

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act².

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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

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

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

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

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

Standards cases

In Breach

Makka Twin Peaks Challenge

CHSTV, 28 November 2014, 21:00

Introduction

CHSTV is a general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for CHSTV is held by CHS.TV Limited (“CHSTV” or “the Licensee”).

Makka Twin Peaks Challenge was a discussion programme about an activity which offered participants the opportunity to visit Makka to perform Umrah¹ and raise money for Ebrahim College (a registered charity) by trekking up Mount Noor and Mount Thawr². Viewers were encouraged to call the studio to ask questions about the challenge. The studio telephone number and a second number which viewers could call to register to participate in the challenge were shown on screen at various points during the programme. The programme was presented by the Director of Ebrahim College.

As the programme was in Bengali and English, we commissioned an independent translation of the material in Bengali.

Ofcom sought information from CHSTV about how the programme was produced and funded and also about any commercial arrangements in place between CHSTV and Ebrahim College (or any party connected to either). On the basis of the information provided, we considered that the references to the Makka Twin Peaks Challenge in the programme raised issues under the following Code rules:

Rule 9.2: “Broadcasters must ensure that editorial content is distinct from advertising.”

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

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

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

We therefore sought CHSTV’s comments on how the programme complied with these rules.

¹ A religious pilgrimage to Makka that can be taken at any time of the year.

² Mount Noor and Mount Thawr are both mountains near Makka in Saudi Arabia.

Response

CHSTV said that, as a community focused television service, it aims to feature success stories about individuals and organisations as well as to support any cultural, social events that make a positive impact on society. Resulting programmes are broadcast completely free of charge in its community slot. *Makka Twin Peaks Challenge* was one of the free of charge programmes that it had produced and broadcast.

CHSTV said that the Makka Twin Peaks Challenge is an educational project, organised by Ebrahim College every year since 2006. The challenge, whose main purpose is to raise funds for Ebrahim College, had come to the attention of its production team as a result of the large number of people who participated in the previous year.

CHSTV explained that its “research shows this kind of event makes a positive impact in our society. Hence [CHSTV] gave [the organiser] a platform to expand the opportunity to our wider community” and that it had “received 100% positive feedback” from viewers and those who took part in the challenge.

The Licensee stressed that the Makka Twin Peaks Challenge is not a commercial brand and the main aim of the challenge is to raise funds for a registered charity. On this basis, CHSTV believed that Rules 9.2, 9.4 and 9.5 were not applicable in this case.

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 specific standards objectives, including “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;
- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

Licensees are free to cover whatever subjects they wish in programmes, provided they comply with the Code. In relation to Section Nine, this means ensuring that a clear distinction is maintained between programming and advertising.

In this case, Ofcom noted that the subject matter of the programme was the Makka Twin Peaks Challenge. The purpose of the programme was to encourage viewers to participate in the trip, with a view to raising funds for a registered charity. Throughout the programme, the presenter and guests provided detailed information about the trip and invited viewers to register to participate. For example:

“If you have any questions, you can call us. Most importantly for registration or just to express interest. Please tell us that you are interested and you want more information. For registration, please call [telephone number] ... You will get information about Makka Twin Peaks by calling any time”;

“If you have access to internet, you can check online [for] Makka Twin Peaks and register now at [website]”;

“If someone can raise £3000, he will have to spend only £399 to perform his/her Umrah. Those who can't raise more funds, for example if someone can raise £2000 he/she will be able to perform Umrah spending £699. If someone can raise only £1000 he/she will be able to perform Umrah spending £899 and those who will not be able to raise funds they will be able to perform Umrah spending £999. However, our request will be to raise at least £500. So everyone can be involved, to whatever extent, with the initiative to support a religious institution. Some of you may think what this fund raising is. I would like to go to Umrah. Please give your details to us and we will explain to you, it is not a difficult matter. There is a number on the screen, [telephone number]. Please call to that number and give your details”.

Ofcom considered CHSTV's view that, because the programme was broadcast free of charge and its aim was to raise funds for a registered charity, Rules 9.2, 9.4 and 9.5 did not apply.

Although Section Nine of the Code permits broadcasters to transmit charity appeals in programmes (subject to specific conditions)³, Ofcom did not consider that the promotion of this trip, which included a fundraising element, was a charity appeal for the purposes of the Code. Ofcom considers a charity appeal to involve the solicitation of donations for a charity on philanthropic grounds alone, with the donor receiving no additional benefit beyond the knowledge that they are supporting a charitable cause. In this case, viewers were not asked to simply donate to the charity but were invited to pay to participate in a trip to Makka, that involved performing Umrah and climbing two mountains. The cost of the trip and participating in the challenge varied dependent on the level of funds raised for the charity (e.g. the trip cost £399 if £3,000 was raised or £999 if £500 was raised).

Although Ofcom acknowledged that the primary objective of the event was to raise funds for a charity, because the programme solicited participants who would be receiving a benefit in return for payment, Ofcom considered that the references to the trip in the programme were commercial references that were subject to Rules 9.2, 9.4 and 9.5.

³ See Rules 9.33 and 9.34 of the Code.

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from “the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or the manner in which a product, service or trade mark appears or is referred to in programming”. Although recognising that the Code provides scope for broadcasters to cover events such as the Makka Twins Peaks Challenge in programmes, the fact that this was an event that may have been of interest to viewers of CHS TV, and that the purpose of the trip was to raise funds for a registered charity, did not provide sufficient editorial justification for the manner in which the programme covered the trip (i.e. the premise of the programme was to encourage viewers to participate in a paid-for event). Further, contrary to Rule 9.4, the programme included explicit invitations to viewers to register to participate in the trip. Ofcom judged that, considered in its entirety, the programme effectively acted as an advertisement for the trip, in breach of Rule 9.2.

Breaches of Rules 9.2, 9.4 and 9.5

In Breach

News

Smooth, Heart and Gold network stations, LBC 97.3, Classic FM, Capital XTRA, 8 June 2015, various times between 06:00 and 19:00
XFM network stations, 8 June 2015, various times between 10:00 and 18:00
Capital network stations, 8 June 2015, various times between 10:00 and 15:00

Introduction

Classic FM, LBC 97.3, Capital XTRA and the branded network stations, Capital, Smooth, Heart, Gold and XFM form part of the national radio group, Global Radio. The licensees of these stations are represented by Global Radio (“Global” or “the Licensee”).

Two complainants alleged that, on 8 June 2015, the mobile network operator, Three¹, sponsored *News* on separate Global Radio stations.

Ofcom noted that *News* broadcast at 10:00 on Heart FM (Kent) ended with the following (read by the same newsreader), prior to a brief weather update:

Pre-recorded sponsorship credit: *“The Good News, on Heart, with Three”.*

Newsreader: *“And a new study reckons the last hedgehogs to live in one of the UK’s busiest parks have survived because they’ve learnt how to avoid busy roads. Officials say they’ve tagged some of them in London’s Regents Park to find out where they go, and it looks like they avoid venturing too far”.*

Pre-recorded message: *“When Mondays suck, make it right”.*

Ofcom also noted that *News* broadcast at 17:00 on LBC 97.3 ended with a brief weather update and the following (read by the same newsreader):

Pre-recorded sponsorship credit: *“The Good News, on LBC, with Three”.*

Newsreader: *“A new app is being developed, which can count the calories in your food, just by taking a photo of it. The image recognition system detects the ingredients pictured and works out the size of the food. It means you can find out the nutritional value of a meal when you’re eating out”.*

Pre-recorded message: *“Another mundane Monday? Make it right”.*

Global confirmed that news bulletins containing sponsored content following similar formats were broadcast on 46 Global Radio stations at various points during daytime on 8 June 2015. Ofcom considered these broadcasts warranted investigation under Rule 10.3 of the Code, which states:

¹ The sponsorship arrangement formed part of Three’s ‘Make it Right’ campaign.

“No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.

“This rule does not apply to:

- reference to a news supplier for the purpose of identifying that supplier as a news source;
- specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming;
- the use of premium rate services (e.g. for station/broadcaster surveys); and
- references that promote the station/broadcaster’s own products and/or services (e.g. the programme/station/broadcaster’s website or a station/broadcaster’s event)”.

We therefore sought Global’s comments on how it considered the sponsored content complied with this rule.

Response

Global said the “sponsored news feature – the ‘Good News’...was the happy and uplifting story of the day, in the vein of the traditional ‘and finally...’ concluding comment”. It provided scripts of 30 different stories (including those in the recordings it had provided to Ofcom), as broadcast on 46 Global Radio stations, each of which aired four such items, on rotation.

The Licensee considered that each “sponsored news feature” was “in line with the exceptions to Rule 10.3 listed, and Ofcom’s associated guidance”. Global described the feature as “a sponsored specialist factual strand that sat alongside the main bulletin, as entertainment, sport, business or travel news would”. It also considered that the stations’ listeners were “familiar with such sponsored editorial and, given that it was read by the news presenter and used the station’s usual sound bed where relevant, [they] would have immediately recognised it as such”. The Licensee added that none of the 46 stations that broadcast the material received a complaint.

Global said “the Good News was reported in addition to, rather than as part of, the news, with the main bulletin retaining its usual length to safeguard quality, localness and integrity”, adding “it was signalled and separated from other material that was not subject to the sponsorship deal with credits...”. The Licensee also said that, “given...the subject matter was ‘good news’, serious issues such as war, conflict and politics where impartiality might appear to have been compromised by the existence of a commercial arrangement were inherently avoided”. Global added that, “as with any sponsored factual strand, Global’s newsroom compiled the stories and retained editorial control over the content” and “constructed and executed [the ‘Good News’] with great care”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives. These objectives include ensuring that: “...generally accepted standards are applied to the contents of...radio services so as to provide adequate protection

for members of the public from the inclusion in such services of...harmful material”; “the unsuitable sponsorship of programmes included in...radio services is prevented”; and “news included in...radio services is presented with due impartiality...”.. In setting or revising such standards, Ofcom must also, under the Act, have regard to “...the desirability of maintaining the independence of editorial control over programme content”.

Ofcom has reflected these requirements in, among other things, Rule 10.3 of the Code. This rule prohibits any commercial reference (or material that implies a commercial arrangement) in or around news bulletins or news desk presentations. Exceptions to this rule include “specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming” (“specialist factual strands”).

The purpose of Rule 10.3 is to ensure that news bulletins and news desk presentations are neither distorted for commercial purposes nor perceived by listeners to have been so distorted. A note to the Code clarifies that the exception that applies to “specialist factual strands” in the context of news broadcasting may include, for example, weather, finance, sport and travel.

In this instance, Ofcom accepted that the 30 items broadcast as “*The Good News*” were all of a similar vein to traditional “and finally...” stories commonly featured in broadcast news bulletins, which often feature a marked change of tone from coverage of more serious events. However, news stories of this kind, which may cover any aspect of news content, do not comprise self-contained information on an identifiable topic. The description of such stories as “*The Good News*” neither made them specialist factual strands within the terms of the Code nor separated them sufficiently from news bulletins. As “*The Good News*” stories were read by news presenters in and around news bulletins and these items did not comprise specialist factual strands, we concluded that each broadcast of *News* was in breach of Rule 10.3 of the Code.

Ofcom noted that Global considered it had safeguarded the quality, localness and integrity of *News*. However, it is of paramount importance that news broadcasts are not, and do not appear to be, subject to commercial influence. Specialist factual strands must be clearly defined and readily distinguishable from news bulletins or news desk presentations if they are to be subject to any commercial arrangement.

Breaches of Rule 10.3

Advertising Scheduling cases

Resolved

Advertising minutage

UMP Movies, 14 May 2015, 14:00

Introduction

UMP Movies is an entertainment channel specialising in Bollywood films. The licence for the service is owned by Disney Broadcasting (India) Limited (“the Licensee”).

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 its routine monitoring of COSTA compliance, Ofcom identified one instance when the Licensee had broadcast more than the permitted advertising allowance. On 14 May 2015, the total amount of advertising in the 14:00 hour was 15 minutes.

Ofcom considered that the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

Response

The Licensee explained that the incident was the result of human error at its third party playout provider, GlobeCast. The Licensee added that it had provided GlobeCast with a compliant playlist which included ten minutes of advertising per hour for the relevant clock hour. However, a GlobeCast operator had inadvertently removed a segment of programming from the playlist which disrupted the UMP Movies schedule. As a result, commercial airtime scheduled for the 15:00 clock hour was erroneously broadcast in the 14:00 hour, causing this hour to exceed the permitted allowance.

The Licensee said that it had taken steps to ensure that the incident is not repeated in future, by instructing GlobeCast to adhere to the standard operating procedure that had already been agreed to by both parties. The Licensee explained that the procedure specifies that the playout provider shall not alter the scheduled playlist and that all commercials are required to be played out at their scheduled time. It said that it had also advised GlobeCast to implement industry best practices and to issue strict instructions to all operators handling the UMP Movies channel.

Ofcom also asked GlobeCast for any representations it wished to make on this matter. GlobeCast said it accepted Ofcom’s decision.

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 noted that the Licensee significantly exceeded its advertising allowance in one clock hour. Nonetheless, Ofcom accepted that the incident was largely beyond the Licensee's control and noted the steps it had taken to minimise the likelihood of such an incident recurring.

Taking these factors into account, Ofcom considers the matter resolved.

Resolved

Broadcast Licence Conditions cases

In Breach/Resolved

Provision of information: audit of television licensees

Introduction

In November 2014, Ofcom requested information from its licensees providing broadcast television content services. This was part of an audit to ensure that all information Ofcom holds on these licensees is accurate and up-to-date.

Ofcom has statutory duties under the Broadcasting Acts 1990 and 1996 and the Communications Act 2003 to ensure that licensees continue to meet the criteria for being licensed in the UK, in accordance with statutory licence restrictions and relevant provisions of the Audiovisual Media Services Directive.

We therefore asked the licensees to provide us with a range of information about directors and shareholders of each licensee company and its licensed services. We also asked Television Licensable Content Service (TLCS) licensees for details of any satellite uplinks used by their services, so we could check that they continue to fall within Ofcom's licensing jurisdiction.

A number of licensees failed to submit their response to Ofcom's request for information by the original deadline, and also failed to respond to Ofcom's subsequent reminders to provide this information.

Ofcom considered this raised issues warranting investigation under Licence Condition 12(1) which states:

"The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents...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..."

Decision

In Breach

The following licensees either failed to respond to Ofcom's request for information as part of its audit, or did respond but subsequently failed to provide further required information when requested.

Ofcom has found that these licensees **breached** Condition 12(1) of their TLCS licences.

Breaches of this Licence Condition are significant because the failure to provide information to Ofcom when requested impedes our ability to carry out our regulatory duties.

In these cases, Ofcom required the information to ensure that each licensee continued to meet fundamental statutory requirements relating to their fitness and propriety to hold licences, their compliance with ownership restrictions, and to

confirm that they continue to fall under Ofcom’s licensing jurisdiction. In the absence of this information, Ofcom was unable to complete the necessary checks.

Ofcom was therefore unable to fulfil its duties in these cases. Given the significance of the information which the licensees below failed to provide, Ofcom considered these breaches to be serious and continuing. **Ofcom is putting these licensees on notice that this contravention of their licences will be considered for the imposition of a statutory sanction, including licence revocation.**

Licensee	Service name(s)	Licence number(s)
Ariana Radio & Television Network	Ariana International	TLCS001086
Middlesex Broadcasting Corporation Limited	MATV (Punjabi) MATV Music	TLCS000384 TLCS000385
Pakistan Television Corporation Limited	PTV Global	TLCS001348
Vox Africa Plc	VA TV	TLCS001064

Breach of Licence Condition 12(1)

Resolved

The following licensees failed to respond to Ofcom’s request for information in accordance with the original deadline. They also failed to respond to Ofcom’s subsequent reminders to provide this information. After Ofcom launched an investigation into the matter, the licensees submitted the required information. In the circumstances, we consider the matter resolved. The licensees should note, however, that should any similar issues arise in future, we may consider further regulatory action.

Licensee	Service name(s)	Licence number(s)
24 Live UK Limited	24 Live	TLCS001748
A&A Inform Limited	Russian Hour	TLCS000680
ARY Network Limited	ARY Digital QTV – Islamic Education ARY News ARY World News ARY QTV ARY Entertainment	TLCS000290 TLCS000924 TLCS000925 TLCS001549 TLCS001550 TLCS001551
Greener Technology Limited	BEN TV	TLCS001094
H&C TV Limited	Horse & Country TV Horse & Country TV (Netherlands) Horse and Country TV (Swedish Feed)	TLCS000929 TLCS001669 TLCS100177
Harmony Media Enterprises (UK) Limited	UKS Fuzion TV	TLCS001292
Independent Television Limited	IT TV	TLCS001753
Passion Broadcasting Television Services Limited	Passion TV	TLCS000885
REAL Digital TV Limited	REAL Digital	TLCS001447
TV Enterprises Limited	NTAI	TLCS000743

Resolved

In Breach

Provision of licensed service Retention and production of recordings

Castle FM (Leith), 29 to 31 January 2015

Introduction

Castle FM is a community radio station licensed to provide a service for the residents of Leith in Scotland. The licence is held by Leith Community Mediaworks Ltd (“LCMWL” or “the Licensee”).

‘Key Commitments’¹ form part of each community radio station’s licence and are contained in an annex to the licence. They set out how the station will serve its target community and include a description of the programme service.

During 2014, Ofcom recorded five licence condition breaches by LCMWL in three separate Findings². The 19 May 2014 Finding related to two failures to produce and retain recordings, and one failure to provide the licensed service in accordance with its Key Commitments. The 28 July 2014 Finding related to a further failure to produce and retain recordings. The 17 November 2014 Finding related to a further failure to provide the licensed service in accordance with its Key Commitments. In each Finding, we put the Licensee on notice that, should similar compliance issues arise in future, we would consider taking further regulatory action which may include consideration of a statutory sanction.

In December 2014, we asked LCMWL for recordings for audio across three days (8 to 10 December inclusive) so that we could assess whether the Licensee was now complying with its Key Commitments. When these were received in January 2015, we raised concerns with LCMWL regarding the accuracy of these recordings, in particular due to an on-air reference to “Monday, 15 December”, which was a date falling after the specific days of output we had requested, and which LCMWL said they had supplied us with.

Given this, and past issues (as set out in the earlier Findings) regarding provision of recordings from LCMWL, we decided to engage Radiomonitor Limited (“Radiomonitor”), an independent monitoring company, to record and supply audio from the FM output of Castle FM, and to request audio covering the same period from LCMWL.

We then asked LCMWL for recordings of its audio across three days (06:00 to midnight, 29 to 31 January 2015 inclusive) so that we could assess whether the Licensee was now complying with its Key Commitments. We received a memory stick but it was damaged and inaccessible on receipt. Following a request to LCMWL that it be re-sent, a second memory stick was then received. We assessed this material alongside the recordings from Radiomonitor.

¹ Castle FM’s Key Commitments:
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000080.pdf>

²

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb268/obb267.pdf>

Retention and production of recordings

The audio supplied by LCMWL materially differed from that Ofcom had sourced independently through Radiomonitor.

In particular, the material supplied by LCMWL differed from the independent recordings sourced from Radiomonitor because it included speech content which would have contributed to meeting the Key Commitments. This led us to be concerned that the material provided by LCMWL may have been put together subsequently to suggest compliance with Key Commitments. This was particularly the case for Saturday 31 January, when listening to the independent recordings we heard continuous music whereas the recordings supplied by LCMWL for the same date contained a large element of speech.

The total amount of material supplied by LCMWL should have been 54 hours based on three 18-hour days. In fact, the audio supplied contained approximately 47.5 hours of output (adding together all audio files received). Additionally, several of the individual audio files received from LCMWL contained fewer minutes than indicated on the file label. Again, this contributed to a concern that the material was put together subsequently rather than constituting the actual output on the days in question.

Ofcom considered that this raised issues warranting investigation under Condition 8(2)(a) and (b) of LCMWL's licence, which require that the Licensee shall:

“(a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...

(b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction...”.

We therefore supplied the Licensee with the independently sourced material and at the same time requested formal comments from the Licensee on its compliance with these licence conditions.

Key Commitments

Because of the concerns explained above over the accuracy of the recordings supplied by LCMWL, Ofcom relied on the independent third party recordings to assess whether the service was complying with its Key Commitments.

Ofcom considered that the output monitored raised issues warranting investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to LCMWL's licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

“...the Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

We therefore requested formal comments from LCMWL on its compliance with these licence conditions, and in particular how it was fulfilling each of the following Key Commitments:

- Live daytime (0800 to 1900) output will typically comprise 70% music and 30% speech ('speech' excludes advertising, programme/promotional trails and sponsor credits).
- Speech content will include topical discussion, interviews, news programming, documentaries, social comment, original comedy, community information, and local history. Weekday daytime presenters will generally have guests, volunteers and experts within the programming.
- Early evening (1900 to 0000) will feature genre/ethnic programming. Some non-English language music & community information shows (in Spanish, Arabic, Polish, Urdu etc) and also specific music genres popular in Leith (Rock, Soul, Country, Scottish Traditional, Folk, Jazz). Some of these slots will be 'access' radio to promote diversity and under-represented groups while still being nondenominational and non-political. Output will include 'live' and 'as live' music and unsigned artists from the community.
- In addition to a Breakfast Show (0700-1000), weekend programming will be largely music based (90% music 10% speech) with various minority music genres and presenter styles as above. Overnight programming will be automated with some selected repeats from daytime output.

Response

LCMWL's response

Regarding Ofcom's concerns over LCMWL's retention and production of recordings, LCMWL said: "When we responded to the request for recordings, the dates requested were on the same dates that we held training courses, Castle FM had nearly 40 volunteers being trained. All were present when presenters were broadcasting". It said that these trainees "can support and give evidence (and will) regarding the live broadcasting on Castle FM".

LCMWL explained that: "Ofcom had asked for recordings put into bite sized chunks in order to make it easier to listen to, again we had a number of volunteers who were with us when the exact recordings were extracted from our legal log. During the training these recordings were used as part of the course to break down into 10min segments."

LCMWL said that it "totally reject[s]" any suggestion that it had acted dishonestly in providing the recordings to Ofcom.

It added: "We are, as you are aware, a voluntary organisation which relies on its volunteers to keep the station running and also for the financial assistance from each volunteer. As we are not a registered charity we find it extremely difficult and practically impossible to secure funding from grants or local council subsidies."

Having considered LCMWL's comments, Ofcom prepared a Preliminary View that LCMWL had breached Licence Conditions 8(2)(a) and (b), and Licence Conditions 2(1) and (4), and sent this to LCMWL. In response, LCMWL set out the practical

challenges it faced in securing its future, including that it had experienced attempts to hack its computers, attempts to switch off its transmitter, and harassment of volunteers. It expressed disappointment in the level of support provided by Ofcom, and said that the questioning it faced from Ofcom about the memory stick that had been damaged in transit was, “unacceptable”. It also asked for clarification of the source of the Radiomonitor material, and how it was “verified”.

Ofcom replied to LCMWL. We stated that we understood the challenges of running a small community radio station, but reiterated that it remained the responsibility of such stations to comply with the terms of their licences. We also noted that there was no implication in our Preliminary View that the damage to the memory stick had been anything other than accidental. Finally, we set out that the Radiomonitor recordings used an industry standard logging computer which recorded every minute of the audio source and named each file according to current date and time, and that a Radiomonitor representative had been present while the recordings took place.

LCMWL responded stating that the recordings it had provided were correct and had been verified by several people, and that the Radiomonitor recordings were unverified and not reliable.

Radiomonitor’s response

Given that Radiomonitor’s procedures were questioned by LCMWL, Ofcom considered Radiomonitor may be directly affected by the outcome of the case and therefore provided it with the opportunity to address the relevant issues raised by LCMWL’s questions as a third party³.

Radiomonitor responded that “our equipment is the trusted standard for many stations across the UK”. It also said that the equipment for recording the Castle FM material had been built and tested by the engineers at Radiomonitor without any knowledge of which stations were to be recorded or why.

It added that: “There can be no deception at our end, since the instructions [from Ofcom] were simply to record the station for the required days. There could be no mistake in the recordings taken, except due to interference or transmission errors, as the recording equipment was attended for the majority of its operation, and periodically tested to confirm clock accuracy, and to verify that the correct FM frequency was being monitored.”

Decision

Retention and production of recordings

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after

³ In accordance with paragraph 1.28 of Ofcom’s General procedures for investigating breaches of broadcast licences.

broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

It is a condition of all radio licences that the licensee adopts procedures for the retention of recordings and produces recordings to Ofcom forthwith on request.

In this case, LCMWL maintained that the recordings it had provided to Ofcom were accurate and that the Radiomonitor recordings were not. Having considered the representations both from LCMWL and Radiomonitor, Ofcom did not agree with LCMWL for several reasons.

Firstly, the systems used by Radiomonitor automatically applied the current date and time to audio files, and the Radiomonitor representative had been present for the recordings further confirming that the recordings covered the correct period. Secondly, the recordings included identifying material such as jingles making clear that the recording was of Castle FM and that a different station had not been recorded by mistake. Thirdly, Radiomonitor had no reason to falsify material. Fourthly, LCMWL's response did not include an explanation for the overall duration of material supplied by LCMWL being insufficient to cover the full period of the request. Finally, Ofcom has previously recorded breaches against LCMWL for failing to produce and retain recordings, indicating an ongoing difficulty in this area.

Ofcom concluded that the Licensee had breached Licence Conditions (8)(2)(a) and (b).

Key Commitments

Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. This is reflected in the licence conditions requiring the provision of the specified licensed service. If a service is not being provided in accordance with the licence, choice for listeners is likely to be reduced.

Ofcom carried out monitoring across three days of output relying, as noted above, on the recordings provided by Radiomonitor. and found:

Music to speech ratio

On the first day monitored (Thursday 29 January), back-to-back music was broadcast until around midday and again between 15:20 and 19:00. Between noon and 15:20, *Citytalk*, a presenter-led interview programme, was broadcast, also interspersed with music.

On the second day (Friday 30 January), back-to-back music featured until around 12:30 and then from 15:00 onwards. In between these times, the *Citytalk* programme was broadcast, again interspersed with music. On the third day (Saturday 31 January), continuous music was broadcast all day.

With such long periods of continuous music broadcast, we calculated the station's overall speech levels as being below the required 30% on the first two days, by 5% and 17% respectively, with no speech at all broadcast on the third day.

Speech content

The Key Commitment requires speech content to include various different types of speech. Ofcom found no news programming, documentaries, original comedy or community information (apart from instances heard as part of an interview, and so specific to that interview). Apart from the *Castle Sessions* music show broadcast between 20:30 and 23:00 on the Thursday, all speech content (across the two days that contained speech) comprised interviews only.

Early evening programming

No genre/ethnic programming was heard, and no non-English language music and community information shows (in Spanish, Arabic, Polish, Urdu etc.) were broadcast. No evidence either was found of specific music genres (Rock, Soul, Country, Scottish Traditional, Folk Jazz) being broadcast, as required under the Key Commitments.

Weekend programming

The relevant Key Commitment requires that there will be a Breakfast Show broadcast between 07:00 and 10:00 at weekends. On the Saturday that we monitored, no breakfast show aired. Continuous music was transmitted all day, meaning that the 10% speech requirement was not met. We heard no minority music genres or presenter styles.

LCMWL did not make representations directly in relation to compliance with Key Commitments, other than to emphasise the continued efforts of volunteers to ensure compliance. LCMWL did, however, make the argument that Ofcom should not rely on the Radiomonitor recordings, but should use the material LCMWL had submitted (which contained more material relevant to delivery of the Key Commitments). Ofcom rejected that argument for the reasons set out above.

In light of the above, Ofcom concluded that the Licensee had breached Licence Conditions 2(1) and 2(4) for failing to provide its licensed service in accordance with its Key Commitments.

Conclusion

Ofcom has found LCMWL to be in breach of Licence Conditions 8(2)(a) and (b) in relation to retention and production of recordings, and in breach of Licence Conditions 2(1) and 2(4) in relation to maintaining the character of the Castle FM service in compliance with key commitments. Ofcom has recorded breaches in both these areas previously against LCMWL⁴.

In Ofcom's view, the breach of requirements on retention and production of recordings was particularly serious. This was because the recordings provided to Ofcom by LCMWL purporting to cover the period were not, in Ofcom's view, an accurate record of what was actually broadcast. Rather, in the absence of any other explanation, it appeared possible that the recordings provided to Ofcom by LCMWL had been edited together subsequently to include material supporting compliance with the Key Commitments which had not, in fact, been broadcast on the dates which the request covered.

⁴ See footnote 2.

The Licensee is therefore put on notice that we will consider the breach of Licence Conditions 8(2)(a) and (b) for the imposition of a statutory sanction.

Breaches of Licence Conditions 8(2)(a) and (b), and breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Leith Community Mediaworks Ltd (licence number CR000080BA).

In Breach

Retention and production of recordings

French Radio London, 2 April 2015, 14:00

Introduction

French Radio London was a local digital commercial radio station that broadcast to the Greater London area. The licence for the service was held by FRL London Limited (“FRL” or “the Licensee”). In June 2015, it ceased broadcasting and began to distribute its programming solely online.

Ofcom received a complaint about offensive language in a song broadcast in the early afternoon on 2 April 2015.

Ofcom therefore requested a recording of the programme from the Licensee to make an assessment.

In response to Ofcom’s request for a recording, the Licensee provided Ofcom with its transmission playlist for that particular time and the lyrics to the song in question. However, it explained that it was unable to supply a recording of the requested material.

Conditions 7(2)(a) and 7(2)(b) of FRL’s Digital Sound Programme Service (“DSPS”) Licence stated:

“(2) In particular, the Licensee shall:

- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks;
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction.”

We therefore asked the Licensee how it complied with these DSPS Licence Conditions.

Response

The Licensee accepted that it had not met this condition of its licence. FRL explained that it was unable to supply a recording because of a technical failure of its recording systems.

FRL said that it had moved premises in early April 2015 and put in place a process to store its output on a server while the move took place. However, it discovered that from 2 April to 23 May 2015, its recording system was “not working as it should” and therefore, it was unable to provide a recording of the requested material to Ofcom. The Licensee said that it took longer than expected to repair the system but it was fully operational (at the time it provided Ofcom with its representations).

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring that the licensee retains recordings of each programme broadcast in a specified form and for a specific period after broadcast, and to comply with any request by Ofcom to produce such recordings issued by Ofcom. These obligations are set out in DSPS Licence Condition 7.

Breaches of Licence Condition 7 are serious because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

Condition 7(2)(a) requires licensees to make and retain, for a period of 42 days, a recording of every programme included in the licensed service. Ofcom noted that owing to a technical failure of its logging system, the Licensee did not make or retain recordings of any of FRL's programming for several weeks. Condition 7(2)(a) was therefore breached.

Condition 7(2)(b) requires licensees to produce recordings of its output to Ofcom forthwith upon request. We noted that the Licensee provided a transmission playlist and the lyrics of the song broadcast. However, FRL was unable to provide a copy of the broadcast material. We therefore did not have the necessary information to carry out an assessment. The Licensee therefore breached Condition 7(2)(b).

Breaches of Licence Conditions (7)(2)(a) and 7(2)(b)

Fairness and Privacy cases

Not Upheld

Complaint by Mr Ty Medland

Countdown to Murder: Diced to Death, Channel 5, 8 September 2014

Summary

Ofcom has not upheld this complaint made by Mr Ty Medland of unwarranted infringement of privacy in the programme as broadcast.

The programme provided a detailed account of the events surrounding the murder of Mrs Samantha Medland by Mr Medland, her husband, in 2013. Photographs of Mr Medland at different stages of his life and footage of him receiving medical treatment in hospital following a suicide attempt were shown in the programme.

Ofcom found that:

- Mr Medland did have a legitimate expectation of privacy in relation to the broadcast of footage of him receiving medical treatment in the programme. However, this was outweighed by the public interest in broadcasting material showing Mr Medland's behaviour in the aftermath of the murder. Mr Medland's privacy was therefore not unwarrantably infringed in the programme as broadcast in this respect.
- Mr Medland did not have a legitimate expectation of privacy with regard to the inclusion of photographs of him in the programme as broadcast. Therefore, Mr Medland's privacy was not unwarrantably infringed in this respect.

Introduction and programme summary

On 8 September 2014, Channel 5 broadcast an edition of *Countdown to Murder*, a documentary series which recounted the events surrounding high-profile murder cases. This edition, entitled *Diced to Death*, provided a detailed account of the events surrounding the murder of Mrs Samantha Medland by her husband, Mr Medland (the complainant). The programme included interviews with various people, including: Ms Amelia Greening, Mrs Medland's mother; Detective Chief Inspector Mark Preston, who investigated the murder; Ms Anna Roberts, a local newspaper journalist; Dr Elizabeth Yardley, a criminologist; and Mr Paul Griffin, Mrs Medland's best friend. Throughout the programme dramatic reconstructions of the events leading up to and including the murder were shown. Various photographs of Mr and Mrs Medland were also shown throughout the programme. Footage filmed by the police of Mr Medland in hospital following his suicide attempt was also included in the programme.

The programme included a detailed account of how the couple had met, married and then separated within 18 months, before describing how Mr Medland murdered Mrs Medland by repeatedly stabbing her outside her place of work in Brighton. Following this, the programme said that Mr Medland then tried to commit suicide. DCI Preston said that Mr Medland had made:

“what I think is a half-hearted effort to cut his own wrist and then he stabbed himself in the leg. He didn’t carry on with any attack trying to take his own life”.

Later in the programme, the police footage of Mr Medland in hospital was shown. The footage showed Mr Medland lying on a hospital bed with dried blood on his legs; bandages around his wrists and leg, and two nurses who appeared to be tending to his injuries. The programme’s narrator said:

“In one last clue to Medland’s state of mind, police body cameras recorded his pitiful attempt to be a victim”.

Mr Medland was heard saying:

“I tried to kill myself and I couldn’t even do that right”.

Later in the programme, more police footage of Mr Medland lying down on his front on a hospital bed was shown. Dried blood could be seen on Mr Medland’s hand and legs and his wrist and leg were bandaged.

DCI Preston said that the police body cameras showed that Mr Medland:

“Didn’t seem to care and does nothing more than carry on moaning about how much pain he is in. He shows no remorse. He shows no concern for Sam [Mrs Medland] in any way shape or form. It was all about him”.

Further footage of Mr Medland receiving treatment was shown. Mr Medland was shown on his back with dried blood and a bandage on his leg. A nurse was seen tending to Mr Medland’s wrist and appeared to be cleaning the area. Mr Medland was heard saying:

“My daughter passed away last year. My wife had an affair”.

No further footage of Mr Medland in the hospital was shown.

The programme then stated that Mr Medland was charged with the murder of Mrs Medland and that he pleaded not guilty. The programme explained that Mr Medland told the jury that he *“just wanted to shame Sam. He said he couldn’t remember anything else about the attack”*. However, DCI Preston disagreed and said that *“he would of have us believe that the depression was so severe it caused him to black out at the time of attack”*. He added that, in his experience:

“Despite people saying time and time again that they black out at the time of something so serious that is happening. Rarely that is the case. More often than not people are lying and I think the jury absolutely believed on this occasion that Medland was lying”.

The programme stated that on 26 July 2013, Mr Medland was found guilty of the murder of Mrs Medland and concluded with an onscreen caption stating:

“Medland was jailed for a minimum of 25 years. He was described by the judge as “petulant and self-centred”.

Summary of the complaint and the broadcaster's response

- a) Mr Medland complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of him in hospital following his suicide attempt was included in the programme without his permission.

By way of background, the footage had been filmed by a body camera worn by a police officer. Mr Medland said that he had not seen the footage before and it had not been used during his court trial.

Before responding specifically to the heads of complaint, Channel 5 said that the editorial focus of the programme was to follow the timelines of both murderer and victim in the days and hours leading up to the fatal incident at the centre of the programme. Channel 5 added that in appropriate cases, such as this one, the programme also examined the aftermath of the murder and the behaviour of the murderer.

Channel 5 said that the focus of the series is murder and by the use of stylised dramatic reconstructions of actual murders, the programme sought to present information about real crime in a fresh and innovative way. Channel 5 said that the series takes care to examine the events leading to the murder from the point of view of the victim and how the victim was feeling and behaving.

In response to this specific head of complaint, Channel 5 said that the footage in question was filmed by a police officer and that Channel 5 had no way of knowing whether or not Mr Medland had seen the footage previously. It added that it understood that the footage was not tendered in evidence at the trial of Mr Medland, but that was not to say that it was not available to the court or that had Mr Medland's defence requested it to be placed in evidence, it would have been. Channel 5 said that Mr Medland pursued a defence of diminished responsibility at trial and had his advisors have thought the footage in question was of assistance to that defence it would have been entered into evidence.

Channel 5 said that the question of whether or not Mr Medland made a serious attempt upon his own life following the murder was one that occupied a great deal of evidence and court time.

Further, the use of the footage in the programme highlighted the view of the Prosecution at Mr Medland's court trial. In particular, that Mr Medland was "smiling, laughing at times, and seemed okay" and that the footage did not reveal a vulnerable person or a person suffering from extreme pain, fear or distress.

Channel 5 stated that "it is not the law in the United Kingdom that people have a right not to be on television. Nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent". Channel 5 said that what matters in every case is whether or not rights are being infringed, and, if they are, whether there are good reasons for those rights to be infringed. Channel 5 said that in general, this requires the balancing of the rights of privacy against the right to freely broadcast matters of public interest.

Channel 5 said that at the time of filming Mr Medland at the hospital, he was under arrest for the commission of a crime for which he was subsequently convicted. It said that he was not a free citizen going about his business, but a suspected murderer in police custody.

The broadcaster added that the fact that Mr Medland's self-inflicted injuries were something that Mr Medland chose to make public as part of his defence for the crime of murder. Channel 5 said this was not an occasion where a broadcast revealed a previously undisclosed medical issue about a convicted criminal. The broadcaster stated that the fact that Mr Medland injured himself and was treated for those injuries had been the subject of widespread publicity and, as noted above, was part of his defence. Channel 5 explained that the jury did not accept that the defence of diminished responsibility was available to Mr Medland.

Channel 5 said that it was difficult to see how Mr Medland could maintain that the matter of his self-injury and his mental state were private given that he had placed this information, before, during and after the murder, directly into the public arena through his pleas and defence of the murder case made against him. Further, Channel 5 said that in any evaluation of what Mr Medland's mental state was, the footage allowed those who had not been able to hear first-hand testimony of witnesses who were there, as the jury at the trial did, to make up their own minds on that point.

Channel 5 stated that the footage was not graphic and did not show Mr Medland exhibiting great pain or profound emotion of any kind, nor did it show him undergoing delicate or intensely private medical treatment.

Channel 5 concluded by stating that it did not believe that the footage in question was private. However, Channel 5 added that even if it was private when filmed, that quality had been lost because of Mr Medland's conduct, namely his defence and subsequent conviction. Further, Channel 5 said that even if Ofcom concluded that the footage was private, it took the view that the public interest in seeing Mr Medland's behaviour, at a time when he claimed to be suffering diminished responsibility, overrode any interest Mr Medland may have in keeping that footage private.

- b) Mr Medland also complained that his privacy was unwarrantably infringed in the programme as broadcast because photographs of him on his own and with Mrs Medland that had "not been in the media" before were included in the programme without his permission.

The complainant identified 23 photographs which were included in the programme as broadcast without his consent which he said infringed his privacy.

In response, Channel 5 said that it is not the law that every photograph of a person is private to that person or that publication of such photographs would, or could, constitute a misuse of that person's private information.

Channel 5 provided the details of the sources for each photograph. They said that eight of the photographs were from Mrs Medland's Facebook page, 12 photographs were from Mr Medland's Facebook page, and three photographs were provided to the programme makers by the victim's family.

Channel 5 said that it did not accept that any of the photographs contained private information about Mr Medland, but simply identified him at different stages of his life and his relationship with the murdered woman. The broadcaster said that the photographs depicted Mr Medland and his victim on their wedding day and other occasions or, showed Mr Medland alone or with persons whose identity had been obscured. Channel 5 added that a person's face is not, in itself,

private. Further, Channel 5 submitted that the photographs in this broadcast did not reveal any private or sensitive information about Mr Medland.

The photographs, Channel 5 said, were ordinary, commonplace and lacked in any appreciable level of privacy. There was nothing inherently private about wedding photographs and that, in general, they tend to be shared with friends and family.

Channel 5 stated that except for the photographs provided by the victim's mother, the photographs sourced from Facebook came from pages which were open to the public when the programme makers accessed them. Further, the broadcaster said that they were unexceptional photographs which did not disclose any private or sensitive information and that this was presumably why they were publically available. Therefore, Channel 5 said that it considered that Mr Medland had no legitimate expectation of privacy in relation to these photographs.

However, Channel 5 said that even if it were Ofcom's view that Mr Medland had a legitimate expectation of privacy, Channel 5 took the view that the public interest in seeing photographs of Mr Medland over the course of his life and his relationship with his victim was significant. Channel 5 stated that the aim of the programme, in part, was to permit the audience to understand the perception the murderer gave his victim, and the photographs played an integral role in allowing the audience to appreciate that perception. Therefore, Channel 5 stated that its Article 10 rights outweighed any interest Mr Medland had pursuant to Article 8 in keeping the contents of the photographs private.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld.

Both parties were given the opportunity to comment on the Preliminary View. Mr Medland made representations and the relevant points relating to the Preliminary View are summarised below. Channel 5 did not make any representations in response to the Preliminary View.

Mr Medland's representations

In response to head a) of Ofcom's Preliminary View, Mr Medland said that his injuries were not widely reported and discussed during his trial. Mr Medland said that the extent of the discussion was limited to a brief medical report and the testimony of an officer at the scene of the incident in the context of the events which had occurred at the time. Mr Medland explained that his injuries were not included as part of his defence of diminished responsibility at trial. Further, Mr Medland said his injuries were not discussed or related to the testimonies made by consultant psychiatrists. In fact, Mr Medland said, the greatest discussion of his injuries was made by the prosecution who referred to his injuries as "scratches".

Mr Medland said that his behaviour at the time, and in the aftermath, of the murder, was explored during the trial, but did not include a discussion of his behaviour during the first 24 hours he was in hospital i.e. the period when the footage included in the programme was taken. The exception to this, Mr Medland said, was the testimony from the police's on call doctor, who commented on the hospital report from the first 24 hours.

In relation to DCI Preston's comments made in the programme about the video footage and Ofcom's view that it provided context, Mr Medland said that DCI Preston's comments only provided one person's opinion, the one Channel 5 wanted viewers to have. Mr Medland said that the programme did not give the viewer an opportunity to consider the other possibilities, or even make them aware that there were other possibilities. In this instance, Mr Medland said, an alternative opinion of the expert witness would give a very different context.

Mr Medland said that at the time the footage was taken, he was recently unconscious from blood loss, his body was in shock, he was under the influence of strong prescribed drugs and he was in severe pain from his injuries. He added that after he was discharged from hospital, he was not able to make a statement until the drugs had left his system.

In response to head b) of Ofcom's Preliminary View, Mr Medland said that he accepted that images of Mr and Mrs Medland taken during their relationship were likely to be widely reported in the public domain and would have been of public interest.

However, Mr Medland said that he did not think that there was an acceptable public interest in broadcasting the photographs taken of him at family events. Mr Medland said that the trial judge's sentencing remarks included that he had been a person of good character up until the tragic incident and that there was nothing about his past behaviour that was of interest or concern during the trial. Mr Medland said that these photographs were "very personal" to Mr Medland and his family, that they represented a different time in his family's life, and their inclusion in the programme was distressing to Mr Medland and his family.

In response to Channel 5's comment that the aim of the programme, in part, was to permit the audience to understand the perception the murderer gave his victim, Mr Medland said that this would imply that Mr Medland intentionally gave Mrs Medland a false view of him. However, Mr Medland said there was nothing in his behaviour or character that indicated any such subterfuge existed and this was accepted during the trial.

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 unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this Decision, we 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. We also took into account Mr Medland's representations on Ofcom's Preliminary View, however, we concluded that his representations did not materially affect the outcome of Ofcom's Decision not to uphold the complaint.

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 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- a) Ofcom first considered Mr Medland's complaint that his privacy was unwarrantably infringed in the programme as broadcast because footage of Mr Medland in hospital following his attempted suicide was included in the programme without his permission.

In assessing this head of Mr Medland's complaint, Ofcom had particular regard to Practice 8.6 of the Code. This 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 of privacy is warranted.

In considering whether or not Mr Medland's privacy was unwarrantably infringed in the programme as broadcast, we assessed the extent to which Mr Medland had a legitimate expectation of privacy in relation to the broadcast of footage of him in hospital without his consent.

As set out above in the "Introduction and programme summary" section, we noted that the programme included footage of Mr Medland in hospital following his attempted suicide. During this footage, Mr Medland was heard discussing events which had taken place in the lead up to the murder and his attempted suicide, for example, that his daughter had died.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We considered Channel 5's response that at the time of filming Mr Medland at the hospital, he was under arrest for the commission of a crime for which he was subsequently convicted and that he was not a free citizen going about his business, but a suspected murderer under police custody. In our view, whether or not someone who has been filmed while under arrest or in police custody has a legitimate expectation of privacy in the subsequent broadcast of that footage depends on all the relevant circumstances. These may include:

- whether the filming occurred in a public place;
- whether the individual was identifiable from either the information and/or footage included in the programme;
- whether the individual was vulnerable in any way (e.g. through the consumption of alcohol or drugs or because of an illness or disability);
- whether the footage depicted the individual doing something, or disclosed information about that individual, which was confidential, sensitive or personal; and
- any change in factual circumstances between the events depicted and its broadcast which may affect the extent to which the material could be

considered to be private or confidential (for example, whether since the incident filmed the individual concerned was charged and/or found guilty of any offences).

In Ofcom's view, in circumstances in which an individual has made an attempt on their own life and is receiving medical treatment for their injuries in hospital, it would generally be reasonable for that individual to expect a high degree of privacy. In this particular case, we had regard to Mr Medland's claim that he had not seen the footage of him in hospital prior to the broadcast of this programme. We also took into account Mr Medland's representations on Ofcom's Preliminary View that the footage of Mr Medland showed him in hospital and was taken after he had been recently unconscious and under the influence of painkillers. Therefore, given that Mr Medland had attempted suicide and was still receiving some form of treatment for his injuries, he was shown in a vulnerable and sensitive situation.

However, we noted that the footage of Mr Medland included in the programme was very brief. We also had regard to Channel 5's response that Mr Medland's self-inflicted injuries and his mental state were matters that had been made public during the course of the trial in which he was subsequently found guilty of murder. We had regard to Mr Medland's representations on Ofcom's Preliminary View that his injuries were not widely reported and discussed during his trial. However, as stated in Mr Medland's representations, there was at least some discussion of his injuries during his trial, whether this was to a greater or lesser extent to that claimed by Channel 5. Therefore, we considered that Mr Medland could not expect the same level of privacy in connection with the fact of his self-inflicted injuries as he would if information about them had not been reported and discussed in open court. Nevertheless, given the very sensitive nature of the situation Mr Medland was filmed in and that the footage itself, which had been obtained from a police body camera, had not been disseminated or used during his trial, we considered that Mr Medland had a legitimate expectation of privacy in relation to the broadcast of footage of him in hospital in the programme.

We next assessed whether Mr Medland's consent had been obtained to include this material in the programme. We noted that it was not disputed that the broadcaster had not obtained, nor sought Mr Medland's consent prior to the broadcast of the footage in the programme as broadcast.

Given that Mr Medland had a legitimate expectation of privacy in relation to the broadcast of footage of him in hospital and that this was broadcast without his consent, it was necessary to establish whether or not the infringement of Mr Medland's privacy was warranted.

In determining whether or not any infringement into Mr Medland's privacy was warranted, we assessed the broadcaster's rights to freedom of expression and viewers' right to receive information against the infringement into Mr Medland's privacy by including footage of Mr Medland in a vulnerable and sensitive situation in hospital without his consent. In particular, we considered whether there was sufficient public interest or other reason to justify the infringement of Mr Medland's privacy in broadcasting this footage.

There is no doubt, in Ofcom's view, that Mr Medland was found guilty of an extremely serious offence and that there is a genuine public interest in the programme examining the events surrounding the murder and the behaviour of the offender, Mr Medland. In particular, we considered it in the public interest for

the programme to include material pertaining to Mr Medland's behaviour at the time of and shortly after the murder, which were issues explored, at least to some extent, during his trial.

We considered that the footage of Mr Medland in hospital provided viewers with a visual representation of Mr Medland's behaviour in the aftermath of the murder and provided some context for the comments made by DCI Preston about Mr Medland's attempted suicide and the fact that Mr Medland subsequently ran a defence of diminished responsibility in his trial.

On balance, although we acknowledged the sensitive nature of the footage in question, and that Mr Medland did not give his consent for the broadcast of the relevant material, it was our view that the broadcaster's right to freedom of expression and public interest in broadcasting the relevant material outweighed Mr Medland's legitimate expectation of privacy in this case. Therefore, Ofcom found that there was no unwarranted infringement of Mr Medland's privacy in the programme as broadcast in this respect.

- b) We next assessed Mr Medland's complaint that his privacy was unwarrantably infringed in the programme as broadcast because photographs of Mr Medland on his own and with Mrs Medland that had "not been in the media" before were included in the programme without his permission.

In assessing this head of Mr Medland's complaint, Ofcom also had regard to Practice 8.6 as set out in head a) above.

In considering whether or not Mr Medland's privacy was unwarrantably infringed in the programme as broadcast, we assessed the extent to which Mr Medland had a legitimate expectation of privacy with regards to the inclusion of the photographs of him in the programme without his consent.

In particular, we considered the nature of the photographs in question. We noted that 11 of the 23 photographs included in the programme were of Mr and Mrs Medland together. Of these photographs, seven appeared to be from the couple's wedding day and the other four photographs were general photographs which showed Mr and Mrs Medland posing for the camera. The other 12 photographs included in the programme were of Mr Medland on his own, or, if there were any other people in these photographs, they were blurred and/or cropped out of the photograph. We noted from Channel 5's response to the complaint that the photographs included in the programme came from three sources: Mrs Medland's Facebook page; Mr Medland's Facebook page; and, Mrs Medland's family.

Ofcom recognises that photographs of a person may be personal and private to that individual and therefore in some circumstances he/she may have a legitimate expectation of privacy in relation to those photographs. Further, it is our view that individuals are not necessarily deprived of their right to privacy if information/images in respect of which they claim that right has been put into the public domain in the past. Each case must be considered on its own facts.

We considered that photographs of a person's wedding day and other personal photographs of them at various stages of their life could be regarded as something which is private and sensitive in nature depending on the circumstances. We noted that Mr Medland, at the time the photographs were taken, was a private individual (i.e. he was not in the public eye), and while we accepted that the photographs were obtained from the publicly accessible parts

of Mr Medland's and Mrs Medland's Facebook pages (at the time the programme makers accessed their pages), it was unlikely that these publicly available photographs would have been widely disseminated (we noted in this context that Mr Medland had said that they had not previously been in the media).

We took into account Mr Medland's representations on Ofcom's Preliminary View regarding the impact the inclusion of photographs of him at various past family events had on him and his family. We recognised that Mr Medland considered the photographs to be "very personal" to him and his family and that it may have been distressing for him and his family to see these photographs broadcast in the programme. However, as noted above, in assessing whether a legitimate expectation of privacy arises, Ofcom applies a fact-sensitive, objective test, which takes account of all the relevant circumstances. In the circumstances of this case, we noted that, following Mr Medland's trial and conviction for murder, his image, including in connection with his wife, was widely reported in the public domain. We also considered that the photographs included in the programme (including those provided by Mrs Medland's family which were very similar to the photographs sourced from Mr Medland's Facebook page) were innocuous in nature and did not reveal any particularly private or sensitive information about Mr Medland, other than his appearance in those photographs. We noted that to the extent the photographs were taken at past family events, the photographs as broadcast did not include images of any other family members, only Mr Medland himself. Further, we considered that the photographs included in the programme were simply used as an illustrative device to show Mr Medland over the course of his life and his relationship with Mrs Medland.

Therefore, in the circumstances of this case, Ofcom considered that, on balance, and having regard to the overall innocuous nature of the photographs, Mr Medland did not have a legitimate expectation of privacy concerning the broadcast of the photographs of him in the programme. Consequently, it was not necessary for Ofcom to go on to consider whether any infringement into Mr Medland's privacy was warranted.

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

Not Upheld

Complaint by Mr Robert Woodhead

Remember the 50s, Angel Radio Havant, 24 January 2015

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programme as broadcast and of unwarranted infringement of privacy in the programme as broadcast made by Mr Robert Woodhead.

The programme complained of was an edition of a 1950s music programme presented by Mr Tony Smith. During the programme the presenter read out email correspondence which had been sent to him by the complainant, Mr Woodhead.

Ofcom found that in the particular circumstances of this case:

- The inclusion in the programme of extracts from emails sent by Mr Woodhead to the presenter was not unjust or unfair to Mr Woodhead.
- Mr Woodhead did not have an expectation of privacy in the circumstances of this particular case in relation to the correspondence and therefore Mr Woodhead's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 24 January 2015, Angel Radio Havant ("Angel Radio"), a community radio station based in Havant, Hampshire which provides music and entertainment for older people, broadcast an edition of its 1950s music programme, presented by Mr Tony Smith (who was also Angel Radio's Station Manager).

During the programme, Mr Smith stated:

"There was a call on the answerphone, no name left but someone asked why the 1950s chart show isn't on this week. I'm afraid we've had an awful lot of problems with the chap that used to do the chart shows. We caught him trying to defraud companies using Angel Radio's name by asking for things for prizes, pretending that it was for Angel Radio and he's also made threats against myself and the latest thing I've had, I will read you. It's not nice, but I will read it to you because it will show you why our chart show is not on by the chap whose name is Bob Woodhead. He wrote to me:

'You are a common little jumped up peasant. No wonder no woman wants anything to do with you. You haven't a good manner in your body and when the day comes I shall dance all over your grave or ashes. If I knew that I wouldn't face a life sentence, I would come and put you out of your misery now. I shall just be praying for that next stroke. You're a pathetic little tramp. Why don't you go for a good hot bath? You might get a girlfriend for five minutes. You vile piece of impotent scum'.

That was written to me by the chap that used to do the 1950s chart show, so I'm sure caller, who didn't leave a name, I'm sure you perhaps now understand why you will not be getting your chart show from now on".

Later in the programme, Mr Smith further stated:

“Many thanks for the phone calls on the answer phone about the horrible letter that I had from the chap who used to present the 1950s programme. There was one chap that phoned who was absolutely shocked by it, as I was. You didn’t leave your name, but thank you so much for your support and also thank you to Sheila Garbutt. Sheila and John listen to us regularly on the internet and Sheila was also disgusted by it. That’s only the very tip of the ice-berg actually to be honest. I’ve had death threats and been accused of embezzling money from the radio station and all sorts of other things from Mr Woodhead and it’s only now that I’ve finally decided that I can’t take it anymore. So I’m really sorry that you won’t get your 1950s chart show, but that’s just the way it is. As you know, I always like to be honest with you on the wireless. You all know the problems we go through and things like that I don’t hide anything from you and I’m sorry that you’ve had to be told that but I was asked, so I tell”.

Mr Smith did not mention Mr Woodhead again in the programme.

Summary of the complaint and the broadcaster’s response

Unjust or unfair treatment

- a) Mr Woodhead complained that he was treated unjustly or unfairly in the programme as broadcast because content from email correspondence sent by him to the presenter was included in the programme out of context. Mr Woodhead said that the presenter had sent him “provocative” emails and that these and his full responses to them were not read out. Mr Woodhead said that this gave listeners a “...very unfair and unpleasant picture of my character”.

In response, Angel Radio said that it refuted Mr Woodhead’s claim that he had been sent “provocative” emails by the presenter. The broadcaster said that each of Mr Woodhead’s emails to the presenter had contained inaccurate comments that required a response to correct. It said that Mr Woodhead had also made “unnecessary and unsavoury” personal comments about the presenter that it said required a response. The broadcaster sent Ofcom copies of email correspondence between the presenter and Mr Woodhead in support of its response.

The broadcaster said that reading Mr Woodhead’s comments to the presenter out of context would have made no difference to listeners’ perceptions of him. It said that in response to the complaint made with Ofcom Mr Woodhead had been given the opportunity to read his emails out in full on air on Angel Radio, but had declined this offer.

Unwarranted infringement of privacy

- b) Mr Woodhead also complained that his privacy was unwarrantably infringed in the programme as broadcast because content from email correspondence sent by him to the presenter was read out during the programme without his consent. He said that the emails were private and were not sent with the intention of being read out on air.

In response, Angel Radio said that Mr Woodhead’s emails (including the content of which was read out on air) had been sent to Angel Radio’s general email address which could be accessed by every member of the Angel Radio team.

The broadcaster said that Mr Woodhead had been aware of this when he sent the emails. It was Angel Radio's view that if Mr Woodhead had wanted to email the presenter personally, then he would have sent his emails to the presenter's personal email address. Angel Radio said that the emails had been sent to an open email address to "cause maximum embarrassment and damage" to the presenter's reputation and therefore could not be considered as intended to be private. Angel radio said that Mr Woodhead had made several allegations against the presenter in his emails, such as: he had used Angel Radio's charitable funds for his own personal gain; he had caused the loss of a legacy; he had been responsible for 90 per cent of Angel Radio's programming being repeats; he had illicitly paid a member of staff to leave; and he maintained poor personal hygiene.

It said that, in response to the complaint made with Ofcom, Mr Woodhead had been given the opportunity to "hold a full and frank discussion about me [Mr Smith] and the way I treat my team" with all or any particular member/s of the team, on or off air, but had declined this offer. Angel Radio said that Mr Woodhead's complaint to Ofcom was "simply a disgruntled ex-employee's vendetta against myself [Mr Smith] and Angel Radio".

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Mr Woodhead submitted further comments to Ofcom, to which we gave careful consideration. However, none of the matters raised by Mr Woodhead caused us to alter our view of the issues set out in his complaint. The broadcaster did not submit any representations.

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, both parties' written submissions, and supporting documentation.

- a) Ofcom first considered Mr Woodhead's complaint that he was treated unjustly or unfairly in the programme as broadcast because content from email correspondence sent by him to the presenter was included in the programme out of context. Mr Woodhead said that the presenter had sent him "provocative" emails and that these and his full responses to them were not read out. Mr Woodhead said that this gave listeners a "...very unfair and unpleasant picture of my character".

When considering and deciding complaints of unjust and unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as

broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

In considering this part of the complaint, we also had regard to Practice 7.9 of the Code. This states 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 an individual or organisation. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

It was within this framework that we considered whether the inclusion in the programme of extracts from Mr Woodhead's email correspondence resulted in any unfairness to him.

We first considered the context in which Mr Woodhead's comments were presented. We noted that the presenter was responding to a query from a listener who wanted to know why a 1950s Chart Show programme would no longer be broadcast. The presenter, explained that Angel Radio had experienced "*an awful lot of problems with the chap that used to do the chart shows* [i.e. Mr Woodhead]", and went on to allege that Mr Woodhead had tried to defraud companies by asking for prizes pretending that it was for Angel Radio and had threatened him. It was at this point that the presenter read out the content from emails sent by Mr Woodhead to the presenter (see "Introduction and programme summary" section above).

We noted that later in the programme, the presenter referred to "*phone calls on the answer phone*" received from listeners who had contacted the programme to give their views about the "*horrible letter*" sent by Mr Woodhead. The presenter added that listeners were "*shocked*" and "*disgusted*" by the comments made by Mr Woodhead and the reasons why he was no longer working with the station. Ofcom considered that this reaction was a result of what the listeners had been informed that Mr Woodhead had said in his email correspondence with Mr Smith.

Ofcom acknowledged the broadcasters' right to freedom of expression and that they must be able to broadcast programmes of matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

In this particular case, Ofcom recognised that Mr Smith was entitled to his own point of view and his right to express it. However, we considered that the comments he made about Mr Woodhead and the email correspondence he broadcast had only a tangential connection with the programme in which they were included. We considered that the inclusion of the material in question served primarily to air the dispute that Mr Smith had with Mr Woodhead.

We noted from his complaint that Mr Woodhead's concern was that his emails had been sent in response to "provocative" emails sent to him by the presenter and that this had not been reflected in the presenter's comments, therefore not giving listeners the context in which his comments were made. We noted from the material provided by Angel Radio that on 30 December 2014 a series of emails

were exchanged between the complainant and Mr Smith. The content of these emails could reasonably be described, in Ofcom's view, as being quarrelsome and confrontational.

Ofcom went on to consider whether or not the way in which the content of Mr Woodhead's emails was presented was unfair to him. From the information provided to us it appeared that Mr Smith only read out selected extracts from Mr Woodhead's emails of 30 December 2014 in the programme. He did not make it clear that the extracts came from different emails nor did he read out his own email responses. Nonetheless, we considered that listeners were likely to infer from both the context and the content of the email extracts that at the time of the email correspondence the two men were quarrelling with one another and that there was history to their dispute.

Ofcom considered further that the language used by Mr Woodhead in the extracts read out to listeners was clearly intended to be insulting and threatening in tone and listeners were likely to have interpreted the comments broadcast in this way.

We also noted that while the extracts from the correspondence were from several emails, they were otherwise an accurate account of what Mr Woodhead had written to Mr Smith (Mr Smith misread the word "pheasant" as "peasant" but we did not consider this to be material). Further, although Mr Smith's side of the correspondence was not broadcast, we did not consider that had this been included in the programme that this would have changed listeners' perceptions of Mr Woodhead's comments; we considered that even when seen in context, in response to Mr Smith's emails, Mr Woodhead's comments were clearly offensive and threatening in nature.

In this particular case, we could see no clear justification for the inclusion of the correspondence from Mr Woodhead. However, having taken all of the above factors into account, and in particular the nature of Mr Woodhead's comments, Ofcom was satisfied on balance that no unfairness to Mr Woodhead had resulted.

Ofcom therefore considered that, in the circumstances of this case, the programme as broadcast avoided unjust or unfair treatment of Mr Woodhead.

- b) Ofcom next considered Mr Woodhead's complaint that his privacy was unwarrantably infringed in the programme as broadcast because the content of email correspondence sent by him to the presenter was read out during the programme without his consent. He said that the email was private and was not sent with the intention of it being read out on air.

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

This is reflected in how Ofcom applies Rule 8.1 of the Code, which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted¹.

¹ The explanation of the meaning of "warranted" under Rule 8.1 of the Code identifies revealing or detecting crime, protecting public health or safety, exposing misleading claims

In considering this head of 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 it is warranted.

We first assessed the extent to which Mr Woodhead had a legitimate expectation of privacy that the content of email correspondence that he had sent to the presenter would not be included in the programme. In doing so, we had regard to the Code which states that “legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question”.

As outlined above, having carefully listened to the programme we noted that the presenter, Mr Smith, made numerous comments about Mr Woodhead and read out various comments taken from email correspondence that Mr Woodhead had sent to him (as set out in detail in the “Introduction and programme summary” section above).

We noted the broadcaster’s assertion that the emails had been sent to Angel Radio’s general email address and so could be accessed by all members of the station’s staff and could therefore not be regarded as being private. While Ofcom was not able to make a definite judgement on Mr Woodhead’s intentions in this respect, we noted that none of the correspondence was marked as “Private and Confidential” and therefore there was no explicit evidence on the face of the correspondence that Mr Woodhead had intended that it should be seen by only Mr Smith. Further, during the course of the correspondence, Mr Woodhead made a number of statements indicating his own willingness to pass the correspondence on to others. In an email dated 30 December 2014 to Mr Smith, for example, he said that he would “consider making the media aware of your disgraceful behaviour”. In a subsequent email sent on the same day he stated that any further “unpleasant or bullying” emails received from Mr Smith would be forwarded to the police and “other influential people as well”. In an email dated 31 December 2014, Mr Woodhead indicated that he had done this. Therefore by his own account, Mr Woodhead had been prepared to share his correspondence with third parties and it appeared to Ofcom that he may have done so. Against this background, Ofcom therefore considered that Mr Woodhead did not have a legitimate expectation of privacy in relation to the correspondence.

Having decided on the particular facts of this case that Mr Woodhead did not have a legitimate expectation of privacy, Ofcom did not need to go on to consider whether any infringement was warranted or not.

Ofcom therefore found that Mr Woodhead’s privacy was not unwarrantably infringed in the obtaining of material included in the programme as broadcast.

Ofcom has not upheld Mr Woodhead’s complaint of unjust or unfair treatment in the programme as broadcast and of an unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Mrs Alison Sinton

Britain's Benefit Tenants, Channel 4, 26 March 2015

Summary

Ofcom has not upheld Mrs Alison Sinton's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme was part of a series which followed letting agents who act as mediators trying to resolve disputes between private landlords and some of their tenants who rely upon housing benefit. It included footage of one of the lettings agents, talking to Mrs Sinton (the complainant). She was not named in the programme and her face was blurred by the broadcaster.

Ofcom found that, in the particular circumstances of this case, Mrs Sinton did not have a legitimate expectation of privacy with regard to both the filming of her conversation with the letting agent and the subsequent inclusion of part of this footage in the programme as broadcast. Therefore, Mrs Sinton's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 26 March 2015, Channel 4 broadcast an edition of *Britain's Benefit Tenants*, a programme which followed letting agents who act as mediators trying to resolve disputes between private landlords and some of their tenants who rely upon housing benefit and, in particular, those in rent arrears.

During the opening sequence of the programme, footage of one of the lettings agents was shown. The lettings agent was subsequently identified as Mr Rob McKenzie of the Letts Let letting agency in Sunderland. Mr McKenzie was shown driving his car while saying:

"We're on our way to pursue a tenant who left the property owing around about £1,177. I've just had enough. I've had enough".

After this Mr McKenzie was shown looking first at a car parked across the road from where he had parked and then down at an image of a very similar looking car on his mobile phone. During this footage, Mr McKenzie said: *"There's the registration, the same as registration on the vehicle across the road"*. The registration plate on the car parked across the road could be seen from a distance, but was too far away to be clearly discernible and the registration plate on the car in the mobile telephone image was blurred by the broadcaster.

Mr McKenzie was subsequently shown knocking at the door of the property outside which the car was parked and talking to the person who answered the door (the complainant, Mrs Sinton). During this footage, Mr McKenzie said: *"Hi, is [audio bleeped out] in please?"* to which Mrs Sinton replied *"No"*. Afterwards, Mr McKenzie said: *"If he doesn't contact us within 48 hours I'm going to be serving a court notice on this address for him for the rent he owes me and for the damage he left at the property in South Shields"*.

Throughout this sequence, Mrs Sinton's face and head was obscured by blurring and, although her voice was not disguised, the only word she could be heard saying was "No".

After the opening sequence, the programme showed footage of Mr McKenzie in his office at work discussing the case which had led him to visit Mrs Sinton's house. The programme's narrator said that Mr McKenzie had "*built a reputation for tackling problem tenants*" after which Mr McKenzie was shown looking at papers on his desk and then at an image of a car on his computer screen (the image of the car, which had its registration plate obscured, appeared to match that previously shown on Mr McKenzie's mobile telephone). During this footage, Mr McKenzie said: "*He's left owing £1,177.95. He's spent all of this money on this car, on a holiday. It sickens me to be honest, it absolutely sickens me*".

The programme then showed Mr McKenzie talking to camera saying:

"The housing benefit market, I would say in the main, is fairly good. Where it falls down is that the people who don't have any morals basically, they're not going to pay. The money is paid to them, they're not going to pay".

Mrs Sinton was neither named nor referred to in the programme and no further footage of her was shown in the programme.

Summary of the complaint and the broadcaster's response

- a) Mrs Sinton complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she did not consent to being filmed. Mrs Sinton said she was not asked if she consented to being filmed, but was "knocked out of bed" by Mr McKenzie who had called at the wrong address. Mrs Sinton said that the person who Mr McKenzie was seeking to speak to about non-payment of rent arrears was her son and that he did not reside with her.

In response to this head of complaint, Channel 4 said that it was necessary for the programme makers to have filmed in an observational manner as Mr McKenzie went about his job in order to capture his genuine interactions with landlords, tenants and debtors on a 'normal' day. It added that all the filming was carried out openly and unobtrusively, so it did not interfere with Mr McKenzie's work, and was done with minimal interruption in order to gather as fair and accurate a representation as possible. Channel 4 acknowledged that it had not sought consent from Mrs Sinton before filming but said that, given the nature of Mr McKenzie's work, giving such prior notice before his visit would have been likely to have confounded his purpose.

Channel 4 said that Mr McKenzie called at Mrs Sinton's address because he was looking for a former tenant who had left £1,177.95 worth of debt and damage at a property which he managed. Mr McKenzie had conducted searches over a period of five months to locate this individual and his searches led him to the address of the debtor's mother, Mrs Sinton, which he attended in the course of legitimate business and in good faith. Channel 4 said that Mrs Sinton had complained that Mr McKenzie had the wrong address. However, it said that: when Mr McKenzie asked Mrs Sinton whether the debtor he was looking for was at her property, she said "he's not in"; when he asked when the debtor would be back Mrs Sinton replied "I'm not sure"; and at no point did Mrs Sinton say that the debtor did not live there. In addition, Channel 4 said that when Mr McKenzie told Mrs Sinton that

if he did not hear from the individual within 48 hours he would be serving court papers on that address, Mrs Sinton had replied “alright”.

Channel 4 also said that rather than being “knocked out of bed” by Mr McKenzie, as she complained, Mr McKenzie knocked on Mrs Sinton’s door once in a normal fashion (i.e. not aggressively or loudly) at approximately 10:00. It said that the programme’s producer made it clear to Mrs Sinton who was filming by saying: “...we are from Channel 4, we’re doing a documentary about the work of letting agents. Hello madam did you hear me?” and that Mrs Sinton neither asked the programme makers to stop filming, nor ceased her conversation with Mr McKenzie.

Channel 4 said that Mrs Sinton was filmed in her front doorway from the public pavement outside her home. She was fully clothed, not in an obvious state of distress or anxiety and she disclosed nothing about herself that was of a private or personal nature. It also said that it was clear at all times that the subject of Mr Mackenzie’s queries was not Mrs Sinton, but a debtor who he had reason to suggest was resident at the property. In light of these factors, Channel 4 argued that Mrs Sinton did not have a legitimate expectation of privacy in the circumstances in which she was filmed.

However, it also argued that, even if, and to the extent that, Ofcom concluded that Mrs Sinton had a legitimate expectation of privacy in these circumstances, any infringement of her privacy in this respect was both proportionate and justified given the public interest in the subject matter of the series.

Channel 4 said that there was a clear public interest in viewers being able to see some of the real impact of ‘austerity’ and to witness first-hand the real life experiences of those people directly involved, whether it be tenants who were struggling to find adequate housing, the private landlords who were filling the growing gap in public housing or the agents who were trying to balance these relationships and collect rents that are derived from ‘public’ monies. It said that this public interest underpinned every edition of *Britain’s Benefit Tenants* and that a key editorial aim of the series was for it to be as authentic and accessible to viewers as possible.

- b) Mrs Sinton also complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included in the programme without her consent.

In particular, Mrs Sinton said that prior to the broadcast Channel 4 had assured her that her face, her front door and the street on which she lived would not be shown in the programme and that no-one who knew her would be able to recognise her. However, while her face was pixelated, Mrs Sinton said that her blonde hair was visible in the programme and that both the street on which she lived and the “distinctive iron fence” outside her property were shown. She said that as a result she was recognised by people who knew her which led to her “ridicule and humiliation”.

In response to this head of complaint, Channel 4 said that, given that Mrs Sinton was not the focus of the story, the programme makers decided that it was appropriate to fully obscure her face and limit the inclusion of her voice in the programme. It said that they took reasonable steps to conceal her identity and that of her son (in the event he could be linked to her); the location of her home

was not disclosed, all street names were concealed and house numbers and discernible car registration plates were blurred.

Channel 4 acknowledged that Mrs Sinton contacted it prior to the broadcast to say that she was concerned about appearing. Her message was referred to the production company who contacted Mrs Sinton directly to assure her that: her face would be blurred, clear extracts of her voice would not be used and her son would not be identified. The broadcaster said that Mrs Sinton confirmed to it prior to the broadcast that she was happy with these steps. It also said that no assurance was given to Mrs Sinton that her front door or street would not feature in the programme. However, she was told that house numbers, street names and car registration plates would be obscured.

Channel 4 said that it was important to note that Mrs Sinton featured only very briefly in the programme, her entire head and face were wholly obscured, she was not named and nor was her address identified. The image of her street shown in the programme was fleeting and taken from an angle; and the area in which it is located, was not revealed. Channel 4 said that the only area identified in connection with Mr McKenzie (via an on-screen caption) was “*Sunderland*” which is 12 miles away from the area in which Mrs Sinton’s home is located. In addition, it said that, as noted above, it was clear from the footage in the programme that Mrs Sinton was not in shown in distress or doing anything of a private nature.

Channel 4 argued that Mrs Sinton did not have a legitimate expectation of privacy in these circumstances, but also said that, to the extent that Ofcom considered the inclusion of the relevant material in the programme infringed Mrs Sinton’s privacy, this infringement was proportionate and justified by the clear public interest in broadcasting a programme examining the work of the letting agents such as Mr McKenzie and thereby developing the public’s understanding of the range of people and situations with which these agents deal.

Ofcom’s Preliminary View

Ofcom prepared a Preliminary View on this case that Mrs Sinton’s complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The complainant commented on the Preliminary View, while Channel 4 chose not to do so. Mrs Sinton’s comments (insofar as they were relevant to the complaint as entertained and considered by Ofcom in the Preliminary View and did not repeat points that were made as part of the original complaint) are summarised below.

Mrs Sinton said that she did not have an opportunity to consent to being filmed. She also said that when she answered the door to Mr McKenzie the person filming was not in her line of vision and she did not have her glasses on; she therefore did not realise she was being filmed until it was too late. She added that if she had known that she was being filmed she would have asked the camera crew why she was being filmed and asked them to stop doing so.

Mrs Sinton also said that during the section of the programme showing her house the programme included an image of Renwicks, a tailor’s shop which she said “can be associated with” the road on which her home is located.

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. Ofcom also took careful account of the representations made by the complainant in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of Mrs Sinton's representations, we concluded that the further points raised by her did not materially affect the outcome of Ofcom's Decision on this privacy complaint.

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 Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- a) Ofcom first considered Mrs Sinton's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

In assessing this head of the complaint, Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. Ofcom also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

In considering whether or not Mrs Sinton's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first considered the extent to which she had a legitimate expectation of privacy with regard to the obtaining of the relevant footage.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be assessed in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts. In particular, as stated in the Code, there may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature

that filming or recording, even in a public place, could involve an infringement of privacy.

We recognised that a person may have a legitimate expectation of privacy in connection with the filming and subsequent broadcast of footage of them standing in the doorway to their home. In these particular circumstances, we also recognised that the filming captured footage of Mrs Sinton where she would not ordinarily expect to be filmed, i.e. answering a knock on the door. However, we reviewed the edited footage that was broadcast in the programme and noted that Mrs Sinton was filmed openly and from the public pavement outside her home. We noted that in her representations on the Preliminary View, Mrs Sinton said that she did not see initially the person filming her and had she known she was being filmed she would have asked the camera crew why they were filming her and asked them to stop doing so. We also noted that in response to the complaint, Channel 4 said that the programme's producer had told Mrs Sinton that the camera crew was from Channel 4 and that they were "doing a documentary about the work of letting agents" with a view to securing consent for a possible interview, but that Mrs Sinton had closed the door on him. Given this, it was our view, that the camera crew took steps to try to ensure that Mrs Sinton was aware of their presence and the purpose for which the footage of her that they recorded might be used (i.e. inclusion in a programme about letting agents which would be broadcast on Channel 4).

We noted Mrs Sinton's contention that she was "knocked out of bed" and acknowledged Channel 4's comment that, in contrast to her claims, Mr McKenzie only knocked on Mrs Sinton's door once during normal working hours and did so in an ordinary rather than loud or aggressive manner. From the footage shown in the programme, it was clear to us that Mrs Sinton was fully clothed when she was filmed and she did not appear to be in a state of distress or anxiety. We noted that the filming did capture a conversation between Mrs Sinton and Mr McKenzie regarding her son, whom Mr McKenzie believed lived at or was connected to her home address, and that it was stated that if her son did not take action within 48 hours, a court notice for debt and a damage to property would be served on him at Mrs Sinton's home address. However, it was our view that, to the extent that this information could be potentially private and sensitive information about an individual, it related to her son rather than to Mrs Sinton. Based on the footage broadcast and Mrs Sinton's and Channel 4's comments, it was therefore Ofcom's view that the interaction between Mrs Sinton and Mr McKenzie did not appear to reveal any private or personal information about Mrs Sinton herself.

Ofcom also considered whether the means of obtaining the footage was proportionate in all the circumstances and, in particular, to the subject matter of the programme. We again took account of Channel 4's submission that Mr McKenzie had called at the property in the course of his legitimate business (namely, with a view to seeking to locate a former tenant) and that giving Mrs Sinton prior warning would have been likely to have defeated his purpose in calling. We also observed that, as noted above, the filming took place openly and from the public pavement and appeared to have been conducted in an unobtrusive manner. It also appeared to be of relatively short duration and, from the footage shown in the programme, we understood that during the filming Mr McKenzie had focused on obtaining from Mrs Sinton the necessary information regarding the whereabouts of the debtor he was seeking and what would happen next if the debtor did not contact him. Given these factors, we considered that, in accordance with Practice 8.9 of the Code, the means of obtaining the relevant footage was proportionate.

Taking all of these factors into account, we considered that in the particular circumstances of this case, Mrs Sinton did not have a legitimate expectation of privacy in relation to the filming of footage of her conversation with Mr McKenzie. We noted that in her representations on the Preliminary View, Mrs Sinton said that she had not had been given an opportunity to consent to being filmed. However, given our conclusion that she did not have a legitimate expectation of privacy with regard to the filming of this material, it was not necessary for Ofcom to consider whether or not Mrs Sinton had consented to the filming, and, if we concluded that she had not, whether any intrusion into her privacy in this regard was warranted.

- b) Ofcom next considered Mrs Sinton's complaint that her privacy was unwarrantably infringed in the programme as broadcast.

In considering this head of complaint, we had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom first considered the extent to which Mrs Sinton had a legitimate expectation of privacy in regard to the inclusion of the footage of her in the programme as broadcast. As stated above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective, fact sensitive and must always be judged in light of the circumstances in which the individual finds him or herself.

As set out above at head a) of the Decision and the "Introduction and programme summary" section, the programme included footage of Mrs Sinton as she answered the door to Mr McKenzie and while she had a very brief exchange with him about the fact that he was seeking her son (who was neither named nor otherwise identified in the programme) regarding non-payment of rent arrears and damage to a property which he had rented.

We took into account Mrs Sinton's assertion that, despite Channel 4's pre-broadcast assurance that no-one who knew her would be able to recognise her from the programme, because her blonde hair was visible and both the street on which she lived and the "distinctive iron fence" outside her property were shown, she was recognised by people who knew her. However, we also observed that Channel 4 said that the production company had assured Mrs Sinton that: her face would be blurred, clear extracts of her voice would not be used and her son would not be identified but not that neither her front door nor her street would feature in the programme.

We also noted that the programme makers took a number of steps to obscure Mrs Sinton's identity in the programme. In particular, she was not named, the entirety of her face was obscured, she was only heard once and very briefly (when she said the word "No") and both the identity of her son and the precise location of her home were not disclosed. Images of the street on which she lived, the front door of her house and the railings outside it were shown. However, the assurance she was given that house numbers, street names and car registrations would be obscured was met and, in Ofcom's opinion, none of these elements noted by Mrs Sinton were particularly distinctive. In addition, we noted that the places which the programme indicated were linked to Mr McKenzie (Sunderland) and the unnamed debtor whom he was seeking (South Shields) are both at least ten miles away from the area in which Mrs Sinton's home is located. We noted

that, having seen the Preliminary View, Mrs Sinton also said that the programme included an image of a tailor's shop that "can be associated with" the road on which her home is located. Having assessed the relevant footage again, we noted that this section of the programme included an image of a shop. However, the shop was seen briefly (for approximately two seconds), from a distance and at an angle. We therefore considered that it was unlikely that anyone to whom the shop was not already well known would have identified it and its location. On this basis, and taking account of all the factors set out above, we concluded that, given the nature of the footage shown and notwithstanding the information which was included, it was unlikely that Mrs Sinton was identifiable from the programme to anyone who did not already know her.

As noted above, Ofcom takes the view that there may be a legitimate expectation of privacy in connection with the filming and subsequent broadcast of footage of an individual standing in the doorway to their home. Again, we noted that, from the footage shown in the programme, it was clear that Mrs Sinton was fully clothed and that she did not appear to be in a state of distress or anxiety. Nor was any private or personal information about Mrs Sinton revealed in this footage. Rather, as noted above, it was our view that, to the extent that the information discussed could be potentially private and sensitive information about an individual, it related to her son rather than to Mrs Sinton. In addition, in our view the programme made it very clear that Mrs Sinton was not the debtor whom Mr McKenzie was seeking.

Therefore, taking all of the factors set out above into account, it was our view that, in the particular circumstances, Mrs Sinton did not have a legitimate expectation of privacy in regard to the broadcast of this footage of her in the programme. Consequently, it was not necessary for Ofcom to go on to consider whether or not Mrs Sinton had consented to the broadcast of this footage, and, if we concluded that she had not, whether any infringement of Mrs Sinton's privacy was warranted.

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

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 8 and 21 August 2015 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Sky News	Sky News	06/05/2015	Due impartiality/bias

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

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

Licensed service	Licensee	Categories
Absolute Radio	Absolute Radio Limited	Provision of information
Fashion Television	Fashion Television International Limited	Provision of information

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

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 8 and 21 August 2015 because they did not raise issues warranting investigation.

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

For more information about how Ofcom assesses conducts investigations about content standards, go to:

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Supersized: 87 Stone - Fat Chance Of Work	5*+1	24/07/2015	Materially misleading	1
BBC News	BBC 1	11/08/2015	Crime	1
BBC News	BBC 1	17/08/2015	Race discrimination/offence	1
BBC News at One	BBC 1	19/08/2015	Generally accepted standards	2
BBC News at Six	BBC 1	18/08/2015	Scheduling	1
BBC News at Ten	BBC 1	29/07/2015	Television Access Services	1
BBC News at Ten	BBC 1	17/08/2015	Generally accepted standards	3
Breakfast	BBC 1	01/08/2015	Generally accepted standards	1
Earth's Natural Wonders	BBC 1	05/08/2015	Generally accepted standards	1
EastEnders	BBC 1	13/08/2015	Generally accepted standards	1
EastEnders	BBC 1	20/08/2015	Religious/Beliefs discrimination/offence	1
Partners in Crime	BBC 1	26/07/2015	Generally accepted standards	1
Radio 1 Summer Mix (trailer)	BBC 1	10/08/2015	Violence and dangerous behaviour	1
Radio 1 Summer Mix (trailer)	BBC 1	13/08/2015	Violence and dangerous behaviour	1
Saturday Kitchen Live	BBC 1	01/08/2015	Violence and dangerous behaviour	1
The Great British Bake Off	BBC 1	05/08/2015	Generally accepted standards	1
The Great British Bake Off	BBC 1	05/08/2015	Scheduling	1
The Great British Bake Off	BBC 1	09/08/2015	Fairness	1
The National Lottery	BBC 1	08/08/2015	Fairness	1
The One Show	BBC 1	19/08/2015	Generally accepted standards	1
The One Show	BBC 1	20/08/2015	Crime	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Welsh Heartland: The Llŷn Peninsula	BBC 1 Wales	Various	Generally accepted standards	1
Coast	BBC 2	06/08/2015	Generally accepted standards	1
Locomotion: Dan Snow's History of Railways	BBC 2	09/08/2015	Outside of remit	1
Newsnight	BBC 2	11/08/2015	Violence and dangerous behaviour	1
Radio 1 Summer Mix (trailer)	BBC 2	06/08/2015	Violence and dangerous behaviour	1
Bad Education	BBC 3	15/07/2015	Gender discrimination/offence	1
Russell Howard's Good News	BBC 3	07/08/2015	Generally accepted standards	1
Top Gear	BBC 3	09/08/2015	Offensive language	1
War Book	BBC 4	11/08/2015	Offensive language	1
BBC News	BBC News website	11/08/2015	Generally accepted standards	1
Richard Bacon	BBC Radio 2	11/08/2015	Generally accepted standards	1
Richard Bacon	BBC Radio 2	12/08/2015	Offensive language	1
Clare in the Community	BBC Radio 4	31/07/2015	Offensive language	1
I'm Sorry I Haven't a Clue	BBC Radio 4	17/08/2015	Generally accepted standards	1
The Now Show	BBC Radio 4	08/08/2015	Race discrimination/offence	1
Peter Tinniswood: A Touch of Daniel	BBC Radio 4Extra	01/08/2015	Race discrimination/offence	1
7 Day Sunday	BBC Radio 5 Live	09/08/2015	Race discrimination/offence	1
Off the Ball	BBC Radio Scotland	08/08/2015	Scheduling	1
Benefits-related programming	BBC, Channel 4, Channel 5	Various	Generally accepted standards	5
Uncle Grandpa	Cartoon Network	05/08/2015	Violence and dangerous behaviour	1
Tomorrow's World	CBS Action	19/07/2015	Generally accepted standards	1
24 Hours in Police Custody	Channel 4	30/07/2015	Race discrimination/offence	1
24 Hours in Police Custody	Channel 4	03/08/2015	Generally accepted standards	2
Channel 4 News	Channel 4	04/08/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	14/08/2015	Due impartiality/bias	2
Channel 4 News	Channel 4	17/08/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	20/08/2015	Due impartiality/bias	2
Life of Pi	Channel 4	09/08/2015	Animal welfare	1
Revenge Porn (trailer)	Channel 4	16/08/2015	Scheduling	1
Sex in Class	Channel 4	06/08/2015	Sexual material	1
Sex in Class	Channel 4	06/08/2015	Under 18s in programmes	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sex in Class	Channel 4	12/08/2015	Generally accepted standards	1
The Last Leg	Channel 4	24/07/2015	Due impartiality/bias	1
The Last Leg	Channel 4	14/08/2015	Generally accepted standards	2
The Three Day Nanny	Channel 4	28/07/2015	Under 18s in programmes	49
Transformers: Revenge of the Fallen	Channel 4	26/07/2015	Offensive language	1
Young, Free and Single (trailer)	Channel 4	10/08/2015	Scheduling	1
5 News at 5	Channel 5	17/08/2015	Due accuracy	1
Benefits Britain: Life on the Dole	Channel 5	05/08/2015	Generally accepted standards	1
Benefits Life: Jailbird Boys Going Straight	Channel 5	18/08/2015	Generally accepted standards	1
Benefits Life: Jailbird Boys Going Straight	Channel 5	20/08/2015	Generally accepted standards	1
Can't Pay? We'll Take it Away!	Channel 5	19/08/2015	Offensive language	1
Can't Pay? We'll Take it Away: Final Demand	Channel 5	01/08/2015	Offensive language	1
Can't Pay? We'll Take it Away: Final Demand	Channel 5	05/08/2015	Offensive language	1
Football League Tonight	Channel 5	08/08/2015	Outside of remit	1
Getting Even with Dad	Channel 5	09/08/2015	Offensive language	1
Gypsies on Benefits and Proud	Channel 5	05/08/2015	Race discrimination/offence	1
Neighbours / Home and Away	Channel 5	Various	Undue prominence	1
Supersized: No Fatties Allowed	Channel 5	06/08/2015	Generally accepted standards	2
The Dog Rescuers with Alan Davies	Channel 5	11/08/2015	Generally accepted standards	1
The Wright Stuff	Channel 5	08/08/2015	Generally accepted standards	1
The Wright Stuff	Channel 5	10/08/2015	Race discrimination/offence	1
Transporter: The Series	Channel 5	01/08/2015	Scheduling	2
Under the Dome	Channel 5	27/07/2015	Animal welfare	1
Undercover Benefits Cheat	Channel 5	05/08/2015	Disability discrimination/offence	2
Undercover Benefits Cheat	Channel 5	05/08/2015	Due impartiality/bias	2
Undercover Benefits Cheat	Channel 5	05/08/2015	Generally accepted standards	1
All Request Lunch	City Beat 96.7FM (Belfast)	Various	Materially misleading	1
Programming	Dave and Food Network	13/08/2015	Materially misleading	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Channel ident	E4	05/08/2015	Generally accepted standards	1
Chronicles of Narnia: The Voyage of the Dawn Treader	E4	26/07/2015	Advertising scheduling	1
Hollyoaks	E4	29/07/2015	Disability discrimination/offence	4
Humans (trailer)	E4	07/08/2015	Generally accepted standards	1
EAVA FM (Leicester)	EAVA FM	06/07/2015	Religious/Beliefs discrimination/offence	1
News	Heart FM (Cambridge)	01/08/2015	Due impartiality/bias	1
The Loved Ones	Horror Channel	15/07/2015	Generally accepted standards	1
IslamiQA	Islam Channel	18/07/2015	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	03/08/2015	Violence and dangerous behaviour	2
Coronation Street	ITV	07/08/2015	Generally accepted standards	2
Coronation Street	ITV	14/08/2015	Violence and dangerous behaviour	1
Coronation Street	ITV	17/08/2015	Generally accepted standards	8
Coronation Street	ITV	Various	Scheduling	1
Emmerdale	ITV	23/07/2015	Violence and dangerous behaviour	6
Emmerdale	ITV	03/08/2015	Generally accepted standards	1
Emmerdale	ITV	03/08/2015	Race discrimination/offence	2
Emmerdale	ITV	04/08/2015	Generally accepted standards	2
Emmerdale	ITV	06/08/2015	Scheduling	1
Emmerdale	ITV	06/08/2015	Violence and dangerous behaviour	3
Emmerdale	ITV	12/08/2015	Transgender discrimination/offence	1
Emmerdale	ITV	12/08/2015	Violence and dangerous behaviour	14
Flockstars	ITV	20/08/2015	Animal welfare	1
Flockstars	ITV	20/08/2015	Outside of remit	1
Freeze Out	ITV	03/08/2015	Generally accepted standards	1
Freeze Out	ITV	05/08/2015	Transgender discrimination/offence	1
Good Morning Britain	ITV	06/07/2015	Competitions	1
ITV News and Weather	ITV	14/08/2015	Generally accepted standards	1
ITV News and Weather	ITV	14/08/2015	Outside of remit	1
ITV News and Weather	ITV	16/08/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
ITV News Anglia	ITV	05/08/2015	Race discrimination/offence	1
ITV News at Ten and Weather	ITV	10/08/2015	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	14/08/2015	Generally accepted standards	1
Keep it in the Family	ITV	08/08/2015	Scheduling	1
Nationwide's sponsorship of ITV documentaries	ITV	03/08/2015	Generally accepted standards	2
Nationwide's sponsorship of ITV documentaries	ITV	13/08/2015	Generally accepted standards	1
Nationwide's sponsorship of ITV documentaries	ITV	18/08/2015	Generally accepted standards	1
Nationwide's sponsorship of ITV documentaries	ITV	20/08/2015	Generally accepted standards	1
Nature Nuts with Julian Clary	ITV	02/08/2015	Scheduling	1
Sainsburys Bank's sponsorship of Keep it in the Family	ITV	15/08/2015	Sponsorship credits	1
Smokey and the Bandit	ITV	16/08/2015	Offensive language	1
The Jeremy Kyle Show	ITV	25/07/2015	Scheduling	1
The Jeremy Kyle Show	ITV	29/07/2015	Generally accepted standards	3
The Jeremy Kyle Show	ITV	30/07/2015	Disability discrimination/offence	1
The Jeremy Kyle Show	ITV	12/08/2015	Generally accepted standards	1
The Jeremy Kyle Show	ITV	17/08/2015	Drugs, smoking, solvents or alcohol	1
The Wonder of Britain	ITV	13/08/2015	Gender discrimination/offence	1
This Morning	ITV	24/07/2015	Materially misleading	1
This Morning	ITV	17/08/2015	Harm	1
Tipping Point	ITV	11/08/2015	Offensive language	1
Travel Guides	ITV	03/08/2015	Animal welfare	7
Emmerdale Omnibus	ITV2	16/08/2015	Race discrimination/offence	1
Safeword	ITV2	23/07/2015	Generally accepted standards	1
Continuity announcement	ITV3	12/08/2015	Generally accepted standards	1
The Chase: Celebrity Special	ITV4	09/08/2015	Generally accepted standards	1
Big Breakfast	Juice FM 107.2	20/07/2015	Competitions	1
Förmiddag	Kanal 11	01/06/2015	Materially misleading	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Gränsbevakarna Australien (Border Security: Australia's Front Line)	Kanal 9	30/07/2015	Generally accepted standards	1
Rickie, Melvin & Charlie in the Morning	Kiss FM	30/07/2015	Generally accepted standards	1
Olly Mann	LBC 97.3 FM	15/08/2015	Religious/Beliefs discrimination/offence	1
Iain Dale	LBC 97.3FM	11/08/2015	Due impartiality/bias	1
Nick Ferrari	LBC 97.3FM	10/08/2015	Due accuracy	1
Continuity announcement	London Live	12/08/2015	Generally accepted standards	1
8 Out of 10 Cats Does Countdown	More4	08/08/2015	Offensive language	1
Community Matters	NTV	16/05/2015	Elections/Referendums	1
Living In Andalucia	Property TV	27/07/2015	Materially misleading	1
Thapki Pyar Ki	Rishtey Europe	17/08/2015	Outside of remit	1
Bam Bam at Breakfast	SAM FM 106 (South Coast)	05/08/2015	Gender discrimination/offence	1
Dag	Sky Arts	31/07/2015	Disability discrimination/offence	1
Dag	Sky Arts	31/07/2015	Disability discrimination/offence	1
Sky News	Sky News	15/08/2015	Generally accepted standards	1
Sky News Tonight with Adam Boulton	Sky News	30/07/2015	Outside of remit / other	1
Sky News Tonight with Adam Boulton	Sky News	20/08/2015	Due impartiality/bias	1
Sunrise	Sky News	01/08/2015	Due impartiality/bias	1
Sunrise	Sky News	05/08/2015	Generally accepted standards	1
Sky Store (Run All Night) promotion	Sky Sports 4	13/08/2015	Scheduling	1
Gillette Soccer Saturday	Sky1	08/08/2015	Race discrimination/offence	1
The Simpsons	Sky1	16/08/2015	Drugs, smoking, solvents or alcohol	1
Drivetime	Talksport	13/08/2015	Generally accepted standards	2
Jesse Duplantis Ministries	TBN UK	19/07/2015	Harm	1
If Katie Hopkins Ruled The World	TLC	06/08/2015	Generally accepted standards	5
The Vanilla Ice Project	Travel Channel	12/07/2015	Violence and dangerous behaviour	1
Programming	Various	Various	Advertising minutage	1
XFM Breakfast Show with Jon Holmes	XFM London	Various	Scheduling	1
Annihilation	Yesterday	24/07/2015	Scheduling	1

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

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

Licensed service	Licensee	Categories	Number of complaints
MFR	Moray Firth Radio Limited	Format	1
Nation Radio (South Wales)	Nation Radio Limited	Format	1
Northsound1	Northsound Radio Limited	Format	1
Clyde1	Radio Clyde Ltd	Format	1
Forth1	Radio Forth Limited	Format	1
Sunny Govan Radio	Sunny Govan Community Media Group	Key Commitments	1

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television and radio adverts, or accuracy in BBC programmes.

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

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

Complaints about television or radio programmes

For more information about how Ofcom assesses conducts investigations about content standards, go to:

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisements	Channel 4	17/08/2015	Advertising content	2
Advertisements	Channel 5	16/08/2015	Advertising content	1
Advertisements	Channel 5	20/08/2015	Advertising content	1
Advertisements	Discovery	17/08/2015	Advertising content	1
Advertisements	Nick Jr Too	16/08/2015	Advertising content	1
Advertisements	Various	Various	Advertising content	1
Advertisements	Watch	15/08/2015	Advertising content	1
BBC Sports News	BBC 1	19/08/2015	Due accuracy	1
Songs of Praise	BBC 1	16/08/2015	Due impartiality/bias	3
The National Lottery	BBC 1	15/08/2015	Due accuracy	1
Scrappers	BBC 2	18/08/2015	Outside of remit / other	1
BBC News	BBC Channels	23/05/2013	Due accuracy	1
Today	BBC Radio 4	20/07/2015	Due impartiality/bias	1

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 8 and 21 August 2015.

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

Programme	Broadcaster	Transmission date
News	Bangla TV	11 June 2015
NCA A World Series	BT Sport / ESNP HD	14 June 2015
Impractical Jokers	Comedy Central	07 August 2015
Impractical Jokers (trailer) and Amy Schumer: Mostly Sex Stuff (trailer)	Comedy Central	10 August 2015
Steve Allen	LBC 97.3 FM	04 August 2015
Jesse Duplantis Ministries	TBN UK	26 July 2015

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

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

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

Programme	Broadcaster	Transmission date
The Dog Factory	BBC 1	19 May 2015
British Gangsters: Faces of the Underworld	Quest	21 June 2015
Shri Guru Ravidass Ji Live	Venus TV	15 March 2015

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:

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