

# **Ofcom Broadcast Bulletin**

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# Contents

Introduction	3
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## Standards cases

### In Breach

<b>Phones 4U's sponsorship of network films on Channel 4</b> <i>Channel 4, 26 December 2012, 23:32</i>	6
---	---

<b>Kobots Federation: Kobots Dual Action Game sponsorship credits</b> <i>Cartoon Network, Cartoon Network Too, Boomerang, 18 February 2013 to 17 March 2013, various times</i>	9
---	---

<b>The Daily Show</b> <i>Comedy Central Extra, 5 March 2013, 20:00</i>	13
---	----

<b>Cross promotion for Sky Sports</b> <i>Sky News, 13 February 2013, 23:47</i>	15
---	----

### Resolved

<b>Viewer competitions</b> <i>Channel 5 and 5*, September to November 2012, various times</i>	17
--	----

<b>Viewer competitions</b> <i>ITV1 and ITV2 channels, September to November 2012, various times</i>	19
--	----

## Advertising Scheduling cases

### In Breach

<b>Advertising scheduling</b> <i>Bloomberg Television, various dates and times</i>	21
---	----

<b>Breach findings table</b> <i>Code on the Scheduling of Television Advertising compliance reports</i>	25
--	----

## Fairness and Privacy cases

### Upheld

<b>Complaint by Mr C</b> <i>Panorama: Gambling Nation, BBC 1, 5 November 2012</i>	26
--	----

<b>Other Programmes Not in Breach</b>	31
<b>Complaints Assessed, Not Investigated</b>	32
<b>Investigations List</b>	40

## Introduction

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

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

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

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

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

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

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

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

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

## Standards cases

### In Breach

#### Phones 4U's sponsorship of network films on Channel 4

*Channel 4, 26 December 2012, 23:32*

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##### Introduction

Phones 4U, an independent mobile phone retailer, sponsors drama and films on Channel 4, E4 and Film 4.

A total of 17 complainants contacted Ofcom about a Phones 4U sponsorship credit broadcast on Channel 4 on 26 December 2012 during the film *The Girl with the Dragon Tattoo*. The complainants felt that the scheduling of the sponsorship credit was inappropriate and belittled the serious issues being dealt with in the film's content.

Ofcom viewed the sponsorship credit and noted that it started with a close-up shot of a woman's face in bed with a man, apparently having sex. The woman paused and leaned towards the camera and said: "*I'm faking it, can I upgrade?*" The sponsorship credit was broadcast at approximately 23:32 leading into an advertising break during the film *The Girl with the Dragon Tattoo*. Immediately before the credit the film showed a prolonged attack and disturbing rape on a young woman, the film's main character. This included a close-up of her face while she was screaming. The effect was to cut from the face of the screaming woman in the film's rape scene to the face of the woman in bed in the sponsorship credit.

In addition, we noted that the next sponsorship credit, leading out of the same advertising break back into the film, continued the sexual theme and returned to the scene of the man and woman in bed used in the sponsorship credit described above. In this credit the man looked at the camera and said "*I've still got my pants on, can I upgrade?*"

Ofcom considered that the sponsorship credits raised issues warranting investigation under Rule 9.17 of the Code which states:

"Sponsorship must comply with both the content and scheduling rules that apply to television advertising."

The BCAP Code: The UK Code of Broadcast Advertising ("the BCAP Code") states in Section 4 that:

"Advertisements must not be harmful or offensive. Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence. The context in which an advertisement is likely to be broadcast must be taken into account to avoid unsuitable scheduling (see Section 32: Scheduling)."

Rule 32.1 of the BCAP Code states that:

"Broadcasters must exercise responsible judgement on the scheduling of advertisements and operate internal systems capable of identifying and

avoiding unsuitable juxtapositions between advertising material and programmes, especially those that could distress or offend viewers or listeners.”

We therefore sought formal comments from the Channel 4 (or “the Licensee”) on how these credits complied with the relevant rules.

## **Response**

Channel 4 said that it took concerns about the sponsorship credits very seriously and that after the broadcast it had issued the following apology to viewers who had complained directly to Channel 4:

“We are sorry that the sponsorship bumper for Phones 4U caused you some distress. Unfortunately, this sponsorship credit was not flagged as being inappropriate for such a sensitive part of this particular film. We have spoken to the department responsible and they are looking into ways to ensure that situations like this do not occur again in the future. Again, we can only apologise for the inadvertent offence this caused.”

The Licensee explained that there are 37 different Phones 4U sponsorship credits and those with a more adult nature are scheduled for post-21:00 broadcast. Channel 4 said that the sponsorship credits complained about were played in random rotation across all sponsored films on Channel 4 and Film 4 and had a post-21:00 restriction. Channel 4 said it regretted what had occurred and acknowledged that “Unfortunately, the juxtaposition between the credits and this particular film inadvertently caused offence to viewers.”

Channel 4 submitted on receipt of the viewer complaints it carried out an urgent review of the placement of all Phones 4U credits around films and implemented processes to identify sponsored films containing potentially sensitive themes or scenes, and to ensure that only appropriate credits are placed around such material.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is to ensure “that unsuitable sponsorship is prevented”.

Rule 9.17 of the Code states that sponsorship must comply with both the content and scheduling rules that apply to television advertising. Section 4 of the BCAP Code requires broadcasters to ensure that advertising is not offensive, and Rule 32.1 of the BCAP Code specifically requires that broadcasters take into account the scheduling of advertising in order to avoid unsuitable juxtapositions between advertising material and programmes, especially those that could distress or offend viewers.

In this case, Ofcom considered that the juxtaposition of a light-hearted sponsorship credit featuring a woman during sex with a disturbing and distressing rape scene in a film was clearly unsuitable. In Ofcom’s view this clearly had the potential to be offensive to viewers.

As set out in the BCAP Code, broadcasters are required to have processes in place to ensure advertising material is scheduled appropriately and unsuitable juxtapositions between advertising and programmes which may cause offence are avoided.

In its submission Channel 4 gave no indication that it had any processes in place other than the post-watershed restriction on some of the Phones 4U sponsorship credits prior to this broadcast.

We noted that the Licensee took steps following complaints about the inappropriate scheduling of the sponsorship credit to carry out “an urgent and immediate” review of the placement of Phones 4U credits and implemented new processes to ensure that sponsorship credits going forward should be scheduled appropriately.

Ofcom has taken account this action by Channel 4 and the apology it issued to viewers. However we considered that, in this case, Channel 4 had had insufficient processes in place to prevent the unsuitable juxtaposition of advertising and programming material, as required by Rule 32.1 of the BCAP Code.

Ofcom therefore considered that both sponsorship credits were in breach of the relevant rules

**Breaches of Rule 9.17 of the Code, with reference to Rule 32.1 of the BCAP Code**

## In Breach

### **Kobots Federation: Kobots Dual Action Game sponsorship credits**

*Cartoon Network, Cartoon Network Too, Boomerang, 18 February 2013 to 17 March 2013, various times*

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#### **Introduction**

Cartoon Network, Cartoon Network Too and Boomerang are cable and satellite channels in the children's section of the electronic programme guide. The channels primarily broadcast animated programmes. The licences for the channels are held by Turner Broadcasting System Europe Limited ("Turner" or "the Licensee").

Between 18 February and 17 March 2013, Kobots Federation: Kobots Dual Action Game<sup>1</sup> sponsored Cartoon Network, Cartoon Network Too and Boomerang. The sponsorship credits were therefore broadcast each day during this period on each channel around a variety of programmes.

During routine monitoring, Ofcom noted a sponsorship credit which comprised: the Kobots logo which stated "*Kobots Federation Kobots Dual Action Game*"; the website address "*www.kobotsfederation.com*"; footage of children playing with the Kobots figures; and the voiceover "*Join the Kobots Federation.<sup>2</sup> Join the Funtastic. Cartoon Network sponsored by Kobots.*"

There were also other voiceover variations as follows:

- "*Join the Kobots Federation. Join the amazing action on Cartoon Network sponsored by Kobots.*"
- "*Join the Kobots Federation. Cartoon Network sponsored by Kobots.*"
- "*Join the Kobots Federation. Join the heavyweight heroes. CN Too sponsored by Kobots.*"
- "*Join the Kobots Federation. CN Too sponsored by Kobots.*"
- "*Slide into big hits all day on Boomerang. Sponsored by Kobots. Join the Kobots Federation.*"
- "*Jump into big hits all day on Boomerang. Sponsored by Kobots. Join the Kobots Federation.*"
- "*Slide into afternoons on Boomerang. Big hits sponsored by Kobots. Join the Kobots Federation.*"

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<sup>1</sup> Kobots are collectible small plastic figures which children play with either by flicking the figures at their opponent's figures or into a goal called a Kobotron. There are six Kobots teams to collect.

<sup>2</sup> The Kobot Federation website allows users to interact with friends, put details of their Kobot toy collection online and play online Kobot games alone or with friends.

- “*Join the Kobots Federation. Boomerang sponsored by Kobots.*”

Ofcom considered the material raised issues warranting investigation under the following Code rule:

Rule 9.22: “Sponsorship credits must be distinct from advertising. In particular:...

- (a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

We therefore asked the Licensee for its comments as to how the content complied with Rule 9.22(a).

### **Response**

Turner submitted that the Kobot Federation toys were launched in February 2013 and the Licensee was conscious of the need to ensure that viewers knew what the products were in order to satisfy Rule 9.19 of the Code which requires that sponsorship must be clearly identified. Turner said that it also took note of the fact that Rule 9.22(a) states that credits “may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

Turner stated that as the toys are so new to the market, it decided to include the sponsor’s tagline “*Join the Kobots Federation*” with the “dual purpose of utilising any brand recognition that may be spreading through the market and also as a method of pointing viewers to the section of the Kobots Federation website that would give them information about the products themselves.” The Licensee added that the Kobots Federation website is not a direct purchasing site, and joining for free only provides more information and functionality on the site. Therefore Turner considered that “*Join the Kobots Federation*” was not directly encouraging the purchase of the Kobots toys.

Turner submitted that “*Funtastic*” was a description of the programmes on the channels which were being sponsored. So the line “*Join the Funtastic*” was included to create a thematic link between the sponsored programmes and the sponsor, i.e. “the viewer is encouraged to enjoy the sponsored programme with the sponsor”.

However, Turner acknowledged that the credits “may create the impression of a commercial call to action”. The Licensee said that it will ensure that for future sponsorship campaigns the creative teams are made aware of the need to include only a small amount of sponsor content and to create “bespoke elements to create thematic link”. The Licensee also submitted that these credits may not have met its usual standards because of a heavily restructured team, but that the compliance and legal teams have now ensured that refresher training sessions are being provided and that all new sponsorship campaigns are subject to additional checks.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. The rules in Section Nine of the Code, among others, reflect this objective.

The EU Audiovisual Media Services Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement. In particular, Ofcom’s published guidance on Rule 9.22(a) states that “credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code”.

In this case, Ofcom noted that when complying the credits Turner had considered that because viewers could not purchase the sponsor’s products on the Kobots Federation website, the voiceover “*Join the Kobots Federation*” was not a call to action for viewers to contact the sponsor to purchase the sponsor’s products. However, Ofcom considered that the purpose of encouraging viewers to “*Join the Kobots Federation*” (which was sometimes accompanied in the voiceover by the line “*Join the heavyweight heroes*”) was to encourage them to use the sponsor’s service to interact with friends, put details of their Kobot toy collection online and play online Kobot games. Further, Ofcom disagreed with Turner that that “*Join the Kobots Federation*” was not a call to action to purchase the toys because the website is not a direct purchasing site. As the toys are called ‘Kobots Federation: Kobots Dual Action Game’, the call to action could have been understood to be an encouragement to visit the website, but could also be understood to be an encouragement to purchase the toys from a retailer.

Further, we noted Turner’s submission that the line “*Join the Funtastic*” was an attempt to create a thematic link between the sponsored programmes and the sponsor. However we judged that this did not serve to create a clear link with the programming being sponsored, and instead simply appeared to be a call to action for the viewer to contact the sponsor, particularly as it followed the line “*Join the Kobots Federation*”. Simply because a sponsorship credit has, or could be argued to have, a thematic link to the programme(s) it is sponsoring, does not necessarily prevent it from also amounting to an advertising message.

Ofcom therefore judged that the credits contained direct invitations to viewers to contact the sponsor and as such encouraged the purchase of the sponsor’s products, in breach of Rule 9.22(a) of the Code. However, Ofcom welcomed the fact that

Turner is undertaking refresher training sessions for its staff to ensure compliance with Rule 9.22(a).

**Breaches of Rule 9.22(a)**

## In Breach

### The Daily Show

Comedy Central Extra, 5 March 2013, 20:00

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#### Introduction

Comedy Central Extra is owned and operated by Paramount UK Partnership (“Paramount UK” or “the Licensee”).

*The Daily Show* is a satirical American news programme which mixes studio discussion about current events with filmed location reports where reporters take a comic look at different aspects of American life, often interviewing people from a particular community.

A complainant alerted Ofcom to the use of the phrase “*fuck it*” by a reporter during an item on Texans who want to secede from the United States.

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

“The most offensive language must not be broadcast before the watershed (in the case of television)...”.

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

#### Response

Paramount UK said that the use of the most offensive language in this case was not “muted or bleeped as is usual practice” as a result of human error.

The Licensee said it accepted the language was “unacceptable” in a pre-watershed broadcast and wanted to “unreservedly apologise” to the complainant. The Licensee said that when complying this programme for broadcast at 20:00 it “takes a special care” to adhere to the Code rules on offensive language. Paramount UK said an investigation was made into how the mistake occurred and that as a result it has reviewed its compliance procedures. Paramount UK said it has “made sure that the individuals concerned understand how seriously the mistake was” and that “sufficient procedures” have been put in place to avoid any recurrence.

#### Decision

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

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck”

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

and its derivatives are considered by audiences to be among the most offensive language. Such language is unacceptable before the watershed, whatever the audience profile of the channel.

In this case the use of the word “fuck” was clearly audible at 20:10 in this programme when broadcast. Ofcom notes the action taken by Paramount UK after it became aware of the transmission of the most offensive language in this broadcast. However, Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...”. There was therefore a breach of Rule 1.14.

#### **Breach of Rule 1.14**

## In Breach

### Cross promotion for Sky Sports

*Sky News, 13 February 2013, 23:47*

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#### Introduction

A complainant alerted Ofcom to flashing images in a 30-second promotion for Sky Sports broadcast on Sky News. The licence for Sky News is held by British Sky Broadcasting Ltd (“BSkyB” or “the Licensee”).

On assessing the material Ofcom noted that the promotion stated, “*Upgrade to Sky Sports and watch the sporting calendar come to life*”. This was followed by images of calendar pages being turned rapidly in the style of a ‘flick book’ (a series of pictures that vary gradually from one page to the next, so that when the pages are turned rapidly, the pictures appear to animate) to depict various animated sporting activities and scenes.

Certain types of flickering or intermittent images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out a technical assessment of the promotion against Ofcom’s guidance to broadcasters on flashing images (“the PSE Guidance”)<sup>1</sup>. The flick-book animation sequences contained rapid variations in brightness due to the varying ‘shadow’ cast by the pages. Some of these sequences, in total, around five and a half seconds, contained brightness changes at levels which exceeded the maximum limits in the PSE Guidance.

Ofcom considered the material raised issues warranting investigation under Rule 2.12 of the Code, which states:

“Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item”.

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

#### Response

The Licensee explained that, as is standard practice, the compliance team reviewed the promotion before it went to air and queried whether it would pass a PSE technical assessment because of the ‘flick book’ format.

BSkyB therefore carried out a technical assessment, which the promotion failed. The promotion was therefore re-edited and the segments which failed the first assessment passed a second test. However, during the second test, other segments of the promotion failed, and so yet further edits were carried out.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

After further edits, the sections of the promotion which had failed the second technical assessment were put through a third test and passed. BSkyB explained, however, that the whole promotion was not tested again at this point. The Licensee said that when Ofcom sent it the complaint, BSkyB put the whole promotion through another assessment and it failed.

The Licensee confirmed that the promotion was then immediately pulled from air, re-edited and tested again. The Licensee said that this version was compliant with Ofcom's PSE Guidance, and so was the version broadcast subsequently by Sky.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and / or offensive material".

Broadcasters are required under Rule 2.12 of the Code to ensure that adequate precautions are taken to maintain a low level of risk to viewers who have PSE. Given the significant potential harm that can result in viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard. Further, the PSE Guidance in this area (and the annexed Guidance Note on flashing images which is based on scientific research), are intended to limit the incidence of seizures.

Ofcom's test of this material found that it did not comply with the limits set out in the PSE Guidance. Ofcom notes the Licensee's explanations of: the compliance checks made in advance of the original broadcast; why this material was broadcast in a non-compliant form; and, that this version was removed from air immediately when BSkyB was realised that the promotion did not comply with the PSE Guidance.

Nonetheless the broadcast was in breach of Rule 2.12 of the Code.

## **Breach of Rule 2.12**

## Resolved

### Viewer competitions

*Channel 5 and 5\*, September to November 2012, various times*

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#### Introduction

Channel 5 Broadcasting Limited (“Channel 5” or the Licensee) alerted Ofcom to a technical error that affected its telephone entry system in a number of its premium rate broadcast competitions conducted between September and November in 2012.

Viewers entering the competitions by telephone were required to leave their contact details during the call so that a recording of this information could be linked to their entry. The error caused some viewers’ telephone calls to be terminated before they had an opportunity to leave their details.

Channel 5 confirmed that all entrants and their telephone numbers were automatically registered, so if an affected entrant had been selected as the winner, it would still have been possible for them to be contacted. Therefore, the error did not affect any entrant’s chances of winning the competitions. However, it did present the possibility that entrants could have been concerned that their entry had been cut short before they left a verbal record of their contact details, causing them to redial to enter again, and consequently be charged twice.

Ofcom considered the matter raised issues warranting investigation under Rule 2.14 of the Code.

Rule 2.14 “Broadcasters must ensure that viewers are not materially misled about any broadcast competition”.

It therefore sought the Licensee’s comments as to how the competitions complied with this rule.

#### Response

The Licensee said that in mid-November its customer service team was contacted by two entrants of the competition featured in *The Gadget Show* whose calls to the competition line had been terminated prematurely. Channel 5 notified its service provider and asked it to investigate the issue. Channel 5 said that BT (which is the platform provider responsible for collating its telephone competition entries) then notified its service provider that a technical error had caused the early termination of some calls. Channel 5 said that: “The root cause was identified to be some code in software deployed as part of an upgrade to the RIDE platform”. Channel 5 said it had not been aware of the software upgrade.

Channel 5 said that 1,863 entrants across 13 competitions were affected and at the time that the error was discovered, seven of these competitions had been completed.

The Licensee examined the results of the completed competitions and found that in each case, they had a full recording of the winner’s details or the winner had entered via a different route e.g. SMS. It therefore concluded that the technical issue had not affected the overall result of the seven completed competitions.

However, Channel 5 said it was concerned that some entrants to the 13 affected competitions may have thought their first entry had not been registered and therefore called again to enter the competition. It therefore identified 1,027 people across the 13 competitions who had made multiple entries. It said that it arranged to contact these people to ascertain whether they had intended to enter the competition more than once, or whether they had done so as a result of their initial call being cut short. The entrants of the seven completed competitions were given the option of receiving a refund or having their entry fee donated to charity. The entrants for the six active competitions were given an extra option of staying in the competition.

Having completed this process, the Licensee proceeded to select the winners of the remaining six competitions. The winners either had full details during their telephone call or used an alternative route of entry and therefore it similarly concluded that the technical error had no impact on the result of these competitions.

Channel 5 said that it did not believe that any entrant was materially affected by this incident but nonetheless has requested that BT notifies it of any other software changes prior to implementation. It added that it will monitor the situation via its service provider going forward to ensure this incident is not repeated.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including “that generally accepted standards are applied to the contents of television... services so as to provide adequate protection for members of the public from the inclusion in such services of ... harmful material.”

This objective is reflected in Section Two of the Code. Rule 2.14 requires broadcasters to ensure that viewers and listeners are not materially misled about any broadcast competition.

In this case, Ofcom noted that a technical error caused some telephone calls to terminate before entrants had the opportunity to provide their personal details. As explained above, this may have caused confusion to entrants and prompted them to redial resulting in a second premium rate charge.

However, Ofcom accepted that the technical error that affected some viewers' entries was beyond the control of the Licensee. Nevertheless we welcome Channel 5's confirmation that its service provider is liaising with BT to reduce the likelihood of any recurrence of this issue. We also noted the extensive process undertaken by the Licensee to eliminate any possibility of material harm to viewers caused by the error. In the circumstances, Ofcom considers the matter resolved.

## **Resolved**

## Resolved

### Viewer competitions

*ITV1 and ITV2 channels, September to November 2012, various times*

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#### Introduction

ITV Broadcasting Limited (“ITV”) alerted Ofcom to a technical error that affected the telephone entry system in a number of its premium rate broadcast competitions conducted between September and November 2012.

ITV’s broadcast competitions often offer three telephone entries for the price of two. Viewers wishing to take advantage of this offer are invited to stay on the line after their second (or fifth) call to leave their details again to receive a third (or sixth) entry for free. However, as a result of the technical error in these instances, eligible entrants’ calls were terminated before they had an opportunity to leave their details and therefore, they did not receive their additional free entry.

Ofcom considered the matter raised issues warranting investigation under Rule 2.14 of the Code.

Rule 2.14 “Broadcasters must ensure that viewers are not materially misled about any broadcast competition”.

It therefore sought the Licensee’s comments as to how the competitions complied with this rule.

#### Response

ITV explained that in late November 2012, BT (which is the platform provider responsible for collating its telephone competition entries) notified it of the issue. ITV said: “...there was an error in the software introduced as part of an upgrade to the underlying BT platform”. ITV added that it was not aware that the software upgrade had taken place until this time.

ITV calculated that 4,833 entrants across 116 competitions were eligible for an additional free entry but owing to this error did not receive one.

ITV said that each of its competition entries is assigned a 19 digit positive or negative number and that this is done entirely at random and not influenced by factors such as the size of the entry pool, the route of entry or the time of submission. The entrant with the lowest assigned number is the determined as the winner.

ITV said that in order to ensure the competitions ran in accordance with its published terms, and that the affected entrants were not disadvantaged, it re-ran the selection process for the 4,833 affected entrants. If a lower number than the originally selected winner in each of the competitions was assigned to one of these entries, these entrants were awarded the original advertised prize. ITV also confirmed that the original winner would also keep the prize originally awarded to them.

ITV said that, following the incident, it had asked BT to review its testing processes to ensure that they are as comprehensive as practically possible and expected an update from BT shortly.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including “that generally accepted standards are applied to the contents of television... services so as to provide adequate protection for members of the public from the inclusion in such services of ... harmful material.”

This objective is reflected in Section Two of the Code. Rule 2.14 requires broadcasters to ensure that viewers and listeners are not materially misled about any broadcast competition.

In this case, Ofcom noted that a technical error led to the exclusion of legitimate competition entries from 4,833 people who would have paid a premium rate for their two preceding entries on the understanding that they would receive an additional entry free of charge. Ofcom therefore considered that viewers could have been materially misled by the competitions’ promotions in respect of the free third (or sixth) entry offer.

However, Ofcom accepted that the technical error that caused some viewers’ entries to be excluded was beyond ITV’s control. Nevertheless we welcome ITV’s confirmation that is liaising with BT to reduce the likelihood of any recurrence of this issue. We also noted the action taken by ITV to retrospectively include excluded entries in the competitions and ensure they had the same chance of winning. In the circumstances, Ofcom considers the matter resolved.

## **Resolved**

## Advertising Scheduling Findings

### In Breach

#### Advertising scheduling

*Bloomberg Television, various dates and times*

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#### Introduction

Rule 17 of the Code on the Scheduling of Television Advertising (“COSTA”) stipulates the maximum number of advertising breaks programmes may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

*The Pulse* is a daily programme broadcast on Bloomberg Television containing analysis of the global financial markets. Ofcom received a complaint from a viewer who considered that the broadcast of *The Pulse* on 17 October 2012 contained more than the permitted number of advertising breaks.

Upon viewing this 180 minute edition of the programme, Ofcom noted that it contained 16 internal advertising breaks – seven more than permitted by COSTA.

Ofcom therefore sought comments from Bloomberg LP (“Bloomberg” or “the Licensee”) as to how the material complied with Rule 17 of COSTA.

#### Response

##### Response regarding *The Pulse*, 17 October 2012

The Licensee acknowledged that the number of internal advertising breaks in the programme exceeded the permitted allowance. It explained that the error resulted from some minor programming changes made the same day during which advertising breaks had been erroneously tagged to mirror the placement of breaks in its United States feed. It added that it had realised the oversight on the same day and had made the necessary changes to the software which it said “were in place for the following day”.

##### *The Pulse*, 18 October 2012 and 15 January 2013

In order to confirm that Bloomberg’s software changes had been effective in addressing this problem, Ofcom requested a recording of the following day’s episode of *The Pulse* to ascertain whether it was compliant with COSTA. When viewing the 180 minute programme broadcast on 18 October 2012, Ofcom noted that it contained 15 internal advertising breaks – six more than permitted by Rule 17 of COSTA.

Additionally, we selected a later episode of *The Pulse* (broadcast on 15 January 2013) for monitoring. This 120 minute episode contained 11 internal advertising breaks – five more than permitted by Rule 17 of COSTA.

Ofcom therefore sought further comments under Rule 17 of COSTA from the Licensee in respect of these broadcasts, and its previous explanation.

Response regarding *The Pulse*, 18 October 2012 and 15 January 2013

The Licensee said that despite being assured that the problem that occurred previously had been fully addressed, it admitted that both of the above broadcasts contained more internal advertising breaks than permitted. Bloomberg sincerely apologised for the oversight and said that it had assigned a senior traffic operative to monitor compliance. It added that that operative had undertaken a rigorous review of its logs and it was now confident that it was compliant with COSTA.

*The Pulse*, 8 February 2013

To ensure that subsequent broadcasts of *The Pulse* were compliant with COSTA, Ofcom selected the episode from 8 February 2013 for monitoring. As with the episode broadcast on 15 January, we noted that this 120 minute episode contained 11 internal advertising breaks – five more than permitted by Rule 17 of COSTA.

Ofcom advised Bloomberg of its findings and requested its further comments under Rule 17 of COSTA in light of this incident, and its previous assurances.

Response regarding *The Pulse*, 8 February 2013

The Licensee acknowledged that the episode contained one more internal advertising break than permitted under Rule 17 of COSTA. It explained that a traffic operative had scheduled a ten second advertisement during a break in the programme that contained a short market report and as a result, transformed it into an internal advertising break. It apologised once again for the oversight but asked Ofcom to take into consideration that it is a global broadcaster that has to build highly complex break structures of irregular durations in order to comply with different regulations across the world. It said that this was further complicated by the fact that the majority of its content is live and as such, breaks are scheduled at very short notice. Nonetheless, it recognised that “these factors cannot excuse [its] errors” which it stressed were “inadvertent and not a deliberate attempt to flout COSTA regulations.”

However, on the issue of the other additional four advertising breaks Ofcom had identified in its monitoring, Bloomberg initially inferred that, when calculating the number of internal advertising breaks in this broadcast, Ofcom had counted sponsorship credits and a break that solely contained what it regarded as “promos”. It submitted that neither should be regarded as internal advertising breaks.

In its Preliminary View, Ofcom stated that it appeared the Licensee had misunderstood the basis on which advertising is calculated for the purposes of COSTA which defines television advertising as:

“any form of announcement broadcast whether in return payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business,

craft or profession in order to promote the supply of goods and services including immovable property, rights and obligations, in return for payment”.

The above definition is derived from Article 1(i) of the AVMS Directive.

Ofcom also stated that “interruptions that solely contain announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placement are not counted as advertising breaks for the purposes of the application of Rule 17 of COSTA.”

The Preliminary View identified several breaks containing an advertisement for Businessweek magazine. This magazine, although produced by Bloomberg, was clearly not an announcement in connection with its own programmes or an ancillary product directly derived from those programmes. We noted that it cost viewers a monthly subscription. As a consequence, any break that contained this material was counted as an internal advertising break for the purposes of assessing the programme’s compliance with Rule 17 of COSTA.

Having considered Ofcom’s Preliminary View, Bloomberg said it had “genuinely believed the announcements that aired for Businessweek magazine did not count as advertising breaks” but “[understood] why [it] should have counted them as advertising.” It added that it has now adjusted its programming accordingly.

Bloomberg apologised for the errors it had made and reiterated that it was committed to being compliant.

## **Decision**

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. The Directive also makes clear that Member States are free to apply more restrictive requirements. COSTA sets out those rules required by the Directive and additionally those that Ofcom has determined appropriate for the United Kingdom.

When calculating the number of internal advertising breaks, Ofcom counted only those that included spot advertisements and advertisements for Bloomberg’s own products and services that were not directly derived its programmes for example, the Businessweek magazine. In all four cases, the number of internal advertising breaks significantly exceeded the permitted allowance.

Ofcom was very concerned about the Licensee’s representations throughout the course of this investigation.

Despite repeated assurances from Bloomberg that it was confident that it was compliant, having implemented more robust compliance procedures, Ofcom continued to identify subsequent broadcasts of *The Pulse* that contained more than the permitted amount of internal advertising breaks.

Furthermore, it was only after 14 February 2013, when Ofcom notified Bloomberg of a fourth incident, that Bloomberg inferred that Ofcom had identified more advertising breaks than it believed had been broadcast. Ofcom noted that in the three previous incidents, Bloomberg had not questioned the number of internal advertising breaks that Ofcom had indicated it noted through its own monitoring. Given that the number of internal advertising breaks in all four broadcasts of *The Pulse* had been significantly increased by the presence of the Bloomberg magazine advertisement, it did not appear to Ofcom that Bloomberg had sufficiently reviewed the broadcasts on 17 and 18 October 2012, and 15 January 2013.

While Ofcom recognises the challenges faced by Bloomberg to ensure that its break patterns satisfy both commercial needs and regulatory requirements across the world, it nonetheless expects full compliance with its rules. In all four cases highlighted in this investigation, Ofcom noted that the number of internal breaks significantly exceeded the permitted allowance. It is therefore recording a breach of Rule 17 of COSTA in each case.

We welcome Bloomberg's acknowledgement of its errors and its commitment to future compliance but in light of the repeated breaches identified in this investigation, Ofcom will continue to monitor the Licensee's compliance in this area and will consider further regulatory action in the event of recurrence.

#### **Breaches of Rule 17 of COSTA**

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
UMP Movies	1 February 2013, 15:00	COSTA Rule 4	UMP Movies exceeded the permitted advertising allowance on this date by 180 seconds.  <b>Finding: Breach</b>

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 15) may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
The Africa Channel	26 January 2013, 28:00	COSTA Rule 17	Ofcom noted, during monitoring, that a programme scheduled to last 100 minutes included seven advertising breaks, two more than is permitted under COSTA.  <b>Finding: Breach</b>

## Fairness and Privacy cases

### Upheld

#### Complaint by Mr C

*Panorama: Gambling Nation, BBC 1, 5 November 2012*

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#### Summary

Ofcom has upheld this complaint of unwarranted infringement of privacy made by Mr C.

This programme about the increase in gambling addiction in the UK featured a number of people talking about their experiences, one of whom was the complainant, Mr C. Mr C was not named in the programme and attempts were made to obscure his face in the footage. However, his voice was clearly audible.

Ofcom found that Mr C's privacy was unwarrantably infringed, since footage of him shown in the programme, which rendered him identifiable, was broadcast without his consent.

#### Introduction

On 5 November 2012, the BBC broadcast an edition of the weekly investigative current affairs programme, *Panorama*. This edition looked at the growth in problem gambling in the UK since the introduction of new legislation five years ago that enabled both greater promotion of gambling and a number of new ways in which to gamble. In particular, it looked at the impact of fixed odds betting terminals ("FOBTs") in betting shops which allow people to bet up to £100 every 20 seconds on the outcome of games or events with fixed odds.

The programme featured a number of people talking about their addictions to gambling. One of these was the complainant, Mr C. Mr C was not named in the programme and attempts were made to obscure his face in the footage shown. However, Mr C's voice was not disguised.

Following the broadcast of the programme, Mr C complained to Ofcom that his privacy was unwarrantably infringed in the programme as broadcast.

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

Mr C complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme which rendered him identifiable without his consent. He said that the programme makers had assured him that his identity would be protected, but that the concerns he expressed after seeing the relevant footage prior to its broadcast were ignored. As a result, Mr C said that he was easily recognised by his friends and family.

In response to this complaint, the BBC said that it regretted any distress which the broadcast of the programme caused to Mr C and repeated the apologies which had already been given to him by the programme makers. It said that the programme makers went to considerable lengths to respond to the concerns Mr C expressed during the production process and that he had confirmed that he was satisfied that appropriate action had been taken to safeguard his identity. However, the BBC

added that, although the programme makers had believed that Mr C's contribution was filmed and edited in a way that was sufficient to safeguard his identity, in hindsight, it was apparent that further steps could have been taken.

The BBC said that the issue of protecting Mr C's identity was discussed several times prior to filming taking place and set out the actions taken on the day of filming to address Mr C's concerns regarding this issue. These included:

- moving furniture to alter the appearance of the room in which Mr C was filmed;
- choosing camera angles to avoid an identifiable room;
- instructing Mr C to wear non-descript clothing and a baseball cap to disguise the back of his head; and
- using extreme close-ups, lighting and silhouettes and blurring to disguise Mr C's identity.

In addition, a monitor was set up so that Mr C was able to view the footage being recorded throughout the day. The BBC said that adjustments were made to the blurring of some shots during filming at Mr C's request. It added that at the end of the day's filming, Mr C signed a consent form (a copy of which was provided to Ofcom).

The BBC said that Mr C was provided with an opportunity to review the original edit of his contribution to ensure that it adequately protected his identity. On 16 October 2012 (six days prior to the provisional transmission date), he was sent a link to a website to which this footage had been uploaded. Mr C expressed concerns about the edit and, following a telephone conversation and email exchange with the programme makers, the sequence was re-edited. In particular, more blurring was applied to images of Mr C's eyes (the original edit of which Mr C considered to have rendered him identifiable) and one image of his left eye was removed altogether. The BBC also said that a blurred long-shot of Mr C sitting at a table was "darkened", but that it was "lightened" again due to technical error during the subsequent editing process.

The BBC said that Mr C viewed the re-edited footage on 19 October 2012, after which one of the programme makers called him to see if he was satisfied that this revised version met the concerns he had raised about protecting his anonymity. There was no email correspondence on this point, but the BBC said that the programme maker's recollection was that Mr C said that the re-edit met his concerns and did not ask for any further changes to be made. The BBC contended that Mr C also said that he did not wish to see the other sequence of the programme in which he appeared and that he confirmed that he remained happy for his own voice to be used in the programme.

The BBC said that the programme did not include Mr C's name or details of where he lived and that programme makers had believed that the actions set out above were sufficient to protect his identity. However, it acknowledged that some people on Mr C's Facebook network had identified him from the broadcast of the material in question. It added that, although it was not possible to know for certain which aspect of the programme had rendered Mr C identifiable, as soon as it received Mr C's post-broadcast complaint, it took the following action:

- cancelled the regular repeat slot on Thursday night (8 November 12.25am) and the broadcast on the BBC World News channel;
- re-edited the programme to remove certain shots and to re-voice Mr C's contribution using an actor at the earliest opportunity; and,

- replaced the original broadcast with the revised version on the BBC iPlayer and Panorama websites.

Finally, the BBC said that, although the programme makers believed that Mr C's identity would be protected by the actions taken prior to the broadcast (and this belief was strengthened by Mr C's own approval of the material they proposed to broadcast), it accepted that responsibility for ensuring that he was not identifiable rested with them and that a misjudgement was made in this regard.

### **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this case that Mr C's complaint should be upheld. The complainant commented on that Preliminary View. The main points made by Mr C which are relevant to the complaint as entertained<sup>1</sup> were, in summary, as follows.

Mr C acknowledged and welcomed Ofcom's Preliminary View that his complaint should be upheld. However, he also said that, despite placing his trust in the programme makers and making his fears about being recognised clear to them on numerous occasions, they continuously assured him that it would be fine (i.e. that he would not be identified from his inclusion in the programme). Mr C also said that at no point was the importance of the inclusion of his own voice in the programme, with regard to the potential for him to be rendered identifiable, raised with him by the programme makers. In addition, Mr C said, that he signed the consent form in the middle of the day of filming rather than at the end of the day as the BBC asserted within its response to the complaint. He admitted that he did not read the consent form but said that he signed it on the basis that he would be "truly anonymous as promised". Mr C also disputed the recollection of one of the programme makers (as set out in the BBC's response) that he had said that the re-edit of the relevant footage which he viewed on 19 October 2012 "met his concerns" and had not asked for any further changes to be made. Rather, Mr C said that in response to this re-edited footage "I again expressed my concerns that it was not right, [in that] it still included shots of my house and I was still concerned about the top part of my face even though it appeared more blurry". The complainant added that he recalled being told that "there was still more editing to be done to the footage and not to worry that everything would be OK".

### **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

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<sup>1</sup> Ofcom noted that within his representations on the Preliminary View Mr C raised the issue of the continued availability of the original edit of the programme via the BBC iPlayer for several days after he had complained to the BBC about the programme as broadcast. Ofcom noted that this issue did not form part of the complaint as entertained and that it also falls outside its remit for the consideration of Fairness and Privacy complaints. Therefore, it is not relevant to Ofcom's consideration of this complaint.

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, both parties' written submissions and recordings of the original and revised edits of the footage sent to Mr C prior to the broadcast. Ofcom also took careful account of the representations made by the complainant in response to Ofcom's Preliminary View on this complaint. However, it concluded that these representations did not raise any substantive points which materially affected Ofcom's Preliminary View not to uphold the complaint. The broadcaster did not make any representations on Ofcom's Preliminary View.

Ofcom considered Mr C's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was included in the programme which rendered him identifiable without his consent.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right 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 considering whether or not there had been an unwarranted infringement of Mr C's privacy in the broadcast of the programme, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the broadcast of the relevant material. Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom noted that Mr C was shown in the programme as he talked about his gambling addiction and, in particular, the speed with which he had lost large sums of money using FOBT machines. Ofcom observed that the relevant footage showed Mr C in a room in his own home. It also noted that techniques had been used to disguise Mr C's identity in the programme. For example, the only clear shots of him included in the programme showed partial images of his face (notably his mouth) and the other images of his face were blurred. However, Ofcom also observed that the programme included Mr C talking about his experiences in his own voice.

Ofcom recognised that, as set out in his post-Preliminary View representations, Mr C's recollection of certain exchanges regarding whether he was content with the footage to be broadcast differed from that of the programme makers. However, Ofcom also noted, from the submissions of both parties, that Mr C had agreed to take part in the programme on the basis that his identity would be protected. While it was clear that the programme makers had taken significant measures to try to achieve this goal, it was acknowledged by the BBC in its response to the complaint, that following the original broadcast of the programme, Mr C was identified via his Facebook network by a number of people who knew him.

Ofcom considered that the subject of Mr C's gambling addiction was sensitive and private in nature and that his contribution to the programme was contingent upon his identity being protected in the broadcast of this material. Given the private nature of the information disclosed in the programme by Mr C, and that he had been assured by the programme makers that sufficient safeguards to protect his identity were in place, Ofcom took the view that Mr C had a legitimate expectation of privacy in the circumstances.

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

As noted above, Mr C consented to the broadcast of his contribution to this programme on the basis that his identity was protected. While the programme makers took steps to disguise Mr C's identity (and gave Mr C an opportunity to review both an original edit of his contribution and a subsequent edit, which was revised to take account of his concerns prior to broadcast) he was, nevertheless, identified from the version of the programme broadcast on 5 November 2012. Therefore, in Ofcom's view, Mr C did not consent to the broadcast of the relevant material, as it was transmitted on 5 November 2012, and his privacy was infringed as a result of its broadcast.

Having concluded that Mr C had a legitimate expectation of privacy and that his privacy was infringed by the broadcast of the relevant footage on the date in question, Ofcom then went on to determine whether the infringement of Mr C's privacy was warranted, in accordance with Rule 8.1 of the Code.

In doing so, Ofcom weighed the broadcaster's competing right to freedom of expression and to impart information and ideas without unnecessary interference. Ofcom noted that the BBC did not make any arguments seeking to justify the infringement of Mr C's privacy in this respect. Rather, the BBC acknowledged that a mistake had been made and that responsibility for it lay with the programme makers. While Ofcom noted that the BBC took swift and appropriate action to prevent any further infringement of Mr C's privacy once it became aware of the error and that the BBC apologised to Mr C for any distress caused to him by the programme, Ofcom, considered that was not justification for the intrusion into Mr C's privacy.

In these circumstances, Ofcom's view is that, on balance, the broadcaster's right to freedom of expression and its right to receive and impart information without interference, in the circumstances of this particular case, did not outweigh Mr C's expectation of privacy in relation to the broadcast of the footage of him that rendered him identifiable without his consent. Ofcom therefore concluded that the inclusion of this material in the programme as broadcast was not warranted in the circumstances.

Ofcom found that Mr C's privacy was unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has upheld Mr C's complaint of unwarranted infringement of privacy in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 22 April 2013

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Interview with Bright Learning Academy	Radio XL (1296AM)	23/01/2013	Commercial communications on radio
Islamic Debate	Ummah Channel	09/02/2013	Religious/Beliefs discrimination/offence
CSI: Crime Scene Investigation	Channel 5	26/03/2013	Generally accepted standards

## Complaints Assessed, not Investigated

Between 9 and 22 April 2013

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
606	BBC Radio 5 Live	21/04/2013	Outside of remit / other	1
118 118's sponsorship of ITV Movies	ITV3	13/04/2013	Disability discrimination/offence	1
118 118's sponsorship credits	Various	n/a	Generally accepted standards	1
24 Hours in A&E (trailer)	Channel 4	09/04/2013	Scheduling	1
40 Year Old Virgins	Channel 4	28/03/2013	Generally accepted standards	5
4thought.tv	Channel 4	21/03/2013	Race discrimination/offence	1
5 Live Drive	BBC Radio 5 Live	08/04/2013	Gender discrimination/offence	1
5 News at 5	Channel 5	11/04/2013	Generally accepted standards	1
5 News at 5	Channel 5	12/04/2013	Generally accepted standards	1
5 News Weekend	Channel 5	14/04/2013	Generally accepted standards	1
A Very British Wedding	BBC 2	09/04/2013	Outside of remit / other	1
Adult programming	Various	n/a	Outside of remit / other	1
Advertisement for The Bangladesh Awami League	ATN Bangla	10/03/2013	Due impartiality/bias	1
Advertising minutage	Nickelodeon	n/a	Advertising minutage	1
Advertising scheduling	ITV1, Dave, Yesterday	n/a	Advertising scheduling	1
Alan Brazil	Talksport	17/04/2013	Race discrimination/offence	1
Alun Cochrane's Fun House	BBC Radio 4	10/04/2013	Disability discrimination/offence	2
Animal Practice	ITV2	25/03/2013	Animal welfare	1
Animal Practice	ITV2	n/a	Animal welfare	2
Ant and Dec's Saturday Night Takeaway	ITV	23/03/2013	Materially misleading	3
Ant and Dec's Saturday Night Takeaway	ITV	06/04/2013	Scheduling	1
Ant and Dec's Saturday Night Takeaway	ITV	06/04/2013	Violence and dangerous behaviour	16
ARY News	ARY News	n/a	Advertising/editorial distinction	1
Bangladesh Today	CHSTV	23/03/2013	Premium rate services	1
BBC London News	BBC 1	09/04/2013	Outside of remit / other	1
BBC London News	BBC 1	12/04/2013	Scheduling	1
BBC News	BBC 1	08/04/2013	Generally accepted standards	1
BBC News	BBC 1	14/04/2013	Outside of remit / other	1

BBC News	BBC 1	21/04/2013	Generally accepted standards	1
BBC News	BBC 2	12/04/2013	Outside of remit / other	1
BBC News	BBC News Channel	07/04/2013	Under 18s in programmes	1
BBC News	BBC News Channel	08/04/2013	Generally accepted standards	1
BBC News	BBC News Channel	08/04/2013	Outside of remit / other	2
BBC News	BBC News Channel	15/04/2013	Outside of remit / other	2
BBC News	BBC News Channel	15/04/2013	Violence and dangerous behaviour	1
BBC News	BBC News Channel	16/04/2013	Generally accepted standards	1
BBC News	BBC Radio 4	08/04/2013	Generally accepted standards	1
BBC News	BBC Radio 5 Live	08/04/2013	Outside of remit / other	1
BBC News at One	BBC 1	08/04/2013	Outside of remit / other	1
BBC News at One	BBC 1	09/04/2013	Outside of remit / other	1
BBC News at One	BBC 1	12/04/2013	Generally accepted standards	1
BBC News at One	BBC 1	17/04/2013	Outside of remit / other	1
BBC News at Six	BBC 1	08/04/2013	Generally accepted standards	4
BBC News at Six	BBC 1	09/04/2013	Outside of remit / other	2
BBC News at Six	BBC 1	17/04/2013	Outside of remit / other	1
BBC News at Ten	BBC 1	08/04/2013	Generally accepted standards	1
BBC News at Ten	BBC 1	09/04/2013	Due accuracy	1
BBC News at Ten	BBC 1	09/04/2013	Generally accepted standards	1
BBC News Special	BBC 1	08/04/2013	Outside of remit / other	1
BBC Red Button	BBC Red Button	23/03/2013	Outside of remit / other	1
Bet365bingo.com 's sponsorship of Emmerdale	ITV	19/04/2013	Sponsorship	1
Big Body Squad (trailer)	Channel 5	09/04/2013	Scheduling	1
Big Body Squad (trailer)	Channel 5	n/a	Generally accepted standards	5
Big John at Breakfast	Hallam FM	01/04/2013	Generally accepted standards	1
Big Rich Texas	ITV2	24/03/2013	Violence and dangerous behaviour	1
Bob's Full House	Challenge	06/04/2013	Generally accepted standards	1
Boom Box	B4U Music	21/03/2013	Scheduling	1
Breakfast	BBC 1	06/04/2013	Under 18s in programmes	1
Breakfast	BBC 1	08/04/2013	Under 18s in programmes	1
Breakfast	BBC 1	09/04/2013	Outside of remit / other	2
Breakfast	BBC 1	10/04/2013	Outside of remit / other	1

Breakfast	BBC 1	18/04/2013	Drugs, smoking, solvents or alcohol	1
Britain's Got More Talent	ITV2	20/04/2013	Violence and dangerous behaviour	1
Britain's Got Talent	ITV	13/04/2013	Flashing images/risk to viewers who have PSE	1
Britain's Got Talent	ITV	13/04/2013	Generally accepted standards	1
Britain's Got Talent	ITV	13/04/2013	Outside of remit / other	2
Britain's Got Talent	ITV	20/04/2013	Outside of remit / other	1
Britain's Got Talent (trailer)	ITV	06/07/2013	Generally accepted standards	1
Broadchurch	ITV	01/04/2013	Offensive language	1
Broadchurch	ITV	08/04/2013	Animal welfare	6
Broadchurch	ITV	08/04/2013	Harm	1
Capital Breakfast	Capital FM	04/04/2013	Competitions	1
Capital Radio	Capital Radio	13/04/2013	Race discrimination/offence	1
Carry on Camping	ITV	24/03/2013	Nudity	1
Celebrity Juice (trailer)	ITV2	18/04/2013	Scheduling	1
Channel 4 News	Channel 4	04/04/2013	Due accuracy	1
Channel 4 News	Channel 4	08/04/2013	Gender discrimination/offence	1
Channel 4 News	Channel 4	08/04/2013	Generally accepted standards	1
Channel 4 News	Channel 4	17/04/2013	Due impartiality/bias	1
Channel i	Channel i	16/03/2013	Animal welfare	1
Channel promotion	Comedy Central	31/03/2013	Hypnotic and other techniques	1
Christian O'Connell Breakfast Show	Absolute Radio	26/03/2013	Fairness	1
Clara on Kiss	Kiss FM	13/04/2013	Offensive language	1
Competition	XFM	n/a	Competitions	1
Continuity announcement	Channel 4	12/04/2013	Gender discrimination/offence	1
Coronation Street	ITV	25/03/2013	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	29/03/2013	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	01/04/2013	Drugs, smoking, solvents or alcohol	2
Coronation Street	ITV	05/04/2013	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	10/04/2013	Race discrimination/offence	4
Coronation Street	ITV	17/04/2013	Materially misleading	1
Coronation Street	ITV	17/04/2013	Generally accepted standards	1
Coronation Street	ITV	19/04/2013	Drugs, smoking, solvents or alcohol	1
Countdown	Channel 4	02/04/2013	Product placement	1
Countdown	Channel 4	18/04/2013	Generally accepted standards	1

Daybreak	ITV	04/04/2013	Generally accepted standards	1
Daybreak	ITV	09/04/2013	Due impartiality/bias	1
Daybreak	ITV	19/04/2013	Generally accepted standards	1
Dickinson's Real Deal	ITV	04/04/2013	Competitions	1
Disney Channel	Disney Channel	01/04/2013	Religious/Beliefs discrimination/offence	1
Doctor Who	BBC 1	13/04/2013	Offensive language	1
Dogging Tales	Channel 4	04/04/2013	Generally accepted standards	6
Dogging Tales (trailer)	Channel 4	04/04/2013	Scheduling	1
Don't Tell The Bride	Really	09/04/2013	Offensive language	1
Embarrassing Bodies: Live from the Clinic (trailer)	Channel 4	15/04/2013	Scheduling	1
Embarrassing Bodies: Live from the Clinic (trailer)	Channel 4	18/04/2013	Scheduling	3
Embarrassing Bodies: Live from the Clinic (trailer)	Channel 4	20/04/2013	Scheduling	1
Embarrassing Bodies: Live from the Clinic (trailer)	E4	19/04/2013	Scheduling	1
Embarrassing Bodies: Live from the Clinic (trailer)	E4	20/04/2013	Scheduling	1
Embarrassing Bodies: Live from the Clinic (trailer)	More4	19/04/2013	Scheduling	1
Emmerdale	ITV	10/04/2013	Nudity	1
Emmerdale	ITV	12/04/2013	Animal welfare	1
Endeavour	ITV	21/04/2013	Drugs, smoking, solvents or alcohol	2
Europen Khober	Channel Nine UK	04/03/2013	Due impartiality/bias	1
FA Cup Semi Final - Millwall v Wigan	ITV	n/a	Outside of remit / other	1
FA Cup Semi-Final	ITV	14/04/2013	Race discrimination/offence	4
Family Guy	Fox	14/03/2013	Generally accepted standards	1
Five Minutes to a Fortune	Channel 4	15/04/2013	Materially misleading	1
Five Minutes to a Fortune	Channel 4	19/04/2013	Materially misleading	1
Five Minutes to a Fortune	Channel 4	n/a	Materially misleading	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	06/04/2013	Generally accepted standards	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	11/04/2013	Scheduling	2
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV2	12/04/2013	Generally accepted standards	1
Foyle's War	ITV	07/04/2013	Drugs, smoking, solvents or alcohol	1
Free Radio	Free Radio	n/a	Generally accepted standards	1
General programming	BBC Radio 2	n/a	Outside of remit / other	1
Giff Gaff's sponsorship of The Big Bang Theory	E4	11/04/2013	Materially misleading	1
Giff Gaff's sponsorship of The Big Bang Theory	E4	n/a	Materially misleading	1

Glee	Sky1	14/04/2013	Scheduling	1
Gogglebox	4seven	29/03/2013	Generally accepted standards	1
Golf	BBC 2	12/04/2013	Hypnotic and other techniques	1
Golf	BBC 2	12/04/2013	Outside of remit / other	1
Got to Dance	Sky1	n/a	Materially misleading	1
Have I Got News for You	BBC 1	12/04/2013	Generally accepted standards	2
Have I Got News for You	BBC 1	19/04/2013	Religious/Beliefs discrimination/offence	1
Horrid Henry	CITV	11/04/2013	Generally accepted standards	1
Horsemeat Banquet	BBC 3	27/03/2013	Generally accepted standards	1
I'm A Celebrity, Get Me Out of Here	ITV	11/11/2012	Animal welfare	1
It's Love Actually (trailer)	Sky 1	28/03/2013	Scheduling	1
It's Love Actually (trailer)	Sky Living +1	07/04/2013	Scheduling	1
ITV News and Weather	ITV	08/04/2013	Due accuracy	1
ITV News and Weather	ITV	08/04/2013	Generally accepted standards	1
ITV News and Weather	ITV	18/04/2013	Due accuracy	1
ITV News at Ten and Weather	ITV	08/04/2013	Generally accepted standards	1
ITV News Granada Reports	ITV	09/04/2013	Generally accepted standards	1
ITV News London	ITV London	10/04/2013	Due accuracy	1
James May's Man Lab	BBC 2	18/04/2013	Religious/Beliefs discrimination/offence	1
Jeremy Vine	BBC Radio 2	10/04/2013	Outside of remit / other	1
Jonathan Creek	BBC 1	01/04/2013	Transgender discrimination/offence	4
Jurassic Park	ITV	21/04/2013	Offensive language	3
Kids Choice Awards 2013	Nick +1	27/03/2013	Disability discrimination/offence	1
Law and Order	Channel 5	n/a	Generally accepted standards	1
Live football	Sky Sports	n/a	Outside of remit / other	1
Live Test Cricket	Sky Sports 1	22/03/2013	Race discrimination/offence	1
Loose Women	ITV	n/a	Scheduling	1
Lorraine	ITV	11/04/2013	Harm	1
Made in Chelsea	E4	08/04/2013	Generally accepted standards	2
Most Haunted	Pick TV	17/04/2013	Exorcism, the occult and the paranormal	1
Most Haunted	Pick TV	19/04/2013	Exorcism, the occult and the paranormal	1
My Big Fat Gypsy Fortune	Channel 4	19/04/2013	Outside of remit / other	1
Neighbours	Channel 5	16/04/2013	Generally accepted standards	1
New Style Radio	New Style Radio	n/a	Format	1

Newcastle v Sunderland	Sky Sports 1	14/04/2013	Due impartiality/bias	1
Not Going Out	BBC 1	05/04/2013	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	20/03/2013	Disability discrimination/offence	1
Off Their Rockers	ITV	07/04/2013	Age discrimination/offence	3
Off Their Rockers	ITV	07/04/2013	Scheduling	5
Off Their Rockers	ITV	14/04/2013	Generally accepted standards	1
Off Their Rockers	ITV	21/04/2013	Violence and dangerous behaviour	1
Once Upon a Time (trailer)	Channel 5	07/04/2013	Scheduling	1
Party Election Broadcast by the Conservative Party Perspectives	ITV	12/04/2013	Outside of remit / other	1
Perspectives	ITV	21/04/2013	Outside of remit / other	1
Pete Price's £2 Million of Work Campaign	Radio City 96.7	n/a	Materially misleading	1
Phil Spencer: Secret Agent	Channel 4	10/04/2013	Scheduling	1
Plebs	ITV2	08/04/2013	Animal welfare	1
Premier League Football	Sky Sports 1	08/04/2013	Race discrimination/offence	1
Press Preview	Sky News	04/04/2013	Generally accepted standards	1
Pricedrop.tv	Pricedrop.tv	07/04/2013	Outside of remit / other	1
Programming	BBC channels	n/a	Outside of remit / other	1
Programming	BBC Radio 1	n/a	Race discrimination/offence	1
Programming	BBC Radio 2	n/a	Outside of remit / other	1
Programming	Kiss	25/03/2013	Scheduling	1
Programming	Various	12/04/2013	Generally accepted standards	1
Psychic Sally On The Road	Pick TV	04/04/2013	Materially misleading	1
Psychic Sally On the Road	Pick TV	05/04/2013	Exorcism, the occult and the paranormal	1
Psychic Sally On the Road	Pick TV	08/04/2013	Exorcism, the occult and the paranormal	1
Psychic Sally on the Road	Pick TV	11/04/2013	Exorcism, the occult and the paranormal	1
Psychic Sally on the Road	Pick TV	16/04/2013	Exorcism, the occult and the paranormal	1
QI	BBC 2	12/04/2013	Race discrimination/offence	1
Radio 4 News	BBC Radio 4	16/04/2013	Generally accepted standards	1
Radio Station Jingle	Sun FM	n/a	Materially misleading	1
Regional News and Weather	BBC 1	11/04/2013	Generally accepted standards	1
Regional News and Weather	BBC 1	12/04/2013	Scheduling	1
Rich Clarke	Capital FM	09/04/2013	Offensive language	1
Rolf Harris Paints His Dream	BBC 2	n/a	Outside of remit / other	1

Rugby Union (trailer)	ESPN	29/03/2013	Gender discrimination/offence	1
Russell Howard's Good News	BBC 3	n/a	Electronic Programme Guides	1
Scott and Bailey	ITV	17/04/2013	Scheduling	1
Secrets of the Pickpockets	Channel 4	26/02/2013	Race discrimination/offence	1
See No Evil, Hear No Evil	5*	13/04/2013	Nudity	1
Sky News	Sky News	08/04/2013	Generally accepted standards	1
Sky News	Sky News	09/04/2013	Generally accepted standards	1
Sky News	Sky News	12/04/2013	Offensive language	1
Sky News	Sky News	16/04/2013	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	n/a	Product placement	1
Sky News with Kay Burley	Sky News	09/04/2013	Due accuracy	1
Southern FM	Southern FM	n/a	Due impartiality/bias	1
Stargate Universe (trailer)	Pick TV	n/a	Materially misleading	1
Suits	Dave HD	11/04/2013	Advertising minutage	1
Sunrise	Sky News	05/04/2013	Due accuracy	1
Superscrimpers: Waste Not, Want Not	Channel 4	25/03/2013	Materially misleading	1
Talksport Breakfast	Talksport	04/04/2013	Outside of remit / other	1
The Century That Wrote Itself	BBC 4	10/04/2013	Outside of remit / other	1
The Chase	ITV	09/04/2013	Materially misleading	1
The Funeral of Baroness Thatcher	BBC 1	17/04/2013	Outside of remit / other	3
The Good Wife	Channel 4	11/04/2013	Advertising minutage	1
The Green Lantern	Cartoon Network	n/a	Generally accepted standards	1
The Horse Hoarder	Channel 4	07/01/2013	Fairness & Privacy	1
The Jeremy Kyle Show US	ITV	07/04/2013	Generally accepted standards	1
The John Smith's Grand National (trailer)	Channel 4	27/03/2013	Animal welfare	4
The John Smith's Grand National (trailer)	Channel 4	28/03/2013	Animal welfare	7
The John Smith's Grand National (trailer)	Channel 4	29/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	Channel 4	31/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	Channel 4	01/04/2013	Animal welfare	1
The John Smith's Grand National (trailer)	Channel 4	n/a	Animal welfare	40
The John Smith's Grand National (trailer)	More4	28/03/2013	Animal welfare	1
The John Smith's Grand National (trailer)	More4 +1	02/04/2013	Animal welfare	1
The Jonathan Ross Show	ITV	13/04/2013	Animal welfare	1
The Martin Lewis Money Show	ITV	05/04/2013	Materially misleading	1

The Matt Lucas Awards	BBC 1	09/04/2013	Generally accepted standards	1
The Mystery of Mary Magdalen	BBC 1	29/03/2013	Religious/Beliefs discrimination/offence	1
The Official Chart with Jameela Jamil	BBC Radio 1	n/a	Outside of remit / other	9
The Official Chart with Jameela Jamil	BBC Radio 1	14/04/2013	Outside of remit / other	11
The One Show	BBC 1	11/04/2013	Outside of remit / other	1
The Silence	BBC 4	23/03/2013	Generally accepted standards	1
The Simpsons	Sky1	11/04/2013	Offensive language	1
The Syndicate	BBC 1	16/04/2013	Nudity	1
The Village	BBC 1	21/04/2013	Generally accepted standards	1
The World at One	BBC Radio 4	10/04/2013	Outside of remit / other	1
The Wright Stuff	Channel 5	08/04/2013	Generally accepted standards	1
The Wright Stuff	Channel 5	11/04/2013	Generally accepted standards	1
The Wright Stuff	Channel 5	n/a	Due impartiality/bias	1
The Wrong Show	97.4 Rock FM (Preston)	24/03/2013	Generally accepted standards	1
The Zoo	ITV3	20/03/2013	Violence and dangerous behaviour	1
This Morning	ITV	18/04/2013	Scheduling	1
This Morning	ITV	18/04/2013	Scheduling	1
Unity Radio	Unity Radio	n/a	Outside of remit / other	1
Victoria Wood's Nice Cup of Tea	BBC 1	10/04/2013	Race discrimination/offence	1
Walkers Deep Ridged's sponsorship of Epic Adventure on Discovery	Discovery +1	08/04/2013	Gender discrimination/offence	1
Website	BBC Radio 1	17/04/2013	Outside of remit / other	1
What's Cooking?	Channel 4	03/04/2013	Generally accepted standards	1
What's Cooking?	Channel 4	11/04/2013	Fairness	1
WWE Raw	Sky Sports 4	25/03/2013	Scheduling	1
X Factor promotion	ITV2 +1	17/03/2013	Advertising content	1

## Investigations List

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

Here is an alphabetical list of new investigations launched between 11 and 24 April 2013.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Advertising minutage	DM Digital	14 February 2013
Advertising minutage	Sky Arts 1	07 April 2013
Breakfast with Stuart Huggy Hughes	Bay Radio	01 April 2013
Britain's Got More Talent	ITV2	13 April 2013
Emmerdale	ITV	23 April 2013
'Essential' series	Travel Channel	n/a
Idiot (trailer)	Channel Nine UK	06 March 2013
It's Complicated (trailer)	Film 4	05 April 2013
Jackpot247	ITV	31 March 2013
Lee Nelson's Well Funny People	BBC 3	11 April 2013
Live Fight Night	Sky Sports 1	09 February 2013
Man About Town	Movie Mix	19 March 2013
Most Haunted	Pick TV	18 March 2013
News	Channel Nine UK	16 February 2013
Nick Conrad standing in for Adrian Goldberg	BBC WM	03 April 2013
Programme sponsorship	Channel Nine UK	07 March 2013
Samjhota Express	PTV Global	24 March 2013
The Incredible Mr Goodwin	Watch	24 March 2013

The Secret Millions	Channel 4	07 April 2013
You've Been Framed!	ITV	13 April 2013

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

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

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

For fairness and privacy complaints go to:

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