

# **Ofcom Broadcast and On Demand Bulletin**

**Issue number 306  
6 June 2016**

## Contents

Introduction	3
<b>Broadcast Standards cases</b>	
<u>In Breach</u>	
<b>Q Radio Breeze</b> <i>Q Radio 96.7 FM, 2 April 2016, 14:00</i>	5
<b>Countdown</b> <i>Channel 4, 21 March 2016, 15:10</i>	7
<b>Broadcast Licence Conditions cases</b>	
<u>In Breach</u>	
<b>Production of recordings</b> <i>BritAsia TV, 5 January 2016, 16:00</i>	10
<b>Broadcasting licensees' non-payment of licence fees</b> <i>Various licensees</i>	12
<u>Resolved</u>	
<b>Retention and production of recordings</b> <i>Ipswich Community Radio, 7 February 2016, 13:45</i>	13
<b>Broadcast Fairness and Privacy cases</b>	
<u>Not Upheld</u>	
<b>Complaint by Mr Chinyere Inyama</b> <i>ITV London News, ITV, 2 November 2015</i>	15
<b>On Demand cases</b>	
<b>Appeal by Pandora Blake about the service 'Dreams of Spanking'</b>	20
<b>Appeal by Laura Jenkins about the services 'Candy Girl Pass' and 'All Teens World'</b>	30
<b>Tables of cases</b>	
<b>Complaints assessed, not investigated</b>	46
<b>Complaints outside of remit</b>	53
<b>Investigations List</b>	55

## Introduction

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

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

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

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

---

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

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

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

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

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

## Broadcast Standards cases

### In Breach

#### Q Radio Breeze

*Q Radio 96.7 FM, 2 April 2016, 14:00*

---

#### Introduction

*Q Radio Breeze* is a weekly radio show broadcast in Northern Ireland on Q Radio Greater Belfast on 96.7 FM. The licence for Q Radio 96.7 FM is held by Belfast City Beat Limited (“the Licensee”).

A complainant alerted Ofcom to the use of offensive language during the *Q Radio Breeze* show broadcast on a Saturday afternoon between 14:25 and 14:35. The song “Pillowtalk” by the pop singer Zayn Malik was played that featured two uses of the word “fucking”.

We considered the material raised issues warranting investigation under the following rule:

Rule 1.14: “The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)”.

We therefore asked the Licensee for its comments on how the content complied with this rule.

#### Response

In response to Ofcom’s Preliminary View, the Licensee apologised for the unintentional broadcast of this song, which featured the most offensive language at a time when children were particularly likely to be listening. The Licensee acknowledged its responsibility for this.

The Licensee explained that offensive language would usually be identified and edited before broadcast. However on this occasion, the song had been downloaded from a service that did not identify that it contained explicit lyrics.

The Licensee advised that after the song had been broadcast, the presenter contacted the programme manager and the song was “immediately edited” to remove the two offensive words. The Licensee added that the presenter had not apologised to listeners following the broadcast of the song. However, it stated that as a result of this incident, it had reinforced its guidance to all presenters that “if offensive language appears on air...that they are to apologise to listeners at the earliest possible opportunity”.

#### Decision

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

Rule 1.14 of the Code states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom's guidance on offensive language on radio<sup>1</sup> states that:

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

- Between 06:00 and 19:00 at weekends all year around...”.

Ofcom research on offensive language<sup>2</sup> notes that the word “fuck” and variations of this word are considered by audiences to be amongst the most offensive language.

In this case, the word “fucking” was broadcast twice on 2 April between 14:25 and 14:35 on a weekend. The most offensive language was therefore broadcast at a time when children were likely to be listening and there was a clear breach of Rule 1.14.

### **Breach of Rule 1.14**

---

<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

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

## In Breach

### Countdown

Channel 4, 21 March 2016, 15:10

---

#### Introduction

*Countdown* is a long standing game show in which two contestants compete against each other in word and number games. A celebrity guest features in every programme.

Ofcom received a complaint about the above episode of *Countdown*. The programme was opened by the host, Nick Hewer, as follows:

*“Good afternoon and welcome to the Countdown studio. And we all know that there is no place like home and over the weekend this year’s Ideal Home Show opened its doors to inspire us on how to improve our homes and make them even more beautiful. It’s all happening at Olympia and it’s running until April 3<sup>rd</sup> and there are talks and tips and what-have-you from such experts as Lawrence Llewelyn Bowen and TV architect George Clarke. If you are going, good luck, get some great ideas, and good luck with the home improvements”.*

Later in the programme, the guest, Mark Foster, talked about his role as an ambassador for P&O Cruises and made numerous comments about the array of different activities and services that are available on board their cruise ships, including such comments as:

*“Lots of different entertainment on board: dance troupes, coffee shops, restaurants – there’s probably about 20 to 30 restaurants on board. A five-a-side football pitch, a basketball court...”*

Channel 4 confirmed that there was no commercial relationship between it, the programme makers, or any person connected with either, and The Ideal Home Show or P&O Cruises.

Ofcom considered that the references to The Ideal Home Show and P&O Cruises raised issues warranting investigation under the following rules:

- Rule 9.4: “Products, services and trade marks must not be promoted in programming.”
- Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
  - the manner in which a product, service or trade mark appears or is referred to in programming.”

Ofcom therefore sought Channel 4’s comments on how the programme complied with these rules.

## Response

Channel 4 stated that the programme regularly includes references to current events and stories and that on this occasion “the references to The Ideal Home Show ... were intended to be purely topical informing viewers of what was happening around the country”. The Licensee continued that while the programme’s producers “believed that the references were editorially justified in context”, it accepted, with the benefit of hindsight, that the language used and the manner in which the information was scripted meant “that it could be construed as promotional in tone and it strayed into being unduly prominent”.

In response to the references to P&O Cruises, Channel 4 stated that Mark Foster spoke about his experience of working as a brand ambassador for the cruise company in his capacity as a health and fitness advisor, encouraging people to make healthy choices. The Licensee said “The production company did not intend for Mark’s discussions to be in any way promotional for P&O, but instead it was an opportunity for viewers to get an insight into the life of one of our popular celebrity guests through talking about his recent activities”. Channel 4 went on to say that, to ensure transparency and that viewers were fully informed, it was made clear in the programme that Mark Foster had a commercial relationship with P&O Cruises. However, the Licensee accepted “that the references to the pleasures of cruising as a way of travelling and about amenities such ships provide, could be construed as promotional references and could give P&O undue prominence beyond what may be editorially justified”. Channel 4 stated that as soon as it was made aware of the complaint it removed this particular episode from All4 and ensured that it was not repeated.

Channel 4 said that both it and the production company take seriously their responsibilities under the Code. It explained that this episode was reviewed before transmission by a junior member of the commissioning team; however neither of the two references were picked up and referred on to the commissioning editor to review as “should be the process”.

In light of this complaint Channel 4 stated that all commercial references will be signed off by the commissioning editor at Channel 4. It also confirmed that “a compliance refresher session will be arranged for the relevant Channel 4 commissioning team member and the production team, including the importance of briefing guests on the parameters of discussing any commercial relationship they may have in place”. The Licensee said that it accepted and regretted “that there were instances in this programme which may have crossed the line in terms of undue prominence and promotional references. However, [it was] confident that the above measures will prevent such lines being crossed in the future”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive. The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content.

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by limiting the extent to which references to products, services and trade marks can feature in programming. Section Nine does not prohibit such references but, to comply with the rules in this section, a programme's narrative must always serve an editorial end: its purpose must not be, or appear to be, to promote the products or services of a third party.

Ofcom noted the Licensee's position that the editorial intention for including references to the Ideal Home Show and P&O Cruises was to provide viewers with information it considered to be of interest. Ofcom also noted Channel 4's acceptance "that there were instances in this programme which may have crossed the line in terms of undue prominence and promotional references".

Ofcom accepted that the format of *Countdown* provides scope for general discussion about topical events and that viewers would expect guests to discuss aspects of their life and career. However, in this case, Ofcom considered that the commercial references in the programme went beyond what could be justified editorially: the discussion about The Ideal Home Show appeared at the very start of the programme and was not prompted by, or linked to, the programme's editorial narrative; and, the references to P&O Cruises went beyond a discussion about the guest's role as a health and fitness advisor. Therefore, these references were unduly prominent, in breach of Rule 9.5 of the Code.

Further, we concluded that the manner in which both commercial entities were discussed was promotional. The Ideal Home Show was referred to as something that would "*inspire us on how to improve our homes and make them even more beautiful*", and the location and opening date were given, along with information about celebrity experts in attendance. Viewers were also given information about a range of facilities and activities available on board P&O Cruise ships. Therefore, these promotional references were in breach of Rule 9.4 of the Code.

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

## Broadcast Licence Conditions cases

### In Breach

#### Production of recordings

*BritAsia TV, 5 January 2016, 16:00*

---

##### Introduction

BritAsia TV is an entertainment channel broadcast on digital satellite. The licence for BritAsia TV is held by BritAsia TV Ltd (“BritAsia” or “the Licensee”).

Ofcom received a complaint about violent content in a series of music videos in the programme *Big Tunes* broadcast during the afternoon of 5 January 2016. Ofcom therefore requested a recording of the programme from the Licensee to assess the content.

In response to Ofcom’s request for a recording, the Licensee provided Ofcom with its transmission playlist for that particular time and details of links to external websites that contained the corresponding music videos. Ofcom advised the Licensee that it required the entire programme as broadcast to assess it. The Licensee then provided Ofcom with media files containing the individual music videos that were broadcast during the programme.

Ofcom reiterated its request for the entire programme as broadcast and clarified that this meant “all content (including links, programme promotions, spot advertising etc) that was broadcast within the duration of the programme”. The Licensee did not respond to this request.

Condition 11 of BritAsia’s licence states that the Licensee must make and then retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom’s request must produce recordings “forthwith”.

In addition, Ofcom guidance to licensees states that recordings “must be of a standard and in a format which allows Ofcom to view the material as broadcast”<sup>1</sup>. Ofcom has previously made clear in a note to broadcasters<sup>2</sup> that on request broadcasters must be able to supply Ofcom with recordings as broadcast, and that the quality of recordings should be equal to that seen by the viewer, in terms of both sound and vision.

Ofcom considered the Licensee’s failure to provide a recording as broadcast warranted investigation under Condition 11(2)(b) of its Television Licensable Content Service (“TLCS”) Licence. This states that:

“11(1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint...

---

<sup>1</sup> See: [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_guidance.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf)

<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb95/>

(2) the Licensee shall:

(b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...”.

We therefore asked the Licensee how it complied with Condition 11(2)(b) in this case.

### **Response**

The Licensee said that in the eight years it has been broadcasting, it has always sent requested material to Ofcom in a series of broadcast files. It added that it was confused why Ofcom considered this method to be insufficient on this particular occasion.

### **Decision**

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. TLCS licences enshrine these obligations in Licence Condition 11.

Under TLCS Licence Condition 11(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 60 days after broadcast. Condition 11(2)(b) requires licensees to produce such recordings to Ofcom forthwith upon request.

In this case, the Licensee did provide recordings to Ofcom but they were in the form of standalone music video files. Even when viewed in succession, they did not represent the continuous television programme as broadcast, as specifically requested by Ofcom. Therefore, the Licensee did not provide the requested recording and accordingly it breached Licence Condition 11(2)(b). Ofcom noted that on previous occasions, when Ofcom had assessed material broadcast on this channel, the Licensee had provided a satisfactory recording of the content as broadcast.

Breaches of Licence Condition 11(2)(b) are significant because they impede Ofcom’s ability to assess in a timely way whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom’s ability to carry out its statutory duties in regulating broadcast content.

### **Breach of Licence Condition 11(2)(b)**

## In Breach

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

---

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

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

#### In Breach

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

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

Licensee	Licence Number	Service Name
Karimia Ltd	CR000015BA	Radio Dawn
Teesdale Community Broadcasting Limited	CR000082BA	Radio Teesdale
Tees Valley Christian Media	CR000098BA	Cross Rhythms Teesside
The Roundhouse Trust Limited	ADSRSL000013BA	Roundhouse Radio
University of Bedfordshire	CR000197BA	Radio LaB

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

---

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

<sup>2</sup> [http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff\\_Tables\\_2015\\_16.pdf](http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff_Tables_2015_16.pdf)

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

## Resolved

### Retention and production of recordings

*Ipswich Community Radio, 7 February 2016, 13:45*

---

#### Introduction

Ipswich Community Radio is a community radio station licensed to provide a service for the residents of Ipswich. The licence is held by Ipswich Community Radio (“ICR” or “the Licensee”).

A listener complained to Ofcom alleging offensive language in a music track broadcast around 13:45 on 7 February 2016.

Ofcom asked the Licensee to provide a recording of the output. The Licensee explained that equipment at the station had been removed, affecting the hard drive storing recordings between 5 and 10 February 2016, and it was therefore unable to provide the recording.

Ofcom considered that this raised issues warranting investigation under Conditions 8(2)(a) and (b) of ICR’s licence, which state:

- “8(2) In particular the Licensee shall:
- (a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
  - (b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction;...”

Ofcom therefore asked the Licensee for its formal comments on its compliance with these licence conditions.

#### Response

The Licensee explained that on 5 February 2016, a director at ICR, who had legitimate access to the station at the time, entered the premises during a live broadcast and, without prior notice, removed equipment which belonged to him.

ICR said this affected equipment related to the scheduled playout, transmission and recording of broadcasts, and resulted in ‘dead air’ and no recording from around 18:45. Station output and recording had been restored from around 22:00, however, the scheduled playout machine had been remotely disabled, and a member of staff therefore took charge of the station for the weekend.

Across the following week, the playout system was restored but, on inspection, the first available recording available was from 16 February 2016, due in part to restricted disc space on the logging machine.

The Licensee said that the director concerned was no longer involved with the station. Following this incident it had introduced new security measures including; restricting remote access to machines; changing locks on the building; and, updating passwords to access equipment. In addition, as of 1 April 2016, the FM transmitter is

remote from the building, and it plans to move the link transmitter and critical computer equipment to a separate locked area, and install a new hard drive to increase recording time.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. These obligations are reflected in Conditions 8(2)(a) and (b) of Community Radio licences .

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

Ofcom noted that the Licensee's failure to provide Ofcom with the recording was due to the unexpected removal of equipment from its premises. We also acknowledged the particular challenges of responding quickly to that situation while attempting to keep the station running, and the steps ICR took to improve security measures and prevent a similar occurrence.

The failure to provide Ofcom with the recording requested is a significant breach of ICR's licence, which, in this particular case, significantly affects Ofcom's ability to assess the station's compliance with the Code. However, taking into account the particular circumstances of this incident and the remedial action by ICR, we consider the matter resolved.

We remind the Licensee of its obligations under the terms of its licence to ensure that recordings of its output are retained for 42 days and provided to Ofcom on request, and should similar compliance issues arise Ofcom may take further regulatory action.

## **Resolved**

## Broadcast Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Chinyere Inyama

*ITV London News, ITV, 2 November 2015*

---

#### Summary

Ofcom has not upheld Mr Chinyere Inyama's complaint of unjust or unfair treatment in the programme as broadcast.

The programme included a report that six London councils had called for the suspension of Mr Inyama from his position as the Senior Coroner for West London. When introducing the report, the presenter of the programme said that Mr Inyama *"was removed from the inquest of murdered school girl Alice Gross last month after complaints from her family"*.

Ofcom found that, on balance, the programme makers took reasonable care to satisfy themselves that material facts in relation to Alice Gross' inquest being transferred to another coroner's area, were not presented, disregarded or omitted in a way that resulted in unfairness to him.

#### Programme summary

On 2 November 2015, ITV broadcast an edition of *ITV London News*, a regional news programme, which included a report that six London councils had called for the suspension My Inyama from his position as the Senior Coroner of the West London.

At the beginning of the programme, the presenter in the studio referred to the upcoming report as follows: *"Six councils call for the West London Coroner to be suspended after allegations of bullying"*. A photograph of Mr Inyama was shown alongside this headline. After reading the other news headlines, the presenter introduced the report as follows:

*"For weeks we've told the stories of families who say they've been let down by the West London Coroner's Service. Some have waited months and even years to be given death certificates. The Coroner, Chinyere Inyama, was removed from the inquest of murdered school girl Alice Gross last month after complaints from her family. Tonight, we can reveal all six councils in the area he covers have written to his bosses calling for him to be suspended"*.

A pre-recorded report was then shown. The report stated that the six councils served by the West London Coroner's Court had sent a letter to the body which governed the Court asking it to suspend Mr Inyama while a number of allegations against him were investigated. These included complaints about the way in which the service he managed was being run, rudeness towards grieving families, and bullying and harassment of his staff.

Towards the end of report, the reporter said:

*"Last month, Mr Inyama had to transfer the Alice Gross inquest [to another coroner] after he admitted leaving sensitive documents on a train. Now, with the*

*councils who fund him withdrawing their support, critics believe it is time for him to resign”.*

Following the report, the reporter was shown with the presenter in the studio discussing what would happen next with regard to whether or not Mr Inyama would be suspended.

The report opened and closed with footage of the photograph of Mr Inyama. No further reference to Mr Inyama was included in the programme.

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

Mr Inyama complained that he was treated unjustly or unfairly in the programme as broadcast because it falsely claimed that he was removed from the inquest into Alice Gross’ death (“the inquest”) after complaints from her family. Mr Inyama said that he had asked for the inquest to be transferred to another coroner because of “undue press interest”.

Before responding to this specific head of complaint, ITV said that the report broadcast on 2 November 2015 was part of a series of similar reports, based on complaints made by at least 20 families, five MPs, two undertakers and the manager of a crematorium, which examined a number of serious concerns which had been raised about Mr Inyama. The concerns raised by these individuals included: delays in the provision of death certificates; delays in holding inquests; delays in carrying out post-mortems; difficulty getting information due to the poor telephone service; unanswered emails; and, the insensitive handling of bereaved families.

Turning to the specific head of complaint, ITV said that the 2 November 2015 report did not present or omit material facts in a way that was unfair to Mr Inyama.

It accepted that the use of the term “*removed*” in the report could have suggested that the case was transferred from Mr Inyama involuntarily when, in fact, (and as it had previously reported by *ITV London News*) Mr Inyama had requested the transfer. It said that the Chief Coroner’s Office had confirmed to ITV that Mr Inyama had asked him to make an order transferring the investigation and inquest to another coroner area; and, that the Chief Coroner had agreed to this request and made a direction to transfer the case (ITV provided Ofcom with a copy of an email from the Chief Coroner’s Office, sent to the programme makers on 8 October 2015, confirming this<sup>1</sup>). ITV said that the Chief Coroner had ordered the case to be transferred, albeit that it was pursuant to a request from Mr Inyama.

ITV contested Mr Inyama’s claim that there had been “undue press interest” in him and his error in leaving sensitive documents concerning the inquest on a train. It said the reporting of this error and the concerns of Alice Gross’ family (and others) about it by the media was entirely justified. The broadcaster said that it was not aware that Mr Inyama (or anyone responding on his behalf) had indicated to ITV, or any other media outlet, that “undue press interest” was the reason he had requested the transfer, and it did not believe this was a reasonable explanation for why he requested it. ITV added that, “given the magnitude of his error, the concerns from Alice Gross’ family and the concerns raised by others”, this seemed to be an unlikely reason for Mr Inyama’s request for the transfer, or for the Chief Coroner’s decision to

---

<sup>1</sup> ITV said that the edition of the programme broadcast on 8 October 2015 included a report about the fact that Mr Inyama would no longer be handling the inquest after he had left a confidential file relating to the inquest on a train.

grant it. ITV said that, for this reason, the programme's omission of Mr Inyama's account of the reason for the transfer was not unfair to the complainant.

ITV argued that the inclusion of the single statement in the report that Mr Inyama had been "*removed*" from the inquest following complaints from Miss Gross' family would not have adversely affected viewers' perceptions of him and resulted in any unfairness to him because:

- the inclusion in the report of the subsequent comment that Mr Inyama "*had to transfer the Alice Gross inquest [to another coroner] after he admitted leaving sensitive documents on a train*" would have made clear to viewers that Mr Inyama himself had a role in the transfer of the case and would have given further context to the earlier statement that he had been "*removed*" from the case;
- the focus of the report was not the transfer of Mr Inyama from the inquest, but the fact that six councils had made a formal complaint to Mr Inyama's superiors, and had called for Mr Inyama to be suspended following the concerns raised about his conduct by numerous individuals;
- the report also stated that the letter sent by the six councils to the Judicial Conduct Investigations Office ("JCIO") was, effectively, a statement of no confidence in Mr Inyama; and,
- the report correctly reported that Mr Inyama had admitted leaving sensitive documents relating to the inquest on a train and that Alice Gross' family had complained about it.

ITV said that, in light of the broader concerns recounted in the 2 November 2015 report about Mr Inyama, his work as a coroner and the service of the West London Coroner's Court, and the magnitude of his admitted error in leaving the sensitive documents on the train, viewers' perceptions of Mr Inyama would not have been materially affected by the report's statement that he had been "*removed*" from the inquest. ITV also said that viewers' perceptions of Mr Inyama were not likely to be affected by the use of the word "*removed*" in the report given the previously reported concerns and complaints about him by ITV and other media outlets.

ITV also said that, on 16 February 2016, the JCIO issued a statement that the Lord Chief Justice and the Lord Chancellor had found Mr Inyama guilty of misconduct for failure to report the loss of the sensitive file (i.e. containing the documents relating to the inquest) to the Chief Coroner at the time it occurred<sup>2</sup>.

In conclusion, the broadcaster said that, given the content of the report on 2 November 2015, the content of previous reporting by *ITV London News* and other outlets and the extent and seriousness of concerns expressed about Mr Inyama and the service he and the West London Coroner's Court provided, the programme did not present or omit material facts in a way that was unfair to Mr Inyama.

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

Ofcom prepared a Preliminary View on this case that Mr Inyama's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, however neither chose to do so.

---

<sup>2</sup> <http://judicialconduct.judiciary.gov.uk/wp-content/uploads/2016/02/JCIO-press-statement-Coroner-Inyama-16022016-.pdf>

## Decision

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

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

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

In reaching its Decision on Mr Inyama's complaint that he was treated unjustly and unfairly in the programme as broadcast, because it falsely claimed that he was removed from the inquest after complaints from Miss Gross' family, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, and both parties' written submissions. Ofcom carried out its considerations having regard to Rule 7.1 of the Code, and to those of the practices to be followed by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes as broadcast, as appeared relevant to Ofcom, and which are set out at Practices 7.2 to 7.14 of the Code. In particular, Ofcom had regard to Practice 7.9 which, insofar as is relevant, provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

Having assessed the relevant report, we observed that, as set out in the "Programme summary" section above, when introducing the report the presenter said that Mr Inyama "**was removed** (Ofcom's emphasis) *from the inquest of murdered school girl Alice Gross last month after complaints from her family*".

We noted that prior to the report broadcast on 8 October 2015 (which included a report on the transfer of Mr Inyama from the inquest following his admission that he had left sensitive documents relating to the inquest on a train), the programme makers were aware that: Mr Inyama's conduct of the inquest, and his error in leaving inquest related documents on a train, had been investigated; at some point during or following this investigation, Mr Inyama had asked the Chief Coroner to transfer the inquest to another coroner; and, that the Chief Coroner had agreed to this request and had ordered that the case be transferred. We also noted that, on the information available, it appeared that Mr Inyama did not dispute this version of events.

As set out above, Mr Inyama said that he was not removed from the inquest but had requested that it be transferred and ITV acknowledged that this was the case – notwithstanding its observation that the procedure required that the Chief Coroner "order" the case to be transferred. However, we noted ITV's argument that the inclusion of the reporter's subsequent comment indicating that "*Mr Inyama had to transfer the Alice Gross inquest [to another coroner] after he admitted leaving*

*sensitive documents on a train*” served to make clear to viewers that Mr Inyama had a role in the transfer of the case and that it placed the earlier comment that he had been “*removed*” from the inquest into context. Ofcom also noted ITV’s position that this matter was not the focus of the report and that viewers’ perceptions of Mr Inyama would not have been materially affected by the reporter’s statement that he had been “*removed*” from the inquest, given the broader context of the report (notably, that six councils had asked for him to be suspended following a long series of complaints and concerns about his conduct and that of the coroner’s office for which he had responsibility) and the fact that, as Mr Inyama had previously admitted, he had left sensitive documents relating to the inquest on a train and that Miss Gross’ family had complained about him.

In his complaint, Mr Inyama said that he had asked for the inquest to be transferred to another coroner because of “undue press interest”. We noted that the programme did not indicate that this was the reason Mr Inyama was no longer handling the inquest. Rather, it was stated in the report that the inquest was transferred after Alice Gross’ family had complained and following Mr Inyama’s admission that he had left sensitive documents relating to the inquest on a train. It is important to note that the content of a programme is an editorial matter for the broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to the individual or organisation concerned. In this context, we observed that ITV argued that “undue press interest” was an unlikely reason for Mr Inyama’s request and said that it was not aware of any occasion on which Mr Inyama (or someone representing him) had claimed, either to ITV or another media outlet, that this was the case. We also observed that Mr Inyama had not provided any evidence to support this claim, for example copies of any relevant correspondence or details of occasions on which he had made such a claim) within his complaint to Ofcom. In this instance, we took the view that, irrespective of whether or not Mr Inyama had at some point stated that “undue press interest” was a reason or one of several reasons he had asked for the inquest to be transferred, viewers of the 2 November 2015 report would have understood that: Mr Inyama had left sensitive documents relating to the inquest on a train, Alice Gross’ family had complained about Mr Inyama’s conduct in this regard; and, following this Mr Inyama was no longer handling the inquest.

Given the factors set out above, and the wider focus of the report (in particular, that, six councils in the area covered by the coroner’s office for which Mr Inyama had responsibility had lost confidence in him and wanted him suspended from his post), we considered that the programme’s referral to Mr Inyama being “*removed*” from the inquest, rather than being transferred at his own request, would not have, in the particular circumstances of this case, materially and adversely affected viewers understanding of Mr Inyama in a way that resulted in unfairness to him.

For this reason, and taking into account all the factors set out above, we concluded that, on balance, the programme makers took reasonable care to satisfy themselves that material facts in relation to Alice Gross’ inquest being transferred to another coroner’s area, were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Inyama.

Therefore, Ofcom found that Mr Inyama was not treated unfairly in this respect.

**Ofcom has not upheld Mr Inyama’s complaint of unjust or unfair treatment in the programme as broadcast.**

## On Demand cases

**APPEAL BY PANDORA BLAKE AGAINST A NOTICE OF DETERMINATION THAT THE PROVIDER OF THE SERVICE “DREAMS OF SPANKING” (AS AT THE SITE [WWW.DREAMSOFSpanking.COM](http://WWW.DREAMSOFSpanking.COM)) HAS CONTRAVENED SECTIONS 368BA (REQUIREMENT TO NOTIFY AN ON-DEMAND PROGRAMME SERVICE), AND 368D(3)(ZA) (REQUIREMENT TO PAY A FEE) OF THE COMMUNICATIONS ACT 2003.**

### **Section 1 – Summary of Ofcom’s Decision**

1. This document sets out Ofcom’s Decision in respect of the Appeal by Pandora Blake (the “Appellant”) against a determination by the Authority for Television On Demand (“ATVOD”) (the “Determination”). On 30 July 2015 ATVOD determined that the service Dreams of Spanking (the “Service”) at the site [www.dreamsofspanking.com](http://www.dreamsofspanking.com) was at the relevant time an “on-demand programme service” (“ODPS”) as defined by Part 4A of the Communications Act 2003 (the “Act”).
2. Ofcom has reached this Decision, in accordance with the relevant procedures<sup>1</sup> which were in place when ATVOD’s Determination was made<sup>2</sup>. Ofcom has made its own assessment of the Service and considered: ATVOD’s Determination; audiovisual material provided by ATVOD; the submissions provided to us by the Appellant in its appeal; relevant legislation including the Act and the Audiovisual Media Services Directive (the AVMS Directive); relevant research by Ofcom; and previous Ofcom decisions on appeals regarding ATVOD scope determinations.
3. Ofcom’s Decision is that, at the time of ATVOD’s Determination, the Service (as described further below) did not fulfil the criteria set out in section 368A(1)(a) of the Act. Ofcom therefore proposes to quash ATVOD’s determination of 30 July 2015 that the Service was at the relevant date an ODPS and replace it with our Decision.

### **Section 2 – Summary of the Legal Framework**

4. The AVMS Directive is a European Directive amongst the purposes of which is to provide a level of protection in accordance with that which consumers of ODPSs might expect; and to provide a measure of fair competition across Member States between those providing:
  - a) traditional (linear) television broadcasting services; and
  - b) on-demand services that are essentially the same, or sufficiently similar, and which compete for viewers and advertisers.
5. The Audiovisual Media Services Regulations 2009 gave effect to the AVMS Directive in the UK by inserting Part 4A into the Act. Part 4A was amended by

---

<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

<sup>2</sup> As discussed in paragraphs 11 and 12 below, the co-regulatory regime for non-advertising content on OPDS ceased to have effect from 31 December 2015.

The Audiovisual Media Services Regulations 2010 and by the Audiovisual Media Services Regulations 2014, and creates the statutory regime for the regulation of ODPSs.

6. A service is only an ODPS if it satisfies the defining criteria in section 368A(1) of the Act which states:

*“... a service is an “on-demand programme service” if –*

- (a) its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;*
- (b) access to it is on-demand;*
- (c) there is a person who has editorial responsibility for it;*
- (d) it is made available by that person for use by members of the public; and*
- (e) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive”.*

7. Section 368A(1)(a) of the Act provides for a composite definition, to be applied in light of the AVMS Directive, to determine whether services are within the scope of regulation. It can be characterised as comprising a *“principal purpose part”* - whether there is a service the “principal purpose” of which is the provision of audiovisual material; and a *“comparability part”*- whether the form and content of programmes comprising that service is comparable with the form and content of programmes normally included in linear broadcast television services.

8. All parts of the composite definition referred to above must be considered and met for a service to be an ODPS. There must be a service whose principal purpose is the provision of programmes, the form and content of which are comparable to the form and content of programmes normally included in television programme services.

9. Broadly, the composite definition referred to above requires those assessing a service to:

- a. look at what is provided as a whole and consider whether there is anything which is a service whose principal purpose is the provision of audiovisual material; and
- b. if so, it is necessary to consider whether, taken as a whole, the service is one whose principal purpose is providing comparable programmes<sup>3</sup> (which is a question that focuses on the audiovisual material that comprises the principal purpose of the service).

10. Section 368BA(1) of the Act provides for an advance notification requirement on the part of persons providing an ODPS.

---

<sup>3</sup> That is, comparable in form and content to the form and content of programmes normally included in television programme services.

11. As part of a co-regulatory regime that applied until 31 December 2015, ATVOD was designated by Ofcom as the “appropriate regulatory authority” to carry out certain functions under section 368B of the Act<sup>4</sup> (the “Designation”). As part of that Designation, ATVOD had power to decide whether a service was an ODPS<sup>5</sup>. Where ATVOD determined that a service was an ODPS, its provider was subject to a requirement to notify ATVOD and pay a fee. The provider had to also ensure the ODPS met a limited number of regulatory requirements. ATVOD’s decisions on such matters were “*subject to appeal to Ofcom in accordance with Ofcom’s relevant procedures*”.
12. Whilst Ofcom decided to end the co-regulatory regime for non-advertising content on ODPS with effect from 31 December 2015, ATVOD’s Determination in this case was made on 30 July 2015, whilst the Designation was still in force. That Determination remains valid notwithstanding the end of the co-regulatory regime, and Ofcom now exercises the power to decide whether a service is an ODPS on a sole basis. Consequently, it is appropriate to continue to consider this matter as an appeal under the procedures in place when the decision was made.
13. As set out in those procedures<sup>6</sup>, Ofcom’s decision in any appeal, “... *may*:
  - (a) *uphold ATVOD’s decision; or*
  - (b) *quash ATVOD’s decision in whole or in part and remit the decision back to ATVOD with reasons for it to reconsider in light of those reasons;*
  - (c) *substitute Ofcom’s decision for that of ATVOD...*”
14. In interpreting section 368A, Ofcom necessarily has regard to relevant provisions of the Directive. This is because that section of the Act implements the Directive insofar as that Directive defines the scope of on demand services which should be subject to regulation. The Directive contains both operative provisions (Articles) and explanatory provisions (Recitals) which define and explain both the purpose of regulation and the scope of on demand services that are subject to it.
15. Recital 24 of the AVMS Directive states that:

*“It is characteristic of on-demand audiovisual media services that they are ‘television-like’, i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of a programme should be interpreted in a dynamic way taking into account developments in television broadcasting”.*

---

<sup>4</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ATVOD\\_revised\\_Designation.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ATVOD_revised_Designation.pdf)

<sup>5</sup> Paragraph 6(ii) of the Designation. This also makes clear that any such decision is “subject to appeal to Ofcom in accordance with Ofcom’s relevant procedures.”

<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

16. Recital 21 of the AVMS Directive states:

*“For the purposes of this Directive, the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. Its scope should be limited to services as defined by the Treaty on the Functioning of the European Union and therefore should cover any form of economic activity, including that of public service enterprises, but should not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest”.*

17. This Decision also takes into account relevant precedents to inform Ofcom’s assessment of this case. These precedents include our Sun Video decision (the “Sun Decision”)<sup>7</sup> and other relevant cases referred to within this document.

18. In light of the provisions set out above and following the approach adopted by Ofcom in previous appeals, we also consider it necessary, when considering whether a service is an ODPS, to take a step back and consider in light of all the circumstances:

- a) whether the relevant audiovisual material is likely to compete for the same audience as linear television broadcasts; and
- b) whether the nature of that material and the means of accessing it would lead users to reasonably expect regulatory protection within the scope of the AVMS Directive.

### **Section 3 – Determination under Appeal**

#### **ATVOD’s Determination**

19. On 27 February 2015 ATVOD wrote to the Appellant informing her of her statutory obligation to notify provision of an ODPS and setting out the statutory criteria which define an ODPS. After an initial investigation of the Service the ATVOD Executive considered that the Services raised issues under Rules 1 and 4 of ATVOD’s Rules<sup>8</sup> and subsequently conducted a full investigation between 25 March and 23 April 2015. Following this investigation, on 8 June 2015 ATVOD informed the Appellant of its Preliminary View that the Service was an ODPS in respect of which a notification had not been given and a fee not paid. Following receipt of the Appellant’s submissions on the Preliminary View, ATVOD issued its Determination on 30 July 2015 that the Service was an ODPS for the purposes of Part 4A section 368A(1) of the Act, that the advance notification as required by section 368BA of the Act had not been given, and the fee as required by section 368D(3)(a) had not been paid.

---

<sup>7</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/sunvideo.pdf>

<sup>8</sup> [http://www.atvod.co.uk/uploads/files/ATVOD\\_Rules\\_Guidance\\_Ed\\_3.0\\_May\\_2015.pdf](http://www.atvod.co.uk/uploads/files/ATVOD_Rules_Guidance_Ed_3.0_May_2015.pdf) - Rules 1 and 9 relate to notification of intention to provide an ODPS and the connected requirement to pay a fee.

20. In relation to criterion (a) in section 368A(1) of the Act (which is the key issue in this Appeal) ATVOD's Determination<sup>9</sup> was that:
  - a) the Service contained programmes the form and content of which was comparable to that of programmes included in television programme services, specifically on broadcast adult channels;
  - b) the videos did not appear to be ancillary to the still photos or any other part of the sites, and that the principal purpose of the Service was the provision of videos.
21. ATVOD also considered the remaining criteria of section 368A(1)(b) to (e) of the Act and set out how it considered the Service fulfilled each of these. ATVOD concluded the Service was, at the time of assessment, an ODPS.
22. The Determination set out the Appellant's right to request an appeal to Ofcom as set out in paragraphs 6(ii) and 7(xvii) of the Designation. ATVOD also directed the Appellant to Ofcom's appeals procedures.

### The Appeal

23. The Appellant wrote to Ofcom on 27 August 2015 to appeal against the Determination, requesting Ofcom to set aside ATVOD's Determination that the Service is an ODPS falling within the scope of Part 4A of the Act. The Appellant stated that she did not consider that the Service constituted an ODPS as defined in section 368A of the Act and that she was therefore not required to notify the service to ATVOD or pay a fee.
24. The Appellant maintained that the Service did not satisfy the requirements for an ODPS, particularly when considered in the light of Recitals 21 and 24 of the AVMS Directive.
25. In summary, the Appellant argued that:
  - a) The definition in section 368A(1)(a) of the Act was not satisfied as the principal purpose of the Service was not the provision of video the form and content of which was TV-like or in competition with linear television, and that the Service was primarily non-economic. Consideration of the characteristics identified in *On demand video services: understanding consumer choices*, prepared by Essential Research for Ofcom in October 2012 (the Essential research)<sup>10</sup> suggests that the form and content of the videos available on the Service were not comparable to the form and content of programmes normally included in adult linear television.
  - b) The Service is primarily non-economic in nature. It is a niche outlet aimed at the distribution of audiovisual content generated by private users for the purposes of sharing and exchanging with a community of interest, and is not mass media within the meaning of Recital 21.

---

9

[http://www.atvod.co.uk/uploads/files/Rules\\_1\\_and\\_4\\_FD\\_Dreams\\_of\\_Spanking\\_300715\\_FO\\_R\\_PUBLICATION.pdf](http://www.atvod.co.uk/uploads/files/Rules_1_and_4_FD_Dreams_of_Spanking_300715_FO_R_PUBLICATION.pdf)

<sup>10</sup> [http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research_Report.pdf)

- c) The Service is not in competition with linear television within the meaning of Recital 24 of the Directive. In 2014 it had a limited subscriber base and generated limited revenue which meant that it cannot be considered to compete for the same audience as television broadcasts.

#### Ofcom's Preliminary View

26. On 3 May 2016, Ofcom set out its Preliminary View on the appeal, which was that ATVOD's final determination should not be upheld and that the Appellant was not, in respect of the Service, the provider of an ODPS on 25 March 2015 and 23 April 2015. Ofcom provided the Preliminary View to the Appellant and gave them the opportunity to make representations. The Appellant did not make any representations.

### **Section 4 – Ofcom's Decision**

#### Ofcom's Assessment

27. As set out above, the substantive grounds of Appeal were in relation to section 368A(1)(a) of the Act. The Appellant did not specifically dispute ATVOD's finding that the Service met the other criteria of section 368A(1).
28. Ofcom reviewed the whole and constituent parts of the Appellant's website at the time ATVOD made its Determination. Ofcom viewed screen grabs taken by ATVOD at the time of its Preliminary View, video evidence captured by ATVOD at the time of its Determination and documentation provided by the Appellant at the point of its Appeal.
29. Ofcom also undertook a review of the website at [www.dreamsofspanking.com](http://www.dreamsofspanking.com) following receipt of the Appellant's appeal submission. At this time, the design and content of the website did not appear to be significantly different compared to the video capture evidence gathered by ATVOD.

#### Principal Purpose Assessment

30. Ofcom's approach to applying the principal purpose test in section 368A(1)(a) of the Act is set out in greater detail in the Sun Decision, taking as reference the characteristics identified in the Sun Decision as relevant, before drawing conclusions on the service as a whole.

#### Homepage

31. The [www.dreamsofspanking.com](http://www.dreamsofspanking.com) homepage did not change in appearance or layout from pre paywall to post paywall. Once a user had signed in, they were given access to all of the video content and photographic content that had been restricted in the pre-paywall experience. Audiovisual and photographic content was catalogued both pre- and post-paywall in a manner allowing it to be accessed via various tabs on the homepage.
32. The homepage described the service as "Dreams of Spanking: fairtrade spanking, corporal punishment and discipline fantasies by Pandora Blake. Join us". Further down the page, there was text stating "Welcome to the new production studio by UK spanking performer Pandora Blake. Dreams of Spanking offers high-quality, aesthetically beautiful spanking films, photo

galleries and audio stories”. This text would suggest that the Service intended to offer a multimedia experience aimed at those with a fetish interest in spanking. The homepage did not appear to present the Service as solely providing users with audiovisual material; there was reference to videos but also to still images and stories.

33. Further down the homepage, under the heading “Latest Updates”, were links to four separate scenes, featuring a screenshot of the video footage, accompanied by four photographic images taken from that footage, a brief description of the narrative of the story depicted in the footage, and a breakdown of the length of the footage and amount of photographic imagery. Ofcom noted that the audiovisual content was presented alongside the sample photographic content, as complements to each other, with no particular prominence to one piece of content over another, in terms of organisation and layout.
34. Once a user clicked on the screenshot of the video footage or photographic images taken from the footage, it led to a separate scene-specific page that contained text, video footage and photographic material. The organisation and layout of the video and photographs was similar to that on the homepage. The video was presented alongside the sample photographs, in a way that suggested them to complement each other.

#### Cataloguing and accessing

35. Ofcom noted that there were several methods for users to find and access content. The audiovisual material was not catalogued on a separate tab on the website, except for under the “Browse by Keyword” facility on the homepage, which allowed the user to search for content using audiovisual specific terms such as “film”. The results of these searches returned both video and photographic content, with no particular prominence given to either type of media.
36. Ofcom also noted that when users searched for material using the various other methods on the homepage, the search results featured both video and photographic content integrated together, and in some cases results returned only photographic content.
37. Accordingly, Ofcom considered the cataloguing did not suggest that the photographic material was ancillary to the provision of video material. Rather, they were catalogued together in such a way that they appeared complementary to one another.

#### Presentation and Styling

38. As noted above, wording on the homepage suggested an integrated offering of photographic content, audiovisual material and stories, and this was reflected elsewhere on the service.
39. Ofcom noted that audiovisual material featured prominently across the website, such as on the homepage under the “latest updates” headline, discussed in the blog section, and accessible via various methods of searching for content across the website. However, Ofcom did not consider that the Service presented itself as principally a destination for video content (with some ancillary non-audiovisual material). The audiovisual material was integrated together with other types of content, such that it was indissociably complementary to the overall offering of

the Service that is a fetish interest website. For instance, searches for specific content would return results containing video and photographic material, with no greater prominence given to either type of media.

#### Completeness, Independence of Material

40. Ofcom noted that the videos on the Service, of an average length of 10-20 minutes, comprised complete programmes that could be understood and watched fully on their own, rather than “bite sized” extracts of longer programmes or material needing access to supporting material to understand sufficiently, such as text.
41. However, Ofcom did not consider the audiovisual content to be a standalone service. The video content was always accompanied by photographs of the scene depicted in the video, such that the audiovisual material was complemented by photographic content, forming part of an integrated offering of audiovisual and photographic content, together with the blog available on the Service, which discussed the scenes depicted in the videos and photographs, as well as other topics related to the theme of the Service.

#### Content and Access Links

42. Ofcom noted that there were various navigational links to audiovisual material via the different search methods and that audiovisual material was accompanied by photographic material. Additionally, the pages featuring video and photographic content in turn contained links to other pages tagged with keywords, denoting similarly themed audiovisual and photographic content.
43. More importantly, the content of the photographs replicated the content of the video footage, unless the photographic images represented a scene of their own and then did not feature accompanying video footage. This reinforced the view that the audiovisual material was not significantly different or distinct from the photographic material and is part of an integrated service offering a portal for users to access both photographic and video content.

#### Balance of material

44. From the Appellant’s submission, Ofcom noted that the Service included 190 videos of an average length of 10-20 minutes. Ofcom also noted from ATVOD’s submission that there 4971 photographic images. Ofcom considered that the amount of video content was substantial but we noted that it was made available alongside a substantial offering of photographic content, all of which was regularly refreshed. However, when considering the balance of material we do not only consider issues of volume.
45. We did not consider that the videos featured on the Service were the primary means by which it offered a service to its users such that other aspects had a merely ancillary role. For instance, some parts of the website only featured photographic imagery without any accompanying video content. Moreover, the significant blog content led us to conclude that the Service aimed to provide an offering which integrated different types of content rather than having the sole purpose of the provision of audiovisual material.

### Overall preliminary assessment on principal purpose

46. Ofcom's overall view was that characteristics of the material available on the Appellant's website and the manner in which it was provided do not support ATVOD's finding that the site constituted a service a principal purpose of which was providing audiovisual material.
47. Whilst the Service offered a significant number of videos of a substantial duration that could be understood and watched fully on their own, Ofcom did not consider this audiovisual content to be a distinct service from other, similarly prominent aspects of the site. The audiovisual material was integrated together with other types of content, such as photographic material, such that it was indissociably complementary to the overall offering of the Service, that is, a fetish interest website.
48. In light of that assessment, Ofcom did not need to consider in further detail whether the nature of the video content on the Service was comparable to adult linear TV programmes in accordance with the comparability part of the definition in section 368A(1)(a).

### Purposive Assessment: Regard to the AVMS Directive

49. As set out above, Ofcom has had specific regard in this Decision to the provisions of the AVMS Directive. We have also taken a step back, and having more general regard to the relevant provisions of the Directive, considered whether the Service provided a service that the Directive seeks to bring within its regulatory scope.
50. As described in paragraph 14 to 16, the AVMS Directive includes Recitals intended to aid its interpretation. These Recitals make clear that, amongst other things, the scope of audiovisual media services intended to be regulated under the Directive is limited to those services that are "mass media" (Recital 21) and "compete for the same audience as television broadcasts" (Recital 24).
51. We note that the Appellant raised arguments regarding the need to interpret the provisions of section 368A(1)(a) purposively in accordance with the AVMS Directive and in particular in light of Recital 21 and 24. We consider below the arguments the Appellant raised in relation to these recitals.

### Recital 21

52. Ofcom had regard to the Appellant's argument that the Service falls outside the scope of an ODPS because it is not a "mass media" service and is "primarily non-economic" within the meaning of Recital 21 of the Directive.
53. Ofcom noted that the Appellant argued that the "video content is primarily non-economic, generated by a private user for the purposes of sharing and exchange within communities of interest". The Appellant also stated that in 2014, the Service had limited membership and a low monthly turnover.
54. Ofcom considered that the fact that a service is viewed only by a limited number of people does not necessarily mean that it cannot be in competition with linear TV. We also note the wording of Recital 21 states the Directive covers services which "...*could* have a clear impact on, a significant proportion of the general public" (emphasis added). In our view the Service was capable of being

accessed by a larger audience, and as such, the limited audience of the Service should not of itself mean that that the Service was “*primarily non-economic*” in nature within the meaning of Recital 21.

55. However, as we were able to conclude that the Service was out of scope on the basis that the provision of the video content was not in itself a principal purpose of the Service, we did not consider it necessary to come to a conclusion on this point.

#### Recital 24 assessment

56. The Appellant also argued that given the membership and turnover figures of the service, it was unlikely that the website would compete for the same audience as television broadcast or even with any small, niche interest channel. As such, the appellant considered the service fell outside of the scope of Recital 24.
57. Ofcom noted that Recital 24 states that one of the key purposes of the AVMS Directive is to maintain undistorted competition between linear TV broadcasting and ‘TV-like’ non-linear audiovisual services which compete for the same audience.
58. Ofcom took the view that the video content made available on the Service is not a standalone service but is an integrated element of the overall offering which also included the photographic stills and accompanying text. Ofcom therefore considered that, assessing the Service as a whole, it was not likely to directly compete with adult television broadcasting services for the same audience.
59. Ofcom also considered Recital 24’s reference to [whether], “...the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive.” Ofcom noted Recital 24 makes clear that it is not just the “means of access” which are relevant but also the “nature” of the Service as well. Given that the nature of the Service can be characterised as a web-based portal for accessing both photographic and/or video content of an adult nature depending on the user’s preferences, Ofcom considered that a user would not reasonably expect regulatory protection under the AVMS Directive.

#### Section 5 – Conclusion

60. For the reasons set out above, Ofcom considered that the Service was not a service the principal purpose of which was to provide audiovisual material which was comparable to the form and content of linear television programme services, and which was in competition with linear television programme services. Ofcom’s Decision is that the Service was, therefore, not an ODPS within the meaning of section 368A(1) of the Act as at the time of ATVOD’s Determination.
61. Consequently, Ofcom’s Decision is that the Appellant was not in breach of the advance notification requirement under section 368BA of the Act, and the requirement to pay a fee under section 368D(3)(za).
62. Ofcom’s Decision is therefore that the Appellant was not, for the reasons set out above, in respect of the Service, the provider of an ODPS at 25 March 2015 and 23 April 2015 and that the Appellant’s appeal against ATVOD’s Determination should be upheld and ATVOD’s decision should be quashed.

**APPEAL BY LAURA JENKINS AGAINST A NOTICE OF DETERMINATION THAT THE PROVIDER OF THE SERVICES “CANDY GIRL PASS” AND “ALL TEENS WORLD” (AS AT THE SITES SHOWN IN ANNEXES 1) AND 2) HAS CONTRAVENED SECTIONS 368BA (REQUIREMENT TO NOTIFY AN ON-DEMAND PROGRAMME SERVICE) AND 368D(3)(ZA) (REQUIREMENT TO PAY A FEE) OF THE COMMUNICATIONS ACT 2003.**

**Section 1 – Summary of Ofcom’s Decision**

1. This document sets out Ofcom’s Decision in respect of the Appeal by Laura Jenkins (the Appellant) against a determination by the Authority for Television On Demand (ATVOD) (the Determination). ATVOD determined in its Determination of 23 October 2014, that the service Candy Girl Productions (the Service Provider) consisting of two main outlets [www.allteensworld.com](http://www.allteensworld.com)<sup>1</sup> (as at sites shown in Annex 2) and [www.candygirlpass.com](http://www.candygirlpass.com) (as at sites shown in Annex 1) is (or was at the relevant time) an on-demand programme service (ODPS) as defined by Part 4A of the Communications Act 2003 (the Act).
2. Ofcom has reached this Decision, in accordance with the relevant procedures<sup>2</sup> which were in place when ATVOD’s Determination was made<sup>3</sup>. Ofcom has made its own assessment of the Service and considered: ATVOD’s Determination; audiovisual material provided by ATVOD; the submissions provided to us by the Appellant in its appeal; relevant legislation including the Act and the Audiovisual Media Services Directive (the AVMS Directive); relevant research by Ofcom; and previous Ofcom decisions on appeals regarding ATVOD scope determinations.
3. Ofcom’s Decision is that, at the time of ATVOD’s Determination, [www.candygirlpass.com](http://www.candygirlpass.com) and its linked sites as shown in Annex 1 (the Service) did not fulfil the criteria set out in section 368A(1) of the Act. Ofcom did not consider that the site [www.allteensworld.com](http://www.allteensworld.com) and its linked sites as shown in Annex 2 to be part of the Service Provider; further, we did not consider [www.allteensworld.com](http://www.allteensworld.com) fulfilled the criteria set out in 368A(1) of the Act. Ofcom therefore proposes to quash ATVOD’s determination of 23 October 2014 that the services were at the relevant date ODPS and replace it with our Determination.

**Section 2 – Summary of the Legal Framework**

4. The AVMS Directive is a European Directive amongst the purposes of which is to provide a level of protection in accordance with that which consumers of ODPSs might expect; and to provide a measure of fair competition across Member States between those providing:
  - a) traditional (linear) television broadcasting services; and

---

<sup>1</sup> The Service Provider identified to Ofcom that [www.allteensworld.com](http://www.allteensworld.com) was the correct URL, and not [www.allteensworld.co.uk](http://www.allteensworld.co.uk) as noted by ATVOD.

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

<sup>3</sup> As discussed in paragraphs 11 and 12 below, the co-regulatory regime for non-advertising content on OPDS ceased to have effect from 31 December 2015.

- b) on-demand services that are essentially the same, or sufficiently similar, and which compete for viewers and advertisers.
5. The Audiovisual Media Services Regulations 2009 gave effect to the AVMS Directive in the UK by inserting Part 4A into the Act. Part 4A was amended by The Audiovisual Media Services Regulations 2010 and creates the statutory regime for the regulation of ODPSs.
6. A service is only an ODPS if it satisfies the defining criteria in section 368A(1) of the Act which states:
- “... a service is an ODPS if –*
- (c) its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;*
  - (d) access to it is on-demand;*
  - (e) there is a person who has editorial responsibility for it;*
  - (f) it is made available by that person for use by members of the public; and*
  - (g) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive”.*
7. Section 368A(1)(a) of the Act provides for a composite definition, to be applied in light of the AVMS Directive, to determine whether services are within the scope of regulation. It can be characterised as comprising a “*principal purpose part*” - whether there is a service the “principal purpose” of which is the provision of audiovisual material; and a “*comparability part*” - whether the form and content of programmes comprising that service is comparable with the form and content of programmes normally included in linear broadcast television services.
8. All parts of the composite definition referred to above must be considered and met for a service to be an ODPS. There must be a service whose principal purpose is the provision of programmes, the form and content of which are comparable to the form and content of programmes normally included in television programme services.
9. Broadly, this composite definition requires those assessing a service to:
- c. look at what is provided as a whole and consider whether there is anything which is a service whose principal purpose is the provision of audio visual material; and
  - d. if so, it is necessary to consider whether, taken as a whole, the service is one whose principal purpose is providing programmes, the form and content of which are comparable to the form and content of programmes normally included in television programme services.<sup>4</sup> (This is a question that focuses on the audio visual material that comprises the principal purpose of the service).

---

<sup>4</sup> That is, comparable in form and content to the form and content of programmes normally included in television programme services.

10. Section 368BA(1) of the Act provides for an advance notification requirement on the part of persons providing an ODPS.
11. As part of a co-regulatory regime that applied until 31 December 2015, ATVOD was designated by Ofcom as the “appropriate regulatory authority” to carry out certain functions under section 368B of the Act<sup>5</sup> (the “Designation”). As part of that Designation, ATVOD had power to decide whether a service was an ODPS<sup>6</sup>. Where ATVOD determined that a service was an ODPS, its provider was subject to a requirement to notify ATVOD and pay a fee. The provider had to also ensure the ODPS met a limited number of regulatory requirements. ATVOD’s decisions on such matters were “*subject to appeal to Ofcom in accordance with Ofcom’s relevant procedures*”.
12. Whilst Ofcom decided to end the co-regulatory regime for non-advertising content on ODPS with effect from 31 December 2015, ATVOD’s Determination in this case was made on 14 October 2014, whilst the Designation was still in force. That Determination remains valid notwithstanding the end of the co-regulatory regime, and Ofcom now exercises the power to decide whether a service is an ODPS on a sole basis. Consequently, it is appropriate to continue to consider this matter as an appeal under the procedures in place when the decision was made.
13. As set out in those procedures<sup>7</sup>, Ofcom’s decision in any appeal, “... *may*:
  - (d) *uphold ATVOD’s decision; or*
  - (e) *quash ATVOD’s decision in whole or in part and remit the decision back to ATVOD with reasons for it to reconsider in light of those reasons;*
  - (f) *substitute Ofcom’s decision for that of ATVOD...*”
14. In interpreting section 368A, Ofcom necessarily has regard to relevant provisions of the Directive. This is because that section of the Act implements the Directive insofar as that Directive defines the scope of on demand services which should be subject to regulation. The Directive contains both operative provisions (Articles) and explanatory provisions (Recitals) which define and explain both the purpose of regulation and the scope of on demand services that are subject to it.
15. Recital 24 of the AVMS Directive states that:

*“It is characteristic of on-demand audiovisual media services that they are ‘television-like’, i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive”. “In the light of this and in order to prevent disparities as regards free movement and competition, the concept of a programme should*

---

<sup>5</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ATVOD\\_revised\\_Designation.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ATVOD_revised_Designation.pdf)

<sup>6</sup> Paragraph 6(ii) of the Designation. This also makes clear that any such decision is “subject to appeal to Ofcom in accordance with Ofcom’s relevant procedures.”

<sup>7</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

*be interpreted in a dynamic way taking into account developments in television broadcasting”.*

16. Recital 21 of the AVMS Directive states:

*“For the purposes of this Directive, the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. Its scope should be limited to services as defined by the Treaty on the Functioning of the European Union and therefore should cover any form of economic activity, including that of public service enterprises, but should not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest”.*

17. This Decision also takes into account relevant precedents to inform Ofcom’s assessment of this case. These precedents include our Sun Video decision (the Sun Decision)<sup>8</sup> and other relevant cases referred to within this document<sup>9</sup>.

18. In light of the provisions set out above and following the approach adopted by Ofcom in previous appeals, we also consider it necessary, when considering whether a service is an ODPS, to take a step back and consider in light of all the circumstances:

- c) whether the relevant audiovisual material was likely to compete for the same audience as linear television broadcasts; and
- d) whether the nature of that material and the means of access to it would lead users to reasonably expect regulatory protection within the scope of the AVMS Directive.

### **Section 3 – Determination under Appeal**

#### **ATVOD’s Determination**

19. On 20 August 2012 ATVOD wrote to the Appellant informing it of its statutory obligations to notify provision of an ODPS and setting out the statutory criteria that define an ODPS. On 30 January 2014 ATVOD informed the Appellant of its Preliminary View that the Service provided within Candy Girl Productions was an ODPS in respect of which a notification had not been given and a fee not paid. Following receipt of the Appellant’s written submissions on the Preliminary View, ATVOD issued its Determination on 14 October 2014 that the Service was an ODPS for the purposes of Part 4A section 368A(1) of the Act and that a notification had not been given and a fee not paid.
20. ATVOD also considered the remaining criteria of section 368A(1) of the Act (criteria (b) to (e)), and set out how the Service fulfilled each of these. ATVOD

---

<sup>8</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/sunvideo.pdf>

<sup>9</sup> <http://stakeholders.ofcom.org.uk/enforcement/on-demand-standards/scope-appeals/>

therefore concluded the Service was, on 3-8 January and 1-7 October 2014, an ODPS.

21. In summary, ATVOD's Determination<sup>10</sup> stated that:
- a) the Service contained programmes the form and content that were comparable to that of programmes normally included in television programme services, specifically on broadcast adult channels; and
  - b) that the videos did not appear to be ancillary to the still photos or any other part of the sites, and that the principal purpose of the Service was the provision of videos.
22. The Determination set out the Appellant's right to request an appeal to Ofcom as set out in paragraphs 6(ii) and 7(xvii) of the Designation. ATVOD also directed the Appellant to Ofcom's appeals procedures<sup>11</sup>.

### The Appeal

23. The Appellant wrote to Ofcom on 18 November 2014 requesting an appeal against the Determination. The Appellant stated that ATVOD had incorrectly determined that the Service was an ODPS fulfilling each of the statutory criteria set out in section 368A of the Act.
24. The Appellant argued that section 368A(1)(a) was not satisfied as the principal purpose of the Service was not the provision of video. The Appellant stated that:
- a) the main purpose of the sites were a fan site. The images and video content were included as proof that the models were real;
  - b) members of the websites were more interested in seeing images and in talking to the models via forums/ diaries and social media platforms, instead of watching the videos; and
  - c) that "less than 1% of the content inside the members area is video", and that CandyGirlPass contained "95893 images" in the gallery, and only "270 videos."
25. The Appellant also argued that the content was not comparable to TV-like programmes; that the videos on the websites are much lower quality to those found on TV (at 640x480 pixels), and much shorter in length at an average of 3-5 minutes long. The Appellant also said the Service offered non-nude/implied nude content, and could not be compared to the adult content typical of adult television programme services.
26. The Appellant finally argued that section 368A(1)(b) was not satisfied and queried whether the service could be considered an on-demand service, stating that the limits on download speed affected the consumption of the audiovisual material.

---

<sup>10</sup> Full details can be found at:  
[http://www.atvod.co.uk/uploads/files/Rules\\_1&4\\_FD\\_Candy\\_Girl\\_Productions\\_FINAL\\_FOR\\_PUBLICATION.pdf](http://www.atvod.co.uk/uploads/files/Rules_1&4_FD_Candy_Girl_Productions_FINAL_FOR_PUBLICATION.pdf)

<sup>11</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

### Ofcom's Preliminary View

27. On 3 May 2016, Ofcom set out its Preliminary View on the appeal, which was that ATVOD's final determination should not be upheld and that the Appellant was not, in respect of the Service, the provider of an ODPS on 3-8 January 2014 and 1-7 October 2014. Ofcom provided the Preliminary View to the Appellant and gave them the opportunity to make representations. The Appellant did not make any representations.

### **Section 4 – Ofcom's Decision**

28. As set out above, the substantive grounds on which the Appellant based its Appeal to Ofcom were in relation to section 368(1)(a) of the Act, and questioned if the download speed it imposed on access to content might mean the service was not 'on-demand'.

### Ofcom's Assessment

29. Taking the approach outlined above, Ofcom has reviewed the whole and constituent parts of the Appellant's websites at the time ATVOD made its Determination. Ofcom viewed screen grabs gathered by ATVOD at the time of its Preliminary View, video evidence captured by ATVOD at the time of its Determination and documentation provided by the Appellant at the point of its appeal.

### The Service

30. Ofcom undertook a review of the websites listed under Annex 1 between November –April 2014 following receipt of the Appellant's appeal submission. At this time, the design and content of [www.candygirlpass.com](http://www.candygirlpass.com) and [www.allteensworld.com](http://www.allteensworld.com) and their linked sites did not appear to be significantly different compared to the video capture evidence gathered by ATVOD. When reviewing these sites, Ofcom identified significant factors that led it to conclude that [www.candygirlpass.com](http://www.candygirlpass.com) and [www.allteensworld.com](http://www.allteensworld.com) were not part of the same service for the reasons outlined in paragraph 30.
31. Ofcom noted that:
- a) Although there were similarities in the way both [www.allteensworld.com](http://www.allteensworld.com) and [www.candygirlpass.com](http://www.candygirlpass.com) were set up (a main site featuring models, some of whom had their own linked sites; the apparent use of the same website template with tabs for each section and a space for banner advertising), they required separate paid subscriptions to view different content. Ofcom considered that this indicated distinct services.
  - b) Furthermore, the two sites were not navigationally linked. [www.candygirlpass.com](http://www.candygirlpass.com) served as the single route to all the models featured on its site, and when navigating the linked URLs, the subscriber was re-directed to [www.candygirlpass.com](http://www.candygirlpass.com) to access the content for the model, as well as to view additional models. However, this did not include any models featured on [www.allteensworld.com](http://www.allteensworld.com). This suggested that [www.candygirlpass.com](http://www.candygirlpass.com) served as the repository of pictures and videos for the models featured on Candy Girl Pass-

irrespective of whether they were accessed through www.candygirlpass.com or its linked URLs - but that the content on www.allteensworld.com and its linked URLs were not part of this Service.

- c) This separation of navigation was supported by the marketing and presentation of materials on each site. For example, the pre pay wall homepage of www.candygirlpass.com described itself as a 'mega site...updated daily with content from ALL of our sites', indicating the provider considered www.candygirlpass.com and its linked URLs to be part of one service. But this did not link back to www.allteensworld.com and its linked URLs.
32. Ofcom therefore considered that www.candygirlpass.com and its linked URLs were one and the same service, but that www.allteensworld.com and its linked URLs should be considered separately for the purposes of this appeal.
33. After establishing that the two services should be considered separately, Ofcom first evaluated www.candygirlpass.com (as at Annex 1).

Principal Purpose Assessment: www.candygirlpass.com

34. Ofcom's approach to applying the principal purpose test in section 368A(1)(a) of the Act is set out in greater detail in the Sun Decision. Taking as reference the characteristics identified in Sun Video, Ofcom's assessment of the Service against those criteria is as follows:

Pre-pay wall Homepage

35. Ofcom looked at the www.candygirlpass.com homepage before the pay wall. It featured images of semi-nude models and some text, and included one embedded video. At the bottom of the page, several 'branded models' were also identified. Five icons at the top of the page served as tabs to 'Join Now', access 'Members login', view 'Photos' and 'Videos' and 'Continue'. Text in the middle of the page stated "*It's finally come to the time where we've decided to launch a mega site full of the hottest girls, pictures and videos that we just know you all love!*" Text at the bottom of the page stated "*Get Instant access to all of our pictures and videos*". This emphasised the website was a destination for photographic and video content for branded models. The branded models were the main theme of the website and the purpose of the Service was to provide different media content for these models.

After the pay wall Homepage and tabs

36. This homepage changed upon entering details of the paid membership, and a different landing page appeared. The homepage after the pay wall had eleven tabs—"Home", "Pictures", "Video", "Forum", "Blog", "Friends", "Webcam", "Store", "Chat", "Free video", and "Bonus sites".
37. The "Home" tab showed 20 collages of branded models and represented the landing page of the post paywall homepage; each collage was composed of the name and several images of the particular model. Clicking on one of these collages lead to a different page with a selection of pictures and some videos of the model, and included additional links to view more photographic content. Greater prominence was given to the photographic content than video content in

terms of the presentation of material on these pages and additionally the volume of photographic content was greater than video content on these pages.

38. The “Video” tab on the homepage showed a matrix of videos, organised by date and across 18 pages which could be selected by ‘branded model’ name or categories such as “Lesbo Brits” or “Test Shot Teens” from a drop down list at the top.
39. The “Pictures” tab on the homepage showed a matrix of photographs, organised by date. The photographs could be selected by ‘branded model’ name or categories such as “Lesbo Brits” or “Test Shot Teens” from a drop down list at the top.
40. There were additional videos in the “Free Video” and “Bonus sites” tabs, which offered links to what appeared to be linked URLs of branded models (see sites shown in Annex 1.)
41. Ofcom also reviewed the activities of the site under the tabs, which the Appellant indicated were the ‘fan’ aspects of the site in support of its argument that the principal purpose of the site was one of connecting users to the models. Ofcom noted that the “Webcam” tab showed pictures of models that were not the same as the ‘branded models’ of the Service, and led to what appeared to be a wholly separate web chatting service called IMLive.
42. In addition, the “Store” tab showed three images of models who were featured on the site, but offered very limited options to purchase items of their underwear. The “Blog” section only had three text entries and one image. The “Forum” to interact with models was not working at the time tested. The “Chat” tab had very few chat entries that were dated in 2011.
43. Ofcom noted that the ‘fan’ aspects of the site, like the store, blog and chat sections were inactive by comparison to the regular updating of the video and photographic material, and the “Webcam” tab led to a completely different site unrelated to the branded models. On this basis, we considered that the ‘fan’ aspects of the website were not the main proposition of the site.

#### Cataloguing and accessing

44. Ofcom noted that audiovisual material was accessible through various routes. A user could access audiovisual content by clicking on a model’s profile from the collage of catalogued models on the home page. When the results of this selection were returned, they included both video and photographic content of the same model integrated together. Likewise, users would see this integrated content when they were re-directed from one of the linked URLs of a specific model to view the video and photographic content for her on [www.candygirlpass.com](http://www.candygirlpass.com).
45. The option to view either photographic or video content of branded models was also made available to users simultaneously on different tabs on the post paywall homepage. We noted that users were able to access either type of content dependent on their preference for video content or photographic content of a specific branded model.
46. Ofcom considered that the cataloguing of material did not suggest that photographic material was ancillary to the provision of video material, but they

were catalogued in a way that they appeared complementary to each other and users could access content dependent on their navigational choice and preference.

### Presentation and Styling

47. Both photographic and video content were promoted to be an attraction of the service on the home page both before and after the pay wall, and in different sections of the site (e.g. written messages from the branded models such as *Inside my site, you've probably already noticed that I have lots of very sexy pictures that you're sure to love! You can also get your hands on my exclusive videos*). We considered that the service presented itself as a destination for photographic content and audiovisual content as opposed to a destination solely for viewing audiovisual content.

### Completeness and Independence of Material

48. Ofcom considers that while the videos were of short duration, (the average length being 4 minutes) they were self-contained and could be understood and watched fully on their own. The Service had videos for all the models profiled on [www.candygirlpass.com](http://www.candygirlpass.com) and each depicted an independent pornographic storyline or narrative that offered a stand-alone entertainment experience (e.g. a sexual act from start to finish; a scene of sexy undressing until full nudity).

### Content and Access Links

49. We noted that audiovisual material was linked to non-audiovisual material dependent on user navigation. If a user chose to click directly on the video tab from the homepage without navigating through a model profile there weren't any navigational links between the audiovisual material in the "Video" tab and other non-audiovisual content (i.e. under the other tabs). However, if the user selected the option to view a model profile from the collage on the homepage (or under the "home" tab), there were navigational links between photographic and audiovisual material since they were integrated on this page. Additionally, once they had selected to view a model profile in this manner, they could freely navigate to the pictures tab or the video tab, and by clicking on a tab, all the photographic content or audiovisual content for that particular model would be displayed.
50. This led us to conclude that the Service was offering different types of content in an integrated fashion and both photographic and audiovisual content could be accessed depending on user preference and navigation of the website.
51. Ofcom noted that the content of photographic footage did not replicate that of the video footage. Apart from the model herself, the content of the videos and photographs were different – for instance the clothing and backdrop of the pictures and the model's poses varied in the photographic content and was different to the video content. This reinforced that the branded model was the unifying theme of the service.

### Balance of material

52. Ofcom noted [www.candygirlpass.com](http://www.candygirlpass.com) gave access to 306 videos with an average length of 4 minutes. Ofcom also noted that there were 10,500 pictures (consisting of 105 sets of pictures, each with around 20 images) with a selection

of these same videos and pictures available in the linked URLs according to the featured model, and all of which could be accessed with one subscription. Ofcom considered this amount of video content a substantial offering but noted it was made available alongside a substantial offering of photographic content and both the video and photographic content were regularly updated.

53. The photographic material did not appear to be ancillary to the provision of video material. Selecting to view a branded model profile from the homepage collage would lead the user to a page that featured video content complementing a greater volume of photographic content. This led us to conclude that the videos featured on the Service were not the primary means by which it offered a service to users; instead the Service aimed to provide an offering of integrated content.

Overall preliminary assessment on principal purpose: [www.candygirlpass.com](http://www.candygirlpass.com)

54. As described in Section 2, in assessing the principal purpose of any service Ofcom takes into account various factors including the independence, prominence, completeness, presentation and substance of the AV content available as well as all other relevant offerings of the Service.
55. Ofcom considers that in this case it was finely balanced as to whether or not it could be said that the 'principal purpose' of the Service was to offer audiovisual material.
56. We did not accept the Appellant's arguments that the 'fan' aspects of the site, such as the store, blog and chat sections were the main propositions of the Service.
57. We noted that the Service offered that video content was regularly refreshed and could be watched on its own which suggested that the provision of audiovisual material could be seen as a key purpose of the Service.
58. However, we also consider that in this case, there was no greater prominence given on the Appellant's website, in terms of cataloguing or accessing of the content, or the presentation or style of the Service, to the photographic or video content. We consider the Service serves as a portal for accessing both photographic and/or video content of branded models depending on the user's preferences.
59. The video content made available on the Appellant's website is one integrated element of the overall offering for branded models which also included a substantial quantity of photographic stills and both elements are complementary to each other. Ofcom considers that the provision of the video content made available through [www.candygirlpass.com](http://www.candygirlpass.com) does not in itself constitute a service having the required principal purpose.
60. In light of that assessment, Ofcom's overall view is that the appellant did not provide a service with the principal purpose of providing audiovisual material.
61. Ofcom did not need to consider in further detail the appellants arguments in relation to whether the nature of the video content on the service was comparable to adult linear TV programmes in accordance with the comparability part of the definition in section 368A(1)(a).

### On-Demand

62. Regarding the Appellant's query of criteria 368A(1)(b), on whether the offering might not be considered on-demand due to the limits they impose on download speeds, Ofcom notes that it did not experience any download limitations when it reviewed the Service.
63. In this respect, Ofcom considers that the Service meets the legislative criteria for what constitutes an on-demand service. This is defined under 368A (2), and states that access to a service is on-demand if –
- e) the service enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service; and
  - f) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).

### Purposive Assessment: Regard to the AVMS Directive

64. Ofcom has, as set out above, had specific regard in this Decision to the provisions of the AVMS Directive. We have also taken a step back, and having more general regard to the relevant provisions of the Directive, considered whether the Service provided a service that the Directive seeks to bring within its regulatory scope.
65. As described in paragraph 14 to 16, the AVMS Directive includes Recitals intended to aid its interpretation. These Recitals make clear that, amongst other things, the scope of audiovisual media services intended to be regulated under the Directive is limited to those services that are “mass media” (Recital 21) and “compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive” (Recital 24).

### Recital 24 assessment

66. With regard to the question of competition, the Appellant submitted that the Service did not intend to compete with companies that offer “high quality, HD videos (that are) very costly, and near impossible (to recreate)... with a low budget and mediocre tools”, and offered examples such as pornhub, youporn, redtube and xhamster. The Appellant argued that the Service was therefore not in competition with such services. However, a key purpose of regulation, and a guide as to its scope, is to provide a measure of fair competition for those providing linear television broadcasting services, from those providing on-demand audiovisual media services. That is, from those who provide similar services and who, in doing so, provide a measure of specific competition for the attention of viewers and advertisers. Therefore, Ofcom considered that the online services referred to by the Appellant were not relevant to our considerations of comparability as they do not relate to linear broadcasting.
67. Ofcom took the view that the video content made available on the website [www.candygirlpass.com](http://www.candygirlpass.com) is not a standalone service but is an integrated element of the overall offering which also included photographic stills and a limited amount of text. Ofcom considered that, assessing the Service as a whole, it was

not likely to directly compete with adult television broadcasting services for the same audience.

68. Ofcom has also considered Recital 24's reference to [whether], "...the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive." Ofcom notes Recital 24 makes clear that it is not just the "means of access" which are relevant but also the "nature" of the Service as well. Given that (as described above) the nature of the Service can be characterised as a web-based portal for accessing both photographic and/or video content of an adult nature depending on the user's preferences, Ofcom considered that a user would not reasonably expect regulatory protection under the AVMS Directive.

69. We will now apply the principal purpose test to [www.allteensworld.com](http://www.allteensworld.com).

#### Principal Purpose Assessment: [www.allteensworld.com](http://www.allteensworld.com)

70. Ofcom applied the principal purpose test, as described in paragraph 33 to [www.allteensworld.com](http://www.allteensworld.com) (as at Annex 2) and its linked URLs. Ofcom considered that [www.allteensworld.com](http://www.allteensworld.com) appeared to use the same website template and linked URL network as [www.candygirlpass.com](http://www.candygirlpass.com). Whilst the website characteristics and interface were similar to [www.candygirlpass.com](http://www.candygirlpass.com), the content itself was different in several aspects as detailed in the following paragraphs.

#### Pre-pay wall Homepage

71. Before the pay wall, the website featured images of semi-nude models and some text, and included one embedded video. At the bottom of the page, several branded models were also identified. Five icons at the top of the page served as tabs to 'Join Now', access 'Members login', view 'Photos' and 'Videos' and 'Continue'.

#### After the pay wall Homepage and tabs

72. After entering the paid membership details, this homepage changed to a different landing page; it had eleven tabs.

73. The "Home" tab showed 14 collages of branded models; each collage was composed of the name and several images of a particular model. Clicking on one of these collages lead to a different page with a selection of pictures and some videos of the model, and included additional links to view more content. Ofcom noted that of the 14 models, only half had video included in their profile page.

74. The "Video" tab on the homepage showed a matrix of videos, organised by date and across three pages that could be selected by branded model name from a drop down list at the top of the videos. Ofcom noted there were only 39 videos corresponding to 7 different models, lasting an average of 4 minutes, and refreshed infrequently (see paragraph 63 for more analysis). Further videos could be found in the "Free Video" and "Bonus sites" tabs, which linked to the URLs of branded models or repeated the same collages available on the Home tab (see sites shown in Annex 1.)

75. Ofcom also reviewed the 'fan' aspects of the site made by the Appellant and noted that the "Webcam" tab led to a separate web chatting service called IMLive, as with [www.candygirlpass.com](http://www.candygirlpass.com).
76. In addition, the "Store" tab announced 'amazing discounts to our customers for some really hot sites'. These sites were depicted as collages of the models from [www.candygirlpass.com](http://www.candygirlpass.com), indicating that this was a separate service that required additional payment. The "Blog" section only had three text entries and one image. The "Forum" to interact with models was not working at the time tested and the "Chat" interface was blank and did not allow posting messages.
77. Ofcom noted that all of the 'fan' aspects described above were inactive and therefore did not appear to be a proposition of the site.

#### Cataloguing and accessing

78. Ofcom noted that the available audiovisual material was catalogued and accessible through its own unique section. The "Video" tab catalogued the audiovisual material by date under each image, as did the drop down list of branded model or theme above the videos. Ofcom noted that 7 of the 14 options on the drop down list (for example 'Heidi Harper' or 'Young Chloe') returned no video. The home page of [www.allteensworld.com](http://www.allteensworld.com) also acted as the repository of video content for the network of linked URLs, as listed in Annex 2, by bringing back paid members to [www.allteensworld.com](http://www.allteensworld.com) to view the content.
79. The lack of video results in the drop down catalogue in the video tab indicated that the AV material was not likely to be an attraction of the site. Similarly, the lack of video results for all of the branded models and themes presented is unlikely to meet the expectations of a user searching for such material.

#### Presentation and Styling

80. Ofcom noted that the audiovisual material was sign posted in different parts of the website, but that this was not actually the case. The pre-pay wall home page included an embedded video that could be played, the website had different text mentioning the availability of videos of the branded models (e.g. in messages from models in the collage section, and on the membership sign-up page). However, there was very little video content on the site.

#### Completeness and Independence of Material

81. Ofcom noted that the video content that was present, whilst lasting an average of 4 minutes, did consist of complete programmes that could be understood and watched fully on their own. As with [www.candygirlpass.com](http://www.candygirlpass.com), they were not snippets from longer programmes and each depicted an independent pornographic storyline.
82. Similarly, no relationship was established between the two types of content apart from the model herself.

#### Content and Access Links

83. Content and access links operated in the same way as on [www.candygirlpass.com](http://www.candygirlpass.com), as per paragraph 48.

### Balance of material

84. Ofcom noted [www.allteensworld.com](http://www.allteensworld.com) gave access to 39 videos and approximately 25,984 pictures (available in sets of approximately 232 pictures) with a selection of these same videos and pictures available in the linked URLs of featured models.
85. The website did not have videos for all the models profiled on [www.allteensworld.com](http://www.allteensworld.com). For example, no videos appeared when selecting models 'Heidi Harper', 'Young Chloe', 'Sophie Ellison', 'Abigail Raye' or 'Kayla Louse' in the category list in the "Videos" tab or in the model's own collage on the homepage.
86. Ofcom did not consider the range of video content to be of a substantial offering. We also noted the videos had not been refreshed since January 2014. In contrast, the picture sets on [www.allteensworld.com](http://www.allteensworld.com) were updated at least twice a month, and often more frequently. This led Ofcom to conclude that the images and not the 39 videos was the main offering of the site and that the provision of video was not its principal purpose.

### Overall assessment on principal purpose: [www.allteensworld.com](http://www.allteensworld.com)

87. After reviewing [www.allteensworld.com](http://www.allteensworld.com) and its linked URLs, Ofcom considered there were significant factors suggesting the service could not be considered as a destination to watch video content:
  - a) 39 videos is not a significant offering of AV material, and the volume and frequency of new pictures available suggested that this, and not the videos, had a significant presence;
  - b) this video content was not refreshed, indicating that the benefit of a paid membership was not to have access to a regular stream of new videos;
  - c) in addition, not all branded models featured on the site and the linked URLs had videos; only 7 of 14 models did. In contrast, sets of photographs were available for all models. Ofcom considered that this implied that the appeal of the different models was not the offering of their videos;
  - d) the lack of content mean that the catalogue system was ineffective.
88. Given all of these reasons, Ofcom has concluded that the principal purpose of [www.allteensworld.com](http://www.allteensworld.com) was not the provision of audiovisual material.
89. Therefore, we will not assess the form and content of this material as the first part of the composite definition under Section 368A(1)(a) of the Act was not met.

### Purposive Assessment: Regard to the AVMS Directive

90. We have also taken a step back, and having more general regard to the relevant provisions of the Directive, considered whether the Service provided a service that the Directive seeks to bring within its regulatory scope. Ofcom took the view that the video content made available on the website [www.allteensworld.com](http://www.allteensworld.com) is not likely to be an attraction of the site and therefore, it was not likely to directly

compete with adult television broadcasting services for the same audience. Given that (as described above) the nature of the Service can be characterised as a portal for accessing photographic content, Ofcom considered that a user would not reasonably expect regulatory protection under the AVMS Directive.

### **Section 5 – Conclusion**

91. For the reasons set out above, Ofcom has reached the Decision that [www.candygirlpass.com](http://www.candygirlpass.com) and its linked sites as shown in Annex 1 (the Service), and furthermore [www.allteensworld.com](http://www.allteensworld.com) did not at the relevant time, meet the definition of an ODPS in section 368A(1) of the Act. Consequently, the Appellant was not in breach of the advance notification requirement under section 368BA of the Act, and the requirement to pay a fee under section 368D(3)(za).
92. Ofcom's Decision is therefore that the Appellant was not for the reasons set out above, in respect of the Service, the provider of ODPS at 3-8 January 2014 and on 1-7 October 2014 and that the Appellants appeal against ATVOD's Determination should be upheld and ATVOD's decision should be quashed.

## **ANNEX 1 – The Service**

The Candy Girl Productions (“the Service”) makes available its content through the following outlets:

Subscription for [www.candygirlpass.com](http://www.candygirlpass.com) allows access to a number of linked URLs:

[www.amysgirlfriends.com](http://www.amysgirlfriends.com)  
[www.asiansexyteens.com](http://www.asiansexyteens.com)  
[www.bigboobteenies.com](http://www.bigboobteenies.com)  
[www.teganbrady.com](http://www.teganbrady.com)  
[www.ameliejane.com](http://www.ameliejane.com)  
[www.georginagee.com](http://www.georginagee.com)  
[www.candysexpecting.com](http://www.candysexpecting.com)  
[www.dorsfeline.com](http://www.dorsfeline.com)  
[www.dreamofashley.com](http://www.dreamofashley.com)  
[www.elliejay.com](http://www.elliejay.com)  
[www.badexgirlfriends.com](http://www.badexgirlfriends.com)  
[www.bustyrobyn.com](http://www.bustyrobyn.com)  
[www.emilysdream.com](http://www.emilysdream.com)  
[www.bustylucy.com](http://www.bustylucy.com)  
[www.getswet.com](http://www.getswet.com)  
[www.georginagetsnaughty.com](http://www.georginagetsnaughty.com)  
[www.lesbobrits.com](http://www.lesbobrits.com)  
[www.testshootteens.com](http://www.testshootteens.com)

## **ANNEX 2 – [www.allteensworld.com](http://www.allteensworld.com)**

In its Determination, ATVOD also identified that the Appellant maintained a separate subscription based service at [www.allteensworld.com](http://www.allteensworld.com) , giving access to:

[www.totallyrachael.com](http://www.totallyrachael.com)  
[www.daniscott.com](http://www.daniscott.com)  
[www.heidiharper.com](http://www.heidiharper.com)  
[www.jessiekay.com](http://www.jessiekay.com)  
[www.youngchloe.com](http://www.youngchloe.com)  
[www.hannahlawley.com](http://www.hannahlawley.com)  
[www.sophieellison.com](http://www.sophieellison.com)  
[www.abigailraye.com](http://www.abigailraye.com)  
[www.kaylalouise.com](http://www.kaylalouise.com)  
[www.playwithalicia.com](http://www.playwithalicia.com)  
[www.youngjessica.com](http://www.youngjessica.com)  
[www.racheltease.com](http://www.racheltease.com)  
[www.sleepoversquad.com](http://www.sleepoversquad.com)

Ofcom did not consider [www.allteensworld.com](http://www.allteensworld.com) and its linked URLs to be part of the Service under review in this Decision.

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 16 and 30 May 2016 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sex Pod	5Star	11/05/2016	Sexual material	2
Sex Pod	5Star	13/05/2016	Generally accepted standards	1
Tabhe Ros Jageo	Akaal Channel	15/03/2016	Crime	1
BBC News at Ten	BBC 1	10/05/2016	Generally accepted standards	1
Britain's Puppy Dealers Exposed: Panorama	BBC 1	16/05/2016	Generally accepted standards	2
Chelsea Flower Show	BBC 1	25/05/2016	Outside of remit	1
EastEnders	BBC 1	11/05/2016	Race discrimination/offence	1
EastEnders	BBC 1	17/05/2016	Suicide and self harm	7
EastEnders	BBC 1	19/05/2016	Scheduling	1
Have I Got News for You	BBC 1	13/05/2016	Generally accepted standards	1
How Should I Vote? – the EU Debate	BBC 1	26/05/2016	Elections/Referendums	2
In the Club	BBC 1	24/05/2016	Generally accepted standards	1
Last Whites of the East End	BBC 1	24/05/2016	Generally accepted standards	9
Panorama	BBC 1	16/05/2016	Animal welfare	1
The Eurovision Song Contest	BBC 1	14/05/2016	Disability discrimination/offence	13
The Graham Norton Show	BBC 1	16/05/2016	Generally accepted standards	1
Eggheads	BBC 2	19/05/2016	Materially misleading	1
Newsnight	BBC 2	16/05/2016	Generally accepted standards	1
Stupid Man, Smart Phone	BBC 2	22/05/2016	Dangerous behaviour	1
Ulster Rugby Live	BBC 2	20/05/2016	Religious/Beliefs discrimination/offence	1
BBC News	BBC News Channel	21/05/2016	Generally accepted standards	1
Victoria Derbyshire	BBC News Channel	25/05/2016	Due impartiality/bias	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Eurovision Song Contest 2016	BBC Radio 2	14/05/2016	Outside of remit	1
The Archers	BBC Radio 4	Various	Generally accepted standards	1
The Small Intricate Life of Gerald C Potter	BBC Radio 4 Extra	05/05/2016	Race discrimination/offence	1
Sportsound	BBC Radio Scotland	18/05/2016	Privacy	1
This is BT Sport Showcase	BT Showcase	26/05/2016	Due impartiality/bias	1
Capital FM Breakfast Show	Capital (Liverpool)	19/05/2016	Gender discrimination/offence	1
Ant Payne	Capital (London)	11/05/2016	Drugs, smoking, solvents or alcohol	1
Capital Breakfast with Dave Berry	Capital (London)	09/05/2016	Offensive language	1
Newsround	CBBC	20/05/2016	Scheduling	1
24 Hours in Police Custody	Channel 4	12/05/2016	Generally accepted standards	1
A Referendum Campaign Broadcast by the Vote Leave Campaign	Channel 4	23/05/2016	Elections/Referendums	6
Channel 4 News	Channel 4	31/03/2016	Due accuracy	1
Four in a Bed	Channel 4	11/05/2016	Generally accepted standards	1
Four in a Bed	Channel 4	11/05/2016	Scheduling	1
Gogglebox	Channel 4	06/05/2016	Generally accepted standards	1
Gogglebox	Channel 4	13/05/2016	Drugs, smoking, solvents or alcohol	1
Gogglebox	Channel 4	20/05/2016	Elections/Referendums	1
Grayson Perry: All Man	Channel 4	12/05/2016	Materially misleading	1
Hollyoaks	Channel 4	18/05/2016	Scheduling	1
How to Get a Council House	Channel 4	24/05/2016	Outside of remit	1
Secret Life of the Human Pups (trailer)	Channel 4	21/05/2016	Scheduling	1
Secret Life of the Human Pups (trailer)	Channel 4	22/05/2016	Scheduling	3
Secret Life of the Human Pups (trailer)	Channel 4	23/05/2016	Scheduling	1
Continuity announcement preceding Hollyoaks	Channel 4+1	26/05/2016	Outside of remit	1
Shipping Wars	Channel 4+1	24/05/2016	Dangerous behaviour	1
Ben Fogle: The Great African Migration	Channel 5	13/05/2016	Animal welfare	1
Police Interceptors	Channel 5	04/05/2016	Offensive language	4
Police Interceptors	Channel 5	16/05/2016	Generally accepted standards	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
The Yorkshire Vet	Channel 5	24/05/2016	Offensive language	1
Undercover – The Big Sting	Channel 5	16/05/2016	Crime and disorder	1
Gordon Ramsay (trailer)	Christmas Gold+1	30/12/2015	Animal welfare	1
Betsafe's sponsorship of primetime on Dave	Dave	05/05/2016	Sponsorship credits	1
Betsafe's sponsorship of primetime on Dave	Dave	17/05/2016	Sponsorship credits	1
Betsafe's sponsorship of primetime on Dave	Dave ja vu	04/05/2016	Sponsorship credits	1
Easter Special	DM News Plus	27/03/2016	Religious/Beliefs discrimination/offence	1
Premium Law	DM News Plus	28/03/2016	Advertising/editorial distinction	1
Hollyoaks	E4	23/05/2016	Scheduling	1
Israel Ministry of Tourism's sponsorship	Eurosport	Various	Sponsorship credits	1
Nymphomaniac Vol 2	Film4	26/04/2016	Sexual material	1
News	Geo News	01/05/2016	Elections/Referendums	1
Breakfast Show	Iman FM	09/05/2016	Sexual orientation discrimination/offence	1
Breakfast Show	Iman FM	11/05/2016	Due impartiality/bias	1
A Referendum Campaign Broadcast by the Vote Leave Campaign	ITV	23/05/2016	Elections/Referendums	10
Britain's Got Talent	ITV	21/05/2016	Dangerous behaviour	1
Britain's Got Talent	ITV	21/05/2016	Outside of remit	1
Britain's Got Talent	ITV	21/05/2016	Sexual orientation discrimination/offence	1
Britain's Got Talent	ITV	22/05/2016	Generally accepted standards	1
Britain's Got Talent	ITV	23/05/2016	Advertising minutage	1
Britain's Got Talent	ITV	23/05/2016	Dangerous behaviour	7
Britain's Got Talent	ITV	23/05/2016	Materially misleading	1
Britain's Got Talent	ITV	23/05/2016	Nudity	19
Britain's Got Talent	ITV	23/05/2016	Race discrimination/offence	1
Britain's Got Talent	ITV	24/05/2016	Dangerous behaviour	1
Britain's Got Talent	ITV	24/05/2016	Drugs, smoking, solvents or alcohol	1
Britain's Got Talent	ITV	24/05/2016	Nudity	3
Britain's Got Talent	ITV	24/05/2016	Outside of remit	1
Britain's Got Talent	ITV	25/05/2016	Generally accepted standards	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Britain's Got Talent	ITV	25/05/2016	Generally accepted standards	1
Britain's Got Talent	ITV	25/05/2016	Nudity	5
Britain's Got Talent	ITV	25/05/2016	Outside of remit	6
Britain's Got Talent	ITV	25/05/2016	Race discrimination/offence	1
Britain's Got Talent	ITV	25/05/2016	Sexual material	5
Britain's Got Talent	ITV	26/05/2016	Outside of remit	1
Britain's Got Talent	ITV	26/05/2016	Sexual material	1
Coronation Street	ITV	13/05/2016	Under 18s in programmes	1
Coronation Street	ITV	18/05/2016	Materially misleading	1
Coronation Street	ITV	20/05/2016	Outside of remit	1
Coronation Street	ITV	23/05/2016	Crime and disorder	1
Emmerdale	ITV	09/05/2016	Violence	2
Emmerdale	ITV	10/05/2016	Violence	3
Emmerdale	ITV	11/05/2016	Generally accepted standards	5
Emmerdale	ITV	13/05/2016	Crime and disorder	1
Emmerdale	ITV	13/05/2016	Outside of remit	1
Emmerdale	ITV	17/05/2016	Generally accepted standards	3
Good Morning Britain	ITV	02/05/2016	Generally accepted standards	1
Good Morning Britain	ITV	04/05/2016	Generally accepted standards	4
Good Morning Britain	ITV	09/05/2016	Elections/Referendums	1
Good Morning Britain	ITV	11/05/2016	Elections/Referendums	1
Good Morning Britain	ITV	16/05/2016	Generally accepted standards	1
Good Morning Britain	ITV	23/05/2016	Race discrimination/offence	1
Good Morning Britain	ITV	24/05/2016	Due accuracy	1
Good Morning Britain	ITV	25/05/2016	Flashing images/risk to viewers who have PSE	2
Good Morning Britain	ITV	25/05/2016	Generally accepted standards	2
ITV News at Ten	ITV	17/05/2016	Generally accepted standards	1
Killer Women with Piers Morgan (trailer)	ITV	18/05/2016	Scheduling	1
Licence to Kill	ITV	10/04/2016	Violence	1
Loose Women	ITV	10/05/2016	Sexual material	1
Loose Women	ITV	11/05/2016	Generally accepted standards	1
Loose Women	ITV	20/05/2016	Sexual material	1
Loose Women	ITV	24/05/2016	Generally accepted standards	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Lorraine	ITV	12/05/2016	Generally accepted standards	15
Lotto's sponsorship of Britain's Got Talent	ITV	25/05/2016	Sponsorship	1
Marcella (trailer)	ITV	17/05/2016	Scheduling	1
Play to the Whistle	ITV	21/05/2016	Generally accepted standards	1
The Chase	ITV	12/05/2016	Religious/Beliefs discrimination/offence	1
The Chase	ITV	26/05/2016	Fairness	1
The Happy Egg Company's sponsorship of Good Morning Britain Local Weather	ITV	Various	Sponsorship credits	1
The Jeremy Kyle Show	ITV	19/04/2016	Disability discrimination/offence	1
The Jeremy Kyle Show	ITV	29/04/2016	Sexual material	1
The Jeremy Kyle Show	ITV	11/05/2016	Generally accepted standards	1
The Jeremy Kyle Show	ITV	17/05/2016	Generally accepted standards	1
The Jeremy Kyle Show	ITV	19/05/2016	Race discrimination/offence	1
The Secret	ITV	13/05/2016	Generally accepted standards	1
This Morning	ITV	24/05/2016	Sexual material	1
This Morning	ITV	25/05/2016	Sexual material	22
This Morning (trailer)	ITV	24/05/2016	Sexual material	1
Tonight at the London Palladium	ITV	18/05/2016	Scheduling	1
ITV News Meridian	ITV Meridian	11/05/2016	Generally accepted standards	1
Britain's Got More Talent	ITV2	22/05/2016	Race discrimination/offence	1
Britain's Got More Talent	ITV2	23/05/2016	Generally accepted standards	1
Britain's Got More Talent	ITV2	24/05/2016	Animal welfare	16
Britain's Got Talent	ITV2	24/05/2016	Outside of remit	1
Britain's Got Talent	ITV2	25/05/2016	Nudity	1
Britain's Got Talent	ITV2	26/05/2016	Nudity	1
Britain's Got Talent	ITV2	26/05/2016	Outside of remit	1
Britain's Got Talent	ITV2	26/05/2016	Sexual material	1
Celebrity Juice	ITV2	19/05/2016	Gender discrimination/offence	1
Celebrity Juice	ITV2	19/05/2016	Generally accepted standards	2
Emmerdale	ITV2	17/05/2016	Generally accepted standards	1
Plebs	ITV2	09/05/2016	Sexual material	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Calamity Jane	ITV3	21/05/2016	Race discrimination/offence	1
BET 365's sponsorship of French Open coverage	ITV4	23/05/2016	Sponsorship credits	1
French Open	ITV4	25/05/2016	Outside of remit	1
Nick Ferrari	LBC 97.3 FM	12/05/2016	Race discrimination/offence	1
Andrew Pierce	LBC 97.3FM	29/04/2016	Due impartiality/bias	1
David Mellor and Michael Crick	LBC 97.3FM	14/05/2016	Due impartiality/bias	1
My Daughter The Teenage Nudist	More4	24/05/2016	Gender discrimination/offence	1
Secret Life of the Human Pups (trailer)	More4	24/05/2016	Scheduling	1
Secret Life of the Human Pups (trailer)	More4+1	20/05/2016	Scheduling	1
Outback Truckers	Quest	23/04/2016	Offensive language	1
Station ident	Sam FM (Bristol)	23/05/2016	Offensive language	1
The Cruise Files	Showcase 3	04/05/2016	Outside of remit	1
The Tunnel: Sabotage	Sky Atlantic	10/05/2016	Generally accepted standards	1
Veep	Sky Atlantic	09/05/2016	Generally accepted standards	1
Press Preview	Sky News	28/04/2016	Sexual material	1
Sky News	Sky News	06/05/2016	Due impartiality/bias	1
Sky News	Sky News	17/05/2016	Due impartiality/bias	1
Sky News	Sky News	17/05/2016	Elections/Referendums	1
Sky News	Sky News	22/05/2016	Elections/Referendums	1
Sky News Sports Bulletin	Sky News	23/05/2016	Outside of remit	1
Sunrise	Sky News	11/05/2016	Generally accepted standards	12
Premier League Football	Sky Sports 1	10/05/2016	Generally accepted standards	1
NCIS: Los Angeles	Sky1	03/05/2016	Surreptitious advertising	1
Beware: Britain Running Riot	Spike	02/05/2016	Generally accepted standards	1
Police Interceptors	Spike	10/05/2016	Offensive language	1
Alan Brazil Sports Breakfast	Talksport	19/05/2016	Generally accepted standards	1
Sports Bar	Talksport	13/05/2016	Disability discrimination/offence	2
Jill and Jessa: Counting On	TLC	16/05/2016	Outside of remit	1
Britain's Got Talent	TV3	23/05/2016	Nudity	1
U105 Lunch	U105	03/05/2016	Competitions	1
Law and Order: Special Victims Unit	Universal Channel	18/05/2016	Violence	1
Programming	Various	Various	Outside of remit	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Programming	Various	Various	Violence	1
Television soaps	Various	16/05/2016	Generally accepted standards	1

## Complaints outside of remit

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

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

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

### Complaints about television or radio programmes

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
A Referendum Campaign Broadcast by the Vote Leave Campaign	BBC 1	23/05/2016	Elections/Referendums	9
BBC News	BBC 1	02/05/2016	Elections/Referendums	1
BBC News	BBC 1	Various	Elections/Referendums	1
BBC News at One	BBC 1	25/05/2016	Elections/Referendums	1
BBC News at Ten	BBC 1	06/05/2016	Due impartiality/bias	1
Breakfast	BBC 1	23/05/2016	Elections/Referendums	1
Paxman in Brussels: Who Really Rules Us?	BBC 1	19/05/2016	Elections/Referendums	2
Sunday Politics	BBC 1	22/05/2016	Elections/Referendums	1
Week In Week Out	BBC 1 Wales	24/05/2016	Due impartiality/bias	1
A Referendum Campaign Broadcast by the Vote Leave Campaign	BBC 2	23/05/2016	Elections/Referendums	3
BBC News	BBC News Channel	01/05/2016	Elections/Referendums	1
Programming	BBC News Channel	Various	Elections/Referendums	1
A Referendum Campaign Broadcast by the Vote Leave Campaign	BBC Radio 4	23/05/2016	Elections/Referendums	3
Up All Night	BBC Radio 5 Live	27/05/2016	Due impartiality/bias	1
BBC News	BBC World Service	23/04/2016	Elections/Referendums	1
BBC News	BBC World Service	26/04/2016	Elections/Referendums	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Advertisement	CBS Drama	18/05/2016	Advertising content	1
Advertisement	Channel 4	18/05/2016	Advertising content	1
Advertisement	Heart TV	22/05/2016	Advertising content	1
Advertisement	ITV	23/05/2016	Advertising/editorial distinction	1
Advertisement	ITV +1	14/05/2016	Advertising content	1
Advertisements	ITV2	20/05/2016	Advertising content	1
Programming	Kiss FM	Various	Generally accepted standards	1
Advertisement	More4	22/05/2016	Advertising content	1
Advertisement	Universal Channel	23/05/2016	Advertising content	1
Advertisement	Various	26/05/2016	Advertising content	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 16 and 30 May 2016.

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

Programme	Broadcaster	Transmission date
Premier League	6'eren	5 March 2016
America's Newsroom	Fox News	7 April 2016
Mike & Chelsea Breakfast Show	Key 103 Manchester	27 April 2016
Steve Allen	LBC 97.3FM	3 May 2016
Breakfast Show with Georgina	Radio Cardiff	4 May 2016
Ford's sponsorship of Super Sunday	Sky Sports 1	24 April 2016

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

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

Programme	Broadcaster	Transmission date
Can't Pay? We'll Take it Away!	Channel 5	20 April 2016

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

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

<b>Licensee</b>	<b>Licensed Service</b>
ARY Network Limited	ARY News

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

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