

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Introduction

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

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

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

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

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

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

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

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

## Note to Broadcasters

### Monitoring of equality of opportunity and training in broadcasting

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#### Updated diversity guidance

In November, we published our updated diversity guidance<sup>1</sup> and subsequently wrote to each licensee who met the statutory threshold<sup>2</sup>, to explain how it would apply to them. This new guidance has immediate effect and we will expect information on how television broadcasters are implementing it when we send out our Spring 2018 information request.

Radio broadcasters are not expected to have incorporated it when developing their equal opportunity strategies for 2017, and the information they provide in response to the request we will send in the New Year will instead be assessed in accordance with our previous guidance of 2006. However, the radio industry is required to have regard to the new guidance in any arrangements introduced after 22 November 2017.

We published an update note to broadcasters in Issue 339 of Ofcom's Broadcast and On Demand Bulletin setting out, amongst other things, the next steps for monitoring the radio industry. This remainder of this note is aimed specifically at **radio broadcasters** and provides an update on the detail of these next steps.

#### Monitoring of the radio industry

##### Stage one information request

On 2 November we sent each radio licensee an initial information request, asking for information related to their number of employees, number of days broadcasting and number of freelancers. This request was sent out to company secretaries by post and to compliance contacts by email.

The deadline for completing this information request was 17 November 2017, so if you haven't yet submitted this information, you can expect us to investigate your compliance.

##### Stage two information request

Those licensees who have submitted responses to the stage one information request and who meet the threshold<sup>3</sup> will receive a further information request in **early January**. This will consist of a questionnaire which will need to be completed and returned to Ofcom. The details of how and when to do this will be included with the questionnaire.

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/108100/guidance-diversity-broadcasting.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/108100/guidance-diversity-broadcasting.pdf)

<sup>2</sup> The obligation only applies broadcasters (of groups of companies) who employ more than 20 people in connection with the provision of licensed broadcasting services and are authorised to broadcast for more than 31 days a year.

<sup>3</sup>See footnote 2

*What information will be requested?*

We will request a range of information including staff make up, the steps broadcasters are taking to improve equal opportunities and diversity, and the level of engagement on diversity issues, at all levels of their organisations.

*How will the information be used?*

We will use the information to produce our first annual Diversity and equal opportunities in radio report, mirroring the one that we produced for the television industry in September<sup>4</sup>. We will set out how the radio industry is doing on equality and diversity overall and the diversity of individual broadcasters. We will highlight areas where the industry is doing well, which groups lack representation and what steps are being taken to address this. Our aim is to be as transparent as we can, while also complying with the relevant data protection obligations. We've committed to monitoring the broadcasting industry on an annual basis and publishing the results.

Any broadcasters who have questions related to the above should contact [diversityinbroadcasting@ofcom.org.uk](mailto:diversityinbroadcasting@ofcom.org.uk)

Finally, we would like to remind you that it is your responsibility to ensure that your contact details held by Ofcom are accurate and up-to-date. Therefore, if this isn't the case, we ask that you email [Broadcast.Licensing@ofcom.org.uk](mailto:Broadcast.Licensing@ofcom.org.uk) with your correct contact details.

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<sup>4</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/diversity/diversity-equal-opportunities-television>

## Broadcast Standards cases

### In Breach

#### Recorded Repeat Show

*Radio Dawn, 16 May 2017, 23:05*

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#### Introduction

Radio Dawn is a Nottingham based community radio station which broadcasts in Punjabi and is aimed at the Muslim community. The licence for Radio Dawn is held by Karimia Limited ("the Licensee" or "Karimia").

We received a complaint about a 'phone-in' show in which listeners were encouraged to seek advice from a scholar on Islamic-related issues. During the show, an exchange took place between the scholar, (referred to as "the Mufti"<sup>1</sup>) and a caller who was seeking advice about fasting with diabetes. The complainant considered that the advice given by the scholar was potentially dangerous.

Ofcom translated the programme and gave the Licensee an opportunity to comment on the accuracy of the translation. In the absence of any comments regarding this translation we considered that it was accurate and relied upon it for the purposes of our investigation.

The call went as follows:

Caller: *"Assalamoalaikum<sup>2</sup>. I have a question to ask about someone who is diabetic and they are taking insulin, and the doctor has forbidden that person that they should not fast. My question is, could that person convert the lengthy fast into a winter fast? Would it be permissible to do that?"*

Presenter: *"I understand the question, let's ask Mufti Sahib. Have you heard the question Mufti Sahib?"*

Mufti: *"I didn't hear the question properly, could you repeat the question?"*

Presenter: *"Yes, the question is, if a person is diabetic and they cannot fast during the lengthy fasts can they instead fast during the winter when the days are shorter?"*

Mufti: *"Look, if the doctor is a Muslim and a religious person, then his advice carries weight. But if he is not a Muslim. Well, a non-Muslim Doctor will tell you to stop fasting even if you have a minor headache. What you have to do, is check is who is giving the advice. A proper Muslim doctor who is religious will not give you the wrong advice. Also, if a doctor has not given you the advice but you know yourself that your [blood] sugar is so high, that if you fast your condition will worsen then don't fast. Particularly in these lengthy fasts and*

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<sup>1</sup> Mufti: a Muslim legal expert or who is empowered to give rulings on religious matters.

<sup>2</sup> Islamic greeting meaning "peace be upon you".

*you are unwell and simply lack the strength, then in that situation you can of course stop fasting and keep the fasts in winter. But if you have mild diabetes, then it is not permitted to give up fasting in that situation. And where it's not a doctor [giving advice], or if it is a non-Muslim doctor who is giving the advice, well their advice carries no weight. It has no importance whatsoever".*

Presenter: *"So, it must be a Muslim doctor who gives the advice, because it's only a Muslim doctor who understands the importance of fasting".*

Mufti: *"Yes, a Muslim but he has to be a religious person and not just some person who is not particularly religious".*

We considered this material raised potential issues under the following rules:

Rule 2.1: "Generally accepted standards must be applied to the contents of television and radio services and BBC ODPS so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material".

Rule 2.3 "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We requested the Licensee's comments on how the content complied with these rules.

## Response

Karimia apologised and said that "on no account was it the intention of the presenter or Radio Dawn to suggest to listeners that they do not seek appropriate medical advice". The reason for giving the reference to seeking advice from a Muslim doctor with Islamic knowledge was because such a doctor would "understand the Islamic theology and the importance of fasting within a qualified medical context". This was based on "well-known theological opinion"<sup>3</sup>. The Licensee stated that a "Muslim doctor, whilst having a full appreciation of the medical requirements of the patient is likely to have a better sense of being able to suggest a range of options from modifying some medications, to continuing with the fast only if it was perfectly safe, to not being able to keep the fast".

Karimia stated that it had been following the guidance issued by the Muslim Council of Britain<sup>4</sup>, as endorsed by the Department of Health, which advises that the patient's choice to fast "should be respected and advice should be offered on medical grounds. The Muslim Chaplain/Imam should be consulted where available". However, the Licensee admitted that the advice offered in this segment of the programme went beyond the advice of the Muslim

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<sup>3</sup> The Licensee cited the "Al-Binayah commentary of Al-Hidayah, Book of Fasting, chapter of rulings about ill and traveller, page 76, Volume 4, Author: Iman Badr-ud-Deen Al Hanafi, Publisher: Darul Kutub Al-Ilmiyah, Beirut, Lebanon."

<sup>4</sup> Muslim Spiritual Care Provision in the NHS in 2013:  
<http://www.nelft.nhs.uk/download.cfm?doc=docm93jjim4n1078.pdf&ver=1240>

Council of Britain by stating that “the patient should seek advice from an appropriately qualified doctor with a knowledge of Islam”.

Karimia also stated that all its radio presenters would be “reacquainted with the advice of the Muslim Council of Britain” and “the bottom line was that medical opinion should always be sought from an appropriately qualified medical doctor”. However, the Licensee said it was its view that its religious community was “more likely to seek advice about fasting from a Muslim doctor than from a non-Muslim doctor and the scholar’s (the Mufti’s) advice was given in this context so as to encourage the Patient to seek appropriate medical attention”.

Finally, it added that the scholar did not intend to cause offence to a non-Muslim doctor, nor was he questioning their advice. The scholar did not say that the doctor had to be Muslim, but had “to be one with Islamic knowledge as he/she is more likely to understand the sensitivity to the medical and religious needs of a Muslim during Ramadan”.

Karimia also provided representations on Ofcom’s Preliminary View in this case, which was to record breaches of Rules 2.1 and 2.3 of the Code. The Licensee stated that the Preliminary View was “based on [an] interpretation that has been taken out of context and the meaning is stretched.” Karimia further stated that “[t]his was clearly a religious programme with a Muslim questioner specifically with a scholar (mufti) who is giving advice Islamically and not medically”. It added that the Mufti “is not medically qualified” and “people with knowledge of Islam would know that a Mufti is a religious title and not a medical title”. The Licensee stated that the question asked to the Mufti “was a very specific one which affects Muslims and fasting and has no relevance to non-Muslims whatsoever”.

Karimia also raised a concern about the translation, stating, in its view, that the Mufti “only says that the advice [of a non-Muslim doctor] carries no importance” rather than “carries no weight”. It added that at no point did the Mufti say “not to listen to the doctor”. It added that “he clearly states that if you know yourself that you can’t keep the fast, lack the strength or know that your condition will worsen then don’t fast”. Therefore, in the Licensee’s view, the information provided by the Mufti was not harmful, as the advice he was giving was “around whether a fast can be missed or delayed”. The Licensee added that the point the Mufti was making was that “a non- Muslim doctor or even a Muslim doctor without Islamic knowledge won’t necessarily understand the importance of fasting”, Karimia also argued “Fasting is an obligatory duty... Unfortunately, we can't change the law of Islam and we believe this falls within the remit of freedom of religious beliefs.”

Concerning the Mufti’s reference to “*mild diabetes*”, the Licensee said that “In the United Kingdom we regard a diabetic as someone who has a HbA1c<sup>5</sup> greater than 6.5. However, levels between 6 and 6.5 is regarded as pre- diabetes in the UK. Some people call it early diabetes in his interpretation he has regarded it as mild diabetes. Pre-diabetes is often confused and given different names by doctors and health care professionals”.

The Licensee concluded by stating that: “We believe and practice diversity, inclusivity and are against any kind of discrimination”. It also said that it had “taken on board” Ofcom’s position and that it is “trying [its] best to reduce the risk of any further breaches of the broadcasting code”.

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<sup>5</sup> Ofcom understands that the term *HbA1c* refers to glycated haemoglobin, which is used as a measure of blood sugar levels.

## Decision

Reflecting our duties under the Communications Act 2003<sup>6</sup>, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression as set out in Article 10 of the European Convention on Human Rights ("ECHR"). Ofcom has also had regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from potentially harmful material and the right to freedom of expression and also the right to freedom of thought, conscience and religion.

In reaching its Decision, Ofcom has also had due regard<sup>7</sup> in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as religion or belief, and those who do not.

### Rule 2.1

This rule requires that generally accepted standards are applied to the content of radio services so as to provide adequate protection from the inclusion in such services of harmful material.

Programmes that provide lifestyle and health advice about potentially serious medical conditions can be broadcast, provided that adequate protection is provided for members of the public<sup>8</sup> from any potentially harmful content.

We first considered whether the material broadcast was potentially harmful.

We acknowledged that Radio Dawn is aimed at the Muslim community and this programme offered the opportunity for members of this community to seek religious guidance from a Mufti. Other calls included the following topics: when to pay Zakat<sup>9</sup>, marriage advice, advice about praying, and using toothpaste during fasting.

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<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>7</sup> Under section 149 of the Equality Act 2010.

<sup>8</sup> In July 2017 (after the broadcast of the programme in this case), Ofcom published research *Health and wealth claims in programming: audience attitudes to potential harm*, setting out audience views on the potential harm arising from programmes involving health or wealth claims (see [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/104650/Health-claims-report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/104650/Health-claims-report.pdf)). We have drawn on that research to provide guidance for broadcasters about the kinds of factors we are likely to consider when investigating potential breaches of Rule 2.1 (see [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/104657/Section-2-Guidance-Notes.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf)).

<sup>9</sup> Zakat: payment made annually under Islamic law on certain kinds of property and used for charitable and religious purposes.

We then considered the statements made by the Mufti in response to the call about fasting with diabetes. The Licensee argued that that at no point did the Mufti say “not to listen to the doctor”, However, in our view, the Mufti’s advice was to: seek and trust only the advice provided by a Muslim doctor or a doctor with “Islamic knowledge”; and to disregard the advice that the diabetes sufferer had received from a non-Muslim doctor. The advice was given without knowledge of the caller’s specific condition, medical history, or suitability for fasting. We note the Licensee’s view, that the Mufti did not say that the advice of a non-Muslim doctor “carries no weight”, but that it “carries no importance”. However, Karimia’s translation of this phrase did not, in our view, materially differ from that upon which Ofcom relied, and therefore did not alter the meaning or significance of the advice given.

We took into account the Licensee’s arguments that the Mufti “is not medically qualified” and “people with knowledge of Islam would know that a Mufti is a religious title and not a medical title” Ofcom acknowledged that some members of the audience might have assumed the Mufti was not medically qualified. However, we also took into account the fact that the Mufti did not make clear that he was not medically qualified. Further, we considered that the Mufti was presenting a religious advice programme, as a respected religious scholar, and therefore his advice would likely to have carried weight with many in the audience.

In Ofcom’s view, the advice provided could clearly have led listeners with diabetes – a potentially serious health condition – to either refrain from seeking medical advice because their doctor was not a practising Muslim, or to disregard or otherwise question legitimate medical advice which they had received because it had not been given to them by a practising Muslim doctor. We considered that the potential harm was likely to have been heightened by the fact that the advice was given by a Mufti, an authority figure in the Muslim community.

Ofcom was also concerned by the statements made by the Mufti regarding “mild diabetes”. There was no evidence to suggest he was medically qualified to make such assessments and indeed the Licensee confirmed that the Mufti was not medically qualified. We noted Karimia’s comment, that levels between 6 and 6.5 HbA1c<sup>10</sup> is regarded as pre-diabetes in the UK, and that the Mufti has interpreted this as “mild diabetes”. We further noted Karimia’s view, that “[p]re-diabetes is often confused and given different names by doctors and health care professionals”.

However, Diabetes UK<sup>11</sup> states that “[t]here is no such thing as mild diabetes. All diabetes is serious and, if not properly controlled, can lead to serious complications”. In light of this, it was Ofcom’s view that the Mufti’s comments about “mild diabetes” were potentially harmful to listeners, who may have been led to believe that some cases of diabetes were not sufficiently serious to warrant seeking medical advice or to cease fasting. Diabetes UK states that people with diabetes should speak to their healthcare team if they are planning to fast, and that “anyone who would be putting their health at serious risk by fasting, e.g. people who treat their diabetes with insulin or have diabetic complications (damage to eyes, kidney or the nerves in your hands and feet)” may be exempt from fasting<sup>12</sup>.

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<sup>10</sup> Ofcom understands that the term *HbA1c* refers to glycated haemoglobin, which is used as a measure of blood sugar levels.

<sup>11</sup> <https://www.diabetes.org.uk/Diabetes-the-basics/Myths-and-FAQs/>

<sup>12</sup> <https://www.diabetes.org.uk/ramadan>

We noted Karimia's argument, that the question asked in this case "was a very specific one which affects Muslims and fasting and has no relevance to non-Muslims whatsoever" and that fasting, as "an obligatory duty" of Islam, which falls within the remit of freedom of religious beliefs. While Ofcom recognises the importance of the right to religious freedom under Article 9 of the ECHR, this right is not absolute, but is subject to the need to protect the health of the public. As set out above, the statements made by the Mufti in the programme as broadcast may have resulted in harm to public health, in circumstances where individuals refrained from following the advice of their doctor. We also took into account that the Muslim Council of Britain<sup>13</sup> makes clear that while fasting, members of the Muslim community should seek advice from a medical professional, without qualifying the need for the advice to be from a Muslim medical professional.

Given all the above, Ofcom considered that the content was potentially harmful.

Ofcom then considered whether the Licensee had provided adequate audience protection from this potentially harmful content. The Licensee stated it took account of the Muslim Council of Great Britain's advice that patient choice should be respected and that the "bottom line" was that medical opinion should always be sought from an appropriately qualified doctor. However, we did not consider that this was made clear in the programme, and the Licensee acknowledged that the advice given by the Mufti "went beyond" the Muslim Council of Great Britain's patient guidance. At no point in the programme were listeners informed that this was not the advice of a medical professional and that listeners with diabetes should therefore seek medical advice before undertaking any religious fasting. There was also no information provided to listeners about whether the Mufti had any medical training or knowledge.

We therefore considered that the Licensee had not provided listeners with adequate protection from the potentially harmful content.

Our Decision was therefore that the programme was in breach of Rule 2.1.

### Rule 2.3

Rule 2.3 of the Code states that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Context is assessed by reference to a range of factors, including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We first considered whether this content was potentially offensive. As outlined above, the Mufti explicitly stated that a non-Muslim doctor's advice was of no importance.

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<sup>13</sup><https://www.dropbox.com/sh/qhf0xc26x2nrujx/AADwcs1QOOEW3kKvPs3KEqePa/Ramadan%20Guidelines?dl=0&preview=MCB+Ramadan+guidelines+p3+.pdf>

We took into account the Licensee's representations that the reason listeners were advised to seek the advice of a Muslim doctor with Islamic knowledge was because he or she would "understand Islamic theology and the importance of fasting within a qualified medical context". We acknowledged that some listeners to the programme may prefer to consult a Muslim doctor. However, Ofcom considered that advising listeners to disregard the medical advice of a non-Muslim doctor suggested to the audience that a non-Muslim doctor was not capable of treating Muslim people. We considered this was discriminatory and potentially offensive, not only to non-Muslim people, but also to members of the Muslim community.

As explained above, there was also no challenge or additional context to the discriminatory advice provided by the Mufti. Ofcom recognises that the programme's predominantly Muslim listenership would expect to hear the Mufti answer questions from an Islamic perspective on Islamic related issues. However, in this instance the Mufti provided no contextual justification for his discriminatory advice.

Ofcom considered therefore that the content was likely to have exceeded listeners' expectations for a programme of this type. In Ofcom's view there was clearly insufficient context to justify the offensive and discriminatory statements.

Our Decision was therefore that Rule 2.3 was also breached.

### **Breaches of Rules 2.1 and 2.3**

## In Breach

### Geo Khelo Pakistan *Geo TV, 31 May 2017, 21:15*

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#### Introduction

Geo TV is a general entertainment channel on a digital satellite platform, aimed at a Pakistani audience in the UK. The licensee for the service is Geo TV Limited ("Geo TV" or "the Licensee").

*Geo Khelo Pakistan* was a gameshow, originally produced for broadcast in Pakistan, in which participants competed in a range of challenges to win prizes supplied by various commercial companies. The presenters Waseem Akram ("WA") and Shoaib Akhtar ("SA") maintained a light-hearted tone throughout.

Ofcom received a complaint that this programme featured excessive commercial branding. As the programme was in Urdu (with some English), we commissioned an independent translation of the content, which the Licensee reviewed and accepted. We therefore relied on this translation for the purposes of this investigation.

Prior to its broadcast in the UK, the programme had been edited to obscure many visual and verbal references to products, services and trade marks, using techniques such as blurring images and bleeping out sounds. However, references to the brands BMW, Sting, Q Mobile and Jazz remained present in the programme.

#### BMW

A BMW car was one of the prizes featured in the programme. During a sequence related to this prize, the car – including a BMW logo which had been placed on the windshield – was visible behind a presenter who said:

*"And now we have a game for you in which some beautiful representatives of my beautiful public will sit in this BMW. And we shall present this game to you very soon. We will bring this game very soon and you need to get ready. Who wants a BMW? I too want it. [Bleeped] This BMW will be presented to you in this month. I want the lucky winner to be the son of a poor mother, to drive this car and this fulfil the dreams of his mother".*

During the bleeped speech, the presenter pointed to the BMW logo on the car bonnet, and the audience responded to his words with applause. A little later in the programme, a large BMW logo was suspended in the air at the back of the set, clearly visible behind both presenters.

#### Sting

Sting is an energy drink, which was incorporated into one of competitions within the programme. The sequence began with this exchange between the presenters:

SA: "Brother, have you ever drunk Sting drink?"

WA: [Chuckles]

SA: *"If you drink it--"*

WA: *"I have seen youngsters drinking it and then they could not be controlled".*

SA: *"If you drink it--"*

WA: *"Have you tried it?"*

SA: *"Brother, I tried it once [jumps straight up several times]"*.

WA: [Laughs]

SA: *"Do you want to play music – one, two, I drink Sting drink and [jumps straight up several times]"*.

The presenters selected five contestants from the studio audience, who were brought onto the stage. The contestants stood next to a table on which were placed bottles of Sting. The bottles were blurred when they were shown in close-up but were clearly visible at other times. At one point, a presenter held up a bottle of the drink and said: *"Sting. A surge in energy. When you drink it, you feel the kicks and therefore this game is called: Sting – Jumping and Hopping"*.

The bottles of Sting were distributed among the five contestants, and each was required to drink one before taking part in the competition, which involved skipping a rope. The presenters made sure each contestant drank their bottle of Sting, questioning them as follows: *"Have you drunk Sting surge of energy?" "Drink. Have a long shot". "Everybody has to have their Sting. You will get an energy shot"*. The contestants did as they were told, drinking and then skipping a rope competitively.

### Q Mobile

There were extensive visual references to Q Mobile throughout the programme, including a large Q Mobile logo suspended in the air at the back of the set, and other pieces of on-set branding. These images were usually blurred, but the references to Q Mobile were not always entirely obscured. For example, on occasions the large Q Mobile logo behind the presenters was blurred so that the "Q" was still legible despite the blurring, and the word "Mobile" was not blurred at all. The blurring of images was also inconsistent, so that there was sometimes no attempt to blur the same large Q Mobile logo. There were also other examples of on-set branding which had not been blurred, such as Q Mobile logos attached to cars and motorbikes which the company had supplied as prizes.

In addition to these visual references, the presenters frequently referred to Q Mobile verbally. They usually credited the company as a provider of prizes for the programme (*"Many congratulations on winning a motorbike from Q Mobile"*), or associated it with one of the games played during the programme (*"It is a Q Mobile game"*). They also made the following statements:

*"Let us inform you that in this blessed month of Ramadan, we will be distributing among you more than 30 vehicles from Q Mobile, which is Pakistan's number one mobile company. Someone will win these from here. So [bleeped] for Q Mobile".*

*"Selfie moment with Q Mobile. Q Mobile is Pakistan's number one selling phone just as Waseem Akram has been Pakistan's greatest ever cricketer".*

### Jazz

Jazz is a mobile network in Pakistan, which was repeatedly referred to verbally as a provider of prizes, including the following statement by one of the presenters: *"Motorbike from Jazz – Jazz, Pakistan's number one Blackbird – Jazz. Wow. Jazz has done wonders! Number one mobile network".*

Ofcom requested information from the Licensee about any commercial arrangements associated with the references in the programme to BMW, Sting, Q Mobile and Jazz.

Based on the information provided, we considered that the references to BMW raised issues under Rule 9.5, and the references to Sting raised issues under Rules 9.4 and 9.5:

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

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

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

Geo TV also provided information which indicated that the references to Q Mobile and Jazz appeared in the programme as a result of a product placement arrangement. Rules 9.9 and 9.10 therefore applied in these instances:

Rule 9.9: "References to placed products, services and trade marks must not be promotional".

Rule 9.10: "References to placed products, services and trade marks must not be unduly prominent".

We therefore requested the Licensee's comments on how the content complied with these rules.

### **Response**

Geo TV explained that its content is produced in Pakistan, under a different regulatory regime than in the UK. It stated: "Geo TV takes its Ofcom duties extremely seriously and edits material to ensure compliance with all Ofcom codes and regulations. At times, this can be challenging and unfortunately on occasions errors occur but they are never deliberate".

The Licensee stressed that *Geo Khelo Pakistan* is a gameshow, which “[a]s with many gameshows in Asia and in Europe...contains brand references to prizes”, adding that the editorial remit of such programmes allows for a greater amount of prominence to be given to these references. However, Geo TV also recognised that there are limits to how much prominence is permitted.

Geo TV said a decision was taken to edit this programme prior to broadcast in the UK to ensure it was compliant, and that “certain brands [were] blurred and words (and, in fact, whole sentences) [were] bleeped – all with the aim of limiting any undue prominence and preventing any undue promotion”.

Geo TV said that on this occasion its compliance team had had to edit the programme in four hours. It acknowledged: “On review, we are aware that some of the bleeping was not as effective as it might have been. As a result, unfortunately, some of the words that should have been edited may have been heard by the UK audience”. It added that in future it would delay the broadcast of such programmes by 24 hours to allow adequate time to edit them.

In summary, the Licensee argued that the references to BMW, Q Mobile and Jazz were compliant with the Code. It accepted that there were potential issues with the references to Sting, but requested that Ofcom deal with the matter in a proportionate way.

### BMW

The Licensee said that it considered all references to BMW in the programme to be compliant with Rule 9.5: “It is [Geo TV’s] view that the verbal and visual references [to BMW] in the programme could not reasonably amount to undue prominence...in the context of a game show”.

Geo TV emphasised that there were only three verbal references to BMW, all of which it believed would have conformed to audience expectations. It pointed out that “no superlatives” were used to describe the car and that there was “no description of the car or any references to any of its attributes”. Noting the excited studio audience reaction to the announcement of the BMW as a prize, the Licensee argued that “this is exactly what you would expect from any gameshow that was giving away a car as a prize”, adding that in the context of a Pakistani quiz show a car of any make would be considered a significant prize and elicit such a reaction.

In terms of visual references, Geo TV said that although the car was visible on numerous occasions, there was “no prolonged footage...close-ups or video of the car akin to advertising”, and no shots of the car’s interior or of contestants in it. In the Licensee’s view, these references to BMW were “extremely limited” and “could [not] be viewed as unduly prominent”, compared to the exposure given to prizes in competitions in many other programmes broadcast in the UK.

### Sting

The Licensee said that, in retrospect, the section of the programme in which the energy drink Sting featured could have been “edited...a little more carefully”, but that its compliance team had thought that it was compliant because the competition itself was based around the product, which is not available in the UK.

Geo TV questioned whether it was reasonable to regulate the prominence and promotion of products not available in the UK, asking what harm such regulation was supposed to prevent. It stated that this issue was particularly pertinent for services which broadcast content originally produced outside the EU.

### Q Mobile

The Licensee acknowledged that there were a number of references to Q Mobile in the programme. However, Geo TV again argued that these references were justified in the context of a gameshow with prizes supplied by Q Mobile. It added that there were no descriptions of Q Mobile products or footage of them being used, and no superlatives or other promotional language. In the Licensee's view, the references to Q Mobile in the programme were equivalent to made in competitions on mainstream channels.

Geo TV also reiterated its argument that references to products which are not available in the UK should be treated differently from references to products which are, given the fact that this programme was originally made for an audience outside the EU, and was "imported for a niche and ethnic minority audience in the UK".

### Jazz

The Licensee also argued that the references to Jazz in the programme were compliant with the Code. It recognised that at one point Jazz was referred to as Pakistan's "*Number one mobile network*", but said that in its view this should not be considered a breach in itself, given that all other references to Jazz were "legitimate (verbal or visual) references to the fact that Jazz donated the prizes". Geo TV said that in the context of a gameshow these references were editorially justified and also pointed out, as with Sting and Q Mobile, that Jazz products are only available in Pakistan.

## **Decision**

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Nine of the Code limits the extent to which commercial references can feature within editorial content. The rules in this Section help ensure there is a distinction between advertising and programming. They also prevent broadcasters from using editorial airtime for advertising purposes. Rules 9.4, 9.5, 9.9 and 9.10 of the Code reflect these requirements.

Ofcom considered the references to BMW and Sting under Rules 9.4 and 9.5.

Rule 9.4 requires that products, services and trade marks must not be promoted in programming. Ofcom's Guidance to Section Nine of the Code<sup>2</sup> states: "In general, products or services should not be referred to using favourable or superlative language and availability should not be discussed".

Rule 9.5 stipulates that no undue prominence may be given to products, services or trade marks. Ofcom's Guidance to Section Nine of the Code makes clear that the level of prominence given to a product, service or trade mark will be judged against the editorial

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

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/33611/section9\\_may16.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf)

context in which it appears and that "a lack or absence of sufficient editorial justification will be more difficult to justify as duly prominent".

For the references to Q Mobile and Jazz, Rules 9.9 and 9.10 were engaged. Rule 9.9 states that references to placed products must not be promotional, and Rule 9.10 requires that such references must not be unduly prominent.

### BMW

Ofcom recognised that the car was referred to in the context of being a prize in a competition and, as such, this provided editorial justification for a degree of branding to shown in the programme (e.g. showing the car and identifying the make/model). However, in this case, in addition to the presence of the car in the studio, a BMW logo had been placed on the windshield and a large BMW logo was placed at the back of the set. Further, when telling the audience about the competition, a presenter pointed to the BMW logo on the car's bonnet, which elicited applause. We considered that the level of prominence afforded to the brand went beyond what could be justified editorially. Our Decision is therefore that the references to BMW were in breach of Rule 9.5.

### Sting

During this sequence, both presenters emphasised the effectiveness of Sting as an energy drink:

*"I have seen youngsters drinking it and then they could not be controlled".*

*"Brother, I tried it once [jumps straight up several times]".*

*"Do you want to play music – one, two, I drink Sting drink and [jumps straight up several times]".*

*"Sting. A surge in energy. When you drink it, you feel the kicks and therefore this game is called: Sting – Jumping and Hopping".*

Ofcom's Guidance to Rule 9.4 states: "Competitions should never be, or appear to be, created for the purpose of promoting a product or service". We considered that the verbal references to Sting served to promote the product, by repeatedly emphasising its effectiveness in giving drinkers a burst of energy. It was also the case that the competition, in which contestants skipped rope, appeared to have been designed to showcase this capacity. Each contestant was required to drink a bottle of Sting prior to undertaking the skipping challenge, and the presenters insisted upon the connection between the two activities, making statements like, *"Everybody has to have their Sting. You will get an energy shot".*

The Licensee submitted that its compliance team had thought the references to the drink were compliant because the competition was based around the product. As set out above, one of the key principles that underpins the rules in Section Nine of the Code is the maintenance of a distinction between advertising and programming. Rule 9.5 of the Code supports this principle by limiting the extent to which brands can feature within programmes. This does not mean that branded products cannot be integrated into a competition task. However, the greater the focus on a brand in such a task, the greater the risk that the lines between advertising and editorial will be blurred. In this case, the consumption of the drink was a key component of the task, which led to numerous visual

and oral references to the brand. We took into account that the Licensee had taken steps to blur close-up images of the drink bottles. However, we did not consider this sufficiently limited the brand exposure, which was, in our view, unduly prominent.

The Licensee accepted that the sequence could have been better edited, but argued it should not be found in breach of the Code because Sting is not available in the UK. The Code does not differentiate between products sold in the UK and those which are not. This is because the intent behind the rules is to maintain a clear distinction between editorial and advertising content, and to ensure that programmes are not distorted so that their editorial integrity is undermined.

Ofcom's Decision is that the references to Sting were in breach of Rules 9.4 and 9.5.

### Q Mobile

We considered whether the references to Q Mobile breached Rules 9.9 and 9.10. Again, the Code provides scope for programmes to acknowledge on-air brands that have donated prizes. However, such references should be appropriately limited and non-promotional.

As set out above, the programme featured numerous visual references to Q Mobile, and attempts to obscure many of them through blurring were only partially successful. There were also many verbal references to Q Mobile, mainly acknowledging the company for supplying the prizes, Ofcom considered that the extent of these references was not editorially justified by the fact that Q Mobile had supplied prizes for the programme, as argued by the Licensee.

In addition, Q Mobile was referred to as "*Pakistan's number one mobile company*" and "*Pakistan's number one selling phone*", both of which Ofcom considered to be promotional statements more akin to advertising than editorial content.

As set out above, we considered the fact that Q Mobile is not available in the UK was irrelevant to the question of whether the material was unduly prominent and promotional. Our Decision is that the references to Q Mobile breached Rules 9.9 and 9.10.

### Jazz

There were a number of verbal references to Jazz during the programme, as it was credited as a provider of prizes. Ofcom did not consider that all of these references were editorially justified, and they were therefore unduly prominent. A presenter also referred to Jazz as having "*done wonders*", and being the "[n]umber one mobile network" in Pakistan. We considered this statement to be promotional. The Licensee's arguments about this product not being available in the UK were, as before, not relevant considerations in reaching our Decision, which is that the content is in breach of Rules 9.9 and 9.10.

Overall, we recognised that Geo TV had attempted to edit this programme to make it compliant for broadcast in the UK. However, as acknowledged by the Licensee, the editing was inadequate in several respects. We welcomed the Licensee's commitment to allot more time to this process in future. Nevertheless, our Decision is that the material broadcast on this occasion was in breach of the Code.

### **Breaches of Rules 9.4, 9.5, 9.9 and 9.10**

## Resolved

### Drivetime

***Talksport, 29 September 2017, 16:45***

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#### Introduction

Talksport is a national radio station providing a 24-hour speech service that primarily features programming about sport as well as regular news bulletins. The licence for Talksport is held by Talksport Limited ("Talksport Ltd" or "the Licensee").

Ofcom received a complaint about two uses of the word "fucking" in the *Drivetime* programme. These occurred when a conversation between the programme presenters was broadcast at the same time as an advert, during a break.

14 minutes later, one of the programme presenters said:

*"I've just been made aware of a technical glitch that happened a few moments ago, so if you did hear something that you shouldn't have heard at this time of day we apologise for that".*

Ofcom considered this raised potential issues under Rule 1.14 of the Code which states:

"The most offensive language must not be broadcast...when children are particularly likely to be listening..."

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

#### Response

The Licensee said that it "fully accept[ed] that the offensive language was in breach of Rule 1.14 and [it] deeply regret[s] this unfortunate error".

The Licensee explained that this broadcast of offensive language occurred 'due to a combination of technical and human errors' that had resulted in the presenters' microphones not being muted during the advertising break. The Licensee also said that the offensive comments were made by the presenter without him realising his microphone was live. The Licensee said that this may have been because the light indicating his microphone was live was dim and therefore, it had been replaced.

Talksport Ltd told Ofcom that a member of staff in the production area had heard the presenters' conversation being broadcast (although not the offensive language) and it was therefore agreed that an apology should be broadcast.

As a result of the incident, the Licensee said that it had reminded the technical operator of the importance of muting the microphones during advertising breaks. It also said it had reminded the presenters of the importance of monitoring the red warning light on the microphones and the "requirement to never use inappropriate language or comments at any time in the studio, regardless of whether the red light is on or off".

Since the incident, the Licensee has 'replaced a dim warning light that caused the presenter to be unaware that his mic was mistakenly live during the ad break'. It has also 'directed production staff and presenters of the importance of muting mics during ad breaks; constantly monitoring the Live red warning light on the studio mics; and never using inappropriate language or comments at any time in the studio.'

## Decision

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

Rule 1.14 states that the most offensive language must not be broadcast when children are particularly likely to be listening.

Ofcom's 2016 research on offensive language<sup>2</sup> clearly indicates that the word "fuck" is considered by audiences to be amongst the most offensive language.

The Code states that "when children are particularly likely to be listening", refers to, "the school run and breakfast time, but might include other times". Ofcom's guidance on offensive language in radio<sup>3</sup> states:

"For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times: between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time..."

In this case, the word "fucking" was broadcast at 16:45 on a Friday during term time. The most offensive language was broadcast when children were particularly likely to be listening.

We took account of the various actions taken by the Licensee which included the on-air apology following the incident, and its actions intended to prevent any recurrence of such incidents. Our Decision is therefore that this matter is resolved.

## Resolved

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

<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area – *Attitudes to potentially offensive language and gestures on television and on radio* – which is available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf)

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Ms T

#### *The Detectives, ITV, 20 April 2017*

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##### Summary

Ofcom has not upheld Ms T's complaint of unwarranted infringement of privacy in the programme as broadcast.

The programme showed the work of police in Lancashire as they investigated a case of alleged rape. Details surrounding Ms T's relationship with the main suspect in the case, Mr Scott Lazenby, were included in the programme without her consent.

Ofcom found that, in the circumstances of this case, Ms T did not have a legitimate expectation of privacy in relation to the material included in the programme as broadcast.

##### Programme summary

On 20 April 2017, ITV broadcast an edition of *The Detectives*, a series which followed the work of police investigators in Lancashire.

This episode followed Detective Constable Ifte Ali ("DC Ali") and Detective Sergeant Sheralyn Melton ("DS Melton") as they investigated the alleged rape of a woman by a man she met on a dating website. The main suspect, Mr Lazenby, was shown handing himself into a police station and giving his account of what happened. While being interviewed by the detectives, Mr Lazenby was asked who he lived with and what the nature of that relationship was.

The programme's narrator said:

*"Lazenby tells the police he lives with a woman<sup>1</sup> he met through the same dating website he met the victim on".*

An extract of DC Ali's interview Mr Lazenby was played:

Mr Lazenby: *"I do live with a friend throughout the week, I met her off Plenty of Fish. She was probably the first person I did meet off there many years ago, and I now live with her and her children.*

DC Ali: *And what are the living arrangements there?*

Mr Lazenby: *We're friends, and we have had sexual relationships before, but now we are just friends".*

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<sup>1</sup> The narrator was referring to the complainant, however she was not named in the programme.

Detectives were shown as they searched Mr Lazenby's car and discovered a supermarket receipt which indicated that the previous night he had been in a different town, Padiham, to the town he had told the police he had been in, Stoke.

DS Melton said:

*"Looking at his inconsistencies, if he's telling us where he's been we need to check that, we need to check alibis, we need to check the address where he said he's been living in the local area, we need to check that's correct".*

The narrator said:

*"Now that the team know that Lazenby lied to them, Detective Constable Ifte Ali wants to challenge him further".*

A further extract of DC Ali's interview with Mr Lazenby was played:

DC Ali: *"When the sergeant spoke to you, she asked you where you were, you clearly said 'I'm in Stoke'. First you said 'yeah, I'm at my parents' then you said 'no, no I'm not at my parents. I am in Stoke, but I am not at my parents' so you know, there are a couple of lies there straight away.*

Mr Lazenby: *There is, and it's not the fact that I lied intentionally or anything like that it's just the fact that I was really scared you know and I didn't understand what you were calling me for, I didn't realise it was so serious.*

DC Ali: *You lied about something that is quite key, so that clearly shows us or gives us the view that you have the propensity to lie".*

DC Ali was then shown recounting his interview with Mr Lazenby to DS Melton:

*"We speak to him about [name obscured] and we ask him, you know 'what's your living arrangements?', 'Yeah yeah we are just friends', and so on. We questioned him a little bit more on that, and we ask him about his sexual relationship with [name obscured] and he basically says: 'Well, I don't think that's got anything to do with it. It's got nothing to do with this case'. So, we said well, we're asking you because it's important if you are having sex with [name obscured] and [name obscured] is your partner. 'No no, she's not my partner, we're just friends'".*

Another extract of DC Ali's interview with Mr Lazenby was then played:

DC Ali: *"[Name obscured] is going to be asked about your relationship, what it is.*

Mr Lazenby: *I just don't understand why this, you know, why this is relevant.*

DC Ali: *You're shaking your head from side to side, this is clearly distressing you. We'd just like to know the truth.*

Mr Lazenby: *Listen, I have not lied to you about this you know.*

DC Ali: *You are still in a sexual relationship with [name obscured].*

Mr Lazenby: *I just, honestly, I'm not.*

DC Ali: *It's a simple question.*

Mr Lazenby: *Yeah, but I am not lying about what happened on that night.*

DC Ali: *OK, are you still in a sexual relationship with [name obscured]?*

Mr Lazenby: *Yes.*

DC Ali: *So why did you lie to us?*

Mr Lazenby: *Well, I just didn't feel it was relevant".*

DC Ali further recounted his interview to DS Melton:

*"What's your relationship? 'Well, we have quite an open relationship'".*

DS Melton then asked: *"So he lied in the first interview?"*

DC Ali said: *"Panic mode seems to set in a little bit more"* and explained that Mr Lazenby said:

*"Well no, no, we are in an open relationship, but she is not going to kind of see it like an open relationship'".*

The narrator said:

*"The team are suspicious of Lazenby's account, but frustratingly for them, they don't at this stage have enough evidence to charge. He'll be placed on police bail, but forbidden to contact the victim in any way".*

DS Melton said:

*"Those conditions are there to protect the victim in this case. So far what I've had from him has been several lies, so you question-mark a lot of what he's saying, is it the truth or not? So, that's exactly what we need to find out. Who is telling the truth".*

The narrator said:

*"Releasing Scott Lazenby is a risk. If he is a rapist, he could attack again".*

Towards the end of the programme, Mr Lazenby was shown being brought back to the police station, and the programme explained that a second, separate case of sexual assault had been brought against him. Details of Mr Lazenby being charged for both cases were given by the narrator. No further references to the complainant were made in the programme.

## Summary of the complaint and broadcaster's response

Ms T complained that her privacy was unwarrantably infringed in the programme as broadcast because details about her relationship with Mr Lazenby, a convicted rapist, were included in the programme without her consent.

By way of background to the complaint, Ms T said that the programme makers had told the police that she was happy for the programme to be broadcast when this was not the case and that she had tried to prevent the programme from being broadcast. Ms T said that, as a result of the programme, she feared retribution from an ex-partner and felt she would be forced to move home after being identified as Mr Lazenby's partner. She also said that as her family, friends and work colleagues had been aware that Mr Lazenby was her partner whom she lived with, the broadcast of the programme had had a negative impact on her private life and her work life.

In its response, ITV explained that *The Detectives* was a series following investigations by Lancashire Police into serious crimes such as murder, armed robbery and rape from the moment a crime was reported to conviction. It said that the programme featured a case involving rape and sexual assault allegations against Mr Lazenby, who was subsequently convicted and sentenced to seven years in prison. It also said that the investigation of serious crimes such as rape was clearly a matter of public interest, and there was a public interest in the programme informing viewers about the work of the police in tackling serious crime. ITV said that in this case, the inclusion of details of the investigation, including some information about Mr Lazenby's relationship with the complainant that was directly relevant to the investigation and to his eventual conviction, was in the public interest.

ITV said that Ms T was at no point named or shown in the programme, and that her name was masked whenever material in which she was referred to by name was included. It said that it had "carefully considered and sought to balance the public interest in presenting, and in the viewing public receiving, information about this investigation and having regard to the complainant's privacy".

The broadcaster said that the programme had followed the course of the investigation into the alleged rape of a woman by Mr Lazenby, whom she had met on a dating website. It said that in circumstances such as this, where only two people were present in a private situation at the time the alleged offence took place, it was essential to take accounts from both parties and look for inconsistencies in each of their stories to establish who was telling the truth. ITV said that, in this case, Mr Lazenby was found to have lied about his whereabouts on the night before his arrest, and had further lied in his interview with DC Ali by saying that he was "just friends" with Ms T with whom he lived. It said that the nature of Mr Lazenby's relationship with Ms T, and the fact that it was a sexual relationship, was therefore relevant to the investigation "precisely because Lazenby later admitted to having lied about it, therefore undermining the credibility of his account". ITV said that details of what Mr Lazenby had said about his relationship with the complainant, and his lie about that relationship, were therefore significant to the investigation. It said that when "a second, separate, very similar allegation" was received against Mr Lazenby, he was charged, and subsequently found guilty of rape and sexual assault, despite having pleaded not guilty at trial.

The broadcaster said that in including information about Mr Lazenby's relationship with Ms T, ITV and the programme makers carefully weighed the public interest in the broadcast of

the story against the complainant's privacy. It said Ms T's name was masked in the police interview footage, that her address was not included and that the programme "took pains not to directly identify her". It said that there had been careful consideration of the amount of detail included in the programme from the police interview about the relationship, for example a question put to Mr Lazenby about the date of the last time he and the complainant had had sex was not included.

ITV said that the programme makers had contacted Ms T in writing prior to its broadcast, in order to make her aware of its content and of the transmission date. It said Ms T had responded by email requesting to discuss the programme, and that she had made clear in telephone discussions that she was unhappy about it. The broadcaster said that, although the programme makers were "fully entitled to identify Mr Lazenby", they had been "sympathetic to her concerns, including those about a former partner". The broadcaster said that the programme makers had spoken about their contact with Ms T to the police officer in charge of the case against Mr Lazenby, and that they had understood a meeting between the complainant and a police officer had been arranged, to "offer advice in this respect". ITV said that, prior to the broadcast, the programme makers had confirmed to the complainant in writing that she was not named or identified in the programme, and had informed her of the rescheduled transmission date.

In relation to Ms T's assertion that the programme makers had told the police that she had been happy for the programme to be broadcast when this was not the case, and that she had tried to prevent the programme from being broadcast, ITV said that she had been misinformed. ITV said that it believed there had been "some miscommunication or misunderstanding" on the part of the police's communications office. It said that the programme makers "did not inform the police that they had met with Ms T, or that she had been satisfied with the content of the programme", but that they "had told the police that they had met the victim, and that the victim was satisfied with the content of the programme".

ITV said that it did not consider the information included in the programme about Ms T's relationship with Mr Lazenby was private at the time of broadcast. It said similar details of the fact that Mr Lazenby was in a relationship had been very widely published prior to the broadcast, and that "at least eight weeks" beforehand there had been widespread press coverage of Mr Lazenby's sentencing, including the publication of his photograph, and the submissions of his barrister put forward on his behalf in mitigation (ITV provided links to various online articles). It said this had included the fact that Mr Lazenby had met a woman (this was a reference to Ms T but she was not named in the article) on a dating website and that they were in "an open (and therefore clearly a sexual) relationship".

ITV said it submitted Mr Lazenby's assertion that he was in an open sexual relationship with a woman was, therefore, in no sense private, and that Ms T had no legitimate expectation of privacy in respect of that information. The broadcaster said that given the "attendant publicity" surrounding Mr Lazenby's trial and conviction, anyone who knew Ms T, and knew that she had been in a relationship with Mr Lazenby, would "therefore very likely already know that her partner had been convicted of very serious sexual offences". It said that the information in the programme pertaining to Ms T, would not have identified her to anyone who was not already aware of her relationship with Mr Lazenby.

In conclusion, ITV said that it did not unwarrantably infringe Ms T privacy in the broadcast of the programme. It said that it was entitled to identify Mr Lazenby, and to report that he had

initially lied to police about being in a sexual relationship with a woman. ITV said that the fact that Mr Lazenby was in a relationship with someone he had met on a dating website at the time the offences took place was extensively and recently reported, and that it was therefore in the public domain. It said that viewers who already knew the complainant and were aware of her involvement with Mr Lazenby may have understood him to have been referring to her, but that it did not follow that the programme was obliged to exclude references to Mr Lazenby's account of his relationship with an unnamed woman, in order to avoid infringing Ms T privacy.

The broadcaster said that the programme included no information about Ms T, or her relationship with Mr Lazenby to which she had a reasonable expectation of privacy, given the publicity surrounding the case. It said that, even in the event Ofcom did find she had any such expectation, it was limited in the circumstances of the case, and the complainant's right to privacy did not exceed the broadcasters' right to freedom of expression, or viewers' right to receive information of public interest surrounding the investigation of a serious crime. Further, ITV said that, if Ofcom was to find there had been a breach of the complainant's privacy in the broadcast of the information about her, any such breach would be warranted in the public interest, in the circumstances of this case.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. The parties were given the opportunity to make representations on the Preliminary View and both parties made representations which are summarised below (insofar as they are relevant to the complaint considered by Ofcom).

#### *Ms T's representations*

Ms T said that both Ofcom and ITV had assumed that she was the person referred to as Mr Lazenby's partner in published newspaper articles. Ms T said that, while the newspaper articles did "discuss a partner", they "failed to mention anything other than this". Therefore, the person referred to in the newspaper articles prior to the broadcast of the programme could have been one of any number of partners engaged in an "open" relationship with him. Ms T said that the programme created a narrative which identified her as Mr Lazenby's partner.

Ms T said that she had asked the programme makers to "at the very least" obscure Mr Lazenby's face and remove private information concerning her family, her living arrangements and the town in which she lived. Ms T said that the broadcaster had assumed that she was likely to already have been identified, and that any negative reaction was already likely to have already taken place, prior to the broadcast. Ms T said that for ITV to "simply assume" was not a "good enough excuse to warrant their blatant disregard" to her concerns.

Ms T said that she considered that the broadcast of the programme had placed her in a vulnerable position and that she should have been given adequate notice of the programme being broadcast in order to minimise the damage caused to her.

### *ITV's representations*

ITV said that it considered Ofcom's Preliminary View to be "correctly decided" in that Ms T had no legitimate expectation of privacy in the information about her relationship with Mr Lazenby included in the programme. ITV said that Mr Lazenby's comments in the police interview, and the programme maker's discussions with the police, suggested that the person referred to in newspaper reports about the case was, in fact, Ms T. It said that the programme did not "create a narrative" in this regard that identified Ms T as Mr Lazenby's partner. ITV said that Mr Lazenby created this narrative in his own account when speaking to police about his relationship with his partner (the complainant); the same narrative which, it said, was outlined at his public trial, and was reported extensively in the media.

ITV said that it did not consider that the information included in the programme about the relationship between Ms T and Mr Lazenby was private at the time of broadcast. It said that the information was featured at Mr Lazenby's trial and that it was "widely rehearsed" in the media. Therefore, those who already knew of the complainant's relationship with Mr Lazenby were likely to have known that her partner had been convicted of rape as a result of this publicity.

ITV said that it was entitled to examine this very serious criminal case in the programme, and to identify Mr Lazenby as a convicted rapist, and did not require the consent or approval of the complainant to do so. It said that it was entitled to report the fact that Mr Lazenby had been in a sexual relationship with a woman at the time the offences took place and that this had already been widely reported. ITV said that the programme did not suggest Mr Lazenby's unnamed partner (the complainant) was in any way complicit in his crimes. ITV said that Ms T would not have been identifiable as Mr Lazenby's partner in the programme other than to a limited number of viewers who were already aware of her relationship with Mr Lazenby.

ITV said that it believed that Ms T was given sufficient and timely warning of the programme and its content prior to broadcast.

### **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, a transcript of it, both parties' written submissions and supporting documentation. Ofcom took into account the representations made by both parties in response to its Preliminary View. However, we did not consider that any of the points raised materially affected our decision to not uphold this complaint.

In Ofcom's view, the individual's right to privacy under Article 8 of the European Convention of Human Rights has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. 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 in the circumstances of the case. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

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

In assessing Ms T's complaint that her privacy was unwarrantably infringed in the programme as broadcast, Ofcom had regard to Practice 8.6 of the Code, which states:

"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 Ms T's privacy was unwarrantably infringed in the programmes as broadcast, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the broadcast of the details surrounding her relationship with Mr Lazenby.

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

As set out above, the programme included details surrounding the facts of Ms T's relationship with Mr Lazenby. In particular, the programme revealed that Mr Lazenby had met a woman (Ms T, although she was not named or shown) through a dating website, that they lived together and that he was in a sexual relationship with her at the time of his arrest which he considered to be an 'open relationship'.

Mr Lazenby's face was shown unobscured and his full name was included in the programme, which also revealed that he lived with a woman and her children in the local area of Padiham. We took into account the fact that, in her representations, Ms T said she considered that the inclusion of this information meant that she was identifiable in the programme as broadcast. In Ofcom's view, Ms T would not have been identifiable to the majority of the programme's viewers. However, we considered that she would have been recognisable as Mr Lazenby's partner to a limited number of people who knew both Ms T and Mr Lazenby and were already aware of their relationship.

We took into account the broadcaster's submission that Mr Lazenby's full name, photograph and limited information about his relationship with Ms T had previously been included in several newspaper articles published about the case, and that some of this information was, therefore, already in the public domain. We also took into account Ms T's submission that Mr Lazenby's partner was not named or otherwise identifiable in these articles, and that she was therefore not identified as the person referred to as Mr Lazenby's partner in the articles. Ofcom considered that there was no evidence to suggest that Ms T had been named in these articles. We therefore did not consider Ms T's relationship with Mr Lazenby to have been made public through the media coverage surrounding his trial and conviction, and that only those who were already aware of her relationship with Mr Lazenby were likely to have made the connection to her as Mr Lazenby's partner.

Ofcom recognises that information about a personal relationship may, depending on the particular circumstances and the nature of the information, be considered private and/or sensitive information to those involved, and so attract a legitimate expectation of privacy. We took into account that the information disclosed in the programme about Mr Lazenby's relationship with the complainant included a claim by Mr Lazenby (as recounted by DC Ali) that he and his partner had an open relationship, but that his partner may not have seen it as an open relationship. We further considered that there were no specific details disclosed about their relationship or its nature, beyond the fact that they were in a relationship and that it was sexual. We considered that these were details that were likely to be already known to those who were aware of her relationship with Mr Lazenby, and that this, therefore, was not information that could reasonably be considered to be sensitive or private information about Ms T so as to afford her a legitimate expectation of privacy.

We considered that the details of Mr Lazenby's claim that they were in an open relationship, but that his partner may not perceive it as such, were of a more private and sensitive nature. However, we also took into account that it had been reported in news articles about the case that Mr Lazenby had said he was in an open relationship at the time. We took into account Ms T's submission that Mr Lazenby's partner was not named or otherwise identifiable in these articles. However, we did not consider that Ms T would have been identifiable in the programme as Mr Lazenby's partner except by those who knew her and were already aware of her relationship with him. We noted that we had no evidence as to whether or not the fact that Ms T's and Mr Lazenby's relationship was an open one was something that would have been known to those who were already aware of their relationship. However, we considered that the previous media coverage at the time of Mr Lazenby's trial and conviction, which reported the fact that he had been in an open relationship, meant that it was likely that those who were aware of Ms T's relationship with Mr Lazenby were also likely to have become aware of the fact that it had been reported at trial that his relationship with her was an "open" one. Therefore, taking all these factors and the particular circumstances of this case into account, we did not consider that Ms T had a legitimate expectation of privacy in relation to the information about her relationship with Mr Lazenby that was broadcast in the programme.

Having found that Ms T did not have a legitimate expectation of privacy in relation to information about her relationship with Mr Lazenby being included in the programme, it was not necessary for Ofcom to consider whether any infringement of privacy was warranted.

Therefore, Ofcom found that there was no unwarranted infringement of Ms T's privacy in the programme as broadcast.

**Ofcom has not upheld Ms T's complaint of unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by Ms Zoe Maguire *Can't Pay? We'll Take It Away!, Channel 5, 1 October 2016*

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#### Summary

Ofcom has not upheld Ms Zoe Maguire's complaint of unwarranted infringement of privacy.

The programme included footage of Ms Maguire who was shown at her place of work as two High Court Enforcement Agents ("HCEAs") attempted to enforce a High Court Writ against her employer, who it was alleged owed money to a supplier.

Ofcom found that, in the particular circumstances of this case, Ms Maguire did not have a legitimate expectation of privacy with regards to the footage of her filmed and subsequently broadcast in the programme. Therefore, it was not necessary for Ofcom to consider whether any infringement into her privacy was warranted.

#### Programme summary

On 1 October 2016, Channel 5 broadcast an edition of *Can't Pay? We'll Take It Away!*, a series which follows HCEAs as they attempt to resolve debt disputes through negotiated settlements and asset seizures. This particular episode included a segment about a business, Thermal Dog Kennels Limited, which the agents alleged owed a supplier money. The HCEAs were shown driving as the programme's narrator stated:

*"Stewart McCracken and Elmor Victor are High Court Enforcement Agents. They travel thousands of miles every week collecting debts and seizing goods. Today they are on their way to a dog kennel business in Crewe, Cheshire, to recover a debt of over £3,000, owed to a supplier".*

Mr Victor explained that they were going to visit a business, *"Thermal Dog Kennels"*. The narrator stated:

*"If company director David Routledge can't or won't pay today, the agents can remove goods from his business to cover the value of the debt".*

The HCEAs were shown arriving at the business and entering the building. The HCEAs introduced themselves to a man in the office and explained that they were there to *"take control of goods"*.

At this point, an unidentified woman (the complainant) could be seen in the background walking from a doorway to a desk and sitting down. At various points throughout the segment of the programme concerning Thermal Dog Kennels, the complainant could be seen either walking through the office, or sitting at the desk. She was not shown interacting with anyone, other than when she was shown at one point on the telephone.

The complainant was visible in the background at various points throughout this section of the programme, either sitting at a desk or walking around the office. Ms Maguire's face was not obscured and her voice was not heard.

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

### Complaint

- a) Ms Maguire complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of her was filmed without her consent. Ms Maguire said that she was not informed prior to filming that filming would be taking place.
- b) Ms Maguire also complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included in the programme without her consent.

Ms Maguire said that "a prior agreement" had been made with the programme makers not to use the footage. She also said that she was not informed in advance that the programme would be broadcast and was therefore denied the opportunity to request that her identity be concealed.

### The broadcaster's response

#### *Background*

Channel 5 said that UK law does not provide that people have a right not to be on television, nor does the law prevent footage or photographs of people being taken and then broadcast without their consent.

The broadcaster said that what mattered in every case was whether or not *rights* were infringed, and, if they were, whether there was good reason for those rights to be infringed. It said that this required the balancing of the rights of privacy (Article 8 of the European Convention of Human Rights ("ECHR")) against the right to freely broadcast matters of public interest (Article 10 of the ECHR).

Channel 5 argued that there could be no doubt that the activities of the HCEAs (conducting official court business in the execution of a Writ allowing them to seize goods, chattels and other property in order to satisfy a judgment debt); the manner in which the law is utilised or ignored; the kinds of difficulties the HCEAs face when executing their duties; and, the impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties are all matters also of "acute public interest".

Channel 5 said that, for all of these reasons, it considered that, generally speaking, it was appropriate and reasonable to include footage of people interacting with the HCEAs in the programme. However, the broadcaster acknowledged that each case would turn on its own facts, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in a programme.

#### *Response to the complaint*

- a) Channel 5 said that the execution of a Writ issued by the High Court was a public matter, not a private one. The broadcaster said that, in this particular case, the execution of the

Writ was not a matter connected with Ms Maguire's private life; it said that it was a public matter that involved Ms Maguire's employers.

Channel 5 acknowledged that Ms Maguire did not consent to being filmed. However, it said that given that the HCEAs were engaged in official court business, it was not necessary to obtain the complainant's consent in relation to the filming. It said that in any event, Mr Routledge Snr did consent to the crew filming on the premises where Ms Maguire worked, knowing that the filming was for broadcast on Channel 5.

Channel 5 said that while the HCEAs arrived at the business premises of Ms Maguire's employers with no warning, it was not necessary for prior warning to be given when executing a Writ as doing so might lead to the frustration of the court order in question. Equally, it said that the HCEAs (and the programme makers) had no idea how Ms Maguire, or anyone else at the premises, would react to the visit by the HCEAs.

Channel 5 said that the Writ authorised the HCEAs to enter the premises of Thermal Dog Kennels and seize any goods which could not be proven to be the property of a person other than the debtor, Thermal Dog Kennels. The broadcaster said that, "a Mr Routledge" was a director of Thermal Dog Kennels and the HCEAs had to ascertain which of the members of the Routledge family associated with the premises was the relevant director. Channel 5 said that if the debt was not settled or an appropriate arrangement made, the HCEAs could have legally removed goods and chattels from the premises, put them in storage and allowed the rightful owners seven days to prove their ownership. Failing such proof, anything seized could be sold to reduce or satisfy the debt.

Accordingly, the broadcaster said that any right to privacy claimed in relation to the execution of the Writ would be outweighed by Channel 5's Article 10 right to communicate, and the public's right to receive, information concerning matters of public interest including, without doubt, the activities of HCEAs carrying out official Court duties.

Channel 5 said that, as a matter of usual policy, HCEAs wear body cameras which record their interactions with members of the public while they are carrying out their official court duties. It said that this is for the safety of the agents as well as providing a record of their activities in case of complaint or inquiry. The broadcaster stated that there was no breach of Ms Maguire's privacy rights involved in the HCEAs recording her activities by using body cameras, especially as at no time were the cameras hidden or concealed.

Channel 5 added that Mr David Routledge had given his permission for the film crew to remain on the business premises and to keep filming. Channel 5 said that he did that having been informed what the film crew were doing, for whom they were filming and for what purpose and that he stated:

"Now I know what the cameras are doing I am quite happy for them to carry on, you seem to be quite a reasonable person".

Channel 5 said that, given that the film crew had permission to film on the premises, there was no issue with Ms Maguire being filmed as part of that process. Nothing Ms Maguire was doing was private and her employer had authorised the filming.

- b) With regards to the broadcast of the footage of Ms Maguire, Channel 5 stated that no agreement was made between the programme makers or Channel 5 and Ms Maguire about any matters. It said that although Ms Maguire had stated in her complaint to Ofcom that a "prior agreement with the production company to not use the coverage was made", Ms Maguire did not state what kind of agreement is alleged to have been made or with whom, or when, it was allegedly made. Channel 5 said that there was no basis for this allegation and that Ofcom should ignore it for the purposes of this decision.

Channel 5 said that the programme contained "only the most fleeting visual image of Ms Maguire". It said that she was not depicted talking about or indicating anything that was private to her or to anyone else.

Channel 5 said that it did not accept that Ms Maguire had any right of privacy infringed by the broadcast of the programme. It said that:

- Ms Maguire was not shown in a bad light and she was not shown doing or saying anything which might be considered private;
- Ms Maguire appeared to act in the role of receptionist for Thermal Dog Kennels and seemed to have an outward facing role on a daily basis; and,
- it would be entirely normal for Ms Maguire to interact with the public or answer queries or be otherwise seen as she went about her duties.

Channel 5 further stated that, absent some special characteristic, Ms Maguire did not have an expectation of privacy in relation to what was included in the broadcast.

Channel 5 said that although Ms Maguire's image was included in the broadcast without her consent, nothing flowed from that. It said that UK law does not provide that individuals have a right to prevent their appearance in television broadcasts and that "Where, as in this case, the broadcast of an image of a person is part of the actual circumstances the subject of the broadcast and does not, and cannot, be considered detrimental to the person, there is no violation of any Article 8 right".<sup>1</sup>

Channel 5 said that for the reasons already given, there was a clear public interest in seeing the activities of the HCEAs in the course of executing their official duties in accordance with the law. Channel 5 said that that public interest extended to including a brief shot of Ms Maguire in the broadcast where doing so did not involve anything other than disclosing that Ms Maguire was at the premises when the HCEAs attended to execute the Writ.

Channel 5 explained that in this case, the sequence in question made several things clear to the public, all of which it said were in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ has been issued, goods and chattels which belong to anyone at the place where the debtor resides can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced;

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<sup>1</sup> Channel 5 referred to the House of Lords judgment in *Campbell v MGN Limited* [2004] UKHL 22 noting that what made the publication actionable in that case was not the fact that a photograph of Miss Campbell was published, but that it was coupled with information about her health. Channel 5 said that no such line had been crossed in this case as no information about Ms Maguire was broadcast apart from her image.

- significant costs can be incurred if the various stages of the execution of the Writ are reached;
- failure to pay judgment debts, or failure to respond to calls from those collecting judgment debts, can lead to the property of people unrelated to the judgment debtor being seized, disrupting ordinary business activities; and,
- judgment debts cannot and should not be ignored.

Channel 5 said that the broadcast was entirely in the public interest and by including the footage that was shown, the broadcast did not exceed what was necessary and appropriate to make viewers understand the situation and the ramifications of what the HCEAs were doing.

Channel 5 said that nothing private to Ms Maguire was revealed by the broadcast and that it did not consider that Ms Maguire had a legitimate expectation of privacy in connection with either the filming or broadcast of the fleeting footage concerning her.

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

Ofcom prepared a Preliminary View that Ms Maguire's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant submitted two sets of representations which are summarised together below (insofar as they were relevant to the complaint considered by Ofcom). Channel 5 did not submit any representations.

#### *Ms Maguire's representations*

Ms Maguire disagreed with Ofcom's decision that her complaint should not be upheld. She said that:

- Ofcom had ignored the fact that the HCEAs were "in the wrong place" and had been "trespassing" at the time of filming (as evidenced by a copy of a County Court judgment dated 30 August 2016 provided by Ms Maguire).
- The fact that she was not named in the programme was irrelevant and that "...it's your face that people know you by more than your name". She said that she had the right not to be shown on television.
- She did not work for Thermal Dog Kennels, the company the HCEAs had a Writ against.
- The office was a "closed office" and any contact with the public was via the telephone, "...therefore it was [her] voice not [her] face that may have been known".
- No one gave permission to be filmed.

### **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. This included a recording of the programme as broadcast, unedited footage from the programme, and both parties' written submissions and supporting documentation. Ofcom also took account of the representations made by the complainant in response to being given the opportunity to comment on Ofcom's Preliminary View. We concluded that they did not materially affect the outcome of Ofcom's Preliminary View that Ms Maguire's complaint should not be upheld.

In Ofcom's view, the individual's right to privacy under Article 8 of the ECHR has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

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

- a) In considering Ms Maguire's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of her was filmed without her consent, Ofcom had regard to Practices 8.5, 8.8 and 8.9 of the Code. Practice 8.5 states:

"Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted".

Practice 8.8 states:

"When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required".

Practice 8.9 states:

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

In considering whether or not Ms Maguire's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the extent to which she had a legitimate expectation of privacy with regard to the circumstances in which footage of her was filmed for inclusion in the programme. The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation:

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

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. In considering whether Ms Maguire had a legitimate expectation of privacy, we first considered the nature of the material obtained and included in the programme.

Ofcom recognises that a person may have a legitimate expectation of privacy in relation to activities of a private nature that are undertaken in the individual's workplace which need protection from unwanted intrusion (for example, a discussion about personal matters with a colleague, or carrying out a business function in a workplace to which the public do not have open access).

In this case, Ms Maguire was filmed incidentally while in her workplace carrying out her duties in what appeared to be an administrative role. It was not clear from the footage whether the office Ms Maguire was shown working in was publicly accessible, or whether she would ordinarily be expected to be observed by others or deal with the public, although we noted that Ms Maguire said that the office was a "closed office" and that any contact with the public was via the telephone.

We took into account the following factors:

- While, Ms Maguire was filmed working at her desk and, on occasion walking through the office, she was not filmed engaging in any conduct that could be reasonably regarded as being particularly sensitive or private to her.
- The programme makers had been present and had filmed openly throughout the segment that included Ms Maguire (which appeared to have included footage captured simultaneously by the camera crew and also the body cameras worn by the HCEAs).
- The absence of any corroborative evidence to show that Ms Maguire herself had objected at the time to being filmed.

We also took into account the representations we received from Ms Maguire on Ofcom's Preliminary View, in particular, the fact that she disputed that the programme makers had permission from her employer to remain on the business premises and to keep filming in accordance with Practice 8.8, as set out above, and the fact that she said that the HCEAs were trespassing when the filming took place.

In assessing the issue of consent from Ms Maguire's employer, we noted from the unedited footage that Mr Routledge's son objected to the filming but that Mr Routledge,

by contrast, was quite clear that he was happy for the programme makers to continue filming. They explained that they were accompanying the HCEAs for the Channel 5 programme *Can't Pay? We'll Take It Away!* and he responded variously by saying "Yes, yes, clearly, I would say you are just innocent people" and that he was "quite happy" and "glad" for the filming to take place as it was recording the HCEAs' conduct towards him in executing the Writ. However, it was clear that he was not happy with the presence of the HCEAs and was unhappy that they were wearing body cameras, which he asked them to turn off, saying that they were "breaching [his] human rights".

Accordingly, we considered that while Mr Routledge had objected to the HCEAs' use of body cameras, it was reasonable for the programme makers to take it that the film crew had Mr Routledge's permission to remain on the business premises and to continue filming.

In relation to Ms Maguire's submission that the HCEAs had been "trespassing" at the time of filming we asked Channel 5 for its comments on the County Court judgment that Ms Maguire had provided. In response, Channel 5 provided Ofcom with a subsequent court order dated 17 February 2017 which overturned the County Court's previous ruling on appeal, finding that the HCEA company had not been trespassing. It was clear therefore that the HCEAs were not trespassing at the time of the filming.

Taking all these factors into account, we considered that Ms Maguire was filmed incidentally with her employer's consent and that, in any case, nothing of any particular private or sensitive nature was obtained about her. Therefore, she did not have a legitimate expectation of privacy with regards to the filming of the footage of her for inclusion in the programme. We also considered that the means of obtaining the material had been proportionate in all the circumstances in line with Practice 8.9.

Having come to the view that Ms Maguire did not have a legitimate expectation of privacy with regards to the obtaining of the footage, it was unnecessary for Ofcom to consider whether any infringement of Ms Maguire's privacy in connection with the obtaining of the footage was warranted.

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

- b) We next considered Ms Maguire's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included in the programme without her consent.

Ms Maguire said that "a prior agreement" had been made with the programme makers not to use the footage. She also said that she was not informed in advance that the programme would be broadcast and was therefore denied the opportunity to request that her identity be concealed.

In considering this head of Ms Maguire's complaint, we had particular regard to Practice 8.6 of the Code which states:

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

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

As set out in detail above at head a) and the "Programme summary" section, footage of Ms Maguire in her workplace was included in the programme. Ms Maguire's face was shown unobscured. She was not named in the programme, nor was her voice heard.

For the same reasons as outlined above at head a), and also taking into account the very fleeting nature of the footage of her included in the programme and the fact that she was not the subject of the Writ but shown only incidentally in the background, Ofcom considered that Ms Maguire did not have a legitimate expectation of privacy with regards to the inclusion of the footage of her in the programme.

Having come to the view that Ms Maguire did not have a legitimate expectation of privacy, in relation to the inclusion of footage of her in the programme, it was unnecessary for Ofcom to consider whether any infringement of her privacy was warranted.

We also considered Ms Maguire's comments that "a prior agreement" had been made with the programme makers not to use the footage and that she was not informed in advance that the programme would be broadcast and was therefore denied the opportunity to request that her identity be concealed. We noted that Channel 5 disputed that any agreement had been made between the programme makers or Channel 5 and Ms Maguire about any matters and that there was no basis for this assertion. As Ofcom had not been provided with any further evidence by Ms Maguire about these matters we were unable to resolve the issue. In any case, as Ms Maguire did not, in Ofcom's view, have a legitimate expectation of privacy with regards to the footage of her broadcast in the programme, there was no obligation on the broadcaster to obtain her consent to include the footage of her in the programme.

Given all of the above factors, Ofcom considered that there was no unwarranted infringement of Ms Maguire's privacy in the broadcast of the material in these circumstances.

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

## Not Upheld

### Complaint by Mrs Laura Shenton *Police Interceptors, Channel 5, 2 May 2017*

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#### Summary

Ofcom has not upheld Mrs Shenton's complaint of unjust or unfair treatment and of unwarranted infringement of privacy in the programme as broadcast.

The programme, part of a series that profiled the work of police interception units across the UK, included brief footage of Mrs Shenton during a public order incident to which a police unit had been called to attend. Mrs Shenton was shown trying to talk to the police officers and being told by one of the officers to "*wind it in and go home*". Mrs Shenton was not named in the programme, but her face was shown unobscured and her voice was heard.

Ofcom found that:

- Material facts were not presented, disregarded or omitted in a way that portrayed Mrs Shenton unfairly in the programme as broadcast.
- Mrs Shenton did not have a legitimate expectation of privacy in connection with the obtaining and subsequent broadcast of footage of her in the programme as broadcast. Therefore, Ofcom considered that there was no unwarranted infringement of Mrs Shenton's privacy.

#### Programme summary

On 2 May 2017, Channel 5 broadcast an episode of *Police Interceptors*, a documentary series profiling the work of police interception units across the UK.

During the programme, the programme's narrator introduced the part of the programme featuring the complainant, saying:

*"In most UK towns, the wee hours of Saturday morning are rarely a picnic. Most revellers just want a good night out, but not everyone".*

A police officer was then shown in a street in Chester city centre telling Mrs Shenton to "*wind it in and go home*". The programme also included footage of various other individuals being spoken to by the police.

Then, the narrator said:

*"Cheshire interceptors are determined that a few bad apples don't ruin the barrel. And their not-so-secret weapon is affectionately known as 'the Big Blue Van'".*

A police officer and his colleagues were shown in the van responding to a call for assistance. The police officer said:

*"We've had a report that there's a group who are getting a bit rowdy and they've asked for police presence, so we're in the Big Blue Van and we'll show a bit of police presence".*

The van was shown pulling up alongside the pavement at the front of an area bound with yellow markings (from indistinct writing alongside the area, Ofcom understood that it was reserved for taxis). As the van parked, Mrs Shenton and a man could be seen through the windscreen standing on the pavement. The police officers were shown getting out of the van walking past Mrs Shenton. People could be heard shouting somewhere in the distance, while Mrs Shenton was shown calling out to the police officers saying, *"Excuse me"*.

Two police officers were then shown standing with two men. The police officers told one of the men to move from the area. The man replied that he was waiting for a taxi, to which the police officer said, *"Not from here"*. A queue at a taxi rank on the opposite side of the road was then shown. The man who had been standing with Mrs Shenton was then shown approaching the police officers. He and one of the other two men who the police officers had spoken to also said that they were just waiting for a taxi. Mrs Shenton was shown following one of the men and could be heard saying:

*"[indistinct] they're from Wales, we're trying to go home"*.

A police officer replied, *"Well, go home then"*.

The programme then showed the police van attending another incident, the narrator said: *"the van works closely with local bars and clubs to keep the peace, and it's just had a call for aide from a nearby nightclub"*. It showed a man who had been thrown out of a nightclub after he was accused of trying to start a fight. The programme continued showing police interceptor units attending to other matters. There was no further footage of, or reference to, Mrs Shenton in the programme.

## **Summary of the complaint**

### *Unjust or unfair treatment*

- a) Mrs Shenton complained that she was treated unjustly or unfairly in the programme as broadcast because it portrayed her as being part of a drunken fight and being part of a "drunken, rowdy gang" that the police were dealing with. She said that she was not involved in the fight and had simply been waiting for a taxi home. Mrs Shenton explained that she had witnessed the fight and had told the police what she had seen.

Mrs Shenton added that she had never been in trouble with the police, but as a result of the programme, she had had to explain to colleagues and her family that she was not involved in the trouble. She added that the programme had negatively affected her reputation professionally and socially.

### *Unwarranted infringement of privacy*

- b) Mrs Shenton complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was filmed without her knowledge or consent.

- c) Mrs Shenton complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was broadcast without her knowledge or consent.

### **Broadcaster's response**

Channel 5 said that the law in the UK does not provide people with a right not to be on television, or prevent footage of people being filmed and then broadcast without their consent.<sup>1</sup>

Channel 5 said that Article 8 of the European Convention of Human Rights ("ECHR") did not confer an unqualified right of privacy.<sup>2</sup> Channel 5 added: "sub-article (2) provides that the right conferred by (1) should not be interfered with by a public authority unless such interference was lawful and necessary in a democratic society in the interests of, inter-alia, the economic well-being of the country, the prevention of disorder, and for the protection of the rights and freedoms of others".

Channel 5 said that if the complainant had no reasonable expectation of privacy, Article 8 is not engaged, and the claim fails at the outset.

Channel 5 said that it was the activity filmed and not the location of filming that established whether Article 8 was invoked.<sup>3</sup> It said that no aspect of police officers carrying out their official duties could properly be regarded as private. It added that no right thinking, ordinary, reasonable person could think that such activities were private.

Channel 5 said that it follows that filming of those activities is not filming of anything private. Channel 5 said "the fact that Article 8 might be engaged on the question of a *broadcast* does not mean that Article 8 is engaged when *filming* occurs. Article 8 is only engaged in filming when the activity being filmed is *private*". The activities of police officers in carrying out their court-approved duties are not private.

Channel 5 said that there can be no doubt that the activities of police officers are matters of genuine public interest. It said that the way the law is utilised, or ignored, is a matter of acute public interest. The kinds of difficulties police officers face when executing their duties is a matter of acute public interest.

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<sup>1</sup> Channel 5 cited *Campbell v MGN Ltd* [2004] 2 AC 457 as authority for this, referencing Lord Nicholls' judgment at paragraph 73: "In the present case, the pictures were taken without Ms Campbell's consent. That in my opinion is not enough to amount to a wrongful invasion of privacy. The famous and even the not so famous who go out in public must accept that they may be photographed without their consent, just as they may be observed by others without their consent. As Gleeson CJ said in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 185 ALR 113, para 41: 'Part of the price we pay for living in an organised society is that we are exposed to observation in a variety of ways by other people'". Channel 5 also referred to Lord Hope's judgment at paragraphs 93-94, 107-108 and Lady Hale's judgment at para. 154.

<sup>2</sup> Channel 5 cited *M v Secretary of State for Work and Pensions* [2006] 2 AC 91 at [83] as authority for this.

<sup>3</sup> Channel 5 stated that *Weller v Associated Newspapers* [2015] EWCA Civ 1176 at [60] and [61] provided authority for that proposition.

Channel 5 said that each case turned on its own facts, and matters such as the unusual vulnerability of a particular person or situation impact on decisions about whether to include footage in a programme.

Channel 5 said that no two privacy rights were necessarily the same. It added that the nature of the privacy right, whether a strong claim or a weaker one, was a factor that came into play when balancing competing rights: it had no place in the determination of whether there was, in fact, anything private for Article 8 to protect.

Channel 5 said in the case of *Police Interceptors*, there is undoubted public interest in seeing how and in what manner police officers carry out their duties, how the investigation of criminal offences affects members of the public and society in general, and what difficulties and situations police officers encounter when performing their public duties. It added that each story, in each programme, is considered by the external legal adviser for the programme makers and at the highest levels within Channel 5. No legitimate right of privacy is ever intentionally infringed by any broadcast.

#### *Unjust or unfair treatment*

- a) Channel 5 said that nothing in the broadcast suggested that Mrs Shenton was part of a “drunken rowdy gang” that the police were dealing with. It said that the programme accurately depicted what happened on the evening in question and showed the way in which the police dealt with the various people they encountered in discharging their duties.

Channel 5 said that the commentary was explicit in indicating that the sequence involving Mrs Shenton was about the police keeping the peace. It added that any reasonable viewer would have understood that it exemplified this work, as it was wholly about the police using their imposing Big Blue Van and their presence to that end.

Channel 5 provided unedited footage of the incident and said that this showed that the programme fairly reflected what had happened. It said that it showed that the police officers arrived at the scene and asked the complainant to be quiet, but that the complainant had continued to engage with the police officers. It added that eventually, the police officers broke up the group that Mrs Shenton appeared to be with and told them all to go home.

Channel 5 said that the sequence as broadcast made clear that the police officers considered Mrs Shenton to be a nuisance and treated her accordingly. It said that the taxi queue was on the other side of the road to the complainant and that the programme clearly reflected the fact that Mrs Shenton had said to the police officers that she was waiting for a taxi. The broadcaster added that the police officers were “not shown questioning the complainant about any fight” and that there was “no reason for any viewer to think that the complainant was the cause of the officers being summoned, or that she was involved in any illegal activity of a serious nature”.

Channel 5 concluded that there was no unjust or unfair treatment of Mrs Shenton in that nothing was presented, omitted or disregarded in the broadcast in a way that was unfair to her.

### *Unwarranted infringement of privacy*

- b) Channel 5 said that the footage of Mrs Shenton was obtained by open filming. In this regard, they said that the cameramen and their cameras were visible, and they were following the activities of the officers; there was no surreptitious filming.

Channel 5 said that, while Mrs Shenton was filmed, she was on a public road, in a place that was not private in any way and not involved in any private activity. It added that everything filmed was clearly observable and could have been overheard by anyone present. Consequently, Channel 5 said that Article 8 was not engaged in relation to the filming. It added that this conclusion was consistent with earlier Ofcom decisions.<sup>4</sup>

- c) Channel 5 said that *Police Interceptors* was edifying, in that it showed, even in sometimes emotionally charged situations, there is constant work carried out by the police to ensure law enforcement and the social good this brings in a democracy. It said that the programme and sequence complained about involved, as per Lady Hale in *Campbell v MGN* [2004] "matters relevant to the organisation of the economic, social and political life of the country [which] is crucial to any democracy", and without which "it can scarcely be called a democracy at all".

Channel 5 said that if, contrary to the above, the complainant's Article 8 rights were invoked in relation to the filming, then Channel 5's Article 10 rights would outweigh those rights [and] lead to the conclusion that there was no breach of the complainant's privacy. It said that the broadcast was clearly in the public interest. In this regard, it said that public order and the way in which the Police maintain it were matters of public interest. It said that the filmed material involving Mrs Shenton educated the public about the seriousness of public order and the need for members of the public to respect requests from police officers.

It said that the law of privacy is not designed to protect the unduly sensitive. If it were otherwise, privacy would become an unacceptable chilling effect on free speech. It referred to an earlier Ofcom decision.<sup>5</sup> It added that the fact that Mrs Shenton was distressed by the broadcast did not mean that any privacy rights had been engaged or breached.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Mrs Shenton's and Channel 5's representations are summarised below:

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<sup>4</sup> Channel 5 referred to *Complaint by The RAC Group Limited, Watchdog, BBC1, 16 and 30 November 2016* in issue 332 of Ofcom's Broadcast and On Demand Bulletin, dated 3 July 2017. This decision is published on our website: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/103709/issue-332-ofcom-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103709/issue-332-ofcom-broadcast-on-demand-bulletin.pdf)

<sup>5</sup> Complaint by Mrs B and Mr C (Ofcom Broadcast Bulletin, Issue 284, 27 July 2015). This decision is published on our website: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/50436/issue\\_284.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/50436/issue_284.pdf)

### *Mrs Shenton's representations*

Mrs Shenton disagreed with Ofcom's decision that her complaint should not be upheld. She said that Channel 5's response to her complaint that she "was not waiting for a taxi as the queue was across the road" was incorrect. Mrs Shenton said that there was a main taxi queue and a "secondary one", which was for black cabs and minibus services. The main queue was on the opposite side of the road to where she was standing in the programme. The secondary queue was where she was waiting for a taxi and where the police van had parked. She added that when the police van had appeared, she had "pro-actively shouted for their attention to simply tell them which direction the individuals who had been fighting had run off to". Mrs Shenton said that the police van had been blocking the road for taxis and that it was for this reason that she was stood where she was shown in the programme and explaining to the police officers they she was "simply waiting for a taxi". Mrs Shenton also said that there were no cameras in sight during this time and argued that the cameras were not visible to herself and her friends.

### *Channel 5's representations*

Channel 5 said that it agreed with Ofcom's decision not to uphold the complaint, adding that Mrs Shenton's representations did not detract from it. It said that whatever might have been the case before the police arrived, when they did arrive, the exchange shown in the programme between the police and Mrs Shenton (and reflected in the Preliminary View) was accurate. The broadcaster said that the police officers, having parked their van where they did, had advised the members of the public there that "they would not be catching taxis from the spot where the van had been parked". It added that the interaction between Ms Shenton and the police officers spoke for itself.

Channel 5 provided Ofcom with three still images taken from unedited footage. The first showed a camera operator in a high visibility jacket, holding a large video camera and standing close in front of Mrs Shenton and in her line of vision. The second image showed the same camera operator standing about four meters from Mrs Shenton, who was standing at right angles to the camera operator with her head turned slightly in the operator's direction. The third image showed what appeared to be the back of Mrs Shenton's head, with the camera operator facing and filming her from about three meters away. Channel 5 said that these images showed that the camera was clearly visible to Mrs Shenton.

## **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript of it,

the unedited footage and both parties' written submissions. Ofcom also took account of the representations made by both parties in response to Ofcom's Preliminary View. We concluded that they did not materially affect the outcome of Ofcom's decision not to uphold Mrs Shenton's complaint.

### *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.

In addition to this Rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) We considered Mrs Shenton's complaint that she was treated unjustly or unfairly in the programme as broadcast because it portrayed her as being part of a drunken fight and being part of a "drunken, rowdy gang" that the police were dealing with.

Practice 7.6 states:

"when a programme is edited, contributions should be represented fairly".

Practice 7.9 states:

"before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation".

It is important to note that the editing of a programme is an editorial decision for the broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to the individual or organisation concerned. We therefore carefully compared the unedited footage of Mrs Shenton against the parts of the edited footage included in the programme as broadcast.

The unedited footage showed the police officers arrive and approach a man at the front of a taxi queue. He then appeared to describe to police officers an incident which had occurred, which did not appear to be ongoing and did not appear to be about Mrs Shenton or her group of friends. At the same time, Mrs Shenton, who was on the other side of the road, sought to get the attention of one of the police officers, who told her to "shush". Mrs Shenton could also be heard saying that people were starting a fight in front of the police officers. The police officer was then shown talking to what appeared to be some of Mrs Shenton's group of friends, and Mrs Shenton approached the group and told one individual in particular to "get away". At this point the police officer told Mrs Shenton to "*wind it in and go home*". Mrs Shenton responded and said that they were starting a fight with her friends. Mrs Shenton and her group of friends explained to the police officer that they were trying to get a taxi home and the police officer said "*well go home then*".

The unedited footage lasted about four minutes and Mrs Shenton and her group did not appear in the last two minutes, except towards the end when they could be seen getting into a taxi that had parked a short distance behind "the Big Blue Van". It appeared to Ofcom from the unedited footage, that the reason for the police presence was due to the large crowd which had built up outside the main taxi rank on the opposite side of the road to Mrs Shenton and her friends, and the various incidents which were occurring on its periphery, including that involving Mrs Shenton and her group of friends.

We also took into account the footage of Mrs Shenton included in the programme as broadcast as set out in the 'Programme summary' section above. Having compared carefully the unedited material with the material included in the programme, it was our view that Mrs Shenton had been given particular prominence during the short sequence included in the programme. Therefore, although the programme did not explicitly state that Mrs Shenton or her group of friends were the reason the police had been summoned to the area, we considered that the focus on Mrs Shenton and her group of friends may have given viewers the impression that they were at least one of the reasons. However, we also took into account that when the police arrived at the scene, they walked past Mrs Shenton and at no point did the programme depict the police as having approached Mrs Shenton to discuss her behaviour. Rather, it showed Mrs Shenton as she approached and tried to engage with the police and as the police requested for her to go home. Therefore, while Mrs Shenton and her group may have been given a greater focus than the other people who appeared in the unedited footage, we considered that the programme provided an accurate reflection of the exchanges which took place between Mrs Shenton and the police and that she was not unfairly portrayed in the programme as being part of a "drunken, rowdy gang".

We noted that Channel 5 had said that the taxi queue was on the other side of the road to where Mrs Shenton had said she was waiting for a taxi. In our view, this appeared to imply that she was waiting for one in the wrong place. We acknowledged from Mrs Shenton's representations that she was concerned by this and we accepted that she and her group were waiting for a taxi in an area reserved for taxis, given the roadside markings and that the unedited footage showed them getting into a taxi that had pulled up just behind "the Big Blue Van". We also acknowledged Channel 5's representations on this matter that "...having parked their van where they did, [the police officer] advised the members of the public that they would not be catching taxis from [that] spot...". In the programme, immediately after the police officer gave this advice (said "Not from here"), the queue at the taxi rank on the opposite side of the road was shown. We considered that this could have initially given viewers the impression that Mrs Shenton and her group were not waiting for a taxi in the appropriate place. However, in the programme, the police officers did not and were not shown to pursue the issue any further or to further challenge the assurances that Mrs Shenton's group gave that they were waiting for a taxi home. Therefore, we considered that the inclusion in the programme of the brief exchanges about taxis would not have materially affected viewers' impressions of Mrs Shenton.

Further, at no point, in our view, did the programme depict Mrs Shenton as being involved in a public order incident, or being treated by the police as being a serious public order concern. Therefore, we considered that the programme would not have given viewers the impression that she had been part of a "drunken fight".

Given the above factors, Ofcom considered that, in the particular circumstances of this case, the broadcaster had taken reasonable care to ensure material facts were not presented, disregarded or omitted in a way that portrayed Mrs Shenton unfairly.

### *Unwarranted infringement of privacy*

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

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

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

- b) We considered Mrs Shenton's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was filmed without her knowledge or consent.

Practice 8.5 states:

"Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted".

Practice 8.9 states:

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

Ofcom first assessed the extent to which Mrs Shenton had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme was obtained.

Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual finds him or herself. Ofcom therefore approaches each case on its facts. It is important to note that some activities may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

Having viewed the unedited footage of the incident, we considered that Mrs Shenton was filmed, incidentally, engaging with police officers as they attended a public order incident. Mrs Shenton was filmed repeatedly saying to the police officers "excuse me",

and trying to tell the police officers that the men they were talking to had tried to start a fight with her friends. As she tried to engage with the police, one police officer told her to *"wind it in and go home"*. After the police officer had moved the people they suspected of causing the incident on their way, they initially told one of the people Mrs Shenton was with also to leave the area. Mrs Shenton then said that she and her friends were trying to go home, and a police officer told her to *"go home then"*.

We took account that Mrs Shenton said in her complaint and representations that she was not aware she was being filmed. However, it appeared to Ofcom from the unedited footage, and the still images that Channel 5 submitted with their representations, that, although the camera operator filmed initially from within the police van as it parked alongside the pavement near to where Mrs Shenton was standing, the camera operator then got out of the van and filmed from the pavement, and in full open view of people in the area, including Mrs Shenton. However, it was not clear to Ofcom whether, at the time, Mrs Shenton was aware that she was being filmed by the programme makers.

In any case, we recognised that the filming was conducted in a public place, where her actions and conversations with the police officers could have been seen and heard by members of the public who were present. We took into account that at the time she was filmed Mrs Shenton appeared to be under the influence of alcohol and that she was concerned about an altercation which had taken place involving some of her friends. However, we considered that there was nothing particularly private about what Mrs Shenton said and did that could reasonably be considered as being particularly personal or sensitive in nature to her nor was she filmed in a particularly sensitive situation.

Taking all the above factors into account, we considered that Mrs Shenton did not have a legitimate expectation of privacy in connection with the obtaining of footage of her, and that the means of obtaining the footage was, in this particular case, proportionate. It was not necessary, therefore, to assess whether any infringement of Mrs Shenton's privacy was warranted.

Ofcom's decision was, therefore, that there was no unwarranted infringement of Mrs Shenton's privacy in connection with the obtaining of material of her.

- c) Ofcom next considered the complaint that Mrs Shenton's privacy was unwarrantably infringed in the programme as broadcast because footage of her was included without her knowledge or consent.

Practice 8.4 states:

"Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual concerned, unless broadcasting without their consent is warranted".

Practice 8.6 states:

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

Ofcom first assessed whether Mrs Shenton had a legitimate expectation of privacy with regard to the broadcast of footage of her included in the programme. As set out at head b), the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

As set out in the 'Programme summary' above, footage was included in the programme of Mrs Shenton and while she was not named, her face was shown unobscured.

As noted at head b), Mrs Shenton had been filmed openly in a public place, namely a public highway, and in full view and hearing of any members of the public present. Ofcom also considered that the footage of Mrs Shenton's interaction with the police as broadcast did not reveal any information which could reasonably be considered to be of a particularly sensitive or private nature to Mrs Shenton.

Taking these factors into account, it was Ofcom's view that Mrs Shenton did not have a legitimate expectation of privacy in relation to the inclusion of the footage of her in the programme as broadcast. Consequently, it was not necessary for Ofcom to go on to consider whether any infringement of Mrs Shenton's privacy was warranted in the circumstances of this case.

Given all the factors set out above, Ofcom's decision was that there was no unwarranted infringement of Mrs Shenton's privacy programme as broadcast.

**Ofcom has not upheld Mrs Shenton's complaint of unjust or unfair treatment in the programmes as broadcast and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 27 November and 10 December and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>	<b>Categories</b>
Stage School	E4	16/10/2017	Offensive language
Advertising	PBS	various	Advertising minutage

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

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

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 27 November and 10 December because they did not raise issues warranting investigation.

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Grim	AXN (Romania)	08/11/2017	Other	1
The Chase	Challenge	12/11/2017	Gender discrimination/offence	1
Channel 4 News	Channel 4	28/11/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	28/11/2017	Race discrimination/offence	1
Channel 4 News	Channel 4	04/12/2017	Generally accepted standards	2
Channel 4 News	Channel 4	04/12/2017	Sexual material	1
Channel ident	Channel 4	27/11/2017	Generally accepted standards	1
Channel ident	Channel 4	05/12/2017	Dangerous behaviour	1
Extraordinary Teens: My Gay Life (trailer)	Channel 4	30/11/2017	Under 18s in programmes	1
First Humans: The Cave Discovery	Channel 4	18/11/2017	Materially misleading	1
Gogglebox	Channel 4	03/11/2017	Materially misleading	1
Gogglebox	Channel 4	17/11/2017	Generally accepted standards	2
Gogglebox	Channel 4	01/12/2017	Generally accepted standards	1
Naked Attraction	Channel 4	05/12/2017	Nudity	1
The Secret Life of Five Year Olds	Channel 4	28/11/2017	Under 18s in programmes	1
The Secret Life of Four Year Olds	Channel 4	07/11/2017	Under 18s in programmes	1
The Truth About Muslim Marriage	Channel 4	21/11/2017	Gender discrimination/offence	1
Unspeakable	Channel 4	05/11/2017	Generally accepted standards	3
Chris Tarrant: Extreme Railway Journeys	Channel 5	27/11/2017	Materially misleading	2
Left for Dead: The Moors Murderers	Channel 5	15/11/2017	Information/Warnings	1
Mobo Awards 2017	Channel 5	29/11/2017	Information/Warnings	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The March Sisters at Christmas	Channel 5	10/11/2017	Offensive language	1
The Wright Stuff	Channel 5	13/11/2017	Due impartiality/bias	1
Ben 10	CITV	29/11/2017	Offensive language	1
The Oddbods Show — High Price of Neighbouring	CITV	20/09/2017	Scheduling	1
News bulletin	Classic FM	19/10/2017	Commercial communications on radio	1
Your Face or Mine	Comedy Central	15/11/2017	Sexual material	1
Sin City Motors	Dave	01/12/2017	Offensive language	1
Mech-x4	Disney XD	05/10/2017	Scheduling	1
The Bill (trailer)	Drama	Various	Materially misleading	2
Naked Attraction	E4	19/11/2017	Nudity	1
The Hunger Games	Film4	05/11/2017	Violence	1
The Full Fix Breakfast	Fix Radio	07/11/2017	Competitions	1
The Walking Dead	Fox	13/11/2017	Violence	1
Programming	Heart FM (Kent)	25/11/2017	Offensive language	1
Matt Wilkinson	Heart Four Counties	28/11/2017	Sexual orientation discrimination/offence	1
Breakfast Show	Heart Radio (Exeter/Torbay)	23/11/2017	Gender discrimination/offence	1
Heart Breakfast with Justin & Kelly	Heart Radio (North East)	01/12/2017	Offensive language	1
Daniel Fox	Heart Radio 96.6 FM (Hertfordshire)	28/11/2017	Sexual material	1
Celebrity Juice	ITV	16/11/2017	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	24/11/2017	Crime and disorder	1
Coronation Street	ITV	24/11/2017	Disability discrimination/offence	1
Coronation Street	ITV	24/11/2017	Materially misleading	1
Coronation Street	ITV	27/11/2017	Sexual material	1
Coronation Street	ITV	28/11/2017	Generally accepted standards	1
Dickinson's Real Deal	ITV	13/11/2017	Competitions	1
Emmerdale	ITV	21/11/2017	Generally accepted standards	1
Emmerdale	ITV	29/11/2017	Dangerous behaviour	3
Emmerdale	ITV	29/11/2017	Generally accepted standards	2
Emmerdale	ITV	04/12/2017	Violence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Gone to Pot: American Road Trip	ITV	17/11/2017	Drugs, smoking, solvents or alcohol	1
Good Morning Britain	ITV	22/11/2017	Offensive language	3
Good Morning Britain	ITV	23/11/2017	Generally accepted standards	1
Good Morning Britain	ITV	27/11/2017	Animal welfare	2
Good Morning Britain	ITV	28/11/2017	Race discrimination/offence	1
Good Morning Britain	ITV	04/12/2017	Dangerous behaviour	1
Good Morning Britain	ITV	06/12/2017	Generally accepted standards	1
Good Morning Britain	ITV	06/12/2017	Sexual material	10
How to Spend it Well at Christmas	ITV	28/11/2017	Generally accepted standards	2
How to Spend it Well at Christmas (trailer)	ITV	28/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2017	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	21/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	23/11/2017	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	23/11/2017	Disability discrimination/offence	2
I'm a Celebrity...Get Me Out of Here!	ITV	23/11/2017	Generally accepted standards	7
I'm a Celebrity...Get Me Out of Here!	ITV	24/11/2017	Animal welfare	25
I'm a Celebrity...Get Me Out of Here!	ITV	24/11/2017	Disability discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	24/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	24/11/2017	Race discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	24/11/2017	Religious/Beliefs discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	25/11/2017	Animal welfare	10
I'm a Celebrity...Get Me Out of Here!	ITV	25/11/2017	Generally accepted standards	2
I'm a Celebrity...Get Me Out of Here!	ITV	26/11/2017	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	26/11/2017	Generally accepted standards	2
I'm a Celebrity...Get Me Out of Here!	ITV	27/11/2017	Disability discrimination/offence	6

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
I'm a Celebrity...Get Me Out of Here!	ITV	28/11/2017	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	28/11/2017	Disability discrimination/offence	3
I'm a Celebrity...Get Me Out of Here!	ITV	28/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	28/11/2017	Offensive language	1
I'm a Celebrity...Get Me Out of Here!	ITV	28/11/2017	Religious/Beliefs discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	29/11/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	29/11/2017	Voting	1
I'm a Celebrity...Get Me Out of Here!	ITV	30/11/2017	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	30/11/2017	Generally accepted standards	2
I'm a Celebrity...Get Me Out of Here!	ITV	30/11/2017	Religious/Beliefs discrimination/offence	2
I'm a Celebrity...Get Me Out of Here!	ITV	01/12/2017	Race discrimination/offence	5
I'm a Celebrity...Get Me Out of Here!	ITV	02/12/2017	Animal welfare	2
I'm a Celebrity...Get Me Out of Here!	ITV	02/12/2017	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here!	ITV	03/12/2017	Other	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV	26/11/2017	Gender discrimination/offence	1
ITV News	ITV	14/11/2017	Due accuracy	1
ITV News	ITV	01/12/2017	Generally accepted standards	1
ITV News (trailer)	ITV	23/11/2017	Due impartiality/bias	1
Judge Rinder	ITV	01/12/2017	Drugs, smoking, solvents or alcohol	1
Loose Women	ITV	28/11/2017	Race discrimination/offence	42
Loose Women	ITV	29/11/2017	Generally accepted standards	1
Lorraine	ITV	16/11/2017	Generally accepted standards	1
Lorraine	ITV	04/12/2017	Generally accepted standards	9

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Slingo Boom's sponsorship of The Jeremy Kyle Show	ITV	05/12/2017	Sponsorship credits	1
The Chase	ITV	21/11/2017	Gender discrimination/offence	1
The Chase	ITV	07/12/2017	Race discrimination/offence	1
The Jeremy Kyle Show	ITV	26/11/2017	Generally accepted standards	1
The Jeremy Kyle Show	ITV	28/11/2017	Sexual material	2
The Jeremy Kyle Show	ITV	29/11/2017	Generally accepted standards	1
The Jonathan Ross Show	ITV	18/11/2017	Disability discrimination/offence	1
The X Factor	ITV	18/11/2017	Voting	1
The X Factor	ITV	25/11/2017	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV	25/11/2017	Nudity	1
The X Factor	ITV	26/11/2017	Offensive language	1
The X Factor	ITV	26/11/2017	Race discrimination/offence	1
The X Factor	ITV	26/11/2017	Voting	2
The X Factor	ITV	03/12/2017	Voting	1
This Morning	ITV	13/11/2017	Religious/Beliefs discrimination/offence	1
This Morning	ITV	28/11/2017	Generally accepted standards	1
This Morning	ITV	28/11/2017	Sexual material	1
Tipping Point	ITV	21/11/2017	Undue prominence	1
Tombola Arcade's sponsorship of I'm a Celebrity...Get Me Out of Here!	ITV	26/10/2017	Sponsorship	1
Tombola Arcade's sponsorship of I'm a Celebrity...Get Me Out of Here!	ITV	29/11/2017	Sponsorship	1
X Factor Final	ITV	03/12/2017	Voting	1
You've Been Framed	ITV	02/12/2017	Generally accepted standards	1
ITV News Tyne Tees	ITV Tyne Tees	27/11/2017	Other	2
ITV News West Country	ITV West Country	25/11/2017	Due impartiality/bias	1
American Dad (trailer)	ITV2	26/11/2017	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
I'm a Celebrity: Extra Camp	ITV2	22/11/2017	Generally accepted standards	1
The Jeremy Kyle show	ITV2	27/11/2017	Race discrimination/offence	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	28/11/2017	Sponsorship credits	3
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	07/12/2017	Sponsorship credits	1
The Real Housewives of Potomac	ITVBe	26/11/2017	Race discrimination/offence	1
Kiss Fresh with Tinea	Kiss Fresh	17/11/2017	Gender discrimination/offence	1
James O'Brien	LBC 97.3 FM	18/11/2017	Due accuracy	1
James O'Brien	LBC 97.3 FM	20/11/2017	Race discrimination/offence	1
Late Nights with Ian Collins	LBC 97.3 FM	28/11/2017	Due accuracy	1
Nick Ferrari	LBC 97.3 FM	05/10/2017	Generally accepted standards	5
Nick Ferrari	LBC 97.3 FM	16/11/2017	Sexual orientation discrimination/offence	1
Steve Allen	LBC 97.3 FM	17/11/2017	Religious/Beliefs discrimination/offence	1
Casillero del Diablo's sponsorship	Movies 4 Men	07/12/2017	Sponsorship credits	1
Casillero del Diablo's sponsorship	Movies 4 Men	14/12/2017	Sponsorship credits	1
Headline News	New Vision TV	18/11/2017	Offensive language	1
Q Breakfast with Stephen Clements and Cate Conway	Q Radio 102.5FM	29/11/2017	Race discrimination/offence	1
News	Radio City	16/11/2017	Materially misleading	1
Chris Moyles	Radio X	14/11/2017	Sexual material	1
Chris Moyles	Radio X	01/12/2017	Drugs, smoking, solvents or alcohol	1
Programming	Really	26/11/2017	Offensive language	1
The Force: North East	Sky 2	20/11/2017	Materially misleading	1
Press Preview	Sky News	15/11/2017	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	15/11/2017	Generally accepted standards	1
Sky News	Sky News	28/11/2017	Due impartiality/bias	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sunday with Niall Paterson	Sky News	26/11/2017	Due accuracy	1
Sunrise	Sky News	14/11/2017	Due impartiality/bias	2
Sunrise	Sky News	23/11/2017	Due accuracy	1
The Russell Howard Hour	Sky1	16/11/2017	Race discrimination/offence	1
Russ Williams	Smooth Radio	27/11/2017	Religious/Beliefs discrimination/offence	1
Fights, Camera, Action	Spike	04/12/2017	Violence	1
Naamkarann	Star Plus	06/12/2017	Dangerous behaviour	1
Scotland Tonight	STV	15/11/2017	Race discrimination/offence	1
STV News	STV	30/11/2017	Due impartiality/bias	27
Kevin Johns (trailer)	Swansea Sound	26/11/2017	Gender discrimination/offence	1
Alan Brazil	Talksport	10/11/2017	Offensive language	1
Extra Time	Talksport	02/12/2017	Race discrimination/offence	1
Legal Show	TV99	08/09/2017	Promotion of products/services	1
Mujhay Jeenay Doh (trailer)	Urdu1 Europe	10/11/2017	Generally accepted standards	1
UTV News	UTV	21/11/2017	Scheduling	1
Dr. Christian Will See You Now	W	05/12/2017	Materially misleading	1
Dr. Christian Will See You Now (trailer)	W	27/11/2017	Materially misleading	1

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Question Time	BBC 1	22/06/2017	Due impartiality/bias	1
BBC News	BBC news channel and BBC1	19/06/2017	Due accuracy	1
Climate Change: The Trump Card	BBC Radio 4	01/01/2017	Due impartiality/bias	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
PM	BBC Radio 4	29/08/2017	Due impartiality/bias	1

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

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

## Complaints outside of remit

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

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

### Complaints about television or radio programmes

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

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

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	5USA	28/11/2017	Advertising content	1
Besh Punjab	Bradford Asian Radio	Various	Outside of remit	1
Advertisement	Cartoon Network	25/11/2017	Advertising content	1
Advertisement	Drama	27/11/2017	Advertising content	1
Ground Force	Home	28/11/2017	Outside of remit	1
Advertisement	ITV	17/11/2017	Advertising content	1
Advertisement	ITV	30/11/2017	Advertising content	1
Advertisement	ITV	02/12/2017	Advertising content	1
ITV News	ITV	29/11/2017	Outside of remit	1
Programming	ITV	01/01/2015	Outside of remit	1
This Morning	ITV	27/11/2017	Outside of remit	6
Programming	ITV2, Home, Really	28/11/2017	Outside of remit	1
Advertisement	LBC 97.3 FM	06/12/2017	Advertising content	1
Advertisement	n/a	24/11/2017	Advertising content	1
Tin Star (trailer)	Sky Sports News	13/09/2017	Scheduling	1
Advertisement	Smooth Radio	26/11/2017	Advertising content	1
Advertisement	Various	04/12/2017	Advertising content	1

## BBC First

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

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

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

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

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1	30/11/2017	Due impartiality/bias	1
Gunpowder	BBC 1	21/10/2017	Violence	1
Question Time	BBC 1	30/11/2017	Due impartiality/bias	1
Strictly Come Dancing	BBC 1	19/11/2017	Gender discrimination/offence	1
The One Show	BBC 1	01/12/2017	Nudity	1
Daily Politics	BBC 2	29/11/2017	Due impartiality/bias	1
Programming	BBC channels	30/11/2017	Due impartiality/bias	1
Gunpowder	BBC iPlayer	14/11/2017	Violence	1
Jeremy Vine	BBC Radio 2	03/11/2017	Commercial communications on radio	1
BBC News	BBC Radio 4	03/12/2017	Due impartiality/bias	1
I'm Sorry I Haven't a Clue	BBC Radio 4	13/11/2017	Offensive language	1
The Today Programme	BBC Radio 4	30/11/2017	Religious/Beliefs discrimination/offence	1
Unreported	BBC Radio 4	27/11/2017	Violence	1
Woman's Hour	BBC Radio 4	13/10/2017	Race discrimination/offence	1
Woman's Hour	BBC Radio 4	21/11/2017	Sexual material	1
World at One	BBC Radio 4	29/11/2017	Due impartiality/bias	1
Have I Got News For You	BBC1	24/11/2017	Generally accepted standards	1
Young, Welsh and Minted	BBC3	29/11/2017	Generally accepted standards	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 27 November and 10 December.

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

Programme	Service	Transmission date
Horror Channel "Bloody British Season" (trailer)	CBS Reality	3 November 2017
Cops UK: Bodycam Squad	Dave	19 November 2017
Tamara's World (trailer)	ITV	26 November 2017
To The Point	JUS Punjabi	2 November 2017
Breakfast Show	Kiss FM	20 November 2017
Sponsorship	Nick Junior	21 October 2017
The Alex Salmond Show	RT	16 November 2017
A Family At War	Talking Pictures TV	19 November 2017

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

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

Investigations launched under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC on demand programme services.

Programme	Service	Transmission date
Today	BBC Radio 4	10 August 2017

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

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

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

<b>Licensee</b>	<b>Licensed Service</b>
Alpha Radio Ltd	Rathergood Radio

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

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