

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Introduction

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

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

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

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

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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.

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

## Broadcast Standards cases

### In Breach

#### Coxson Reggae Playlist

***New Style Radio 98.7 FM, 2 July 2017, 16:00***

#### DJ Denco

***New Style Radio 98.7 FM, 21 July 2017, 15:00***

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#### Introduction

New Style Radio 98.7 FM is a community radio station providing a service for Afro-Caribbean communities in the Winson Green area of Birmingham. The licence for the service is held by Afro Caribbean Millennium Centre ("ACMC" or "the Licensee").

We received a complaint about offensive language broadcast in two programmes:

#### *Coxson Reggae Playlist, Sunday 2 July 2017 at 16:00*

The song "*Medication*" by Damian Marley featuring Steven Marley was broadcast at around 16:30. Its lyrics contained several references to drug use, including:

*"Your medication makes me high  
Just be patient  
I'm like a patient trying to find  
Levitation  
Run your fingers down my spine  
Elevation  
Your medication makes me high";*

*"Inna fields of marijuana that is my playground  
I love you, Mary J  
You're the prettiest of flowers  
Girl, me can't complain";*

*"When I'm with you, I feel so high, I rise above the rain  
You no do people damage, like that bitch cocaine";*

*"Your effect is so potent, it's so insane  
You so gummy and sticky like a plasticine  
When me grind out your body, only stems remain  
And to love you is so risky, I might get detained  
You always keep me flying on the highest plane";*

*"Your leaves of green, your purples and blues  
Has cured little kids, and old women too  
And I say to myself, what a wonderful herb";* and

*"You should be a celebrity, amongst any tree*

*Across the seven seas, for your energy  
But you're an enemy, catching felonies  
Of the remedies in your recipes, whoa".*

Ofcom considered that this content raised potential issues under the following rule of the Code:

Rule 1.10: "The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol...must generally be avoided and in any case must not be condoned, encouraged or glamorised in...programmes broadcast...when children are particularly likely to be listening (in the case of radio) ...unless there is editorial justification...".

We therefore sought comments from ACMC on how the material complied with this rule.

DJ Denco, Friday 21 July 2017 at 15:00

The song "Get It On Tonite (Remix)" by Montell Jordan with LL Cool J was broadcast at around 15:40. This song's lyrics contained sexual references:

*"You bust in the bathroom, sex in your eyes  
I pecked you down low, tongue kissed the cat  
Your legs is upside down twisted back  
It feels so wet I'm on the go".*

Ofcom considered that this content raised potential issues under the following rules of the Code:

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

Rule 1.5: "Radio broadcasters must have particular regard to times when children are particularly likely to be listening".

We therefore also sought comments from the Licensee on how the material complied with these rules.

### **Response**

ACMC said the songs "should not have been broadcast as such material is ostensibly offensive". It added that the song broadcast on 2 July 2017 was played because the presenter was not "fully aware of the details of the lyrics". On the song broadcast on 21 July 2017, the Licensee said that the presenter had "inadvertently" played a "dirty" version of it.

However, by way of mitigation, ACMC added that in both songs, "issues were approached in an allusive fashion peculiar to song writers and poets". In the case of "Medication", it said that "at times it was not clear whether it was the beauty of a female which has been praised or something else...there is an element of ambiguity". The Licensee also said that in the case of "Get It On Tonite (Remix)", "a precocious child could infer that the allusion is to sexual matters but this was not explicitly stated".

Following these incidents, the Licensee said it had “made it clear to presenters...we will not accept as an adequate explanation for broadcasting offensive material that the presenter is unaware of the content of the song” and that “we are taking stringent measures to ensure that there is no repetition”. It added that “the infringements were inadvertent and not deliberate”.

## Decision

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

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

### Coxson Reggae Playlist, Sunday 2 July 2017 at 16:00

Rule 1.10 states that the use of illegal drugs or the abuse of drugs must not be condoned, encouraged or glamorised in programmes broadcast when children are particularly likely to be listening unless there is editorial justification.

The Code states that “when children are particularly likely to be listening”, refers to, “the school run and breakfast time, but might include other times”. Ofcom's guidance on offensive language in radio<sup>2</sup> states:

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

- between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time; and
- between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays”.

In our view, this song was a prolonged, positive endorsement of cannabis which appeared to condone or encourage the use of the drug. The Licensee argued that the song lyrics had “an element of ambiguity”. We acknowledged that some of the references to drug use in the song were indirect. However, taken as a whole, we considered that the various references to drug use in the song would be likely to have been understood by older children. The was broadcast on Sunday 2 July 2017 at 16:00, a time when children were particularly likely to be listening. We did not consider there was, and the Licensee did not offer, any editorial justification for the broadcast of this song at this time. ACMC also accepted that the song should not have been broadcast at this time.

Our Decision was that this broadcast was in breach of Rule 1.10 of the Code.

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

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf)

DJ Denco, Friday 21 July 2017 at 15:00

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged according to: the nature of the content; the likely number and age range of children in the audience; the start time and finish time of the audience; the nature of the station and the particular programming; and the likely expectations of the audience for a particular station at a particular time on a particular day.

Rule 1.5 states that broadcasters must have particular regard to times when children are particularly likely to be listening.

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

A song was broadcast which included sexual references. ACOMC argued that "a precocious child could infer that the allusion is to sexual matters but this was not explicitly stated". We considered that while some of these phrases were euphemistic and unlikely to be understood by younger children, there were some more explicit references which were likely to have been understood by older children. As a result, we considered this material to be unsuitable for children.

Ofcom next considered whether this material was appropriately scheduled.

The song was broadcast on a Friday at around 15:40 during term-time, with no prior warning for listeners. As set out above, we considered that this was at a time when children were particularly likely to be listening, and in our view, this content was likely to have gone beyond the expectations of parents and carers for this station at this time of day. Any children in the audience were not protected from this unsuitable material by appropriate scheduling.

Our Decision was therefore that this programme was in breach of Rules 1.3 and 1.5 of the Code.

On 7 December 2015, ACOMC was found<sup>3</sup> in breach of the Code for the broadcast of songs which were unsuitable for children at a time when they would particularly be likely to be listening. On 25 September 2017, the Licensee was also found<sup>4</sup> in breach of the Code for the broadcast of a song containing the most offensive language at a time when children would particularly be likely to be listening. In view of the breaches in the present case, Ofcom is requesting that ACOMC attend a meeting to discuss its compliance in this area.

**Breaches of Rules 1.3, 1.5 and 1.10**

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<sup>3</sup> See issue 294 of Ofcom's Broadcast Bulletin, published on 7 December 2015:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/50176/issue\\_294.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/50176/issue_294.pdf)

<sup>4</sup> See issue 337 of Ofcom's Broadcast Bulletin, published on, 25 September 2017:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/106642/issue-337-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/106642/issue-337-broadcast-on-demand-bulletin.pdf)

## In Breach

### News

#### **Bangla TV, 29 April 2017, 21:00**

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#### Introduction

Bangla TV is a news and general entertainment channel broadcast mainly in Bengali and targeting a Bangladeshi audience in the UK. The Licence for Bangla TV is held by Bangla TV (UK) Limited ("Bangla TV" or "the Licensee").

Ofcom received a complaint that a news item promoted Rushanara Ali, the prospective Labour Party candidate standing for re-election to Parliament in the Bethnal Green and Bow constituency in the 2017 General Election.

Some parts of the news item were in English, and some in Bengali. Ofcom obtained an independent translation in English of the Bengali parts of the item. We gave the Licensee an opportunity to comment on the accuracy of the translation. Bangla TV did not raise any objections and we therefore relied on this translation for the purposes of the investigation.

This edition of the news contained a report on the election campaign of Rushanara Ali, the prospective Labour Party candidate standing for re-election in the Bethnal Green and Bow constituency in the 2017 General Election. The studio presenter introduced the report as follows:

*"Prime Minister Theresa May has appealed to people to vote for the Conservative Party in order to strengthen the Union. In her election campaign in Scotland she said that the Tory Party needs to be brought to power to strengthen her hand in order to make the economy and the Brexit deal stronger. She took part in an election campaign among young people in London and mentioned that her leadership strategy was the right one. Liberal Democrat leader Tim Farron hopes to lead the election campaign for the opposition party. SNP leader Nicola Sturgeon said that the Tory Party will not be given the chance to take Scotland backwards".*

This was followed by a brief clip of Theresa May in which the Prime Minister said to journalists:

*"We want to ensure that we build a more secure and united nation. That means taking action against the extremists who would divide us and standing up against the separatists who want to break up our country".*

The studio presenter then said:

*"Rushanara Ali MP complained that the education sector has been destroyed. She said that if the Labour Party come to power they will work to alleviate poverty, tackle climate change, and promote economic growth in Bangladesh. She made all these points during her election campaign on Saturday".*

Another clip was played in which the news correspondent explained:

*"The first British-Bangladeshi MP Rushanara Ali will again vie for election on 8 June. She led an election campaign on Saturday in Bethnal Green. She said during this campaign that the Tory government was leading the education sector and NHS to destruction after cutting the budgets in these sectors. She says that the Labour Party can save these sectors".*

This was followed by a clip of Rushanara Ali speaking to the journalists during a campaign meeting. In the clip, Ms Ali said:

*"There have been cuts to the education sector we are fighting to stop that, to reverse that cut. Here in my constituency, millions of pounds are being taken away from schools, that is the threat we have to keep fighting to stop that from happening. If you don't have an MP in Parliament against this sort of proposals, which we have been doing to stop it, then they, the Government will do what they like, that means there will not be an NHS as we know it today, that will affect our families, there won't be an education service free at the point of delivery as we know it".*

The news correspondent then explained:

*"By referring to the example of her work as business Ambassador of Britain to Bangladesh, she said she would work to alleviate poverty in Bangladesh, tackle climate change, and promote economic growth and jobs in Bangladesh".*

In the following clip, Ms Ali said:

*"I focused on making sure that I've used my position to help the people of Bangladesh, whoever is in power. I am a Labour politician and I have always and will always fight alleviate poverty in Bangladesh, to tackle climate change and to promote economic growth and jobs in Bangladesh...".*

This was followed by Umesh Desai, a Labour GLA Member<sup>1</sup>, also attending the campaign rally, who said:

*"I believe the electorate of Tower Hamlet and Bethnal Green in particular are a mature electorate I think, they recognise the issues of the day, I think that they'll recognise the hard work done by our MP Rushanara Ali as our Labour Candidate".*

John Biggs, the Labour Party Mayor of Tower Hamlets, also attending the campaign rally, then said:

*"We need to stand up and vote for what we think is important, which is investment in public services to keep us safe and to invest in the future and Rushanara Ali is a keeper in doing that".*

The news correspondent then concluded the report:

*"The Bangladeshi communities expect that, as before, Bangladeshi MPs will play a stronger role in the interest of the communities and on issues related to Bangladesh.*

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<sup>1</sup> Greater London Authority <https://www.london.gov.uk/>

*Rushanara Ali MP has expressed her commitment to work for the community and to increase business growth with Bangladesh as she did in the past”.*

Although this news item dealt with the forthcoming June 2017 General Election, it was broadcast before 3 May 2017, the date when the ‘election period’<sup>2</sup> for that election had started. Therefore, the rules in Section Six (elections and referendums) did not apply. However, we considered this content raised issues under Rule 5.1 of the Code which states:

“News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

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

### **Response**

Bangla TV said that it “covered series of news items and stories” from the day of announcement of the General Election to Election Day. It explained that “as per our editorial policy we tried our level best to ensure impartial coverage of all candidates in the election”.

The Licensee argued that the news report “concentrated on Bow and Bethnal Green Labour Party candidate Ms. Rushanara Ali’s activities” but also included “comment of the day by Conservative Party Leader Theresa May, Liberal Democrat Party Leader Tim Farron and SNP leader Nicola Sturgeon”.

Bangla TV said that at the time of the broadcast, neither the Conservative Party nor the Liberal Democrat Party had announced their candidates for the Bethnal Green and Bow constituency. It added that Independent candidate Mr Ajmal Masroor announced his candidature in the first week of May 2017. Therefore, the Licensee argued that it was not possible to include other candidates’ comments in the news item or “mention their profile”. Bangla TV said that it did broadcast “a detail[ed] news report on Mr. Ajmal Masroor on 9<sup>th</sup> May 2017”. It further added that in spite of “repeated request[s] from our news team”, the “Conservative Candidate for Bow and Bethnal Green failed to give us any schedule” to be interviewed. It argued however that during the election coverage period it broadcast several news reports “reflecting views and opinion of Conservative Party local and national leaders”.

In summary, Bangla TV said that it believed the news report it broadcast needed “to be considered as part of our election coverage from the date of announcement of election to the Election Day”. The Licensee added that it has “sufficient reason to believe that our news team was aware and sincerely tried to comply with” Rule 5.1 of the Code.

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>3</sup>, Rule 5.1 of the Code requires that news included in television and radio services is reported with due accuracy and presented with due impartiality.

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<sup>2</sup> Under Section Six of the Code, the ‘election period’ for a Parliamentary General Election begins with the dissolution of Parliament.

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2003/21/contents>

The Code makes clear that the term “due” means adequate or appropriate to the subject matter. Due impartiality does not therefore mean an equal division of time has to be given to every view, or that every argument has to be represented. Due impartiality can be preserved in several ways, and it is an editorial decision for the broadcaster as to how it ensures this. Depending on the specific circumstances, it may be necessary to reflect alternative viewpoints in an appropriate way. The context in which programme material appears, including the particular characteristics of the programme, is important to judgments of what is duly impartial.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcasters' freedom to discuss any controversial subject or point of view in their programming with the need to preserve due impartiality.

This news programme featured a news item lasting four minute and 30 seconds featuring the prospective Labour Party candidate Rushanara Ali standing for re-election for the constituency of Bethnal Green and Bow in the 2017 General Election. The report included several statements, as laid out in the Introduction, referring in positive terms to the views of Ms Ali and the Labour Party, including statements that were critical of the Conservative Government's budget cuts to the NHS and the education sector.

We considered that the news item was overwhelmingly supportive of the candidacy of Rushanara Ali, and the Labour Party more widely, while also being critical of the Conservative Government. We therefore considered how the Licensee had reflected alternative viewpoints.

The Licensee argued that the news item included a statement by Theresa May and references to Tim Farron, the Liberal Democrat Party Leader and to Nicola Sturgeon, the SNP Leader. However, we considered these limited references were insufficient to represent alternative views when considered against the large amount of the material that was supportive of the Labour Party within this news item. Bangla TV also said that, at the date of the broadcast, neither the Conservative Party nor the Liberal Democrat Party had announced their candidate for Bow and Bethnal Green Constituency and that Independent Candidate Ajmal Masroor had only announced his candidacy after the broadcast. It argued therefore that “it was not possible to take their comments on that date or mention their profile”. We acknowledged that at the time of broadcast it would not have been possible for the Licensee to have featured or otherwise reported on other prospective candidates contesting the Bethnal Green and Bow constituency. However, we considered that given the amount of positive coverage for Ms Ali and Labour Party policies more generally, it was incumbent on Bangla TV to have reflected other viewpoints that were critical or otherwise countered the various positive statements about the Labour Party. In particular, given the criticisms being made about Conservative Party policies, we considered that these were significant issues on which the Conservative Party was likely to have had a view.

The Licensee also argued that it broadcast a news item on 9 May 2017 featuring Mr Ajmal Masroor, the Independent candidate for Bethnal Green and Bow. However, we considered that viewers in the present case would not have been aware of the latter news item, featuring Mr Masroor. Further, we considered that the Licensee could not rely on a news item broadcast 10 days later as a means of preserving due impartiality in this case.

In this instance, Ofcom therefore concluded that alternative views were not appropriately reflected to ensure due impartiality was maintained. Our Decision was therefore that the news item was in breach of Rule 5.1.

**Breach of Rule 5.1**

## In Breach

### UK Election

**Channel 44, 8 June 2017, 15:00**

**News from Westminster**

**Channel 44, 8 June 2017, 18:00**

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#### Introduction

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

Ofcom received two complaints about the above two programmes, which referred to the Conservative Party and Labour Party, while polls were open on the day of the June 2017 General Election in the UK.

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

#### UK Election

This news programme featured correspondents reporting from around the UK on: voter turnout for the General Election; security at voting booths; and when the election results might be expected. One correspondent, reporting from London, interviewed: a Conservative Party activist, a Labour Party activist; and a journalist. He commented that London was generally considered "*a Labour city*" and that Channel 44 had found it hard to find Conservative voters there to interview. The journalist said that "*as far as London is concerned the wind is blowing in favour of Labour*" and that he thought that "*people have listened to left-wing slogans [and] rhetoric*". The correspondent then asked the Conservative Party activist why she supported the party. The activist said: "*The Tories have policies to help in the generation of...wealth. By contrast [Labour] are very quick to tell you how to spend money...Another reason is immigration because I believe in [the importance of] boundaries...*".

#### News from Westminster

This news programme featured two news presenters reporting on various events including: voter turnout for the General Election; where the party leaders had voted; and the numbers of female and Pakistani candidates standing in the General Election. They also reported that "*The most intelligent man in the world, Stephen Hawking has announced his support for the Labour Party*". The presenters then heard from correspondents around the UK.

One correspondent interviewed three Labour Party supporters, and there were the following statements:

Interviewee 1: *"There has been a new resurgence of the Labour Party".*

\*\*\*\*

Interviewee 1: *"I want to tell you that one million people who have come and voted for Jeremy Corbyn [in Labour Party leadership elections], their vote is going to play a decisive role and I want to say especially to British Pakistanis and British Muslims, through...Channel 4: You have already seen how the political parties and the systems that are here are demonising Islam and Muslims. If you want to bring some change to this, you will have to use your vote and send your representatives to the Parliament".*

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Interviewee 2: *"[The Labour Party's] policies are very good. They have promised to abolish higher education fees and they have also said that they would write off [student loan debts]. These are very attractive policies for young people like myself".*

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Reporter: *"What do you think would be the danger for the Asian community and the Muslim community [of Labour losing the General Election]?"*

Interviewee 1: *"It is not for one particular community. It is going to be a challenge for the whole of Britain because Theresa May, the Conservative Government, reduced the police budget, they tried to cut down the NHS, they cut down the bursaries that existed for care and nurses, they have done away with the care for senior citizens and especially for disabled people, they cut their disability benefits. All these cuts from government are for the public".*

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Interviewee 2: *"We have the highest level of Asian MPs, prospective MPs, in this election than any other election. And most of these are in the Labour Party".*

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Interviewee 3: *"[The] Labour Party is remarkably popular among youth... Jeremy Corbyn has woken up the sleeping vote of the Labour Party".*

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

Rule 6.4: *"Discussion and analysis of election and referendum issues must finish when the poll opens...".*

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

## Response

City News apologised for the “errors” in this case, which it said were not deliberate, adding that it would ensure that its staff would learn from them. It said that its intention was “to cover voter turnout, when and where party leaders voted and...the demographics of candidates by gender or ethnic origin, including reference to candidates from Pakistan”.

The Licensee said that, in *UK Election*, its reporters “went further than they should” and mistakenly allowed the Conservative Party activist to influence the discussion, which “undermined the due impartiality required in election reporting”. It added, “Despite trying to go to a commercial break to break the Tory supporter’s flow, the mistake had been made”.

City News said that, in *News from Westminster*, the correspondents “strayed into making opinions on previous election performance, which went beyond the parameters on which they were briefed”.

The Licensee said that its reporters would complete training on election reporting before being permitted to report on elections in future.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Six of the Code requires that special impartiality requirements are observed, in particular during elections.

Under Rule 6.4, the discussion and analysis of election issues must finish when the polls open. The purpose of this rule is to ensure that broadcast coverage on the day of an election does not directly affect voters’ decisions.

Ofcom has taken account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between the requirements in the Code, for example, in the area of elections, on one hand and the right to freedom of expression on the other.

The two programmes in this case included various statements from supporters of the Conservative Party and Labour Party setting out reasons why voters should vote for each party. In particular, an interviewee in *News from Westminster* called upon viewers to vote for candidates who would represent British Pakistanis and British Muslims. In our view, these various statements constituted discussion and analysis of election issues.

The programmes were broadcast after the polls had opened and prior to their closure at 22:00 on 8 June 2017.

We took into account the Licensee’s apology and the fact that its reporters would be required to complete training on election reporting before being permitted to report on elections in future.

However, our Decision is that these were clear breaches of Rule 6.4.

## Breaches of Rule 6.4

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

## Broadcast Licence Conditions cases

### In Breach/Resolved

#### Provision of information: relevant turnover submission

##### *Various TV licensees*

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#### Introduction

Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory obligation to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles<sup>1</sup>. The fees all television licensees are required to pay are based on a percentage of their turnover from related activities. This is known as Relevant Turnover.

Each licensee is required to submit to Ofcom an annual statement of its Relevant Turnover for the previous calendar year. This provision of information is a licence requirement in broadcast licences including Television Licensable Content Services (TLCS) licences and Local Digital Television Programme Service (L-DTPS) licences. As well as enabling Ofcom to determine the fees for the following year, the information is used by Ofcom to fulfil its market reporting obligations.

A number of television licensees failed to submit their Relevant Turnover return to Ofcom by the deadline specified.

Ofcom considered that this raised issues warranting investigation under the Licence Condition "General provision of information to Ofcom"<sup>2</sup> which states:

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

Failure by a licensee to submit an annual Relevant Turnover return when required represents a serious and fundamental breach of a broadcast licence, as the absence of the information contained in the return means that Ofcom is unable properly to carry out its regulatory duties.

#### In Breach

The following licensees have failed to submit their Relevant Turnover return. These licensees have therefore been found **in breach of Licence Condition 12(1) of the Television Licensable Content Service licences**:

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<sup>1</sup> Statement of Charging Principles -

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

<sup>2</sup> Licence Condition 12(1) in Television Licensable Content Service and Digital Television Programme Service licences and Condition 17(1) in Local Digital Television Programme Service licences.

Licensee	Service name	Licence Number
Prime Bangla Limited	Channel i	TLCS001127
Global Tamil Vision Limited	Global Tamil Vision	TLCS001281
Pakistan Television Corporation Limited	PTV Global	TLCS001348

As Ofcom considers this to be a serious and continuing licence breach, **Ofcom is putting these licensees on notice that this contravention of their licences will be considered for the imposition of a statutory sanction, including licence revocation.**

Ofcom takes this opportunity to remind all TV licensees that failure to submit Relevant Turnover information when required represents a significant breach of a television broadcasting licence.

### Resolved

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

#### Licence Condition 12(1) the Television Licensable Content Service licences:

Licensee	Service name	Licence Number
The Light Academy Limited	Believe TV	TLCS000966
Sportsmax Limited	Ceen	TLCS101298
Global Passion TV Limited	Global Passion TV	TLCS101384
Khalsa Television Limited	KTV	TLCS101501

#### Licence Condition 17(1) of the Local Digital Television Programme Service licences:

Licensee	Service name	Licence Number
Cambridge Presents Limited	That's Cambridge	L-DTPS100084
That's Oxford Limited	That's Oxford	L-DTPS000008
That's Solent Limited	That's Solent	L-DTPS000007
YourTV Preston Limited	YourTV Blackpool & Preston	L-DTPS000019
YourTV Manchester Limited	YourTV Manchester	L-DTPS000016

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Ms Emma Brown

#### *The Nightmare Neighbour Next Door, Channel 5, 2 March 2017*

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##### Summary

Ofcom has not upheld Ms Emma Brown's complaint of unwarranted infringement of privacy.

The programme featured the dispute between the complainant, Ms Brown, and her neighbour, Ms Suzie Carpenter, about Ms Carpenter's dogs. Ms Brown was named in the programme, photographs of her were shown, as was footage of the exterior of her house. Ms Brown complained that her privacy was unwarrantably infringed both in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Ofcom found that Ms Brown did not have a legitimate expectation of privacy in relation to the obtaining of the photographs of her from her Facebook page or the filming of the outside of her property. Nor did Ms Brown have a legitimate expectation of privacy in the subsequent broadcast of her full name, the photographs of her, or the footage of her property in the context of her dispute with Ms Carpenter. We therefore considered that there was no unwarranted infringement of Ms Brown's privacy in either the obtaining or the broadcast of this footage.

##### Programme summary

On 2 March 2017, Channel 5 broadcast an episode of *The Nightmare Neighbour Next Door*, a series which featured disputes between neighbours. The story involving the complainant was introduced by the programme's narrator:

*"Britain is a nation of dog lovers...But when they live on your doorstep they are not necessarily every man or woman's best friend...In Norwich, 52 year old Suzie Carpenter can't get enough of them. Along with her son, Jamie, she runs a huskie re-homing centre...Suzie and Jamie bring their work home with them too, they currently have seven huskies as full-time pets..."*

Footage of Ms Carpenter and Mr Carpenter at home with their dogs was shown. Ms Carpenter explained that *"They're not just dogs, they are part of the family, and they are for life"*.

The narrator continued:

*"The dogs play a vital part in the life of 19 year-old Jamie. He has Asperger's syndrome and also suffers from depression"*.

Ms Carpenter explained that her son did not socialise well and *"...needs the dogs for socialising. They are his best friends"*.

Mr Carpenter stated:

*"The huskies, pretty much mean the world to me, you know, walking them every day, but it's also helping me with my depression, it's kind of a therapy to me...it means a lot to me".*

Footage of the outside of Ms Brown's house was shown and various shots of her house were included throughout the segment involving Ms Brown and her neighbour. The footage showed Ms Brown's front door and several open windows but did not show the number of the property or street name. The narrator stated:

*"But not everyone in the area shares their love of huskies. Suzie says that her next-door neighbour, Emma Brown [a photograph of the complainant's face was shown], had complained to the authorities on numerous occasions about the loud noise and overpowering smell caused by her dogs".*

Ms Carpenter said:

*"My relationship with Emma has always been strained. I've tried to always say good morning to her and things and she doesn't seem to respond...I have no idea why Emma has such a problem with the dogs or ourselves, no idea whatsoever".*

The narrator stated:

*"Single mum Suzie is fiercely protective of her family. She believes the dispute started when neighbour, Emma, was rude to her son".*

Ms Carpenter explained that Mr Carpenter felt uncomfortable when people stare at him and said:

*"...Emma does make a point of doing this, she will stand at her sitting room window and stare at him [footage of the complainant's window was shown] to the point that he will explode".*

The narrator stated:

*"Emma denies having contact with any of Suzie's kids, but in 2012, Jamie claims that he was provoked by Emma and her partner at the time".*

Mr Carpenter explained:

*"I came out to empty the bin and I heard Emma and her boyfriend round the corner [footage of the outside of the complainant's front door was shown]. They were looking at me, they were sniggering, so basically I said 'What are you looking at, bitch?' and her boyfriend responded saying, 'What did you say?' and he basically demanded that I apologise to her and I said 'no' because I'd had enough of her [language bleeped], so he basically...and he basically said 'apologise to her now', I said 'no' and he basically pushed me up against this fence...".*

The narrator stated:

*"But Jamie and his mum would soon have a much bigger threat to deal with".*

Ms Carpenter, shown holding a letter, said:

*"I would actually like to ram this down her throat because my dogs are not going anywhere".*

Later in the programme, the narrator stated:

*"In Norwich, Suzie Carpenter's seven huskies had dragged her into a dispute with her neighbour, Emma Brown [a second, different, photograph of the complainant's face was shown]"*.

Ms Carpenter said:

*"I have no idea why Emma has such a problem with the dogs, no idea whatsoever".*

The narrator continued:

*"Suzie's son, Jamie, had also locked horns with Emma and got into an altercation with her partner at the time".*

Mr Carpenter was shown explaining again what he said had happened between him, Ms Brown, and her then partner.

The narrator stated:

*"Jamie admits swearing at Emma, but claims her then partner pushed him against a fence when he refused to apologise".*

Mr Carpenter stated:

*"So, I was really angry now. I was really upset at this point. I was actually crying and he was so persistent that he wouldn't go, so my brother told him that he would phone the police. The police came round and demanded that I apologise because I basically swore at Emma and provoked her boyfriend".*

The narrator stated:

*"We spoke to Emma and this was her explanation about the turn of events".*

The second photograph of the complainant was shown again as an actor read out the following statement:

*"I was on my way out to dinner with my then fiancé and Jamie verbally abused me. My fiancé got out of his vehicle to confront Jamie and get him to apologise to me. Jamie retaliated aggressively by pushing my fiancé in the chest. We came to an agreement with a police officer that we would not go ahead and press charges against Jamie, but we would accept an apology for his behaviour".*

The narrator stated:

*"Emma says Jamie came to her house the next day and made an apology which she accepted. She also says she wasn't aware that Jamie had autism until she was informed by the police on the night of the incident. With tensions building between the neighbours, Suzie claims Emma found a way of taking revenge for Jamie's actions".*

Ms Carpenter explained that an officer from the housing association and an environmental health officer visited her after receiving complaints from her neighbour about the smell of dog urine.

The narrator stated:

*"Suzie's seven huskies had kicked up quite a stink in her small outside space".*

Footage of Ms Carpenter's backyard was shown. Urine stains were shown on the concrete.

Ms Carpenter said:

*"...Hands up, yes it was bad, there was quite a lot of poo over that area and there was quite a bit of wee this way, so I got a warning for the fouling of the dogs basically and that was it. The penalty was a silly amount, like a £6000 fine or something or rather if it's found to be in that condition again. But it was bad that morning. It was just annoying because I've never done anything to next door, so there's no reason that she can't just come and knock on my door and say 'Suzie, it smells', and I'll sort it out. It's just childish".*

A third photograph of Ms Brown was shown. The narrator stated:

*"Suzie's neighbour, Emma, told us [an actor's voice was used to read out a statement]: 'Suzie has been given lots of opportunities to sort out this problem, but alas this problem still persists. I followed the advice of the housing association in keeping a diary of the problems that I have to live with on a daily basis in regard to the smell coming from Suzie's back garden'".*

The narrator stated:

*"Following the housing association's visit, they wrote to Suzie with some devastating news. They told her to reduce the number of dogs at her property from seven down to two".*

Ms Carpenter was shown reading the letter which stated that failure to comply would result in court action and offered to provide details of where she could seek help to have her dogs re-homed.

The first photograph of Ms Brown was shown again. The narrator stated:

*"We asked Emma how she felt about the situation. She told us [an actor's voice was used to read out a statement]: 'The whole experience has been really traumatic and unpleasant for me. I still do not feel well and all of the stress is a contributing factor'. The housing association told us: 'We've been working closely with both parties to find a*

*solution'. Since filming, the housing association has applied for an injunction against Suzie to reduce the number of dogs at her house. In court, however, the application was dismissed due to a lack of detailed evidence about the problems they caused. A result for Suzie, meaning she will not have to re-home any of the seven huskies'.*

Ms Carpenter stated:

*"They're staying. They're my life. I adore them".*

The story concerning Ms Brown and her neighbour ended and Ms Brown was not referred to or shown again in the programme.

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

- a) Ms Brown complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because:
- i) Her Facebook account was "hacked" and photographs of her were obtained for inclusion in the programme.

Channel 5 said that it did not agree that Ms Brown's privacy had been unwarrantably infringed in connection with the obtaining of material included in the programme. It said that Ms Brown's Facebook account was not "hacked" and explained that Ms Brown's Facebook account was, and continued to be (up to 19 June 2017 when Channel 5 was preparing its statement in response to the complaint), publicly accessible, as were numerous photographs of her, including the three photographs included in the programme. Channel 5 provided Ofcom with screenshots of the photographs, showing that, as of 19 June 2017, they remained publicly available on Facebook.

Channel 5 said that it was "common journalistic practice" to obtain photographs of individuals from publicly accessible social media pages. It said that it appeared that Ms Brown had put the photographs in question into the public domain herself. The broadcaster added that the photographs merely showed what she looked like and did not disclose any private or sensitive information about her. Channel 5 said that obtaining copies of the photographs from Ms Brown's publicly available Facebook page involved no infringement of her privacy, whether warranted or not.

- ii) Footage of the outside of her property was filmed without her consent.

Channel 5 said that it was correct that footage was obtained of the exterior of Ms Brown's home. It said that the programme makers had permission from Norwich Council to film on the public roads and that it understood that all filming of the exterior of Ms Brown's property was filmed from a public place. The broadcaster also said that the footage disclosed no private information about either Ms Brown or her property. It said that there could be no legitimate expectation of privacy in relation to the filming of the exterior of a property visible from a public street and that openly filming such a property from a public place could not amount to an unwarranted infringement of privacy. Channel 5 said that Ms Brown's consent was neither obtained nor required for such filming.

- b) Ms Brown complained that her privacy was unwarrantably infringed in the programme as broadcast because:
- i) She was named in the programme and photographs of her, obtained from her Facebook account, were included in the programme without her consent.

Channel 5 said that it did not agree that Ms Brown's privacy was unwarrantably infringed in the programme as broadcast by the inclusion of her name and photographs of her. In relation to Ms Brown's name being included in the programme, Channel 5 said that Ms Brown was initially happy to participate in a filmed interview with no suggestion that she would be anonymised. However, it appeared that she was prevented from undertaking the interview by the housing association who had an imminent hearing for an injunction against Ms Carpenter. Once that hearing was over, Channel 5 said that Ms Brown had responded to the claims that had been made by Ms Carpenter, again with no suggestion that she wished to be anonymised.

Channel 5 said that because Ms Brown was unable to take part in the interview, the programme makers had sent her a letter dated 15 September 2016 (provided to Ofcom) giving her the right to reply as she would be named in the programme. It said that various options as to how Ms Brown may wish to respond were provided in the letter, none of which suggested that Ms Brown would not be identified in the programme.

Channel 5 said that on 26 September 2016, and after the housing association's legal action against Ms Carpenter was dismissed, Ms Brown provided a full written response to the programme makers (provided to Ofcom). Channel 5 said that Ms Brown gave no indication that she expected that she would not be identified, nor did she make any such request.

Channel 5 said that from the content of the right of reply letter sent to her, Ms Brown must have been aware when she responded that, where relevant, her response would be included in the programme. The broadcaster said that as no explicit consent from Ms Brown for her name to be included in the programme was required, it was not explicitly sought or obtained, but it said that there appeared to be no objection. Channel 5 said that, in the circumstances, Ms Brown could have no legitimate expectation that her name would not be included in the programme.

Channel 5 said that, in any event, the dispute between Ms Brown and Ms Carpenter was not a private matter. It said that it was apparent that Ms Brown's complaints about Ms Carpenter had caused her to be involved with public bodies such as: the police; the housing association; the local authority environmental health department; and, the Housing Ombudsman. Following complaints from Ms Brown, official notices were served on Ms Carpenter in relation to her dogs and, it said appeared, based upon evidence in part provided by Ms Brown, Ms Carpenter was taken to court by the housing association.

Channel 5 said that Ms Brown was not anonymous in relation to her dispute with Ms Carpenter in her dealings with the various public bodies, in the service of notices by those bodies on Ms Carpenter or in the court proceedings brought by the housing association. Channel 5 said that it did not believe that Ms Brown was referred to by

name in court. It said that it understood that the hearing had been held in open court in the presence of several supporters of Ms Carpenter and a journalist from the Eastern Daily Press, which subsequently published an article reporting the outcome of the hearing. Channel 5 added that it was not aware that any reporting restriction was made in relation to Ms Brown in the court proceedings. It said that, in the circumstances, Ms Brown could have no legitimate expectation of privacy in relation to the reporting of the dispute or that her name would not be included in the programme.

In relation to the inclusion of the photographs of Ms Brown in the programme, Channel 5 said that, as set out above in head a) i), the photographs in question appeared on her publicly accessible Facebook account. It said that therefore Ms Brown could have no legitimate expectation of privacy in relation to them. In any event, the broadcaster said that Ofcom had previously made it clear that what someone looks like is not private. It added that the photographs of Ms Brown did not disclose any private or sensitive information about her.

- ii) Footage of the outside of Ms Brown's property was included in the programme without her consent.

Channel 5 said that it did not agree that Ms Brown's privacy was unwarrantably infringed in the programme as broadcast by the inclusion of footage of the exterior of her home. It said that the exterior of a property was not private information. It said that in this case it understood that the footage was filmed from a public place. It said that there was nothing particularly distinctive about the property that would have made it readily identifiable to anyone who did not know the area well. It added that the footage of Ms Brown's property did not disclose any private or sensitive information about her and that in all the circumstances, the footage did not engage Article 8 of the European Convention of Human Rights.

The broadcaster said that even if Ofcom did consider that Ms Brown had a legitimate expectation of privacy that had been infringed in some way by the broadcast of the programme, the right of freedom of expression of both Ms Carpenter and Channel 5 and the public interest in broadcasting the programme would outweigh any such privacy right. It said that the right to freedom of expression included the right to hold opinions and to receive and impart information and ideas without interference by public authority.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, both parties' written submissions and supporting documentation, including a recording of a telephone conversation between the programme makers and Ms Brown.

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.

- a) Ofcom considered Ms Brown's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

Ofcom had particular regard to Practices 8.5 and 8.9 of the Code. Practice 8.5 states:

"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:

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

We considered each of the sub-heads in turn.

- i) Ms Brown's Facebook account was "hacked" and photographs of her were obtained for inclusion in the programme.

In considering whether Ms Brown's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the extent to which she had a legitimate expectation of privacy with regard to the photographs of her obtained from her Facebook account. 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...".

We assessed the nature of the material obtained and included in the programme. Three different photographs of Ms Brown's face were obtained from her Facebook account and included in the programme. The photographs featured only Ms Brown and, in our view, did not reveal any private or sensitive information about Ms Brown other than her facial appearance.

Ofcom considered that while a person's photographs on Facebook may be considered private in some circumstances, this was dependent on factors such as how privacy settings were set up, who had access to the information posted, and the nature of the information in the photographs. In this case, Channel 5 said that the photographs had been publicly accessible on Ms Brown's Facebook page from which they had been obtained by the programme makers. We therefore considered that the photographs were in the public domain at the time the programme was being made and that Ms Brown had not taken any steps to ensure that this information was kept private. In these circumstances, we did not consider that Ms Brown had a legitimate expectation of privacy in relation to the obtaining of the photographs of her. We also considered that the means of obtaining the photographs from a publicly accessible Facebook page by the programme makers had been proportionate.

Having come to the view that Ms Brown did not have a legitimate expectation of privacy in this respect, it was unnecessary for Ofcom to consider whether any infringement of Ms Brown's privacy was warranted.

Therefore, Ofcom's decision is that there was no unwarranted infringement of Ms Brown's privacy in connection with the obtaining of material included in the programme.

- ii) Footage of the outside of Ms Brown's property was filmed without her consent for inclusion in the programme.

In considering this head of complaint, Ofcom first assessed the extent to which Ms Brown had a legitimate expectation of privacy with regard to the footage filmed of her property. 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 assessed the nature of the material obtained and included in the programme. As set out in detail in the "Programme summary" section above, various shots of the outside of Ms Brown's property were shown, including the front door and several open windows.

The footage appeared to have been filmed openly and from the public street outside the property. In our view, and in the particular circumstances of this case, the filming of the exterior of Ms Brown's property, visible from the street, in itself, could not reasonably be regarded as attracting a legitimate expectation of privacy. We also considered that the means of obtaining this material had been proportionate in the circumstances.

Having come to the view that Ms Brown did not have a legitimate expectation of privacy in this respect, it was unnecessary for Ofcom to consider whether any infringement of Ms Brown's privacy was warranted.

Therefore, Ofcom's decision is that there was no unwarranted infringement of Ms Brown's privacy in connection with the obtaining of material included in the programme.

- b) Ofcom considered Ms Brown's complaint that her privacy was unwarrantably infringed in the programme as broadcast.

Ofcom had particular regard to Practice 8.6 of the Code. Practice 8.6 states:

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

We considered each of the sub-heads in turn.

- i) Ms Brown was named in the programme and photographs of her, obtained from her Facebook account, were included in the programme without her consent.

In considering whether Ms Brown's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the inclusion of her name and photographs of her 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 considered in light of the circumstances in which the individual finds him or herself.

As set out in detail above at head a) i) and the "Programme summary" section, Ms Brown was identified by her full name in the programme and three different photographs of her were included in the programme.

With regards to Ms Brown's complaint that she was named in the programme, we did not consider that revealing her name, in itself, could reasonably be regarded as revealing sensitive or private information about her.

With regards to Ms Brown's complaint that photographs of her, obtained from her Facebook account, were included in the programme without her consent, as above, we noted that the photographs of Ms Brown included in the programme were at the time of broadcast publicly available on her Facebook page and were therefore already in the public domain. We also considered that the inclusion of the photographs in the programme did not reveal any private or sensitive information

about Ms Brown apart from her facial appearance. It was our view that, in the particular circumstances of this case, the showing of Ms Brown's appearance on its own could not reasonably be regarded as revealing sensitive or private information about her.

We acknowledged that Ms Brown was named in the programme and the photographs had been shown of her in the context of a story about the ongoing dispute she was having with her neighbour. Ofcom recognises that information relating to a dispute between neighbours may, depending on the particular circumstances of the dispute and the nature of the information, be considered private and/or sensitive information to those involved, and so attract a legitimate expectation of privacy.

We noted Channel 5's argument that the dispute was already in the public domain, as it had been the subject of a court case, and Ms Brown had complained to various public bodies. However, as there is no evidence that Ms Brown was personally identified in open court, we do not consider Ms Brown's involvement in the dispute to have been made public by the court case. Nor do we consider that the mere fact of complaining to a public body in itself removes any expectation of privacy that the complainant may have in relation to the complaint.

We took into account that this particular dispute concerned Ms Brown's altercations with Ms Carpenter's son, and the nuisance caused by Ms Carpenter's dogs. We also recognised that the dispute had caused distress to Ms Brown. However, we considered that elements of the dispute took place in the street and that others in the community were likely to have been aware of the nuisance caused by Ms Carpenter's dogs, given that they caused noise and smell. In our view, disputes with neighbours about pets are not unusual and not generally considered to be sensitive to those involved. After careful consideration, and taking account of all the circumstances of this case, Ofcom considered that, on balance, the information broadcast in this case which identified Ms Brown as being in dispute with her neighbour should not be regarded as constituting sensitive or private information about Ms Brown, so as to afford her a legitimate expectation of privacy.

Taking all of the above factors into account, in the particular circumstances of this case, we did not consider that Ms Brown had a legitimate expectation of privacy with regards to her full name and photographs of her being broadcast in the programme. Having come to this view, it was unnecessary for Ofcom to consider whether any infringement of Ms Brown's privacy was warranted.

Therefore, Ofcom's decision is that there was no unwarranted infringement of Ms Brown's privacy in the programme as broadcast.

- ii) Footage of the outside of Ms Brown's property was included in the programme without her consent.

Again, we first assessed the extent to which Ms Brown had a legitimate expectation of privacy in relation to the inclusion of the footage of the outside of her property 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 considered in light of the circumstances in which the individual finds him or herself.

As set out in detail above at head a) ii) and the "Programme summary" section, various shots of the outside of Ms Brown's property were shown, including the front door and several open windows. No house number or street name were shown, nor were viewers able to discern what the inside of Ms Brown's property looked like from the footage taken of the windows.

The footage appeared to have been filmed openly and from a public street. In our view the inclusion in a programme of footage of the exterior of a person's property, visible from the public street, in itself, could not reasonably be regarded as attracting a legitimate expectation of privacy.

However, in addition to having regard to Practice 8.6 of the Code, we also took account of Practice 8.2 which states:

"Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted".

In this case, the programme did not give specific details of Ms Brown's address (i.e. it did not disclose the street name or her house number). The programme only stated that the location was Norwich. We therefore considered that it was unlikely that anyone to whom Ms Brown and her property (and to whom her neighbour and her property) were not already known would have discerned the location of Ms Brown's home from the programme as broadcast.

Taking all of the above factors into account, in the circumstances of this case, we did not consider that Ms Brown had a legitimate expectation of privacy with regards to the footage of the outside of her property being included in the programme. Having come to this view, it was unnecessary for Ofcom to consider whether any infringement of Ms Brown's privacy was warranted.

Therefore, Ofcom's decision is that there was no unwarranted infringement of Ms Brown's privacy in the programme as broadcast.

**Ofcom has not upheld Ms Brown's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**

## Not Upheld

### Complaint by Mr G

#### *How the Police Missed the Grindr Killer, BBC3 iPlayer, 10 May 2017*

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#### Summary

Ofcom has not upheld Mr G's complaint of unwarranted infringement of privacy in the programme.

The programme included a montage of images from a gay website showing a number of different young men. One website page shown featured four unobscured photographs of the complainant which were shown for approximately three seconds.

Ofcom found that Mr G did not have a legitimate expectation of privacy in connection with the inclusion of the photographs in the programme. The photographs were publicly available, having been posted on the website by Mr G to advertise his services and to reveal to potential clients, who were members of the public, what he looked like. In these circumstances, we considered that Mr G did not have a legitimate expectation of privacy in connection with the inclusion of the photographs in the programme. Therefore, there was no unwarranted infringement of Mr G's privacy in the programme.

#### Programme summary

A BBC3 documentary entitled *How Police Missed the Grindr Killer* was made available on the BBC's On Demand Programme Service, BBC iPlayer, on 16 February 2017 and accessed by the complainant on 10 May 2017. The programme considered the case of Mr Stephen Port who was convicted in November 2016 for "date-raping" and murdering four young gay men in east London within 15 months of each other. In particular, the programme examined the role of the police and the failure to link the deaths until after the murder of the fourth victim.

In the first ten minutes of the programme, the programme's narrator explained that Mr Port was "regularly meeting young men through gay dating and escort sites" and that he had multiple profiles. A montage was then shown of images from such websites showing a number of different young men. One website page shown was entitled "Photos of Boyish Twink..." (part of the title page was obscured) and featured four unobscured photographs of the complainant. Two of the photographs were full length of Mr G dressed in a suit, one photograph of him, in a swimming pool, was a close-up of his face and upper torso (though he was wearing sunglasses), and the final photograph was near full length of Mr G wearing only underpants, though his face was partially obscured with shadow. These images were shown for approximately three seconds.

Accompanying this footage, Mr Ryan Edwards, described by the programme as Mr Port's former neighbour, said of Mr Port:

*"Stephen's type was, in gay terms, a Twink, which is, you know, a young, slim gay guy. Sometimes effeminate. The types Stephen would date would be 16 or 17. And almost a bit vulnerable types".*

Mr G was not named in the programme, nor was he featured any further.

## Summary of the complaint and broadcaster's response

Mr G complained that his privacy was unwarrantably infringed in the programme because photographs of him "showing delicate kind of images" were included in it without his consent. Mr G said that having his images included in the programme had been a "nightmare" for him because he had been shown as a male escort to potentially "millions of people".

In response, the BBC said that while it regretted that this had caused Mr G distress, the images in question were openly available to view on a website (the name of this website was provided to Ofcom). It said that this was a commercial site, freely accessible to the public, on which, the BBC said, Mr G was advertising his services for financial gain. It said that the photographs were shown extremely briefly and their use was editorially justified. It added that the photographs illustrated to viewers the typical physical attributes of "a twink" – the sort of man to whom Mr Port was sexually attracted and sought out on websites such as the one on which the photographs of Mr G were available. The BBC said that the photographs also illustrated how easily "dangerous predators" like Mr Port could find and identify young men who openly advertise their services on readily accessible websites. The BBC said that one of the purposes of the programme was to raise awareness of the vulnerability of young men who use such websites. However, the BBC said that the name of the website was not shown on screen, nor, did it say, were Mr G's profile name or contact details shown.

The BBC said that given the nature of the website, the use of photographs from it could not constitute an infringement of Mr G's privacy. It said that any advertisement on a public website, deliberately placed so as to attract new customers for commercial purposes, could not at the same time carry a reasonable expectation of privacy.

## Supplementary material

On receipt of the broadcaster's response, Mr G contacted Ofcom to query part of the BBC's response to his complaint.

In particular, Mr G said that even without his real name or contact details being disclosed on the image of the website shown in the programme, the pictures could be searched for online which meant that his other details would be linked. Mr G also said that the BBC said that his profile could be found on a particular website, but that this was not accurate as he was not on the website anymore. Mr G confirmed to Ofcom that he had taken his profile off the website after watching the programme.

Ofcom provided this further information to the BBC and asked for its response.

The BBC said that its statement in response to the complaint did not say that Mr G's profile was still publicly available, so there was no inaccuracy in that respect. The statement said that "the images in question were openly available to view on the website" and that it was a website "on which Mr G was advertising his services for financial gain". The broadcaster added that this was the case at the time the images were first made available in the programme on 16 February 2017, and that the accuracy of the BBC's response was unaffected by the subsequent removal of Mr G's profile. Nor did its removal affect the considerations in relation to privacy which applied at the time of the broadcast. The BBC reiterated that it did not see that any reasonable expectation of privacy could be attached to images which a person publishes in order to advertise one's professional services, or that such an expectation could be generated retrospectively by removing them at a later date.

## **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View that Mr G's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant submitted two sets of representations which are summarised together below (insofar as they were relevant to the complaint considered by Ofcom). The BBC did not submit any representations.

### *Mr G's representations*

Mr G disagreed with Ofcom's Preliminary View that his complaint should not be upheld. He said that he understood that broadcasters had a right to freedom of expression, but said that this should not be at the expense of "...breaking [the] human rights of an individual". He said that the programme was about the deaths of young men by a "brutal killer" and "escorts", to which he said he had no link, and that he now felt like a victim of the broadcaster. He said that he had been "linked" to the content of the programme without the right to have his face blurred like other images in the programme, or to have the images removed completely. Mr G said that even though the images were shown very briefly, their inclusion in the programme was a "threat to my future" and was "interfering a lot in my private life".

Mr G further said that he disagreed with Ofcom's view that he did not have a legitimate expectation of privacy in connection with the inclusion of the photographs in the programme. Mr G said that his privacy had been unwarrantably infringed because the programme had wrongly connected him with "sex dating". He said that the broadcaster had wrongly assumed that he was "...working as sex dating and taking financial gain and labelled me as a sex worker, which I am not".

Mr G said that he had nothing to do with the content of the programme or the murderer, Mr Port. He said that at the time the programme was broadcast he had his "...images published but it was about 'masseur services...and in this programme it is nothing to do with 'Masseurs' and again I was Unfair Labelled as sex escort which undermined my dignity and my profession...".

## **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.

Ofcom also has due regard, in carrying out its functions, to the need to eliminate discrimination, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and foster good relations between persons

who share a relevant protected characteristic<sup>1</sup> and those who do not, including tackling prejudice and promoting understanding.

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme, a transcript of it, and both parties' written submissions. 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. After careful consideration of Mr G's representations, we concluded that they did not materially affect the outcome of Ofcom's decision not to uphold his complaint.

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.

We considered Mr G's complaint that his privacy was unwarrantably infringed in the programme because unobscured images of him from a website were included in it.

We considered the extent to which Mr G had a legitimate expectation of privacy in relation to the inclusion of the unobscured images of him in the programme.

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

As set out above, the programme included photographs of Mr G that had appeared on a gay website. Ofcom recognises that photographs of a person may be personal and private to them and therefore, in some circumstances, that person may have a legitimate expectation of privacy in relation to those photographs. Further, it is our view that people are not necessarily deprived of their right to privacy if information or images, in respect of which they claim that right, have been put into the public domain in the past. Each case must be considered on its own facts.

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<sup>1</sup> These are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In considering whether Mr G had a legitimate expectation of privacy with regards to the inclusion of the photographs of him in the programme, we considered the nature of the photographs in question.

As detailed above, the photographs, in which Mr G's face was largely unobscured, showed him dressed in a suit, in a swimming pool and just wearing underpants. While two of the photographs showed Mr G in a state of undress, they did not reveal anything particularly private about him other than his appearance. We also took into account that while Mr G was not named, nor his contact details disclosed in the programme, Mr G was identifiable in the photographs shown in the programme as his face was shown unobscured. In addition, we noted that the footage of Mr G was extremely brief; the photographs of Mr G appeared only for a couple of seconds as part of a montage of photographs.

We further took into account that the photographs had been obtained by the broadcaster from a publicly accessible gay website on which Mr G had posted the images. We noted Mr G's concerns that the inclusion of the photographs in the programme gave the impression that he was a sex worker, which he said he was not. Although the programme revealed that Mr Port frequented gay dating and escort websites, it did not state that the website on which Mr G's photographs appeared was specifically an escort site, or that he was an escort. In addition, the BBC stated that the name of the website was not shown on screen, however, we were able to identify the name of the website from the montage of images shown. The logo of the website also appeared on photographs of Mr G, however, in our view, this was unlikely to have been legible to most viewers.

We also recognised that the photographs of Mr G were publicly available on the website at the time the programme was being made and at the time it became available on BBC iPlayer on 16 February 2017. Ofcom also took into account that Mr G had posted the photographs of himself on the website for the purpose of advertising his services and revealing to potential clients, who were members of the public, what he looked like. In these circumstances, although Mr G may not have intended for the photographs to have been accessed or viewed by members of the public more widely than the users of that website, we considered that Mr G did not have a legitimate expectation of privacy in connection with the inclusion of the photographs in the programme.

Ofcom also considered that after accessing the programme online on 10 May 2017, Mr G said that he had removed his profile and photographs from the website. There may be, in Ofcom's view, circumstances in which broadcasters should periodically review their justification for including potentially personal or private information about people in programmes to ensure the ongoing accessibility of that information does not unwarrantably infringe a person's privacy. However, in the circumstances of this particular case, for the reasons already given above, we considered that Mr G did not have a legitimate expectation of privacy in connection with the inclusion of the photographs in the programme, even though he had subsequently removed these photographs from the website after they had been initially made available in the programme.

Therefore, Ofcom considered that Mr G did not have a legitimate expectation of privacy in relation to the photographs of him included in the programme, or their subsequent availability on BBC iPlayer. Having reached this view, it was not necessary for Ofcom to consider whether any infringement of Mr G's privacy was warranted.

**Ofcom has not upheld Mr G's complaint of unwarranted infringement of privacy in the programme.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 30 October and 12 November 2017 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

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>	<b>Categories</b>
Jay London	Capital Xtra	10/09/2017	Generally accepted standards
Named and Shamed: Greatest Celeb Scandals	Channel 5	22/07/2017	Scheduling

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

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

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 30 October and 12 November 2017 because they did not raise issues warranting investigation.

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Scottish Football Live	BT Sport 1	13/10/2017	Generally accepted standards	1
Capital Breakfast	Capital FM	02/11/2017	Offensive language	1
Toni Phillips	Capital Xtra	27/09/2017	Competitions	1
Layman Evangelical Fellowship: The Lord's Challenge	CBS Reality	29/10/2017	Crime and disorder	1
Takeshi's Castle	Challenge	01/10/2017	Transgender discrimination/offence	1
Channel 4 News	Channel 4	19/10/2017	Due accuracy	1
Channel 4 News	Channel 4	24/10/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	30/10/2017	Generally accepted standards	1
Channel 4 News	Channel 4	07/11/2017	Due impartiality/bias	1
Channel ident	Channel 4	31/10/2017	Due impartiality/bias	1
Countdown	Channel 4	30/10/2017	Generally accepted standards	1
Educating Greater Manchester	Channel 4	05/10/2017	Generally accepted standards	1
Feral Families	Channel 4	26/10/2017	Materially misleading	1
Formula One: Mexican Grand Prix Highlights	Channel 4	29/10/2017	Due impartiality/bias	1
Gogglebox	Channel 4	20/10/2017	Gender discrimination/offence	1
Gogglebox	Channel 4	20/10/2017	Religious/Beliefs discrimination/offence	1
Gogglebox	Channel 4	27/10/2017	Animal welfare	4
Gogglebox	Channel 4	27/10/2017	Gender discrimination/offence	1
Gogglebox	Channel 4	27/10/2017	Violence	12
Gogglebox	Channel 4	03/11/2017	Due impartiality/bias	4
Gogglebox	Channel 4	03/11/2017	Generally accepted standards	1
Gogglebox	Channel 4	05/11/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Gogglebox	Channel 4	05/11/2017	Race discrimination/offence	1
Hollyoaks	Channel 4	18/10/2017	Suicide and self harm	30
Hollyoaks	Channel 4	02/11/2017	Materially misleading	2
Hollyoaks	Channel 4	03/11/2017	Suicide and self harm	1
My Week As A Muslim	Channel 4	23/10/2017	Race discrimination/offence	1
Obsessive Compulsive Cleaners	Channel 4	18/10/2017	Disability discrimination/offence	1
Sunday Brunch	Channel 4	22/10/2017	Nudity	2
The End of the F***ing World	Channel 4	24/10/2017	Animal welfare	2
The End of the F***ing World	Channel 4	24/10/2017	Offensive language	2
The Great British Bake Off	Channel 4	24/10/2017	Generally accepted standards	1
The Great British Bake Off	Channel 4	24/10/2017	Sexual orientation discrimination/offence	1
The Great British Bake Off: An Extra Slice	Channel 4	26/10/2017	Generally accepted standards	1
The Great British Bake Off: An Extra Slice	Channel 4	02/11/2017	Offensive language	1
The Simpsons	Channel 4	30/10/2017	Violence	1
Undercover Boss USA	Channel 4	01/11/2017	Gender discrimination/offence	1
Unreported World	Channel 4	20/10/2017	Offensive language	2
Hollyoaks	Channel 4 / E4	23/10/2017	Suicide and self harm	1
Currys PC World's sponsorship of Christmas movies on 5	Channel 5	05/11/2017	Generally accepted standards	1
Grease: Before and After They Were Stars	Channel 5	05/11/2017	Violence	1
Home and Away	Channel 5	27/10/2017	Nudity	1
The Wright Stuff	Channel 5	25/10/2017	Due impartiality/bias	1
The Wright Stuff	Channel 5	26/10/2017	Generally accepted standards	1
The Wright Stuff	Channel 5	27/10/2017	Generally accepted standards	1
The Wright Stuff	Channel 5	31/10/2017	Generally accepted standards	1
Adventure Time	CITV	21/10/2017	Scheduling	1
News	Classic FM	25/10/2017	Due impartiality/bias	1
Bigg Boss	Colors	17/10/2017	Generally accepted standards	1
Friends	Comedy Central	18/10/2017	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Takeshi's Castle	Comedy Central	26/10/2017	Due impartiality/bias	1
Doc McStuffins	Disney Jr	18/10/2017	Advertising placement	1
The Bill	Drama	18/10/2017	Offensive language	1
Hollyoaks	E4	17/10/2017	Suicide and self harm	58
Hollyoaks	E4	23/10/2017	Suicide and self harm	1
Hollyoaks Omnibus	E4	22/10/2017	Suicide and self harm	1
Rude Tube	E4	25/10/2017	Race discrimination/offence	1
Walk of Shame Shuttle	E4	07/11/2017	Dangerous behaviour	1
Couples Come Dine With Me	E4+1	29/10/2017	Offensive language	1
Nymphomaniac Vol 1&2	Film4	10/07/2017	Sexual material	1
The Hunger Games	Film4	09/10/2017	Violence	1
Savage Kingdom: Uprising (trailer)	Fox	26/10/2017	Religious/Beliefs discrimination/offence	1
Savage Kingdom: Uprising (trailer)	Fox	27/10/2017	Religious/Beliefs discrimination/offence	1
Savage Kingdom: Uprising (trailer)	Fox	31/10/2017	Religious/Beliefs discrimination/offence	1
Savage Kingdom: Uprising (trailer)	Fox	04/11/2017	Religious/Beliefs discrimination/offence	1
Free Radio Birmingham Breakfast Show	Free Radio Birmingham	20/10/2017	Generally accepted standards	1
Breakfast Show with Jagger and Woody	Heart Wales	20/10/2017	Gender discrimination/offence	2
After The News	ITV	17/10/2017	Due impartiality/bias	4
After The News	ITV	30/10/2017	Generally accepted standards	1
An Hour to Catch a Killer with Trevor MacDonald	ITV	12/10/2017	Generally accepted standards	1
Coronation Street	ITV	23/10/2017	Materially misleading	1
Coronation Street	ITV	23/10/2017	Scheduling	1
Coronation Street	ITV	23/10/2017	Under 18s in programmes	1
Coronation Street	ITV	30/10/2017	Generally accepted standards	1
Coronation Street	ITV	30/10/2017	Scheduling	1
Coronation Street	ITV	30/10/2017	Sexual material	1
Coronation Street	ITV	03/11/2017	Materially misleading	1
Coronation Street	ITV	08/11/2017	Violence	1
Dickinson's Real Deal	ITV	24/10/2017	Competitions	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Doc Martin	ITV	01/11/2017	Materially misleading	1
Emmerdale	ITV	21/09/2017	Scheduling	1
Emmerdale	ITV	18/10/2017	Disability discrimination/offence	1
Emmerdale	ITV	27/10/2017	Offensive language	1
Emmerdale	ITV	31/10/2017	Drugs, smoking, solvents or alcohol	2
Emmerdale	ITV	31/10/2017	Sexual material	1
Emmerdale	ITV	03/11/2017	Sexual material	1
Emmerdale	ITV	09/11/2017	Generally accepted standards	2
Emmerdale	ITV	09/11/2017	Sexual material	1
Good Morning Britain	ITV	26/10/2017	Gender discrimination/offence	1
Good Morning Britain	ITV	27/10/2017	Due impartiality/bias	2
Good Morning Britain	ITV	30/10/2017	Gender discrimination/offence	1
Good Morning Britain	ITV	03/11/2017	Generally accepted standards	2
Gordon Ramsay on Cocaine (trailer)	ITV	26/10/2017	Drugs, smoking, solvents or alcohol	2
ITV News	ITV	20/10/2017	Due impartiality/bias	1
ITV News	ITV	31/10/2017	Nudity	1
ITV News	ITV	31/10/2017	Other	1
ITV News	ITV	04/11/2017	Due impartiality/bias	1
ITV News	ITV	30/10/2017	Due accuracy	1
Loose Women	ITV	02/10/2017	Disability discrimination/offence	2
Loose Women	ITV	27/10/2017	Drugs, smoking, solvents or alcohol	1
Loose Women	ITV	31/10/2017	Gender discrimination/offence	2
Loose Women	ITV	06/11/2017	Generally accepted standards	1
Loose Women	ITV	Various	Gender discrimination/offence	1
Loose Women (trailer)	ITV	27/10/2017	Gender discrimination/offence	1
Loose Women (trailer)	ITV	02/11/2017	Disability discrimination/offence	1
Lorraine	ITV	24/10/2017	Generally accepted standards	1
Lorraine	ITV	01/11/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Lorraine	ITV	07/11/2017	Generally accepted standards	1
Ninja Warrior UK	ITV	28/10/2017	Materially misleading	1
Peston on Sunday	ITV	29/10/2017	Generally accepted standards	1
Saturday Kitchen	ITV	21/10/2017	Dangerous behaviour	1
Saturday Kitchen	ITV	28/10/2017	Dangerous behaviour	1
Saturday Morning Kitchen	ITV	04/11/2017	Scheduling	1
Scrambled	ITV	05/11/2017	Due impartiality/bias	1
The Chase	ITV	30/11/2017	Offensive language	1
The Only Way Is Essex and The Real Housewives of Cheshire (trailers)	ITV	28/10/2017	Scheduling	1
The Pride of Britain Awards	ITV	07/11/2017	Scheduling	7
The Pride of Britain Awards	ITV	07/11/2017	Sexual material	1
The X Factor	ITV	22/10/2017	Generally accepted standards	2
The X Factor	ITV	22/10/2017	Promotion of products/services	1
The X Factor	ITV	28/10/2017	Offensive language	1
The X Factor	ITV	29/10/2017	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV	29/10/2017	Sexual material	27
The X Factor	ITV	29/10/2017	Voting	3
The X Factor	ITV	04/11/2017	Other	1
The X Factor	ITV	04/11/2017	Race discrimination/offence	6
The X Factor	ITV	05/11/2017	Animal welfare	1
The X Factor	ITV	05/11/2017	Generally accepted standards	1
The X Factor	ITV	05/11/2017	Sexual material	13
The X Factor	ITV	05/11/2017	Voting	1
This Morning	ITV	25/10/2017	Animal welfare	1
This Morning	ITV	25/10/2017	Generally accepted standards	1
This Morning	ITV	31/10/2017	Race discrimination/offence	1
Timewasters (trailer)	ITV	28/10/2017	Violence	1
Tipping Point	ITV	29/10/2017	Materially misleading	1
You've Been Framed	ITV	28/10/2017	Race discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Crime Files (trailer)	ITV Wales	29/10/2017	Violence	1
Good Morning Britain	ITV	04/09/2017	Generally accepted standards	1
Bromans	ITV2	26/10/2017	Race discrimination/offence	1
Rosemary and Thyme	ITV3	06/10/2017	Generally accepted standards	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	07/11/2017	Sponsorship credits	1
The Only Way Is Essex	ITVBe	25/10/2017	Drugs, smoking, solvents or alcohol	1
The Real Housewives of Cheshire	ITVBe	23/10/2017	Generally accepted standards	1
Våra Pinsamma Kroppar	Kanal 11	23/10/2017	Gender discrimination/offence	1
Våra Pinsamma Kroppar	Kanal 11	26/10/2017	Nudity	1
Clive Bull	LBC 97.3 FM	29/10/2017	Materially misleading	1
Jacob Rees-Mogg	LBC 97.3 FM	23/10/2017	Due impartiality/bias	1
Shelagh Fogarty	LBC 97.3 FM	02/11/2017	Materially misleading	1
Britain's Next Top Model	Lifetime	02/11/2017	Generally accepted standards	1
Just Tattoo of Us	MTV	30/10/2017	Sexual material	1
Savage Kingdom: Uprising (trailer)	Nat Geo Wild	26/10/2017	Religious/Beliefs discrimination/offence	1
Savage Kingdom: Uprising (trailer)	Nat Geo Wild	04/11/2017	Religious/Beliefs discrimination/offence	1
Savage Kingdom: Uprising (trailer)	National Geographic	29/10/2017	Religious/Beliefs discrimination/offence	1
Out in 60	Nick Junior	23/10/2017	Sexual material	4
School of Rock	Nickelodeon	03/11/2017	Crime and disorder	1
Tazkia	PTV Global	19/10/2017	Generally accepted standards	1
Q Radio - Belfast	Q Radio Northern Ireland	06/11/2017	Competitions	1
Press Preview	Sky News	21/10/2017	Due accuracy	1
Press Preview	Sky News	07/11/2017	Age discrimination/offence	1
Sky News	Sky News	01/11/2017	Generally accepted standards	1
Sunday with Niall Paterson	Sky News	29/10/2017	Sexual orientation discrimination/offence	1
Smooth Breakfast	Smooth Radio North East	16/10/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
U-571	Spike	05/11/2017	Materially misleading	1
Scotland Tonight	STV	18/10/2017	Due impartiality/bias	1
Hawksbee and Jacobs	Talksport	25/10/2017	Race discrimination/offence	1
Sunday Exclusive: Leicester v Everton	Talksport	29/10/2017	Generally accepted standards	4
The Alan Brazil Breakfast Show	Talksport	24/10/2017	Generally accepted standards	1
Jo Frost Nanny On Tour	TLC	23/10/2017	Under 18s in programmes	1
Bad Neighbours	TV3 Sweden	20/10/2017	Gender discrimination/offence	1
Programming	Various	13/10/2017	Fairness	1
One Born Every Minute	Watch	10/10/2017	Generally accepted standards	1
Savage Kingdom: Uprising (trailer)	YourTV	02/11/2017	Religious/Beliefs discrimination/offence	1

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC Election Debate 2017	BBC 1	31/05/2017	Due impartiality/bias	1
BBC Election Debate 2017	BBC 1	31/05/2017	Elections/Referendums	1
BBC News	BBC 1	29/01/2017	Due impartiality/bias	1
BBC News	BBC 1	15/09/2017	Due impartiality/bias	1
Newsnight	BBC 2	19/05/2017	Due accuracy	1
BBC News	BBC News Channel	02/06/2017	Due accuracy	1
Radio 1's Big Weekend	BBC Radio 1	27/05/2017	Offensive language	1
Today	BBC Radio 4	09/08/2017	Due impartiality/bias	1
World At One	BBC Radio 4 / BBC iPlayer	26/07/2017	Offensive language	1

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

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

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

<b>Licensee</b>	<b>Licensed service</b>	<b>Categories</b>
That's Carlisle Limited	That's Cumbria	Programming Commitments

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

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf)

## Complaints outside of remit

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

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

### Complaints about television or radio programmes

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

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

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	CBS Reality	08/11/2017	Advertising content	1
Advertisement	Channel 4	31/10/2017	Advertising content	1
First Dates	Channel 4	31/10/2017	Outside of remit	1
First Dates	Channel 4	06/11/2017	Outside of remit	1
Advertisement	Channel 5	31/10/2017	Advertising content	1
Advertisement	Film4	02/11/2017	Advertising content	1
Advertisement	Gem 106 (East Midlands)	06/11/2017	Advertising content	1
Advertisement	Heart FM	31/10/2017	Advertising content	1
Advertisement	ITV	27/10/2017	Advertising content	1
Advertisement	ITV	02/11/2017	Advertising content	1
Advertisement	ITV	03/11/2017	Advertising content	1
Advertisement	ITV	05/11/2017	Advertising content	1
Advertisement	ITV	07/11/2017	Advertising content	2
Advertisement	ITV	08/11/2017	Advertising content	1
The X Factor	ITV	29/10/2017	Outside of remit	1
Advertisement	ITV4	01/11/2017	Advertising content	1
Advertisement	n/a	01/07/2017	Advertising content	1
Advertisement	Sky Sports Main Event	09/11/2017	Advertising content	1
Advertisement	Sky1	27/10/2017	Advertising content	1
Sick Note (pre-transmission)	Sky1	Pre-tx	Outside of remit	1
Advertisement	Various	29/10/2017	Advertising content	1
Advertisement	Various	07/11/2017	Advertising content	1
Advertisement	Various	08/11/2017	Advertising content	1
Advertisements	Various	03/11/2017	Advertising content	1

## BBC First

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

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

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

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

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1	20/10/2017	Gender discrimination/offence	1
BBC News	BBC 1	20/10/2017	Race discrimination/offence	1
BBC News	BBC 1	31/10/2017	Sexual material	1
BBC News	BBC 1	02/11/2017	Due impartiality/bias	1
BBC News	BBC 1	05/11/2017	Due impartiality/bias	1
BBC News	BBC 1	08/11/2017	Due impartiality/bias	1
Doctor Who	BBC 1	17/07/2017	Outside of remit	1
EastEnders	BBC 1	30/10/2017	Generally accepted standards	1
Gunpowder	BBC 1	21/10/2017	Materially misleading	1
Gunpowder	BBC 1	21/10/2017	Violence	9
Have I Got News For You	BBC 1	04/11/2017	Generally accepted standards	1
Last Post (trailer)	BBC 1	30/09/2017	Violence	1
Newsnight (trailer)	BBC 1	01/11/2017	Gender discrimination/offence	1
Question Time	BBC 1	02/10/2017	Due impartiality/bias	1
Sounds Like Friday Night	BBC 1	03/11/2017	Offensive language	1
Strictly Come Dancing	BBC 1	28/10/2017	Generally accepted standards	5
Strictly Come Dancing	BBC 1	05/11/2017	Generally accepted standards	1
This Week	BBC 1	02/11/2017	Generally accepted standards	1
Wimbledon	BBC 1 / BBC 2	11/07/2017	Outside of remit	1
The Ganges with Sue Perkins	BBC 1 / BBC 2	02/11/2017	Generally accepted standards	1
Exodus: Our Journey Continues	BBC 1 / BBC 2	02/11/2017	Generally accepted standards	1
BBC News at Ten and BBC news website	BBC 1 / BBC Website	30/10/2017	Due impartiality/bias	1

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>	<b>Categories</b>	<b>Number of Complaints</b>
Sunday Politics	BBC 1 Scotland	29/10/2017	Due impartiality/bias	1
BBC News	BBC 1, BBC News, BBC iPlayer	28/10/2017	Due accuracy	1
The Chillenden Murders	BBC 2	various	Due accuracy	1
Gay Britannia (trailer)	BBC Channels	various	Materially misleading	1
Gunpowder	BBC iPlayer	22/10/2017	Generally accepted standards	1
BBC News	BBC News	08/11/2017	Due impartiality/bias	1
Charlie Sloth (trailer)	BBC Radio 1	27/10/2017	Generally accepted standards	1
Dev and Cel Spellman	BBC Radio 1	29/10/2017	Generally accepted standards	1
BBC News	BBC Radio 4	26/10/2017	Due impartiality/bias	1
BBC News	BBC Radio 4	07/11/2017	Due accuracy	1
Book of the Week	BBC Radio 4	16/10/2017	Generally accepted standards	1
Feedback	BBC Radio 4	17/07/2017	Other	1
The Now Show	BBC Radio 4	03/11/2017	Generally accepted standards	1
Today	BBC Radio 4	28/10/2017	Generally accepted standards	1
5 Live Drive	BBC Radio 5 Live	31/07/2017	Race discrimination/offence	1
BBC Radio Lancashire News	BBC Radio Lancashire	26/10/2017	Due impartiality/bias	1
Programming	Various	various	Due impartiality/bias	1
Programming	Various	various	Other	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 30 October and 12 November 2017.

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

Programme	Service	Transmission date
Stage School	E4	16 October 2017
Journey to Al Aqsa 2017	NTV	25 September 2017
News Beat with Paras Jahanzeb	Samaa TV	18 August 2017
Pehredaar Piya Ki	Sony TV	22 July 2017

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

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

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

Programme	Service	Transmission date
BBC London News	BBC 1	9 March 2017

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

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