

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 objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

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 advertising³.
- 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.

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

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

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

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.

Notice of Sanction

City News Network (SMC) Pvt Limited

Introduction

Channel 44 is an Urdu-language news and current affairs channel which broadcasts on satellite and cable services. The Ofcom licence for this channel is held by City News Network (SMC) Pvt Limited (or "the Licensee").

This sanction related to comments made by a guest about the alleged actions of members of the Ahmadiyya community¹ in two episodes of the current affairs discussion programme *Point of View*, broadcast on 4 and 11 December 2017.

In the breach decision published on 2 July 2018 in [Issue 357 of the Broadcast and On Demand Bulletin](#), Ofcom found that the programmes contained hate speech and language amounting to abusive treatment of, and offensive to the Ahmadiyya community, in breach of Rules 2.3, 3.2 and 3.3 of the Code:

- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context".
- Rule 3.2: "Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context".
- Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services".

In accordance with Ofcom's penalty guidelines, Ofcom decided that it was appropriate and proportionate in the circumstances to impose a financial penalty of £75,000 on the Licensee in respect of these serious Code breaches (payable to HM Paymaster General). In addition, City News Network (SMC) Pvt Ltd is directed to broadcast a statement of Ofcom's findings in this case, on a date and time to be determined by Ofcom.

The full sanction decision [was published on 15 April 2019](#).

¹ The Ahmadiyya community (or Ahmadi movement) identifies itself as a Muslim movement which follows the teachings of the Qur'an. However, it is regarded as heretical by orthodox Islam since it differs in its interpretation of the finality of prophethood. There are Ahmadiyya communities around the world. They face restrictions in many Muslim countries and are described in publicly available reports as one of the most persecuted communities in Pakistan. There have also been reports of discrimination and threats against the community in the UK.

Broadcast Standards cases

In Breach

Sunday Politics

BBC 1, 30 April 2017, 11:24

Introduction

Sunday Politics is a weekly current affairs programme featuring interviews and debates on political issues. This edition was broadcast during the election period for the 2017 local elections in Scotland (which ran from 22 March to 4 May 2017) and after it had been announced that there would be a UK General Election taking place on 8 June 2017.

Ofcom received a complaint that, during an interview with the Scottish National Party ("SNP") former Scottish First Minister Alex Salmond, the presenter Andrew Neil used a "false statistic" about literacy standards in Scottish primary schools. The viewer had previously raised their concerns with the BBC in accordance with [Ofcom's published procedures](#). The BBC had upheld the complaint at the final stage of its own complaints process and published a finding¹. However, the complainant had not been satisfied with the BBC's response and brought their complaint to Ofcom.

During the interview, Alex Salmond said that the SNP had protected public services. The interview continued as follows:

Andrew Neil: *"...If services have been so well protected, why after a decade of SNP rule do one in five Scots pupils leave primary school functionally illiterate?"*

Alex Salmond: *"You've to take these things in the round, and Nicola Sturgeon's² made it a top priority to address these challenges. But let's take another statistic: 93% of Scottish kids are now emerging from school to positive destinations. That means to further education, to apprenticeships or to work".*

Andrew Neil: *"Why are one in five functionally illiterate?"*

Alex Salmond: *"Well you argue one statistic – I'm arguing that in the round Scottish education is putting in some substantially good performances like the 93%, a record figure, who are going on to positive destinations. You can't have a failing education system if you've got that 93% and, incidentally, a record low youth unemployment in Scotland. We've got the second lowest unemployment rate in Europe. These pupils are being prepared by the Scottish education system".*

The interview then continued on the issue of education and other matters relating to the record of the SNP administration in Scotland.

¹ Sunday Politics, BBC 1, 30 April 2017: [Finding by the Executive Complaints Unit](#).

² Current Scottish First Minister.

In the original complaint to the BBC, the complainant queried the meaning and the source of the statistic, adding that it suggested that Scottish education was failing terribly, but that did not reflect the complainant's personal experience as a school teacher in a very large primary school. The complainant had looked for the statistic in a number of Scottish education reports but had been unable to locate its source.

The complaint was made to the BBC on 1 May 2017. We took into account the BBC's various responses to this case, including in relation to the source on which Andrew Neil based his question (*"why after a decade of SNP rule do one in five Scots pupils leave primary school functionally illiterate?"*):

- on 8 May 2017, in its first substantive response to the complainant, the BBC said: "A quick search online shows that the statistic you refer to comes from a 2009 study; reported here, for example: [One in five Scots struggle with literacy, report reveals, The Scotsman, 4 December 2009](#) [and] [One in five Scots children leave primary school not fully literate, The Telegraph, 4 December 2009](#)";
- after the complainant challenged this source, the BBC provided its second substantive response on 17 May 2017, when it said to the complainant: "First of all, we would like to apologise for giving you the incorrect statistics before. We have spoken to the programme editors who have confirmed that the statistics Andrew [Neil] was referring to in his questioning of Mr Alex Salmond was the Scottish Government's [2014 Scottish Survey of Literacy and Numeracy](#) ["SSLN"], not the 2009 survey..."³; and
- on 23 June 2017 the complainant escalated the complaint to the BBC's Executive Complaints Unit ("ECU"). On 5 October 2017, the ECU wrote to the complainant providing the BBC's third and final substantive response, stating that: "Having conducted our own research into the matter and consulted further with the programme, we agree that this [statement] was not accurate. The figure was drawn from the 2009 Scottish Survey for Literacy and Numeracy (which was not the most recent research into school attainment) and it was not accurate to say that this allowed the conclusion quoted in the programme. It should have been made clear that the phrase 'functionally illiterate' was not used in that report and that its source was the education spokeswoman of the Scottish Conservatives".

On 28 November 2017, the BBC ECU published its finding⁴ which was to uphold the complaint in this case. The BBC finding as originally published on 28 November 2017 said:

"The figure had originally been put forward by a spokesperson for the Scottish Conservatives, as being based on the 2009 [SSLN]⁵. That survey, however, contained no

³ The complainant challenged this response on 19 May 2017 and reiterated that the BBC had failed to correct the statistic or respond to the complaint with urgency during an election period. The BBC's replies of 2 and 13 June 2017 invited the complainant to escalate the complaint to the BBC's Executive Complaints Unit if they were dissatisfied with the BBC's earlier responses.

⁴ See footnote 1.

⁵ Ofcom understands there was no SSLN in 2009 and the first such survey was in 2012. The SSLN is a sample survey of Scottish pupils nearing the end of the school year in Primary 4 (age 8-9), Primary 7 (age 11-12) and Secondary 2 (age 13-14). It assesses their ability in reading, writing and listening and

reference to 'functional illiteracy', and no data which would have justified the claim in question".

The finding also said: the "Sunday Politics team has been reminded of the need to establish the evidential basis of claims that are quoted in its questions".

During Ofcom's investigation, the BBC confirmed to Ofcom in April 2018 that it had changed the published text of the ECU finding to include the following:

"The figure derived from the sum of the two lower bands for reading attainment in the 2014 [SSLN]. That survey, however, contained no reference to 'functional illiteracy', and no data which would have justified that form of words as a description of its findings".

As a weekly current affairs programme, *Sunday Politics* is not a news broadcast, and there is therefore no requirement under the Broadcasting Code that facts discussed in the programme be presented with due accuracy. However, we considered the broadcast content raised potential issues under the following Code rule:

Rule 2.2: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

We therefore requested comments from the BBC on how the programme complied with this rule.

Response

The BBC's representations

The BBC provided initial representations as well as representations from itself and from presenter Andrew Neil on Ofcom's Preliminary View, which was to provisionally record a breach of Rule 2.2 in this case.

The BBC explained that typically before each Sunday transmission, the programme editor and producer would send a briefing to the presenter, Andrew Neil on Friday evenings. The briefing would consist of "notes on the topics to be covered in the programme and on the contributors invited to discuss them, with suggested questions". The BBC added that there would be "exchanges between the presenter and the producer and Editor" on the day before broadcast on the proposed content of the programme and that "[v]erification of factual references is an integral part of this process".

talking. Pupils are assigned one of four categories based on the percentage of questions they answer correctly. The categories are 'performing very well at the level', 'performing well at the level', 'working within the level', and 'not yet working within the level'. For Primary 7 pupils, "not yet working within the level" meant they had "successfully completed" 39% or less of the items, and "working within the level" meant they had "successfully completed" more than 39%, but less than 60% of the "items" in the SSLN. For secondary 2 pupils the corresponding cut-off points were 34% and 60%. In the 2014 SSLN, 3% of Secondary 2 Pupils were in the bottom category and 17% in the next category up for reading, totalling 20% or one in five. For Primary 7 pupils, the corresponding figures were 3 and 9%, totalling 12% or 3 in 25 pupils. See the Scottish Government's [Statistics Publication Notice](#) on the 2014 SSLN.

After a further attempt to link the statement to an official statistical source in its initial representations, the BBC now accepts that it was not based on any such source and that it was therefore not accurate. However, inaccuracy in and of itself in non-news programmes does not constitute a breach of the Broadcasting Code, and as stated above, as *Sunday Politics* is not a news programme, the question for Ofcom to consider under Rule 2.2 is whether the content was materially misleading to the audience so as to cause potential or actual harm or offence.

The BBC referred to Andrew Neil's representations on Ofcom's Preliminary View (see below), expressing the hope that having "considered the sources cited by Mr Neil" Ofcom would "conclude that, despite the phrase 'functionally illiterate' going beyond what was warranted by the 2014 SSLN, any inaccuracy here was not so materially misleading as to constitute a breach of Rule 2.2".

The BBC also referred to the following statement in its initial representations:

"...however characterised, the relevant statistics [from the 2014 SSLN] indisputably showed a significant decline in literacy levels amongst primary school-leavers, as the Scottish government had repeatedly acknowledged".

In its further representations, the BBC said that this statement had arisen from an "incorrect reading of the 2014 SSLN" and had been "added at a late stage of drafting by the Head of the [BBC ECU]" as was the following statement:

"the intended effect [of the use of the term 'functionally illiterate'] was rather to encapsulate the general situation of declining levels of literacy amongst primary school-leavers reflected in the [2014] SSLN report".

The BBC apologised for this error saying that the above two statements did "not represent a view held by BBC News in general or the programme-makers in particular".

The BBC argued that rather than relating to a "single data set" as implied by the Preliminary View, an assessment of the accuracy of the programme needed to take into account a "considerably wider range of data", as cited by Andrew Neil in his representations on the Preliminary View (see below). It added that Andrew Neil's question to Mr Salmond ("*Why, after a decade of SNP rule...?*") "related to a longer period...than is discussed in the Preliminary View".

The BBC emphasised in its representations that neither Alex Salmond, within the programme, nor Nicola Sturgeon, speaking within the Scottish Parliament, had treated the content as materially misleading. It acknowledged that broadcasters "should not rely on others to correct their mistakes, and that the absence of challenge [by Mr Salmond] did not of itself mean viewers were not misled". However, the BBC argued that the reactions of Mr Salmond and Ms Sturgeon were significant. It said that Alex Salmond and Nicola Sturgeon were informed about and accustomed to debating the policy area of education. It added that "...the least that can be inferred from their responses is that neither of them regarded the statement in question as materially misleading (the implausible alternative being that they did regard it as misleading but chose not to say so – indeed, in Ms Sturgeon's case, to say otherwise)".

The BBC cited the subsequent interview with Nicola Sturgeon in *The Andrew Marr Show* on 14 May 2018. In this interview, Mr Marr had said the SNP's record on literacy was "absolutely terrible" and "...you have among 13 and 14-year olds only, less than half are now performing well in reading and writing...", to which Nicola Sturgeon had replied:

"Firstly, let me say I've been very open that that's not good enough, but just to put that into context, we have a survey that measures pupils in the second year of the secondary school, but measures them against the standard they are expected to achieve in the third year of secondary school, and we have other information that show that by the time people are in the third year more than 80% are reaching the required level".

Andrew Marr also said: "On numeracy and literacy, there's no question that things have got worse", to which Nicola Sturgeon replied:

"I'm not denying that in terms of literacy and numeracy, and I'm telling you what we are doing to address that..."

In the BBC's view, Nicola Sturgeon's replies to the questions posed to her in *The Andrew Marr Show* indicated she "accepted not only the premise that standards of literacy among Scottish children were highly unsatisfactory, but also the premise that they had worsened significantly while the SNP had been in office". It added "In the context of a public debate in which such premises were accepted by the First Minister of Scotland, we think it difficult to maintain that Mr Neil's question to her immediate predecessor...carried the potential for harm to viewers discerned by the Preliminary View or was so misleading as to constitute a breach of Rule 2.2".

Andrew Neil's representations on Ofcom's Preliminary View

Andrew Neil also provided representations on Ofcom's Preliminary View. While acknowledging that his statement was not based on any statistical source and that it was therefore inaccurate, Mr Neil set out the context surrounding the Scottish education debate and referred to a number of sources published before and after the broadcast, in relation to primary school leavers and secondary school pupils, to support his view that the statement was not materially misleading. He said that in December 2009, Scotland's Literacy Commission had published a [report](#) (the "Literacy Commission report"), which had stated "A good estimate would be that 18.5% leave primary school [in Scotland] without being functionally literate". Mr Neil added this report had "hung over Scotland's educational debate..." and that by the time of his interview with Alex Salmond the data used in the 2009 report was 10 years old. He said that the SNP had also been in power for 10 years in 2017 and had often stated its commitment to improving Scottish educational standards. Mr Neil said it was therefore "legitimate to try to discover if things had got better in the decade of SNP power". Mr Neil also said that his "question to Mr Salmond was framed in a provocative way to elicit a response that knocked my premise back".

Andrew Neil said, "Evidence that Scottish literacy has improved between 2007 and 2017 is hard to come by. Evidence that Scottish literacy has got no better, and could even be worse, is clearer". He cited "the respected independent Holyrood Magazine", in comparing the 2012 and 2014 SSLN results, stating that "Fewer Scottish school children are good at reading and writing" and that there was "[falling literacy in Scottish schools](#)". He added that the decline recorded in the 2014 SSLN was "not precipitous", but it provided "scant evidence that matters were improving, even from the existing low base". He further added that

“Government politicians and policymakers in Scotland have worried, usually in private, rarely in public, that not enough progress was being made to improve the situation revealed in the 2009 Literacy Commission report – indeed they feared there were signs it was getting worse”. Mr Neil stated his belief that this was why Alex Salmond and Nicola Sturgeon did not challenge the premise of his question – that 20% of primary school leavers were “*functionally illiterate*” – because it was “all too credible, even if not exactly accurate, as I now realise”. He added “My specific formulation of the situation was clearly open to challenge (and subsequently was); but the underlying assumption – that literacy among young Scottish pupils is a serious problem that is not being solved – is pretty robust”.

Andrew Neil cited various more recent statistics which showed, in his view, that literacy had not been improving in Scottish schools over a number of years. For example, he stated that: “The 2014 SSLN – published two years (2015) before the interview – had already provided scant relief for those arguing literacy was improving; if anything, there was a deterioration”. He added “Several months before the interview” the OECD published (in December 2016) its latest international comparative study of schools – [PISA](#) – in which Scottish schools recorded their worst ever PISA performance with declines for scores in maths, science and *reading* (my emphasis)”.

Mr Neil said that in relation to primary school leavers in Primary 7:

- the 2016 SSLN report published one month after the broadcast of this programme found that “those who could write well or very well had fallen from 72% in 2012 to 65% in 2016...[The] decline in reading was less marked – but it was still down two percentage points on 2012”; and
- a “new official government study, using different methodology from SSLN, published in December 2017 found only 69%...were reaching the expected reading standard, 76% in writing. So over one in five in both cases were not”.

Mr Neil added that in relation to Secondary 2 pupils (those two years after leaving primary school):

- “those who met the expected standard in writing had fallen from 64% in [the 2012 SSLN] to less than half (49%) in [the 2016 SSLN]⁶ – a dramatic fall of 15 percentage points over only four years; and
- in the 2016 SSLN those “who failed to meet the expected [Secondary 2] standard came to 16% – one in six – compared with only 7% in” the 2012 SSLN⁷. Mr Neil argued that this “suggests that something is seriously amiss in Scottish secondary schools in the early years after primary school; or that the SSLN has been underestimating the literacy problems of P7 primary school leavers”.

Andrew Neil said ‘functionally illiterate’ “does not mean illiterate in the sense of unable to read or write. It means not possessing enough basic skills to be confident of handling many normal reading and writing tasks”. He added that: “The SSLN does not use the term

⁶ For secondary 2 pupils’ performance in writing, the 2016 SSLN said that 33%, 14% and 2% (a total of 49%) were “performing well, very well or beyond the level”, with 35% “working within the level”.

⁷ The 2016 SSLN said 16% of secondary 2 pupils were “not yet working within the level” in writing.

[‘functionally illiterate’ and] I did not attribute it to the SSLN”. He accepted that “being in the bottom two [SSLN categories] does not necessarily produce a combined ‘functionally illiterate’ category”. However, Mr Neil argued that “the SSLN’s categorisations are somewhat opaque and, for the second bottom category, not very demanding (working ‘within the level’ requires completing only 40% of the test or over)”.

Mr Neil said that “it would have been better if I had phrased my question along the lines of ‘why is literacy among Scottish school pupils still so bad – and maybe even getting worse’. But I do not accept that the formulation I used seriously misled viewers about the gravity of the situation”. He added that “evidence is strong that illiteracy in Scottish schools is still deeply embedded in the system and that, far from improving, is likely getting worse, even after 10 years of SNP government”. In conclusion, Mr Neil said that: “Questions can always be better framed in retrospect. But I refute Ofcom’s draft conclusion that my question seriously misled viewers about literacy problems in Scottish schools or misrepresented the Scottish Government’s response to them. And I do not accept that it was even close to a breach of...Rule 2.2”.

Investigation of the statistic (post-broadcast)

Ofcom also asked the BBC to explain why, having received the complaint during the Scottish local election period and ahead of the UK General Election, the statistic was not fully investigated and Mr Neil’s statement corrected at the time. The BBC said the complainant received a substantive response to their first contact within a week and a response to their second and third contacts within seven working days and two days respectively. It added that there was no correction at that time because “unfortunately, the investigation did not identify⁸ the inaccuracy in the terms in which [the statistic] was described...the context was one where the claim in question had been effectively accepted, rather than disputed, by successive First Ministers”.

The BBC also said that “the ECU investigation took a good deal longer than we would have wished. It took place against the background of implementing new procedures and adjusting to new demands arising from the 2018 Charter and the assumption by Ofcom, in early April, of full regulatory authority over the BBC, and the situation was aggravated by unexpected staff absences”.

Decision

Reflecting our duties under the [Communications Act 2003](#), there is no requirement under the Code that facts discussed in non-news programmes be presented with due accuracy. However, section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of harmful or offensive material in programmes.

⁸ The BBC said that “New light was thrown on the matter when the Sunday Herald published an analysis by The Ferret fact-checking service published on 14 May [2017] – after the local elections but before the BBC Complaints Team [provided the BBC’s second substantive response to the complainant on 17 May 2017] – which made a strong case for regarding the claim as based on an inaccurate interpretation of the statistical data. It is a matter of regret that this analysis went unnoticed by those responsible for the 17 May message, but they would have to have been close followers of the Scottish press to have become aware of it; it went virtually unreported in the media generally and, more significantly, was not remarked upon by the Scottish government or the SNP”.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom acknowledges the importance attached to freedom of expression in the broadcasting environment, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority.

The Code does not prevent broadcasters from covering subjects which may elicit strong opinions, such as the Scottish Government's record on education. It is crucial that broadcasters have the editorial freedom to cover such topics. However, Rule 2.2 requires broadcasters to ensure that facts are not misrepresented in a way which materially misleads the audience. This is particularly important in current affairs programmes in which audiences are likely to have high levels of trust. This is likely to be highest during election periods.

Misrepresentation

We first considered whether the question *"why after a decade of SNP government, one in five Scots pupils leave primary school 'functionally illiterate'"* misrepresented a factual matter.

During the course of the BBC complaints process and of Ofcom's investigation, the BBC pointed to a range of sources for the statement that was made during the broadcast, none of which provided a proper basis for the statistic used. In their latest representations, both the BBC and Andrew Neil have accepted that the presenter's question was not accurate and was not based on an official statistical source.

We took into account the reference to a specific time (*"after a decade"*), and the repeated use of the statistic *"one in five"* and of the term *"functionally illiterate"*. In our view, these gave the overall impression that Andrew Neil was basing his allegation that *"one in five [20%] Scots pupils leave primary school functionally illiterate"* on a specific statistical source relating to primary school leavers, with reference to the year 2017. This approach, in our view, gave viewers the false impression that Mr Neil's question was founded on an established fact or source, which recorded literacy levels upon leaving primary school according to a recognised benchmark in the education sector of 'functional illiteracy'.

In light of all the above, in our view the statement misrepresented a factual matter and was misleading to viewers.

Material misleadingness

We then assessed whether this misrepresentation was *materially* misleading.

Under Rule 2.2, "Factual programmes or items or portrayal of factual matters must not materially mislead the audience". [Ofcom's Guidance](#) to Rule 2.2 states that "...it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues". The Guidance also states that it is "designed to deal with content that *materially misleads the audience so as to cause harm or offence*" [emphasis in original] and not with "issues of inaccuracy in non-news programmes". This means that it is possible for a non-news programme such as *Sunday Politics* to include inaccurate material without breaching the Code, *if* the inaccuracy is not materially misleading. The Guidance also says: "Whether a programme or item is '*materially*' misleading depends on a number of factors such as the context, the editorial approach taken

in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred [emphasis in original]”.

Context provided by available statistics

The BBC argued that in the context of all the data given in Andrew Neil's representations, his statement was not materially misleading. Mr Neil said that “it would have been better if I had phrased my question⁹ along the lines of ‘why is literacy among Scottish school pupils still so bad – and maybe even getting worse’. But I do not accept that the formulation I used seriously misled viewers about the gravity of the situation”. He added that “evidence is strong that illiteracy in Scottish schools is still deeply embedded in the system and that, far from improving, is likely getting worse, even after 10 years of SNP government”. Mr Neil also said that “Questions can always be better framed in retrospect”.

We took into account Mr Neil's argument that the fact his question could have been better phrased does not mean in the particular context that it was materially misleading, and that questions can always be better framed in retrospect. We also took into account that *Sunday Politics* is a weekly programme which the editorial team and presenter prepare in advance, as per the BBC's explanation of the steps typically taken prior to each Sunday transmission described above. In our view, given the content and phrasing of Mr Neil's question, ordinary viewers would have been likely to have understood that the statistic had been researched by the editorial team and was a statistic of verifiable provenance that could be relied upon. Therefore, we did not consider that ordinary viewers would have understood that the statistic Mr Neil used in his question was paraphrasing for his personal interpretation that literacy in Scottish school pupils was bad and getting worse.

We examined the sources available at the time of the broadcast which related to Scottish primary school leavers to ascertain whether Mr Neil's statement was consistent with those indicators. Some of the statistics cited by Andrew Neil in his representations were not published at the time of the interview in April 2017, and some related to secondary school children rather than the focus of Andrew Neil's question – namely children leaving primary school. We acknowledged that some of the statistics which were available at the time of the interview could have been used to argue that some of the metrics used to measure literacy levels at the end of primary school in Scotland had slightly declined between 2012 and 2014 (by no more than between one and four percentage points in any specific instance), or to support commentary on these literacy levels as at 2014¹⁰. However, we took into account

⁹ “...why after a decade of SNP rule do one in five Scots pupils leave primary school functionally illiterate?”.

¹⁰ For example:

- At the time of the interview the results of the 2012 and 2014 SSLNs were available. These showed that the percentages of Primary 7 pupils (the final year of primary school children in Scotland):
 - in the lowest category of performance (“not yet working within the level”) were: (for reading) 2% and 3% respectively; (for writing) 3% and 5% respectively; and (for ‘listening and talking’) 9% and 8% respectively; and
 - in the next category up of performance (“working within the level”) were: (for reading) 8% and 9% respectively; (for writing) 25% and 28% respectively; and (for ‘listening and talking’) 32% and 26% respectively. (The 2014 SSLN report did not compare results for ‘listening and talking’ in 2012 and 2014 because different “assessment approaches were adopted in each year”).

that Mr Neil's statement was made by reference to a specific point in time (2017 – “*after a decade of SNP rule*”) rather than a comparison exercise of trends, for example, between 2012 and 2014. Therefore, we carefully considered whether it was materially misleading to characterise the available metrics as providing evidence that one in five Scottish primary school leavers could be described as being ‘functionally illiterate’ in 2017.

With regard to Mr Neil's use of the expression ‘functionally illiterate’, we note that the UK's National Literacy Trust describes ‘functional illiteracy’ by reference to adults: “Around 15 per cent, or 5.1 million adults in England, can be described as ‘functionally illiterate’. They would not pass an English GCSE and have literacy levels at or below those expected of an 11-year-old. They can understand short straightforward texts on familiar topics accurately and independently, and obtain information from everyday sources, but reading information from unfamiliar sources, or on unfamiliar topics, could cause problems”¹¹. The term is not commonly used in relation to primary school children and, although it featured in the 2009 Scottish Literacy Commission Report cited by Mr Neil in his representations, it is Ofcom's understanding that it has not been used in any official statistical sources on Scottish education since then. The 2009 Report itself only referred to “functional” literacy in its introduction and in relation to available UK data (we discuss this source further below). The Report discussed low levels of literacy and how to tackle the issue in general, among school leavers (whether from primary or secondary school) as well as adults, and preferred the use of the term “**basic literacy**” rather than “**functional literacy**”¹².

In his representations, Andrew Neil said ‘functionally illiterate meant’ “not possessing enough basic skills to be confident of handling many normal reading and writing tasks”. In

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- The 2012 and 2014 SSLN reports described above also provided performance percentages for Secondary 2 pupils (the second year of secondary school children in Scotland):
 - in the lowest category of performance these were (for reading) 3% and 3% respectively; (for writing) 7% and 12% respectively; and (for “listening and talking”) 17% and 18% respectively;
 - in the next category up of performance these were: (for reading) 14% and 17% respectively; (for writing) 29% and 33% respectively; and (for ‘listening and talking’) 37% and 31% respectively.
 - In both age cohorts, (primary and secondary) the remaining pupils were either “performing well at the level” or “performing very well at the level”, with some instances of pupils also performing “beyond the level”. See footnote 9 for an explanation of the above performance categories and a link to the statistics.
 - The Scottish Government's report “[Programme for International Student Assessment \(PISA\) 2015: Highlights from Scotland's results](#)” states that a sample of pupils are assessed at the age of 15 and that in the 2015 reading assessment in Scotland “the proportion of low performers increased compared to 2012, but was lower than the OECD average”. It also showed that 17.9% of the Scottish pupils sampled were below Level 2, which is the baseline level of proficiency in PISA and the level “at which readers begin to demonstrate the competencies that will enable them to participate effectively and productively in life as continuing students, workers and citizens” (see [PISA for Development Brief 8](#))

¹¹ See its webpage “[Adult Literacy](#)” as at 19 November 2017. An [updated version](#) of this webpage refers to “very poor literacy skills” instead of “functional illiteracy”.

¹² Emphasis added. On page 3 of Scotland's Literacy Commission Report 2009, functional illiteracy is described as “young people leav[ing] school ... without the basic literacy skills to function in a modern society”. Where the Report refers to school leavers it is not evident that they refer to primary school rather than secondary school leavers.

our view, this definition was Mr Neil's own interpretation of the expression rather than a definition taken from an academic or other source.

In any event as the BBC and Mr Neil both now accept, it was inaccurate to say that *"after a decade of SNP rule, one in five Scots pupils leave primary school functionally illiterate"*. In order to assess whether or not this was materially misleading, we considered how the ordinary viewer would have understood Mr Neil's question. In our view, the ordinary viewer would have understood the meaning at the time of broadcast in 2017 to be "one in five primary school leavers in Scotland are unable to carry out basic literacy skills expected of children in that age group".

Of the information cited by Mr Neil and the BBC in their representations relevant to primary school leavers, only Scotland's Literacy Commission Report 2009 and the 2012 and 2014 SSLNs were official sources available at the time of the interview. The 2009 report contextualised its statement that "in Scotland 18.5% leave primary school without being functionally literate" by stating that "There is no national/official measure of how many children are going through the school system without acquiring basic literacy skills but, using what information is available", the 18.5% figure would be "a good estimate" on the basis of UK data¹³. As this was an estimate, not based on data specific to Scotland and in a report based on 2007 data which was 10 years old at the time of the interview, we considered that it was not an adequate source of information against which to assess Mr Neil's statement in relation to educational performance in 2017 for the purpose of determining whether the statement was materially misleading. The 2012 and 2014 SSLNs were based on data specific to Scotland, and the 2014 SSLN was the most recent of the two. Therefore, we took into account the 2014 SSLN when assessing Mr Neil's statement. We also considered the [2016 SSLN](#). Although not available at the time of broadcast, it was published nine days later on 9 May 2017 and we therefore considered the 2016 SSLN in assessing whether the inaccuracy was materially misleading.

- Primary 7 pupils

We considered that the 3%, 5% and 8% of primary 7 pupils who were "not yet working within the level" (i.e. the bottom level of performance) in reading, writing, and listening and talking respectively in the 2014 SSLN could be described as unable to carry out basic literacy skills expected of 11-year olds¹⁴. The corresponding figures from the 2016 SSLN were 3%, 6% and 8%. Pupils falling within this category would have "successfully completed" 39% or less of the items they were tested on. In our view, it would be materially misleading to use the higher

¹³ See: [A Vision for Scotland: The Report and Final Recommendations of the Literacy Commission December 2009](#). The report stated under the heading "UK Data" that "There is no national/official measure of how many children are going through the school system without acquiring basic literacy skills but, using what information is available, a good estimate would be that in Scotland 18.5% leave primary school without being functionally literate", which it defined as "without the basic literacy skills to function in a modern society".

¹⁴ Each percentage relates to different metrics for measuring various aspects of literacy (reading, writing and 'listening and talking'), and it would therefore be incorrect to add the percentage figures to arrive at a total percentage of pupils in the bottom level of performance. As the measurements are carried out among the same sample of pupils, there would also be double or triple counting issues with this approach (for example the same pupil might be in the lower level for both reading and writing, so that by adding the reading and writing percentages that same pupil would be taken into account twice).

categories of attainment within the 2014 and 2016 SSLNs as evidence that the pupils falling within these categories are unable to carry out basic literacy skills expected of their age group. For example, the next level of performance, "working within the level", included pupils who had successfully completed up to 59% of the given assessment. We did not consider that the ordinary viewer would have been likely to have associated this category of performance (i.e. "working within the level") with a lack of basic literacy skills for the relevant age group. In his representations, Mr Neil accepted that "being in the bottom two [SSLN categories] does not necessarily produce a combined 'functionally illiterate' category", though he also argued that "the SSLN's categorisations are somewhat opaque and, for the second bottom category, not very demanding (working 'within the level' requires completing only 40% of the test or over)". We considered that Mr Neil's latter comment was a matter of personal opinion rather than a widely accepted view on Scottish education statistics.

- Secondary 2 pupils

We considered that the 3%, 12% and 18% of secondary 2 pupils who were "not yet working within the level" (i.e. the bottom level of performance) in reading, writing, and listening and talking respectively in the 2014 SSLN could be described as unable to carry out basic literacy skills expected of 14-year olds¹⁵. The corresponding figures from the 2016 SSLN were 2%, 16% and 15%. Pupils falling within this category would have "successfully completed" 34% or less of the items they were tested on. In our view, it would be materially misleading to use the higher categories of attainment within the 2014 and 2016 SSLNs as evidence that the pupils falling within these categories are unable to carry out basic literacy skills expected of their age group. For example, the next level of performance, "working within the level", included pupils who had successfully completed up to 59% of the given assessment. We did not consider that viewers would have associated this category of performance with a lack of basic literacy skills for the relevant age group.

In relation to the performance of Scottish secondary school children, we also took into account the results of another source cited by Mr Neil in his representations, the 2015 Programme for International Student Assessment (PISA), published¹⁶ in December 2016. In the PISA reading assessment undertaken by 15-year olds, students were placed in one of seven levels, from level 1b (lowest) to level 6 (highest)¹⁷, with level 2 as a baseline level of proficiency¹⁸. Level 2 proficiency is defined under the PISA classification¹⁹ as follows: "Readers at level 2 can locate one or more pieces of information, which may need to be inferred and may need to meet several conditions. They can recognize the main idea in a text, understand relationships, or construe meaning within a limited part of the text when the information is not prominent and the reader must make low-level inferences. Tasks at this level may involve comparisons or contrasts based on a single feature in the text. Typical

¹⁵ Ibid.

¹⁶ See footnote 10, final bullet point.

¹⁷ See "Table 4. An overview of reading proficiency levels as they were described in the PISA 2012 study", as found on page 35 of the [Pisa 2018 Reading Literacy Framework](#).

¹⁸ See footnote 10, final bullet point.

¹⁹ See footnote 17.

reflective tasks at this level require readers to make a comparison or several connections between the text and outside knowledge, by drawing on personal experience and attitudes". We considered that viewers would not have associated level 2 ability with a lack of basic literacy skills for the relevant age group, and therefore focused on the next two levels below level 2, i.e. level 1a (the next level down)²⁰ and level 1b (lowest level)²¹. The 2015 PISA results for Scottish secondary pupils were that 4.4% were placed in level 1b and below and 13.5% were placed in the next level up, level 1a, a total of 17.9%.

We took into account the following with regard to the above statistics relating to the performance of Scottish secondary school children:

- in relation to the 2014 and 2016 SSLNs, in comparing Mr Neil's reference to 20% of primary 7 pupils being "*functionally illiterate*" to the percentage of pupils in the 2014 and 2016 SSLN samples who were "not yet working within the level" (i.e. the bottom level of performance), we acknowledged that 18% of secondary 2 pupils were in this category for "listening and talking" in 2014 (falling to 15% in 2016) and that this was close to 20%. However, fewer secondary 2 pupils were in this category for writing and for reading (12% and 3%, respectively) in 2014 (the corresponding figures in 2016 were 16% and 2%); and
- in relation to the 2015 PISA figures for Scotland, we acknowledged that 17.9% of the Scottish pupils sampled were below Level 2, which the OECD classifies as the baseline level of proficiency in PISA and the level "at which readers begin to demonstrate the competencies that will enable them to participate effectively and productively in life as continuing students, workers and citizens" (see PISA for Development Brief 8).

However, the above sets of statistics related to Scottish secondary school pupils, and in the case of PISA, 15-year old pupils, a population which is three years older than primary school leavers. We therefore placed greater weight on the 2014 and 2016 SSLN results for primary 7 pupils, as it was pupils of this age to whom Mr Neil had referred in the interview. Significantly less than 20% of primary 7 pupils were in the bottom level of performance (3%, 5 to 6% and 8% in reading, writing, and listening and talking, respectively) in the 2014 and 2016 SSLNs.

In light of the above, we considered that the context indicated that the question posed by Mr Neil to Mr Salmond significantly misrepresented the actual situation in relation to literacy levels amongst Scottish primary school leavers in 2017 and that his statement was a significant departure from reasonable interpretations of the available data, such that it was materially misleading to the audience.

²⁰ Under the PISA classification, "Readers at level 1a can locate one or more independent pieces of explicitly stated information; they can recognise the main theme or author's purpose in a text about a familiar topic, or to make a simple connection between information in the text and common, everyday knowledge. Typically, the required information in the text is prominent and there is little, if any, competing information. The student is explicitly directed to consider relevant factors in the task and in the text".

²¹ Under the PISA classification, readers at level 1b can "locate a single piece of explicitly stated information in a prominent position in a short, syntactically simple text with a familiar context and text type, such as a narrative or a simple list. Texts in level 1b tasks typically provide support to the reader, such as repetition of information, pictures or familiar symbols. There is minimal competing information. Level 1b readers can interpret texts by making simple connections between adjacent pieces of information".

Context in the form of public debate

In their representations, the BBC and Andrew Neil also relied on the reaction of Alex Salmond and Nicola Sturgeon to the statistic as evidence that it was not materially misleading. The BBC said that, during the interview, "Alex Salmond did not seek to dispute or directly engage with the claim". The BBC also said that following the interview Nicola Sturgeon did not "dismiss" the statistic during a Scottish parliamentary debate. Andrew Neil said that Alex Salmond and Nicola Sturgeon did not challenge the premise of his question – that 20% of primary school leavers were "*functionally illiterate*" – because it was "all too credible". In our view, and as the BBC accepted in its further representations, the BBC and other broadcasters should not rely on interviewees and others to directly address misrepresentations in their programmes.

However, the BBC also argued that "...the least that can be inferred from [Mr Salmond and Ms Sturgeon's] responses is that neither of them regarded the statement in question as materially misleading (the implausible alternative being that they did regard it as misleading but chose not to say so – indeed, in Ms Sturgeon's case, to say otherwise ('...I do not dismiss any of the statistics that Ruth Davidson cites...'))". We disagreed. Although Alex Salmond did not directly dispute the statistic, and Nicola Sturgeon at first appeared to accept it, both challenged the idea that the Scottish education system was failing. In response to Mr Neil's question, Alex Salmond said "*You can't have a failing education system if you've got that 93%*", a reference to "*a record [number of school leavers] who are going on to positive destinations*". Nicola Sturgeon made a similar point in the Scottish Parliament after stating that Ruth Davidson, in quoting Andrew Neil's statistic, did "*a disservice to young people*"²²). In any case, irrespective of the fact that, arguably, Alex Salmond and Nicola Sturgeon only indirectly disputed the statistic in question, this did not remove the fact that Mr. Neil's question did not reflect reality and that viewers were materially misled in this case.

The BBC also cited the First Minister's appearance on The Andrew Marr Show on 14 May 2018, two weeks after the programme in this case. The BBC said that Mr Marr had said the SNP's record on literacy was "*absolutely terrible*" and "*...you have among 13 and 14-year olds only, less than half are now performing well in reading and writing...*", to which Nicola Sturgeon had replied: "*Firstly, let me say I've been very open that that's not good enough*". The BBC added that the First Minister had also said she did not deny that literacy had worsened. Given this context it refuted that Mr Neil's question to Mr Salmond in the present case "was so misleading as to constitute a breach of Rule 2.2". We disagreed. Mr Marr framed his question by reference to broadly accurate statistics, and was consistent with the reality of Scottish education at the time of the broadcast, relying on the 2016 SSLN²³. By

²² The BBC referred in its submissions to Ofcom to an exchange in the Scottish Parliament on 3 May 2017 between Nicola Sturgeon and Ruth Davidson, in which Ms Davidson referred to the *Sunday Politics* interview, noting that Mr Salmond had been asked why one in five children leaves primary school functionally illiterate. She also asked about a separate statistic. Nicola Sturgeon replied "...Although I do not dismiss any of the statistics that Ruth Davidson cites, I think that she does a disservice to young people and teachers across the country". She then listed some achievements of the Scottish education system under the SNP administration, including "...record numbers of positive destinations, which is more young people than ever before going into employment, further education or training".

²³ Mr Marr said that "*among 13 and 14-year olds only, less than half are now performing well in reading and writing, and that's gone down from 70% in just a few years, under the SNP*". This was a reference to the results of the 2016 SSLN for Secondary 2 pupils, which were published after the

contrast, Andrew Neil used a statistic which both he and the BBC have accepted did not exist. Further, although we agreed with the BBC that Mr Marr characterised a “highly unsatisfactory” scale of underperformance in literacy in Scottish schools, we did not consider that this was evidence that corroborated Mr Neil’s statement that in 2017 20% of primary school leavers in Scotland were unable to carry out basic literacy skills expected of children in that age group.

Andrew Neil also quoted [an article from the Holyrood Magazine](#) as having stated that “Fewer Scottish school children are good at reading and writing” and that there was “falling literacy in Scottish schools” We considered the article, which also stated:

“Claire Telfer, Spokeswoman for the Read On, Get On coalition, led by Save the Children, said ‘It is deeply disheartening to see a standstill in reading rates for Scotland’s poorest children. 1 in 5 children from deprived backgrounds are not reading well by the end of primary school²⁴’.

In our view, the article did not contain evidence that corroborated Mr Neil’s statement. In particular, we considered that to state that 20% of Primary 7 pupils were “not reading well” was very different from stating, as Mr Neil did, that 20% of Primary 7 pupils were “functionally illiterate”. Further, the 20% statistic given in the article applied to children from deprived backgrounds, whereas Mr Neil’s question in the present case did not make such a qualification and apparently related to all Scottish Primary 7 school pupils. For all the Primary 7 pupils sampled in the 2014 SSLN, 12% were “not reading well” (i.e. 3% were “not within the level” and 9% were “within the level” and therefore not in the “performing well at the level” and “performing very well at the level” categories).

In light of the above, we considered that the wider public debate generated around the time of the programme, and the earlier 2015 Holyrood Magazine article, did not reduce the materiality of the misleading nature of Mr Neil’s statement.

Format, editorial approach and nature of the misleading material

Sunday Politics reviews the UK’s topical political issues on a weekly basis and is a traditional staple of the discursive, current affairs genre. This edition of the programme was presented by Andrew Neil, who is “one of Britain’s best-known and experienced journalists in print and broadcast”²⁵, and it was broadcast at a key moment in British politics. It was the election period for Scottish local elections taking place on 4 May 2017 and it had been announced that there would be a UK General Election on 8 June 2017. Further, Andrew Neil’s question was in an interview with a prominent Scottish politician, on a topic of importance to the Scottish electorate, namely education in Scotland.

Sunday Politics broadcast. They showed that 82% of Secondary 2 pupils were “performing well or very well” in reading in 2016, and that 49 % of Secondary 2 pupils were “performing well, very well or beyond the level” in writing in 2016. See [Scottish Survey of Literacy and Numeracy 2016: literacy](#), 9 May 2017.

²⁴ Both the 2012 and 2014 SSLNs stated that, of the sampled Primary 7 pupils from the most deprived backgrounds, 4% were ‘not working within the level’ and 15% were ‘working within the level’, in reading. See [SSLN 2014 Supplementary Tables](#) and [SSLN 2012 Supplementary Tables](#).

²⁵ See [BBC profile of Andrew Neil](#)

Given the timing, we considered the interview was likely to have been understood by viewers as being a significant feature of the programme. In the interview, Mr Neil challenged the Scottish Government's record on education in primary schools, repeating a statistic twice. Therefore, in our view the statistic was a significant element of the interview and, with the emphasis placed on it, the audience was likely to have relied on it as evidence that clearly supported Mr Neil's argument.

In his representations, Mr Neil said that the statistic was in a question to Mr Salmond which was "framed provocatively to elicit a response that knocked [the] premise back...". We acknowledged that viewers were likely to expect Andrew Neil to use a robust and provocative interview technique in an interview with a leading politician of a prominent Scottish political party in the context of an on-going election campaign. However, we considered that, in line with the higher trust audiences are likely to have in current affairs programming, viewers would have expected to be able to rely on a statistic presented as a factual matter, and used as a prominent and important element of a political interview. This would have especially been the case given the significance of the issue of education and the presentation of the information in an authoritative manner, as part of Alex Salmond's interview. The audience, in our view, would not have considered it acceptable, as apparently suggested by Mr Neil in his representations, for a BBC presenter to put up a false statistic and rely on the interviewee to rebut it.

In this context we considered that audience trust and, correspondingly, the potential for harm or offence due to a breach of this trust, were particularly high.

Harm or offence

It is particularly important that the content of factual and current affairs programmes can be relied on by viewers and listeners, as breaches of audience trust in those instances can result in material harm or offence.

We took into account that that the BBC and Andrew Neil accepted the absence of any actual statistical source to support Andrew Neil's argument that "*one in five Scots pupils leave primary school functionally illiterate*" and that the BBC's ECU published a finding that the 2014 SSLN "[did not justify] that form of words as a description of its findings"²⁶. This was, at the time, the latest report of relevance to primary school leavers and it showed that 3%, 5% and 8% of them were "not yet working within the level" in reading, writing, and listening.

In our view, viewers would have expected Andrew Neil to pursue a strong line of argument in holding a senior figure within the SNP to account on its record in education. However, we also considered that the use of a statistic which did not exist gave Andrew Neil's characterisation of underperformance in literacy among primary school leavers greater force than was justified and that the statistic exceeded by far any other contemporary characterisations of primary education attainment in Scotland. We considered that viewers would not have expected a BBC presenter to question a politician in this way.

As stated above, the requirement to ensure that facts are not misrepresented in a way which materially misleads the audience is particularly important in current affairs programmes. This is because audiences are likely to have high levels of trust, and this level of trust is likely to be highest during election periods. We considered that other factors which would have

²⁶ See footnote 1.

increased the likely level of audience trust in this case included the fact that a well-known and experienced political interviewer was seeking to hold a leading Scottish politician to account by citing a statistic framed in precise terms about an important and controversial issue within Scottish politics at the time, namely. educational standards in Scottish schools. In particular, the audience would have had particularly high expectations of any factual content included within a political interview on a BBC service.

Given these factors, we considered that Andrew Neil misrepresented statistics on literacy among Scottish primary school children in a way that would have had the potential to affect negatively and erroneously viewers' understanding of educational standards in Scotland, at a time when those standards were being strongly debated during an election in that country. This was particularly relevant given that the presenter in this case was using the statistic as a basis for challenging the record on education in government of the interviewee's party, the SNP.

For all the reasons above we considered that this content materially misled viewers so as to cause potential harm or offence.

Assessment of the actions taken by the BBC

Breaches of the Code that have resulted in the audience being materially misled have always been considered by Ofcom to be among the most serious that can be committed by a broadcaster, because they go to the heart of the relationship of trust between a broadcaster and its audience. Having reached the view that the content was materially misleading, we considered whether, and if so to what extent, the BBC's handling of the complaint and subsequent remedial actions mitigated the potential harm to viewers.

We took into account that the BBC took some remedial action in this case in the form of its published finding that this material had breached the BBC's Editorial Guidelines. In terms of further action, the BBC's ECU finding stated that "The Sunday Politics team has been reminded of the need to establish the evidential basis of claims that are quoted in its questions".

However, we had a number of concerns about the steps taken by the BBC in this case:

- in each of its three substantive responses to the complainant, the BBC erroneously referred to three different official reports as the correct source for Mr Neil's statistic;
- the ECU finding published by the BBC on 28 November 2017 also wrongly stated that the figure quoted by Andrew Neil was based on the 2009 SSLN;
- the BBC confirmed to Ofcom (after the start of its investigation) in April 2018 that the ECU Finding had been corrected to say the following:

"The figure derived from the sum of the two lower bands for reading attainment in the 2014 [SSLN]. That survey, however, contained no reference to 'functional illiteracy', and no data which would have justified that form of words as a description of its findings";

- in the BBC's and Andrew Neil's representations on Ofcom's Preliminary View, it appeared that some of the basis for Mr Neil's question was the December 2009 report by

Scotland's Literacy Commission (Ofcom is not aware of the BBC having amended the ECU Finding to reflect its final representations to Ofcom); and

- in its representations on Ofcom's Preliminary View, the BBC and Mr Neil accepted that the statistic had no official source. The BBC said that it had provided factually incorrect statements in its initial representations to Ofcom which had arisen due to an "incorrect reading of the 2014 SSLN" and had been "added at a late stage of drafting by the Head of the [BBC ECU]". The BBC made clear that the incorrect statements it had provided to Ofcom "does not represent a view held by BBC News in general or the programme-makers in particular".

Ofcom is greatly concerned about the BBC's handling of this case, where at different stages of dealing with the complaint and during Ofcom's investigation, the BBC provided conflicting explanations on the source from which Andrew Neil's statement was derived. Notably, the BBC was still maintaining the accuracy of Andrew Neil's statement in its second substantive response to the complainant on 17 May 2017 and continued to provide different explanations on the source for Mr Neil's question at all the different stages of Ofcom's investigation. The length of time it took the BBC to admit there was no factual source to support Mr Neil's statement is deeply unsatisfactory and we expect better standards from the BBC, both in its handling of viewer complaints and in its interactions with Ofcom.

As the BBC acknowledged, the figure cited by Andrew Neil was quoted by Ruth Davidson in the Scottish Parliament²⁷ three days after the broadcast. Therefore, given the apparent salience of this figure in Scottish political debate it would have better mitigated the potential harm which arose from this broadcast if the BBC had publicly corrected this misrepresentation ahead of the UK General Election that took place on 8 June 2017. By failing to establish the full facts on the basis for Andrew Neil's statement at that time, the BBC was not able, as it should have been, to take a view as to whether it was materially misleading and to take steps to remedy or mitigate this inaccuracy. This, in our view, exacerbated the potential harm caused in this case.

Although outside of the scope of our investigation into the programme²⁸, we became aware of a clip of Andrew Neil's interview with Alex Salmond containing the content in question, which was still available on the *Sunday Politics* homepage until March 2018, with no clarification about the statistic in question. The BBC explained that when upholding complaints about BBC content its policy is that "appropriate action should be taken in connection with any online versions of the material in question (this normally consists of adding an explanatory note to the relevant webpage, with a link to the summary of the finding, though in some instances the material may simply be removed)". It added that "Regrettably, the policy was not followed in this instance because of an oversight". We agree

²⁷ See footnote 22.

²⁸ In this case, the complaint focused on the broadcast content, as well as referring to the fact that the misleading statement was also available in a BBC website article. We discovered the existence of the interview clip as part of our investigation. Ofcom has no enforcement powers in relation to BBC online material (such as material on the BBC websites, including written text, images, video and sound content), although under the BBC Agreement, we may give an opinion on whether the BBC has observed its editorial guidelines in its online material. Given that our investigation into the original broadcast covers broadly the same issues, we did not consider it necessary to do so.

it is regrettable that the materially misleading statistic remained online without clarification for this length of time.

We took into account the BBC's admission of the various errors that had taken place in its handling of this complaint, including that the ECU investigation took place against the background of "implementing new procedures and adjusting to new demands" arising from Ofcom becoming the BBC's new regulator in April 2017 and was "aggravated by unexpected staff absences".

However, in the particular circumstances of this case, we remain concerned that the BBC did not act sooner to correct the statement. Critically, our concerns stemmed from the fact that the statement was made in a current affairs programme which dealt with a controversial subject matter at a sensitive time during an election period. For these reasons, we did not consider that the BBC's subsequent actions sufficiently mitigated the materially misleading statement and the potential harm caused to viewers of the programme.

The BBC is rightly held to high standards by its audience. Ofcom therefore expects the BBC to take careful note of its errors in the handling of this case to ensure they do not recur. The BBC should consider how it identifies, prioritises and resolves complaints during election and referendum periods. In particular, it should consider how to identify sources of statements that are challenged by viewers and make any appropriate corrections as soon as possible when audiences have been materially misled – as in this case – before an election or referendum period ends, so as to mitigate any potential harm to viewers.

Given all the above, Ofcom's Decision is that this content was in breach of Rule 2.2 of the Code.

Breach of Rule 2.2

In Breach

Zee Companion

Zee TV, 18 January 2019, 17:30

Introduction

ZEE TV is a general entertainment service which predominantly broadcasts programmes in Hindi. The Licence for Zee TV is held by Asia T.V. Limited ("Asia T.V." or "the Licensee").

Zee Companion is a live chat show featuring a presenter and a guest, who is generally an expert in a specific area. Viewers are invited to phone in to ask the guest questions. As the programme included some Hindi as well as English, we commissioned an independent translation of the content and provided it to the Licensee, who confirmed that it was accurate. We therefore relied on this translation for the purposes of this investigation.

Ofcom received a complaint about references in the programme to Leather Sofa World, a furniture retailer. As the programme included some Hindi as well as English, we commissioned an independent translation of the content.

In this episode the guest was the Director of Leather Sofa World, who the presenter described as "*our sofa expert*". The programme featured a phone-in competition in which viewers had the chance to win a sofa.

At the start of the programme the presenter said:

"Today's fever is that there has been a contest going on for a long time on our Zee TV network. The name is the 'Aaram Say Zee TV Dekho Contest'. The winners of the show have received sofas from LeatherSofaWorld.com. Today, it is amazing to have [guest name] joining us".

The presenter then asked the guest to select a name from a bowl. The presenter read out the name and said:

"congratulations, you have won a free sofa from LeatherSofaWorld.com. And another big news for all before we begin the show is that we are giving out three sofas, three sofas to the next three callers that call on the show. So, the phonelines are open. Pick up the phone and you'll get a chance to win an absolute beautiful, comfortable sofa from LeatherSofaWorld.com".

The first three callers after this announcement won a sofa.

After the competition was finished, the presenter interviewed the guest about his business, career and took questions about sofas from callers. In answering these questions, the guest talked about the company's approach to design and outlined information about the retailer's stock and availability. For example:

- *"Now we have our own showroom in Birmingham, we sell a lot of sofas online we have a lot of platforms that we sell on and we supply other internet sellers";*

- *“we offer a drop-ship, which is we give you the products to put onto your website. So, there’s no cost involved for you, you don’t buy any of the products. We hold all the stock because we hold about two and a half thousand sofas in stock at any time and if it sells we deliver it direct to your customer”*; and,
- *“Our showroom is open seven days so if you can travel to Birmingham...”*.

Following the last statement, the presenter interrupted the guest and said *“so we obviously can’t mention...”* before paraphrasing the caller’s comments.

In response to another call, when a caller said *“whatever you will suggest, I will buy it from you people”*, the presenter and the guest laughed and the presenter said *“Of course, we can’t do any selling on the show, but we can definitely give you good advice, which is...”*.

When suggesting the things a caller might want to take into consideration when buying a sofa, the guest recommended that the caller should *“shop around. Don’t go to one store. Go to a few different retailers... I’d advise you to shop around first”*. The presenter followed this by saying *“We just want to put it out there, we aren’t trying to sell any sofas to you all. Please go out there, there are all retailers out there, buy the one that fits you and is perfect for you and be comfortable in it”*.

During the first half of the programme, there were eight references to Leather Sofa World that included the full brand name or the website address *“LeatherSofaWorld.com”*. There were also two instances in which text was displayed in the bottom of the screen that said *“[guest name], Director of LeatherSofaWorld.com”*.

Ofcom requested information from the Licensee about any commercial arrangements associated with the references in the programme to Leather Sofa World. Based on the information provided, we considered that the references to the furniture retailer met the definition of product placement¹ and raised issues under [Rules 9.9, 9.10 and 9.14 of the Code](#):

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.”

Rule 9.14: “Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

- a) at the beginning of the programme in which the placement appears;
- b) when the programme recommences after commercial breaks; and
- c) at the end of the programme.”

We therefore asked the Licensee for its comments on how the content complied with these rules.

¹ The Code defines product placement as: “The inclusion in a programme of, or reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not prop placement.”

Response

The Licensee accepted that the references to Leather Sofa World in the programme “could be understood by the viewer to meet the definition of product placement” and said that it would “like to apologise to the viewer”.

The Licensee told Ofcom that an individual working on the programme had not liaised with Zee TV's compliance team. The Licensee added that the potential issues that arose might have been mitigated by the comments made by the presenter:

- *“so we obviously can't mention...”*.
- *“Of course, we can't do any selling on the show, but we can definitely give you good advice, which is...”*.
- *“We just want to put it out there, we aren't trying to sell any sofas to you all. Please go out there, there are all retailers out there, buy the one that fits you and is perfect for you and be comfortable in it”*.

The Licensee said that this issue had been addressed and that production of *Zee Companion* had been cancelled. Further, as a result of this incident, the Licensee said that it spoken to the compliance team and reminded it of the Code's requirements for product placement. It said it “also communicated to key executives” to make sure employees “are conversant with Ofcom guidelines”.

Decision

Reflecting our duties under the Communications Act 2003 ([Section 319](#)), Section Nine of the Code contains rules that apply to product placement in programming. These rules require that programmes containing product placement do not promote or give undue prominence to the placed products, services or trade marks and also that viewers are made aware when a programme includes product placement.

One of the key principles that underpin the rules in Section Nine, including the product placement rules, is that a distinction is maintained between editorial content and advertising. While product placement provides brands with scope to gain exposure for their products during programmes, it does not allow commercial arrangements to distort programmes so that they effectively become advertising vehicles.

Rule 9.9

Rule 9.9 states that references to placed products, services and trade marks must not be promotional. [Ofcom's Guidance on the rule](#) identifies some factors that are likely to be considered promotional, such as:

- price or availability information;
- references (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark; and
- endorsements (either explicit or implicit).

Ofcom's Guidance on Section Nine of the Code also addresses how competition prizes may be described in programmes. It acknowledges that where a programme features a competition, the “descriptions of prizes can help audiences decide whether or not to enter a

competition.” However, it recognises when a competition prize is subject to a product placement arrangement, prize descriptions may raise issues under Rule 9.9.

During the programme, statements were made about the quality and availability of the furniture retailer's products. These included references to the showroom location and opening times. In addition, the host described the competition prize as an “*absolute beautiful, comfortable sofa*”.

Our Decision is that these references were promotional, in breach of Rule 9.9.

Rule 9.10

Although the Code provides scope for brands to feature in programmes, care is needed to avoid the impression that product placement is guiding or distorting editorial content. Rule 9.10 states that references to placed products, services and trade marks must not be unduly prominent. As made clear in the guidance on Section Nine, the level of prominence given to a product, service or trade mark will be judged against the editorial context in which it appears.

In this case, the programme included numerous references to a furniture retailer, with the director of the company appearing as the only guest and the company's products given away as competition prizes. We considered whether there was sufficient editorial justification these references.

We accept that it is common in chat shows for presenters and guests to discuss aspects of a guest's life and career. As referenced above, it is also usual for competition prizes to be described in a level of detail that enables viewers to determine whether they wish to enter. However, any references to commercial products or services should be appropriately limited so as not to become promotional or unduly prominent: this is especially important when the references result from a commercial arrangement (as in this case), to avoid the impression that the commercial arrangement is driving the editorial content of the programme.

The overall focus of the programme was the competition and the history and products of the furniture retailer. There were no other subjects covered, which may have provided some balance to prevent the programme from giving undue prominence to the brand.

Ofcom acknowledged the presenter's comments outlined in the Licensee's response (as set out in the Response section). However, we considered that these comments were not sufficient to mitigate the repeated and extended references to the retailer and its products. Our Decision is therefore that the programme gave undue prominence to Leather Sofa World.

Rule 9.14

Rule 9.14 applies to programmes produced or commissioned by the broadcaster (or any person connected to it). It requires that viewers are made aware when product placement features in programmes through the display of a universal logo, which must be shown at the beginning and end of the programme and also when it resumes after advertising breaks².

² For more information, see the [Section Nine guidance](#).

In this case, *Zee Companion* was produced by the Licensee and Rule 9.14 therefore applied. The programme did not include the universal logo at any of the required junctures and our Decision is therefore that the programme was in breach of Rule 9.14.

Ofcom acknowledged the steps taken by the Licensee to address these compliance issues. However, for the reasons set out above our Decision is that the programme was in breach of Rules 9.9, 9.10 and 9.14 of the Code.

Breaches of Rules 9.9, 9.10 and 9.14

Resolved

Jeremy Vine

Channel 5, 28 January 2019, 09:15

Introduction

Jeremy Vine is a topical magazine programme broadcast live on weekday mornings on Channel 5. The licence for Channel 5 is held by Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee").

The programme is presented by Jeremy Vine. It features a panel of guests who discuss various news items. Viewers are also invited to participate in discussions, via telephone and social media.

A viewer alerted Ofcom to offensive language in the above programme during a discussion about President Trump's state visit to the UK. At 10:13, a caller named Emily was put to air and the following exchange took place:

Emily: *"People go out on the streets protesting about our government, about the American government, and then our government is a fucking mess..."*

Jeremy Vine: *"Oh, don't. You can't do that. We're sorry that Emily swore"*.

The call was terminated immediately.

Jeremy Vine went on to say: *"I've got to say sorry about the swear word. We apologise unreservedly for any offence caused by the language. It was unacceptable...This is a very long apology...We do our best to avoid such language causing offence, but we're all human – again apologies. OK, that's a very long-winded way of saying we're sorry. That's killed the atmosphere! That was the longest apology ever. OK, it was quite bad, but you know..."*

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

Rule 1.14: *"The most offensive language must not be broadcast before the watershed"*.

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

Response

Channel 5 said *"Jeremy Vine* is one of very few Current Affairs programmes on UK television with live phone-ins", arguing that there is a "clear public interest value" in providing viewers with the "broadest possible opportunity to contribute to [the programme's] debates with the least amount of filtering".

The Licensee explained that the programme is made by ITN productions ("ITN"). It said that a number of factors are considered in deciding who gets put through to air, providing details of these procedures:

- Emily's phone number was checked against a software system which flags previous problem callers;
- a member of the production team spoke to Emily to determine that her views were "relevant and appropriate for discussion on air"; and
- Emily had explained to her what constituted acceptable behaviour, and on two occasions was instructed not to swear.

Channel 5 said: "Emily did not use any offensive language before being put on air or give any indication that she was likely to do so if chosen to appear on air". It added that despite its "standard procedures" being followed, "the caller unpredictably went on to use offensive language in a colloquial manner".

Channel 5 added that it "did not believe that it was [Emily's] intention to do so or that she was a malicious caller". It also said: "[A]s per our strict protocol, Emily was immediately cut off and Jeremy Vine gave a swift apology saying he was sorry for the swearing and for any offence it may have caused viewers. After that section, approximately 90 seconds later, Jeremy Vine apologised again issuing a formal apology to viewers".

The Licensee explained that an external lawyer was present during the incident, to ensure that protocol was followed, including an apology being given. It said that following the incident, steps were taken to ensure that the offensive language was not repeated when the programme was transmitted an hour later on Channel 5+1. In addition, Channel 5 said that the caller's telephone number has now been blocked, so that it cannot be used to contact the programme again.

Finally, the Licensee said that it "apologises unreservedly to any viewer who was offended by the language used".

Decision

Reflecting our duties under the [Communications Act 2003](#), Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 requires that the most offensive language must not be broadcast before the watershed on television. Ofcom's [2016 research on offensive language](#) clearly indicates that the word "fuck" is considered by audiences to be among the most offensive language. The inclusion of the word in this programme at 10:13 was therefore a clear example of the most offensive language being broadcast before the watershed.

Programmes which feature live interaction with viewers clearly carry an increased risk of offensive language being used on air. Broadcasters should have procedures in place to minimise this risk, as far as practicable. In this case, the Licensee had taken a number of steps in advance to minimise the risk of offensive language being broadcast, and followed its protocol for handling such incidents once it occurred, including terminating the call immediately and issuing an on-air apology.

We took into account that this is the second time the most offensive language has been broadcast before the watershed in this programme across a short time period. However we acknowledged that the circumstances were different in [the previous case involving the programme broadcast on 24 October 2018](#).

Given the live nature of this programme and the steps the Licensee had put in place and followed in this case, including the on-air apology, Ofcom's Decision is that this matter is resolved.

However, given the recent previous case in this area, should a similar compliance issue arise we may consider requesting the Licensee attends a meeting to discuss its compliance procedures for this programme.

Resolved

Broadcast Licence Conditions cases

In Breach

Provision of information

Khalsa Television Limited

Introduction

KTV is a television channel broadcasting to the Sikh community in the United Kingdom. The licence for KTV is held by Khalsa Television Limited ("KTV" or "the Licensee").

Ofcom received two complaints relating to the promotion of products or services in two different episodes of the programme *Health Time* broadcast on KTV on 16 November 2018 and 23 January 2019.

Ofcom requested background information in relation to the programme from the Licensee on 28 November 2018, in order to assist us in our assessment of the complaint about the episode broadcast on 16 November 2018. The Licensee did not provide the information requested.

Ofcom requested this information from the Licensee again on 24 January 2019, after receiving a complaint about the episode of the programme broadcast on 23 January 2019. Again, the Licensee did not provide the information requested.

On 4 February 2019, we wrote to the Licensee explaining that the information requested by Ofcom was still outstanding. The Licensee again failed to provide the information requested.

On 14 February 2019, we formally requested the information in accordance with Licence Condition 12(1) ("General provision of information to Ofcom"), which states that the Licensee:

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

The Licensee failed to submit the required information by the final deadline of 19 February 2019.

We requested comments from the Licensee on how it was complying with this condition.

Response

The Licensee did not respond to Ofcom's request for comments.

Decision

The Licensee failed to provide the information requested within the deadlines set by Ofcom. Ofcom's Decision is therefore that there was a breach of Licence Condition 12(1).

Breach of Licence Condition 12(1) of the Television Licensable Content Service Licences held by Khalsa Television Limited (Licence number TLCS101501).

In Breach/Resolved

Provision of information: Diversity in Broadcasting *Various licensees*

Introduction

Ofcom has a statutory duty under the Communications Act 2003 to take all such steps, as we consider appropriate, for promoting equality of opportunity in relation to employment and training by broadcasters, in terms of three of the 'protected characteristics' in the Equality Act 2010: gender, racial group and disability.

We wrote to all radio licensees in November 2018 requiring them to submit information to Ofcom in relation to the number of people employed in connection with the provision of their broadcast service and the number of days per year for which they are licensed to broadcast. This information was to determine if the licensees met the threshold¹ requiring them to complete a more detailed questionnaire on their employees and equal opportunities arrangements.

We requested this information in accordance with the Licence Condition "General provision of information to Ofcom"² which states:

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

Failure by a licensee to submit this information when required represents a breach of a broadcast licence, as it means that Ofcom may be unable to properly carry out its regulatory duties.

In Breach

The following licensees failed to submit the required information. These licensees have therefore been found in breach of Licence Condition 8(1) of their Local Digital Sound Programme licence or National Digital Sound Programme licence.

Licensee	Service Name	Licence Number
Central Air Radio Ltd	Radio XL (Birmingham)	DP000011
French Radio London Ltd	French Radio London	DP000143
		DA000031
Radio Yorkshire Limited	Radio Yorkshire	DP100203
Sara-Int Limited	Polish Radio London 24	DP000113

¹ Licensees employing more than 20 people in connection with the provision of their licensed services and authorised to broadcast for more than 31 days a year.

² Licence Condition 8(1) in Local Digital Sound Programme licences and National Digital Sound Programme licences and Licence Condition 9(1) in Community Radio licences, Local Sound Broadcasting licences and Radio Licensable Content Service licences.

This is Electric Limited	This is Electric (for small scale DAB)	DP101682
Timeless Radio Ltd	Timeless Radio	DP101892
Vinejuice Limited	Vinejuice Radio	DP102046

The following licensees failed to submit the required information. These licensees have therefore been found in breach of Licence Condition 9(1) of their Community Radio licence or Local Sound Broadcasting licence.

Licensee	Service Name	Licence Number
Afro Caribbean Millennium Centre	New Style Radio 98.7 FM	CR000037
Betar Bangla Ltd	Betar Bangla Radio	CR000222
B.R.F.M. Bridge Radio Limited	BRFM 95.6 FM	CR000107
Central Air Radio Ltd	Radio XL	AL000171
Community Broadcast Initiative Tyneside Ltd	NE1 FM 102.5	CR000050
Lochbroom FM Limited	Lochbroom FM	AL100667
Preston Community Radio 23	Beat Radio	CR000158

The following licensees failed to submit the required information. These licensees have therefore been found in breach of Licence Condition 8(1) of their Local Digital Sound Programme licence or Licence Condition 9(1) of their Radio Licensable Content Service licence respectively. This is the second time that these licensees have breached these Licence Conditions for non-provision of diversity data. We therefore consider these breaches to be serious and repeated, and are putting these licensees on notice that this contravention of their licences will be considered for the imposition of a statutory sanction.

Licensee	Service Name	Licence Number
Antenna Media Limited	Antenna Radio	DP101590
Radio Khushkhabri Limited	Radio Khushkhabri	RLCS000128

Resolved

The following licensees failed to submit the required information in accordance with the deadline, but subsequently submitted a late return. For these licensees, we therefore consider the matter resolved.

Licence Condition 8(1) of a Local Digital Sound Programme licence or National Digital Sound Programme licence:

Licensee	Service Name	Licence Number
An individual	Core Radio Cambridge (for small scale DAB trial)	DP101307
Awesome Enterprises Limited	Awesome Radio	DN101370
Crackers Radio Limited	Crackers Radio	DP102690
GGFC UK Limited	Ahomka	DP101173
Huntingdon Community Radio (Media) Limited	HCR104fm	DP102632

Live Channel Cornwall Limited	Goldmine	DP102555
Lyca Media II Limited	Athavan Radio	DP100393
	Lyca Dil Se 1035 (Greater London)	
	Lyca Radio 1458 (Greater London)	
	Lyca Radio UK	DN102211
Matreshka Media House Ltd	Matryoshka Radio	DP100722
MCR Live Limited	MCR Radio (for small scale DAB)	DP101353
Meyhem Media Limited	Metal Meyhem Radio	DP102357
North West Media Limited	Unity Radio (for Small Scale Trial DAB)	DP101147
Oidar Ltd	Rathergood Radio	DP101222
Vive Media Limited	Colourful Radio	DP101776

Licence Condition 9(1) of a Community Radio licence, Local Sound Broadcasting licence or Radio Licensable Content Service licence:

Licensee	Service Name	Licence Number
Alias Music and Community Projects C.I.C.	1BN	CR101282
Ambient FM Limited	Ambient-Chill	RLCS102517
	Ambient-Chill	RLCS102517
	Ambient-Plush	RLCS102523
Ambur Community Radio Limited	Ambur Radio	CR000175
	Ambur Radio	CR000175
	Ambur Radio	CR000175
Calon Communications Limited	Calon FM	CR000091
Commedia Sheffield	Sheffield Live! 93.2 FM	CR000083
East Coast FM (SCIO)	East Coast FM	CR000259
Gloucester FM	Gloucester FM	CR000054
GGFC UK Limited	GN RADIO	RLCS000141
Huntingdon Community Radio (Media) Limited	HCR FM	CR000199
Kemet Radio Limited	Kemet Radio	CR000016
Liberty Radio Ltd	Liberty Radio	RLCS000143
Lyca Media II Limited	Lyca Dil Se 1035	AL000160
	Lyca Radio 1458	AL000156
Lyca Media II Limited	Time 107.5	AL100803
Nevis Community Radio Limited	Nevis Radio	CR000262
North West Media Limited	Unity Radio	CR000187
Oban FM Community Radio Limited	Oban FM	AL101041
Phoenix Radio Limited	Phoenix FM	CR000022
Radio Ashford Limited	Radio Ashford	CR000201
Radio Nova Limited	Nova FM	CR100520
Radio Warrington C.I.C.	Radio Warrington	CR100137
Sunny Govan Community Media Group	Sunny Govan Radio	CR000018

The Heartland Radio Foundation Limited	Heartland FM	AL000133
Tircoed Village Trust	Radio Tircoed	CR000111
Vectis Radio Limited	Vectis Radio	CR101286
Western Isles Community Radio Ltd	Isles FM	AL100768
Wythenshawe Community Media	Wythenshawe FM	CR000024

Broadcast Fairness and Privacy cases

Not Upheld

Complaint by Symphony Environmental Technologies PLC, made on its behalf by Himsworth Scott Limited BBC News, BBC 1, 19 July 2018

Summary

Ofcom has not upheld this complaint by Symphony Environmental Technologies PLC ("Symphony"), made on its behalf by Himsworth Scott Limited ("Himsworth Scott"), of unjust or unfair treatment in the programme as broadcast.

The programme included a report about oxo-degradable plastics and the European Commission's concerns about, and possible ban of, these products. Himsworth Scott complained that Symphony was treated unjustly or unfairly in the programme as broadcast because the programme included allegations that Symphony had made false and misleading claims about the performance of its products in order to make commercial gain. It also complained that Symphony was not provided with an appropriate opportunity to respond to the allegations made against the company in the programme.

Ofcom considered that:

- The broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in a way that was unfair to Symphony.
- Symphony was provided with an appropriate and timely opportunity to respond to the allegations made in the programme and that its response was fairly reflected in the programme.

Programme summary

On 19 July 2018, BBC 1 broadcast an edition of *BBC News*, its national evening news programme. At the beginning of the programme, the presenter introduced the news stories that the programme would cover. Referring to the item on Symphony, the presenter said:

"Can a plastic bag ever be fully biodegradable? We have a special report".

Footage of plastic waste on a beach was shown.

Later in the programme, the presenter introduced the news item, and footage of plastic waste was shown. She said:

"Plastic bags that biodegrade to nothing. It sounds like a perfect solution to the problems of plastic pollution. A British company, which makes what are called oxo-biodegradable bags, say they break down in the environment like a leaf, only quicker, and the technology is being widely used across Africa and the Middle East. So, if they are that good, why are they facing a possible ban by the European Commission?"

The report began by showing footage of the manufacturing process of oxo-biodegradable bags, and Symphony's logo was shown on the side of one of the machines. The reporter said:

"Is this a solution to the plastics crisis? Ordinary plastic with a simple chemical additive. Its makers call it oxo-biodegradable. One of the manufacturers is a British company. Its product is called d2w".

The report then showed a clip of an interview with Symphony's CEO, Mr Michael Laurier. He said:

"You know this is going to convert, basically organically, to materials similar to a leaf. It couldn't be better".

Part of a Symphony promotional video was then shown, featuring time-lapse footage of the breakdown of d2w plastic. The reporter continued:

"They have promotional videos and big-name supporters. Here's environmentalist Chris Packham on the BBC's One Show".

Mr Packham was shown saying:

"There are technologies out there. Now, oxy-biodegradable plastics, which will break down very rapidly".

A tweet posted by Mr Packham was then shown:

"Just popped in to see some old friends @SymphonyEnv as they produce remarkable biodegradable plastics – an essential part of the suite of technologies we need to address plastic pollution. It doesn't fragment into micro plastics it decays into organic molecules. #environment".

The reporter said:

"What he didn't declare on the programme, he's one of Symphony's paid advisors. The BBC says he's done nothing wrong, and he didn't want to talk to us about it".

Footage was shown of d2w plastic bags being used abroad, and of police officers seizing ordinary plastic bags. The reporter continued:

"d2w is now being used in many countries. Here in the Ivory Coast in west Africa, for example, where even water is sold in plastic bags, millions per day. They've banned normal bags, encouraging people to use oxo from manufacturers around the world, including the British d2w. And they even have a special police unit, whose job is to track down and seize ordinary plastic. Look at this. It's not popular, but that's the law".

The reporter was then shown standing on the coastline holding some plastic. He said:

"Hundreds of millions of plastic bags get into the rivers and oceans every year. This technology is meant to provide a solution. If you chuck this away, manufacturers say that within about two years, it will break down to nothing, on land or at sea. But does it really? Here's one way to find out".

Footage filmed from within a plastic bag entering and then being removed from the sea was shown. Professor Richard Thompson was shown retrieving the bag and said: *"quite a lot of marine life on here now, after several years in the sea"*. The reporter continued:

"Thousands of miles away, hanging in the water, bags placed in the sea at Plymouth University".

Professor Thompson was shown inspecting the bag, and said:

"It's a bag that's labelled as d2w. We've had these bags in the sea for more than two years now. I mean, probably still strong enough to carry your shopping home in it".

Professor Thompson was then shown looking at a bag under a microscope. The reporter said:

"What's more, scientists fear, when they do break down, they may create tiny pieces. Under the microscope, a bag that's more than ten years old".

Professor Thompson said:

"It's degraded as a carrier bag, you could no longer carry your shopping in it, that bit's true. But, is this an environmental solution, that what we've now got is millions and millions of very small pieces of plastic?"

Footage of the manufacturing process was shown again, with the following captions shown while the reporter was speaking: *"no evidence oxo-degradable plastic will fully biodegrade in a reasonable time"*, *"misleading claims to consumers"*, *"potential increase in littering"* and *"not a solution for the environment"*. The reporter continued:

"The European Commission agrees and is moving to restrict or may even ban oxo-products across the EU. It says that there is no evidence oxo-degradable plastic will fully biodegrade in a reasonable time. The EU's report refers to misleading claims to consumers and warns of a potential increase in littering. It concludes that oxo-degradable technology is not a solution for the environment".

Footage of the interview with Mr Laurier was shown. He said: *"when they say: 'we're going to ban oxo-degradable'"*, before the reporter said:

"That's just bad science, according to one British manufacturer. It insists the product does fully biodegrade".

Mr Laurier then said:

"This is what we describe as an insurance policy. If it ends up in the environment, it probably wouldn't even get to the ocean as a piece of plastic, it would probably end up in the ocean as a biodegradable material. But, if you do just drop it in the ocean, which has been our studies, we've shown, versus non-degradable products, that it degrades and biodegrades an awful lot faster than conventional plastics".

Footage of plastic waste in the Ivory Coast was then shown, and the reporter concluded the report:

"In Ivory Coast, the debate has moved on. The government is now talking about banning all plastic bags, including oxos. The solution here then, not better plastic, but no plastic at all".

No further reference was made to the complainant in the programme.

Summary of the complaint and the broadcaster's response

Complaint

Himsworth Scott complained that Symphony was treated unjustly or unfairly in the programme as broadcast because:

- a) The programme included "false and highly damaging" allegations that Symphony had made false and misleading claims about the performance of its d2w product in order to make commercial gain. Himsworth Scott said that the allegations were "of the utmost seriousness", as they accused Symphony of dishonesty and claimed that its d2w product, designed to accelerate the conversion of plastics into biodegradable materials if they get into the open environment, "simply does not work in the way described". Himsworth Scott said these allegations had misled viewers, resulted in damage to Symphony's reputation, and caused Symphony serious financial harm.
- b) Symphony was not provided with an appropriate and timely opportunity to respond to the allegations made about it in the programme. In particular, Himsworth Scott said that the claims of Professor Thompson in the programme "were simply not put to [Symphony] in advance", and if they had been done so, Symphony would have "been in a position to debunk his claims".

Broadcaster's response

- a) The BBC said that there was an ongoing debate within the scientific community, and more widely, about the potential benefits and drawbacks of oxo-degradable plastic and plastic bags. It said that the claims made by manufacturers such as Symphony about the extent to which oxo-degradable plastics convert to carbon dioxide, biomass and water in a real-world situation were disputed by some scientists and by bodies such as the European Commission, and that some experts argue that "there is no persuasive or conclusive evidence oxo-degradable plastic is fully biodegradable".

The BBC said that the presumption of the European Commission is that these plastics will not fully biodegrade in the natural world, and pointed to the findings of the European Commission's January 2018 report on the impact of oxo-degradable plastic on the environment, which stated that:

"It is undisputed that oxo-degradable plastic, including plastic carrier bags, may degrade quicker in the open environment than conventional plastic. However, there is no evidence that oxo-degradable plastic will subsequently fully biodegrade in a reasonable time in the open environment, on landfills or in the marine environment...A wide range of scientists, international and government institutions, testing laboratories, trade associations of plastics manufacturers, recyclers and other experts have therefore come to the conclusion that oxo-degradable plastics are not a

solution for the environment and that oxo-degradable plastic is not suited for long-term use, recycling or composting”.

The BBC said that the European Commission also launched a ‘European strategy for plastics’ in January 2018, and that the factsheet issued to mark the launch noted that:

“As regards so-called oxo biodegradable plastics, there is no evidence that they offer any advantages over conventional plastics. They do not biodegrade and their fragmentation into microplastics causes concern. Taking into account these concerns, the Commission will start work to restrict the use of oxo-plastics in the EU”.

The BBC said that there was therefore clear editorial justification for examining the contrasting claims made about oxo-degradable plastic bags, and to consider the evidence presented on both sides. The BBC said that, in light of growing public concern about plastic pollution, it sought to examine the European Commission’s proposal to restrict the use of oxo-degradable plastic. It said that, as Symphony’s CEO, Mr Laurier, had acknowledged in an online statement published the day after the BBC report was broadcast that: “it is legitimate for the BBC reporter to question whether d2w technology actually works”.

However, the BBC said that it rejected Mr Laurier’s claim that: “the BBC coverage did not...fairly present the scientifically proven benefit of oxo-biodegradable technology”. It said that the news report accurately and fairly reflected the views of Symphony about its product, as one of the leading manufacturers of oxo-degradable plastic, as well as the concerns of scientists and organisations responsible for the environment and human health. It said that this ensured the report met the requirements for fairness by adequately and appropriately requesting relevant views and ensuring no material facts were omitted. The BBC said that the report presented both sides of the debate in a duly accurate and duly impartial way, and that it treated all contributors, including Symphony, in a fair and reasonable manner.

The BBC said that there was a significant body of expert opinion which had challenged the claims made by manufacturers and which had raised concerns about the science relied upon by manufacturers to demonstrate effective degradation of oxo-degradable plastic in real world situations. It provided Ofcom with several examples of studies and reports from organisations, such as the European Commission, the UK’s Department for Environment, Food and Rural Affairs, and the United Nations, that “rebut the claims of manufacturers”, which it said “clearly indicate relevant organisations and scientists have serious and long-term concerns about the genuine benefits of oxo-degradable plastic” and about the claims made by manufacturers about their products. The BBC said that it was required to adequately and fairly reflect the full range of views on the subject, and that the report gave due weight to the claims made by manufacturers (such as Symphony) while also referring to the significant issues identified by scientists and bodies such as the European Commission.

The BBC said that the introduction to the report as broadcast summarised the positive claims Symphony made about its product and told viewers that oxo-degradable plastic was widely used in many parts of the world. It said that the report began with a contribution from Mr Laurier in which he summarised the fundamental benefits of d2w. It said that the report also included footage from one of Symphony’s promotional videos

which demonstrated the breakdown of oxo-degradable plastic, as well as an endorsement for d2w by the environmentalist, Mr Packham. It said that the reporter then explained that oxo-degradable plastic was used in many countries across the world, and that the report included footage from the Ivory Coast where the reporter explained that the government had banned normal plastic bags and was *"encouraging people to use oxo from manufacturers across the world, including the British d2w"*.

The BBC said that the reporter then accurately summarised a key claim made by manufacturers such as Symphony, specifically that oxo-degradable plastic *"will break down to nothing"* within *"about two years"*. The BBC said that the complainant said that the reference to *"within about two years"* was misleading because Symphony had said in its letter to the BBC on 28 August 2018 that its bags will *"become biodegradable under normal conditions in the open environment within a period of two to five years (far quicker than ordinary plastic)"*. However, the BBC said that the complainant had not provided any evidence to support this timescale, and that there did not appear to be any reference on Symphony's website to the period over which it claimed d2w bags will degrade. The BBC said that it considered the wording used by the reporter was duly accurate and fair for the following reasons:

- The reporter was referring to oxo-degradable plastic in general, rather than specifically to d2w. The BBC said this was clear from the fact that the reporter was standing on the shore line in the Ivory Coast surrounded by discarded plastic, and because he used the following language: *"hundreds of millions of plastic bags get into rivers and oceans every year"*.
- The fundamental point that viewers would have taken from the reporter's piece to camera was that manufacturers claimed that oxo-degradable bags break down in the open and marine environment in a matter of years, far quicker than normal plastic which can take hundreds of years to degrade. The BBC said that this was an accurate representation of the claims made by the oxo-degradable plastics industry.
- Symphony's promotional video used in the report clearly stated that the timescale for degradation can be *"tailored and adjusted at will"*. The BBC said that the programme stated: *"...by adjusting the formulation of the d2w we can programme longer or shorter periods of fitness for purpose in the plastic product"*.
- The oxo-degradable plastics industry did not present a consistent timescale when promoting oxo-degradable plastic.

The BBC said that the next section of the report considered the *"significant concerns"* of various scientists and organisations, and that it did not accept that there was any unfairness to Symphony by ensuring that material facts were included about the *"apparent failure of oxo-degradable plastic to undergo full biodegradation within a reasonable timeframe in an open or marine environment"*. The BBC said that it was necessary and appropriate to ensure that viewers were aware of other significant points of view, such as concerns that oxo-degradable plastic will fragment and increase the risk of microplastics accumulating in the environment, including in water. The BBC said that Professor Thompson's contribution was included to reflect this *"significant strand of opinion"*.

The BBC said that in the complainant's letter to the BBC dated 28 August 2018, it said that Professor Thompson's experiment "subjects the bags to conditions which are completely unnatural" and that "in those conditions the bag would not be expected to degrade within two years". The BBC said that this "appears to be at odds" with Symphony's public statements about its d2w bags. It said that the evidence indicated that Symphony "does not publicly acknowledge there may be potential situations or circumstances which might prevent its oxo-degradable plastic from fully biodegrading". The BBC said that Symphony was "unequivocal" that its d2w products "will degrade and biodegrade until there is nothing left". The BBC said that it appeared that Symphony had now "shifted its ground in order to contest the validity of Professor Thompson's observations", and that it now argued that "there are circumstances in which its oxo-degradable plastic will not break down [emphasis added by BBC]".

The BBC said that it was Professor Thompson's view that bags made from oxo-degradable plastic may break down over time, but the result appeared to be millions of fragments of plastic (rather than a single plastic bag). It said that Professor Thompson believed that oxo-degradable plastic could not be considered a solution to plastic pollution because there was no demonstrative evidence that the fragments would biodegrade. The broadcaster said that it considered that it would have been clear to viewers that Professor Thompson was expressing an informed opinion based on his research and experiments. The broadcaster said that it did not accept the complainant's allegation that Professor Thompson's views were broadcast uncritically, and it said that viewers were able to judge Professor Thompson's contribution based on its merits in the same way that Mr Laurier was given an opportunity to explain the benefits of Symphony's products, and assert that a bag made with d2w "*is going to convert basically, organically, to materials similar to a leaf*", the BBC said with the "clear implication" that oxo-degradable plastic was environmentally friendly. The BBC said that it also did not believe that it was unfair to Symphony to summarise the results of a scientific test carried out on d2w products. It said that Professor Thompson's conclusions were "shared by many other scientists working in this area" and that they mirrored the concerns of the European Commission.

The BBC also said that the report concluded by giving Mr Laurier an opportunity to respond to the general concerns raised by the European Commission about oxo-degradable plastic, and to refer to the evidence of Symphony's own studies.

The BBC said that it did not accept the complainant's assertion that viewers would have reasonably inferred that the comments included in the programme from the European Commission's report referred specifically or only to Symphony. The BBC said that it was clear from the context that the European Commission was considering restricting or banning oxo-products across the EU, and that its concerns about oxo-degradable plastics would therefore apply to all oxo-products rather than just d2w products. The BBC said it was not reasonable to suggest that viewers would have understood the European Commission's conclusion that "*oxo-degradable technology is 'not a solution to the environment'*" to have been referring solely to Symphony, or that Symphony had claimed its product was "*a solution for the environment*".

The BBC concluded that the report was about the European Commission's decision "to start a process to restrict the use of oxo-plastics in the EU", that viewers were presented with both sides of the ongoing debate, and that due weight was given to significant views. It said that Mr Laurier's contribution clearly and accurately reflected Symphony's

claims about the benefits of d2w and the science that supported this view. It said that the report also reflected the informed opinion of scientists and organisations which challenged the claims made by Symphony and other manufacturers about oxo-degradable plastic. It said that the report presented the material facts about oxo-degradable plastic in general and allowed viewers to draw their own conclusions based on the evidence.

- b) The BBC said that the programme makers initially contacted Symphony by email on 9 April 2018 to request an on-camera interview and set out the areas they wished to discuss (a copy of this email was provided to Ofcom). The broadcaster said that, in this email, the programme makers set out clearly the scope of the report and referred specifically to the European Commission's decision to consider restricting the use of oxo-degradable plastic and, in particular, plastic bags made using oxo-technology. The BBC said that it received a response later that day from Mr Michael Stephen, deputy Chairman of Symphony, which indicated that he fully understood the nature and scope of the BBC's report, and was aware of the concerns raised about oxo-degradable plastic. The BBC said that, in particular, it was clear that Mr Stephen understood that the programme makers wished to discuss the degradation of oxo-degradable plastic in the marine environment.

The BBC said that, therefore, it did not accept that Symphony was unaware of the scope of the report, or that it was given insufficient information to provide an informed contribution. It said that Symphony could be in no doubt that the degradation of oxo-degradable plastic in the marine environment is one of the major concerns of the European Commission. It also said that Symphony was fully aware of the scientific arguments put forward by the people such as Professor Thompson which support and reinforce those concerns.

The BBC said that Professor Thompson's contribution represented a "significant strand of well-documented and published scientific opinion concerned about the apparent failure of oxo-degradable bags to fully degrade in the marine environment". It said that Professor Thompson was a recognised and credible expert in this field and that his comments in the report were in line with the concerns set out by bodies such as the European Commission. The BBC said that it considered that viewers would have understood Professor Thompson to have been included in the report to illustrate and articulate those significant concerns.

The BBC said that Symphony was familiar with the evidence relied upon by Professor Thompson and others and was therefore able to offer an informed response. It said that there was no particular requirement to offer Symphony a specific right of reply to what Professor Thompson said. The BBC said that this was sufficient to ensure that the report accurately represented Symphony's views, reflected the science they were based upon, and presented them in the appropriate context.

The BBC said that, in the programme as broadcast, Mr Laurier gave a clear explanation of the benefits of d2w, including that a d2w plastic bag "*is going to convert, basically organically, to materials similar to a leaf. It couldn't be better*". The BBC also said that the reporter summarised Mr Laurier's opinion about the research relied upon by the European Commission, namely that it was "*bad science*", and reported Mr Laurier's view that "*the product does fully biodegrade*". It said that the report ended with a further contribution from Mr Laurier, in which he made it clear that Symphony's scientific

studies had demonstrated successful degradation, with particular reference to the marine environment.

The BBC said that it therefore did not consider that there was any persuasive evidence to support Symphony's claim that it was not given an appropriate or timely opportunity to respond to the concerns raised by the European Commission and others about oxo-degradable plastic in the programme.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Both parties made representations which are summarised, insofar as they are relevant to the complaint as entertained and considered by Ofcom, below.

Complainant's representations

Himsworth Scott said on behalf of Symphony that it disagreed with Ofcom's Preliminary View not to uphold the complaint. It said that Ofcom had failed to take account of Practice 7.3 of the Code when making its decision. Practice 7.3 states:

"Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

...

- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions..."

Himsworth Scott said that Symphony should have been informed of the contribution of Professor Thompson and the nature of it. Himsworth Scott said that this should have included the allegations which Professor Thompson intended to make about Symphony's product, and that Symphony should have been given the opportunity to respond. Himsworth Scott said that while some of the allegations made against Symphony were put to it prior to the broadcast of the programme, and that it commented on these, the nature of the allegations made in the programme "...went beyond those allegations and made unmistakable assertions of fact (that our client's product does not in fact work as claimed and that it had therefore misled consumers) which is a much more serious and significant allegation".

Himsworth Scott said that therefore Symphony should have been given an appropriate and timely opportunity to respond. It said that Symphony was not afforded that opportunity which resulted in unfairness to it.

Broadcaster's representations

The BBC said that: the programme was based on sound evidence; Symphony was given a reasonable opportunity to respond; and, its response was fairly and accurately reflected in the programme.

The BBC said that its understanding of Practice 7.3 of the Code was that the requirement for contributors to be "informed about the areas of questioning and, wherever possible, the

nature of other likely contributions [the BBC's emphasis]" did not mean that contributors had to be told the specific identity of other contributors or the precise details of their contribution. The BBC said that in this case it was sufficient to ensure Symphony understood the nature and scope of the programme and the intention to discuss the widespread concerns which had been raised about the use of oxo-degradable plastic and plastic bags made using oxo-technology. The BBC said that these points were clearly set out in the programme makers' email of 9 April 2018 and acknowledged by Symphony in its response the same day.

The BBC said that it did not accept that the decision to interview Professor Thompson and include a contribution from him in the programme led to any unfairness to Symphony. It said that Symphony was made aware and acknowledged the programme would consider the concerns of informed and expert bodies about oxo-degradable plastic. It said that it rejected any claim that the views of Professor Thompson or the conclusions drawn from his research went beyond the allegations put to Symphony in the making of the programme. The BBC said that the programme makers had put the specific concerns raised by the European Commission to Symphony's Chief Executive in his interview and that they were broadly the same as those set out by Professor Thompson in the programme.

The BBC said that it maintained that Symphony was given an appropriate opportunity to respond, that the allegations included in the programme were put to Symphony, and that its response was accurately and fairly reflected in the programme. It said that the allegations did not go beyond those made in the European Commission's report and that the programme therefore met the requirements of the Code.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting documentation. Ofcom also took careful account of the representations made by the parties in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of these representations, we considered that the points raised by both parties did not materially affect the outcome of Ofcom's decision not to uphold the complaint.

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 Ofcom's Broadcasting Code ("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) Ofcom first considered the complaint that Symphony was treated unjustly or unfairly in the programme as broadcast because the programme included allegations that Symphony had made false and misleading claims about the performance of its d2w product in order to make commercial gain.

In considering this head of complaint, we had particular regard to Practice 7.9:

“Before broadcasting a factual programme, including programmes examining past events, 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 an individual or organisation...”.

It is important to note that Ofcom is unable to make findings of fact on the matters reported in the programme. Our role is to consider whether, by broadcasting the programme, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to Symphony. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they were presented in the programme. Therefore, Ofcom began by considering whether the comments complained of had the potential to materially and adversely affect viewers' opinions of Symphony in a way that was unfair.

We considered the nature of the material included in the programme, as set out in detail above in the “Programme summary”. In particular, we took into account that, when introducing the report, the presenter said: *“so, if they [oxo-degradable plastic bags] are that good, why are they facing a possible ban by the European Commission?”* We also took into account that the programme included Professor Thompson's view that: *“It's degraded as a carrier bag, you could no longer carry your shopping in it, that bit's true. But, is this an environmental solution, that what we've now got is millions and millions of very small pieces of plastic”*. We also took into account that the reporter explained the European Commission's position: *“The European Commission agrees and is moving to restrict or may even ban oxo-products across the EU. It says there is no evidence oxo-degradable plastic will fully biodegrade in a reasonable time. The EU's report refers to misleading claims to consumers and warns of a potential increase in littering. It concludes that oxo-degradable technology is not a solution for the environment”*.

In our view, it was clear that the programme questioned whether oxo-degradable bags, including d2w bags, were as biodegradable as manufacturers, such as Symphony, claimed and whether manufacturers had potentially misled consumers about their products. We considered that this amounted to significant allegations about manufacturers' claims that had the potential to materially and adversely affect viewers' opinions of Symphony.

We next considered whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Symphony.

We took into account the questions raised in the programme about Symphony and its d2w products through the inclusion of Professor Thompson's comments and the European Commission's position on oxo-degradable plastic (see above). However, we also considered that Symphony was given the opportunity to respond to these concerns made in the programme (as detailed below at head b)), and that its response was reflected in the programme.

We took into account that, during the reporter's introduction of oxo-degradable plastic, interview footage of Mr Laurier was shown, in which he said: *"You know this is going to convert, basically organically, to materials similar to a leaf. It couldn't be better"*. We also took into account that immediately following the reporter's explanation of the European Commission's position on oxo-degradable plastics, footage of the interview with Mr Laurier was shown, in which he said: *"when they say: 'we're going to ban oxo-degradable'"*, followed by the reporter saying: *"that's just bad science, according to one British manufacturer. It insists the product does not fully biodegrade"*. Further footage of the interview with Mr Laurier was then shown, in which he said:

"This is what we describe as an insurance policy. If it ends up in the environment, it probably wouldn't even get to the ocean as a piece of plastic, it would probably end up in the ocean as a biodegradable material. But, if you do just drop it in the ocean, which has been our studies, we've shown, versus non-biodegradable products, that it degrades and biodegrades an awful lot faster than conventional plastics".

We considered that, through the inclusion of interview footage of Mr Laurier, viewers were made aware of Symphony's view on its d2w product, namely that it *"biodegrades an awful lot faster than conventional plastics"*, and of its view that the European Commission's position on oxo-degradable plastic was *"bad science"*. Taking the news report in its entirety, we considered that the opposing views on oxo-degradable products were fairly presented in the programme and that viewers were provided with sufficient information to be able to form their own opinion on the claims made about Symphony and its d2w bags.

Taking all the above factors into account, therefore, it was Ofcom's view that, in the particular circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Symphony.

- b) Ofcom next considered the complaint that Symphony was not provided with an appropriate and timely opportunity to respond to the allegations made about it in the programme, and in particular, the contribution made by Professor Thompson.

In considering this head complaint, we had particular regard to Practice 7.11 of the Code:

"If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

We considered that the claims made in the programme about Symphony and its d2w products amounted to significant allegations and that, in accordance with Practice 7.11, the programme makers were required to offer Symphony an appropriate and timely opportunity to respond to the allegations in order to avoid unfairness to it.

We took into account that on 9 April 2018, the programme makers had written to Symphony to explain that they were planning to broadcast a news report about "the use of Oxo technology in plastic bags" and requested an interview with the company about "the EU's decision to begin what it calls a process to 'restrict the use of Oxo-plastics'". The programme makers had also outlined in their email the specific concerns raised by the European Commission:

"We would wish to put to you concerns raised by the European Commission in its January document, the primary concern being that Oxo-biodegradable plastic bags (or Oxo-degradable plastic bags as the Commission refers to them) do not biodegrade 'in a reasonable time'.

The report concluded 'Claims presenting Oxo-degradable plastic as an 'Oxo-biodegradable' solution to littering which has no negative impact on the environment in particular by not leaving fragments of plastic or toxic residues behind, are not substantiated by the evidence'.

The EU stated that 'Oxo-degradable plastic, including plastic carrier bags, may degrade quicker in the open environment than conventional plastic'. It then went on to conclude, 'however, there is no evidence that Oxo-degradable plastic will subsequently fully bio-degrade in a reasonable time in the open environment, or landfills or in the marine environment'.

...

It also raised the issue of 'fragmentation' stating that 'there is a considerable risk that fragmented plastics will not fully biodegrade and a subsequent risk of an accelerated and accumulating amount of microplastics in the environment'".

Later the same day, Symphony's deputy Chairman provided a detailed response to the programme makers' email in which he addressed the concerns raised:

"...In 2016 a sample of oxo-biodegradable plastic which has degraded in seawater was sent to Queen Mary University London, who observed it being consumed by bacteria which are commonly found on land and also by bacteria which are commonly found in the oceans. They see no reason why the bacteria should not continue to consume it until there is nothing left. The oxo-degradable plastic had no adverse effect on the bacteria.

As to timescale, the EU Commission have never said what they regard as a reasonable time. They accept that conventional plastic takes decades...to biodegrade, and this is why there is so much public concern about it...anything which speeds it up must therefore be beneficial. Timescale depends on the particular conditions in the environment, but provided oxygen is present the process is unstoppable.

One thing is certain – that in the same place at the same time the oxo-biodegradable plastic will become biodegradable very much more quickly”.

We also took into account that Symphony had accepted the programme makers' request for an interview, which took place on 5 May 2018. Parts of that interview, with Symphony's CEO Mr Laurier, were included both at the start of and at the end of the report.

We also considered that the programme makers' contact with Symphony prior to the broadcast did not make any reference that the news report would include a contribution by Professor Thompson. We also took into account Himsworth Scott's representations on Ofcom's Preliminary View, in which it asserted that Ofcom had failed to take into account Practice 7.3 and that Symphony should have been informed of the contribution of Professor Thompson and the allegations he intended to make about Symphony's product. However, Ofcom considered that the Code does not stipulate that programme makers must inform contributors of the specific identity and contribution of other contributors to the programme, and, in our view, the contribution of Professor Thompson reflected the general position of some of the scientific community which questioned the claims made by manufacturers about oxo-degradable plastic. His views were largely in line with the position taken by the European Commission which was set out in detail to Symphony by the programme makers in their email of 9 April 2018. We considered that these scientific concerns were well publicised and that it was unlikely that Symphony, and other manufacturers of biodegradable plastic products, would not have been aware of them. Given this, and that fact that Symphony was able to respond to these concerns, not only in an interview with its CEO, but also in correspondence from the company's deputy Chairman, we did not consider it was incumbent on the programme makers to have specifically referred to Professor Thompson in its correspondence in order to avoid unfairness to Symphony.

Therefore, taking all the above into account, it was Ofcom's view that Symphony had been given an appropriate and timely opportunity to respond to the allegations made in the programme and that its response was fairly reflected in the programme. Therefore, Ofcom considered that there was no unfairness to Symphony in this regard.

Ofcom has not upheld Symphony's complaint, made on its behalf by Himsworth Scott, of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr Saifur Rahman

Can't Pay? We'll Take It Away!, Channel 5, 7 September 2016

Summary

Ofcom has not upheld Mr Saifur Rahman's complaint of unwarranted infringement of privacy.

The programme included footage of Mr Rahman in his business premises as he dealt with two High Court Enforcement Agents ("HCEAs") who were there to enforce a High Court Writ against Mr Rahman's company which, it was alleged, owed money to a customer.

Ofcom considered that Mr Rahman had a legitimate expectation of privacy in relation to the broadcast of the footage of him. However, we considered that Mr Rahman had consented to the footage being filmed and broadcast. Therefore, we concluded that his privacy was not unwarrantably infringed in the programme as broadcast.

Programme summary

On 7 September 2016, Channel 5 broadcast an episode of *Can't Pay? We'll Take It Away!*, a series which followed HCEAs as they attempted to resolve debt disputes through negotiated settlements and asset seizures. The programme's narrator introduced the programme:

"What happens when you get into debt...and you can't...or won't pay it back?...We meet the HCEAs who are pushed to their limits...dealing with desperate debtors...in dramatic situations... We meet the people who are losing their homes...and their possessions...Because, whatever happens, if you can't pay...they'll take it away".

This episode included a segment about a printing company, identified in the programme as "Creative Printer", which the HCEAs said owed money to a dissatisfied customer. The narrator introduced the segment:

"Over the last six years there's been a huge increase in cashflow difficulties faced by UK businesses. 100,000 county court judgments were issued against businesses in England and Wales last year".

This caption also appeared: "COUNTY COURT JUDGMENTS WORTH £78 MILLION WERE ISSUED AGAINST BUSINESSES IN ENGLAND AND WALES IN THE FIRST QUARTER OF 2016".

Two HCEAs were shown driving in a van as the narrator said:

"Delroy Anglin ["Del"] and his son Dael are HCEAs. They travel hundreds of miles every week collecting debts and seizing goods. Today they're on their way to a printing company in east London to collect a debt of nearly £2,000 owed to a dissatisfied customer. If the owner of the company, Mohammed Rahman, can't or won't pay today, the agents have the right to seize company assets to off-set the debt".

Both HCEAs were shown entering the premises and explaining through the intercom that they were looking for "Creative Printer". When the door was opened by one of the company's employees, they asked to "speak to the boss". The HCEAs were led upstairs where Mr Dael Anglin introduced himself to Mr Rahman. He explained that he had a High Court Writ against Creative Printer and had come to collect £1,971.07. Mr Rahman said: "We are talking about this one with the court", to which Mr Dael Anglin responded: "What, are you disputing it?". Mr Rahman said: "yes".

The narrator then said:

"Even though Mr Rahman is disputing the case, the agents are duty bound to enforce the Writ here today".

Mr Rahman explained to the HCEAs the nature of the dispute with the customer, after which the narrator said:

"In spite of his argument with the claimant, Del needs Mr Rahman to understand that he must settle his debt today".

One of the HCEAs then said:

"What happens is, the money, when you pay it to us, stays with us, right, whilst you do this and go to court, and the judge is the referee. If the judge decides that you are in the right, you will get the money back. If the judge decides that she's in the right [i.e. the customer] you will lose the money".

Following this explanation, Mr Rahman continued to say that he disputed the case and refused to pay the debt. The HCEAs told him that if he did not pay the debt, they would have to seize goods. Mr Rahman said that none of the assets on the premises belonged to the company, Creative Printer, and claimed that, instead, they belonged to another company, Creative Distribution UK Limited. The HCEAs asked Mr Rahman to provide proof of this claim.

The narrator then explained that, after an hour and half at the factory, Mr Rahman had "only provided one receipt for the assets on site". The HCEAs were shown shutting down and seizing computers, while Mr Rahman contested the HCEAs' right to seize them and tried to stop them. Mr Rahman was also shown telling his employees to film what was happening on their mobile phones.

The narrator said:

"Resisting the agents carrying out their duties is a criminal offence".

...

"With tempers rising, Dael calls for police backup".

Footage of one of the HCEAs calling the police was included in the programme.

Following a programme break, more footage of Mr Rahman contesting the HCEAs' right to seize the computers was shown alongside footage of a few of his employees filming the events on their phones.

The programme then showed the police arriving and both the HCEAs and Mr Rahman explained the situation to the police officers as they each saw it. The police explained to Mr Rahman that the HCEAs had *"a legal right to obtain property"* from the premises, at which point, Mr Rahman started to film the police with his mobile phone.

One of the HCEAs was shown trying to seize a computer while Mr Rahman attempted to prevent him from doing so. A police officer then spoke to Mr Rahman:

"Let's just give you a friendly word of warning today, if your behaviour continues and you persist to prevent them from doing their job, we are going to be forced, we will have no choice, to arrest you for breach of the peace and believe me you don't want to do that".

Afterwards, Mr Rahman said: *"I will not pay a single penny which is unfair"* to which Mr Del Anglin responded that it was not unfair to require him to pay the debt. Mr Rahman then asked to speak to Mr Dael Anglin in private. At this point, Mr Rahman told the HCEA that he did not have the money to pay the debt, and that he had been unable to pay his employees' wages that month.

The narrator said: *"The truth about Mr Rahman's situation finally emerges"*, before Mr Rahman was shown saying:

"We've been struggling for the last few months and there is no money. I can show you the bank account if you don't trust".

At the end of this part of the programme, Mr Rahman was shown agreeing to pay the HCEAs £885, which he had raised by asking his employees for the money, on the understanding that he would pay the remainder of the debt within 48 hours.

Towards the end of the programme, a short clip of the earlier footage of Mr Rahman was shown again, but with no accompanying audio. The following caption appeared below this footage:

"Creative Printer owner, Mohammed Rahman, appealed the debt. The court set it aside and returned the £885 paid".

No further footage of Mr Rahman was shown in the programme.

Summary of the complaint and broadcaster's response

Complaint

Mr Rahman complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without consent. He said that friends, family and neighbours had laughed at and had criticised him.

Broadcaster's response

Channel 5 said that it was not the law in the United Kingdom that people have a right not to be on television. Nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. What matters in every case is whether or not *rights* are being infringed, and, if they are, whether there are good reasons for those rights

to be infringed. Channel 5 said that this requires the balancing of the right of privacy (the Article 8 of the European Court of Human Rights, "ECHR") against the right to freely broadcast matters of public interest (the Article 10 right of the ECHR).

The broadcaster said that in this case, the sequence in the programme which featured Mr Rahman concerned the activities of HCEAs conducting official court business, specifically executing a Writ of Control, permitting the seizure of goods, chattels and other property of Creative Printer, the company owned by Mr Rahman, in order to satisfy a judgment debt.

Channel 5 said that there can be no doubt that the activities of HCEAs are matters of intense public interest. 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 of public interest.

The broadcaster said that in the case of *Can't Pay? We'll Take It Away!*, each story, in each programme, is considered by the external legal adviser for the programme maker and at the highest levels within Channel 5. No legitimate right of privacy is ever intentionally infringed.

In specific response to Mr Rahman's complaint that his privacy was unwarrantably infringed in the programme as broadcast, Channel 5 began by addressing the manner in which the footage of Mr Rahman was obtained.

Filming Mr Rahman

Channel 5 said that the execution of a Writ issued by the High Court is a public matter, not a private matter. Particularly, the execution of the Writ in this case was not a matter connected with Mr Rahman's private life; it was a public matter that involved Mr Rahman's business.

It said that, importantly, Mr Rahman was the person who represented and owned Creative Printer. He was not an incidental bystander to the enforcement process, but was, instead, the person who embodied the business interests and with whom the HCEAs were required to deal.

Channel 5 said that the interactions between the HCEAs and Mr Rahman were not a part of any private life protected by Article 8. However, communications about those interactions are protected by Article 10.

Channel 5 said that it was not the case that Mr Rahman did not consent to being filmed. It said that Mr Rahman gave permission to the programme makers to remain on the business premises and to keep filming. He did that having been informed what the programme makers were doing, for whom they were filming, and for what purpose. The broadcaster quoted the following extract from the unedited footage of the enforcement:

Programme maker 1: *"Are you happy for us to come up so you can tell your side, to show.*

Mr Rahman: *Yeah.*

Programme maker 1: *With the camera, yeah?*

Mr Rahman: *Yeah, that's fine.*

Programme maker 2: *'Coz we can observe, we can also ask you questions''.*

Channel 5 also quoted the following extract:

Programme maker 3: *"If you can just say...*

Mr Rahman: *I have given all the details, that was on the first, you said, are you okay, I said yes, fine.*

Programme maker 1: *Are you happy this has been filmed for Channel 5, Can't Pay! We'll Take It Away?, you're happy, you've given consent to use it?*

Mr Rahman: *I'm happy to take it but as long as it is showing what I say, it's not like it's been anything cut or edited.*

Programme maker 1: *It will be edited and cut, obviously, but your, what you've said will be.*

Mr Rahman: *Obviously* [nodding]

Programme maker 3: *It's six hours!*

Programme maker 1: *It would be six hours long otherwise''.*

The broadcaster said that given that Mr Rahman permitted the filming, there was no issue with Mr Rahman being filmed as part of the production process, nor with him being included in any broadcast.

Even if that were not the case, Channel 5 said that Mr Rahman's conduct during the enforcement process justified the filming. It said that Mr Rahman obstructed the enforcement process and was argumentative and threatening towards the HCEAs.

The broadcaster said that the Writ authorised the HCEAs to enter Mr Rahman's business premises and seize any goods which could not be proven to be the property of a person other than the debtor. It 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, whoever they might be, seven days to prove their ownership. Failing such proof, anything seized could be sold to reduce or satisfy the debt. It said that, accordingly, 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. This is for the safety of the HCEAs as well as providing a record of their activities in case of complaint or inquiry. It said that there was no breach of any of Mr Rahman's privacy rights involved in the HCEAs recording their activities by using body cameras especially as at no time were the cameras hidden or concealed, and both the HCEAs and the programme

makers informed him that the body camera footage would be available for inclusion in the programme.

The broadcaster said that Mr Rahman was told that filming was occurring, what the filming was for and he was advised that he might be included in the programme as broadcast. It said there was no attempt to deceive Mr Rahman.

Broadcasting footage of Mr Rahman

Channel 5 said that during the enforcement, Mr Rahman chose to obstruct the activities of the HCEAs by seeking to prevent them from removing chattels. It said that interfering with the execution of the duties of HCEAs is an offence and that no right of privacy could be attached to Mr Rahman's "illegal conduct".

Channel 5 said that it did not accept that Mr Rahman had any right of privacy infringed by the broadcast. Even if it were otherwise, it said that the public interest in understanding the difficulties faced by HCEAs when exercising court duties is acute and would override any right to privacy Mr Rahman sought to exercise. The broadcaster said that the execution of a Writ, wherever it occurs, is a public act the HCEAs, in accordance with the law, are obliged to carry out.

It said that the public interest extended to including footage of Mr Rahman in the broadcast "where so to do demonstrates his aggressive, confrontational and deceptive behaviour when the HCEAs attended to execute the Writ". Channel 5 said that in this case, the segment featuring Mr Rahman made several things obvious to the public, all of which it was in the clearest interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- When a Writ of Control 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;
- Significant costs can be incurred if the various stages of the execution of the Writ of Control 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 therefore the broadcast of the programme 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.

For all these reasons, Channel 5 concluded that it did not believe that Mr Rahman's privacy was infringed by either the making of the programme or the broadcast.

Further submission from Channel 5

Mr Rahman's consent

Channel 5 said that Mr Rahman had given his permission to the programme makers to remain on his business premises and to keep filming during the enforcement process. It said that he had done so having been informed what the programme makers were doing, for whom they were filming, and for what purpose.

The Article 8/Article 10 Balancing Question

In relation to the balancing of Article 8 and Article 10 rights, Channel 5 referred to various judgments from the European Court of Human Rights which, it said, set out the well-established methodology of the Strasbourg case-law¹. It said that these cases established the factors that must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights under the ECHR (i.e. the right to respect for private and family life and the right of freedom of expression). Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest.

It said that the broadcast of the segment involving Mr Rahman was clearly capable of contributing to a debate of public interest, namely the manner in which civil judgments are enforced, the powers granted to HCEAs and the consequences of not paying proper attention to personal debts. Where, as here, the subject matter of a broadcast contains information which is of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, Channel 5 said that this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of the expression is also protected under Article 10 and that it is not for the national authorities to substitute their own views for those of the publisher/broadcaster². It said that the way in which the story is presented is a matter of editorial judgment and increasing the interest of the story by giving it a human face was a legitimate consideration³.

Therefore, Channel 5 said, the Article 10 rights of Channel 5 and the programme maker to impart, and the audience to receive, the information in *Can't Pay? We'll Take It Away!* must weigh heavily in the balancing exercise. There must be very weighty privacy interests at stake if any restriction is to be placed on those Article 10 rights. Channel 5 said that it should not be taken as suggesting that its Article 10 rights (and those of the audience) automatically take priority over any Article 8. Neither right automatically trumps the other.

The broadcaster said that in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, the balance between the public interest in broadcasting the programme – including the margin of appreciation to include footage of Mr Rahman unobscured, and such Article 8 rights (if any) as might arise in relation to the footage, must lie with the Article 10 rights of Channel 5 and its viewers.

¹ Grand Chamber cases of *Von Hannover v Germany (No 2)* [2012] ECHR 228; *Axel Springer v Germany* [2012] EMLR 15; and *Couderc v France* [2015] ECHR 992.

² *Jersild v Denmark* [1994] 19 EHRR 1.

³ *Khuja v Times Newspapers Ltd and others* [2017] UKSC 49.

Filming Mr Rahman

The footage contained in the broadcast was a combination of both footage filmed by the body cameras worn openly by the HCEAs and the footage filmed openly by the programme makers. For almost all of the enforcement activity, the open TV camera was filming, and Mr Rahman was aware he was being filmed by that camera. The broadcaster referred again to Mr Rahman's consent to his being filmed for possible inclusion in the broadcast, as set out above.

Channel 5 said that all the footage filmed was thoroughly reviewed by the programme makers to determine whether or not there was sufficient public interest in the filmed material, given the editorial context of *Can't Pay? We'll Take It Away!*. The footage was reviewed further at least two more times by senior members of the production team to consider the content, the context and the relevant public interest. It was reviewed again after it was edited by the production company's independent lawyer to ensure the cut complied with Ofcom's Broadcasting Code and the general law. Finally, the edited footage was reviewed by a senior member of the Channel 5 Commissioning team as well as a senior member of the Channel 5 Content Legal Advice team. It was only after all those separate considerations had occurred that the decision to broadcast was made.

Channel 5 said that Mr Rahman's complaint was about being identified in the programme. It said that he had not complained that any information private to him was filmed or broadcast, nor that he was deceived in any way into believing that he was not being filmed or that the footage might appear in a broadcast. Further, Mr Rahman consented to the broadcast of the footage that had been filmed during the enforcement process.

Warranted broadcast

Channel 5 said that the broadcast was warranted for all the reasons set out in its earlier submissions and because Mr Rahman had agreed to the filming and broadcast at the time of the enforcement action. In any event, it said that as nothing private about Mr Rahman was conveyed by the broadcast, no infringement of any relevant privacy right is required to be warranted.

It said that the identity of Mr Rahman was not peripheral to the broadcast – he actively involved himself in seeking to disrupt the enforcement proceedings by directing his employees to film the activities of the HCEAs and was involved in the payment of part of the debt he owed. It said that the broadcast of the programme was entirely in the public interest and it was a matter for the programme makers and the broadcaster to decide what elements should be included in the broadcast⁴.

This included the manner in which the story of the enforcement action against Mr Rahman was expressed, including whether or not to identify Mr Rahman and his actions.

Information disclosed

The broadcaster said that the programme contained no discussion of Mr Rahman's personal finances, nor was any other matter that might be considered private to Mr Rahman revealed in the broadcast. In these circumstances, Channel 5 said, it was difficult to see that any reasonable expectation of privacy could be said to arise in relation to anything filmed and

⁴ *O (A Child) v Rhodes (English PEN ors intervening)* [2016] AC 219, paras 78 and 99.

broadcast concerning Mr Rahman. If, contrary to that submission, such a right did arise, it would not be a right to which any particular weight ought to be attached.

Channel 5 said that the Strasbourg case law to which previous reference had been made was clear authority for the proposition that, in the circumstances of this case, the broadcast was capable of – and did – contribute to a matter of public debate and the rights of Mr Rahman, if any, are insufficient to outweigh that Article 10 freedom.

For all these reasons, and those in Channel 5's earlier submissions, Channel 5 concluded that it did not believe there had been any unwarranted infringement of Mr Rahman's privacy.

Ofcom's Preliminary View

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

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment 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 our decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of both the programme as broadcast and the unedited footage, and both parties' written submissions.

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.

Mr Rahman complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without consent.

In considering Mr Rahman's complaint, we first assessed whether he had a legitimate expectation of privacy regarding the broadcast of footage of him included in the programme. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We took account of the material shown in the programme, as described in the "Programme summary" above. In particular, the programme named Mr Rahman and included unobscured footage of him as he interacted with the HCEAs in premises where he ran his printing business. He was shown discussing the debt and his business' financial circumstances with the HCEAs as he attempted to negotiate payment of the debt. Mr Rahman was also shown trying to obstruct the HCEAs from seizing computer equipment from the premises and was shown interacting with police officers who were called as a result of his behaviour.

Ofcom considered that the programme revealed financial information about Mr Rahman's business. In particular, this related to his ability to pay the money owed and the fact that he asked his employees to contribute their own money to help pay some of the money owed. We took into account that the enforcement took place in business premises where it appeared that members of the public would not ordinarily have access. Given that Mr Rahman was identified, the programme revealed information about the circumstances which had led to the Writ being issued against his business and showed him discussing the financial circumstances of his business, we considered that the inclusion of the material in the programme as broadcast constituted an interference with Mr Rahman's privacy rights. Ofcom therefore took the view that Mr Rahman had a legitimate expectation of privacy in these particular circumstances.

We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. We observed from the unedited footage of the enforcement that Mr Rahman was told the purpose of the filming and was also made aware that the footage filmed by body cameras worn by the HCEAs would be available to the programme makers. It was also clear that Mr Rahman had allowed the programme makers to re-enter his premises after their initial entry on arrival with the HCEAs and that he gave them permission to film him and the events taking place. In particular, we took account of the following exchange between Mr Rahman and the programme makers:

Programme maker: *"Are you happy this has been filmed for Channel 5, Can't Pay? We'll Take It Away! You're happy, you've given consent to use it?"*

Mr Rahman: *I'm happy to take it, but as long as it is showing what I say, it's not like it's been cut or edited.*

Programme maker: *It will be edited and cut, obviously, but your, what you've said will be...*

Mr Rahman: *Obviously [nodding].*

...

Programme maker: *It would be six hours long otherwise*".

Ofcom considered that the unedited footage showed that Mr Rahman had been willing to engage with the programme makers and that he had spoken freely and openly to them about his situation. We further considered that there was nothing in the footage to indicate that Mr Rahman had sought to raise any material concerns about footage of him being broadcast, or that he had asked for his face to be obscured.

Taking all these factors into account, Ofcom considered that Mr Rahman had given his informed consent for the footage filmed of him to be included in the programme.

Having considered that Mr Rahman had consented to the broadcast of the footage of himself, it was not necessary for Ofcom to consider whether it was warranted to broadcast the footage of Mr Rahman included in the programme. Consequently, we concluded that there was no unwarranted infringement of Mr Rahman's privacy in the programme as broadcast.

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

Not Upheld

Complaint Mr Sujan Kumar Saha *Can't Pay? We'll Take It Away, Channel 5, 7 September 2016*

Summary

Ofcom has not upheld Mr Sujan Kumar Saha's complaint of unwarranted infringement of privacy.

The programme included footage of Mr Saha at his place of work as High Court Enforcement Agents ("HCEAs") enforced a Writ against his employer, who it alleged, owed money to a customer.

Ofcom considered that, in the particular circumstances of this case, Mr Saha did not have a legitimate expectation of privacy in relation to the footage of him filmed and subsequently broadcast in the programme. Therefore, it was not necessary for Ofcom to consider whether any infringement of Mr Saha's privacy was warranted.

Programme summary

On 7 September 2016, Channel 5 broadcast an episode of *Can't Pay? We'll Take It Away!*, a series which followed HCEAs as they attempted to resolve debt disputes through negotiated settlements and asset seizures. The programme's narrator introduced the programme:

"What happens when you get into debt...and you can't...or won't pay it back?...We meet the HCEAs who are pushed to their limits...dealing with desperate debtors...in dramatic situations... We meet the people who are losing their homes...and their possessions...Because, whatever happens, if you can't pay...they'll take it away".

This episode included a segment about a printing company, identified in the programme as "Creative Printer", which the HCEAs said owed money to a dissatisfied customer. Two HCEAs were shown in a van as the narrator said:

"Delroy Anglin ["Del"] and his son Dael are HCEAs. They travel hundreds of miles every week collecting debts and seizing goods. Today they're on their way to a printing company in East London to collect a debt of nearly £2,000 owed to a dissatisfied customer. If the owner of the company Mohammed Rahman, can't or won't pay today, the agents have the right to seize company assets to off-set the debt".

Both HCEAs were shown entering the premises and explaining through the intercom that they were looking for "Creative Printer". When the door was opened by one of the company's employees (the complainant, Mr Saha), they asked to "speak to the boss". Mr Saha then led the HCEAs upstairs where one of them introduced himself to Mr Rahman. He explained that he had a High Court Writ against Creative Printer and had come to collect £1,971.07. Mr Rahman said: "We are talking about this one with the court", to which the HCEA responded: "What, are you disputing it?". Mr Rahman said: "yes".

The programme went on to show Mr Rahman dealing with the HCEAs, and later with the police, during the enforcement.

Later in the programme, the narrator explained that, after an hour and half at the factory, Mr Rahman had *"only provided one receipt for the assets on site"*. The HCEAs were shown shutting down and seizing computers, while Mr Rahman contested the HCEAs' right to seize them and tried to stop them. Mr Rahman was also shown telling his employees (one of whom was Mr Saha) to film what was happening on their mobile phones.

Following a programme break, more footage of Mr Rahman contesting the HCEAs right to seize the computers was shown alongside footage of his employees filming on their phones. Again, Mr Saha was seen in this footage and was later shown again, alongside his colleagues in the background as they watched Mr Rahman and the HCEAs.

Eventually, Mr Rahman disclosed to the HCEAs that he did not have the money to pay the debt, and that he had been unable to pay his employees' wages that month. At the end of this part of the programme, Mr Rahman was shown agreeing to pay the HCEAs £885, which he had raised by asking his employees for the money, on the understanding that he would pay the remainder of the debt within 48 hours.

Towards the end of the programme, a short clip of the earlier footage of Mr Rahman was shown again, but with no accompanying audio. The following on-screen text appeared below this footage:

"Creative Printer owner, Mohammed Rahman, appealed the debt. The court set it aside and returned the £885 paid".

No further footage of Mr Saha was included in the programme. Mr Saha was not named in the programme, but his face was shown unobscured.

Summary of the complaint and broadcaster's response

Complaint

- a) Mr Saha complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of him was filmed without consent. He said that when the HCEAs entered the premises they did not inform him that he was being recorded or that this material would be broadcast.
- b) Mr Saha complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him, including his face, was shown in the programme without consent. Mr Saha said that the programme had "nothing to do" with him but instead was about the company he worked for.

Broadcaster's response

Channel 5 said that it was not the law in the United Kingdom that people have a right not to be on television. Nor was it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. What matters in every case is whether or not *rights* are being infringed, and, if they are, whether there are good reasons for those rights to be infringed. Channel 5 said that this requires the balancing of the rights of privacy (the Article 8 right of the European Court of Human Rights "ECHR") against the right to freely broadcast matters of public interest (the Article 10 right of the ECHR).

The broadcaster said that in this case, the sequence in the programme which featured Mr Saha concerned the activities of HCEAs conducting official court business, specifically executing a Writ of Control, permitting the seizure of goods, chattels and other property of Creative Printer, the company Mr Saha worked for, in order to satisfy a judgment debt.

Channel 5 said that there can be no doubt that the activities of HCEAs are matters of intense public interest. 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 is also a matter of acute public interest.

The broadcaster said that in the case of *Can't Pay? We'll Take It Away!*, each story, in each programme, is considered by the external legal adviser for the programme maker and at the highest levels within Channel 5. It said that no legitimate right of privacy was ever intentionally infringed.

Filming Mr Saha

Channel 5 said that the execution of a Writ issued by the High Court is a public matter, not a private matter. Particularly, the execution of the Writ in this case was not a matter connected with Mr Saha's private life; it was a public matter that involved Mr Saha's employer. It said that the interactions between the HCEAs and Mr Saha's employer were not a part of any private life protected by Article 8. However, communications about those interactions were protected by Article 10.

Channel 5 said that Mr Saha did not consent to being filmed. However, given that the HCEAs were engaged in official court business, it was not necessary to obtain his consent in relation to the filming. In any event, it said that Mr Rahman, Mr Saha's employer, did consent to the programme makers filming on the premises where Mr Saha worked, knowing that the filming was for broadcast on Channel 5.

Channel 5 said that as a matter of usual policy, HCEAs wear body cameras to record their interactions with members of the public while they are carrying out their official court duties. This was for the safety of the HCEAs as well as providing a record of their activities in case of complaint or inquiry. It said that there was no breach of any of Mr Saha's privacy rights involved in the HCEAs recording their activities by using body cameras, especially as at no time were the cameras hidden or concealed. Further, it said that Mr Saha's employer gave his permission to the programme makers to remain on the business premises and to keep filming. He did that having been informed what the programme makers were doing, for whom they were filming, and for what purpose.

Channel 5 said that given that the programme makers had permission to film on the premises, there was no issue with Mr Saha being filmed as part of that process. Nothing Mr Saha was filmed doing was private, and his employer had authorised the filming.

Channel 5 said that Mr Saha asserted in his complaint that he was not told that filming was occurring, or that material involving him would be broadcast. The broadcaster quoted the following unedited exchange:

Programme maker: *"... it's Channel 5, it's called Can't Pay? We'll Take It Away! Er, there was a series which was just on recently, erm, but it's just finished.*

We're shooting obviously for the next series, that's due to come out in September, erm, and we, we follow Agents wherever they go, but we've, you know, we hope to show both sides of the story, which is why we've been speaking to Mohammed as well and herein obviously two or three sides of the story, so erm, you guys obviously aren't central but you might have been caught in camera, little bits and pieces in the background. Er, if you do crop up, are you happy to be shown in it?

Mr Saha: *No.*

Assistant Producer: *You'd rather not?*

Mr Saha: *No.*

Male: *No.*

Programme maker: *Okay. I'm going to pass that onto the, the Channel and see what's best. I can't guarantee that they won't, but I will, I will pass that on to them and leave the decision up to them, okay? Thanks guys".*

Channel 5 said that while Mr Saha did not express agreement with being included in the programme as broadcast, he was told that filming was occurring, what the filming was for, and that he was advised that he might be included in the programme as broadcast. There was no attempt to deceive Mr Saha.

Broadcasting footage of Mr Saha

Channel 5 said that the programme contained only minimal images of Mr Saha. He was not depicted talking about or indicating anything that was private to him or to anyone else. It said that during the enforcement, Mr Saha had chosen to involve himself in what was happening: he opened the door to permit entry for the HCEAs; and, as the enforcement proceeded, chose to film the HCEAs, thereby applying pressure to them while they were executing their duties.

Channel 5 said that it did not accept that Mr Saha had any right of privacy infringed by the broadcast. It said that Mr Saha was not shown in a bad light and he was not shown doing or saying anything which might be considered private.

The broadcaster said that if Mr Saha had not chosen to involve himself in the enforcement process, then his identity would have been obscured when the programme was broadcast. Other employees who took no part in the enforcement process were not identified in the programme as broadcast. Channel 5 said that only those, such as Mr Saha, whose conduct required them to be identified to understand the evolving situation the HCEAs encountered during the enforcement, were identified.

Channel 5 said that while Mr Saha's image was included in the broadcast without his consent, nothing flowed from that. It said that the law in the United Kingdom does not provide that individuals have a right to prevent their appearance in television broadcasts. 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.

The broadcaster said that the execution of a Writ, wherever it occurs, is a public act the HCEAs, in accordance with the law, are obliged to carry out. It said that the public interest extended to including brief footage of Mr Saha in the broadcast "where so to do does not involve anything other than disclosing that Mr Saha was at the premises when the HCEAs attended to execute the Writ and indicating his reaction to their presence". Channel 5 said that in this case, the segment featuring Mr Saha made several things clear to the public, all of which it is in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- When a Writ of Control 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;
- Significant costs can be incurred if the various stages of the execution of the Writ of Control 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.

Accordingly, 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.

For all these reasons, Channel 5 concluded that it did not believe that Mr Saha's privacy was infringed by either the making of the programme or the broadcast.

Further submissions from Channel 5

The Article 8/Article 10 Balancing Question

In relation to the balancing of Article 8 and Article 10 rights, Channel 5 referred to various judgments from the European Court of Human Rights which, it said, set out the well-established methodology of the Strasbourg case-law¹. It said that these cases established the factors that must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights under the ECHR (i.e. the right to respect for private and family life and the right of freedom of expression). Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest.

Channel 5 said that the form of the expression is also protected under Article 10 and that it is not for the national authorities to substitute their own views for those of the publisher/broadcaster². It said that the way in which the story is presented is a matter of

¹ Grand Chamber cases of *Von Hannover v Germany (No 2)* [2012] ECHR 228; *Axel Springer v Germany* [2012] EMLR 15; and *Couderc v France* [2015] ECHR 992.

² *Jersild v Denmark* [1994] 19 EHRR 1.

editorial judgment and increasing the interest of the story by giving it a human face was a legitimate consideration³.

Therefore, Channel 5 said that the Article 10 rights of Channel 5 and the programme maker to impart, and the audience to receive, the information in *Can't Pay? We'll Take It Away* must weigh heavily in the balancing exercise. It said that there must be very weighty privacy interests at stake if any restriction is to be placed on those Article 10 rights. Channel 5 said that it should not be taken as suggesting that its Article 10 rights (and those of the audience) automatically take priority over any Article 8. Neither right automatically trumps the other.

The broadcaster said that in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, the balance between the public interest in broadcasting the programme – including the margin of appreciation to include footage of Mr Saha unobscured, and such Article 8 rights (if any) as might arise in relation to the footage, must lie with the Article 10 rights of Channel 5 and its viewers.

Filming Mr Saha

The footage contained in the broadcast was a combination of both footage filmed by the body cameras worn by the HCEAs and the footage filmed openly by the programme makers. For almost all of the enforcement activity, the TV camera was filming, and Mr Saha was aware he was being filmed by that camera. At one point, Mr Saha, on his employer's instructions, filmed the activities of the HCEAs.

Channel 5 said that all the footage filmed was thoroughly reviewed by the programme makers to determine whether or not there was sufficient public interest in the filmed material, given the editorial context of *Can't Pay? We'll Take It Away*. The footage was reviewed further at least two more times by senior members of the production team to consider the content, the context and the relevant public interest. It was reviewed again after it was edited by the production company's independent lawyer to ensure the cut complied with Ofcom's Broadcasting Code and the general law. Finally, the edited footage was reviewed by a senior member of the Channel 5 Commissioning team as well as a senior member of the Channel 5 Content Legal Advice team. It was only after all those separate considerations had occurred that the decision to broadcast was made.

Channel 5 said that Mr Saha's complaint was about being identified in the programme. It said that he had not complained that any information private to him was filmed or broadcast, nor that he was deceived in any way into believing that he was not being filmed or that the footage might appear in a broadcast. Further, it said that his employer had consented to the broadcast of the footage that had been filmed during the enforcement process.

Warranted broadcast

Channel 5 said that the broadcast was warranted for all the reasons set out in Channel 5's earlier submissions and because Mr Saha's employer agreed to the filming and broadcast at the time of the enforcement action. In any event, as nothing private about Mr Saha was conveyed by the broadcast, no infringement of any relevant privacy right is required to be warranted.

³ *Khuja v Times Newspapers Ltd and others* [2017] UKSC 49.

It said that the identity of Mr Saha was not peripheral to the broadcast – he actively involved himself in the enforcement proceedings by filming the activities of the HCEAs and was involved in the payment of part of the debt owed by his employer. It said that the broadcast of the programme was entirely in the public interest and it was a matter for the programme makers and the broadcaster to decide what elements should be included in the broadcast⁴.

Information disclosed

The broadcaster said that the programme contained no discussion of Mr Saha's personal life, nor was any other matter that might be considered private to Mr Rahman revealed in the broadcast. In these circumstances, Channel 5 said, it was difficult to see that any reasonable expectation of privacy could be said to arise in relation to anything filmed and broadcast concerning Mr Saha. If, contrary to that submission, such a right did arise, it would not be a right to which any particular weight ought to be attached.

Channel 5 said that the Strasbourg case law to which previous reference had been made was clear authority for the proposition that, in the circumstances of this case, the broadcast was capable of – and did – contribute to a matter of public debate and the rights of Mr Saha, if any, are insufficient to outweigh that Article 10 freedom.

For all these reasons, and those in Channel 5's earlier submissions, Channel 5 concluded that it did not believe there had been any unwarranted infringement of Mr Saha's privacy.

Ofcom's Preliminary View

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

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment 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 our decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and the unedited footage, and both parties' written submissions.

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

⁴ *O (A Child) v Rhodes (English PEN ors intervening)* [2016] AC 219, paras 78 and 99.

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 Mr Saha's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of him was filmed without his consent, Ofcom had regard to the following Practices 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 Mr Saha's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the extent to which he had a legitimate expectation of privacy with regard to the circumstances in which footage of him was filmed. 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. 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, Mr Saha was filmed at his workplace while a Writ was enforced against his employer. It was not clear from the unedited footage whether the business premises in which Mr Saha was filmed was publicly accessible, or whether he would ordinarily be expected to be observed by others or to deal with the public, but there was an intercom system to control entry to the premises and the HCEAs had to wait for an employee (Mr Saha) to let them in.

Mr Saha was filmed as he let the HCEAs (and the programme makers) into his employer's business premises. He was also filmed inside the premises later in the enforcement process, standing in the background with other employees watching the events as well as recording them on his mobile phone. Overall, we considered that Mr Saha's appearance in the footage was incidental, particularly as he was not filmed saying anything of any particular significance.

We took account of the following factors:

- The programme makers had been present for most of the filming that included Mr Saha and the camera operator had filmed openly during this time. Mr Saha was also filmed by the body cameras worn by the HCEAs. The footage from the body cameras which captured Mr Saha mostly (although not entirely) overlapped with the filming by the camera crew.
- It was evident from the footage that Mr Saha was aware that he was being filmed by the programme makers although he may not have been aware that he was being filmed for potential broadcast by the body cameras worn by the HCEAs.
- Mr Saha did not say anything to the programme makers or the HCEAs about being filmed until towards the end of the enforcement when he responded "No" to the programme makers' request for consent to be shown in the programme.
- Channel 5 did not dispute that Mr Saha had not consented to being filmed, either by the programme makers or the HCEAs' body cameras.

As noted above, Practice 8.8 states that the individual consent of employees whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required when permission has been obtained from the employer.

In this case, we observed from the unedited footage that Mr Saha's employer, Mr Rahman, was made aware at the beginning of the enforcement process that the programme makers were filming for Channel 5's *Can't Pay? We'll Take It Away!* programme and that the footage filmed by the HCEAs' body cameras would be accessible to the programme makers. This was evident from the following unedited exchange which took place shortly after Mr Saha had let the HCEAs and the programme makers onto the premises:

Mr Rahman: *"If you want to stay here, feel free, but do not do the filming."*

- Programme maker: *We have to keep recording, which is why I'm going to say we'll go out basically. But, I'd love to come back in and... and talk to you about this issue.*
- Mr Rahman: *As I say, you can stay here without filming.*
- Programme maker: *Well we'd have to, we'd have to keep recording though if we stayed.*
- Mr Rahman: *The same thing, if you are going outside then there's no point in you just filming it, same thing, you stay here and no just...*
- HCEA 1: *They have access, they have to access to [pointing at his body camera].*
- Mr Rahman: *You can do this one, which is... Oh, that's right.*
- HCEA 2: *Either way they still have access, it doesn't make any difference.*
- Programme maker: *Either way, we're kind of here, but we're not.*
- Mr Rahman: *OK, that's fine".*

Although Mr Rahman asked the programme makers to leave the premises at this time the unedited footage clearly showed that Mr Rahman subsequently allowed them to re-enter his premises, giving them permission to film him and the events taking place:

- Programme maker 1: *"Are you happy for us to come up so you can tell your side, to show.*
- Mr Rahman: *Yeah.*
- Programme maker 1: *With the camera, yeah?*
- Mr Rahman: *Yeah, that's fine.*
- Programme maker 2: *'Coz we can observe, we can also ask you questions".*

Later in the enforcement, the programme makers discussed with Mr Rahman what had been filmed and whether he consented for its use:

- Programme maker: *"Are you happy this has been filmed for Channel 5, Can't Pay? We'll Take It Away! You're happy, you've given consent to use it?*
- Mr Rahman: *I'm happy to take it, but as long as it is showing what I say, it's not like it's been cut or edited.*
- Programme maker: *It will be edited and cut, obviously, but your, what you've said will be...*
- Mr Rahman: *Obviously [nodding]".*

We considered these exchanges showed that Mr Rahman was made aware of the filming by both the camera crew and the HCEAs' body cameras, that he understood the nature and purpose of both types of filming, and that he consented to it taking place.

In light of this, and our view that Mr Saha's appearance was incidental, we considered that Mr Saha was filmed with his employer's consent for all of the filming which took place inside the premises. We also considered that none of the filming, either inside the premises or during the initial sequence when Mr Saha let the HCEAs and the programme makers into the premises, captured him engaging in any conduct or saying anything that could reasonably be regarded as being particularly private or sensitive to him.

Taking all these factors into account, we considered that Mr Saha did not have a legitimate expectation of privacy with regards to any of the filming of him 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 considered that Mr Saha did not have a legitimate expectation of privacy in relation to the obtaining of footage of him included in the programme, it was not necessary for Ofcom to consider whether any infringement of Mr Saha's privacy in connection with the obtaining of the footage of him was warranted. Consequently, we concluded that there was no unwarranted infringement of Mr Saha's privacy in connection with the obtaining of the material included in the programme.

- b) We next considered Mr Saha's complaint that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without his consent.

In considering this head of Mr Saha'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".

Ofcom first assessed the extent to which he had a legitimate expectation of privacy in relation to the broadcast of the footage of him 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 in head a) and the "Programme summary" above, footage of Mr Saha in his workplace was included in the programme. Mr Saha was not named in the programme, but his face was shown unobscured. While Mr Saha gave a very brief response to the HCEAs' question about his employer being on the premises, what he said was indiscernible.

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

Having considered that Mr Saha did not have a legitimate expectation of privacy, in relation to the inclusion of footage of him in the programme, it was not necessary for Ofcom to consider whether it was warranted to broadcast the footage of Mr Saha included in the programme. Consequently, Ofcom concluded that there was no unwarranted infringement of Mr Saha's privacy in the programme as broadcast.

Ofcom has not upheld Mr Saha's complaint 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 1 and 21 April 2019 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

Programme	Service	Transmission date	Categories
The Bill	Drama	15/10/2018	Race discrimination/offence
Steve Allen	LBC 97.3 FM	31/01/2019	Sexual orientation discrimination/offence
The Seventies	Sky Arts	29/01/2019	Scheduling
The Independent Republic of Mike Graham	Talk Radio	28/11/2018	Generally accepted standards

[How Ofcom conducts investigations about content standards on television and radio programmes](#)

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 21 April 2019 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
Can't Pay? We'll Take It Away!	5Star	24/03/2019	Offensive language	1
Exclusive News	Aaj Tak	18/02/2019	Due impartiality/bias	1
Programming	Absolute 00s	21/03/2019	Offensive language	1
Newshour	Al Jazeera	05/04/2019	Scheduling	1
Conlan v Hernandez	BoxNation	17/03/2019	Generally accepted standards	1
Champions League Football: Manchester City v FC Schalke 04	BT Sport 2	12/03/2019	Due impartiality/bias	1
Capital Breakfast with Rob Howard & Lauren Layfield	Capital FM	26/03/2019	Sexual material	1
Programming	Capital South Coast	11/03/2019	Other	1
24 Hours in Police Custody	Channel 4	07/04/2019	Generally accepted standards	1
Channel 4 News	Channel 4	20/03/2019	Due impartiality/bias	7
Channel 4 News	Channel 4	23/03/2019	Due accuracy	1
Channel 4 News	Channel 4	26/03/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	02/04/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	05/04/2019	Due impartiality/bias	15
Channel 4 News	Channel 4	12/04/2019	Due impartiality/bias	1
Channel 4 news	Channel 4	12/04/2019	Elections/Referendums	1
Cheers	Channel 4	15/03/2019	Violence	1
Food Unwrapped	Channel 4	01/04/2019	Race discrimination/offence	1
Gogglebox	Channel 4	01/03/2019	Generally accepted standards	2
Gogglebox	Channel 4	15/03/2019	Generally accepted standards	11
Gogglebox	Channel 4	29/03/2019	Animal welfare	3
Gogglebox	Channel 4	29/03/2019	Generally accepted standards	1
Gogglebox	Channel 4	29/03/2019	Sexual material	1

Programme	Service	Transmission Date	Categories	Number of complaints
Gogglebox	Channel 4	05/04/2019	Generally accepted standards	1
Hunted	Channel 4	14/02/2019	Generally accepted standards	1
Joe Lycett's Got Your Back	Channel 4	05/04/2019	Generally accepted standards	1
Leaving Neverland: Michael Jackson and Me	Channel 4	06/03/2019	Materially misleading	2
Lee and Dean (trailer)	Channel 4	04/03/2019	Disability discrimination/offence	1
Let's Talk About Sex	Channel 4	05/04/2019	Generally accepted standards	1
Mums Make Porn	Channel 4	27/03/2019	Sexual material	4
Mums Make Porn	Channel 4	01/04/2019	Sexual material	1
Mums Make Porn	Channel 4	03/04/2019	Sexual material	1
Mums Make Porn	Channel 4	07/04/2019	Generally accepted standards	1
Naked Beach	Channel 4	11/04/2019	Generally accepted standards	1
Naked Beach (Trailer)	Channel 4	10/04/2019	Nudity	3
The Big Narstie Show	Channel 4	22/03/2019	Generally accepted standards	1
The Secret Lives of Slim People	Channel 4	11/02/2019	Harm	1
Around the World by Train with Tony Robinson	Channel 5	01/04/2019	Generally accepted standards	1
Blended	Channel 5	02/03/2019	Scheduling	1
Eamonn and Ruth: How the Other Half Lives	Channel 5	29/03/2019	Sexual material	1
Jeremy Vine	Channel 5	21/03/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	22/03/2019	Due impartiality/bias	1
Jeremy Vine	Channel 5	28/03/2019	Materially misleading	3
Jeremy Vine	Channel 5	01/04/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	03/04/2019	Generally accepted standards	3
Jeremy Vine	Channel 5	04/04/2019	Generally accepted standards	3
Jeremy Vine	Channel 5	10/04/2019	Generally accepted standards	1
Jeremy Vine	Channel 5	12/04/2019	Elections/Referendums	1

Programme	Service	Transmission Date	Categories	Number of complaints
Millionaire Shoplifter and Proud	Channel 5	20/03/2019	Materially misleading	1
Neighbours	Channel 5	09/04/2019	Generally accepted standards	1
Secrets of the Royal Spending	Channel 5	16/02/2019	Materially misleading	1
The Jeremy Vine Show	Channel 5	10/04/2019	Due impartiality/bias	1
The Last Days of Michael Jackson	Channel 5	05/03/2019	Materially misleading	1
Project Z	CITV	27/03/2019	Scheduling	1
Your Face or Mine	Comedy Central	27/03/2019	Race discrimination/offence	1
Would I Lie to You?	Dave	09/03/2019	Generally accepted standards	1
Ed Stafford: Naked and Marooned	Discovery	23/03/2019	Offensive language	1
Vampirina	Disney Jnr HD	25/03/2019	Harm	1
SEAT advertisement	DMAX	03/04/2019	Political advertising	1
The Alaska Frontier	DMAX	24/03/2019	Animal welfare	1
Pro Bull Riding	FreeSports	23/03/2019	Animal welfare	1
Heart Breakfast with Joel and Lorna	Heart North West	29/03/2019	Generally accepted standards	1
Heart Breakfast with Joel and Lorna	Heart North West	29/03/2019	Sexual material	1
Forged in Fire: Knife or Death	History	25/03/2019	Violence	1
The Big Stories	ION TV	29/12/2018	Due impartiality/bias	1
Britain's Got Talent	ITV	06/04/2019	Generally accepted standards	2
Britain's Got Talent	ITV	06/04/2019	Materially misleading	1
Britain's Got Talent	ITV	06/04/2019	Sexual material	7
Britain's Got Talent	ITV	06/04/2019	Violence	3
Coronation Street	ITV	20/03/2019	Generally accepted standards	2
Coronation Street	ITV	29/03/2019	Gender discrimination/offence	1
Coronation Street	ITV	01/04/2019	Violence	1
Coronation Street	ITV	03/04/2019	Offensive language	3
Coronation Street	ITV	05/04/2019	Crime and disorder	2
Coronation Street	ITV	08/04/2019	Offensive language	1
Coronation Street	ITV	10/04/2019	Generally accepted standards	1
Emmerdale	ITV	26/03/2019	Generally accepted standards	2
Emmerdale	ITV	26/03/2019	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	26/03/2019	Race discrimination/offence	3
Emmerdale	ITV	26/03/2019	Scheduling	1
Emmerdale	ITV	28/03/2019	Materially misleading	1
Emmerdale	ITV	02/04/2019	Generally accepted standards	1
Emmerdale	ITV	04/04/2019	Generally accepted standards	1
Good Morning Britain	ITV	13/08/2018	Race discrimination/offence	1
Good Morning Britain	ITV	21/03/2019	Sexual orientation discrimination/offence	16
Good Morning Britain	ITV	25/03/2019	Generally accepted standards	1
Good Morning Britain	ITV	26/03/2019	Generally accepted standards	1
Good Morning Britain	ITV	27/03/2019	Religious/Beliefs discrimination/offence	10
Good Morning Britain	ITV	27/03/2019	Violence	4
Good Morning Britain	ITV	28/03/2019	Generally accepted standards	1
Good Morning Britain	ITV	02/04/2019	Due impartiality/bias	1
Good Morning Britain	ITV	02/04/2019	Sexual material	1
Good Morning Britain	ITV	03/04/2019	Crime and disorder	1
Good Morning Britain	ITV	03/04/2019	Disability discrimination/offence	2
Good Morning Britain	ITV	03/04/2019	Generally accepted standards	2
Good Morning Britain	ITV	03/04/2019	Transgender discrimination/offence	82
Good Morning Britain	ITV	11/04/2019	Generally accepted standards	1
Good Morning Britain	ITV	12/04/2019	Race discrimination/offence	1
Hard to Please OAPs	ITV	09/04/2019	Materially misleading	1
Hard to Please OAPs	ITV	09/04/2019	Offensive language	1
In for a Penny	ITV	13/04/2019	Generally accepted standards	1
In for a Penny	ITV	13/04/2019	Generally accepted standards	1
ITV News	ITV	14/03/2019	Generally accepted standards	1
ITV News	ITV	01/04/2019	Due accuracy	1
ITV News	ITV	02/04/2019	Due accuracy	1
ITV News	ITV	02/04/2019	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
ITV News	ITV	03/04/2019	Due impartiality/bias	1
Judge Rinder	ITV	01/04/2019	Generally accepted standards	1
Live Racing: Grand National Festival	ITV	05/04/2019	Gender discrimination/offence	1
Live Racing: Grand National Festival	ITV	06/04/2019	Generally accepted standards	1
Loose Women	ITV	19/02/2019	Gender discrimination/offence	1
Loose Women	ITV	28/03/2019	Generally accepted standards	3
Lorraine	ITV	03/04/2019	Generally accepted standards	1
Lorraine	ITV	03/04/2019	Offensive language	3
Lorraine	ITV	11/04/2019	Generally accepted standards	1
Ninja Warrior	ITV	13/04/2019	Generally accepted standards	1
Party Political Broadcast by the Conservative Party	ITV	08/04/2019	Materially misleading	1
Peston	ITV	06/03/2019	Due impartiality/bias	4
Super 4	ITV	07/04/2019	Offensive language	2
The Bay	ITV	09/04/2019	Crime and disorder	1
The Chase	ITV	23/03/2019	Fairness	1
The Durrells	ITV	07/04/2019	Offensive language	4
The Great Celebrity Bake Off: Stand Up To Cancer	ITV	19/03/2019	Offensive language	1
The Jeremy Kyle Show	ITV	14/03/2019	Generally accepted standards	1
The Jeremy Kyle Show	ITV	20/03/2019	Generally accepted standards	1
The Jeremy Kyle Show	ITV	28/03/2019	Sexual material	1
The Jeremy Kyle Show	ITV	04/04/2019	Generally accepted standards	1
The Jeremy Kyle Show	ITV	04/04/2019	Violence	1
The Kyle Files	ITV	11/03/2019	Disability discrimination/offence	1
The Olivier Awards	ITV	07/04/2019	Generally accepted standards	1
The Radox Health Grand National Festival (trailer)	ITV	04/04/2019	Animal welfare	1
The Voice UK	ITV	23/03/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Voice UK	ITV	30/03/2019	Voting	1
The Voice UK	ITV	06/04/2019	Generally accepted standards	1
This Morning	ITV	05/03/2019	Generally accepted standards	13
This Morning	ITV	01/04/2019	Generally accepted standards	1
This Morning	ITV	02/04/2019	Generally accepted standards	1
This Morning	ITV	02/04/2019	Race discrimination/offence	1
This Morning	ITV	03/04/2019	Generally accepted standards	1
This Morning	ITV	05/04/2019	Competitions	1
This Morning	ITV	09/04/2019	Generally accepted standards	2
This Morning	ITV	09/04/2019	Race discrimination/offence	3
This Morning	ITV	14/04/2019	Race discrimination/offence	1
Victoria	ITV	31/03/2019	Animal welfare	1
ITV News Meridian	ITV Meridian	25/03/2019	Due impartiality/bias	1
Tyne Tees Evening News	ITV Tyne Tees	15/03/2019	Due impartiality/bias	1
Business Wales advertisement	ITV+1	20/03/2019	Political advertising	1
Britain's Got More Talent	ITV2	07/04/2019	Gender discrimination/offence	1
Celebrity Juice	ITV2	28/03/2019	Generally accepted standards	2
Celebrity Juice	ITV2	04/04/2019	Generally accepted standards	1
Jeremy Kyle Show	ITV2	12/04/2019	Generally accepted standards	1
You've Been Framed	ITV2	08/04/2019	Animal welfare	1
Trustatrader.com's sponsorship of evenings on ITV4	ITV4	22/03/2019	Sponsorship credits	1
Sam and Billie Faiers: The Mummy Diaries	ITVBe	27/03/2019	Dangerous behaviour	1
The Only Way is Essex	ITVBe	07/04/2019	Generally accepted standards	1
The Real Housewives of Cheshire	ITVBe	25/03/2019	Violence	1
James O'Brien	LBC 97.3 FM	15/03/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
James O'Brien	LBC 97.3 FM	26/03/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	27/03/2019	Generally accepted standards	4
James O'Brien (trailer)	LBC 97.3 FM	03/04/2019	Race discrimination/offence	1
Majid Nawaz	LBC 97.3 FM	24/03/2019	Religious/Beliefs discrimination/offence	1
Nick Abbot	LBC 97.3 FM	06/04/2019	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	26/03/2019	Gender discrimination/offence	1
Nick Ferrari	LBC 97.3 FM	28/03/2019	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	05/04/2019	Due impartiality/bias	1
Nick Ferrari	LBC 97.3 FM	08/04/2019	Gender discrimination/offence	1
Nigel Farage	LBC 97.3 FM	02/04/2019	Due accuracy	1
Nigel Farage	LBC 97.3 FM	12/04/2019	Elections/Referendums	1
Nigel Farage	LBC 97.3 FM	n/a	Due impartiality/bias	1
Nigel Farage	LBC 97.3 FM	Various	Due impartiality/bias	2
Programming	LBC 97.3 FM	12/04/2019	Due impartiality/bias	1
Steve Allen	LBC 97.3 FM	18/03/2019	Materially misleading	1
Devon and Cornwall	More4	08/04/2019	Generally accepted standards	1
The Good Fight	More4	04/04/2019	Generally accepted standards	1
Rah E Huda	MTA International Africa 1	23/02/2019	Religious/Beliefs discrimination/offence	4
The Weekly Review	NTV Mir Lithuania	20/01/2019	Due impartiality/bias	1
BDO World Darts Championship 2019	Quest	06/01/2019	Offensive language	2
Wake Up With Webbo	Radio Ashford	12/04/2019	Competitions	1
Toby Tarrant	Radio X	18/03/2019	Gender discrimination/offence	1
Crosstalk	RT	13/03/2019	Due impartiality/bias	1
Going Underground	RT	20/02/2019	Due impartiality/bias	1
All Out Politics	Sky News	20/03/2019	Due impartiality/bias	1
All Out Politics	Sky News	01/04/2019	Due impartiality/bias	1
All Out Politics	Sky News	02/04/2019	Due impartiality/bias	2
All Out Politics	Sky News	03/04/2019	Generally accepted standards	14
All Out Politics	Sky News	05/04/2019	Generally accepted standards	1
All Out Politics	Sky News	16/04/2019	Elections/Referendums	1

Programme	Service	Transmission Date	Categories	Number of complaints
Paper Review	Sky News	20/03/2019	Due impartiality/bias	1
Press Preview	Sky News	22/03/2019	Due impartiality/bias	1
Sky News	Sky News	16/03/2019	Generally accepted standards	1
Sky News	Sky News	21/03/2019	Due impartiality/bias	1
Sky News	Sky News	24/03/2019	Due impartiality/bias	1
Sky News	Sky News	25/03/2019	Due impartiality/bias	1
Sky News	Sky News	27/03/2019	Due accuracy	1
Sky News	Sky News	29/03/2019	Due impartiality/bias	1
Sky News	Sky News	31/03/2019	Due accuracy	1
Sky News	Sky News	31/03/2019	Due impartiality/bias	1
Sky News	Sky News	01/04/2019	Generally accepted standards	1
Sky News	Sky News	02/04/2019	Due impartiality/bias	3
Sky News	Sky News	03/04/2019	Fairness	1
Sky News	Sky News	07/04/2019	Due impartiality/bias	1
Sky News	Sky News	11/04/2019	Generally accepted standards	2
Sky Papers	Sky News	11/04/2019	Elections/Referendums	1
Sophy Ridge on Sunday	Sky News	24/03/2019	Due impartiality/bias	2
The Papers	Sky News	20/03/2019	Due impartiality/bias	1
The Pledge	Sky News	07/03/2019	Race discrimination/offence	1
The Pledge	Sky News	28/03/2019	Materially misleading	1
Live IndyCar: St Petersburg GP	Sky Sports F1	10/03/2019	Advertising placement	1
Scottish Premier League: Kilmarnock v Rangers	Sky Sports Football	17/02/2019	Religious/Beliefs discrimination/offence	2
Football League: Birmingham City v Aston Villa	Sky Sports Football / Sky Sports Main Event	10/03/2019	Violence	2
Premier League Live: Southampton v Liverpool	Sky Sports Main Event	05/04/2019	Due impartiality/bias	3
Scottish Premier League: Kilmarnock v Rangers	Sky Sports Main Event	17/02/2019	Generally accepted standards	1
Good Morning Sports Fans	Sky Sports News	28/03/2019	Generally accepted standards	4
Super Sunday	Sky Sports Premier League	31/03/2019	Due impartiality/bias	3
Charlie's Angels: Full Throttle	Sony Movie Channel	29/03/2019	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
The House Bunny	Sony Movie Channel	25/03/2019	Sexual material	1
STV Evening News	STV	20/03/2019	Offensive language	1
The Chase	STV	16/02/2019	Advertising/editorial distinction	1
Julia Hartley-Brewer	Talk Radio	25/02/2019	Due impartiality/bias	1
The Late Night Alternative with Iain Lee	Talk Radio	18/03/2019	Generally accepted standards	1
News	Tay FM	17/03/2019	Generally accepted standards	1
Cash Call competition	TFM Radio	22/03/2019	Competitions	1
Dr. Pimple Popper	TLC	21/02/2019	Generally accepted standards	1
UTV Live News	UTV	20/03/2019	Religious/Beliefs discrimination/offence	1
News	Various	04/04/2019	Due impartiality/bias	1
News	Various	Various	Due impartiality/bias	1
Quom di Soch	Venus TV	27/12/2018	Generally accepted standards	1
UK's Scariest Debt Collector	Vice	18/03/2019	Generally accepted standards	1
Eddy Temple-Morris	Virgin Radio	11/03/2019	Harm	1

[How Ofcom assesses complaints about content standards on television and radio programmes](#)

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

Programme	Service	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	04/01/2019	Advertising/editorial distinction	1
BBC News	BBC 1	17/01/2019	Age discrimination/offence	1
Comic Relief	BBC 1	15/03/2019	Religious/Beliefs discrimination/offence	1
Holby City	BBC 1	04/12/2018	Transgender discrimination/offence	1
Holby City	BBC 1	11/12/2018	Sexual orientation discrimination/offence	2
Question Time	BBC 1	13/12/2018	Due impartiality/bias	1
Warren	BBC 1	25/02/2019	Dangerous behaviour	1
Sportscene	BBC 1 Scotland	30/12/2018	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
Inside Out West Midlands	BBC 1 West Midlands	21/01/2019	Animal welfare	1
Newsnight	BBC 2	21/12/2018	Due impartiality/bias	1
Victoria Derbyshire	BBC 2	29/11/2018	Materially misleading	1
BBC News	BBC channels	21/12/2018	Due impartiality/bias	1
The Papers	BBC iPlayer	21/01/2019	Due impartiality/bias	1
Jeremy Vine	BBC Radio 2	18/01/2019	Materially misleading	1
World Tonight	BBC Radio 4	30/11/2018	Due impartiality/bias	1

[How Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS](#)

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 21 April 2019 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories	Number of complaints
Imagine FM Limited	Imagine FM	Format	1

How Ofcom assesses complaints about broadcast licences

Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Service provider	Categories	Number of complaints
Amazon Video	Sexual material	3
ITV Hub	Generally accepted standards	1
YouTube	Crime and disorder	1

How Ofcom assesses complaints about on demand services

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 that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
X-Men: Apocalypse	4seven	10/04/2019	Outside of remit	1
Programming	5Select	Various	Advertising content	1
The Victim	BBC 1	08/04/2019	Outside of remit	1
Programming	BBC channels	Various	Outside of remit	2
Quickies	BBC Three Facebook page	04/04/2019	Generally accepted standards	1
Advertisement	Boomerang HD	06/04/2019	Advertising content	1
Advertisement	Capital FM	26/03/2019	Advertising content	1
Channel 4 News	Channel 4	29/03/2019	Outside of remit	9
Advertisement	Channel 5	17/03/2019	Advertising content	1
Tefal Cake Factory	Ideal World	04/04/2019	Teleshopping	1
Advertisement	ITV	19/03/2019	Advertising content	1
Advertisement	ITV	29/03/2019	Advertising content	1
Advertisement	ITV	02/04/2019	Advertising content	1
Advertisement	ITV	08/04/2019	Advertising content	1
Britain's Got Talent	ITV	06/04/2019	Outside of remit	1
ITV News	ITV	29/03/2019	Outside of remit	1
This Morning	ITV	25/03/2019	Outside of remit	1
Subtitling	ITV Hub	n/a	Access services	1
Advertisement	ITV2	28/03/2019	Advertising content	1
Advertisement	ITV4	24/03/2019	Advertising content	1
Advertisement	LBC 97.3 FM	08/04/2019	Advertising content	1
Advertisements	LBC 97.3 FM	n/a	Advertising content	1
Shelagh Fogarty	LBC 97.3 FM	29/03/2019	Outside of remit	1
Alan Robson's Night Owls	Metro Radio 97.1	18/02/2019	Outside of remit	1
Advertisement	Sky channels	Various	Advertising content	1
Wilder v Fury fight	Sky Sports Box Office	n/a	Outside of remit	1
Advertisement	Sky Sports Main Event	01/04/2019	Advertising content	1
Advertisements	Sky Sports Main Event	01/04/2019	Advertising content	1
Programme Trailers	STV Player	Various	Other	1
n/a	TMCRFM	n/a	Other	1
Birthday Deals with Laura	TJC	31/03/2019	Teleshopping	1
Question Time	Twitter	02/04/2019	Outside of remit	1

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisements	Various	08/04/2019	Advertising content	1

[More information about what Ofcom's rules cover](#)

BBC First

The BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the 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 Breakfast	BBC 1	13/03/2019	Generally accepted standards	1
BBC News	BBC 1	15/03/2019	Due accuracy	1
BBC News	BBC 1	25/03/2019	Due impartiality/bias	1
BBC News	BBC 1	29/03/2019	Due impartiality/bias	2
BBC news	BBC 1	30/03/2019	Due impartiality/bias	1
BBC News	BBC 1	30/03/2019	Generally accepted standards	1
BBC News	BBC 1	01/04/2019	Due accuracy	1
BBC News	BBC 1	02/04/2019	Nudity	1
BBC News	BBC 1	03/04/2019	Due impartiality/bias	1
BBC News	BBC 1	12/04/2019	Due impartiality/bias	2
BBC News	BBC 1	12/04/2019	Elections/Referendums	1
BBC News	BBC 1	14/04/2019	Due impartiality/bias	1
Blue Planet Live	BBC 1	31/03/2019	Animal welfare	1
Breakfast	BBC 1	13/03/2019	Due impartiality/bias	1
Breakfast	BBC 1	31/03/2019	Due impartiality/bias	1
Breakfast	BBC 1	10/04/2019	Promotion of products/services	1
Dr Who	BBC 1	01/01/2019	Due impartiality/bias	1
EastEnders	BBC 1	11/04/2019	Generally accepted standards	1
Have I Got a Bit More News for You	BBC 1	08/04/2019	Generally accepted standards	1
Line of Duty	BBC 1	31/03/2019	Violence	2
Match of the Day	BBC 1	06/04/2019	Generally accepted standards	1
Midlands Today	BBC 1	16/04/2019	Due accuracy	1
Panorama	BBC 1	n/a	Due impartiality/bias	1
Question Time	BBC 1	17/01/2019	Due impartiality/bias	1
Question Time	BBC 1	17/01/2019	Race discrimination/offence	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Question Time	BBC 1	28/03/2019	Sexual orientation discrimination/offence	11
Question Time	BBC 1	28/03/2019	Transgender discrimination/offence	2
Question Time	BBC 1	04/04/2019	Due impartiality/bias	11
Question Time	BBC 1	04/04/2019	Generally accepted standards	3
Question Time	BBC 1	07/04/2019	Due impartiality/bias	1
Question Time	BBC 1	10/04/2019	Race discrimination/offence	1
Question Time	BBC 1	Various	Due impartiality/bias	1
The Andrew Marr Show	BBC 1	31/03/2019	Due impartiality/bias	1
Various	BBC 1	29/03/2019	Due impartiality/bias	1
The Victim	BBC 1	08/04/2019	Suicide and self harm	1
BBC News	BBC 1 Scotland	15/03/2019	Due impartiality/bias	1
BBC News	BBC 1 Scotland	04/04/2019	Due impartiality/bias	1
Sportscene	BBC 1 Scotland	24/02/2019	Materially misleading	1
All Over the Place	BBC 2	13/04/2019	Dangerous behaviour	1
BBC Newsroom Live	BBC 2	26/10/2018	Other	1
Comic Relief	BBC 2	15/03/2019	Generally accepted standards	1
Frankie Boyle's New World Order	BBC 2	31/03/2019	Generally accepted standards	1
Great British Menu	BBC 2	11/04/2019	Generally accepted standards	2
Great British Menu	BBC 2	12/04/2019	Generally accepted standards	2
Newsnight	BBC 2	15/03/2019	Generally accepted standards	3
Newsnight	BBC 2	01/04/2019	Gender discrimination/offence	1
Newsnight	BBC 2	02/04/2019	Due impartiality/bias	1
Politics Live	BBC 2	12/04/2019	Elections/Referendums	1
The Great British Sewing Bee	BBC 2	Various	Generally accepted standards	1
The Masters	BBC 2	14/04/2019	Offensive language	1
Victoria Derbyshire	BBC 2	01/04/2019	Generally accepted standards	1
Showbands: How Ireland Learned to Party	BBC 2 Northern Ireland	31/03/2019	Generally accepted standards	1
BBC Asian Network	BBC Asian Network	01/01/2019	Race discrimination/offence	1
BBC News	BBC channels	14/03/2019	Due impartiality/bias	1
BBC News	BBC channels	31/03/2019	Due impartiality/bias	1
BBC News	BBC channels	12/04/2019	Due impartiality/bias	2
BBC News	BBC channels	13/04/2019	Elections/Referendums	1
BBC News	BBC channels	Various	Due impartiality/bias	2

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Programming	BBC channels	09/02/2019	Due impartiality/bias	1
Programming	BBC channels	01/03/2019	Due impartiality/bias	1
Programming	BBC channels	12/04/2019	Due impartiality/bias	1
Programming	BBC channels	Various	Elections/Referendums	2
This Week	BBC channels	14/03/2019	Due impartiality/bias	1
Line of Duty	BBC iPlayer	n/a	Violence	1
Programming	BBC iPlayer	14/04/2019	Other	1
BBC News	BBC News Channel	29/03/2019	Due impartiality/bias	4
BBC News	BBC News Channel	11/04/2019	Race discrimination/offence	1
BBC News	BBC News Channel	12/04/2019	Due impartiality/bias	3
BBC News	BBC News Channel	12/04/2019	Generally accepted standards	1
BBC News	BBC News Channel	14/04/2019	Privacy	1
BBC Newsroom Live	BBC News Channel	15/03/2019	Due impartiality/bias	1
Business News	BBC News Channel	01/04/2019	Due impartiality/bias	1
The Papers	BBC News Channel	29/03/2019	Due impartiality/bias	1
America This Week	BBC Parliament	31/03/2019	Offensive language	1
Programming	BBC Radio	22/03/2019	Due impartiality/bias	1
Adele Roberts	BBC Radio 1	03/04/2019	Race discrimination/offence	1
Scott Mills	BBC Radio 1	11/04/2019	Sexual material	1
BBC News	BBC Radio 2	23/03/2019	Due impartiality/bias	1
Jeremy Vine	BBC Radio 2	04/04/2019	Due impartiality/bias	1
Any Questions?	BBC Radio 4	13/04/2019	Elections/Referendums	1
BBC News	BBC Radio 4	29/03/2019	Due impartiality/bias	1
BBC News	BBC Radio 4	29/03/2019	Generally accepted standards	1
Programming	BBC Radio 4	03/03/2019	Due impartiality/bias	1
Today	BBC Radio 4	02/04/2019	Due impartiality/bias	1
News	BBC Radio Devon	10/04/2019	Due accuracy	1
John Warnett	BBC Radio Kent	05/04/2019	Due impartiality/bias	1
The Curry Show	BBC Radio Leicester	04/03/2019	Commercial communications on radio	1
Katie Morag and Tiresome Ted	CBeebies	10/04/2019	Scheduling	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 1 and 21 April 2019.

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

Programme	Service	Transmission date
Advertising minutage	ATN Bangla	Various
Beverly Hills Ninja	Channel 5	23/03/2019
Kerry Gold Country	Keep It Country	02/04/2019
Mondays for Women (trailer)	Kino TV	14/02/2019
Homeopathic Clinic	KTV	15/03/2019

[How Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes](#)

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

Programme	Service	Transmission date
Disclosure: The Dark Side of Dairy	BBC 1 Scotland	10/09/2018

[How Ofcom conducts investigations about content standards on BBC broadcasting services and BBC ODPS](#)

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

Programme	Service	Transmission date
Aaj Rana Mubashir Ke Sath	A1TV	21/10/2018

Skint Britain: Friends Without Benefits	Channel 4	20/02/2019
News and Main Headlines	Geo News	18/09/2018

Discontinued Investigation

In [Issue 372 of Ofcom's Broadcast and On Demand Bulletin](#), Ofcom announced it would be launching an investigation under the Procedures for the consideration and adjudication of Fairness and Privacy complaints into an edition of *Sky News* broadcast on 19 November 2018. This investigation has been discontinued.

[How Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes](#)

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

Licensee	Licensed Service
Cambridge Radio Ltd	Star Radio

[How Ofcom assesses complaints and conducts investigations about broadcast licences](#)