

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003, 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.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-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. COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- 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>2</sup>.

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- 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 on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

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 provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at:

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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

<sup>2</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

## Notice of Sanction

### Various programmes

*Aden Live, 27 to 29 October 2010 and 15 to 16 November 2010*

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#### Introduction

Aden Live is a general entertainment service broadcast in Arabic. It can be received in the Middle East and some parts of Europe by satellite, but it is not on the Sky Electronic Programme Guide and cannot be received in the UK on normal satellite equipment. The service is aimed at the people of South Yemen and includes programmes based on news, political views, South Yemeni culture and entertainment. The licence for Aden Live is held by Dama (Liverpool) Limited (“the Licensee”).

#### Summary of Decision

In Ofcom’s finding published on 10 October 2011 in Broadcast Bulletin 191<sup>1</sup>, Ofcom concluded that:

- the content and views expressed were almost entirely in support of the Southern Movement and the independence of South Yemen, and critical of the Government of Yemen, its policies and its actions. Ofcom also found that the views of the Government of Yemen, its supporters and supporters of a unified Yemen, as providers of alternative significant views, were not presented or referred to with due weight in the illustrative content or in the material broadcast as a whole;
- the views and opinions of the Licensee on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen (that is on a matter of major political controversy and a major matter relating to current public policy) were expressed in the output of the channel; and
- parts of the content condoned and in some cases glorified: people dying in support of the southern cause; revolt against the government; and the carrying of weapons. In Ofcom’s view, given the context in this case, such content can reasonably be considered material which condones or glamorises violent or dangerous behaviour. Given that the Licensee directs its broadcasts predominantly to a South Yemeni audience, many of whose members are likely to support the Southern Movement and oppose the Government of Yemen, Ofcom concluded that the content could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour.

This broadcast material breached the following rules of the Code:

- Rule 2.4: Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb191/>

- Rule 5.4: Programmes...must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.
- Rule 5.11: In addition to the rules above [Rules 5.1 to 5.10 of the Code inclusive], due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes.
- Rule 5.12: In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

Ofcom decided that the Code breaches were so serious that a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions.

In accordance with Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£10,000** on Dama (Liverpool) Limited in respect of the Code breaches (payable to HM Paymaster General).

In addition, Ofcom directed the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.

The full adjudication is available at:

[http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden\\_Live\\_sanctions\\_decisio1.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Aden_Live_sanctions_decisio1.pdf)

## Standards cases

### In Breach

#### News

*IBC Tamil, 5 January 2012, 15:00*

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#### Introduction

IBC Tamil is a digital radio service broadcast on terrestrial and satellite platforms and aimed at the Tamil community in the UK. The licence for IBC Tamil is held by Sathy Media Limited (“Sathy Media” or “the Licensee”).

Ofcom received a complaint in relation to a news item in the above programme from a Tamil journalist, who writes under the name ‘Athirvuk Kannan’. The complainant said this news programme had: included various statements that unfairly criticised his journalism; and, alleged that he was a supporter of the Sri Lankan Government and associated with another individual, ‘Karuna’, who was allegedly acting in the interests of the Sri Lankan Government.

Ofcom reviewed the news bulletin in question, which was broadcast in Tamil. Ofcom commissioned an independent translation and transcript of the output. Ofcom noted that the leading news headline read out by the presenter said that:

*“It has been made public that the Domain Athirvu [a website] and an anonymous [news]paper known as Karuppu are being run by stooges of the Sri Lankan Government.”*

Having read out the other news headlines, the presenter then read out an extended news report about the alleged activities and views of Athirvuk Kannan. This had a duration of just under five minutes. We noted that the news report included various statements that were critical in particular of Athirvuk Kannan. We noted the following from the transcript:

*“It has been made known to the public that the Domain Athirvu [a website] and an anonymous [news]paper called Karuppu are being run by stooges of the Sri Lankan Government. Misinformation is being given to our Tamil people by a traitor known as Athirvuk Kannan who is operating the Athirvu domain. The affinities between this traitor [and]... Karuna, a lackey of Sri Lankan government have been made known to the public with proof. For the past few days, they have written on the Athirvu website, denigrating our national [Tamil] leader”.*

....

*“Even though this Athirvuk Kannan had made a lot of efforts to create divisions among our Tamil people, they have not been effective. Some of them are important as follows:*

*Firstly, as soon as the transnational government was formed, even though a slew of efforts were taken in conjunction with a regional representative known as Ithayasanthiran, to create a division within this transnational government, those efforts were outmanoeuvred by the IBC Radio. They had taken a lot of efforts against the IBC Tamil. They were filled with deception saying that the IBC had only as few as one hundred listeners.*

*Secondly, they threw people into confusion by organising the heroes' day [a day of celebration for some Tamils] in many parts and thereby claiming that they were the followers of the national leader. This they did with a view to having people confused and creating an illusion for them to appear as nationalists.*

*Athirvuk Kannan's treacherous activity had not materialised, even though they had done everything they could to characterise as traitors all those who have been taking pains to support this liberation struggle [i.e. of certain Tamils in Sri Lanka against the Sri Lankan government] and to take the war crimes<sup>1</sup> to the attention of the world and thereby cause the perpetrators to be punished; this they did, while knowing as to what wrong they were doing on behalf of the Sri Lankan government and pretending to have no knowledge of any wrong doing, in return for the money they had received from the [Sri Lankan] government. All these have been crushed by the IBC Tamil Radio.*

*Athirvuk Kannan, proprietor of the Athirvu website and Ithayasanthiran, a regionalist with the intention of foisting the concept of regionalism on people, are members of the Association of International Tamil Journalists; who are these people? What are their real names? Are they genuine journalists? Many questions like these are being raised to the IBC Tamil by people. Either the President or Secretary of the Association of International Tamil Journalists should please undertake to make known to people the real names of these people"*

....

*"We have received proofs that the newspaper Karuppu and the website Athirvu are both run by this traitor, Kannan. We will make them known to people when we have an opportunity. Questions continue to come from people about this person."*

Ofcom considered the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

"News, in whatever form, must be reported with due accuracy and presented with due impartiality".

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

## **Response**

Sathy Media said that it was "very sorry and apologise[d]...for the errors made" and gave assurances "that these will not happen again". The Licensee said that having reviewed the news report in question it "understood that there [had] been mistakes made" and that "the comments that were made should not have been made on the news programme as it may have been construed as personal comment from the news team, which would be wrong, as the news...must comply with Rule 5.1 of the Code".

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<sup>1</sup> Alleged to have been committed by the Sri Lankan government against Tamils when government forces defeated the terrorist organisation, the Liberation Tigers of Tamil Eelam (also known as the Tamil Tigers) in 2009.

The Licensee stated its belief that the news report in this case was broadcast “as this particular website Athirvu, and paper Karuppu...were anonymous and [were] generally opinioned by the public to be misleading and damaging. It was therefore decided rightly or wrongly that it was within the public’s interest to comment on the above on the news programme”. Sathy Media said that it had met with IBC Tamil’s news team and had stressed the importance of complying with Rule 5.1 at all times.

The Licensee added that the Karuppu newspaper “now no longer exists” and the Athirvu website “no longer makes the sort of comments it made before” and Sathy Media stated its belief that “we could move forward and improve the radio station given what we have learnt so far”.

In conclusion, the Licensee expressed its hope that in future it would “broadcast the news in accordance with Rule 5.1 of the Code”.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to ensure that news included in television and radio services is presented with due impartiality. This duty is reflected in Rule 5.1 of the Code which states that: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

When applying the requirement to report news with due accuracy and preserve due impartiality in news, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without unnecessary interference by public authority.

Article 10 is also clear, however, that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society as well as for the protection of the reputation or the rights of others. The requirement for news to be reported with due accuracy and presented with due impartiality reflects these considerations and necessarily obliges broadcasters to ensure appropriate balance in presenting news so that, for example, neither side of a controversy is unduly favoured.

The requirement in Rule 5.1 that news is reported with due accuracy and presented with due impartiality applies potentially to any issue covered in a news programme where there is more than one viewpoint, and not just matters of political or industrial controversy and matters relating to current public policy. In judging whether due accuracy has been used and due impartiality preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. In the context of “due impartiality” in particular, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Therefore, in considering the issues raised under Rule 5.1 by this case Ofcom has had regard to how the matter was presented, including whether - and if so, to what extent - differing viewpoints were reflected.

We recognise that this case dealt with a news item relating to criticisms of a particular journalist, Kannan Athirvu, and in addition the 'Athirvu' website, and the 'Karuppu' newspaper. The Code does not prohibit news from including views critical of individuals or institutions provided that any views that are included are reported with due accuracy and presented with due impartiality. The central issue for Ofcom in this case therefore is an assessment of the manner in which the criticisms of Kannan Athirvu made in the news item were presented.

In this case, Ofcom noted that the news report about the alleged activities and views of Athirvu Kannan lasted almost five minutes and was wholly critical. The news item variously described the journalist Athirvu Kannan as: a "*stooge...of the Sri Lankan Government*"; a "*traitor*"; carrying out "*treacherous activity*"; and behaving "*like an ignorant person*". In addition, Athirvu Kannan was also described as "*denigrating [the Tamil] national leader*" and "*creat[ing] divisions among our Tamil people*". We considered that these highly critical statements about Athirvu Kannan were clearly controversial and on which there would be more than one viewpoint – not least that of Athirvu Kannan.

In assessing whether any particular news item has been reported with due accuracy and presented with due impartiality, we take into account all relevant facts in the case, including: the nature of the coverage; and whether there are varying viewpoints on a news story and - if so - how a particular viewpoint, or viewpoints, on a news item could be or are reflected within news programming.

At no point did the report reflect Athirvu Kannan's viewpoint on the significant allegations being made against him, nor did it even suggest that he had at any point been asked to comment. In reaching a decision in this case, we have also taken into account the Licensee's admission and apology for the "mistakes made" in this report and "that these will not happen again".

We also took into account the various representations made by Sathy Media. We noted that the Licensee characterised the news report in question as being "personal comment from the news team" and had arisen because "this particular website Athirvu, and paper Karuppu...were anonymous and [were] generally opinioned by the public to be misguiding and damaging. It was therefore decided rightly or wrongly that it was within the public's interest to comment on the above on the news programme". However, licensees must always ensure that news items are reported with due accuracy and presented with due impartiality in accordance with Rule 5.1 of the Code. This is essential: irrespective of the personal views of reporters or other editorial staff on the matters that are being reported in news programming; whether or not comments being reported on are anonymous; or, irrespective of perceived public views on the matters that are being reported in news programming.

Ofcom therefore concluded that, in the circumstances of this case, the news was not reported with due accuracy and presented with due impartiality.

In line with the broadcaster's and audience's right to freedom of expression, Ofcom underlines that the broadcasting of highly critical comments by particular individuals of others is not, in itself, a breach of Rule 5.1 and the obligations to report news with due accuracy and present it with on due impartiality. It is an editorial matter for the broadcaster as to how it complies with these requirements.

Given the above, we concluded that in the specific circumstances of this case the Licensee did not take appropriate steps to ensure the story concerning Athirvu

Kannan was reported with due accuracy and presented with due impartiality. Ofcom has therefore found the material to be in breach of Rule 5.1 of the Code.

Ofcom remains concerned about Sathy Media's compliance arrangements in relation to IBC Tamil. We noted that in its representations, the Licensee appeared to be unaware of the actions of, and compliance procedures being followed by, the IBC Tamil news team.

This raised concerns about the effectiveness of Sathy Media's editorial control over IBC Tamil's output. Ofcom therefore reminds Sathy Media that, as the Licensee, it is responsible for ensuring all its output complies with the Code.

### **Breach of Rule 5.1**

## In Breach

### Nitro Circus

*Extreme Sports Channel, 13 March 2012, 15:30*

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#### Introduction

*Nitro Circus* is an American fly-on-the-wall documentary series featuring groups of people performing original and dangerous stunts. The licence for Extreme Sports Channel is held by Zonemedia Broadcasting Limited (“Zonemedia” or “the Licensee”).

A complainant alerted Ofcom to the broadcast of offensive language in this programme. During this episode, a man was heard to say “*that was fucking awesome*” after taking part in a waterskiing stunt.

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

“The most offensive language must not be broadcast before the watershed...”.

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

#### Response

The Licensee provided comments concerning the 13 March broadcast when responding formally to Ofcom about the broadcast of exactly the same programme on the same channel previously on 8 February 2012<sup>1</sup>. Zonemedia explained that following the incident on 8 February 2012, the Content Manager issued instructions for the programme containing the offensive language to be removed from the scheduling system until further notice. However, the Content Management Assistant did not follow these instructions and the episode remained in the system and was broadcast again in the same form on 13 March 2012. The Licensee said the Content Management Assistant responsible was serving their resignation notice period at the time of the second broadcast and left the company the following day.

#### 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 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...”. Ofcom research on offensive language<sup>2</sup> notes that the word “fuck” and similar words are considered by audiences to be

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<sup>1</sup> See Rule 1.14 breach finding recorded against Zonemedia published on 8 May 2012 in Broadcast Bulletin 205 (<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb205>)

<sup>2</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

amongst the most offensive language. The use of the word “fucking” in this programme broadcast before the watershed was therefore a clear breach of Rule 1.14.

While recognising the unusual circumstances that resulted in this second breach, Ofcom is concerned that having been alerted to the broadcast of the offensive language by Ofcom in February, the Licensee allowed the episode to be transmitted again the following month. Ofcom therefore puts the Licensee on notice that it will consider further regulatory action in the event of a recurrence.

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

## In Breach

### Smart on Sunday

XFM London, 4 March 2012, 14:33

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#### Introduction

XFM London is a radio station owned and operated by Global Radio UK Ltd (“Global Radio” or “the Licensee”). The service is targeted at 15 to 34 year-old listeners, and provides “alternative rock” output.

A complainant alerted Ofcom to the use of the word “motherfucker” in the broadcast of the track *Broke Up the Family* by the band Milk in the early afternoon of Sunday, 4 March 2012.

On assessing the material Ofcom noted the appearance of the word “motherfucker” in the final chorus of the track. At the end of the next song the presenter gave the following apology:

*“Apologies for any bad language you might have heard in that Milk track, it caught our delicate ears off guard too”.*

Ofcom considered the material raised issues warranting investigation under Rules 1.14 and 2.3 of the Code:

Rule 1.14: “The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio).”

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

Ofcom therefore requested comments from the Licensee about how the programme material complied with these rules.

#### Response

The Licensee said that the record label provided the track by Milk which was broadcast on 4 March 2012 labelled as a “clean radio edit”, and that the offending word is delivered in the last line of the last chorus in this version of the track.

Global Radio explained that in the week prior to the broadcast, Milk appeared at XFM on 26 February 2012 to perform a live acoustic version of the track, and then on 28 February 2012 for a recording session with XFM’s in-house producer. During these two performances Milk did not repeat the last chorus nor the last line which contained the offensive word.

The Licensee said its policy is not to broadcast any music track that has not been checked beforehand. In this case, while a member of staff at XFM had listened to the track before broadcast, they had removed their headphones before the final chorus was repeated. The member of staff had not realised that the version sent by the record label had the final chorus repeated, including the offensive language.

Global Radio said that while the track provided by the record label should have been listened to in its entirety before broadcast, there was no expectation that the final chorus would be repeated, and that it would contain such language, nor that there would be such language in a track clearly labelled by a record label as “clean radio edit”.

The Licensee acknowledged that the broadcast of this strong language was inappropriate for this time, and this was why the presenter made an on-air apology at the next available opportunity. The Licensee confirmed it had reminded station staff of the importance of diligence when checking tracks for compliance purposes. It had also corresponded with the record label to ensure it labels tracks correctly in the future.

The Licensee referred to Ofcom guidance on offensive language on radio,<sup>1</sup> from which it understood there was a general principle that children are considered to be particularly likely to be listening between 6am and 7pm at weekends.

The Licensee explained that, from its research, the listening patterns of children and young people on XFM are quite different from other more generalist stations. For example, people under 18 are four to five times more likely to be listening to XFM at 10pm on a Tuesday than they are to be listening between 2pm and 3pm on a Sunday. It said that the listening figures for XFM showed the percentage of listeners under 18 years old between 6am and 7pm on a Sunday is just under 11 per cent. For this particular show – from midday until 3pm – eight per cent of listeners are under 18 years old, and in the hour in which the word was broadcast, the percentage of under-eighteens listening is just under three per cent.

Global Radio acknowledged Ofcom guidance about times when children are considered to be particularly likely to be listening, however it pointed out that the guidance also states that, “for the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it”.

The Licensee considered that XFM’s character as a specialist music station, and the resulting departure from traditional peak times for under-18 listening, should take precedence over a general principle developed from listening patterns across the industry as a whole, and drawn from stations with largely different listening patterns. Having examined both Rule 1.14 and all associated guidance, the Licensee did not believe that at 2.30pm on a Sunday afternoon children are particularly likely to be listening to XFM, and it therefore do not believe there was a breach of Rule 1.14 of the Code.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. These objectives are reflected in Sections One and Two of the Code.

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<sup>1</sup> Ofcom Guidance – Offensive language on radio, December 2011  
(<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>)

### Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom research on offensive language<sup>2</sup> clearly notes that the word “fuck” and other variations of this word are considered by audiences to be among the most offensive language.

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

“For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:...

- between 06:00 and 19:00 at weekends all year around...”.

Ofcom noted the various points the Licensee made to suggest that Sunday afternoon on XFM London was not a time when children were particularly likely to be listening. However, in our view an average figure of eight per cent of under-eighteens listening to a radio show is a significant potential child audience, and given the time of broadcast (early Sunday afternoon) we also consider there was a clear potential for children to be in the audience.

The broadcast of the most offensive language on a Sunday afternoon was therefore in breach of Rule 1.14 of the Code.

### Rule 2.3

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Ofcom therefore considered first whether the language in this song was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

As stated above, Ofcom’s research on offensive language indicates that the word “motherfucker” is considered by audiences to be among the most offensive language. Therefore, Ofcom considered that the use of the word clearly had the potential to cause offence to the audience.

Ofcom went on to assess the context. We note that our guidance on offensive language in radio states (regarding Rule 2.3) that: “Ofcom’s 2010 audience research found that in general, listeners do not expect to hear strong language during the day on radio, regardless of whether children would likely to be listening to the station or programme in question ... . In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio

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<sup>2</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

<sup>3</sup> See footnote 1 above

station at the time of broadcast.” In our opinion the majority of listeners to XFM London early on a Sunday afternoon do not expect programmes to contain the most offensive language. The broadcast of this language was therefore not justified by the context.

We noted that the Licensee acknowledged that the broadcast on XFM London of this example of the most offensive language on a Sunday afternoon was inappropriate and that the presenter made an on-air apology as soon as convenient. We have also taken into account all the background circumstances that led to the track being played as explained by Global Radio. Nonetheless, this was a clear example of lack of diligence in the application of compliance procedures leading to the broadcast of the most offensive language at a time when children were particularly likely to be listening, and a failure to apply generally accepted standards.

The broadcast of this material was therefore in breach of Rule 2.3 of the Code.

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

## In Breach

### Advertisement for The Royal Hotel, Cuillin FM and Skye Liberal Democrats

*Cuillin FM, 30 January to 10 February 2012, various times*

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#### Introduction

Cuillin FM is a local commercial radio station broadcasting a service in English and Gaelic for listeners in Lochalsh and the Isle of Skye. The licence for Cuillin FM is held by Cuillin FM Ltd (“Cuillin” or “the Licensee”).

A listener contacted Ofcom, as he was concerned by the broadcast of an advertisement that he considered “a fundraiser for a political party.”

The advertisement promoted the details of a “*steak and bingo night*”, which was to take place on 11 February 2012 at “*The Royal Hotel, Portree, with Cuillin FM and Skye Liberal Democrats*”. It was broadcast 24 times across eight of the 12 days leading up to the event.

Cuillin confirmed to Ofcom that the Liberal Democrat Party was “financially benefiting” from the event, as were The Royal Hotel and Cuillin FM.

Ofcom has a statutory duty, under section 319(2)(g) of the Communications Act 2003 (“the Act”), to secure the standards objective “that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services.”

Political advertising is prohibited on radio and television under the terms of sections 321(2) and 321(3) of the Act and Rule 7.2 of the BCAP Code<sup>1</sup>.

For most matters, the BCAP Code is enforced by the Advertising Standards Authority (“ASA”). However, Ofcom remains responsible, under the terms of a Memorandum of Understanding between Ofcom and the ASA, for enforcing the rules on “political” advertising.

In this instance, Ofcom considered that the material raised issues warranting investigation under the following rules from Section 7 (Political and controversial matters) of the BCAP Code:

- Rule 7.1, which states:

“Radio Central Copy Clearance – Radio broadcasters must seek central clearance for advertisements that might fall under this section on the grounds of either the advertiser’s objectives or the content of the advertisement”<sup>2</sup>; and

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<sup>1</sup> The UK Code of Broadcast Advertising, available at: <http://bcap.org.uk/The-Codes/BCAP-Code.aspx>.

<sup>2</sup> The Radio Advertising Clearance Centre (<http://www.racc.co.uk>) provides central copy clearance to radio broadcasters. In this instance, the RACC confirmed to Ofcom that no approval for the advertisement had been sought in this instance.

- Rule 7.2, which states, among other things:
  - “Advertising that contravenes the prohibition on political advertising set out below must not be included in television or radio services;
  - 7.2.1 An advertisement contravenes the prohibition on political advertising if it is:
    - (a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
    - (b) an advertisement which is directed towards a political end...
  - 7.2.2 For the purposes of this section objects of a political nature and political ends include each of the following:
    - (a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;
    - (b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;
    - (c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;
    - (d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;
    - (e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
    - (f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;
    - (g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.”

Ofcom therefore asked the Licensee for its comments, and for the comments of the advertisers, on how the advertisement had complied with the above rules.

## **Response**

Cuillin, which also responded on behalf of all the advertisers, said that, following a meeting of the local Liberal Democrat Party, the station had been asked if it would use its bingo software to hold a bingo night. Having agreed, The Royal Hotel was

then approached as a venue. It agreed not only to be the venue for the event but also to run one of its regular promotional steak nights on the same evening.

The Licensee noted that in the advertisement “there was no attempt to promote any political view other than the brief mention of the Liberal Democrats at the beginning of the advert...”. However, it accepted that its volunteer advertising manager “made a serious mistake which should not have happened”. It said that it realised, with hindsight, that “by including the Liberal Democrats in the advert”, for what Cuillin had considered was “intended to be more of a fun night rather than a major fund raising evening”, the advertisement was in breach of the BCAP Code. Further, the Licensee accepted that central copy clearance of the advertisement should have been sought prior to broadcast.

Cuillin apologised and assured us it had “set a procedure in place that all future adverts produced by the station will be checked by a director and [its] member of staff to ensure that no further breach of the Ofcom regulations will occur.”

## **Decision**

Under the Act, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure certain standards objectives, one of which is “that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services.”

Section 321(2) and section 321(3) – which provides an inclusive, non-exhaustive list of examples of what “political nature” and “political ends” include under Section 321(2) – are replicated at paragraphs 7.2.2 and 7.2.1 of BCAP Code Rule 7.2, from which the material relevant in this instance is quoted in the ‘Introduction’, above.

Further, to assist Ofcom’s radio licensees’ compliance in this area, Rule 7.1 requires that, prior to broadcast, they seek central copy clearance of advertisements that may fall under Section 7 (Political and controversial matters) of the BCAP Code.

### Central Copy Clearance

Radio broadcasters must seek central copy clearance of ‘special category’ advertisements from the Radio Advertising Clearance Centre (RACC)<sup>3</sup>. “Matters of public controversy including matters of a political or industrial nature” comprise such a category. Any advertisement that refers to a political party may fall under Section 7 (Political and controversial matters) of the BCAP Code. Cuillin admitted that it had not sought central clearance in this instance prior to broadcasting the advertisement. The Licensee therefore failed to seek central copy clearance of an advertisement that may fall under Section 7, in breach of Rule 7.1 of the BCAP Code.

### Content of the advertisement

Ofcom noted that Cuillin considered the material broadcast had breached the BCAP Code “by including the Liberal Democrats in the advert.” However, referring to a political party in an advertisement may not in itself breach Rule 7.2 of the BCAP Code (e.g. if it consists of a passing reference to a political party in a broadcast advertisement for a newspaper). In this case, however, Ofcom considered that Rule 7.2 was breached in the following two ways:

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<sup>3</sup> Full details of ‘special category’ advertisements can be found in Section 1 (Compliance) of the BCAP Code, at:

[http://bcap.org.uk/The-Codes/BCAP-Code/BCAP-Code-Item.aspx?q=Test\\_General\\_Sections\\_01\\_Compliance#c446](http://bcap.org.uk/The-Codes/BCAP-Code/BCAP-Code-Item.aspx?q=Test_General_Sections_01_Compliance#c446)

The advert was inserted by or on behalf of a political party

The advertisement for a “*steak and bingo night*” was placed by The Royal Hotel, Cuillin FM and Skye Liberal Democrats. As a UK political party, the Liberal Democrats is “a body whose objects are wholly or mainly of a political nature” (where ‘political nature’ includes any of (a) to (g), in paragraph 7.2.2 of BCAP Code Rule 7.2 – see ‘Introduction’, above).

Since one of the three entities that placed the advertisement was Skye Liberal Democrats, the advertisement was in breach of Rule 7.2 of the BCAP Code, which prohibits, among other things, “an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature.”

The advert promoted a fund raising event for a political party

The advertisement promoted a social event that was held, in part, to raise funds for Skye Liberal Democrats. It was therefore “directed towards a political end”, where ‘political end’ includes “promoting the interests of a party ... in the United Kingdom ... for political ends” (i.e. sub-paragraph (g) in paragraph 7.2.2 of BCAP Code Rule 7.2 – see ‘Introduction’, above).

The advertisement was therefore in breach of Rule 7.2 of the BCAP Code, which prohibits, among other things, “an advertisement which is directed towards a political end.”

Ofcom notes the Licensee’s apology and welcomes the action it has taken to ensure future compliance. We do not expect any further breaches of Rule 7.2 of the BCAP Code by Cuillin.

**Breaches of Rules 7.1 and 7.2 of the BCAP Code**

## In Breach

### Transitions Adaptive Lenses' sponsorship of Channel 4 Travel Programming

*Channel 4 and More4, 1 February 2012 to present, various dates and times*

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#### Introduction

Channel 4's travel programming consisting of the series: *A Place in the Sun*; *A Place in the Sun Home and Away*; *Four in a Bed*; *Three in a Bed*; *Coach Trip*; and *Our Man In*, is sponsored by Transitions Adaptive Lenses. These are lenses for glasses which darken as light levels increase.

A complainant alerted Ofcom to the sponsorship credits, one of which consisted of the following:

Image: A woman wearing glasses standing on a rooftop looking out over a sunny city skyline. A hand turns a dial to make the scene slightly darker.

Voiceover: *"Discover the world in the best light."*

Image: Two glasses lenses on a background of a blue sky, turning from transparent to dark when a hand turns a dial.

On-screen text: *"Transitions Adaptive Lenses"*

Voiceover: *"Transitions Adaptive Lenses adjust to changing light."*

Image: A man dressed in smart clothes and wearing glasses walking through a city in the sun. A hand turns a dial to make the scene slightly darker.

Voiceover: *"Giving you a better view on the world."*

Image: A man dressed in casual clothes and wearing glasses walking through a corn field.

Voiceover: *"Discover and enjoy Coach Trip sponsored by Transitions Adaptive Lenses."*

Image: Two glasses lenses on a background of a blue sky turning from transparent to dark.

On-screen text: *"Sponsored by Transitions Adaptive Lenses. Transitions.com"*

Ofcom considered the material raised issues warranting investigation under Rule 9.22(a) of the Code which states:

"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 Channel 4 (or “the Licensee”) for its comments on how the sponsorship credit, particularly the line: “*Transitions Adaptive Lenses adjust to changing light giving you a better view on the world*”, complied with Rule 9.22(a).

## Response

Channel 4 said that it had ensured that the primary focus of the sponsorship credit was the sponsorship arrangement. It stated that the references to the sponsor's product were brief, helped to identify the sponsor and “amplified the link between the programme and sponsor.” Channel 4 referred to the fact that at the end of the credit a full-screen graphic clearly stated: “*Sponsored by Transitions Adaptive Lenses. Transitions.com*”.

The Licensee submitted that the credit did not contain detailed descriptions, references to positive attributes, claims (particularly those capable of objective substantiation), calls to action or price messaging about the sponsor's product.

Channel 4 explained that the credit was “set in the context of discovering new and exciting parts of the world.” It referred to the images of a woman in the sun dreaming of escaping the city and a man in the city and then walking through fields exploring new surroundings. The Licensee continued in its view that this visual link to travel themes helped to ensure the focus of the credits was on the sponsorship arrangement itself, by making what Channel 4 considered to be “a clear thematic connection with the programmes, and not a focus on the sponsor's products.”

In addition, Channel 4 submitted that the voiceover “*Discover the world in the best light*”, “*...giving you a better view on the world*” and “*Discover and enjoy [programme title] sponsored by Transitions Adaptive Lenses*”, helped to link the credits to the programme “by using language to bring out the sense of discovery and travel.”

With regards to the line: “*Transitions Adaptive Lenses adjust to changing light. Giving you a better view on the world*”, Channel 4 explained that the first sentence identifies the sponsor and contains a brief description of the product as permitted by Rule 9.22(a). It continued that the second sentence “seeks to create a link to the programme which is sponsored.” In addition, the Licensee stated that there was a clear one second pause between the two sentences, “in order to emphasise the distinction of one being a mere description of the product and the other a linking line to the programme.”

## 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 EU Audiovisual Media Services (AVMS) 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, and that credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

Ofcom acknowledged that, in accordance with its guidance<sup>1</sup>, Channel 4 had sought, through the use of language such as “*Discover the world in the best light*” and “*Giving you a better view on the world*”, as well as through imagery, to identify the sponsorship arrangement by creating a thematic link between the sponsor and the programme, i.e. discovering a new way of viewing the world through Transitions Adaptive Lenses as well as through travel.

However, Ofcom considered that the imagery of a woman looking over city skyline, a man walking through a city and a man walking through a cornfield did not serve to create a particularly strong link with the travel programming being sponsored. Furthermore Ofcom noted the images in question featured in the sponsor’s spot advertising campaign in which they did not appear to be linked to the theme of travel.

Further, 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 or claim about the sponsor or its products.

Ofcom noted the voiceover: “*Transitions Adaptive Lenses adjust to changing light. Giving you a better view on the world*”. We agreed with Channel 4 that “*Transitions Adaptive Lenses adjust to changing light*” was a brief description of the sponsor’s product. However, we considered it unlikely that viewers would have understood the one second pause between the first and second sentences to indicate that the second sentence was a reference to the link between the sponsor and the programme. Instead, Ofcom considered that, in combination with the brief description of the sponsor’s product, viewers were more likely to understand the sentence “*giving you a better view on the world*” to be a reference to the positive attributes of that product. Ofcom considered this reference to be an advertising message which is not permitted in sponsorship credits.

Furthermore, we noted that, while the end of the credit did contain a reference to the sponsored programme in voiceover and a reference to the sponsorship arrangement in text, these references did not appear until about 11 seconds into the approximately 15 second credit.

Ofcom took into account what it considered to be the relatively weak thematic link between the sponsorship credit and the sponsored programme and arrangement, as set out above. We also took into account the late references to the sponsored programme and arrangement, and the inclusion of the advertising message “*giving you a better view on the world*”. Ofcom concluded that the sponsorship arrangement was not the focus of this credit.

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<sup>1</sup> See Guidance to Rule 9.22(a) available at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

The credit was therefore in breach of Rule 9.22(a).

**Breach of Rule 9.22(a)**

## In Breach

### La Sienne's sponsorship of Jorbozeh II

GEM TV, 1 February 2012, 19:00

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#### Introduction

Gem TV is a Farsi (Iranian) language channel broadcasting via the Hotbird 6 satellite. The channel can be received in Europe and the Middle East. *Jorbozeh II* was a programme about psychology which was sponsored by La Sienne skincare.

During routine monitoring, Ofcom noted that the sponsorship credit for La Sienne appeared between the opening credits of the programme and the programme itself.

The credit consisted of the following:

Image:	A woman's face
On-screen text:	"FACE MAKEUP"
Voiceover:	"According to beauty experts in the United States"
Image:	A woman's face
On-screen text:	"SKINCARE"
Voiceover:	"La Sienne is one of the best ways to treat lines and for combating aging"
Image:	A woman's face
Voiceover:	"With the use of skin, beauty, and"
On-screen text:	"ANTI-AGING"
Voiceover:	"health creams of La Sienne, you can experience youth and feel refreshed."
Image:	A woman's face and upper body
On-screen text:	"LIPSTICK"
Voiceover:	"The phone number for ordering and acceptance of franchise opportunities throughout the world is [telephone number]"
Image:	A woman's face
On-screen text:	"EYE MAKEUP"
Voiceover:	"La Sienne made in the USA"
On-screen text:	"LA SIENNE"

La Sienne's telephone number and website address appeared at the bottom of the screen throughout the credit.

At the beginning of the programme, and after the sponsorship credit, we noted that the female presenter stated: "*Jorbozeh, a presentation programme by La Sienne.*"

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

Rule 9.19: "Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- a) The identity of the sponsor by reference to its name or trade mark; and
- b) The association between the sponsor and the sponsored content."

Rule 9.22(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 General Entertainment & Music Limited ("GEM Ltd" or "Licensee") for its comments on how the material complied with Rules 9.19 and 9.22(a).

## Response

GEM Ltd's response confirmed that this piece of content was intended to be a sponsorship credit. The Licensee told Ofcom that it was "working to mention [these] rules [to its staff]", and was identifying any other sponsorship credits which raised issues in relations to Ofcom's rules. GEM Ltd also said that it would comply its sponsorship credits more carefully in future.

## 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.

### Rule 9.19

The EU Audiovisual Media Services (AVMS) Directive requires that viewers be clearly informed of sponsorship arrangements.

Rule 9.19 of the Code therefore requires that sponsorship is clearly identified by means of sponsorship credits, which must make clear the identity of the sponsor and the association between the sponsor and the sponsored content.

While the identity of the sponsor was clear from the sponsorship credit, no reference was made to the sponsorship arrangement during the opening credit. Instead, the presenter stated in the opening line to the programme: *“Jorbozeh, a presentation programme by La Sienne.”* As the sponsorship arrangement was not clearly identified in the opening sponsorship credit, the credit was in breach of Rule 9.19.

#### Rule 9.22(a)

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is distinguishable 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, and that credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

The sponsorship credit in question stated: *“According to beauty experts in the United States La Sienne is one of the best ways to treat lines and for combating aging”, and “With the use of skin, beauty, and health creams of La Sienne, you can experience youth and feel refreshed”* accompanied by the on-screen text: *“ANTI-AGING”*. These statements clearly contained advertising claims which were capable of objective substantiation.

The sponsorship credit also included the following call to action to contact the sponsor both to buy the product and to pursue a franchise opportunity for its sale: *“The phone number for ordering and acceptance of franchise opportunities throughout the world is [telephone number]”*.

Further, as no reference was made to the sponsorship arrangement during the credit, in Ofcom’s view, it was effectively an advertisement.

As this sponsorship credit contained advertising messages about the sponsor’s products, a call to action to contact the sponsor, and encouraged the purchase of the sponsor’s products, it was clearly in breach of Rule 9.22(a).

The breaches in this case demonstrate that this sponsorship credit was not subject to adequate compliance procedures. Ofcom will therefore monitor GEM TV to check its future compliance with the sponsorship rules.

#### **Breaches of Rules 9.19 and 9.22(a)**

## Resolved

### ITV News and Weather

ITV1, 26 February 2012, 13:30

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#### Introduction

This news bulletin included an item on racism and homophobia in British football and reported on an anti-discrimination summit chaired by the Prime Minister at Downing Street that day about how to combat discrimination in the sport.

Four complainants alerted Ofcom to the reporter using the term “coloured” to describe some football players and coaches during this pre-recorded news item, indicating that they found it offensive.

During the item the reporter said in voiceover:

*“... Football has certainly come a long way since bananas were routinely thrown at coloured players. But one shameful statistic remains – only three of the 92 League clubs employ a black manager, and one of those Keith Curl, was only appointed at Notts County a few days ago. The Government are funding a scheme to promote more coloured coaches and are also tackling the issue of homophobia in the sport”.*

Ofcom considered the material raised issues warranting investigation under Rule 2.3 of the Code, which states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ... . Such material may include, but is not limited to, offensive language, ... discriminatory treatment or language...”.

Ofcom asked ITV Broadcasting Limited (“ITV” or “the Licensee”) on behalf of the ITV Network for ITV1 for its comments as to how this content complied with this rule.

#### Response

ITV said that the reporter’s use of the term “coloured” was “inappropriate and we do not defend its use. It was an editorial misjudgement and we apologise to those who were understandably offended by the use of this term”.

The Licensee said that although this was a report completed against a tight deadline “we accept that this does not excuse the mistake being made ... and understand the careful selection of appropriate language around the issues of race”. ITV explained that the report was reviewed prior to broadcast. However the reference was not identified, which was a result of “human error and editorial misjudgement – and is regretted”. The Licensee said that “the reporter, producer and programme editor have all been made aware of the gravity of the error” and that the incident will feature in future newsroom compliance training.

ITV said that once the report was broadcast, the Licensee recognised very quickly that inappropriate language had been used and took swift action to mitigate the potential for further offence by: editing the reference from the news programme

scheduled on ITV1 +1; issued an apology that was distributed to the press that afternoon; published an apology on the ITV News Twitter account within the hour of the broadcast; and removed the report from the ITV News website. The Licensee said that approximately 20 viewers had contacted ITV News and ITV Viewer Services directly and apologies were made to all these complainants.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including 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”. This objective is reflected in Section Two of the Code.

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

In applying Rule 2.3, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

Ofcom recognises that the use of language changes over time and likewise the impact of offence it may cause will also be subject to change. However, broadcasters are required to ensure that potentially offensive material is justified by the context.

Ofcom first considered whether the material was capable of causing offence.

In this case we noted that the pre-recorded news report concerned: the issue of racism in British football; an anti-discrimination summit at Downing Street; and two recent high profile cases regarding racism and Premier League football players. Ofcom noted that on two occasions the reporter used the term “coloured” during this news item.

Ofcom noted that the on line Oxford English Dictionary has an entry for the word “coloured” as follows:

*“Coloured dated or offensive wholly or partly of non-white descent. South African used as an ethnic label for people of mixed ethnic origin, including Khoisan, African, Malay, Chinese, and white: there was a drive to recruit coloured, black, and Indian members.”<sup>1</sup>*

Although the word “coloured” has various meanings, Ofcom understands that it is potentially offensive when used to describe certain individuals from ethnic minority groups because it fails to recognise adequately their specific differences and also has associations with racial segregation. Therefore in Ofcom’s view the use of the word twice in a news report was clearly capable of causing offence to viewers.

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<sup>1</sup> <http://oxforddictionaries.com/definition/coloured?q=coloured>

We went on to consider whether the offensive language in this broadcast was justified by the context. We took into account factors such as the degree of offence caused, the likely expectations of the audience and the nature of the offensive content.

Ofcom first considered how the term was used. We noted that the reporter deliberately selected this word to refer to football players and coaches from various ethnic minority groups in the context of a report about racism in football. The ill-judged use of this word twice in this context was therefore likely to have increased to some extent the degree of offence caused in this particular case. In Ofcom's opinion, the comments made by the reporter also went beyond the likely expectations of the audience, particularly in view of the fact that the offensive term was deliberately included in a pre-recorded news report in one of ITV1's main daily news bulletins. Taking into account the above factors Ofcom therefore concluded there was insufficient context to justify the potential offence caused to viewers and in this instance ITV did not apply generally accepted standards.

In this case the news item was subject to compliance checks prior to its broadcast but the offensive term was not identified due to "human error and editorial misjudgement".

However, we noted that ITV recognised the editorial mistake almost immediately after broadcast, and took swift and appropriate action to mitigate the potential for further offence by for example: editing the report prior to its repeat on the ITV1 +1 service and issuing apologies via the press, the social media site Twitter and to those viewers who contacted it directly.

On balance, and in light of the steps taken by ITV to mitigate this offence, Ofcom therefore considered the matter resolved.

## **Resolved**

## Broadcast Licence Condition cases

### Community radio station compliance reports

*Various*

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Community radio stations are, under the terms of The Community Radio Order 2004 (“the Order”), defined as local radio stations provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They are also required to deliver social gain, operate on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

Any group applying for a community radio licence is required to set out how proposals as to how it will meet these various statutory requirements. If the group is awarded a licence, these proposals are then included in the licence so as to ensure their continued delivery. This part of a community radio station's licence is known as the 'key commitments'.

Given that each station's 'key commitments' are designed to ensure that the station continues to provide the service for which it has been licensed, it is of fundamental importance that Ofcom is able to monitor delivery of these 'key commitments'. Licensees are therefore required to submit an annual report setting out how they have been meeting their licence obligations.

In addition to the requirements set out above, there are also statutory restrictions on the funding of community radio stations (section 105(6) of the Broadcasting Act 1990, as modified by the Order). Specifically, no community radio station is allowed to generate more than 50% of its annual income from the sale of on-air advertising and sponsorship. In certain circumstances, some stations are not allowed to carry any paid for advertising or sponsorship.

It is also a characteristic of community radio services that any profit that is produced by providing the service is 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).

As with the 'key commitments', it is of fundamental importance for Ofcom to verify that a licensee is complying with its licence requirements relating to funding and licensees are therefore required to submit an annual report setting out how they have met their financial obligations.

The annual reports from stations also inform Ofcom’s own report on the sector, to be featured in the annual Communications Market Report and late submission of annual reports from individual stations impacts on this.

Failure by a licensee to submit an annual report when required represents a serious and fundamental breach of a community radio licence, as the absence of the information contained in the report means that Ofcom is unable properly to carry out its regulatory duties.

Licence condition 9(1) states:

## 9. General provision of information to Ofcom

(1) 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 (but without prejudice to the generality of the foregoing):

(a) a declaration as to the Licensee's corporate structure in such form and at such times as Ofcom shall specify;

(b) such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee is on any ground a disqualified person by virtue of any of the provisions in Section 143 (5) of the 1996 Act and/or Schedule 2 to the 1990 Act or whether the requirements imposed by or under Schedule 14 to the Communications Act are contravened in relation to the Licensee's holding of the Licence;

(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.

## In Breach

The following station has failed to submit its annual report despite repeated requests for this information. The licensee has therefore been found **in breach** of their licence.

Station	Code and rule / licence condition	Summary finding
104.7 Rossendale Radio	Community Radio licence condition 9(1)	The licensee, Agapao International, did not submit its annual financial report by the date required (30 March 2012). (An extension was given to 16 April 2012, at which point the key commitment report was received.) Finding: <b>In breach</b> , in relation to the finance report. Licence has since been surrendered and so no further action to be considered.

## Resolved

The following licensees failed to submit either one or both parts of their annual reports (key commitments and finance sections) in accordance with the original deadline, but have subsequently submitted late reports. For these licensees we therefore consider the matter **resolved**.

<b>Station</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
Alive Radio	Community Radio licence condition 9(1)	<b>Resolved</b>
Radio JCom, Leeds	Community Radio licence condition 9(1)	<b>Resolved</b>
Voice of Africa Radio	Community Radio licence condition 9(1)	<b>Resolved</b>

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*LFC TV, 3 March 2012, 15:00*

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#### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

During monitoring of licensees’ compliance with COSTA, Ofcom noted that on 3 March 2012 LFC TV transmitted 1 minute and 23 seconds more advertising than the amount permitted in a single clock hour.

Ofcom therefore sought comments from Liverpool Football Club & Athletic Grounds Limited (“the Licensee”), the licence holder for LFC TV under Rule 4 of COSTA.

#### Response

The Licensee explained that the overrun was a result of human error and a member of staff not following the correct procedures rather than a technical malfunction or inadequate reporting measures.

The Licensee added that it was committed to COSTA compliance, that it would be introducing new improved procedures and an automated system to eradicate playout issues and system failures, and that it had allocated extra staff for monitoring compliance.

The Licensee said it would be very willing to reduce the permitted hourly allowance to make-up for the overrun and would be happy “to deduct additional minutage to readdress the balance”.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees’ compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast by LFC TV was in breach of Rule 4 of COSTA.

This compliance failure follows previous breaches recorded by Ofcom covering a series of minutage overruns on LFC TV, as follows:

- in Broadcast Bulletin 199<sup>1</sup>, we recorded three breaches of Rule 4 of COSTA;
- in Broadcast Bulletin 192<sup>2</sup>, we recorded two breaches of Rule 4;
- in Broadcast Bulletin 169<sup>3</sup>, one breach of Rule 4 was recorded; and
- in Broadcast Bulletin 162<sup>4</sup>, one breach of Rule 4 was recorded.

In those cases, the Licensee had provided assurances to Ofcom that, following compliance failures at the time, it had since implemented improved procedures to minimise the risk of a recurrence.

We note the Licensee's willingness to reduce its minutage in recognition of this latest overrun and its latest assurances about its improved procedures and a new system to assist with its COSTA compliance. However, Ofcom is particularly concerned that despite previous repeated assurances by LFC TV, its revised procedures have not proved sufficiently robust to prevent a further breach of Rule 4 of COSTA. Ofcom is therefore putting the Licensee on notice that we will proceed to consider further regulatory action in the event of future incidents of this nature.

### **Breach of Rule 4 of COSTA**

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb199/obb199.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb192/obb192.pdf>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb162/issue162.pdf>

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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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.”

<b>Channel</b>	<b>Transmission date and time</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
MTVN HD	23 and 24 February 2012	COSTA Rule 4	Ofcom noted, during monitoring, that the amount of advertising exceeded the permitted hourly allowance by 30, 32 and 139 seconds on the transmission dates specified.  <b>Finding: Breach</b>
Star Plus	15 January and 15 February 2012, 14:00	COSTA Rule 4	Ofcom noted, during monitoring, that the amount of advertising exceeded the permitted hourly allowance by 100 and 38 seconds respectively on the transmission dates specified.  <b>Finding: Breach</b>

## Fairness and Privacy Cases

### Upheld in Part

#### Complaint by Ms Daisy Borrett-Renn

*The Candy Bar Girls, Channel 5, 14 July 2011*

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**Summary:** Ofcom has upheld in part this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Ms Daisy Borrett-Renn.

Channel 5 broadcast an episode of the observational documentary series *The Candy Bar Girls* on 14 July 2011. One of the contributors to the programme was Ms Borrett-Renn, who was shown getting ready to attend a party at a nightclub and later arguing with her girlfriend, Ms Jo Davis, outside the party.

Following the broadcast of the programme, Ms Borrett-Renn complained to Ofcom that she was treated unjustly or unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the broadcast of the programme.

In summary, Ofcom found as follows:

- Material facts were not presented, disregarded or omitted in a way that was unfair to Ms Borrett-Renn, in that the programme did not state or suggest that Ms Borrett-Renn and Ms Davis were living together.
- There was evidence that the programme makers had provided Ms Borrett-Renn with an assurance that footage filmed after she had requested some space from filming, would not be broadcast in the programme. However, the broadcast of some of that footage did not lead to any unfairness in the programme as broadcast.
- The programme makers obtained informed consent from Ms Borrett-Renn to participate in the programme and provided her with an accurate description of the nature of the programme, which did not materially change from the making to the broadcast of the programme.
- Ms Borrett-Renn did not have a legitimate expectation of privacy at any point in relation to the filming which took place because she had provided programme makers with her informed consent to be filmed.
- Ms Borrett-Renn did have a legitimate expectation of privacy that footage filmed outside a nightclub (after she had asked the camera crew for “some space”) would not then be broadcast. This is because Ofcom found evidence that an assurance had been given by programme makers that material filmed after she had made this request would not feature in the programme. Ms Borrett-Renn’s privacy was unwarrantably infringed as a result of the inclusion of a section of this footage in the programme as broadcast.

#### Introduction

On 14 July 2011, Channel 5 broadcast an episode of the reality television series entitled *The Candy Bar Girls*, which follows the lives of staff members and regular

customers at the Candy Bar, a lesbian bar in central London. Each episode featured different customers and staff members of the Candy Bar.

The programme started with an introduction to the Candy Bar which was described by the narrator as follows:

*“The Candy Bar, London’s famous lesbian bar. Sitting in the heart of London, hundreds of women hang out at this popular bar every night”.*

This was accompanied by footage of women standing at the bar and included Ms Borrett-Renn, who said: *“it’s a whole new world”*.

The narrator explained that Ms Jo Davis was now “*seeing*” Ms Borrett-Renn a “*30 year old barrister from London*” and that Ms Davis stated that they had met “*through the Candy Bar*”. Ms Borrett-Renn was shown in the kitchen of Ms Davis’ flat, as Ms Davis was getting ready for her job as a DJ at the Candy Bar. Footage of Ms Borrett-Renn dancing and having drinks with Ms Davis was also shown.

The programme stated that Ms Davis’ flat had been burgled and her laptop had been stolen. Ms Borrett-Renn was shown in the flat, along with Ms Davis’ flatmate, sympathising with Ms Davis and advising her on how to deal with the situation.

Later in the programme Ms Borrett-Renn was shown with some friends, preparing to attend a fetish party. Footage of the party, which was held at the Pussy Control nightclub (“the nightclub”), was featured. Ms Davis had initially stated that she would not be able to attend the party, but later was shown arriving. The narrator stated that while Ms Borrett-Renn appeared to be enjoying herself, Ms Davis was feeling “*neglected*”. Ms Borrett-Renn and Ms Davis were then shown arguing in an area outside the nightclub and Ms Borrett-Renn appeared, at one point, to be crying.

Following the broadcast of the programme, Ms Borrett-Renn complained to Ofcom that she was treated unjustly or unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

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

### Unjust or unfair treatment

In summary, Ms Borrett-Renn complained that she was treated unjustly or unfairly in the programme as broadcast in that:

- a) Material facts were presented, disregarded or omitted in a way that was unfair to Ms Borrett-Renn. In particular, Ms Borrett-Renn said that the programme had described her as living with Ms Davis when, in fact, they had only been dating for a few weeks.

In response, Channel 5 said that although the programme did show Ms Borrett-Renn at Ms Davis’ flat on a number of occasions, the programme did not at any point describe Ms Borrett-Renn as “living with” Ms Davis.

- b) Covert footage of Ms Borrett-Renn was broadcast, despite assurances being given to her by the programme makers that she would not feature in the programme due to concerns over her health.

In response, Channel 5 said that Ms Borrett-Renn had provided informed consent to be filmed for the series. In addition, it said that Ms Borrett-Renn had provided the programme makers with details of her daily movements which she thought they may wish to film.

In relation to the complainant's reference to "covert footage", Channel 5 said that none of the footage included in the programme was filmed surreptitiously or covertly. In relation to the footage that was filmed in the courtyard area of the nightclub, Channel 5 said that all the footage included in the programme was filmed by programme makers at close range. Channel 5 said that it would have been clear to Ms Davis and Ms Borrett-Renn that they were being filmed both on account of the close proximity of the camera crew and because the camera had a very bright light attachment that shone on them.

With respect to Ms Borrett-Renn's complaint that assurances were given to her that she would not appear in the programme, Channel 5 said that no such assurances were given to Ms Borrett-Renn.

Channel 5 said that text messages between Ms Borrett-Renn and the programme makers (copies of which were provided to Ofcom) showed that she was enthusiastic about the programme. However, Channel 5 said that later on in the programme making process, Ms Borrett-Renn informed the programme makers that she was experiencing back pain and that she was under stress. At this point, the programme makers agreed that they would not specifically film her anymore, although there may have been some scenes filmed at the Candy Bar in which Ms Borrett-Renn appeared in the background because she happened to be present. Channel 5 said that both the series producer and the location producer discussed with Ms Borrett-Renn, in detail, what footage would and would not be included in the programme as broadcast. At no stage did the programme makers say to Ms Borrett-Renn that no footage of her would appear in the programme.

Channel 5 also said that Ms Borrett-Renn had failed to turn up to pre-arranged filming on a few occasions and that the programme makers had, therefore, decided to stop approaching her to arrange filming times on the assumption that she no longer wished to be a part of the programme. However, Ms Borrett-Renn continued to contact the programme makers, stating that this was not a correct assumption for them to make and that she did want to be a part of the programme. Channel 5 said that the location producer then tried several times to telephone Ms Borrett-Renn to clarify the situation, but she did not pick up or return the calls. When the series producer did manage to speak to Ms Borrett-Renn, he clarified with her which scenes that featured her would be included in the final version of the programme. Channel 5 said that the scenes included in the programme were those as discussed with Ms Borrett-Renn on those occasions. Channel 5 added that a few weeks after the filming Ms Borrett-Renn attended the Candy Bar launch party and was happy to be filmed talking to the camera.

Channel 5 also provided copies of correspondence between Ms Borrett-Renn and the legal department of the programme makers. In a letter to the complainant dated 7 July 2011, the legal department stated:

"After having filmed you, you made us aware that your back was causing you pain and that you were under some stress. At that point, we agreed that we would not specifically film with you any more...We stopped filming with you (as referred to above) because of your health issues. We also did reassure

you that no footage which was filmed after the point at which you requested some space after the argument filmed at Pussy Control would be included in the programme. We discussed with you, in detail, exactly what footage would and wouldn't be included in the final programme. At no stage did we say that no footage of you would appear in the programme”.

By way of further response, Channel 5 stated that this letter did not give any assurances to Ms Borrett-Renn, who in any event did not receive the letter and therefore could not as a result be in receipt of any assurance. Channel 5 said that separately the Series Producer had had various conversations with Ms Borrett-Renn in which he promised her that certain footage filmed of her would not be included in the programme and all these assurances were honoured by the Series Producer.

- c) The programme makers did not obtain informed consent from Ms Borrett-Renn. In particular, Ms Borrett-Renn said that the programme was originally pitched to Ms Borrett-Renn as being a positive and accurate documentary portraying the lives of successful lesbians in London. In fact, she said that the programme as broadcast was very different from what was originally pitched to her. Ms Borrett-Renn also said that she had asked whether there was any link to the Candy Bar, but that this was denied by the programme makers.

By way of background, Ms Borrett-Renn said that if she had known that the entire series would be focused around the Candy Bar, she would not have agreed to take part in the programme.

In response, Channel 5 said that the series was, and always had been, planned as an observational documentary about the lives of lesbians in London, using the Candy Bar as a backdrop. It said that there had been no significant change of editorial content or direction during the course of production. Channel 5 also said that the release form which Ms Borrett-Renn had signed contained the working title of the project and an accurate description of the series, which also correlated with a verbal description which the programme makers had given to Ms Borrett-Renn. Channel 5 said that Ms Borrett-Renn had attended a sample screening of the series, during which the nature of it would have been clear to her. However, Ms Borrett-Renn did not contact the programme makers or Channel 5 at that stage to indicate that she had any reservations about the series. Channel 5 said that the first time Ms Borrett-Renn contacted the programme makers to express her reservations was when she saw a promotional trailer for the series broadcast on Channel 5.

#### Unwarranted infringement of privacy

In summary, Ms Borrett-Renn complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- d) Ms Borrett-Renn was filmed outside the nightclub without her knowledge and in spite of the fact that she had asked not to be filmed. In particular, Ms Borrett-Renn said that she only became aware that she had been filmed when Ms Davis told her later on that evening.

In response, Channel 5 said that Ms Borrett-Renn had provided the programme makers with her informed consent to participate in the series and that she did not withdraw her consent at any point. It said that it was clear from the unedited

footage that Ms Borrett-Renn was happy to be filmed by the programme makers while she prepared for the fetish party at the nightclub and for them to film her there. When Ms Borrett-Renn and Ms Davis started arguing outside the nightclub, Channel 5 said that it was clear that they were both aware that they were being filmed because the camera was close to them and the large light attached to the camera was shining on them. It said that at the point where Ms Borrett-Renn became visibly upset, the programme makers continued to film her, but at a slight distance (as she had not asked for filming to stop). However, as the camera crew began to move closer to Ms Borrett-Renn and Ms Davis, it was inconceivable that Ms Borrett-Renn would not have been aware that she was being filmed because of the camera's bright light and the fact that the camera was facing her.

Channel 5 said that it did not consider that Ms Borrett-Renn had a legitimate expectation of privacy in the circumstances. However, it said that if she did have a legitimate expectation of privacy, then any infringement was warranted by the programme makers right to freedom of expression and to film without being unduly constrained.

In summary, Ms Borrett-Renn complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

e) Covert footage of Ms Borrett-Renn was broadcast in the programme.

In response, Channel 5 said that the programme did not include any surreptitiously or covertly filmed footage of Ms Borrett-Renn. Further, as stated in its response at heads b) and d) above, Ms Borrett-Renn had provided the programme makers with her informed consent to participate in the series. Channel 5 added that Ms Borrett-Renn had invited the programme makers to film her and had spoken directly to the camera on a number of occasions and was fully aware that she was being filmed. Therefore, Channel 5 said that it did not consider that Ms Borrett-Renn had a legitimate expectation of privacy.

## **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.

Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

In reaching its Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions. It also viewed the unedited footage of Ms Borrett-Renn's contribution to the programme.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that material facts were presented, disregarded or omitted in a way that was unfair to Ms Borrett-Renn. In particular, Ms Borrett-Renn said that the programme had described her as living with Ms Davis when, in fact, they had only been dating for a few weeks.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 the Code, which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented in a way that is unfair to an individual or organisation.

Ofcom noted that Ms Borrett-Renn was first introduced in the programme as Ms Davis' "new girlfriend Daisy" and that she was shown in the kitchen of Ms Davis' flat while Ms Davis was getting ready to go to work at the Candy Bar. Footage of Ms Davis and Ms Borrett-Renn at the Candy Bar was then shown and the narrator then stated "*It's morning in North London and Jo is up early after a night of DJ'ing*".

Ofcom noted that Ms Davis was shown in the programme speaking about the fact that she needed to buy some new clothes for her work experience at a primary school and Ms Borrett-Renn was shown in the bedroom of Ms Davis' flat talking to the camera about Ms Davis' new career choice. Ms Borrett-Renn was then shown with her coat on, wishing Ms Davis luck. Ofcom considered that from this footage, viewers may have formed the impression from this scene that Ms Borrett-Renn had stayed the night with Ms Davis or, possibly, that they were living together.

However, later in the programme, Ofcom noted the following commentary:

*"Over in north London things are not so rosy. Jo's flatmate, Simon, has just broken the news to her [i.e. Ms Davis] that they've been burgled".*

Ofcom considered that in the absence of any reference to Ms Borrett-Renn in this statement, it was likely that viewers would have understood that Ms Davis was living in the flat with her "*flatmate Simon*", rather than living with Ms Borrett-Renn.

Later in the programme, Ofcom noted that Ms Borrett-Renn was shown in a house which the programme described as being located in "*south London*" with a group of her friends, getting ready to go out. It appeared to Ofcom that viewers might have formed the view that this was Ms Borrett-Renn's home because it was different from the flat that was seen earlier in the programme and was referred to as being in "*south London*".

Taking all the above factors into account, Ofcom considered that the programme did not, at any point, state that Ms Davis and Ms Borrett-Renn were "living together". Moreover, there was nothing in the programme which could be reasonably regarded as confirming, conclusively, Ms Borrett-Renn's and Ms Davis' living arrangements. In any event, it was not clear to Ofcom how any description of them "living together" could have caused any unfairness to Ms

Borrett-Renn. Ofcom concluded that the programme's presentation of Ms Borrett-Renn's and Ms Davis' living arrangements was unlikely to have materially or adversely affected viewers understanding of Ms Borrett-Renn in a manner that was unfair. It also considered that the broadcaster had taken reasonable care to satisfy itself that the programmes did not present, disregard or omit material facts in a way that resulted in unfairness to Ms Borrett-Renn.

Ofcom therefore found no unfairness to Ms Borrett-Renn in this respect.

- b) Ofcom next considered the complaint that covert footage of Ms Borrett-Renn was broadcast in the programme despite assurances being given to her by the programme makers that she would not feature in the programme due to concerns over her health.

In considering this part of the complaint, Ofcom had regard to Practice 7.7 of the Code which states that assurances given to contributors, for example relating to the content of a programme, confidentiality or anonymity should normally be honoured.

Ofcom first noted that Ms Borrett-Renn's complaint referred to the broadcast of covert footage. For the reasons given in head d) of the Decision below, Ofcom has not found that any filming that was undertaken was covert. However, Ofcom went on to consider what, if any assurances were given to Ms Borrett-Renn in relation to footage that was broadcast and, if so, whether such assurances were honoured and whether or not the inclusion of that footage resulted in any unfairness to Ms Borrett-Renn.

Ofcom went on to consider whether there was any unfairness to Ms Borrett-Renn as a result of a failure on the part of the programme makers to honour any assurances made to her.

Ofcom noted that the programme was an observational documentary which followed various contributors, including Ms Borrett-Renn, who was introduced as Ms Davis "*new girlfriend*". Ms Borrett-Renn was shown getting ready to attend an event at a nightclub and chatting with her friends about what to expect. Ms Borrett-Renn was later featured at the club and then having an argument with Ms Davis outside the club.

As part of our investigation, Ofcom carefully reviewed all the unedited footage filmed by the programme makers. This footage showed that at one point during the filming outside the nightclub, Ms Borrett-Renn went to find Ms Davis and that the camera had followed her. On finding Ms Davis, Ms Borrett-Renn had turned to the camera, visibly upset and asked "*Can I just have....*" before walking away from the camera towards Ms Davis. Ofcom noted that a voice was heard responding: "*you can have a minute if you want with me, babe*". Ofcom inferred from the context that these words were spoken by one of the programme makers. Ms Borrett-Renn was then filmed, from a slight distance, speaking to Ms Davis, with her back to the camera. Filming of both Ms Borrett-Renn and Ms Davis having an argument about their relationship continued. Ofcom noted that while the argument took place, the camera slowly moved to position itself so that it faced Ms Borrett-Renn and a large microphone could be seen to edge closer towards the two women.

Ofcom noted that in a letter to the programme makers' legal department, dated 3 July 2011, Ms Borrett-Renn made the following statements:

“Soon after the filming commenced it became clear to the crew that I was not well enough to be involved in the programme. I had informed Sarah Burton (the producer of the programme) of all my personal circumstances and my health problems the first day I saw her during the burglary filming, and explained all these issues at some length...I was informed that I was not going to be used in the programme because I was not well enough and separately by the (producer) that the company had a duty of care to me in the circumstances”.

Ofcom also noted the response, dated 7 July 2011, in which the legal department said:

“After having filmed you, you made us aware that your back was causing you pain and that you were under some stress. At that point, we agreed that we would not specifically film with you any more...We stopped filming with you (as referred to above) because of your health issues. We also did reassure you that no footage which was filmed after the point at which you requested some space after the argument filmed at Pussy Control would be included in the programme. We discussed with you, in detail, exactly what footage would and wouldn't be included in the final programme. At no stage did we say that no footage of you would appear in the programme”.

Ofcom observed that there was a dispute between the parties in relation to what would be shown in the programme and, if any assurances were given, what they related to. Ofcom was not provided with any evidence which could assist it in determining this point conclusively. However, in addition to the correspondence above, Ofcom was provided by Channel 5 with copies of text messages between Ms Borrett-Renn and the programme makers. It noted that the text messages mainly concerned filming arrangements and suggestions as to filming locations and times. Having reviewed all the text messages provided to it, Ofcom noted that at no point did Ms Borrett-Renn indicate to the programme makers that she would not be able to take part in the filming due to ill health or any other reason, or that she was being caused any stress by being filmed.

As further discussed in heads d) and e) of the Decision, Ms Borrett-Renn did ask for some space from filming and Ofcom was satisfied that the programme makers letter of 7 July 2011, provided evidence of an assurance already given by the programme makers to Ms Borrett-Renn that footage filmed after she requested some space, would not be broadcast. However, as stated in head e) of the Decision, some of this material was broadcast nevertheless, in the programme.

Therefore, Ofcom went on to consider whether any unfairness resulted to Ms Borrett-Renn from the broadcast of this material.

Ofcom noted from the unedited footage that a section which was filmed after she had requested some space from filming, was subsequently broadcast in the programme:

Ms Davis: *“So I came here to have fun I came here in a good mood I came here at whatever time in the morning, despite the fact that I have to get up in a few hours time and be a sensible teacher. I came here as Little Jo really excited to have fun with you and you ignored me.*

Ms Borrett-Renn: *It doesn't have to be this hard.*

Ms Davis: *But it always is.*

Ms Borrett-Renn: *So what that's your conclusion you're walking away?*

Ms Davis: *I'm looking after myself.*

Ms Borrett-Renn: *That seems to be exactly what you're doing.*

Ms Davis: *I need to 'cos everyone else just wants to take the piss out of me".*

Ofcom noted that directly after the above segment was broadcast, Ms Borrett-Renn was shown upset and facing the camera directly and said the following:

Ms Borrett-Renn: *"I'm really sorry.*

Friend: *Don't apologise, you two need to talk.*

Ms Borrett-Renn: *She won't talk to me ...she won't talk to me...I really don't know what to do".*

Ofcom considered that the argument between Ms Borrett-Renn and Ms Davies set out above was a continuation of an argument they had had earlier in footage broadcast in the nightclub. Although Ofcom acknowledged that Ms Borrett-Renn appeared to be more upset in this later footage, we did not consider that broadcasting the above footage materially affected viewers' opinion in a way that was unfair to Ms Borrett-Renn. Therefore the broadcast of this footage did not, in Ofcom's opinion, lead to any unfairness in the programme as broadcast.

Ofcom therefore found no unfairness to Ms Borrett-Renn in this respect.

- c) Ofcom went on to consider the complaint that Ms Borrett-Renn's informed consent was not obtained by the programme makers.

In considering this head of complaint, Ofcom considered whether the programme makers' actions ensured that they were fair in their dealings with Ms Borrett-Renn as a potential contributor to the programme, as outlined in Practice 7.2 of the Code. In particular, Ofcom considered whether Ms Borrett-Renn gave her informed consent to participate in the programme, as outlined in Practice 7.3 of the Code. Practice 7.3 which states that in order for potential contributors to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; the areas of questioning and, wherever possible, the nature of other likely contributions; and, any changes to the programme that might affect their decision to contribute.

The programme makers provided Ofcom with the contributor release form signed by Ms Borrett-Renn. Ofcom noted that the release form contained a working title of "Candy Girls" and gave the following description of the programme:

*"A major six part observational documentary series for Channel Five, which will be transmitted at 10:00pm every week this Easter. The series focuses on the lives of young women in London, as they go about their everyday lives, at*

work, at home and following their various hobbies. We also see how today's young people relax, especially in the clubs at the heart of the capital. We'll feature the iconic Candy Bar as it undergoes major refurbishment and subsequent re-launch...All of the women featured in the show will have some kind of connection both to each other and to the Candy Bar. The bar will act as a kind of hub around which the characters gravitate, but we will also be following them in their everyday lives".

Ofcom considered whether the description of the programme that was given in both the release form signed by Ms Borrett-Renn and the concept of the programme that was set out in the treatment accurately reflected the programme as broadcast. Ofcom noted that the programme featured contributors who spoke about their relationships and the various challenges they faced both personally and professionally. The programme also showed them socialising in various locations, one of which was the Candy Bar. In this respect, Ofcom considered that both the treatment and the release form accurately reflected the programme as broadcast.

Ofcom noted both from the unedited footage and the programme as broadcast that Ms Borrett-Renn participated in a manner which demonstrated that she understood the nature and format of the programme. In particular, it appeared to Ofcom that Ms Borrett-Renn was content being filmed with a number of friends as she got ready to attend a fetish party at a club and that she willingly participated by speaking openly to the camera about attending the party. Ofcom therefore considered that Ms Borrett-Renn was aware of the likely nature of her contribution to the programme as broadcast. Ofcom also observed from the unedited footage that what was filmed did not materially differ from what was broadcast and, in Ofcom's view, it was not edited in a way that caused any unfairness to Ms Borrett-Renn.

Ofcom took into account that the release form only displayed the working title "Candy Girls" and did not state the final title of the programme "*Candy Bar Girls*". However, Ofcom recognised that the release form had made a specific reference to the Candy Bar and had highlighted that the "clubs at the heart of the capital" would feature significantly in the programmes. Ofcom also considered text messages between Ms Borrett-Renn and the programme makers which demonstrated that Ms Borrett-Renn took an active part in the programme making process. In particular, Ofcom noted that in one text message exchange Ms Borrett-Renn had told the programme makers that she would be going to the Candy Bar and had asked the programme makers if they wanted to film her there. Ofcom considered that it was reasonably clear from these text messages and from her general acquiescence during filming that Ms Borrett-Renn was aware of the type of filming taking place and that footage was likely to feature in the broadcast version of the programme. Ofcom therefore considered that the change of title from "Candy Girls" to "Candy Bar Girls" was not a significant change which would render Ms Borrett-Renn's original consent invalid.

Taking all the above factors into account, Ofcom considered that Ms Borrett-Renn had been given sufficient information about the nature and purpose of the programme and that this did not change as the programme developed or in the programme as broadcast. Ofcom also considered that Ms Borrett-Renn had been aware of the kind of contribution she would be expected to make and that she had willingly and actively taken part in the making of the programme. Therefore, Ofcom concluded that that it was reasonable for the programme makers and the broadcaster to have believed that the consent provided by Ms Borrett-Renn was

“informed consent” and that, in the absence of any material changes to the programme or her contribution, that consent remained valid.

Ofcom therefore found no unfairness to Ms Borrett-Renn in this respect.

### Unwarranted infringement of privacy

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

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

- d) Ofcom considered the complaint that Ms Borrett-Renn’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that she was filmed outside the club without her knowledge and in spite of the fact that she had asked not to be filmed.

In considering this part of the complaint, Ofcom had regard to Practice 8.5 of the Code, which states that any infringement of privacy in the making of the programme should be with the person’s and/or organisation’s consent or be otherwise warranted.

Ofcom first noted that Ms Borrett-Renn complained that material of her was obtained covertly. Surreptitious filming is defined in the Code as “the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end”. Ofcom considered that although, as set out in head b), there were points in the filming in which Ms Borrett-Renn may not have been explicitly aware that she was being filmed, the filming did take place openly and therefore did not fall into the definition of surreptitious filming.

In considering whether or not Ms Borrett-Renn’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom considered whether Ms Borrett-Renn could have had a legitimate expectation of privacy in the particular circumstances in which she was filmed.

Having carefully watched the unedited footage of the disagreement between Ms Borrett-Renn and Ms Davis at the Pussy Control nightclub, Ofcom noted that Ms Borrett-Renn was filmed initially with her back to the camera and that Ms Davis appeared to be aware of the filming as she was facing the camera. Ofcom also noted that there were other people coming in and out of the nightclub. Ofcom observed from the footage that the camera had a bright white light attached to it and that it was shining on Ms Borrett-Renn and Ms Davis. There was a bright red light, which seemed to be emanating from the nightclub building itself and which was also shining on them.

Ofcom noted that the camera appeared to zoom in on Ms Borrett-Renn and Ms Davis as they continued their discussion, still with Ms Borrett-Renn's back to the camera. At one point, the white light began to shine directly onto Ms Davis' face and then onto Ms Borrett-Renn's face, then, as Ms Borrett-Renn moved away from Ms Davis, a large microphone also came into focus and the camera appeared to move closer towards Ms Borrett-Renn. Given these circumstances Ofcom considered that it was likely that Ms Borrett-Renn was aware that she was being filmed at this point. Ofcom also observed that Ms Borrett-Renn and Ms Davis stood in a place where a number of people were in close proximity and considered that they could have seen what was being filmed. Ofcom also had regard to its Decision under head c) above that Ms Borrett-Renn had given her informed consent to the filming and was aware that the programme makers were filming her and others in the nightclub.

As already pointed out above, at one point during the filming outside the nightclub, Ms Borrett-Renn went to find Ms Davis and the camera had followed her. On finding Ms Davis, Ms Borrett-Renn had turned to the camera, visibly upset and asked "*Can I just have....*" before walking away from the camera towards Ms Davis. Ofcom noted that a voice was heard responding: "you can have a minute if you want with me, babe". Ofcom inferred that these words were spoken by one of the programme makers. Ms Borrett-Renn was then filmed, from a slight distance, speaking to Ms Davis, again with her back to the camera. Filming of both Ms Borrett-Renn and Ms Davis having an argument about their relationship continued. Ofcom noted that while the argument took place, the camera slowly moved to position itself so that it faced Ms Borrett-Renn and a large microphone could be seen to edge closer towards the two women.

Taking all the above into account, Ofcom considered that during filming of Ms Borrett-Renn she had become more upset and therefore the situation had become more sensitive. However, it was not clear from her comment that she was asking for the filming to stop. As noted above, the filming continued after this point, but at a slight distance. This appeared to confirm that the programme makers understood the sensitivity of the situation but not that Ms Borrett-Renn had asked them to stop filming.

Ofcom had regard to the informed consent that Ms Borrett-Renn had provided to the programme makers (as set out above in the Decision at head c) above) and considered that she was aware that she could be filmed in such circumstances (the programme was described in the release form as being focussed on "the lives of young women in London as they go about their everyday lives, at work, at home and following their various hobbies"). Ofcom took the view that Ms Borrett-Renn was aware of the type of contribution she was going to be making and therefore what was likely to be filmed.

Further, Ofcom observed that before the filming at the nightclub commenced, Ms Borrett-Renn had spoken directly to the camera about her relationship with Ms Davies and had mentioned that Ms Davis was expecting Ms Borrett-Renn to text her every 10 minutes when she was at the club. Consequently, Ofcom considered that Ms Borrett-Renn had consented to speak about her relationship while being filmed and that what was filmed fell within the scope of the description provided in the release form that Ms Borrett-Renn had signed. In Ofcom's view what was filmed later on at the club was not so different as to cast doubt upon Ms Borrett-Renn's consent or to give rise to a legitimate expectation of privacy.

Taking all the above into consideration, Ofcom did not consider that Ms Borrett-Renn had a legitimate expectation of privacy in relation to the filming described above. Ofcom also considered that the programme makers had complied with Practice 8.5 of the code by obtaining Ms Borrett-Renn's consent for the filming which took place.

Having formed the decision that Ms Borrett-Renn did not have a legitimate expectation of privacy in the obtaining of the material in the circumstances, Ofcom did not go on to consider whether any infringement of privacy was warranted.

Therefore Ofcom found that Ms Borrett-Renn did not have a legitimate expectation of privacy in connection with obtaining material included in the programme.

- e) Ofcom next considered Ms Borrett-Renn's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that covert footage of Ms Borrett-Renn was broadcast in the programme.

In considering this part of the complaint Ofcom had regard to Practice 8.6 of the Code if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom again noted that Ms Borrett-Renn's complaint referred to "covert footage" being broadcast. However, for the reasons set out above in the Decision under head d) above Ofcom did not consider that any footage filmed was surreptitiously or covertly.

In considering whether Ms Borrett-Renn's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she could have had a legitimate expectation of privacy in relation to the broadcast of footage of herself.

Ofcom noted the following exchange between Ms Borrett-Renn and Ms Davis that was included in the programme as broadcast:

Ms Davis: *"So I came here to have fun I came here in a good mood I came here at whatever time in the morning, despite the fact that I have to get up in a few hours time and be a sensible teacher. I came here as Little Jo really excited to have fun with you and you ignored me."*

Ms Borrett-Renn: *It doesn't have to be this hard.*

Ms Davis: *But it always is.*

Ms Borrett-Renn: *So what that's your conclusion you're walking away?*

Ms Davis: *I'm looking after myself.*

Ms Borrett-Renn: *That seems to be exactly what you're doing.*

Ms Davis: *I need to 'cos everyone else just wants to take the piss out of me".*

Ofcom noted that directly after the above segment was broadcast, Ms Borrett-Renn was shown upset and facing the camera directly and said the following:

Ms Borrett-Renn: *"I'm really sorry.*

Friend: *Don't apologise, you two need to talk.*

Ms Borrett-Renn: *She won't talk to me ...she won't talk to me...I really don't know what to do".*

Ofcom noted that it was clear from the footage broadcast that Ms Borrett-Renn was upset. Ofcom noted that Ms Renn had sent a letter to the programme makers dated 3 July 2011, which stated as follows:

"On 29 June 2011 footage [a trailer for the programme] of me was aired on Channel 5 without my consent. This has caused me considerable distress and I require your confirmation, by return that no further footage containing my image will be aired on Channel 5 or any channels associated with it over the internet. This letter further confirms in writing, that I have withdrawn permission to use all and any footage, covertly obtained or otherwise, of me".

Ofcom observed the response from the programme makers to Ms Borrett-Renn's letter above, dated 7 July 2011, and in particular noted the following:

"We stopped filming with you because of your health issues. We also did reassure you that no footage which was filmed **after the point at which you requested some space after the argument filmed at Pussy Control would be included in the programme** [emphasis added by Ofcom]. We discussed with you, in detail, exactly what footage would and wouldn't be included in the final programme. At no stage did we say that no footage of you would appear in the programme".

The highlighted wording above in this letter was in Ofcom's opinion to some extent ambiguous. However, it did indicate to Ofcom that the programme makers had agreed not to show material of the argument between the complainant and Ms Davis outside the nightclub filmed after Ms Borrett-Renn indicated she wanted "some space". Ofcom noted however that the broadcast version of the programme did in fact include the portion of filming which took place after Ms Borrett-Renn became visibly upset and requested "some space", as described in head d) above. By way of further response, Channel 5 stated that Ms Borrett-Renn had not received the letter dated 7 July 2011 and that even if such an assurance had been contained in the letter (which Channel 5 denied), she was not in receipt of any such assurance. However, Ofcom took the view that the letter provided confirmation of matters already discussed and therefore this did not, as Channel 5 submitted, negate the fact that an assurance had already been provided to Ms Borrett-Renn. Ofcom was therefore satisfied that the letter provided evidence of an assurance already given by the programme makers to Ms Borrett-Renn and of what the assurance related to.

Although the footage in question was a continuation of an argument which had already been broadcast, emotions were heightened and Ms Borrett-Renn had become visibly upset. The emotional sensitivity of this particular footage was underlined by the fact that Ms Borrett-Renn requested "some space" from the filming. Ofcom considered that the more sensitive nature of this footage together

with the evidence of an assurance from the programme makers that this particular footage would not be broadcast gave rise to a legitimate expectation of privacy in relation to the inclusion of this material in the programme as broadcast.

Having found that Ms Borrett-Renn had a legitimate expectation of privacy in relation to that specific section of filming which was broadcast in the programme, Ofcom went on to consider whether it was warranted to include it in the programme. The programme was an observational documentary series following the lives of “young women in London, as they go about their everyday lives, at work, at home and following their various hobbies.” Part of the programme was focussed on the contributors’ relationships which, ordinarily, and in the absence of any informed consent being provided, would have attracted a legitimate expectation of privacy because they concern personal relationships which by their nature are private. Ofcom noted that Channel 5 did not in their response advance any justification (apart from a broadcaster’s general right to freedom of expression) as to why it was warranted in the public interest to show this more sensitive material. For these reasons, Ofcom concluded that there was no justification for including the specific footage of the argument outside the nightclub in the broadcast version of the programme.

Ofcom found that there was an unwarranted infringement of privacy in relation to the broadcast of this section of footage in the programme.

**Accordingly, Ofcom’s Decision is that Ms Borrett-Renn’s complaints of unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programme should not be upheld and that her complaint of unwarranted infringement of privacy in the programme as broadcast should be upheld.**

## Not Upheld

### Complaint by Ms Sarah Lanchester on her own behalf and on behalf of Alpha Oak Flooring and Joinery Limited and Mr David Jones

*The Ferret, ITV1 Wales, 28 November 2011*

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**Summary:** Ofcom has not upheld this complaint of unjust and unfair treatment made by Ms Sarah Lanchester on her own behalf and on behalf of Alpha Oak Flooring and Joinery Limited and Mr David Jones.

The programme included a report about oak joinery fitted by Mr David Jones, who is a director of Alpha Oak Flooring and Joinery Limited (“Alpha Oak”), in the home of Mr Richard Woodward and his wife, Mrs Sarah Woodward. It included footage of an interview with Ms Sarah Lanchester, the manager of Alpha Oak, who is also Mr Jones’ fiancée.

Ms Lanchester complained to Ofcom that she, Alpha Oak and Mr Jones were treated unjustly or unfairly in the programme as broadcast.

In summary Ofcom found that:

- The programme did not result in unfairness to Alpha Oak in that the report implied a direct connection between it and the work carried out at Mr and Mrs Woodward’s house.
- Mr Jones was not treated unfairly in the programme as broadcast in that the programme makers took reasonable care in presenting the material facts in relation to the allegations made about Mr Jones in the report and, although Mr Jones’ decided not to respond personally to the opportunity offered to reply to the allegations made about him, the programme included the responses which Ms Lanchester gave to criticisms included in the programme on Mr Jones’ behalf.
- Ms Lanchester was not treated unfairly in the programme as broadcast with regard to either the way in which her involvement, and that of Alpha Oak, with the work carried out at Mr and Mrs Woodward’s property was presented, or the inclusion of the information that she sometimes used the surname Jones.

#### Introduction

On 28 November 2011, ITV1 Wales broadcast an edition of its consumer affairs programme *The Ferret*. This edition featured a report about oak joinery fitted by Mr David Jones, a director of Alpha Oak Flooring and Joinery Limited, (“Alpha Oak”), in a newly built house owned by Mr Richard Woodward and his wife, Mrs Sarah Woodward.

The programme’s presenter interviewed Mr and Mrs Woodward at their new home, where they showed the presenter the oak joinery which they had had fitted and expressed their dissatisfaction with it. At the beginning of the report, the presenter explained that the couple “*were keen to use local craftsman and were delighted to find a firm called Alpha Oak Flooring and Joinery who had a showroom nearby in Llanddarog*”. He also said that when they visited the showroom of Alpha Oak they saw examples of Mr Jones’ work. The presenter said too that “*the company*

*recommended joiner, David Jones*”; and, *“all the money went to David Jones and Son”*.

The presenter said that the work had started the autumn prior to the broadcast of the programme (i.e. autumn 2010) but that Mr and Mrs Woodward *“became uneasy about progress [and] in July [2011], when Sarah saw the workmanship on the porch, she snapped and told David Jones to leave”*.

During the report, Mrs Woodward said that the Building Regulations Department of Carmarthen County Council, which had inspected the property, informed her that the windows and doors *“are one, non-compliant with building regs and two, not fit for purpose”*. When asked what was wrong with the house by the presenter she responded by saying: *“What’s right with it? It’s atrocious, the glazing is horrific, the joints are leaking, there’s nothing right with it...”*. Mrs Woodward also said that she had got *“£23,000 worth of firewood”*.

In addition, Mrs Woodward said that *“Mr Jones has not been a very nice man to deal with. He has been quite abusive and communications have broken down with him”*. She added that:

*“He said he wanted another £7,000 out of us because I broke the contract when I said he was no longer welcome here when I highlighted the mess with the porch. [He] was abusive to me and said he could get into my house and remove anything he liked whenever he wanted to”*.

This section of the report included footage of mastic tape and expanding foam which had been applied to the joints and edges of parts of the woodwork.

Later in the programme, the presenter was shown standing by the entrance sign to the Alpha Oak showroom. Fields and a farm house with a group of farm buildings were visible behind the presenter as he stood by the Alpha Oak sign. Some of the footage included in the programme showed closer views of the farm building in which the Alpha Oak showroom was located. During this section of the programme, the presenter said:

*“David Jones is one of three directors of Alpha Oak Flooring and Joinery Limited. The company website says it supplies and fits, among other things, oak doors, oak staircases and oak flooring. It also has a recommended joiner team offering bespoke windows, porches and furniture. But we’ve been told that director David Jones undertook the project as David Jones and Son. Alpha Oak manager, Sarah Lanchester, who is David Jones’ fiancée, said ‘Alpha Oak did not supply or install any of the joinery at the Woodwards’ property’. So just to be clear: Alpha Oak is a retail flooring and joinery company; David Jones is a director and examples of his work are on show here; [and] Sarah Lanchester, who also uses the name Jones, agrees she did work in the Woodwards’ house but in her capacity as David Jones’ fiancée. Mr Jones has confirmed to us he is part of Alpha Oak, but this job had nothing to do with them”*.

The programme also showed footage of an interview which Ms Lanchester gave to the presenter on Mr Jones’ behalf.

Following the broadcast of the programme, Ms Lanchester, the manager of Alpha Oak complained to Ofcom that she, Alpha Oak and Mr Jones were treated unjustly or unfairly in the programme as broadcast.

## Summary of the complaint and broadcaster's response

In summary, Ms Lanchester complained that Alpha Oak was treated unjustly or unfairly in the programme as broadcast in that:

- a) Alpha Oak was unfairly portrayed in that the report implied a direct connection between it and the work carried out at Mr and Mrs Woodward's house (notably by showing the Alpha Oak showroom) despite the fact that the programme makers were informed by Alpha Oak that all the joinery at Mr and Mrs Woodward's house was supplied by Mr Jones and that their complaints about the work should be directed to him alone.

In response, ITV said that there was a connection between Alpha Oak and Mr Jones. The presenter described this connection in the programme by explaining that Mr and Mrs Woodward were put in touch with Mr Jones by Alpha Oak when they visited the showroom and that the recommendation to use Mr Jones came from Alpha Oak. ITV also said that the programme made clear: Mr Jones' and Ms Lanchester's roles at Alpha Oak (Mr Jones was a founding director of Alpha Oak and Ms Lanchester was its manager); the relationship between all the parties concerned; and, Alpha Oak's position regarding Mr and Mrs Woodward's complaints about the oak joinery fitted in their home by Mr Jones.

The broadcaster quoted from the transcript of the report to support its position on these matters. In particular, it noted that the presenter said:

*"Sarah Lanchester, who is David Jones' fiancée said Alpha Oak did not supply or install any of the joinery at the Woodward's property";*

and

*"Mr Jones has confirmed to us that he is part of Alpha Oak but this job had nothing to do with them".*

ITV also said that the programme makers directed all queries to Mr Jones via his fiancée, Ms Lanchester, only after they were asked to do so.

In summary, Ms Lanchester complained that Mr Jones was treated unjustly or unfairly in the programme as broadcast in that:

- b) Mr David Jones was unfairly portrayed in that:
  - i) The report included unsupported allegations of threats made by Mr Jones and unsupported comments by Mr and Mrs Woodward about the quality of the joinery which he had provided.

Ms Lanchester added that correspondence between Mr Jones' and Mr and Mrs Woodward's solicitors (which was supplied to the programme makers six days prior to the broadcast) showed that Mr and Mrs Woodward did not tell Mr Jones that they were dissatisfied with the standard of the work he had carried out (notably on the porch), but gave an entirely different reason for their request that he leave the site<sup>1</sup>.

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<sup>1</sup> Ofcom noted that the Mr and Mrs Woodward's solicitor's letter specifically referred to in this part of the complaint indicates that Mr and Mrs Woodward considered that: Mr Jones had not supplied them with all the materials for which they had paid; a lot of the work was unfinished;

In response, ITV acknowledged that the programme made allegations of wrongdoing, incompetence or other significant allegations against Mr Jones and said that it had given Mr Jones a timely and appropriate opportunity to respond to these allegations.

ITV said that the producer of the programme sent an email to Mr Jones on 17 November 2011 (a copy of which was supplied to Ofcom) in which she invited Mr Jones to respond to the claim that he had been “abusive, [had] sent threatening texts to Mrs Woodward and told her that you have the keys to her home and can come in and take things out at any time”. The broadcaster also said that neither Ms Lanchester nor Mr Jones responded to this particular allegation so the producer raised it again with Ms Lanchester during a telephone conversation the producer had with the complainant. ITV said that Ms Lanchester admitted that relations between Mr Jones and Mr and Mrs Woodward had broken down, but made no further comment on the matter either during her telephone conversation with the producer or in her subsequent interview with the programme’s presenter. ITV also said that although Mr Jones decided not to respond to this allegation, he was given an opportunity to do so and therefore the programme did not result in unfairness to him.

The broadcaster also explained that the email of 17 November 2011 gave Mr Jones an appropriate and timely opportunity to respond to Mr and Mrs Woodward’s claims about the quality of the work carried out by Mr Jones and that these matters were also raised again during the interview which Ms Lanchester gave to the programme on behalf of Mr Jones.

ITV said that Ms Lanchester’s response to criticisms of the quality of the joinery was included in the programme in that she was shown saying:

*“There was no complaint whatsoever with David’s [Mr Jones]’ workmanship as the job was going along. The problems that arose were due to delays in the project, there were issues on both sides”.*

The broadcaster also said that during her interview, Ms Lanchester admitted that some of the work, notably the beading on the porch which was carried out by one of David’s employees was a “*bodged job... was very badly put in... [and] there is no way we would accept that standard of workmanship*”. ITV added that this response was fairly represented in the programme.

- ii) Footage of the joinery in Mr and Mrs Woodward’s house showed that mastic tape and expanding foam had been applied to it liberally. However, dated pictures of the joinery show that neither were present at the time of installation.

ITV said that the footage of the mastic tape and expanding foam did not result in an unfair portrayal of Mr Jones. It added that Mr Jones was provided with an opportunity to respond to this point both in the email of 17 November 2011 and via the interview with Ms Lanchester and that his response (that he wanted to get back and finish the work in a proper and professional manner in order to protect the works already carried out) was fairly represented in the report through the inclusion Ms Lanchester’s response on his behalf.

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and, in their view, Mr Jones had “made excuse after excuse for his delay in dealing with matters [and had] become obstructive”.

- iii) Mrs Woodward claimed that Mr Jones demanded £7,000 for breach of contract. However, a letter (from Mr Jones' solicitor to Mr and Mrs Woodward's solicitor) showed that he considered that there was £4,700 outstanding with regard to the staged payments to be made to him by Mr and Mrs Woodward.

ITV said that in the programme Mrs Woodward stated that: *"he [Mr Jones] said that he wanted another £7,000 out of us because we broke the contract"*. It said that this was not a reference to the solicitor's letter mentioned above, but instead referred to one of many other exchanges between the parties and clearly demonstrated Mr Jones' view that he was the wronged party and that Mr and Mrs Woodward had not fulfilled their side of the contract in that they had not paid him all the monies he believed that he was due.

The broadcaster also said that Ms Lanchester commented on the matter of the money that Mr Jones thought he was still owed when she said: *"David issued a solicitor's letter in July [of] which I have a copy here, and I have given you a copy of, explaining that he wanted to get back and finish, and I quote from here, 'in a proper and professional manner in order to protect the works already carried out'. He also listed the monies that are still outstanding"*.

ITV said that both parties hotly contested the details of this dispute, but that the programme could not, in the time available, explore every single aspect of those details. It said that, in her interview on Mr Jones' behalf, Ms Lanchester accepted the opportunity to respond to the issue regarding whether (and to what extent) Mr and Mrs Woodward owed any money to Mr Jones and the programme represented her response fairly.

In summary, Ms Lanchester complained that she and Alpha Oak were treated unjustly or unfairly in the programme as broadcast in that:

- c) The report unfairly involved Ms Lanchester and Alpha Oak and focussed heavily on Ms Lanchester's involvement in the work carried out by Mr Jones for Mr and Mrs Woodward.

By way of background, Ms Lanchester said that she had spoken to the programme's presenter informally on Mr Jones' behalf. She added that the presenter was told that Mr Jones was not at the Alpha Oak showroom and did not work from there at any time, but the programme makers still chose to involve the showroom in the programme. Ms Lanchester said that, by doing so, they put enormous pressure on her to appear in the programme. In particular, she said that they told her that *"they would use the footage any way so it was in my interest to speak to them"*.

ITV said that Alpha Oak played a key role in the story as did Ms Lanchester, and in order to make clear to viewers why Ms Lanchester was invited to be interviewed, the programme took great care to explain the relationship between the three parties so as not to misrepresent or be unfair to any of them. The broadcaster said that at the time of filming Ms Lanchester was Mr Jones' fiancée and the manager of Alpha Oak, a company of which Mr Jones was a founding director. Furthermore, when asked by the programme's producer in an email on 22 November 2011 if she had done some work in Mr and Mrs Woodward's house, Ms Lanchester responded (again by email) that she occasionally assisted Mr Jones with his work as she had been a professional painter and decorator for ten years. ITV argued that the detailed explanation of Ms Lanchester's and Mr Jones' roles in the story not only contextualised Mr and Mrs Woodward's

relationship with Mr Jones, but also ensured that there was no unfairness to the parties.

ITV denied that Ms Lanchester was pressurised to take part in the interview. It said that the email of 17 November 2011 to Mr Jones invited him to take part in the interview and that it was also made clear to Ms Lanchester that an “off-air” response (i.e. either a written response or a verbal response which was not recorded) would be included as an alternative.

In summary, Ms Lanchester complained that she was treated unjustly or unfairly in the programme as broadcast in that:

- d) The report suggested that Ms Lanchester had acted in a suspicious way because she used business cards with an alternative surname [i.e. Jones]. Ms Lanchester added that she had explained to the programme makers why she used an alternative surname on her business card, namely that she and Mr Jones had been planning to marry at the time she became the manager of Alpha Oak in 2009 and to avoid having to change her stationery later the same year she had had her cards printed in the name Sarah Jones. However, the wedding was postponed due to the serious illness of one of her close family members.

ITV said that the programme makers asked Ms Lanchester about her surname in the email of 22 November 2011 and that in response she had explained that she used the surname Jones in certain aspects of her life (namely her role in Alpha Oak) as she was Mr Jones’ fiancée, but that given that their wedding plans had been postponed she occasionally used the surname Lanchester. The broadcaster added that the programme dealt with this issue by simply stating that Ms Lanchester was Mr Jones’ fiancée and that she also occasionally uses the name Jones. ITV said that the programme highlighted Ms Lanchester’s use of Mr Jones’ surname to illustrate the connections between the parties. It argued that this did not suggest that Ms Lanchester had acted in a suspicious way or result in unfairness to her in that the programme had represented the material facts on this matter fairly by explaining who Ms Lanchester was.

## **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties’ written submissions (including pre-broadcast correspondence between the broadcaster and the complainants and clarification of the broadcaster’s initial response).

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that Alpha Oak was unfairly portrayed in that the report implied a direct connection between it and the work carried out at Mr and Mrs Woodward's house (notably by showing the Alpha Oak showroom) despite the fact that the programme makers were informed by Alpha Oak that all the joinery at Mr and Mrs Woodward's house was supplied by Mr Jones and that their complaints about the work should be directed to him alone.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 which provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation, and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

Ofcom observed that at the beginning of the report, the programme's presenter said that Mr and Mrs Woodward: "*were keen to use local craftsmen and were delighted to find a firm called Alpha Oak and Joinery Limited who had a showroom nearby in Llanddarog*". Mrs Woodward was also shown explaining that she and her husband had visited the Alpha Oak showroom and that: "*the lady there had explained that their joiner was a very experienced gentleman [with] thirty years experience*". This was followed by the presenter saying:

*"The couple say Alpha Oak recommended joiner David Jones. It was a big project but after seeing samples of his work they were happy to hire him. All the money went to David Jones and Son"*.

In addition, after describing the work which he and his wife had commissioned and how happy they were to have found a local firm, Mr Woodward was shown saying: "*unfortunately, as it went on with David Jones and Alpha Oak it just fell to pieces*".

At the end of the first section of the report, in which Mr and Mrs Woodward's claims about the work carried out on their property were set out, the presenter invited viewers to: "*join us later when we meet David Jones' fiancée and find out what she has to say on his behalf about the work*".

Ofcom also observed that the second section of the report included footage which was filmed at the entrance to the private road leading to the Alpha Oak showroom. During this section of the programme the presenter said:

*"I'm at the entrance to the showroom just off the A38 outside Carmarthen where the Woodwards visited to see examples of David Jones' bespoke work and where they were recommended that he should do the work at their house. David Jones is one of three directors of Alpha Oak Flooring and Joinery Limited. The company website says it supplies and fits, among other things, oak doors, oak staircases and oak flooring. It also has a recommended joiner team offering bespoke windows, porches and furniture. But we've been told that director David Jones undertook the project as David Jones and Son. Alpha Oak manager, Sarah Lanchester, who is David Jones'*

*fiancée, said Alpha Oak 'did not supply or install any of the joinery at the Woodward's property'. So just to be clear: Alpha Oak is a retail flooring and joinery company, David Jones is a director and examples of his work are on show here; [and] Sarah Lanchester, who also uses the name Jones, agrees she did work in the Woodward's house but in her capacity as David Jones' fiancée. Mr Jones has confirmed to us he is part of Alpha Oak but this job had nothing to do with them".*

The programme also included footage from a filmed interview with Ms Sarah Lanchester, whom it described as *"the manager of Alpha Oak, who was willing to talk on her fiancé David Jones' behalf"*. In the interview she set out Mr Jones' response to the criticisms made in relation to the work on Mr and Mrs Woodward's house.

In light of the above observations, Ofcom considered that viewers would have understood that Mr and Mrs Woodward had decided to employ the services of Mr Jones after seeing examples of his work at the Alpha Oak showroom and having him recommended by *"the lady"*<sup>2</sup> they saw at the showroom, and that Mr Jones was a director of Alpha Oak. However, Ofcom also considered that viewers would have understood that:

- Mr and Mrs Woodward paid a company called *"David Jones and Son"* for all the joinery work they had done at their house;
- Alpha Oak's position was that it did not: *"supply or install any of the joinery at Mr and Mrs Woodward's property"*;
- Ms Lanchester agreed to answer questions on Mr Jones' behalf;
- as well as being the manager of Alpha Oak, Ms Lanchester was Mr Jones' fiancé; and
- Ms Lanchester's position was that any work she had carried out in Mr and Mrs Woodward's house was done on the basis of her personal relationship with Mr Jones, rather than on the basis of her role at Alpha Oak.

In addition, Ofcom considered that the response Ms Lanchester was shown giving on Mr Jones' behalf to the questions put to her by the presenter during her on-camera interview made it clear to viewers that Mr Jones accepted responsibility for all the work that he had carried out or commissioned to be carried out at Mr and Mrs Woodward's property.

Ofcom noted that Ms Lanchester did not dispute any of the information included in the programme as set out above, notably the manner in which Mr and Mrs Woodward secured Mr Jones' services and Mr Jones' directorship of Alpha Oak.

Taking account of all these factors, Ofcom concluded that the programme did indicate that there was a connection between Alpha Oak and the work carried out at Mr and Mrs Woodward's house. However, the programme made clear: the precise nature of the relationships between Mr and Mrs Woodward and Mr Jones (and between Alpha Oak, Mr Jones and Ms Lanchester); and that Mr and Mrs Woodward paid all money for the oak joinery carried out in their house to *"David Jones and Son"* and that Alpha Oak's position (as relayed by Ms Lanchester) was that it did not supply or install any of it. Given these factors, Ofcom considered that viewers would have been able to draw their own conclusions in relation to

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<sup>2</sup> This individual is not named in the programme although Ofcom believes that most viewers would have assumed that the person referred to was likely to be Ms Lanchester.

any link between Alpha Oak and the work carried out at Mr and Mrs Woodward's house.

Accordingly, Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Alpha Oak and that the manner of its inclusion in the programme was unlikely to have materially and adversely affected viewers' understanding of it in a way that was unfair to it.

Ofcom therefore found that Alpha Oak was not portrayed unfairly in the programme as broadcast in this respect.

- b) Ofcom then considered the complaint that Mr David Jones was unfairly portrayed.

In considering this part of the complaint, Ofcom again had regard to Practice 7.9 of the Code as set out in head a) above.

Ofcom assessed each element of the programme that Ms Lanchester complained had resulted in the unfair portrayal of Mr Jones.

- i) The report included unsupported allegations of threats made by Mr Jones and unsupported comments by Mr and Mrs Woodward about the quality of the joinery which he had provided.

Ofcom noted that during the report the presenter said *"The work started in autumn last year [2010]. But Sarah and Richard [Mr and Mrs Woodward] became uneasy about progress [and] in July [2011], when Sarah saw the workmanship on the porch, she snapped and told David Jones to leave"*. Immediately after this statement, Mrs Woodward said that the Building Regulations Department of Carmarthen County Council (which inspected the property after Mr Jones left) considered that *"the windows and doors etc are one, non-compliant with building regs. and two, not fit for purpose"*.

In response to a question from the presenter about what was wrong with the house, Mrs Woodward said: *"What's right with it? It's atrocious, the glazing is horrific, the joints are leaking, there's nothing right with it... [We have got] £23,000 worth of firewood"*.

The presenter also said that *"the couple [Mr and Mrs Woodward] are not happy with the quality of the work and the project is now on hold. After he was asked to leave relations with David Jones took a turn for the worse"*.

In addition, Mrs Woodward said:

*"Well Mr Jones hasn't been a very nice man to deal with. He's been quite abusive and communications have broken down with him" and "He said he wanted another £7,000 out of us because we broke then contract because I told him that he was no longer welcome here when I highlighted the mess with the porch and was abusive to me... he said that he could get into my house and remove anything he liked whenever he wanted to"*.

The report also made clear that after this incident, Mr and Mrs Woodward had changed the locks to their house.

In Ofcom's opinion, viewers would have understood this section of the programme to have indicated that:

- Mr and Mrs Woodward had concerns about progress throughout the project;
- Mrs Woodward was not satisfied with the quality of workmanship on the porch when she saw it in July 2011 and consequently she asked Mr Jones to leave;
- Carmarthen County Council Building Regulations Department considered that the windows and doors were not compliant with building regulations and were not fit for purpose;
- Mr and Mrs Woodward were dissatisfied with all the joinery work carried out in their home and believed that they had paid for £23,000 of firewood (i.e. that their money had gone to waste);
- Mrs Woodward said Mr Jones asked for a further payment of £7,000 because he believed that she had broken the contract when she told him to leave the site because she was unhappy with his work; and,
- Mrs Woodward also said that Mr Jones became abusive to her and told her that: *"he could get into my house and remove anything he liked whenever he wanted to"*.

Ofcom recognised that there was a dispute between the parties about these matters. However, it should be noted that Ofcom's role is not to establish whether or not the claims made about Mr Jones and his work in the programme were true but rather to determine whether, in broadcasting any such claims, the programme makers took reasonable care not to present, disregard or omit material facts in a way that was unfair to him.

Ofcom observed that the sources of the claims made about Mr Jones were information supplied to the programme makers by Mr and Mrs Woodward (including the opinion of their architect and the findings of the Building Regulations Department of the local Council), and the presenter's own inspection of the property, as well as two letters which passed between the parties' respective solicitors (provided to the programme makers by Ms Sarah Lanchester prior to the broadcast).

Ofcom considered that there was no reason for it to question the credibility of Mr and Mrs Woodward's testimony regarding their contractual relationship and dealings with Mr Jones. Ofcom noted that there was relatively little documentary evidence relating to the contractual relationship and dispute between Mr and Mrs Woodward and Mr Jones. However, Ofcom also observed that, as well as Mr and Mrs Woodward's account and the opinion of their architect, the programme makers could rely on the presenter's inspection of the property and the opinion of the local Council regarding whether the work undertaken by Mr Jones met building regulations. Taking account of these factors, Ofcom considered that the programme makers had a reasonable basis on which to include the claims made about Mr Jones' work and his behaviour in the broadcast.

Ofcom noted that ITV acknowledged that the allegations made in the programme were of wrongdoing, incompetence or other significant allegations against Mr Jones. Ofcom noted too that the programme makers had sought, via an email dated 17 November 2011, a response to the allegations from Mr Jones, but that he did not respond. However, it observed that Ms Lanchester

contacted the programme makers and discussed the matters set out in the email sent to Mr Jones and that she subsequently gave an on-camera interview to the programme makers in which she addressed some of the allegations made in the programme. Some of this interview footage was included in the programme and covered a number of issues that had been raised about Mr Jones and the breakdown of his relationship with Mr and Mrs Woodward. In these circumstances, Ofcom took the view that the inclusion of interview footage with Ms Lanchester in the programme was likely to have left viewers in no material doubt that the allegations made against Mr Jones were disputed.

Ofcom recognised Ms Lanchester's complaint that the correspondence between Mr Jones' and Mr and Mrs Woodward's solicitors (which was supplied to the programme makers six days prior to the broadcast) showed that Mr and Mrs Woodward did not tell Mr Jones that they were dissatisfied with the standard of the work he had carried out (notably on the porch) but gave a different reason for their request that he leave the site. However, given that the programme made clear both Mr and Mrs Woodward's position and, via Ms Lanchester's interview, that of Mr Jones on this matter, Ofcom does not consider that the omission of this information contained in the relevant solicitor's letter would have had a material impact on viewers opinions of Mr Jones in a way that was unfair to him.

Ofcom therefore found that Mr Jones was not treated unfairly in respect of the complaint that he was unfairly portrayed in that the report included unsupported allegations of threats made by Mr Jones and unsupported comments by Mr and Mrs Woodward about the quality of the joinery which he had provided.

- ii) Footage of the joinery in Mr and Mrs Woodward's house showed that mastic tape and expanding foam had been applied to it liberally. However, dated pictures of the joinery showed that neither were present at the time of installation.

Ofcom noted that the report included close-up footage of both mastic tape and expanding foam which had been applied to some of the joints and edges of the woodwork in Mr and Mrs Woodward's home. It noted too that in this section of the report Mrs Woodward could be heard saying: *"He [Mr Jones] said he wanted another £7,000 out of us because I broke the contract when I said he was no longer welcome here when I highlighted the mess with the porch..."*.

Later in the programme (during his interview with Ms Lanchester) the presenter said:

*"Mrs Woodward's architect has described the external joinery as incomplete and not fit for purpose. He also says that the use of mastic and filler is unacceptable and defective, as is the bespoke porch. Local authority inspectors say the work does not comply with building regulations"*.

Ofcom considered that viewers would have understood these sections of the programme to have implied that Mr Jones had applied both mastic tape and expanding foam to the joinery and that this was unacceptable. Ofcom recognised that there was a dispute between the parties regarding this

matter. However, Ofcom's role was not to determine whether or not the claims made about Mr Jones and the quality of his work in the programme were true. Rather, its role was to determine whether, in broadcasting such claims, the programme makers took reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Jones.

Nonetheless, Ofcom observed that the email the producer sent to Mr Jones on 17 November 2011, in which she asked for his response to the claims made by Mr and Mrs Woodward, stated that: "there are gaps between the bi-fold doors – which now have to be taped up. Many frames have huge splits bisecting them, there are strange joints on main beams and sealant has been applied in a haphazard fashion".

In Ofcom's view, this statement could indicate that the mastic tape was applied to the bi-folding doors after Mr Jones left the site (i.e. that it was not applied by him). However, the programme made it clear to viewers that the tape had been applied because of the significant gap between the edges of the doors in question which had been fitted by Mr Jones. In light of this, Ofcom did not consider that this discrepancy would have had a material effect on viewers' perception of Mr Jones and the quality of his work.

Ofcom noted that the sources of the claim about the mastic and filler were the architect employed by Mr and Mrs Woodward, Mr and Mrs Woodward's testimony, and the presenter's own observation of mastic tape and filler which had been applied in a manner that disfigured the joinery beneath (images of which were subsequently included in the programme). Ofcom therefore considered the programme makers had a reasonable basis for including the claim in the programme.

Ofcom considered that this claim formed part of the allegation of wrongdoing and incompetence on the part of Mr Jones in the programme as broadcast. However, it noted that the inclusion of the statement about the use of tape and sealant within the 17 November 2011 email to Mr Jones (set out above) constituted a timely and appropriate opportunity for Mr Jones to respond to the claim that he had applied both mastic tape and filler to the joinery which was unacceptable. Ofcom recognised that although Mr Jones did not avail himself of this opportunity to respond, this matter was again raised in the interview which Ms Lanchester gave on behalf of Mr Jones and that the programme included the following response from Ms Lanchester to the architect's description of the work (including the use of mastic and filler) and the position of the local building regulations department as put to her by the presenter:

*"David issued a solicitor's letter in July [of] which I have a copy here, and I have given you a copy of, explaining that he wanted to get back and finish, and I quote from here, 'in a proper and professional manner in order to protect the works already carried out'. He also listed the monies that are still outstanding".*

In light of these observations, and Ofcom's view that there was no reason for it to question the credibility of Mr and Mrs Woodward's testimony, Ofcom considered that the programme makers took reasonable care with material facts in relation to the inclusion of the claim that use of mastic and filler by Mr Jones was unacceptable in this report; that while this claim amounted an allegation of incompetence Mr Jones was given an opportunity to respond to

it although he did not do so personally, the programme included the response which Ms Lanchester gave on his behalf, when this claim was raised (amongst several others) with her by the presenter, and that this response was general rather specific in nature.

Therefore, Ofcom found that Mr Jones was not treated unfairly in this respect.

- iii) Mrs Woodward claimed that Mr Jones demanded £7,000 for breach of contract. However, a letter (from Mr Jones' solicitor to Mr and Mrs Woodward's solicitor) showed that he considered that there was £4,700 outstanding with regard to the staged payments to be made to him by Mr and Mrs Woodward.

As set out at head b) ii) above, in the report Mrs Woodward claimed that Mr Jones had told her he wanted another £7,000 because she had broken the contact when she told him to leave because she was dissatisfied with the work he had carried out on the porch.

Ofcom recognised that there was a dispute between the parties on this matter. This is evidenced by the contrasting claims within the submissions made by the parties regarding whether, after he left the site, Mr Jones asked Mr and Mrs Woodward for £7,000 as compensation for breach of contract or £4,700 as an outstanding part of the staged payments which he believed he was owed by Mr and Mrs Woodward. However, as already noted, Ofcom's role is not to determine whether or not Mr Jones acted as Mrs Woodward claims he did (i.e. in this instance demanded £7,000 for breach of contract after he was asked to leave) but whether in broadcasting any such claims, the programme makers took reasonable care not to present, disregard or omit material facts in a way that was unfair to him.

As already noted above, there was nothing to suggest that Mr and Mrs Woodward's testimony regarding their own experience of their contractual relationship and dealings with Mr Jones was not credible. Therefore, in Ofcom's view their testimony regarding the claim that Mr Jones demanded a further payment of £7,000 for breach of contract after he was asked to leave, provided the programme makers with a reasonable basis for the inclusion of this claim in the programme.

Nonetheless, Ofcom also considered that this claim amounted to an allegation of wrongdoing on the part of Mr Jones. However, it observed that although this specific claim was not included in the email of 17 November 2011 which the programme's producer sent to Mr Jones, the matter of the monies which Mr Jones' believed he was owed was raised during the on-camera interview with Ms Lanchester. In addition, Ms Lanchester's response to this point on behalf of Mr Jones (which was given alongside her response to several other points) was included in the programme as broadcast when she was shown saying that a letter from Mr Jones' solicitors in July 2011 *"listed the monies that are still outstanding"*.

In light of these observations, Ofcom concluded that the programme makers took reasonable care in presenting material facts in relation to the inclusion of the claim that Mr Jones demanded £7,000 from Mr and Mrs Woodward for breach of contract.

Therefore, Ofcom found that Mr Jones was not treated unfairly in this respect.

- c) Ofcom considered the complaint that the report unfairly involved Ms Lanchester and Alpha Oak and focussed heavily on Ms Lanchester's involvement in the work carried out by Mr Jones for Mr and Mrs Woodward.

In considering this part of the complaint, Ofcom had regard to Practices 7.2 and 7.3 of the Code as well as Practice 7.9. Practice 7.2 states that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise and Practice 7.3 states that where a person is invited to make a contribution to a programme, they should normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make.

ITV denied that Ms Lanchester was pressurised to take part in the filmed interview and said that the programme makers made it clear to her that an off-air response (i.e. either a written response or a verbal response which was not recorded for inclusion in the programme) would be included as an alternative. Ofcom took the view that, in the absence of further evidence, it could not know precisely what the programme makers had said to Ms Lanchester or what prompted her to give a filmed interview. However, Ofcom observed that prior to giving the interview, Ms Lanchester: had a telephone conversation with the programme's producer about the nature of the programme and the claims which Mr and Mrs Woodward had made about Mr Jones; exchanged emails with the producer about the connections between Alpha Oak and Mr Jones and between herself and Mr Jones; and, clearly spoke to Mr Jones about how best to respond to the questions which the presenter would put to her during the filmed interview. Therefore, Ofcom considered that Ms Lanchester was fully aware of the nature of the programme and the claims it intended to make about Mr Jones' work and that as such the programme makers were fair in their dealings with her and, before she gave her an on-camera interview on behalf of Mr Jones, she was informed sufficiently about the nature and purpose of the programme and what kind of contribution she was expected to make.

Moreover, it is important to note that even if it appeared that there had been unfairness in the making of the programme, this would only result in a finding of unfairness, if Ofcom considered that it had resulted in unfairness to the complainant in the programme as broadcast.

With regard to the complaint of unfair treatment as a result of the way in which Ms Lanchester's involvement, and/or that of Alpha Oak, in the work carried out by Mr Jones was presented in the programme as broadcast, Ofcom considered that, as set out at head a) above, the programme made clear the nature and extent of any connections between Ms Lanchester and Alpha Oak, Alpha Oak and Mr Jones, Ms Lanchester and Mr Jones and all three and Mr and Mrs Woodward. In addition, the programme made clear that Ms Lanchester took part in the on-camera interview on behalf of Mr Jones. The presenter also represented Ms Lanchester's explanation of her link to some of the work carried out at the Woodwards' property (given within her email to the producer of 22 November 2011) by saying "*Sarah Lanchester, who also uses the name Jones, agrees that she did work at the Woodward's house but in her capacity as David Jones' fiancée*".

In light of this and its conclusions set out at head a) above, Ofcom considered that the programme makers took reasonable care with presenting material facts in relation to the portrayal of both Ms Lanchester and Alpha Oak and in particular

with regard to Ms Lanchester's involvement in the work carried out by Mr Jones for Mr and Mrs Woodward.

Therefore, Ofcom found that Ms Lanchester was not treated unfairly in this respect.

- d) Ofcom considered the complaint that the report suggested that Ms Lanchester had acted in a suspicious way because she used business cards with an alternative surname [i.e. Jones].

In considering this part of the complaint, Ofcom again had regard to Practice 7.9 of the Code.

As noted above, in the programme the presenter, who had just explained that Ms Lanchester was Mr Jones' fiancée, observed that Ms Lanchester "*also uses the name Jones...*". No further comment was made in the programme about Ms Lanchester's use of the surname Jones and, as set out at heads a) and b) iii) above, the programme made clear Ms Lanchester's role at Alpha Oak, her personal relationship with Mr Jones and her position that the work she undertook in Mr and Mrs Woodward's house was carried on the basis of that relationship.

Ofcom noted that during her 22 November 2011 email exchange with the producer (and in response to a specific question about her use of the surname Jones for business purposes) Ms Lanchester explained that when she became the manager of Alpha Oak in 2009 she and Mr Jones had intended to marry later the same year and to avoid additional expense she had her business cards printed in the name Sarah Jones. However, due to the ill health of a close family member the wedding was postponed. Ms Lanchester added that because she considered the matters raised by the programme to be very serious she signed off her correspondence with the programme makers as Sarah Lanchester in order avoid any confusion should she subsequently be required to provide "a witnessed signature" regarding any of these matters.

Ms Lanchester's explanation was not represented in the programme. However, in Ofcom's view the information that Ms Lanchester sometimes used the surname Jones (i.e. that of her fiancé) was presented as a piece of factual information, within the context of a description of the interrelationships between Mr Jones and Alpha Oak, Alpha Oak and Ms Lanchester and Ms Lanchester and Mr Jones and the connection each had to the work carried out on Mr and Mrs Woodward's property. Ofcom considered that having watched the report, viewers were likely to have concluded that Ms Lanchester wanted to use the surname of her fiancé in anticipation of their marriage and that, she also used what would become her maiden name.

In addition, while Ofcom recognised that Ms Lanchester might have preferred this information not to be broadcast, there was no dispute between the parties about the fact that Ms Lanchester did sometimes use the surname Jones. Rather, Ms Lanchester confirmed that she did so (with an explanation regarding why) within an email that she sent to the producer of the programme after she had been made aware of both the nature of the programme and the claims which it intended to make about Mr Jones and the work carried out at Mr and Mrs Woodward's property.

In light of these observations, Ofcom concluded that the programme makers took reasonable care with material facts in disclosing this information in the programme as broadcast.

Therefore, Ofcom found that Ms Lanchester was not treated unfairly in this respect.

**Accordingly, Ofcom has not upheld Ms Lanchester's complaint of unfair treatment on her own behalf and on behalf of Alpha Oak and Mr Jones.**

## Not Upheld

### Complaint by Mr Julian Gaze

*Selkirk News, BBC Radio Scotland, 26 January 2012*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programmes as broadcast made by Mr Julian Gaze.

BBC Radio Scotland broadcast three editions of *Selkirk News*, which reported on the conviction and sentencing of Mr Julian Gaze for cultivating cannabis plants. The reports stated that Mr Gaze “*suffered from both Hepatitis C and Asymptomatic Myeloma, a form of bone marrow and liver cancer*” and that he smoked cannabis to ease the pain.

Ofcom found that Mr Gaze did not have a legitimate expectation of privacy in relation to the disclosure of his medical condition in the broadcasts, which had been disclosed in open court by his legal representative by way of mitigation and was taken into account by the court when passing sentence. Ofcom therefore found that there was no unwarranted infringement of Mr Gaze’s privacy.

#### Introduction

On 26 January 2012, BBC Radio Scotland broadcast three editions of *Selkirk News*, a local news bulletin service for the Scottish Borders region. The programmes each included a report (broadcast at 07:50, 12:54 and 16:54 hours) on the conviction and sentencing of Mr Julian Gaze for cultivating cannabis plants. The reports stated that Mr Gaze had admitted to Peebles Sheriff Court the previous day (i.e. 25 January 2012) that he had grown £3,000 worth of cannabis in a secret room of the joinery workshop he rented. It was also reported that the court had been told that Mr Gaze “*suffered from both Hepatitis C and Asymptomatic Myeloma, a form of bone marrow and liver cancer*”, and that he smoked cannabis to ease the pain. The reports concluded by stating that Mr Gaze was fined £450.

Mr Gaze complained to Ofcom that his privacy was unwarrantably infringed in the programmes as broadcast.

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

In summary, Mr Gaze complained that his privacy was unwarrantably infringed in the programmes as broadcast in that sensitive medical details were broadcast, including the fact that he was suffering from an “incurable terminal illness”. Mr Gaze said that, while reporting his prosecution for growing cannabis was fair enough, there was absolutely no justification for the reports to mention his specific medical conditions.

By way of background, Mr Gaze said that he had not told his children about his medical conditions prior to the broadcast of the report and that they had been “devastated” to hear about it in this manner. He added that his family felt violated by the reports and that he found it difficult to believe that a journalist or editor could think that it be “acceptable, ethical, necessary or desirable” to have broadcast this information.

In response the BBC said that neither version of the report (as set out in detail in the “Decision” section below) said that the condition Mr Gaze suffered from was “incurable” or “terminal”.

The BBC said that, while Mr Gaze’s circumstances commanded every sympathy, it did not see how a reasonable expectation of privacy could attach to the information in question. The BBC said that it was volunteered in open court by Mr Gaze’s lawyer, by way of mitigation, and was taken into account by the Sheriff in passing sentence.

The BBC said that, as the part played by the information in the court proceedings placed it squarely in the public domain, it did not believe that any infringement of privacy could arise from reporting it, or that a public interest justification was needed for doing so. The BBC said, however, that the public interest in accurate contemporaneous reporting of court proceedings was enshrined in law, to the extent that such reporting is covered by qualified privilege. The BBC said that in this instance there was no dispute as to the accuracy of the BBC’s reporting. It said that a report which omitted the information in question, or referred to it in general terms such as “medical problems”, might have been impugned for failing to reflect the strength of the mitigation offered on Mr Gaze’s behalf.

## **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 programmes, or in connection with the obtaining of material included in programmes, in such services.

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

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

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

This is reflected in how Ofcom applies Rule 8.1 of the Ofcom 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.

Ofcom considered Mr Gaze’s complaint that his privacy was unwarrantably infringed in that sensitive medical details were broadcast, including the fact that he was suffering from an “incurable terminal illness”.

In considering this complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or

organisation, consent should be obtained before the relevant material is broadcast, unless the infringement is warranted.

In assessing whether or not Mr Gaze's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have a legitimate expectation of privacy in respect of the particular information about his medical condition that was disclosed in the reports.

Ofcom noted the relevant script for all three reports that were broadcast. The report broadcast at 07:50 hours stated:

*"A father of two from Traquair has admitted to growing £3,000 worth of cannabis in a secret room. Joiner Julian Gaze of Avenue Head admitted to producing the drug at The Sawmill, on or between February 1<sup>st</sup> and July 29<sup>th</sup> last year. Peebles Sheriff Court heard the married father of two had built a false wall at the workshop he rented where he cultivated ten cannabis plants. The court was also told that Gaze suffered from both Hepatitis C and asymptomatic myeloma, a form of bone marrow and liver cancer, and that smoking the drug eased his pain. Gaze was fined a total of £450 by Sheriff Kevin Drummond".*

The following two reports broadcast at 12:54 and 16:54 hours, which were broadcast in a slightly shorter form than the first report, stated:

*"A Traquair joiner has admitted growing £3,000 worth of cannabis in a secret room. Peebles Sheriff Court heard Julian Gaze built a false wall at a workshop he rented, behind which he cultivated ten cannabis plants. The court was also told the father of two suffered from both Hepatitis C and asymptomatic myeloma, a form of bone marrow and liver cancer, and that smoking the drug eased his pain. Gaze was fined a total of £450".*

While generally information about medical conditions is private information, Ofcom noted the context in which Mr Gaze's medical condition was disclosed. In Ofcom's view, information disclosed in open court during the course of criminal proceedings, including conviction and sentence, did not have a legitimate expectation of privacy. Court proceedings are a matter of public record and the public nature of the operation of the courts is an integral element of the principle of open justice (unless formal reporting restrictions are in place). For this reason, Ofcom concluded that Mr Gaze did not have a legitimate expectation of privacy in relation to the disclosure in the broadcasts of his medical condition, which had been disclosed in open court by his legal representative by way of mitigation and was taken into account by the court when passing sentence. Ofcom also took the view that Mr Gaze's prior consent for the information to be broadcast in the reports was not required, as the information given in open court no longer held a legitimate expectation of privacy. Ofcom acknowledged Mr Gaze's concern that his children had learned of his medical condition through the broadcast of the reports. Having found that Mr Gaze did not have a legitimate expectation of privacy in relation to the disclosure of information relating to his medical condition in the circumstances, it was not necessary however for Ofcom to consider whether any intrusion into Mr Gaze's privacy was warranted.

**Accordingly, Ofcom has not upheld Mr Gaze's complaint of unwarranted infringement of privacy in the broadcast of the programmes as broadcast.**

## Other Programmes Not in Breach

Up to 30 April 2012

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Babestation	Lucky Star	30/03/2012	Participation TV - Offence
Coppers	Channel 4	23/01/2012	Scheduling
Advertising scheduling	Movies4Men	n/a	Advertising scheduling
Emmerdale	ITV1	22/03/2012	Violence and dangerous behaviour
Home and Away	Channel 5	13/03/2012	Violence and dangerous behaviour
Red Light Central	Red Light 4	23/03/2012	Participation TV - Offence
Will Writing Show	Sunrise TV	04/02/2012	Promotion of products/services

## Complaints Assessed, not Investigated

Between 17 and 30 April 2012

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
4thought.tv	Channel 4	23/04/2012	Materially misleading	1
60 Minute Makeover	ITV1	16/04/2012	Materially misleading	1
9/11: The Lost Tapes (trailer)	Channel 4	18/04/2012	Generally accepted standards	2
A League of Their Own	Sky1	20/04/2012	Violence and dangerous behaviour	1
Advertisements	Cell Cast	16/04/2012	Advertising content	1
Advertisements	Discovery Channel	15/04/2012	Advertising minutage	1
An Officer and a Gentleman	Film4	14/04/2012	Offensive language	1
BBC London Weather Forecasts	BBC 1	n/a	Advertising/editorial distinction	1
BBC News	BBC News Channel	19/04/2012	Disability discrimination/offence	1
BBC News at Six	BBC 1	25/04/2012	Outside of remit / other	1
Beetlejuice	Channel 5	21/04/2012	Offensive language	1
Britain's Got More Talent	ITV2	15/04/2012	Generally accepted standards	1
Britain's Got Talent (trailer)	ITV1	n/a	Materially misleading	1
Capital Breakfast	Capital FM	17/04/2012	Sexual material	1
Celebrity Juice	ITV2	05/04/2012	Race discrimination/offence	2
Celebrity Juice	ITV2	26/04/2012	Generally accepted standards	1
Channel 4 News	Channel 4	23/04/2012	Due impartiality/bias	1
Cheekybingo.com's sponsorship of The Jeremy Kyle Show	ITV1	05/04/2012	Generally accepted standards	1
Cheekybingo.com's sponsorship of The Jeremy Kyle Show	ITV2	04/04/2012	Generally accepted standards	1
Cheekybingo.com's sponsorship of The Jeremy Kyle Show	ITV2	18/04/2012	Generally accepted standards	1
Come Dine with Me	Channel 4	23/04/2012	Animal welfare	13
Come Dine with Me	Channel 4	24/04/2012	Sexual material	2
Competitions	ITV channels	n/a	Competitions	1
Coronation Street	ITV1	20/02/2012	Harm	1
Coronation Street	ITV1	02/04/2012	Disability discrimination/offence	2
Cowboy Traders	Channel 5	16/04/2012	Harm	1
Cowboy Traders	Channel 5	18/04/2012	Materially misleading	1
Deal or No Deal	Channel 4	25/04/2012	Race discrimination/offence	3

Digital on-screen graphics	Various	n/a	Cross/self promotions	1
Digital television reception	n/a	n/a	Outside of remit / other	1
Drivetime	Talksport	16/04/2012	Materially misleading	1
Drivetime	Talksport	18/04/2012	Violence and dangerous behaviour	1
Drivetime	Talksport	20/04/2012	Generally accepted standards	1
Evenings with Emma Fitzpatrick	Citybeat 96.7FM	27/03/2012	Premium rate services	1
FA Cup Semi-Final	ITV1	15/04/2012	Race discrimination/offence	1
FA Cup Semi-Final	ITV1	15/04/2012	Offensive language	1
FA Cup Semi-Final Highlights	ITV1	14/04/2012	Outside of remit / other	1
Family Guy	BBC 3	24/04/2012	Disability discrimination/offence	1
Films	Various	n/a	Outside of remit / other	1
Filthy Cities	BBC 2	05/04/2011	Outside of remit / other	1
Formula One coverage	Sky	n/a	Outside of remit / other	1
Great British Menu	BBC 2	18/04/2012	Race discrimination/offence	1
Greg James	BBC Radio 1	18/04/2012	Scheduling	2
Halfords' sponsorship of Happy Motoring on Dave	Dave	14/04/2012	Generally accepted standards	1
Hardliners	Dave	07/04/2012	Religious/Beliefs discrimination/offence	1
Have I Got News for You	BBC 1	20/04/2012	Generally accepted standards	1
Heart Breakfast with Matt and Caroline	Heart FM Devon	18/04/2012	Animal welfare	1
Heart Breakfast with Matt and Michelle	Heart Oxfordshire	29/03/2012	Race discrimination/offence	1
Hirsty's Daily Dose (trailer)	Capital Yorkshire	06/04/2012	Religious/Beliefs discrimination/offence	1
Hot or Not: Top 10	Viva	16/04/2012	Offensive language	1
Hustle	Sony Entertainment Television	17/04/2012	Offensive language	1
I Woke Up Gay	BBC 3	17/04/2012	Generally accepted standards	1
iCarly	Nickelodeon	14/04/2012	Violence and dangerous behaviour	1
Incredible Edibles	BBC 1	20/04/2012	Generally accepted standards	1
Indian Ocean with Simon Reeve	BBC 2	22/04/2012	Animal welfare, and drugs, smoking, solvents or alcohol	1
Inside the Medieval Mind	BBC 4	23/04/2012	Scheduling	1
ITV documentaries trailer	STV	22/04/2012	Generally accepted standards	1
ITV News and Weather	ITV1	17/04/2012	Materially misleading	1
ITV News and Weather	ITV1	24/04/2012	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	26/04/2012	Generally accepted standards	1

Jeremy Vine	BBC Radio 2	17/04/2012	Age discrimination/offence	1
Jeremy Vine	BBC Radio 2	17/04/2012	Generally accepted standards	2
Julia Hartley-Brewer	LBC 97.3FM	22/03/2012	Crime	1
Kase and Sagar's Gaming Rock	Preston FM	09/04/2012	Religious/Beliefs discrimination/offence	1
Keith Lemon's LemonAid	ITV1	14/04/2012	Scheduling	1
Lee Nelson's Well Good Show	BBC 3	26/04/2012	Harm	1
London Mayoral Election 2012	LBC 97.3FM	11/04/2012	Elections/Referendums	1
Made in Chelsea (trailer)	E4	16/04/2012	Scheduling	2
Mike and Chelsea in the Morning	Key 103	17/04/2012	Violence and dangerous behaviour	1
Morgan Spurlock's New Britannia	Sky Atlantic	02/04/2012	Disability discrimination/offence	1
Morgan Spurlock's New Britannia	Sky Atlantic	05/04/2012	Race discrimination/offence	1
Mystery Voice Competition	Heart FM Devon	n/a	Competitions	1
News programming	Various	n/a	Due accuracy	1
News Update	BBC 1	13/04/2012	Scheduling	1
Newsbeat	BBC Radio 1	20/04/2012	Generally accepted standards	1
Newsbeat	BBC Radio 1	21/04/2012	Outside of remit / other	1
Nick Ferrari	LBC 97.3FM	12/04/2012	Elections/Referendums	1
Panorama	BBC 1	23/04/2012	Privacy	1
Party Election Broadcast by the British National Party	BBC 1	24/04/2012	Religious/Beliefs discrimination/offence	1
Party Election Broadcast by the Liberal Democrats	BBC 1	19/04/2012	Outside of remit / other	1
Peter Andre: My Life	ITV2	11/04/2012	Generally accepted standards	1
Playboy TV Chat	Playboy TV Chat	07/04/2012	Participation TV - Protection of under 18s	1
Poms in Paradise	ITV1	06/04/2012	Competitions	1
Programming	Ummah Channel	18/04/2012	Generally accepted standards	1
Programming	Various	n/a	Sexual orientation discrimination/offence	1
Programming	Various	n/a	Outside of remit / other	1
Programming	Various	n/a	Scheduling	3
Radio St Austell Bay	Radio St Austell Bay	08/04/2012	Offensive language	1
Richard Bacon	BBC Radio 5 Live	26/04/2012	Due impartiality/bias	1
River City	BBC 1 Scotland	24/04/2012	Sexual material	3
River Cottage	More4	01/04/2012	Offensive language	1
Rosemary and Thyme	ITV1	23/04/2012	Offensive language	2
Rosemary and Thyme	ITV1	24/04/2012	Offensive language	1
Russell Howard's Good News	BBC 3	19/04/2012	Under 18s in programmes	1
Sabras Radio	Sabras Radio	n/a	Outside of remit / other	1

Scott and Bailey	ITV1	23/04/2012	Generally accepted standards	1
Self-promotions / cross-promotions	Sky channels	n/a	Cross/self promotions	1
Shakespeare Unlocked (trailer)	BBC 1	15/04/2012	Generally accepted standards	1
Shooting Stars	Dave	15/04/2012	Offensive language	1
Silent Witness	BBC 1	16/04/2012	Generally accepted standards	1
Silent Witness	BBC 1	22/04/2012	Generally accepted standards	1
Silent Witness	BBC 1	22/04/2012	Violence and dangerous behaviour	86
SpongeBob SquarePants	Nickelodeon	07/04/2012	Violence and dangerous behaviour	1
Station ident	BBC Radio London 94.9 FM	n/a	Hypnotic and other techniques	1
Sunday Politics	BBC 1	15/04/2012	Outside of remit / other	1
Sunrise	Sky News	14/04/2012	Generally accepted standards	1
Super Scoreboard	Clyde 1	16/04/2012	Generally accepted standards	1
Super Tiny Animals	ITV2	21/04/2012	Animal welfare	1
Talkback	BBC Radio Ulster	17/04/2012	Race discrimination/offence	1
Tall Girls	n/a	n/a	Outside of remit / other	1
The Apprentice	BBC 1	25/04/2012	Race discrimination/offence	1
The Boat Race	BBC 1	07/04/2012	Offensive language	1
The Chase	ITV1	17/04/2012	Competitions	1
The Chase	ITV1	19/04/2012	Generally accepted standards	1
The Chase	ITV1	25/04/2012	Competitions	1
The Great British Taste Tour	ITV1	18/04/2012	Animal welfare	1
The Human Centipede	Syfy	16/04/2012	Generally accepted standards	1
The Human Centipede	Syfy	21/04/2012	Generally accepted standards	1
The Million Pound Drop Live	Channel 4	20/04/2012	Age discrimination/offence	1
The Mummy	ITV1	08/04/2012	Scheduling	1
The One Show	BBC 1	13/04/2012	Generally accepted standards	2
The One Show	BBC 1	20/04/2012	Generally accepted standards	1
The Preston Passion	BBC 1	06/04/2012	Scheduling	1
The Undateables	Channel 4	17/04/2012	Disability discrimination/offence	4
The Undateables	Channel 4	17/04/2012	Generally accepted standards	1
The Undateables (trailer)	Channel 4	n/a	Disability discrimination/offence	1
The Voice - Results Show	BBC 1	29/04/2012	Materially misleading	3
The Weakest Link	BBC 2	28/03/2012	Race discrimination/offence	1

The Wright Stuff	Channel 5	27/04/2012	Religious/Beliefs discrimination/offence	1
This Morning	ITV1	20/04/2012	Due impartiality/bias	1
Those Who Kill (trailer)	ITV3	n/a	Outside of remit / other	1
TMCR Jukebox	TMCR	21/04/2012	Offensive language	1
Tonight	ITV1	24/04/2012	National/regional/local issues	1
Tonight - Are Your Kids Contagious?	ITV1	12/04/2012	Due impartiality/bias	3
Tonight: Why Isn't Britain Working?	ITV1	19/04/2012	Race discrimination/offence	1
Traffic Cops	Dave	02/04/2012	Offensive language	1
Tuff Puppy	Nickelodeon	10/04/2012	Generally accepted standards	1
Turtle Boy: A Bodyshock Special	Channel 4	25/04/2012	Generally accepted standards	1
Turtle Boy: A Bodyshock Special	Channel 4	25/04/2012	Outside of remit / other	1
Turtle Boy: A Bodyshock Special (trailer)	Channel 4	24/04/2012	Generally accepted standards	1
UEFA Champions League	ITV1	18/04/2012	Competitions	1
UEFA Champions League	ITV1	18/04/2012	Competitions	1
UK Top 40	Heart FM	15/04/2012	Drugs, smoking, solvents or alcohol	1
Universal Somali TV	Universal Somali TV	n/a	Outside of remit / other	1
Unreported World: Terror in Sudan (trailer)	Channel 4	11/04/2012	Generally accepted standards	1
Vera	ITV1	22/04/2012	Religious/Beliefs discrimination/offence	1
Waterloo Road	BBC 1	04/04/2012	Scheduling	2
Weatherseal's sponsorship credit	STV	n/a	Materially misleading	1
Weekend Anthems	Massive R&B	15/04/2012	Outside of remit / other	1
White Heat	BBC 2	22/03/2012	Materially misleading	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	n/a	Sponsorship credits	1
You've Been Framed!	ITV1	07/04/2012	Crime	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 3 and 16 May 2012.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>
4thought.tv	Channel 4	13 February 2012
Den Hemlige Miljonären	Kanal 5 (Sweden)	8 February 2012
Gilbert Deya Ministries	Praise TV	12, 20 March and 21 March 2012
How Successful People Make Success	Praise TV	15 April 2012
Insane Championship Wrestling	My Channel	6 May 2012
Live with Myleene	Channel 5	9 May 2012
The Wright Stuff	Channel 5	17 April 2012
This Morning	ITV1 London	3 May 2012
Very Important People	Channel 4	27 April 2012

**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/>.