

# **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 as appear to it best calculated to secure the standards objectives<sup>1</sup>. 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>. Ofcom must include these standards in a code, codes or rules. These are listed below.

The Broadcast and On Demand Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and rules 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 the ASA on the basis of their rules and guidance for advertising content on ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”) for content broadcast on television and radio services.
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in television 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 for on television and radio services. 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) Ofcom’s [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral 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 Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must

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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.

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 and On Demand Bulletin may therefore cause offence.**

## Broadcast Standards cases

### In Breach

#### The Garage

Quest+1, 6 March 2016, 06:00 to 07:00

Quest, 6 March 2016, 05:00 to 06:00

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#### Introduction

Quest+1 is the catch-up +1 service for Quest, the factual, lifestyle and entertainment television channel. The licence for Quest and Quest+1 is held by Discovery Corporate Services Limited (“Discovery” or “the Licensee”).

A complainant alerted Ofcom to offensive language in an episode of *The Garage*, an hour long factual programme exploring the lives of British car mechanics living and working in Marbella. This programme was shown first on Quest, starting at 05:00, and then repeated an hour later on the Quest+1 service.

Offensive language was used throughout the 60 minute programme. In particular Ofcom noted the following:

- 62 uses in total of: “*fuck off*”, “*fuck*”, “*fucking*”, “*fuck all*” and “*fuck you*”;
- Nine of “*shit*” or “*shite*”;
- Three of “*bastard*”;
- two of “*bullshit*”;
- two of “*arsehole*”; and
- one of “*prick*”.

We considered the material raised issues warranting investigation under the following rules of the Code:

Rule 1.14: “The most offensive language must not be broadcast before the watershed”;

Rule 1.16: “Offensive language must not be broadcast before the watershed..., unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”; and

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”.

We therefore asked the Licensee how the programme complied with these rules.

#### Response

Discovery apologised unreservedly for any offence that this programme caused to viewers. It stated that it took compliance “very seriously” and had a number of

processes in place to ensure that inappropriate offensive language was not broadcast at times when material unsuitable for children should not in general be shown (i.e. between 05:30 and 21:00).

The Licensee told Ofcom that the scheduling system for the core channel (i.e. Quest) had a “hard stop” in place to prevent content certified as post-watershed from playing before 21:00 or after 05:30. However, the Licensee said that the timeshifted channel (Quest+1) had “no equivalent hard stop in place” and it relied on “manual checks” to prevent pre-watershed content playing outside watershed hours.

The Licensee explained that this episode of *The Garage* was intended for post-watershed broadcast and should not have transmitted pre-watershed. However, in this case, the “hard stop” of the core channel had been changed to 06:00 in error. This resulted in the scheduling system failing to flag the transmission of this post-watershed programme starting on Quest at 05:00 (with 30 minutes of its content therefore broadcast between 05:30 and 06:00). The Licensee said an “unfortunate human error” had resulted in the manual checks failing to spot the erroneous scheduling of the programme at 06:00 on Quest+1.

Discovery said that as soon as it became aware of the error it “immediately reinstated the hard stop at 05:30” and also “added an additional level of sign off before any changes can be made to the current hard stops”. In relation to the Quest+1 channel, the Licensee said it had implemented “two additional manual checks” and was “currently exploring whether there are any additional technical measures that can be put in place as a further check”.

While the Licensee accepted that this content should not have been broadcast after 05:30, it questioned whether the programme was in breach of Rule 2.3. In support of this, Discovery pointed to both the time of broadcast and the “editorial justification for the language used”. The Licensee said that *The Garage* had been broadcast since 2006 and “as with programmes such as Channel 4’s *Ramsay’s Kitchen Nightmares*... viewers are very familiar with the language and style of the programmes when transmitted in a post watershed slot”.

## **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, which include ensuring that persons under the age of eighteen are protected from material that is unsuitable for them, and providing adequate protection for members of the public from harmful and/or offensive material. These objectives are reflected in Sections One and Two of the Code.

### **Rule 1.14**

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...”. The Code also states that “the watershed is at 21:00. Material unsuitable for children should not, in general, be shown before 21:00 or after 05:30”.

Ofcom’s research on offensive language<sup>1</sup> notes that the word “fuck” and similar words are considered by audiences to be among the most offensive language and

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

unacceptable for broadcast before the watershed. In this case, the word “fuck” and similar words were broadcast throughout the programme a total of 63 times. Therefore the whole programme was clearly in breach of Rule 1.14 when shown on Quest+1 commencing at 06:00.

In relation to the transmission starting at 05:00 on Quest, Ofcom noted that 28 instances of the most offensive language were broadcast in the period after 05:30, and therefore after the start of the time when material unsuitable for children (such as this) should not be shown. This material therefore also breached Rule 1.14.

### Rule 1.16

Rule 1.16 of the Code states that “offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event frequent use of such language must be avoided before the watershed”.

Ofcom’s Guidance on Rule 1.16 of the Code<sup>2</sup> says that: “Milder [offensive] language in the early part of the evening may be acceptable... However, in general, viewers...do not wish to hear frequent or regular use of such language...before 2100”. In this case there were 15 instances in total of mild or moderately offensive language broadcast in this 60 minute programme i.e. “shit”, “shite”, “bastard”, “prick” and “arsehole”. We considered this constituted frequent use<sup>3</sup>.

We went on to consider whether the frequent use of this offensive language was justified by the context.

This was an episode from the long running factual series exploring the lives of a group of mechanics, led by the outspoken head mechanic Jock Campbell. Therefore regular viewers may have expected some occasional use of mild offensive language if this programme was appropriately scheduled for broadcast post-watershed. However, Ofcom did not consider that viewers’ expectations for this programme when broadcast before the watershed on these services at this time would extend to the frequent use of offensive language.

The frequent use of offensive language in the programme broadcast on Quest+1 and starting at 06:00 therefore breached Rule 1.16.

### Rule 2.3

Rule 2.3 of the Code states that: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”.

Ofcom considered that the 62 instances of the most offensive language and 15 uses of milder offensive language, during the course of this hour long programme, were clearly capable of causing offence.

We therefore considered whether this was justified by the context. The Licensee sought to question whether the material was in breach of Rule 2.3 in light of: the time

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

<sup>3</sup> The majority of uses of this language occurred in the first half of the programme. Therefore we did not consider that the broadcast of this programme on Quest from 05:00 raised issues under Rule 1.16.

of broadcast; the “editorial justification for the language used”; and, viewers’ familiarity with the language and this style of programme “when transmitted in a post watershed slot”. Ofcom accepts that regular viewers of *The Garage*, when watching post-watershed, may well expect frequent uses of the most offensive and offensive language. However, the broadcast of the second half of this programme on Quest (from 05:30) and the broadcast of the whole programme on Quest+1 (from 06:00) took place before the watershed. We therefore considered the nature and frequency of offensive language in this case would have far exceeded audience expectations for a programme shown at these times on these channels.

In Ofcom’s view the broadcast of the most offensive language in this programme, when shown after 05:30 (on Quest) and from 06:00 on Quest+1, was therefore not justified by the context and breached Rule 2.3.

### Conclusion

Ofcom noted that the broadcast of this post-watershed programme on Quest and Quest+1 occurred as a result of human errors. We took account of the fact the Licensee had put in additional processes to avoid a repeat of these errors. However, Ofcom was concerned that the Licensee’s compliance processes at the time were not sufficiently robust to prevent these breaches.

### **Breaches of Rules 1.14, 1.16 and 2.3**



## Television Advertising Scheduling cases

### In Breach

#### Advertising placement

*NickToons, 1 to 14 April 2016, various times*

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#### Introduction

Rule 12 of the Code on the Scheduling of Television Advertising (“COSTA”) states that:

“children’s programmes with a scheduled duration of 30 minutes or less may not be interrupted by advertising”.

In July 2014, Ofcom publically consulted on how it should apply certain rules in COSTA. A significant element of the consultation<sup>1</sup> concerned how Ofcom should measure the scheduled duration of a programme. After careful consideration of the responses to the consultation, Ofcom published a statement<sup>2</sup> on 8 July 2015 which confirmed that, for the purposes of COSTA, the scheduled duration of a programme is equivalent to the length of the slot it occupies in an electronic programme guide (‘EPG’). To allow broadcasters to make any necessary changes to their scheduling practices, Ofcom announced that it would not begin enforcement on this basis until 1 April 2016.

NickToons is a cable, satellite and digital terrestrial television channel specialising in children’s cartoons. The licence for the service is held by Nickelodeon UK Limited (“Nickelodeon” or “the Licensee”).

Ofcom identified 177 children’s programmes broadcast on NickToons between 1 April and 14 April 2016 which raised issues under Rule 12 of COSTA. Each programme occupied a 30 minute EPG slot and was interrupted once by advertising.

Ofcom therefore asked the Licensee how the scheduling of advertising around these programmes complied with Rule 12 of COSTA.

#### Response

Nickelodeon said that it takes compliance with COSTA very seriously and upon receipt of Ofcom’s request for comments, it reviewed its scheduling processes. Having completed its review, the Licensee submitted that 175 of the programmes identified by Ofcom were compliant with Rule 12 of COSTA as in each case the interrupting advertising break was in fact, an ‘end break’<sup>3</sup>.

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<sup>1</sup> The Scheduling of Television Advertising – consultation document:  
<http://stakeholders.ofcom.org.uk/binaries/consultations/scheduling-adverts/summary/scheduling-adverts.pdf>

<sup>2</sup> The Scheduling of Television Advertising – statement:  
<http://stakeholders.ofcom.org.uk/binaries/consultations/scheduling-adverts/statement/costa-statement.pdf>

<sup>3</sup> End breaks (breaks transmitted between the end of one programme and the start of the next programme) do not count towards a programme’s advertising break allowance.

The Licensee said that 175 of the instances highlighted contained two entirely separate and standalone programmes, each comprising: a self-contained narrative concluded within its 11 minute run time; an open slate detailing the episode title; and production credits together with a clear end to the story narrative. It added that each episode was “bracketed by” sponsorship idents, promotion pieces and channel idents. Nickelodeon argued that these elements showed sufficient separation and as such, viewers would not have considered the two items as one single programme.

The Licensee submitted that in each case, the title of the programme in EPGs indicated that it was a series rather than an individual episode and that the EPG synopsis provided further clarity that there were two episodes within a scheduled block of programmes rather than one 30 minute episode.

Nickelodeon acknowledged that two of the 177 programmes identified by Ofcom may not have complied with Rule 12 of COSTA. It explained that these episodes of *The Fairly Odd Parents* were regarded as “Specials” as they comprised a single narrative lasting between 15 and 30 minutes. It added, however, that although these programmes occupied a 30 minute slot on EPGs, the actual slot time as broadcast was 30 minutes and 27 seconds, and 30 minutes and 13 seconds.

The Licensee said that to avoid a repeat of these two instances, it has implemented a safeguard that removes all content labelled as ‘feature length’ in the event that it is scheduled accidentally. It also provided details of additional manual and automated checking procedures that it intended to introduce.

## **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 Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees’ compliance with COSTA.

Rule 12 of COSTA states that “children’s programmes with a scheduled duration of 30 minutes or less may not be interrupted by advertising.”

Ofcom consulted on how it should apply COSTA rules in 2014. Both the consultation document and statement contained an extensive analysis of the options available for measuring the scheduled duration of a programme. The statement made clear that Ofcom would enforce COSTA rules on the basis that the scheduled duration of a programme equates to the slot it in which it is scheduled in EPGs and TV listings.

Ofcom noted the Licensee’s recognition that on two occasions, it may not have complied with Rule 12 of COSTA. We also noted the measures undertaken by the Licensee to prevent similar occurrences in future.

We were particularly concerned that Nickelodeon sought to justify the other 175 interrupting advertising breaks on the basis that the single EPG slot contained two separate programmes interrupted by an end break. This did not accord with one of the key outcomes of the consultation.

The 177 children's programmes identified by Ofcom were scheduled in 30 minute EPG slots and therefore, for the purposes of COSTA, each programme had a scheduled duration of 30 minutes regardless of how the content was presented. Rule 12 of COSTA prohibits advertising breaks in children's programmes with a scheduled duration of 30 minutes or less. All 177 programmes contained one internal advertising break and consequently Ofcom's Preliminary View is that these programmes breached Rule 12 of COSTA.

Ofcom considers the Licensee's compliance failure in this case to be significant and will continue to monitor advertising scheduling practices on this service.

### **Breaches of Rule 12 of COSTA**

## Broadcast Licence Conditions cases

### Resolved

#### Provision of information: community radio station finance reports

*Various community radio licensees, year ending 31 December 2015*

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##### Introduction

Community radio stations are provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They must also deliver social gain, operate on a non-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

Any profit produced by providing a community radio service must be used “wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve” (clause 3(3) of the Order).

There are statutory restrictions on the funding of community radio stations, as set out in section 105(6) of the Broadcasting Act 1990, as modified by The Community Radio Order 2004 (“the Order”) and the Community Radio (Amendment) Orders of 2010 and 2015.

These funding requirements are set out in community radio licences. Ofcom must be able to verify that community radio licenses are complying with them. Licensees are therefore required to submit an annual report explaining how they have met their financial obligations during the previous calendar year. The annual reports from stations also inform Ofcom’s own report on the community radio sector, which is featured in the annual Communications Market Report.

In March 2016, Ofcom requested finance reports for the calendar year 2015 from all community radio licensees who were broadcasting during the whole of 2015. Following our requests, a number of stations failed to provide their reports by the deadline specified.

Ofcom considered that this raised issues warranting investigation under Licence Condition 9(1) which states:

“The Licensee shall maintain records of and furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, estimates, returns, 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 and in particular...

- (c) such information as Ofcom may reasonably require for the purposes of determining whether the Licensee is complying with the requirements of the Community Radio Order 2004 for each year of the Licensed Service;
- (d) such information as Ofcom may reasonably require for the purposes of determining the extent to which the Licensee is providing the Licensed

Service to meet the objectives and commitments specified in the Community Radio Order 2004; and ...

- (e) the provision of information under this section may be provided to Ofcom in the form of an annual report which is to be made accessible to the general public.”

## Decision

The following licensees failed to submit their annual finance report by the original deadline, but subsequently submitted late reports. However, they were filed in time for the data to be used in Ofcom’s Communications Market Report. We therefore considered these cases to be resolved:

<b>Licence number</b>	<b>Station name</b>	<b>Licensee</b>
CR000208BA	Awaaz Radio	Awaaz Radio Ltd
CR000257BA	Celtic Music Radio FM	Celtic Music Radio Ltd
CR000168BA	Gravity FM	Gravity FM CIC
CR000050BA	NE1FM	Community Broadcast Initiative Tyneside Ltd
CR000239BA	Pulse Radio	Pulse Media Broadcasting Ltd
CR000094BA	Radio Cardiff	Radio Cardiff Ltd
CR000014BA	Radio Faza 97.1 FM	Radio Fiza Ltd
CR000106BA	Saint FM	St Peters Studio and Community Radio Limited
CR000240BA	Sedgemoor FM (formerly known as Access FM)	Bridgwater Young Men's Christian Association;
CR000116BA	Ujima Radio	Ujima Radio CIC
CR000024BA	Wythenshawe FM	Wythenshawe Community Media

## Resolved

## Broadcast Fairness and Privacy cases

### Upheld

#### Complaint by Mr and Mrs F

*Reporting Scotland, BBC 1 Scotland, 15 December 2015*

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#### Summary

Ofcom has upheld this complaint by Mr and Mrs F of unwarranted infringement of privacy.

This programme included a report about the impact alcohol related call-outs had on the Scottish Ambulance Service's response to "genuine, emergency" incidents. The report included footage of Mr F sitting on the pavement outside a public house in Glasgow after having fallen and injured his head. It also showed close-up footage of blood being washed from his hand and Mr F sitting in an ambulance. In addition, the programme included footage of Mrs F in the ambulance talking to her husband. Both Mr and Mrs F's faces were obscured.

Ofcom found that Mr and Mrs F's legitimate expectation of privacy in relation to the filming of them and the subsequent broadcast of the footage without their consent outweighed the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Their privacy was therefore unwarrantably infringed in the obtaining of and broadcast of the footage in the programme as broadcast.

#### Programme summary

On 15 December 2015, BBC 1 Scotland broadcast an edition of its news programme, *Reporting Scotland*. This edition included a report about the impact alcohol-related call outs made over the weekend had on the Scottish Ambulance Service in Glasgow and the delays these call-outs caused to the services' response to "genuine emergency" incidents. The presenter read the headlines of the stories coming-up in the programme. She said:

*"Tonight on Reporting Scotland: the country's ambulance crews say more than half their call-outs at weekends are due to alcohol-related incidents..."*

While the presenter introduced the headlines, part of the upcoming report was shown, including footage of two police officers and a paramedic as they attended a man (Mr F) sitting on the pavement and leaning against the wall of a public house. In this footage, Mr F was shown from a distance, partially blocked from view for some of the time, by the paramedic and police officers as they leaned forward to attend him. When Mr F was visible, his face was obscured by blurring. The footage following this showed a close-up of Mr F's blood-stained hand as one of the paramedics cleaned the blood from it.

Immediately after this footage, part of an interview with the two paramedics from the ambulance which attended Mr F was shown. One of the paramedics said:

*"You get there and it's an alcohol-related call. And you know there is a wee person waiting to go to hospital and they've not got the ambulance because it's been diverted"*

Later in the programme, the presenter introduced the full report. She said:

*“Good evening. Alcohol is a factor in more than half of the incidents ambulances are called out to during weekends. The service says unnecessary call can delay their response to a genuine emergency. Well let’s go to our health correspondent, Eleanor Bradford, who’s at Springburn Ambulance Centre in Glasgow. Eleanor”.*

During the presenter’s introduction, a still image from the footage of Mr F recorded during this incident could be seen on a screen behind her. The image, in which the complainant could be seen from behind, appeared to show Mr F walking towards the ambulance with a paramedic assisting him.

Following this, footage was shown of the reporter reporting back to the studio via a live video link from the ambulance centre. She said:

*“Jackie, this is one of Scotland’s busiest ambulance stations. The ambulances behind me have been coming and going all evening already. There are 11 vehicles based here handling at this time of year around a hundred calls a day and the crews tell me it’s getting busier and busier. But too many of their calls are due to alcohol, as I found out on Friday when I spent an evening with them”.*

Footage of paramedics driving an ambulance to an incident was then shown. The reporter explained:

*“It’s a Friday night, and we are on our way to the first of what would be many unnecessary 999 calls”.*

The earlier footage of one of the paramedics attending to Mr F in the street as he sat on the pavement leaning against the wall of a public house was shown again. As before, when his face was visible it was obscured by blurring. The paramedic addressed Mr F, saying: *“Hello young man”*, to which Mr F replied *“Hello”*. The reporter explained:

*“A civil servant in his fifties [Mr F] has fallen over and cut his head after an office party. There’s a fair amount of blood [footage of blood on the pavement was shown] but the ambulance crew patch him up [a close-up of Mr F’s hand as a paramedic cleaned blood from it was shown] and we wait for his unimpressed wife to come from home and get him”.*

Footage of Mr F as he sat in the ambulance was then shown. His face was obscured by blurring, but his body and clothing were visible. The two paramedics and Mrs F were also shown in the ambulance. Mrs F’s face was blurred and her body was obscured partially by her husband who was sitting in front of her. In this footage, Mrs F said to her husband: *“Right, come with me [Mr F’s first name]?”* Mr F replied *“yes”* and one of the paramedics then said: *“Come on then, we will get your jacket on”*. Mr and Mrs F’s voices were not disguised.

The report then moved on to cover another alcohol-related incident in Glasgow city centre to which the paramedics had been called.

Later in the programme, one of the paramedics explained in interview that often an ambulance would be on its way to take an elderly person to the hospital only to be diverted to attend an alcohol-related incident. The reporter then concluded the report.

No further footage of Mr and Mrs F was included in the programme. Footage of Mr F appeared in the programme for a cumulative total of approximately twenty seconds (ten seconds of which was accounted for by the still image of Mr F from behind as he walked towards the ambulance). Mrs F was shown for approximately three seconds.

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

#### *The complaint*

- a) Mr and Mrs F complained that their privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because they were filmed in the ambulance without their consent or permission.

They said that when Mrs F arrived at the scene, she was informed by the ambulance crew that the BBC was filming, but she told them that she did not want to be filmed. The complainants said that no one had asked Mr F if they could film in the ambulance and he did not voluntarily give his name, age and occupation to the BBC. They added that they did not know how information about Mr F had been obtained and they felt that it was an invasion of their privacy at a very traumatic time.

- b) Mr and Mrs F also complained that their privacy was unwarrantably infringed in the programme as broadcast because footage of them was included in the programme without their consent.

They said when Mrs F got into the ambulance, she told the filming crew she did not want "this footage to be used". They also said that Mr F was identifiable by his clothes, occupation, age, mention of his first name, and information about location of the incident in Glasgow. They added that a lot of people had seen the report and had been able to identify Mr F from the piecing together of the information disclosed in the programme and that Mrs F was identifiable by her voice and her clothes. The complainant's also said that Mr F was told that his face would be obscured in the broadcast, but he had asked for the footage not to be shown at all.

#### *The broadcaster's response*

Responding to both elements of the complaint, the BBC said that the programme makers had applied the established protocols during the filming of the incident involving Mr F. In particular, it said that the filming occurred once the paramedics had indicated that it was appropriate to do so, having satisfied themselves that this was "a classic, alcohol-related call". Accordingly, pursuant to the established protocol, permission was not sought from the complainants to film (or subsequently broadcast part of) the footage "because of the strong public interest argument", but the complainants' faces were blurred out in the broadcast footage.

The BBC said that the paramedics were called to Mr F in the early hours of Saturday morning on 12 December 2015. It said that the paramedics had found Mr F, slumped on the ground, in the care of two police officers and a rapid-response paramedic, with a cut to his eye area. The broadcaster said that Mr F was helped to stand up and supported to walk over to the ambulance. The reporter and cameraman waited outside the ambulance while the paramedics assessed Mr F. The broadcaster said that once the paramedics had satisfied themselves that this was "a classic, alcohol-related call", they invited the cameraman inside the ambulance and one of the paramedics introduced him to Mr F: "[Mr F's first name], this is Steve". Steve (the



cameraman) said hello and Mr F replied “Steve, go away” and then laughed. The BBC said that Mr F then told the paramedics, in the presence of the cameraman, that he “thought” he was 52 years old. The broadcaster said that Mr F was smiling and that the atmosphere was amiable. It said that Mr F then gave his full name and address to the paramedics while he was being filmed and also confirmed to them that he had been at an office party and that he had had too much to drink. The BBC said that the cameraman filmed the paramedics treating Mr F’s eye injury and cleaning blood from his face and hands.

The broadcaster explained that after filming had been going on for approximately 2 minutes and 40 seconds, the paramedics invited the reporter into the ambulance, about which Mr F did not express any unhappiness. The BBC said that after being filmed at close quarters for a total of five minutes and 45 seconds, Mr F waved at the camera and, some 30 seconds later, asked the paramedics if: “this can be expunged”, to which the ambulance crew replied that the BBC crew were primarily filming them.

The broadcaster explained that the ambulance crew had established that a hospital admission was not necessary, but that they could not discharge Mr F because of his inebriated state. They then had to wait approximately ten minutes for his wife to arrive and collect him. The broadcaster said that the camera was switched off during this time but, although Mr F was in an inebriated state and his speech was slurred, the atmosphere was amiable and the reporter, cameraman, and paramedics chatted to him while they waited for his wife. The broadcaster said that Mr F also told them his and his wife’s occupations. The broadcaster explained that inside the ambulance, Mr F pointed to the camera and said “Not happy with...”. It said that the reporter had told Mr F that he would be blurred out in the broadcast report and that his name would not be used.

With regard to Mrs F, the BBC said that prior to entering the ambulance she was told that a TV crew was inside and filming her husband. Mrs F then told the paramedics to tell the TV crew that she would leave her husband if the filming was used. It added that, as a paramedic entered the ambulance again, Mrs F voluntarily followed and told the reporter that “under no circumstances is this footage to be used”. The reporter told her that Mr F’s face would be blurred out to which Mrs F replied: “My husband has five lawyers in his family, so it’s definitely not going to be used”.

The BBC said that, prior to the broadcast, the programme makers decided to obscure Mr and Mrs F’s identity by blurring out their faces in the broadcast footage. However, they took the view that their clothes were unremarkable and, therefore, these were not obscured. The programme makers considered that Mrs F’s reference to her husband by his first name was indistinct and that it would not have been picked up by viewers. The BBC said that it was, therefore, not edited out, although a similar, subsequent reference to Mr F by his first name, made by one of the paramedics, was edited out because it was considered to be audible. The BBC said that the reporter and picture editor felt that the steps taken were reasonable and that Mr and Mrs F would not be recognisable from the programme to anyone other than themselves, especially as they were only on screen for a few seconds. The broadcaster added that the reporter’s description of Mr F as “*a civil servant in his fifties*” was included in the programme to convey to viewers that it is not only young people who are responsible for alcohol-related calls.

The BBC argued that there was a strong public interest in the filming and broadcast of the footage, given the current strain on NHS resources generally, and on the ambulance service specifically. It noted that the footage highlighted an issue of major

concern to ambulance staff and illustrated that the cause of the problem is not confined to young people as may be widely thought. The broadcaster noted that in the report, the ambulance crew had explained that they are regularly diverted from other calls (and in some cases delayed from attending a serious emergency) to attend avoidable alcohol-related incidents. The broadcaster said that Mr F was the patient who took up the most resources on the night of the filming, and that attending him meant that the ambulance was out of service while the paramedics waited for his wife to arrive so he could be safely discharged. The BBC said that the footage of Mr F inside the ambulance did not show “anything of an inherently private nature” and it was an important illustration of the time wasted by ambulance crews because of “alcohol abuse and the resulting, essentially self-inflicted injuries”.

In conclusion, the BBC said that it did not believe that Mr F was identifiable in the broadcast footage other than by those present at the incident, either visually or verbally, and believed the gathering of the material was wholly justified in the public interest, and given the anti-social nature of his behaviour and its consequences for the ambulance service and other patients in need of their care.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View in this case that Mr and Mrs F’s complaint should 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 and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, the unedited (and not broadcast) footage of Mr and Mrs F outside and in the ambulance (as applicable) and both parties’ written submissions and supporting material (including correspondence between the BBC and the complainants).

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

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

- a) Ofcom first considered the complaint that Mr and Mrs F's privacy was unwarrantably infringed in connection with the obtaining of material of them included in the programme as broadcast because they were filmed without their consent or permission.

In assessing this head of the complaint, Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Ofcom also had regard to Practice 8.7 of the Code which provides that if an individual's privacy is being infringed and they ask that filming be stopped, the broadcaster should do so, unless it is warranted to continue. Ofcom also considered Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Ofcom also took Practice 8.16 into account which states that broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, unless it is warranted or the people concerned have given consent.

Ofcom first considered the extent to which Mr and Mrs F had a legitimate expectation of privacy in the particular circumstances in which the relevant material was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts. In particular, as stated in Section Eight of the Code, legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question. We also noted Section Eight states that "there may be circumstances where people can reasonably expect privacy even in a public place...". Further, the Guidance to Section Eight of the Code (the "Guidance") states that "privacy is least likely to be infringed in a public place" but that "there may be circumstances where people can reasonably expect a *degree* of privacy even in a public place" (emphasis in original).<sup>2</sup> The Guidance says that the degree of privacy a person can reasonably expect in a public place will "always be dependent on the circumstances".

From the unedited footage of Mr F we observed that he was initially filmed while sitting on the pavement outside a public house attended by two police officers and a rapid response paramedic and being greeted by the two paramedics from the ambulance. We noted that, at this point, the programme makers had been informed by the ambulance paramedics that Mr F was intoxicated. Immediately after greeting him, the first ambulance paramedic informed Mr F that she and her colleague were accompanied by the BBC. She said: "The BBC are with us sir, but they're not going to. You won't be filmed, you'll be obscured out". Mr F interjected to say: "No don't". The filming continued as the rapid response paramedic told the other paramedics how Mr F had fallen and injured himself and what treatment he had been given already. Images of Mr F's blood on the pavement were recorded

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section8.pdf>

<sup>2</sup> We note in this context, *PG v United Kingdom* [2006] 46 EHRR 51 (para 56) states: "Article 8 also protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world... There is therefore a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life"".

at this point. Mr F was then filmed walking to the ambulance with the assistance of the two paramedics.

Ofcom noted that as Mr F got into the ambulance, the first paramedic could be heard telling him: “the crew will just be filming us and stuff like that...nothing will be, like your face won’t be shown or anything like that”. Audio of the paramedics in the ambulance as they began to assess Mr F’s state of health was recorded before the camera operator entered the ambulance and filmed inside the vehicle. The first paramedic introduced the camera operator as soon as he entered the ambulance with his camera recording: She said “[Mr F’s first name], this is Steve” and Mr F responded “Steve, go away” after which he laughed gently.

Mr F was then filmed as he told the paramedics his full name, his date of birth and his address and as they continued to assess his state of health and cleaned blood from his injuries. Mr F told the paramedics that he had been out at an office party and that he had drunk too much alcohol. He also indicated that his wife, who was coming to pick him up, would be upset with him. He was then filmed having his blood pressure checked and discussing his medical history. The rapid response paramedic also provided further details of the treatment already given to Mr F. Ofcom noted that Mr F was visibly shaking during part of this footage. While Mr F was able to answer the first paramedic’s questions, in our opinion, he seemed confused about what was happening. In particular, after already receiving some treatment and having spoken to the paramedics about the evening’s events, Mr F asked the first paramedic why he was in the ambulance and what had happened. We noted that soon afterwards, Mr F asked if the footage of him could be “expunged” and the first paramedic said “it’s just us they’re filming”.

The next section of unedited footage included Mrs F entering the ambulance and talking to the paramedics, her husband and the programme makers. Prior to this (i.e. before she entered the ambulance), the rapid-response paramedic could be heard telling Mrs F what had happened to her husband and she could be heard asking questions about the incident and giving her opinion of Mr F’s behaviour. The second paramedic then informed Mrs F that they had a camera crew filming them in the ambulance. The following exchange between the second paramedic and Mrs F then occurred:

2<sup>nd</sup> Paramedic: *“There’s a cameraman. We’ve got a camera crew out with us tonight. Just so you don’t get a fright. It’s for the news. He can say he doesn’t want it. She’ll phone him, he’s given his phone number, before it goes out and he can say no.*

Mrs F: *Let the girl whose in there know that under no circumstances is she to use it [the footage]. I will leave him if it’s used. It’s as simple as that”.*

The second paramedic opened the side door of the ambulance and informed the first paramedic (in the presence of the reporter and the camera operator who continued to film) of Mrs F’s position. Mrs F then entered the ambulance. The unedited footage showed her immediately greeting the reporter and their conversation went as follows:

Mrs F: *“Under no circumstances is this footage to be used.*

Reporter: *It’s all blurred out.*

Mrs F:                *OK.*

Reporter:            *We are doing a piece on the ambulance service.*

Mrs F:                *OK, my husband has five lawyers in his family, so it's definitely not going to be used.*

Reporter:            *It's all blurred out".*

Mrs F then leaned down to her husband and said "would you like to come with me, [Mr F's first name]?", to which he replied "yes", before she thanked the paramedics and stepped out of the ambulance. The paramedics advised Mrs F to give her husband pain killers if he needed them before helping Mr F out of the ambulance.

Ofcom accepted that Mr F was filmed openly by the programme makers and that he was informed that he was being filmed by the BBC. However, we noted the sensitive nature of the footage obtained and the fact Mr F was filmed whilst injured, not only in a public place (i.e. on the street outside the public house), but also as he received medical treatment in an ambulance. We also noted that Mr F provided personal information about himself (notably, his full name, date of birth, home address and medical history). We considered that, in these circumstances, in which he was receiving medical treatment, a particularly sensitive situation, he had a heightened legitimate expectation of privacy with regard to the obtaining of the footage and information relating to him.

Similarly, we considered that Mrs F too had a legitimate expectation of privacy with regard to the obtaining of the relevant footage and information. This was because although Mrs F was also filmed openly in the ambulance and in the knowledge that the material was being filmed "for the news" (we observed that it was unclear if Mrs F was aware that her conversation outside the ambulance, prior to this filming was being recorded), the programme makers recorded audio and footage of her discussing her husband's health, attending her husband while he was in an ambulance (having received medical treatment) and as he was in the process of being discharged into her care by the paramedics. In addition, we noted that in capturing information about Mr F prior to Mrs F's arrival, the programme makers also captured information about Mrs F. In particular, her occupation, the fact that she was married to Mr F and her home address.

Having concluded that both Mr and Mrs F had a legitimate expectation of privacy and that Mr F's expectation of privacy was heightened by the particular circumstances in which he was filmed, we assessed if they had consented to the recording of the relevant material. From the BBC's statement in response to the complaint, Ofcom noted that the programme makers had in place a set of protocols for the filming of footage for potential inclusion in the news report. In particular, one protocol stated, specifically, that "For alcohol-related calls, permission was not sought because of the strong public interest argument, but patients' faces were blurred out". We also noted, as above, that during the unedited footage Mr F repeatedly indicated that he did not want to be filmed or for the footage to be subsequently broadcast. Given this, it was clear to Ofcom that Mr F's consent was neither sought, nor was it given by Mr F, during the filming of the incident.

With regard to Mrs F, we observed that although, as the broadcaster said in its response, she entered the ambulance voluntarily after being told that she there was a camera crew filming inside, she needed to do so in order to see her husband, whom she had been told had required medical treatment after sustaining an injury, and to collect him. In addition, while Mrs F did not specifically tell the camera operator to stop filming, she made it clear, both prior to entering the ambulance and immediately after doing so, that she objected to the fact that the footage filmed of her and her husband might be broadcast. Given the above, we do not consider that Mrs F's actions could be considered to constitute her having given de facto consent either to the filming (or the subsequent use) of the relevant material. From the unedited footage also, it was clear to Ofcom that the programme makers did not seek Mrs F's consent.

Taking all these factors into account, we concluded that Mr and Mrs F had not consented to the filming and recording of the relevant material. We therefore went on to consider whether the infringement of their legitimate expectation of privacy in the obtaining of this material was warranted. In doing so, we assessed the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. We also considered whether the means of obtaining the material was proportionate in all the circumstances and, in particular, to the subject matter of the programme.

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

In this case, we noted that the BBC argued that there was a "strong public interest" in the filming (and broadcast) of the footage, because "it highlighted an issue of major concern to ambulance staff and illustrated that the cause of the problem was not confined to young people as may be widely thought". In Ofcom's view, there was a genuine public interest in making this programme. It was clear that the programme's purpose was to show the burden placed on emergency services by avoidable alcohol-related call-outs. It was also clear that the programme makers filmed Mr F being attended by paramedics and police officers and, later, his wife as she came to collect him with a view to meeting this purpose. However, in weighing up the competing rights of the parties, we took particular account of Mr F's heightened expectation of privacy with respect to his receiving medical treatment in the ambulance – we observed that: it appeared that the entirety of the medical treatment he received was recorded; Mr F was filmed as he started to shake while having his blood pressure taken; and, he appeared to be confused about what had happened to him. We also noted that Mr F appeared to become agitated by the continued filming of him and that he indicated repeatedly that he was not happy being filmed.

Ofcom also considered whether, in accordance with Practice 8.9 of the Code, the means of obtaining the material had been proportionate in all the circumstances and in particular to the subject matter of the programme. We noted again that both Mr and Mrs F were filmed openly and that the broadcaster said the programme makers filmed Mr F only after being informed by the paramedics that this was a typical alcohol-related incident and that it would be appropriate for

them to do so. However, we also observed that, as set out above, much of the filming that took place was of Mr F receiving medical treatment in the ambulance, a particularly sensitive situation, and that despite his repeated indications that he did not want to be filmed, the crew continued to do so, which appeared to cause Mr F further agitation and confusion. In light of these circumstances, we considered that the means of obtaining the relevant material was not proportionate.

Having taken all the above factors into consideration, Ofcom considered that, on balance, Mr and Mrs F's legitimate expectation of privacy in relation to the filming of them outweighed the broadcaster's right to freedom of expression and the public interest in obtaining the footage. Therefore, we found that Mr and Mrs F's privacy in connection with the obtaining of the material included in the programme was unwarrantably infringed.

- b) Ofcom next considered the complaint that Mr and Mrs F's privacy was unwarrantably infringed in the programme as broadcast because footage of them was included without their consent.

In assessing this head of the complaint, Ofcom had regard to Practices 8.4 and 8.6 of the Code. Practice 8.4 states that broadcasters should ensure that actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual concerned, unless broadcasting without their consent is warranted. Practice 8.6 states 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. Finally, as in relation to head a) above, Ofcom also had regard to Practice 8.16, which states that broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, unless it is warranted or the people concerned have given consent.

Ofcom first assessed whether Mr and Mrs F had a legitimate expectation of privacy with regard to the broadcast of footage of them included in the programme. As noted in head a), the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its particular facts.

As set out in the "Programme Summary" above, the programme included a report about the impact on the Scottish Ambulance Service of alcohol related call-outs and the delays they caused to the services' response to "*genuine emergency*" calls. In order to illustrate the issue, the programme showed the reporter accompanying a team of paramedics as they attended call-outs on a Friday night in Glasgow. The report included footage of two police officers attending Mr F as he sat on the pavement outside a public house in the city centre. For the brief period that Mr F was visible in this part of the footage, his face was obscured. Part of the name of the public house was visible from the footage. Two paramedics who had attended the scene in an ambulance were shown greeting Mr F, saying: "*Hello young man*", to which Mr F replied "*Hello*", his voice was not disguised. Subsequently, the programme showed close-up footage of Mr F's hand as one of the paramedics cleaned blood from it. This was followed by footage, recorded inside of the ambulance, in which Mr F, the two paramedics and Mrs F (who had come to collect her husband) were all visible. The

programme did not name either Mr or Mrs F. On the occasion(s) when Mr or Mrs F's faces would have been visible (notably when they were in the ambulance), the broadcaster had obscured them by blurring. However, their bodies and clothing (particularly those of Mr F) were visible. During this section of the footage, Mrs F could be heard saying "*Would you like to come with me, [Mr F's first name]?*" and Mr F replied "*yes*". Neither of their voices was disguised.

We also noted the context in which Mr and Mrs F were filmed as set out in detail in head a) above. Given that Mr F was injured, and that footage of him receiving medical treatment in an ambulance was shown, and that, as set out above, we considered that Mr F was agitated and confused (which, in our opinion, was exacerbated by that fact he was being filmed) while this material was recorded, we considered that he had a heightened legitimate expectation of privacy with regard to the inclusion of the relevant material in the programme as broadcast. We reached this conclusion not only because of the circumstances in which Mr F was filmed, but also because of the manner in which the material was presented. We accepted that the programme makers took steps to try to disguise Mr F's identity; for example, not naming him and blurring his face. However, the programme included several pieces of information which, in our opinion, rendered him identifiable (moreover, we noted that in their complaint, both Mr and Mrs F said that they were identifiable and Mr F said "a lot of people saw it [the footage] and knew it was me"). In particular, the programme made it clear to viewers that the incident was filmed in Glasgow city centre on a Friday night and included footage of the front of a public house (with part of its name visible) outside which Mr F was sitting when the ambulance arrived. It also described Mr F as "*a civil servant in his fifties*" who had "*fallen over and cut his head after an office party*"; and showed a clear image of Mr F's clothing. While we noted the broadcaster's assertion that both Mr and Mrs F's clothes were unremarkable, we considered that the footage was shown only four days after the incident was filmed and therefore, it was possible that people who knew Mr F and had seen him wearing the clothing might well have recognised him from this footage, especially when combined with the other information included in the programme). We also took into account that the report included Mr F saying "*hello*" when greeting the paramedic (his voice was not disguised), which was clearly audible and was in fact quite distinct such that we considered it could allow him to be identified by people who know him. Moreover, the report also included an exchange between Mr and Mrs F (neither of their voices was disguised) during which Mrs F referred to her husband by his first name, albeit that, as the broadcaster said in its response, this reference was indistinct. Given the above, we considered that Mr F was identifiable to others who were not at the scene of the incident.

We also considered that Mrs F had a legitimate expectation of privacy with regard to the broadcast of this material. This was because, despite the brevity of the footage of Mrs F shown in the programme, as the programme made clear, this material was filmed while she was in an ambulance to attend to her husband who was being discharged into her care after suffering an injury and receiving medical treatment. As stated above, we considered this to be a particularly sensitive situation and, accordingly, particular care should be taken if including footage of such a situation in a broadcast. While we recognised the steps the broadcaster had taken to try to disguise Mrs F, we considered that, by virtue of the information included in the programme about her husband, and to lesser extent about her, and the inclusion of her undisguised voice, Mrs F was identifiable from the programme as broadcast.



For the reasons set out in head a) of this Decision, we did not consider that either Mr or Mrs F had consented to the broadcast of the relevant material. We therefore assessed whether the infringement into their privacy in the broadcast of this material was warranted. In doing so we again considered the meaning of “warranted” as set out in the Code.

As set out at head a) above, we considered that there was a genuine public interest in the broadcast of this programme, in that it showed the burden placed on emergency services by avoidable alcohol-related call-outs. However, in weighing up the competing rights of the parties, we took particular account of the sensitive circumstances surrounding the filming of Mr and Mrs F whilst the former was receiving medical treatment in the ambulance. In particular, and as discussed above, we took account of the confusion and distress which Mr F appeared to exhibit while being filmed in such a sensitive situation, which indeed seemed to be exacerbated by the fact that he was being filmed against his will, as well as the extent to which Mr and Mrs F were identifiable in light of the details that were presented in the broadcast. These factors led us to conclude that in the circumstances of this case, the infringement into Mr and Mrs F’s privacy in the broadcast of the news report was not warranted.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster’s right to freedom of expression and the public interest in broadcasting the footage of and information about Mr and Mrs F did not outweigh their legitimate expectation of privacy in the particular circumstances of this case. Therefore, we found that the complainants’ privacy was unwarrantably infringed in the programme as broadcast.

**Ofcom has upheld Mr and Mrs F’s complaint that their privacy was unwarrantably infringed 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 31 May and 12 June 2016 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<sup>1</sup>

Programme	Broadcaster	Transmission date	Categories
Steve Allen	LBC 97.3FM	03/05/2016	Race discrimination/offence
Good Morning Britain	ITV	01/03/2016	Competitions
ITV London News	ITV London	20/04/2016	Due impartiality/bias

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

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<sup>1</sup> This table was amended after publication to correct a factual inaccuracy.

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 31 May and 12 June 2016 because they did not raise issues warranting investigation.

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

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Funniest Fails, Falls and Flops	5 HD	28/05/2016	Offensive language	1
Sex Pod (trailer)	5*	14/05/2016	Scheduling	1
Can't Pay? We'll Take it Away!	5*	28/05/2016	Materially misleading	1
Sex Pod	5*	28/05/2016	Sexual material	1
The Time Machine	5*	21/05/2016	Scheduling	1
Christian O'Connell Breakfast Show	Absolute Radio	13/05/2016	Sexual material	1
Programming	Attheraces	31/05/2016	Materially misleading	1
BBC News	BBC 1	01/06/2016	Outside of remit	1
BBC News	BBC 1	09/06/2016	Outside of remit	1
BBC News at Six	BBC 1	25/05/2016	Race discrimination/offence	2
EastEnders	BBC 1	17/05/2016	Suicide and self harm	1
EastEnders	BBC 1	20/05/2016	Violence	21
EastEnders	BBC 1	26/05/2016	Crime and disorder	1
Have I Got News for You	BBC 1	20/05/2016	Disability discrimination/offence	3
Have I Got News for You	BBC 1	20/05/2016	Generally accepted standards	2
In the Club	BBC 1	10/05/2016	Materially misleading	1
In the Club	BBC 1	17/05/2016	Materially misleading	3
Reg	BBC 1	06/06/2016	Outside of remit	1
Strictly Come Dancing	BBC 1	n/a	Voting	1
The Eurovision Song Contest 2015	BBC 1	n/a	Voting	1
The National Lottery: In It to Win It	BBC 1	28/05/2016	Outside of remit	1
The One Show	BBC 1	03/06/2016	Offensive language	1
Neighbourhood Blues	BBC 2	04/05/2016	Scheduling	1
Newsnight	BBC 2	25/05/2016	Race discrimination/offence	1
Newsnight	BBC 2	26/05/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Hollow Crown	BBC 2	15/05/2016	Disability discrimination/offence	1
Top Gear	BBC 2	29/05/2016	Generally accepted standards	1
Top Gear	BBC 2	29/05/2016	Offensive language	10
Top Gear	BBC 2	29/05/2016	Outside of remit	2
Top Gear	BBC 2	29/05/2016	Product placement	1
Top Gear	BBC 2	29/05/2016	Violence	3
Top Gear	BBC 2	05/06/2016	Outside of remit	1
Top Gear	BBC 2	06/06/2016	Offensive language	1
Victoria Derbyshire	BBC 2	16/05/2016	Religious/Beliefs discrimination/offence	1
Victoria Derbyshire	BBC 2 / BBC News Channel	06/06/2016	Outside of remit	1
BBC News	BBC News Channel	20/05/2016	Race discrimination/offence	1
BBC News	BBC News Channel	04/06/2016	Outside of remit	1
Dateline London	BBC News Channel	30/05/2016	Race discrimination/offence	1
Matt Edmondson	BBC Radio 1	27/05/2016	Scheduling	1
The Chris Evans Breakfast Show	BBC Radio 2	03/06/2016	Outside of remit	1
Afternoon Drama (trailer)	BBC Radio 4	11/05/2016	Sexual material	1
Programming	Capital FM 105.8	03/06/2016	Scheduling	1
Murderers and Their Mothers	CBS Reality	15/05/2016	Gender discrimination/offence	1
Black on Black	Channel 4	25/09/2001	Race discrimination/offence	1
Channel 4 News	Channel 4	31/05/2016	Race discrimination/offence	1
Channel 4 News	Channel 4	09/06/2016	Outside of remit	1
How to Get a Council House	Channel 4	24/05/2016	Due impartiality/bias	1
Lagos to London	Channel 4	07/06/2016	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	31/05/2016	Offensive language	1
The Morning Line	Channel 4	21/05/2016	Scheduling	1
The Simpsons	Channel 4	01/06/2016	Scheduling	1
Big Brother	Channel 5	07/06/2016	Outside of remit	1
On Benefits: Life on the Dole	Channel 5	26/05/2016	Animal welfare	1
The Hotel Inspector	Channel 5	01/06/2016	Offensive language	4
The Wright Stuff	Channel 5	26/05/2016	Race discrimination/offence	1
Programming	Clyde 2	04/06/2016	Outside of remit	1
CNN Newsroom	CNN	31/05/2016	Due impartiality/bias	1
Hits NI	Cool FM	31/05/2016	Competitions	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
999 Killer on the Line	Crime and Investigation Network	05/06/2016	Outside of remit	1
Betsafe's sponsorship of primetime on Dave	Dave	18/05/2016	Sponsorship credits	1
Storage Hunters UK	Dave	04/06/2016	Other	1
Nymphomaniac Vol 1	Film4	25/04/2016	Sexual material	1
Advertisement	FOX	01/06/2016	Advertising content	1
Jirga	Geo News	08/05/2016	Race discrimination/offence	1
What's That Noise competition	Hallam FM	09/05/2016	Competitions	1
News at 16:00	Heart East-Scotland Radio	28/05/2016	Race discrimination/offence	1
Eurovision Pop Party	Heat TV	14/05/2016	Materially misleading	1
Bang on the Money	ITV	28/05/2016	Materially misleading	1
Britain's Busiest Airport	ITV	06/06/2016	Generally accepted standards	1
Britain's Got Talent	ITV	23/05/2016	Dangerous behaviour	1
Britain's Got Talent	ITV	25/05/2016	Race discrimination/offence	128
Britain's Got Talent	ITV	26/05/2016	Voting	2
Britain's Got Talent	ITV	28/05/2016	Dangerous behaviour	4
Britain's Got Talent	ITV	28/05/2016	Generally accepted standards	2
Britain's Got Talent	ITV	28/05/2016	Outside of remit	1
Britain's Got Talent	ITV	28/05/2016	Race discrimination/offence	1
Britain's Got Talent	ITV	28/05/2016	Scheduling	6
Britain's Got Talent	ITV	28/05/2016	Sexual orientation discrimination/offence	1
Euro 2016	ITV	10/06/2016	Outside of remit	1
Fraud: How They Steal Your ID	ITV	03/06/2016	Outside of remit	1
Green Flag's sponsorship of ITV Weather	ITV	30/05/2016	Sponsorship credits	1
International Football Live	ITV	27/05/2016	Outside of remit	1
International Football Live	ITV	02/06/2016	Other	1
ITV News	ITV	02/06/2016	Race discrimination/offence	1
Loose Women	ITV	10/05/2016	Sexual material	1
Loose Women	ITV	17/05/2016	Under 18s in programmes	2
Lorraine	ITV	05/05/2016	Generally accepted standards	1
Lorraine	ITV	06/05/2016	Sexual material	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Lorraine	ITV	12/05/2016	Generally accepted standards	2
Marcella	ITV	09/05/2016	Violence and dangerous behaviour	7
Marcella (trailer)	ITV	17/05/2016	Generally accepted standards	1
McCains' sponsorship of Emmerdale	ITV	05/05/2016	Sponsorship	1
McCains' sponsorship of Emmerdale	ITV	13/05/2016	Sponsorship	1
McCain's sponsorship of Emmerdale	ITV	29/04/2016	Sponsorship credits	1
Tennis: French Open	ITV	04/06/2016	Race discrimination/offence	1
The Chase	ITV	30/05/2016	Materially misleading	1
This Morning	ITV	25/05/2016	Sexual material	2
This Morning	ITV	31/05/2016	Generally accepted standards	1
ITV News London	ITV London	31/05/2016	Due accuracy	2
Britain's Got Talent	ITV2	26/05/2016	Race discrimination/offence	5
Britain's Got Talent	ITV2	27/05/2016	Scheduling	3
Britain's Got Talent	ITV2	27/05/2016	Voting	1
Love Island	ITV2	30/05/2016	Drugs, smoking, solvents or alcohol	1
Love Island	ITV2	31/05/2016	Offensive language	1
Love Island	ITV2	01/06/2016	Gender discrimination/offence	1
Love Island	ITV2	03/06/2016	Offensive language	1
British Soap Awards 2016 (trailer)	ITV3	20/05/2016	Flashing images/risk to viewers who have PSE	1
French Open	ITV4	26/05/2016	Advertising minutage	1
The Chase	ITV4	10/05/2016	Competitions	1
Bag-in box Leva wine's sponsorship of Jakten på storsäljaren	Kanal 5	03/05/2016	Sponsorship	1
Kiss Breakfast	Kiss FM	05/05/2016	Violence and dangerous behaviour	1
Programming	New Style Radio (Birmingham)	05/04/2016	Race discrimination/offence	1
Peppa Pig	Nick Junior	25/04/2016	Dangerous behaviour	1
Big Fish Man	Quest	28/05/2016	Animal welfare	2
British Superbikes	Quest	22/05/2016	Gender discrimination/offence	1
Military Secret	Ren TV Estonia	05/12/2015	Due impartiality/bias	1
Game of Thrones	Sky Atlantic	23/05/2016	Nudity	1
Penny Dreadful	Sky Atlantic	05/06/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Veep	Sky Atlantic	02/06/2016	Offensive language	1
UK Border Force	Sky Living	26/05/2016	Generally accepted standards	1
Sky News	Sky News	20/05/2016	Due accuracy	1
Sky News Tonight with Adam Boulton	Sky News	23/05/2016	Due impartiality/bias	2
Live Top 14 Rugby	Sky Sports 2	05/06/2016	Race discrimination/offence	1
Rovers	Sky1	24/05/2016	Race discrimination/offence	1
STV News at Six	STV	24/05/2016	Due accuracy	1
The Alan Brazil Sports Breakfast	Talksport	30/05/2016	Drugs, smoking, solvents or alcohol	1

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

For more information about how Ofcom assesses complaints about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/general-procedures/>

Licensee	Licensed service	Categories
Smooth Radio London Ltd	Smooth Radio (Greater London)	Format

## 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, accuracy in BBC programmes or an on demand service does not fall within the scope of regulation.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

### Complaints about television or radio programmes

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

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Coverage of EU Referendum	BBC	n/a	Due impartiality/bias	1
The Truth About Healthy Eating	BBC 1	02/06/2016	Due impartiality/bias	1
The Truth About Healthy Eating	BBC 1	07/06/2016	Materially misleading	1
BBC News	BBC 1 / BBC News Channels	27/05/2016	Due accuracy	1
Week in Week Out "The cost of saving the Welsh language"	BBC 1 Wales	24/05/2016	Due impartiality/bias	3
Mum	BBC 2	13/05/2016	Undue prominence	1
Mum	BBC 2	20/05/2016	Undue prominence	1
Mum	BBC 2	27/05/2016	Undue prominence	1
Mum	BBC 2	03/06/2016	Undue prominence	1
BBC News	BBC News Channel	25/05/2016	Due impartiality/bias	1
Advertisement	BT Sport 1	03/06/2016	Advertising content	1
Advertisement	BT Sport 2	05/06/2016	Advertising content	1
Advertisements	Discovery	04/06/2016	Advertising content	1
Fabulift Beauty	Ideal World	03/06/2016	Advertising content	1
Advertisement	ITV	01/06/2016	Advertising content	1
Advertisement	ITV	03/06/2016	Advertising content	1
Advertisement	ITV	08/06/2016	Advertising content	1
Advertisement	ITV4	29/05/2016	Advertising content	1
Advertisement	Tiny Pop	01/06/2016	Advertising content	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 31 May and 12 June 2016

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

Programme	Broadcaster	Transmission date
Evolution	Channel 4	22 May 2016
Big Brother	Channel 5	12 June 2016
Harry Hill's TV Burp	Dave	23 May 2016
Loose Women	ITV	17 May 2016
This Morning	ITV	25 May 2016
News	NDTV 24x7	19 May 2016
PTC News	PTC Punjabi	14 November 2015
Desi Street	TV99	5 March 2016

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

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

Licensee	Licensed Service
Hub Media CIC	The Hub (Cornwall)

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/general-procedures/>