

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

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

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

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

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

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

## Standards cases

### In Breach

#### Cops

*Movie Mix, 22 June 2013, 09:00*

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#### Introduction

Movie Mix is a general entertainment service which broadcasts films and acquired drama series, mainly from America, and is owned and operated by Square 1 Management Ltd (“Square 1” or “the Licensee”).

*Cops* is a documentary series that follows law enforcement officers in America. This episode featured officers policing the Mardi Gras festival in New Orleans. A complainant alerted Ofcom to graphic scenes in this broadcast.

Ofcom noted the following content at the times indicated:

- The episode, which aired at 09:00, was preceded by the verbal and visual warning, *“Due to the graphic nature of this programme, viewer discretion is advised”*;
- 09:00: In the opening title sequence, there was a montage of clips of the Mardi Gras festival, including three women on a balcony pulling up their tops to reveal their breasts (which had been blurred) to onlookers;
- 09:01: Two women pulled up their tops to show their breasts (which had been blurred) to onlookers;
- 09:03: A woman gave her account to police in the aftermath of a fight with another woman. While language was audibly bleeped there was no blurring of the subject’s mouth:

*“she [bleep] started hitting me for no reason...”*;

*“she just pushed me [bleep] down and started [bleep] hitting me”*;

- 09:05: Scene of a topless woman being cautioned by a police officer. She wore body paint on her chest, and her breasts had been blurred;
- 09:08: A woman sitting on man’s shoulders pulled up her top to reveal her breasts (which had been blurred) to onlookers;
- 09:12: A man unbuttoned his trousers to display his penis (which had been blurred) to onlookers;
- 09:18: Scene of police restraining a man by forcibly wrestling him to the ground; and
- 09:21: Police intervened after witnessing a women punch another woman in the face.

Ofcom considered that the material warranted investigation under Rule 1.3 of the Code, which states:

“Children must...be protected by appropriate scheduling from material that is unsuitable for them.”

We therefore requested comments from the Licensee as to how this material complied with Rule 1.3.

## **Response**

The Licensee said it took compliance seriously and that staff were trained to ensure compliance with the Code and that content was suitable for the time of broadcast.

The Licensee said that all episodes of *Cops* were assessed for their suitability to be broadcast in daytime schedules, and any content deemed unsuitable was carefully edited. It said that all *Cops* episodes carry a warning at the start of the show advising viewer discretion due to its fly-on-the-wall nature. While most episodes were considered suitable for daytime broadcast, some were designated either post 20:00 or 21:00, and scheduling restrictions were applied. Restrictions were also applied to some episodes which Square 1 considered suitable for daytime broadcast, but which may not be suitable in daytime schedules at the weekend or during school holidays when a higher proportion of children might be viewing.

Square 1 said that because all shots of nudity and swearing had been blurred and bleeped in this particular episode, it was considered suitable for daytime broadcast, but not in daytime schedules at the weekend or during school holidays. Due to a mistake, this restriction was not marked on this episode and the programme was broadcast at 09:00 on a Saturday.

The Licensee apologised for the error and said that as a result of this incident all daytime episodes of this series were being reviewed and checked.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure 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 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

Ofcom first assessed whether this episode contained material unsuitable for children. We considered that the images and implied language (as set out in the Introduction), when assessed individually, were not necessarily unsuitable. In Ofcom’s view, however, the cumulative effect of this material conveyed an adult tone unsuitable for child viewers.

Ofcom then went on to consider whether this material was appropriately scheduled.

As part of our consideration, we took into account: that this content was broadcast at 09:00 on a Saturday; the cumulative adult tone and some themes of the programme; and, the likelihood of there being children available to view this programme – some unaccompanied – at this time of day. In Ofcom’s view this material would have exceeded the likely expectations of the audience, and parents in particular, for this time on a Saturday morning. On balance we did not consider this material was appropriately scheduled.

Ofcom noted that: Square 1 had reviewed this programme and classified it as unsuitable for broadcast during daytime at weekends when a higher proportion of children might be viewing; the programme was broadcast because it had not been correctly labelled; and, Square 1 has subsequently reviewed all episodes of this series to ensure they are appropriately scheduled.

Ofcom concluded that the material was in breach of Rule 1.3.

Ofcom considered the broadcast of this material was a significant failure in compliance by Square 1. We noted a recent case<sup>1</sup> involving the broadcast of content on Movie Mix that was unsuitable for children in the early evening on a week day. We were therefore concerned that a similar issue of inappropriate daytime scheduling should arise so soon after the previous compliance failure. We are putting Square 1 on notice that should similar compliance issues arise Ofcom may take further regulatory action.

### **Breach of Rule 1.3**

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>

## In Breach

### **Sex and the City**

*Comedy Central Extra, 29 June, 18:10*

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#### **Introduction**

*Sex and the City* is an American comedy drama series following the lives of a group of four female friends in New York City. It is aimed at an adult audience. Episodes were originally broadcast after the 21:00 watershed but repeats are shown on Comedy Central Extra at various times of the day.

The licence for Comedy Central Extra is held by Paramount UK Partnership (“the Licensee”).

A complainant alerted Ofcom to the broadcast of offensive language during a pre-watershed broadcast of this episode. Having viewed the programme, Ofcom noted that it contained four instances of the word “fuck” or a derivative.

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

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

We therefore sought comments from the Licensee as to how the material complied with this rule.

#### **Response**

The Licensee recognised the broadcast of this language was unacceptable in daytime and said the incident occurred due to an operational error.

The Licensee said that when it made the decision to air *Sex and the City* during the day each episode was carefully assessed with a view to pre-watershed broadcast. A large number of episodes were rejected at this stage in the process. The remainder went through an extensive editing procedure to ensure suitability for the intended transmission slot.

The Licensee explained that this particular episode had been edited for a pre-watershed broadcast but, earlier in the year, the edited version had “dropped off” its server owing to a technical issue, and the original (post-watershed) version was mistakenly loaded for transmission.

The Licensee said that it has deleted this version of the episode from its systems and discussed the matter at length with its digital operations staff. It has also implemented new compliance training to prevent a recurrence of this problem.

#### **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure 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.

Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” is considered by audiences to be amongst the most offensive language. Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...”.

Ofcom noted that the wrong episode was transmitted by mistake and that the Licensee has taken various measures to prevent this problem recurring. However, the four uses of the word “fuck” or a derivative in this programme broadcast before the watershed was a clear breach of Rule 1.14.

### **Breach of Rule 1.14**

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

## In Breach

### Your Opinions

*Sikh Channel, 30 April 2013, 21:00*

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#### Introduction

The Sikh Channel is in the religious section of the digital satellite Electronic Programme Guide and is aimed at the Sikh community in the UK. *Your Opinions* was a current affairs programme broadcast in Punjabi and English. The licence for the Sikh Channel is held by The Sikh Channel Community Broadcasting Company Limited (“the Sikh Channel CBC” or “the Licensee”).

This 90-minute programme consisted of three segments. The first and third sections (the first 25 minutes and the last 36 minutes of the programme) consisted of a Sikh presenter interviewing worshippers outside a Sikh Gurdwara<sup>1</sup> in Southall. The presenter was asking worshippers for their views on the news announced that day in India that Sajjan Kumar<sup>2</sup>, a senior member of the Congress Party<sup>3</sup>, had been acquitted of alleged crimes committed during anti-Sikh riots in November 1984. The middle 29-minute segment consisted of a studio panel discussion, moderated by a studio presenter, which also featured the panellists responding to interventions made by telephone by members of the audience. The studio segment discussed various issues including the acquittal of Sajjan Kumar.

A viewer alerted Ofcom to the programme, stating that the broadcast incited hatred against Hindus. Most of the content was in Punjabi. Ofcom therefore commissioned an independent translation and transcript of the output. In summary, Ofcom noted the following content within the programme, the vast majority of which was included within the middle studio segment of the programme:

Interviewee:        *“Our nation should unite and fight and liberate our country.”*

Interviewer:        *“Do you think our nation will unite?”*

Interviewee:        *“It will unite, surely, and make Khalistan<sup>4</sup>.”*

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Presenter:         *“What should we do in future? What should be done?”*

Caller:             *“We need to follow the path and teachings of Jarnail Singh Bindranwale<sup>5</sup>, obtain separate rule for ourselves so that we*

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<sup>1</sup> A Sikh place of worship.

<sup>2</sup> A senior member of the Congress Party in India. On 30 April 2013, a district court in New Delhi acquitted Sajjan Kumar of any role in the killing of five Sikhs during anti-Sikh riots that took place in November 1984.

<sup>3</sup> The Congress Party (also known as the Indian National Congress) is the largest political party in India.

<sup>4</sup> The term frequently used to denote an independent Sikh homeland.

*could live in our own way with pride and dignity. This is the only way for us to be able to live with dignity and pride; we do not have any other way. We can file as many appeals as we like, go to courts as many times as we like, to high courts, but at the end of the day the Hindus are ruling in India and we have no hope of getting one per cent of justice there.”*

Presenter: “[Caller’s name], many thanks, you are right in that Sikhs need their own rule”.

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Presenter: “Give us one strategy; what action can we take within the next two months?”

Caller: “Actually I was asking for the independence and that is the only way forward for the Sikhs. The only solution and way forward is our own separate homeland – Khalistan.”

Presenter: “Okay [caller’s name], thanks very much; you have made it very clear; a separate homeland; we are still waiting for how we get there but are going to work it out. Let’s go to the next caller.”

Caller: “It is [caller’s name] from Walsall; we have done a lot of appeals, lot of cases but I think the only solution is Khalistan; how to achieve that? First we will have to liberate Akal Takht<sup>6</sup> which is a slave of the Delhi government; they do not issue any orders that are for Sikhism, for Gurmukh<sup>7</sup> or for Sikh people; we do not receive orders; you must have heard the story about [inaudible]; so we have to liberate Akal Takht then we could have Khalistan.”

Presenter: “Okay; that’s very clear; we need to reclaim Akal Takht and then we need to go for independence”.

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Sukhvinder Singh  
(a panellist):

*“The important thing is; there are three ways to react to 1984<sup>8</sup> initially. First, everybody has mentioned a separate Sikh state. Second, for those who think that is not possible, actually to have a federal structure with autonomy for the Sikhs.”*

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<sup>5</sup> The leader of the Sikh militants who occupied the Golden Temple in Amritsar in June 1984. In response to this occupation, the Indian Army launched its controversial military operation, known as Operation Bluestar, which resulted in a number of deaths.

<sup>6</sup> A building, located in Amritsar, India, serving as a symbol of Sikh religious and political identity.

<sup>7</sup> Gurmukh means to follow the way of the Sikh Gurus.

<sup>8</sup> This is a reference to Operation Bluestar (see footnote 5) and the subsequent anti-Sikh riots that Sajjan Kumar had been accused of taking a part.

Presenter: *“Let me put that to Kuldeep Singh [a panellist]. Kuldeep, 24 hours after we heard the court judgement, are we nearer to an autonomous Sikh state or are we farther away or are we at the same point?”*

Kuldeep Singh: *“We are not at the same point; we do take these suggestions to see whether we can take the next step and carry out the action points; do we take action? I totally agree that we have got no freedom for Sikhs as part of India. We are slaves whether we like it or not”.*

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Presenter: *“So you are saying that we should be clever, strategic?”*

Kuldeep Singh: *“Absolutely. Brother Rajwana [a panellist] is saying that we cannot break from the Akal Takht – Guru Gobind’s throne – and finally we got to get nationalistic thought in the Punjab Assembly, we got to get people who want a Sikh homeland because I am not going to even insult the Hindus now; I want our homeland; I am not going to lie to them, and I am going to be honest. But what would that homeland be? Look at Maharaja Ranjeet Singh’s<sup>9</sup> rule; the Hindus there, the Muslims there, could remain in the majority and it was a brilliant free state.”*

Presenter: *“Unless you are a fascist theocratic state, without persuading the non-Sikhs in Punjab, you are not going to get there.”*

Kuldeep Singh: *“But the alternative is this mafia-led, corrupt, Indian central government.”*

Presenter: *“But then we would just create the same entity.”*

Kuldeep Singh: *“We wouldn’t because we would run on the principles of Guru Garanth Sahib<sup>10</sup>, humanitarianism – the living Guru.”*

Presenter: *“So why not just go for free Punjab and then we will decide the name afterwards?”*

Kuldeep Singh: *“Absolutely, and that is what we have always said, free Punjab”.*

As discussed below, it was Ofcom’s view that this programme was dealing with matters of political or industrial controversy and matters relating to current public policy i.e. the policies and actions of the Indian Government towards the Sikh community and the Punjab; and the related debate concerning the possible creation

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<sup>9</sup> This is a reference to a Sikh empire that existed in India in the first half of the nineteenth century.

<sup>10</sup> Guru Garanth Sahib is a Sikh sacred text.

of an independent Sikh homeland in the Punjab. We therefore considered<sup>11</sup> this content raised issues warranting investigation under the following rule of the Code.

Rule 5.5: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”.

Ofcom asked the Sikh Channel CBC to provide comments on how the programme complied with the above rule.

## Response

The Licensee said that Sajjan Kumar had been accused of inciting “a mob to kill five Sikhs” during anti-Sikh riots that took place in New Delhi in November 1984. However, while three other members of the Congress Party had been convicted for their role in the deaths of the five Sikhs “Sajjan Kumar was the only accused who was acquitted of involvement on grounds of insufficient evidence”. The Sikh Channel CBC said that it was in this context that it: “dedicated programming starting on 30 April 2013 to the breaking news of Sajjan Kumar’s acquittal”. In particular, the programme in this case included: “a live UK based panel show discussing the news with callers alongside public opinions of the Sikh community at Gurdwara Sri Guru Singh Sabha, Park Avenue, Southall”.

With regard to Rule 5.5 of the Code, the Licensee said that on being notified of the complaint in this case: “the programme was assessed and potential breaches were identified along with techniques to redress them and prevent any future breach from occurring”. It added that, during the studio segment of the programme, the presenter “paraphrased callers as well as challenged callers to offer solutions to the grievances they expressed”. It added that: “Whilst it is clear at points that the presenter/panel...show[ed] their support for autonomy, for the vast majority their comments have largely paraphrased the callers and their views”.

The Sikh Channel CBC said that it understood: “the absolute importance of due impartiality”. However, it stated its view that this should not “prohibit any discussion on autonomy”. In this particular case, the Licensee said that while the programme was “aimed at discussing the acquittal of Sajjan Kumar, discontent regarding the acquittal led to a separate discussion regarding [Sikh] autonomy” in India. The Sikh Channel CBC added that programming concerning the acquittal of Sajjan Kumar “commencing on 30 April 2013 dominated the schedule for several days, during which the full spectrum of views were taken and discussed”.

The Licensee also said that: “Sikh Channel has no agenda against any Government, political party or person but has a policy of covering all subjects of importance to the Sikh community”. It added that: “A great deal of care is taken with each broadcast and as with all shows of a sensitive nature, participation is sought from all parties in the absence of which official publications are sought to provide a balanced opinion”. The Sikh Channel CBC said that: “With relation to the acquittal news, the Congress

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<sup>11</sup> Ofcom did also consider whether the content in the programme raised issues relating to incitement against Hindus under Rule 3.1 of the Code which states: “Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television or radio services.” However, Ofcom concluded that the material did not raise issues under Rule 3.1.

party, Sajjan Kumar nor any official person or organisation agreed to involvement in the show or provided an opinion upon the acquittal”.

In conclusion, the Licensee said that as a result of Ofcom’s investigation it has “ceased live broadcasts involving discourse upon any subject of political controversy or matters relating to current public policy”. The Sikh Channel CBC added that this would continue: “until presenters have received suitable training in techniques of due impartiality”. In addition, the Licensee set out various changes to its compliance processes, such as “simply report[ing] the facts” in relation to matters of political controversy and matters relating to current public policy, and employing “a further full time compliance officer to ensure adequate members of staff are available wherever and whenever necessary”. Finally, due to what the Sikh Channel CBC termed “the continuous reluctance of Government and political party representatives to” discuss political topics on the Sikh Channel, the Licensee had “commenced an outreach programme to redress any perceived partiality” on the Sikh Channel, by for example inviting Indian political parties to appear on the channel.

## **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 the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy.

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code. Further, in reaching decisions concerning due impartiality, Ofcom underlines that the broadcasting of highly critical comments concerning the policies and actions of any government or state is not, in itself, a breach of due impartiality. Any broadcaster may do this provided it complies with the Code. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way in order to ensure that Section Five is complied with.

In addition, in judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

We first assessed this programme under Rule 5.5 of the Code, which states that:

“Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole.”

We considered first whether the requirements of Section Five of the Code should be applied: that is, whether the programme concerned matters of political or industrial controversy or a matter relating to current public policy. We then went on to assess whether the programme preserved due impartiality, by for example reflecting sufficiently alternative viewpoints.

This programme included a number of statements, as laid out in the Introduction, relating to the policies of the Indian Government towards the Sikh community and the Punjab, and the related controversial policy debate concerning a Sikh homeland in the Punjab. In summary, the programme included a number of statements that Ofcom considered to be either critical of the Indian state’s policy and actions in relation to its treatment of the Sikh community in India, or could be interpreted as arguing the case for an independent homeland for the Sikh community in India. For example, the Indian Government was implicitly criticised when it was stated that: “*the Hindus are ruling in India and we have no hope of getting one per cent of justice there*”; “*we have got no freedom for Sikhs as part of India. We are slaves whether we like it or not*”; and the Sikhs were ruled by a “*mafia-led, corrupt, Indian central government*”. In addition, there were various statements strongly arguing that Sikhs in India should: establish “*Khalistan*”; “*obtain separate rule*”; “*independence*”; a “*separate homeland*”; “*a separate Sikh state*”; and a “*free Punjab*”.

We therefore considered the programme dealt with a matter of political controversy and matter relating to relating to current public policy, and Rule 5.5 was applicable.

Ofcom went on to assess whether the programme preserved due impartiality by, for example, containing sufficient alternative viewpoints. We considered that, taken overall, this programme did not include any views that could reasonably and adequately be classed as supportive of, or which sought to explain, the policy and actions of the Indian state in relation to the Sikh community within India, or argued against an independence homeland for the Sikh community within India. Therefore, this programme when considered alone gave a one-sided view on these matters of political controversy and matters relating to current public policy. Further, and importantly, the broadcaster did not provide any evidence of alternative views on these issues in any series of programmes taken as whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience).

In reaching our decision, we took account of the Licensee’s representations. Firstly, we noted the Licensee’s representation that: “Whilst it is clear at points that the presenter/panel...show[ed] their support for autonomy, for the vast majority their

comments have largely paraphrased the callers and their views". However, just because the viewpoints being expressed on matters of political controversy and current public policy were those of audience members paraphrased by the presenter and other panellists, this did not remove the obligation on the Sikh Channel CBC to reflect alternative viewpoints, as appropriate, on those matters.

Second, we noted the Licensee's argument that the requirement to preserve due impartiality should not "prohibit any discussion on autonomy". There is no restriction on the issues, including the debate concerning an independent Sikh homeland, that broadcasters may cover in their programming as long as the Code is complied with. However, Section Five, reflecting the special impartiality requirements set out in section 320 of the Act, requires that alternative viewpoints are appropriately reflected in programming.

Third, the Sikh Channel CBC said that the programme in this case was "aimed at discussing the acquittal of Sajjan Kumar" which "led to a separate discussion regarding [Sikh] autonomy" in India. Although the programme did focus in large part on the issue of the acquittal of Sajjan Kumar, as the Licensee accepted the programme also included substantial discussion about an independent Sikh homeland. In our view, given the prominent and substantive nature of this discussion arguing for an independent Sikh homeland, it was necessary that alternative viewpoints were reflected on this matter, to some extent, either in this programme or a series of programmes taken as a whole.

Fourth, the Sikh Channel CBC said that: "programming concerning the acquittal of Sajjan Kumar "commencing on 30 April 2013 dominated the schedule for several days, during which the full spectrum of views were taken and discussed [on the Sikh Channel]". However, as mentioned above, the Licensee did not provide any evidence to Ofcom of alternative views on these issues in any series of programmes taken as whole. On a related point, we noted the Licensee's representation that: "With relation to the acquittal news, the Congress party, Sajjan Kumar nor any official person or organisation agreed to involvement in the show or provided an opinion upon the acquittal". As Ofcom's Guidance to Section Five of the Code states: "Due impartiality will not be maintained merely by offering people or institutions likely to represent alternative viewpoints (for example, representatives of a foreign government) the opportunity to participate in programmes, who decline to do so"<sup>12</sup>. In any case, in this programme, the matters of political controversy and matters of current policy requiring the reflection of alternative viewpoints were the policies and actions of the Indian Government towards the Sikh community and the Punjab, and the related controversial policy debate concerning a Sikh homeland in the Punjab, rather than the acquittal of Sajjan Kumar. The Sikh Channel CBC failed to reflect alternative viewpoints on these matters.

Ofcom's Guidance<sup>13</sup> to Section Five suggests a number of editorial techniques for maintaining due impartiality, where programmes handle, for example, controversial policy matters and where alternative views are not readily available, such as: presenters challenging more critically alternative viewpoints being expressed, for example, by programme guests or audience members; alternative viewpoints being summarised, with due objectivity and in context, within a programme; having available interviewees to express alternative views; or if alternative viewpoints cannot

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<sup>12</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>, paragraph 1.36.

<sup>13</sup> Ibid, paragraph 1.37.

be obtained from particular institutions, governments or individuals, referring to public statements by such institutions, governments or individuals or such viewpoints could be expressed, for example, through presenters' questions to programme contributors.

In reaching our decision, we took into account the various changes to its compliance that the Licensee had put in place, including the employment of a "further full time compliance officer". However, given the above, Ofcom considered the programme breached Rule 5.5 of the Code.

We are concerned that the breach in this case comes after three previous contraventions of the Code rules covering due impartiality and elections recorded against TLCS Licence 912 and the Sikh Channel broadcast under this licence<sup>14</sup>: in issue 164 of Ofcom's Broadcast Bulletin<sup>15</sup>; issue 192 of Ofcom's Broadcast Bulletin<sup>16</sup>; and issue 211 of Ofcom's Broadcast Bulletin<sup>17</sup>. In issue 211, we required representatives of the Sikh Channel<sup>18</sup> responsible for output to attend a meeting to explain its compliance procedures in the area of due impartiality. As a result of this meeting, which took place in September 2012, representatives of the Sikh Channel said they understood their obligations in relation to Section Five of the Code. In light of the current breach, Ofcom will visit the Licensee's premises to agree how to improve the Licensee's understanding of, and compliance with, all applicable legal and regulatory requirements, and in particular the rules on due impartiality.

### **Breach of Rule 5.5**

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<sup>14</sup> The Licence TLCS 912 was transferred from TV Legal Limited to The Sikh Channel Community Broadcasting Company Limited on 8 November 2012.

<sup>15</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>

<sup>16</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb192/obb192.pdf>

<sup>17</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb211/obb211.pdf>

<sup>18</sup> The compliance staff for The Sikh Channel Community Broadcasting Company Limited is the same as that that existed for TV Legal Limited.

## Resolved

### Rugby Sevens

*BT Sport 1, 3 August 2013, 19:00*

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#### Introduction

BT Sport 1 is owned and operated by British Telecommunications Plc (“BT” or “the Licensee”). On Saturday 3 August at 19:00, BT Sport 1 broadcast live coverage of a rugby ‘sevens’ match between London Irish and Saracens.

Two complainants alerted Ofcom to the broadcast of offensive language during coverage of each of the teams’ huddles during the one minute half time period.

Ofcom noted coverage of the half time huddles was shown at around 19:23. For this sequence a camera was placed in the huddle to capture the players’ tactical discussions and comments. The audio of the players was broadcast alongside commentary by the presenters and other ambient noise such as from the spectators and the stadium commentary.

There were two clearly audible instances of the word “fucking” broadcast during this sequence. The presenter apologised around 35 seconds later, just before play recommenced, “...*little bit of language there straight off the factory floor. We apologise for that. We’re sure you appreciate emotions run high in the brief one minute period they have at half time*”.

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

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

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

#### Response

BT said that it took compliance very seriously and regretted that offensive language was broadcast. It explained that because the programme was going to be broadcast live and use cameras on the pitch during the players’ huddle, the production team took the precautionary step of reminding the rugby teams before play commenced that coverage was live and that they should avoid using offensive language.

The Licensee said, despite the fact that an on-air apology was made immediately following the incident, that broadcast of this language was clearly unacceptable. To avoid this happening again, all future live broadcasts of huddles would have a time delay to ensure any offensive content could be edited out before broadcast.

#### Decision

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

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...” Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and other variations of this word are considered by audiences to be among the most offensive language.

The broadcast of the word “fucking” in this programme just before 19:30 was therefore a clear example of the most offensive language being broadcast before the watershed.

However, Ofcom took into account that: the Licensee did take some measures before the broadcast to minimise the risk of offensive language being broadcast; apologised on air very soon after the incident; and, all future live broadcasts of huddles would have a time delay.

In light of these factors, Ofcom considered the matter resolved.

### **Resolved**

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

## Advertising Scheduling Findings

### In Breach

#### Advertising minutage

*Aaj Tak, 22 July 2013, 22:00*

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#### Introduction

Aaj Tak is a 24 hour news channel broadcast in Hindi on the digital satellite platform (Channel 902). The licence for Aaj Tak is held by TV Today Network Ltd (“TVTN” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom noted that on 22 July 2013 the 22:00 clock hour exceeded the permitted advertising allowance by five minutes and 30 seconds.

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

#### Response

The Licensee acknowledged that the clock hour identified exceeded the permitted allowance of advertising.

TVTN explained that it had conducted an internal inquiry into this matter. The inquiry revealed that it was caused by an error by an intern which resulted in the advertising breaks being grouped and exceeding the permitted allowance. TVTN assured Ofcom that action is being taken to ensure such a mistake is not repeated in future.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculate to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted that the Licensee’s assurance that it is taking measures to improve compliance. Nonetheless, on this occasion, the amount of advertising in the 22:00 clock hour clearly exceeded the permitted allowance and breached Rule 4 of COSTA.

Ofcom also noted that in issue 236 of the Broadcast Bulletin it recorded a breach<sup>1</sup> of Rule 4 of COSTA against this Licensee. In light of this further breach, we will continue to monitor the Licensee's compliance with COSTA.

#### **Breach of Rule 4 of COSTA**

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb236/>

## Fairness and Privacy cases

### Upheld

#### Complaint by The Rt Hon the Lord McAlpine of West Green

*This Morning*, ITV1, 8 November 2012

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#### Summary

Ofcom has upheld RMPI LLP's ("RMPI") complaint on behalf of The Rt Hon the Lord McAlpine of West Green ("Lord McAlpine")<sup>1</sup> that he was treated unjustly or unfairly in the programme as broadcast. Ofcom found ITV Broadcasting Limited ("ITV"), the licensee for the *This Morning* programme, in breach of Rules 7.1 and 2.1 of Ofcom's Broadcasting Code.

The programme included an interview with the Prime Minister, The Rt Hon Mr David Cameron MP, during which he was asked whether there should be an overarching inquiry into the recent child abuse scandal. The presenter, Mr Phillip Schofield, produced a list he said of names of people linked to allegations of child abuse which he had compiled from searching on the internet, and he gave this list to the Prime Minister. The list was then briefly and inadvertently broadcast. ITV accepted that this was an uncharacteristic lapse in editorial judgement on the part of the programme's editorial team, and both ITV and Mr Schofield have issued several apologies since the broadcast of the programme. It led to a claim for libel being brought by Lord McAlpine, which they settled with a payment of damages and legal costs and an agreed Statement read in open court.

ITV accepted that the way in which this part of the interview was conducted, and the idea of handing over a list of named individuals about whom speculation was taking place online, was clearly misjudged. This, it said, was an editorial misjudgement which was then compounded by an entirely inadvertent mistake in relation to the camera shot at the precise moment the list was being handed to the Prime Minister, which meant that the list was briefly visible (but ITV believed not legible) to viewers. ITV said that this was highly regrettable and it accepted full responsibility for these mistakes.

Ofcom considered that the programme broadcast significant allegations about Lord McAlpine, which turned out to be wholly untrue, without adequate research and without offering him the opportunity to respond. The programme as broadcast therefore resulted in significant unfairness to Lord McAlpine and was therefore a breach of Rule 7.1 of the Broadcasting Code.

Ofcom also considered that whilst the material was not offensive, ITV had failed in its obligation to ensure that generally accepted standards were applied to the content of this particular edition of *This Morning* and had not provided adequate protection for members of the public from the inclusion of harmful material. It was therefore a breach of Rule 2.1 of the Broadcasting Code.

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<sup>1</sup> Lord McAlpine is a former Deputy Chairman of the Conservative Party and a former Party Treasurer. He was a close aide to Margaret Thatcher during her time as Prime Minister. As a result of his positions and his work with the Conservative Party, he had a significant political profile during the late 1970s and the 1980s.

## Introduction

On 8 November 2012, ITV broadcast an edition of *This Morning* which included an interview with the Prime Minister, The Rt Hon Mr David Cameron MP, which was conducted by one of the presenters, Mr Phillip Schofield. During the course of the interview, Mr Schofield sought to raise with the Prime Minister “*the fact that...there could have been a paedophile ring amongst the elite of Great Britain that led all the way to Downing Street*”. This would have been understood by the Prime Minister and viewers to have been a reference to the widely publicised child abuse case involving the Bryn Estyn Care Home in north Wales (“Bryn Estyn”)<sup>2</sup>. On 2 November 2012, the BBC had broadcast an edition of *Newsnight* in which serious allegations of serial child sex abuse of vulnerable young boys at Bryn Estyn had been made against a “*leading Conservative figure from the Thatcher years*”. Both before and after the *Newsnight* programme, Lord McAlpine had been widely, and falsely, identified, mainly on the online social networking site Twitter, as being the subject of the allegations.

During the interview with the Prime Minister, Mr Schofield asked Mr Cameron whether he had “*heard the names*” who had been associated with the allegations concerning Bryn Estyn. Despite being warned specifically by the Prime Minister of the dangers of speculation about such serious allegations, Mr Schofield then passed the Prime Minister a card on which was written a list of individuals whom he had found named on the internet as linked to allegations of child abuse. Lord McAlpine’s name was amongst those written on the list. As Mr Schofield handed the card to the Prime Minister, the list was briefly broadcast to viewers.

Later on the same day, both ITV and Mr Schofield released public statements apologising for the fact that the list of names on the card may have been visible, albeit briefly, to viewers. ITV also broadcast three apologies on *This Morning* the following day.

By 9 November 2012, it had become clear that the allegations against Lord McAlpine were false and ITV accepted that the allegations alluded to in the programme were wholly untrue.

## Framework for the investigation

Ofcom has general duties under section 3 of the Communications Act 2003 (“the 2003 Act”) to (among other things) secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in television and radio services (Section 3(2)(e) of the 2003 Act); and in addition, to all other persons from both (i) unfair treatment in programmes included in such services; and (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services (Section 3(2)(f) of the 2003 Act)<sup>3</sup>.

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<sup>2</sup> The Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974 (known as “the Waterhouse Inquiry” or the “Waterhouse Tribunal”), which began in 1997, investigated allegations of child sexual and physical abuse at a number of care homes in Wales, including the Bryn Estyn Care Home. Its findings were published in 2000.

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

Ofcom received 473 complaints from viewers who were offended by Mr Schofield's handing the list of names to the Prime Minister. On the information available to Ofcom at this time, it appeared to Ofcom that ITV did not take appropriate steps to ensure that generally accepted standards were applied to the programme to ensure that viewers were protected from the inclusion of harmful and/or offensive content. Ofcom proceeded to investigate the programme under Section Two (Harm & Offence)<sup>4</sup> of the Ofcom's Broadcasting Code ("the Broadcasting Code"). Soon after broadcast of the programme, Ofcom also decided to investigate the programme in relation to "fairness". Normally, Ofcom requires a complaint from the "person affected" before investigating any fairness issues. However, Ofcom's Procedures for the consideration and adjudication of Fairness & Privacy complaints<sup>5</sup> ("the Procedures"), published on 1 June 2011, state at paragraph 1.5 that:

*"in exceptional circumstances, where Ofcom considers it necessary in order to fulfil its general duty (under section 3(2)(f) of the 2003 Act) to secure the application of standards that provide adequate protection to members of the public (and all other persons) from unfair treatment in programmes and unwarranted infringements of privacy, Ofcom may consider fairness or privacy issues in the absence of a complaint from "the person affected" ... In those exceptional circumstances, Ofcom would set out in advance the procedures that it intends to follow and allow any relevant parties to respond accordingly. The procedures would be similar to these but adapted as appropriate to ensure that they are fair in the particular circumstances".*

In this case, Ofcom considered that "exceptional circumstances" existed for it to consider the fairness implications of Mr Schofield's conduct in the programme and the apparent lapse in editorial judgement on the part of the programme's editorial team, in order to fulfil its general duty to secure the application of standards that provide adequate protection to members of the public from unfair treatment and unwarranted infringements of privacy. Ofcom considered such exceptional circumstances to exist in light of the fact that the names of a number of individuals were broadcast and linked with allegations of child sex abuse. There is no doubt that this is an extremely serious allegation, with potentially very serious consequences for those identified, and is a matter of serious public concern.

In any event, a short while later, on 23 November 2012, Ofcom received a complaint of unjust or unfair treatment made by RMPI on behalf of Lord McAlpine as "the person affected". Ofcom therefore proceeded to consider Lord McAlpine's fairness complaint about the broadcast under Section Seven (Fairness)<sup>6</sup> of Ofcom's Broadcasting Code<sup>7</sup>.

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/standards/>.

<sup>5</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

<sup>6</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/fairness/>.

<sup>7</sup> Ofcom aims to conclude fairness and privacy investigations as soon as possible. The majority are concluded within 90 working days. However, certain cases can take significantly longer, especially if they are complex, raise difficult issues, and significant representations are received from the broadcaster or the complainant that require careful consideration (including representations on legal issues) as was the case here.

### Standards with respect to harmful and/or offensive content

The 'standards' with respect to harm and offence are set out in Section Two (Harm and Offence) of the Broadcasting Code. This section sets out a Principle and Rules to be observed by the broadcaster. The Principle is "to ensure that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material". The Rule considered by Ofcom to be relevant to its investigation is Rule 2.1 which states that:

"Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material".

### Standards with respect to fairness and privacy

The 'Standards' in respect to unjust or unfair treatment are set out in Section Seven (Fairness) of the Broadcasting Code. This section sets out a Principle and a Rule (Rule 7.1) to be observed by broadcasters. The Principle is "to ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes". Rule 7.1 states that:

"Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes".

Section Seven (Fairness) of the Broadcasting Code sets out a series of "practices to be followed" by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes. Failure to follow the practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

### **The Programme as broadcast**

*This Morning* is ITV's long-running flagship weekday mid-morning live magazine programme, which features a wide variety of lifestyle and topical stories. Mr Schofield has been a main presenter of the show since 2002 and has interviewed many senior political figures on *This Morning*.

ITV provided Ofcom with a recording of the edition of the programme broadcast on 8 November 2012 and a transcript of Mr Schofield's interview with the Prime Minister. Ofcom noted the following sequence of events.

During the interview, Mr Schofield introduced the topic of child sex abuse allegations in relation to parliamentary figures by saying to the Prime Minister that "a very serious topic that is in the news at the moment" is that "there could have been a paedophile ring amongst the elite of Great Britain that led all the way to Downing Street". The Prime Minister responded by issuing a caution about the dangers of speculation concerning such issues, saying "I've heard all sorts of names being bandied around and what then tends to happen is of course everyone sits round and speculates about people...some of whom are alive, some of whom are dead".

At this point in the interview, Mr Schofield said:

*“It takes a momentary, cursory glance at the internet, it took me about three minutes last night to continually to find a list of the same names. I have those names there, those are the names on a piece of paper, will you be speaking to these people?”*

Mr Schofield then handed the Prime Minister a card on which was written a list of names of individuals about whom such speculation was taking place “*on the internet*”. As Mr Schofield handed the card to the Prime Minister, the list of names was briefly broadcast to viewers, and Lord McAlpine’s name was legible on the list. Again, the Prime Minister responded by cautioning Mr Schofield about the dangers of speculation and warned that “*there is a danger that if we are not careful that this could turn in to a sort of, a sort of witch hunt, particularly against people who are gay*”.

The interview then turned to a discussion about the number of inquiries that had been held or were being set up to look into a number of allegations relating to child sex abuse.

### **Ofcom’s investigation and Lord McAlpine’s complaint**

Ofcom wrote to ITV on 14 November 2012 and expressed its concern about the potential issues raised by the programme that it believed warranted urgent investigation in relation to the application of generally accepted standards by ITV and the application of standards to prevent unfair treatment and unwarranted infringements of privacy. In its letter, Ofcom requested ITV to submit its formal representations on how the actions of ITV and Mr Schofield maintained appropriate standards and complied with Rules 2.1 and 7.1 (and the relevant “Practices to be followed”) as set out in the Broadcasting Code.

In relation to Section Two (Harm and Offence) of the Broadcasting Code and the 473 complaints Ofcom received from viewers about the programme, Ofcom provided ITV with the following summary of the main themes that the viewers who complained found offensive:

- Some viewers were offended that it was disrespectful and unfair to the Prime Minister to “ambush” the interview as it was supposed to be about a different matter.
- Some viewers were offended that: they could momentarily see at least one of the names on the list; Mr Schofield had no substantive evidence to link paedophilia with the names on the list, having obtained them from the internet; and, Mr Schofield’s handing the list of names to the Prime Minister was a “sensationalist” act.
- Some viewers were offended that: the Prime Minister appeared to link homosexuality with paedophilia; the item linked homosexuality with paedophilia; and,
- the item compromised the personal safety of individuals and homosexual people in general by indirectly encouraging vigilante attacks.

In relation to Section Seven (Fairness) of the Broadcasting Code, Ofcom also received a letter of complaint dated 23 November 2012 (the “letter of complaint”) from RMPI, Lord McAlpine’s legal representatives, on behalf of Lord McAlpine about the *This Morning* programme broadcast on 8 November 2012.

RMPI complained that Lord McAlpine was not offered the opportunity to contribute or respond to any of the allegations made in the programme. In particular, RMPI said that Phillip Schofield, by presenting the Prime Minister with a list of rumoured paedophiles, led viewers to search the internet which, in turn, caused people to read and further spread false and malicious rumours about Lord McAlpine. RMPI said that even though Lord McAlpine's name could not be seen on the list, the production of the list will have led viewers to turn to the internet to search for the names of those rumoured to be paedophiles. It also said that the programme had no regard for the previous findings or evidence that already existed and the actions of Phillip Schofield fuelled the fires further which resulted in the unfair treatment of Lord McAlpine.

### **ITV's response to Ofcom investigation**

Before addressing the specific concerns raised by Ofcom's investigation, ITV set out the events and circumstances leading up to the broadcast of the programme and the action taken subsequent to the broadcast of the programme.

#### *ITV's statement relating to the background to the programme*

ITV said that the programme had to be considered in the context of the widely reported events taking place immediately prior to Mr Schofield's interview with the Prime Minister. It said that the issue of paedophilia and child sex abuse had dominated the news agenda in the months preceding the broadcast, in particular following ITV's broadcast on 3 October 2012 of its *Exposure* programme, revealing the sexual abuse of children by the late Jimmy Savile.

There had previously been an investigation into child sex abuse in the 1970s and 1980s at care homes in the former county council areas of Clwyd and Gwynedd in north Wales (which included Bryn Estyn), culminating in the report of the Waterhouse Inquiry published in 2000.

ITV said that on 2 November 2012, the BBC had trailed that its edition of *Newsnight* that evening would include a report regarding the sexual abuse of boys in the 1970s and 1980s at Bryn Estyn. That same morning, Mr Iain Overton of the Bureau of Investigative Journalism published a tweet stating "*if all goes well we've got a Newsnight out tonight about a very senior figure who is a paedophile*". ITV said that it understood that this information had spread quickly across the internet and social networking sites such as Twitter, which led to widespread speculation as to who the relevant individual might be. It said that a number of people had named Lord McAlpine and had identified him as the subject of the *Newsnight* report.

ITV said that the *Newsnight* report did not, in the event, name Lord McAlpine. However, during its detailed report, explicit and serious allegations of involvement in a paedophile ring and the organised serial rape of vulnerable young boys at Bryn Estyn were made against a "*leading Conservative figure from the Thatcher years*". In particular, ITV said that the *Newsnight* programme had reported a number of allegations from Mr Steve Messham, a victim of abuse at Bryn Estyn. Subsequent to the broadcast of the *Newsnight* report, ITV said that it understood that Lord McAlpine had again been named and identified as the subject of the allegations made in it by a number of people on the internet and on social networking sites.

In the light of Mr Messham's allegations, the Prime Minister announced on 5 November 2012 that he would "ask...a senior independent figure to lead an urgent investigation into whether the original inquiry was properly constituted and properly did its job and to report urgently to the government". ITV said that by the time of the

broadcast of the programme, a total of seven inquiries were widely known to be underway in relation to or arising from child sex abuse allegations.

ITV said that *This Morning*, while not a “hard news” programme, regularly covered public interest issues currently in the news and regularly interviewed senior political figures on the political issues of the day. In the light of all of the above, ITV said that the *This Morning* editorial team took the view (which ITV considered has been correct and justified) that the question of whether there should be an overarching inquiry into the child abuse scandal would be an appropriate matter of public interest for discussion with the Prime Minister.

#### *ITV's statement in relation to the programme's compliance procedures*

ITV said that there was an established compliance procedure for *This Morning* to ensure that generally accepted standards are met and to avoid the unfair treatment of individuals and any unwarranted infringement of their privacy. The programme's production team is provided with bespoke training sessions on legal and compliance issues with particular relevance to the programme, and with written compliance and legal guidelines, which are regularly reviewed and updated.

ITV said that the programme is produced for ITV by ITV Studios, and the compliance licensee is ITV Broadcasting Limited. ITV's compliance team is composed of around 30 people and includes “Compliance Managers” for each genre of programming who, in turn, report to the “Director of Programme Compliance”. A number of “Compliance Advisors” report to the “Compliance Managers” and there are, in addition, a number of experienced and specialist “Programme Lawyers” to advise producers on legal matters.

ITV said that as *This Morning* is a live programme, the principal components of each episode are compiled in advance of broadcast by way of discussion between the production and compliance teams. Advice is sought routinely in the preparation of each episode, primarily from the “Compliance Manager Daytime” and from the nominated duty lawyer for the programme for that particular week. Pre-recorded elements such as viewer competition V/Ts or interviews will be reviewed and approved by compliance staff before broadcast. The running order for each programme outlining the items to be covered is circulated by the production team, usually in the late afternoon on the day before broadcast, and a brief for each principal component is sent either to the Compliance Manager or to the duty lawyer for comment and approval.

In accordance with these procedures, ITV said that the brief for the interview with the Prime Minister was prepared and sent to the duty compliance lawyer assigned to provide advice on legal matters relating to *This Morning* that week, on the evening of 7 November 2012. Approval of the brief was confirmed by email to the production team shortly before 09:00 hours on 8 November 2012.

#### *ITV's statement in relation to the preparation for the interview*

ITV said that the interview with the Prime Minister was planned well in advance and, as was standard practice for the programme, the detailed brief outlining topics for discussion in the interview was prepared by the production team for the presenters. This brief outlined the three main topics for discussion in the interview, including the question of whether there should be an overarching inquiry into the child abuse scandal. A copy of the brief was provided to Ofcom.

ITV said that the three topics were discussed with the Prime Minister's advisor prior to the interview, again in line with the programme's standard practice and the Practices to be followed detailed in Section Seven (Fairness) of the Broadcasting Code, namely that interviewees should be made aware of the broad areas of discussion before an interview takes place. The Prime Minister's press advisor confirmed that he was happy for the Prime Minister to be questioned on these topics.

ITV said that discussions took place between Mr Schofield and the News Editor two days before the interview with the Prime Minister took place, concerning the child abuse scandal. Reference was made during the discussions to the identity of the unnamed individual accused in the *Newsnight* programme, which the News Editor understood to be Lord McAlpine, and other individuals linked to child abuse in internet speculation.

*ITV's statement in relation to Mr Schofield's research*

ITV said that on the evening of 7 November 2012, Mr Schofield undertook his own research on the internet in relation to the child sex abuse scandal in preparation for the interview with the Prime Minister. Mr Schofield had read articles on newspaper and other websites reporting a question that had been raised in Parliament by Mr Tom Watson MP that suggested that there was evidence in existence that linked "a powerful paedophile network... to Parliament and Number 10 [i.e. Downing Street]".

A brief search on Google revealed various articles, blogs and posts repeatedly naming a number of senior political figures alleged to have been connected with child abuse. ITV said that Mr Schofield had spent approximately two hours reading this material.

In the course of this research, and in light of Mr Watson's allegations, Mr Schofield formulated the idea, in the context of discussing the prospect of an overarching inquiry into the various child abuse scandals, of handing the Prime Minister a list of the individuals that he had repeatedly seen named online, to illustrate the fact that there was widespread speculation on the internet about these individuals, and to ask the Prime Minister for his view about it. ITV said that at no point did Mr Schofield ever intend to name or otherwise identify these individuals on the programme, or to accuse them of any wrongdoing. Indeed, ITV said that Mr Schofield was very conscious of the need for care in addressing this matter at all and framed his questioning to the Prime Minister by reference to the wording that had been used by Mr Watson MP in Parliament.

ITV said that it should be noted that although Mr Schofield referred to a "cursory" search (i.e. a search through the "Google" search engine) in the programme, his research of the materials revealed by this search for the purpose of the interview was certainly not cursory.

*ITV Statement in relation to the Editorial discussions on morning of the broadcast of the programme*

ITV said that each morning before broadcast, the editorial team responsible for the preparation of the programme's content that day meet with the presenters to discuss the items that will be featured.

On 8 November 2012, the presenters met with the senior editorial team, namely the Deputy Editor, the News Editor, and the Day Producer, at approximately 08:45 hours. At this meeting, Mr Schofield introduced the idea of presenting the list of names he

had collated from the internet to the Prime Minister during the interview. Mindful of the serious and sensitive nature of the issue, and conscious of the need not to reveal the identities of the individuals on the list, ITV said that it was agreed that the names would be written on a presenter's briefing card which would be passed to the Prime Minister in such a way that the list would never be visible to the camera. Unfortunately, the editorial team did not refer this new idea to the duty Programme Lawyer for advice. Instead, ITV said the editorial team proceeded on the misguided basis that no further advice or clearance was needed because discussion of the child abuse issue had already been cleared, in principle, from a legal perspective as part of the standard interview brief.

Following this meeting, the News Editor had instructed a member of the news desk team to place the names on a card. Two members of this team conferred and through further research (including discussion with journalistic contacts) provided a fifth name in addition to four already selected, on the same basis, i.e. a political figure referred to in internet speculation in relation to child abuse allegations.

At around 09:15 hours, ITV said that the programme's Editor arrived at the studio and was informed by the editorial team about the proposed new feature of the interview. The Editor immediately recognised that raising the issue in this way carried a legal risk and went to discuss it directly with Mr Schofield. Following that discussion, ITV said that the Editor had decided that the item could still proceed as long as the card bearing the list of names was handed to the Prime Minister face down so its content could not be seen by viewers. Regrettably, ITV said that the Editor had assumed incorrectly that the new item had been discussed with the duty Programme Lawyer, and had also failed to recognise that the correct framing of the question was as important as the manner in which the card was to be handed across. ITV accepted that these were serious editorial misjudgements.

However, ITV said that it should be emphasised that while these editorial decisions prior to broadcast were misguided, they arose from honest mistakes in the assessment of the idea as part and parcel of a wider discussion on a matter of public interest. It said that the editorial team, of which Mr Schofield was part, were certainly not reckless or thoughtless as to the seriousness of making an actual allegation of child abuse against those named in internet speculation. No one in the editorial team had intended to make or considered that any such allegation would be made in the programme (and ITV did not accept that any such allegation was, in fact, made). ITV said that had such an allegation been intended to be made, the team would have understood as a matter of basic journalistic good practice that such allegations were serious, could only be made on the basis of firm evidence rather than internet speculation, and in accordance with Section Seven (Fairness) of the Broadcasting Code would have to have been put to the individuals in question in advance of broadcast.

ITV said that these editorial misjudgements were then further compounded by the failure to follow established editorial and compliance procedures by ensuring that legal advice had been taken specifically on this new element of the interview before broadcast. The production team failed to appreciate that the risk did not simply involve the visibility of the names on the list, but also the manner in which the question would be put to the Prime Minister. For example, ITV said that the question should have been more clearly formulated to indicate the origin of the "*paedophile ring*" allegation (namely, the comments of Mr Watson MP), should have made it clear that the names were drawn from unreliable internet speculation, and that there was no suggestion or inference of any wrongdoing on the part of these individuals. ITV said that this was a collective mistake by the editorial team as a whole.

ITV said that the list of names was prepared for Mr Schofield on a printed card, but that this was rewritten shortly before the interview began in Mr Schofield's own handwriting, because the printed card had been headed "*Names For Cameron*", which Mr Schofield considered disrespectful to the Prime Minister.

Action taken by ITV subsequent to the broadcast of the programme

*Apology*

ITV said that after the programme had concluded, the presenters and the programme's Editor met with ITV's Director of Communication, the Director of Programme Compliance and others, and the incident was reported to members of ITV's Management Board. It was quickly agreed that both ITV and Mr Schofield should issue an apology. At that point it was not clear whether any of the names had, in fact, been legible to any viewers. ITV said it was realised that the inadvertent display of the list of names, while momentary, could potentially be extremely damaging to the individuals concerned if they had been identified. Accordingly, within hours of the broadcast of the programme on 8 November 2012, both ITV and Mr Schofield issued public apologies.

Mr Schofield's apology stated:

"If any viewer was able to identify anyone listed, I would like to apologise and stress that was never my intention. I was not accusing anyone of anything and it is essential that it is understood that I would never be part of any kind of witch hunt.

Unfortunately there may have been a misjudged camera angle for a split second as I showed the Prime Minister some information I had obtained from the internet. I asked for his reaction to give him the opportunity to make a point which he very clearly made about the dangers of any witch hunt".

ITV's apology stated:

"It is extremely regrettable that names may have been very briefly visible as a result of a misjudged camera angle, although most viewers would not have been able to read the list, and as Phillip has stressed, the programme was not accusing anyone of anything".

On the following edition of *This Morning*, on 9 November 2012, ITV said that a further apology repeating both of those statements was broadcast, as follows:

*"Time for a look at stories in the news, and This Morning dominates a lot of the headlines after Phillip and Holly's<sup>8</sup> interview with Prime Minister David Cameron yesterday.*

*While discussing speculation about child abuse allegations, Phillip produced a list of names he had found on the web the night before the show. Unfortunately when showing this list to the Prime Minister, it was briefly and inadvertently shown on camera.*

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<sup>8</sup> Ms Holly Willoughby, Mr Schofield's co-presenter.

*Now Phillip has apologised, saying 'If any viewer was able to identify anyone listed, I would like to apologise and stress that was never my intention. I was not accusing anyone of anything and it's essential that it's understood that I would never be part of any kind of witch hunt'.*

*He went on to say that 'Unfortunately there may have been a misjudged camera angle for a split second as I showed the Prime Minister some information I'd obtained from the internet. I asked for his reaction to give him the opportunity to make a point which he very clearly made about the dangers of any witch hunt'.*

*ITV have also issued an apology, stating 'It's extremely regrettable that names may have been very briefly visible as a result of a misjudged camera angle, although most viewers would not have been able to read the list, and as Phillip has stressed, the programme was not accusing anyone of anything'.*

ITV subsequently issued a further public apology on 15 November 2012, as follows:

*"Last Thursday we began an investigation into the circumstances surrounding the mistake on that day's This Morning programme, for which both Phillip Schofield and ITV apologised. This investigation has now concluded and the appropriate disciplinary action has been taken.*

*We sincerely apologise because the way in which the issue was raised was clearly wrong and should have been handled differently. We have taken steps to make sure our editorial processes are always properly followed, which was not the case in this instance, and to ensure such an error will not be made again".*

On the same day Mr Peter Fincham, ITV's Director of Television, was interviewed on ITV News and once again expressed ITV's regret in relation to the broadcast and the seriousness with which ITV had taken the matter.

On 19 November 2012, ITV acknowledged the lapse in its editorial standards in Mr Fincham's letter to Mr John Whittingdale MP, in response to his letter dated 14 November 2012, raising questions about the programme in his capacity as the Chairman of the Culture, Media and Sport Select Committee.

ITV said that as these public apologies make clear, it was neither Mr Schofield's nor ITV's intention to accuse anyone of any wrongdoing in the interview.

#### *ITV's own investigation and steps taken in response*

On the afternoon of 8 November 2012, ITV's Group Legal Director initiated an immediate internal investigation, undertaken by ITV's Head of Governance, to establish what had happened and to consider what could be done to avoid the recurrence of such an incident in future. Following this investigation, the following steps were promptly taken by ITV:

- Disciplinary measures were taken in relation to the senior editorial team of *This Morning* and Mr Schofield.
- Clear compliance procedures were already in place for *This Morning* that, had they been followed, would certainly have resulted in the issue in question

being handled differently. The Controller of Daytime & Lifestyle for ITV Studios, in consultation with the Director of Programme Compliance and the Head of Governance, took active steps since the broadcast of the programme to reinforce the compliance procedures with the production team and all producers and senior editorial staff had been re-briefed verbally and in writing.

#### *Libel action by Lord McAlpine*

On 15 November 2012, ITV received a letter before action on behalf of Lord McAlpine claiming damages from both ITV and Mr Schofield for libel.

ITV and Mr Schofield expressed their willingness to make a speedy, public and unequivocal statement confirming the falsity of the allegations against Lord McAlpine and to apologise to Lord McAlpine for the harm and distress suffered by him as a result of the broadcast. Although ITV considered that Lord McAlpine had not been identified in the programme, in the interests of ensuring a swift resolution of Lord McAlpine's complaint to ITV, in order to alleviate any distress caused to Lord McAlpine by the broadcast, an offer was made to pay damages and to join in the making of a Statement in Open Court. The parties subsequently reached a negotiated settlement to which ITV and Mr Schofield agreed (amongst other terms) to pay Lord McAlpine the sum of £125,000 to compensate him for the harm and distress suffered as a result of the programme. Following the agreement of this settlement, the terms of which are not confidential, ITV issued the following statement:

*"ITV and Phillip Schofield have now reached agreement with Lord McAlpine to settle his libel claim, made in relation to the This Morning programme broadcast on 8 November 2012. ITV and Phillip Schofield apologise unreservedly to Lord McAlpine, have agreed the terms of a statement to be made in open court, and have agreed to pay him damages of £125,000 and his legal costs".*

ITV considered that it had acted responsibly and swiftly to mitigate any harm caused to Lord McAlpine and to resolve his complaint regarding the programme as broadcast.

#### *ITV's response to Ofcom's request for representations in relation to Rules 2.1 and 7.1 of the Broadcasting Code*

Before addressing the particular Rules of the Broadcasting Code, ITV made the following comments, generally, in relation to the programme as broadcast.

ITV said that it did not consider that the ordinary, reasonable viewer would have considered the programme to be alleging that the individuals on the list were guilty of paedophilia or child sex abuse. It said that Mr Schofield had certainly not suggested that the list was a list of paedophiles or even paedophile suspects. His intention was only to refer the Prime Minister to the fact that serious allegations reportedly leading all the way to Downing Street were being made in relation to individuals that had been widely named on the internet, and to seek his view on this, to lead into the wider issue for discussion as to whether the time had come for there to be an overarching inquiry into the child abuse issues. ITV said that the Prime Minister forcefully responded to the effect that speculation regarding such allegations in relation to individuals was dangerous, that if any person had any information suggesting an individual was guilty of any such allegations then they should go to the police immediately, that the key thing was to establish the truth in relation to all of these matters as quickly as possible, and that he was not convinced that an

overarching inquiry would assist in achieving that aim. Taking the interview as a whole, therefore, ITV said that it did not consider that reasonable viewers would have understood the programme to be making allegations of paedophilia against the individuals on the list.

ITV said that the list of names was in shot and partially visible for around half a second. It said that while it was deeply regrettable, this was an entirely inadvertent mistake. Unfortunately, Mr Schofield did not pass the card across to the Prime Minister face down as had been envisaged in earlier discussions with the editorial team. ITV said that Mr Schofield had believed (from many years of experience in studio presenting) that at that particular moment the camera would have been focused on him in close up, as indeed it was as he began to pass the card over. However, the camera then moved to the wider shot just as the card was momentarily in view. This, ITV said, was simply a split second miscalculation and not a deliberate act seeking to identify the names to the public.

ITV said that having studied the footage repeatedly and in detail, while the names were briefly visible, it did not accept that the names would have been legible to viewers watching the programme as broadcast. ITV noted that some commentators in the press had claimed that some of the names on the list may have been identifiable, while others had said that they had been unable to read most or all of the names. ITV accepted that some viewers, already aware of the controversy around the BBC's *Newsnight* programme and the internet speculation that Lord McAlpine was the individual discussed in that programme, might have therefore assumed that Lord McAlpine was among the names on the list, as in fact he was. However, ITV did not accept that viewers would have been able to identify the names simply by having watched the interview in the programme.

ITV said that the programme makers had only become aware that the list of names had been briefly shown in the broadcast programme when internet bloggers and newspapers began posting stills and clips of it in the interview on their websites. When it became clear what had happened, ITV said that it took steps to ensure that the interview as broadcast would not be made available on ITV's ITV Player video on demand service, or on *This Morning's* website. Later, when ITV became aware that unobscured clips of the interview were beginning to be posted on the internet site of the consumer-generated video service "YouTube", it sought to have those clips taken down from the website.

*Rule 2.1 – Generally accepted standards to protect against harmful and/or offensive material*

In response to Rule 2.1 of the Broadcasting Code, ITV acknowledged that it did not meet the high editorial standards it sets for itself in relation to the programme as broadcast. Having been provided with a summary of the viewer complaints received by Ofcom, ITV responded to the main themes that the viewers who complained found offensive:

- Mr Schofield's handing the list of names to the Prime Minister was a "sensationalist" act.

As set out above, ITV said that the editorial decision to hand the list to the Prime Minister was taken in the context of a serious discussion of a matter of public interest. However, ITV and Mr Schofield now accepted that the editorial decision was misjudged and its execution was clearly flawed.

- Mr Schofield had no substantive evidence to link paedophilia with the names on the list having obtained them from the internet.

ITV said that the programme made clear that the names on the list were drawn from the internet and did not suggest that there was any substantive evidence to link them with paedophilia.

- It was disrespectful and unfair to the Prime Minister to “ambush” the interview as it was supposed to be about a different matter.

ITV said that no discourtesy was intended towards the Prime Minister. The main themes to be discussed in the interview included the child abuse scandal and inquiries and notification of these themes were given to the Prime Minister’s advisors before the interview. ITV submitted that most viewers would expect questioning of the Prime Minister to be robust in such an interview. It said that the Prime Minister is, by virtue of his role in public life, well versed in dealing with challenging and at times uncomfortable questioning, and being sometimes put “on the spot” by interviewers. ITV said that the Prime Minister was able to express fully and forcibly his response to the issue being put to him.

- The item compromised the personal safety of individuals and homosexual people in general by indirectly encouraging vigilante attacks.

ITV considered that the programme could not reasonably be viewed to have encouraged vigilante attacks or to have compromised anyone’s safety. It said that the Prime Minister warned expressly against internet speculation and the dangers of this turning into a “*sort of witch hunt particularly against people who are gay*”.

- Viewers could momentarily see at least one of the names on the list.

ITV disagreed that one of the names could be seen, given the brevity and lack of clarity of the moving shot in which the list was visible. However, it acknowledged that the accidental exposure of the list to camera was a deeply regrettable human error.

- The item linked homosexuality with paedophilia and/or the Prime Minister appeared to link homosexuality with paedophilia

ITV said that the only reference to homosexuality in the item was the Prime Minister’s comment cautioning against a “*sort of witch hunt, particularly against people who are gay*”. Clearly, the programme could not possibly have anticipated this particular response, given that there were no references to homosexuality made by the presenters in this context at all. Equally, ITV said that no reasonable viewer could have understood the Prime Minister to be linking homosexuality with paedophilia. His remark clearly conveyed a warning against any such link being made.

ITV accepted that the interview caused offence to some viewers (although ITV said that it had also received a number of expressions of support, in particular, for Mr Schofield). However, ITV said that it considered that combative questioning of senior political figures on matters of public interest was generally considered not only acceptable, but important and necessary in the exercise of the media’s and the

public's Article 10 (of the European Convention of Human Rights) right of freedom of expression, particularly in relation to "political speech". ITV said that while it did not seek to demur from its acceptance that this particular editorial decision and its execution was misjudged and wrong, ITV submitted that Ofcom should consider the incident in relation to generally accepted standards in this particular context.

In relation to any harm arising from the broadcast, ITV accepted that there was a potential for harm in relation to the specific individuals on the list, as a result of the way in which the matter was dealt with in the broadcast. However, ITV said that it did not consider that these individuals named on the list would have been identified to viewers. In relation to the unique position of Lord McAlpine, given the context of the speculation previously generated by the BBC's *Newsnight* programme, ITV said that it had promptly sought to mitigate as far as possible any harm caused.

#### *Rule 7.1 – fairness*

In relation to the fairness and privacy provisions of the Broadcasting Code, ITV said that it contained basic Rules and "practices to be followed" and that failure to follow these practices will only constitute a breach when it results in unfairness in the programme or an unwarranted infringement of privacy. ITV said that it understood therefore that: the practices to be followed were not comprehensive; compliance with them was not necessarily sufficient to avoid a breach; and, failure to comply with them would not necessarily constitute a breach.

Given the highly unusual circumstances of the incident under investigation, ITV submitted that the last point made in relation to the practices to be followed above was particularly relevant in this instance.

In relation to the position of the Prime Minister, ITV did not consider that the Prime Minister was treated unfairly. It said that the Prime Minister's representative had been briefed in advance about the general subject matter of the interview in accordance with Practice 7.9 of the Broadcasting Code. While the specific question of internet speculation about senior political figures was not raised with his representative in advance, the reference to a "*potential paedophile ring leading all the way to Downing Street*" (which, of course, had previously been raised with the Prime Minister directly in Parliament), and speculation regarding the possible involvement of senior political figures, were matters that the Prime Minister might have reasonably expected to be referenced in a discussion about the child abuse scandal, and the various inquiries set up to investigate various aspects of it. In any event, as noted above, ITV said that the Prime Minister was, by virtue of his role in public life, well versed in dealing with challenging and at times uncomfortable questioning, and being put "on the spot" by interviewers.

In relation to the individuals whose names appeared on the list, ITV reiterated that:

- ITV did not intend to make any allegations against them (and did not believe that it, in fact, did so); and
- ITV did not intend to identify them (and did not believe that it, in fact, did so).

ITV said that it did not consider that any allegations were, in fact, made in the programme as broadcast against the individuals whose names appeared on the list. It said that Mr Schofield had referred to online speculation, but did not specify where such speculation was taking place online, or seek to endorse that speculation. It said that Mr Schofield did not, at any time, encourage viewers to search for such speculation.

Similarly, in relation to identifying the individuals on the list, ITV repeated that it did not consider that their names were legible to viewers during the programme as broadcast. If the editorial team had intended to identify any individual or make allegations against anyone, ITV would, in accordance with the Broadcasting Code and its own standard practices, have put the allegations to the individuals in advance to give them the opportunity to respond.

ITV said that while it accepted that the way in which the matter was handled in the programme as broadcast was misjudged, it did not consider that its failure to put any allegations to the individuals on the list prior to the interview was, of itself, a breach of the provisions in Section Seven (Fairness) of the Broadcasting Code.

ITV said that it took immediate remedial steps following the broadcast of the programme to apologise to viewers for the lapse in editorial judgement and commenced its own internal investigation. It also said that it initiated appropriate disciplinary proceedings against those involved, and had reviewed and strengthened its existing editorial and compliance procedures. ITV also responded promptly and appropriately to Lord McAlpine's subsequent libel complaint, and had paid a substantial six-figure sum to him by way of damages for the harm and distress caused to him as a result of the programme as broadcast.

In its conclusion, ITV said that it prided itself on its mature and responsible editorial and compliance culture, which generally has ensured a good compliance record across its massive broadcast output across a family of channels. As the UK's leading commercial public service broadcaster, ITV said that it was expected to meet the very highest of standards, and was committed to achieving those standards and ensuring compliance with the Broadcasting Code. Regrettably, its usual high standards of editorial decision-making did fall short in relation to this particular incident. However, ITV submitted that its decisive, timely and public actions following the broadcast of the programme demonstrated that it fully accepted its responsibilities to viewers and acknowledged the shortcomings in the way this particular issue was handled during the broadcast of the programme.

#### Response to Lord McAlpine's complaint

In response to the complaint of unjust or unfair treatment made on behalf of Lord McAlpine, ITV referred Ofcom to its previous submissions in relation to Ofcom's own investigation (see above).

In terms of further response to the letter of complaint, ITV said that it largely reiterated the terms of Lord McAlpine's libel claim, i.e. that the presenter of the programme presented the Prime Minister with "a list of rumoured paedophiles" which, although Lord McAlpine's name "could not be seen on the list", had led viewers to search on the internet for the names of these "rumoured paedophiles", and thereby caused people to read and further spread false and malicious rumours about Lord McAlpine.

ITV said that insofar as Ofcom has decided that this element of the complaint is also a complaint of unjust or unfair treatment as well as a libel complaint, Ofcom has seen the Statement in Open Court<sup>9</sup>, agreed between the parties, in which it was recognised that Mr Schofield had sought to paraphrase a question that had previously been raised in the House of Commons, that neither ITV nor Mr Schofield had intended to make any defamatory allegations concerning Lord McAlpine, and

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<sup>9</sup> <http://s3.documentcloud.org/documents/541198/itv-statement-in-open-court.pdf>.

that Mr Schofield's actions were not intended to encourage viewers to perform similar internet searches to those referred to by the presenter in the programme, by which means he had discovered the names on the list, that ITV accepted had been associated elsewhere with defamatory allegations of child sexual abuse.

ITV said that it was accepted in the letter of complaint that Lord McAlpine's name "could not be seen on the list", which indicated that the complainant concurred with ITV's previous submission to Ofcom, namely that his name was not in fact legible to viewers. The complaint also states that the programme "had no regard for the previous findings or evidence that already existed". ITV said that it was not clear exactly what previous findings or evidence this might refer to, and so it was unable to offer any further substantive response to this element of the complaint letter.

ITV said that the letter of complaint also stated that the actions of Mr Schofield "fuelled the fires further which resulted in the unfair treatment of Lord McAlpine". ITV took this to mean that the programme provoked further public speculation about Lord McAlpine, albeit that it did not make any explicit allegations about him, or name him in relation to the allegations which had already been made about him in the BBC's *Newsnight* programme a few days prior to the *This Morning* broadcast, or to any previously existing internet allegations. It should be noted that the complaint here appears to allude to the BBC *Newsnight* programme as having been responsible for making the most serious allegations about Lord McAlpine in a deliberate "expose" in relation to the north Wales child abuse scandal, and that by contrast the *This Morning* programme simply further "fuelled the fires" of speculation that had already been generated by the *Newsnight* programme.

Insofar as the programme may have had this wholly unintended effect, ITV said that at the time of the broadcast, Lord McAlpine had not yet issued his comprehensive rebuttal of the false *Newsnight* allegations. As stated in the agreed Statement in Open Court – "It was not until 9 November 2012 that the falsity of the allegations against Lord McAlpine was made known to the world at large". ITV noted that any harm caused to Lord McAlpine in this respect by the *This Morning* programme was extremely short lived, since the following day (i.e. 9 November 2012) the falsity of those allegations made elsewhere was made known to the world at large, once Lord McAlpine had made a detailed public statement, and once Mr Messham had made it clear that Lord McAlpine was not in fact the person who had abused him, as previously alleged on *Newsnight*.

ITV said that the harm to Lord McAlpine was created principally by the *Newsnight* programme, not the *This Morning* programme, which did not purport to be and would not have been understood by viewers to be an "expose" of guilt in relation to Lord McAlpine. This was clearly also acknowledged by the complainant's advisors publicly at the time of the libel settlement, and reflected in the respective quantum of damages agreed in relation to the two programmes (*Newsnight* £185,000, *This Morning* £125,000). As Lord McAlpine's legal representatives were reported as stating to the BBC, "We accepted the legal argument that the *Newsnight* programme had effectively set the pot - it was already boiling at that point...the Schofield stunt added fuel to the fire that was already there and we had to take that into account".<sup>10</sup>

ITV said that the letter of complaint then stated that Lord McAlpine was "not offered the opportunity to contribute or respond to any of the allegations". ITV said that the programme never intended to make any allegations about Lord McAlpine, or to identify him in relation to any allegations. For this reason, neither Mr Schofield nor

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<sup>10</sup> <http://www.bbc.co.uk/news/uk-20443186>.

the programme makers considered that there was any requirement to put any allegation to Lord McAlpine, and hence did not do so. Unfortunately, as ITV's submission in response to Ofcom's self-initiated investigation (summarised above) sets out in some detail, the idea of presenting the list of names in the first place was misconceived and this was included in the programme without taking compliance advice, contrary to ITV's usual editorial process. It was therefore simply not recognised that there was a risk of Lord McAlpine being identifiable to viewers in relation to those prior internet allegations, even though Lord McAlpine was not named and his name on the list was not visible to viewers.

ITV said that while the consequences of this misjudgement were obviously serious, in all the circumstances it did not consider that the failure to put allegations to Lord McAlpine prior to broadcast of the programme that were never intended to be ascribed to him, and that were not made about him in the programme itself (or about the other individuals named were on the list), could properly be considered as having led, of itself, to a breach of Section Seven (Fairness) of the Broadcasting Code.

### **Ofcom's Preliminary View – ITV's representations and Ofcom's response**

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme made on behalf of Lord McAlpine should be upheld. Ofcom provisionally concluded that Lord McAlpine's name had been not only visible on the list shown in the programme, but that his name was also legible to viewers. In these circumstances and given the context in which the list was presented in the programme, Ofcom took the view that its inclusion had resulted in significant unfairness to Lord McAlpine because it broadcast significant allegations which turned out to be wholly untrue, without adequate research and due diligence in checking the truth of them, and without offering the subject of the allegations the opportunity to respond. It also took the view that presentation of the list along with Mr Schofield's questioning of the Prime Minister clearly linked Lord McAlpine, who was named on the list, to a significant allegation of child abuse.

Ofcom also considered 473 complaints from viewers about the programme. It took the view that whilst the material was not, in itself, offensive, ITV had failed in its obligation to ensure that generally accepted standards were applied to the content of this particular edition of *This Morning* and had not provided adequate protection for members of the public from the inclusion of harmful material. Its Preliminary View was therefore that ITV was in breach of Rule 2.1 of the Broadcasting Code.

Lord McAlpine's legal representative made no representations on Ofcom's Preliminary View. ITV submitted representations on the Preliminary View that were directly relevant to the complaint and Ofcom's investigation.

### **Summary of the ITV's representations**

ITV said that while it accepted that the list was visible, it did not accept that the names on the list were legible. It said that Lord McAlpine was identifiable in the broadcast not by virtue of the list, but by virtue of the highly defamatory and false allegations made about him previously in the BBC's *Newsnight* programme, which were subsequently widely circulated on social media and online prior to the *This Morning* broadcast, and which were then alluded to in its broadcast. ITV also said that Lord McAlpine's legal representative had stated in the complaint that his client's "name could not be seen on the list". In these circumstances, ITV said it would be not be appropriate for Ofcom to reach a finding of fact that Lord McAlpine's name "was legible and would have been so to viewers", which was contrary to the accepted

position of both parties to the complaint, without any stated explanation, rationale or evidence presented to that effect.

ITV said that the Preliminary View stated as a fact that the programme broadcast significant allegations about Lord McAlpine, a finding that was not agreed to in those terms in the settlement between the parties to the libel settlement. ITV said that it was never the intention of Mr Schofield or ITV to make any allegations against Lord McAlpine, nor did they make any such allegations. ITV said that Lord McAlpine's legal representative stated at the time of the settlement that "we accepted the legal argument that *Newsnight* had effectively set the pot boiling and the Schofield stunt added fuel to the fire that was already there and we had to take that into account".

ITV considered that Ofcom was not right to say as a fact in the Preliminary View that the programme made allegations of child sex abuse against those on the list or that Mr Schofield's questioning of the Prime Minister suggested that those on the list had "a case to answer" or created a link that amounted to a significant allegation of child sex abuse. ITV said that Ofcom's conclusions appeared to be a finding of fact as to the particular defamatory meaning attaching to the programme, rather than a finding of unfairness in the programme.

#### *Ofcom's response to ITV's representations*

Ofcom considered ITV's representations in relation to the Preliminary View that Lord McAlpine's name was both visible and "legible and would have been so to viewers". Having carefully viewed the footage as broadcast again and reconsidered the material submitted by the parties during the course of its investigation, Ofcom agreed that whilst the list was briefly visible, Lord McAlpine's name was not legible. Ofcom agreed with ITV's submission that by virtue of the allegations made previously about Lord McAlpine in BBC's *Newsnight* programme, Lord McAlpine was identifiable in the broadcast. In Ofcom's opinion, this brief view of the list of names, when taken together with the previous widespread social media speculation about Lord McAlpine following the BBC *Newsnight* programme, led to Lord McAlpine being identifiable in the programme.

Ofcom noted ITV's representations that Ofcom's Preliminary View had found as fact that the programme had broadcast significant allegations about Lord McAlpine and that it made allegations of child sex abuse. However, while Ofcom recognised that ITV disagreed with Ofcom's conclusions on this point and that it understood that it was not the intention of the programme to make such allegations, Ofcom considered that the presentation of the list to the Prime Minister, the context of which involved speculation of a paedophile ring and a discussion about paedophilia, along with Mr Schofield's statement and questions relating to finding names on the internet caused a link to be established between Lord McAlpine and child sex abuse. This, Ofcom concluded amounted to a significant allegation of child sex abuse. For this reason, Ofcom maintained its original view and its decision below in relation to these points remained unchanged.

#### **Ofcom's Decision**

Following its careful consideration of ITV's representations on the Preliminary View, Ofcom made its final decision. In reaching its decision, Ofcom considered Rule 7.1 (fairness) and the complaint made on behalf of Lord McAlpine, and Rule 2.1 (harm/offence) of the Broadcasting Code separately.

### *Rule 7.1 – fairness*

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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services. Following the receipt of the complaint from RMPI on behalf of Lord McAlpine, Ofcom focussed on whether Lord McAlpine had been treated unfairly in the programme as broadcast.

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by ITV and RMPI in relation to the complaint made on behalf of Lord McAlpine. This material included a recording of the programme as broadcast, a transcript of it and written submissions from both parties. It also included the representations made by ITV on Ofcom's Preliminary View.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Broadcasting Code. Ofcom had regard to this Rule when reaching its decision on its investigation and the complaint of unjust or unfair treatment made on behalf of Lord McAlpine.

Ofcom also had regard to Practice 7.9 of the Broadcasting Code which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Ofcom also had regard to Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom examined the programme and in particular the exchange between the Prime Minister and Mr Schofield as the list of names written on a piece of card was handed to the Prime Minister. Ofcom noted that Mr Schofield had introduced the topic of child sex abuse allegations in relation to parliamentary figures by saying to the Prime Minister that:

*"a very serious topic that is in the news at the moment" is that "there could have been a paedophile ring amongst the elite of Great Britain that led all the way to Downing Street".*

The Prime Minister responded by issuing a caution about the dangers of speculation concerning such issues, saying:

*"I've heard all sorts of names being bandied around and what then tends to happen is of course everyone sits round and speculates about people...some of whom are alive, some of whom are dead".*

At this point in the interview, Mr Schofield said:

*“It takes a momentary, cursory glance at the internet, it took me about three minutes last night to continually to find a list of the same names. I have those names there, those are the names on a piece of paper, will you be speaking to these people?”*

Ofcom noted that Mr Schofield handed the Prime Minister a card on which was written a list of names of individuals about whom such speculation was taking place “on the internet”. The Prime Minister responded by cautioning him about the dangers of speculation and warned that *“there is a danger that if we are not careful that this could turn in to a sort of, a sort of witch hunt, particularly against people who are gay”*. Ofcom noted that the card was not passed to the Prime Minister face down and as the card was passed to the Prime Minister, the list of names appeared, albeit briefly, in shot.

Ofcom noted that ITV did not dispute that Mr Schofield passed over a card on which was written a list of names and that amongst those names listed was Lord McAlpine’s name.

Ofcom next considered whether Lord McAlpine’s name was not only visible, but also legible to viewers and, if so, whether the context in which the names were revealed amounted to a significant allegation.

Ofcom noted that ITV said that the list of names had been partially visible for around half a second. It said that this was simply the result of a split second miscalculation and was not a deliberate act seeking to identify the names to the public. ITV said that having studied the footage “repeatedly and in detail”, it accepted that the names were briefly visible in the programme. However, ITV did not accept that the names would have been legible to viewers watching the programme as broadcast. Given the brevity and lack of clarity of the moving shot in which the list was visible, ITV disagreed that Lord McAlpine’s name could be seen.

Ofcom examined the relevant part of the programme very carefully in relation to Lord McAlpine, and noted that the card passed by Mr Schofield to the Prime Minister had been passed face up. Ofcom noted that Lord McAlpine’s solicitors stated in their letter of complaint that in their view, Lord McAlpine’s name “could not be seen on the list”. From watching the footage very carefully, Ofcom agreed with ITV and Lord McAlpine’s solicitors that while the list of names was briefly visible, Lord McAlpine’s name was not legible. However, Ofcom considered that this brief view of the list, when taken together with the widespread speculation about Lord McAlpine following the allegations in the BBC *Newsnight* programme, led to Lord McAlpine being identifiable in the programme. In such circumstances, Ofcom’s view was that the broadcast of the list had the potential to cause very serious and damaging reputational consequences for Lord McAlpine.

Having concluded that Lord McAlpine’s name was identifiable to viewers from the footage broadcast in the programme, Ofcom went on to consider whether the inclusion of his name on the list and the context in which it was used in the programme amounted to a significant allegation against him.

Again, Ofcom noted that ITV stated in its response that it did not consider that the ordinary, reasonable viewer would have considered the programme to be alleging that the individuals on the list were guilty of paedophilia or child sex abuse. It said that Mr Schofield had certainly not suggested that the list was a list of paedophiles or

even paedophile suspects, but that his intention had only been to refer the Prime Minister to the fact that serious allegations reportedly leading “*all the way to Downing Street*” were being made in relation to individuals that had been widely named on the internet. Ofcom noted that ITV said that taking the interview as a whole (including the Prime Minister’s response), reasonable viewers would have understood the programme not to be making allegations of paedophilia against the individuals on the list. It further noted that ITV said that Mr Schofield had referred to online speculation, but had not specified where such speculation was taking place online, nor had sought to endorse that speculation or, encourage viewers to search for such speculation.

However, having carefully examined the footage as broadcast and considered the transcript of the relevant part of the programme, Ofcom was not persuaded by ITV’s submission that the programme as broadcast did not make allegations of child abuse against those named on the list. Ofcom understood that it was not the intention of Mr Schofield or the programme’s editorial team to allege that those named on the list were engaged in child sex abuse and it noted that Mr Schofield had not specified where such speculation was taking place online, nor had sought to endorse that speculation or, encourage viewers to search for such speculation.

However, Ofcom took the view that the presentation of the list to the Prime Minister during a television interview, the context of which involved speculation that a paedophile ring “*led all the way to Downing Street*” and a discussion about allegations of paedophilia, along with the statement and questions made by Mr Schofield relating to finding the names on the internet caused, inevitably, a link between Lord McAlpine and allegations of child sex abuse. Ofcom further noted that Mr Schofield asked the Prime Minister “*will you be speaking to these people*”, clearly suggesting that Lord McAlpine who was on the list had a case to answer. Ofcom therefore considered that this link amounted to the broadcast of a significant allegation of child sex abuse against Lord McAlpine. Ofcom recognised that Lord McAlpine had already been identified, wrongly, as a child sex abuser through speculation online following the earlier BBC *Newsnight* programme. However, it considered that the appearance of his name on Mr Schofield’s list fuelled further the speculation about him that he was implicated in child sex abuse.

Given Ofcom’s conclusion that Lord McAlpine was identifiable in the broadcast, and given the context in which his name was included on the list (i.e. in relation to an allegation of child sex abuse), Ofcom considered that the inclusion of the list in the programme amounted to a significant allegation of child sex abuse against Lord McAlpine and that it had the potential to be extremely damaging to him.

As it became clear subsequently, the allegations of child sex abuse against Lord McAlpine were completely false. ITV said that the research in relation to the list of names consisted of a two hour internet search by Mr Schofield, and “further research by the news desk” including a phone call to a journalistic contact for the fifth name. Ofcom reviewed the material provided by ITV as evidence of Mr Schofield’s research, which consisted of references in Hansard<sup>11</sup>, unidentified newspaper reports, and extracts from unidentified blogs and tweets. On this point, Ofcom noted that Mr Schofield and ITV did not intend to broadcast a specific allegation against Lord McAlpine. However, such an allegation was broadcast and given this, Ofcom considered that the research undertaken by Mr Schofield and the news desk team had been inadequate to ensure that material facts were not presented in a way which

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<sup>11</sup> **Hansard** is the official, edited verbatim report of proceedings of both the House of Commons and the House of Lords.

was unfair to an individual. Ofcom noted that ITV accepted that “had such an allegation been intended to be made, the team would have understood as a matter of basic journalistic good practice that such allegations were serious and could only be made on the basis of firm evidence rather than internet speculation”.

Therefore, having considered all the material provided to Ofcom in its investigation, Ofcom considered that, contrary to Practice 7.9 of the Broadcasting Code, the programme makers had failed to ensure that material facts were not presented in a way which was unfair to Lord McAlpine.

Having concluded that the programme had alleged that Lord McAlpine was a paedophile, Ofcom considered whether under Practice 7.11 of the Broadcasting Code, Lord McAlpine should have been given an appropriate and timely opportunity to respond.

As Ofcom has found that the programme, albeit unintentionally broadcast significant allegations against Lord McAlpine, then, in Ofcom’s view, Lord McAlpine should have been given an appropriate and timely opportunity to respond to those allegations. In the event, Lord McAlpine was not given any opportunity to respond in advance of the programme. Again, Ofcom noted that ITV accepted that had such an allegation been intended, in accordance with Practice 7.11 of the Broadcasting Code (as set out above), it would have been put to Lord McAlpine in advance of broadcast.

Taking all the factors set out above, Ofcom concluded that the programme broadcast significant allegations, which turned out to be wholly untrue, about Lord McAlpine, without adequate research, and without offering him the opportunity to respond. The programme as broadcast therefore resulted in significant unfairness to Lord McAlpine. There is no doubt that allegations of child sex abuse are extremely serious, with potentially very serious consequences for those accused. In this respect, Ofcom noted that ITV accepted responsibility for the harm caused to Lord McAlpine and had stated in court that “[ITV] unreservedly apologise to [Lord McAlpine] for the injury to his reputation and good name and for the hurt and distress caused by the broadcast”. ITV had also agreed to pay Lord McAlpine a substantial sum in damages and his legal costs as a result of the programme.

Therefore, for the reasons given above, Ofcom concluded that the programme resulted in unfairness to Lord McAlpine and that ITV failed in its requirement under the Broadcasting Code to avoid unfair treatment of individuals.

Ofcom concluded that ITV was in breach of Rule 7.1 of the Broadcasting Code.

*Rule 2.1 – harmful and/or offensive material*

Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards are applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.” This objective is reflected in Section Two (Harm and Offence) of the Broadcasting Code. Rule 2.1 is specifically concerned with ensuring that broadcasters provide adequate protection to viewers from harmful and/or offensive broadcast material.

In assessing whether there was a breach of Rule 2.1, Ofcom had to consider first whether the material as broadcast was potentially harmful and/or offensive.

*Ofcom's consideration of the main themes raised in the 473 complaints made by viewers who said that they were offended by the programme.*

- Some viewers were offended that the Prime Minister was “ambushed” by Mr Schofield.

Ofcom noted from ITV's statement in response that the programme makers had discussed the topics to be raised in the interview with the Prime Minister's advisor prior to the interview taking place. It noted too from the broadcast interview itself that the Prime Minister seemed prepared when responding to the allegations put to him by Mr Schofield (which included allegations of child sex abuse amongst senior political figures).

Ofcom, considered it likely that the majority of viewers would have expected the Prime Minister to have been robustly questioned on the topics raised by Mr Schofield and it took into account that the Prime Minister was very experienced in dealing with challenging and often difficult questions being put to him by interviewers. Furthermore, Ofcom considered that the Prime Minister had been able to answer the questions asked of him in the interview and that he had responded to the presentation of the list in a forthright manner and with a warning to the presenter of the danger of speculation.

For this reason, Ofcom took the view that it was very unlikely that the majority of viewers would have considered the presentation of the list to the Prime Minister, in itself and in the context of a live interview, as being offensive and it took the view that there was no issue under its Broadcasting Code to warrant further investigation.

- Some viewers were offended that: they could momentarily see at least one of the names on the list; Mr Schofield had no substantive evidence to link paedophilia with the names on the list, having obtained them from the internet; and, Mr Schofield's handing the list of names to the Prime Minister was a “sensationalist” act.

In considering the themes identified from the complaints that related to the names on the list being visible, that there was no substantive evidential link between the names on the list and paedophilia, and that it was a sensational act, Ofcom considered that it had already determined (in the decision “Rule 7.1” section above) that whilst Lord McAlpine's name was not legible, the programme led to Lord McAlpine being identifiable to viewers and that given the context in which it was broadcast, i.e. in connection with allegations of child sex abuse, this had the potential to cause very serious and damaging reputational consequences for Lord McAlpine. While this gave rise to an issue of unjust or unfair treatment to Lord McAlpine, Ofcom did not consider that the presentation of the list amounted to the material being offensive to viewers.

It was not Ofcom's role to determine whether or not the handing of the list to the Prime Minister was a “sensationalist” act. Rather, Ofcom's role was to consider whether the presentation of the list as broadcast in the programme was offensive. As already mentioned above, Ofcom considered that the Prime Minister had responded to the presentation of the list in a forthright manner and with a warning to the presenter of the danger of speculation. Ofcom took the view that it was very unlikely that the majority of viewers would have considered the presentation of the list to the Prime Minister, in itself and in the context of a live interview, as being offensive.

For the reasons given above, in relation to this group of themes from the viewer complaints received about the programme, Ofcom found no issue under its Broadcasting Code to warrant further investigation.

- Some viewers were offended that: the Prime Minister appeared to link homosexuality with paedophilia; the item linked homosexuality with paedophilia; and, the item compromised the personal safety of individuals and homosexual people in general by indirectly encouraging vigilante attacks.

In considering the themes identified from the complaints that related to the linking of paedophilia to homosexuality and the compromise of the personal safety of individuals as a result, Ofcom noted that the only reference in the relevant part of the programme to homosexuality was made by the Prime Minister in response to being handed the list of names by Mr Schofield. In particular, the Prime Minister stated:

*“Look, look, I think Phillip, this is really important, right, because there is a real danger, if we aren’t careful that this could turn out to be a sort of, sort of witch hunt, particularly against those people who are gay...”*

In Ofcom’s view, having carefully watched the interview and read the transcript of it, it was clear that the only reference to homosexuality made in the context of paedophilia was made by the Prime Minister and had not been an issue raised by the programme’s presenters.

It appeared to Ofcom that the Prime Minister was raising a cautionary note about the dangers of speculation, especially speculation taken from sources on the internet, and a warning about how such speculation could result in the victimisation of a particular group in society. Ofcom recognised the concerns of those who complained about an alleged suggestion of a link between paedophilia and homosexuality. However, Ofcom took the view that it was unlikely that the majority of viewers would have taken the Prime Minister’s remark to intentionally link paedophilia to homosexuality. Ofcom also took the view that, given the context in which Ofcom considered that the Prime Minister’s comments were made, it was extremely unlikely that his comments could reasonably be seen as placing the personal safety of “individuals and homosexual people” in jeopardy of vigilantism.

In relation to this group of viewer complaints, Ofcom found no issue under its Broadcasting Code to warrant considering these matters any further.

While Ofcom did not consider that the main themes raised in the 473 complaints to be offensive, Ofcom did consider whether the material as broadcast was potentially harmful.

Ofcom noted the steps set out in ITV’s response above that the programme makers had taken in preparation for the programme and the interview with the Prime Minister. In particular, it noted the chain of events and decisions that took place in relation to the list of names that would be presented to the Prime Minister by Mr Schofield during that interview. Despite all this preparation, the passing of the list to the Prime Minister resulted in the identification of Lord McAlpine in connection with significant allegations of child abuse. Ofcom noted from ITV’s submission that it “accepts that there was a potential for harm in relation to the specific individuals on the list, as a result of the way in which the matter was dealt with in the broadcast”. While Ofcom accepted ITV’s position that the broadcast of the list was inadvertent

and unintentional, Ofcom considered that the potential harm to anyone who was potentially identifiable on the list was significant, and that the fact that such an error of judgement took place in relation to such serious and significant allegation was indicative of the failure of adequate preparation and compliance of the programme in general to ensure that it did not breach the requirements of the Broadcasting Code.

For this reason, Ofcom took the view that ITV had failed in its obligation to ensure that generally accepted standards were applied to the content of this particular edition of *This Morning* and had not provided adequate protection for members of the public from the inclusion of harmful material.

Ofcom concluded therefore that the programme was in breach of Rule 2.1 of the Broadcasting Code.

**Accordingly, Ofcom has upheld the complaint of unjust or unfair treatment in the programme as broadcast made on behalf of Lord McAlpine and has found ITV in breach of Rules 2.1 and 7.1 of the Broadcasting Code.**

## Upheld

### **Complaint by The Rt Hon the Lord McAlpine of West Green** *Newsnight, BBC2, 2 November 2012*

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#### **Summary**

Ofcom has upheld RMPI LLP's ("RMPI") complaint made on behalf of The Rt Hon the Lord McAlpine of West Green ("Lord McAlpine")<sup>1</sup> that he was treated unjustly and unfairly in the programme as broadcast. Ofcom therefore found the BBC in breach of Rule 7.1 of Ofcom's Broadcasting Code.

The programme included a report about a *Newsnight* investigation into sexual abuse of boys at the Bryn Esytn children's home in Wales in the 1970s and 1980s. The report stated that two victims of the abuse alleged that *"they suffered sexual abuse at the hands of a leading Conservative politician from the Thatcher years"*. The report also included an interview with one of the victims, Mr Steve Messham, who gave details of that alleged abuse. The report did not name Lord McAlpine. Towards the end of the report, the presenter stated that *"the evidence that we've heard, that we have gathered over the last twenty years remains the same. For now there is simply not enough to name names"*.

On the day of the broadcast of the report, before its transmission, the report had been widely discussed on the internet and Lord McAlpine's name was linked to it. After the broadcast of the programme, Lord McAlpine was widely named as the subject of the allegations made in the programme. The broadcast of these allegations in the context of the widespread internet speculation led to Lord McAlpine being incorrectly identified as the subject of child sex abuse allegations.

Ofcom considered therefore that the programme as broadcast resulted in unfairness to Lord McAlpine, and that the BBC failed in its requirement under the Broadcasting Code to avoid unjust or unfair treatment of individuals in programmes.

#### **Introduction**

On 2 November 2012, the BBC broadcast an edition of its evening news programme, *Newsnight*. The programme included a report about a *Newsnight* investigation into sexual abuse of boys at the Bryn Esytn children's home in Wrexham, north Wales in the 1970s and 1980s. The report was introduced as being the result of a *Newsnight* investigation and it reported the allegations of two victims who alleged that *"they suffered sexual abuse at the hands of a leading Conservative politician from the Thatcher years"*. The report also included an interview with one of the victims, Mr Steve Messham, who gave details of that alleged abuse.

The report did not name Lord McAlpine, but the programme makers intended him to be the subject of the allegations made in the programme. Towards the end of the report, the presenter stated that *"the evidence that we've heard, that we have gathered over the last twenty years remains the same. For now there is simply not enough to name names"*. However, throughout the day of 2 November 2012, the

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<sup>1</sup> Lord McAlpine is a former Deputy Chairman of the Conservative Party and a former Party Treasurer. He was a close aide to Margaret Thatcher during her time as Prime Minister. As a result of his positions and his work with the Conservative Party, he had a significant political profile during the late 1970s and the 1980s.

*Newsnight* report to be aired that evening had been widely discussed on the internet. Furthermore, Lord McAlpine's name had been linked to it. After the broadcast of the *Newsnight* report, Lord McAlpine was widely identified as the subject of the allegations made in the programme. The broadcast of these allegations led to Lord McAlpine being incorrectly identified as the subject of child sex abuse allegations. A week later, on 8 November 2012, Lord McAlpine issued a statement denying his involvement with the claims made by Mr Messham. Later the same day, Mr Messham issued a statement that "the individual concerned" was not the man who had abused him and he apologised to Lord McAlpine and his family. That evening, *Newsnight* broadcast an unreserved apology for having broadcast the earlier report on 2 November 2012.

The BBC accepted that the allegations made in the programme were utterly baseless and should never have been made. Prior to the broadcast of the programme, the programme makers had not contacted Lord McAlpine. If they had done so, he would have been able to give them the correct information, namely that he had never been to the children's home in question. Lord McAlpine would also have been able to remind them that similar allegations had been considered and authoritatively rejected by the Waterhouse Inquiry, as recorded in its final report<sup>2</sup>. Furthermore, it was only after the *Newsnight* programme was broadcast that anyone showed Mr Messham a photograph of Lord McAlpine. Having seen it, Mr Messham immediately withdrew his allegations and apologised to Lord McAlpine.

The allegations caused Lord McAlpine great distress and embarrassment. He took steps to vindicate his reputation and he prepared to issue libel proceedings against the BBC. The BBC apologised to Lord McAlpine publicly and agreed to pay him substantial damages and his costs. The BBC accepted that the allegations were wholly untrue and it withdrew them unreservedly in an agreed statement in open court.

### **Framework for the investigation**

Ofcom has general duties under section 3 of the Communications Act 2003 ("the 2003 Act") to (among other things) secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in television and radio services (Section 3(2)(e) of the 2003 Act); and in addition, to all other persons from both (i) unfair treatment in programmes included in such services; and (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services (Section 3(2)(f) of the 2003 Act)<sup>3</sup>.

Soon after broadcast of the programme, Ofcom decided to investigate the programme in relation to "fairness". Normally, Ofcom requires a complaint from "the person affected" before investigating any fairness issues. However, Ofcom's

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<sup>2</sup> The Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974 (known as "the Waterhouse Inquiry" or the "Waterhouse Tribunal"), which began in 1997, investigated allegations of child sexual and physical abuse at a number of care homes in Wales. Its final report, "Lost in Care", was published in 2000.

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

Procedures for the consideration and adjudication of Fairness & Privacy complaints<sup>4</sup> (“the Procedures”), published on 1 June 2011, state at paragraph 1.5 that:

*“in exceptional circumstances, where Ofcom considers it necessary in order to fulfil its general duty (under section 3(2)(f) of the 2003 Act) to secure the application of standards that provide adequate protection to members of the public (and all other persons) from unfair treatment in programmes and unwarranted infringements of privacy, Ofcom may consider fairness or privacy issues in the absence of a complaint from “the person affected”...In those exceptional circumstances, Ofcom would set out in advance the procedures that it intends to follow and allow any relevant parties to respond accordingly. The procedures would be similar to these but adapted as appropriate to ensure that they are fair in the particular circumstances”.*

In this case, Ofcom considered that “exceptional circumstances” existed for it to consider the fairness implications of the programme’s content which led to Lord McAlpine being wrongly and widely identified as the subject of very serious child sex abuse allegations potentially with very serious consequences for him. The fact that such serious allegations appear to have been broadcast without contacting Lord McAlpine and without appropriate journalist checks being taken, was a matter of serious concern to Ofcom.

In any event, a short while later, on 23 November 2012 Ofcom received a complaint of unjust or unfair treatment made by RMPI on behalf of Lord McAlpine as “the person affected”. Ofcom therefore proceeded to consider Lord McAlpine’s complaint about the broadcast under Section Seven (Fairness) of the Broadcasting Code, as set out below<sup>5</sup>.

The ‘Standards’ in respect to unjust or unfair treatment are set out in Section Seven (Fairness) of the Broadcasting Code<sup>6</sup>. This section sets out a Principle and a Rule (Rule 7.1) to be observed by broadcasters. The Principle is “to ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes”. Rule 7.1 states that:

“Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes”.

Section Seven (Fairness) of the Broadcasting Code sets out a series of “practices to be followed” by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes. Failure to follow the practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

<sup>5</sup> Ofcom aims to conclude fairness and privacy investigations as soon as possible. The majority are concluded within 90 working days. However, certain cases can take significantly longer, especially if they are complex, raise difficult issues, and significant representations are received from the broadcaster or the complainant that require careful consideration (including representations on legal issues) as was the case here.

<sup>6</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/fairness/>.

## Events prior to broadcast of the programme

Before examining the content of the programme itself, Ofcom noted the background and events leading up to the broadcast of the report. The following summary of those events is taken from the BBC's statement in response to Ofcom's investigation.

The BBC said that the idea for a report into allegations of institutional failures in relation to historic cases of child abuse in Wales was brought to the then acting Editor of *Newsnight* on 28 October 2012 by Mr Stickler, who was a freelance reporter who at the time worked with the the Bureau of Investigative Journalism ("the BIJ")<sup>7</sup>. The BBC said that Mr Stickler had been reporting on child abuse over many years and was, in part, spurred to reopen this story which he had previously covered for the BBC, by references made by Mr Watson MP during Prime Minister's Questions concerning a potential cover-up of a paedophile ring linked to Parliament. The BBC said that the intention of the report was to examine concerns that the Waterhouse Inquiry had failed to address allegations concerning a wider paedophile ring in north Wales, and that, according to a victim (i.e. Mr Messham), involved a senior Conservative political figure.

The report, which was broadcast just five days later on 2 November 2012, led on the allegations about the unnamed senior Conservative politician. The BBC said that considerable public awareness of the report had built up during that day, including that the report centred on a political figure. This was due in large part to online social media activity prompted after the editor of the BIJ, Mr Iain Overton, had "tweeted" that morning that *Newsnight* hoped to broadcast a report that night about a senior political figure being a paedophile. Although Mr Overton's tweet did not name Lord McAlpine, it attracted Twitter responses which did link Lord McAlpine's name to the allegations (amongst others). Mr Overton had told Channel 4's political editor, Mr Michael Crick, about the story in a conversation the previous night, and Mr Crick had himself "tweeted" that the political figure concerned denied the story. This was followed up with an item on *Channel 4 News* a few hours before *Newsnight* broadcast its report. The BBC said that later in the evening, Mr Crick had also "tweeted" that the senior political figure had told him that he still had not heard from the BBC. The BBC said that in the context of *Newsnight's* editor, Mr Peter Rippon, having stepped aside while his decision to drop the story about Jimmy Savile and child abuse was investigated, there were suggestions on Twitter that the *Newsnight* programme would "bottle it up again" by not naming the political figure.

## The Programme as broadcast

The edition of *Newsnight* broadcast on 2 November 2012 included an item which reported calls made by victims of historic child sex abuse for a new investigation into "*historical allegations of child sexual abuse linked to the north Wales child abuse scandal of the seventies and eighties*". The studio presenter, Mr Gavin Esler said:

*"A Newsnight investigation into the abuse of boys from children's homes in Wales can reveal that two victims say they suffered sexual abuse at the hands of a leading Conservative politician from the Thatcher years. The claims arise from a child abuse scandal in north Wales, which led to a lengthy [I]nquiry in the year*

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<sup>7</sup> According to its website, the Bureau of Investigative Journalism ("the BIJ") is an independent not-for-profit organisation based at City University in London. Its journalists "bolster original news by producing high-quality investigations for press and broadcast media with the aim of educating the public and the media on both the realities of today's world and the value of honest reporting".

*2000, known as the Waterhouse Tribunal. One of the alleged victims has now called for a meeting with the Prime Minister, and for a new investigation. Angus Stickler, from the Bureau of Investigative Journalism who's been covering what went on at these homes for more than a decade for the BBC, has this report".*

Mr Stickler introduced the report by explaining that during the 1970s and 1980s, children's homes in north Wales had been the scene of *"the most deprived child abuse imaginable. Vulnerable children in care, raped by the very people paid to look after them"*. The report then included interview footage of Mr Steve Messham who described the abuse he and others suffered while they were at the Bryn Esytyn children's home. Mr Stickler stated in the report that:

*"... There were allegations of widespread physical and sexual abuse, not just at the hands of the staff who worked here, but of children lent out to others. There are allegations of a paedophile ring involving people from all walks of life; businessmen, a market trader, a senior public figure. This was a paedophile ring that stretched beyond the Welsh borders to Chester, the South Coast, London and beyond"*.

The report also referred to the Waterhouse Inquiry which had mentioned *"the existence of a shadowy figure of high public standing"*, but that there was no *"substantial evidence to support the allegations"*.

Footage of Mr Tom Watson MP speaking during Prime Minister's Questions was then shown in which he said that *"the evidence that had been used to convict paedophile Peter Righton if it still exists, contains clear intelligence of a widespread paedophile ring"*. Immediately following this, Mr Stickler, in commentary, stated:

*"In our original investigation in the 1990s, Peter Righton was linked with a North Wales Children's home, and via that, to a prominent Tory politician at the time. We had interviews with alleged victims. Newsnight and the Bureau of Investigative Journalism went back to Steve Messham this week. He stands by what he told me then"*.

Further interview footage of Mr Messham was shown in which he described the abuse he suffered. Mr Messham told Mr Stickler in interview that when he went to the police to report the abuse, he was *"pinned up against the wall"* and called a liar and that the police refused to say who was named in the statements he made. Mr Stickler also asked Mr Messham to confirm whether he made these statements against *"this senior public figure"* to which he confirmed that he had.

The programme went on to include an excerpt of an interview broadcast on BBC Radio 5 Live in 2000 which featured an anonymous victim who had suffered child abuse in north Wales. An actor's voice described the abuse that the victim claimed he had suffered and the narrator explained that the victim had approached the police with *"faxed photographs of the senior Tory politician"*. However, the victim explained that no further action was taken by the police because they deemed the faxed photographs to be unreliable.

Mr Messham was then shown again in interview and stated that although there was a tribunal in the late 1990s (i.e. the Waterhouse Inquiry), victims were not allowed to name *"thirty per cent of the abusers"*. The anonymous victim, according to the programme, also corroborated Mr Messham's statement and had said that when he made a statement to the police (about being abused by the *"senior Tory politician"*), the police had *"crossed it out and said there was no proof"*.

The programme then included interview footage of Mr Richard Scorer, a solicitor who represented 30 victims at the Waterhouse Inquiry. Mr Scorer explained that the terms of reference of the Inquiry had made it difficult to pursue certain allegations and that at the time *“the idea that senior public figures, politicians, celebrities could be involved in child abuse was seen as a bit far-fetched”*. Mr Stickler asked Mr Scorer whether one of his clients had named a *“senior public figure”*. Mr Scorer replied that while these allegations were alluded to, they were not pursued because they did not fall within the terms of reference which applied to the Inquiry. Mr Stickler then said:

*“The evidence that we’ve heard, that we’ve gathered over the last 20 years, remains the same. For now, there’s simply not enough to name names. But, what has changed is the attitude, the public attitude, towards child abuse”*.

The report concluded with Mr Messham stating that he wished to have a meeting with the Prime Minister, The Rt Hon Mr David Cameron MP, and he called for a full investigation.

### **Action taken by the BBC following the broadcast of the programme**

In the days that followed the broadcast of the *Newsnight* report, there was considerable online social media speculation about the identity of the politician. On 9 November 2012, The Guardian newspaper published an article in which it named Lord McAlpine as being the victim of mistaken identity and, on the same day, Lord McAlpine issued a denial of the allegations. Later that day, Mr Messham also apologised to Lord McAlpine in an interview recorded earlier and said that Lord McAlpine was not the man who had abused him.

Following the broadcast of the programme, the BBC initiated a number of remedial actions and internal investigations into the circumstances surrounding the editorial checks and decisions taken in the preparation and broadcast of the *Newsnight* report. Some of the findings of these investigations are referred to within this Adjudication and so are listed here for ease of reference.

#### 9 November 2012 – Newsnight apology

On 9 November 2012, *Newsnight* broadcast an on-air apology to Lord McAlpine for the report broadcast on 2 November 2012. The apology stated:

*“On 2 November, Newsnight broadcast a report that looked into the criticism of the North Wales Abuse Tribunal [i.e. the Waterhouse Inquiry]. The report included an interview with Steve Messham who said that a senior political figure of the time had abused him. We broadcast Mr Messham’s claim but did not identify the individual concerned. Mr Messham has tonight made a statement that makes clear he wrongly identified his abuser and has apologised. We also apologise unreservedly for having broadcast this report”*.

Also on 9 November 2012, the then Director General of the BBC, Mr George Entwistle, commissioned Mr Ken MacQuarrie, the BBC’s Director of Scotland, to investigate the circumstances and editorial failings surrounding the report.

#### 11 November 2012 – Director General of the BBC resigned

On 11 November 2012, Mr George Entwistle resigned as the Director General of the BBC “in light of the unacceptable journalistic standards of the *Newsnight* film

broadcast on Friday 2 November 2012<sup>8</sup>.

12 November 2012 – Summary of findings (the MacQuarrie Report)<sup>9</sup>

On 12 November 2012, the BBC released a summary of the findings of Mr MacQuarrie which stated that during the editorial decision-making process, some basic journalistic checks had not been completed and that there was ambiguity around who [in the editorial team] was taking the ultimate responsibility for the *Newsnight* report...<sup>9</sup>.

The full report (see below) was withheld from publication until related BBC internal disciplinary proceedings had been concluded.

15 November 2012 – BBC settle with Lord McAlpine

On 15 November 2012, the BBC and Lord McAlpine reached a negotiated settlement in relation to Lord McAlpine's libel claim about the broadcast of the *Newsnight* report. The BBC damages to be paid to Lord McAlpine totalled £185,000, plus his legal costs<sup>10</sup>.

14 December 2012 – The BBC Executive Report ("the Executive Report")<sup>11</sup>

On 4 December 2012, the Editorial Standards Committee of the BBC Trust ("the BBC Trustees") wrote to the Chair of the Editorial Standards Board of the BBC Executive and requested it to respond to a series of questions relating to the background to the commissioning of the *Newsnight* report and the editorial decisions made prior to broadcast.

The BBC Executive provided the BBC Trustees with its report on 14 December 2012. The stated aim of this report was to "give more editorial content to the MacQuarrie Report...focusing in particular on the failures of editorial standards". In summary, the report concluded that: basic journalistic checks on the story were not applied; the BBC made inadequate attempts to seek validation for the story beyond what the reporter delivered; the management of the story was not carried out adequately; and, the report combined with social media made jigsaw identification possible and which led to the naming of Lord McAlpine in connection with the "most damaging of accusations".

18 December 2012 – Finding of the BBC Trust Editorial Standards Committee<sup>12</sup>

On 14 December 2012, the BBC Trust considered the Executive Report and published its own findings into its investigation into the *Newsnight* programme on 18 December 2012. In summary, the BBC Trust concluded that: there was a serious breach of Editorial Guidelines relating to accuracy; the broadcast allegations were

<sup>8</sup> <http://www.bbc.co.uk/news/uk-20284124>.

<sup>9</sup> <http://www.bbc.co.uk/news/uk-20306096>.

<sup>10</sup> <http://www.bbc.co.uk/news/uk-20348978>.

<sup>11</sup>

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2012/newsnight\\_2nov.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/newsnight_2nov.pdf).

<sup>12</sup> See footnote 10 above (appendix 2).

not based on sound evidence and had not been thoroughly tested; as a result of inaccuracy, the audience had been misled; the combination of the *Newsnight* report and online speculation had led to Lord McAlpine being incorrectly identified as Mr Messham's abuser. The BBC Trustees also said that "this was a grave breach which had been costly to all concerned" and apologised to Lord McAlpine and to the public for the serious failure of BBC journalism. The BBC Trust finding was accompanied by the full text of the MacQuarrie Report (and the Executive Report).

#### 18 December 2012 – Statement made in open court

On 18 December 2012, a statement by the BBC was read in open court by the legal representatives of the BBC and Lord McAlpine which set out the allegations that the *Newsnight* programme presented and the distress, embarrassment and damage to reputation that the allegations had on Lord McAlpine. The BBC accepted the "great damage and distress" the broadcast had caused Lord McAlpine and it apologised to him, saying that it wished to express its genuine remorse for the harm it had caused him.

#### **Ofcom's investigation and Lord McAlpine's complaint**

Ofcom wrote to the BBC on 14 November 2012 and expressed its concern about the potential issues raised by the programme that it believed warranted urgent investigation in relation to the application of generally accepted standards by the BBC and the application of standards to prevent unfair treatment. In its letter, Ofcom requested the BBC to submit its formal representations on how its actions maintained appropriate standards and complied with Rule 7.1 (and the relevant "Practices to be followed") as set out in the Broadcasting Code.

On 23 November 2012, Ofcom received a Fairness and Privacy complaint made by RMPI, Lord McAlpine's legal representatives, on behalf of Lord McAlpine about the *Newsnight* programme broadcast on 2 November 2012. In relation to the complaint, Ofcom considered that Lord McAlpine satisfied the statutory definition of "the person affected" by the programme as described above.

RMPI complained that Lord McAlpine was treated unjustly or unfairly in the programme as broadcast. RMPI said that the programme misled its audience, and subsequently others, into believing that a "senior Tory" (i.e. Lord McAlpine) was a paedophile and serial abuser of Mr Messham, which has subsequently been proved to be untrue.

RMPI said that although Lord McAlpine was unnamed, viewers were able to easily determine the identity of the politician with a quick search on the internet, because of the heavy trailing prior to the *Newsnight* broadcast. RMPI added that the programme omitted many key facts and disregarded the findings of the Waterhouse Inquiry, resulting in the unfair treatment of Lord McAlpine. In addition, Lord McAlpine was not offered an opportunity to contribute to or respond to any of the allegations that were made.

#### **The BBC's response to Ofcom's investigation**

##### *Newsnight and accuracy issues prior to broadcast*

The BBC said that Mr Stickler was known to *Newsnight's* acting Editor as an award-winning journalist and someone with whom *Newsnight* and she personally had worked with successfully over time. It said that Mr Stickler had explained to the acting

Editor that Mr Messham, the same victim he had interviewed for a BBC Radio 5 Live report in 2000 and a BBC Radio 4 report in 2004, was willing to go on camera to talk about a potential cover-up at the Waterhouse Inquiry. Mr Messham had wanted to raise issues about a wider paedophile ring, which, according to him, included a senior Conservative figure who had abused him. The BBC said that there was also the hope of finding and interviewing the other anonymous victim who had featured in the previous BBC Radio 5 Live report. The BBC said that before meeting Mr Stickler, the acting Editor did some background research on the internet. It said that she read the terms of reference of the Waterhouse Inquiry and the conclusions of the relevant chapter of its report. She also conducted an internet search through the “Google” search engine of Mr Messham’s name and found that he had been acquitted of embezzling money from a victim’s fund. The BBC said that on the morning of 29 October 2012, the acting Editor had met with Mr Stickler to discuss the story at length. The BBC said that she then agreed to embark on the story.

The BBC said that as the BBC Radio 5 Live report had been cleared for broadcast, *Newsnight*, essentially, had relied on Mr Stickler as having previously checked out the allegations made by Mr Messham. It said that the *Newsnight* production team did not therefore ask for fresh checks to be made as to the substance of the allegations. The BBC stated that, in light of the assumption that due diligence had been carried out for previous BBC reports and that, in the mistaken belief that there was no doubt about the identity of the abuser, at this stage the key issue that had been identified was legal risk. The BBC said that the particular focus for the programme makers was the extent to which it would be possible to incorporate Mr Messham’s allegations about Lord McAlpine in the wider story, though it was never the intention to name Lord McAlpine.

In relation to editorial controls, the BBC said that there was excessive reliance on the idea that Mr Messham’s allegations had been subject to previous, and adequate, due diligence by the BBC. This, in combination with the reliance placed on Mr Stickler’s expertise, gave rise to a situation in which the fundamental journalism was subject to less scrutiny than should be the case. After the report was commissioned, a freelance (and former *Newsnight*) producer and Mr Stickler worked on filming the report. The BBC said that the freelance producer asked Mr Stickler whether Mr Messham had identified the right person. In the light of his answer, and the confirmation given by Mr Messham himself and his solicitor, the freelance producer had no doubts about the identity of the person by the time they conducted the interview with Mr Messham.

The BBC said that the acting Editor’s focus returned to the story on the day of broadcast. At this point, the production team had not succeeded in tracking down the anonymous victim who had appeared in the BBC Radio 5 Live report in 2000. The BBC said that no decision had been taken about whether or not to broadcast the report when Mr Overton published his “tweet” on the morning of 2 November 2012. It said that while this “tweet” did not name Lord McAlpine, it attracted Twitter responses which did link Lord McAlpine’s name, amongst others, to the allegations. The BBC said that this was a grave concern to the *Newsnight* team because of the risk of “jigsaw” identification. It said that there were discussions involving the *Newsnight* lawyer (who regularly gave advice to programme) and the Controller of BBC Radio 5 Live (who had been appointed as the temporary point of referral for ‘Savile-related’ matters in the news) as to the legal safety of going ahead with broadcast. The BBC said that the legal advice, which was directed to the issue of defamation, was that, as the report identified no individual, the risk involved in transmitting it remained low. It said that the advice was given on the basis that the pool of people being mentioned on online social media forums was big enough to avoid any individual being

identified. The BBC said that the acting Editor said that she has been aware of about ten names being in circulation at the time.

The BBC said that the decision not to check the allegations with Lord McAlpine was made on the basis that, as the report would identify no individual (as the subject of Mr Messham's allegation), no right of reply arose. However, the BBC said that in its view, especially following Mr Crick's "tweet" and broadcast, the allegations should have been put to Lord McAlpine as part of due journalistic effort to validate the story, and that the programme team should have seen the importance of this.

### Editorial responsibility

The BBC said that the acting Editor was responsible for the integrity of the programme's journalism and was clear that, given the sensitivity of the story, she needed to refer it to a more senior member of the editorial management. As she regarded it as falling within the 'Savile-related' matters (though it later emerged that this was not clear to all parties until the day of transmission) the BBC said that she made the Controller of BBC Radio 5 Live aware of the story on 29 October 2012 and referred the final report to him on the day of transmission, along with the transcript and having had a number of exchanges with him. In addition, the BBC said that a conversation had taken place between the Controller of BBC Radio 5 Live and the BBC Director of Northern Ireland (who was the editor-in-chief on Savile-related issues at the time) about which recollections differed. However, the BBC said that the actual "go-ahead" for transmission was a decision taken in London within the *Newsnight* and BBC News teams.

The BBC said that there was also a referral to the BBC's Editorial Policy Unit about whether to advise Mr Messham to contact the police, but not about any editorial issues as such. For example, the BBC said that no check was made about whether it was appropriate not to put allegations to Lord McAlpine.

### Newsnight and Mr Messham

The BBC said that the acting Editor said that she had sought and was given assurances as to the credibility of the witness by Mr Stickler. It said that Mr Stickler had explained in the MacQuarrie report that although concerns about Mr Messham and the second victim were known, their voices had been used in the past, based on advice given by the BBC's lawyers and that "he believes that the victims of child abuse should be heard, with the caveat that their testimony be treated with extreme caution"<sup>13</sup>.

The BBC added that corroboration for Mr Messham's account appeared to be given by the second victim, but that this appearance was misleading. It said that the Waterhouse Inquiry had concluded that he was referring to a different person from the anonymous victim, a fact of which the acting Editor said she had been unaware. The BBC also said that the acting Editor had been unaware that the report had said that no reliance should be placed on the evidence of Mr Messham and that a senior police officer had successfully fought a libel action against three publications in 1994 after Mr Messham had falsely claimed to have been abused by him. Nor did the acting Editor know that the name "McAlpine" had actually been raised in the Inquiry hearing, so that all journalists who followed it could, indeed, have linked Mr Messham and Lord McAlpine. The BBC said that this information did not come to light in the course of her internet research, presumably because Mr Messham had been granted

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<sup>13</sup> MacQuarrie Report, Section 3, The Editorial Process.

anonymity in these instances and the name “McAlpine” had been replaced in the Inquiry’s published report. The BBC said that it was an unfortunate aspect of the situation that the information was available from colleagues in other areas of the BBC, but was not drawn upon. For example, it said that if colleagues in BBC Wales had been alerted to the possibility of a significant story about their editorial area, the doubts about the credibility of Mr Messham’s evidence could have been flushed out before any broadcast.

### Failures in editorial standards

The BBC said that at the request of the BBC Trustees, the BBC Executive investigated the matter and reported the following conclusions:

1. Basis journalistic checks on the story were not applied. There was no attempt to show the complainant a photograph of the accused man and the allegations were not put to Lord McAlpine, even after Mr Crick’s “tweet” and report on *Channel 4 News*, nor was sufficient attention paid to his denial reported elsewhere.
2. Related to this, the BBC appeared to have made inadequate attempts to seek validation for the story beyond what the reporter delivered. The reporter was seemingly also used as the expert with no other use of specialist guidance—such as from colleagues at BBC Wales.
3. Although referral levels were clear in terms of who had sign off for broadcast, the management of the story was not carried out adequately.
4. The *Newsnight* report combined with the online social media activity made eventual jigsaw identification possible. This was what led to the naming of Lord McAlpine in connection with the most damaging of accusations. It was noted that the programme makers believed, after taking legal advice, that by not naming the politician they were within the area of acceptable risk. However, the BBC thought it clear that the risk increased during the day of the broadcast, and that, in the end, the decision to broadcast the report was wrong.

### The BBC’s statement in response to Ofcom’s request for representations in relation to Rule 7.1 of the Broadcasting Code and Lord McAlpine’s complaint

The BBC said that it fully acknowledged that the programme’s pursuit of the story in question resulted in a gross injustice to Lord McAlpine. However, the BBC said that on the particular facts, the matter was not one to which Ofcom’s remit for fairness and privacy complaints from affected parties applied. The BBC said that Ofcom’s remit was confined to unfair treatment “in” programmes and it seemed to the BBC that, in this case, the unfairness to Lord McAlpine must be seen as consequential to, as distinct from “in” the programme. The BBC said that it was not in dispute that the programme itself did not name Lord McAlpine or otherwise directly identify him; and that the programme did not make immediate identification inevitable, though it did fuel unfounded speculation, which the BBC said it deeply regretted. The BBC added that the acting Editor of *Newsnight* had been aware of about ten names in circulation online on the day of the broadcast (i.e. 2 November 2012) and that subsequent searches on the internet showed that a number of names remained in currency in the days following the broadcast. The BBC said that it was possible that the progress

towards definite identification was inexorable, but, as the Joint Statement in Court<sup>14</sup> stated, Lord McAlpine was widely identified as the subject of Mr Messham's allegations "in the aftermath of *Newsnight's* broadcast".

The BBC said that it was not aware of anything in the Broadcasting Code or its accompanying Guidance, or previous Ofcom decisions, which suggested that there was scope for elasticity in the application of its remit. It added that the only reference to jigsaw identification in the Broadcasting Code related to the coverage of sexual and other offences in the UK involving under-18s (i.e. Section One (the Protection of the Under-Eighteens) of the Broadcasting Code). Therefore, in the BBC's view, its absence from the Fairness and Privacy sections of the Broadcasting Code strongly suggested that the identification of individuals as a consequence of information in the programme taken in connection with other information was not envisaged as falling within the remit for unfairness "in" programmes. The BBC went on to cite a number of Entertainment Decisions<sup>15</sup> made by Ofcom where the distinction between fairness and privacy in the content of the programme and any adverse consequences alleged by the complainant to have resulted from the programme. The BBC gave an example of a relevant citation in one of the Entertainment Decisions where Ofcom stated that unfairness could not arise to the complainant concerned because the complainant "could not be reasonably identified from what was said". The BBC said that in the present case even less identifying information was given in the programme and no one could conceivably have identified Lord McAlpine as the intended subject of Mr Messham's allegations on the basis of "what was said". The BBC said that identification had only been possible from the combination of what was said in the programme with ongoing speculation, until the events of 9 November 2012 put that speculation to an end.

The BBC said that it was concerned about the consequences for legitimate journalistic activity. The BBC said that they were not intending to suggest that the journalism in this instance was legitimate or defensible, and that the BBC's history of straight dealing with Ofcom should provide assurance that the BBC is not motivated by any desire to escape deserved censure. The BBC added that if the remit for unfair treatment "in" programmes was applied so as to encompass adverse consequences arising from the content of programmes in combination with online speculation, then the BBC's view was that it was hard to see how any future programme could escape jeopardy when considered in connection with any and every piece of potentially relevant information in the public domain, whether or not the programme makers had any control over it, or whether or not they even knew of its existence.

### **Ofcom's Preliminary View – BBC's representations and Ofcom's response**

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme made on behalf of Lord McAlpine should be upheld. Ofcom provisionally concluded that the programme broadcast significant allegations

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<sup>14</sup> <http://www.guardian.co.uk/media/interactive/2012/dec/18/medialaw-bbc>.

<sup>15</sup> As set out in Ofcom's Procedures for the consideration and adjudication of Fairness and Privacy Complaints, on receiving a complaint, in most cases, Ofcom will assess it and will decide whether or not to entertain the complaint based on the submissions from the complainant and the broadcast material. This decision is called the "Entertainment Decision". In summary, the Entertainment Decision, which is provided to both parties to a complaint (and which they can comment on if they wish so that Ofcom can consider amending it if necessary), indicates whether (and to what extent) Ofcom will be proceeding with consideration of the complaint.

which turned out to be wholly untrue, without adequate research and due diligence in checking the truth of them, and without offering the subject of the allegations the opportunity to respond, and that therefore the broadcast of the programme resulted in significant unfairness to Lord McAlpine.

Ofcom received representations on the Preliminary View from both RMPI on behalf of Lord McAlpine and the BBC which are summarised below.

#### Summary of RMPI's representations on behalf of Lord McAlpine

Lord McAlpine's legal representative questioned how Ofcom had reached the preliminary view that Lord McAlpine's complaint was "about unfair treatment in the programme that was broadcast" rather than the actual disclosure of personal or sensitive information about Lord McAlpine and asserted that breach of privacy was part of Lord McAlpine's complaint but made no other representations on the content of Ofcom's Preliminary View.

#### Summary of the BBC's representations

The BBC said that there was a distinction between unfair treatment "in programmes" and other consequences of programmes and that where a programme does not make a complainant identifiable, there is no basis for a complaint of unfair treatment "in the programme". It said that the Preliminary View did not directly address the relevance of the cases cited by the BBC to support this point or attempt to rebut the arguments the BBC draw from the cases and that Ofcom's reasoning in response to the BBC's representations on this point was elusive .

The BBC said that the Preliminary View made reference to the intentions of the programme-makers and cited them as if they were a significant aspect of the matter, and had accorded them some importance in reaching its conclusion. The BBC said that in its view, the intentions of the programme makers were irrelevant to a proper consideration of the matter because they were not discernible from the programme (the contents of which would have been identical even if the programme-makers had believed the allegations to apply to one of the other people named in social media, rather than Lord McAlpine). Whatever the intentions of the programme makers, the BBC said that they did not include identifying Lord McAlpine or facilitate his identification.

The BBC said that the reference in the Preliminary View to "the widespread identification of Lord McAlpine online prior to the programme's broadcast as the subject of the allegations", went beyond the facts as it had been able to establish them. While it was true that there was widespread speculation in advance of transmission about the identity of the subject of the allegations, the number of occasions on which Lord McAlpine was so identified appeared to have been few. A search of Twitter by the BBC's Legal Department found only a handful of tweets which mentioned Lord McAlpine before the broadcast, and RMPI (whom the BBC understood had undertaken a similar exercise) identified to the BBC only two or three such tweets.

The BBC also said that it noted that section 114(2)(b) of the Broadcasting Act 1996 ("the 1996 Act") gave Ofcom the discretion not to entertain or proceed with complaints in relation to which the complainant has a legal remedy. It acknowledged that while it did not refer to this discretion in response to Ofcom's decision to entertain Lord McAlpine's complaint, it hoped Ofcom would take this concern into

account now. It said that the settlement with Lord McAlpine involved very substantial damages, of £185,000, payment of his reasonable legal costs amounting to £117,000, and an unqualified apology. If the discretion cited above was not to be exercised in circumstances where a legal remedy was not merely available but had been sought and so comprehensively obtained, the BBC said it had difficulty in envisaging circumstances in which Ofcom might reasonably exercise it in the future.

Further, the BBC said that Ofcom was required to ensure that its regulatory activities are “*proportionate...and targeted only at cases in which action is needed*”<sup>16</sup>. It did not appear to the BBC that any further action is needed in this case. The BBC said that: Lord McAlpine has had a legal remedy; the BBC’s Director-General resigned; three BBC employees were subject to disciplinary action; the editorial managers responsible were removed from their posts; all investigations on *Newsnight* were suspended; collaborations with the BJJ ended; and, Mr Stickler, the reporter and editor of the report, resigned. The BBC went on to state that the *Newsnight* programme broadcast an unreserved apology and that the BBC Trust published its finding, including its own apology to Lord McAlpine, and that finding received extensive publicity. The BBC concluded that it was hard to imagine circumstances where any Ofcom action could more clearly be demonstrated to be disproportionate and unnecessary.

#### Ofcom’s response to RMPI’s representations

Ofcom considered RMPI’s representations on this point and considered that it had addressed it already in the covering letter it had sent to RMPI along with the Preliminary View on 23 September 2013. Ofcom had explained during the course of its investigation, it became apparent to it that the complaint made on Lord McAlpine’s behalf was about unfair treatment in the programme as broadcast, rather than the actual disclosure of personal or sensitive information about him. Nor did Ofcom consider that there was an issue of privacy, so far as its duty in maintaining broadcasting standards was concerned, in the manner in which information included in the programme was obtained. For these reasons, Ofcom decided not to pursue this line of investigation. Ofcom does not consider RMPI’s representations alter its view on this point.

#### Ofcom’s response to the BBC’s representations

Ofcom considered the BBC’s representations in relation to the Preliminary View and noted that they largely repeated the position the BBC had set out in its representations in response to Ofcom’s investigation (see above). In relation to the BBC’s point about the distinction between unfair treatment “in programmes” and other consequences of programmes and its contention that the Preliminary View did not directly address this point, Ofcom considered that its Preliminary View had been clear on this point. It noted that while Lord McAlpine had not been named *in* the programme itself, he was the subject of the allegations made in the programme. That fact, combined with the internet speculation before the programme was broadcast, meant that the broadcast of the programme led to him being widely named as the subject of the allegations. While Ofcom understood the point made by the BBC, Ofcom maintained that irrespective of whether or not Lord McAlpine was explicitly named in the programme, in Ofcom’s view it was the treatment of the material included in the programme and the surrounding context in which it was used that resulted in Lord McAlpine being identified as the subject of the allegations made in

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<sup>16</sup> Communications Act 2003, 3(3)(a)

the programme. For this reason, Ofcom considered that the BBC's representations did not alter its view on this point.

Ofcom considered the BBC's comments relating to the references in the Preliminary View to the intentions of the programme makers. Ofcom acknowledged that these references to "intention" in the Preliminary View had the potential to create ambiguity. Therefore, Ofcom has made amendments accordingly which are reflected in the Decision below.

In relation to the BBC's point regarding the Preliminary View's reference to "the widespread identification of Lord McAlpine online prior to the programme's broadcast as the subject of the allegations", Ofcom noted that the BBC's ESC's own finding as reported to the BBC Trust concluded that "*by the time the Newsnight Report was broadcast, Lord McAlpine had been widely identified as the subject of the claims*". On this basis, Ofcom was not persuaded to change its position on this point.

In response to the BBC's representation that Ofcom should have exercised its discretion and not have entertained the complaint on behalf of Lord McAlpine because he had a legal remedy (under section 114(2)(b) of the 1996 Act), Ofcom noted that the BBC did not raise this issue at the time it was notified that the complaint would be investigated. While this issue does not relate directly to the Preliminary View, for the sake of completeness, Ofcom will address it. In deciding to entertain the complaint, Ofcom recognised that Lord McAlpine had such a remedy and that he had since obtained not only a financial settlement, but also a public apology from the BBC Trust. However, it is important to note that section 114(b) of the 1996 Act states that Ofcom shall not entertain a complaint "**if it appears to [Ofcom] that the person affected has a remedy by way of proceedings in a court of law in the UK and that in the particular circumstances it is not appropriate for [Ofcom] to consider a complaint about it**" (Ofcom's emphasis). In this case, Ofcom considered that the remedy Lord McAlpine had and received was very much set in the context of his libel action against the BBC, as opposed to the consideration by the regulator of whether the BBC had breached Ofcom's Broadcasting Code and the required standards therein. Given this, and the serious nature of the allegations made in the programme, Ofcom considered that it was entirely appropriate in the circumstances of this case for it to consider the complaint made on Lord McAlpine's behalf.

In response to the BBC's representation that no further action was required by Ofcom, Ofcom recognised the actions taken by the BBC and others connected with the programme after its broadcast and this is reflected in the Preliminary View and maintained in the decision below. In particular, Ofcom had already explained (see the "Framework for the investigation" section above) the "exceptional circumstances" that existed for it to embark on its investigation into "the fairness implications of the programme's content which lead to Lord McAlpine being wrongly and widely identified as the subject of very serious child sex abuse allegations". The fact that such serious allegations were broadcast "without contacting Lord McAlpine and without appropriate journalistic checks being taken, was a matter of serious concern to Ofcom". For these reasons, Ofcom considered that this was precisely the type of case in which it was appropriate and proportionate for Ofcom to investigate.

### **Ofcom's Decision**

Following its careful consideration of the BBC's representations on the Preliminary View, Ofcom reached its final 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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services. Given the receipt of the complaint from Lord McAlpine, Ofcom focussed on whether he had been treated unfairly in the programme as broadcast.

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by the BBC and RMPi in relation to the complaint made on behalf of Lord McAlpine. This material included a recording of the programme as broadcast, a transcript of it and written submissions from both parties. The BBC also provided Ofcom with copies of the MacQuarrie Report; the BBC Executive Report; the Findings of the BBC Trustees in relation to the programme; and the Joint Statement in Court. Ofcom also considered the BBC's representations on its Preliminary View.

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

Ofcom also had regard to Practice 7.9 of the Broadcasting Code which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Ofcom also had regard to Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom examined the programme as broadcast (see "The Programme as broadcast section" above) and noted that the report was introduced as a *Newsnight* investigation into claims of historical child sex abuse in care homes and how it claimed to "*reveal that two victims say they suffered sexual abuse at the hands of a leading Conservative politician from the Thatcher years*". It was in this context, Ofcom noted, that the report continued to mention that the Waterhouse Inquiry findings had referred to "*the existence of a shadowy figure of high public standing*" and that further references were made to "*a prominent Tory politician at the time*"; a "*senior public figure*"; and, a "*senior Tory politician*" having been a serial abuser of Mr Messham and another, unidentified, victim.

Ofcom noted that, the individual referred to in the report as the "*senior Tory politician*", amongst other terms, was not named in the programme. However, Ofcom recognised that despite the fact that the programme itself did not name the individual, a number of factors prior to and following the broadcast of the programme led to that individual being identified, albeit wrongly, as Lord McAlpine.

Ofcom noted from the various reports and findings undertaken by the BBC Executive and the BBC Trust, the Joint Statement in Court and the BBC's statement in response to Ofcom's investigation, that the programme presented allegations of

historic child sex abuse against an unnamed person and that those allegations turned out to be untrue. It was also not disputed that failings in the journalistic approach taken by the programme makers and the inadequacy of editorial standards applied in complying the report for broadcast meant that the allegations made were not verified for accuracy, which, in turn, resulted in untrue and potentially damaging allegations against an unnamed individual being presented in the programme.

The BBC stated that Lord McAlpine was not named in the report and that it did not make “immediate identification inevitable”. The BBC said that while it acknowledged that the report resulted in a “gross injustice to Lord McAlpine, Ofcom’s remit for fairness complaints was confined to unfair treatment “in” programmes and not treatment consequential to a programme. It said that the absence of “jigsaw” identification from Sections Seven (Fairness) and Eight (Privacy) of the Broadcasting Code suggested that the identification of individuals as a consequence of information in a programme and taken in connection with other information was not envisaged as falling in Ofcom’s remit.

Ofcom took into account the BBC’s position in relation to Ofcom’s ability to consider matters arising as a consequence of a programme and that only content which is broadcast *in* a programme is subject to the Broadcasting Code. However, for the reasons set out below, Ofcom considered that Rule 7.1 of the code applied to Lord McAlpine’s treatment in the programme as broadcast.

Firstly, Ofcom considered that the inclusion of the references to “*a senior Tory politician*”, and like phrases made in the report to a politician, in relation to allegations of child sex abuse, amounted to a significant allegation of child sex abuse and criminality against that individual which had the potential to be extremely damaging.

Ofcom noted that the BBC did not dispute that the politician referred to in the report was intended to be Lord McAlpine. Nor did the BBC dispute that the *Newsnight* report, combined with the online social media activity before and after its broadcast, made “jigsaw” identification possible.

It further noted that in the Statement in Court, the BBC accepted that “throughout the day on 2 November, *Newsnight’s* forthcoming report had been widely trailed on the internet. Furthermore, Lord McAlpine’s name had been linked to it. In the aftermath of *Newsnight’s* broadcast, Lord McAlpine was widely identified as the subject of *Newsnight’s* allegations. In short, *Newsnight* made the most serious of defamatory allegations about Lord McAlpine, tarring him as a paedophile, who was guilty of sexually abusing vulnerable young boys living in care”.

Also, in relation to the events that took place on 2 November 2012 prior to the broadcast of the report, Ofcom noted that the BBC’s statement in response acknowledged that considerable public awareness had built up during the day that the report would centre on a political figure. This awareness was due largely to online social media activity that had been lead by the editor of the BIJ who had “tweeted” the programme hoped to broadcast a report about a senior political figure being a paedophile. The previous evening (1 November 2012), Channel 4’s political editor, Mr Crick, had been told about the story in a conversation with the Editor of the BIJ, and Mr Crick had himself “tweeted” that the political figure concerned denied the allegations to be made in the report. This was followed up with an item on *Channel 4 News* a few hours before the *Newsnight* programme was broadcast. The BBC said that later in the evening, Mr Crick had also “tweeted” that the senior political figure had told him that he still had not heard from the BBC.

Section 3(2)(f) of the 2003 Act requires that Ofcom secures, in the carrying out of our functions, “the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both unfair treatment in programmes included in such services and unwarranted infringements of privacy resulting from activities carried on for the purposes of such services”.

While noting that Lord McAlpine was not directly named in the programme itself, the treatment of the material contained in the programme, when combined with the internet speculation before the programme was broadcast, led to Lord McAlpine being widely named as the subject of the allegations. As such, Ofcom took the view that Lord McAlpine was the “subject of that treatment, who had a direct interest in the subject matter of that treatment” and that he was, therefore, “the person affected” in terms of section 111 of the Broadcasting Act 1996 (as amended) (“the Broadcasting Act”). Ofcom further noted that “unjust or unfair treatment” is defined in section 130 of the Broadcasting Act as “includ[ing] treatment which is unjust or unfair because of the way in which material included in a programme has been selected or arranged”.

Ofcom considered that the programme had played a central role in the furore surrounding the speculation as to the identity of the politician referred to in the report and which led, ultimately, to Lord McAlpine being identified, wrongly, as a child sex abuser. This clearly affected Lord McAlpine significantly.

Given this, and the unusual and very exceptional circumstances surrounding this case, in particular, the identification of Lord McAlpine online prior to the programme’s broadcast as the subject of the allegations, combined with the extremely serious and potentially damaging nature of the allegations, Ofcom considered that, even though Lord McAlpine was not named in the programme, the material included in the programme led to him being wrongly identified as a child sex abuser and the provisions relating to unfair treatment apply to him and the allegations made about him in the programme as broadcast. In addition, Ofcom noted that Lord McAlpine was the “senior political figure” that the programme makers were referring to in the programme.

Turning to the complaint made by Lord McAlpine that the programme omitted many key facts and disregarded the findings of the Waterhouse Inquiry, Ofcom noted that RMPI did not provide detailed evidence as to the facts of the Waterhouse Inquiry which it alleged had been disregarded.

From the information provided to it by the BBC, Ofcom considered that it was indisputable that basic journalistic checks in relation to the report had not been applied by the programme makers prior to its broadcast. Ofcom noted that although the acting Editor conducted some background research about the subject on the internet, she and the *Newsnight* production team had placed considerable reliance on Mr Stickler who they assumed had previously and adequately checked the claims made by Mr Messham and that excessive reliance was placed on the idea that the allegations had been subject to previous and adequate due diligence by the BBC. On this basis, the *Newsnight* production team had not asked for fresh checks to be made to validate the substance of allegations. Ofcom also noted that the BBC said that information regarding the detail and conclusions of the Waterhouse Inquiry, of which the acting Editor was unaware, was available from colleagues in other areas of the BBC, but was not drawn upon. The BBC also said that doubts about the reliability of Mr Messham’s evidence could have been “flushed out” before the broadcast of the *Newsnight* report had the production team alerted their BBC Wales colleagues about the possibility of a significant story in their editorial area. Ofcom also noted that no

effort was made by the production team to contact Lord McAlpine to validate the story.

Therefore, having considered all the material provided to Ofcom in its investigation, Ofcom considered that, contrary to Practice 7.9 of the Broadcasting Code, the programme makers had failed to take reasonable care to satisfy themselves that the material facts were not presented in a way which was unfair to Lord McAlpine.

Having concluded that the *Newsnight* report had resulted in Lord McAlpine being wrongly identified as a child sex abuser, Ofcom considered whether under Practice 7.11 of the Broadcasting Code (as set out above), Lord McAlpine should have been given an appropriate and timely opportunity to respond. In assessing whether Lord McAlpine should have been given an opportunity to respond to the allegations, Ofcom also considered whether, if such an opportunity had been given, would it have become apparent that the allegations to be made in the programme were unsound.

Ofcom noted from the BBC Executive Report that following Mr Crick's tweet that the political figure concerned was threatening libel action and his report on *Channel 4 News* prior to the broadcast of the *Newsnight* report, the programme makers "should have seen the importance of checking the allegations with Lord McAlpine". Ofcom noted, however, that the BBC Executive qualified this by stating that such checking with Lord McAlpine should have been part of "the process of establishing the accuracy of the story, rather than for purposes of right to reply". It referred to the BBC's own Editorial Guidelines<sup>17</sup> in relation to fairness and decided that they did not "come into play up to and including the transmission" of the report because it did not, itself, identify any individual as the subject of the allegations and "gave no grounds of followers of social media to identify Lord McAlpine rather than any other of the names in circulation at the time".

Ofcom noted also the finding of the BBC Trustees who considered whether Lord McAlpine should have been given the opportunity to comment before the report was broadcast, especially in light of the fact that Lord McAlpine had denied the allegations when he was contacted by Mr Crick on 1 November 2012, the day before the transmission of the *Newsnight* report. The BBC Trustees acknowledged that it would not be standard practice to contact an individual for comment where that individual would not be named in a programme, however, in the circumstances of this case, "where the programme makers were aware that the allegations had been strenuously denied, the BBC Trustees agreed that Lord McAlpine should have been contacted".

Ofcom further noted that the Joint Statement in Court stated that had the BBC contacted Lord McAlpine prior to the broadcast of the programme, Lord McAlpine "would have been able to give them [the programme makers] the correct information, mainly that he had never been to the children's home in question...and he would have been able to remind them that similar allegations had been considered and authoritatively rejected at the Waterhouse Inquiry...".

Ofcom noted that the MacQuarrie Report stated that "some discussion" had taken place amongst the programme makers as to whether the allegations should be put to the politician for a response, but that it was decided it would not be necessary. The reason being that as the politician would not be named, there would be insufficient other detail in the report to identify him. The report also said that "basic checks, such as...seeking a response from the alleged abuser, were simply not done".

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<sup>17</sup> <http://www.bbc.co.uk/editorialguidelines/page/guidelines-fairness-introduction/>.

Finally, Ofcom took note of the BBC's response to Ofcom's investigation and Lord McAlpine's complaint and noted that it stated that the decision not to check the allegations with Lord McAlpine had been made on the basis that, as the report would identify no individual, no right of reply arose. It went on to state, however, that following Mr Crick's tweet and report on *Channel 4 News*, "the allegations should have been put to Lord McAlpine as part of due journalistic effort to validate the story".

Ofcom noted the position taken by the BBC in its response to Ofcom's investigation and Lord McAlpine's complaint and it took into account the BBC's view that as no individual was identified in the programme, then an opportunity to respond to the allegations made in the programme was not necessary, and no unfairness with respect to Rule 7.1 resulted. However, as already considered above, Ofcom takes the view that the circumstances surrounding this case are extremely unusual and exceptional and Ofcom was not persuaded by the BBC's argument. For the reasons already given above, Ofcom considered that the allegations made in the programme, although false, did amount to significant allegations of wrongdoing against Lord McAlpine, as he was the subject of those allegations, despite him not being named or being identified directly in the programme.

Given that Ofcom has concluded that the programme broadcast significant allegations which turned out to be wholly untrue, without adequate research and due diligence in checking the truth of them, and without offering the subject of the allegations the opportunity to respond, the broadcast of the programme resulted in significant unfairness to Lord McAlpine. There is no doubt that allegations of child sex abuse are extremely serious, with potentially very serious consequences for those accused. In this respect, Ofcom noted that the BBC has accepted responsibility for the harm caused to Lord McAlpine and has stated in court that "the BBC withdraws the allegations made by Newsnight unreservedly, and apologises sincerely to Lord McAlpine for the great damage and distress which its broadcast caused him". Ofcom also noted that it was aware that the BBC had agreed to pay Lord McAlpine a substantial sum in damages and his legal costs as a result of the programme.

Therefore, taking all the factors considered above into account, Ofcom concluded that the programme as broadcast resulted in unfairness to Lord McAlpine, and that the BBC failed its requirement under the Broadcasting Code to avoid unjust or unfair treatment of individuals in programmes.

Ofcom concluded that the BBC was in breach of Rule 7.1 of the Broadcasting Code.

**Accordingly, Ofcom has upheld the complaint of unjust or unfair treatment in the programme as broadcast made on Lord McAlpine's behalf and has found the BBC in breach of Rule 7.1 of the Broadcasting Code.**

## Upheld in Part

### Complaint by Mr E

*Battle Scarred: Soldiers Behind Bars, Channel 5, 8 April 2013*

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#### Summary

Ofcom has upheld in part this complaint made by Mr E of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

This programme looked at ex-servicemen who were serving prison sentences having committed crimes after leaving the armed forces and returning to civilian life. Footage of prison employees performing routine tasks was included in the programme. One of the prison employees shown was the complainant, Mr E. Mr E, who appeared only once for about six seconds, was shown pushing a cage trolley along a corridor. His face was unobscured.

Ofcom found that:

- Mr E had a legitimate expectation of privacy in relation to being filmed at work in a maximum security prison. However, the prison authorities had given consent for the programme makers to film within the prison and, as Mr E was filmed engaged in conduct that could not reasonably be regarded as private or sensitive in nature, in Ofcom's view the programme makers were not required to obtain separate consent from Mr E before filming him. Ofcom considered, therefore, that there was no unwarranted infringement of privacy in connection with the obtaining of material included in the programme.
- However, in relation to the broadcast of the footage of Mr E in the programme, Ofcom considered that there was no public interest justification for the infringement of Mr E's privacy by the inclusion of the unobscured footage of him without his consent. Ofcom therefore found that Mr E's privacy was unwarrantably infringed in the programme as broadcast.

#### Introduction and programme summary

On 8 April 2013, Channel 5 broadcast an edition of *Battle Scarred*, a series of programmes reporting on ex-servicemen, and in particular how they coped with adapting to the move back into civilian life and how some of them found the transition to be traumatic.

This edition, entitled *Soldiers Behind Bars*, looked at ex-servicemen who were serving prison sentences having committed crimes after returning to civilian life. The presenter visited two prisons in Scotland, HMP<sup>1</sup> Shotts and HMYOI<sup>2</sup> Polmont, and talked to several ex-servicemen serving prison sentences there. Footage of prison employees performing routine tasks was included in the programme. One of the prison employees shown at HMP Shotts was the complainant, Mr E. Mr E, who

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<sup>1</sup> Her Majesty's Prison.

<sup>2</sup> Her Majesty's Young Offenders Institution.

appeared only once for about six seconds, was shown pushing a cage trolley along a corridor. His face was unobscured.

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

By way of background, Mr E explained that HMP Shotts is a maximum security prison and that he was advised during his induction training not to tell people he worked at the prison because doing so could put him and his family "at risk of intimidation, threats of violence and attempts to coerce".

- a) Mr E complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of him working at HMP Shotts was filmed without his consent. Mr E said that he was not asked if he could be filmed and he did not sign any permission document.

In response, Channel 5 said that the programme makers had relied on the agreement and support of the prison authority and of individual prison officers in its making. The broadcaster said that consents were sought at the time of filming from prisoners and prison staff who specifically featured in the programme, but not from those who were only shown in general views of the prison environment. Channel 5 said that it was not practicable to seek consent from every member of prison staff who might be caught on camera. In relation to individuals included in general shots of the prison where consent had not been sought at the time, an agreement was made that the prison authority would scrutinise the final cut to ensure that no one was identifiable who had not given consent. According to the broadcaster, Mr E was likely to have been aware of the filming taking place in the prison but did not give any indication that he did not wish to be filmed. Therefore, according to Channel 5, there was no requirement to obtain his specific consent for the filming at the time the filming took place.

Further, Channel 5 noted that it has the right to freedom of expression and it considered that there was a genuine public interest in the programme's investigation into the reasons for and the circumstances surrounding the large number of ex-servicemen serving time in prisons. According to the broadcaster, "if broadcasters were prevented from filming in such circumstances without obtaining prior consent from every individual who might be caught on camera, that would impose undue constraints on broadcasters and would constitute a disproportionate interference with their right to freedom of expression".

- b) Mr E also complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him working at the prison was included in the programme without his consent. Mr E said that some of the people appearing in the programme had had their faces blurred out but that his was not.

Mr E said that, since the programme had been broadcast, several people had spoken to him and his fiancé about seeing him in the programme, and had said that they did not know that he worked at the prison. He said that he felt that he and his family had been placed at unnecessary risk.

Channel 5 responded to this part of Mr E's complaint by stating that, in the light of the steps Mr E had taken to keep his place of work private, he had a legitimate expectation of privacy in relation to his place of work and that the footage in which he was identifiable amounted to an unwarranted infringement of his privacy.

The broadcaster noted that, throughout the production of the programme, all parties concerned were extremely conscious of the need to ensure that prisoners and prison staff, who were filmed inside the prison and appeared in the programme, had given their consent to be shown. It stated that its intention was to ensure that anyone who had not provided consent would either be excluded from the broadcast footage or would have their features obscured. According to Channel 5, the programme was cleared for broadcast on the understanding that all prisoners and prison staff who had not consented to being identified would be obscured in the programme.

Channel 5 said that it took the privacy and security of prison staff very seriously and therefore appreciated and sympathised with Mr E's concerns for his safety. According to the broadcaster, after identifying Mr E, it arranged to edit the programme to ensure that Mr E was not identifiable in any repeats of the programme that may be broadcast or on the on-demand services of the channel.

An investigation by Channel 5 revealed that the footage captured of Mr E was in a general view of the prison environment and no consent was obtained from him to broadcast the footage of him at the time it was filmed. The broadcaster said that, in accordance with the agreement that had been reached between the programme maker and the prison authority, the final cut of the programme was sent to HMP Shotts two months before the scheduled broadcast of the programme and was approved. Channel 5 said that it was the lapse in communication within the prison itself which had resulted in Mr E remaining identifiable in the footage and the footage being broadcast without his written consent. According to the broadcaster, the prison failed to double check with Mr E that he consented to being identified and as a consequence his lack of consent was not conveyed to the programme makers or to Channel 5.

Channel 5 said that it regretted that, despite its best efforts, Mr E was identified in the programme without his consent and it apologised to him and his partner for any distress the broadcast of the footage may have caused them.

## **Decision**

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

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

In reaching its Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a submission from Channel 5. Ofcom provided the parties with the opportunity to make representations on its Preliminary View (which was to uphold Mr E's complaint in part). Neither party made any representations on the Preliminary View.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such

has precedence over the other and, where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights claimed in the individual case. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

- a) Ofcom first considered Mr E’s complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that footage of him working at the prison was filmed without his consent. Mr E said that he was not asked if he could be filmed and he did not sign any permission document.

In considering this part of the complaint, Ofcom had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person’s consent or be otherwise warranted. Ofcom also had regard to Practice 8.8 of the Code which states that in potentially sensitive places, such as prisons, separate consent should normally be obtained before filming or recording from those in sensitive situations (unless not obtaining consent is warranted).

In assessing whether Mr E’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed whether Mr E had a legitimate expectation of privacy in relation to the filming of footage of him at work in the prison.

As stated in the Code, “legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question”. When assessing the extent to which an individual has a legitimate expectation of privacy, Ofcom has regard to a number of factors which were taken account of below.

Mr E was filmed in his work place, a maximum security prison, while performing a routine task of pushing a cage trolley along a corridor in the prison. Ofcom noted Channel 5’s submission that it was likely that Mr E was aware of the filming taking place in the prison and, having watched the footage as broadcast, Ofcom considered that the filming appeared to have been conducted openly by the programme makers. Also, it appeared to Ofcom, from the footage shown in the programme, that Mr E was not filmed engaged in any conduct or action that could reasonably be regarded as private or sensitive in nature. However, Ofcom considered that a prison is a place which gives rise to an expectation of privacy because of the potential sensitivity of the environment and the consequent restrictions on filming without permission.

Taking all these factors into account, Ofcom considered that Mr E had a legitimate expectation of privacy in relation to the obtaining of the footage of him included in the programme.

Given this conclusion, Ofcom then assessed whether the programme makers had secured an appropriate consent for the footage of Mr E to be filmed. As already mentioned above, Practice 8.8 of the Code recognises that a prison is a “potentially sensitive” place and that separate consent should normally be

obtained before filming from those in sensitive situations (unless not obtaining consent is warranted).

Mr E was filmed in a maximum security prison, which in this case was a sensitive place, as indicated by the fact that Mr E was advised during his induction not to tell people he worked at the prison because doing so could put him and his family “at risk of intimidation, threats of violence and attempts to coerce”. Mr E did not give his consent to be filmed. However, Ofcom noted Channel 5’s submission that for general views of the prison the programme makers had relied on the consent given by the prison authorities to film and that individual consent was not sought at the time of filming. Mr E was filmed in a general view of the prison and he was not filmed engaged in any conduct that could reasonably be regarded as private or sensitive in nature. In Ofcom’s view, Mr E was not filmed in a “sensitive situation” that, in accordance with Practice 8.8, would normally have required the programme makers to have obtained his separate consent before filming. Ofcom further noted that Channel 5 said in its submission that it was likely that Mr E was aware of the filming taking place in the prison, but that he had not given any indication to the cameraman, the prison officer accompanying the cameraman, or anyone else that Channel 5 is aware of, that he did not wish to be filmed.

Taking all these factors into account, Ofcom considered that the consent given by the prison authorities for the programme makers to film within the prison warranted the filming of Mr E and that his separate consent was not required. Ofcom concluded that there was no unwarranted infringement of Mr E’s privacy in connection with the obtaining of footage of him for inclusion in the programme.

However, it is important that, in circumstances such as these in which material is filmed in a sensitive place without the need for separate consent from an individual, the broadcaster should take all reasonable and proportionate steps to ensure that the subsequent broadcast of that material does not result in an unwarranted infringement of privacy. This issue is dealt with in head b) below.

- b) Ofcom next considered the complaint that Mr E’s privacy was unwarrantably infringed in the programme as broadcast because footage of him working at the prison was included in the programme without his consent. Mr E said that some of the people appearing in the programme had had their faces blurred out, but that his was not.

In considering this head of the complaint, Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Ofcom also had regard to Practice 8.8 of the Code which states that, in potentially sensitive places, such as prisons, separate consent for broadcast should normally be obtained from those in sensitive situations (unless not obtaining consent is warranted).

In considering whether or not Mr E’s privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed whether he had a legitimate expectation of privacy in respect of the broadcast of footage of him working in the prison.

Ofcom noted that Mr E appeared very briefly in the programme. Nevertheless, his face was visible for approximately six seconds and Mr E was identifiable from the footage.

As set out in head a) above, Mr E was filmed in his work place, a maximum security prison, while performing a routine task of pushing a cage trolley along a corridor in the prison. Ofcom considered that the footage of Mr E did not show him engaged in any conduct or action that could reasonably be regarded as private or sensitive in nature. However, Ofcom considered that a prison is a place which gives rise to an expectation of privacy because of the potential sensitivity of the environment and the consequent restrictions on filming without permission.

In Ofcom's view, taking into account all these factors, Mr E had a legitimate expectation of privacy in relation to the broadcast of unobscured footage of him working in the prison.

Ofcom noted that the broadcaster accepted that Mr E did not give his consent to be shown in the programme. According to the broadcaster's statement, the programme makers had failed to obscure Mr E's face in the programme as broadcast due to an error by the prison authorities. While Ofcom acknowledged Channel 5's submission, given the context of the footage, i.e. Mr E was shown as an employee working in a maximum security prison, it was incumbent on Channel 5 to satisfy itself that his consent for broadcast had been obtained. It was not sufficient for the broadcaster to have relied on the assurance from the prison authorities. Responsibility for compliance with Rule 8.1 of the Code rests with the broadcaster.

Having found that Mr E had a legitimate expectation of privacy, Ofcom went on to consider the broadcaster's competing right to freedom of expression and the need for broadcasters to have the freedom to broadcast without undue interference, as well as the audience's right to receive information and ideas without unnecessary interference. Ofcom assessed whether there was sufficient public interest or other reason to justify the infringement of Mr E's privacy in the broadcast.

Ofcom considered that there was a genuine public interest in the programme's examination of ex-servicemen who were serving prison sentences, having committed crimes since returning to civilian life. However, Ofcom took into account that HMP Shotts is a maximum security prison and that Mr E said in his complaint that he was advised during his induction training not to tell people he worked at the prison because doing so could put him and his family "at risk of intimidation, threats of violence and attempts to coerce". Moreover, Ofcom considered that, in the circumstances of this case, the broadcaster could have fulfilled the public interest without disclosing Mr E's identity and therefore without infringing his privacy.

Having taken all the factors above into account, Ofcom found that there was insufficient public interest to justify the infringement of Mr E's privacy in the broadcast. Ofcom considered that, on balance, the broadcaster's right to freedom of expression, and the audience's right to receive information and ideas without interference, did not outweigh Mr E's expectation of privacy as regards the broadcast of material in the circumstances of this case.

Ofcom concluded therefore that Mr E's privacy was unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr E's complaint of unwarranted infringement of privacy in connection with the obtaining of material in the**

**programme. However, it has upheld his complaint of unwarranted infringement of privacy in the programme as broadcast.**

**Mr E's complaint is therefore upheld in part.**

## Other Programmes Not in Breach

Up to 7 October 2013

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Branded a Witch	BBC 3	20/05/2013	Generally accepted standards
Blessings of Ramadan	Madani Channel	18/07/2013	Religious/Beliefs discrimination/offence

## Complaints Assessed, not Investigated

### Between 24 September and 7 October 2013

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Adrian Goldberg	BBC WM	20/09/2013	Crime	1
Advertisements	Channel 5	Various	Advertising minutage	1
Alan Carr: Chatty Man	Channel 4	27/09/2013	Drugs, smoking, solvents or alcohol	1
Appeals for funds	Sunrise Radio	Various	Appeals for funds	2
Atlantis	BBC 1	28/09/2013	Generally accepted standards	1
Aunt Bessie's sponsorship of The Chase	ITV	23/09/2013	Generally accepted standards	2
Back to School Movies promotion	Comedy Central	17/09/2013	Scheduling	2
Background music	BBC 1	Various	Outside of remit / other	1
BBC News	BBC radio services	Various	Generally accepted standards	1
BBC News	BBC 1	27/09/2013	Scheduling	1
BBC News	BBC 1	02/10/2013	Generally accepted standards	1
BBC News	BBC 1	03/10/2013	Generally accepted standards	1
BBC News	BBC Radio 4	05/08/2013	Race discrimination/offence	1
BBC News at Six	BBC 1	02/10/2013	Outside of remit / other	1
BBC News at Ten	BBC 1	24/09/2013	Religious/Beliefs discrimination/offence	1
BBC News at Ten	BBC 1	01/10/2013	Generally accepted standards	1
BBC Radio 1 Newsbeat poll	BBC Radio 1 / BBC Sheffield	Various	Religious/Beliefs discrimination/offence	1
BBC World News	BBC World	29/09/2013	Due accuracy	1
Big School	BBC 1	16/08/2013	Race discrimination/offence	1
Blackadder II	Gold	30/07/2013	Scheduling	1
Breakfast	BBC 1	17/09/2013	Outside of remit / other	1
Breakfast	BBC 1	18/09/2013	Outside of remit / other	1
Breakfast	BBC 1	24/09/2013	Outside of remit / other	1
Business News	Sky News	19/09/2013	Undue prominence	1
By Any Means	BBC 1	22/09/2013	Outside of remit / other	1
Channel 4 News	Channel 4	10/09/2013	Generally accepted standards	1
Channel 4 News	Channel 4	20/09/2013	Due impartiality/bias	4
Channel 4 News	Channel 4	21/09/2013	Due impartiality/bias	1
Charity appeal	Bangla TV	21/07/2013	Sponsorship credits	1

Classic Car Rescue	Discovery Turbo	23/08/2013	Competitions	1
Conservative Party Conference	BBC Parliament	30/09/2013	Disability discrimination/offence	1
Coronation Street	ITV	23/09/2013	Generally accepted standards	1
Coronation Street	ITV	25/09/2013	Product placement	1
Coronation Street	ITV	30/09/2013	Scheduling	1
Coronation Street	ITV	Various	Outside of remit / other	1
Countrywise	ITV	30/09/2013	Harm	1
Countrywise	ITV	30/09/2013	Materially misleading	2
CSI: NY	5USA	25/09/2013	Scheduling	1
Daybreak	ITV	20/09/2013	Due impartiality/bias	1
Daybreak	ITV	23/09/2013	Crime	1
Daybreak	ITV	23/09/2013	Generally accepted standards	1
Daybreak	ITV	27/09/2013	Due impartiality/bias	1
Death Machines	Quest	28/09/2013	Violence and dangerous behaviour	1
Diya aur Bati hum	Star Plus	09/09/2013	Advertising minutage	1
Doc Martin	ITV	09/09/2013	Under 18s in programmes	1
Don't Call Me Crazy	BBC 3	24/06/2013	Under 18s in programmes	1
Don't Call Me Crazy	BBC 3	01/07/2013	Materially misleading	1
Don't Call Me Crazy	BBC 3	02/07/2013	Harm	1
EastEnders	BBC 1	23/09/2013	Generally accepted standards	2
EastEnders	BBC 1	26/09/2013	Scheduling	2
Educating Yorkshire	Channel 4	26/09/2013	Generally accepted standards	1
Euronews	Euronews	02/10/2013	Outside of remit / other	1
Fabric of Britain	BBC 4	18/09/2013	Gender discrimination/offence	1
Fake Britain	BBC 1	07/10/2013	Outside of remit / other	1
Family Guy	BBC 3	29/09/2013	Generally accepted standards	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	23/09/2013	Generally accepted standards	1
Fred: The Show	Nickelodeon	04/08/2013	Scheduling	1
Friends with Benefits (trailer)	Channel 4	02/10/2013	Sexual material	1
Fry's English Delight	BBC Radio 4	16/09/2013	Offensive language	1
Geordie Shore	MTV	18/09/2013	Drugs, smoking, solvents or alcohol	1
Geordie Shore	MTV	01/10/2013	Generally accepted standards	1
Have I Got News for You	BBC 1	04/10/2013	Generally accepted standards	1
Hawaii Five-0	Sky1	30/09/2013	Scheduling	1
Heart Breakfast	Heart FM (Sussex)	24/09/2013	Race discrimination/offence	1
Hitler's Henchmen	Quest	12/09/2013	Scheduling	1

Holby City	BBC 1	24/09/2013	Disability/discrimination offence	1
Holby City	BBC 1	24/09/2013	Race discrimination/offence	2
Hollyoaks	Channel 4	23/09/2013	Offensive language	1
Hollyoaks	Channel 4	02/10/2013	Scheduling	1
Hollyoaks	E4	27/09/2013	Offensive language	1
Humaare Baatein	Spice FM	23/09/2013	Religious/Beliefs discrimination/offence	1
Insidious (trailer)	E4	04/09/2013	Scheduling	1
ITV Player promotion	ITV	29/09/2013	Violence and dangerous behaviour	1
ITV Player promotion	ITV	30/09/2013	Promotion of products/services	1
ITV News at Ten and Weather	ITV	10/09/2013	Due accuracy	1
ITV News at Ten and Weather	ITV	03/10/2013	Generally accepted standards	1
ITV News Granada Reports	ITV Granada	01/10/2013	Outside of remit / other	1
James O'Brien	LBC 97.3FM	27/09/2013	Due impartiality/bias	1
Kick Ass Kung Fu	Sky1	23/09/2013	Animal welfare	1
Kick Ass Kung Fu	Sky1	23/09/2013	Gender discrimination/offence	1
Kick Ass Kung Fu	Sky1	23/09/2013	Race discrimination/offence	1
Kick Ass Kung Fu	Sky2	04/10/2013	Animal welfare	1
Layaly Ramadhania	Fadak TV	02/08/2013	Religious/Beliefs discrimination/offence	1
Live at the Apollo	Comedy Central	22/09/2013	Generally accepted standards	1
London Irish	Channel 4	24/09/2013	Generally accepted standards	1
London Irish	Channel 4	24/09/2013	Offensive language	6
London Irish	Channel 4	24/09/2013	Race discrimination/offence	2
London Irish	Channel 4	01/10/2013	Offensive language	2
London Irish	Channel 4	01/10/2013	Race discrimination/offence	1
London Irish (trailer)	Channel 4	23/09/2013	Race discrimination/offence	1
Lorraine	ITV	23/09/2013	Crime	1
McVitie's Cakes' sponsorship of 'Slices of Comedy'	Gold	30/09/2013	Race discrimination/offence	2
Meet the Russians	Fox	25/09/2013	Materially misleading	1
Miranda	BBC 1	27/09/2013	Scheduling	2
Motorway Cops	BBC 1	23/09/2013	Generally accepted standards	5
Motorway Cops	BBC 3	24/09/2013	Generally accepted standards	1
My Tattoo Addiction	Channel 4	26/09/2013	Generally accepted standards	4
News	NDTV	13/09/2013	Due impartiality/bias	1

Newsnight	BBC 2	01/10/2013	Outside of remit / other	1
Nick Ferrari	LBC 97.3FM	23/09/2013	Race discrimination/offence	1
Nick Ferrari	LBC 97.3FM	24/09/2013	Race discrimination/offence	1
'Original British Drama' (trailer)	BBC 1	28/09/2013	Scheduling	1
Orphan Black (trailer)	BBC 3	01/09/2013	Flashing images/risk to viewers who have PSE	2
Orphan Black (trailer)	BBC 3	07/09/2013	Flashing images/risk to viewers who have PSE	1
Pat and Cabbage	ITV	26/09/2013	Disability discrimination/offence	9
Paul Morris	Town 102 FM	12/09/2013	Race discrimination/offence	1
Pause for Thought	BBC Radio 2	Various	Outside of remit / other	1
Piers Morgan's Life Stories	ITV	27/09/2013	Offensive language	1
PM	BBC Radio 4	24/08/2013	Race discrimination/offence	1
Police Interceptors	Channel 5	23/09/2013	Offensive language	1
Porn on the Brain (trailer)	Channel 4	28/09/2013	Scheduling	2
Porn on the Brain (trailer)	Channel 4	30/09/2013	Scheduling	2
Porn on the Brain (trailer)	More 4	25/09/2013	Scheduling	1
Porn on the Brain (trailer)	More 4	29/09/2013	Scheduling	1
Programming	BBC 6 Music	20/09/2013	Premium rate services	1
Programming	Geo Tez	29/09/2013	Drugs, smoking, solvents or alcohol	1
Programming	Halton Community Radio	30/09/2013	Offensive language	1
Q and A English	Iqra TV	21/09/2013	Religious/Beliefs discrimination/offence	1
Question Time	BBC 1	26/09/2013	Generally accepted standards	1
Rich Planet	Showcase TV	Various	Outside of remit / other	1
River City	BBC 1 Scotland	24/09/2013	Scheduling	2
Rude Tube	E4	22/09/2013	Violence and dangerous behaviour	1
Saraswati Chandra	Star Plus	24/09/2013	Violence and dangerous behaviour	1
Sex Box	Channel 4	07/10/2013	Outside of remit / other	1
Sex: My British Job	Channel 4	23/09/2013	Generally accepted standards	1
Shopaholic Showdown (trailer)	TLC	29/09/2013	Offensive language	1
Sky Sports News	Sky Sports News	22/08/2013	Promotion of products/services	1
Smyths Toys Superstores' sponsorship of You've Been Framed	ITV2	24/09/2013	Sponsorship credits	1
Soccer A.M.	Sky1	28/09/2013	Generally accepted standards	1
Something Special	Cbeebies	03/10/2013	Outside of remit / other	1

Station ident	Jack FM	26/09/2013	Generally accepted standards	1
Street Patrol UK	BBC 2	10/09/2013	Scheduling	1
Strictly Come Dancing	BBC 1	28/09/2013	Disability discrimination/offence	1
Strictly Come Dancing	BBC 1	28/09/2013	Scheduling	1
Strictly Come Dancing	BBC 1	28/09/2013	Sexual orientation discrimination/offence	2
Strictly Come Dancing	BBC 1	05/10/2013	Disability discrimination/offence	1
Summer Holiday competition	True Entertainment	21/09/2013	Animal welfare	2
Superdrug's sponsorship of Human Spider Sisters: My Shocking Story	TLC	19/09/2013	Sponsorship	1
Teenage Mutant Ninja Turtles	ITV	21/09/2013	Violence and dangerous behaviour	1
Teleshopping	PTV Global	18/08/2013	Advertising minutage	1
Terminator 2: Judgement Day	Channel 4	31/08/2013	Violence and dangerous behaviour	1
The Alan Brazil Sports Breakfast	Talksport	16/09/2013	Commercial communications on radio	1
The Big Bang Theory	E4	29/09/2013	Scheduling	1
The Breakfast Show	Spire FM	11/09/2013	Scheduling	1
The Chase	ITV	25/09/2013	Outside of remit / other	1
The Cross-Dressing Cannibal: Born to Kill?	Channel 5	17/09/2013	Scheduling	1
The Fried Chicken Shop	Channel 4	30/09/2013	Materially misleading	1
The Ginge, the Geordie and the Geek	BBC 2	29/09/2013	Generally accepted standards	1
The House That £100k Built	BBC 2	02/10/2013	Violence and dangerous behaviour	1
The Inbetweeners	E4	Various	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV	26/09/2013	Generally accepted standards	1
The Jeremy Vine Show	BBC Radio 2	13/09/2013	Animal welfare	1
The Lovely Bones	Film 4	26/09/2013	Generally accepted standards	1
The One Show	BBC 1	24/09/2013	Generally accepted standards	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	30/09/2013	Scheduling	1
The Simpsons	Channel 4	25/09/2013	Generally accepted standards	1
The Social Network	NDTV 24x7	10/09/2013	Religious/Beliefs discrimination/offence	1
The Three Day Nanny	Channel 4	18/09/2013	Under 18s in programmes	1
The Three Day Nanny	Channel 4	25/09/2013	Crime	1
The Wonder of Dogs	BBC 2	21/09/2013	Outside of remit / other	1
The X Factor	ITV	05/10/2013	Nudity	1
The X Factor	ITV	05/10/2013	Outside of remit / other	1

The X Factor	ITV	Various	Undue prominence	1
The X Factor	ITV2	30/09/2013	Offensive language	1
This Morning	ITV	01/10/2013	Competitions	1
This Morning	ITV	01/10/2013	Due impartiality/bias	1
This Morning	ITV	01/10/2013	Generally accepted standards	1
This Morning	ITV	02/10/2013	Offensive language	1
Through the Keyhole	ITV	14/09/2013	Offensive language	2
Through the Keyhole	ITV	28/09/2013	Generally accepted standards	2
Today	BBC Radio 4	27/09/2013	Outside of remit / other	1
Today	BBC Radio 4	07/10/2013	Outside of remit / other	1
Top of the Pops	BBC 4	03/10/2013	Generally accepted standards	1
Truckers (trailer)	BBC 1	05/10/2013	Scheduling	1
News	BBC	Various	Outside of remit / other	1
Victoria Derbyshire	BBC Radio 5 Live	27/09/2013	Outside of remit / other	1
Watchdog	BBC 1	02/10/2013	Outside of remit / other	1
Whitechapel	Hot Cable (Israel)	16/09/2013	Outside of remit / other	1
Whitechapel	ITV	02/10/2013	Generally accepted standards	15
WWE Bottom Line	Sky Sports 2	09/09/2013	Violence and dangerous behaviour	1
You've Been Framed!	ITV2	03/10/2013	Under 18s in programmes	1

## Investigations List

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

Here is an alphabetical list of new investigations launched between 26 September and 9 October 2013.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Adhan-e-Isha	NTV	6 August 2013
Azan-E- Asr	CHSTV	7 August 2013
BBC Radio Cumbria Sport – Post Match	BBC Radio Cumbria	14 September 2013
Breakfast Show	Kerrang	21 September 2013
Cowboy Traders	Channel 5	27 June 2013
Lycamobile's sponsorship of Idiots	Channel Nine UK	10 September 2013
News	Russia Today	18 September 2013
News	Samaa TV	14 September 2013
Programme sponsorship	Star Plus	24 September 2013
Provision of recordings	Klear TV	3 September 2013
Road Wars	Sky 2	22 August 2013
The Dealership	Channel 4	15 August 2013
The Sam Brown Show	Peace FM	8 August 2013

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

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

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

For fairness and privacy complaints go to:

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