

# **Ofcom Broadcast and On Demand Bulletin**

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## Contents

Introduction	4
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### Broadcast Standards cases

#### In Breach

<b>Can't Pay? We'll Take It Away!</b> <i>Spike, 4 February 2016, 20:00</i>	6
<b>Super Bass Top 20</b> <i>Flava, 16 January 2016, 16:00</i>	9
<b>News</b> <i>That's Solent, 14 January 2016, 11:00</i>	12

#### Resolved

<b>News</b> <i>Gem 106, 11 March 2016, 11:00</i>	17
---	----

### Television Advertising Scheduling cases

#### In Breach

<b>Advertising minutage</b> <i>Channel i, 23 December 2015, 20:00 to 00:00</i>	20
---	----

### Broadcast Licence Conditions cases

#### In Breach

<b>Providing a service in accordance with 'Key Commitments'</b> <i>1 Ummah FM (Reading), 25 to 27 February 2016</i>	22
<b>Providing a service in accordance with 'Key Commitments'</b> <i>Access FM (Bridgwater), 21 to 23 January 2016</i>	24

### Broadcast Fairness and Privacy cases

#### Upheld

<b>Complaint by Mrs D on behalf of her two sons (minors)</b> <i>Britons Living Behind the Veil, BBC News Channel, 7 September 2015</i>	26
---	----

#### Not Upheld

<b>Complaint by Mr Curt Andren on behalf of Mr Johan Andren</b> <i>Stalkers, TV3 Sweden, 10 March 2015 (and various repeats)</i>	37
---	----

## Tables of cases

<b>Investigations Not in Breach</b>	68
<b>Complaints assessed, not investigated</b>	69
<b>Complaints outside of remit</b>	77
<b>Investigations List</b>	79

## 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 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>. Ofcom must include these standards in a code, codes or rules. These are listed below.

The Broadcast and On Demand Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and rules 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 the ASA on the basis of their rules and guidance for advertising content on ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”) for content broadcast on television and radio services.
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in television 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 for on television and radio services. 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) Ofcom’s [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral by the Advertising Standards Authority (“ASA”), the co-regulator of ODPS for advertising or may do so as a concurrent regulator.

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

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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.

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 and On Demand Bulletin may therefore cause offence.**

## Broadcast Standards cases

### In Breach

#### Can't Pay? We'll Take It Away!

*Spike, 4 February 2016, 20:00*

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#### Introduction

Spike is a general entertainment channel that specialises in reality programming. The licence for Spike is held by Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee").

*Can't Pay? We'll Take It Away!* is an observational documentary series that follows the work of High Court Enforcement Officers as they attempt to resolve debt disputes through negotiated settlements and asset seizures.

A complainant alerted Ofcom to the broadcast of offensive language during this episode. We viewed the programme and noted that it included three uses of the word "fucking".

We considered this material raised issues warranting investigation under Rule 1.14 of the Code, which states:

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

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

#### Response

Channel 5 said the programme was "originally commissioned for... a 9pm slot" and "accordingly, the Content Legal Team ensured that it was compliant with [the Code] for that slot". The Licensee explained that subsequently a new version of the programme was "created to enable it to be broadcast at 8pm" by removing language and material unsuitable for pre-watershed broadcast.

The Licensee said that "regrettably...the post-watershed version of the programme was broadcast at 8pm on 4 February 2016 rather than the pre-watershed reversion". Channel 5 said it "urgently investigated how this had occurred".

The Licensee explained that "over the final months of 2015, data contained in Channel 5's Broadcast Management System was migrated to the same Broadcast Management System used by the rest of the Viacom group of channels"<sup>1</sup>. Channel 5 said "it transpires that there was a bug in the migration system".

Channel 5 told Ofcom that "the version of the programme compiled for 9pm broadcast had not actually been broadcast prior to the migration". Channel 5 said "the system bug, finding no evidence of transmission of the 9pm version, inexplicably assigned that version a SATNK rating (schedule any time, except when children are likely to be watching) rather than the 9pm rating the Compliance Team had prescribed".

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<sup>1</sup> Channel 5 Broadcasting Limited was taken over by Viacom International Media Networks in 2014.

Channel 5 said that “there was no simple way to detect this error” and “despite the many people involved in the migration system and processes in place, the system bug undermined the migration of data in this case”.

Following this incident, Channel 5 said that it had undertaken “a labour-intensive system of manually checking the suitability of all programmes scheduled for broadcast” and that this “system remains in place”. The Licensee also informed Ofcom that: it had been “advised that it is technically not possible for this particular issue to occur again in relation to this programme or other programmes”; “the migration bug has been fixed”; and, “in any event, no further data is being migrated”.

Channel 5 said it “deeply regrets what has happened in this case and the resulting breach” of the Code. It also told Ofcom that “this was not a case where Channel 5 was seeking to push or test the boundaries set by [the Code]; nor was it a case where the error of an individual was preventable”. Rather, the Licensee said that “this was a case of an error in the migration of data which has had embarrassing and regrettable consequences”.

## Decision

Under the Communications Act 2003 Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed”. Ofcom research on offensive language<sup>2</sup> notes that the word “fuck” and variations of this word are considered by audiences to be amongst the most offensive language.

As noted above, this pre-watershed programme included three uses of the word “fucking”. It was therefore in clear breach of Rule 1.14.

We noted that this breach occurred as a result of a technical error during the migration of broadcast systems. We also took into account the actions taken by the Licensee after the incident and its assurance that “it is technically not possible for this particular issue to occur again”.

However, this is the second recent breach that has occurred as a result of an unedited post-watershed programme including multiple instances of the most offensive language being broadcast on one of the Licensee’s services before the watershed. The first of these breach decisions was published on 25 January 2016<sup>3</sup> and concerned the programme *Benefits Brits By The Sea*. This programme was broadcast at 20:00 on 5\* and included 21 uses of the word “fuck” and variations of this word as well as 19 uses of other offensive language. In that instance, the Licensee said that a member of its scheduling staff had incorrectly selected the post-watershed version of the programme for the pre-watershed slot, despite automated warnings that the wrong version had been selected. The Licensee also said that “to prevent any re-occurrence” of the issue, a separate member of its scheduling team would “check that correct versions have been scheduled for broadcast as the

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

<sup>3</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb297/Issue\\_297.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb297/Issue_297.pdf)

schedule approaches finalization”. In addition, Channel 5 said that a member of its compliance team would also “check the schedules to ensure that no programme has been inadvertently or unaccountably scheduled in error”. Ofcom recorded breaches of Rules 1.14, 1.16 and 2.3. Our published decision stated that: “should any similar breaches occur in the future, Ofcom will consider taking further regulatory action”.

Ofcom recognised the different nature of the circumstances that resulted in the broadcast of the incorrect version of *Can't Pay? We'll Take It Away!* However we were concerned that the additional measures implemented by the Licensee after the *Benefits Brits By The Sea* Code contravention were not sufficient to prevent this most recent breach. Although Ofcom does not intend taking further regulatory action in this case, we remind the Licensee of the need to have effective compliance procedures in this area.

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



## In Breach

### Super Bass Top 20

Flava, 16 January 2016, 16:00

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#### Introduction

Flava is a music television channel operated by CSC Media Group Limited (“CSC Media” or “the Licensee”) available on the digital satellite platform.

*Super Bass Top 20* is a programme which features the 20 most popular music tracks of an artist. Ofcom received a complaint from a viewer that the video for the song *High School* by Nicki Minaj featuring Lil Wayne, which appeared in the programme on 16 January 2016, featured a visual reference to MYX Fusions Moscato<sup>1</sup>.

During a scene including Nicki Minaj and Lil Wayne at a business meeting, there was a close-up shot of eight bottles of MYX Fusions Moscato. This was followed by two wide shots in which the bottles of MYX could be seen at the centre of the frame. There were other brief wide shots in which bottles could be seen later in the music video.

Ofcom requested information from the Licensee to decide whether the references constituted product placement as defined in the Code<sup>2</sup>. The Licensee confirmed that there was no commercial arrangement in place between CSC Media, the producer of *Super Bass Top 20*, or any ‘connected person’ and MYX Beverage LLC, to air references to MYX Fusions Moscato.

Ofcom therefore considered that the complaint raised issues warranting investigation under Rule 9.5 of the Code, which states:

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

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

We therefore asked CSC Media for its comments on how the video complied with this rule.

#### Response

The Licensee argued that the branding on the bottle was only visible for 28 frames (just over a second) in a video which is three minutes and 38 seconds long. Further,

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<sup>1</sup> A brand of fruit-infused sparkling wine which is co-owned by Nicki Minaj.

<sup>2</sup> The Code defines product placement as “The inclusion in a programme of, or reference to, a product, service or trademark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not product placement”.

there are blue bottles in shot at other times but in the Licensees view they were either in the background and/or the branding could not be seen.

The Licensee added that the close-up shot of the bottles was not out of context in that it formed part of a music video “set in the context of a luxury lifestyle where a range of brands – a Ferrari sports car, a Louis Vuitton bag, Christian Louboutin shoes – ...editorially paint a picture of conspicuous wealth”.

CSC Media emphasised that the images were not aired as a result of a commercial arrangement between themselves and any other party. It added “as ever, we remain vigilant and mindful of...our wider responsibilities in ensuring programming is compliant and fit for purpose”.

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of 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”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including Rule 9.5 among other rules.

Ofcom’s published guidance<sup>3</sup> on Rule 9.5 states: “Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. A product that is integral to a scene may justify a greater degree of product exposure...However, where a product is used as a set prop, care should be taken to avoid close-up or lingering shots”.

In this case, a close-up image of eight distinctive bottles of MYX Fusions Moscato were shown for approximately two seconds during a music video. We noted that the Licensee’s argument that the video contained references to branded products “to paint a picture of conspicuous wealth”. However we did not agree that MYX Fusions Moscato drinks are widely considered a luxury product. In addition, we noted that images of the brands highlighted by the Licensee were not shown in close-up for a similar duration.

Because, in our view, the product did not form part of the narrative of the video, we considered that including a close-up shot of the product could not be justified editorially and resulted in MYX Fusions Moscato being given undue prominence in breach of Rule 9.5 of the Code.

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

Although we acknowledge that neither CSC Media nor the producer of *Super Bass Top 20* received a commercial benefit from the inclusion of MYX Fusions Moscato drinks in the video, we noted that Nicki Minaj is a co-owner of the MYX Fusions brand. In such cases we would expect licensees to demonstrate particular care to ensure references to brands (including cases such as this where brands are co-owned by an artist) are not unduly prominent and are justified by the editorial requirements of the content.

For the reasons set out above, the programme was therefore in breach of Rule 9.5 of the Code.

### **Breach of Rule 9.5**

## In Breach

### News

*That's Solent, 14 January 2016, 11:00*

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#### Introduction

That's Solent is the local television service for Southampton and surrounding areas. The licence for the service is held by That's Solent Limited ("That's Solent" or "the Licensee").

During routine monitoring, Ofcom noted an item in a news bulletin about a taxi company called Cab My Ride, which had developed a booking application for mobile devices in partnership with the University of Southampton. The news presenter introduced a report that was about four minutes and 45 seconds in length.

The report included repeated footage of taxis with branding for the company, including its telephone number. At various points, information about where the app could be downloaded was also visible, as well as the following slogans giving details of the service provided: "DRIVER PHOTO", "NAME & CAR", "TRACK CAB", "FARE ESTIMATE", "PRE-BOOK RIDES" and "RIDE HISTORY".

The sequence also included interviews with a director of Cab My Ride, Harjit Sahota and the employee of the company with responsibility for 'customer experience', Arjan Sahota. Harjit and Arjan Sahota's interviews included the following:

*"Nothing ever stands still. It's to make the industry more smarter, more transparent, more honest for drivers and for customers, which we call basically connecting smart drivers with smart riders".*

*"We wanted everyone to be able to use Cab My Ride and experience the service. So we created, obviously the app, which is just press a button and the taxi's on its way... You could either phone us on [phone number given] and get a taxi to you within ten minutes, or for businesses you can do the web booking, where you literally type in your client's name and number and press 'book' and the taxi's on its way. So we've got three products, and them three products will revolutionise the way people move and connect with taxis from now on".*

*"It's seamless, one smart touch. You download the app, once it's on your phone you just tap it once to go into the platform, and once you're there it picks up your GPS location: 'This is precisely where I am – book now'. Then it takes you to the next screenshot, you get the photograph of the driver, all the cab details including his name, the date and time, your pick-up location. As soon as you enter in the destination, it gives you the estimated cost for your journey as well. We have routes in there as well, which is basically the fare is calculated on the shortest route, instead of taking a long-winded way round".*

The sequence continued, with the interviews interspersed with footage of taxicabs:

Reporter: *"Managed by Arjan, the operation has a heavy focus on both safety and customer experience. Cab drivers are licensed by the local authority, and also receive training in customer service".*

Arjan Sahota: *“When they’re actually brought onto the team, we go through training, so again customer service which is a key one, the way they should speak to a customer, obviously map directions and stuff like that, but most importantly we’re starting to roll out like secret customers, so whether it maybe a regular customer or one of our secret customers, they go in, they review the taxis, how clean it is, or how does the driver interact with them, or what other services does the driver provide. That’s how we ensure that the driver’s always making sure our five-star service is always being delivered”.*

Harjit Sahota: *“We do let the customers know, you know, update them on their bookings, update them on their ride, so basically you can track the car as well, so once you’ve made your booking you can actually see the vehicle or the cab coming to you, so you track the cab as well. And if you’ve got your favourite rides there, you just tap on it, go to options, rebook, job is done”.*

Arjan Sahota: *“All of our taxis, or any city we launch in, it’s always run by the local meter tariffs set by the council. So, for instance, from the docks to Southampton Airport, with Cab My Ride it comes to about £12-13 approximately, on a good day. And the good thing with the app is if you want to know how much a taxi is, just type in where you’re going from and to in the advance booking, and you can see how much your taxi’s going to be. And we’re doing discounts and stuff like that, so by all means go to our social media and you’ll see everything we’re doing”.*

The Licensee confirmed that the report was not subject to a commercial arrangement between the broadcaster and Cab My Ride or the University of Southampton.

Ofcom considered that the content raised potential issues warranting investigation under the following rules:

Rule 9.4: “Products, services and trade marks must not be promoted in programming”.

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

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

We therefore asked That’s Solent to provide comments as to how the material complied with these rules.

## **Response**

The Licensee stated that it was important to it to maintain its editorial integrity, and reiterated that it had not entered into a commercial arrangement with Cab My Ride. That’s Solent said that in its view this business story was “newsworthy” and would be “of interest to [its] audience”, noting that it had been “covered by other local media”,

and claiming that the channel would also “follow...plans for other apps to launch”. It added: “We do believe that it is appropriate for a feature on a new locally-targeted product which is unlikely to be familiar to many local viewers...to make references to the features of the product”.

The Licensee described the reporter on the item as “an experienced journalist familiar with Ofcom guidelines”. It accepted that “the story could have been filmed and edited differently”, stating that “a different edit of this item may not have raised all of the concerns referred to by Ofcom”. It nevertheless maintained that there was “clear editorial justification” for “report[ing] on an innovative app developed over an extended period” like Cab My Ride.

That’s Solent concluded: “We remain committed to telling stories about new businesses and innovation in our area in an appropriate form”.

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, including “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;
- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

Importantly, Section Nine does not proscribe all references to products and services in programmes. However, it does require all such references to be justified by the editorial requirements of a programme and not be promotional or unduly prominent.

### **Rule 9.4**

Rule 9.4 stipulates that products, services and trade marks must not be promoted in programming. Ofcom’s Guidance<sup>1</sup> on Rule 9.4 explains: “Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed”.

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/code-july-15/section9-jul15.pdf>.

Ofcom noted that during their interviews, Harjit and Arjan Sahota used favourable language to highlight features of Cab My Ride. These instances included:

- references to the benefits of the company's business model, for example: referring to the app making the industry "*smarter, more transparent, more honest for drivers and for customers*"; and claiming that the company's products "*will revolutionise the way people move and connect with taxis from now on*";
- references to the ease and convenience of using the company's app, for example: "*It's seamless, one smart touch. You download the app, once it's on your phone you just tap it once to go into the platform, and once you're there it picks up your GPS location: 'This is precisely where I am – book now'*";
- a reference to the value offered to customers by the company: "*As soon as you enter in the destination, it gives you the estimated cost for your journey as well. We have routes in there as well, which is basically the fare is calculated on the shortest route, instead of taking a long-winded way round*"; and
- a reference to the company's approach to pricing and the availability of discounts: "*And the good thing with the app is if you want to know how much a taxi is, just type in where you're going from and to in the advance booking, and you can see how much your taxi's going to be. And we're doing discounts and stuff like that, so by all means go to our social media and you'll see everything we're doing*".

In addition, there were visual and aural references to Cab My Ride's telephone number, and an aural reference to the "*five-star service*" offered by the company.

We recognise that it is legitimate for news programmes (whether on local television or other services) to feature stories about businesses for editorial reasons. Broadcasters however must take care to ensure that all such references are justified by the context of that news report. In this case, taken together, Ofcom considered that the favourable language used to describe Cab My Ride as well as the references to pricing and service availability promoted the company, in breach of Rule 9.4.

#### Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, with undue prominence resulting from: the presence of, or reference to, a product, service or trade mark where there is no editorial justification; or the manner in which a product, service or trade mark is referred to.

Ofcom noted That's Solent's view that there was "clear editorial justification" for "report[ing] on an innovative app developed over an extended period" as with Cab My Ride. Ofcom acknowledged that there was scope for limited editorially justified references in a news item about a local business that had developed a new product in partnership with a local university. However, as Ofcom's Guidance makes clear: "The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears".

In this case, the item included repeated footage of taxis with branding for Cab My Ride, including information such as: the firm's telephone number; where the app could be downloaded; and features of the service, such as the facility to pre-book rides and access to your ride history. Although the item did discuss the involvement of local students in developing the company's app as well the experience they had

gained from doing so, we noted that over half of the feature's running time consisted of interviews with representatives of the company, who promoted the benefits of their service. Because we considered that the amount of these references included within a short item was excessive, Ofcom concluded that the material was in breach of Rule 9.5.

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



## Resolved

### News

*Gem 106, 11 March 2016, 11:00*

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#### Introduction

Gem 106 is an analogue commercial radio station that broadcasts to the East Midlands area. The licence for the service is held by Orion Media (East Midlands) Ltd (“Orion” or “the Licensee”).

A complainant alerted Ofcom to the promotion in *News* of Nottingham’s Splendour Festival, due to be held on 23 July 2016. It stated:

*“...and Justin will be joined by the likes of The Human League, UB40 and Jamie Lawson in Nottingham’s Splendour Festival this year. Tickets for the Wollaton Hall event are on sale through our website, [website address given]...”*

Ofcom considered the material raised issues warranting investigation under Rule 10.3 of the Code, which states:

“No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.

“This rule does not apply to:

- reference to a news supplier for the purpose of identifying that supplier as a news source;
- specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming;
- the use of premium rate services (e.g. for station/broadcaster surveys); and
- references that promote the station/broadcaster’s own products and/or services (e.g. the programme/station/broadcaster’s website or a station/broadcaster’s event)”.

We therefore sought Orion’s comments on how it considered the above content complied with this Rule.

#### Response

Orion submitted to Ofcom a copy of Gem 106’s “Partnership Agreement 2016” with DHP, the producer of the Splendour Festival, which, among other things, recognised the station as the event’s “Official Media Partner”. The agreement included a commitment by Gem 106 to promote the July event in spot advertisements throughout the preceding seven weeks. The Licensee noted that the agreement also provided for Gem 106 to brand the event and for its presenters to appear on stage, adding that the station was therefore “very much part of the experience”. Orion said that, although other broadcast commitments included “ticket giveaways and the like”, reference to the event in *News* formed no part of the agreement and the Licensee was to receive no revenue from ticket sales.

Orion considered that, as the Splendour Festival was a large event, with artists of interest to Gem 106 listeners, “the announcement of the acts was justified [as a news item]”. However, acknowledging that “the newsreader went on to mention that tickets [were] on sale through [the station’s] website”, Orion noted that the news staff member on duty had considered the broadcast material to be a reference that promoted the station’s own products and services (i.e. an exemption from Rule 10.3 of the Code), as a “dispensation...designed to help those stations which work on event partnerships to boost their profile, as well as those with the resources to stage their own events wholly, as is the case with larger and national radio brands”.

The Licensee said the news staff member had therefore considered, “in this context, the ticketing element [of the broadcast] was useful to listeners and permissible”.

Orion added that, on hearing the broadcast in *News* of such a promotion, its Content and Operations Director immediately contacted the Group News Editor, who clarified to her team “that only [Gem 106’s] wholly-operated events and activities qualify for the exclusion [from Rule 10.3]”.

The Licensee said it attaches high importance to compliance and had “rolled out a compliance roadshow to presenters and journalists”, when its “journalists [had been made] well aware of the general prohibition on commercial mentions [in *News*]”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives. These objectives include ensuring that “...generally accepted standards are applied to the contents of...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material” and “news included in...radio services is presented with due impartiality...”. In setting or revising such standards, Ofcom must also, under the Act, have regard to “...the desirability of maintaining the independence of editorial control over programme content”.

Ofcom has reflected these requirements in, among other things, Rule 10.3 of the Code. This rule prohibits any commercial reference, or material that implies a commercial arrangement, in or around news bulletins or news desk presentations, subject to limited exceptions, such as “references that promote the station/broadcaster’s own products and/or services (e.g. the programme/station/broadcaster’s website or a station/broadcaster’s event)”.

The purpose of Rule 10.3 is to ensure that news bulletins and news desk presentations are neither distorted for commercial purposes nor perceived by listeners to have been so distorted.

Ofcom noted that the Splendour Festival’s line-up was released on the festival website<sup>1</sup> on 11 March 2016, the day of the broadcast. Given also the potential interest of the event and featured acts to Gem 106 listeners, we accepted that providing details of the line-up in *News* (i.e. “...and Justin will be joined by the likes of *The Human League, UB40 and Jamie Lawson in Nottingham’s Splendour Festival this year...*”) on the day the performers were announced was justified.

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<sup>1</sup> <http://www.splendourfestival.com>

As noted in the Code, “for the purposes of [Section Ten] of the Code a commercial reference is a reference in programming to a brand, trademark and/or service that:

- is subject to a commercial arrangement; or
- promotes the station/broadcaster’s own products or services”.

The announcement, “*Tickets for the Wollaton Hall event are on sale through our website, [website address given]...*” did not promote an event run by the station and was not subject to the agreement between Gem 106 and DHP (the event producer). This announcement was not therefore a commercial reference.

However, Rule 10.3 also prohibits “material that implies a commercial arrangement” in or around news programming. Ofcom’s guidance to Rule 10.3 clarifies that, among other things “prohibiting in news any material that *implies* a commercial arrangement is intended to prevent the more general or unjustified prominence of products and services in news”.

In this case, the on-air announcement of ticket availability for the Splendour Festival promoted ticket availability for a third party’s event (i.e. that of DHP) through the station’s own website. It was Ofcom’s view that this announcement gave more general and unjustified prominence to the event and that Gem 106 listeners were likely to consider the material was subject to a commercial agreement between the station and a third party.

The news item was therefore material that implied a commercial arrangement, in breach of Rule 10.3 of the Code.

Ofcom noted the immediate action taken by senior staff in response to the broadcast, as well as the provision of training by Orion for its presenters and journalists. Ofcom therefore considered the matter resolved.

**Resolved**

## Television Advertising Scheduling cases

### In Breach

#### Advertising minutage

*Channel i, 23 December 2015, 20:00 to 00:00*

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#### Introduction

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

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

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

Ofcom was alerted by a complainant that the advertising on the channel on 23 December 2015 appeared to exceed what is permitted under COSTA. After assessing the recording provided by the Licensee, Ofcom noted that there were four instances where the amount of advertising in a single clock hour exceeded the permitted allowance:

Clock hour	Amount of advertising (minutes and seconds)
20:00	13:21
21:00	12:34
22:00	12:16
23:00	12:45

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

#### Response

Prime Bangla agreed that it had “slightly” exceeded the permitted allowance. It said it had a procedure in place to limit the amount of advertising to 12 minutes per hour, but that its “system rounds to [the] whole number which led to confusion”.

The overruns “may have [been] caused due to manual error” or a “mismatch” in the length of the file booked by the advertising scheduling team, and what was actually broadcast by the playout team.

Prime Bangla said it has “always tried” to keep to the hourly limit and that it will “ensure that the errors are corrected immediately”.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of

the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring its licensees’ compliance with COSTA.

In this case, the amount of advertising broadcast on Channel i exceeded the permitted allowance on four occasions.

Ofcom noted the Licensee’s explanation for how these incidents occurred. However, we were concerned that Channel i appeared to misinterpret the maximum permitted allowance and considered any advertising in the 12 minute range as being compliant with COSTA. This is not the case.

It is clear from Channel i’s submissions that it had insufficient compliance awareness of COSTA. We also noted that the Licensee had no firm conclusion as to why the overruns occurred, presenting two possible reasons for the errors.

We will continue to monitor Channel i’s compliance with COSTA. Ofcom puts the Licensee on notice that it will consider further regulatory action in the event of a recurrence.

#### **Breaches of Rule 4 of COSTA**

## Broadcast Licence Conditions cases

### In Breach

#### Providing a service in accordance with ‘Key Commitments’

*1 Ummah FM (Reading), 25 to 27 February 2016*

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##### Introduction

1 Ummah FM is a community radio station licensed to provide a service for the Muslim community of Reading. The licence is held by 1 Ummah FM Community Interest Company (“1 Ummah” or “the Licensee”).

Like other community radio stations, 1 Ummah is required to deliver the ‘Key Commitments’ which form part of its licence.<sup>1</sup> These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint alleging that 1 Ummah was providing very little live and local programming, instead playing out pre-recorded religious sermons or lectures that did not appear to be recorded locally.

1 Ummah has the following Key Commitment set out in its licence:

“Original and live locally produced output will feature for 8 hours per day. (Live programming may include pre-recorded inserts, if applicable). The majority of the output will be locally produced”.

We requested recordings of three days of 1 Ummah’s output, covering Thursday 25, Friday 26, and Saturday 27 February 2016. We also asked the Licensee to highlight the original, live or local programmes on its schedule for the week commencing Monday 21 February, which included our three monitoring days.

Responding to our request, the Licensee stated that the hours of live and/or local programming broadcast on the week commencing Monday 21 February were as follows:

Monday 22 February	0 hours
Tuesday 23 February	50 minutes
Wednesday 24 February	1 hour
Thursday 25 February	1 hour 50 minutes
Friday 26 February	0 hours
Saturday 27 February	50 minutes
Sunday 28 February	50 minutes

Given the requirement in the Key Commitments is for the station to broadcast original live locally produced output for eight hours per day, Ofcom considered that the issue

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<sup>1</sup> The Key Commitments are contained in an annex to 1 Ummah’s licence. They can be viewed in full at:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000214.pdf>.

warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to 1 Ummah's licence. These state, respectively:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period." (Section 106(2) of the Broadcasting Act 1990); and

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period." (Section 106(1) of the Broadcasting Act 1990).

We therefore requested 1 Ummah's comments on how it was complying with these conditions, with reference to the specific Key Commitment set out above.

## Response

The Licensee stated that the shortfall in live and local programming was "being dealt with as a main priority over the last couple of weeks". It said that the lack of such programming has been due to 1 Ummah "not having enough volunteers", but added that this situation is now improving and that "we shall be able to produce what is required of us in future".

## Decision

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

In the week we assessed, 1 Ummah failed to provide the live and local programming for the eight hours per day required by its licence. On two days, there was no live or local programming broadcast at all. We noted only one day (Thursday 25 February) when there was more than a single hour of local or live programming aired by the station.

A breach of 1 Ummah's licence was previously recorded for failing to deliver the required amount of original and live local output in June 2015.<sup>2</sup>

Provision of locally-produced programming is a fundamental characteristic of community radio services. Ofcom is concerned about the Licensee's compliance in this area. Taking into account the improvements the Licensee assured us would occur, we do not intend to take further regulatory action at this time. However, we are putting the Licensee on notice that we intend to monitor its output in the near future and will consider taking further regulatory action if necessary.

## **Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by 1 Ummah CIC (licence number CR000158).**

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<sup>2</sup> Page 59 of issue 282 of the Ofcom Broadcast Bulletin, available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb282/>

## In Breach

### Providing a service in accordance with ‘Key Commitments’

*Access FM (Bridgwater), 21 to 23 January 2016*

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#### Introduction

Access FM is a community radio station licensed to serve the people of Bridgwater and the surrounding area in Somerset, catering for “a wide range of local tastes and interests.” The licence is held by Bridgwater Young Men’s Christian Association (“Bridgwater YMCA” or “the Licensee”).

Like other community radio stations, Bridgwater YMCA is required to deliver the ‘Key Commitments’ which form part of its licence.<sup>1</sup> These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint alleging that, during its mainstream daytime programming, Access FM was playing music drawn mainly from the 1980s. The station’s licence includes the following Key Commitment:

“Music output will comprise of largely current chart music, however specialist shows and arts programmes will broaden this output”.

We requested recordings and music logs for three days of Access FM’s output, covering Thursday 21, Friday 22, and Saturday 23 January 2016.

Having reviewed the material, and given the requirement in the Key Commitments set out above, Ofcom considered that the issue warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Bridgwater YMCA’s licence.

These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

We therefore requested Bridgwater YMCA’s comments on how it was complying with these conditions, with reference to the specific Key Commitment set out above.

#### Response

The Licensee did not provide any comments on the matter.

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<sup>1</sup> The Key Commitments are contained in an annex to Bridgwater YMCA’s licence. They can be viewed in full at:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000240.pdf>.



## **Decision**

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

We analysed a number of hours of Access FM's mainstream music output, taken from the three days for which we had requested audio and data. On average, a quarter of the tracks in the hours we monitored were either current chart hits or had been released during the previous year.

In our view, the amount of current music being aired by Access FM was inconsistent with the Key Commitment requirement that "Music output will comprise of largely current chart music". This is because the overwhelming majority of tracks played by Access FM during our monitoring period were drawn from the 70s, 80s, 90s and 00s.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Bridgwater Young Men's Christian Association (licence number CR000240).**

## Broadcast Fairness and Privacy cases

### Upheld

#### Complaint by Mrs D on behalf of her two sons (minors)

*Britons Living Behind the Veil, BBC News Channel, 7 September 2015*

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#### Summary

Ofcom has upheld this complaint made by Mrs D on behalf of her two sons (minors) of unwarranted infringement of privacy.

The programme reported on the growing number of attacks, both verbal and physical, on Muslims in the UK. In particular, during a discussion with the Chairman of Finsbury Park Mosque in London about the steps taken by the mosque to engage with the wider local community, footage of Mrs D's two sons (along with various other children) at a youth club held at the mosque was shown. Mrs D's two children were not named, but their faces were clearly visible in the programme.

Ofcom found that Mrs D's two sons had a legitimate expectation of privacy in connection both with the obtaining and subsequent broadcast of the footage of them in the programme. In the circumstances, the children's legitimate expectation of privacy was not outweighed by the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference and was not warranted in the public interest. The broadcaster had therefore unwarrantably infringed their privacy in respect of the obtaining of this material included in the programme and in the programme as broadcast.

#### Programme summary

On 7 September 2015, *BBC News Channel* broadcast a documentary about the growing numbers of attacks, both verbal and physical, on Muslims in the UK<sup>1</sup>. In particular, the programme focussed on attacks on Muslim women who were easier to identify as a Muslim because of their decision to wear a niqab (veil) or hijab (headscarf) as part of their faith. The programme featured a number of stories from Muslim women who spoke about the physical and verbal attacks they had experienced.

Later in the programme, the reporter visited a mosque in Leyton, east London which she said had an "*open door policy*" and had decided to engage with the wider community "*to weaken the potential influence of both right-wing and Muslim extremists in the area*". The reporter then discussed the Finsbury Park Mosque which was also employing this strategy. The reporter said that this was because in the early 2000s, the mosque had been "*splashed across the front pages as an extremist camp in the heart of London, controlled by the now imprisoned radical preacher Abu Hamza*". The Chairman of Finsbury Park Mosque, discussed the impact this had on the mosque and its congregation. The reporter said that since then: "*the mosque has gone through a process of renewal with its extremist elements now banished*". The Chairman stated:

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<sup>1</sup> The programme was a repeat of a story from the London edition of Inside Out programme broadcast earlier on 7 September 2015 at 19:30 on BBC1.

*“We have to move forward and try to bring back this mosque to the Muslim community and the wider community and keep it away from extremists. It’s actually more than a place of worship, it’s a community centre, it has youth activities taking place here in the mosque, women activities. We open our doors to all communities, especially our neighbours around us”.*

While the Chairman spoke, footage of children engaged in playing video games, table tennis and pool was shown. This included footage of Mrs D’s children who were shown in the background watching and talking to other children playing.

The reporter then said:

*“However, their public relations’ campaign has, so far, failed to gain universal approval. The mosque and its congregation has been the focus of increasing hate attacks”.*

The Chairman said:

*“We have women being pushed... This mosque was subject to white powder, for example, being sent to us by post. Cartoons, which is very nasty drawing about our prophet, about our religion, about our book, about our community. All these sorts of hate crimes is happening here at Finsbury Park Mosque and it’s happening in other mosques and community centres around the country”.*

The programme’s reporter explained that *“the children who come to the mosque here and thousands of other Muslim kids around the country are learning early on that not everyone approves of their religion and some fear that could be the trigger for terrible future repercussions”*. The programme went on to describe incidences of Islamophobia in schools.

No further footage of Mrs D’s children was included in the programme.

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

- a) Mrs D complained that her children’s privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme because they were filmed at Finsbury Park Mosque without her knowledge or consent.
- b) Mrs D also complained that her children’s privacy was unwarrantably infringed in the programme as broadcast because footage of them with their faces unobscured was broadcast without her knowledge or consent.

By way of background, Mrs D said the programme was about Islamophobia and included testimonies from individuals who spoke about the physical and emotional abuse they had incurred because of their religious beliefs. Mrs D said that these individuals had had their faces obscured, however, her children’s faces were not obscured and, as a consequence, the programme had put her children at risk of being subjected to similar abuse.

In response to both heads of complaint, the BBC said that the Chairman of Finsbury Park Mosque was first contacted by the producer of the report in July 2015. The broadcaster explained that in that initial conversation, the producer outlined the subject matter of the film and requested an interview with the mosque’s Chairman. He was also asked if it was possible to film general shots of the mosque and any activities that demonstrated how the mosque was embracing

and engaging with all members of the community; and, therefore distancing itself from extremist elements.

The BBC said that the interview with the Chairman was conducted on 3 August 2015, at which time he suggested that the mosque's youth project would provide an appropriate illustration of its inclusive "open door" policy. The BBC stated that the Chairman offered to sign the filming consent form (a copy of which was provided to Ofcom) on behalf of the children in the youth project, acting *in loco parentis* (i.e. taking the legal responsibility and some of the functions and responsibilities of a parent). The BBC said that the producer suggested to the Chairman that, as an additional check, the consent forms should be sent to the children's parents, however, the Chairman said that he preferred to speak personally to the parents and explain the nature of the programme and the filming, since many of them did not speak English and would have struggled to understand the paperwork. Further, the BBC said that the Chairman felt that some parents might have been reluctant to have their personal information documented in this way. Therefore, the BBC said that the programme makers agreed with the Chairman that cultural and linguistic barriers made standard paperwork impractical.

The BBC said that on 7 August 2015, the producer spoke to the Chairman who confirmed that he had obtained verbal permission from the parents of all the children who would be attending the youth club that evening and that he gave his consent, *in loco parentis*, to film the children. The broadcaster added that as the Chairman was a trusted and respected member of the community in charge of running the youth club, the programme makers felt they could rely on his word, but as an additional precaution, the producer told the young people present at the centre that filming would be taking place that evening and asked them to let him know if they or their parents did not wish them to appear in the film. The BBC said that of around 50 children present, only one girl stated that her parents objected, and she agreed to leave the area in which the filming was taking place.

The BBC said that when the programme makers contacted the Chairman following the complaint made to Ofcom by Mrs D, he explained that her children were not regular attendees of the groups at the time. Consequently, the BBC said that the Chairman had not spoken to Mr and Mrs D. The broadcaster added that the Chairman had since apologised to Mr and Mrs D personally for the oversight in not contacting them about the filming.

The BBC stated that in Mrs D's complaint, she asserted that by not obscuring her children's faces the BBC had put her children at risk of being subjected to abuse similar to that described by contributors to the programme. However, the BBC said that the accompanying narrative to the footage in which the children appeared made it very clear that the mosque had distanced itself from its previous extremist connections and was now embracing an inclusive form of Islam. The BBC added that the youth club was an example of how the mosque was successfully engaging with the wider local community. The BBC stated that Mrs D's children appeared only fleetingly, and it did not believe that there was reason to conclude that any of the children who appeared incidentally in the report would be under threat from hate attacks as a result. The BBC clarified that only one interviewee's face was obscured and this was for legal reasons. Further, given the subject matter of the programme, the BBC said that many of the contributors were wearing face-veils, but they were not offered anonymity and nor was it considered necessary for their protection.

## **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy should be upheld.

Both parties were given the opportunity to make representations on the Preliminary View. Both Mrs D and the BBC submitted representations on the Preliminary View, which are summarised below.

### *Mrs D's representations*

In summary, Mrs D said that her children had been going to the youth club since 2014 and had only been absent when they were unwell or when the youth club was closed.

Further, Mrs D said she considered that the Chairman of the mosque had no legal right over her children. In particular, she said that she and her husband had not given the Chairman verbal or written consent to act on behalf of their children so he could not take the decision regarding the filming of their children. Mrs D said that the Chairman did not know her or her husband personally so was not the right person to speak to on their behalf. Mrs D also said that she did not receive any letter from the BBC or the Finsbury Park Mosque asking for her consent.

Mrs D also said it was unacceptable for the BBC to consider the word of the Chairman of the mosque to be enough to replace proper written parental consent. In particular, she said that the BBC should not have accepted the linguistic barrier as a reason for not having parental consent; if the English language was a barrier, an interpreter should have been used by the BBC or by the Finsbury Park Mosque.

In addition, Mrs D said that the consent of children under the age of 16 was not enough to act as a replacement for written parental consent. She added that her children were in a trusted environment and were not old enough to fully understand the impact the filming would have on them. In particular, Mrs D said that they were not able to take a decision regarding consent. This was demonstrated by the fact that when she asked her children why the BBC came to film at the mosque, they were not able to explain. Mrs D said that Finsbury Park Mosque has always been targeted with "bad press" and, previously, with having "a bad reputation". She said that the mosque has done a lot to change the views of people by being open and transparent but that it has been targeted again as a consequence of "what is going on in the world at the moment" and following the 13 November 2015 Paris attacks. In particular, Mrs D said that the last reported attack on the mosque occurred on 27 November 2015. Mrs D reiterated that she and her husband were afraid of the impact the programme could have on their children if it were to be broadcast with their children being easily recognisable.

### *BBC representations*

In response to Mrs D's representations, the BBC noted that Mrs D disputed some aspects of the BBC's account of events, particularly in relation to the information given to the programme makers by the Chairman of the mosque. The BBC said that it was not in a position to address all the disputed points, which in any case it considered to be immaterial to Ofcom's decision.

In view of Mrs D's concern about the safety of her children, the BBC said that Ofcom may wish to note that many of those filmed had told the programme makers that the

number of Islamophobic incidents in the vicinity of the mosque had declined, and that community relations had improved.

## Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions. Ofcom also took into account the representations made by Mrs D and the BBC in response to Ofcom's Preliminary View in this case. After careful consideration we concluded that those representations did not materially affect the outcome of Ofcom's Preliminary View, which was to uphold the complaint.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In assessing both heads of complaint, Ofcom had particular regard to Practices concerning children, Practices 8.20 and 8.21. Practice 8.20 of the Code states that broadcasters should pay particular attention to the privacy of people under sixteen, and Practice 8.21 states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

- a) Mrs D complained that her children's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme because they were filmed at Finsbury Park Mosque without her knowledge or consent.

In assessing this head of complaint Ofcom had particular regard to Practices 8.5 and 8.8. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.8 states that when filming in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is

incidental or where they are essentially anonymous members of the general public will not normally be required. As noted above, we also took into consideration Practices 8.20 and 8.21.

In considering whether or not Mrs D's two children's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first considered the extent to which the two children had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme was obtained.

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

We recognise that children do not have a legitimate expectation of privacy merely because they are children. However, there are relevant considerations relating to children that may result in a child having a legitimate expectation of privacy where an adult might not. For instance, the age of the child, the nature of what was filmed and where the filming took place, the purpose of the filming and the broadcast, consent, and the effect on the child are all relevant factors. These must be taken into account along with all the other circumstances of the case in determining whether or not a child has a legitimate expectation of privacy.

In considering whether the two children had a legitimate expectation of privacy in relation to the filming of them at the youth club at Finsbury Park Mosque we noted from the edited footage that Mrs D's two children were filmed along with other children at the youth club as the children played video games, table tennis and pool.<sup>2</sup> Ofcom was satisfied from both parties' submissions and from viewing the footage that the filming took place openly and that Mrs D's children had not been the focus of the filming. Further, it did not appear that they were filmed doing anything of a particularly private or sensitive nature. We also noted that the part of the programme for which Mrs D's children were being filmed was relatively uncontroversial (i.e. they were filmed to help illustrate the mosque's open door policy). However, we noted that at the time of the filming, Mrs D's children were 10 and 13 years old. It was also likely that many of the other children filmed at the mosque's youth club would have been under the age of 16. We considered that filming in these circumstances pointed towards a higher expectation of privacy, particularly as the environment in which the filming took place was potentially sensitive, not only on account of the age of the children but also taking account of the fact that the mosque and its congregation had, at the time of filming, been the focus of increasing hate attacks. Further, we considered that the children's attendance at the youth club formed part of their private recreational time.

In these circumstances Ofcom considered that Mrs D's two children had a legitimate expectation of privacy in relation to the obtaining of the footage of them included in the programme.

Therefore, Ofcom went on to consider whether the programme makers had secured consent to obtain the material. In particular, and in accordance with Practices 8.8 and 8.21, we considered whether it was necessary for the

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<sup>2</sup> It was not necessary to consider the unedited footage in this case as Mrs D's complaint appeared to refer only to the obtaining of the footage of her children that was subsequently broadcast.

programme makers to have obtained individual consent from Mrs D or from any other person prior to filming her two sons or whether, in fact, the subject matter was trivial or uncontroversial and the participation minor such that consent was not required.

Ofcom noted that the main purpose of the filming at the mosque was to obtain footage of the children at the youth club and the activities which took place as an example of an action taken by the mosque to engage with the wider community. Although we noted that the part of the programme for which Mrs D's children were being filmed for was relatively uncontroversial (i.e. they were filmed to help illustrate the mosque's open door policy), when taking the programme as a whole, we considered that the matter being investigated was serious in that it considered the increase of verbal and physical attacks on Muslims in the UK. Given this, we considered it was necessary for the programme makers to have obtained consent from Mrs D to film her children.

We noted that the programme makers had arranged the filming in advance with the Chairman of Finsbury Park Mosque. We noted from the Chairman's "Contributor consent form" provided to Ofcom by the BBC, that there was a handwritten note made by one of the programme makers which stated: "in regards to the children at the mosque to be filmed on 7/8/15 please see attached notes – we will require parental or guardian consent". A "BBC Child Consent Form" was also attached which requested that the parents or guardians of the children consent to the filming and subsequent broadcast of the footage of their children. However, we noted that the BBC said in its response that the Chairman felt it would be preferable for him to speak personally to the parents and explain the nature of the programming and the filming, since many of them did not speak English and would have struggled to understand the paperwork. The BBC said that the Chairman also felt that some parents might be reluctant to have their personal information documented in this way. The BBC said that in this context the programme makers agreed with the Chairman that cultural and linguistic barriers made standard paperwork impractical and it was on this basis that they had relied on him to obtain consent from the parents or guardians of the children to be filmed.

Ofcom noted that the Chairman, who was in charge of running the youth club, had confirmed to the programme makers on 7 August 2015 that he had obtained verbal permission from the parents of all the children who would be attending the youth club on the evening of the filming and that he gave his consent, *in loco parentis*, to film the children. We also noted that he said in subsequent correspondence to the BBC that the safety and security of the children under the mosque's care and in the youth centre is always their main focus and that before the BBC came to film, the mosque had contacted the "parents and legal guardians of the children who **usually** attend our youth club to inform them about the filming" [emphasis added by Ofcom]<sup>3</sup>. We further noted that the mosque's Chairman had informed the BBC that Mrs D's children were not regular attendees of the youth club at the time and that, consequently, the Chairman had not spoken to Mrs D (for which he had since apologised). We noted that Mrs D disputed that her children were not regular attendees. Mrs D said that they had attended the youth club since 2014 and were only absent when they were unwell or the youth club was closed. Notwithstanding this conflict of facts, we recognised that the programme makers and the broadcaster would not have appreciated, at

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<sup>3</sup> This was in an email sent by Mr Kozbar to the BBC in November 2015 following Mrs D's complaint about the programme.



the time the filming took place, that the Chairman had not spoken to Mrs D. We also noted from Mrs D's representations that he did not know her or her husband personally. As to the Chairman being *in loco parentis* at the time the filming took place, we considered that parents would not ordinarily expect decisions about matters relating to their children's privacy, and in particular whether or not they could be filmed for the purpose of a television programme, to form part of the responsibility of someone they had entrusted to act *in loco parentis* (if indeed this was the case here, which Mrs D strongly disputed). In our view it was not sufficient to rely on any consent the Chairman said he had given to the filming; the responsibility for ensuring that the appropriate consent was obtained for each of the children at the youth club rested solely with the programme makers and the broadcaster.

Given this, we went on to consider the further steps the BBC said the programme makers had taken to ensure they had the consent of the parents. We noted that the BBC said that the programme makers had taken the additional precaution of asking the children at the youth club whether they or their parents objected to the filming that would be taking place that evening and that, of around fifty children present, the BBC said that only one girl stated that her parents objected and that she agreed to leave the area in which the filming was taking place. It was not clear to Ofcom whether or not Mrs D's children were present when the programme makers asked the children at the youth club whether they or their parents objected to the filming and we noted that there was nothing in the submissions to show that they were. We also noted Mrs D's comment that boys under the age of 16 are not old enough to fully understand the impact of filming and are unable, therefore, to provide informed consent for themselves. In our view, it was clear that at no point was Mrs D told that her children were being filmed. On this basis, we concluded that the broadcaster did not have Mrs D's consent for the filming of her two children at the youth club.

Ofcom therefore went on to consider whether the infringement into Mrs D's two children's privacy was warranted. In doing so, we assessed the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. We also took into consideration the rights of freedom of other parents and children, the BBC and the programme makers in relation to filming for the programme.

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

We recognised that there may have been a genuine public interest in making this programme about the reality of daily life for some Muslim women and the physical and verbal attacks that they are subjected to and that it was within this context that the programme set out to explore the increase of Islamophobia in the UK and the steps some mosques, such as the Finsbury Park Mosque, were taking to engage with the wider community. However we noted that the BBC did not provide any specific arguments as to why, in the particular circumstances of this case, they considered it was warranted to have obtained the infringing material of Mrs D's two sons.

As noted already in relation to assessing whether the children had a legitimate expectation of privacy in relation to the filming, Mrs D's two sons were 10 and 13 years old at the time and were filmed at a youth club inside the mosque. This was a private recreational environment where many of the other children also would have been under the age of 16. Furthermore, Mrs D's sons were filmed without her or her husband's consent. As also noted above, the youth club was potentially sensitive, not only on account of the age of the children, but also taking account of the fact that the mosque and its congregation had, at the time of filming, been the focus of increasing hate attacks. For all these reasons we considered that the filming by the BBC in these circumstances did not outweigh any public interest in obtaining the footage.

Having taken all the above factors into account, we considered that, on balance, the rights of Mrs D's two children were not outweighed by the broadcaster's right to freedom of expression in obtaining the footage. Therefore, in the circumstances of this case, we found that there was an unwarranted infringement of privacy in connection with the obtaining of footage of Mrs D's two children for inclusion in the programme.

- b) Mrs D also complained that her children's privacy was unwarrantably infringed in the programme as broadcast because footage of them with their faces unobscured was broadcast without her or her husband's knowledge or consent. By way of background, Mrs D said the programme was about Islamophobia and included testimonies from individuals who spoke about the physical and emotional abuse they had suffered because of their religious beliefs. Mrs D said that these individuals had had their faces obscured, however, her children's faces were not obscured and, as a consequence, the programme had put her children at risk of being subjected to similar abuse.

In assessing this head of Mrs D's complaint, as well as taking into consideration Practices 8.20 and 8.21, we had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mrs D's two son's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which they had a legitimate expectation of privacy in relation to footage of them being included in the programme without her consent.

As set out in the "Programme summary" section above, following a brief discussion about the previous extremist associations of Finsbury Park Mosque, the mosque's Chairman explained that the mosque now had a more inclusive, open door policy and was more than just a place of worship as it also acted as a community centre. Following this, footage of various children (including Mrs D's two sons) playing video games, table tennis and pool was shown. The programme also explained that the mosque and its congregation had been the focus of hate attacks and the Chairman explained some of those which had taken place.

As under head a) in relation to considering Mrs D's complaint of an unwarranted infringement of privacy in the making of the programme, the test applied by Ofcom as to whether a legitimate expectation of privacy arises in relation to inclusion of footage in the programme as broadcast is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Therefore, in considering whether or not Mrs D's

two children had a legitimate expectation of privacy in relation to the inclusion of the footage of them in the programme, we took into consideration the circumstances in which this information was included. We also took into account the considerations relating to children as set out in head a) that may result in a child having a greater legitimate expectation of privacy or in having an expectation of privacy in circumstances where an adult might not.

For all the same reasons as in relation to our consideration of the above points in head a) we concluded that Mrs D's children had a legitimate expectation of privacy. However, we considered that such legitimate expectation was even further heightened in relation to the broadcast of the footage because the children were clearly visible in the footage and no steps had been taken to obscure their identity. In particular, we considered that they were identifiable and that it would have been clear from watching the programme that the two children had attended a youth club at Finsbury Park Mosque; a mosque which in the past had had links to extremism and whose congregation were still the focus of hate attacks. We also noted Mrs D's concerns about the risk of her children being subjected to abuse as a result of being visible in the footage. Further, we considered that the children's attendance at the youth club formed part of their private recreational time.

While we noted that Mrs D's children's participation in the programme was relatively minor and that the subject matter of the part of the programme in which they appeared was relatively uncontroversial, the subject matter of the programme when taken as a whole was serious because it considered the increasing number of verbal and physical attacks on Muslims in the UK. Taking these considerations into account and for all the reasons set out under head a) in relation to the obtaining of the footage, we considered it was not sufficient to rely on any consent the Chairman had given and that it was necessary for the broadcaster to have obtained individual consent from Mrs D for the subsequent broadcast of this material. We noted from the BBC's submissions that the broadcaster did not dispute that it had not obtained Mrs D's consent for the material to be broadcast. In all the circumstances, therefore, we concluded that Mrs D had not consented to the broadcast of footage of her children in the programme.

Ofcom therefore went on to consider whether the infringement of Mrs D's two children's privacy was warranted. In doing so we were conscious of the broadcaster's right to freedom of expression and the audience's right to receive information without unnecessary interference, as well as the privacy rights of Mrs D's two children. In particular, we considered whether there was a sufficient public interest or other reason to justify the infringement of Mrs D's children's privacy in broadcasting the footage of them without her consent.

As already noted in relation to head a) above, the BBC did not provide any specific arguments regarding why, in its view, it might be warranted to have included this material which infringed the privacy of Mrs D's two children. However, for the same reasons as set out under head a) in relation to the making of the programme, we considered that there was a public interest in broadcasting this programme. In particular, we considered that there was a public interest in showing footage of the youth club in order to demonstrate how, by opening its doors up to the wider community, the mosque was attempting to keep itself away from extremists.

While we recognised that the participation in the programme of Mrs D's two sons was relatively minor and their appearance in the footage fleeting, we considered that they were identifiable and that the subject matter of the programme, when taken as a whole, was serious because it considered the increasing number of verbal and physical attacks on Muslims in the UK and included testimony from various individuals about the physical and emotional abuse they had suffered because of their religious beliefs. We also took into consideration that the Chairman had stated that some members of the Finsbury Park Mosque itself had been the subject of hate attacks. Within this context and having particular regard to the lack of consent and the factors considered under head a) in relation to the heightened expectation of privacy of Mrs D's children, including their age and the environment in which they were filmed, it was our view that the broadcaster's right to freedom of expression and any public interest in broadcasting the footage of Mrs D's children were not sufficient to justify the infringement of their privacy. Therefore, in all the particular circumstances of this case, we concluded that the rights of Mrs D's two children were not outweighed by the broadcaster's right to freedom of expression.

Therefore, Ofcom found that there was an unwarranted infringement of the privacy of Mrs D's two sons in the programme as broadcast.

**Ofcom has upheld Mrs D's complaint made on behalf of her two children (minors) of unwarranted infringement of privacy in connection with the obtaining of material of included in the programme, and in the programme as broadcast.**

## Not Upheld

### **Complaint by Mr Curt Andren on behalf of Mr Johan Andren** *Stalkers, TV3 Sweden, 10 March 2015 (and various repeats)*

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#### **Summary**

Ofcom has not upheld Mr Curt Andren's complaint, made on behalf of his son Mr Johan Andren, of unjust or unfair treatment in the programme as broadcast and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme, part of a documentary series recounting cases involving allegations of stalking, provided a detailed account of "Lotta's" experience of being stalked by "Stefan" (an alias for Mr Johan Andren). Mr Curt Andren complained that his son was treated unfairly in the programme as broadcast because false accusations were made about him in the programme, and his privacy was unwarrantably infringed.

Ofcom found that:

- In relation to the complaint of unjust or unfair treatment, Ofcom considered that the programme was not misleading or unfair in its representation of Mr Johan Andren. We considered that viewers were likely to have understood that events depicted in the programme were a representation of Lotta's side of the story and would not have considered the information presented as unequivocal fact. Further, given the nature of the crimes Mr Johan Andren was convicted of, we did not consider that the particular claims made in the programme were likely to have materially and adversely affected viewers' opinions of him in a way that was unfair.
- In relation to the complaint of unwarranted infringement of privacy regarding the filming of Mr Johan Andren outside the court, the filming of his property, and the obtaining of an audio court recording of court proceedings, and the subsequent broadcast of this footage, and the broadcast of information from his Facebook page, Ofcom considered that Mr Johan Andren did not have a legitimate expectation of privacy in the particular circumstances of this case. Therefore, it was not necessary for Ofcom to consider whether any infringement into his privacy was warranted.

#### **Programme summary**

TV3 Sweden ("TV3") is a Swedish channel that is licensed to Modern Times Group MTG Limited ("MTG") by Ofcom.

MTG provided Ofcom with a recording of the programme broadcast. As the programme was broadcast in Swedish, an English translation was obtained by Ofcom from an independent translation company and provided to the complainant and broadcaster. Both parties' comments on the translation were sent to the translation company for its views. Having assessed all of the comments made, appropriate amendments were made by Ofcom and the parties were provided with a final version of the translated transcript. The parties were informed that Ofcom would use this transcript to investigate the complaint.

On 10 March 2015, TV3 broadcast an edition of *Stalkers*, a documentary series which recounted cases involving allegations of stalking. This edition provided a detailed account of “Lotta’s” experience of being stalked by “Stefan” (an alias for Mr Johan Andren). The programme was presented by Ms Jenny Gorman and included interviews with Lotta, her son “Max” and experts such as a criminologist and security consultants. The programme also included home recorded video footage demonstrating Lotta’s recollection of events.

The programme’s narrator introduced the programme:

*“Every year 150,000 Swedes are subjected to stalking. Despite this, only 72 people have ever been convicted since the law came into force in 2011. Stalkers intervenes when society has failed and try to help the people affected to regain their lives before it is too late”.*

Jenny then explained:

*“For over a year Lotta has been harassed by a man with whom she had had a short but intensive relationship with. He threatens and stalks her, but worst of all, he goes after her 13 year old son”.*

Lotta explained how she and Stefan had met at a party but a few years earlier Stefan had asked her if they could be friends on Facebook. She said:

*“I accepted his friendship request because I thought here is probably an interesting guy: he had several thousand friends”.*

At this point, footage of Stefan’s Facebook page was shown scrolling down the screen. Various people’s names and photographs were displayed.

Lotta explained that after two months she felt that she had to end her relationship with Stefan. She said that on a trip away together, she had agreed to let Stefan take Max to play Laserdome, however, she explained that:

*“But the only thing he could think of doing meanwhile, was to go to a pub in the vicinity and drink, so he was drunk when he collected Max”.*

She continued:

*“I got this horrible feeling in my stomach – I already had it earlier in the day – I probably had it even before we travelled really, but this trip was really the culmination”.*

She said that the next morning:

*“...he became totally weird...I did not understand what was happening. He had been off drinking – just drank something straight down. Then there was nothing to discuss, this is just to conclude – now he just has to go. I can’t have anything more to do with him”.*

At this time, close up obscured images of Stefan’s face were shown along with images of him holding a glass of wine.

Lotta explained that after ending the relationship, that was when “*Stefan began the harassment*”.

She spoke about the effect Stefan's actions had had on her and her son and how they were afraid of him. She read out various text messages that she said they had received from Stefan. She said, for example, that Stefan had written to Max:

*"This is how it is Max: your dad is a heavy alcoholic and drug addict. That is why your mum left him, but only after several years. She also partied really hard".*

Lotta said that less than an hour after Stefan being released by the police for questioning over his behaviour, he had come to their house. She said:

*"This is really what I have been afraid of all the time – that he would show up – he has got us to feel insecure and threatened all the time and suddenly he is actually standing right there in the middle of the window. And I was standing down here in the kitchen. And it turns to chaos here".*

Max later said: *"...I thought I was going to die"*.

Lotta added: *"He [Max] screamed straight out 'mum, mum I don't want to die, mum, mum'"*.

The programme's narrator then explained:

*"Our security expert Janne went to Gothenburg to meet Lotta and to find out more details about her stalker in order to map his routines before a future confrontation".*

Later in the programme Max was shown speaking to Jenny. He said:

*"But then I had nightmares and all... The worst nightmares were probably when he and I were mates. He had said to me – as far as I remember, anyway – that he had chopped my mum up into small pieces. And I cried and cried, I remember that he tried to comfort me".*

The programme then cut to Jenny speaking with an unnamed "author and criminologist" who explained:

*"Stefan is a relationship stalker. He has had a relationship with the woman. It does not matter whether it has been short or a longer one. It is a relationship that has been terminated. The trigger for this stalking is that she has terminated this relationship... He is a person who tries to humiliate, irritate, disturb, make it known that he is there in the wings, so that she will think about him".*

The programme then cut back to Janne and Lotta; Janne asked:

*"With regard to his house and accommodation, it is a building situated in the centre of town?"*

Lotta responded that this was correct.

Footage of the outside of Stefan's building was then shown.

Janne explained:

*“Now we’re going to see if we can try to find him somewhere here. It isn’t exactly easy, as he seems to be a person who does not follow any specific routines. The only fixed place he has, really, is his home”.*

The programme’s narrator then stated:

*“Janne and his colleague head out to the address where Stefan is registered as a resident”.*

A close up image of a map was shown, though the text appeared out of focus.

Janne and his colleague were shown driving to Stefan’s house. Janne’s colleague stated:

*“We’ll have to see if he is out and about now. He appears to be tired in the mornings. On the third floor there is a balcony. That is his bedroom and the window on the left where the light is on, is his sitting room”.*

Footage of the outside of Stefan’s flat was shown and the programme’s narrator explained:

*“Janne’s colleague takes a look in the entrance and concludes that the name of the man we are looking for is written there and that the lights are on in the flat in which we have found out that he is living in. Despite lots of reports to the police, Stefan does not stop terrorising Lotta. He is now on his third injunction but all the time he comes up with new ways to stalk her”.*

The programme’s narrator later explained:

*“Stefan uses the surrounding world to constantly remind Lotta that he exists. In addition to [signing her up to] competitions, surveys and dating sites, Stefan has also reported her to the Social Welfare Board for child neglect. Her private email and work emails have been intercepted, which has resulted in chaos at the company where she works”.*

Various emails were then shown.

Following this, a caption stated *“After the break”* and Lotta said: *“The worst case scenario that I have been afraid of all the time [is] that he is going to shoot me”.*

After a commercial break, home filmed footage was shown taken from the inside of Lotta’s house looking out the window as she could be heard saying:

*“Now I don’t know exactly what is happening here. I just hear strange sounds outside and it is soon nine in the evening. And the dog has gone completely nuts. Normally the dog does not react this way and it feels really scary. I hear sounds and I don’t know where they are coming from – whether it is up on the patio or not. Now about a quarter of an hour has passed, and the dog is still very tense and my pulse rate is 200. I don’t dare go down and see what it is...”.*

Lotta then explained that on a separate occasion, she had arrived home at about 2am from a night out, and had received a text message which was shown:

*“You have commissioned anonymous little idiots to call and make death threats. If you want to ‘talk’ about it then I’ll see you soon. Listen after the Harley sound!”*



The name “HAWChap [Hells Angels West Chapter]” appeared at the top of the message.

Later in the programme, footage of the outside of Stefan’s flat was shown again. Janne’s colleague stated:

*“There is a light on in his flat. He may be at home, but it also may be timers that start when motion-activated. He may be sitting in a local pub in the vicinity”.*

The programme’s narrator stated:

*“Our security experts continue to watch the address where we believe Stefan is”.*

Lotta then spoke about the physical affect the stress had had on her son and explained how she felt as a mother:

*“You feel completely heartbroken. You have to try and give the security you can provide. The worst case scenario that I have been afraid of the whole time is that he is going to shoot me...or that he will take Max or kill one of us. Yes, that’s the tough thing, that has been the hardest thing the whole time”.*

Later in the programme, further footage of the outside of Stefan’s flat was shown. The following exchange then occurred:

Janne: *“Let’s see if he’s at home now...”*

Janne’s colleague: *I think that I saw the light from the TV from in there. Wait a little.*

Janne: *It appears to be the same lights as earlier.*

Janne’s colleague: *“Yes, but I saw – there was something. I think the TV was on.*

Janne: *Yes, it looks like it actually”.*

The programme’s narrator then stated:

*“After just over 20 hours outside Stefan’s address our security experts still haven’t had a glimpse of him. Janne’s colleague has gone out once again to check the building”.*

Janne’s colleague stated: *“Yes, he’s at home. You can see that the TV is on”.*

The programme’s narrator then explained:

*“We know that Stefan has been summoned to a trial and if our security experts have not managed to map his routines with the help of surveillance, there will be a chance to confront him there. What we do know, on the other hand is that Stefan has not appeared earlier when he was summoned”.*

Footage of the outside of Stefan’s flat was shown again and the programme’s narrator explained:

*“It is early morning in Gothenburg. Stefan has been summoned to a District Court hearing in Alingas and Janne and his companion are on the way to Stefan’s*

*address in order to keep an eye on the entrance during the hours of the morning. Stefan has been summoned to hearings previously and did not appear. So that we can be sure of executing the confrontation, Stefan needs to be there. When they park, they suddenly notice a man who could be Stefan...Janne's colleague jumps out of the car and can confirm that it is actually Stefan".*

Obscured footage of Stefan from a distance crossing the street was shown.

The two security experts were then shown following Stefan's car. Footage of Stefan's car was included but the registration number was obscured.

The programme's narrator then stated:

*"Janne and his colleague follow Stefan to Alingas District Court where I am waiting. Our plan is to confront Stefan after the hearing. Stefan stands accused of, among other things, harassment and several cases of violating injunctions. From a distance we see how Stefan arrives at the court".*

A partial audio recording of the court proceedings was then played. Stefan was heard being interviewed in court about his relationship with Lotta and Max.

Jenny was then shown discussing with Janne what he thought Stefan's reaction would be to them waiting outside the court for him. Janne said:

*"He is not a violent person as far as we believe. He may try to avoid us and get away from there. Or it may well be that he believes in his story".*

Jenny was then shown approaching Stefan, his parents and his lawyer (their faces were all obscured) outside the court. Jenny asked if she could ask Stefan a few questions. He responded "No".

Stefan, his parents and his lawyer were shown trying to walk away from Jenny and the camera crew. The following exchange ensued:

Jenny: *"How can you expose a 12 year old boy to what you do? Did you know he has nightmares? He can't go to school.*

Stefan's father: *He doesn't feel all that great either, I can tell you, and nor will you if you carry on.*

Jenny: *You know something? He doesn't need to go after a 12 year old child. And I am talking to him. He can't go to school. He can't play table tennis. He can't [interrupted].*

Stefan: *I don't want to. Please.*

Jenny: *Live a normal life.*

Stefan: *Please, I don't wish to be in a TV programme.*

Jenny: *Can you just say that you will stop then?*

Stefan: *I [inaudible]. Yes I stop [inaudible]. I am not going to say anything.*

Jenny: *I have read your Facebook entries under false aliases, your text messages. Two weeks ago you sent 'Listen to the Harley sound'. Everything can be traced to you, unfortunately. The evidence is quite clear in this case. I just want to know why you do it. She finished it and you carry on anyway. It can't be good for you or for her, can it, and above all it's no good for Max who is 12 years old.*

...

Jenny: *Can you say that hereafter you will stop contacting Lotta and Max?*

Stefan: *Yes, I stopped [contacting Lotta and Max] a long, long time ago. I have felt like shit because of these things.*

...

Stefan: *I haven't done this. I don't want to be in [inaudible] to broadcast this...*

...

Jenny: *Okay. Can you just say that you are going to stop, that's all?*

Stefan: *Yes, but I don't want you to show me on TV.*

Jenny: *Just say you are going to stop.*

Stefan: *I did stop, a year ago.*

Jenny: *No you haven't.*

Stefan: *Yes I have.*

...

Stefan: *I haven't done a load of things that she is alleging. I have been [inaudible]".*

During this exchange, Stefan, his parents and his lawyer were shown trying to evade Jenny and the camera crew. Jenny was shown repeatedly blocking their path. Stefan was then shown getting into a car.

The programme's narrator stated:

*"A few weeks after our confrontation, Stefan is found guilty of several of the crimes which he has been charged with. He is sentenced to probation with special conditions for harassment and violation of injunctions".*

Lotta then commented on the outcome:

*"That he gets away lightly as usual. That was the first thing I thought about. It would have felt better if he had been locked up for a while".*

Lotta later stated that Stefan had "started again" and had for example "contacted several hundred people on Facebook".

The expert “*author and criminologist*” then stated:

*“My advice to Lotta is to report every violation of injunctions. Be very determined when she talks to the police and say that I know it is this person. It is your job to prove it. I know that it is this person, and my suggestion to the police is that they start a preliminary investigation and start investigating this problem”.*

Jenny then said:

*“Let justice take its course against him, quite simply, and you’ll carry on collecting piles of evidence”.*

The programme ended with Lotta stating that she was pleased that she had taken part in the programme.

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

### Complaint

#### *Unjust or unfair treatment*

- a) Mr Curt Andren complained that Mr Johan Andren was treated unjustly or unfairly in the programme as broadcast because false accusations were made against him which damaged his reputation. In particular, the programme stated that Mr Johan Andren:
  - i) Was a “*stalker*”. The programme stated that Mr Johan Andren had been “...*found guilty of several of the crimes which he has been charged with. He is sentenced to probation with special conditions for harassment and violation of injunctions*”. The complainant said that this was untrue and provided Ofcom with an extract from a document entitled ‘Alingas District Court Judgement’ (dated 11 March 2014) which stated that: “Johan Andren shall therefore be found guilty of breach of [his] contact ban on three occasions and not for unlawful stalking”.
  - ii) Had sent a threatening SMS text message to Lotta. The text message which appeared in the programme stated: “You have commissioned anonymous little idiots to call and make death threats. If you want to ‘talk’ about it then I’ll see you soon. Listen after the Harley sound!” The name “HAWChap” (Hells Angels West Chapter) appeared at the top of the message. The complainant said that this was a criminal organisation, and that the programme had implied that his son had been behind the message sent and that he had connections with HAWChap. The complainant said that his son neither sent this message nor had connections with HAWChap.
  - iii) Had signed Lotta up to various competitions, surveys and dating sites to “*remind Lotta that he exists*”. The complainant said that this was untrue.
  - iv) “...*has been summoned to hearings previously and did not appear*”. The complainant said that a previous trial had been postponed once due to legal reasons and that a new date had been set.
  - v) Was potentially violent and had caused Lotta and her son to fear for their lives. For example, Lotta stated in the programme that: “*The worst-case scenario that I have been afraid of the whole time is that he is going to shoot*”

*me*". The complainant said that his son had never been in possession of any weapon. He also said that the security consultant working with the programme makers stated in the programme that his son was "...not a violent person as far as we believe".

- vi) Had caused distress to Lotta's son. The programme claimed that due to Mr Johan Andren's actions, Lotta's son's health had suffered, he had taken time off school, and had stopped playing table tennis.
- vii) Had once driven Lotta's son Max home whilst in an "intoxicated condition". The complainant said that this had never happened.

#### *Unwarranted infringement of privacy*

b) Mr Curt Andren complained that his son's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because:

- i) The programme makers attempted to interview him without warning outside the court. The complainant explained that after being in court for seven hours "...we [Mr Johan Andren, his mother, his lawyer and himself] were almost instantly attacked by some strange people with moveable recording equipment". He said that his son had told the programme makers that "I haven't done anything" and "I don't want to participate in this programme" but that "Jenny is very persevering and hunts Johan around".
- ii) Footage of the outside of his flat was filmed for inclusion in the programme.
- iii) An audio recording of the court proceedings against him was obtained by the programme makers.

c) Mr Curt Andren also complained that his son's privacy was unwarrantably infringed in the programme as broadcast because:

- i) Footage of him was included in the programme without his consent. The complainant argued that his son was identifiable from the footage included in the programme. While his face was obscured, and he was referred to by an alias name ("Stefan") in the programme, his voice could be heard. The complainant explained that: "Absolutely nobody has missed to recognize him [Johan]".
- ii) Footage of the outside of his flat was included in the programme.
- iii) Footage of his Facebook page, showing a list of his friends, was included in the programme.
- iv) An audio recording of the court proceedings against him was included in the programme.

By way of background to the complaint, Mr Curt Andren explained that his son's health had deteriorated since the broadcast of the programme. He described his son as "...a man without hope, totally diminished as a person". He said that his son no longer wanted to live in or even visit his own apartment and was "...afraid to his life even to go out for a walk...".

### The broadcaster's response

Before addressing the specific heads of complaint, MTG began by providing background information on the programme. It said that “‘Stalkers’ is an investigative programme which aims to address and highlight the issue of stalking, as this is an increasing problem in Sweden. According to national statistics 150,000 people are victims of persecution and harassment every year and eight people are killed by a stalker”. Further, MTG stated that a new law was introduced in Sweden in 2011 specifically to deal with stalking, explaining that “[p]rior to this, the perpetrator could only be charged with certain individual crimes committed while stalking, such as assault, threats and violation of restraining orders”. MTG went on to explain that the purpose of the programme was to: “...put an end to the stalking by gathering evidence against the stalker and confronting them”.

MTG explained that the programme had featured “Lotta”, a single mother who lived in a mid-size town in Sweden. It said that Lotta had met Mr Johan Andren at a party and that they had dated for a time. It said that when Lotta ended the relationship, Mr Johan Andren had started to “harass” her and that Lotta was then “...living in constant fear, not knowing what Johan was capable of and what his next move would be”. MTG said that the programme gave viewers an insight into how Mr Johan Andren’s actions had affected the lives of Lotta and her son, “...to the extent that they now avoided going out”.

MTG said that the evidence against Mr Johan Andren had been carefully reviewed by the programme’s experts (a criminologist who specialised in stalking and an expert on safety issues). It said that the programme’s presenter, Ms Gorman (“Jenny”), had then confronted Mr Johan Andren about his alleged stalking of Lotta. It said that during this confrontation, Mr Johan Andren had admitted to harassing Lotta and her son and had told the programme makers that he had stopped harassing her a year ago.

MTG pointed out that Mr Johan Andren had been “...found guilty [of] harassment and [of] violating three restraining orders. He was sentenced to probation”. MTG provided Ofcom with a copy of the court’s decision of 11 March 2014.

### *Unjust or unfair treatment*

- a) MTG addressed each of the sub-heads of complaint in turn.
  - i) MTG said that Mr Johan Andren had been found guilty of harassing Lotta’s 12 year old son, “Max”; Mr Johan Andren had sent numerous “offensive and unsuitable” texts and messages to Max via his phone and Facebook. It said that the court had also found Mr Johan Andren guilty of breaching three restraining orders and that as a consequence, he had been sentenced to probation and ordered to pay damages to Lotta and her son.
  - ii) MTG said that Lotta had received the text message in question a few minutes after arriving home one evening. It said that given Mr Johan Andren had previously violated his restraining order, Lotta suspected that it had been sent by him. MTG said that the sender of the text was not revealed in the programme and the programme did not link Mr Johan Andren to “HAWChap”.
  - iii) In relation to the complaint that the programme stated incorrectly that Mr Johan Andren had signed Lotta up to various competitions, surveys and dating sites, the broadcaster said that Lotta was explaining her version of

events. It said that based on Mr Johan Andren's previous behaviour and the fact that he had violated restraining orders and harassed Lotta and her son, Lotta "...had every reason to believe that Johan is the one behind this".

- iv) MTG acknowledged that the reasons for Mr Johan Andren being absent from court "were not adequately explained in the programme". However, it said that the omission of this information did not result in any material unfairness towards Mr Johan Andren or damage to his reputation.
- v) In relation to the complaint that the programme stated that Mr Johan Andren was potentially violent and had caused Lotta and her son to fear for their lives, MTG said that Lotta and her son could not have known what Mr Johan Andren was capable of. It said that they had both been subjected to harassment by Mr Johan Andren and their natural instinct was therefore to be afraid of him. MTG said that the programme did not present Mr Johan Andren to be as dangerous as Lotta and her son had thought he was at the time. It said that it was important that Lotta be able to speak freely about her experience and that Lotta's experience of the situation was different to that of the security consultant. It said that no one other than Lotta could have known how she was feeling at the time she was being harassed and "A person harassed does not always think rational thoughts as they experience fear on a daily basis".
- vi) MTG pointed out that Max had been only 12 at the time of filming and that he had not previously encountered anything like this in his reasonably sheltered life. It said that Max had received "highly offensive" text messages from Mr Johan Andren about his mother that would have likely been distressing for any young boy. It said that Max had been most afraid when Mr Johan Andren had appeared outside their house one evening unexpectedly. It said that Mr Johan Andren had looked through the kitchen window and that Lotta had noticed and "expressed her fear" and Max had "feared for his life". It said that Mr Johan Andren had been in violation of a restraining order by visiting their home on that evening. It said that the complainants were not in a position to judge "how [Max] did or did not react to the situation he was subjected to or what possible consequences this might have had on [Max's] life and quality of life".
- vii) With regards to the complaint that the programme stated that Mr Johan Andren had driven Lotta's son whilst in an "intoxicated condition", MTG said that while the programme stated that Mr Johan Andren was in an "intoxicated condition" when he collected Max from Laserdome on the day in question, neither the programme's narrator nor Lotta stated or implied that Mr Johan Andren was in a car when he collected Max.

#### *Unwarranted infringement of privacy*

- b) In response to the complaint that Mr Johan Andren's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, MTG stated the following:
  - i) MTG said that it did not consider there had been an unwarranted infringement of Mr Johan Andren's privacy. It said that the experts featured in the programme had carefully reviewed the evidence against Mr Johan Andren, including determining that they had identified the correct individual, and that Jenny had then confronted Mr Johan Andren with a view to "give Johan a

chance to give his side of the story and to also give him the chance to say he would stop [harassing Lotta and her son]”. It said that Jenny had informed Mr Johan Andren about the distress he had caused, especially with regards to Lotta’s 12 year old son. MTG said that in the unedited footage of the confrontation, Mr Curt Andren admitted that “he did not appreciate what his son had done to [Max]”. It said that it was important to note that Mr Johan Andren had been found guilty of harassing Max and of violating a number of restraining orders.

- ii) MTG said that the footage of the outside of Mr Johan Andren’s flat was filmed on a street in the city centre of Sweden’s second biggest city. It said that many of the buildings were identical in a street over 980 meters long. It said that it would be “more or less impossible” to identify Mr Johan Andren’s address based on the footage included in the programme. It also said that the location of filming was not discussed in the programme.
  - iii) MTG said that unless there were special circumstances, trials in Sweden were open to the public and that verdicts were also publicly available. It also said that Mr Johan Andren’s identity was not disclosed in the clip of the audio recording included in the programme.
- c) In response to the complaint that Mr Johan Andren’s privacy was unwarrantably infringed in the programme as broadcast, MTG stated the following:
- i) MTG said that Mr Johan Andren’s face had been obscured to make him unidentifiable in the broadcast programme.
  - ii) MTG said that the footage of the outside of Mr Johan Andren’s flat was filmed on a street in the city centre of Sweden’s second biggest city. It said that many of the buildings were identical in a street over 980 meters long. It said that it would be “more or less impossible” to identify Mr Johan Andren’s address based on the footage included in the programme. It also said that the location of filming was not discussed in the programme.
  - iii) MTG said that neither Mr Johan Andren nor his friends had a legitimate expectation of privacy with regards to information on Facebook. It said that Mr Johan Andren could not possibly have been identified from the footage shown of his friends on Facebook. It also said that Mr Johan Andren’s name was not shown on screen. MTG therefore said that there was no infringement of Mr Johan Andren’s privacy.
  - iv) MTG said that unless there were special circumstances, trials in Sweden were open to the public and that verdicts were also publicly available. It also said that Mr Johan Andren’s identity was not disclosed in the clip of the audio recording included in the programme.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View that Mr Curt Andren’s complaint, made on behalf of his son Mr Johan Andren, should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant made representations which are summarised below. The broadcaster did not submit any representations.



## Mr Curt Andren's representations

### *Unjust or unfair treatment*

Mr Curt Andren said:

- With regard to the court judgment, Mr Johan Andren had been convicted of a breach of the 'no contact' order on three occasions, and not unlawful harassment. On that basis, Mr Johan Andren could not be called "a stalker". Mr Curt Andren said that the programme had presented the charges against his son as being more severe than they actually were and that Ofcom had similarly done so by accepting the broadcaster's representations in its Preliminary View.
- The programme had wrongfully linked Mr Johan Andren with HAWChap (Hells Angels West Chapter).
- Mr Johan Andren had not signed Lotta up to various competitions.
- The programme stated that "*Stefan has been summoned to hearings previously and did not appear*". Mr Curt Andren reiterated that this had damaged his son's reputation and had resulted in material unfairness.
- It was unfair to say that Mr Johan Andren's behaviour towards Lotta and her son had caused them to fear for their lives as he had never acted violently towards either of them. Further, statements were included in the programme with the intention of making Lotta and her son's situation seem worse than it was.

### *Unwarranted infringement of privacy*

Mr Curt Andren said:

- With regard to the filming of footage of Mr Johan Andren outside the court, he was satisfied with how Ofcom had "described our experiences" and understood that the programme makers could not be prevented from filming in circumstances such as this, but felt that "...morally it is quite astonishing to do so, after 7 hours in cort [sic]!"
- In relation to both the filming and broadcast of footage of Mr Johan Andren's flat, his son's flat location was identifiable from the footage included in the programme. In particular, Mr Curt Andren said that the programme clearly stated the floor on which his son's apartment was located and showed a restaurant on the ground floor of the building which was well-known to people living in Gothenburg. The footage also showed the names of local supermarkets and a barber shop located near to Mr Johan Andren's house. Mr Curt Andren also said that while he agreed that his son's property was on a long street, the houses were not identical to one another. In Mr Curt Andren's view, these factors taken together helped to make his son's address identifiable.
- In relation to both the obtaining and inclusion in the programme of the audio recording of the court proceedings, together with other factors, the audio recording "...makes it very likely for people who know him, to recognize [Mr Johan Andren]".

- In relation to the inclusion in the programme of footage of Mr Johan Andren outside the court, Mr Curt Andren did not agree that his son was unidentifiable from this footage. In particular, he stated that people who knew Mr Johan Andren could see “the contours of his face and identify the shape of his face and hairstyle, and together with his voice detect that this person has to be Johan”.
- In relation to the inclusion in the programme of footage from Mr Johan Andren’s Facebook page showing the faces of some of his friends, Mr Curt Andren stated that this was “going somewhat too far”.

## Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast and translated transcript, both parties’ written submissions, and supporting documentation. Ofcom also took careful account of the representations made by the complainant in response to being given the opportunity to comment on Ofcom’s Preliminary View on this complaint. After careful consideration of Mr Curt Andren’s representations, we concluded that the points raised did not materially affect the outcome of Ofcom’s decision not to uphold the complaint.

### *Unjust or unfair treatment*

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

Ofcom considered the complaint that Mr Johan Andren was treated unjustly or unfairly in the programme as broadcast because false accusations were made against him which had damaged his reputation.

Before considering the substance of the complaint, it was necessary for Ofcom to assess whether or not Mr Johan Andren was identifiable in the programme. For the reasons detailed at head c) i) of the Decision below, we considered on balance, that Mr Johan Andren was identifiable as “Stefan” from the footage, albeit only to a small and limited number of individuals who knew Mr Johan Andren and had knowledge of the events depicted in the programme.

In assessing whether Mr Johan Andren had been treated unjustly or unfairly we considered each of the various sub-heads of the complaint in turn. In doing so, we had particular 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. It is important to clarify from the outset that Ofcom is unable to make findings of fact in relation to the allegations made about Mr Johan Andren. Rather, our role is to consider whether, by broadcasting certain comments, the broadcaster treated Mr Johan Andren unfairly and, in particular, whether it took reasonable care not to present, disregard or omit material facts in a way that was unfair to him.

- i) Ofcom considered the complaint that the programme alleged that Mr Johan Andren was a “*stalker*”. The programme stated that Mr Johan Andren had been “...*found guilty of several of the crimes which he has been charged with. He is sentenced to probation with special conditions for harassment and violation of injunctions*”. The complainant said that this was untrue and provided Ofcom with an extract from a document entitled “Alingas District Court Judgment” (dated 11 March 2014) which stated that: “Johan Andren shall therefore be found guilty of breach of [his] contact ban on three occasions and not for unlawful stalking”.

Having carefully viewed the programme and examined the translated transcript of it, we noted in particular the following comments made in relation to Mr Johan Andren who was referred to as “Stefan” throughout the programme:

Jenny stated:

*“For over a year Lotta has been harassed by a man with whom she had had a short but intensive relationship with. He threatens and stalks her, but worst of all, he goes after her 13 year old son”.*

Lotta explained that after ending the relationship, “*Stefan began the harassment*”.

An expert criminologist stated:

*“Stefan is a relationship stalker. He has had a relationship with the woman. It does not matter whether it has been short or a longer one. It is a relationship that has been terminated. The trigger for this stalking is that she has terminated this relationship...He is a person who tries to humiliate, irritate, disturb, make it known that he is there in the wings, so that she will think about him”.*

The programme’s narrator stated:

*“Despite lots of reports to the police, Stefan does not stop terrorising Lotta. He is now on his third injunction, but all the time he comes up with new ways to stalk her”.*

The programme’s narrator later stated:

*“Stefan stands accused of, among other things, harassment and several cases of violating injunctions”.*

And:

*“A few weeks after our confrontation, Stefan is found guilty of several of the crimes which he has been charged with. He is sentenced to probation with special conditions for harassment and violation of injunctions”.*

Ofcom considered that the language used throughout the programme to describe Mr Johan Andren and his behaviour was accusatory in nature, and would have left viewers in no doubt that, in the view of the programme makers, Mr Johan Andren had stalked Lotta and her son. We considered that this was a serious claim which had the clear potential to materially and adversely affect viewers’ opinion of Mr Johan Andren.

We then considered whether the inclusion of the allegation resulted in unfairness to him. Ofcom acknowledged the broadcasters’ right to freedom of expression and that they must be able to broadcast programmes of matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

Ofcom recognised that there was disparity between the interpretations given by the two parties on the court judgment and the crimes committed by Mr Johan Andren. Therefore, Ofcom commissioned an independent translator to translate the document. The independent translation of the court decision referred to Mr Johan Andren having committed the crimes of “harassment” and “breach of no contact order”.

From the broadcaster’s representations, it was Ofcom’s understanding that the specific offence of “stalking” had been introduced in Sweden in 2011 and that prior to this people could only be charged with a series of other related offences, including “harassment”. It was not clear to Ofcom whether the convictions for “harassment” and “breach of no contact order” in this case constituted “stalking” within the definition of Swedish criminal law, or whether these were separate offences. Ofcom did not consider, however, that the references to “stalking” which were made in the programme resulted in unfairness to Mr Johan Andren. This was because, whether or not the offences were technically characterised as “stalking”, the fact remained that Mr Johan Andren had been found guilty in a Swedish court of law of making unlawful approaches to Lotta and her son on a number of occasions.

Given the above factors, we considered that it was not misleading or unfair to have referred to Mr Johan Andren as a “stalker” in the programme.

- ii) We next considered the complaint that the programme stated that Mr Johan Andren had sent a threatening SMS text message to Lotta.

We noted that in the programme Lotta explained that one minute after arriving home late after a night out, she had received a text message. Lotta read the text message out and it was also shown:

*“You have commissioned anonymous little idiots to call and make death threats. If you want to ‘talk’ about it then I’ll see you soon. Listen after the Harley sound!”*

The name “HAWChap [Hells Angels West Chapter]” appeared at the top of the message.

The complainant said that the programme implied that his son had been the author of the message sent and that he had connections with HAWChap, a criminal organisation. He said that his son had neither sent the message, nor had connections with HAWChap.

As outlined above, it is not for Ofcom to investigate and adjudicate on whether information broadcast is factually correct or not, but rather to consider whether the inclusion of specific information amounted to unjust or unfair treatment of an individual and/or organisation. In this case we noted that the programme was about stalkers and was presented from the point of view of a victim of harassment, Lotta. The programme included Lotta and her son’s recollections of events and a number of dramatic reconstructions of them. Ofcom was of the view that, owing to this format, it was reasonable to assume that viewers would understand that the events depicted in the programme, including in this case Lotta’s claim that she had received a text message, were a representation of only one side of what had happened. In this context we did not consider that viewers would view the information presented in the programme as unequivocal fact.

In addition, we noted that Lotta simply stated in the programme that she had received the text message and contacted the police. Neither Lotta nor the programme makers stated that Mr Johan Andren was responsible for sending the text message or that he had affiliations with Hells Angels.

We also noted that Mr Johan Andren had been found guilty of harassment and of violating restraining orders, and that he had sent text messages to Lotta and Max which had formed part of that harassment. We therefore considered that given the nature of the crimes that Mr Johan Andren was convicted of, whether or not he had sent the specific text message referring to HAWchap (and neither the programme’s narrator nor Lotta stated explicitly that this was the case), the inclusion of this information in the programme was unlikely to have materially and adversely affected viewers’ perception of Mr Johan Andren in a way that was unfair to him.

Given the above factors, Ofcom considered that there was no unjust or unfair treatment in this respect.

- iii) We considered the complaint that the programme stated that Mr Johan Andren had signed Lotta up to various competitions, surveys and dating sites to “*remind Lotta that he exists*”. The complainant said that this was untrue.

We noted that the programme’s narrator stated: “*He is now on his third injunction but all the time he comes up with new ways to stalk her*”. Following which Lotta explained that she started receiving “*strange*” telephone calls. She said:

*“For a long time we have been inundated with telephone calls. I have had everything from participating in surveys about wanting to lose weight to me wanting to win a year’s supply of fast food, or to join Greenpeace. I was registered on dating sites for bisexuals and lesbians and everything.*”

*It has just rung, rung, rung here...I have a stalker that participates for me in lots of surveys...*

The programme's narrator then further explained:

*"Stefan uses the surrounding world to constantly remind Lotta that he exists. In addition to [signing her up to] competitions, surveys and dating sites, Stefan has also reported her to the Social Welfare Board for child neglect. Her private email and work emails have been intercepted, which has resulted in chaos at the company where she works".*

As outlined above at head a) ii), it is not for Ofcom to investigate and adjudicate on whether information broadcast is factually correct or not.

Also, as above, in this case we noted that the programme was about stalkers and was presented from the point of view of a victim of harassment, Lotta. The programme included Lotta and her son's recollections of events and a number of dramatic reconstructions of them. Ofcom was of the view that, owing to this format, it was reasonable to assume that viewers would understand that the events depicted in the programme, including Lotta's claim that she had received various unwanted telephone calls and been registered to various online sites et cetera, were a representation of only one side of what had happened. In this context we did not consider that viewers would view the information presented in the programme as unequivocal fact.

To the extent that viewers may have concluded that Mr Andren was responsible for signing Lotta up to various competitions, surveys and dating sites however, the inclusion of this information in the programme was unlikely to have materially and adversely affected viewers' perception of Mr Johan Andren in a way that was unfair to him. This was because Mr Andren had been found guilty in a Swedish court of law of harassment and violating restraining orders with respect to Lotta, irrespective of whether or not he had been responsible for signing her up to these various sites.

Given the above factors, Ofcom considered that there was no unjust or unfair treatment in this respect.

- iv) We considered the complaint that the programme stated that Mr Johan Andren: *"...has been summoned to hearings previously and did not appear"*. The complainant said that this was misleading as a previous trial had been postponed once due to legal reasons and that a new date had been set.

We noted that the programme's narrator stated:

*"Stefan has been summoned to a District Court hearing in Alingas and Janne and his companion are on the way to Stefan's address in order to keep an eye on the entrance during the hours of the morning. Stefan has been summoned to hearings previously and did not appear"*.

Given the above comments, we considered that the programme made clear that Mr Johan Andren had not attended a previous court hearing as scheduled. On this basis, Ofcom was of the view that some viewers may have reasonably assumed that Mr Johan Andren had deliberately sought to avoid court. We therefore considered that this information constituted a serious

allegation which had the potential to materially and adversely affect viewers' opinions of Mr Johan Andren.

We next considered whether the inclusion of this allegation resulted in unfairness to Mr Johan Andren. In doing so, Ofcom acknowledged the broadcaster's right to freedom of expression, as outlined above at head a) i).

We noted that in response to this head of complaint, MTG said that it acknowledged that the reasons for Mr Johan Andren being absent from court "were not adequately explained in the programme".

As previously stated above, we noted that Mr Johan Andren had been found guilty of harassment and of violating restraining orders. Given this, we considered that whether or not the broadcaster had included in the programme the reasons for Mr Johan Andren's previous court absence, this was unlikely to have materially and adversely affected viewers' perception of him in a way that was unfair.

Ofcom therefore considered that there was no unjust or unfair treatment in this respect.

- v) We next considered the complaint that the programme stated that Mr Johan Andren was potentially violent and had caused Lotta and her son to fear for their lives. For example, Lotta stated in the programme that: *"The worst-case scenario that I have been afraid of the whole time is that he is going to shoot me"*. The complainant said that his son had never been in possession of any weapon. He also said that the security consultant working with the programme makers stated in the programme that his son was *"...not a violent person as far as we believe"*.

We noted that throughout the programme, Lotta spoke about the fact that she and her son had felt afraid of Mr Johan Andren and that they had obtained a dog for "extra protection". Lotta explained, for example, that less than an hour after Mr Johan Andren had been released by the police for questioning over his behaviour, he had come to their house. She said:

*"This is really what I have been afraid of all the time – that he would show up – he has got us to feel insecure and threatened all the time and suddenly he is actually standing right there in the middle of the window. And I was standing down here in the kitchen. And it turns to chaos here"*.

Max later said: *"...I thought I was going to die"*.

Lotta added: *"He [Max] screamed straight out 'mum, mum I don't want to die, mum, mum'"*.

Later in the programme Max also said:

*"The worst nightmares were probably when he and I were mates. He had said to me – as far as I remember, anyway – that he had chopped my mum up into small pieces. And I cried and tried, I remember that he tried to comfort me"*.

Lotta spoke about the physical effect the stress had had on her son and explained how she felt as a mother:

*“You feel completely heartbroken. You have to try and give the security you can provide. The worst case scenario that I have been afraid of the whole time is that he is going to shoot me...or that he will take Max or kill one of us. Yes, that’s the tough thing, that has been the hardest thing the whole time”.*

As above, in this case we noted that the programme was about stalkers and was presented from the point of view of a victim of harassment, Lotta. The programme included Lotta and her son’s recollections of events and a number of dramatic reconstructions of them. Ofcom was of the view that, owing to this format, viewers would reasonably understand that the statements made by Lotta and her son reflected their personal feelings and responses to events as they had experienced them, rather than being presented as unequivocal facts.

To the extent that viewers may have come to the conclusion that Lotta and her son were fearful of Mr Johan Andren, however, we noted that Mr Johan Andren had been found guilty of harassment and of violating restraining orders in relation to both Lotta and her son. Given the nature of the offences Mr Johan Andren had committed, the inclusion in the programme of information relating to Lotta and her son’s personal experiences was unlikely to have materially and adversely affected viewers’ perception of Mr Johan Andren in a way that was unfair to him.

We also noted that while Jenny and Max expressed a fear of Mr Johan Andren throughout the programme, the programme did not state that Mr Johan Andren had actually acted in a violent manner, or that he was in possession of a weapon. We also noted that the security expert had explained to Jenny: *“He [Mr Johan Andren] is not a violent person as far as we believe”.*

Given the above factors, Ofcom considered that there was no unjust or unfair treatment in this respect.

- vi) We considered the complaint that the programme stated that Mr Johan Andren had caused distress to Lotta’s son. Mr Curt Andren said that the programme claimed that due to Mr Johan Andren’s actions, Lotta’s son’s health had suffered, he had taken time off school, and had stopped playing table tennis.

We noted that throughout the programme, Lotta, Jenny and Max spoke about the effect Mr Johan Andren’s actions had had on Lotta’s son Max.

Max expressed his fear of Mr Johan Andren during the programme. He said, for example: *“...I thought I was going to die”.*

Max also spoke about the fact that he had missed school because of Mr Johan Andren’s actions and that he found it *“very difficult to concentrate”.*

He spoke about the fact that he suffered nightmares:

*“The worst nightmares were probably when he and I were mates. He had said to me – as far as I remember, anyway – that he had chopped my*



*mum up into small pieces. And I cried and tried, I remember that he tried to comfort me”.*

Lotta explained:

*“He still feels very bad. He is absent from school, at home a lot. He gets infection after infection and...vomits and has a stomach-ache”.*

Jenny addressed Mr Johan Andren outside the court house. She asked him:

*“How can you expose a 12 year old boy to what you do? Did you know he has nightmares? He can’t go to school...You know something? He doesn’t need to go after a 12 year old child. And I am talking to him. He can’t go to school. He can’t play table tennis. He can’t [interrupted]”.*

As above, owing to the format of the programme, viewers would reasonably understand that the statements made by Lotta and her son reflected their personal feelings and responses to events as they had experienced them, rather than being presented as unequivocal facts.

Further, Mr Johan Andren was found guilty of harassment and of violating restraining orders, and in the Court judgment against him, we noted that he had been ordered to pay compensation to Lotta’s son in the sum of 6,000 kroner. Given this, the inclusion in the programme of the statements set out above was unlikely to have materially and adversely affected viewers’ perception of Mr Johan Andren in a way that was unfair to him.

Given the above factors, Ofcom considered that there was no unjust or unfair treatment in this respect.

- vii) We considered the complaint that the programme stated that Mr Johan Andren had once driven Lotta’s son Max home whilst in an “intoxicated condition”. The complainant said that this had never happened.

We noted that in the programme Lotta explained that Mr Johan Andren and her son had gone to play Laserdome and that:

*“...it turned out that Max thought it was such fun so he begged to stay. They rang and checked if it was okay with me – and it was okay. But the only thing he could think of doing meanwhile, was to go to a pub in the vicinity and drink, so he was drunk when he collected Max”.*

As above, owing to the format of the programme, we considered that viewers would reasonably understand that the statements made by Lotta and her son reflected their personal feelings and responses to events as they had experienced them, including their perception of how much Mr Johan Andren may or may not have had to drink, rather than being presented as unequivocal facts.

In addition, we noted that neither Lotta nor the programme’s narrator stated that Mr Johan Andren had driven a car after having consumed alcohol, only that he had “collected” Max. We also noted that the complainant acknowledged that his son had consumed some alcohol while supervising Lotta’s son. He stated in a letter to Ofcom dated 25 May 2015:

“Johan found a saloon that had that play. He paid for all the games, but had very little to do himself. In a nearby local he drank during these hours 3 bottles 33cl of beer, still having *full* control over Max”.

Given the above factors, we considered that the inclusion of this information in the programme was unlikely to have materially and adversely affected viewers’ perception of Mr Johan Andren in a way that was unfair to him.

Ofcom therefore considered that there was no unjust or unfair treatment in this respect.

### *Unwarranted infringement of privacy*

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

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

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

- b) Ofcom first considered Mr Curt Andren’s complaint that his son’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

In considering this part of the complaint, we had regard to Practices 8.5 and 8.9 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or be otherwise warranted. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Given that we understood that Mr Johan Andren suffered from mental health problems and that his parents had power of attorney over his affairs, we also took into account Practice 8.21 which states that where a programme features an individual under sixteen or a vulnerable person<sup>1</sup> in a way that infringes privacy, the appropriate consent must be obtained unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

We considered each of the various sub-heads of the complaint in turn.

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<sup>1</sup> The Code’s definition of a vulnerable person includes those with mental health problems.

- i) The programme makers attempted to interview Mr Johan Andren without warning outside the court. The complainant explained that after being in court for seven hours "...we [Mr Johan Andren, his mother, his lawyer and himself] were almost instantly attacked by some strange people with moveable recording equipment". He said that his son had told the programme makers that "I haven't done anything" and "I don't want to participate in this programme" but that "Jenny is very persevering and hunts Johan around".

With regards to this sub-head of complaint, we also took into account Practices 8.7 and 8.11 of the Code. Practice 8.7 states that:

"If an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue".

Practice 8.11 states that:

"Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places".

Ofcom began by assessing whether or not Mr Johan Andren had a legitimate expectation of privacy with regard to the circumstances in which footage of him was filmed for inclusion in the programme. The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation:

"...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...".

In considering whether Mr Johan Andren had a legitimate expectation of privacy, we first considered the nature of the material obtained. This included both the material included in the programme and the unedited footage.

We noted that Mr Johan Andren's complaint related to the obtaining of footage of him outside the court, which had been filmed and subsequently included in the programme without his consent. As set out in detail above in the 'Introduction and programme summary' section, the programme showed the presenter, Jenny, and a camera crew attempt to interview Mr Johan Andren in the street. Mr Johan Andren was shown with his parents and his lawyer (their faces were obscured) outside the court. Jenny requested if she could ask Mr Johan Andren a few questions and he declined. Mr Johan Andren, his parents and his lawyer were then shown trying to walk away from Jenny and the camera crew, however, they continued to follow them and ask questions. Jenny was shown repeatedly physically blocking their path. Mr Johan Andren was shown asking Jenny and the camera crew several times to stop and said "*Please, I don't wish to be in a TV programme*". After some

time, Mr Johan Andren was shown leaving by getting into a car and being driven away.

We also took into account the fact that Mr Johan Andren was a potentially vulnerable person because we understood he suffered mental health problems and his parents had power of attorney over his affairs. We noted that in the unedited footage Mr Curt Andren asked Jenny and the camera crew repeatedly to stop harassing his son and to stop questioning him. He said to Jenny: "I don't think you should speak to him. I'm telling you that he is psychologically unwell".

We considered whether any private or sensitive information was revealed about Mr Johan Andren in the footage filmed for inclusion in the programme. We noted that Mr Johan Andren was filmed in a public street. We also noted that although conversations revealing details of his court case were filmed, we considered that information pertaining to the findings of the court (i.e. that he was convicted of a number of the offences as charged) was in the public domain. We therefore did not consider that the material recorded included any images or information of a particularly sensitive or private nature to Mr Johan Andren.

Given the above factors, we considered that Mr Johan Andren did not have a legitimate expectation of privacy with regards to the filming of the footage of him for inclusion in the programme.

Having come to the view that Mr Johan Andren did not have a legitimate expectation of privacy in relation to the filming of the footage of him, it was therefore unnecessary for Ofcom to consider whether any infringement of Mr Johan Andren's privacy was warranted.

Therefore, our Decision is that there was no unwarranted infringement of Mr Johan Andren's privacy in connection with the obtaining of material included in the programme.

ii) Footage of the outside of his flat was filmed for inclusion in the programme.

In assessing this head of the complaint, we began by assessing whether or not Mr Johan Andren had a legitimate expectation of privacy with regard to the circumstances in which footage of his property was filmed for inclusion in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in detail in the "Introduction and programme summary" section, footage of the outside of Mr Johan Andren's property was included in the programme. Ofcom noted that the programme made clear that the footage was filmed in Gothenburg and included footage of the outside of the building in which Mr Johan Andren lived, together with the following information:

*"With regard to his house and accommodation, it is a building situated in the centre of town?"*

And:

*“On the third floor there is a balcony. That is his bedroom and the window on the left where the light is on, is his sitting room”.*

However, we also noted that: the footage appeared to have been filmed openly and from a public street; Mr Johan Andren was not named in the programme as the occupant of the property; and the programme did not give details of Mr Johan Andren’s specific address (i.e. it did not state the name of his street, nor give details of his building name or flat number).

Given this conclusion, Ofcom did not consider that Mr Johan Andren had a legitimate expectation of privacy. It was therefore unnecessary to consider this element of the complaint further.

Taking into account all the factors above, Ofcom therefore found that there was no unwarranted infringement of Mr Johan Andren’s privacy in the filming of his property for inclusion in the programme.

- iii) An audio recording of the court proceedings against him was obtained by the programme makers.

In assessing this head of the complaint, we began by assessing whether or not Mr Johan Andren had a legitimate expectation of privacy with regard to the circumstances in which an audio recording of the court proceedings against him was obtained by the programme makers for inclusion in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

We first considered the nature of the material obtained about Mr Johan Andren. As set out in detail in the “Introduction and programme summary” section, a partial recording of the court proceeding was included in the programme. In the recording Mr Johan Andren was heard being questioned about his relationship with Lotta and her son Max. Although Mr Johan Andren was not named, his voice was clearly audible.

Ofcom took the view that, ordinarily, information relating to an individual’s personal relationships, may be regarded as being private and sensitive and therefore attract a legitimate expectation of privacy.

However, in this case we noted that the information was obtained from a court hearing. On the basis of the broadcaster’s representations, Ofcom understands that court hearings held in Sweden are generally open to the public and that their verdicts are publicly available. We understood this to be the case with regard to Mr Johan Andren’s court hearing. We therefore considered the information in question to have been in the public domain.

Taking all of the factors above into account, and in particular also the fact that Mr Johan Andren was found guilty of a number of the offences he was charged with, we considered that Mr Johan Andren did not have a legitimate expectation of privacy concerning the programme makers obtaining of the audio recording for inclusion in the programme.

Having decided on the particular facts of this case that Mr Johan Andren did not have a legitimate expectation of privacy, Ofcom did not need to consider the complaint any further, including the broadcaster's right to freedom of expression.

Ofcom's Decision is therefore that Mr Johan Andren's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme.

- c) Ofcom considered Mr Curt Andren's complaint that his son's privacy was unwarrantably infringed in the programme as broadcast. We considered each of the various sub-heads of the complaint in turn.
- i) We considered the complaint that footage of Mr Johan Andren was included in the programme without his consent. The complainant argued that his son was identifiable from the footage included in the programme. While his face was obscured, and he was referred to by an alias name ("Stefan") in the programme, his voice could be heard. The complainant explained that: "Absolutely nobody has missed to recognize him [Johan]".

In assessing this element of the complaint, Ofcom had regard to Practice 8.4 which states that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted and Practice 8.6 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. We also had regard to Practice 8.21, as outlined above at head b).

In considering whether or not Mr Johan Andren's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in relation to the broadcast of the footage of him included in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in detail above at head b) i) and the "Introduction and programme summary" section, footage of Mr Johan Andren being questioned in the street about his court appearance was included in the programme. Mr Johan Andren's face was blurred and he was not named (he was referred to under the alias "Stefan"), however, his voice was clearly audible.

In assessing whether or not Mr Johan Andren had a legitimate expectation of privacy, we considered whether he was identifiable in the programme as broadcast.

We noted that Mr Curt Andren said that people had identified his son from the footage of him and the information about him and his relationship with Lotta included in the programme. In particular, he stated that people who knew Mr Johan Andren could see "the contours of his face and identify the shape of his face and hairstyle, and together with his voice detect that this person has to be Johan".

We also noted however, MTG's point that: "In this episode of Stalkers TV3 decided to call Johan "Stefan" and to further protect Johan's identity he [was] blurred during the confrontation and no information that could potentially reveal his identity was exposed during the programme". We also noted that his parents' and lawyer's faces were blurred, providing further protection against Mr Johan Andren being identified.

Taking account of all the factors set out above, we took the view that, given the nature of the footage shown and, notwithstanding the information which was included about the events leading up to Mr Johan Andren being charged and convicted with harassment and breach of no contact order, it was unlikely that Mr Johan Andren was identifiable from the programme to anyone who did not already know him and was also aware of his previous relationship with Lotta and the events depicted in the programme.

It was Ofcom's view that for the same reasons, as outlined above at head b) i), Mr Johan Andren did not have a legitimate expectation of privacy with regards to the inclusion of the footage of him in the programme.

Having come to the view that Mr Johan Andren did not have a legitimate expectation of privacy, in relation to the inclusion of footage of him in the programme, it was unnecessary for Ofcom to consider whether any infringement of Mr Johan Andren's privacy was warranted.

Therefore, our Decision is that there was no unwarranted infringement of Mr Johan Andren's privacy in the broadcast of the material in these circumstances.

ii) Footage of the outside of his flat was included in the programme.

In considering this head of the complaint, we also took into account 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.

We began by assessing whether or not Mr Johan Andren had a legitimate expectation of privacy with regard to the circumstances in which footage of his property was broadcast in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out in detail in the "Introduction and programme summary" section and head b) ii), footage of the outside of Mr Johan Andren's property was included in the programme. Ofcom noted that the programme made clear that the footage was filmed in Gothenburg and included footage of the outside of the building in which Mr Johan Andren lived, together with the following information:

*"With regard to his house and accommodation, it is a building situated in the centre of town?"*

And:

*“On the third floor there is a balcony. That is his bedroom and the window on the left where the light is on, is his sitting room”.*

However, we also noted that: the footage appeared to have been filmed openly and from a public street; Mr Johan Andren was not named in the programme as the occupant of the property; the programme did not give details of Mr Johan Andren’s specific address (i.e. it did not state the name of his street, nor give details of his building name or flat number); and the footage of the area surrounding Mr Johan Andren’s property which was shown in the programme included no particularly distinguishing features. We also noted the broadcaster’s representations, that Mr Johan Andren’s flat was filmed in the city centre of Sweden’s second largest city, on a street which is almost one kilometre long, where many of the buildings appear to be indistinguishable from one another.

With respect to the point raised by Mr Curt Andren, that the location of his son’s flat was identifiable from the inclusion in the broadcast footage of images of a local restaurant and shops, we noted first that the image of the restaurant was fleeting, and secondly that the footage had been taken from such a distance that it would have been very difficult (if not, impossible) for viewers to have reasonably identified the restaurant from the sign positioned outside. Although the name of the barber shop was reasonably legible from the footage as broadcast, it did not seem to Ofcom that there were any other distinguishing features which would make clear the nature of that enterprise, much less, its location, such that individuals who were not already familiar with the locale would be able to use it as a reference point for identifying the location of Mr Johan Andren’s flat. Finally, with respect to the supermarket referred to by Mr Curt Andren, Ofcom noted that this was a part of a chain, where there were likely to be a number of other such shops located throughout Gothenburg.

We also took account of the broadcaster’s representation that Gothenburg is Sweden’s second largest city and that the footage was captured on a street in the city centre which is almost a kilometre long, where many of the buildings appear to be indistinguishable from one another. While Mr Curt Andren has disputed this point, stating that there is “great variation” in the houses situated on his son’s street, it is Ofcom’s view that, given the length of the street involved, and the size of Gothenburg more generally, it would have been difficult for individuals who were not already familiar with Mr Johan Andren’s specific address to identify either the street, or the relevant part of that street, in which the footage had been taken..

On the basis of the facts set out above, to the extent that the location of Mr Johan Andren’s flat may have been identifiable from the inclusion of the local restaurant and shops, it is Ofcom’s view that it was unlikely that anyone to whom Mr Johan Andren and his property was not already known would have discerned the location of Mr Johan Andren’s home from the programme as broadcast.

Given this conclusion, Ofcom did not consider that Mr Johan Andren had a legitimate expectation of privacy and it was unnecessary to consider this element of the complaint further.



Taking into account all the factors above, Ofcom therefore found that there was no unwarranted infringement of Mr Johan Andren's privacy in the programme as broadcast.

- iii) Footage of his Facebook page, showing a list of Mr Andren's friends, was included in the programme.

In assessing this head of the complaint, we began by assessing whether or not Mr Johan Andren had a legitimate expectation of privacy with regard to the circumstances in which footage of his Facebook page was broadcast in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

We first considered whether Mr Johan Andren was identifiable in the programme as broadcast. As set out at head c) i), Ofcom took the view that, given the nature of the footage shown in the programme and, notwithstanding the information which was included about the events leading up to Mr Johan Andren being charged and convicted with "harassment" and "breach of no contact order", it was unlikely that Mr Johan Andren was identifiable from the programme to anyone who did not already know him and also knew of his previous relationship with Lotta and the events depicted in the programme.

We next considered the nature of the specific material in question included in the programme. As set out in detail in the "Introduction and programme summary" section, footage of Mr Johan Andren's Facebook page was shown scrolling down the screen. Various people's names and photographs were displayed. The information obtained from Facebook and included in the programme did not include any information about Mr Johan Andren himself.

Ofcom considered that while an individual's contacts, comments and photographs on Facebook may constitute private information in some circumstances, this in our view was dependent on factors such as how privacy settings were set up and who had access to the information posted and the nature of the information in question. In this case Ofcom did not know how the programme makers had accessed Mr Johan Andren's Facebook account – whether because he had: accepted them as a 'friend'; Lotta or Max still had access to his page which they in turn provided to the programme makers; or the information was at the time publicly accessible. Ofcom noted, however, that at least at the time of this complaint being investigated, Mr Johan Andren's Facebook account, including information as to who his linked 'friends' were, appeared to be publicly accessible and that he had not taken steps to ensure that this information was kept private. In any event, it appeared to Ofcom that the footage of the Facebook page showing a selection of Mr Andren's friends was not inherently private or sensitive to Mr Andren as to give rise to a legitimate expectation of privacy in the broadcast of that material. We did not consider that simply revealing people linked to Mr Johan Andren via Facebook was sufficient in itself to constitute private and sensitive information about him in this case.

Given the above, we considered that Mr Johan Andren did not have a legitimate expectation of privacy concerning the broadcast of information taken from his Facebook page.

Having decided on the particular facts of this case that Mr Johan Andren did not have a legitimate expectation of privacy, Ofcom did not need to consider the complaint any further, including the broadcaster's right to freedom of expression.

Ofcom's Decision is therefore that Mr Johan Andren's privacy was not unwarrantably infringed in the programme as broadcast.

- iv) An audio recording of the court proceedings against him was included in the programme.

In assessing this head of the complaint, we began by assessing whether or not Mr Johan Andren had a legitimate expectation of privacy with regard to the circumstances in which an audio recording of the court proceedings against him was broadcast in the programme. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

We first considered whether Mr Johan Andren was identifiable in the programme as broadcast. As set out at head c) i), Ofcom took the view that, given the nature of the footage shown in the programme and, notwithstanding the information which was included about the events leading up to Mr Johan Andren being charged and convicted with "harassment" and "breach of no contact order", it was unlikely that Mr Johan Andren was identifiable from the programme to anyone who did not already know him and also know of his previous relationship with Lotta and the events depicted in the programme.

We next considered the nature of the specific material in question included in the programme about Mr Johan Andren. As set out in detail in the "Introduction and programme summary" section, a partial recording of the court proceeding was included in the programme. In the recording Mr Johan Andren was heard being questioned about his relationship with Lotta and her son Max. Although Mr Johan Andren was not named, his voice was clearly audible.

Ofcom took the view that, ordinarily, information relating to an individual's personal relationships may be regarded as being private and sensitive and therefore attract a legitimate expectation of privacy.

However, in this case, as noted above at head b) iii), the information was obtained from a court hearing. On the basis of the broadcaster's representations, Ofcom's understanding was that court hearings held in Sweden are generally open to the public and their verdicts publicly available. We understood this to be the case with regard to Mr Johan Andren's court hearing. We therefore considered the information in question to have been in the public domain.

Taking all of the factors above into account, and in particular the fact that Mr Johan Andren was found guilty of a number of the offences he was charged with, we considered that Mr Johan Andren did not have a legitimate expectation of privacy concerning the broadcast of the audio recording for inclusion in the programme.

Having decided on the particular facts of this case that Mr Johan Andren did not have a legitimate expectation of privacy, Ofcom did not need to consider the complaint any further, including the broadcaster's right to freedom of expression.

Ofcom's Decision is therefore that Mr Johan Andren's privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Mr Curt Andren's complaint, made on behalf of Mr Johan Andren, of unjust or unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 4 and 17 April 2016 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Clara Amfo (Live Lounge)	BBC Radio 1	10/02/2016	Generally Accepted Standards
Programming	Flava	16/01/2016	Drugs, smoking, solvents or alcohol

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 4 and 17 April 2016 because they did not raise issues warranting investigation.

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

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Programming	1 Ummah FM	21/02/2016	Crime	1
The Yorkshire Vet (trailer)	5*	08/04/2016	Generally accepted standards	1
Competitions	5USA	Various	Competitions	1
Christian O'Connell Breakfast Show	Absolute 80s	28/03/2016	Generally accepted standards	1
HMRC advertisement	Absolute Radio	19/03/2016	Political advertising	1
News	Akaal Channel	07/04/2016	Generally accepted standards	1
Tabhe Ros Jageo	Akaal Channel	16/02/2016	Crime	1
HM Government advertisement for The National Living Wage	Attheraces	04/03/2016	Political advertising	1
BBC News at Six	BBC 1	28/03/2016	Generally accepted standards	1
BBC News at Ten	BBC 1	28/03/2016	Generally accepted standards	2
Boomers	BBC 1	08/04/2016	Religious/Beliefs discrimination/offence	1
DIY SOS The Big Build	BBC 1	24/03/2016	Gender discrimination/offence	1
EastEnders	BBC 1	25/03/2016	Generally accepted standards	1
EastEnders	BBC 1	28/03/2016	Generally accepted standards	4
EastEnders	BBC 1	29/03/2016	Violence and dangerous behaviour	3
Have I Got News for You	BBC 1	08/04/2016	Generally accepted standards	1
MasterChef	BBC 1	14/04/2016	Gender discrimination/offence	1
Match of the Day	BBC 1	03/04/2016	Advertising scheduling	1
Panorama - Inside Europe's Terror Attacks	BBC 1	23/03/2016	Generally accepted standards	1
Party Election Broadcast by the Green Party	BBC 1	08/04/2016	Under 18s in programmes	5

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
The Night Manager	BBC 1	27/03/2016	Race discrimination/offence	1
The Voice UK	BBC 1	26/03/2016	Offensive language	1
The Voice UK	BBC 1	10/04/2016	Generally accepted standards	1
Undercover	BBC 1	03/04/2016	Violence and dangerous behaviour	1
War and Peace	BBC 1	31/01/2016	Nudity	1
Party Election Broadcast by the Scottish Labour Party	BBC 1 Scotland	05/04/2016	Under 18s in programmes	1
Bake Off Crème de la Crème	BBC 2	02/04/2016	Race discrimination/offence	1
Into the Wild with Gordon Buchanan	BBC 2	11/04/2016	Offensive language	1
Line of Duty	BBC 2	31/03/2016	Violence and dangerous behaviour	1
Tribes, Predators and Me	BBC 2	20/03/2016	Animal welfare	2
Victoria Derbyshire	BBC 2	22/03/2016	Generally accepted standards	1
BBC News	BBC News Channel	01/04/2016	Crime	1
Just A Minute	BBC Radio 4	20/03/2016	Offensive language	1
The Archers	BBC Radio 4	03/04/2016	Violence and dangerous behaviour	2
The Archers	BBC Radio 4	04/04/2016	Violence and dangerous behaviour	1
The Archers	BBC Radio 4	08/04/2016	Offensive language	1
Good Morning Wales	BBC Radio Wales	30/03/2016	Gender discrimination/offence	1
Being Bilal	British Muslim TV	14/04/2016	Violence and dangerous behaviour	1
Champions League	BT Sport Europe	13/04/2016	Due impartiality/bias	1
Robbie D Radio Show	CFM Radio	06/04/2016	Offensive language	1
Beatrix Potter with Patricia Routledge	Channel 4	02/04/2016	Generally accepted standards	1
Bernard Matthews' sponsorship of The Simpsons	Channel 4	Various	Sponsorship credits	1
British Army Girls	Channel 4	07/04/2016	Offensive language	2
Channel 4 News	Channel 4	29/03/2016	Generally accepted standards	2
Channel 4 News	Channel 4	31/03/2016	Violence and dangerous behaviour	1
Formula 1	Channel 4	03/04/2016	Gender discrimination/offence	1
Gogglebox	Channel 4	01/04/2016	Outside of remit / other	1
Gogglebox	Channel 4	01/04/2016	Violence and dangerous behaviour	1
Gogglebox	Channel 4	03/04/2016	Outside of remit / other	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Gogglebox	Channel 4	08/04/2016	Disability discrimination/offence	1
Gogglebox	Channel 4	08/04/2016	Due impartiality/bias	1
Gogglebox	Channel 4	08/04/2016	Offensive language	1
Hollyoaks	Channel 4	31/03/2016	Generally accepted standards	2
Hollyoaks	Channel 4	14/04/2016	Generally accepted standards	1
President Trump: Can He Really Win?	Channel 4	30/03/2016	Due impartiality/bias	1
Rich Kids Go Shopping	Channel 4	04/01/2016	Materially misleading	1
Sex Box	Channel 4	04/04/2016	Outside of remit / other	2
Sex Box	Channel 4	04/04/2016	Sexual material	7
Sex Box	Channel 4	11/04/2016	Generally accepted standards	6
Sex Box	Channel 4	15/04/2016	Generally accepted standards	1
The Crabbie's Grand National Festival (trailer)	Channel 4	30/03/2016	Generally accepted standards	1
The Island with Bear Grylls	Channel 4	04/04/2016	Generally accepted standards	1
The Island with Bear Grylls	Channel 4	04/04/2016	Offensive language	1
The Island with Bear Grylls	Channel 4	11/04/2016	Offensive language	2
The Last Leg	Channel 4	25/03/2016	Generally accepted standards	1
The Last Leg	Channel 4	25/03/2016	Outside of remit / other	1
The Last Leg	Channel 4	25/03/2016	Religious/Beliefs discrimination/offence	2
The Last Leg (Your Mum)	Channel 4	01/04/2016	Due impartiality/bias	1
The Last Leg (Your Mum)	Channel 4	01/04/2016	Generally accepted standards	1
The People Next Door	Channel 4	06/04/2016	Generally accepted standards	4
The People Next Door	Channel 4	11/04/2016	Generally accepted standards	1
The Simpsons	Channel 4	24/03/2016	Disability discrimination/offence	1
Weekend Brunch - Grand National Day	Channel 4	09/04/2016	Scheduling	1
Abducted: The Carlina White Story	Channel 5	18/03/2016	Scheduling	1
Benefits by the Sea: Jaywick	Channel 5	29/03/2016	Race discrimination/offence	1
Damaged	Channel 5	16/03/2016	Generally accepted standards	1
Fail Army	Channel 5	25/03/2016	Offensive language	6
Fail Army	Channel 5	25/03/2016	Scheduling	1
Fail Army	Channel 5	25/03/2016	Violence and dangerous behaviour	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Gypsies on Benefits and Proud	Channel 5	22/03/2016	Race discrimination/offence	1
NCIS: New Orleans	Channel 5	26/03/2016	Violence and dangerous behaviour	1
The Dog Rescuers with Alan Davies	Channel 5	13/04/2016	Fairness	1
The Tube: Going Underground	Channel 5	11/04/2016	Generally accepted standards	1
The Wright Stuff	Channel 5	12/02/2016	Generally accepted standards	1
The Wright Stuff	Channel 5	25/03/2016	Materially misleading	1
Programming	Channel AKA	16/01/2016	Promotion of products/services (TV)	1
Looped	CITV	11/04/2016	Generally accepted standards	1
Super Scoreboard	Clyde 1	25/03/2016	Materially misleading	1
Traffic Cops	Dave	09/04/2016	Materially misleading	1
Bear Grylls	DMAX	19/03/2016	Animal welfare	1
17 Again	E4	02/04/2016	Sexual material	1
Charmed	E4	08/04/2016	Scheduling	1
Catch Me Daddy	Film4	23/03/2016	Generally accepted standards	1
HM Government advertisement for The National Living Wage	Film4	02/04/2016	Political advertising	1
The O'Reilly Factor	Fox News	17/03/2016	Materially misleading	1
The Brittias Empire	Gold	06/04/2016	Offensive language	1
Bigfoot Captured	H2	01/04/2016	Outside of remit / other	1
Ant and Dec's Saturday Night Takeaway	ITV	02/04/2016	Generally accepted standards	1
Bear Grylls: Mission Survive	ITV	31/03/2016	Generally accepted standards	2
Bear Grylls: Mission Survive	ITV	06/04/2016	Generally accepted standards	1
Big Star's Little Star	ITV	06/04/2016	Sexual material	1
Big Star's Little Star	ITV	06/04/2016	Sexual material	1
Britain's Got Talent	ITV	09/04/2016	Animal welfare	3
Britain's Got Talent	ITV	09/04/2016	Generally accepted standards	1
Britain's Got Talent	ITV	09/04/2016	Offensive language	3
Britain's Got Talent	ITV	09/04/2016	Violence and dangerous behaviour	33
Britain's Got Talent (trailer)	ITV	09/04/2016	Generally accepted standards	1
Coronation Street	ITV	01/04/2016	Disability discrimination/offence	5
Coronation Street	ITV	13/04/2016	Materially misleading	2
Emmerdale	ITV	05/04/2016	Violence and dangerous behaviour	2



<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Emmerdale	ITV	07/04/2016	Drugs, smoking, solvents or alcohol	1
Emmerdale	ITV	13/04/2016	Information/warnings	1
Emmerdale	ITV	14/04/2016	Generally accepted standards	1
Emmerdale	ITV	Various	Scheduling	1
Emmerdale	ITV	Various	Under 18s in programmes	1
Further Tales from Northumberland with Robson Green	ITV	11/04/2016	Materially misleading	1
Good Morning Britain	ITV	14/03/2016	Religious/Beliefs discrimination/offence	2
Good Morning Britain	ITV	16/03/2016	Generally accepted standards	1
Good Morning Britain	ITV	06/04/2016	Scheduling	1
Good Morning Britain	ITV	07/04/2016	Due impartiality/bias	1
Good Morning Britain	ITV	11/04/2016	Violence and dangerous behaviour	2
Good Morning Britain	ITV	13/04/2016	Due impartiality/bias	1
Good Morning Britain	ITV	13/04/2016	Race discrimination/offence	1
Grantchester	ITV	06/04/2016	Materially misleading	1
Hillarys Blinds' sponsorship of Lorraine	ITV	15/04/2016	Sponsorship credits	1
HM Government advertisement for The National Living Wage	ITV	01/04/2016	Political advertising	1
Home Fires (trailer)	ITV	02/04/2016	Violence and dangerous behaviour	1
International Football	ITV	29/03/2016	Drugs, smoking, solvents or alcohol	1
ITV Evening News	ITV	06/04/2016	Due accuracy	2
ITV News at Ten and Weather	ITV	07/04/2016	Generally accepted standards	1
ITV News at Ten and Weather	ITV	07/04/2016	Offensive language	1
Loose Women	ITV	13/04/2016	Materially misleading	1
Party Election Broadcast by the Green Party	ITV	06/04/2016	Under 18s in programmes	2
Party Election Broadcast by the Green Party	ITV	08/04/2016	Under 18s in programmes	3
Peugeot's Sponsorship of ITV's coverage of the RBS Six Nations	ITV	19/03/2016	Sponsorship credits	1
Piers: The Trump Interview	ITV	25/03/2016	Due impartiality/bias	2

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Plebs (trailer)	ITV	09/04/2016	Offensive language	1
Six Nations Rugby	ITV	12/03/2016	Race discrimination/offence	4
The Happy Egg Company's sponsorship of Good Morning Britain Local Weather	ITV	Various	Sponsorship credits	8
The Jeremy Kyle Show	ITV	07/04/2016	Generally accepted standards	2
This Morning	ITV	09/03/2016	Materially misleading	1
This Morning	ITV	15/03/2016	Disability discrimination/offence	1
This Morning	ITV	13/04/2016	Generally accepted standards	2
Tipping Point	ITV	04/04/2016	Fairness	1
You're Back in the Room	ITV	02/04/2016	Materially misleading	1
Britain's Got More Talent	ITV2	09/04/2016	Gender discrimination/offence	1
Britain's Got Talent	ITV2	10/04/2016	Violence and dangerous behaviour	1
Celebrity Juice	ITV2	24/03/2016	Religious/Beliefs discrimination/offence	2
Emmerdale Omnibus	ITV2	10/04/2016	Generally accepted standards	1
Midsomer Murders	ITV3	10/04/2016	Outside of remit / other	1
The Queen's Garden	ITV3	06/04/2016	Disability discrimination/offence	1
Dinner Date	ITVBe	09/04/2016	Race discrimination/offence	2
The Only Way Is Essex	ITVBe	06/04/2016	Generally accepted standards	1
Våra Pinsamma Kroppar	Kanal 5	17/03/2016	Gender discrimination/offence	1
Mike Tolan	Key 103	05/04/2016	Generally accepted standards	1
Nick Ferrari	LBC 97.3FM	29/03/2016	Generally accepted standards	1
Shelagh Fogarty	LBC 97.3FM	13/04/2016	Disability discrimination/offence	1
Steve Allen	LBC 97.3FM	15/04/2016	Disability discrimination/offence	1
8 Out of 10 Cats Does Countdown	More4	01/04/2016	Offensive language	1
Car SOS	More4	27/03/2016	Gender discrimination/offence	1
Sex Box (trailer)	More4	01/04/2016	Sexual material	1
Sex Box (trailer)	More4	03/04/2016	Sexual material	1
North West Stages Rally	Motors TV	08/04/2016	Outside of remit / other	1
Geordie Shore	MTV	07/04/2016	Generally accepted standards	1
Charity appeal	Noor TV	Various	Charity appeals	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Themes for Dreamers	Phoenix FM (Halifax)	10/04/2016	Scheduling	1
Safari Park Adventure	Quest	20/03/2016	Violence and dangerous behaviour	1
Johnny Vaughan	Radio X	12/04/2016	Offensive language	2
Station ident	Sam FM (Solent)	03/03/2016	Disability discrimination/offence	1
Sky Sports (trailer)	Sky Atlantic	11/04/2016	Offensive language	1
Calvin Klein Euphoria's sponsorship US Drama	Sky Living	24/03/2016	Sponsorship credits	1
Press Preview	Sky News	25/03/2016	Due impartiality/bias	1
Sky News	Sky News	12/04/2016	Due impartiality/bias	1
Sky News Tonight with Adam Boulton &#46;	Sky News	07/04/2016	Due impartiality/bias	1
Sky News with Colin Brazier	Sky News	07/04/2016	Due impartiality/bias	1
Sunrise	Sky News	12/03/2016	Due accuracy	1
A League of Their Own	Sky1	09/04/2016	Outside of remit / other	1
STV News and Weather	STV	24/03/2016	Elections/Referendums	1
STV News at Six	STV	04/04/2016	Elections/Referendums	1
Comedy Horror Season promotion	Syfy	04/03/2016	Violence and dangerous behaviour	1
Drivetime	Talksport	08/04/2016	Religious/Beliefs discrimination/offence	1
Sports Bar	Talksport	28/03/2016	Generally accepted standards	1
The Alan Brazil Sports Breakfast	Talksport	08/04/2016	Drugs, smoking, solvents or alcohol	1
Boogie and Arlene	Tay FM	26/03/2016	Generally accepted standards	1
Programme trailers	TV3 Sweden	26/03/2016	Scheduling	1
Debate Night	Ummah Channel	30/03/2016	Crime	1
Sky Atlantic programme trailers	Various	Various	Outside of remit / other	1
Teletext	Various	Various	Religious/Beliefs discrimination/offence	1
Wild Africa	Yesterday	25/03/2016	Race discrimination/offence	1

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

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

Licensee	Licensed service	Categories
Community Development Horizons Limited	Raaj FM	Key Commitments

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

Programme	Service name	Service provider	Categories	Number of complaints
Six Nations Rugby	ITV Hub	12/03/2016	Race discrimination/offence	1

For more information about how Ofcom assesses complaints about on demand services, go to: <http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/procedures-investigating-breaches.pdf>

## Complaints outside of remit

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

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

### Complaints about television or radio programmes

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC News at Six	BBC 1	11/04/2016	Due impartiality/bias	1
BBC News at Six	BBC 1	13/04/2016	Due impartiality/bias	1
BBC News at Ten	BBC 1	12/04/2016	Elections/Referendums	1
Final Score	BBC 1	02/04/2016	Materially misleading	1
Daily Politics	BBC 2	Various	Due impartiality/bias	1
BBC News	BBC News Channel	02/04/2016	Due impartiality/bias	1
BBC News	BBC News Channel	09/04/2016	Due impartiality/bias	1
BBC News	BBC News Channel	14/04/2016	Due impartiality/bias	1
BBC News	BBC News Channel	Various	Due impartiality/bias	1
Programming	BBC Radio 4	07/04/2016	Due impartiality/bias	1
Advertisement	CBS Reality	05/04/2016	Advertising content	1
Advertisement	Channel 4	02/04/2016	Advertising content	1
Advertisement	Channel 5	04/04/2016	Advertising content	7
Advertisement	Channel 5	09/04/2016	Advertising content	1
Programming	Create and Craft	27/03/2016	Generally accepted standards	1
Advertisement	Crime and Investigation	11/04/2016	Advertising content	1
Advertisement	Film4	10/04/2016	Advertising content	2
Advertisement	Good Food	06/04/2016	Advertising content	1
Advertisement	History Channel	05/04/2016	Advertising content	1
Advertisement	ITV	03/04/2016	Advertising content	4
Advertisement	ITV	05/04/2016	Advertising content	1
Advertisement	ITV	08/04/2016	Advertising content	1
Advertisement	ITV	09/04/2016	Advertising content	9
Advertisement	ITV	10/04/2016	Advertising content	1
Advertisement	ITV2	04/04/2016	Advertising content	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	ITV3	04/04/2016	Advertising content	1
Advertisement	ITVBe	03/04/2016	Advertising content	1
Advertisement	ITVBe	05/04/2016	Advertising content	1
Advertisement	LBC 97.3FM	06/04/2016	Advertising content	1
Advertisement	N/A	07/04/2016	Advertising content	1
Advertisement	Really	03/04/2016	Advertising content	2
Advertisement	Sky Living	02/04/2016	Advertising content	1
Advertisement	Sky News	06/04/2016	Advertising content	1
Advertisement	Sky Sports 1	03/04/2016	Advertising content	4
Advertisement	Sky Sports News	05/04/2016	Advertising content	1
Advertisement	Sky Sports News HQ	06/04/2016	Advertising content	1
Advertisement	Sky Sports News HQ / Sky1	08/04/2016	Advertising content	1
Advertisement	Travel Channel	08/04/2016	Advertising content	1
Advertisement	Various	11/04/2016	Advertising content	1
Advertisement	Various	Various	Advertising content	1

### Complaints about broadcast licences

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

Licensed service	Licensee	Categories
Magic 105.4	Magic 105.4 Limited	Outside of remit/other

### Complaints about on demand services

Programme	Service name	Accessed date	Categories	Number of complaints
Advertisement	ITV Hub	12/04/2016	Advertising content	1
Programming	www.blakemason.com	n/a	Other	1
Programming	www.boynapped.com	n/a	Other	1
Programming	www.brutaltops.com	n/a	Other	8
Programming	www.hardbritlads.com	n/a	Other	1
Programming	www.missvelour.com	n/a	Other	1
Programming	www.ukhotjocks.com	n/a	Other	1
Programming	www.uknakedmen.com	n/a	Other	1
Programming	www.ukscallylads.com	n/a	Other	1
Programming	www.willwrightwebcammodel.blogspot.co.uk	n/a	Other	1
Programming	YouTube	n/a	Other	1

For more information about how Ofcom assesses complaints about on demand services, go to: [http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules\\_and\\_guidance.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules_and_guidance.pdf)

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 4 and 17 April 2016.

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

Programme	Broadcaster	Transmission date
The Chris Evans Breakfast Show	BBC Radio 2	18 March 2016
Football Tonight	BT Sport 1	19 March 2016
Tritio Matra	Channel i	24 December 2015
Paddy's Sunday Dinner	Metro Radio	27 March 2016
The Garage	Quest+1	11 March 2016
Going Underground	RT	various

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

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

Programme	Broadcaster	Transmission date
A New Life in the Sun	Channel 4	1 March 2016
Good Morning Britain	ITV 1	1 March 2016
Sawal Yeh Hai	ARY News	7 February 2016

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/fairness/>

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

<b>Licensee</b>	<b>Licensed Service</b>
Radio Ceredigion Ltd	Radio Ceredigion

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

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