whether Mr Elkington was portrayed in a way that resulted in unfairness to him and his wife in the programme as broadcast, Ofcom considered the following points particularised by Mr Elkington in his complaint in order to reach an overall conclusion.

- Mr Lawrence, Mr Elkington's step son, was given free rein to make comments about his character, despite the fact that they had never had a relationship and had not been in contact with each other for many years. Mr Elkington said that he had only met Mr Lawrence three times between March and June 2008.

It is important to note that it is not Ofcom's role to resolve disputes of fact or to determine the veracity or otherwise of one particular view points or opinion over another. Rather, Ofcom's role is to consider whether the programme makers took reasonable steps to satisfy themselves that material facts relating to Mr and Mrs Elkington were not presented, disregarded or omitted in a manner in the programme that was unfair to them.

In relation to the contribution of Mr Elkington's son, Mr Lawrence, Ofcom noted that he was introduced in the programme as being:

*"One person who knows about David Elkington's habit of embellishing the truth is Edward Lawrence, his estranged son from a former relationship. Mr Elkington has had little contact with his son but they have met up over the years..."*

In Ofcom's view, this introduction indicated clearly to viewers that the relationship between Mr Lawrence and Mr Elkington was not, on the face of it, an amicable one and that it was likely that Mr Lawrence's viewpoint in relation to his father was not given from an impartial perspective.

Ofcom then noted what Mr Lawrence had said in the programme about his father:

*“He’s a very good story teller. He said he was studying for a doctorate at Oxford University. He also told me that I was Maori prince of some tribe in New Zealand”.*

In relation to Mr Lawrence’s claims about what Mr Elkington had told him in the past about his qualifications and his family lineage, Ofcom noted that Mr Elkington had told the programme makers in a telephone conversation on 13 November 2013 that:

*“I may have said out of jest, I’ve often turned round and said that you know I come from a titled family. I come from a long line of [misters], I come, you know I’ve said all that sort of stuff...”*

Ofcom noted too that Mr Elkington’s statement in relation to his son’s comments pertaining to being a Maori prince was included in the programme:

*“I am not a descendant of a Maori Prince. However, my family is connected to the Maori tribes of the same name”.*

Having considered the comments made by Mr Lawrence in the programme along with Mr Elkington’s response to those claims that were put to him by the programme makers before the broadcast of the programme, Ofcom considered that no unfairness could arise from the comments made by Mr Lawrence in relation to Mr Elkington’s lineage that Mr Elkington himself accepted he had made. Furthermore, Ofcom considered that the programme makers had summarised Mr Elkington’s response to Mr Lawrence’s claims in the programme and had presented it in a way that fairly reflected his own viewpoint.

Ofcom considered therefore that the broadcaster had taken reasonable care when presenting Mr Lawrence’s comments not to do so in a way that was unfair to Mr and Mrs Elkington.

- The programme portrayed a contract with Bradford on Avon Films as being a bill of debt that Mr Elkington owed to a third party. This was inaccurate and cast a negative view on his character.

Ofcom noted what was said in the programme in relation to this issue:

*“And over the years he’s taken thousands of pounds as investment to make a film based on his theories, a project he says is now on hold”.*

Ofcom noted that at no stage of the programme was the document described as a bill of debt.

Accompanying this commentary in the programme was an image of an agreement of investment (dated 27 February 2007 and signed by Mr Elkington, “as Bradford on Avon Films Co Ltd”) entitled “Investment into the Development of the film 783 Awakening Sound and Associated products” for the sum of £4,000. A copy of this document was provided to Ofcom which noted that one of the clauses in it stated:

*“That the investor will receive an equity share of all net returns from the film and associated product. This equity share will be that proportion of the Film Production Budget represented by £4000”.*

Ofcom understood that the accuracy of the document was not disputed by the parties to the complaint.

Ofcom also noted that in an email dated 20 November 2012, Mr Elkington said in response to a question relating to a number of his film and television projects that the programme makers claimed had failed to materialise that:

“I have an ongoing media project (singular), which cannot be considered ‘a failure’ as it is still very much active, though at present this project...is in hibernation due to present commitments”.

Given the above factors, Ofcom considered that the programme makers had accurately reflected the particulars of the agreement and that an investment of “thousands of pounds” had been agreed to in relation to a film production budget. It also considered that the programme had fairly reflected Mr Elkington’s stance that he considered that the film project was “*on hold*” or, in his own words, “hibernation”.

Ofcom considered therefore that the broadcaster had taken reasonable care when presenting the detail relating to this agreement not to do so in a way that was unfair to Mr and Mrs Elkington.

- The programme wrongly accused Mr Elkington of calling himself “Doctor” or “Professor” when he was not entitled to do so, which was incorrect.

Ofcom noted that the programme did not state that Mr Elkington claimed to be a “professor” or “Doctor”. However, it did question his credentials and it showed an image from a conference website that listed him as “Professor”.

Ofcom noted that the programme makers had given Mr Elkington the opportunity to comment about the use of these titles and his response was summarised in the programme. In particular, Mr Elkington said in an email of 20 November 2012, that he:

“...had to make it clear on several occasions that I was neither Doctor nor Professor Elkington but plain Mr”.

The programme also included the following statement made by Mr Elkington in his response:

“[I have] never claimed to have had any formal qualifications and have been largely self-taught...[I have] always been upfront about this”.

Given the factors above, while the programme did not expressly state that Mr Elkington used the academic titles himself, Ofcom took the view that the programme made the suggestion that he was, at least, content for those titles to be attributed to him by others without correcting the mistake. Ofcom considered that it was clear from the programme also that the programme makers had put this allegation to Mr Elkington, and that he had responded that he had no formal qualifications and that he had to make clear “on several occasions” that he was neither a “Doctor” nor a “professor”, and that this was a mistake made by others which he had to correct. Mr Elkington’s response was summarised in the programme and would have left viewers in no doubt that he maintained that he had never claimed he had any formal

qualifications, and that he had had to make it clear that he was neither “Doctor nor Professor Elkington”.

Ofcom considered therefore that the broadcaster had taken reasonable care when presenting the issue of Mr Elkington’s formal academic qualifications not to do so in a way that was unfair to Mr and Mrs Elkington.

- The programme alleged, wrongly, that Mr Elkington had been involved in a number of failed media projects. Mr Elkington said that he had put the programme makers in contact with some of the “shareholders” in his projects who had confirmed that the projects were “ongoing, not failed”.

Ofcom noted that the programme did not state that Mr Elkington had been involved in any media projects that had “failed”, but had made reference to Mr Elkington having sought investment from people in order to fund certain projects. In particular, Ofcom noted the following extract from the programme:

“Mr Elkington is now planning to release a book on the Codices called ‘Divine Revelation’ and hopes to make a film. In the meantime, he’s using the Codices to raise money to support him in his work. He even made a direct appeal on American radio”.

The programme then included an excerpt from an American radio programme in which Mr Elkington could be heard appealing for investment for further excavation to take place in Jordan. Ofcom noted too that the programme stated that Mr Elkington had received an investment from Princess Elizabeth of Yugoslavia and that she was yet to receive a return on that investment. Ofcom noted that the programme included a statement from Mr Elkington in relation to Princess Elizabeth which said:

“(I) acknowledge a small personal debt owed to (Princess) Elizabeth, which...has never been disputed and will be paid back in full...”

As already considered above, Mr Elkington, when asked by the programme makers about a number of film and television projects they claimed had failed to materialise, he had responded that one media project was “still very much active”, but was in “hibernation” at the current time due to other commitments. From this response, Ofcom took the view that Mr Elkington accepted that this particular project that he was involved in had not yet come to fruition. It considered that it was reasonable, therefore, for the programme to refer to the investment and other projects that Mr Elkington was involved with and it had fairly reflected his position in relation to them.

Ofcom considered therefore that the broadcaster had taken reasonable care when presenting the issue of Mr Elkington’s projects not to do so in a way that was unfair to Mr and Mrs Elkington.

Having taken all of the above factors into account and considered each of the particular points of complaint, Ofcom took the view that, overall, the broadcaster had taken reasonable care in satisfying itself that material facts (as specified in the points above) had not been presented, disregarded or omitted in a way that portrayed Mr and Mrs Elkington unfairly. Ofcom also considered that the broadcaster had presented a summary of Mr Elkington’s statement in response to some of the allegations towards the end of the report, and it considered that Mr Elkington’s point of view and his position were fairly summarised and presented

in a manner that enabled viewers to reach their own conclusions on the issues raised in the report.

Ofcom considered therefore that there was no unfairness to Mr and Mrs Elkington in this respect.

- c) The programme omitted to include the statement made by Professor Saad, former Head of Antiquities of Jordan, to the programme makers in support of Mr and Mrs Elkington's efforts and that they had acted in a "morally upright manner" and had shown "great integrity".

Ofcom recognises that programme makers and broadcasters can legitimately select whether or not to include particular pieces of information or material in a programme. Ultimately, this is an editorial decision for broadcasters to make prior to the broadcast of a programme. However, broadcasters must ensure that material facts are presented fairly. Therefore, Ofcom had regard to Practice 7.9 of the Code when assessing whether material facts, i.e. Professor Saad's statement, was omitted in a way that was unfair to Mr and Mrs Elkington.

Ofcom noted that the programme did not refer to Professor Saad at any stage during the report.

From the complaint made by Mr Elkington, Ofcom noted that he contended that Professor Saad had told the programme makers that Mr and Mrs Elkington had acted in a "morally upright manner" and had shown "great integrity". Ofcom noted from the BBC's statement in response to the complaint that the programme makers had contacted Professor Saad and had recorded their conversation with him. The BBC had said that the programme makers said that at no point in their conversation did Professor Saad say that Mr Elkington had acted in a "morally upright manner" or had shown "great integrity". Instead, the BBC said that Professor Saad had told the programme makers that Mr Elkington was "credible", but also said that he had different areas of interest to Mr Elkington and was considering the codices from a different perspective.

Given the factors detailed above and on the strength of the comments made by the BBC in its statement to Ofcom about what was said by Professor Saad in his conversation with the programme makers about Mr Elkington, Ofcom considered that Professor Saad did not provide an unequivocal endorsement of Mr Elkington or his work on the Codices. On this basis, Ofcom considered that there was no obligation for the programme makers to make reference in the programme to the comments made by Professor Saad in conversation with the programme makers. Ofcom therefore considered that the broadcaster had taken reasonable care in satisfying itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr and Mrs Elkington.

Ofcom noted the comments made by Mr and Mrs Elkington in relation to this head of complaint, namely that the programme makers had misled them about the reasons for omitting Professor Saad's interview comments. Ofcom considered that its Preliminary View had been clear in explaining that, from the material submitted by the BBC, Professor Saad had not provided an unequivocal endorsement of Mr Elkington or his work on the Codices and that there was no obligation on the programme makers to include Professor Saad's comments in the programme. Ofcom considered that Mr and Mrs Elkington's representations did not provide any further material that persuaded it to reconsider and alter its Preliminary View not to uphold this head of complaint.

Ofcom considered therefore that there was no unfairness to Mr and Mrs Elkington in this respect.

- d) Mr and Mrs Elkington were not given an opportunity to respond to the allegations made in the programme.

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

Ofcom first examined the steps taken by the programme makers to provide Mr and Mrs Elkington with an opportunity to respond to the allegations about Mr Elkington that the programme intended to make.

Ofcom noted that the programme makers initially contacted Mr Elkington's public relations representative on 6 November 2012 and that on the same day Mr Elkington spoke with the programme makers directly. This telephone conversation and all subsequent telephone conversations were recorded by the programme makers for note-taking purposes. A copy of the notes was provided to Ofcom. In relation to this particular telephone conversation, Ofcom noted that the programme makers had described the programme as being about "*a piece about the codices... kind of covering the story from the background...*". The following day the programme makers contacted Mr Elkington who told them that he did not want to conduct an interview with the programme makers. On 13 November 2012, Ofcom noted that the programme makers contacted Mr Elkington again and explained that the programme would be looking into "the arguments over whether the codices are authentic" and "the claims that have been made about your involvement and your background...whether your credentials are as good as you say they are, and therefore whether you are the right person to be making these statements".

During this conversation, Mr Elkington said that he would be prepared to be interviewed on condition that he would have sight of the questions to be asked in advance and to have his lawyers present. Ofcom noted that on the same day the programme makers emailed Mr Elkington informing him of the two main areas of the report which were described as:

"The questions raised over the authenticity of the Codices, the claims you have made about them and the funding of your work [and] your own background and credentials, including the various claims made by you over the years, your involvement in a number of failed media projects and the financial complaints arising as a result of those projects and others".

Ofcom noted that Mr Elkington acknowledged receipt of this email on 14 November 2012 and on the following day that the programme makers contacted Mr Elkington again with a view to organising the interview, but that Mr Elkington then declined to be interviewed.

Ofcom noted that in an email dated 16 November 2012, the programme makers sent Mr Elkington a list of points they wanted him to respond to (see head a) in the "Summary of the complaint and the broadcaster's response" section above for the detail of the email). The deadline given to Mr Elkington to reply was 20 November 2012 (which was six days before the programme was broadcast).

Ofcom noted that Mr Elkington did respond on the same day and that his response addressed the particular points raised by the programme makers.

Ofcom noted that further points were put to Mr Elkington by the programme makers on 22 November 2012 (the detail of this email is set out at head a) of the “Summary of the complaint and the broadcaster’s response” above). The programme makers gave Mr Elkington a deadline to respond of 23 November 2012 and Ofcom noted that he provided a detailed response to all of the points raised on the deadline date.

Given the factors set out above, Ofcom considered that the programme makers had given Mr Elkington (and through him, his wife) an appropriate and timely opportunity to respond to the allegations that they intended to make in the programme. Ofcom considered that the programme makers and Mr Elkington had conducted detailed discussions about the programme and Mr Elkington’s potential contribution to it for a period of 20 days before the programme was broadcast. Having examined the email correspondence and the notes of the telephone conversations referred to above, Ofcom was satisfied that Mr Elkington had been able to address all the points raised by the programme makers in advance of transmission and that a summary of his response was reflected in the programme.

Ofcom considered therefore that there was no unfairness to Mr and Mrs Elkington in this respect.

#### Unwarranted infringement of privacy

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

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

- e) Mr Elkington complained that his and his wife’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that the programme makers turned up at Mr and Mrs Elkington’s private address and began to film outside their property. Mr Elkington said that he and his wife were living under “police supervision” owing to the controversial and sensitive nature of the Codices’ discovery and threats having been made. He also said that his landlord had told the programme makers that they did not have permission to film as where they were filming was not a right of way.

In considering whether or not Mr and Mrs Elkington’s privacy was unwarrantably infringed in the making of the programme, Ofcom had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person’s and or organisation’s consent, unless it is warranted. Ofcom also had regard to Practice 8.4 of the Code which states that broadcasters should ensure that images filmed in a public place are not so private that prior consent is required, unless broadcasting without their consent is warranted. It also had regard to Practice 8.9 which states that the means of

obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

In order to establish whether or not Mr and Mrs Elkington's privacy was unwarrantably infringed in this respect, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the filming of his home.

From the BBC's statement in response to the complaint, Ofcom noted that it said that the programme makers did not film any footage of Mr and Mrs Elkington's home. The BBC stated too that the programme makers had been filming "several hundred yards" away from their home and on private property, though that private property did not, it said, belong to Mr and Mrs Elkington, but to their landlord. Ofcom further noted from the BBC's statement that, as soon as the programme makers became aware that they were filming on private property, they moved. In any event, Ofcom understood from the BBC's statement that none of the footage filmed at this location was used in the programme as broadcast.

Ofcom recognised that filming an individual's home may, in some circumstances, give rise to an expectation of privacy. However, in light of the factors set out by the BBC in its statement in response about the circumstances in which the filming had taken place, Ofcom considered that the filming had not captured any information relating to Mr and Mrs Elkington or their home that could be reasonably regarded as being private or of a nature that would attract a degree of privacy in the circumstances. For these reasons, Ofcom considered that Mr and Mrs Elkington did not have a legitimate expectation in connection with the obtaining of material included in the programme.

Having reached this conclusion, Ofcom considered that it was not necessary for it to consider whether any infringement in to Mr and Mrs Elkington's privacy was warranted.

Ofcom concluded therefore that there was no unwarranted infringement of Mr and Mrs Elkington's privacy in connection with the obtaining of material included in the programme as broadcast.

- f) Ofcom next considered Mr and Mrs Elkington's complaint that their privacy was unwarrantably infringed in the programme as broadcast in that the programme disclosed their whereabouts. Mr Elkington said that the police had warned the programme makers that they would be in "breach of the law" if the footage was broadcast, but the programme disregarded that warning.

In assessing this complaint, Ofcom had regard to Practice 8.2 of the Code which states that information which discloses the location of a person's home or family should not be revealed without permission unless it is warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr and Mrs Elkington's privacy was unwarrantably infringed in the programme as broadcast, Ofcom assessed the extent to which they had a legitimate expectation of privacy in relation to the footage broadcast in the programme.

Ofcom noted that footage of Mr and Mrs Elkington's home was not shown in the programme. Neither their address nor any other identifying features relating to their home or its location, were given in the programme apart from a reference to them living in the "*Gloucestershire hills*". Ofcom also took note that the location of Mr and Mrs Elkington's home was already in the public domain. In particular, it noted that Mr and Mrs Elkington had been interviewed and photographed in their home by The Telegraph Online in March 2011 and that their address had been published by local press in June 2011.

Ofcom recognised that the filming and subsequent broadcast of footage of an individual's home may give rise to an expectation of privacy. However, for the reasons set out above, Ofcom considered that, in the circumstances of this case, Mr and Mrs Elkington did not have an expectation of privacy in relation to the information and footage included in the programme as broadcast.

Ofcom noted Mr and Mrs Elkington's representations that the Preliminary View suggested that they had "'no right to privacy' as the discovery [of the Codices] is a matter of public interest". It is clear from Ofcom's decision that the reasons for finding that Mr and Mrs Elkington did not have a legitimate expectation of privacy was that the filming and the subsequent broadcast of the programme had not captured or disclosed any information relating to Mr and Mrs Elkington or their home that could be reasonably regarded as being private or of a nature that would attract a degree of privacy in the circumstances. Ofcom was therefore not persuaded by Mr and Mrs Elkington's representations to alter its Preliminary View not to uphold their complaint of unwarranted infringement of privacy in respect to the obtaining of material included in the programme and in the programme as broadcast.

Having reached this conclusion, Ofcom considered that it was not necessary for it to consider whether any infringement in to Mr and Mrs Elkington's privacy was warranted.

Given all the factors referred to above, Ofcom concluded that Mr and Mrs Elkington did not have a legitimate expectation of privacy in relation to the information relating to their whereabouts broadcast in the programme. Ofcom concluded therefore that there had been no unwarranted infringement of Mr and Mrs Elkington's privacy in the broadcast of the programme.

Having considered all the relevant representations on Ofcom's Preliminary View from both parties, Ofcom considered that nothing raised in Mr and Mrs Elkington's submissions amounted to sufficient grounds for Ofcom to reconsider its position and alter its conclusion set out in its Preliminary View, which was not to uphold their complaint of unjust or unfair treatment and unwarranted infringement of privacy.

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

## Not Upheld

### Complaint by Mrs Tabassum Ahmed

*Dispatches: How Safe is Your Child's Nursery?*, Channel 4, 11 February 2013

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#### Summary

Ofcom has not upheld the complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast made by Mrs Tabassum Ahmed.

This edition of *Dispatches* examined the practice of children's nurseries that have poor Ofsted records "re-registering" with Ofsted under new names. One re-registered nursery featured in the programme was the My World Nursery (formerly named the Little Hippos Nursery). The programme included secretly filmed footage of Mrs Tabassum Ahmed, the current director of the My World Nursery, as she spoke to an undercover reporter posing as a parent who was considering sending his child to the nursery.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts, with regard to the portrayal of Mrs Ahmed in a way that resulted in unfairness to her; and her contribution to the programme was not unfairly edited.
- There was no unwarranted infringement of Mrs Ahmed's privacy in the programme as broadcast because the intrusion into her privacy was warranted by the public interest.

#### Introduction and programme summary

On 11 February 2013, Channel 4 broadcast an edition of its investigative current affairs programme *Dispatches*. This edition, entitled *How Safe is Your Child's Nursery?*, asked whether parents could trust that their child's nursery was safe even though all nurseries are regulated by Ofsted. The programme examined the practice of the "re-registering" of nurseries. This is when a nursery which has previously received a poor Ofsted inspection report(s) and/or where a child has been seriously harmed as a result of an accident sets itself up under a new name. The programme said that these re-registered nurseries were often located in the same building as the old nursery and either had the same manager or a new manager who was closely linked to that person. In these circumstances, the only material difference between the old and the newly re-registered nursery was the name. The programme also said that parents considering sending children to re-registered nurseries would find it difficult to access any history of previous complaints or critical Ofsted reports associated with the nursery prior to its re-registration under a new name.

One of the stories featured in the programme was that of Eshan Ahmed, a child who was severely injured after he fell from the top of a fire escape at Little Hippos Nursery in the Newton area of Birmingham ("Little Hippos"). The programme said that the then owner of Little Hippos, Mr Irshad Ahmed (no relation to Eshan Ahmed), tried to persuade Eshan's mother that the accident had occurred during a fire-drill. However, during the prosecution which followed, the court heard that Mr Irshad Ahmed had

lied. The nursery was subsequently fined £16,000 for breaching health and safety legislation.

The programme explained that after the prosecution the nursery changed its name to "My World". The presenter said: *"There's now no direct link to the accident or history of complaints at Little Hippos. On company records Irshad Ahmed is no longer linked to the nursery"*.

The programme then showed some secretly filmed footage of the My World Nursery ("My World") including images of and comments made by Mrs Tabassum Ahmed.

Commentary: *"When we went undercover the nursery seemed to have turned a corner. A new manager was in place and also a new owner, Tabassum Ahmed."*

Reporter

(undercover): *What about Mr Ahmed the Director, is he...?*

Mrs T Ahmed: *No, we are, we are the one that take over from Mr Ahmed. You know. I'm the one who's take over. I bought this...*

Reporter: *Oh, oh OK, alright.*

Mrs T Ahmed: *I bought this company from Mr Ahmed...It's, it's not called Little Hippos it's called My World Nursery.*

Commentary: *What Mrs Ahmed forgot to mention was the small fact that Mr Ahmed, the man she bought the nursery from, is her husband"*.

The presenter, Mr Morland Sanders, went on to say *"the past and present owners may be married but according to the paperwork the two nurseries are completely unrelated"*. He then discussed the similarity between the websites of the Little Hippos and My World nurseries.

In the broadcast, Mrs Sabrina Ahmed (Eshan's mother) expressed her view that when the ownership of a nursery stays within the same family, Ofsted should not allow the nursery to re-register as if it was a completely new nursery.

At the end of this section of the programme Mr Sanders explained that Mr Irshad Ahmed declined to make a formal response to the claims made in relation to him in the programme. However, he did say: *"the nursery changed its name and is under new ownership and due to the bad publicity suffered by the previous name [it] did not wish to carry this forward. There is nothing sinister about this. It is purely a business decision"*. Mr Ahmed added that he was planning to appeal the health and safety conviction to which he previously pleaded guilty. The presenter also said that Mrs Tabassum Ahmed declined to comment but that she provided the programme with several testimonies from parents who said that they were happy with her nursery.

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

### Unjust or unfair treatment

- a) Mrs Tabassum Ahmed complained that she was treated unjustly or unfairly in the programme as broadcast because she was unfairly portrayed. In particular, Mrs

Ahmed said that her statement<sup>1</sup> was severely edited and that although the undercover reporter asked her if she was a director of the nursery (to which she replied that she was) he did not ask her to whom she was married. She also said that there was no evidence that she had done anything wrong and she had not been found guilty of anything.

Before responding to the specifics of Mrs Ahmed's fairness complaint, Channel 4 set out the history of the Little Hippos nursery. The broadcaster said that the programme, which included secretly filmed footage, investigated the shortcomings of a system in which parents were not able to see a comprehensive history of previous complaints in relation to nurseries to which they were considering sending their children. It said that Little Hippos had a history of complaints upheld by Ofsted in relation to both the quality of care and child welfare. In particular, in November 2010 Ofsted reported that following an unannounced visit, it found that the nursery was "not providing adequate supervision of children at all times and that no recent risk assessments have been undertaken in relation to fire safety and security on the premises." As a result, the nursery was told to "conduct a risk assessment and take all reasonable steps to ensure that hazards to children were 'kept to a minimum'". Channel 4 said that, despite this Ofsted requirement, the nursery continued to use a steep iron fire exit with gaps in the stairs and no side protection as a routine (i.e. non-emergency) way of getting in and out of the nursery.

Channel 4 said that on 31 March 2011, Eshan Ahmed, a three year old boy attending the nursery, fell down the fire escape and was left in a coma and that on the day of the accident Mr Irshad Ahmed (the director of Little Hippos) told Ms Sabrina Ahmed (Eshan Ahmed's mother) that the child had fallen during a fire drill. The broadcaster said that the subsequent health and safety trial found this to be a lie; that there was no fire drill; and, in fact, the nursery had been using the fire escape as an exit which was unsafe. The trial also found that Mr Ahmed had asked staff from the nursery to lie (which one of three staff members subsequently did). Channel 4 also said that Mr Ahmed was convicted of offences under the Health and Safety at Work Act and was fined £20,000<sup>2</sup>. The judge condemned this as an "accident waiting to happen" and the court heard how the attempted cover-up had been "utterly cynical".

The broadcaster said that since the accident there had been two changes to the company which owned Little Hippos. Just before the case came to trial the ownership of the holding company for the nursery was changed from Little Hippos Multicultural Nursery and Day Care Centre Limited to Little Hippos Newton Limited; and Mr Irshad Ahmed resigned his directorship. (It added that Mr Ahmed's business partner (from another business) appeared to be the owner of the company.) Channel 4 said that this second change meant that when the nursery re-registered, its failings were no longer immediately apparent on the Ofsted website.

Channel 4 also said that subsequently the company which ran Little Hippos had become part of My World Nurseries and that on its website My World Nurseries stated that it had taken over Little Hippos and brought a "fresh new approach to operations". It added that Mr Irshad Ahmed did not appear in any of the

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<sup>1</sup> Ofcom understands Mrs Ahmed's reference to her "statement" to relate to the secretly filmed footage of her speaking to the undercover reporter.

<sup>2</sup> Ofcom observed that the programme claimed that the fine was £16,000 rather than £20,000.

documents of incorporation for My World Nurseries lodged with Companies House but his wife, the complainant Mrs Tabassum Ahmed, was one of the directors. The broadcaster said that the notes of the programme maker who secretly filmed inside the nursery (while posing as a parent interested in sending his daughter to the nursery) stated that staff had confirmed that Mr Irshad Ahmed was the owner. Channel 4 also said that, although not named on the nursery's website, Mr Ahmed was named as the person to contact in job advertisements for the nursery and the website was registered in his name.

Turning to the particulars of Mrs Tabassum Ahmed's complaint of unfair treatment, Channel 4 acknowledged that it had secretly filmed Mrs Ahmed and noted that it had provided a copy of the unedited recording (including the footage of Mrs Ahmed and a transcript of this) to Ofcom. It said that this unedited footage showed that Mrs Ahmed was specifically asked about Mr Ahmed and stated that *"no, we are the one that take over from Mr Ahmed. But it's not called Little Hippos, it's called My World Nursery but we are the one with the new director so yeah. It is a good experience."* The undercover reporter then explained that he was slightly "confused" before Mrs Ahmed quickly interjected to say it was *"My World now [and] Little Hippos has been finished"*. The broadcaster said that the section of Mrs Ahmed's contribution which was included in the programme closely represented her position as set out in the unedited footage.

Channel 4 said that, following filming, the producers of the programme sent Mrs Ahmed a detailed letter which explained what the programme was investigating and described the programme in general and the particular segment in which she would feature. At the end of the letter the producers asked her for a specific response to and explanation of the following:

- Why the nursery changed its name – and especially if it was to distance itself from previous criticism from Ofsted and the serious accident involving Eshan Ahmed;
- Why, if the nursery had had a genuine change of ownership, it was using testimonials on its website which were granted to the predecessor company; and
- Why Mrs Ahmed was not open about the fact that she had taken over from her husband as the director of My World Nursery.

In response Mrs Ahmed said that she had not hidden the fact that she was Mr Ahmed's wife but nor was she obliged to provide details of their relationship. She also said that she had registered the company as an individual and that she should not be included in the programme. Following this response, the programme makers asked Mrs Ahmed if she wanted to provide a formal statement to be considered for inclusion in the programme. Mrs Ahmed's response to this was to send letters of endorsement from parents whose children attend the nursery. The commentary in the programme stated that Mrs Ahmed declined to comment but instead provided testimonies from parents who were happy with the nursery.

Channel 4 argued that, given the above, it strongly disagreed with Mrs Ahmed's contention that her "statement" (i.e. the secretly filmed footage of her comments) was severely edited. It said that the section of Mrs Ahmed included in the

programme was a fair and accurate reflection of the unedited footage and communication between the programme makers and Mrs Ahmed.

It also argued that the programme did not suggest that Mrs Ahmed had “done anything wrong” or that she had been “found guilty of anything”. However, it did question Mrs Ahmed’s judgement in failing to mention who her husband was when she was engaged in a conversation with a prospective parent. While Mrs Ahmed was not asked explicitly who her husband was (because doing so would have been incongruous and compromised the undercover reporter) she was, as set out above, asked about Mr Ahmed and Little Hippos.

Channel 4 said that it was vital for parents thinking of sending their children to My World to know about the familial connection between the director of Little Hippos, where serious incidents had previously taken place (including but not limited to Eshan Ahmed’s critical accident) and whose management had been severely criticised by the judge at the health and safety trial, and the current director of the “new” nursery. It added that although the programme did not suggest that there was any mismanagement or incompetence under Mrs Ahmed’s ownership, this familial connection should have been brought to the attention of prospective parents so that they could decide if they felt comfortable sending their children to that nursery. However, the connection was not evident from the “new” website or available from Ofsted’s records, particularly when, as at the time of filming, My World was not registered with Ofsted. Channel 4 said that although Mrs Ahmed maintained that My World was a “new company” it still continued to trade on the past accolades of Little Hippos. It also said that the almost identical appearance of the two websites coupled with the lack of information available about the company structure and history was likely to have been confusing for many parents. Channel 4 argued that Mrs Ahmed should have been more transparent about the history of Little Hippos and the fact that she had taken over the company from her husband and thereby apprised parents of important facts about the nursery so that they could make informed decisions in relation to the provision of care for their children.

#### Unwarranted infringement of privacy

- b) Mrs Tabassum Ahmed complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her (which was filmed secretly) was shown in the programme without justification. Mrs Ahmed acknowledged that she had taken the nursery over from her husband but said that this information had not been hidden from anyone. In addition, Mrs Ahmed questioned why her face was included in the programme when the faces of people from the other nursery featured were not. Mrs Ahmed suggested that it might have been because she is of Asian origin while the people running the other nurseries were not.

In response to this complaint, Channel 4 said that before deciding to broadcast Mrs Ahmed’s contribution to the programme (which was filmed secretly), it carefully considered whether it was in the public interest to show the contribution and specifically whether Mrs Ahmed should have been identified. It said that a number of factors were taken into account in determining this matter, many of which are referred to in the response to head a) above. In particular, both Channel 4 and the programme makers concluded that there was a clear public interest in illustrating the difficulty for prospective parents in finding out about an establishment’s history. The broadcaster said that Little Hippos/My World represented a clear example of this issue. It was a nursery with a long history of

critical inspection reports, where an avoidable accident which left a child fighting for his life had occurred, and, where, in the broadcaster's view, the director (Mrs Ahmed) had a duty to be transparent about the history of the nursery's ownership and her familial connection with the previous director with parents who were considering sending their children to the nursery.

Channel 4 said that both it and the programme makers vehemently refuted the suggestion that the decision not to obscure Mrs Ahmed's face in the programme was in any way racially motivated. It said that to tell the story fairly and accurately, the programme makers had to be clear about which nursery they were featuring and added that the decision to obscure the owner of another nursery was based on proportionality. Specifically, in three of the case studies featured in the programme, including Little Hippos, a child had been injured or killed. In the fourth nursery featured, the failings had not resulted in any injury. Therefore, it was decided that on balance it would not be proportionate to identify this nursery alongside other establishments where children had been injured.

Channel 4 said the interference into Mrs Ahmed's privacy through the inclusion of secretly filmed footage of her in the programme was proportionate and that, for the reasons set out above, the broadcast of this footage served the public interest. It argued that these considerations outweighed any expectation of privacy in the circumstances and therefore the infringement of Mrs Ahmed's privacy in the broadcast of the programme was clearly warranted.

## **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and the unedited footage recorded secretly at the nursery and a transcript of this footage. Ofcom provided the parties with the opportunity to make representations on its Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

- a) Ofcom first considered Mrs Tabassum Ahmed's complaint that she was unfairly portrayed. In particular, Mrs Ahmed said that the footage of her was severely edited and that although the undercover reporter asked her if she was a director

of the nursery (to which she replied that she was) he did not ask her to whom she was married. She also said that there was no evidence that she had done anything wrong and she had not been found guilty of anything.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code which provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation, and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute. It also had regard to Practice 7.6 which states that when a programme is edited, contributions should be represented fairly.

As noted above the programme considered the issue of nursery safety and in particular the practice of the re-registering of nurseries which have received a poor Ofsted report(s) and/or have histories of serious accidents.

In assessing Mrs Ahmed's complaint that she was unfairly portrayed Ofcom first considered what, if any, claims were made about her and the nursery she operated in the programme.

The relevant section of the programme included several claims of wrongdoing and incompetence with regard to the way in which the nursery operated when it traded under the name Little Hippos and on the part of its then director Mr Irshad Ahmed. In particular, the programme said that, following a serious accident, in which a child attending the nursery (Eshan Ahmed) had fallen from the top of a fire escape (and thereby severely fractured his skull) Mr Ahmed had lied to the child's mother (Mrs Sabrina Ahmed) to try to hide the nursery's negligence in not having previously carried out a risk assessment at the nursery. The programme also said that the nursery had been required to do this risk assessment by Ofsted after the regulator had found 17 breaches of its standards at Little Hippos. In addition, the programme said that following the accident a court had found that the nursery had breached health and safety legislation and fined it £16,000.

Ofcom considered that there was a reasonable basis for the inclusion of these claims in the programme, namely: Ofsted reports about Little Hippos, the report of the court hearing; and the findings against the nursery/Mr Ahmed and the testimony of Mrs Sabrina Ahmed. In addition, it noted that the programme makers gave Mr Ahmed an opportunity to respond to the claims made about him and the programme informed viewers that although Mr Ahmed did not wish to provide a formal statement in response to these claims, he had said that the nursery was under new ownership and that the decision to change its name was due to the bad publicity and there was nothing sinister about it.

Turning to Mrs Ahmed's complaint, Ofcom noted that the programme did not include any claims of incompetence on the part of the nursery since it had been operating under new ownership and a new name (i.e. during the time Mrs Tabassum Ahmed had been the director of the nursery and it had traded under the name My World). Indeed, having explained that the nursery had changed its name and that "*on company records, Irshad Ahmed is no longer linked to the company*" the presenter of the report said: "*When we went undercover the nursery seemed to have turned a corner, a new manager was in place and also a new owner Tabassum Ahmed*".

There followed an exchange of comments between Mrs Tabassum Ahmed and the undercover reporter:

Reporter

(undercover): *“What about Mr Ahmed the Director, is he...?”*

Mrs T Ahmed: *No, we are, we are the one that take over from Mr Ahmed. You know. I’m the one who’s take over. I bought this...*

Reporter: *Oh, oh OK, alright.*

Mrs T Ahmed: *I bought this company from Mr Ahmed...It’s, it’s not called Little Hippos it’s called My World Nursery”.*

The presenter then said that Mrs Ahmed *“forgot to mention”* to the undercover reporter - whom she believed to be a parent who was considering sending his child to the nursery - *“the small fact that Mr Ahmed, the man she bought the nursery from, is her husband”*.

He went on to note the *“striking similarities”* between the websites of Little Hippos and My World and the fact that according to its website My World claimed to have received a food hygiene rating of five and three other awards as well as an endorsement from a parent *“for providing an A star private nursery”* despite the fact that it had only been operating for a week. Subsequently, Ms Marion Dowling, who was described in the programme as a childcare expert, was shown saying *“I’m afraid that they [i.e. My World] want it both ways. They want the unfortunate history erased and they want comments such as this [i.e. positive comments], you know, kept”*.

In addition, Ofcom observed that prior to this section of the programme (which included not only secretly filmed footage of an undercover reporter visiting My World but also of a different undercover reporter visiting another nursery which had changed its name after receiving critical assessments from Ofsted) the presenter said: *“After the break we go undercover to find out if nurseries will tell the truth about previous complaints”*. It also noted that the programme made it clear that in Mrs Sabrina Ahmed’s opinion, parents with children at, or thinking of sending their children to, My World had a right to know about the accident that had occurred at the nursery when it was under Mr Ahmed’s direction and that in this type of circumstance it should not be possible to *“pass the nursery on”* to another member of the same family.

Taking account of all these observations Ofcom concluded that the programme had implied that, as the director of My World, Mrs Ahmed had:

- deliberately omitted to mention her close family connection to Mr Irshad Ahmed to someone whom she believed to be a parent thinking of sending his child to the nursery. This was because knowledge of the connection may have a detrimental impact on that person’s impression of the nursery; and
- sought to use the positive aspects of the history of the nursery when it traded under the name Little Hippos to the advantage of the nursery under its new name (My World) while at the same time omitting any negative aspects of this history.

Ofcom observed that in her complaint Mrs Ahmed said that there was no evidence that she had done anything wrong and she had not been found guilty of anything. It noted that the programme had not said that Mrs Ahmed was guilty of anything. However, given the inclusion of the claims above, Ofcom did consider that the programme had indicated that Mrs Ahmed had deliberately misled parents thinking of sending their children to the nursery. It therefore went on to consider the source of the information on which these claims were based.

Ofcom noted that the above claims were based on information which was publically available (notably records at Companies House and the websites of Little Hippos and My World) as well as the observations of the undercover reporter when he visited the nursery, the secretly filmed footage he recorded during that visit, and, in particular, the information which Mrs Ahmed chose to volunteer to the undercover reporter when he questioned her about Mr Ahmed during this visit. Ofcom observed that in her complaint Mrs Ahmed said that the undercover reporter had not specifically asked her to whom she was married and that Channel 4 responded to this by saying that although Mrs Ahmed was not asked explicitly who her husband was (because doing so would have been incongruous and compromised the undercover reporter) she was, as set out above, asked about Mr Ahmed and Little Hippos.

In Ofcom's opinion, given that Mrs Ahmed was clearly aware of the accident involving Eshan Ahmed, the conviction which followed and of her husband's previous role at the nursery, it would not have been unreasonable for her to have volunteered her close familial connection to Mr Ahmed in response to a question about him and the nursery's history, without specifically having been asked if she was married to him. Ofcom also considered that given that Channel 4 was investigating whether or not parents thinking of using the nursery would be told about its history and, in particular, the familial connection between Mrs Tabassum Ahmed and the former director of the nursery, Mr Irshad Ahmed, it was reasonable for the undercover reporter not to have asked Mrs Ahmed directly about her relationship to Mr Ahmed as this was not the type of question which a parent seeking information about a nursery would typically ask.

Given the evidence set out above, Ofcom concluded that there was a reasonable basis for the inclusion of the claims about Mrs Ahmed in the programme.

However, notwithstanding this conclusion, Ofcom also considered that the claims made against Mrs Ahmed were serious in nature. In effect the programme said that she had misled the undercover reporter about the history of the nursery she operated and her connection to Little Hippos through her husband (albeit through the omission of information rather than making an untrue statement). This was to prevent parents from finding out about the accident which had occurred at the nursery when it was under the directorship of her husband. The programme suggested that the My World website deliberately created a misleading impression in that it claimed accolades or positive feedback to which it was not entitled while not acknowledging the negative history of the nursery when it was called Little Hippos.

Ofcom considered that these claims amounted to an allegation of wrongdoing on Mrs Ahmed's part and noted that, as set out in Practice 7.11 of the Code, if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. However, Ofcom also noted that Mrs Ahmed did not

specially complain that she was not given an appropriate opportunity to respond to the claims made about her in the programme.

Nevertheless, Ofcom observed that the programme makers wrote separately to both Mr and Mrs Ahmed to set out the nature of the programme and what it would say about Mr Ahmed, Little Hippos and My World. The letters also explained that an undercover reporter had secretly filmed footage at the nursery “in order to explore how frank the nursery would be about previous failings to prospective parents” and asked the recipients to comment on the programme makers’ observations and explain several points including:

- Why the nursery changed its name (and if this was to distance itself from previous criticism by Ofsted and the serious accident);
- Why, if the nursery had had a genuine change in ownership, it was using testimonials on its website which were granted to its predecessor; and
- Why Mrs Ahmed was not open about the fact that she had taken over from her husband as director of the nursery.

Ofcom observed that, as noted above, the programme made it clear that although Mrs Ahmed chose not to provide a formal response to the claims being made about her and the change of ownership at the nursery she did provide a number of testimonies from parents who were happy with the nursery.

Mrs Ahmed also complained the footage of her (which was secretly filmed) was severely edited. With regard to this element of the complaint, it is important to note that the editing of a programme is an editorial matter for a broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation. That said, it was not necessary for Channel 4 to have restated or reflected every comment Mrs Ahmed made in order to avoid unfairness to her.

Having assessed the unedited recording and transcript of the secretly recorded footage of Mrs Ahmed, Ofcom noted that during this footage she:

- was introduced to the undercover reporter and talked to him about how “cute” his daughter was;
- spoke to the undercover reporter about her role as director of My World and its partnerships with six other nurseries run by family members or good friends;
- explained to the undercover reporter that she had bought the nursery from Mr Ahmed, that she was its sole director and that it was no longer called little Hippos but was instead My World; and
- said that they were waiting for new registration from Ofsted and encouraged feedback from parents.

Later on Mrs Ahmed also discussed the provision of halal food in the nursery and observed that the nursery had a managing director who was on one of its other sites on that day.

Ofcom concluded that the secretly filmed footage of Mrs Ahmed in the nursery was not unfairly edited. This was because the report included the key comments which she made to the undercover reporter (namely, that she had bought the nursery from Mr Ahmed and taken over its running and that it was no longer called Little Hippos but was instead called My World), and because the report neither included nor omitted footage which was likely to have materially affected viewers' opinions of Mrs Ahmed in a way that was unfair to her.

Taking into account all the factors set out above, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the portrayal of Mrs Ahmed in a way that resulted in unfairness to her; and her contribution to the programme was not unfairly edited.

Therefore, Ofcom concluded that Mrs Ahmed was not treated unfairly in the programme as broadcast in these respects.

#### Unwarranted infringement of privacy

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

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

- b) Ofcom considered Mrs Ahmed's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her (which was filmed secretly) was shown in the programme without justification. Mrs Ahmed acknowledged that she had taken the nursery over from her husband but said that this information had not been hidden from anyone. In addition, Mrs Ahmed questioned why her face was included in the programme when the faces of people from the other nursery featured were not. Mrs Ahmed suggested that it might have been because she is of Asian origin while the people running the other nurseries were not.

In considering this head of complaint, Ofcom 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. Ofcom also had regard to Practice 8.14 of the Code which states that material gained by surreptitious filming or recording should only be broadcast when it is warranted.

In order to establish whether or not Mrs Ahmed's privacy was unwarrantably infringed in this respect, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in respect of the broadcast of the secretly filmed footage of her.

Ofcom observed that Mrs Ahmed was filmed secretly in her place of work which was a children's nursery. Some of the filming took place in the office where Mrs Ahmed worked alongside at least one of the nursery's management team. While

this was not a place to which the general public had unfettered access, clearly individuals considering using the nursery were invited into this office.

The footage of Mrs Ahmed which was shown in the programme included no information about her which did not relate to her directorship of the nursery. As noted above it simply showed her welcoming the reporter who was posing as a prospective client and talking about how she had bought the nursery from Mr Ahmed and changed its name from Little Hippos to My World. In light of these observations and given that Mrs Ahmed advertised her business via its website and was willing to discuss how the nursery operated to a person posing as a prospective client, Ofcom considered that none of this footage included information which Mrs Ahmed would not be willing to impart to members of the public seeking the nursery's services.

Nonetheless, having taken the factors noted above into account, Ofcom concluded that Mrs Ahmed had a legitimate expectation of privacy with regard to the broadcast footage of part of her conversation with the undercover reporter and that her privacy had been infringed as a result of the broadcast of this material. This was because the conversation took place within an office to which the general public did not have unfettered access; Mrs Ahmed took part in the conversation on the basis that it was a private exchange of information between her as the director of the nursery and a parent; and the filming of the conversation took place without Mrs Ahmed's knowledge or consent (i.e. surreptitiously). However, this expectation was limited by the fact that some members of the public (notably parents of children attending the nursery or trades people providing services to the nursery) would regularly be invited to the office in question and no information of a personal or sensitive nature to Mrs Ahmed was included in this footage. Ofcom also observed that Mrs Ahmed did not give consent for the broadcast of the material in question (i.e. the recording of part of her conversation with the undercover reporter).

Ofcom next went on to consider whether the infringement of Mrs Ahmed's legitimate expectation of privacy in this regard was warranted. In this context "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case it is warranted.

To do this, Ofcom sought to balance the broadcaster's right to freedom of expression, the public interest which Channel 4 said was served through the inclusion of this footage in the programme and the audience's right to receive information and ideas without unnecessary interference, with Mrs Ahmed's right to privacy<sup>3</sup>. In this respect, Ofcom considered whether, in the circumstances, there was a sufficient public interest to justify the infringement of Mrs Ahmed's legitimate expectation of privacy.

Ofcom noted Channel 4's position that there was a strong public interest in illustrating the difficulty for prospective parents in finding out about a nursery's history. In particular, it observed that the broadcaster had argued that Little Hippos/My World represented a clear example of this issue. It was a nursery with a long history of critical inspection reports, where an avoidable accident which left a child fighting for his life had occurred and where, in the broadcaster's view, the

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<sup>3</sup> Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

director (Mrs Ahmed) had a duty to be transparent with parents who were considering sending their children to the nursery about the history of the nursery's ownership and her familial connection with the previous director. It also recognised that within the complaint Mrs Ahmed said that the information that she had taken over the nursery from her husband had not been hidden from anyone.

In Ofcom's view, the inclusion in the report of a direct illustration of a person trying and failing to elicit pertinent and full information about the history of the nursery in question (notably the close connection between the current director and the former director of the nursery, the latter of whom was in charge during a period when the nursery had received critical Ofsted inspections and when a serious accident had occurred) served the public interest. This was because this illustration helped materially to impress upon viewers the difficulty facing parents in these circumstances (i.e. those seeking to evaluate a nursery which has re-registered under a new name following either critical Ofsted inspection reports and/or serious accidents).

Ofcom therefore concluded that, on balance, the broadcaster's right to freedom of expression and the public interest in broadcasting this material in these particular circumstances outweighed Mrs Ahmed's legitimate expectation of privacy in secretly filmed footage which was broadcast without her consent.

Ofcom recognised that within her complaint Mrs Ahmed questioned why her face was included in the programme when the faces of people from the other nurseries featured were not and that she suggested that it might have been because she is of Asian origin while the people running the other nurseries were not. However, Ofcom noted that Channel 4 vehemently refuted this suggestion and that the complainant had not provided any evidence to support the claim that her face had not been obscured because she was of Asian origin.

Ofcom also observed that in its response to this aspect of the complaint the broadcaster said that in three of the four case studies featured in the programme a child had been injured or killed (one of these being Little Hippos – now My World) and the nurseries concerned (and/or managers thereof) had been identified in the programme. Only in the fourth nursery featured, where the failings had not resulted in any injury, had the nursery not been identified. Ofcom considered that it was justified for the programme to have included this footage of Mrs Ahmed without obscuring her face.

Having taken all the factors above into account, Ofcom considered that there was no unwarranted infringement of Mrs Ahmed's privacy in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mrs Ahmed's complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by Gordons LLP on behalf of The Factory Shop Limited

*Secrets of the Shoplifters, Channel 4, 16 April 2013*

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#### Summary

Ofcom has not upheld The Factory Shop Limited's ("The Factory Shop") complaint of unjust or unfair treatment in the programme as broadcast.

The programme followed a team of undercover police officers dealing with shoplifters in the lead up to Christmas. The programme included an interview with Mr Gavin Platts, a shoplifter, who discussed his shoplifting activities and revealed that he had previously shoplifted at The Factory Shop.

Gordons LLP complained to Ofcom on behalf of The Factory Shop that it had been treated unjustly or unfairly in the programme as broadcast.

Ofcom found that:

- The broadcaster had taken reasonable care to ensure that the programme did not present Mr Platts' comments in a way that resulted in unfairness to The Factory Shop.
- Mr Platts' comments did not amount to significant allegations, or allegations of wrongdoing or incompetence, about The Factory Shop. Therefore, it was not incumbent upon the programme makers or the broadcaster to have offered it an appropriate and timely opportunity to respond to Mr Platts' comments or to have been informed prior to broadcast that it would be featured in the programme.

In this case, the allegations made by Mr Platts did not amount to significant allegations about The Factory Shop. It is important for broadcasters to note however that when significant allegations are made, either by a contributor to the programme or by the programme itself, the broadcaster must ensure that the person concerned should normally be given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

#### Introduction and programme summary

On 16 April 2013, Channel 4 broadcast an edition of *Secrets of the Shoplifters*, a programme which followed a team of undercover police officers in South Yorkshire dealing with shoplifters and pickpockets in the lead up to Christmas. The programme explained that the police officers were targeting their "*top ten shoplifters in one concentrated blitz*".

One of the shoplifters targeted was Mr Gavin Platts, also known as "*the Grinch*". Interview footage of Mr Platts was included in the programme in which he explained how easy he found shoplifting. The exterior of The Factory Shop could be seen and a sign with the shop name "The Original Factory Shop" was visible for approximately three seconds, although the name was partially obscured by a van parked in the street. Mr Platts then stated:

*“That shop, I’ve hammered. Clothes and kids’ toys and you know like order for Christmas an’ that. I used to go in there and come out with me coat full to the brim, blatant like that, the alarms going off and everything and they just leave you to it and let you walk off”.*

Later in the programme, Mr Platts was shown being arrested by police officers and being told that he would be interviewed and charged with shoplifting offences.

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

Gordons LLP complained that The Factory Shop was treated unjustly or unfairly in the programme as broadcast because:

- a) The programme gave the incorrect impression that The Factory Shop was vulnerable to shoplifters, poorly run and allowed shoplifting activity to go unchecked, thereby damaging The Factory Shop’s reputation.

Before addressing the specific heads of complaint, Channel 4 said that the programme dealt with a serious issue of public interest in highlighting the extent of shoplifting in the UK. Channel 4 also said that by following the shoplifters and the police officers, the programme showed how difficult it was for the police and the shops to catch the professional shoplifters who had become adept at evading detection or arrest.

In response to the complaint that the programme gave the incorrect impression that The Factory Shop was vulnerable, Channel 4 said that Mr Platts’ comments during his interview were his own opinions and descriptions of his experience of shoplifting from The Factory Shop. Channel 4 stated that Mr Platts’ comment about The Factory Shop’s alarm system made the audience aware that it had security systems in place and that, in spite of this, Mr Platts claimed to have shoplifted from the shop. It said that these comments were the boasts of a prolific shoplifter who stole to order and made a living from shoplifting. Channel 4 said that viewers would accept that there was a certain element of bravado, bragging and exaggeration in Mr Platts’ comments about his shoplifting abilities and experiences. Channel 4 argued too that it would be clear to viewers that any retail shop was vulnerable to being targeted for shoplifting by Mr Platts and other career shoplifters. It went on to say that the audience would understand that Mr Platts was not a chance shoplifter, but an expert and frequent shoplifter who unashamedly stole from shops and was not deterred by the security measures that were in place in those shops.

Further to this, Channel 4 said that the programme did not create an incorrect and unfair impression of The Factory Shop because, at the time of filming, the police had informed the programme makers that The Factory Shop was one of a few shops known to them to be targeted by shoplifters. It said the police also confirmed to the programme makers that The Factory Shop had, at the time of filming, poor security with only a couple of cameras of poor quality and coverage and that, to their knowledge, there were no security personnel. Channel 4 said that any impression that viewers may have formed as to the vulnerability of The Factory Shop to shoplifting by professional shoplifters and the adequacy of its security would have been accurate and therefore there is no inherent unfairness to The Factory Shop in the programme.

- b) The Factory Shop was not informed that it would be featured in the programme, nor given the opportunity to respond to the assertions made in the programme about the shoplifting activities of Mr Platts.

Channel 4 said that the comments made by Mr Platts did not cast negative aspersions on The Factory Shop. Channel 4 explained that all the shops featured in the programme, including The Factory Shop, were portrayed as victims of crime. It also said that Mr Platts' comments were his own opinions of his shoplifting activities and not those of the programme itself. For these reasons, Channel 4 considered the allegations made by The Factory Shop did not necessitate a right to reply.

## Decision

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

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

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

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

- a) Ofcom first considered the complaint that the programme gave the incorrect impression that The Factory Shop was vulnerable to shoplifters, poorly run and allowed shoplifting activity to go unchecked, thereby damaging The Factory Shop's reputation.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom viewed the programme as broadcast and noted the comments made by Mr Platts about shoplifting from The Factory Shop. Ofcom took particular notice of Mr Platts' comment:

*"That shop, I've hammered. Clothes and kids' toys and you know like order for Christmas an' that. I used to go in there and come out with me*

*coat full to the brim, blatant like that, the alarms going off and everything and they just leave you to it and let you walk off”.*

With regard to Mr Platts’ contribution, it is important to note that it is not Ofcom’s role to establish whether the substance of Mr Platts’ comments were correct or not, but to determine whether in broadcasting his comments, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to The Factory Shop. In doing so, Ofcom considered the context of Mr Platts’ comments as expressed in the programme and whether the programme’s presentation of his opinion resulted in unfairness to the company.

Ofcom noted that Mr Platts was introduced to the programme as “*Gavin the Grinch*” and a “*prolific shoplifter*” and it took the view that the audience would have understood that the purpose of his contribution was to express his outlook on shoplifting based on his experience as a “*prolific shoplifter*”. Based upon Mr Platts’ experience of shoplifting, which was clearly signposted to viewers by the programme’s introduction of him, Ofcom considered that it was legitimate for the programme to include Mr Platts’ comments. It noted too that the purpose of the programme was to provide an insight into the work of the undercover retail police in South Yorkshire as they attempted to catch the top ten most prolific shoplifters before Christmas, and Mr Platts was contributing to the programme because he was one of the shoplifters on this list.

In these circumstances, Ofcom went on to consider whether or not the presentation of Mr Platts’ comments resulted in any unfairness to The Factory Shop. Ofcom again noted the manner in which Mr Platts was introduced in the programme (see paragraph above) and that he was shown voicing his own opinion as an experienced shoplifter who claimed to have stolen items from The Factory Shop. Ofcom noted too that within this part of the programme in which Mr Platts talked about how he carried out his shoplifting activities, CCTV footage of him shoplifting was also shown and it was explained that he was on “*the top ten list*” of most prolific shoplifters in the area.

While Ofcom recognised that Mr Platts’ comments that the shop “*just leave you to it and let you walk off*” had the potential to imply that its security was lacking, it assessed that viewers would have been likely to have taken Mr Platts’ comments to be exaggerated and would have seen the shop as a victim, rather than being in some way responsible for Mr Platts’ recidivist criminality. In this context, Ofcom considered it was relevant to include Mr Platts’ comments about The Factory Shop because they emphasised the vulnerability of shops to shoplifters regardless of the security measures they have in place.

Ofcom considered that Mr Platts was entitled to express his views about his experience of shoplifting, which included his claim to have stolen items from The Factory Shop which he said “*leave you to it*”, and for the broadcaster to include them in the programme.

Ofcom also considered the other steps taken by Channel 4 to ensure the facts were presented fairly. Channel 4 had been told by the police at the time of filming that the footage from the CCTV cameras in The Factory Shop was poor in quality and that it did not employ security guards. Ofcom acknowledged that this information was not included in the programme as broadcast, but it considered that this demonstrated that the programme makers had gathered information from another source, i.e. the police, that corroborated to some extent the comments made by Mr Platts about the shop.

Taking all the factors above into account, Ofcom acknowledged that the context in which Mr Platts' comments were made and the manner in which they were presented was such that viewers would have understood them to be his personal opinions based on his experience and were not an authoritative critique of the security measures employed by The Factory Shop. For this reason, Ofcom took the view that it was unlikely that Mr Platts' comments would have materially and adversely affected viewers' perceptions of The Factory Shop. In these circumstances, Ofcom considered that the broadcasters had taken reasonable care to ensure that the programme did not present Mr Platts' comments in a way that resulted in unfairness to The Factory Shop.

- b) Ofcom then considered the complaint that The Factory Shop was not informed that it would be featured in the programme, nor given the opportunity to respond to the assertions made in the programme about the shoplifting activities of the contributor Mr Gavin Platts.

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

Again, Ofcom noted Mr Platts' comments in relation to stealing from The Factory Shop (see head a) above) and it considered whether the nature of his comments amounted to significant allegations that would place a requirement on the broadcaster to give The Factory Shop an opportunity to respond.

Ofcom noted Channel 4's submission that "Mr Platts' comments were his own opinions of his shoplifting activities and not those of the programme itself" and that it was for "these reasons [that] Channel 4 considered the allegations made by The Factory Shop did not necessitate a right to reply". Ofcom appreciated that a contributor is entitled to present his or her own opinions in a programme. However, if those opinions amount to allegations of wrongdoing, incompetence or other significant allegations about an individual or organisation, the broadcaster must ensure that that the individual or organisation concerned should normally be given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner. The important point is that if significant allegations against an individual or organisation are made (whether by a contributor to a programme or by the programme itself), the right of reply should normally be offered.

As in head a) above, Ofcom considered that the comments made by Mr Platts were expressed as his own opinions and were not presented as an authoritative critique of The Factory Shop or the security measures it employed. Given that Ofcom did not consider that Mr Platts' comments amounted to significant allegations, or allegations of wrongdoing or incompetence, about The Factory Shop, it considered that it was not incumbent upon the programme makers or the broadcaster to have offered it an appropriate and timely opportunity to respond to Mr Platts' comments or to have been informed prior to broadcast that it would be featured in the programme.

**Accordingly, Ofcom has not upheld The Factory Shop's complaint of unjust or unfair treatment in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 9 September 2013

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Bavaria Beer's sponsorship of The Job Lot	ITV1	13/05/2013	Sponsorship credits

## Complaints Assessed, Not Investigated

### Between 27 August and 9 September 2013

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
10 Things I Hate About You	Channel 4	01/09/2013	Scheduling	1
118 118's sponsorship of ITV Movies	ITV4	29/08/2013	Harm	1
15 Minute Drama: How to Have a Perfect Marriage	BBC Radio 4	13/08/2013	Sexual material	1
20th Century Battlefields	BBC 4	20/08/2013	Generally accepted standards	1
4OD promotion	Channel 4	22/08/2013	Generally accepted standards	1
4OD promotion	Channel 4	30/08/2013	Generally accepted standards	1
4OD promotion	Film 4	25/08/2013	Generally accepted standards	2
5 Live Breakfast	BBC Radio 5 Live	09/09/2013	Generally accepted standards	1
8 Out of 10 Cats	E4	04/09/2013	Generally accepted standards	1
8 Out of 10 Cats	E4	05/09/2013	Generally accepted standards	1
9/11: 102 Minutes That Changed America	Channel 4	31/08/2013	Advertising scheduling	1
9/11: 102 Minutes That Changed America	Channel 4	31/08/2013	Outside of remit / other	1
9/11: 102 Minutes That Changed America	Channel 4	31/08/2013	Scheduling	1
Ade Adepitan: Journey of My Lifetime	Channel 4	19/08/2013	Materially misleading	1
Adventure Time	Cartoon Network	30/07/2013	Scheduling	1
Adventure Time	Cartoon Network	06/08/2013	Violence and dangerous behaviour	1
Adventure Time	Cartoon Network	27/08/2013	Scheduling	1
Advertisements	True Movies	Various	Advertising minutage	1
Afternoon Drama	BBC Radio 4	Various	Offensive language	1
Airplane!	Film 4	23/08/2013	Nudity	1
Aldi's sponsorship of Neighbours	Channel 5	30/08/2013	Scheduling	1
AMA	Sunrise Radio	11/07/2013	Due impartiality/bias	1
An Idiot Abroad	Pick TV	25/08/2013	Generally accepted standards	2
Anadin's sponsorship of Deal or No Deal	Channel 4	30/08/2013	Gender discrimination/offence	1
Ashes Cricket	Sky Sports Ashes	21/08/2013	Advertising/editorial distinction	1

Badults	BBC 3	14/08/2013	Offensive language	1
BBC London	BBC 1	28/08/2013	Race discrimination/offence	1
BBC Look North	BBC 1	03/09/2013	Outside of remit / other	4
BBC News	BBC News Channel	14/08/2013	Violence and dangerous behaviour	1
BBC News at Six	BBC 1	30/08/2013	Outside of remit / other	1
BBC News at Ten	BBC 1	22/08/2013	Transgender discrimination/offence	1
BBC News at Ten	BBC 1	29/08/2013	Generally accepted standards	1
BBC News at Ten	BBC 1	29/08/2013	Outside of remit / other	1
BBC Points West	BBC 1	16/08/2013	Scheduling	1
Bear Grylls: Born Survivor	Various	Various	Animal welfare	1
Ben and Holly's little Kingdom	Nickelodeon	28/08/2013	Generally accepted standards	1
Benefits Britain 1949	Channel 4	12/08/2013	Generally accepted standards	10
Benefits Britain 1949	Channel 4	12/08/2013	Materially misleading	33
Benefits Britain 1949	Channel 4	19/08/2013	Discrimination and Inciting hate	1
Benefits Britain 1949	Channel 4	19/08/2013	Generally accepted standards	1
Benefits Britain 1949	Channel 4	19/08/2013	Race discrimination/offence	2
Benefits Britain 1949	Channel 4	26/08/2013	Materially misleading	1
Big	Sky Comedy HD	24/08/2013	Offensive language	1
Big Bad World	Comedy Central	04/09/2013	Violence and dangerous behaviour	1
Big School	BBC 1	06/09/2013	Generally accepted standards	1
Boogie's Big Saturday Show	Forth One	31/08/2013	Drugs, smoking, solvents or alcohol	1
Born to Kill? (trailer)	Channel 5	Various	Violence and dangerous behaviour	1
Bouncers	Channel 4	05/09/2013	Generally accepted standards	3
Breakfast Show	Absolute Radio	22/08/2013	Generally accepted standards	1
Breakfast with Stuart Banford	City Beat 96.7FM (Belfast)	11/08/2013	Generally accepted standards	1
Breaking The Set	RT	Various	Due impartiality/bias	1
Britain and Ireland's Next Top Model	Living	29/07/2013	Generally accepted standards	1
BT Sport promotion	BT Sport 1	30/07/2013	Materially misleading	1
BT Sport promotion	BT Sport 1	05/08/2013	Materially misleading	1
BT Sport promotion	BT Sport 1	10/08/2013	Materially misleading	1
Casualty	BBC 1	24/08/2013	Materially misleading	1
Casualty	BBC 1	31/08/2013	Disability discrimination/offence	2

Celebrity Juice	ITV2	29/08/2013	Animal welfare	1
Celebrity Juice	ITV2	05/09/2013	Generally accepted standards	1
Celebrity Juice (trailer)	ITV2	29/08/2013	Generally accepted standards	1
Channel 4 News	Channel 4	07/08/2013	Generally accepted standards	1
Channel 4 News	Channel 4	14/08/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	22/08/2013	Generally accepted standards	1
Channel 4 News	Channel 4	27/08/2013	Due accuracy	1
Channel 4 News	Channel 4	02/09/2013	Due impartiality/bias	2
Channel 4 Racing	Channel 4	24/08/2013	Advertising/editorial distinction	1
Channel ident	ITV	28/08/2013	Animal welfare	1
Channel ident	ITV2	23/08/2013	Generally accepted standards	1
Channel ident	ITV2	Various	Animal welfare	1
CheekyBingo.com's sponsorship of The Jeremy Kyle Show	ITV2	30/08/2013	Crime	1
Chickens	Sky1	22/08/2013	Generally accepted standards	1
Chickens	Sky1	29/08/2013	Generally accepted standards	2
Chickens (trailer)	Sky Sports Ashes	17/08/2013	Scheduling	1
Citroen Van's sponsorship of documentaries on Discovery	Discovery	Various	Race discrimination/offence	1
Classic Car	Quest	29/08/2013	Generally accepted standards	1
Colin Murray	Talksport	03/09/2013	Race discrimination/offence	1
Competition promotion	More>Movies	24/08/2013	Scheduling	1
Coronation Street	ITV	23/08/2013	Disability discrimination/offence	1
Coronation Street	ITV	26/08/2013	Generally accepted standards	1
Coronation Street	ITV	26/08/2013	Race discrimination/offence	1
Coronation Street	ITV	28/08/2013	Product placement	1
Coronation Street	ITV	02/09/2013	Generally accepted standards	2
Coronation Street	ITV	08/09/2013	Violence and dangerous behaviour	1
Coronation Street	ITV	Various	Generally accepted standards	1
Coronation Street	ITV	Various	Outside of remit / other	1
Coronation Street	ITV	Various	Promotion of products/services	1
Crossing Continents	BBC Radio 4	02/09/2013	Scheduling	1
Dara O'Briain's Science Club	BBC 2	27/07/2013	Race discrimination/offence	1

Dave (trailer)	Dave	07/09/2013	Scheduling	1
Daybreak	ITV	23/08/2013	Scheduling	1
Daybreak	ITV	03/09/2013	Materially misleading	1
DCI Banks	ITV3	03/09/2013	Violence and dangerous behaviour	1
Diary of the Dead	Film4	26/08/2013	Violence and dangerous behaviour	1
Drivetime	Talksport	05/09/2013	Sexual orientation discrimination/offence	1
EastEnders	BBC 1	12/08/2013	Disability discrimination/offence	1
EastEnders	BBC 1	30/08/2013	Violence and dangerous behaviour	2
EastEnders (trailer)	BBC 1	03/09/2013	Scheduling	1
Emmerdale	ITV	16/08/2013	Scheduling	2
Emmerdale	ITV	26/08/2013	Scheduling	7
Emmerdale	ITV	Various	Generally accepted standards	1
England vs Scotland Football (trailer)	STV	05/08/2013	Generally accepted standards	1
England vs Scotland Football (trailer)	STV	07/08/2013	Generally accepted standards	1
England vs Scotland Football (trailer)	STV	08/08/2013	Generally accepted standards	1
England vs Scotland Football (trailer)	STV	09/08/2013	Generally accepted standards	1
England vs Scotland Football (trailer)	STV	10/08/2013	Generally accepted standards	1
England vs Scotland Football (trailer)	STV	13/08/2013	Generally accepted standards	1
England vs Scotland Football (trailer)	STV	14/08/2013	Generally accepted standards	1
Every Which Way But Loose	ITV4	01/09/2013	Outside of remit / other	1
Family Guy	BBC 3	24/08/2013	Generally accepted standards	1
Family Tree	BBC 2	23/07/2013	Disability discrimination/offence	1
Femfresh's sponsorship of Feel Good Entertainment on Really	Really	15/08/2013	Religious/Beliefs discrimination/offence	1
Femfresh's sponsorship of Feel Good Entertainment on Really	Really	19/08/2013	Religious/Beliefs discrimination/offence	1
Femfresh's sponsorship of Feel Good Entertainment on Really	Really	25/08/2013	Religious/Beliefs discrimination/offence	1
Four Weddings	Sky Living	26/08/2013	Generally accepted standards	1
Friday Fright Night Trailer	5*	09/08/2013	Generally accepted standards	1
From Our Own Correspondent	BBC Radio 4	24/08/2013	Transgender discrimination/offence	1

Geetan Di Bahaar	Kismet Radio	15/08/2013	Religious/Beliefs discrimination/offence	1
Gold radio promotion	Gold	27/08/2013	Materially misleading	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	09/08/2013	Generally accepted standards	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	21/08/2013	Generally accepted standards	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	Various	Generally accepted standards	1
Have I Got a Bit More News for You	BBC 1	12/08/2013	Religious/Beliefs discrimination/offence	1
Hawksbee and Jacobs	Talksport	08/08/2013	Under 18s in programmes	1
Headline News	RT	28/08/2013	Due impartiality/bias	1
Heart Travel	Radio 4	16/08/2013	Commercial communications on radio	1
Hell's Kitchen USA (trailer)	ITV2	27/08/2013	Outside of remit / other	1
Here Comes Honey Boo Boo	TLC	Various	Scheduling	1
Hollyoaks	Channel 4	22/08/2013	Scheduling	2
Hollyoaks	Channel 4	26/08/2013	Scheduling	1
Hollyoaks	Channel 4	03/09/2013	Violence and dangerous behaviour	2
Hollyoaks	Channel 4	04/09/2013	Scheduling	1
Hollyoaks	E4	24/08/2013	Generally accepted standards	1
How Not to Get Old	Channel 4	14/08/2013	Materially misleading	3
How Not to Get Old	Channel 4	04/09/2013	Nudity	1
I'm Spazticus	Channel 4	14/08/2013	Disability discrimination/offence	1
I'm Spazticus	Channel 4	28/08/2013	Disability discrimination/offence	2
I'm Spazticus	Channel 4	04/09/2013	Disability discrimination/offence	1
I'm Spazticus	Channel 4	07/09/2013	Disability discrimination/offence	2
Inside Out	BBC 1	02/09/2013	Outside of remit / other	1
International Football Live	ITV	06/09/2013	Gambling	1
ITN News	ITV	28/08/2013	Due impartiality/bias	1
ITV News and Weather	ITV	29/08/2013	Due accuracy	1
ITV News Cymru Wales	ITV Wales	08/08/2013	Due impartiality/bias	1
ITV News London	ITV London	26/08/2013	Outside of remit / other	1
Jackpot247	ITV	28/07/2013	Participation TV - Misleadingness	1
James Max	LBC 97.3FM	24/08/2013	Generally accepted standards	1

James O'Brien	LBC 97.3 FM	03/09/2013	Generally accepted standards	1
Jessie	Disney Channel HD	27/08/2013	Violence and dangerous behaviour	1
Keeping up with the Kardashians	E!	20/08/2013	Animal welfare	1
Law and Order: UK	ITV3	09/08/2013	Generally accepted standards	1
Live International Football	Sky Sports 1	14/08/2013	Materially misleading	1
Lunchtime News	ITV	12/08/2013	Generally accepted standards	1
McCain's sponsorship of Film 4	Film 4	10/08/2013	Harm	1
McVities' sponsorship of slices of comedy on Gold	Gold	27/08/2013	Violence and dangerous behaviour	1
Meet David Sedaris: Memory Lapse – If I Ruled the World	BBC Radio 4	08/08/2013	Religious/Beliefs discrimination/offence	2
MFR news	MFR Inverness	28/08/2013	Outside of remit / other	1
Mythbusters	Discovery	27/08/2013	Scheduling	1
Nature's Newborns	ITV	30/07/2013	Crime	1
New Tricks	BBC 1	27/08/2013	Information/warnings	1
New Tricks	BBC 1	27/08/2013	Sexual material	1
News	Various	Various	Religious/Beliefs discrimination/offence	1
News Update	BBC 1	06/09/2013	Offensive language	1
Newsnight	BBC 2	27/08/2013	Outside of remit / other	1
Newsnight	BBC 2	29/08/2013	Outside of remit / other	1
Once Upon a Time	Channel 5	01/09/2013	Violence and dangerous behaviour	1
Pete Price	Radio City 96.7FM	29/08/2013	Generally accepted standards	1
PhoneShop	E4	15/08/2013	Flashing images/risk to viewers who have PSE	1
Premier League Football	Sky Sports 1	19/08/2013	Religious/Beliefs discrimination/offence	1
Programming	Ramadhan 87.9FM Bristol	06/08/2013	Sexual orientation discrimination/offence	1
QI	Dave	01/09/2013	Offensive language	1
Random Acts	Channel 4	15/08/2013	Race discrimination/offence	1
Random Acts	Channel 4	27/08/2013	Race discrimination/offence	2
Regular Show	Cartoon Network	18/08/2013	Scheduling	1
River Monsters	ITV	09/08/2013	Animal welfare	1
Rude Tube	Channel 4	30/07/2013	Generally accepted standards	1
Secret Dealers	ITV	05/08/2013	Competitions	1

Secrets of the Pickpockets	Channel 4	06/09/2013	Generally accepted standards	1
Seven Seas Multivitamins' sponsorship of ITV National Weather	ITV	12/08/2013	Generally accepted standards	1
Sex Hospital	TLC	Various	Scheduling	1
Shab e Bharat	GEO TV	29/07/2013	Promotion of products/services	1
Sky Broadband's sponsorship of ITV Showcase Drama	ITV	05/09/2013	Generally accepted standards	1
Sky News	Sky News	10/08/2013	Due impartiality/bias	1
Sky News	Sky News	20/08/2013	Promotion of products/services	1
Sky News	Sky News	30/08/2013	Generally accepted standards	2
Sky News	Sky News	06/09/2013	Outside of remit / other	1
Sky Sports News	Sky Sports News	14/08/2013	Promotion of products/services	1
South East Today	BBC 1	06/09/2013	Offensive language	1
Sportsound	BBC Radio Scotland	04/09/2013	Outside of remit / other	1
State of Emergency	Sky News	07/09/2013	Materially misleading	1
Stephen Nolan	BBC Radio 5 Live	10/08/2013	Outside of remit / other	1
Strike it Rich	Challenge	21/08/2013	Race discrimination/offence	2
Sunday Brunch	Channel 4	25/08/2013	Undue prominence	1
Sunrise	Sky News	22/08/2013	Transgender discrimination/offence	1
Sunrise Radio	Sunrise Radio	08/09/2013	Appeals for funds	1
Super Scoreboard	Clyde 1	Various	Due impartiality/bias	1
Swansea Market	BBC 2	02/09/2013	Outside of remit / other	1
Take on the Twisters	ITV	Various	Outside of remit / other	1
Test Cricket	Sky Sports Ashes	22/08/2013	Flashing images/risk to viewers who have PSE	1
Test Cricket: The Ashes	Sky Sports Ashes	25/08/2013	Race discrimination/offence	1
That Puppet Game Show	BBC 1	17/08/2013	Violence and dangerous behaviour	1
That Puppet Game Show	BBC 1	07/09/2013	Scheduling	1
The Alan Brazil Sports Breakfast	Talksport	29/08/2013	Generally accepted standards	1
The Billion Dollar Wreck Hunt	Channel 5	19/08/2013	Materially misleading	1
The Chase	ITV	05/09/2013	Outside of remit / other	1
The Goonies	Watch	25/08/2013	Scheduling	1
The Great British Bake Off	BBC 2	27/08/2013	Generally accepted standards	6

The Hotel Inspector	Channel 5	28/08/2013	Nudity	1
The Hotel Inspector	Channel 5	28/08/2013	Scheduling	1
The Jeremy Kyle Show	ITV	05/09/2013	Under 18s in programmes	1
The Jeremy Kyle Show	ITV	06/09/2013	Outside of remit / other	1
The Jeremy Kyle Show	ITV2	30/08/2013	Age discrimination/offence	1
The Last Leg	Channel 4	31/08/2013	Generally accepted standards	1
The Mill	Channel 4	28/07/2013	Scheduling	4
The Mill	Channel 4	11/08/2013	Scheduling	1
The Mummy	ITV	11/08/2013	Scheduling	1
The News Quiz	BBC Radio 4	09/08/2013	Generally accepted standards	1
The One Show	BBC 1	29/08/2013	Offensive language	1
The Prophecy	Movie Mix	28/08/2013	Under 18s in programmes	1
The Railway: First Great Western	Channel 5	29/08/2013	Generally accepted standards	1
The Railway: First Great Western	Channel 5	05/09/2013	Offensive language	1
The Towering Inferno	Film4	11/08/2013	Offensive language	1
The Work Experience	E4	17/08/2013	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	02/09/2013	Age discrimination/offence	1
The X Factor	ITV	31/08/2013	Generally accepted standards	1
The X Factor	ITV	07/09/2013	Disability discrimination/offence	34
The X Factor	ITV	08/09/2013	Offensive language	2
The X Factor (trailer)	ITV2	22/08/2013	Harm	1
This Morning	ITV	05/08/2013	Generally accepted standards	1
Through the Keyhole	ITV	31/08/2013	Generally accepted standards	4
Through the Keyhole	ITV	07/09/2013	Generally accepted standards - race discrimination/offence	1
Tipping Point	ITV	25/08/2013	Outside of remit / other	1
Toddlers and Tiaras	TLC	31/08/2013	Under 18s in programmes	1
Tonight	ITV	05/09/2013	Materially misleading	1
Top Boy	Channel 4	03/09/2013	Race discrimination/offence	1
Top Gear	BBC 3	28/07/2013	Outside of remit / other	1
Total Wipeout USA	Dave	28/08/2013	Offensive language	1
Toyota's sponsorship of ITV Movies	ITV	17/08/2013	Sponsorship credits	1
Two and a Half Men	Comedy Central	30/08/2013	Scheduling	1

Under the Dome (trailer)	Channel 5	21/08/2013	Generally accepted standards	1
US Open 2013	Sky Sports 1	08/09/2013	Materially misleading	1
UTV Live	UTV	04/08/2013	Due impartiality/bias	1
Victoria Derbyshire	BBC Radio 5 Live	28/08/2013	Generally accepted standards	1
Washington Heights	MTV	13/08/2013	Race discrimination/offence	1
Waterloo Road	BBC 1	05/09/2013	Disability discrimination/offence	1
Wentworth	Channel 5	28/08/2013	Violence and dangerous behaviour	1
What to Eat Now	BBC 2	08/09/2013	Animal welfare	1
Whitechapel	ITV	04/09/2013	Violence and dangerous behaviour	1
World Cup Qualifier	ITV	06/09/2013	Generally accepted standards	1
World's Greatest Motorcycle Rides	Travel Channel	13/08/2013	Race discrimination/offence	1
Yosemite Park Slayer: Born to Kill? (trailer)	Channel 5	31/08/2013	Scheduling	1
You've Been Framed	ITV	03/08/2013	Generally accepted standards	1
You've Been Framed!	ITV	07/09/2013	Generally accepted standards	2

## Investigations List

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

Here is an alphabetical list of new investigations launched between 29 August and 11 September 2013.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Advertising and sponsorship	Takbeer TV	Various
Advertising minutage	Aaj Tak	22 July 2013
Blessings of Ramadan	Madani Channel	18 July 2013
Doctors	BBC 1	5 August 2013
Doctors	BBC 1	29 August 2013
Dubai's sponsorship of Channel 4 Racing	Channel 4	24 August 2013
Embarrassing Bodies	TLC (Polish)	25 July 2013
How Not to Get Old	Channel 4	14 August 2013
Interview with Dr Whittaker	Unity 101	12 August 2013
Obsessive Compulsive Cleaners	More4	16 July 2013
Sex Hospital (trailer)	Investigation Discovery	1 September 2013
Teen Wolf	Pick TV	14 August 2013
The One Show	BBC 1	2 July 2013

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

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

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

For fairness and privacy complaints go to:

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