

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 objectives¹. 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 Act².

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 advertising³.
- 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

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

³ 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

Scorned: Crimes of Passion

Investigation Discovery, 24 September 2013, 17:00

Introduction

Investigation Discovery is a channel dedicated to documentary programming about crime and criminal investigations. The licence for Investigation Discovery is held by Discovery Communications Europe Limited (“Discovery” or “the Licensee”).

Scorned: Crimes of Passion is a true-life crime series about relationships that ended in murder. This 60-minute episode, entitled *Best Friends for Never*, reported on the circumstances of the murder of a 19 year old American woman, Devon Guzman, by her 18 year old lover Michelle Hetzel, and Michelle’s husband, Brandon Bloss.

A complainant alerted Ofcom to sexually explicit scenes in the episode broadcast at 17:00 on 24 September 2013. Ofcom assessed the episode, which was preceded by the following warning:

“The following programme contains drama reconstruction based on real events”.

We noted that this programme dealt with the friendship of three teenage girls: Devon, Michelle and a third girl, Keary Renner. The programme recounted how Devon had had sexual relationships with both Michelle and Keary. During the programme, a number of scenes depicted Devon’s sexual relationship with Michelle, as set out below.

Preview

The programme began with a preview featuring short clips from scenes in the programme. The first of these depicted Devon and Michelle, aged 19 and 18 at the time, wearing their bras and knickers and kissing passionately on a bed. An interviewee described their relationship in the following terms:

“These two girls, being the same age, they were into this experimentation and finding their sensuality”.

Further footage was then shown of various intercut images of: the women kissing on the bed; Devon kissing Michelle’s body; and Michelle throwing her head back, apparently in pleasure. At the culmination of this sequence the sound of a female moaning was broadcast, enhanced and emphasised through the use of a staccato sound effect.

An image of a bloody knife was then shown in close-up, and this was followed by a series of images of Devon’s corpse with a large amount of blood around her neck. The following description of her fatal injuries was given by an interviewee:

“Her neck sort of fell backwards to the extent that I thought she may have been decapitated”.

Portrayals of sexual behaviour

Scene One

The first section of the programme recounted how Michelle had met and become engaged to the son of her foster parents, Brandon. The programme's narrator described what happened next:

"Only a few months after getting engaged, [Michelle]'s cheating on [Brandon] with the last person he'd ever expect, her best friend, 18 year old Devon Guzman".

In this segment (approximately six minutes into the programme) in a dramatic reconstruction Devon and Michelle were shown removing each other's clothes down to their bra and knickers, before kissing passionately on a bed. Various close-ups of the women's bodies were intercut with footage of Devon lying on top of Michelle as they kissed each other's mouths and necks. Images of Devon kissing Michelle's stomach were also shown. Towards the end of the sequence, the sound of a female moaning was broadcast, enhanced and emphasised through the use of a staccato sound effect. The following comments were made during the scene, the first by the narrator and the second by an interviewee:

"The intense chemistry of this taboo relationship gives Michelle the thrill that Brandon could never provide".

"They have a secret and an understanding...they understand each other in a way that nobody else could possibly understand. It really heightens not just the love, but the sexual turn-on between them".

This scene lasted approximately 50 seconds.

Scenes Two and Three

Approximately 17 minutes into the programme a sequence lasting approximately 15 seconds was broadcast which included various images that had been included in Scene One above. In summary, Devon and Michelle were shown kissing and caressing each other. At the culmination of this sequence, the sound of a female moaning was broadcast. This sequence was repeated five minutes later.

Depictions of violence

Ofcom noted, in particular, two portrayals of violent behaviour and its after-effects within the programme. These two linked scenes showed: firstly, a reconstruction of Devon's dead body being found; and, second, a reconstruction of how Devon had been killed by Michelle and Brandon.

The first scene took place approximately 38 minutes into the programme. A dramatic reconstruction depicted Keary and Michelle looking for Devon after she was discovered to be missing. They were shown finding Devon's body in the back of her car and the programme's narrator described how she had been apparently killed:

"Their friend's throat has been viciously slashed to the bone".

An image was then shown of the top half of Devon's body lying on the back seat of her car. The image showed Devon's head nearest to camera, with her neck covered

in blood. There was then a close-up shot of her blood-covered neck. Shortly afterwards, an interviewee (a police investigator) said:

“I was there when they physically removed the body from the vehicle and placed Devon’s body on a mat outside the vehicle, and her neck sort of fell backwards, almost to the extent that I thought she may have been decapitated. A gashing wound across her throat, which was deep. It was very visible. It was pretty clear that this was not a suicide.”

Close-ups of what was depicted as Devon’s blood-covered neck were shown five more times over the course of the next minute and a half.

The second scene was about 57 minutes into the programme. A dramatic reconstruction showed how Michelle and Brandon had worked together to kill Devon. Devon was shown arriving at Michelle and Brandon’s house and, while Devon was standing in the hallway, Brandon was seen grabbing Devon from behind and then Brandon was shown restraining Devon for approximately 30 seconds. During this sequence, which was in slow motion: Devon was seen screaming in terror whilst being restrained by Brandon; Michelle was seen holding a knife; and Brandon was seen from behind drawing his hand across Devon’s throat, apparently with the knife.

During this sequence, the following statements were made in the programme commentary and by two separate interviewees:

Commentary: *“When [Devon] arrives, she is grabbed by Michelle and Brandon, who launch a vicious and deadly attack”.*

First interviewee: *“I think Brandon was certainly the one who cut her throat but with the bruises on Devon’s forearms I think Michelle was right there, holding her arms, so Brandon could do this thing.”*

Second interviewee: *“Brandon was taller than Devon; he was stronger than Devon. This required a great amount of strength to commit this injury. He had the bite mark on his arm which probably occurred while he was putting his arm around her throat.”*

A few seconds later there was a (reconstruction) close-up image of the knife, now bloody, in Brandon’s hand.

Ofcom considered the dramatic reconstructions of Michelle and Devon’s sexual relationship, and the depictions of violence and the after-effects of violence raised issues under Rule 1.3 of the Code. This rule states:

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

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

Response

Discovery apologised for broadcasting this programme at this time. The Licensee said that, after being notified by Ofcom of the complaint about this programme, it had “recertified” *Scorned: Crimes of Passion* to be shown only post-watershed. The Licensee said this step was part of its wider re-assessment of “compliance

procedures and certification process” on Investigation Discovery, which had been instigated following a separate Ofcom investigation into other content shown pre-watershed on the channel¹. Discovery added that as a result of this re-assessment: “a number of series from the daytime [Investigation Discovery] schedules...are being reviewed and recertified as required”.

While accepting that “some of the content in this particular episode may have been inappropriate for a daytime audience, even on a specialised crime channel...” such as Investigation Discovery, the Licensee pointed to a number of factors which it argued lessened the risk of child viewers watching this content or being harmed by it:

- Investigation Discovery is a “clearly labelled and specialist crime channel located in the documentaries part of the EPG on both Sky and Virgin, and the channel is clearly intended for an adult audience”;
- the channel has a low child audience “between the hours of 4pm and 7pm”;
- only one viewer had complained about this episode, and: “no other viewer complaints related to this series”;
- the dramatic reconstructions were clearly labelled as “reconstruction” or “dramatization”; and
- the representations of sexual activity were “impressionistic rather than graphic”.

Discovery outlined various steps it had taken in response to this incident to further improve its compliance. These included: the establishment of a new team, consisting of “key members of the re-versioning teams, compliance teams and scheduling teams” to ensure that “clear parameters of acceptable daytime” content on Investigation Discovery are agreed; and the provision of “tailored, crime compliance training to teams working on crime content” with clear guidelines on “handling content referencing key areas such as child abuse and domestic violence”.

Decision

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

In reaching a Decision in this case, Ofcom has taken into account the right to freedom of expression which gives broadcasters a right to transmit and the audience to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention of Human Rights. However, although broadcasters and viewers have this right, it is the responsibility of broadcasters to ensure that the material they transmit is in accordance with the general law and 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

¹ See Ofcom’s Finding on *Deadly Women*, Investigation Discovery, 16, 18 & 20 August 2013, various times, published in issue 246 of Ofcom’s Broadcast Bulletin: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb246/>.

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 considered whether the programme was suitable for children. We noted that the programme included the repeated broadcast of images of two young women, variously: removing each other's clothes down to their bras and knickers; kissing each other's mouths and necks passionately; and caressing each other while wearing only their underwear. These sequences included: close-up images of the women's bodies; images of one of the women lying on top of the other; and images of one of the women kissing the other's stomach. Towards the end of each sequence, the sound of a female moaning was broadcast and on two occasions was emphasised through the use of a staccato sound effect. We noted that, during one of the sequences, the following statements were made respectively by the narrator and an interviewee:

"The intense chemistry of this taboo relationship gives Michelle the thrill that Brandon could never provide".

"They have a secret and an understanding...they understand each other in a way that nobody else could possibly understand. It really heightens not just the love, but the sexual turn-on between them".

We considered that while these reconstructions were not graphic and did not show any explicit depictions of specific sexual acts, they were clearly sexual in tone, and this tone would have been likely to have been emphasised by the use of stylised music, soft-focus camera effects, and the sounds of a woman moaning (apparently in sexual pleasure) with the addition of the staccato sound effect.

We also noted that the programme included two scenes of violence and its after-effects, in particular various real shots of Devon's blood-covered throat (which were shown six times in less than one minute). The strength of these images was sharpened by the broadcast of the accompanying descriptions:

"Their friend's throat has been viciously slashed to the bone."

"I was there when they physically removed the body from the vehicle and placed Devon's body on a mat outside the vehicle, and her neck sort of fell backwards, almost to the extent that I thought that she may have been decapitated. A gashing wound across her throat, which was deep. It was very visible. It was pretty clear that this was not a suicide."

In addition, the programme included a dramatic reconstruction of Devon being murdered as described in detail above. There were no images of, for example, the blade cutting into Devon's throat. We considered however that the combination of Michelle holding the knife to Brandon, Brandon's aggressive movement (shown in slow-motion) as he drew his arm across the front of Devon's neck, the close-up shot of the bloodied knife in Brandon's hand following the attack, and the detailed information contained within both the programme commentary and interviews describing Devon's injury, made it clear to viewers that Devon's throat had been slashed. The menacing tone of this sequence would have been exacerbated by the fact that it was in slow motion, with stylised music.

Although the content featuring sexualised behaviour and the separate sequences depicting violent behaviour and its aftermath were not graphic, in our view when

taken together they created an effect which made them notably adult in tone when featured within this programme. We noted that the Licensee accepted that: “some of the content in this particular episode may have been inappropriate for a daytime audience”. Taking all these factors into account, Ofcom considered that the cumulative effect of this programme combining scenes of a sexualised nature and of violence and its after-effects, meant that this programme was unsuitable for children.

Ofcom went on to consider whether the material was appropriately scheduled.

The Code does not preclude programmes about real life crime being shown before the 21:00 watershed. Further, the expectations of the audience of a crime-based channel such as Investigation Discovery are likely to be different from those of a mainstream, general-interest channel, particularly in relation to depictions of violence. This is reflected in Ofcom’s guidance note to Section One of the Code², where it is recognised that there is a distinction between channels which appeal to a wide-ranging audience and specialist channels which attract a smaller, niche audience.

However, broadcasters of specialist channels still carry a responsibility towards a potential child audience. Ofcom’s guidance³ *Protecting the Under-Eighteens: Observing the watershed on television and music videos* makes clear that in relation to violence:

“broadcasters editing post-watershed drama material including violent scenes for pre-watershed transmission should ensure that such scenes are appropriately limited. Particular attention should be paid to scheduling of material in slots when children may reasonably be expected to have returned from school. It should be noted that, as indicated by Ofcom’s research...violent scenes are of principal concern to parents.”

Discovery argued that the hours between “4pm and 7pm” generally attract a low child audience on Investigation Discovery. We recognise that a specialist crime channel like Investigation Discovery may attract a limited child audience. However, we noted that this broadcast occurred in the late afternoon on a weekday when there was a likelihood that children, who may have returned from school, would have been available to view – in some cases potentially unaccompanied by an adult. In this context, the BARB viewing figures for this programme indicated that, although the overall number of viewers was very low, over 47% of viewers were aged between 10 and 15.

The programme was preceded by the following pre-broadcast warning:

“The following programme contains drama reconstruction based on real events”.

We considered that the provision of pre-broadcast warnings may be of use to viewers in certain circumstances. However, this particular warning lacked any relevant detail and would have been of little help in advising viewers about the programme’s content. In any case, even the most descriptive of warnings may not be sufficient to ensure that material is appropriately scheduled, particularly at times when there is the potential for child viewers, in some instances unaccompanied by an adult, to

² See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

³ See <http://stakeholders.acmpub.intra.ofcom.local/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

come across content unawares. For example, we noted that the episode preview in this programme included images that were amongst the most graphic featured in the programme. However the pre-broadcast warning in this case made no reference to the fact that images of a sexual and violent nature would be broadcast from the outset.

The Licensee asked Ofcom to note that “only one” viewer complaint had been received about the episode. Ofcom however is charged with maintaining broadcasting standards through ensuring compliance with the Code, independent of the number of complaints received. We would be concerned if licensees considered that a low number of complaints received after broadcast was a reason to justify retrospectively scheduling decisions about material that was unsuitable for children to view.

Discovery also pointed out that the dramatic reconstructions were clearly labelled as “reconstruction” or “dramatization”. The fact that the dramatic reconstructions were labelled in this way did not mitigate materially the fact that material which was unsuitable for children was broadcast at this time of the day. The labelling of the content as “reconstruction” or “dramatization” would not have been sufficient to alert viewers to the strength of the material within those sequences.

In reaching our Decision, Ofcom took into account: the Licensee’s apology; the fact that the series *Scorned: Crimes of Passion* had been removed from the pre-watershed schedule; and the various steps taken by Discovery to improve its compliance procedures.

Nonetheless, taking all the above into account, Ofcom concluded that the programme contained material unsuitable for children and was inappropriately scheduled. It therefore breached Rule 1.3 of the Code.

Breach of Rule 1.3

In Breach

Embarrassing Bodies

TLC (Poland), 25 July 2013, 14:00

Introduction

Embarrassing Bodies is an educational series which features participants with a range of medical problems, usually concerning embarrassing health conditions. The purpose of the programme is to demystify these conditions and by doing so alleviate any anxieties viewers might have about them. The participants are typically shown receiving medical advice, examinations and treatment from one of the *Embarrassing Bodies* doctors in the studio, being referred to other medical specialists and then returning to review their treatment with the series doctors back in the studio.

This particular episode of *Embarrassing Bodies* was broadcast on TLC (Poland) and the licensee for this service is Discovery Communications Europe Limited ("Discovery" or "the Licensee").

Ofcom received a complaint from a viewer in Poland who considered that the genital examinations shown in this programme were not suitable for broadcast during the daytime and at a time when children were available to view.

This programme, broadcast at 14:00 during the school holidays, featured a genital examination of a woman with the symptoms of thrush, before and after treatment. The programme was preceded by the following pre-programme information (as translated for Ofcom from the original Polish): "*the programme includes real scenes of emergencies, injuries and surgery, which may cause discomfort*"¹.

Ofcom considered this material warranted investigation. We therefore wrote to Discovery giving them details of the complaint, and requested comments as to how this material complied with 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 Discovery as to how this material complied with this rule.

Response

In its initial response to Ofcom, the Licensee explained that the content of this episode was "very much in line with the expectations of [the] TLC (Poland) audience" and it was not anticipated that "significant numbers of children...would be watching this adult orientated channel." The Licensee indicated that Discovery had only ever scheduled this series for transmission in low child index slots. The broadcaster also confirmed that its research did not demonstrate any increase in children viewing the channel during the school holidays.

¹ As translated for Ofcom from the original Polish.

Discovery explained that this series of *Embarrassing Bodies* only started transmitting in a pre-watershed 14:00 slot the week before, on 18 July 2013. Before then, the series had been broadcast at 21:00. However, the Licensee stated that the Polish audience of TLC (Poland) was “very familiar” with this kind of pre-watershed content with other TLC series such as *Last Chance Salon*, *Family Fat Surgeons* and *Bodyworks*.

The Licensee referred to a previous decision, published in issue 180 of Ofcom’s Broadcast Bulletin², which noted that an episode of *Embarrassing Bodies*, broadcast on Channel 4 at 19:00, was an educational programme, and that “a programme which stresses the importance of viewers not needing to feel anxious or embarrassed by any medical conditions, is not unsuitable for children”.

With regard to the overall content of the episode, Discovery stated that all of the nudity “was very much in the context of awareness and understanding, and ultimately represented a very positive outcome for the patients involved.” In addition, the series was “clearly educational and medical in nature” and there was no sexual context to the nudity. The Licensee said that the programme was also preceded by a clear warning alerting viewers to the nature of the content and, while this warning did not address the fact that the programme included nudity, the nature of the topics to be covered in this programme were made clear to the viewer in the pre-title sequence.

Having considered this first response, which did not specifically address the issue of the female genital examination featured in this episode, Ofcom sought further comments from the Licensee. The Licensee stated that due to a mistake by its compliance team, Discovery had initially reviewed a different episode of the series broadcast during daytime and based its earlier comments on the content of that programme, not the one which Ofcom was investigating. On reviewing the episode broadcast on 25 July 2013 featuring the genital examination of the woman with thrush symptoms, the Licensee said that this episode “was more explicit in some of the examinations than we would usually approve for a daytime slot.” The Licensee explained that the vaginal examination was “quite explicit”, featured “quite early in the programme”, and for “quite a prolonged period”, and as such this episode had been removed from daytime until it was edited appropriately.

The Licensee also stated that it had removed all other episodes of the series from the daytime schedule, until it could ensure that any other particularly sensitive topics have been appropriately edited for daytime.

In its submissions on Ofcom’s Preliminary View in this case (a breach of Rule 1.3), Discovery argued that its initial response commented on the wrong programme because the Licensee had not been provided with sufficient information about the complaint by Ofcom.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears 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.

In reaching this Decision, Ofcom has taken into account the right to freedom of expression which gives the broadcaster a right to transmit and the audience a right to

² <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb180/>.

receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights. Although broadcasters and viewers have this right, it is the responsibility of broadcasters to ensure that the material they transmit is in accordance with the general law and the Code, in particular, in this case the rules to protect children from material which is unsuitable for them.

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 firstly noted the Licensee's reference to Ofcom's previous decision, published concerning an episode of *Embarrassing Bodies* broadcast on Channel 4 at 19:00 in March 2010 ("the 2010 Decision").

The 2010 Decision, which found that the programme in question had not breached the Code, set out that: "in principle, educational programming on medical matters, and in particular a programme which stresses the importance of viewers not needing to feel anxious or embarrassed by any medical conditions is not unsuitable for children." However, as detailed in that 2010 Decision, the outcome was based on the individual circumstances of that case, particularly: the nature of the content of the specific episode of 28 March 2010; the scheduling of the programme; and the nature of the channel and audience of this episode.

In the 2010 Decision, Ofcom considered that the nature of the content in that particular episode, which featured images of male genitalia, was not "lingering or gratuitous" and the purpose of including the images and related discussion in the programme was not sexual arousal. Ofcom therefore concluded that the content in that particular case was not unsuitable for children. As required by Rule 1.3, Ofcom also considered whether the content had been appropriately scheduled. The 2010 Decision set out that Ofcom considered that the scheduling of a serious educational programme dealing with medical issues and aimed at an adult audience, as the episode of 2010 was, would be within the likely expectations of the audience of Channel 4 at 19:00 on a Sunday evening.

Consequently, when considering whether the episode broadcast on TLC (Poland) on 25 July 2013 complied with Rule 1.3, Ofcom carefully reviewed the circumstances of this individual broadcast to reach a view on both its suitability for children and whether it was appropriately scheduled.

Ofcom remains of the view, as expressed in its previous 2010 Decision that, in principle, an educational programme on medical matters does not necessarily exceed the boundaries of acceptability for a pre-watershed programme and is not unsuitable for children. Programme makers have the editorial freedom to include such content provided it complies with the Code.

Ofcom first considered whether the material in this programme was suitable for children. This programme featured two genital examinations of a woman. In the first diagnostic examination, Ofcom noted three specific sequences: the first, a full screen image of the woman's genitals as one of the series doctors, Dr Christian Jessen, inserted a speculum inside her vagina; the second, a full screen close-up image of the woman's genitals with the speculum in place and the doctor looking into it; and

the final scene, a full screen close-up image of the woman's genitals as the doctor removed the speculum from her vagina. Later in the episode, and following treatment, the woman returned to see the doctor for a second examination, when there was one further sequence of a full screen close-up image of the woman's genitals as the doctor examined her. The remaining sequences of the second examination also featured the insertion of a speculum. However, these were more limited in detail because they were shot at mid-range and did not show any close-up detail of the woman's genitals.

The nature of these specific scenes of a female genital examination, which featured full screen and close-up images of the insertion and removal of a speculum, was in Ofcom's view unnecessarily invasive and detailed for broadcast pre-watershed. If the four full-screen images of the woman's genitals and the insertion of the speculum had been edited to limit the detail shown, it would not, in Ofcom's opinion, have disproportionately undermined the important medical information that was being given by the doctor at the same time or disproportionately affected the Licensee's right to freedom of expression. Further, in Ofcom's view, the nature of these full-screen images of the participant's genitals was far more detailed and intrusive than, for example, the footage of the male genitalia which was subject to the 2010 Decision (see above).

Ofcom noted the warning which appeared before the start of the programme which stated that the broadcast contained scenes of: "*real scenes of emergencies, injuries and surgery, which may cause discomfort*". This warning was not specific, however, and was not, in Ofcom's opinion, sufficiently clear. In particular, it did not indicate to viewers the nature of the intimate medical examinations which were to follow nor did it inform viewers that the programme included nudity.

In Ofcom's view, the graphic and invasive nature of the images shown would have exceeded the likely expectations of the pre-watershed audience for this programme. Ofcom therefore considered that this material was unsuitable for children.

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

We have set out above in some detail the nature of the particular scenes in this programme that Ofcom considered unsuitable for a pre-watershed audience where children were available to view. Ofcom also assessed these scenes as part of its consideration of whether they were appropriately scheduled. Ofcom noted that the series *Embarrassing Bodies* had been previously scheduled at 21:00 on TLC (Poland) and that this episode was only the second programme of the series to be broadcast pre-watershed on this service at 14:00.

Ofcom noted the Licensee's argument that TLC (Poland) is an adult orientated channel. However, in Ofcom's view, the images of the genital examination in this programme required careful and cautious scheduling to comply with the Code. In this case Ofcom considered that the images would have exceeded the expectations of a pre-watershed audience (and especially of parents) due to their graphic and invasive nature and because these sequences were shown at 14:00 during the school holidays. For these reasons, Ofcom did not consider that the material was appropriately scheduled.

Ofcom was concerned that Discovery initially made representations about the wrong episode of *Embarrassing Bodies* broadcast during daytime. Ofcom was also surprised that Discovery claimed it had not been provided with sufficient information about the complaint by Ofcom. Ofcom's first letter to Discovery requesting comments

included reference to the transmission date and time of the episode we were investigating and the details of the original complaint. In Ofcom's view this information should have sufficiently alerted the broadcaster to the problematic episode and material contained within it. Ofcom expects all licensees to take appropriate measures to ensure that when the regulator requests formal comments and launches an investigation representations are not only full and frank but based on the broadcast material Ofcom has clearly indicated it is investigating.

The Licensee acknowledged in its further representations that this programme included material which was unsuitable for broadcast before the watershed and should have been edited before being shown, and has taken various measures to improve compliance in future. However, having regard to all the factors set out above, we concluded that this material as broadcast was not appropriately scheduled and the Licensee breached Rule 1.3.

Breach of Rule 1.3

In Breach

Retention and production of recordings

Peace FM, 8 to 13 August 2013

Introduction

Peace FM is a community radio station primarily aimed at the African and Caribbean community in Manchester. The licence for this service is held by Peace Full Media Limited (“PFM Limited” or “the Licensee”).

Ofcom received a complaint that a presenter made racist references to Jamaican people.

The Licensee said it was unable to provide Ofcom with a copy of the relevant output because the recording files of the programme had been corrupted. It was able to provide to Ofcom some very short sequences of output, but none related to the content complained about.

Ofcom considered the failure to provide a complete recording of the programme raised issues warranting investigation under Condition 8(2)(a) and (b) of PFM Limited’s Community Radio Licence which states:

“8(2) In particular, the Licensee shall:

- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...”.

We therefore requested the Licensee’s comments on how it complied with this Licence Condition.

Response

PFM Limited apologised for the recording not being available. The Licensee said it had investigated the incident and had found that a system failure occurred at approximately 03:00 on 8 August, lasting until 12 August.

The Licensee said it could not state with certainty why the station’s output (with the exception of some very short sequences) had not been recorded. It said the error could have occurred because of the lack of memory on the computer which recorded the station’s output. PFM Limited explained that its audio files are normally converted to an external hard drive but this had not been carried out for a period, which led to a lack of storage space on the computer. This resulted in only small amounts of recording data being saved, and only truncated audio clips being made available to Ofcom. The Licensee also suggested that the recordings may have been affected by a member of staff carrying out some technical work on the storage computer.

To avoid a similar technical issue in future, PFM Limited said it now has a second computer make a back-up recording of its output.

Decision

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

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

Breaches of Licence Conditions 8(2)(a) and (b) are serious because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

In this case, the Licensee failed to record its output for five days from 8 to 12 August 2013. As a result, the Licensee was unable to provide to Ofcom the output from 8 August which Ofcom had requested. These are clear breaches of Licence Conditions 8(2)(a) and (b).

The requirement for licensees to make and retain recordings is one of the most basic licence obligations. Ofcom was concerned that no one at PFM Limited was aware that the station's output was not being recorded for five days. We therefore welcome the measures introduced by the Licensee to improve its compliance recording system.

Breaches of Community Radio Licence Conditions 8(2)(a) and (b)

Resolved

Mr Selfridge

ITV3, 30 September 2013, 20:00

Introduction

Mr Selfridge is a fictional drama series loosely based on the lives of the London department store founder Mr Selfridge, his family and fictional characters representing various members of staff in the department store at the start of the twentieth century. The series was originally broadcast on ITV at 21:00. This episode was part of a repeat of the series broadcast from 20:00 on ITV3, which specialises in repeats of programmes of contemporary and classic dramas. The licence for ITV3 is held by ITV Digital Channels Limited (“ITV” or “the Licensee”).

A complainant alerted Ofcom to a sex scene broadcast at 20:15 which featured the character Lady Mae Loxley, a London socialite, and Victor Colleano, a waiter at Selfridges & Co. The complainant considered it to be unsuitable for broadcast before the watershed.

The scene in question took place in Lady Mae’s bedroom and was approximately ten seconds in duration. It started immediately after the end of the first advertising break in the programme with sounds of heavy panting. It showed Victor on top of Lady Mae having sex and the couple reaching a sexual climax. During the sequence the couple were shown naked from the waist up, with the rest of their bodies covered by a duvet, and with Lady Mae’s long hair fully covering her breasts.

Ofcom considered this material raised issues warranting investigation under Rule 1.20 of the code which states:

“Representations of sexual intercourse must not occur before the watershed (in the case of television)...unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed...and must be appropriately limited”.

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

Response

ITV said that this period drama had very little content that would be problematic for children and was expected to appeal to adult viewers rather than children. Although ITV accepted that the scene was “briefly sexual” it considered it was editorially justified by the context because it revealed a turning point in the relationship between Lady Mae and Victor.

ITV said that the scene was “largely post-coital. The characters quickly part and lie side by side on their backs and neither character was shown nude”. It also considered that despite some sexual content the scene was “sufficiently brief” and that there was “no explicit depiction of intercourse”.

However, ITV apologised for the offence caused and said it had reconsidered the content in light of the concerns raised. Consequently, the Licensee said it would edit

the scene for any future scheduling before the watershed and would reserve the original version for 21:00 transmission only.

Decision

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

In reaching this decision, Ofcom has taken into account the fact that broadcasters have a right to freedom of expression which gives the broadcaster a right to transmit and the audience a right to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights. Although broadcasters and viewers have this right, it is the responsibility of the broadcasters to ensure that the material they transmit is in accordance with the general law and the Code, in particular, in this case the rules to protect children from material which is unsuitable for them.

Ofcom noted that the series *Mr Selfridge* was first broadcast on ITV at 21:00. The scene showing a couple having sex (as described in the Introduction) would therefore have been originally transmitted after the watershed. In this ITV3 case, however, the scene was shown at 20:15, some time before the watershed and immediately after an advertising break. There were no warnings given, either before the start of the programme or at the end of the advertising break.

Rule 1.20 states that any representations of sexual intercourse must not be broadcast before the watershed unless there is a serious educational purpose, and that any portrayal before the watershed of sexual behaviour must be editorially justified and appropriately limited.

We noted ITV’s comments that the scene was “briefly sexual” and that there was no “explicit depiction of intercourse”. Although the sequence was brief and only showed the characters’ naked bodies above the waist, it clearly depicted the couple having sex and reaching a climax.

Given that this scene was featured in a period drama series for general entertainment, there was clearly no editorial intention for this scene to be considered as having a serious educational purpose as required by Rule 1.20. Further, it was Ofcom’s view that, although this scene had some editorial justification in the context of this period drama, this was not sufficient (and nor was the sequence appropriately limited) to justify its broadcast in this programme at 20:15.

Ofcom took into consideration however that this scene was relatively brief, limited to some extent in what it showed, and was scheduled on ITV3, which typically broadcasts dramas with a greater appeal to adults. Ofcom also took into account that ITV would edit the scene for any future showings of this programme before the watershed. We therefore concluded that this matter should be resolved.

Resolved

Advertising Scheduling Findings

In Breach

Advertising minutage

News18 India, 13 September to 29 September 2013, various times

Introduction

News18 India is a 24-hour news service broadcasting in English. The licence for News18 India is held by TV18 Broadcast Limited (“TV18” 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 identified the following four instances when the Licensee had broadcast more than the permitted advertising allowance:

- 13 September 2013, 15:00 clock hour – overrun of 35 seconds;
- 27 September 2013, 14:00 and 16:00 clock hours – overruns of one minute and 20 seconds, and one minute and 15 seconds respectively; and
- 29 September 2013, 17:00 clock hour – overrun of one minute and 10 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

TV18 said the total amount of advertising scheduled for each clock hour was in accordance with COSTA. However, on further investigation it found there was “an inadvertent technical error” as advertisements scheduled for broadcast in the preceding hours were pushed forward, resulting in the 12 minute limit being exceeded.

The Licensee said its scheduling team books all advertisements in advance to ensure compliance with COSTA, although it added that as a news service “sometimes certain important events cannot be pre-determined.”

TV18 said “During the days on which the duration has exceeded the prescribed limits, there were some important events which were being covered, due to which the scheduled commercial breaks were not taken for making sure that comprehensive coverage” was given to viewers.

TV18 said the scheduling team noticed this error and “immediately” took steps to rectify the situation. The Licensee said it was unable to detect the situation beforehand as it has recently launched the news service and the scheduling team was being trained on the processes involved.

TV18 said it has now put in place increased compliance checks to avoid this kind of mistake in the future. The Licensee also assured Ofcom the incidents were due to a

technical error rather than an intention to exceed the maximum allowance permitted by COSTA. It pointed out that advertising minutage in the preceding clock hours in these instances ranged between three minutes and 25 seconds and four minutes and 30 seconds, well below the maximum allowance.

The Licensee said if programming overran in the future due to coverage of an important live news event, causing an advertising break in one hour transmitting in the following hour, then that break would automatically be dropped to comply with COSTA.

Decision

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

Articles 20 and 23 of the 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 undertakes routine monitoring of its licensees’ compliance with COSTA.

We accepted the Licensee was not trying to gain a commercial advantage through the amount of advertising broadcast. Nevertheless, as a 24-hour news service, TV18 should have anticipated there would be numerous occasions when it would broadcast important or breaking news stories while also needing to ensure it complied with the maximum advertising allowances. It is not an acceptable practice to push advertising forward into the next clock hour without anticipating the implications for advertising minutage and making appropriate compensations for this.

Ofcom noted that, while the Licensee said it “immediately” took steps to correct the situation at the time, it was not evident from its submissions what this involved. We welcomed the Licensee’s assurance that it is taking measures to improve compliance with COSTA and that it has introduced procedures to avoid similar incidents in the future. Nonetheless, the amount of advertising in these clock hours exceeded the permitted allowance and therefore breached Rule 4 of COSTA on each occasion.

Breaches of COSTA Rule 4

Resolved

Advertising minutage

Bliss, 14 November 2013, 10:00

Introduction

Bliss is a music television channel shown on cable and satellite platforms. Ofcom received notification from the licence holder for Bliss, CSC Media Group Limited (“CSC Media”) that it had exceeded its permitted advertising allowance by one minute and 58 seconds.

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

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

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA.

Response

CSC Media informed Ofcom that the incident occurred after rebranding the channel from Bliss to Blissmas for the Christmas period, when it uploaded new software to its systems containing seasonal graphics and logos. The Licensee explained that to reduce the potential for minutage errors, this software update was carried out at 06:30 on 14 November 2013, when the channel was not broadcasting advertisements.

However, CSC Media said that while the software update was successful, a Transmission Controller set the new schedules to begin at 06:00 instead of 06:30 which meant that all content on the channel was running 30 minutes ahead of schedule. This error was not identified until 10:00 and before the Licensee could rectify the issue, an extra one minute and 58 seconds of advertising was broadcast during the 10:00 clock hour.

CSC Media said it then instructed its playout team to broadcast an “emergency slate” for two minutes during an advertising break at 12:17. The Licensee said that it subsequently removed eight minutes of advertising between 13:00 and 15:00.

CSC Media said that uploading new schedules is something which happens every day across its 16 channels, usually without error. To avoid a recurrence of the error which occurred on 14 November 2013, CSC Media said the Transmission Controller had been suspended from working across the Licensee’s channels pending re-training. In addition, the Licensee said it is exploring the need to reduce human involvement in uploading schedule changes.

CSC Media said that it considered the emergency action taken on the day, including “removing a substantial amount of commercial” airtime, as well as suspending the Transmission Controller, demonstrated how seriously it treated this issue.

Decision

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

Articles 20 and 23 of the 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.

In this case, Ofcom noted the measures taken by the Licensee to remedy the situation, including removing more advertising across the day than it had overran by during the 10:00 clock hour.

However, Ofcom is concerned about ongoing compliance issues with COSTA on CSC Media’s channels. This is the third time when Ofcom has reported on failures with CSC Media’s compliance with COSTA in the past year¹.

As a result, Ofcom may consider further regulatory action should there be any further COSTA compliance issues across CSC Media’s channels.

Resolved

1

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/243/obb243.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb234/obb234.pdf>

Broadcast Licence Condition Cases

Broadcasting licensees' late and non- payment of licence fees

Ofcom is partly funded by the licence fees it charges television and radio licensees. Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles¹. The detailed fees and charges which are payable by broadcasting licensees are set out in Ofcom's Tariff Tables².

The payment of a fee is a licence requirement³. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence, as it means that Ofcom is unable properly to carry out its regulatory duties.

In Breach

The following licensees have failed to pay their annual licence fee in accordance with the original deadline, despite repeated requests to do so. These licensees have therefore been found **in breach** of their licences. As a consequence of this serious and continuing licence breach, Ofcom is putting these licensees on notice that their present contravention of their licences is being considered for the imposition of a statutory sanction, including licence revocation.

Television Licensees		
Licensee	Licence Number	Service Name
Channel M Television Limited	DTPS 080	Channel M
Harmony Media Enterprises (UK) Limited	TLCS 1292	UKS Fuzion
Al Zahra TV Limited	TLCS 1390	Al Zahra TV
Wild TV Inc Limited	TLCS 1427	Wild TV

Resolved

The following licensees failed to pay their annual licence fee in accordance with the original deadline, but have subsequently submitted a late payment. For these licensees, we therefore consider the matter **resolved**.

Television Licensees		
Licensee	Licence Number	Service Name
Kashmir Broadcasting Corporation Ltd	TLCS 544	KBC
Arise Media UK	TLCS/1676	Arise 360
Arise Media UK	TLCS/1677	Arise News

1

http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

2 http://stakeholders.ofcom.org.uk/binaries/research/Tariff_Tables_2001112.pdf

3 Contained in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees

Correction

In issue 242 of the Broadcast Bulletin, published on 18 November 2013⁴, Scripps Networks International (UK), holder of TLCs 324 for the service 'Retail TV', was recorded as being in breach of the relevant licence condition for failing to pay its 2013-2014 annual licence fee. This was incorrect, occurring due to an administrative error. Issue 242 of the Broadcast Bulletin has now been amended to correct this.

⁴ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb242/>

Fairness and Privacy cases

Upheld in Part

Complaint by Mr G

999: What's Your Emergency, Channel 4, 10 September 2012

Summary

Ofcom has upheld in part a complaint of unwarranted infringement of privacy made by Mr G.

The programme, which was part of a series which followed the work of Blackpool's emergency services, included footage of Mr G as he was being cared for by paramedics and hospital staff after taking an overdose of Valium and smoking cannabis.

Ofcom's decision is that:

- Mr G had a legitimate expectation of privacy with regard to the recording of footage of and information about him. This expectation was heightened by Mr G's age and the fact that he was in a vulnerable state whilst receiving medical attention. While it was not reasonable for the programme makers to conclude they had obtained "informed consent" for this recording from Mr G, it was reasonable for them to conclude that such consent had been obtained from his step-father and/or mother. There was therefore no unwarranted infringement of Mr G's privacy in the obtaining of the material.
- Mr G had a legitimate expectation of privacy with regard to the broadcast of the footage of and information about him in the programme. This expectation of privacy was heightened by Mr G's age, the fact that he was shown while in a vulnerable state while receiving medical attention, and the fact that he was clearly identifiable from the material broadcast. With regards to "informed consent" for the broadcast of the footage, it was not reasonable for the programme makers in the particular circumstances of this case to conclude they had obtained such consent either from Mr G or his mother and/or step-father. Ofcom considered that broadcast of the relevant footage served the public interest to some extent by providing viewers with an example of the daily challenges faced by emergency workers in dealing with drug related incidents and the adverse consequences for individuals of taking such an overdose. However, Ofcom concluded that the broadcaster's right to freedom of expression and the public interest in broadcasting this material in these particular circumstances was outweighed by Mr G's heightened expectation of privacy in relation to the broadcast of this material without consent. Therefore, Ofcom concluded that Mr G's privacy was unwarrantably infringed in the programme as broadcast.

Guidance to broadcasters

There is a material difference between someone giving his or her consent to being filmed and to the subsequent broadcast of that footage (especially if the individual can be identified from that footage) to a potentially wide audience. As a result, Ofcom considers that if someone is identifiable from the broadcast of footage and is portrayed in a way which could unwarrantably infringe their privacy, in particular when receiving medical attention at home and hospital, they normally need to have a

proper understanding of the extent to which the programme maker proposes to feature them in a programme and to be given an opportunity to give their informed consent to the broadcast, unless the broadcast of that material is otherwise warranted.

Introduction and programme summary

On 10 September 2012, Channel 4 broadcast an edition of its series *999: What's Your Emergency?*, which followed the work of Blackpool's emergency services from the point an emergency call is taken at the control centre to the deployment of the police, ambulance teams and fire crews. This edition of the programme focused on the use of unclassified "party" drugs and prescription drugs, often in combination with alcohol and/or other drugs, and how this impacted upon the work of the emergency services in Blackpool.

The programme included footage in which an ambulance was called to a house where a young man, the complainant, Mr G, was said to have taken an overdose of Valium and been smoking cannabis. At the beginning of the footage, a paramedic, who was already attending Mr G, informed the two paramedics who had just arrived that he had taken "*ten Valium...and a load of weed*". Mr G, who was 17 years old at the time of filming, was shown experiencing some difficulty going down the stairs while accompanied by the ambulance crew. He was also shown getting into the ambulance, sticking his tongue out at the camera, and removing his shoe and gesturing to the trade mark of the manufacturer. Mr G was shown sitting in a wheelchair in the Accident and Emergency ("A&E") Department of a hospital and being questioned by a member of nursing staff. At this point, one of the paramedics told the nurse booking Mr G into hospital that Mr G had "*overdosed. 10, er no, 12 Valium, quite a bit of cannabis as well throughout the day*". Subsequently, the ambulance crew was shown discussing Mr G's case.

Summary of the complaint and the broadcaster's response

- a) Mr G complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that footage of him was filmed without his consent or that of his mother, who was present at the time of filming. The programme makers continued to film him even though he was not in a condition to give "informed consent" for the filming.

Mr G said that the programme makers took advantage of him, because they filmed him after he had taken an overdose of drugs and had nearly died. By way of background, Mr G said that he had got drunk one evening and had also been given some Valium, after which he barely remembered anything for four or five days. Two days later he went to his step-father who noticed that something was wrong with Mr G and called an ambulance. The paramedics arrived with a film crew, who, Mr G said, had a camera in his face all the time until he got into the ambulance. Mr G added that the programme makers continued filming at the hospital while checks were being carried out on him, Mr G said that he nearly died as a result of the incident.

In response and before addressing the substance of Mr G's complaint, Channel 4 provided Ofcom with a detailed account of the filming of Mr G and, in particular, the actions taken by the programme makers regarding the obtaining of consent for the filming and subsequent broadcast of the footage in question.

Channel 4 said that on 16 October 2011, a paramedic team which was being filmed that night for the programme was called to attend a 17 year old male (who had reportedly taken between 10 and 12 Valium tablets and had smoked some cannabis) at his home, which he shared with his mother and step-father. The paramedics were accompanied by a cameraman and an assistant producer. Channel 4 said that the cameraman followed the paramedics as they went upstairs in order to assess Mr G. The assistant producer remained downstairs to explain to the complainant's step-father that they were filming for an observational documentary series for Channel 4 which followed the work of the paramedics and to ask permission to continue filming. Channel 4 said that the step-father gave his verbal consent to this and that the cameraman, later joined by the assistant producer and Mr G's step-father, continued to film the paramedics who were upstairs with Mr G and his mother.

Channel 4 said that the exchange with Mr G's step-father took place 'off-camera', but was confirmed by two members of the production team. It also said that as soon as he could, the cameraman, who was using a large shoulder-mounted camera, moved into the centre of the room so that he was in clear view of Mr G and his parents. Channel 4 added that during the initial assessment of Mr G by the paramedics, he confirmed that he had taken 12 Valium tablets which had not been prescribed for him. The filming continued as Mr G walked downstairs with the paramedics and got into the ambulance. He was then taken to hospital accompanied by his step-father.

Channel 4 said that there were a number of occasions during the filming, which were clear in the unedited footage of Mr G, where he talked directly to the camera and clearly referenced the filming. It said that when Mr G came out of the house he asked "What is this you're filming then?" The paramedic explained that it was for Channel 4 to which Mr G responded by saying "Channel 4?" and, after receiving confirmation of this, raising his arms, shrieking "Whoo!" and grinning directly at the camera. The broadcaster also said that later on, Mr G said "I'm on TV" and again raised his arms.

In addition, Channel 4 said that while in the ambulance waiting to go to hospital, Mr G acknowledged the camera and asserted that two different areas of Blackpool were "the best". His step-father then said "[Mr G], stop that. They won't put it on the telly, they'll just cut that shit. It's not about you, it's about the ambulance crew". Channel 4 said that this confirmed the step-father's understanding of the documentary series and corroborated the account of the production team that Mr G and his step-father were fully aware of the nature and purpose of the filming and had given their permission for it. Channel 4 also said that when the paramedic asked Mr G if he had been with anyone when he took the Valium, he was lucid enough to ask if he had to "grass them up".

Channel 4 said that the filming continued as the complainant, his step-father and the ambulance crew got out of the ambulance and then waited to hand Mr G over to staff at the hospital. Channel 4 said that, when leaving the ambulance, Mr G's step-father acknowledged the camera with a nod and said to one of the paramedics: "I'm not going to be on that am I?" While this was not addressed to one of the programme makers, it was noted carefully by them and Mr G's step-father was not therefore identified visually in the programme as broadcast (he was only seen from behind as he accompanied Mr G into the hospital). Channel 4 added that it was clear from the relevant section of the unedited footage that Mr G and his step-father were aware of the camera throughout this period, that it was close by and, that neither raised any objection to the filming of Mr G.

Channel 4 said that once Mr G was placed in a side room at the hospital, a second camera operator (who was stationed to film in the A&E Department) asked him if he would be willing to give an interview about what had happened that day. Mr G agreed to the interview and to wear a radio microphone to record his voice. (A copy of the unedited footage of this interview, approximately ten minutes in duration, was provided to Ofcom). Channel 4 said that from this recording it was apparent that, in full knowledge of the filming, Mr G talked in detail about the circumstances of the evening and his life in general. It added that in the middle of the interview, he asked "What's this for? Channel 4?", to which the cameraman responded "yes". He laughed and said: "does this mean I'm going to be on TV then?" Channel 4 said that Mr G gave detailed answers to questions about skateboarding, the last time he was in hospital and, why he took the drugs that evening. For example, he said: "I just try everything me, 'part from crack and smack and all the heavy drugs, I just see what the buzz is, see what the big deal is". He also said: "I don't even think I should be here – before I've been in states a lot worse than this". Channel 4 said that at no point during this 'on-camera' interview did Mr G raise any objection to the filming or request that his microphone be removed.

Channel 4 said that during the editing of the programme, which took place eleven months after the filming, consideration was given to the inclusion of footage of Mr G. The producer contacted both the cameraman and the assistant producer to seek confirmation regarding the circumstances on the night of filming. Separately, they both confirmed that either Mr G's mother or step-father, or both, were present or close by throughout all of the filming – at home, in the ambulance and in the hospital. They also said that at no point did Mr G or his parents raise any objection regarding the filming while it took place. Channel 4 said that the unedited footage of Mr G confirmed that this was the case. It added that in the period between the filming and the editing of the programme, neither it, the production company, nor the ambulance service from which the camera crew had permission to accompany its paramedics on duty, received any indication from Mr G, his mother or step-father that they had had second thoughts about the filming.

Channel 4 said that when the programme was being edited, the producer called the mobile telephone number given by Mr G's step-father at the time of filming in order to inform him, Mr G and his mother that a small amount of the footage of Mr G was to be included in an edition of the programme for the forthcoming series. Despite leaving numerous voice and text messages asking Mr G's step-father to call him back, the producer received no response. As a result, the producer visited the property where the initial filming took place, but found that the family had moved. The producer also sought contact details for Mr G and his parents from their previous landlord (via the current residents), the ambulance service and local directory enquires services, but was unsuccessful.

Having set out the circumstances surrounding the filming of Mr G, Channel 4 responded to the specific complaint made by Mr G at head a).

In response to Mr G's complaint that he was filmed without his consent or that of his mother and that filming continued even though he was not in a condition to give informed consent for it, Channel 4 said that it was clear from the above account that consent to the filming was given by Mr G, his step-father and his mother. It said that the filming was conducted openly and at various points Mr G and his step-father talked about the filming. At no time were the production team asked to stop filming Mr G. Channel 4 said that Mr G, who was 17 years old at the time of filming, was of an age where he was making adult decisions about

smoking, drinking alcohol, taking illegal and prescription drugs and that although he was living at home on the day he was filmed he had previously left home to live in Brighton for a time. Channel 4 argued that both of these circumstances indicated a young man who had lived independently from his mother and made decisions for himself.

In addition, Channel 4 said that although consent was obtained from Mr G's step-father and mother for the relevant filming, it did not accept that Mr G was unable to give informed consent. It pointed, for example, to the fact that during his voluntary interview Mr G was clearly coherent and gave detailed answers to the questions asked of him. Channel 4 questioned Mr G's assertion that "they filmed him after he had taken an overdose of drugs and nearly died" because during this interview Mr G had said "...I don't think I should be here [in hospital]. Before, I've been in states a lot worse than this, and I can find my home all the way from town when I'm staggering here, here, there".

- b) Mr G also complained that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was included in the programme without his consent, despite him stating that he did not want the footage on television. He said that he was misled as he was informed that the footage was being filmed for training purposes and would not be used on television.

In response, Channel 4 denied that Mr G had said that "...he did not want the footage on television". It said that there was no evidence to support his claim in the unedited footage of Mr G and, on the contrary, he clearly gave a 'miked-up' interview – behaviour which, Channel 4 said, was inconsistent with his claim. Channel 4 also denied that either Mr G or his family were in any way misled about the nature of the filming. Channel 4 said that it wholly refuted Mr G's claim that he was informed that the filming was for training purposes and would not be used on television and added that, as noted above, during his interview the complainant clearly indicated that he was fully aware that he was being filmed for a programme on Channel 4.

Channel 4 referred back to its earlier comments about Mr G's condition when in hospital and his use of drugs. In addition, it said that it was significant that Mr G was not an innocent victim, but was someone who had deliberately abused illegal and prescription drugs and had had past experience of doing so. Channel 4 said that all reasonable steps had been taken to inform the complainant and his family that footage of him would be included in the broadcast programme and repeated that at no point did the complainant or his family attempt to get in touch with the production company, the broadcaster or the ambulance service to indicate that they had changed their mind about the footage filmed.

Channel 4 said in conclusion that there was no unwarranted intrusion into the privacy of Mr G in either the obtaining or broadcast of the relevant footage. However, it added that to the extent that any consent was not obtained (which it did not accept) the inclusion of the footage was warranted in the public interest in demonstrating the demands put on the UK's emergency services by those individuals who choose to abuse illegal and prescription drugs.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that upheld the part of Mr G's complaint that related to his privacy being unwarrantably infringed in the broadcast in the

programme of footage of him filmed at home and at the hospital. Both parties to the complaint were invited to make representations on the Preliminary View.

Mr G considered that consent could not have been presumed from how “happy” he came across at the time of filming and stated that he would expect “some sort of serious talk by somebody at a more appropriate time with paperwork explaining what is going on with the footage and the order of events filmed being broadcast.” In addition, Mr G stated that he considered himself an adult and was therefore the only person who should make decisions which only affected him.

Channel 4 said that in its view the Preliminary View partially upholding Mr G’s complaint about privacy in the broadcast was flawed. It set out various reasons for this, but principally because in its opinion either Mr G or his step-father had given informed consent for the filming and for the subsequent inclusion of that footage in the programme as broadcast and that Mr G “was not intoxicated or so intoxicated that he was unable to give informed consent”. Channel 4 also made various other points. Ofcom took careful account of all Channel 4’s additional submissions on the Preliminary View in preparing its final decision as indicated as appropriate below.

Decision

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

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

Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties’ written submissions. It also included the unedited footage of Mr G at his home, in the ambulance and at the hospital (including his on-camera interview and a transcript of this) as well as relevant post-broadcast correspondence.

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

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

- a) Ofcom considered first Mr G’s complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that he was filmed without his consent (or that of his mother) even though he was not in a condition to give informed consent for the filming.

Ofcom took into consideration 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.

From the broadcast footage of Mr G, the unedited footage of him, including his on-camera interview, and both parties' submissions, Ofcom noted that Mr G was filmed at home either sitting down or walking downstairs and then getting into the ambulance, where he was accompanied (for the most part unaided) by the paramedics attending him. He was filmed getting out of the ambulance at the hospital, waiting to be booked in and in a hospital room where he was the only patient. Ofcom considered that this filming appeared to have been conducted openly by the programme makers and noted that either Mr G's mother or his step-father accompanied him, or were close by, throughout the filming.

Based on the evidence of the unedited footage of Mr G and the material as broadcast about him, Ofcom considered it reasonable to conclude that Mr G was intoxicated to some extent as a result of having consumed a number of Valium tablets and smoked a quantity of cannabis. Within his complaint, Mr G said that he had taken the tablets two days before his step-father noticed that something was wrong with him and called an ambulance. However, Ofcom also noted that during the unedited footage, Mr G indicated repeatedly that he had been smoking cannabis earlier that day and had taken the tablets a couple of hours before the ambulance crew arrived at his home. Ofcom considered that both the broadcast footage and the unedited footage indicated that at the time (and notwithstanding his intoxicated state) Mr G was aware of the camera and the fact that footage of him was being filmed potentially for inclusion in a programme to be broadcast on Channel 4.

Taking account of the factors above, Ofcom considered that Mr G was filmed in a vulnerable and sensitive situation, i.e. receiving medical care for intoxication resulting from a drug overdose and smoking cannabis, initially in his own home and subsequently in an ambulance and in hospital. Ofcom considered that receiving medical care could reasonably be deemed a private matter (especially when that person was not in a public place, i.e. he was in his own home or a hospital room in which he was the only patient) and that such a person would normally expect not to be filmed being given such care without his/her prior consent. In these circumstances, Ofcom concluded that Mr G had a legitimate expectation of privacy in relation to the filming of footage of him.

In addition, Ofcom considered that there were several factors which heightened Mr G's expectation of privacy with regard to the filming of footage of him. These were: his age (although he was 17 years old at the time he was filmed, he was yet to reach adulthood) and his vulnerable state (the footage shown revealed that he appeared to be under the influence of drugs).

Given this conclusion, Ofcom assessed whether the programme makers had secured "informed consent" for the footage of Mr G to be filmed.

The Foreword to Section Eight (Privacy) of the Code sets out that where consent is referred to in Section Eight, it refers to "informed consent". In considering this complaint, Ofcom also took into account Practice 7.3 of the Code, which indicates the sort of information which should normally be given to a person who has been invited to contribute to a programme (unless the subject-matter is trivial or their participation is minor) in order to ensure that the consent which they give for their participation is "informed". Ofcom noted that, in accordance with Practice 7.3, in

order to obtain informed consent, broadcasters should normally provide this information at an appropriate stage.

Ofcom noted that Mr G had been filmed openly and that the programme makers had not concealed the fact that they were filming him. It was also clear to Ofcom from the unedited footage that the programme makers had filmed in an unobtrusive manner and had not got in the way of Mr G's care.

Ofcom recognised that there was a disparity in the recollections of Mr G and the programme makers in relation to the circumstances in which the filming took place, notably with regard to the severity of Mr G's condition at the time, and consequently as to whether informed consent was given. In these circumstances Ofcom attempts, based on the evidence available, to determine which of the parties is correct on this point. If it is unable to do so, Ofcom decides whether it was reasonable for the programme makers to consider that they had obtained a complainant's informed consent in the specific circumstances.

Mr G asserted that "the programme makers took advantage of him, as they filmed him after he had taken an overdose of drugs and nearly died". Channel 4 said that, although intoxicated, Mr G remained lucid throughout the filming and that during his interview Mr G expressed the view that he should not be in hospital and that he had previously been "in states a lot worse than this".

Mr G was 17 years old at the time that the filming took place. Ofcom noted that Section Eight (Privacy) of the Code includes three practices which aim at affording increased protection to the privacy of individuals under 16 and vulnerable people, but not specifically to persons of an older age. In addition, as Mr G acknowledged during his interview, he had previously lived away from home in order to pursue an apprenticeship and regularly made decisions for himself about his intake of alcohol and drugs. Accordingly, Ofcom did not consider that, in and of itself, Mr G's age precluded him from being able to give informed consent for the filming and subsequent broadcast of footage of him.

Ofcom went on to assess whether in the circumstances of this particular case Mr G did give his informed consent to the filming at the time it took place.

Having carefully watched both the broadcast and unedited footage of Mr G at home, on the way to hospital and at hospital, and read transcripts of the broadcast footage and the on-camera interview, Ofcom noted that Mr G appeared to be very drowsy and unsteady on his feet and occasionally slurred or mispronounced his words. This was especially the case at home and during his initial period in hospital, and in the recovery room. Further, Mr G told the medical staff that he had taken 10 or 12 Valium tablets on the night in question and had smoked cannabis. As a result he was admitted to hospital and received the following medical care: regular checks for pupil response and blood pressure, an intravenous drip for a period and, several blood tests.

It was also apparent to Ofcom that Mr G had been aware that he was being filmed. He made brief comments and gestures to the cameraman who filmed him initially and subsequently gave candid and quite detailed responses to questions about himself and his past experiences during his on-camera interview. In addition, Ofcom noted that on several occasions Mr G made specific references to appearing on television. For example, during his interview, Mr G had the following exchange with the camera operator:

Mr G: "What's this for anyway? Channel 4?"

Camera operator: "That's right."

At this point Mr G laughed.

Camera operator: "Why are you laughing?"

Mr G: "Does this mean I am going to be on TV?"

Ofcom recognises that it is (absent any explicit evidence of consent) a matter of judgement as to whether an individual capable in principle of giving informed consent did in fact do so. In this case, Ofcom's view is that, having taken account of all the factors above and Channel 4's submissions, Mr G was sufficiently under the influence of the drugs he had consumed that he was not able to give appropriate and sufficiently careful consideration to the potential impact of his tacit agreement to be filmed and potentially for all or part of that footage to be broadcast. On balance therefore, Ofcom's view is that Mr G did not give his informed consent to be filmed at the time and it was not reasonable for the programme makers to conclude he had done so.

Ofcom went on to consider whether his mother and/or step-father had given informed consent on Mr G's behalf for him to be filmed. Ofcom considered that, as explained above, Mr G was vulnerable at the time of filming due to the fact that he was intoxicated and was receiving medical attention. Ofcom also took into account the fact that Mr G was under eighteen. Ofcom had regard to Practice 8.21 which provides that, where a programme features a vulnerable person in a way that infringes privacy, consent must be obtained from: (a) a parent, guardian or other person of eighteen or over *in loco parentis*; and (b) wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

Ofcom noted that, during the initial filming, Mr G was with his mother (while a programme maker explained the purpose of the filming and sought verbal consent for it from Mr G's step-father). Mr G's step-father then accompanied Mr G to the hospital and was either with Mr G or close to him throughout the subsequent filming. Ofcom also noted that, at the time of the filming, Mr G was living with his step-father and it was Mr G's step-father who called the ambulance. From the footage submitted in response to the complaint, it appeared to Ofcom that, while concerned for Mr G's well-being, neither Mr G's mother, nor his step-father were incapable of understanding the purpose of the filming and that the footage recorded was for possible inclusion in a programme to be broadcast on Channel 4. In particular, Ofcom noted that during the unedited footage recorded in the ambulance Mr G's step-father turned to Mr G after he made a comment about which of two different areas of Blackpool were "*the best*" and said: "[Mr G], *stop that. They won't put it on the telly, they'll just cut that shit. It's not about you, it's about the ambulance crew*". Ofcom agreed with Channel 4's assertion that this indicated that Mr G's step-father understood the nature of the programme. In particular, Ofcom concluded that this comment indicated that Mr G's step-father knew that the focus of the footage being filmed would be the work of the ambulance crew and that he remained content for the footage of his step-son to be filmed and potentially included in the subsequent programme.

In addition, none of the unedited footage indicated that either Mr G's mother or his step-father raised any objection to the filming while it was taking place and

Ofcom was not provided with any other evidence to suggest that either Mr G or his parents had raised any objection to the filming at the time or had asked for filming to be stopped.

Ofcom noted that Mr G had said that his step-father was not his parent or guardian and could not therefore give consent on his behalf. However, as explained above, Ofcom assessed whether it was reasonable for programme makers to conclude that they had obtained informed consent at the time of filming. Ofcom considered that, at that time, the programme makers could not have known that Mr G's step-father was not his parent or guardian.

Taking account of all the above factors, Ofcom considered that it was reasonable for Channel 4 to conclude that Mr G's mother and/or his step-father had given his or her consent on Mr G's behalf to be filmed for the purposes of the programme both at home and at the hospital.

Given this conclusion, Ofcom concluded that Mr G's privacy was not unwarrantably infringed in connection with obtaining the material included in the programme. It was not therefore necessary for Ofcom to consider whether any infringement of Mr G's privacy in the obtaining of the material was warranted on other grounds.

- b) Ofcom then considered the complaint that Mr G's privacy was unwarrantably infringed in the programme as broadcast in that that footage of him was included in the programme without his consent.

In considering this 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.

In considering whether or not there had been an unwarranted infringement of Mr G's privacy in the programme as broadcast, Ofcom first considered the extent to which Mr G could have legitimately expected that the unobscured footage of him receiving medical care would not be broadcast without his consent.

Ofcom carefully examined the footage of Mr G broadcast in the programme. It noted that at the start of the sequence, viewers were informed that the paramedics were going to attend a 17 year old male who had taken an overdose of 10 or 12 Valium tablets and had been smoking cannabis. Mr G, who was fully dressed, was initially shown sitting on the edge of a bed with his mother and then being guided downstairs into an ambulance by two paramedics. He was then shown leaving the ambulance in a wheelchair, being pushed into the hospital and being asked questions as he was being booked in. Clear images of Mr G's face, including in close-up, were shown several times throughout the relevant sequence which was around two minutes in duration. As one of the paramedics pushed Mr G into the hospital in the wheelchair, she addressed him by his first name. Ofcom considered therefore that Mr G was identifiable from the footage of him included in the programme. As already stated in head a) above, it appeared to Ofcom that Mr G was filmed openly throughout the incident.

Also, as already explained in head a) above, Ofcom recognised that where an individual is receiving medical care, that individual may have an expectation of privacy. In the circumstances of this case, Ofcom considered that Mr G had been filmed in a vulnerable and sensitive situation, i.e. receiving medical care for

intoxication as a result of a drug overdose and smoking an illegal drug, initially in his own home and subsequently in an ambulance and in hospital. Ofcom considered that the administration of medical care to an individual could reasonably be considered to be a private matter. It therefore concluded that Mr G had a legitimate expectation of privacy in these particular circumstances in relation to the broadcast of this material.

In addition, Ofcom considered that there were several factors which heightened Mr G's expectation of privacy with regard to the broadcast of the unobscured footage of him, and information about him in the programme as broadcast. These were: his age (although he was 17 years old at the time he was filmed – and, as noted above, would have been able to give consent on his own behalf in normal circumstances – he had also not yet reached adulthood); his vulnerable state (the footage shown revealed that he appeared to be under the influence of drugs); and, the fact that he was clearly identifiable in the programme as broadcast (i.e. Mr G's face was shown unobscured and he was referred to by his first name). The material in the programme also revealed that this identifiable 17 year old individual had taken illegal drugs, and showed him receiving medical treatment in hospital as a result (normally information that could reasonably be regarded as private and sensitive in nature).

Having found that Mr G had a legitimate expectation of privacy in this respect, Ofcom assessed whether his consent had been secured before the footage was broadcast in accordance with Practice 8.6 of the Code.

Ofcom again recognised the difference between the recollections of Mr G and the programme makers regarding the circumstances in which the filming took place. Specifically, in his complaint Mr G claimed that he was informed that the filming was for training purposes and would not be used on television and that he had said that: "...he did not want the footage on television". Channel 4, in turn, rejected these claims in their entirety.

Ofcom concluded that Mr G did not give his informed consent to unobscured footage of him receiving medical treatment being broadcast. This was for the same reasons already set out under head a) as to why he did not give his consent to being filmed (in particular, because he was in a vulnerable state as a result of being under the influence of the drugs he had consumed at the time).

Ofcom went on to assess whether his mother and/or step-father had given informed consent on Mr G's behalf to the broadcast of the unobscured footage in the programme. As noted under head a) above, Mr G's mother and step-father allowed the filming of Mr G to take place at their home and his step-father accompanied Mr G to hospital (and, in so far as it was necessary, appeared to give consent for his son to receive medical treatment).

Nevertheless, in considering this issue Ofcom had regard to the particular circumstances of this case and Practice 7.3 of the Code which provides that, in order to obtain informed consent, programme makers should provide certain information to contributors to programmes at an appropriate stage. Ofcom did not consider that, at the time of filming while Mr G was receiving medical attention as a result of taking an overdose, Mr G's mother and/or step-father were in a position to have proper regard and consideration on Mr G's behalf to the question of providing informed consent to the broadcast of unobscured footage of him. In arriving at this conclusion, Ofcom took into consideration the specific circumstances of this case, in particular Mr G's age and the fact that Mr G was

receiving medical attention both at home and at hospital as a result of taking an overdose.

In such circumstances, Ofcom recognises that there is a material difference between someone giving his or her consent to being filmed and to the subsequent broadcast of that footage (especially if the individual can be identified from that footage) to a potentially wide audience. As a result, Ofcom considers that if someone is identifiable from the broadcast of footage and is portrayed in a way which could unwarrantably infringe their privacy, in particular when receiving medical attention at home and hospital, they normally need to have a proper understanding of the extent to which the programme maker proposes to feature them in a programme and to be given an opportunity to give their informed consent to the broadcast, unless the broadcast of that material is otherwise warranted. In this case, Ofcom considered that there were potentially adverse consequences for Mr G by being shown unobscured on national television as a 17 year old who had taken illegal drugs and an overdose of Valium tablets. The fact that Mr G was conscious of the filming taking place during the incident and that he did not object to it at the time, and that his mother and/or step-father gave consent to the filming, did not mean, in Ofcom's view, that on balance informed consent had been obtained for that footage to be included in the programme in a way in which he could be easily identified.

Nor was it reasonable in Ofcom's view for the programme makers to conclude that either Mr G's mother or his step-father gave such informed consent for the broadcast of such footage on his behalf. Ofcom therefore concluded that Mr G's privacy was infringed in this respect.

Ofcom noted that, while editing the programme, its producer attempted to contact Mr G's step-father and, on failing to get a response, even visited the house where Mr G had lived and he had been filmed. This, Channel 4 said, was to inform the step-father, Mr G and his mother that a small amount of the footage of Mr G was to be included in an edition of the programme for the forthcoming series in compliance with its internal notification procedures. Ofcom considered that in these circumstances where Channel 4 was unable to make further contact with Mr G and/or his mother and/or step-father, Channel 4 should have considered not including the material in the programme or taking steps to disguise Mr G's identity.

Ofcom then went on to weigh the broadcaster's competing right to freedom of expression, the public interest in examining the work of the emergency services and the audience's right to receive information and ideas without unnecessary interference against Mr G's right to privacy. In this respect, Ofcom considered whether, in the circumstances, there was a sufficient public interest or other reason to warrant the infringement of Mr G's legitimate expectation of privacy by broadcasting the unobscured footage of him receiving medical treatment.

In this context "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster

should be able to demonstrate that the public interest outweighs the right to privacy¹.

Ofcom noted the public interest served by this programme enabling viewers to examine the work of the emergency services and the audience's right to receive information and ideas without unnecessary interference. Ofcom considered that there was a genuine public interest in enabling programme makers to broadcast film footage of the work of the emergency services in dealing with people who have overdosed on drugs and in developing the public's understanding of the nature of the incidents encountered, their associated risks, and their impact on the emergency services and the drug takers themselves. In particular, it noted that without the broadcast of such material it would not be possible for broadcasters to illustrate the daily challenges faced by people engaged in of this type of work or the reality of such experiences from the point of view of individuals who find themselves in need of emergency care.

There was therefore some public interest in broadcasting the material, including the footage featuring Mr G, because this provided first-hand illustrations of the work of the emergency services. However, Ofcom also considered that it is important in circumstances such as those of this complaint, that the broadcaster takes appropriate steps to ensure that the subsequent broadcast of any material does not result in an unwarranted infringement of privacy.

Having taken all the factors above into account, 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 G's heightened expectation of privacy in relation to the broadcast of unobscured footage of him receiving medical treatment as broadcast in the programme. Therefore, Ofcom's decision is that there was an unwarranted infringement of Mr G's privacy in the programme as broadcast.

Accordingly, Ofcom has not upheld Mr G's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme. However, Ofcom has upheld Mr G's complaint of unwarranted infringement of privacy in the programme as broadcast.

¹ Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Not Upheld

Complaint by Mr Dean Hanson-Shaw and Mrs Beverley Hanson-Shaw

Watchdog, BBC1, 22 May 2013

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Mr Dean Hanson-Shaw and Mrs Beverley Hanson-Shaw.

The “*Rogue Traders*” segment of the programme investigated the respective wedding dress businesses of Mr Dean Hanson-Shaw and his wife, Mrs Beverley Hanson-Shaw: The Wedding Dress Studio (of Dewsbury), and Amazing Brides (of Wakefield). The programme included interviews with customers who claimed to be unhappy with their experience of the businesses as well as surreptitiously filmed footage of two undercover researchers for the programme posing as brides-to-be and buying wedding dresses at both shops. Footage of the programme’s presenter outside Mr and Mrs Hanson-Shaw’s home address was shown in which he attempted to get their responses to the programme’s allegations.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts were not presented, omitted or disregarded in a way that portrayed Mr and Mrs Hanson-Shaw unfairly.
- Mr and Mrs Hanson-Shaw were given an appropriate opportunity to respond to the allegations made against them in the programme.
- Mr and Mrs Hanson-Shaw had a limited expectation of privacy in relation to the obtaining of material included in the programme and that any infringement of their privacy was warranted. Therefore, Mr and Mrs Hanson-Shaw’s privacy was not unwarrantably infringed in relation to the obtaining of material included in the programme.
- Mr and Mrs Hanson-Shaw had a limited expectation of privacy in relation to the broadcast of the footage shown of them. However, the public interest in broadcasting the material outweighed Mr and Mrs Hanson-Shaw’s expectation of privacy. Therefore, Mr and Mrs Hanson-Shaw’s privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 22 May 2013, BBC1 broadcast an edition of its consumer affairs series *Watchdog*. In this edition, one of the regular features of the programme, “*Rogue Traders*”, focused on Mr and Mrs Hanson-Shaw’s respective wedding dress businesses, The Wedding Dress Studio (of Dewsbury), and Amazing Brides (of Wakefield). The programme’s reporter claimed that *Watchdog* had received so many complaints, about the quality of the dresses and the customer service provided by Mr and Mrs Hanson-Shaw, it had decided to mount an undercover investigation.

The “*Rogue Traders*” part of the programme was split into three separate sections and distributed throughout the main programme. The first began with a filmed sequence of a mock wedding reception, the “guests” of which were, the programme’s reporter said, made up of disgruntled former customers of Mr and Mrs Hanson-Shaw and their families. This was followed by interviews with three former customers who detailed the various problems they claimed they had each experienced with dresses purchased from Mr or Mrs Hanson-Shaw.

The first contributor, Mrs Cheryl Tucker, said that she had ordered a £1,200 made-to-measure dress from The Wedding Dress Studio and stated that the dress Mr Hanson-Shaw had provided her “*didn’t fit properly, it was...miles too big*”. She said that, when she complained, Mr Hanson-Shaw refused to rectify the situation and instead referred her to his lawyer. Mrs Tucker stated that because Mr Hanson-Shaw’s dress did not fit she needed to buy a completely new dress from a different supplier.

The second contributor, Mrs Rebecca Shaw, claimed she had paid £2,500 for a wedding dress from Amazing Brides and said that the dress Mrs Hanson-Shaw had provided was five inches too small at the back. She also said that she had had to have additional panels stitched into the back by a seamstress from a different company before it would fit. When her mother had attempted to discuss the problems with the dress with Mrs Hanson-Shaw at her shop Amazing Brides, Mrs Shaw said that Mrs Hanson-Shaw had threatened to call the police.

The third contributor, Mrs Faye Lansdell, stated that she had paid a £1,000 deposit for a “*unique dress*” from Mrs Hanson-Shaw, only to have subsequently seen exactly the same design of dress displayed at a wedding fair, but attributed to a completely different designer. When she confronted Mrs Hanson-Shaw about this, Mrs Lansdell said that Mrs Hanson-Shaw had refused to refund the deposit.

In the second part of the report, two undercover researchers were secretly filmed visiting Mr and Mrs Hanson-Shaw’s respective shops while posing as brides-to-be who wanted to buy wedding dresses. In the material secretly filmed at Amazing Brides, Mrs Hanson-Shaw was recorded making a number of claims about a dress which had been picked out by one of the undercover researchers, including the following:

- when asked by the undercover researcher for the name of the designer of a particular dress, Mrs Hanson-Shaw replied, “*what [the] design? [It’s] ours, we make them*”; and
- when asked by the undercover researcher about a dress priced at £1,600, Mrs Hanson-Shaw explained that it was “*made-to-measure*”, adding “*you’d pay five grand for that in London*”.

The undercover researcher was then shown ordering the dress she had picked out and paying a deposit. Following this, Mrs Hanson-Shaw was shown saying “*your dress will be bang-on perfect*”.

In the footage that was secretly filmed at The Wedding Dress Studio, Mr Hanson-Shaw was shown making similar claims about a dress chosen by another undercover researcher. When asked for the name of the designer of a particular dress, Mr Hanson-Shaw replied: “*We are, it’s our style...you cannot buy any of this range from a shop*”.

In the following sequence, the programme's reporter asked designer Ms Elizabeth Emanuel, a well-established wedding dress designer, to compare the design of the dress which Mr Hanson-Shaw had been secretly filmed claiming to be "*our style*", with pictures of a dress made by another design company, Enzoani. Ms Emanuel stated that the dress that Mr Hanson-Shaw had claimed as his own design looked "*virtually identical, it's definitely a copy [...] it's one and the same dress as far as I can see; I don't see any difference at all*".

The programme's reporter then explained that Enzoani had said that Mr Hanson-Shaw's dress was "*a carbon copy*" of their own. Further, it was claimed that Mrs Hanson-Shaw's shop, Amazing Brides, was also passing the same dress off as one of "*our designs*".

In the third and final section of the report, one of the undercover researchers was secretly filmed attending Amazing Brides for the final fitting of the dress she had been shown ordering earlier in the programme. In this footage the undercover researcher sought reassurance from the shop assistant about the provenance of her dress after seeing a sign in a changing room that read: "*PLEASE NOTE DRESSES ARE STANDARD SIZE NEAREST TO YOURS*".

The shop assistant told the undercover researcher that her dress had indeed been made-to-measure, stating:

"You've had yours made especially...but for everybody else it's standard dress size nearest to your own [yours has been made] from scratch for you, from, your measurements".

The undercover researcher was then seen trying on the dress with the help of the assistant who was lacing up the back of the dress. The following exchange took place:

Researcher: *"I can't breathe now...You've got to loosen that.*

Assistant: *Did you have a bra on when you tried it before?*

Researcher: *No.*

Assistant: *Wish I'd been at this fitting"*.

This was followed by a sequence in which the dress was taken to Ms Emanuel in order that she could assess its quality and the extent to which it fitted the undercover researcher. After examining the dress Ms Emanuel concluded that it was not made-to-measure, but "*factory made*", stating:

"At another price point this would be fine, but to pass this off as a £1,600 dress, I would be very upset".

Ms Emanuel added that, in her view, the dress had not been measured and fitted properly to the shape of the undercover researcher and that, consequently, it was too big:

"Obviously the fit here is wrong, it's not fitted here, it's all gaping here...it's the wrong size".

The undercover researcher was then shown demonstrating how roomy the dress was by showing how far around her body, in each direction, the fully laced up dress could be moved.

Following this, footage was shown of the programme's reporter outside Mr and Mrs Hanson-Shaw's home, which was also the location of Mr Hanson-Shaw's business, The Wedding Dress Studio. In this sequence, the programme's reporter attempted to get Mr and Mrs Hanson-Shaw to respond to the allegations made in the programme by standing on a step ladder and shouting questions across a high set of gates to Mr and Mrs Hanson-Shaw who could be seen on their driveway. Footage of the exterior of Mr and Mrs Hanson-Shaw's property was shown and also that of the road on which it was located. The programme's reporter then conducted a mock wedding ceremony in front of Mr and Mrs Hanson-Shaw's property, in which the "bride" and "groom", who were played by BBC production staff, arrived in a vintage Rolls Royce and the "vicar", who was played by the programme's reporter, stated:

"Dearly beloved we are here to celebrate the coming together of a perfectly matched couple...Beverley and Dean Hanson-Shaw, without whose intervention and money-making tactics, many people would have had an utterly delightful wedding".

The sequence ended with shots of the programme's reporter attaching a banner to the fence of Mr and Mrs Hanson-Shaw's property which read:

"NOT SO Amazing Brides...ruining weddings across Yorkshire".

After the item, the programme's reporter stated from the studio that:

"Both Bev and Dean Hanson-Shaw say they've been selling bridal wear for 20 years and have served thousands of extremely satisfied brides. They say their businesses are entirely separate. Bev describes the wedding industry as a highly stressful trade where emotions run high. She says she knew our pretend bride was different, and maintains that we manufactured a problem situation which she tried to accommodate. But nothing she did was ever right in our eyes. She said she would have addressed the problem if she had been in the wrong, and adds that the people featured in our film signed those satisfaction notes".

The programme's reporter then walked to a wire-framed partition in the studio upon which were mounted still portraits of Mr and Mrs Hanson-Shaw stating:

"I'm signing off by making Bev and Dean Hanson-Shaw the latest faces on our 'Rogues Gallery'".

Summary of the complaint and the broadcaster's response

Unjust or unfair treatment

- a) Mr and Mrs Hanson-Shaw complained that material facts were presented, disregarded and omitted in a way that was unfair to them. By way of example, Mr and Mrs Hanson-Shaw set out a number of examples which were individually responded to by the BBC:
 - Mr and Mrs Hanson-Shaw said that factually incorrect and untruthful statements about them, made by former customers, were included in the programme.

The BBC said that the programme included three separate contributions from customers who had bought wedding dresses from Mr or Mrs Hanson-Shaw. The broadcaster said that viewers would have been aware that the contributors were expressing their own views about the fit and quality of the dresses they had paid for and were expressing genuine, personal concerns about the service provided by Mr and Mrs Hanson-Shaw.

The broadcaster said that the programme-makers spoke at length to all those who contributed to the programme and, in some cases, to seamstresses who were witness to the poorly fitting garments. The claims were investigated to ensure there was sufficient evidence to support them which included checking receipts, letters of complaint and photographic evidence which the BBC provided details of.

The broadcaster added that it had spoken to a number of other brides who reported similar experiences and the details of these allegations were set out in a letter sent to Mr and Mrs Hanson-Shaw on 9 April 2013.

- Mr and Mrs Hanson-Shaw said that they were depicted as liars and “Rogue Traders”.

The BBC said that the programme had explained that Mr and Mrs Hanson-Shaw had deceived customers in a number of ways such as claiming to sell ‘made-to-measure’ dresses which were actually standard ‘off-the-peg’ sizes, claiming to sell dresses which were their own exclusive designs, selling copies of designer dresses without permission and claiming dresses on sale were unavailable through other suppliers or outlets. The BBC made reference to an Amazing Brides’ employee telling its undercover researcher that her wedding dress had been made “*From scratch. From scratch. For you. To your measurements*”. It also quoted Mrs Hanson-Shaw’s claim made in the programme that “*[the dress] has been made from scratch!*”

In the programme, the BBC said that such dress was seen being examined by Ms Emanuel who described it as “*factory-made*”. The BBC also said that the programme makers had gathered evidence that Mr and Mrs Hanson-Shaw had told customers that the wedding dresses they were sold were unique, one-off designs, but were in fact unauthorised copies of a design by wedding dress makers Enzoani.

The BBC said that therefore it believed the allegations made in the programme that Mr and Mrs Hanson-Shaw knowingly deceived customers were supported by the facts and there was no unfairness to either complainant.

- A false and exaggerated impression was created of the number of complaints that the BBC had received about their respective businesses.

The BBC said that the mock wedding reception featured in the programme was attended by 41 guests who were made up of eight unhappy brides and their families. It said it believed that it was apparent that the people featured in this sequence included family members, particularly as those interviewed included mothers and grooms.

The BBC said that the programme makers had identified 38 dresses that had prompted complaints and therefore it did not consider that the programme

exaggerated the number of complaints that had been made about Mr and Mrs Hanson-Shaw. It also remarked that, since the broadcast of the programme, the programme makers had been contacted by a further 23 brides who were unhappy with dresses they had bought from Amazing Brides and three who complained about The Wedding Dress Studio. The broadcaster said that West Yorkshire Trading Standards had confirmed that they had received more than one hundred inquiries about the two companies.

- An undercover researcher misleadingly and incorrectly made a dress appear to be the wrong size and poorly fitted when she tried it on.

The BBC said that the programme included several sequences in which the undercover researcher in question, “Anna”, demonstrated that her wedding dress did not fit, despite repeated assurances it had been “*made from scratch*” and would be “*bang-on perfect*”. The BBC said that Ms Emanuel had confirmed the dress did not fit by saying “*this is not made-to-measure*” and, on the occasion Ms Emanuel examined the dress, Anna had been fastened and corseted into it by a qualified wedding dress seamstress working for Ms Emanuel.

- The BBC failed to refer to, or include, testimonies from any of the many happy brides that Mr and Mrs Hanson-Shaw had provided with dresses over the last 20 years.

The BBC said that the programme reflected Mr and Mrs Hanson-Shaw’s view that they had had many satisfied customers by stating in the programme:

“Both Bev and Dean Hanson-Shaw say they’ve been selling bridal wear for 20 years and have served thousands of extremely satisfied brides”.

The BBC said that it did not consider there was any requirement to interview or feature any such testimonies and the inclusion of the above response from Mr and Mrs Hanson-Shaw was sufficient.

- b) Mr and Mrs Hanson-Shaw complained that they were not given an appropriate or timely opportunity to respond to the serious allegations made against them in the programme. In particular, they said that in a letter they received from the programme makers on 12 April 2013 they were given a deadline of 17:00 on 17 April 2013 to respond to the programme makers’ questions. They considered this to be unreasonable because it did not take into account the fact that Mr and Mrs Hanson-Shaw worked weekends and that they were away on holiday from 14 April 2013.

In response, the BBC referred to the exchange of letters and emails between the programme makers, Mr and Mrs Hanson-Shaw and their solicitor. Copies of these were provided to Ofcom.

The BBC said that the programme makers had informed Mr and Mrs Hanson-Shaw that they were to be the subject of a BBC investigation in a letter delivered by courier on the morning of 9 April 2013. The letter set out the nature of the investigation, the allegations which had been made against both businesses, and the points which the programme was intending to make. An invitation to be interviewed for the programme was offered and Mr and Mrs Hanson-Shaw were asked to respond to that request by 12 April 2013. The letter also invited any other response to the allegations by 15 April 2013. A further letter, also delivered

by courier on 12 April 2013, set out full details of the specific complaints which were being considered for inclusion in the programme. The deadline for a response from Mr and Mrs Hanson-Shaw was extended to 17 April 2013.

The BBC said that the programme makers received a response from Mr Yat Wong, Mr and Mrs Hanson-Shaw's solicitor, in a letter dated 15 April 2013 which acknowledged receipt of the letter dated 9 April 2013 and which addressed a number of the allegations contained within it. Also, on 15 April 2013, Mr Wong sent an email to the BBC which confirmed receipt of the letter dated 11 April 2013 and said that: "My clients are currently away and therefore cannot respond within the deadline stipulated". An email later the same day from Mr Wong confirmed that his clients were "away for two weeks" and that they would respond "in 14 days' time". The BBC said that the programme makers replied in an email which addressed some of Mr Wong's comments from his letter dated 15 April 2013. A 29 April 2013 deadline for responses to this letter was given.

The broadcaster said that, subsequently, the programme makers had reason to believe that the claim that Mr and Mrs Hanson-Shaw were away on holiday was false. A letter was sent to Mr and Mrs Hanson-Shaw, delivered on 26 April 2013, which explained that, given the apparent attempt to avoid responding to the allegations being made, permission had been granted for the programme makers to attend Mr and Mrs Hanson-Shaw's business premises in an attempt to get a response to the allegations laid out.

The BBC said that responses were received on 20 May 2013, two days before the transmission of the programme, and that these statements were summarised at the end of the programme.

Unwarranted infringement of privacy

- c) Mr and Mrs Hanson-Shaw complained that their privacy had been unwarrantably infringed in connection with the obtaining of the material included in the programme in that they were surreptitiously filmed at their respective places of work. They also said they were filmed in a "highly intimidating and bullish manner" in their private residence for a prolonged period of time despite asking the programme makers to leave. Mr and Mrs Hanson-Shaw said that filming only stopped when the police arrived.

In response, the BBC said that the surreptitious filming carried out at both Amazing Brides and The Wedding Dress Studio had been entirely warranted in that there was a clear public interest in investigating the accusations of unacceptable business practices levied against Mr and Mrs Hanson-Shaw. It said that this was particularly true in the case of those selling wedding dresses as it is generally recognised that a wedding day is a unique and significant day for those involved, and therefore there is a reasonable expectation that the service provided by those who claim to be experts in the field will be of an appropriate standard.

The BBC said that, as the programme makers had *prima facie* evidence of the businesses misleading customers, there was clear public interest in gaining further, first-hand evidence which would not have been possible without the use of surreptitious recording.

In reference to filming outside Mr and Mrs Hanson-Shaw's home from the public highway, the BBC said that it did not believe that an infringement of privacy had

taken place. It also rejected the accusation that the filming was conducted in a “highly intimidating and bullish manner”.

The BBC asserted its belief that it was justified in visiting the property because the programme makers had made numerous efforts to get a response from Mr and Mrs Hanson-Shaw. The BBC also claimed that the information from Mr and Mrs Hanson-Shaw’s solicitor that they were away for 14 days from 15 April 2013 had been incorrect and misleading. It said that Mrs Hanson-Shaw had been seen at the Amazing Brides shop on 23 April 2013 and both complainants had been seen at their home.

The BBC added that the programme did not show the number of the property or the street name. In addition, the BBC argued that, as the property was the premises for The Wedding Dress Studio, was advertised as such on the internet and was regularly visited by clients, the complainants could not reasonably expect the same degree of privacy as might be afforded if the property was used solely as a private home.

The BBC accepted that some filming took place over the boarded-up gates of the premises. It argued that the serious nature of the allegations made against Mr and Mrs Hanson-Shaw was sufficient to justify such action because, as the BBC claimed, the couple had refused reasonable requests to respond to the claims that had been made against them. It said the filming was warranted because it had enabled the programme makers to establish that the couple were at home despite claims to the contrary and the footage had demonstrated that the couple had been dishonest about their whereabouts. The BBC said that this justified any infringement of privacy as it proved that Mr and Mrs Hanson-Shaw had attempted to deceive the programme makers in an attempt to avoid responding to the allegations that had been made against them.

- d) Mr and Mrs Hanson-Shaw also complained that their privacy had been unwarrantably infringed in the programme as broadcast in that material gained by surreptitious filming was unwarrantably included in the programme without their consent. They also complained that sequences filmed in front of their private residence (including footage of them obtained by pointing a camera over the perimeter gate and into the property) had been included in the programme which disclosed the location of their private residence.

The broadcaster responded that there was no requirement to seek consent of the complainants to broadcast footage which had been obtained surreptitiously and reasserted its claim that the inclusion of the material was justified in the public interest.

The BBC also repeated its claim that Mr and Mrs Hanson-Shaw could not have a legitimate expectation of privacy in relation to the property in Dewsbury because it served as the premises for The Wedding Dress Studio and was accessible to, and visited by, customers to that business. The broadcaster also said that the programme did not show anything that might be regarded as inherently private or which would not be visible to visitors to The Wedding Dress Studio.

Ofcom’s Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme and unwarranted infringement of privacy in connection

with the obtaining of material included in the programme and in the programme as broadcast should not be upheld.

Ofcom provided the parties with the opportunity to make representations on the Preliminary View. Representations from Mr and Mrs Hanson-Shaw were received, disagreeing with some of Ofcom's reasoning and our view that their complaint should not be upheld. We considered that some of the representations made were not directly relevant to the Preliminary View or reiterated points made in the original complaint. However, Ofcom did take into account the following points made by Mr and Mrs Hanson-Shaw:

- Mr and Mrs Hanson-Shaw said that formal written responses to the claims made against them by the programme makers in a letter dated 11 April 2013 were not given by them on 20 May 2013. They said that they gave no formal responses to these claims because insufficient time was given to them to do so and that their email of 20 May 2013 to the programme makers was "a hurried last minute statement".
- Mr and Mrs Hanson-Shaw queried how the wedding dress supplied to the undercover researcher could "have been too tight in our shop, yet too big in London". They said "it wasn't fair and was misleading".
- Mr and Mrs Hanson-Shaw provided the reasons why they believed the statements in the programme, made by previous customers, were inaccurate. A satisfaction note, signed by Mrs Tucker was provided, but no further evidence was supplied.

The BBC provided comments on Mr and Mrs Hanson-Shaw's response but none that were directly relevant to the Preliminary View or the complaint.

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 this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, and both parties' written submissions, including supporting material.

Unjust or unfair treatment

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 Code. Ofcom had regard to this rule when reaching its Decision on the individual heads of the complaint detailed below.

- a) Ofcom first considered the complaint that material facts were presented, disregarded and omitted in a way that was unfair to Mr and Mrs Hanson-Shaw.

In considering this part of the complaint, Ofcom had particular regard to Practice 7.9 of the Code which states that broadcasters should take reasonable care to satisfy themselves that: (i) material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and (ii) anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of a genuine public interest. However, in presenting material that could be regarded as amounting to significant allegations about an individual or organisation, reasonable care must be taken not to do so in a manner that causes unfairness in the programme broadcast. In this particular case, Ofcom considered that it was in the public interest for the programme to investigate and report on allegations such as those covered in the programme against Mr and Mrs Hanson-Shaw, but that this needed to be consistent with the requirements of the Code.

To assess whether or not the programme complained of created unfairness to Mr and Mrs Hanson-Shaw, Ofcom considered in turn the selected specific examples provided by the complainants as set out in the “Summary of the complaint and the broadcaster’s response” section above. Having examined each example, Ofcom then reached an overall view of whether Mr and Mrs Hanson-Shaw had been treated unjustly or unfairly in the context of the programme as a whole.

- Ofcom first considered Mr and Mrs Hanson-Shaw’s complaint that factually incorrect and untruthful statements made by former customers were included in the programme.

Ofcom viewed the programme and noted the comments made by the three former customers of Mr and Mrs Hanson-Shaw describing their own experiences of purchasing wedding dresses from them (please see the “Introduction and programme summary” section above for detail of the comments made). Subsequent to receiving Ofcom’s Preliminary View, Mr and Mrs Hanson-Shaw provided a statement explaining why they thought the testimonies from these customers were inaccurate.

It is not Ofcom’s role to decide whether particular claims of contributors in a broadcast programme are factually correct or not, but rather to consider whether the broadcaster ensured that individuals or organisations are not treated unjustly or unfairly in programmes in accordance with Rule 7.1 of the Code. In doing so, Ofcom assesses whether broadcasters took reasonable care to satisfy themselves that material facts have not been presented, omitted or disregarded in a way that is unfair to an individual or organisation. In accordance with this approach, Ofcom considered the context of the contributors’ comments expressed in the programme and whether the programme’s presentation of them resulted in unfairness to Mr and Mrs Hanson-Shaw.

Ofcom considered from what was said that viewers were likely to have understood that the individuals concerned were expressing their opinions and views and that viewers would have been able to make up their own minds as to the veracity and credibility, or otherwise, of the contributors' experiences.

Ofcom noted that, prior to broadcast, the programme makers had checked receipts, letters of complaint and photographic evidence and spoke to both the contributors and, in some cases, witnesses.

Ofcom further noted that the BBC had sent Mr and Mrs Hanson-Shaw a letter dated 11 April 2013 in which it set out the complaints that had been made by two of the contributors in addition to three other former customers. The letter offered Mr and Mrs Hanson-Shaw an opportunity to respond to the claims.

In a statement sent to the BBC via her solicitor on 20 May 2013, Mrs Hanson-Shaw responded to the complaints of the four Amazing Brides customers as raised in the BBC's letter of 11 April 2013. She said "Those who collected their goods have signed satisfaction notes, in each case they were verbally asked if they were happy with their orders and they have confirmed that they were". Ofcom noted that Mrs Hanson-Shaw has not provided a copy of the satisfaction notes.

Mr Hanson-Shaw provided a similar statement, also on 20 May 2013, in which he said, in reference to Mrs Tucker's complaint, that: "there are many comments in her statement that are untrue". Mr Hanson-Shaw said that no insurance company had been in touch with regards to refunding the cost of Mrs Tucker's dress, but he did not provide the broadcaster with further details as to why he considered Mrs Tucker's statement to be untrue.

Taking the above factors into account, Ofcom took the view that in presenting the comments of the three former customers, the broadcaster had done so fairly.

- Ofcom then went on to consider the complaint that Mr and Mrs Hanson-Shaw were depicted as liars and "Rogue Traders".

Ofcom noted that the programme's reporter concluded the segment dealing with the investigation into Mr and Mrs Hanson-Shaw's businesses saying:

"I'm making both Bev and Dean Hanson-Shaw the latest faces on our rogues' gallery".

In Ofcom's view, the programme's investigation examined concerns that had been brought to the programme makers' attention by a number of complaints made by former customers of Mr and Mrs Hanson-Shaw. The complaints covered a number of business practices of the complainants such as claiming to sell "made-to-measure" dresses which it appeared were actually standard "off-the-peg" sizes and selling copies of designer dresses without permission. In investigating these concerns, the programme makers sought the independent advice of Ms Emanuel as to whether in her opinion the claims made by Mr and Mrs Hanson-Shaw were accurate and truthful.

Ofcom noted that Mr and Mrs Hanson-Shaw were offered the opportunity to respond to these allegations before the programme was broadcast and that the programme included a summary of the statements provided by Mr and

Mrs Hanson-Shaw. Having read the full written response from which this summary was taken and correspondence received from Mr and Mrs Hanson-Shaw's solicitor, Ofcom noted that Mr and Mrs Hanson-Shaw had refuted the allegations of selling copies of designer dresses without permission. With regards to the allegations of selling standard "off-the-peg" sized dresses as "made-to-measure" dresses, Mr and Mrs Hanson-Shaw confirmed that dresses sold were from standard sizes which were then altered to the specific measurements of the individual customer but, in the case of one of the undercover researchers, Mrs Hanson-Shaw confirmed that she had told her that the dress would be made to her measurements.

Given the above factors, Ofcom considered that the manner in which Mr and Mrs Hanson-Shaw were described in the programme was emotive and was intended to convey to viewers a particular view of the complainants. Ofcom considered that the programme provided viewers with sufficient information regarding the allegations made against Mr and Mrs Hanson-Shaw, including the independent opinion provided by Ms Emanuel, and it summarised adequately their statement in response, stating that they had served thousands of satisfied customers over the 20 years that they had been in business and that the undercover researcher had manufactured problems and was obstructive. In these circumstances, Ofcom considered that viewers would have been left to reach their own conclusions about Mr and Mrs Hanson-Shaw and whether the programme's description of them was appropriate in the circumstances.

- Ofcom then considered the complaint that a false and exaggerated impression had been created of the number of complaints that the BBC had received about Mr and Mrs Hanson-Shaw's respective businesses.

Ofcom noted from its response that the BBC had said that the mock wedding reception featured in the programme had been attended by 41 guests made up of eight brides and their families. Ofcom considered that it would have been clear to viewers that some of the people featured in this gathering were family members related to the former customers, as the guests included a number of men, young children, and "mothers-of-the-bride" who were interviewed alongside their daughters. Ofcom also noted that, by this stage, the programme makers had identified 38 dresses that had prompted complaints and numerous complaints received by West Yorkshire Trading Standards so, even if viewers had understood that every person featured in the scene was someone dissatisfied with the service they had received from Mr and Mrs Hanson-Shaw, an unfair impression would still not have been made.

In respect of the claim that Mr and Mrs Hanson-Shaw had "*ruined so many weddings*" Ofcom took into account the number of complaints that the BBC had been made aware of which could have been used as a justification for this remark. In Ofcom's view, the comment was not unfair in light of the 38 complaints the programme makers were aware of at that point.

- Mr and Mrs Hanson-Shaw complained that the undercover BBC researcher featured in the programme misleadingly made a dress appear to be the wrong size.

Ofcom noted that, in the programme, the fit of the dress was assessed by Ms Emanuel, a well-known wedding dress designer. She commented that

“obviously the fit here is wrong...it’s not fitted here and it’s gaping here and it’s not the right size”. It noted too from the BBC’s statement that, when the dress was examined, the undercover researcher had been fastened and corseted into it by a qualified wedding dress seamstress in the employ of Ms Emanuel.

In their representations on Ofcom’s original Preliminary View, Mr and Mrs Hanson-Shaw commented that the footage in the programme indicated that, when the finished dress was first tried on at Amazing Brides, the undercover researcher had complained that the dress was too tight, yet when the dress was assessed by Ms Emanuel, she had considered it too big.

From watching the footage included in the programme, Ofcom considered that the assistant’s comments *“did you have a bra on when you tried it on before?”* and *“I wish I’d been at this fitting”* suggested that there was a clear issue with the fit of the dress when it was tried on at Amazing Brides and this was being acknowledged by the assistant. In our opinion, the researcher’s exclamation that *“I can’t breathe now, you’ve got to loosen that”*, did not indicate exclusively that the dress was too small (as Mr and Mrs Hanson-Shaw suggested). It was entirely possible, in Ofcom’s view, that the fit of the bust of the dress was too big (as also later indicated by Ms Emanuel), and in attempting to remedy this problem the assistant had tightened up a fastening of the dress leading to the comment *“I can’t breathe now, you’ve got to loosen that”*.

Ofcom also considered that the programme included a number of visual demonstrations to show that the dress did not fit. For example, Anna, the undercover researcher, was shown turning the dress right around her body without moving herself and slipping a fist in between her chest and the dress. Ofcom noted that Mr and Mrs Hanson-Shaw said that, during the researcher’s demonstration of moving the dress around her body, the lace-up fastening *“wasn’t laced up correctly”*. However, in Ofcom’s view, the multiple, visual demonstrations along with the expert independent opinion of Ms Emanuel allowed viewers to use their own judgement as to the fit of the dress and to whether Anna was modelling it in such a way to mislead viewers into believing it did not fit her. Ofcom considered there was no unfairness in this respect.

- Mr and Mrs Hanson-Shaw complained that the BBC failed to refer to, or include, testimonies from previous, happy customers of Mr and Mrs Hanson-Shaw.

Ofcom noted that the report concluded with a summary of Mr and Mrs Hanson-Shaw’s written responses to the programme makers. In particular, it noted that it was stated that:

“Both Bev and Dean Hanson-Shaw say they’ve been selling bridal wear for 20 years and have served thousands of extremely satisfied brides”.

In Ofcom’s view, given the limited responses made by Mr and Mrs Hanson-Shaw to the programme makers, this was a satisfactory summary of their claim that they had thousands of satisfied customers of the time they had been in business. Therefore, Ofcom considered there to be no unfairness in this regard.

Having considered each element of the complaint identified by Mr and Mrs Hanson-Shaw as being particularly unfair to them, Ofcom noted that the broadcaster had taken reasonable care to satisfy itself that material facts were not presented or omitted or disregarded in a way that portrayed Mr and Mrs Hanson-Shaw unfairly in the programme as broadcast. Ofcom also carefully assessed the programme complained about as a whole, to reach a view as to whether it was unfair, i.e. it assessed whether the various examples taken together created a cumulative effect that might present a depiction of Mr and Mrs Hanson-Shaw in a way that was unfair to them. After careful consideration, and for all the reasons set out above, Ofcom concluded that this was not the case and that there was no unfairness to the complainants in this regard.

- b) Mr and Mrs Hanson-Shaw also complained that they had not been given an appropriate or timely opportunity to respond to the allegations made in the programme.

Ofcom noted the detailed timeline of the exchange of letters and emails from the programme makers and Mr and Mrs Hanson-Shaw and their solicitor, Mr Wong, as set out in head b) of the “Summary of the complaint and the broadcaster’s response” section above. It noted too that the BBC had claimed that Mr and Mrs Hanson-Shaw’s assertion that they were away for 14 days from 15 April 2013 was false and misleading, since they returned home on 22 April 2013. In his representations, Mr Hanson-Shaw said that their holiday had consisted of a week away and a week at home as they were unable to be away from their businesses for an extended period of time.

In Ofcom’s view, even though the week commencing 22 April 2013 was considered a holiday by Mr and Mrs Hanson-Shaw, it was entirely open and possible for them to respond to the allegations from this date onwards had they wished to do so.

Given the repeated opportunities offered to Mr and Mrs Hanson-Shaw to make a statement in response to the programme makers, Ofcom considered that, in the circumstances, Mr and Mrs Hanson-Shaw were given an appropriate and adequate amount of time to respond to the allegations made in the programme.

Ofcom concluded therefore that there was no unfairness to Mr and Mrs Hanson-Shaw in this regard.

Unwarranted infringement of privacy

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

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

- c) Mr and Mrs Hanson-Shaw complained that their privacy was unwarrantably infringed in connection with the obtaining of material included in the programme both in respect of the surreptitious filming that occurred in their places of work

and the filming that took place outside their home address. Ofcom first considered the surreptitious filming at Mr and Mrs Hanson-Shaw's places of work.

Surreptitious filming

In considering this part of the complaint, Ofcom had regard to Practices 8.5 and 8.13 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.13 says that surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if: there is *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme. Ofcom also has regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Before assessing the extent to which Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in connection with the obtaining of the material included in the programme, Ofcom considered whether the surreptitious filming was, in itself, warranted.

In its response to the complaint the BBC stated that it believed that the surreptitious filming had been entirely warranted as there had been a clear public interest in exposing the unacceptable practices of both Mr and Mrs Hanson-Shaw, in particular taking into account the fact that they were selling wedding dresses. The response stated that the programme makers had *prima facie* evidence that Mr and Mrs Hanson-Shaw's businesses were misleading customers which included the complaints received by both the BBC and West Yorkshire Trading Standards. Ofcom accepted that the complaints received by *Watchdog* before the commencement of surreptitious filming did amount to *prima facie* evidence. Ofcom then considered the other requirements of Practice 8.13 needed to warrant surreptitious filming. In Ofcom's opinion the programme makers had reasonable grounds to believe that, by having two undercover researchers posing as customers and using hidden cameras to film their interactions with Mr and Mrs Hanson-Shaw, further evidence could be obtained in relation to the claims made by the brides who had originally complained to *Watchdog*. Ofcom also reasoned that attempts to obtain evidence in other ways, such as approaching Mr and Mrs Hanson-Shaw directly, would be highly unlikely to be successful. Ofcom then took the view that the first-hand evidence of Mr and Mrs Hanson-Shaw making claims about their products added to the credibility and authenticity of the programme. Therefore, in Ofcom's view, the use of surreptitious filming was warranted and the means of obtaining the material had been proportionate.

Ofcom then assessed the extent to which Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in the circumstances in which they were filmed, i.e. surreptitiously by an undercover researcher. 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".

Ofcom noted that the filming took place in the premises of Mr and Mrs Hanson-Shaw's respective wedding dress businesses. Ofcom observed that the conversations that occurred between the complainants and the undercover researchers took the form of discussions about the purchase of wedding dresses.

Mr and Mrs Hanson-Shaw were unaware that secret filming was taking place during the discussions. It is Ofcom's view that, ordinarily, conversations of this type, i.e. conducted during the course of business and in which the parties felt that they could speak openly and freely, could reasonably be regarded as being confidential and therefore could attract an expectation of privacy. However, from the footage included in the programme, Mr and Mrs Hanson-Shaw did not appear to disclose any private information about their personal lives, nor did the conversations appear to contain particularly private and sensitive business or financial information. It was also clear to Ofcom that the undercover researchers had secretly filmed in Mr and Mrs Hanson-Shaw's business premises that were open to general members of the public, as customers.

Therefore, taking these factors into account, Ofcom considered that, while Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in relation to the surreptitiously filmed material, their expectation was limited by the fact that the content of the conversations was not particularly private or sensitive in nature and had been conducted in business premises that members of the public had access to.

Ofcom then went on to consider whether it was warranted to infringe Mr and Mrs Hanson-Shaw's privacy.

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

As noted above, Ofcom considered that there was genuine public interest in the programme's investigation into the allegations made by a number of former customers about Mr and Mrs Hanson-Shaw's bridal businesses as the purpose of the investigation was to expose misleading claims made by Mr and Mrs Hanson-Shaw and to disclose any related incompetence which affected the public. Therefore, in this instance, there was justification for gathering more evidence to corroborate the complaints that had been made about Mr and Mrs Hanson-Shaw.

On balance, and given all the factors set out above, Ofcom considered the broadcaster's right to freedom of expression and the public interest of obtaining footage of Mr and Mrs Hanson-Shaw's bridal businesses that corroborated the allegations made in the programme outweighed the limited expectation of privacy of Mr and Mrs Hanson-Shaw.

Doorstepping

Ofcom considered Mr and Mrs Hanson-Shaw's complaint that filming took place outside their home address and that they were filmed in a "highly intimidating and bullish manner" for a period of time despite asking the programme makers to leave.

In considering this element of the complaint, Ofcom first assessed whether the use of doorstepping¹ was, in itself, warranted. Ofcom had particular regard to Practice 8.11 of the Code which states that “doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places”.

Ofcom recognised that the footage of Mr and Mrs Hanson-Shaw outside their home was obtained in an attempt to get a response to the allegations made about their bridal businesses. As described under head b) of the BBC’s response in the “Summary of the complaint and the broadcaster’s response” section above, the programme makers had believed, the BBC said, that Mr and Mrs Hanson-Shaw were deliberately attempting to avoid making a formal response to the allegations to be made in the programme. Having regard to Practice 8.11, Ofcom considered that doorstepping can be justified by the broadcaster if a request for an interview has been refused or if it has not been possible to request one. Ofcom noted that, before the doorstepping took place, the only formal response made by Mr and Mrs Hanson-Shaw to the programme makers’ allegations was in a letter sent by their solicitor, Mr Wong. This letter concluded:

“This letter is to be treated as our clients’ formal response to the allegations which you have raised and you are authorised by our clients to broadcast it on your programme should you still decide to proceed”.

Ofcom considered that at no stage in their correspondence with the programme makers did Mr and Mrs Hanson-Shaw’s solicitor confirm whether or not they were willing to take part in a filmed interview. Ofcom also noted that the programme makers had been told by Mr and Mrs Hanson-Shaw’s solicitor that the couple were not able to respond more fully to the allegations as they were “away for two weeks”. Mr Hanson-Shaw provided Ofcom with material to show that he and his wife were away for seven days. However, during the second week of the period that Mr and Mrs Hanson-Shaw were described as “away”, the programme makers became aware that Mr and Mrs Hanson-Shaw had been seen at home and at their respective businesses.

In Ofcom’s view, the allegations raised by the programme makers in their correspondence were serious and investigating them was a matter in the public interest. Given the claim that Mr and Mrs Hanson-Shaw were “away for two weeks” and that the programme makers had become aware that the couple had been seen at work and at home during the second week of this period, Ofcom considered that it was reasonable for the programme makers to assume that Mr and Mrs Hanson-Shaw were refusing to cooperate. Ofcom also noted that the programme makers took the step of pre-warning Mr and Mrs Hanson-Shaw about their intention to try and get an interview with them. In a letter received by Mr and Mrs Hanson-Shaw on 26 April 2013, the Series Producer wrote:

“Because of this deception and your attempts to avoid responding to us we have been given permission to visit your business premises today in an attempt to get the answers to our allegations”.

¹ Doorstepping is defined in the code as “the filming or recording of an interview or attempted interview with someone [...] without prior warning”.

Therefore, it is Ofcom's view that the programme makers were warranted in their decision to conduct a doorstep interview at Mr and Mrs Hanson-Shaw's home (which was also the premises of Mr Hanson-Shaw's business).

Ofcom then assessed the extent to which Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in relation to the obtaining of material of their home.

Ofcom first considered the way that the filming was conducted. From the footage shown in the programme, it appeared to Ofcom that all filming equipment and crew were located on the public highway, outside the gates of Mr and Mrs Hanson-Shaw's home. At no point did any filming take place within the boundaries of their property.

Ofcom observed that, in the time between the undercover researcher's visit to The Wedding Dress Studio (which is located in the home of the complainants) and the film crew's return, the large double gates at the front of Mr and Mrs Hanson-Shaw's house had been backed by what appeared to be large panels to block their property being viewed through the gate. This led to the programme makers standing on a step ladder and filming over the top of the gate in an attempt to engage Mr and Mrs Hanson-Shaw in conversation. During this filming, Mr and Mrs Hanson-Shaw were filmed walking across their driveway. Taking these factors into account, Ofcom considered that Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in relation to the filming of both themselves and their house, particularly given the use of a step ladder to film over a perimeter gate that had been adapted to block out visibility from the public highway.

However, Ofcom also had regard to the fact that Mr and Mrs Hanson-Shaw's home address was also the registered business address of Mr Hanson-Shaw's business. As the area of Mr and Mrs Hanson-Shaw's property that was filmed would, ordinarily, be open to members of the public who were customers of the business, Ofcom considered that Mr and Mrs Hanson-Shaw could not have the same expectation of privacy in relation to being filmed in these areas as someone whose home is solely a private residence. For this reason, while Ofcom accepted that Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy, it considered that their expectation was limited in the circumstances.

Ofcom went on to consider whether the intrusion into their privacy was warranted.

As considered above in relation to the surreptitious filming, Ofcom considered the factors by which a broadcaster can demonstrate that an infringement of privacy is warranted. Ofcom noted the steps taken by the programme makers in requesting either a written response or filmed interview with Mr and Mrs Hanson-Shaw and considered that it was reasonable for the programme makers to have taken the view that Mr and Mrs Hanson-Shaw had no intention of fully addressing the allegations made against them either by a written statement or a filmed interview prior to broadcast, and that such a response could only be obtained by conducting a doorstep interview.

As previously noted above, Ofcom considered that there was a public interest justification in the programme investigating allegations of this sort and that filming Mr and Mrs Hanson-Shaw at their home, during the period of time their solicitor had described them as being "away", formed a key part of the investigation in that it allowed viewers to make their own judgement as to Mr and Mrs Hanson-Shaw's

willingness to respond to the allegations. In these circumstances, Ofcom took the view that any infringement of privacy in respect to the footage recorded at Mr and Mrs Hanson-Shaw's home was warranted.

Therefore, on balance, and given all the factors set out above, Ofcom considered the broadcaster's right to freedom of expression and the public interest in obtaining footage of Mr and Mrs Hanson-Shaw's home in the circumstances outweighed Mr and Mrs Hanson-Shaw's limited expectation of privacy. Ofcom found therefore that Mr and Mrs Hanson-Shaw's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast.

- d) Mr and Mrs Hanson-Shaw complained that material gained by surreptitious filming was broadcast. They also complained that sequences filmed in front of their residence (including footage filmed by pointing a camera over the fence and into the property) were included in the programme which disclosed the location of their private residence.

Surreptitious Filming

In relation to the use of surreptitious filming, Ofcom had regard to Practices 8.6 and 8.14 of the Code. Practice 8.6 of the Code 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. Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom again considered whether it was warranted to film surreptitiously in accordance with Practice 8.13. As discussed in head c) immediately above, Ofcom considered that the use of surreptitious filming was warranted in the circumstances.

Having reached the view that the use of surreptitious filming was warranted, Ofcom next considered the extent to which Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in the broadcast of the material in the programme.

Ofcom again took account of the circumstance in which Mr and Mrs Hanson-Shaw were filmed as well as the actual material that was broadcast. Mr and Mrs Hanson-Shaw were unaware they were being filmed discussing the purchase of a wedding dress with the undercover researchers posing as customers. Again, Ofcom took the view that conversations of this type, i.e. conducted during the course of business and in which both parties felt they could speak freely and openly, could reasonably be regarded as being confidential and therefore could attract an expectation of privacy. However, from the footage broadcast during the programme, Mr and Mrs Hanson-Shaw did not disclose anything particularly private in relation to either their personal lives or their businesses. Taking these factors into account, Ofcom considered that Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in relation to broadcast of the footage, but that this expectation was limited.

Ofcom next took a view as to whether broadcasting this footage was warranted.

As considered under head c) above, an individual's privacy must be balanced against the competing rights of broadcasters to freedom of expression. Neither of

these rights has precedence over the other and, where there is conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right.

Ofcom carefully balanced Mr and Mrs Hanson-Shaw's right to privacy in relation to the broadcast footage obtained through surreptitious filming and weighed this against both the broadcaster's right to freedom of expression and the audience's right to receive information in the public interest. Ofcom considered that there was a genuine public interest justification in broadcasting Mr and Mrs Hanson-Shaw's conduct with customers and the claims that they made about their wedding dresses.

Therefore, on balance, and taking all the factors set out above into account, Ofcom considered that the broadcaster's right to freedom of expression, and the public interest in broadcasting the material in order to corroborate the allegations made in the programme, outweighed Mr and Mrs Hanson-Shaw's limited expectation of privacy in relation to the broadcast of the footage.

Doorstepping

Ofcom considered the complaint in relation to the broadcast footage of Mr and Mrs Hanson-Shaw's home.

As discussed under head c) above, Ofcom took the view that doorstepping Mr and Mrs Hanson-Shaw was warranted in the circumstances. It therefore went on to consider to what extent Mr and Mrs Hanson-Shaw had a legitimate expectation of privacy in relation to the broadcast of the footage.

Ofcom viewed the broadcast material and noted that it included footage filmed from the top of a step ladder looking into Mr and Mrs Hanson-Shaw's driveway. Mr and Mrs Hanson-Shaw were briefly shown walking across the driveway, as the programme makers attempted to engage them in conversation.

Ofcom noted that the programme did not reveal the street name or house number of the property. The programme did make mention of the town where Mr Hanson-Shaw's business (and thus his home) was located, but this was the only information given in the programme that may have disclosed to viewers the whereabouts of Mr and Mrs Hanson-Shaw's address. Also, the home address of Mr and Mrs Hanson-Shaw is shared with The Wedding Dress Studio and it was advertised as such on the internet.

Ofcom noted that the material broadcast had been obtained by filming over the perimeter gate of Mr and Mrs Hanson-Shaw's home. However, it considered that the footage did not disclose anything that could be regarded as being particularly private or personal to the complainants. In addition, the areas filmed and shown in the programme would have been open to members of the public who were customers of Mr Hanson-Shaw and who visited his business.

Having regard to the factors set out above, Ofcom considered that Mr and Mrs Hanson-Shaw had a reasonable expectation of privacy in relation to the broadcast footage of their home, but that the expectation was limited. Ofcom then went on to assess whether it was warranted to infringe Mr and Mrs Hanson-Shaw's privacy.

As previously noted in head c) above, Ofcom considered that there was a public interest justification in the programme investigating allegations of this sort and

that filming Mr and Mrs Hanson-Shaw at their home, during the period of time during which their solicitor had described them as being “away”, formed a key part of the investigation in that it allowed viewers to make their own judgement as to Mr and Mrs Hanson-Shaw’s willingness to respond to the allegations. In these circumstances, Ofcom took the view that any infringement of privacy in respect to the broadcast of footage of Mr and Mrs Hanson-Shaw’s home was warranted.

Therefore, on balance, and given all the factors set out above, Ofcom considered the broadcaster’s right to freedom of expression and the public interest in broadcasting footage of Mr and Mrs Hanson-Shaw’s home outweighed their limited expectation of privacy in the circumstances. Ofcom concluded therefore that Mr and Mrs Hanson-Shaw’s privacy was not unwarrantably infringed in the programme as broadcast.

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

Not Upheld

Complaint by Mr Eliot Higgins

RT News, RT (formerly Russia Today), 18 September 2013, 10:00 and 11:00

Summary

Ofcom has not upheld the complaint made by Mr Eliot Higgins of unjust or unfair treatment in the programme as broadcast.

Two RT news bulletins featured a story on three videos which had been posted online by a blogger based in England known as “Brown Moses” (Mr Higgins’ blogging name), who has become well known for monitoring the armed conflict in Syria. The videos allegedly showed Syrian rebel opposition forces carrying out a chemical weapons attack. They were discussed by the studio presenter and a reporter in both bulletins. During the bulletins, Mr Higgins (by reference to his Brown Moses pseudonym) was discussed briefly, while the studio presenter and reporter spoke about the issue of whether the videos were genuine. In the first 10:00 bulletin, Mr Higgins was described as *“a staunch critic of Damascus and a staunch critic of president Bashar al-Assad’s regime”*.

Ofcom found that:

- describing Mr Higgins as being *“a staunch critic of Damascus and a staunch critic of President Bashar al-Assad’s regime”* seemed a fair reflection of the views of Brown Moses (Mr Higgins’ pseudonym), as presented through his Twitter account.
- the language used throughout made the unauthenticated nature of the footage (and the uncertainty about what it allegedly showed) sufficiently clear, to the extent that to avoid unfairness the broadcaster was not obliged to mention that the blogger (Brown Moses) who posted the videos, said that the footage: *“kinda seems dubious”*.

Introduction and programme summary

RT (formerly known as Russia Today) is a global news and current affairs channel produced in Russia. In the UK, the channel broadcasts on satellite and digital terrestrial platforms. The licence for RT is held by Autonomous Non-profit Organisation TV Novosti (“TV Novosti”). The channel is partly funded by subsidies granted to TV Novosti from the federal budget of Russia and by advertising. TV Novosti states however that it is independent in its editorial decisions and is not a part of any government body, nor is it answerable to any government body.

On 18 September 2013, RT broadcast an edition of its 10:00 and 11:00 news bulletin programmes, *RT News*, which featured a news story on the Syrian civil war. A significant aspect of the story was based on three videos which had been posted on the website of a blogger based in England, Brown Moses (Mr Higgins’ blogging name), who had become well known for monitoring the armed conflict in Syria. The videos allegedly showed Syrian rebel opposition (and not government) forces carrying out the widely reported chemical weapons attack in the Ghouta suburb of east Damascus on 21 August 2013. Hundreds of people were killed in the attack. The Syrian government and opposition blamed each other for the attack. Many

governments, mostly in the Western and Arab worlds, said the attack was carried out by forces of Syrian President Bashar al-Assad, a conclusion echoed by the Arab League and the European Union. On 11 September 2013, the Russian government suggested the attack was probably a “false flag” operation by the opposition to draw foreign powers into the civil war on the rebels' side.¹ The attack sparked debate in France, the United Kingdom, the United States and other countries about whether to intervene militarily against the government forces.

The videos were discussed by the studio presenter and a reporter in both bulletins.

In the 10:00 news bulletin, the studio presenter introduced the videos and said:

Presenter: *“Meanwhile, a prominent Syrian blogger known as Black Moses² has posted footage allegedly showing chemical weapons being used by rebels. Let’s get the details from our correspondent Paul Scott in the studio. Paul, what do we know about this footage?”*

The videos were then discussed by the programme’s reporter:

Reporter: *“Well, as you mentioned there, the blogger is a staunch critic of Damascus and a staunch critic of President Bashar al-Assad’s regime. In the past, he’s monitored all sorts of news sources and claims and counter-claims that are emerging from the Syrian civil war, to use it as a stick to beat the Assad government with and implicate Assad in all sorts of atrocities. But it’s interesting now that he’s posted a video on this blog that suggests that, actually, it could be the Syrian opposition that have been using these chemical weapons. It represents a shift in focus from what...the narrative of the blog has been taking in recent weeks”.*

In the subsequent 11:00 news bulletin, the videos were introduced in a similar way by a different studio presenter. The reporter then stated:

Reporter: *“The videos have appeared on the website of a prominent blogger who goes by the name of Brown Moses. Now, he’s been focussing on the Syrian conflict for the last couple of years, analysing claims and counter claims that have been emerging from the two-year civil war. Now, he’s been sent a link to three videos which apparently show a chemical weapons attack being carried out by opposition forces...Now Brown Moses, on his blog, has been continually trying to decipher really all the information coming out of this conflict, and his decision to publish these videos, which suggest it could well be opposition forces carrying out chemical weapons attacks really opens up the debate once more as a sign that the information war is going to carry out for as long as the ground war”.*

During the broadcasts, the videos were accompanied, at all times, with an on-screen message which throughout most of the programme described the footage as “unverified”, but also at times showed the caption “chemical doubts”. The studio

¹ New York Times, 11 September 2013: http://www.nytimes.com/2013/09/12/opinion/putin-plea-for-caution-from-russia-on-syria.html?ref=opinion&_r=0.

² Harbottle & Lewis, RT’s legal representatives, confirmed that the reference to the blogger as Black Moses (instead of Brown Moses) had been made in error in the broadcast.

presenter and the reporter in both broadcasts warned viewers at regular intervals that the authenticity of the videos had yet to be verified.

Summary of the complaint and the broadcaster's response

Mr Higgins complained that he was treated unjustly or unfairly in the programmes as broadcast because:

- a) The 10:00 bulletin described him as *"a staunch critic of Damascus and a staunch critic of President Bashar al-Assad's regime"*. Mr Higgins said that this description misrepresented his blog unfairly by questioning the impartiality of his blog.

RT's legal representatives, Harbottle & Lewis LLP ("Harbottle & Lewis") responded on behalf of the broadcaster. It stated that on 13 and 16 September 2013, Mr Higgins indicated on his Brown Moses blog that "the evidence" pointed towards the Syrian government being responsible for the chemical attack. Following this, Harbottle & Lewis said that Mr Higgins posted three videos onto his blog, which purported to show that the Syrian opposition was responsible for carrying out the attack. Then, on 18 September 2013, RT featured the videos in its news bulletins at 10:00 and 11:00.

Harbottle & Lewis said that in the period leading up to the posting of the videos on 16 September 2013, Mr Higgins' blog appeared to suggest that the balance of evidence pointed to the Syrian government being responsible for the chemical attack rather than the opposition forces. On 13 September 2013, Mr Higgins posted on his blog that:

"The evidence I've gathered seems to point towards the government being responsible for the use of these munitions, with evidence I've examined pointing towards the opposition being responsible seeming very weak. If the UN report confirms these are chemical munitions, then it seems almost certain the government were responsible for firing them".

Harbottle & Lewis commented that another post, this time on 16 September 2013, stated that: *"It seems to me, that compared to the evidence of government responsibility for the attacks, the evidence of opposition responsibility seems very poor"*.

Harbottle & Lewis said that Mr Higgins also posted tweets on his Twitter account under the pseudonym "Brown Moses" and that he used the account as an extension of his Brown Moses blog. It said that the blog and Twitter account were linked to each other and that the views posted on both should be read together. Harbottle & Lewis said therefore that the Brown Moses tweets were identified with the blog and that what was said in those tweets might affect perceptions of Mr Higgins' blog or him as the blogger.

Harbottle & Lewis quoted a number of tweets from the Brown Moses Twitter account which, it said, revealed animosity towards President al-Assad from which hostility to his government was readily inferred:

- 21 June 2012: "Heh, on the first page of Google results for the search "anti-assad blog.""

Harbottle & Lewis said that it appeared from this tweet that Mr Higgins celebrated the fact that a search on the Google internet search engine for

“anti-assad blog” returned his Brown Moses blog on the first page of results. It said that this apparently indicated that Mr Higgins was “content, indeed proud”, that his blog should be perceived as “anti-assad”.

- 18 July 2012: “Assad’s regime is collapsing round his ears, and considering the length of his neck it’s got further to fall than most”.

Harbottle & Lewis commented that this tweet suggested that Mr Higgins attributed the collapse of the Syrian government to President Assad’s personal failings.

- 19 July 2012: “If Assad was burnt in the explosion Asma [President al-Assad’s wife] will have to change her pet name for him to Crispy Fried Duck”.

Harbottle & Lewis said that, in this tweet, Mr Higgins considered the possibility of President al-Assad being badly burnt and as a result his wife having to change her pet name for him (“Duck” apparently being Mrs al-Assad’s pet name for her husband).

- 2 December 2012: “Assad, the great humanitarian, has heard his people are freezing in the winter, so to help them he’s started to drop bombs that start fires”.

Harbottle & Lewis commented that in this tweet Mr Higgins, with “savage irony”, characterised President al-Assad as firebombing his own citizens to keep them warm.

- 9 September 2013: “It’s clear the Syria opposition needs to secure some footage of Asma al-Assad twerking [a sexually-provocative dance movement] with Bashar”.

Harbottle & Lewis stated that in this tweet, posted a few days before the videos were posted on the blog, Mr Higgins was not above the personal denigration of President al-Assad’s wife.

- 18 September 2013: “To be clear, I’m not anti-Assad specifically, just anti-war criminals, child killers, etc in general, whichever side they’re on”.

Harbottle & Lewis remarked that on the day the news reports were broadcast, Mr Higgins tweeted the above message which, it said, characterised President al-Assad as a war criminal and child killer.

Harbottle & Lewis stated that it was clear from the above tweets where Mr Higgins’ sympathies lay and that he had been hostile to President al-Assad’s government for some considerable period of time. It said that in light of the content of the tweets and the period of time during which he had been disseminating them, it was difficult to see how Mr Higgins’ complaint of unfair treatment, because his blog was described as a “*staunch*” critic of the Syrian regime, could be sustained.

- b) The programmes had not made it clear that Brown Moses was sceptical about the authenticity of the video footage which Mr Higgins had posted to his blog. Mr Higgins said that he had described the videos posted to his blog as “kinda seems

dubious” in his blog. However, by omitting a reference to this statement he said that the broadcasts had potentially damaged his reputation.

In response, Harbottle & Lewis said that the source of the chemical attack on 21 August 2013 in east Damascus had been disputed for some time and that any new evidence that could help potentially to identify those responsible was of great public interest. The videos, which reportedly showed those responsible for the attack, were being uploaded to YouTube and distributed to a wider audience by Mr Higgins’ blog, which made them newsworthy. Harbottle & Lewis underlined that, in its view, the videos were the subject of the news reports, and not Mr Higgins.

Harbottle & Lewis said that it could not have been more transparent that the news reports also found the authenticity of the videos dubious. The reports described the footage as “*unverified*” and that the authenticity of the videos had yet to be “*verified*”. Harbottle & Lewis stated that the aim of the report was not to suggest that the rebels were responsible for the attack, but to highlight the doubts surrounding the issue of who was to blame. These doubts were emphasised by the on-screen caption “*CHEMICAL DOUBTS*” which was shown on-screen during part of the bulletin.

Harbottle & Lewis added that viewers were clearly informed of the dubious nature of the videos throughout the reports. For example, during part of the 10:00 news segment, the statement “*UNVERIFIED AMVID POINTS TO REBEL HAND IN SYRIAN CHEM. WAR CRIME*” was displayed in text at the bottom of the screen. During this bulletin, the studio presenter introduced the story saying “*a prominent Syrian blogger known as ‘Black Moses’ has posted footage allegedly showing chemical weapons being used by rebels*”. In the 11:00 bulletin, during part of the video, on-screen text was displayed stating “*UNVERIFIED VIDEO DATED 21 AUG. ALLEGEDLY SHOWS JIHADISTS FIRING CHEM. WEAPONS*”.

Harbottle & Lewis stated that by describing the videos in his blog post as “dubious”, Mr Higgins conceded that it was “at least not impossible” that the videos might be authentic, and therefore admitted that it is possible that the opposition were accountable for the attack. It said that the programmes did no more than to pick up on this thread by describing the posting of the videos as representing “*a slight shift in focus from...the narrative that the [Brown Moses] blog has been taking in recent weeks*”. It said that this statement implied that the blog’s narrative in recent weeks suggested that evidence pointed towards the Syrian government being responsible for the attack.

Harbottle & Lewis went on to state that it was not necessary to make Mr Higgins’ opinions on the authenticity of the footage clear in the news bulletins, as the focus of the bulletin was on the videos, not the Brown Moses blog. Harbottle & Lewis stated that Mr Higgins’ role in the report was as the source of information, and that there was nothing broadcast in the reports to indicate that he was any less doubtful about the authenticity of the footage than was suggested by the broadcast. Harbottle & Lewis added that a specific mention of Mr Higgins’ doubts was not editorially justified.

Harbottle & Lewis stated that it was not clear how featuring Mr Higgins’ thoughts on the videos would have left his reputation undamaged, or how not featuring them could possibly have damaged his reputation. As a result of the factors set out above, it said that it was not unjust or unfair to omit Mr Higgins’ beliefs about the footage from the broadcasts.

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 and transcript of the bulletins as broadcast, both parties' written submissions, and supporting material. The parties chose not to make any representations on Ofcom's Preliminary View in this case (which was that there was no unjust treatment of Mr Higgins).

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 Code. We had particular regard to this rule when reaching our decision.

- a) Ofcom first considered the complaint that Mr Higgins was treated unjustly or unfairly in the 10:00 *RT News* bulletin because he was described as "*a staunch critic of Damascus and a staunch critic of President Bashar al-Assad's regime*".

Ofcom recognises the importance of the right to freedom of expression and the need to allow broadcasters the freedom to report and broadcast matters of genuine public interest, and for audiences to receive this information without undue interference. However, in exercising this right broadcasters must take reasonable care to satisfy themselves that material facts are not presented, disregarded or omitted in a way that is unfair to an individual or organisation (as outlined in Practice 7.9 of the Code). In this case, Ofcom considered that it was in the public interest and consistent with the broadcaster's editorial freedom for the broadcaster to report and provide comment on the alleged video evidence of the chemical attack. This needed to be done, however, in a way that complied with the requirements of the Code.

In assessing this head of the complaint, Ofcom noted the 10:00 bulletin (as set out in full in the "Introduction and programme summary" section above. In particular, we noted that, during the bulletin, Mr Higgins was described as a "*staunch critic of Damascus and a staunch critic of President Bashar al-Assad's regime*". We also took into account the information provided by Harbottle & Lewis regarding Mr Higgins' tweets and blog postings as "Brown Moses" prior to the broadcast of the reports.

In Ofcom's opinion, while Mr Higgins may not consider himself to be a "*staunch critic*" of the Syrian government and may not, on the information provided to us, have expressly stated that he was a critic of the regime, the nature and content of the blogs and tweets posted by Mr Higgins as Brown Moses prior to the broadcasts could reasonably be understood as being very critical of President al-Assad and his government. Ofcom recognises that the word "*staunch*" is emotive

and carries with it connotations of dogged determination and an unwavering resolution. However, given the content of the tweets provided by Harbottle & Lewis, we consider that the use of this adjective was reasonable in the circumstances.

Taking the above factors into account, Ofcom considered that it was reasonable (and so not unfair) for the first broadcast news report to refer to Mr Higgins as a “*staunch critic*” of President al-Assad’s government, because this appeared to be a fair reflection of some of the views posted by Mr Higgins on both his Twitter account and Brown Moses blog.

Ofcom’s decision is therefore that the broadcaster had taken reasonable care to ensure that the material facts had not been presented in the programme in a way that was unfair to Mr Higgins.

- b) Ofcom then considered Mr Higgins’ complaint that *RT News* had not made it clear in their broadcasts that he was sceptical about the authenticity of the video footage which he had posted to his blog.

In considering this aspect of the complaint, Ofcom again took account of Practice 7.9 of the Code, as mentioned above, and the broadcaster’s and audience’s right to freedom of expression in broadcasting matters of public interest.

Ofcom noted that Mr Higgins’ statement “kinda seems dubious”, regarding the video footage in his blog, was not mentioned in the broadcasts. However, we also took into account that, in the reports, the videos’ authenticity was discussed by the studio presenter and the reporter. In particular, Ofcom recognised that the videos were accompanied by a number of on-screen captions that described the footage as “unverified” and the reports included the caption “*CHEMICAL DOUBTS*”. Also, the reports used language that suggested that the videos were questionable, for example “*apparently*”, “*alleged*”, “*if indeed it’s correct*”, and “*it could be*”.

In Ofcom’s view, the language used in the programme along with the on-screen captions (as described above) was clear and unequivocal in relaying to viewers that the authenticity and provenance of the videos was uncertain, and that what they appeared to depict was unverified. Neither was there any suggestion in either RT report that the source of the videos (i.e. Mr Higgins’ blog) considered the videos to be authentic or provided conclusive proof as to who had carried out the chemical attack. Ofcom’s view is also that the focus of the bulletins was the videos posted to Mr Higgins’ blog, and not Mr Higgins himself nor any criticism of Mr Higgins. On this basis, Ofcom considered that it was not incumbent on the broadcaster to have made a specific reference in the reports to Mr Higgins’ view that the video footage “kinda seems dubious” (i.e. that Mr Higgins had doubts about the authenticity of the videos). Given this conclusion, Ofcom did not consider that the omission resulted in unfairness to Mr Higgins.

Ofcom’s decision is therefore that as regards head b) of the complaint the broadcaster took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Higgins.

Accordingly, Ofcom has not upheld Mr Higgins’ complaint of unjust or unfair treatment in the programmes as broadcast.

Other Programmes Not in Breach

Up to 20 January 2014

Programme	Broadcaster	Transmission Date	Categories
Hollyoaks	Channel 4	15/10/2013	Violence and dangerous behaviour

Complaints Assessed, not Investigated

Between 7 and 20 January 2014

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
5 Live Drive	BBC Radio 5 Live	08/01/2014	Outside of remit / other	2
5 Live Investigates	BBC Radio 5 Live	05/01/2014	Generally accepted standards	1
5 Movies promo	5*	11/01/2014	Scheduling	1
50 Shocking Facts About Diet and Exercise	Channel 5	02/01/2014	Materially misleading	1
ABP News	ABP News	N/A	Materially misleading	1
Advertising	BBC Radio Derby	Various	Commercial communications on radio	1
Agatha Christie's Miss Marple	ITV	29/12/2013	Television Access Services	1
All Star Family Fortunes	ITV	19/01/2014	Scheduling	1
American Pie	TV6	27/11/2013	Disability discrimination/offence	1
Aunt Bessie's sponsorship of The Chase	ITV	Various	Sponsorship	1
Autopsy: Michael Jackson's Last Hours	Channel 5	07/01/2014	Generally accepted standards	18
BBC Lunchtime News	BBC 1	03/01/2013	Outside of remit / other	1
BBC News	BBC 1	12/01/2014	Outside of remit / other	1
BBC News	BBC 2	17/01/2014	Outside of remit / other	1
BBC News	BBC News	20/01/2014	Outside of remit / other	1
BBC News	BBC News Channel	06/01/2014	Outside of remit / other	1
BBC News at One	BBC 1	13/01/2014	Outside of remit / other	1
BBC News at One	BBC 1	17/01/2014	Generally accepted standards	1
BBC News at Six	BBC 1	08/01/2014	Outside of remit / other	1
BBC News at Six	BBC 1	09/01/2014	Outside of remit / other	1
BBC News at Six	BBC 1	10/01/2014	Religious/Beliefs discrimination/offence	1
BBC News at Ten	BBC 1	08/01/2014	Outside of remit / other	1
BBC News at Ten	BBC 1	14/01/2014	Outside of remit / other	1
BBC News/ITV News/Sky News	Various	07/01/2014	Disability discrimination/offence	1

Benidorm	ITV	02/01/2014	Violence and dangerous behaviour	7
Birds of a Feather	ITV	09/01/2014	Scheduling	1
Boots' sponsorship of This Morning	ITV	10/01/2014	Sponsorship	1
Botched Up Bodies (trailer)	Channel 5	06/01/2014	Scheduling	1
Botched Up Bodies (trailer)	Channel 5	09/01/2014	Scheduling	1
Breakfast	BBC 1	03/01/2014	Outside of remit / other	1
Breakfast Show	Capital Radio	06/01/2014	Drugs, smoking, solvents or alcohol	1
Breakfast Show	Heart FM	08/01/2014	Generally accepted standards	1
British Comedy Awards 2013	Channel 4	12/12/2013	Offensive language	49
Callum Mellon	Drystone Radio	13/01/2014	Offensive language	1
Channel 4 News	Channel 4	03/12/2013	Due impartiality/bias	1
Channel ident	Dave	10/01/2014	Race discrimination/offence	1
Channel ident	E4	08/01/2014	Drugs, smoking, solvents or alcohol	1
Channel ident	E4	08/01/2014	Generally accepted standards	1
Channel ident	E4	Various	Generally accepted standards	1
Channel ident	ITV	16/11/2013	Flashing images/risk to viewers who have PSE	1
Christian O'Connell Breakfast Show	Absolute Radio	06/01/2014	Offensive language	1
Cleopatra: Portrait of a Killer	BBC 4	09/01/2014	Outside of remit / other	1
Come Dine with Me	Channel 4	08/01/2014	Offensive language	1
Comedy Central Promotions	Comedy Central	21/12/2013	Scheduling	1
Coronation Street	ITV	pre-tx	Outside of remit / other	1
Coronation street	STV	Various	Generally accepted standards	1
Dancing on Ice	ITV	05/01/2014	Disability discrimination/offence	1
Dancing on Ice	ITV	05/01/2014	Generally accepted standards	10
Dancing on Ice	ITV	05/01/2014	Voting	6
Dancing on Ice	ITV	12/01/2014	Generally accepted standards	1
Dancing on Ice	ITV	12/01/2014	Outside of remit / other	1
Dancing on Ice	ITV	19/01/2014	Gender discrimination/offence	2
Deadtime Stories	CITV	28/12/2013	Scheduling	1
Deal or No Deal	Channel 4	07/01/2014	Generally accepted standards	1
Death Becomes Her	ITV3	05/01/2014	Scheduling	1

Defending Our Kids	Channel 5	10/01/2014	Scheduling	1
Dog and Beth: On the Hunt	CBS Reality	27/12/2013	Offensive language	1
EastEnders	BBC 1	31/12/2013	Generally accepted standards	1
EastEnders	BBC 1	01/01/2014	Scheduling	6
EastEnders	BBC 1	02/01/2014	Generally accepted standards	1
EastEnders	BBC 1	07/01/2014	Sexual orientation discrimination/offence	1
EastEnders	BBC 1	08/01/2014	Generally accepted standards	1
EastEnders	BBC 1	14/01/2014	Race discrimination/offence	87
EastEnders	BBC 1	15/01/2014	Religious/Beliefs discrimination/offence	1
EastEnders (trailer)	BBC 1	09/01/2014	Generally accepted standards	1
Eastenders (trailer)	BBC 1	09/01/2014	Scheduling	1
Eastenders/Coronation Street/Emmerdale	BBC1 / ITV	Various	Generally accepted standards	1
Emmerdale	ITV	07/01/2014	Disability discrimination/offence	1
Emmerdale	ITV	07/01/2014	Generally accepted standards	2
Emmerdale	ITV	07/01/2014	Materially misleading	1
Emmerdale	ITV	08/01/2014	Religious/Beliefs discrimination/offence	1
F.A. Cup Live	ITV	04/01/2014	Generally accepted standards	3
F.A. Cup Live	ITV	04/01/2014	Race discrimination/offence	1
Fifth Gear	Channel 5	Various	Religious/Beliefs discrimination/offence	1
Finding Mum and Dad	Channel 4	15/01/2014	Materially misleading	2
Finding Mum and Dad	Channel 4	15/01/2014	Sexual orientation discrimination/offence	1
Frank Skinner	Absolute Radio 90s	21/12/2013	Race discrimination/offence	1
Gardener's Question Time	BBC Radio 4	03/01/2014	Materially misleading	1
Gormiti	CITV	30/12/2013	Violence and dangerous behaviour	1
Halfords sponsorship credits	Dave	01/01/2014	Generally accepted standards	1
Heartbeat	ITV3	06/01/2014	Outside of remit / other	1
Hollyoaks	Channel 4	30/12/2013	Scheduling	2
Hollyoaks	Channel 4	09/01/2014	Scheduling	14
Hollyoaks	Channel 4	10/01/2014	Scheduling	4
Hollyoaks	Channel 4	13/01/2014	Scheduling	1
Hollyoaks	E4	06/01/2014	Violence and dangerous behaviour	1
Hollyoaks	E4	08/01/2014	Scheduling	14
I'm Sorry I Haven't a Clue	BBC Radio 4	16/12/2013	Religious/Beliefs discrimination/offence	1

ITV News	ITV	19/12/2012	Outside of remit / other	1
ITV News and Weather	ITV	16/12/2013	Due accuracy	1
ITV News and Weather	ITV	07/01/2014	Animal welfare	1
ITV News and Weather	ITV	08/01/2014	Violence and dangerous behaviour	1
ITV News and Weather	ITV	15/01/2014	Scheduling	1
ITV News at Ten and Weather	ITV	07/01/2014	Due accuracy	2
ITV News London	ITV London	18/12/2013	Race discrimination/offence	1
ITV Player promotion	ITV2+1	03/01/2014	Violence and dangerous behaviour	1
Jamie's Money Saving Meals	More4	08/01/2014	Promotion of products/services	1
Live Darts	Sky Sports 1	13/12/2013	Sponsorship credits	1
Live Youth Show	Sikh Channel	27/10/2013	Religious/Beliefs discrimination/offence	1
Looking (trailer)	Sky1	12/01/2014	Scheduling	1
Loose Women	ITV	07/01/2014	Drugs, smoking, solvents or alcohol	1
Lorraine	ITV	06/01/2014	Generally accepted standards	1
Made of Honour	Channel 5	05/01/2014	Offensive language	3
Max	Capital FM	12/01/2014	Crime	1
Moonfleet	Sky1	28/12/2013	Television Access Services	1
Mrs. Brown's Boys	BBC 1	25/12/2013	Offensive language	1
My Big Fat Gypsy Christmas	More4	25/12/2013	Generally accepted standards	1
Nature's Weirdest Events	BBC 2	11/01/2014	Outside of remit / other	1
News	Classic FM	29/12/2013	Due impartiality/bias	1
News on the Hour	Sky News	08/01/2014	Generally accepted standards	1
NFL	Sky Sports	Various	Materially misleading	1
Nick Ferrari	LBC 97,3FM	13/01/2014	Generally accepted standards	1
Nick Ferrari	LBC 97.3FM	15/01/2014	Materially misleading	1
Peter Levy	BBC Radio Humberside	03/01/2014	Race discrimination/offence	1
Phones 4 U sponsorship credit PM	More4	20/12/2013	Sponsorship credits	1
Pointless	BBC 1	06/01/2014	Generally accepted standards	1
Police Interceptors	Channel 5	18/01/2014	Violence and dangerous behaviour	1
Politics Show with Tony Gosling	BCFM	13/12/2013	Due impartiality/bias	1
Press Preview	Sky News	08/01/2014	Due impartiality/bias	1
Programming	Kiss Me TV	18/12/2013	Sexual material	1
Programming	Proud Dating	17/12/2013	Sexual material	1

Programming	The Sikh Channel	30/11/2013	Charity appeals	1
QI	BBC 2	29/12/2013	Generally accepted standards	1
QI XL	BBC 2	24/12/2013	Religious/Beliefs discrimination/offence	1
Radio Ikhlas	Radio Ikhlas	19/12/2013	Race discrimination/offence	1
Random Acts	Channel 4	16/01/2014	Generally accepted standards	1
Rare Exports: Christmas Tale (Trailer)	Film 4	22/12/2013	Scheduling	1
Regional News and Weather	BBC 1	08/01/2014	Outside of remit / other	1
Revenge	E4	06/01/2014	Advertising content	1
River Monsters	ITV	07/01/2014	Materially misleading	1
Rude Tube	E4	30/12/2013	Scheduling	1
Scrambled!	ITV	18/01/2014	Offensive language	2
Secrets of the Scammers	Channel 4	07/01/2014	Race discrimination/offence	1
Sherlock	BBC 1	12/01/2014	Drugs, smoking, solvents or alcohol	1
Sherlock	BBC 1	12/01/2014	Gender discrimination/offence	1
Sherlock	BBC 1	12/01/2014	Generally accepted standards	2
Shipping Wars	Channel 4	05/01/2014	Violence and dangerous behaviour	2
Sky News	Sky News	30/12/2013	Drugs, smoking, solvents or alcohol	1
Sky News at Ten	Sky News	05/01/2014	Due accuracy	1
Sky News with Kay Burley	Sky News	14/01/2014	Outside of remit / other	1
Sky Store promotion	Sky1	08/01/2014	Scheduling	1
Sky Store promotion	Sky1	09/01/2014	Scheduling	5
Sky Store promotion	Sky1	10/01/2014	Scheduling	1
Sky Store promotion	Sky1	11/01/2014	Scheduling	1
Sonia Poulton	The People's Voice	28/11/2013	Materially misleading	1
Splash!	ITV	11/01/2014	Disability discrimination/offence	1
Sports Personality of the Year 2013	BBC 1	15/12/2013	Voting	1
Steve Allen	LBC 97.3FM	13/01/2014	Generally accepted standards	1
Storage Wars	History	09/01/2014	Offensive language	1
Strictly Come Dancing	BBC 1	07/12/2013	Offensive language	1
Strictly Come Dancing	BBC 1	14/12/2013	Voting	1
Strictly Come Dancing	BBC 1	21/12/2013	Voting	2
Subtitling	Drama	Various	Television Access Services	1
Sunrise	Sky News	05/01/2014	Due impartiality/bias	1
Super Scoreboard	Clyde 1	03/01/2014	Religious/Beliefs discrimination/offence	1

Super Scoreboard	Clyde 1	09/01/2014	Religious/Beliefs discrimination/offence	1
Talk Back	BBC Radio Ulster	09/01/2014	Commercial communications on radio	1
Test Match Special	BBC Radio 5 Live	27/12/2013	Disability discrimination/offence	1
The 7.39	BBC 1	07/01/2014	Violence and dangerous behaviour	1
The Big Bang Theory	Channel 4	Various	Scheduling	1
The Cat in the Hat	BBC 1	03/01/2014	Scheduling	1
The Chase	ITV	13/01/2014	Materially misleading	2
The Eiger: Wall of Death	BBC 4	14/01/2014	Outside of remit / other	1
The Great Sport Relief Bake Off	BBC 2	13/01/2014	Offensive language	1
The Great Sport Relief Bake Off	BBC 2	15/01/2014	Nudity	1
The Illusionists	ITV	01/01/2014	Scheduling	1
The Inbetweeners	Channel 4	Various	Generally accepted standards	1
The Jeremy Kyle Show	ITV	07/01/2014	Offensive language	2
The Jeremy Kyle Show	ITV	09/01/2014	Generally accepted standards	1
The Jonathan Ross Show	ITV	28/12/2013	Under 18s in programmes	1
The Lying Game: Crimes That Fooled Britain	ITV	07/01/2014	Due impartiality/bias	7
The One Show	BBC 1	18/12/2013	Generally accepted standards	1
The One Show	BBC 1	09/01/2014	Outside of remit / other	1
The One Show	BBC 1	13/01/2014	Outside of remit / other	2
The One Show	BBC 1	14/01/2014	Outside of remit / other	1
The Revolution Will be Televised	BBC 3	15/12/2013	Religious/Beliefs discrimination/offence	1
The Simpsons	Channel 4	02/01/2014	Generally accepted standards	1
The Truth About Immigration	BBC 2	07/01/2014	Race discrimination/offence	1
The Undateables	Channel 4	09/01/2014	Generally accepted standards	1
Thieves and Thugs: Caught on Camera	Channel 5	11/12/2013	Generally accepted standards	1
This Morning	ITV	03/01/2014	Generally accepted standards	1
This Morning	ITV	10/01/2014	Generally accepted standards	1
This Morning	ITV	13/01/2014	Generally accepted standards	1
This Morning	ITV	15/01/2014	Generally accepted standards	4
This Week	BBC 1	10/01/2014	Generally accepted standards	1

Three Men in Another Boat	Dave	09/01/2014	Religious/Beliefs discrimination/offence	1
Titanic	Film 4	23/12/2013	Nudity	2
Tonårsbossen	TV3	28/10/2013	Generally accepted standards	1
Twit of the Year	Channel 4	30/12/2013	Disability discrimination/offence	1
Two Doors Down	BBC 1	31/12/2013	Gender discrimination/offence	6
UTV Live	UTV	08/01/2014	Outside of remit / other	2
VO5's sponsorship of Hollyoaks	Channel 4	09/01/2014	Sponsorship credits	1
What Happens in Kavos...	E4	13/01/2014	Generally accepted standards	1
What Happens in Sunny Beach...	Channel 4	09/01/2014	Generally accepted standards	15
Win a Holiday to Jamaica promotion	Channel 5	12/01/2014	Competitions	1
Wooly & Tig	CBeebies	14/01/2014	Generally accepted standards	1

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 9 and 22 January 2014.

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

Programme	Broadcaster	Transmission date
Advertising minutage	Starz	Various
Advertising scheduling	Food Network	Various
Advertising scheduling	MTV Rocks	11 December 2013
Advertising scheduling	NDTV	Various
Programmes	Studio 66 TV1	Various
Two and a Half Men	Comedy Central	3 December 2013

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

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

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

Programme	Broadcaster	Transmission date
Fool Britannia	ITV and ITV+1	26 and 27 October 2013
Police Interceptors	Channel 5	23 September 2013

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:

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

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

Licensee	Licensed Service
OX4 FM Community Interest Company	OX105FM
Ummah Channel Limited	Ummah Channel

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

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